

## **Crown Pastoral Land Tenure Review**

**Lease name: ORCHARD ESTATE**

**Lease number: PT 092**

### **Public Submissions - Part 1**

These submissions were received as a result of the public advertising of the Preliminary Proposal for Tenure Review.

**December**

**05**



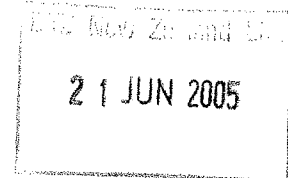
**Meridian Energy**  
The Power of Nature

www.meridianenergy.co.nz

20th June 2005

Manager  
DTZ New Zealand  
P O Box 142  
CHRISTCHURCH

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Dear Sir

**OMAHAU ORCHARD ESTATE TENURE REVIEW PRELIMINARY PROPOSAL**

Thank you for the information forwarded to Meridian Energy on 26 April 2005.

Although the proposal appears to have no direct affect upon the operations of Meridian Energy Ltd, we would wish to point out the location of electricity lines crossing the proposed land.

Both sets of lines are shown on your proposed map. For your information, it appears that protection for both sets of lines, and access thereto, are covered in the Electricity Act 1992. Meridian therefore would appreciate your informing any prospective purchaser of the provisions of this Act.

Thank you.

Yours sincerely

Paul Cain  
Property Officer  
Twizel Office

10 Smacks Close  
Papanui  
Christchurch 5

DTZ NEW ZEALAND  
TIMARU

27849
GH
ll

21 JUN 2005

Dear Sir  
Omahau Orchard Estate Tenure Review,

I agree that the proposed conservation areas designated in this report, should be retained in Crown ownership. Strangely enough I noticed this section of riverbed at Christmas, looking at it from the canal road and although at a distance was most impressed and am looking forward to walking along it in the future.

I have not visited the Oxidation ponds from Twizel, but would question whether the council has enough land for expansion/desposal at this facility and suggest this be taken into account before disposal of the property.

I have no further objection to this proposal.

Regards

*Geoff Clark.*

**Federated Mountain Clubs of NZ Inc.**  
**PO Box 1604**  
**WELLINGTON**

Your Ref: Pt 142 Omahau Orchard Estate

21 June 2005

The Commissioner of Crown Lands  
C/- DTZ New Zealand Ltd.,  
PO Box 142  
CHRISTCHURCH  
ATTENTION: Geoff Holgate

Dear Sir,

**Re: Preliminary Proposal for Tenure Review: Omahau Orchard Estate**

I write on behalf of Federated Mountain Clubs of NZ Inc. (FMC) which represents some 12,000 members of tramping, mountaineering, climbing and other outdoor clubs throughout New Zealand. We also indirectly represent the interests and concerns of many thousands of private individuals who may not currently be members of clubs but who enjoy recreation in the back country.

On their behalf, FMC aims to enhance recreation opportunities, to protect natural values, especially landscape and vegetation, and to improve public access to the back country through the tenure review process.

FMC fully supports the objectives of tenure review as set out in the Crown Pastoral Land (CPL) Act 1998, and the more recently stated government objectives for the South Island high country especially the following:-

- *to promote the management of the Crown's high country in a way that is ecologically sustainable.*
- *to protect significant inherent values of reviewable land by the creation of protective measures; or preferably by restoration of the land concerned to full Crown ownership and control.*
- *to secure public access to and enjoyment of high country land.*
- *to ensure that conservation outcomes for the high country are consistent with the NZ Biodiversity Strategy.*
- *to progressively establish a network of high country parks and reserves.*

[EDC Min (03) 5/3; CAB Min (03) 11/5 refer]

FMC appreciates this opportunity to comment on the Preliminary Proposal for the review of Omahau Orchard Estate.

**The Preliminary Proposal**

FMC notes that the proposal includes the following designations:-

1. Approximately 75ha to be designated as land to be restored to or retained in full Crown control and ownership as Conservation Area CA 1.
2. Approximately 15ha to be designated as land to be restored to or retained in full Crown ownership and control as river bed Conservation Area CA 2.

## RELEASED UNDER THE OFFICIAL INFORMATION ACT

3. Approximately 2,302ha to be designated as land to be disposed of by freehold disposal to the holder(s) subject to protective mechanisms and qualified designations.

### Protective Mechanisms

- An easement to provide public access on foot and with or without non motorised vehicles from the State Highway to the confluence of the Twizel and Ohau Rivers along the route 'a-b-c-d'.
- Crown access on foot and with or without non motorised vehicles, with motor vehicles with or without machinery and implements over the routes 'a-b-c-d' and 'e-f' for the purposes of conservation management.
- The provision of marginal strips on the Twizel River where the river has eroded through the legal road and on the Ohau, Tekapo and Pukaki rivers where they have eroded the existing boundary.

### FMC Submissions

The details of FMC comments on, and submissions relating to, the Preliminary Proposal are presented below and are arranged in the same format as the Preliminary Proposal quoted above.

### Preliminary Proposal, Item 1.

*Approximately 75ha to be designated as land to be restored to or retained in full Crown control and ownership as Conservation Area CA 1*

FMC notes that the Scoping Report on Omahau Orchard Estate (2001) recommended as follows:-  
*"The principal interest in retaining any land by the Crown for conservation is along the Twizel and Ohau Rivers. Along the Twizel River to provide a wider berm area, for bird life, fish life and various plant communities. Adjoining the Ohau River it is probably desirable to restore to the Crown the existing covenant area and include the narrow strip of land down stream lying between the existing river boundary and a high terrace. Total area to be retained by the Crown is in the vicinity of 250 hectares. The balance of the land could be designated for disposal on freehold tenure, without any restriction."*

This recommendation was based on the observation that:- *"The Pukaki and Ohau Riverbeds are noted in the Mackenzie Ecological Region, Protected Natural Area Programme, as Site 15 in the Pukaki Ecological District. They are noted as wide braided alluvial riverbeds subject to NZED control. Important riverbed habitat for waterfowl, waders, pesarines, and aquatic and terrestrial insect fauna. The species noted are: Black Stilts, Banded Dotterels, Back Fronted Terns, Black Backed Gulls, and Wrybills."*

We also note that the Conservation Resources Report (March 2005) states that *"On the flats the only community of any significance is the matagouri shrubland in the stream bed and the cassinia shrubland, both of these communities are under represented in the Pukaki Ecological District."*

The Scoping Report further noted that:- *"A conservation covenant is registered against the lease to protect a 99.7920 hectare area fenced off for the breeding of Black Stilts in captivity, and a release area surrounding it."*

FMC notes that the 250ha area referred to in the Scoping Report appears to consist of four parts. The first two (now recommended for restoration to or retention in full Crown ownership and control as CA1 (75ha) and CA 2 (15ha) respectively) only account for 90ha of the area concerned. The other two areas consist of an estimated 50ha adjacent to the Ohau River a little east of CA 1, and a larger area (estimated to be about 100ha) on the true left of the Twizel River running down to its confluence with the Ohau River.

We accept the Department of Conservation judgement stated in the letter of 15 October 2001 to Knight Frank Ltd and headed "Consultation: Orchard Estate":- *"It is still my view that the only area of significant*

*inherent value that should be retained in Crown ownership as Conservation land is an area alongside the Ohau River.” This judgement eliminates from consideration for return to full Crown ownership the larger area (estimated to be about 100ha) on the true left of the Twizel River. It does not on the other hand, eliminate the smaller area consisting of an estimated 50ha adjacent to the Ohau River a little east of CA 1. FMC believes that this area (or at least that part of it on the lower terrace) should be treated the same as CA 1 as recommended in the Scoping Report.*

**FMC Submission**

***FMC strongly supports the proposal that an area of 75ha (CA 1) is returned to full Crown ownership and control as a conservation area. FMC recommends that this area be enlarged by inclusion of at least part of a further area, (estimated to be about 50ha) adjacent to the Ohau River a little east of CA 1, (ie. that part of it on the lower terrace) as recommended in the Scoping Report for the reasons identified by the Protected Natural Area survey of the Pukaki Ecological District.***

**Preliminary Proposal, Item 2.**

*Approximately 15ha to be designated as land to be restored to or retained in full Crown ownership and control as river bed Conservation Area CA 2.*

This area was referred to in the discussion above relating to the recommendations made in the Scoping Report (2001) and is included in the 250ha which were recommended for return to full Crown ownership and control. FMC fully supports this proposal.

**FMC Submission**

***FMC strongly supports the proposal that approximately 15 ha (CA 2) are returned to full Crown ownership and control as a conservation area.***

**Preliminary Proposal, Item 3.**

*Approximately 2,302ha to be designated as land to be disposed of by freehold disposal to the holder subject to protective mechanisms and qualified designations.*

FMC notes that the Scoping Report stated that:- *“The balance of the land [ie excluding the 250 ha proposed for return to full Crown ownership] could be designated for disposal on freehold tenure, without any restriction.”*

FMC has no objection to this proposal so long as the area of CA 1 is enlarged to include the area of about 50ha a little to the east of CA 1, as discussed above.

**FMC Submission**

***FMC is not opposed to the disposal as freehold of most of Omahau Orchard Estate so long as provision is made to enlarge CA 1 to include some of the area of about 50ha a little to the east of the proposed CA 1 Conservation Area, in particular that part of it on the lower terrace.***

In the next few paragraphs we make comment on the proposed protective mechanisms and qualified designations:

**Protective Mechanisms**

- *An easement to provide public access on foot and with or without non motorised vehicles from the State Highway to the confluence of the Twizel and Ohau Rivers along the route ‘a-b-c-d’.*

## RELEASED UNDER THE OFFICIAL INFORMATION ACT

- *Crown access on foot and with or without non motorised vehicles, with motor vehicles with or without machinery and implements over the routes 'a-b-c-d' and 'e-f' for the purposes of conservation management.*
- *The provision of marginal strips on the Twizel River where the river has eroded through the legal road and on the Ohau, Tekapo and Pukaki rivers where they have eroded the existing boundary.*

From a recreational perspective, the most important issue in this tenure review is the provision of secure public access along the rivers which bound this leasehold property, as is required by the CPL Act 1998 (S 24 (c)). FMC is therefore pleased to note the terms of this Preliminary Proposal.

FMC strongly supports these protective mechanisms as they will provide for public access, either by way of easement or marginal strip for fishing in the Twizel and Ohau Rivers which is the main recreational interest in this property, as noted in the Scoping Report. We imagine that there will also be interest in day walks and mountain bike rides along the track on the true right of the Twizel River to its confluence with the Ohau River with a probable round trip returning via the former Ohau River bed. These activities would be catered for by the terms of the easement (first bullet point listed above) and therefore have FMC support. We believe that the indicated route (orange dotted line on the Plan) is a better route than the existing track for two reasons. These reasons are: (a) it is a better recreational route as it includes more nearly natural terrain and (b) because it would avoid the productive lucerne paddocks and other pastoral land which it is probably more appropriate to include in the land to become freehold. On the completion of this tenure we look forward to the improvement of the proposed new route so that it will be more suitable for mountain bike use.

### *FMC Submissions*

*FMC strongly supports the proposals for public access easements and marginal strips*

### *Conclusions*

With respect to the tenure review of Omahau Orchard Estate, FMC concludes as follows:

1. FMC strongly supports the proposal that an area of 75ha (CA 1) is returned to full Crown ownership and control as a conservation area. FMC recommends that this area be enlarged by inclusion of at least part of the further area (50 ha referred to above) on the lower terrace adjacent to the Ohau River a little east of CA 1.
2. FMC strongly supports the proposal that approximately 15ha (CA 2) are returned to full Crown ownership and control as a conservation area.
3. FMC is not opposed to the disposal as freehold of most of Omahau Orchard Estate so long as provision is made to enlarge CA 1 to include some of the area of about 50ha a little to the east of the proposed CA 1 Conservation Area.
4. FMC strongly supports the proposals for public access easements and marginal strips.

Finally, FMC thanks the Commissioner of Crown Lands for this opportunity to comment on the Preliminary Proposal for the tenure review of Omahau Orchard Estate.

Yours faithfully

Barbara Marshall  
Secretary, Federated Mountain Clubs of NZ, Inc.

# Public Access New Zealand

INCORPORATED

R D 1 Omakau 9182 Central Otago New Zealand  
www.publicaccessnewzealand.org

Phone & Fax 64-3-447 3554  
panz@es.co.nz

22 June 2005

Commissioner of Crown Lands  
C/- DTZ New Zealand  
P O Box 142  
Christchurch  
Fax (03) 379 8440

Attn: Geoff Holgate

27860  
GH/CD  
ll  
**FAXED**

8pm 22/6/05

## Submission: Orchard Estate Tenure Review Preliminary Proposal

### Summary of Proposal

This 2393 hectare pastoral lease is proposed to be designated as follows-

75 ha of terraces and Ohau riverbed to become conservation area.

15 ha of Twizel riverbed downstream of Twizel to become conservation area.

2302 to be freeholded, subject to a public foot and cycle access easement a-d along or near the bank of the Twizel River.

Unspecified marginal strips to apply where rivers have eroded through unformed legal roads along the banks of the Twizel, Ohau, Pukaki, and Tekapo Rivers.

DOC management easements, being of no interest to PANZ.

### Adequacy of proposed conservation areas

As we have not inspected the property we cannot make detailed comment other than question the appropriateness of freeholding a substantial area of the Twizel and Bendrose Stream beds. We submit that all streambeds should be retained in full Crown ownership and control. There are significant inherent values in these riverbeds as there is water and sports fish present, both of which are public property with expectations of access and use.

### Public access easement

The provision of public access is the main retention of Crown interest in this property. Without this there would be almost nothing else of Crown and public benefit from tenure review. It was therefore with dismay to read the comments of 29/7/03 by Bob Lysaght of LINZ, in official information provided to us. Despite protestations from DOC that there were at that time no public access provisions in this tenure review and that the Crown should withdraw from a deal, Lysaght stated that he "can't see any good grounds for the Commissioner of Crown lands withdrawing from tenure review".

This is a most revealing and alarming statement from an organisation with a statutory duty to ensure that the objects of the Crown Pastoral Land Act are honoured, including securing public access and enjoyment. The Crown has no obligation to persist with tenure reviews that do not fulfil legal and



government purposes. Lysaght's statement is an indictment of a LINZ culture of non-public service in general and of him in particular. In my view he is unfit to continue to be entrusted with official powers on behalf of the CCL. Full marks to DOC and the CCL's agent in standing up to such an abject renunciation of responsibility and seeing that public access was provided for in the Preliminary Proposal.

We are however concerned that the proposed alignment along and near the Twizel riverbank may not provide practical access. We submit that this be reevaluated on the ground to ensure that walkers and cyclists will have no difficulties in using it. This has the potential to be a major recreational outlet for the growing population of Twizel, so it is important that the alignment is right from the outset. If the above double-check is done we are pleased to support this proposal.

#### **Specific terms of access easement**

We refer to the express terms of the draft easement document-

#### *Exclusion of schedules.*

Whilst the Ninth Schedule of the Property Law Act 1952 is expressly excluded from the terms of the easement, section 126G of that Act is not. Section 126G allows modification or extinguishment of easements through the courts, at the initiative of either party or one alone. There is no ability for public notification or objection. This omission constitutes a fundamental failure to 'secure' public rights of passage, as required by the CPLA.

#### *Temporary suspension*

Under the easement "the Transferee (not being a member of the Public) may, at any time in exercise of her/his powers, temporarily close all or part of the Easement Area for such period as she/he considers necessary".

The absence of any cited legal authority for closure is of great concern. It is mere licence for official abuse. If there are lawful powers of closure applicable they should be expressly cited. Without such there can be no accountability for DOC's future actions, and therefore no certainty of public access.

We submit that the above easement, even with amendment, cannot meet the test of securing public access as required by the CPLA. We have legal advice that the Crown's duties to secure public access and enjoyment are on-going. Therefore the CCL should ensure that the terms he agrees to removes scope for misuse of unspecified powers by DOC in the future.

#### *Special easement terms*

The provisions for marking, stile erection, signs and maintenance are essential.

We support provision No. 11 allowing the easement to be relocated so that it continues to serve its intended purpose. This is necessary in the event of further movement of the river.

We also support No. 12 requiring surrender of the easement 'b-c' if it becomes public road. There is no purpose for an easement remaining in such an eventuality, and in any event it is not possible to have easements over public roads, as everyone has the right of unhindered passage at all times.

Yours faithfully

Bruce Mason, PANZ Spokesman and Researcher



OrchardEstate20Jun05

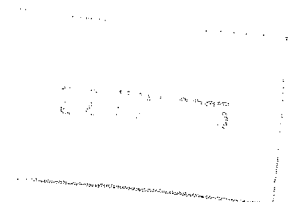
## Council of Outdoor Recreation Associations of New Zealand Inc

P O Box 1876 Wellington  
Tel&Fax +64 4 934 2244  
[hugh@infosmart.co.nz](mailto:hugh@infosmart.co.nz)

20 June 2005

Orchard Estate Tenure Review  
C/o DTZ Christchurch Office  
Box 142  
Christchurch

Noted	27854
by	GH/CD
date	1/6



Dear Sir

### Orchard Estate Tenure Review

The Council of Outdoor recreation Associations consists of the following national outdoor recreation associations:

- NZ Deerstalkers Association
- Public Access New Zealand
- NZ Federation of Freshwater Anglers
- NZ Salmon Anglers Association
- NZ Bowhunters Society
- Marlborough Recreational Fishers Association

The Council represents the **common interests of the million or more New Zealanders who fish, shoot, tramp, ski, canoe, climb, walk, mountainbike, botanise, photograph, relax etc in New Zealand's great outdoors.** Individual members may also be making more extensive submissions.

We make the following comments:

**1 Movable Marginal Strips should be provided:** Movable marginal strips were introduced in 1990, and should apply to the reservation under this tenure review, eg by an exchange of all fixed strips for movable strips.

Movable marginal strips will give much greater flexibility to providing public access should stream river or lake beds change in future, as required by the Crown Pastoral Lands Act (S 24 (Objects) (c) (i)) "securing" ie secure access. This is better provided by movable strips, rather than fixed ones, as evidenced by the erosion or possible, referred to in this tenure review on this lease.

**2 Conditions of change in the access easements:** To make these more permanent, we ask that the easement agreement include that any proposal to change the easement require public notification of this intention.

Thanking you

Yours truly

Dr Hugh Barr  
Secretary

AnthonyHarper | Lawyers

Anthony Harper Building  
47 Cathedral Square, P O Box 2646  
Christchurch 8015, New Zealand  
Tel +64 3 379 0920 Fax +64 3 366 9277  
www.anthonyparker.co.nz

22 June 2005

The Commissioner of Crown Lands  
C/- DTZ New Zealand Limited  
P O Box 142  
**CHRISTCHURCH**

**TENURE REVIEW OF ORCHARD ESTATE PASTORAL LEASE UNDER THE CROWN PASTORAL LAND ACT 1998**

**Introduction**

- 1 We act for Mackenzie District Council ("Council").
- 2 Council has received a copy of the preliminary proposal for the tenure review of Orchard Estate Pastoral Lease under the Crown Pastoral Land Act 1998.
- 3 We have been instructed to forward this submission on behalf of Council in respect of Orchard Estate Pastoral Lease tenure review.

**Objectives**

- 4 We submit that Council complies with the objects of Part 2 of the Crown Pastoral Land Act 1998 for the reasons set out later in this letter on the basis of the following:
  - 4.1 The objective of Council is to promote the management of the reviewable land in a way that is ecologically sustainable; and
  - 4.2 The factors set out below affect the freehold disposal of the reviewable land.

**Background**

- 5 Council owns the land on which the existing Twizel oxidation ponds are situated. The oxidation ponds site owned by Council is legally described as Section 1 SO Plan 18355 (CB45A/677).
- 6 Section 1 SO Plan 18355 is surrounded on all sides by land to be disposed of as freehold pursuant to the Orchard Estate tenure review.

**The Issues**

- 7 The issues arising from the tenure review proposal affecting Council are as follows:
  - 7.1 Outfall Soakage Trench Easement.

At the time that Section 1 SO Plan 18355 was created as a separate certificate of title, the plan made provision for an outfall soakage trench easement which is marked as C on SO Plan 18355. The area marked as C on SO Plan 18355 is situated on the land to be disposed of as freehold in terms of the Orchard Estate

tenure review. However, the easement has never been legally created. Furthermore, the area set aside for the easement (being 20 metres in width) is insufficient for the purposes for which it was designed.

In order to operate and maintain the outfall soakage trench in an efficient and ecologically sustainable way it will be necessary for the easement to be a minimum 30 metres (ie 15 metres each side of the centreline of the trench) width and also, that a further area of 45 metres on either side of the centreline of the trench be set aside to protect the functioning and allow for servicing of the outfall soakage trench (for a total width either side of the centreline of the trench of 60 metres).

#### 7.2 Additional land around Twizel oxidation ponds.

The Twizel oxidation ponds are situated on land which is owned by Council (CB45A/677). In the short-medium term the existing outfall disposal trench will continue to be used for disposing of treated waste water from the oxidation ponds.

Although this system is suitable on a short-medium term basis, with the increasing population growth of Twizel township, Council does not see the use of the outfall disposal trench as being the best ecologically sustainable method for disposing of effluent from the oxidation ponds in the long term.

Council considers that it is more ecologically sustainable in the long term for it to locate an effluent disposal field (comprised of a series of soakage trenches) adjacent to the existing ponds rather than continuing to rely in the long term on the existing outfall disposal trench.

The future effluent disposal field will require an area of approximately 3 hectares in area, configured in a rectangular shape adjoining the southern boundary of the existing oxidation ponds. This area is located on the land which is to be disposed of as freehold pursuant to the Orchard Estate tenure review.

In addition, Council believes that it will be necessary to create a buffer area with a width of 150 metres around the existing oxidation ponds and the future effluent disposal field in order to provide for odour control. A buffer zone is considered prudent in light of the potential for subdivision of the land which is to be disposed of as freehold subsequent to its transfer to a new owner. A buffer zone width of 150 metres is considered an ecologically sustainable New Zealand industry standard for separation purposes between an oxidation pond and sensitive development (such as will occur if the land is further subdivided).

Council considers that it is preferable for the additional land to be transferred to it so it can manage the land in conjunction with the existing land in Section 1 SO Plan 18355.

After the disposal field has been established at the southern end of the existing oxidation ponds, the existing outfall soakage trench will be relinquished and the easement protecting the outfall soakage trench surrendered.

#### 7.3 Existing facilities servicing the land in Section 1 SO Plan 18355.

We have already noted that the land in Section 1 SO Plan 18355 is surrounded on all sides by the land to be disposed of as freehold pursuant to the Orchard Estate tenure review. Section 1 SO Plan 18355 is therefore landlocked. Although SO Plan 18355 shows provision for the grant of a right of way (marked B on SO Plan

18355) and a right to convey electricity (marked H-G centreline on SO Plan 18355) it appears that neither of these easements has been legally created.

Although there is provision for a right of way and electricity easement and these facilities have been physically established, there is no legal basis for the ongoing use of Twizel oxidation ponds property by Council.

Unless Council can have legal access to Section 1 SO Plan 18355 and there is a right to convey power to the land in Section 1 SO Plan 18355 then it will not be possible to manage the Twizel oxidation ponds. Provision for power to the site is a necessary component of the long term upgrading of the treatment ponds. Failure to meet this requirement will result in a reduced treatment capacity within the ponds, a poorer effluent quality and likely odour nuisance. The likely consequence will be that the land to be disposed as freehold pursuant to the Orchard Estate tenure review will be subjected to diminished air quality.

7.4 New easement to service the land in Section 1 SO Plan 18355.

In addition to the other easements referred to above, Council requires the use of a new easement in approximately the same position as the land marked H-G centreline on SO Plan 18355 to enable sewage to be conveyed from Twizel Township to the oxidation ponds situated on Section 1 SO Plan 18355.

**Summary**

- 8 We therefore submit on behalf of Council that in regard to the land to be disposed of as freehold pursuant to the Orchard Estate tenure review that any freeholding proposal be subject to the following:
- 8.1 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.
- 8.2 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.
- 8.3 That an area comprising a width of 150 metres around the entire land comprised in Section 1 SO Plan 18355 and 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.
- 8.4 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.
- 8.5 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.
- 8.6 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.

**Further Steps**

- 9 If you should require further information in respect of this submission please contact the writer.

- 10 If additional further information in respect of the ecological effects on the land and the manner in which the land to be disposed of as freehold may be effected please contact Paul Whyte or Graeme Jenner of Engineering Consultants, Beca Carter Hollings and Ferner Limited on 03 366 3521.
- 11 Thank you for your consideration of this submission.

Yours faithfully

**ANTHONY HARPER**



**Murray Weakley**

Partner

c.c. Mr B Haar  
Mackenzie District Council  
PO Box 52  
Fairlie

c.c. Mr G Jenner  
Beca Carter Hollings and Ferner Limited  
PO Box 13 960  
Christchurch

Contact: Murray Weakley (03) 364 3801 [murray.weakley@ah.co.nz](mailto:murray.weakley@ah.co.nz)



22 June 2005

The Commissioner of Crown Lands  
C/- DTZ New Zealand Limited  
P O Box 142  
**CHRISTCHURCH**

Attention: Mr Ray Ward-Smith

Dear Mr Ward-Smith

**OMAHAU ORCHARD ESTATE PASTORAL LEASE  
SUBMISSION ON PRELIMINARY PROPOSAL FOR TENURE REVIEW**

Thank you for advising Environment Canterbury of the release of the Preliminary Proposal for tenure review of Orchard Estate Pastoral Lease. We appreciate the opportunity to review the proposal and make a submission in relation to the future management of this land.

Environment Canterbury has statutory responsibilities under the Resource Management Act 1991 (RMA) for the sustainable management of natural and physical resources of the region, including soil conservation, water quality and quantity and ecosystems, and for maintenance of biodiversity. In addition, Environment Canterbury also has statutory responsibilities under the Biosecurity Act 1993 for the management or eradication of animal and plant pests in accordance with regional pest management strategies. These responsibilities are entirely compatible with achievement of the objectives of Tenure Review, specifically to "promote the ecologically sustainable management of High Country land" and protecting land with "significant inherent values" by retaining it in Crown ownership.

The Canterbury Regional Policy Statement 1998 (CRPS) provides an overview of the resource management issues of the region, and sets out how natural and physical resources are to be managed in an integrated way to promote sustainable management. Key to the management of soils is the maintenance or restoration of a vegetative cover over non-arable land that is sufficient to prevent land degradation or the onset of erosion (Ch7 Objective 1). Sustainable management of water resources requires safeguarding the life-supporting capacity of water, including associated aquatic ecosystems and significant habitats of indigenous fauna and vegetation (Ch9 Objective 3). Policy 11 in Chapter 9 promotes land use practices which maintain or enhance water quality

Environment Canterbury has recently notified its Proposed Natural Resources Regional Plan (NRRP) to address the resource management issues identified in the CRPS and to provide more specific standards and methods, including rules, to achieve the objectives. The NRRP promotes the integrated and sustainable management of soil and water resources with provisions that emphasise the links between land use practices and the management of water quality.

The Soil Conservation chapter (Ch8), Objective SCN1 seeks to: "...maintain soil quality and an intact and resilient vegetation cover sufficient to minimise the risk of induced erosion, safeguard the life-supporting capacity of the soil, and prevent, as far as practicable, the movement of soil into water bodies." The objective contains specific guidelines for intact and resilient vegetation cover. Policy SCN1 provides options to restore such a cover where it has become depleted.

Policy WQL5 of the Water Quality chapter includes a range of regulatory and non-regulatory methods to manage the riparian margins of rivers to maintain or improve water quality.

**Our Ref:** PL5C-103; AG5T-60  
**Your Ref:**  
**Contact:** Cathie Brumley

58 Kilmore Street, PO Box 345, Christchurch

General enquiries: 03 365 3828

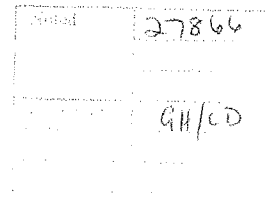
Fax: 03 365 3194

Email: [ecinfo@ecan.govt.nz](mailto:ecinfo@ecan.govt.nz)

Customer services: 03 353 9007

or: 0800 EC INFO (0800 324 636)

Website: [www.ecan.govt.nz](http://www.ecan.govt.nz)



The Canterbury Regional Pest Management Strategy (1998) and Canterbury Regional Pest Management Strategy Biodiversity Pests (2002) identify a number of species of plants and animals for control or management as pest species.

The Twizel and Ohau Rivers are included as Statutory Acknowledgement Areas under the Ngai Tahu Claims Settlement Act 1998, and are of considerable importance to Ngai Tahu.

In line with these statutory responsibilities and documents, and Section 24 of the Crown Pastoral Lands Act (1998), technical and planning staff have reviewed the Preliminary Proposal for Orchard Estate Pastoral Lease to assess the impacts, if any, of this proposal on the sustainable management of the land, including pest management, indigenous biodiversity protection, soil conservation and the integrity of the water bodies. Our comments and recommendations are listed below.

### **General comments**

The Orchard Estate pastoral lease includes a prominent example of glacial outwash plains that are highly visible from SH8, the main route from Tekapo to Twizel. In addition to its scenic and landscape values, the area is highly valued for its natural, cultural and recreational values associated with the braided beds of the Tekapo, Twizel and Ohau rivers.

Some key local and national infrastructure facilities are associated with land held within the lease.

Most of the land in Orchard Estate pastoral lease has been designated as land to be disposed of as freehold land under the Preliminary Proposal, including riverbed and river margins along the Twizel River, and parts of the lower terraces of the Ohau River. Concerns are raised within this submission that the Preliminary Proposal provides insufficient provision for the long-term maintenance and protection of these values.

As with most of the Preliminary Proposals released to date, the emphasis for this proposal has been primarily on management of the land area in the pastoral lease. There has been little focus on the implications of changing, or intensifying land uses that may result from the review and freeholding of this land, and in this case, the implications for the Twizel and Ohau Rivers. Management of the land adjacent to these rivers will have important consequences for the ongoing quality of the water and the river environment, both in this part of the catchment and downstream from this lease.

These aspects need to be seen as fundamentally important to the long-term "ecologically sustainable management" of the land held within the lease, regardless of the final designations confirmed through the tenure review process.

The following discussion covers aspects of the sustainable management of the land relating to soil conservation, biodiversity protection, water quality and public access. Some discussion of the management of community and national network facilities associated with this land is also included.

### **Soil Conservation**

Environment Canterbury has a legal interest in the Orchard Estate lease through the Rabbit & Land Management Property Plan LIA 990830.1 registered on all titles within the former Omahau pastoral lease. This agreement does not expire until 1 April 2010.

Under Council policy in regard to LIAs, all R&LM Property Plans must be retained and monitored. In the case of land to be freeholded under tenure review, the certificate of title for the land to be freeholded will issue subject to any interest on the lease title. Therefore the LIA is protected for the term of its agreement.

No works under the R&LM Property Plan were completed on the Orchard Estate land. However there is an inferred obligation to maintain the rabbit netted fences around the boundary to retain the integrity of the Rabbit Control Units, despite the continuing success of RCD.

The majority of soils on the lease are low fertility Mackenzie soils which have been depleted in vegetation cover through years of grazing. To improve the extent and resilience of the vegetation cover on these soils, the R&LMPP set up grazing management conditions including a reduction in stocking rates on the depleted soils and a programme of oversowing and topdressing for the better soils. More recently a centre pivot irrigator has been installed on Mackenzie soils in the Point Block between the Tekapo and Twizel Rivers resulting in improvements to the vegetation cover.

Most of the grazing pressure has been concentrated on the better alluvial soils located along the Twizel River and there are concerns that increasing the intensity of grazing here may have adverse



impacts on the riverbed habitat and water quality. This is discussed further under the Biodiversity and Water Quality sections.

Recommendations:

- That future owners or lessees of land within the Orchard Estate pastoral lease are made aware that the terms of the R&LMPP Land Improvement Agreement for the Orchard Estate lease will be binding through any proposal for the freeholding of land through Tenure Review.
- That the rabbit netted fences around the property should be maintained
- That any future intensification of land use does not result in adverse effects on natural values of the braided river habitats of the Tekapo, Twizel or Ohau Rivers.

**Indigenous vegetation, habitat and wetlands values**

Tenure review provides a valuable opportunity to help achieve two key objectives of the Reserves Act 1977 and the New Zealand Biodiversity Strategy (2001). These are, respectively, "preservation of representative samples of all classes of natural ecosystems and landscapes" and to "maintain and restore a full range of remaining natural habitats and ecosystems to a healthy functioning state." A complimentary objective of the tenure review process is to ensure that conservation outcomes are consistent with the New Zealand Biodiversity Strategy.

The Land Environments of New Zealand landscape classification system (Leathwick et al. 2003) provides a framework for securing protection and/or restoration of examples of the full range of terrestrial vegetation and habitats. Land environments, and potential natural vegetation cover (in the absence of human modification) are classified at four different national scales: Level I (20 land environments nationally), Level II (100 land environments nationally), Level III (200 nationally) and Level IV (500 nationally). Each is nested within higher levels. The 500 Level IV environments provide the most detailed information on the diversity of New Zealand's terrestrial environments and is the best nationally comprehensive estimate of the 'full range' of ecosystems, habitats and biodiversity.

Analysis of Land Environments in conjunction with spatial data depicting indigenous vegetation cover (from Land Cover Data Base) and current legal protection has recently been carried out by Landcare Research (Walker et al. in prep.), for the Department of Conservation. This analysis offers a useful method of identifying the most threatened environments, and therefore determining what should be priorities for protection of indigenous biodiversity, as part of tenure review. In reporting this work, the authors recommended that threat classification analysis be carried out using Level IV Land Environments, as these provide a more accurate, efficient and plausible assessment at regional and local scales.

Examples of three Level IV Land Environments are present on the Orchard Estate pastoral lease (Leathwick et al. 2003):

- N6.1a – Waitaki Basin glacial outwash plains, recent soils
- N6.1b – Waitaki Basin glacial outwash plains, older soils
- N7.1a – Wetlands in the Upper Waitaki Plains.

The table below shows the percentage of indigenous vegetation remaining in each land environment nationally, and the proportion of each environment that is already protected in existing reserves or conservation covenants. Threat categories are assigned on the basis of these figures (from Walker et al. in prep.)

Lvl IV Land Environment	% Indigenous Cover Remaining	% Protected	Threat category	Examples included in proposed CAs?
N6.1a	32.95	2.08	Critically underprotected	Yes. Examples in CA1 and UCL riverbed nearby
N6.1b	66.44	3.78	Critically underprotected	Yes. Small example at W end of CA1
N7.1a	12.07	3.83	Chronically threatened	Yes. Wetlands are well protected within CA2.

The proposal affords no protection to the Twizel River dry matagouri shrublands identified as significant in the Conservation Resources Report (within Land Environment N6.1a).

No protection is provided in the CAs for any examples of "Mackenzie short tussock grasslands" identified in the Conservation Resources Report as formerly dominating the outwash gravel surfaces.

Most areas of riverbed along the Twizel River that are included in the pastoral lease have been designated for freeholding with very limited requirement for the provision of marginal strips.

Overall, the areas within CA1 and CA2 provide only token protection to this range of critically under protected habitats or to the threatened species of riverbed birds that are found along the Twizel River.

A further area need has been identified as CA3 to protect examples of the matagouri shrublands, short tussock grasslands, and outwash river gravels at the lower end of the Twizel River, near its confluence with the Tekapo River. This should provide protection for the full range of significant natural habitats and ecosystems present on the pastoral lease.

Finally, the opportunity should be taken to secure protection of all the recent alluvial terraces and floodplains bordering the Twizel River, given the 'Chronically Threatened' status of these habitats and their value, acknowledged in the CRR and Preliminary Proposal, as important habitat and nesting area for a number of rare and endangered bird species. These communities, although modified by a history of burning and grazing and the presence of exotic plant species, have high representative significance and remain important habitats for indigenous fauna. They also contribute to the important landscape values that are prominent in this part of the Mackenzie Basin.

Priority must be given to securing opportunities for the protection and restoration of these most threatened environments if the tenure review process is to deliver conservation outcomes consistent with its own objectives, and with the New Zealand Biodiversity Strategy.

Recommendations:

That before any final recommendation for freeholding is completed, provision is made for the sustainable, long-term protection of the range of significant inherent values present on the Orchard Estate pastoral lease. In addition to the areas identified in the Preliminary Proposal, the following areas would incorporate the diversity of habitats found within the lease area, with particular emphasis of those habitats currently under protected in the reserve system:

- the dry river gravels and matagouri shrublands of the lower Twizel River
- Examples of the extensive outwash plains containing remnants of the once extensive short tussock grassland habitats

The area identified as CA3 on the attached map retains the best examples of these habitats.

### **Surface water and ground water resources**

As mentioned in the General Comments, the Preliminary Proposal contains little information on the relationships between land management and the long-term ecological sustainability of the aquatic ecosystems. Management of the land surrounding rivers and wetlands will play a key role in the long-term protection of water quality and instream values, as well as influencing the quality of rivers downstream from the pastoral lease.

Braided rivers in the Waitaki Basin generally have very high water quality and "clean bedrock or gravels" – very low concentrations of nutrients (nitrogen and phosphorus) and little evidence of sedimentation of the bed by fine sediments. This is in large part a result of past extensive levels of grazing management on these low fertility soils.

The Twizel and Ohau Rivers in particular provide important habitat for a number of threatened species of riverbed birds. The Twizel, Tekapo and Ohau Rivers are all highly valued for trout and salmon fishing. These rivers form part of the Statutory Acknowledgement areas under the Ngai Tahu Claims Settlement Act 1998 and are of considerable value to Ngai Tahu.

A change in land status or intensification of land within the Orchard Estate pastoral lease could potentially lead to an increase in sedimentation and nutrient concentrations of these rivers. The impact of intensive agricultural land use activities on water quality and ecosystems is well documented, most recently in the report "Growing for Good" by the Parliamentary Commissioner for the Environment. Tributary streams because of their size and limited assimilative capacity are particularly susceptible to degradation. Reduced flows in the Tekapo and Ohau Rivers as a result of hydro-electricity generation

has compromised the ability of these rivers to dilute any contamination resulting from sediment or nutrient input.

One of the most effective ways of maintaining water quality is to restrict stock access to waterways and to maintain well-vegetated riparian margins to trap pollutants in runoff from adjacent land. Grazing of riparian margins, for example, reduces vegetation stature and trampling of soils and banks results in an increase in sedimentation.

As a provision of freeholding, all river boundaries should be required to be fenced to exclude stock from the waterways. A riparian margin should be retained between the fences and water bodies to protect the important braided riverbed habitat. The use of irrigation will increase the potential stocking rates for this land and the consequent risks to water quality in adjoining waterways. If additional intensification occurs, this risk will increase further.

Chapter 4 of the Proposed Canterbury Natural Resources Regional Plan seeks to maintain water bodies, including the upper Waitaki catchment, in a natural state, where rivers and their tributaries are largely unaffected by human activities. The plan also promotes the retention, maintenance and planting of riparian vegetation to minimise bank erosion and to reduce runoff of sediment, nutrients and animal faecal matter. (Policy WQL 5)

The tenure review process offers a "one off" opportunity to put in place measures to safeguard in the long-term the health of aquatic ecosystems and to protect water quality. Environment Canterbury is devoting considerable resources through its "Living Streams" programme to restoring water ways, mostly groundwater fed streams, which have already been degraded as a result of land use activities. It is generally more cost effective to protect a waterway by preventing a decline in water quality and habitat values, rather than trying to restore a degraded water body.

Recommendations:

- That marginal strips are applied along the full length of all rivers adjoining the Orchard Estate property
- That marginal strips along the Twizel River are fenced and managed to maintain water quality and protect the riverbed habitat.

### **Geological features**

There appear to be no geological sites of scientific or education value in the Orchard Estate pastoral lease area that would require special protection.

### **Management of Pest species**

There are currently no significant pest issues associated with the management of the Orchard Estate pastoral lease. Rabbits are currently not an issue, and very few wildings are present on the pastoral lease land. The retention and maintenance of the rabbit netting around the boundary of the property should be continued to retain the integrity of the Rabbit Control Units, despite the continuing success of RCD.

### **Public Access**

Public access is poorly provided for in the Preliminary Proposal. The proposal provides for public foot and non-motorised access along the south bank of the Twizel River (routes marked a-b-c-d), and Crown access only along part of the Ohau River (route e-f). Marginal strips apply only where the river has (at this time) eroded through the unformed legal road (Twizel River) and property boundary (Ohau, Tekapo and Pukaki Rivers).

The areas to which marginal strips apply are not indicated on maps, and are uncertain as to their extent. This has been an ongoing criticism of the designation maps for Preliminary Proposals and needs to be rectified in future.

The proposal contends that recreational values will be protected by a proposed easement (part 3.4, page 3 of preliminary proposal). However as it can be expected that erosion of the riverside terraces alongside the Twizel River and other waterways will continue to remove parts of the unformed legal roads and property boundary in this area, an easement may not provide any long-term certainty of access. Esplanade Reserves (were this option available) would also be unsatisfactory, as continuing erosion along parts of these margins would gradually reduce the land available for access. Marginal

strips (under the Conservation Act), however, move with the erosion of boundaries (s. 24 (g)), and are measured from the landward margin of waterways. This is the preferred option here.

The application of marginal strips across the existing (unformed) legal roads may require the agreement of the Mackenzie District Council (MDC) to proceed or, alternatively, MDC may consider closing and disposing of this land to the Crown to provide for the marginal strips. Recent experience in the Mackenzie District with a similar issue suggests that this matter could be simply dealt with following agreement of MDC to the marginal strip applying across the unformed legal road.

As an additional matter, it is recommended that the riverbed areas below the terrace on the north side of the Twizel River (below the broken line indicating a track) and alongside the Ohau River (south of point "f" - entitled "riverbed subject to rapid flooding") be retained by the Crown to secure public access to and along these parts of the riverbeds. This will also ensure that this land - vulnerable to erosion - cannot be subdivided and built upon if the land is developed following freeholding.

### **Infrastructure and Network facilities**

Although not a specific objective of the tenure review process, this does offer an opportunity to secure the protection of important network facilities on land to be designated for freeholding.

#### **a) Twizel Sewage Treatment and Disposal Infrastructure.**

The land in question contains the Twizel Oxidation Ponds and pipeline infrastructure both to this facility and discharging from it. Road access to the ponds is shown on the plans, but the status of this road is unclear.

Under the Mackenzie District Plan, the "Oxidation Pond" is identified in the Schedule of Designations (Planning Maps 33 and 38), however this designation does not appear to encompass the pipeline infrastructure leading to or from the ponds, the "road", or the disposal field area. Note that the oxidation ponds are excluded from the property subject to tenure review (Sec 1, SO 18355 - 6.3 ha approx.).

This infrastructure is of vital importance to the social wellbeing, health and welfare of the Twizel community, and should be recognised and explicitly provided for through tenure review. To provide for the future operational viability of this facility:

- land encompassing the "road to Oxidation Ponds", the oxidation ponds, pipe work to the ponds and discharging from the ponds (including the emergency overflow pipe work), power supply, and disposal field area should be restored to full crown ownership. This would provide security for the future on-going operation and maintenance of this infrastructure.
- this land should be contained in one discrete "block" and allow that sufficient additional space is available for expansion of the facility to meet future growth pressures at Twizel.

#### **b) Transmission Infrastructure.**

The property is traversed by electricity transmission infrastructure owned by Meridian Energy and Transpower. This infrastructure is of considerable national strategic importance. Consideration should be given to formalising the route(s) of this transmission network infrastructure. This could occur either by way of formal easement, or by restoration to full Crown ownership and lease-back to the adjoining freehold property owner(s), subject to access, and maintenance/upgrade arrangements.

### **Recommendations**

Environment Canterbury acknowledges and supports the areas proposed to be restored to full Crown ownership and control as contributing to soil conservation management and the protection of examples of some of the indigenous habitats of the area. However these areas, on their own, fall short of achieving the objectives of the CPLA as they fail to include the range of habitats or to provide for the integrated management of soil and water resources as identified in the NRRP, particularly with regard to the management of river margins and the prevention of any adverse effects of future land intensification on water quality.

Some key issues in relation to the provision for public and network facilities are inadequately dealt with.

## RELEASED UNDER THE OFFICIAL INFORMATION ACT


The following recommendations for alterations and additions to the areas for protection have been identified to provide for the ecologically sustainable management of the Orchard Estate land into the future:

1. That future owners or lessees of land within the Orchard Estate pastoral lease are made aware that the terms of the R&LMPP Land Improvement Agreement for the Orchard Estate lease will be binding through any proposal for the freeholding of land through Tenure Review.
2. That the rabbit netted fences around the property should be maintained
3. That an additional area of land, marked as CA3, be managed to protect
  - the dry river gravels and matagouri shrublands of the lower Twizel River; and
  - examples of the extensive outwash plains containing remnants of the once extensive short tussock grassland habitats
4. That marginal strips are applied along the full length of all rivers adjoining the Orchard Estate property.
5. That marginal strips along the Twizel River are fenced and managed to maintain water quality and protect the riverbed habitat.
6. 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 protected by restoring to full Crown ownership and by establishment of formal easement across freeholded land.

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.

Thank you for the opportunity to comment on this Preliminary Proposal.

Yours sincerely

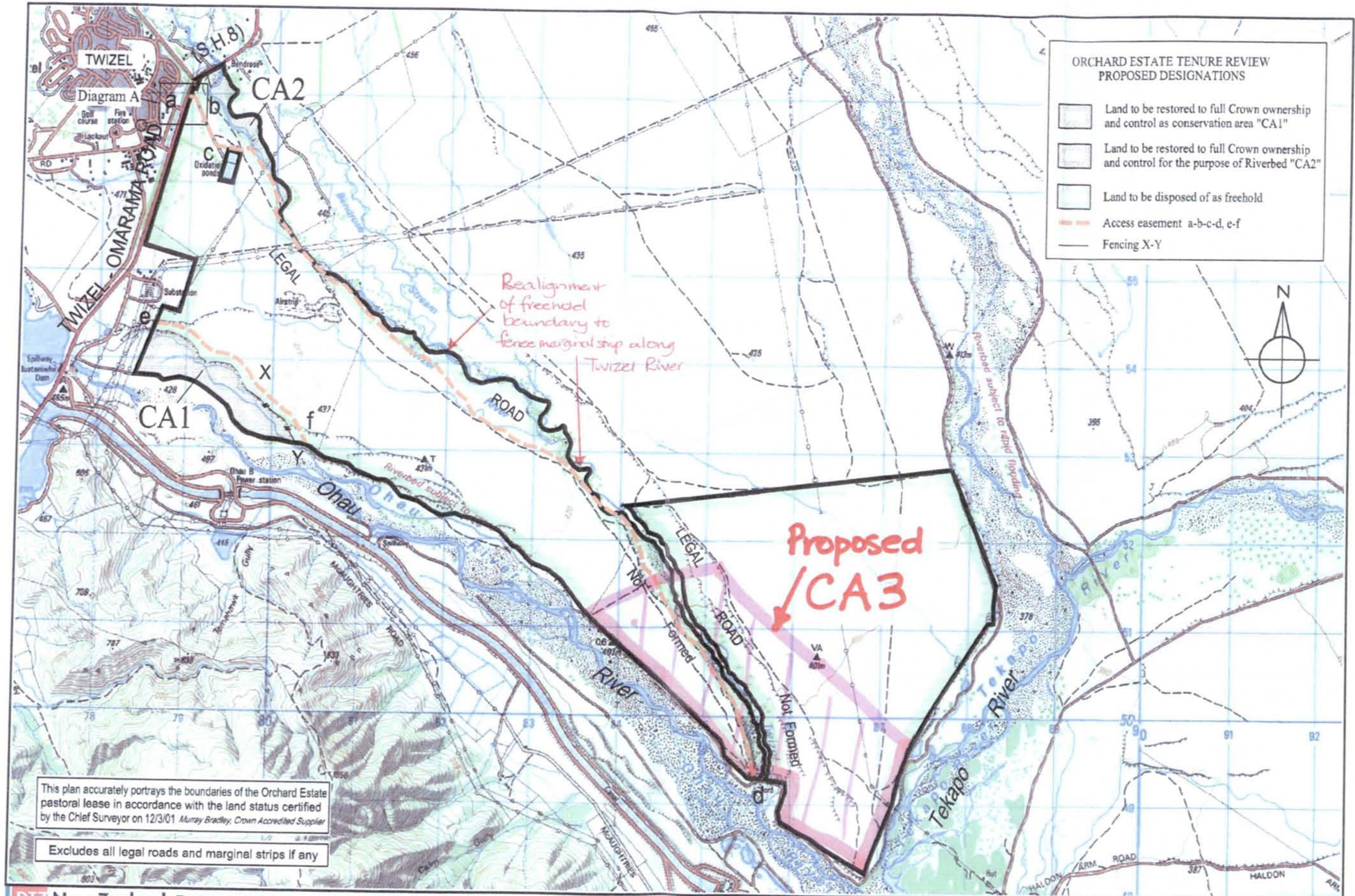


John D Talbot  
DIRECTOR OF POLICY AND PLANNING

Attachments:

Map 1 – showing recommendations for further areas to be restored to full Crown ownership, or to be managed for the protection of important values.





This plan accurately portrays the boundaries of the Orchard Estate pastoral lease in accordance with the land status certified by the Chief Surveyor on 12/3/01 Murray Bradley, Crown Accredited Supplier

Excludes all legal roads and marginal strips if any

**DTZ New Zealand**  
International Property Advisors

**GLASSON POTTS FOWLER**

The boundaries shown on this plan are indicative and are for illustrative and discussion purposes only. Precise boundary positions will be determined by survey during implementation

Land being disposed of as freehold will be subject to Part IV A of the Conservation Act 1987, and Part IV A applies to the entire length of the Ohau, Pukaki & Tekapo rivers within the boundaries of the land to be disposed of

**ORCHARD ESTATE PASTORAL LEASE**

0 1 2 3 4 5

1:40,000 SCALE (Kilometres)

Version	1	2	3	4	5
Canterbury Land District	Sheet 1 of 1				
Topographic Map 260 - H38&H39	Date: February 2005				