

Crown Pastoral Land Tenure Review

Lease name: MUZZLE STATION

Lease number: PM 005

Final Report on Public Submissions

This document builds on the Preliminary Report on public submissions. The analysis determines if an issue that was allowed, and further consulted on, is accepted or not accepted for inclusion in the Substantive Proposal and to what extent. The report complies with the requirements of Section 45 Crown Pastoral Land Act 1998.

The report attached is released under the Official Information Act 1982.

August

05

**REPORT IN ACCORDANCE WITH
LINZ OPERATIONAL GUIDELINES PHASE 8_7.5**

**Analysis of submissions received through public notice of
Preliminary Proposal for tenure review**

File Ref: PM005.01 Muzzle

Report No: Muzzle 404

Report Date: 28 February 2005

LINZ ID: TR 021

Contractor's Office: Timaru

LINZ Case No: 04/
TR05/54

Date sent to LINZ: 1 March 2005

RECOMMENDATIONS

That the Commissioner of Crown Lands or his Delegate:

1. **Notes** this report on the final analysis of the submissions on the preliminary proposal for the tenure review of the Muzzle pastoral lease.
2. **Approves** the attached final analysis of the submissions on the preliminary proposal for the tenure review of the Muzzle pastoral lease.
3. **Notes** that the final analysis is in partial fulfilment of the requirements of section 45 of the Crown Pastoral Land Act 1998.

CERTIFICATION

DTZ certifies that this report has been prepared in accordance with Procedure P10 23/10/03 of the LINZ Operational Guidelines.

Signed by Agent:

R.A. Ward-Smith

Name:

Approved/Declined by:

R. Webster

Name:

ROBERT JOSEPH WEBSTER

Date of decision:

7/3/05

Details of lease:

Lease Name: Muzzle

Location: Middle Clarence Valley, Marlborough

Lessee: CA & CA Nimmo

APPENDICIES:

1. Analysis of submissions
2. Copy of public notice.
3. List of submitters.
4. Draft Sustainable Management Covenant
5. Draft Concession Document for Grazing and Tourism
6. Draft Grant of appurtenant easement for public access and vehicle access for management purposes
7. Notes from consultations

FINAL ANALYSIS OF PUBLIC SUBMISSIONS

MUZZLE TENURE REVIEW

1. **Details of lease:**

Lease Name: Muzzle
Location: Middle Clarence Valley, Marlborough
Lessee: Colin Allen Nimmo and Christina Anne Nimmo

2. **Public Notification of Preliminary Proposal - Background** Advertised 22 November 2003

A copy of the advertisement is attached at Appendix 2.

Closing date for submissions: 10 February 2004

A total of twelve submissions were received by 10th February 2004.

Four late submissions were received in this office on 11, 12, 20 February and 31 March 2004, and LINZ advised that they be analysed and marked LATE. A further submission was sent to the Minister's office on 21 January but a copy only received in the DTZ office on 23 February 2004.

LINZ approved preliminary analysis 19 April 2004
DGC's delegate consulted 20 April 2004
Holder's consultant met with DGC's delegate (M.Clare) and DTZ (R. Ward-Smith) 12 August 2004. Holder was unable to attend due to weather.
Copy of meeting notes sent to the Holder 16 September 2004

3. **Analysis of submissions:**

3.1 **Introduction:**

Explanation of Analysis:

Each of the submissions received has been reviewed in order to identify the points raised and these have been numbered accordingly. Where submitters have made similar points, these have been given the same number.

The following analysis summarises each of the points raised along with the recorded number (*shown in Appendix 3*) of the submitter(s) making the point. Discussion of the point and the decision whether to allow/disallow the point follows.

The decision to “**Allow**” the point made by submitters is on the basis that the matter raised is a relevant matter for the Commissioner of Crown Lands (CCL) to consider when making decisions in the context of the Crown Pastoral Land Act 1998 (CPL Act). Conversely, where the matter raised is not relevant in terms of the Commissioner’s consideration, the decision is to “**Disallow**”.

Each allowed point has then been evaluated with respect to the following criteria:

- The objects and matters to be taken into account in the CPL Act 1998 (Sections 24 and 25), and;
- The views of all parties consulted and any other matters relevant to the particular review, balanced against the objects and matters to be taken into account in the CPL Act 1998.

The evaluation is based on the premise that the Preliminary Proposal (PP) met the objects and matters to be taken into account in the CPL Act 1998 (Sections 24 and 25). Based on the information available at the time, the Department of Conservation (DoC) and the Holder have been consulted and their views have been taken into consideration and balanced against the objects and matters to be taken into account in the CPL Act.

Following the above evaluation and consultation, points that will be included in the draft Substantial Proposal, are then “accepted”. Conversely points that will not be included in the draft Substantial Proposal, are then “not accepted”. Accordingly the decision is recorded as being to “**Accept**” or to “**Not accept**” each point. Further explanation of the Decision has been made in the discussion paragraph showing the summary for each point.

Points that were disallowed, as approved by the Commissioner of Crown Lands’ delegate, are automatically not accepted therefore have been deleted from this report.

3.2 Analysis:

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
2	That the tourist concession only be permitted providing it does not interfere or detract from ongoing public access.	2	Allow	Accept

Discussion Point 2:

The submitter is concerned that a tourist concession is proposed that could interfere or detract from ongoing public access.

The matter of public access is relevant under CPL Act, Part 2, Section 24 (c) (i). The matter of the concession is relevant under Section 36 (1) (a). The point is therefore allowed.

Consideration

The point raised is covered in schedule 2 clause 9 of the proposed concession document. The clause referred to states that "subject to clause 10 hereof the public have unrestricted access rights to the land". No further action would appear to be required.

As the point raised is already in the proposed document the point is accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub Nos</i>	<i>Decision</i>	
3	The public information was not sufficiently clear about public use of existing buildings (Quail Flat) or criteria for additional buildings.	2	Allow	Not Accept

Discussion Point 3:

The submitter has a concern about the use of existing buildings, historic buildings and future buildings. Historic buildings occur both around the Muzzle steading and on the former Clarence Reserve, particularly at Quail Flat as mentioned by the submitter. There are therefore two aspects to this matter. Firstly, buildings where a freehold designation is proposed and buildings which remain Crown subject to a concession.

The matter of granting concessions is relevant under CPL Act, Part 2, Section 36 (1) (a) and the point is therefore allowed.

The protection of significant inherent values is relevant under CPL Act, Part 2, Section 24 (b) and the point is therefore allowed.

Consideration

Clause 9 of the concession documents states what the Concessionaire can and cannot use. Other buildings are open and available to the public for their use and they can stay in designated buildings.

The matter of criteria for any future buildings is one for The Department of Conservation to consider in the future, and is not a matter for the Commissioner to consider as part of tenure review.

The old sod homestead at the Muzzle steading area is still in use by the Holder and comprises part of the Holder's improvements. It has not been referred to by either the DGC's delegate or the submitter.

In light of the above, the point is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub Nos</i>	<i>Decision</i>	
4	That the grazing concession have five-yearly reviews.	3	Allow	Not accept

Discussion Point 4:

The submitter has requested that the grazing concession have five-yearly reviews. See also point 19.

The matter of granting concessions is relevant under CPL Act, Part 2, Section 36 (1) and the point is therefore allowed.

Consideration

The DGC's delegate states that the review has to take place at three-yearly intervals as required by statute.

As the review period is already a matter of statute the point cannot be accepted.

The Holder did not raise any further concern regarding the matter.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub Nos</i>	<i>Decision</i>	
5	That perhaps the fence VWX not be erected and so minimise fencing on the proposed conservation landscape.	3	Allow	Not accept

Discussion Point 5:

The submitter has the view that it is more detrimental to have the intrusion of fencing in the landscape than a few domestic stock encroaching into a conservation area.

The protection of significant inherent values is relevant under CPL Act, Part 2, Section 24 (b) and the point is therefore allowed.

Consideration

There is already a fence along the line referred to and agreement has been reached that the fence be upgraded to prevent stock movement. The DGC's delegate and the Holder do not see the upgrading of the fence as a landscape issue.

In view of the fact that both parties consulted agree that the fence should be upgraded and that it is necessary to contain stock to the concession area the point is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub Nos</i>	<i>Decision</i>	
6	That Nelson Marlborough Fish and Game Council staff should have direct access to the Clarence River as provided in the proposal for Department of Conservation.	5	Allow	Accept

Discussion Point 6:

The matter of access is relevant under CPL Act, Part 2, Section 24 (c) (i) and the point is therefore allowed.

Consideration

The DGC's delegate and the Holder agreed that it is reasonable for Fish & Game to also have access rights over the routes i – j and f – g. These are the same routes that are available to Department of Conservation. The point is accepted and the documentation will be amended accordingly.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
7	That the proposed freehold designation is undesirable. The area should remain Crown and if necessary leased. One submitter requested that the whole Tenure Review not proceed.	6, 10, 16	Allow	Not accept

Discussion Point 7:

There is a strong indication from the submitters that they believe the whole of the area should remain Crown however, there could continue to be farming under a suitable lease/licence/concession arrangement.

The protection of significant inherent values is relevant under CPL Act, Part 2, Section 24 (b) and the point is therefore allowed.

Consideration

The DGC's delegate advised that the proposed freehold designation for Muzzle is clearly farmland and has very low significant inherent values. It was clear from the Holder that he would not accept the Tenure Review proceeding without the freeholding. The submitters clearly indicate a preference to continue with the Pastoral Lease or some similar arrangement however the objective of the CPLA is for land that does not have significant inherent values to be freed from the management constraints resulting from its tenure, while land that has high significant values be restored to full Crown ownership.

The point is therefore not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
8	That large rivers such as the Clarence should have as a minimum a 50metre marginal strip. One submitter requested a 200metre marginal strip or additional conservation area if freehold proceeds.	6, 16	Allow	Not accept

Discussion Point 8:

The Clarence River variously has legal road or marginal strip along the true left bank adjoining Muzzle pastoral lease, therefore, the lease does not join the river. The only area which it is proposed to designate as freehold is part of the Muzzle Pastoral Lease, all being on the true left of the Clarence River. Where marginal strips already exist there is no

option for increasing their width as an outcome of tenure review. Where marginal strips are to be laid off as an outcome of tenure review, there is an option under part IV of the Conservation Act to create strips greater than 20 metres. Alternatively further land may be retained under Crown control.

The submitters have raised a number of issues relating to the potential recreational use of the reviewable land adjoining the streams, which relates to s24(c)(i) of the CPL Act. The point is therefore allowed for further consideration.

Consideration

The DGC's delegate advises that the true right bank of the Clarence River will be freely available to the public for camping and there will be public access. He submits that it is not therefore necessary to take a wider marginal strip or to incur additional survey costs that would be required to take additional conservation land.

The Holder does not favour a wider marginal strip especially in view of full public access being available on the true right bank.

As the true right bank of the Clarence River will be freely available to the public, there appears to be little justification for specific provision for recreational use of land on the true left bank. The matter of increasing the width of the marginal strip is a matter for the DGC to consider. For these reasons the point is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
10	That the whole of the RAP 4 - Ravine Stream - be protected. One submission also required the protection of all RAP's outlined in the conservation values of Muzzle Station report – December 1994.	10, 16	Allow	Not accept

Discussion Point 10:

The conservation values report of Muzzle highlighted various recommended areas for protection and not all have been identified for protection under the preliminary proposal.

The matter of the protection of significant inherent values is relevant under CPL Act, Part 2, Section 24 (a) (i) and (b) (i) and the point is therefore allowed.

Consideration

The CPL Act requires the protection of significant inherent values, and while previous assessments of conservation values may assist, they can not be automatically adopted. The DGC's delegate having considered the matter of RAP4 and RAPs elsewhere on the property has come to the conclusion that the vast majority of RAPs have been protected. There are some minor exceptions being the moving of the boundary of RAP4 to a more practical fenceline where a fence already exists along the top of a ridge which he says does not compromise the area. Some small areas, including RAP8 will be within the proposed freehold however topography of the areas will ensure that the plants are protected and there is no risk to them. The DGC's delegate does agree with the point made, and the matter was not subject to further discussion with the Holder.

In light of the above, the point is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
11	That the boundary for the proposed freehold designation is inappropriate and should be that of the 1994 Conservation Resources report because cattle can cause considerable damage.	10	Allow	Not accept

Discussion Point 11:

The submitter is concerned that cattle can and do cause damage to wetlands, streams and forest margins. It prefers a boundary that could be fenced as proposed in the 1994 Conservation Resource Resources report.

The protection of significant inherent values is relevant under CPL Act, Part 2, Section 24 (b) and the point is therefore allowed.

Consideration

The DGC's delegate considered it appropriate to have further discussion with the Holder on the boundaries of the proposed freehold but acknowledged that they were issues that have been traversed at some length in the past. The Holder certainly did not wish to renegotiate the proposal and offered the view that the sustainable management covenant largely allayed the concerns of the submitter.

The submitter had raised the issue of cattle causing damage to wetlands, streams and forest margins. The sustainable management covenant notes that the land is to be used for pastoral farming and that agreement has been reached to manage the covenant area for the purpose of protecting conservation values of the conservation area including the preservation and protection of natural resources for the purpose of retaining intrinsic values. This means that any grazing of the freehold area, subject to the sustainable management covenant, will need to be conservative to effectively restrict animals from grazing the adjacent conservation area. The Commissioner may require that the covenant be varied from time to time to better achieve the purposes and objectives therefore control is with the Commissioner.

This is a Tenure Review that has been under negotiation for a very long period and all matters have been thoroughly traversed by the parties involved. The submitter has stated that the proposed boundary is inappropriate. While it may not be ideal, it is very workable and the sustainable management covenant allows some grazing on an area that does not need to be fenced to be utilised due to its cold southerly aspect.

The views of all parties consulted have been considered in relation to the Objects of Part 2 of the CPL Act. Taking the review overall, the objects are being achieved, and no change to the proposed boundaries has been able to be negotiated. The point is therefore not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
12	Provide easement access to bypass the difficult sections of streams that are routes (North) from the Clarence River to the proposed designation for conservation on Muzzle Pastoral Lease.	10	Allow	Not accept

Discussion Point 12:

The submitter states that while marginal strips along the streams running in to the Clarence River through Muzzle give access, there are sections of them that are particularly difficult to traverse and it is desirable that those sections are able to be bypassed by legal means. See also point 15.

The matter of public access is relevant under CPL Act, Part 2, Section 24 (c) (i) and the point is therefore allowed.

Consideration

The DGC's delegate considered that the vast majority of streams that flow from the Clarence into the Inland Kaikoura range are easily traversed and are in fact the most practical route onto the range. In many instances they give access to leading spurs within the proposed conservation area. The matter was not discussed further with the Holder.

The views of those consulted were considered against the Objects of Part 2 of the CPL Act. On the basis that reasonable public access will be available to the proposed conservation area, the point is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
13	Provide an area of public land in the vicinity of Ravine Hut, easily accessible from the Clarence River for camping	10	Allow	Not accept

Discussion Point 13:

The matter of public use along the Clarence River appears in several submissions and the submitter in this case has identified an area where they believe sufficient land should be made available for use by kayakers and rafters for camping together with trampers, mountain bikers and other users.

The matter of public access is relevant under CPL Act, Part 2, Section 24 (c) (i) and the point is therefore allowed.

Consideration

The DGC's delegate did not support the need for provision of public land in the vicinity of Ravine Hut for camping. In discussion with the Holder it was noted that the Ravine Hut is

in proximity to stockyards and not a suitable place for public use. The whole of the right bank is available for public use and a sheltered area is available at “the Point” being the confluence of Dart Stream and the Clarence River. There is a wide river flat in the lower Dart Stream suitable for public use within the riverbed.

Having considered the views of the parties consulted, in relation to the Objects of Part 2 of the CPL Act, the point is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
15	A long length (10km) has no formal access to the proposed higher public use land.	11	Allow	Not accept

Discussion Point 15:

The area of concern is located between Bluff River and Muzzle Stream from the proposed public easement near the Clarence River to the proposed conservation area to the north. See also point 12.

The matter of public access is relevant under CPL Act, Part 2, Section 24 (c) (i) and the point is therefore allowed.

Consideration

The DGC's delegate noted that the topography allows for very good access up the Bluff and Muzzle streams both of which lead onto good leading spurs in the proposed conservation area. While these streams may be some ten kilometres apart, in the context of this large-scale landscape this distance is not significant. There is also a significant proposed conservation designation approximately halfway between the two streams at Bluff Hill which adjoins the Clarence River and has an easement access proposed both upstream and downstream.

The CPL Act provides for the securing of public access (amongst other things), and reasonable public access will be available to the proposed conservation area. The matter of numbers of access routes, or frequency of access along a boundary is not covered in the Act.

In light of the above factors, the point is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub Nos</i>	<i>Decision</i>	
16	Concern at the effectiveness of stock control, especially by future owners, if not properly monitored by the grantor. Believes fencing is required in the Fidget Stream area to prevent sheep moving onto conservation land, or proposed conservation land. Alternatively only cattle should be grazed where not fenced. In addition, the fence installed under a soil and water conservation programme (SWCP) between Dubious and Fidget Streams should be reinstated (shown A-B on submission 13). Another submitter requested that all boundaries between grazed and ungrazed land be fenced.	12,13,16	Allow	Not accept

Discussion Point 16:

There was general concern in several submissions about the effects of stock on significant inherent values and the control of such stock. This ranges from allowing cattle grazing in certain areas, particularly if unfenced to the full fencing of any area that was supposed to be grazed.

Note also Point 5 that promotes less fencing in conservation areas.

The matter of the SWCP fence is a matter that should be dealt with under the Land Improvement Agreement by the Regional Council, however it is included here in the general discussion on stock control.

The matter of the protection of significant inherent values is relevant under CPL Act, Part 2, Section 24(a)(i) and (b)(i) and the point is therefore allowed.

Consideration

The DGC's delegate notes that the majority of the area is fenced and is being repaired in some instances on the former Clarence Reserve area.

In discussions with the Holder it was noted that the fence referred as A-B in submission 13 between Dubious and Fidget Streams is a very good fence and is intended to be maintained. It was also pointed out that land northeast of Fidget Stream, which is currently in public conservation land and referred by submitter, is not within the scope of the Tenure Review. Post-tenure review arrangements will be made between the Department of Conservation and the Holder if necessary. Any fences that are not currently up to standard are being reinstated by the Holder under the terms of the grazing concession.

As the matter of fencing has been discussed at length in previous negotiations and there is no new material presented the point is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
19	That environmental monitoring be a requirement, not an option (schedule 2 special conditions, section 3, grazing concession). Also that there be a monitoring programme in the Sustainable Management Covenant (SMC) to replace clause 2b.	13	Allow	Not accept

Discussion Point 19:

The submitter is concerned that there must be mandatory monitoring to enable adequate and ongoing reviews of the grazing concession and SMC. See also point 4.

The matter of the management of reviewable land in a way that is ecologically sustainable and the protection of significant inherent values is relevant under CPL Act, Part 2, Sections 24 (a) (i) and (b) (i) and the point is therefore allowed.

Consideration

The grazing concession and SMC documents provide for monitoring at the discretion of the grantor. The concession document also provides for a contribution from the Concessionaire towards monitoring.

It will be the responsibility of the administering agencies to ensure compliance with the terms of the concession and covenant, and to determine what is required to adequately assess compliance. Mandatory monitoring would not in itself achieve or ensure compliance. It is not considered appropriate for the Commissioner to prescribe how agencies will ensure compliance with the provision of concessions or covenants, and the point is therefore not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
20	That recognition be given in the SMC to the management of the area for soil conservation purposes. It is accepted that some cattle will encroach onto the proposed conservation area. That a regular review of conditions of the SMC be put in place.	13	Allow	Not accept

Discussion Point 20:

The submission particularly relates to the sustainable management covenant and raises the point of soil conservation and in particular the need for a regular review of the conditions of the SMC.

Soil conservation values are part of ecological sustainability which is a matter required to be considered under CPL Act, Part 2, s24(a)(i). and the point is therefore allowed.

Consideration

The DGC's delegate was supportive of considering this matter further. When meeting with the Holder it was noted that clause 3.3 of the sustainable management covenant provides for the covenant to be varied from time to time to better achieve the purposes and objectives. If therefore there is a problem in the future the Commissioner may vary the document to ensure that soil conservation issues are fully considered. It is extremely unlikely that there would be undue pressure on this land due both to its geography and that only light grazing will be possible to achieve the purposes and objectives of the covenant.

The views of the parties consulted have been considered against the Objects of Part 2 of the CPL Act. In light of the above, the point is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
23	That there has been insufficient public information made available, particularly CRR report on Clarence Reserve which was purchased with Nature Heritage Fund money for conservation purposes.	16	Allow	Not accept

Discussion Point 23:

The Act requires the CCL to give notice "describing the proposal in general terms". The matter is whether the information published was sufficient to meet that requirement.

Public notification is relevant under CPL Act, part 2, section 43 (b) and the point is therefore allowed.

Consideration

The whole of Clarence Reserve was purchased with Nature Heritage Fund money and the whole area is to be retained as conservation land subject to part of it being subject to a grazing concession. Public notice was given as prescribed under the Act and public information was made available to those who requested it.

The submitter did not identify any particular detrimental effect that any 'insufficient public information' may have caused.

The point raised has been considered in relation to the Objects of Part 2 of the CPL Act, and in relation to the obligations of the Commissioner to provide information to the public. The point is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
24	Do not proceed with Clarence Reserve concession. Readvertise with more information.	16	Allow	Not accept

Discussion Point 24:

The submission is a direct negative and really is about the provision of information. It asks for reconsideration and then subsequent re-advertising.

The matter of granting concessions is relevant under CPL Act, Part 2, Section 36 (1) and the point is therefore allowed.

Consideration

The DGC's delegate is satisfied that the concession has been appropriately constructed and advertised, and the matter was not raised with the Holder.

The CPLA process has been followed which includes advertising of the grazing and tourist concessions. The point raised has been considered in relation to the Objects of Part 2 of the CPL Act, and in relation to the obligations of the Commissioner to provide information to the public. There appears to be no justification to not proceed with the concession therefore the matter of re-advertising is not an issue. The point is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
26	The submitter argues that the Crown does not 'own' the unused Crown Land included in the review	17	Allow	Not accept

Discussion Point 26:

The arguments raised relate to the validity of the processes by which land of the former Clarence Reserve pastoral lease was acquired from the Lessees. The initial tenure and any existing interests in land being included in a tenure review is fundamental to the review process, and consequently the matter is allowed to enable LINZ to investigate the submitters concerns and respond as appropriate.

Consideration

This point was raised by a former lessee of the Clarence Reserve. The point was allowed so that LINZ could investigate the submitters concern and respond appropriately.

The 'Clarence Reserve' land in question that has been included in the review was originally part of Clarence Reserve pastoral lease. The Crown purchased the entire lease in 1994. The notice of the surrender was registered against the title on 9 November 1994 and extinguishes all rights and obligations attached to the lease. In 2002 some of the land purchased was transferred to the Department of Conservation. A remaining area of approximately 12,000 hectares was retained as Crown land subject to the Land Act 1948, and the Commissioner subsequently decided to include this area of Crown land in the Muzzle Tenure Review. Since the Crown does own this land the point cannot be accepted.

LINZ responded to the submitter in a letter dated 15 February 2005 separate to the analysis of public submissions and the tenure review process.

5. Discussion and conclusions:

Discussion relevant to each particular point has been made under each point for simplicity and clarity

Explanation Notes:

1. There was comment from several submitters about there being insufficient public information, particularly in regard to the former Clarence River Reserve land.

**REPORT IN ACCORDANCE WITH
PROCEDURE 10 OPERATIONAL GUIDELINES
CONTRACT 50344**

**Final analysis of Iwi submission on a
Preliminary Proposal for tenure review**

File Ref: Pm005.01 Muzzle **Report No:** Muzzle406 **Report Date:** 24 November 2004

LINZ ID: CON/50000/16/12644/A-ZNO

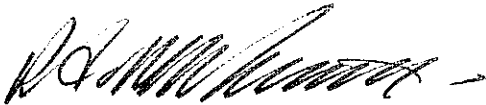
Contractor's Office: Timaru **LINZ Case No:** 047/205/51 **Date sent to LINZ:** ²⁶ November 2004

RECOMMENDATIONS

That the Commissioner of Crown Lands or his delegate:

1. Notes this final analysis and makes the decisions as set out in the analysis attached.

Signed for DTZ New Zealand Limited:



R A Ward-Smith: Manager - Timaru

Approved/Declined (pursuant to a delegation from the Commissioner of Crown Lands) by:



Name: ROBERT JOSEPH WEBSTER

Date of decision: 6/12/04

1. Details of lease:

Lease Name: Muzzle
Location: Clarence Valley, Marlborough
Lessee: CA & CA Nimmo

APPENDICIES:

1. Final analysis of submission.
2. Copy of annotated submission dated 22 January 2004
3. Copy of additional submission dated 30 April 2004
4. Director General of Conservation Delegate's comments dated 25 June 2004
5. Letter to DGC's Delegate dated 5 May 2004

APPENDIX 1:

Final analysis of submission

FINAL ANALYSIS OF SUBMISSION

MUZZLE TENURE REVIEW

1. *Details of lease:*

Lease Name: Muzzle

Location: Clarence Valley, Marlborough

Lessee: CA & CA Nimmo

2. *Details of submission:*

The Commissioner of Crown Lands advised Iwi of the Preliminary Proposal for the Muzzle tenure review in accordance with Section 43 Crown Pastoral Land Act. Iwi responded by letter dated 22 January 2004 and raised three distinct points in relation to this review.

LINZ approved preliminary analysis 4 May 2004
DGC's delegate consulted 5 May 2004
Holder's consultant met with DGC's delegate (M.Clare) and DTZ (R. Ward-Smith) 12 August 2004.
Holder was unable to attend due to weather.

3. *Analysis of submission:*

3.1 *Introduction:*

Explanation of Analysis:

The submission received has been reviewed in order to identify the points raised and these have been numbered accordingly.

The following analysis summarises each of the points raised. Discussion of the point and the decision whether to allow/disallow the point follows.

The decision to "**Allow**" the point made by the submitter is on the basis that the matter raised is a relevant matter for the Commissioner of Crown Lands (CCL) to consider when making decisions in the context of the Crown Pastoral Land Act 1998 (CPL Act). Conversely, where the matter raised is not relevant in terms of the Commissioner's consideration, the decision is to "**Disallow**".

Each allowed point has then been evaluated with respect to the following criteria:

- The objects and matters to be taken into account in the CPL Act 1998 (Sections 24 and 25), and;
- The views of all parties consulted and any other matters relevant to the particular review, balanced against the objects and matters to be taken into account in the CPL Act 1998.

The evaluation is based on the premise that the Preliminary Proposal (PP) met the objects and matters to be taken into account in the CPL Act 1998 (Sections 24 and 25). Based on the information available at the time, the Department of Conservation (DoC) and the Holder have been consulted and their views have been taken into consideration and balanced against the objects and matters to be taken into account in the CPL Act.

Points that were disallowed, as approved by LINZ, are automatically not accepted therefore have been deleted from this report.

3.2 Analysis:

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
1a	Concern at the inclusion of Clarence Reserve in the Tenure Review.	Allow	Not accepted

Discussion Point 1a:

The matter of including unoccupied Crown Land in a Tenure Review is relevant under the CPL Act, section 29.

Consultation:

The land included in the tenure review was Crown Land that at the time of the purchase by the Crown was intended for a special lease for grazing. The proposed designation is for the land to be restored to Crown control subject to a concession. The inclusion of the Crown land in the tenure review is a decision that the Commissioner may make and allows for full consideration of the future use of such land. The point is therefore not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
1b	The large amount of Crown Land included in the proposal is a concern.	Allow	Not accepted

Discussion Point 1b:

The matter of the designation of land is central to Tenure Review, encompassed in the objects of the CPL Act Section 24.

Points 1a & 1b are interrelated. Iwi have requested a copy of the Conservation Resource Report for Clarence Reserve. Concern is raised due to the lack of information available. Therefore they have been bracketed as points 1a & b.

Consultation:

The submitter had concern at the large amount of Crown Land included in the tenure review. The matter of Clarence Reserve was interrelated to point 1a and was allowed, however, the amount of land is dependent on the size of the legal parcel of land. Therefore the whole of the former Clarence Reserve remaining as Crown Land (excluding that land that had been transferred to the control of the Department of Conservation) was included in the tenure review by the Commissioner. The point is therefore not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
2	Future environmental management is an option for DOC which requires clarification.	Allow	Not accepted

Discussion Point 2:

The matter of environmental management is taken to be the same or similar to being ecologically sustainable and is relevant under the CPL Act 24 (a) (i).

This area is of significant cultural, spiritual and traditional significance to Ngai Tahu. Future management of the area is an issue raised noting that DOC may establish an environmental management plan. Clarification of future management has been requested. The point has been allowed due to its relevance under the CPL Act.

Consultation:

The Department of Conservation intend to have further discussions with the submitter about future management of the area. It is noted that this land will be included under the umbrella of the Conservation Management Strategy. While it is valid for the submitter to have concern about future environmental management it is a post tenure review matter between Department of Conservation and Iwi. Department of Conservation have responded that there will be further discussion with Ngai Tahu about future management. It is not a matter to be dealt with in the Substantive Proposal therefore is not accepted.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Decision</i>	
3	Ngai Tahu question the exclusive use of part of Clarence Reserve by the proposed concession holder.	Allow	Not accepted

Discussion Point 3:

Ngai Tahu raise an anomaly in the documentation of the grazing concession in that exclusive use would not normally be given. It is a matter that must be considered in the granting of concessions when dealing with Tenure Review under the CPL Act, section 36 (1) (a), 39 (c).

Consultation:

The areas of exclusive use and occupation referred to by the submitter are the woolshed and stockyards at Quail Flat for the purpose associated with the grazing concession. These areas are considered to be a workplace and in terms of health and safety it is inappropriate that the general public have access to these facilities. They have no inherent value significance nor historical significance, as it is a relatively modern facility. The point is therefore not accepted.

4. Discussion and conclusions:

Discussion on each particular point has been made under the individual point headings for simplicity and clarity. The points really are more of requiring information and clarity. A meeting was requested to seek clarification and was held on 15 March 2004 at Kaikoura. It is however appropriate that the issues be formally documented through this analysis.

Subsequent to the meeting with Iwi on 15 March 2004 and an inspection by Iwi the following week, a further submission was received from Ngai Tahu dated 30 April 2004. A copy was forwarded to Land Information New Zealand on 4 May 2004 however by that time Land Information New Zealand had approved the Preliminary Analysis of the earlier Iwi submission. A copy of the latest submission was enclosed when the preliminary analysis was forwarded to the Department of Conservation for consultation requesting that it also be taken into consideration.

The Ngai Tahu submission of 30 April 2004 largely reinforces and agrees with the proposed designations. Of concern, however, is some of the post-tenure review management provisions not normally considered under part 2 of the Crown Pastoral Land Act. Due to the presence of extensive areas of scrub weeds being hawthorn, sweet briar, gorse and broom, the submitter wants to reinforce the need for an operational weed and pest control plan. As set out in condition 13 of schedule 2, in the draft concession document. This requires the grantor to set up an operational weed and pest control plan for the concessionaire and have it included in the substantive proposal. The submission further states that the Department of Conservation prepares a conservation resource report for the Clarence Reserve stating that this is necessary prior to being able to prepare the operational weed and pest control plan.

The submission reinforces the importance and requirement for the Department of Conservation to consult with Ngai Tahu when considering any consents required under the concession particularly for cultivation or soil disturbance.

The length of the grazing concession is the only part of the submission, where there is considerable variance from the draft concession. While recognising that a significant term is required to recoup investment they consider the thirty year grazing term should be reduced to fifteen years. Unfortunately there is no real reason for this other than considering that thirty years is a long period.

The submitter has raised the issue of exclusive use of a bunkhouse, referred to as the 'concrete one', located immediately outside the perimeter fence of Quail Flat cottages. They have requested that the concessionaire does not have exclusive use of that bunkhouse.

Comments:

The matters regarding weed and pest control really reinforces the provisions as currently set out in the draft concession document therefore no further comment is proffered.

Department of Conservation currently have a responsibility to consult with Iwi on matters concerning conservation land and therefore are required to consult regarding any application for earth disturbance under the provisions of the concession. Therefore no further comment is required.

Term of the grazing concession

The term of the grazing concession has been considerably debated in previous negotiations. The present proposal is a fall-back from a possible freeholding designation and with three year reviews and no right of renewal, it gives the Crown considerable control over land that is suitable for farming, has been considerably modified in the past, but does have landscape and cultural significance. Longer term leases encourage the holder to take greater care of the land and make a reasonable investment.

If weeds are to be cleared there is a considerable cost to the holder in complying with that requirement which is a long-term benefit to the Crown as well as to the occupier. Adequate provision has been made for public access and use therefore there is a reasonable compromise between the security for the concessionaire and public use and protection.

The proposed concession does not give the holder exclusive use of the bunkhouse referred to but does give the concessionaire (9.2 (a)) a right to modify the concrete bunkhouse by installing a gas hot water heater and shower facilities. The document at schedule 1 clause 2 (A) (ii) gives exclusive use only to the woolshed and stockyards at Quail Flat. Clause 2 (B) allows the use of the land, together with the bunkhouse referred to and the Quail Flat cookhouse for the purposes of the business relating to the tourism concession but does not grant exclusive use. It would therefore appear that there is not an intention to grant exclusive use of the concrete bunkhouse.

The view is taken that there is nothing Land Information New Zealand specifically requires to do as the result of the Ngai Tahu submission dated 30 April 2004 other than ensure that the Department of Conservation is aware of the submission in relation to its future management of the Clarence Reserve area.