

Crown Pastoral Land Tenure Review

Lease name: ORCHARD ESTATE

Lease number: PT 092

Preliminary Report on Public Submissions

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.

December

05

PRELIMINARY ANALYSIS OF PUBLIC SUBMISSIONS THROUGH PUBLIC NOTICE OF
PRELIMINARY PROPOSAL FOR TENURE REVIEW

TR 103 ORCHARD ESTATE REPORT
Phase 8_7.4.1

File Ref: Pt 142/1 Orchard Estate

Report Date: 29 September 2005

Contractor's Office: Christchurch

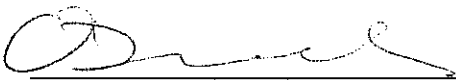
LINZ Case No: ^{TR 06/} 34

Date sent to LINZ: 30 Sep 05

RECOMMENDATIONS

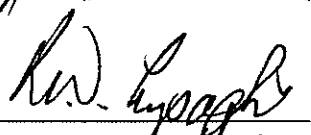
1. That the Commissioner of Crown Lands (or his delegate) **notes** the submissions received and **approves** the preliminary analysis of public submissions.
2. That the Commissioner of Crown Lands (or his delegate) **authorises** DTZ to send the preliminary analysis, and copies of the public submissions, to the Minister of Conservation in partial fulfilment of section 45 of the Crown Pastoral Act 1998.
3. That the Commissioner of Crown Lands (or his delegate) **authorises** DTZ to consult with the Director General of Conservation's delegate on points allowed from the public submissions.
4. That the Commissioner of Crown Lands (or his delegate) **authorises** DTZ to consult with the Holder following consultation with the Director General of Conservation's delegate.

Signed for DTZ New Zealand Limited:



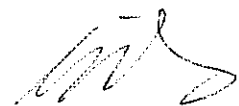
Charlotte Donald
Resource Management Consultant

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


7/10/05

Name:
Date of decision:

I recommend approval
of this Preliminary
Analysis of Public
Submissions.


7/10/05

Dr STEPHEN CHARLES URLICH
TENURE ASSESSOR
CROWN PROPERTY MANAGEMENT
C/-LINZ, CHRISTCHURCH

1. Background

This analysis has been carried out in partial fulfilment of the requirements set out in section 45(a) (iii) Crown Pastoral Land (CPL) Act 1998.

2. Details of lease

Lease Name: Orchard Estate

Location: Twizel

Lessee: High Country Rosehip Orchards Limited

3. Public Notification of Preliminary Proposal

Date Advertised	Publication	Location
Wednesday 27 th April 2005	High Country Herald	South Canterbury
Saturday 23 rd April 2005	The Press	Canterbury
Saturday 23 rd April 2005	Otago Daily Times	Otago

A copy of the advertisement is attached at Appendix 2.

The closing date for submissions was 23rd June 2005.

4. Details of submissions received:

A total of nine submissions were sent by 23rd June 2005.

5. Groups/individuals represented by the submissions

Submissions sent by 23 June 2005

1. Meridian Energy Limited
2. Geoff Clark
3. Federated Mountain Clubs of NZ (Inc)
4. Public Access New Zealand
5. Council of Outdoor Recreation Associations of New Zealand Inc
6. Mackenzie District Council
7. Environment Canterbury
8. Royal Forest & Bird Protection Society
9. Second submission from Meridian Energy Limited.

Note that submissions 3 and 9 had been treated as being late (refer letter from DTZ to LINZ dated 27 June 2005). However, these submissions have now been included in this analysis of submissions due to a change in DTZ's interpretation of section 43 of the CPL Act.

6. Appendices

1. Analysis of submissions
2. Copy of public notice
3. Copy of annotated submissions

TR 103

PRELIMINARY ANALYSIS OF PUBLIC SUBMISSIONS

1. Introduction

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 of the submitter(s) making the point. The rationale for 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**”.

2. Analysis

Point	Summary of Point Raised	Sub No.s	Decision
1	<i>Electricity infrastructure:</i> Electricity lines cross the lease. Any prospective purchaser should be informed of the provisions of the Electricity Act 1992.	1	Disallow

Rationale for disallowing point 1

This point does not relate to any matters that can be considered under the CPL Act. Rather, the submitter’s point constitutes a request for the landowner to be informed of Electricity Act provisions as a courtesy. DTZ notes that the Electricity Act allows infrastructure associated with electricity provision to remain in place, regardless of land ownership. The Electricity Act also allows access to this infrastructure for maintenance purposes as a matter of right.

Point	Summary of Point Raised	Sub No.s	Decision
2	<i>Support for proposal:</i> Support for the areas proposed to be designated as conservation land.	2,3	Allow

Rationale for allowing point 2

Support for certain designations can be allowed as the designation of land for various purposes is a matter explicitly considered under the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
3	<i>Council sewage scheme:</i> Questions whether the council has enough land for treatment and possible expansion of the oxidation ponds.	2	Disallow

Rationale for disallowing point 3

Proposed use of land by a local authority is not a matter that is provided for under the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
4	<i>Extension to conservation area:</i> CA1 should be enlarged by inclusion of approximately 50 ha adjacent to the Ohau River and east of CA1, as recommended in the scoping report for the reasons identified in the PNA survey.	3	Allow

Rationale for allowing point 4

The matter of the designation of land as conservation land is a matter explicitly provided for under the CPL Act. Refer to, for example, section 24(b) of the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
5	<i>Support for freehold designation:</i> No opposition to the proposed disposal of freehold land providing CA1 is enlarged in accordance with point 4.	3	Allow

Rationale for allowing point 5

The matter of the designation of land as freehold land is a matter explicitly provided for under the CPL Act. Refer to, for example, section 24(c)(ii) of the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
6	Support for public access easements and marginal strips.	3	Allow

Rationale for allowing point 6

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

Point	Summary of Point Raised	Sub No.s	Decision
7	<i>Streambeds should become Crown land:</i> All streambeds should be retained in full Crown ownership and control. There are significant inherent values in the streambeds and they are public property with expectations of public access and use.	4	Allow

Rationale for allowing point 7

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

Point	Summary of Point Raised	Sub No.s	Decision
8	<i>Adequacy of easement:</i> Concern regarding whether the proposed easement along the Twizel River provides adequate public access.	4	Allow

Rationale for allowing point 8

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

Point	Summary of Point Raised	Sub No.s	Decision
9	<i>Security of easements:</i> The public access provided by the proposed easements will not be secure public access, as the easements can be modified or extinguished without public notification or objection. Any changes to the easements should be publicly notified. Also, There is no cited legal authority for DoC closure of easement.	4,5	Allow

Rationale for allowing point 9

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

Point	Summary of Point Raised	Sub No.s	Decision
10	Support for easement provisions 11 and 12	4	Allow

Rationale for allowing point 10

Protective mechanisms such as easements are explicitly provided for under the CPL Act therefore a statement of support for the easement can be allowed. Refer to, for example, section 36(3)(b) of the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
11	<i>Marginal strips:</i> Fixed marginal strips should be replaced with movable marginal strips so that access is retained regardless of movement of water courses.	5	Disallow

Rationale for disallowing point 11

The matter of marginal strips is not a matter that the CCL can consider under the CPL Act. Rather, the matter of marginal strips is for the Minister of Conservation (MoC) to consider, therefore the point is disallowed.

Point	Summary of Point Raised	Sub No.s	Decision
12	<i>Sewerage easement:</i> That an outfall soakage trench easement be granted in the space marked as C on SO 18355 and that the total width of the easement be extended to 120 metres.	6	Disallow

Rationale for disallowing point 12

Section 25(1)(c) of the CPL Act stipulates that the CCL must take into account any use or intended use of the land by the Crown. However, there is no evidence that the Crown had any intention to use the land to grant an easement. Other legislation is available outside of the tenure review to resolve this issue.

Point	Summary of Point Raised	Sub No.s	Decision
13	<i>Future sewage treatment:</i> That an area of 3 hectares at the southern end of Section 1 SO Plan 18355 be vested in Council for the purpose of creating a future effluent disposal field.	6	Disallow

Rationale for disallowing point 13

Section 25(1)(c) of the CPL Act stipulates that the CCL must take into account any use or intended use of the land by the Crown. However, there is no evidence that the Crown had any intention to use the land to grant an easement. Other legislation is available outside of the tenure review to resolve this issue.

Point	Summary of Point Raised	Sub No.s	Decision
14	<i>Future sewage treatment:</i> That an area comprising a width of 150 metres around the entire land comprised in Section 1 SO Plan 18355 <u>and</u> the additional 3 hectare future disposal field (as referred to in paragraph 8.2 above) be vested in Council for the purposes of an odour control zone.	6	Disallow

Rationale for disallowing point 14

Tenure review is concerned only with reviewable land and the CPL Act does not provide for considering the use of adjoining land. Section 25 CPL Act directs the CCL to take into account any Crown use of land or intended use of land. However, there is no evidence of any Crown intention to use the land identified by the submitter for any particular purpose. The point is therefore disallowed. Other legislation is available outside of the tenure review to resolve this issue.

Point	Summary of Point Raised	Sub No.s	Decision
15	<p><i>Future sewage treatment:</i></p> <p>That the area of land shown marked B on SO Plan 18355 be vested in Council for the purposes of access to Section 1 SO Plan 18355 and the land referred to in paragraph 8.2 above.</p>	6	Disallow

Rationale for disallowing point 15

Section 25(1)(c) of the CPL Act stipulates that the CCL must take into account any use or intended use of the land by the Crown. However, there is no evidence that the Crown had any intention to use the land to grant an easement. Other legislation is available outside of the tenure review to resolve this issue.

Point	Summary of Point Raised	Sub No.s	Decision
16	<p><i>Electricity easement relating to future sewage treatment:</i></p> <p>That an easement be registered over the area marked H-G centreline easement on SO Plan 18355 for the purpose of conveying electricity to Section 1 SO Plan 18355.</p>	6	Disallow

Rationale for disallowing point 16

Section 25(1)(c) of the CPL Act stipulates that the CCL must take into account any use or intended use of the land by the Crown. However, there is no evidence that the Crown had any intention to use the land to grant an easement. Other legislation is available outside of the tenure review to resolve this issue.

Point	Summary of Point Raised	Sub No.s	Decision
17	<p><i>Future sewage treatment:</i></p> <p>That a new easement be registered alongside the area marked H-G centreline for the purpose of conveying sewage to the oxidation ponds situated on Section 1 SO Plan 18355 and the land referred to in paragraph 8.2 above.</p>	6	Disallow

Rationale for disallowing point 17

Section 25(1)(c) of the CPL Act stipulates that the CCL must take into account any use or intended use of the land by the Crown. However, there is no evidence that the Crown had any intention to use the land to grant an easement. Other legislation is available outside of the tenure review to resolve this issue.

Point	Summary of Point Raised	Sub No.s	Decision
18	<i>Inherent values:</i> The preliminary proposal (PP) does not provide for the maintenance and protection of scenic, landscape, natural, cultural and recreational values.	7	Allow

Rationale for allowing point 18

This point relates to inherent values that may be significant therefore it is a relevant matter under section 24(b) of the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
19	<i>Intensification of land use:</i> The preliminary proposal does not focus on implications of changing or intensifying land use.	7	Allow

Rationale for allowing point 19

This point relates to ecological sustainability and therefore the CCL can consider it under section 24(a)(i) of the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
20	<i>Land improvement agreement:</i> That future owners or lessees of land within the Orchard Estate pastoral lease are made aware that the terms of the Rabbit & Land Management Property Plan (R&LMPP) Land Improvement Agreement for the Orchard Estate lease will be binding through any proposal for the freeholding of land through Tenure Review.	7	Disallow

Rationale for disallowing point 20

The lessee's awareness, or lack of awareness, in regards to the R&LMPP LIA is not a matter that can be considered under the CPL Act through this submission process. Rather, the submitter's point constitutes a request for the landowner to be informed of the existence of R&LMPP as a courtesy.

Point	Summary of Point Raised	Sub No.s	Decision
21	<i>Rabbit fences:</i> That the rabbit netted fences around the property should be maintained.	7	Disallow

Rationale for disallowing point 21

The maintenance of fences is not a matter that can be considered under the CPL Act through this submission process. According to the submitter, the maintenance of the rabbit-proof fences is required under the R&LMPP, the requirements of which will be continue to be in place when the R&LMPP is brought down on the freehold title.

Point	Summary of Point Raised	Sub No.s	Decision
22	<i>Protection of matagouri shrublands</i> The PP does not protect the Twizel River dry matagouri shrublands.	7	Allow

Rationale for allowing point 22

This point relates to inherent values that may be significant therefore it can be allowed under section 24(b) of the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
23	<i>Protection of short tussock grasslands:</i> The PP does not protect any Mackenzie short tussock grasslands.	7	Allow

Rationale for allowing point 23

This point relates to inherent values that may be significant therefore it can be allowed under section 24(b) of the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
24	<i>Lack of marginal strips:</i> There is a very limited provision for marginal strips associated with the proposed freehold land.	7	Disallow

Rationale for disallowing point 24

Marginal strips are not a matter that the CCL can consider under the CPL Act. Marginal strips are a matter for the MoC to consider.

Point	Summary of Point Raised	Sub No.s	Decision
25	<i>Protection of habitats and bird species – Twizel River:</i> Critically under protected riparian habitats and threatened riverbed bird species along the Twizel River have been given only token protection.	7	Allow

Rationale for allowing point 25

This point relates to inherent values that may be significant therefore it can be allowed under section 24(b) of the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
26	<p><i>Protection of recent alluvial terraces and floodplains along the Twizel River:</i></p> <p>Recent alluvial terraces and floodplains along the Twizel River should be protected due to their importance to birds, other indigenous fauna and their contribution to landscape values.</p>	7	Allow

Rationale for allowing point 26

This point relates to inherent values that may be significant and may be considered under the CPL Act. Refer to, for example, section 24(b) of the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
27	<p><i>Fencing marginal strips:</i></p> <p>That marginal strips along the Twizel River are fenced and managed to maintain water quality and protect the riverbed habitat.</p>	7	Disallow

Rationale for disallowing point 27

This point is effectively to fence a boundary of the reviewable land for the benefit of inherent values that are not on the reviewable land. The CCL can only consider reviewable land and therefore the point is disallowed.

Point	Summary of Point Raised	Sub No.s	Decision
28	<p><i>Geological features:</i></p> <p>No geological sites of scientific or education value require protection.</p>	7	Allow

Rationale for allowing point 28

This point relates to inherent values that may be significant therefore it can be allowed under section 24(b) of the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
29	<p><i>Lack of access:</i></p> <p>The PP provides for poor public access.</p>	7	Allow

Rationale for allowing point 29

Public access is a relevant matter under section 24(c) CPL Act therefore the point can be allowed.

Point	Summary of Point Raised	Sub No.s	Decision
30	<i>Crown retention of riverbed areas:</i> Riverbed areas alongside the Twizel and the Ohau Rivers should be retained in Crown ownership to secure access and avoid building on these erosion-prone areas.	7	Allow in part and disallow in part

Rationale for allowing point 30 in part and disallowing point 30 in part

Public access is a relevant matter under section 24(c) of the CPL Act therefore this part of the point can be allowed. The appropriateness of building in an erosion-prone area is not a matter that the CCL can consider under the CPL Act, and therefore this part of the point is disallowed.

Point	Summary of Point Raised	Sub No.s	Decision
31	<i>Protection of land for infrastructure purposes:</i> That land currently associated with the provision of community and public network facilities, including access ways for maintenance, and additional land to allow for expansion of these facilities, be formerly [sic] protected by restoring to full Crown ownership and by establishment of formal easement across freeholded land.	7	Disallow

Rationale for disallowing point 31

The submitter refers specifically to the sewage treatment plant, and this plant is located on council land that is not part of the review. Additionally, there are no provisions in the CPL Act that relate to infrastructure except that section 25(1)(c) would allow for intended use of land by the Crown if the Crown had intended to use the land to grant an easement. However, there is no evidence that this is the case. Other legislation is available outside of the tenure review to resolve this issue.

Point	Summary of Point Raised	Sub No.s	Decision
32	<i>Objectives of the CPLA:</i> The areas designated as conservation land only partially fulfil the objects of the CPL Act.	7	Allow

Rationale for allowing point 32

The Objects of Part 2 of the CPL Act are a relevant matter that can be considered under the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
33	<i>Necessity of protection for freehold land:</i> If the management recommendations are not achieved through the restoration of the above areas of land to full Crown ownership, then some other, equally secure form of protection should be provided for as a condition of freeholding.	7	Allow

Rationale for allowing point 33

This point suggests that, if designation as Crown land is not possible, another form of protection should be applied to land with inherent value currently proposed to be freeholded. These inherent values may be significant and can therefore be considered under the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
34	<i>Protection of landscape values:</i> The PP does not recognise landscape values of 'the point' between Tekapo and Ohau Rivers. 'The points' between Tekapo and Twizel, and Twizel and Ohau Rivers should be restored to full Crown ownership as shown on the map attached to submission 8.	8	Allow

Rationale for allowing point 34

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

Point	Summary of Point Raised	Sub No.s	Decision
35	<i>Provision of public access:</i> Opposed to the freeholding of current tracks alongside the Twizel and Ohau Rivers.	8	Allow in part and disallow in part

Rationale for allowing point 35 in part and disallowing point 35 in part.

The matter of public access is relevant under CPL Act, Part 2, Section 24(c)(i) however, some of the tracks alongside the Ohau River are generally outside the lease boundaries therefore the point is allowed in relation to tracks located on the lease but disallowed for tracks that are not on the lease.

Point	Summary of Point Raised	Sub No.s	Decision
36	<i>Conservation land allows secure access:</i> Opposed to the use of easements to provide for public access, prefer more secure access to be provided via land being designated as conservation land.	8	Allow

Rationale for allowing point 36

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

Point	Summary of Point Raised	Sub No.s	Decision
37	<i>Ecologically sustainable management:</i> PP fails to achieve ecologically sustainable management.	8	Allow

Rationale for allowing point 37

The extent to which the PP provides for ecologically sustainable management is a relevant matter under the CPL Act, therefore the point is allowed.

Point	Summary of Point Raised	Sub No.s	Decision
38	<i>High country objectives:</i> PP fails to implement the government's high country objectives.	8	Disallow

Rationale for disallowing point 38

While the review may contribute to the High Country Objectives, the CCL can only address matters under the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
39	<i>Recreational values:</i> PP fails to recognise high recreational values of lake and riverside areas.	8	Allow

Rationale for allowing point 39

A recreational value may be a Significant Inherent Value, and therefore this is a relevant matter under the CPL Act, therefore this point can be allowed.

Point	Summary of Point Raised	Sub No.s	Decision
40	<i>Strategic factors:</i> Lake and riverside areas strategically important and there is an absence of publicly protected land close to Lake Benmore.	8	Disallow

Rationale for disallowing point 40

The amount of land that is already protected, outside of the land under review, is not a relevant matter under the CPL Act

Point	Summary of Point Raised	Sub No.s	Decision
41	<i>Riparian areas:</i> The PP fails to protect riparian areas.	8	Allow

Rationale for allowing point 41

This point could be interpreted as relating to inherent values that may be significant, therefore it can be allowed under section 24(b) of the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
42	<i>Lack of protection for landscape values:</i> PP fails to protect landscape values appropriately, e.g.: it's aesthetic and transitory values.	8	Allow

Rationale for allowing point 42

These inherent (landscape) values may be significant therefore they are a relevant matter under section 24(b) of the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
43	<i>Significance of the point:</i> PP fails to recognise the significance of 'the point'.	8	Allow

Rationale for allowing point 43

This point relates to landscape values and this is a relevant matter as landscape values are a type of inherent value that may be significant, which can be considered under section 24(b) of the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
44	<i>Recreational values:</i> PP fails to protect recreational values.	8	Allow

Rationale for allowing point 44

These inherent (recreational) values may have significance therefore the matter can be considered under section 24(b) of the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
45	<i>Lakeside and riparian areas:</i> These areas are unique from a recreational perspective and deserve protection.	8	Allow in part and disallow in part

Rationale for allowing point 45 in part and disallowing point 45 in part

This point relates to inherent values that may be significant under section 24(b) of the CPLA, therefore it can be considered by the CCL. The point is allowed in part in relation to the areas that are part of the reviewable land, and disallowed in part in relation to areas that are not part of the reviewable land.

Point	Summary of Point Raised	Sub No.s	Decision
46	Car turn-off and parking area: CA2 should be increased in size to allow for a car turn-off and parking area.	8	Allow

Rationale for allowing point 46

This point relates to access therefore the CCL can consider it under section 24(c) of the CPL Act.

Point	Summary of Point Raised	Sub No.s	Decision
47	Ownership of the Twizel Riverbed: The legal Twizel River boundary is different to the physical river boundary. The submitter suggests that the Crown should retain ownership of the Twizel River along its physical, rather than its legal extent.	9	Allow

Rationale for allowing point 47

While the submitter has not referred to, or implied, any reasons under the Objects of the CPL Act regarding why this land should be retained or restored to Crown ownership, the point is allowed as the physical riverbed within the reviewable land could be designated as Crown land for riverbed purposes under section 35(2)(a)(iii) of the CPL Act.

3. Summary

28 points have been allowed and 16 points have been disallowed. Three points have been allowed in part and disallowed in part.