

Crown Pastoral Land Tenure Review

Lease name: MUZZLE

Lease number: PM 027

Preliminary Report on Public Submissions - Part 1

This document includes information on the public submissions received in response to an advertisement for submissions on the Preliminary Proposal. The report identifies if each issue raised is allowed or disallowed pursuant to the CPLA. If allowed the issue will be subject to further consultation with Department of Conservation, or other relevant party.

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

May

05

PRELIMINARY ANALYSIS OF 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

Details of advertisement, date, publication, location:

Date Advertised	Publication	Location
Saturday – November 22 nd 2003	Otago Daily Times	Dunedin
Saturday – November 22 nd 2003	The Press	Christchurch

Closing date for submissions:

10th February 2004 which had been extended from 2 February 2004.

3. Details of submissions received:

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.

4. Analysis of submissions:

4.1 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**’.

4.2 *Analysis:*

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
1	That the route marked a-b, d-h, h-j, be designated as a legal road. A point was also raised that there be provision for re-alignment of designated roads due to erosion etc.	2, 10, 12, 16	Disallow	

Discussion Point 1:

Various submitters have raised the issue of the security of a public access indicating that they believe that legal road is much more secure and it gives opportunities to open up the access to the level required at the time.

Easements to allow foot, horse and non-motorised vehicle over the route referred to above has been proposed in the preliminary proposal.

The CCL has no jurisdiction over public roads, and the matter of creation or exchange of public roads is therefore not a matter that the CCL is required to consider under the CPL Act. The point is therefore not allowed.

<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	

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 concession is relevant under Section 36 (1) (a). The point is therefore allowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</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	

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.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
4	That the grazing concession have five-yearly reviews.	3	Allow	

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.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
5	That perhaps the fence VWX not be erected and so minimise fencing on the proposed conservation landscape.	3	Allow	

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.

	<i>Summary of Point Raised</i>	<i>Sub No.s</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	

Discussion Point 6:

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

<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	

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.

	<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	

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.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
9	The “through route” referred to in public material does not include the formed road/track through “Remuera Station” which is an easement in favour of Bluff Station Ltd and the Nimmos (Muzzle) requiring consent for tourist activity.	7	Disallow	

Discussion Point 9:

The submitter is making the point that while there is an easement through their property in favour of the holders of Muzzle Pastoral Lease it does not necessarily grant the general public access through their property.

Remuera Station is not in the Tenure Review therefore the point is disallowed.

<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	

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.

<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	

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.

	<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	

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.

<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	

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.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
14	The information made available to the public needs a statement concerning the location of marginal strips.	11,14, 16	Disallow	

Discussion Point 14:

This submission is not so much about the provision of marginal strips as the identification of marginal strips on public information and the need for identification prior to public notification. However, it should be noted that this matter has been raised as a more general concern and is being considered as an issue outside of this individual tenure review.

The matter of marginal strips is dealt with under Part IV Conservation Act. It is not a matter the CCL is required to consider under the CPL Act, and the point is therefore not allowed.

<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	

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.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</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	

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.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
17	Why differentiate the area CA5 from the Clarence Conservation Area.	12	Disallow	

Discussion Point 17:

Part of the former Clarence Reserve Pastoral Lease has previously been gazetted as conservation land and is not part of this review.

The Clarence conservation area is not included in the tenure review, therefore cannot be considered by the CCL under the CPL Act 1998. The point therefore is not allowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
18	No reference has been made to the Land Improvement Agreement (LIA) over the former Clarence Reserve Pastoral Lease. It was not noted in the due diligence report or the preliminary proposal. The Canterbury Regional Council has an interest in the area under the LIA.	13	Disallow	

Discussion Point 18:

Any agreement registered against the Pastoral Lease may be brought down on any future title and any consent given by the Regional Council to a substantive proposal may be given without prejudice to its rights under any Land Improvement Agreement. Therefore the Regional Council is entitled to enforce any matters pertaining to the agreement.

The CCL is not required under the CPL Act to consider agreements between the holder and the Regional Council in making a decision and the point is therefore disallowed.

<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	

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.

<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	

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.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
21	That the period of exclusive access over Blind Saddle be reduced.	14	Disallow	

Discussion Point 21:

The easement currently in place in favour of the holders of the Muzzle Pastoral Lease is not a matter under discussion in the tenure review.

The area over Blind Saddle is within the Clarence Conservation Area which is not included in the tenure review, therefore cannot be considered by the CCL under CPL Act 1998. The point is therefore not allowed.

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
22	That note be taken of mineral potential of the land northeast of Junction Spur.	15	Disallow	

Discussion Point 22:

The submitter points out that the geology of the area and technical reports identify the occurrences of copper and nickel in mineralisation in the area northeast of Junction Spur. Economic use is a matter that the CCL must consider under the CPL Act.

However, the tenure review of this land will not affect the ownership of Crown minerals below the surface, and it would not appear that mining satisfies any of the

Objects of tenure review. It would not appear that mining is the sort of economic use implied in CPL Act s24(a)(i). In addition, the submitter has not specified what designation they seek under the CPL Act, and it would appear that there is no designation in the CPL Act which would provide the protection they require. Consequently there is nothing here that requires consideration in this tenure review under the CPL Act and the point is therefore disallowed.

<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	

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.

<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	

Discussion Point 24:

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

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

<i>Point</i>	<i>Summary of Point Raised</i>	<i>Sub No.s</i>	<i>Decision</i>	
25	Ensure existing legal road is not included in the tenure review and disposed of as freehold.	16	Disallow	

Discussion Point 25:

The legal road is identified on the plan although the scale makes identification difficult in places. A former road to the north in short broken lengths was revoked some years ago and has been included in the tenure review as Crown Land. There is no intention of closing any existing legal roads as part of this tenure review. The matter of existing legal road and closing is not a matter for the CCL to consider under the CPL Act therefore the point is not allowed.

<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	

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.

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.

PRELIMINARY ANALYSIS OF IWI 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.

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**”.

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	

Discussion Point 1a:

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

<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	

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.

<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	

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 accepted due to its relevance under the CPL Act.

<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	

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).

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.