Land Information New Zealand
Toitū te whenua

Proactive release of policy advice

Crown Pastoral Land Reform Bill

September 2020

Crown Pastoral Land Reform Bill advice

LINZ has released its advice to the Minister for Land Information regarding the Crown Pastoral Land Reform Bill to help the public make informed submissions.

The Bill had its first reading in Parliament on 23 July 2020 and was referred to the Environment Select Committee.

The Committee is now accepting submissions, and the public is encouraged to provide any feedback regarding the Bill.

Submissions can be made here.

About the documents:

This advice was provided to the Minister for Land Information, and helped to inform:

- policy decisions made by Cabinet in December 2019
- delegated policy decisions made by the Minister for Land Information (in consultation with the Minister for the Environment and the Minister of Agriculture) in early 2020
- delegated technical decisions made by the Minister for Land Information in 2020.

This advice has been compiled and can be found below. Some information has been withheld in line with the Official Information Act 1982.

Where there are references to attachments that are out-of-scope, the references remain but the attachments themselves have been withheld as out-of-scope.

In some cases, in-scope information has been extracted from the relevant briefings and provided as an extract. These are clearly marked.

About the Crown Pastoral Land Reform Bill:

The Bill proposes changes to the Crown Pastoral Land Act 1998 and Land Act 1948. It will end tenure review and introduce an outcomes-based approach to the regulatory system, to help ensure that sustainable pastoral farming maintains or enhances the inherent (ecological, landscape, cultural, heritage and scientific) values of the land.

The Bill also aims to increase transparency and accountability, and reflects the Crown's obligations under the Treaty of Waitangi to support strong and enduring Crown-Māori relationships.

See Crown Pastoral Land Management for further information.

Previous Cabinet decisions and related advice:

Advice that informed the February 2019 decision to end tenure review has already been published on our website:

High country advice (published April 2019)

Information on the public consultation process and submissions received can also be found on our website:

Consultation on enduring stewardship of Crown pastoral land

The December 2019 Cabinet paper, minute of decision, and Regulatory Impact Statement are available on our website:

Delivering better outcomes for Crown pastoral land: Final decisions

The June 2020 Cabinet paper Crown Pastoral Land Reform Bill: Approval for Introduction has also been published on our website:

Crown Pastoral Land Reform Bill: Approval for Introduction

Documents being released

Briefing Number	Briefing Title	Date
BRF 19-338	Crown pastoral land regulatory system work programme: background for policy discussion with officials on 2 May	1 May 2019
BRF 19-347	Crown pastoral land regulatory system work programme: background for policy discussion with officials on 9 May	8 May 2019
BRF 19-408	Briefing on Crown pastoral land reform options analysis and recommendations	7 June 2019
BRF 19-420	Memorandum: High Country Advisory Group's Feedback on Crown Pastoral Land Policy Thinking	24 June 2019
BRF 19-431	Briefing on implications of changes to Crown pastoral land regulatory system	28 June 2019
BRF 19-442	Briefing on enforcement approach for Crown pastoral land regulatory system	28 June 2019
BRF 20-027	Update on further work on changes to the Crown pastoral land regulatory system	29 July 2019
BRF 20-072	Crown pastoral land regulatory changes: further advice on enforcement, appeals, and access	22 August 2019
BRF 20-094	Memorandum: Crown pastoral land policy proposals: Decision making on discretionary consents	5 September 2019
BRF 20-132	Memorandum: Flow diagram of the proposed discretionary consents process	23 September 2019
BRF 20-142	Memorandum: Crown pastoral land reforms: Calibrating the discretionary consent process	27 September 2019
BRF 20-152*	Aide Memoire: Crown pastoral land policy proposals: updated Cabinet paper and speaking points for Ministerial consultation	1 October 2019
BRF 20-209*	Further information requested following ENV's consideration of the Crown pastoral land reform Cabinet paper on 23 October	30 October 2019
BRF 20-250	Crown pastoral land reforms: possible approaches to a new discretionary consent process	19 November 2019

BRF 20-251	Crown pastoral land reforms: update on developing a new decision-making process for discretionary consents	29 November 2019
BRF 20-252*	Crown pastoral land reforms: further advice on classification of activities and the statutory process for discretionary consents	10 December 2019
BRF 20-293	Aide Memoire: Crown pastoral land update and talking points for Minister's meeting with Minister of Agriculture and Minister for the Environment	16 December 2019
BRF 20-298	Crown pastoral land reforms: further advice on classification of discretionary activities and the statutory test for discretionary consents decisions	12 December 2019
BRF 20-336	Crown pastoral land reforms: Update and further advice	7 February 2020
BRF 20-367	Aide Memoire: Crown pastoral land reforms: Further advice for the CPLA meeting between Hon Eugenie Sage, Minister for Land Information, and Hon Damien O'Connor, Minister of Agriculture, Wednesday 19 February (1:00pm)	18 February 2020
BRF 20-368	Crown pastoral land reforms: Report back on engagement and further advice on discretionary actions	25 February 2020
BRF 20-401	Crown pastoral land reforms: Delegated decisions on schedule and statutory process	28 February 2020
BRF 20-443*	Crown pastoral land reforms: Updated Bill for Ministerial and cross-party consultation	23 March 2020

* All relevant information that falls within the scope of this release has been extracted from these briefings and prepared for release.

Land Information New Zealand
Toitū te whenua

1 May 2019 BRF 19-338

AIDE MEMOIRE

Crown pastoral land regulatory system work programme: background for policy discussion with officials on 2 May

Purpose statement

1. This aide memoire provides an update on work on the proposed changes to the Crown pastoral land regulatory system in advance of our meeting with you on 2 May. It also:
   - provides an initial high-level summary of some of the feedback we have received through the consultation process
   - provides an overview of our initial policy thinking in a number of key areas
   - suggests a number of potential questions for discussion at our meeting.

Background

2. Following the close of submissions on the discussion document on 12 April, we have been working to summarise and analyse the over 3,000 submissions.
3. In tandem with this, we have begun to assess the proposed changes set out in the discussion document in the light of the submissions and to identify further options that may be required for achieving the Government's objectives in this area.
4. Our work programme currently falls into six workstreams:
   - *Submissions analysis* – this involves summarising and analysing the submissions received, and feeding this into the other workstreams.
   - *Protection mechanisms after tenure review* – this is identifying options for securing access to, and maintaining and enhancing inherent values worthy of protection on, Crown pastoral land with the ending of tenure review, as well as identifying any issues associated with ending tenure review. It includes an assessment of the ongoing role and/or need for the Part 3 review process.
   - *Outcomes* – this focuses on finalising the outcomes and how they will be reflected in legislation.
   - *Discretionary consents* – this focuses on the design of a discretionary consents process that will give effect to the desired outcomes.
   - *Decision making* – this looks at how best to increase the transparency of the system and clarify the accountability of the different system participants.
   - *Implementation and system performance* – this focuses on what monitoring and enforcement arrangements will be needed to support the delivery of desired outcomes.
5. While we still are at an early stage with this work, there are a number of key areas where we have identified potential choices or approaches, and would like to test our initial thinking with you over the next few weeks. For our meeting on 2 May, we propose focusing on:
   - how our relationship with iwi should be reflected in the regulatory system
   - the definition and scope of the outcomes

- our broad approach to the discretionary consents process.

Relationship with iwi

Summary of the feedback so far

6. Since the release of the discussion document, officials from Land Information New Zealand (LINZ) and the Department of Conservation (DOC) have participated in two hui with Ngāi Tahu. Te Rūnanga o Ngāi Tahu has also provided a formal submission, which is attached to this briefing (Annex 1). Ngāi Tahu leaders have also requested a meeting with you, and are working with your office on potential dates.
7. Overall, Ngāi Tahu is supportive of improving the stewardship of the high country, and agrees with the general direction of the reform. Ngāi Tahu also sees respect for current property rights as an important underlying principle.
8. The main focus of Ngāi Tahu's feedback has been on how the regulatory system should better reflect its relationship with the Crown as Treaty partners and mana whenua. Historically, outside of tenure review Ngāi Tahu has felt largely shut out from the Crown pastoral lease regulatory system – particularly at the Ministerial and Commissioner of Crown Land (the Commissioner) levels.
9. We have been working with Ngāi Tahu on a three-tiered approach to the ongoing relationship between the Crown and Ngāi Tahu:
    - a strong 'mana to mana' relationship between the Kaiwhakahaere (Chair) and the Minister at a system outcomes level, including setting the strategic direction for Crown pastoral land
    - a relationship between the Chief Executive of Te Rūnanga o Ngāi Tahu, and the Commisisoner at a system performance level, including developing and setting standards, policies and guidance
    - an operational–level relationship between mana whenua, LINZ/DOC staff and leaseholders, including in relation to processes for identifying, maintaining and enhancing cultural values.
10. Ngāi Tahu sees legislation as a way of cementing these relationships, providing specific statutory "touch-points" between the Crown and iwi while noting that the Treaty relationship is dynamic and constantly evolving – and that legislation should enable the relationship to continue developing rather than constrain it. As part of this they are seeking the inclusion of a provision that requires the legislation to give effect to the principles of the Te Tiriti o Waitaingi and requiring individuals making decisions under the Act to apply Treaty principles to all decision making.

Initial comment

11. While we are still working through the details of the feedback from Ngāi Tahu, our initial view is that the 'three-tiered' approach to the ongoing relationship between the Crown and Ngāi Tahu is a helpful way of framing how we would engage with Ngāi Tahu at different points in the regulatory system.
12. Additionally the practical specifics of how to deliver this are consistent with a partnership approach, and our initial thinking is that they are largely workable from an operational point of view.
13. Going forward, the potential area of tension will be what is specified in the legislation – in particular, Ngāi Tahu's view that the outcomes should require decisions to "give effect to" Treaty principles as opposed to the current wording which requires decisions to "take into account" Treaty principles.
14. An alternative is to retain the current wording and specify how the principles will be given effect to in different part of the system (e.g. a requirement for iwi to be part of developing a State of

Performance Expectations). We will test this issue further with the Ministry of Justice and the Legislation Design and Advisory Committee.

Suggested questions for discussion

- Is the proposed 'three-tiered approach' to the ongoing relationship between the Crown and Ngāi Tahu a useful way of framing the relationship?
- What are you views on how to approach the overarching representation of the Treaty relationship in legislation?

Definition and scope of outcomes

Summary of the feedback so far

15. There is widespread support for the need to articulate clearer outcomes for Crown pastoral land.
16. Submitters emphasise the importance of clear definitions and terminology in the outcomes. Many submitters noted that unclear terms and definitions may lead to legal risks and disputes as to how terms should be applied to decision making. More specifically, there has been some feedback that the use of the term "natural capital" is problematic. This is because of its association with a broader economic framework which describes natural resources primarily in terms of their "use" value and does not adequately account for the inherent values of nature.
17. Overall, leaseholders do not agree with the proposed set of outcomes as they currently stand, raising a number of issues:
    - The proposed outcomes are seen as impacting on their contractual relationship with the Crown and the property rights granted by the pastoral lease.
    - The reference to the Crown obtaining 'a fair financial return' is seen as inconsistent with the current rent setting mechanism, and as undermining future relationships between the Crown and leaseholders.
    - The proposed outcomes do not acknowledge the relationship of leaseholders to Crown pastoral land or the role of pastoral farming in the high country's heritage.
18. The High Country Accord's submission acknowledges that this review presents an opportunity through dialogue to create a set of outcomes that work for both leaseholders and the Crown and further to this, suggests an alternative outcomes statement[1].
19. Leaseholders also argue that the history, tradition, and 'way of life' of pastoral farming should be included in the 'heritage values' of the outcomes.
20. Non Governmental Organisations and other submitters generally agree with the proposed outcomes – in particular placing environmental values above economic activity. However some submitters, especially recreation advocacy groups, want access to be included within the outcomes. The use of financial incentives to leaseholders to secure this access has been raised across many groups of submitters (e.g. rent discounts/rebates).

Initial comment

21. In the light of the feedback, our work has so far focused on two areas:
    - the definitions of terms in the outcomes – particularly 'natural capital'

[1] The Crown will:
- safeguard for present and future generations the natural landscapes, indigenous biodiversity and heritage values of Crown pastoral land whilst recognising the contractual rights of pastoral lessees and the principles of the Treaty of Waitangi
- promote the enhancement of indigenous biodiversity in Crown Pastoral land through the sharing of responsibility for the stewardship of Crown pastoral land with lessees.

- whether there is anything missing from the outcomes.

22. Our initial thinking is that:
    - we will need to tighten up/simplify some of the terms in the outcomes – particularly 'natural capital'. One alternative is to use 'natural values' instead (and potentially use the 'natural capital' concept as a way of measuring whether we are achieving that outcome).
    - similarly, we will need to clarify whether the phrase "that support economic resilience and foster the sustainability of communities" is intended to limit the nature of pastoral and non-pastoral activities that can take place by assessing whether they are necessary to economic resilience/sustainability - one option is to remove this phrase altogether.
    - we will need to clarify our definition of 'culture and heritage values' given that this could be interpreted to include the pastoral farming 'way of life' which makes the intended hierarchy less clear.
    - there is probably not a strong enough rationale to support the inclusion of recreation/access in the outcomes, and it is likely to exacerbate concerns around leaseholders' property rights.
23. We have also been looking at the issue of the impact of the new outcomes (and the other proposed changes) on the contractual relationship with leaseholder and the impact of the proposed changes on property rights, as highlighted in leaseholder submissions – particularly in the context of the High Country Accord submission. We will provide you with further advice on this in the aide memoire for your meeting with the High Country Accord.

Suggested questions for discussion

- What alternatives could we be considering to natural capital? What other clarifications are needed in light of feedback?
- Should recreational or other values be included in the outcomes?

Broad approach to the discretionary consents process

Summary of the feedback so far

24. Feedback on the discretionary consents process is generally falling into three broad areas:
    - The interaction between the proposed outcomes and decision making.
    - The need for decision making to better understand and take account of the environmental and other impacts of activities – particularly the cumulative impacts.
    - The need to improve the discretionary consents process, including reducing the burden it places on applicants and as appropriate, recognising the beneficial impact of some activity.
25. Much of the feedback from NGOs and non-leaseholder submitters supports some tightening up of how discretionary consent decisions are made – for instance, both Forest & Bird and Environmental Defence Society (EDS) support a requirement for the Commissioner to give effect to a set of outcomes in discretionary consent decisions. Many of these submitters have raised concerns about the ability of the current system to manage cumulative effects.
26. Leaseholders note that their view of the proposals relating to discretionary consents ultimately depends on what outcomes are agreed. Many leaseholders emphasise the need to ensure that the changes do not create roadblocks for farmers who are doing activities consistent with the outcomes. For instance, most leaseholder and service provider submissions highlight the need

to address the requirement for leaseholders to apply for consent to undertake pest plant control or other activities that are needed to fulfil the good husbandry requirements of the lease.

27. Submitters have also expressed concerns around improving the efficiency of the consents process, suggesting that decision making should be targeted at applications that are higher risk or involve new development.

28. There is some broad agreement about using mechanisms such as farm plans to help potentially streamline the decision making process and/or place decision making in a broader context. For instance, EDS supports the use of farm plans to demonstrate how CPLA requirements will be met. The High Country Accord also supports the use of farm/lease management plans, to align RMA and CPLA processes and reduce the number of consent applications needed. However, Forest & Bird has some reservations about the use of farm plans on the basis that farm plans are often private documents, so would not assist with transparency, and there is a lack of capacity amongst ecologists and other necessary consultants to provide comprehensive, quality advice to inform farm plans of the number that would be required.

Initial comment

29. In light of this feedback, our work on discretionary consents is focusing on:

    - ensuring that decisions contribute to the desired outcomes, including being based on a good understanding of the likely impacts (including cumulative impacts), and being clear about what the Commissioner needs to consider when making decisions
    - ensuring the decision making process itself supports an outcome focus, including focusing efforts on decisions relating to activities likely to have the most impact.

30. In the second area, one option we are considering is creating classes of activities to reflect their scale/risk profile. This option would involve creating low impact, discretionary and prohibited classes of activities based on the likely impact of those activities:

    - *low impact activities* could include activities that the leaseholder is required to carry out under the terms of their lease, such as pest control and other minor/slash low risk activities
    - *discretionary activities* would, as now, be those activities that would need the consent of the Commissioner to undertake (and would need to be informed by a clear understanding of impacts, including cumulative impacts)
    - *prohibited activities* could not be applied for.

31. The classification of individual activities could be set in regulation and reviewed periodically. Public consultation on classification of activities could be required to ensure that appropriate decisions were made about which activities the Crown should promote or avoid. Such an approach would also need to be supported by an effective monitoring and enforcement system.

32. We are also considering the role that farm/lease management plans could play in the discretionary consents process – in particular, whether they could improve efficiency (for example, by informing consent applications) and improve our understanding of cumulative effects.

Suggested questions for discussion

Are you comfortable with us exploring alternative approaches to the current discretionary consents process such as the one above?

LINZ Contacts

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Annex 1: Submission from Te Rūnanga o Ngāi Tahu

Te Rūnanga o NGĀI TAHU

23 April 2019

Crown Pastoral Land Consultation
Land Information New Zealand
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Wellington 6145

Email: smetwell@linz.govt.nz
CPLC@linz.govt.nz

Tēnā koutou,

RE: Discussion Document - Enduring Stewardship of Crown Pastoral Lease Lands

Te Rūnanga o Ngāi Tahu (**Te Rūnanga**) welcomes the opportunity to participate in consultation on the enduring stewardship of Crown pastoral land and appreciates the concerted effort Land Information New Zealand (**LINZ**) have made to ensure appropriate, meaningful consultation has occurred with Ngāi Tahu as mana whenua.

Te Rūnanga support the desire of the Crown to deliver a more appropriate balance of outcomes for pastoral lands through this review and are particularly supportive of the Crown's decision to end the practice of freeholding Crown land through tenure review.

Te Rūnanga o Ngāi Tahu

Te Rūnanga is statutorily recognised as the representative tribal body of Ngāi Tahu whānui and works to advocate for and protect the rights and interests inherent to Ngāi Tahu as mana whenua. Te Rūnanga consists of eighteen Papatipu Rūnanga who uphold the mana whenua and mana moana of their rohe. Ngāi Tahu whānui comprises over 62,000 registered iwi members. The responsibilities of Te Rūnanga in relation to this kaupapa can be found in Appendix One.

The takiwā (region) of Ngāi Tahu in Te Waipounamu covers the largest geographical area of any tribal authority, see Appendix Three.

As acknowledged by LINZ, the majority of what is described as high country, and the associated pastoral lease lands, are found within the Ngāi Tahu takiwā.

Te Rūnanga recognise that several leases fall within the takiwā of other iwi and acknowledge their interests in of those lands.

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Notwithstanding its statutory status as the representative voice of Ngāi Tahu whānui for all purposes, Te Rūnanga accepts and respects the right of individuals and Papatipu Rūnanga to make their own responses in relation to this matter.

Te Tiriti o Waitangi

Te Tiriti o Waitangi (**the Treaty**) provides for the enduring relationship of mana whenua with the lands, waters and taonga, including mahinga kai resources, in their takiwā. Te Rūnanga expect that the Crown will honour the Treaty and the principles upon which it is founded, including the rangatiratanga status of Ngāi Tahu whānui over its takiwā.

Te Rūnanga note that while LINZ are the lead agency for this kaupapa, the Department of Conservation (the **Department**) have played a role in the management of Crown land recovered from pastoral leases through the tenure review process. Section 4 of the Conservation Act 1987 provides an obligation on the Department to give effect to the principles of the Treaty in all its actions (which is expanded on below).

Te Rūnanga expect LINZ, the Department and all other agencies of central and local government to engage with Ngāi Tahu directly, as the Crown's Treaty Partner, on policy and management of biological diversity, ecosystems, and natural resources within the Ngāi Tahu takiwā.

The Ngāi Tahu Settlement

Te Rūnanga has a further interest in the management of Crown pastoral lands by virtue of the Ngāi Tahu Claims Settlement Act 1998 (**Settlement Act**). This is reflected in the Crown's apology, as contained at sections 5 and 6 of the Settlement Act and the recognition of the importance of mahinga kai and taonga species to Ngāi Tahu at Part 12 of the Settlement Act.

The Crown's apology to Ngāi Tahu is **attached** at Appendix Two. The apology guides the relationship of Te Rūnanga with the Crown post-Settlement and provides the basis of the expectation of Te Rūnanga that the rights, interests and values of Ngāi Tahu are recognised in the management of Crown land.

The Settlement Act also provides mechanisms of Tōpuni, Statutory Adviser, Deeds of Recognition, nohoanga sites and protocols. These are intended to recognise the Treaty principles of partnership, active participation in decision-making, active protection of the rights and interests of Ngāi Tahu and rangatiratanga.

Indigenous species are also recognised as taonga species to Ngāi Tahu as recognised in sections 287 to 296 of the Settlement Act. These sections specify how the special relationships with taonga species are to be recognised in practice and in accordance with the law. In particular, section 293 of the Settlement Act provides the circumstances that the Minister of Conservation must advise or consult with Ngāi Tahu on any plans, policies or documents and policy decisions concerning the protection, management or conservation of taonga species.

Ngāi Tahu Interest in Management of the High Country

Any approach to management of pastoral lease lands must demonstrate an understanding of the historical and contemporary values mana whenua have in the landscape.

Ngāi Tahu has a rich history of spiritual and practical connection with the high country. The significance of mountain landscapes in Māori creation stories and belief systems are well known, and the high country was important for the seasonal mahinga kai opportunities available. The alps and passes were important for traditional navigation, and pathways from coast to coast and end to end of the takiwā were frequently travelled by our scattered yet strongly interconnected iwi.

To date, Ngāi Tahu have had limited opportunity to access, identify and express our values on Crown Pastoral Lease Land.

Te Rūnanga acknowledges that whilst flawed, the tenure review process did provide an opportunity for mana whenua to conduct cultural values assessments. Any alternative mechanism that replaces tenure review must enable Ngāi Tahu with the ability to access sites of significance and to identify values to inform and guide future land management.

Taonga Species

Many species found in the high country are taonga species to Ngāi Tahu. One of the outcomes of the Settlement Act was the inclusion of taonga species due to the special relationships Ngāi Tahu has with these plants, birds, fish and animals.

There are several key sections of the Settlement Act that specify how the special relationships with taonga species are to be recognised in practice and in accordance with the law. These relationships are based in whakapapa and reflect a long history of interaction, management and use.

The result of building an enduring partnership is that Ngāi Tahu are recognised as an active participant in the management of taonga species on Crown lands. Active protection of taonga species by Crown agencies must include the kaitiakitanga role of Ngāi Tahu, recognising rangatiratanga and mātauranga (as described in the Department's Threatened Species Strategy). Providing the opportunity for Ngāi Tahu and the Crown to establish a strong partnership model, enables Ngāi Tahu to fulfil our ancestral responsibilities to these species, places of significance and landscapes.

Ngāi Tai Ki Tāmaki Tribal Trust v Minister of Conservation

As referred to above, Te Rūnanga expects LINZ to develop and implement the amendments to the Crown Pastoral Lease Act 1998 (**CPLA**) and Land Act 1948 (**Land Act**) in partnership with Ngāi Tahu and apply the Treaty principles in all its decision making. This notion is supported by the recent decision of the Supreme Court in *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* (**the Judgment**).

The principles of law outlined in the Judgment as to how the Department must apply section 4 of the Conservation Act and the principles of the Treaty, also apply to LINZ. The Judgment sets a high precedent as to how the Crown must apply the principles of the Treaty in all its decision making.

The current legislation provides that the Commissioner must take into account the principles of the Treaty when acting in any tenure review (see section 25 of the CPLA) and reviewing Crown land (see section 84 of the CPLA). In addition, the Commissioner has duty to consult with and consider the views of iwi when developing a substantive proposal (see sections 44 and 47 of the CPLA, for example). Unfortunately, these provisions solely relate to tenure review as there are no similar provisions in either the CPLA and Land Act in respect of pastoral leases generally and discretionary consents.

As outlined in the Discussion Document, the CPLA was intended to facilitate parts of the leased land to be purchased by the leaseholder and the remaining land to be restored to the Crown for conservation purposes. That is the process of tenure review and was then seen as the most effective way to protect important or valuable land, whilst freeing up the land for economic use by the leaseholder.

However, for those reasons already outlined by LINZ, the tenure review process has had limited effect, leaving 171 Crown pastoral leases currently in operation. The provisions outlined have therefore had much less consideration and implementation than what was originally intended for. Rather, the land has remained occupied by the leaseholder and greater discretionary consents have been granted of which iwi have had no input (and have had a greater focus on the viability of farming activity rather than the environmental effects such activities may have or mana whenua aspirations).

It is imperative that any amendment to the CPLA and Land Act, or the creation of a new Act, includes a provision that requires the Act to be administered as to give effect to the Treaty principles, that is, the Treaty principles must apply to all processes, including the granting of discretionary consents and implementing 'protective mechanisms' such as covenants and easements.

Te Rūnanga notes that the Minister and Director-General of Conservation are bound to apply the Treaty principles in their activities under the CPLA and Land Act, given their powers and functions are established through the Conservation Act (and therefore section 4 of the Conservation Act 1987 applies). The Queen Elizabeth the Second National Trust Act 1977 is also listed as an enactment of which the Department is responsible for the administration of. Section 4 of the Conservation Act therefore applies to the Queen Elizabeth the Second National Trust. LINZ, as a Treaty partner, must support the Department of Conservation and the QEII National Trust in meeting their obligations under section 4 of the Conservation Act.

To bring the CPLA and Land Act in line with the Conservation Act and the recent Supreme Court Judgment, the amendments must include a provision that requires the CPLA and Land Act to give effect to the principles of the Treaty.

Recommendations:

- The amendments to the CPLA and Land Act must include a provision that requires the Acts to give effect to the principles of the Treaty of Waitangi;
- LINZ must apply the principles of the Treaty in all its decision making;
- LINZ must support the Department of Conservation and the QEII National Trust in meeting their obligations under section 4 of the Conservation Act.

Development of Contemporary Management of Crown Pastoral Lease Land

It is imperative that meaningful partnerships are maintained between the Crown and Ngāi Tahu to support effective and appropriate management of natural and cultural values within the Ngāi Tahu takiwā.

Te Rūnanga must be engaged in the development of the management framework for Crown pastoral land. Te Rūnanga envisages a framework which supports a strong mana to mana relationship between the Kaiwhakahaere and Minister, as well as a relationship between the Commissioner and Te Rūnanga and at the operational level, mana whenua, leaseholders and applicants. Those flax roots relationships, between mana whenua, leaseholders and other applicants are extremely important, and it is the responsibility of both Treaty partners to foster a framework that allows them to function and flourish.

Whilst Te Rūnanga and mana whenua have demonstrated effective relationships at the operational level in tenure review processes to date, currently the relationships at the Ministerial and Commissioner levels are weak.

Recommendations:

- The management framework for Crown pastoral land must be developed in partnership with Te Rūnanga;
- The framework must support the following relationships:
  - Kaiwhakahaere and Minister;
  - Te Rūnanga and Commissioner;
  - Mana whenua and leaseholders and applicants.

<u>Current Pastoral Lease in Tenure Review Process</u>

Te Rūnanga acknowledges there are 34 leases that are currently in the tenure review process. Te Rūnanga understands that the current legislative process must continue until there are amendments to the CPLA and Land Act. Te Rūnanga also understands that any substantive proposals that have been accepted by a leaseholder before any legislative amendment will also continue. Te Rūnanga supports and respects individual and collective property rights.

However, Te Rūnanga stresses the importance that it must be engaged in these current processes. Te Rūnanga must be fully informed so that it can review the particular property and assess its cultural values to Ngāi Tahu and mana whenua and

take steps to protect the same. Reflecting on the reasons for ending tenure review is helpful to illustrate how imperative it is that Ngāi Tahu is fully engaged in the creation of any future proposals.

Similarly, Te Rūnanga and mana whenua must also be engaged in the process of the Commissioner prioritising those pastoral leases that are currently in tenure review. By way of example, particular land may have greater cultural and/or conservation values and therefore greater resources may need to be allocated. Iwi can only assess such cultural values. The inherent conservation and cultural values of such land must be protected during this process.

Recommendations:

- Te Rūnanga and mana whenua must be engaged and advised on the leases that are currently in the tenure review process;
- Te Rūnanga and mana whenua must be engaged in the process of the Commissioner prioritising the pastoral leases in tenure review.

Protective Mechanisms

Te Rūnanga supports the use of protective mechanisms on Crown pastoral land. Te Rūnanga must, however, be engaged in the creation of and agreement with leaseholders on those protective mechanisms. Other than iwi involvement in providing a Cultural Values Report to LINZ and being "consulted" on a substantive proposal, there is no legislative requirement for LINZ and/or the Commissioner to engage iwi in the implementation of any covenant or easement on Crown pastoral land.

Any protective mechanisms implemented must support iwi and mana whenua needs and aspirations for that land, whether it be for example, for conservation purposes, access to mahinga kai, or the active protection of taonga species. Not only must iwi and mana whenua be engaged in assessing protective mechanisms for others on Crown pastoral land, but a framework and mechanism must be created that provides protective mechanisms for Ngāi Tahu to access, protect and use land, in line with Ngāi Tahu values.

Similarly, Te Rūnanga must be engaged in any purchase of Crown pastoral land. To date, iwi have only been consulted on a substantive proposal. There is no mechanism which provides for the engagement of iwi on the purchase of land or leases. As a Treaty partner, iwi must be engaged in these processes.

Recommendations:

- Te Rūnanga supports the use of protective mechanisms, however iwi must be engaged on the creation and implementation of same;
- Any protective mechanisms must support iwi and mana whenua needs and aspirations; and
- Iwi must be engaged on the purchase of any Crown pastoral land (whether by the Crown or others).

Outcomes

Te Rūnanga supports the inclusion of a new set of outcomes within the amended Act, or new Act, that not only ensures land is managed to protect natural, cultural and heritage values, but that it is also managed as to give effect to the Treaty.

In addition to including a specific Treaty provision within the Act the outcomes must include that in managing the land, the Crown must give effect to the Treaty principles. Te Rūnanga expects that it will be engaged, as partner, by LINZ to develop this outcome and how it will be affected through the management framework.

Recommendations:

- The outcomes within the CPLA and Land Act must provide that the management of the land must give effect to the Treaty principles;
- Iwi must be engaged as a Treaty partner to develop the outcomes.

Statement of Performance

Te Rūnanga supports the establishment of a Statement of Performance. Te Rūnanga expects to be involved in the development of that Statement of Performance at the Commissioner and at Ministerial level. Te Rūnanga must be engaged at the drafting stage of the Statement of Performance as a Treaty partner, as opposed to stakeholder or during the public consultation stage.

Te Rūnanga supports the proposition that the Statement of Performance set out the priorities for addressing issues on pastoral land and how the Commissioner proposes to exercise their statutory responsibilities (including how this would help achieve the proposed outcomes). The Statement of Performance must also include how the Commissioner proposes to meet the principles of the Treaty and the priorities of iwi and mana whenua.

Recommendations:

- Te Rūnanga must be engaged in drafting the Statement of Performance;
- The Statement of Performance must include how the Commissioner will meet the principles of the Treaty and the priorities of mana whenua.

Farm Management Plans and Guidelines, Standards or Policies

Te Rūnanga supports the principle behind the proposal to require leaseholders to complete farm management plans. However, Te Rūnanga are concerned whether a farm management plan would sufficiently protect conservation and cultural values on the land. Te Rūnanga would prefer a farm environmental management plan that also includes how the leaseholder will meet iwi needs and aspirations in the management of the land.

Te Rūnanga desires strong relationships with leaseholders. There have been good examples, at the flaxroots level, where the Department, mana whenua and farmers have had successful relationships that meet all parties' needs. LINZ and the Commissioner have a responsibility to facilitate these relationships.

Te Rūnanga supports the proposal that the Commissioner ought to release guidance and standards to assist officials, leaseholders and applicants to understand and comply with the legislative requirements, including the Statement of Performance as outlined above. Along with those matters listed in the Discussion Document, the standards, guidelines or policies must include how leaseholders/applicants are expected to and propose to meet iwi and mana whenua priorities. Te Rūnanga expects that it would therefore be engaged as a Treaty partner in the creation and implementation of such guidance, standards or polices.

Te Rūnanga proposes the creation of an 'Iwi Management Plan' or guidance which outlines the expectations, aspirations and Ngāi Tahu values in Crown pastoral land. The creation of this document may be reflected in the statute or not. This point warrants further consideration by Te Rūnanga and LINZ in partnership. An Iwi Management Plan ought to:

a) Guide leaseholders as to how they must manage the land (and possibly what is to be included in farm environmental management plan);

b) Guide applicants for discretionary consents and what may or may not be approved; and

c) Guide the Commissioner on what values and outcomes need to be taken into account when considering whether leaseholders are acting in accordance with the statutory outcomes, determining farm environmental management plans and determining applications for discretionary consents.

Once the idea of an Iwi Management Plan has been further considered by the Treaty partners then the detail of what's contained in the 'Iwi Management Plan' must be driven by mana whenua.

Recommendations:

- Te Rūnanga supports the principle of farm management plans but prefers a farm environmental management plan that also includes how the leaseholder will meet iwi needs and aspirations in the management of the land.

- Te Rūnanga supports the proposal that the Commissioner ought to release guidance and standards;

- The standards, guidelines or polices must include how leaseholders/applicants are expect to and propose to meet iwi and mana whenua priorities;

- Iwi must be engaged in the creation and implementation of such guidance, standards or policies;

- Te Rūnanga proposes the creation of an 'Iwi Management Plan'. This needs to be further considered by the Treaty partners and the details of what is included in the 'Iwi Management Plan' must be driven by mana whenua.

Discretionary Consents

Under current legislation, iwi do not have to be consulted nor engaged in the process of determining discretionary consents. Any 'discretionary consent' is solely determined by the Commissioner with no requirement that any decision made must give effect to any clear priority. Whilst the Commissioner must take into account the matters set out in section 18 of the CPLA, there is no requirement for the Commissioner to consider the views or priorities of mana whenua. This does not reflect the principles of the Treaty.

Te Rūnanga requires the Commissioner to give effect to the principles of the Treaty when determining any application for a discretionary consent. This ought to be affected by:

a) Including a provision in the amended Act (or new Act) that requires same to be interpreted and administered to give effect to the Treaty principles, as outlined above;

b) Including an outcome that the Crown must manage the land in accordance with the Treaty principles, as outlined above, and requiring the Commissioner to give effect to the outcomes in any decisions on discretionary consents, as currently proposed by LINZ; and

c) Engaging iwi with the creation of the Statement of the Performance and including the needs, aspirations and values of iwi within the Statement of Performance.

Te Rūnanga supports the principle behind the proposal requiring the Commissioner to obtain expert advice and consult on discretionary consents. Te Rūnanga expects that the Commissioner would obtain the expert advice of iwi and mana whenua where their cultural values, needs or aspirations may be affected.

Recommendations:

- The Commissioner must give effect to the principles of the Treaty when determining any discretionary consent application;

- Te Rūnanga expects the Commissioner to obtain advice from iwi and mana whenua where their cultural values, needs and aspirations may be affected.

Monitoring Framework

Te Rūnanga agrees with the proposal that the Commissioner ought to regularly update and release a monitoring framework and release regular reporting against that framework.

As outlined in the Discussion Document, there has been a lack of information gathered on the effects of discretionary consents and tenure review on the environment. Unless the tenure review process has been evoked, the Department has been unable to complete any reviews of land for their conservation value (and will not be able to do so under current legislation). Similarly, iwi have not had access to land to review any cultural values, including mahinga kai, wāhi tapu, wāhi taonga sites and taonga species.

Any monitoring framework must include how the needs and aspirations of iwi are met. Iwi must be engaged in the design, development and updating of any monitoring framework.

Recommendations:

- Te Rūnanga supports the requirement that the Commissioner regularly update and release a monitoring framework and report against that framework;
- The monitoring framework and reporting must include how the needs of iwi and mana whenua are being met;
- Iwi and mana whenua must be engaged in the development of the monitoring framework.

Conclusion

As expressed above, Te Rūnanga commend LINZ on the manner in which this process has been conducted to date. This response is one step in what we anticipate will be a constructive and collaborative journey. Te Rūnanga is committed to working alongside our Treaty partner to develop a management model that delivers positive outcomes for Ngāi Tahu values, Crown Pastoral Lease Lands, and reflects and strengthens our partnership.

If you have any questions or require further clarification, please do not hesitate to contact me on (03) 9740079 or Rebecca.Clements@ngaitahu.iwi.nz .

Nāku noa, nā

Rebecca Clements
GENERAL MANAGER (ACTING), STRATEGY AND INFLUENCE

Encl. Appendix One: Te Rūnanga o Ngāi Tahu
Appendix Two: Text of Crown Apology
Appendix Three: Ngāi Tahu takiwā

APPENDIX ONE: TE RŪNANGA O NGĀI TAHU

- This response is made on behalf of Te Rūnanga o Ngāi Tahu (Te Rūnanga). Te Rūnanga is statutorily recognised as the representative tribal body of Ngāi Tahu Whānui and was established as a body corporate on 24th April 1996 under section 6 of Te Rūnanga o Ngāi Tahu Act 1996 (the Act). Te Rūnanga note for the Department the following relevant provisions of our constitutional documents:

  Section 3 of the Act States:

  "This Act binds the Crown and every person (including any body politic or corporate) whose rights are affected by any provisions of this Act."

  Section 15(1) of the Act states:

  "Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu Whānui."

- The Charter of Te Rūnanga o Ngāi Tahu constitutes Te Rūnanga as the kaitiaki of the tribal interest.
- Te Rūnanga respectfully requests that the Department accord this response the status and weight due to the tribal collective, Ngāi Tahu Whānui, currently comprising over 55,000 members, registered in accordance with section 8 of the Act.
- Notwithstanding its statutory status as the representive voice of Ngāi Tahu Whānui "for all purposes", Te Rūnanga accepts and respects the right of individuals and Papatipu Rūnanga to make their own responses in relation to this matter.

TREATY RELATIONSHIP

- Te Rūnanga o Ngāi Tahu have an expectation that the Crown will honour Te Tiriti o Waitangi (the Treaty) and the principles upon which the Treaty is founded.
- The management of the environment and resources within the takiwā of Ngāi Tahu Whānui, including the natural environment, for which Ngāi Tahu Whānui have kaitiaki responsibilities and over which Ngāi Tahu Whānui maintain rangatiratanga status, must take into account the principles of the Treaty of Waitangi.

KAITIAKITANGA

- In keeping with the kaitiaki responsibilities of Ngāi Tahu whānui, Te Rūnanga has an interest in ensuring sustainable management of natural resources, protecting taonga species and mahinga kai resources for future generations.

- Ngāi Tahu whānui are both users of natural resources, and stewards of those resources. At all times, Te Rūnanga is guided by the tribal whakataukī: “mō tātou, ā, mō kā uri ā muri ake nei” (for us and our descendants after us).

WHANAUNGATANGA

- Te Rūnanga has a responsibility to promote the wellbeing of Ngāi Tahu whānui and ensure that the management of Ngāi Tahu assets and the wider management of natural resources supports the development of iwi members.

APPENDIX TWO: TEXT OF CROWN APOLOGY

The following is text of the Crown apology contained in the Ngāi Tahu Claims Settlement Act 1998.

Part One – Apology by the Crown to Ngāi Tahu

Section 6 Text in English

The text of the apology in English is as follows:

- The Crown recognises the protracted labours of the Ngāi Tahu ancestors in pursuit of their claims for redress and compensation against the Crown for nearly 150 years, as alluded to in the Ngāi Tahu proverb 'He mahi kai takata, he mahi kai hoaka' ('It is work that consumes people, as greenstone consumes sandstone'). The Ngāi Tahu understanding of the Crown's responsibilities conveyed to Queen Victoria by Matiaha Tiramorehu in a petition in 1857, guided the Ngāi Tahu ancestors. Tiramorehu wrote:

  "'This was the command thy love laid upon these Governors … that the law be made one, that the commandments be made one, that the nation be made one, that the white skin be made just equal with the dark skin, and to lay down the love of thy graciousness to the Māori that they dwell happily … and remember the power of thy name."

- The Crown hereby acknowledges the work of the Ngāi Tahu ancestors and makes this apology to them and to their descendants.

- The Crown acknowledges that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngāi Tahu in the purchases of Ngāi Tahu land. The Crown further acknowledges that in relation to the deeds of purchase it has failed in most material respects to honour its obligations to Ngāi Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngāi Tahu's use, and to provide adequate economic and social resources for Ngāi Tahu.

- The Crown acknowledges that, in breach of Article Two of the Treaty, it failed to preserve and protect Ngāi Tahu's use and ownership of such of their land and valued possessions as they wished to retain.

- The Crown recognises that it has failed to act towards Ngāi Tahu reasonably and with the utmost good faith in a manner consistent with the honour of the Crown. That failure is referred to in the Ngāi Tahu saying 'Te Hapa o Niu Tireni!' ('The unfulfilled promise of New Zealand'). The Crown further recognises that its failure always to act in good faith deprived Ngāi Tahu of the opportunity to develop and kept the tribe for several generations in a state of poverty, a state referred to in the proverb 'Te mate o te iwi' ('The malaise of the tribe').

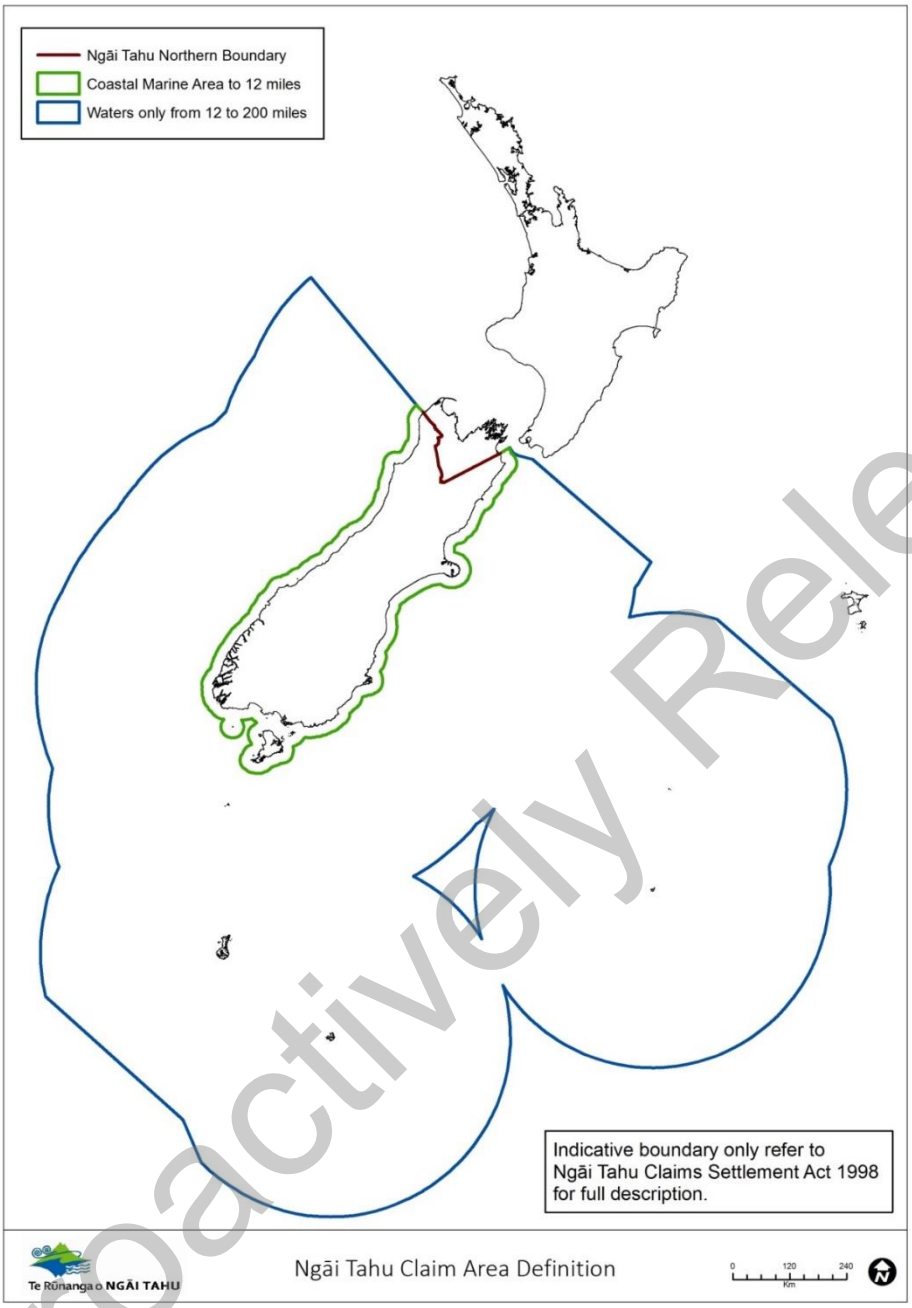
- The Crown recognises that Ngāi Tahu has been consistently loyal to the Crown, and that the tribe has honoured its obligations and responsibilities under the Treaty of Waitangi and duties as citizens of the nation, especially, but not exclusively, in their active service in all of the major conflicts up to the present time to which New Zealand has sent troops. The Crown pays tribute to Ngāi Tahu's loyalty and to the contribution made by the tribe to the nation.

- The Crown expresses its profound regret and apologises unreservedly to all members of Ngāi Tahu Whānui for the suffering and hardship caused to Ngāi Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngāi Tahu as a tribe. The Crown acknowledges that such suffering, hardship and harmful effects resulted from its failures to honour its obligations to Ngāi Tahu under the deeds of purchase whereby it acquired Ngāi Tahu lands, to set aside adequate lands for the tribe's use, to allow reasonable access to traditional sources of food, to protect Ngāi Tahu's rights to pounamu and such other valued possessions as the tribe wished to retain, or to remedy effectually Ngāi Tahu's grievances.

- The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tangata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.

- Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the historical grievances finally settled as to matters set out in the Deed of Settlement signed on 21 November 1997, to begin the process of healing and to enter a new age of co-operation with Ngāi Tahu."

APPENDIX THREE: NGĀI TAHU TAKIWĀ



Land Information New Zealand
Toitū te whenua

8 May 2019 BRF 19-347

AIDE MEMOIRE

Crown pastoral land regulatory system work programme: background for policy discussion with officials on 9 May

Purpose statement

1. This aide memoire provides you with supporting information for your discussion with officials on 9 May, including providing an overview of our initial policy thinking in a number of key areas and suggesting a number of potential questions for discussion at our meeting.

Background

2. On 2 May, we met with you to discuss how our thinking was developing in three key areas.
   - How our relationship with iwi should be reflected in the regulatory system.
   - The definition and scope of the outcomes.
   - A broad approach to the discretionary consents process.
3. A brief update on progress in these areas since our meeting is attached as Annex 1.
4. At our meeting on 9 May, we would like to test our initial thinking with you in a number of areas.
   - Our proposed criteria for analysing and assessing options.
   - How we provide for an effective relationship with leaseholders in the system.
   - System accountability.
   - Monitoring and enforcement.

Proposed criteria for options analysis

5. We have taken the Government's *Expectations for good regulatory practice* as our starting point for developing proposed criteria for assessing options.
6. The proposed criteria will also help us to consider some of the tensions inherent in these changes – including balancing leaseholders' property rights and desire for efficiency and certainty with a stronger focus on achieving outcomes and some stakeholders' desire for transparency and greater participation in decision making.
7. The assessment of options will be based on the information provided to us through the consultation process and will focus on the achievement of the outcomes, as well as the impacts of proposed changes on leaseholders, iwi and stakeholders.

Proposed criteria for assessing options

- Effectiveness – to what extent does the option promote the achievement of the desired outcomes?
- Efficiency – does the option deliver on the outcomes in the most cost effective way (including avoiding unnecessary cost and duplication), and with the least adverse impacts on regulated parties?
- Flexibility – does the option allow sufficient flexibility in the way outcomes are met?

- Certainty and fairness – does the option help support predictable and consistent outcomes for regulated parties across time, and are expectations and obligations easy to understand? Does the option impact on property and other rights? Does it take account of the Crown's obligations?
- Transparency – does the option help to ensure it is clear how and why decisions are being made?
- Durability – does the option enable evolution in response to changing circumstances or new information on the regulatory system's performance?

Suggested question for discussion

- Are you comfortable with these criteria for assessing options?

Relationship with leaseholders

Summary of the feedback so far

8. As noted in the aide memoire we provided you for your meeting with the High Country Accord (BRF19-342), leaseholder submissions emphasise their desire to pursue a collaborative approach to shared stewardship with the Crown.
9. However, the Accord sees the Crown pastoral land system as being based on contract/relationship, rather than regulation - and sees a tension between regulating to achieve outcomes and achieving those outcomes through partnering and shared stewardship.
10. Other submitters also refer to good Crown/leaseholder relationships in their submissions.
    - The New Zealand Conservation Authority sees value in the development of an active protection programme that would involve Land Information New Zealand (LINZ) working closely with leaseholders on matters such as stocking rates, pest and weed control.
    - The Mackenzie Country Trust notes that a management regime could entail officials to enter the land more regularly and that this should be used as an opportunity to develop relationships with leaseholders and frontline staff.
    - The Queen Elizabeth II Trust (QE II) recommends the development of a set of engagement principles relating to the covenant process, enabling the Crown to be more joined-up when negotiating with leaseholders.

Initial comment

11. Based on the findings of the regulatory review, it is clear that the changes the Government is wanting to see in the Crown pastoral land regulatory system cannot be achieved without regulatory change. However, the Crown/leaseholder relationship is central to the achievement of the desired outcomes.
12. At a meeting with LINZ officials on 7 May, the Accord articulated the following elements as characterising a strong partnership relationship between the Crown and leaseholders.
    - A good understanding by government of values across all Crown pastoral land.
    - Good capability and capacity on the part of government agencies.
    - Good, efficient processes.
    - Consistent, independent decision making.
    - Mutual trust and a high degree of certainty.

- The celebration of, and support for leaseholders' ongoing preservation and enhancement of natural values on Crown pastoral land over many years.

13. These elements seem to us to be a good starting point to identify how we should be working with leaseholders across the system.
14. Many of the operational changes that are planned or already taking place will help to embed these elements into the Crown/leaseholder relationship – and we can continue to identify ways to work more closely with leaseholders in ways that don't require regulatory change.
15. We are also working to identify ways we can codify this relationship in the proposed regulatory changes. One option is to provide an acknowledgement of the need for a strong partnering relationship with leaseholders in a preamble to the Act. Te Arawhiti suggested this as a way of articulating our aspirations for how the Crown will work with iwi, and it could be broadened to include our relationship with leaseholders.

Suggested question for discussion

- What is the best way to work with the High Country Accord through this process to reflect how we are wanting the Crown/leaseholder relationship to work?

System accountability

Summary of the feedback so far

16. Most submitters support clearer system accountability, including better defining the role of different participants in the system (specifically the Minister, LINZ, the Commissioner, the Department of Conservation (DOC) and leaseholders).
17. Overall, Te Rūnanga o Ngāi Tahu support the introduction of a Statement of Performance Expectations (SPE) as a key accountability mechanism. Te Rūnanga would expect to be involved in the development of a SPE during the drafting stage and sees a SPE as articulating the priorities for addressing issues on Crown pastoral land, and how the Commissioner would carry out their statutory responsibilities (including how the Commissioner proposes to meet the principles of the Treaty and the priorities of iwi and mana whenua).
18. The High Country Accord supports an SPE in principle, noting that it should promote a better public understanding of the respective interests and roles of the Crown, the Commissioner and leaseholders in pastoral leased land. The High Country Accord is strongly of the view that the Commissioner must remain substantially independent of political direction. Their view is that there should be consultation with the Minister, but the Minister should not be the one to approve the SPE (as is currently proposed in the discussion document). Public consultation could be allowed but should not be required. By extension, it is likely the Accord would not support making the Commissioner or LINZ consider Government policy or Ministerial direction when producing a SPE for Crown pastoral land.
19. Forest & Bird and the Environmental Defence Society support a SPE as a tool to make it clear how the outcomes for Crown pastoral land will be achieved on individual leases and cumulatively across Crown pastoral land. Their submission also made suggestions to improve accountability, including recognising the High Country Advisory Group in the legislation, allowing for independent advice to the Commissioner, and giving the Commissioner a function of advocating for the inherent and ecosystem values of Crown pastoral land.

Initial comment

20. Both LINZ and the Commissioner have distinct roles in ensuring the outcomes are delivered:

    - LINZ has regulatory stewardship responsibilities as 'system owner' under the State Sector Act 1988 (s32). In this role, LINZ's functions range from providing staff to carry out operational activities that support and advise the Commissioner to the overarching policy for strategic system design. *Our initial thinking is that, as 'system owner', LINZ has responsibility for ensuring that the system as whole is delivering on its intended outcomes over time.*
    - The Commissioner is the public face and decision maker for Crown pastoral land. The Commissioner discharges the functions of the (former) Board and the Commissioner under the Land Act and Crown Pastoral Land Act - this includes a number of decision making functions such as deciding on discretionary consents, and being the contractual party (lessor) under the lease. *Our initial thinking is that the Commissioner is responsible for discharging those particular functions in a way that is consistent with, and contributes to the outcomes (as opposed to being responsible for the delivery of the outcomes overall).*

21. As a government department, LINZ already has clear accountability and reporting requirements in place. For instance, LINZ is required to produce annual reports on performance and to produce longer-term 'strategic intentions'. These mechanisms will help to ensure that LINZ can be held accountable for its role as system owner (assuming an effective monitoring system to support this reporting).

22. Beyond this, we are considering how the Commissioner should/can be held accountable and what the role of the Minister should be. One option could be the development of a bespoke accountability framework – possibly a modified version of the Crown Entity accountability framework – for the Crown pastoral land regulatory system.

23. In this context, the questions we are working through include:

    - who should play what role in ensuring the outcomes are delivered?
    - what are the options for accountability mechanisms to codify clear roles and responsibilities in the system?
    - how should this all be codified in the legislation?

24. We are also looking at how adding an advocacy function to the Commissioner impacts on their responsibilities (following on from our discussion last week) and if this affects the accountability relationships described above.

Suggested discussion point

- The accountability for both LINZ and the Commissioner around stewardship of Crown pastoral land needs to shift. We are exploring what parts of this need to be reflected in the act.

Monitoring and enforcement

Summary of the feedback so far

25. Some submitters argue that that enhanced monitoring can be achieved under the current legislative framework, provided LINZ has enough capacity and capability. However, submitters such as QE II argue that enshrining a monitoring system in legislation is important since the

former Department of Lands and Survey previously discontinued its high country monitoring programme as it did not consider it to be a statutory responsibility.

26. The High Country Accord sees compliance monitoring as a consequential function of the lease contract, but notes that further system performance monitoring could increase the costs of the administering the system, and that the Crown needs to consider whether it is willing to incur this cost. They argue that, since environmental reporting is largely a public good, the cost of this should not fall on leaseholders. Similarly some groups such as QE II state that the proposals around monitoring do not appear to adequately account for the increased costs of monitoring.
27. To ensure that collecting information about this land is an enduring obligation on the Crown some submitters, such as Walker, Harding, and Head, EDS and Forest and Bird recommend that the outcomes should include wording that mandates the identification of inherent values across the leases – for example where values are "identified, secured and safeguarded" as opposed to the current proposed wording where values are "maintained and enhanced." This would essentially require the Commissioner and LINZ to undertake a stocktake of these values across Crown pastoral land that could provide a useful baseline.
28. Overall, submitters suggest a number of different aspects of the land that should be monitored to assess what outcomes are being delivered including:
    - natural values
    - farming practices including stock numbers and farming techniques
    - public access arrangements (or potential areas suitable and desirable for public access)
    - archaeological and heritage sites, and
    - pest and weed management practices.
29. It is also important to multiple submitters from the pastoral lease community that any reporting should give an indication of leaseholders' investment and protection of the land, such as through weed and pest control, soil improvement, land improvement; and job opportunities created and the economic benefits of pastoral farming to New Zealand.
30. Leaseholders note that monitoring arrangements could likely require LINZ staff to access the land more regularly. It was requested that this access was clearly communicated to and arranged with leaseholders, rather than imposed on them. One submitter suggests that more effective monitoring is seen as a way that LINZ could build relationships with leaseholders, and increase its organisational capability and understanding of the land.
31. In order to demonstrate its commitment to partnership, some submitters suggest that the Crown should also commit to a similar monitoring framework for conservation land in the high country (especially in the case of former Crown pastoral land).

Initial comment

32. We are in the early stages of assessing what a monitoring framework could look like under the new regime. Currently, there is minimal monitoring within the system and it is focused on the legal and on-the-ground compliance with the terms of the lease and consents granted. To understand how the system is performing against the outcomes (not just who is complying with lease and consent requirements), there will need to be a greater focus on ecosystem or environmental monitoring.
33. There will be a number of options that require various levels of resourcing and expertise to achieve. Identifying these options involves answering three key questions
    - *What should we be measuring?* This will largely depend upon the final agreed outcomes. From these we will determine what indicators will be most useful in order to assess system performance and whether the outcomes are being achieved (the feedback from consultation will be a valuable part of this exercise). Central to an effective monitoring framework is

establishing a baseline from which trends can be measured and against which, decisions on consent applications can be assessed. It will take time to collect the right information to establish a baseline and we need to consider how the Commissioner's decision making could be undertaken in the interim period after legislation is passed.

- *Who is responsible for collecting the information?* We are exploring who is best placed to collect the information (i.e. LINZ, DOC, leaseholders or others). This also includes determining what agencies have the right expertise, or identifying capability gaps that need to be filled in order to collect and interpret the information effectively. Fairness is central to assigning responsibilities for data collection due to the associated costs, and subsequent benefits (public or private) of using that information (for example some information may be useful to leaseholders for their farm management, however, the benefits of environmental reporting are largely to the public and broader New Zealanders).
- *How should that information be collected?* There are two key ways in which information can be collected. The first is through on the ground site visits which allow for compliance monitoring and detailed measurements of indicators. We are considering the impact that entering onto the land more regularly could have on leaseholders (such as increased compliance costs and impact on farm performance) and how this might be mitigated. We are also considering the funding implications of such an approach, noting that resourcing will impact the quality of the information we gather. The second way is through less invasive techniques such as detailed aerial imagery and remote sensing. In both cases we will be careful to ensure we are utilising existing information, such as information already gathered through tenure review (where it is still current) and the collation of existing data (for example, from joint environmental reporting by Ministry for the Environment and Statistics New Zealand on Our Land).

34. In addition to monitoring we are investigating the existing enforcement mechanisms available to the Commissioner. There currently exist a range of compliance and enforcement tools to ensure that leaseholders are meeting the conditions of their consents or leases. We are in the early stages of assessing whether these existing mechanisms are fit for purpose and are exploring whether other enforcement mechanisms may be needed. We are mindful of the interface with other regulatory regimes. Accordingly, we will be investigating what powers are contained within other regimes or might be required specifically in the Crown pastoral land system.
35. Increased monitoring of Crown pastoral land, and any related enforcement, may create tensions with leaseholders if it is seen as undermining a partnering relationship between Crown and leaseholders based on trust. Any monitoring and enforcement options that we consider therefore should recognise the importance of these relationships wherever possible and support effective engagement.

Suggested question for discussion

- Noting that we are early in the process of assessing options for what a monitoring framework will look like, is there anything else you want us to be looking into?

LINZ Contacts

Name	Position	Contact number	First contact
Elisa Eckford	Principal Advisor, Policy	MOB: 027 237 7695	☐
Sarah Metwell	Manager, Policy	MOB: 027 809 6953	☒

Annex One: Update on actions from last meeting

Area	Action points from previous meeting	Update
Iwi relationship	• Talk to Te Arawhiti/LDAC about how to reflect undertakings Ngāi Tahu want in legislation. • Get advice on impacts on leaseholder rights. • Support Minister for discussion with Minister Davis (once the above two steps have been done).	We met with officials from Te Arawhiti on 7 May, updating them on our engagement with Ngāi Tahu and their aspirations for the Crown / iwi relationship in relation to CPL. Te Arawhiti was comfortable with our approach to iwi engagement to date. It suggested some ways that we could reflect the proposed partnership approach in legislation and capture the Treaty commitment, while not unduly "fettering" the Crown. **Te Arawhiti also advised that it offers an assurance role to Government, and can provide a neutral "check in" with iwi to seek their views on how effective the Crown's (LINZ) engagement in relation to CPL has been. We will discuss how we can use this role with them later in the process.** Officials are meeting with LDAC on 13 May to seek advice and guidance on some legislative matters, including how the Crown / iwi partnership, and iwi's connection to / interests in the whenua could be reflected in legislation. We will update you on the outcome of this meeting.

Outcomes	• Continue to explore different alternatives to natural capital and report back with options.
	• Discuss different options for natural capital with HCAG.
	• Continue work on access including:
	  ○ looking at what submitters are suggesting
	  ○ testing legal position on access
	  ○ looking at whether there might be a trigger for access negotiation
	  ○ thinking about Commissioner vs WAC role.
		We are further developing our thinking on alternatives to natural capital, by incorporating key points from submissions and discussions with key submitters. This will inform a range of options for alternative outcomes statements.
		
		We are investigating the need for a process to support access (including the role WAC might play) and will be considering if this is something legislation change should address and, if so, how.

Discretionary consents	• Continue with development of options, including classification of activities approach. • Look at new DOC infringement regime as a possible starting point for our thinking in that area.	We are continuing to incorporate key points from submissions into our options analysis, and are currently holding workshops with operational staff to test our thinking. We have set up a discussion with DOC staff on the infringement regime.
Role of the Commissioner	• Look into what other powers the Commissioner might need. • Look at whether it would be desirable for the Commissioner to take on an advocacy role.	On 7 May, we met with Forest & Bird and Environmental Defence Society and discussed what the Commissioner taking an advocacy role could look like in practice. Two different approaches were considered: • a general approach such as in section 6 (b)[1] of the Conservation Act. This would give a mandate to the Commissioner to engage in various forums that impact on the outcomes for Crown pastoral land. • a targeted approach to advocacy which specifies the statutory frameworks, such as the RMA or Biosecurity Act, that the Commissioner should engage in to advocate for the outcomes for Crown pastoral land. We are further exploring the implications for this approach in relation to: • its capacity to increase alignment • the extra resources it requires • any implications it has on the Crown's relationship with leaseholders and their property rights.

To: Minister for Land Information

Briefing on Crown pastoral land reform options analysis and recommendations

Date	7 June 2019	**Classification**	In confidence
LINZ reference	BRF 19-408	**Priority**	High

Action sought

Minister	Action	Suggested Deadline
Minister for Land Information	**Discuss** the content of this briefing and the attachment with officials on Wednesday 12 June	12 June 2019

LINZ Contacts

Name	Position	Contact number	First contact
Sarah Metwell	Manager Policy	027 809 6953	☒
Stephen Trebilco	Policy Advisor	04 4969468	☐

Minister's office to complete

1 = Was not satisfactory 2 = Fell short of my expectations in some respects 3 = Met my expectations 4 = Met and sometimes exceeded my expectations 5 = Greatly exceeded my expectations					
Overall Quality	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
Comments					
☐Noted	☐Seen	☐Approved	☐Overtaken by events		
☐Withdrawn	☐Not seen by Minister	☐Referred to:			

Purpose statement

To provide you with initial options analysis and recommendations for the Crown pastoral land regulatory change work and indicate the priority issues to discuss in our meeting next week.

Key messages

1. The attached document "Crown pastoral land regulatory changes: initial options analysis and recommendations" outlines an initial package of proposed regulatory changes to support the achievement of better outcomes for Crown pastoral land.
2. The draft Cabinet paper is being developed and will be based on the recommendations in the attached paper as we discuss them with you.
3. The first of three meetings to discuss the package of proposed regulatory changes is on Wednesday 12 June. Our suggested discussion topics are:
    - roles and responsibilities in the regulatory system between LINZ and the Commissioner of Crown Lands, and how these affect the operation of the system
    - proposed changes to public involvement across the entire system, and whether they provide the right amount of involvement on the right things, and
    - our approach to the draft Cabinet paper.
4. We will continue to refine our analysis and will provide you with further advice, including on transitional arrangements and enforcement over the next few weeks.

Recommendations

It is recommended that you:

1. **note** the contents of this briefing and the attached "Crown pastoral land regulatory changes: initial options analysis and recommendations"
2. **discuss** the package of proposed regulatory changes with officials on Wednesday 12 June.

Sarah Metwell	Hon Eugenie Sage
Manager Policy, Crown Land and Information	Minister for Land Information
Date: / /	Date: / /

Attachments

1. Crown pastoral land regulatory changes: initial options analysis and recommendations
2. Agenda for High Country meeting on Wednesday 12 June

Background

5. On May 2 and 9, we met with you to discuss our thinking on Crown pastoral land reforms in the following areas.
    - Relationship with iwi
    - Outcomes to deliver enduring stewardship
    - Approach to the discretionary consents process
    - Relationship with leaseholders
    - System accountability, monitoring and enforcement

Initial options analysis and recommendations

6. The attached document "Crown pastoral land regulatory changes: initial options analysis and recommendations" outlines LINZ's analysis and initial recommendations on a package of proposed regulatory changes to support the achievement of better outcomes for Crown pastoral land. It:
    - clarifies and confirms the overall context for, and scope of, the proposed changes in the light of previous Cabinet decisions and discussions with you
    - outlines our thinking on a number of overarching issues relating to the Crown pastoral land regulatory system as a whole that have arisen out of our consideration of feedback and further analysis
    - outlines our thinking on issues relating to the components of the system, building on the proposals set out in the discussion document and other proposals raised in the feedback, and
    - provides a summary of recommendations.

Key topics to cover on Wednesday 12 June

7. Three meetings have been scheduled with you to discuss the Crown pastoral land regulatory reforms. These are on 12, 18, and 26 June.
8. For the first meeting we suggest giving particular attention to confirming the roles and responsibilities and highlighting the general approach to public involvement (although decisions on public involvement are required as part of each component of the system).

Roles and responsibilities

9. As we developed advice, we identified an underlying lack of clarity about who is responsible for various roles (or functions) in the system. Fixing this lack of clarity is particularly important for establishing the right accountability mechanisms and improving transparency.
10. We identified four particular roles that the Crown plays in the system (refer to p.6 in attachment 1):
    - *system owner* is a role LINZ carries out because it must ensure the whole system functions well and is consistent with the desired outcomes
    - *lessor* and underlying *land-owner* are functions, powers, and duties that the Commissioner exercises for and on behalf of the Crown
    - *decision-maker* is a statutory function that the Commissioner currently exercises, and
    - *Treaty partner* involves working in partnership with iwi on the design and operation of the system as a whole and is carried out by the Commissioner, LINZ, and the Minister.

11. These roles cascade into the specific functions in different parts of the system. Who carries out these functions, and how they must be carried out, affects how the Crown pastoral land system operates and how the outcomes will be achieved. Examples of these functions are the decision-making around discretionary consents, disputes of decisions, monitoring of the land, and evaluation of the system (refer to annex 1 in attachment 1).

Public Involvement

12. Public involvement in the system improves transparency of system processes, accountability for LINZ and the Commissioner's functions in the system, and increases trust in the outcomes the system is delivering. It is not the same as the expert advice a decision-maker will need for robust decision-making.
13. Excluding the processes of tenure review or part 3 reviews of other Crown land, there are currently few places for public involvement in the management of Crown pastoral land.
14. We have examined how to increase public participation across the different parts of the regulatory system. Some considerations that have helped to guide our thinking on public participation in different parts of the system are:
    - whether the involvement should be on individual decisions or on a 'whole of system' level
    - weighing the benefits of public involvement through increased trust and understanding, versus the possible administrative costs of the involvement and efficiency costs of slower decision-making, and
    - any possible duplication of public involvement, for example the RMA public notification processes.
15. The recommended proposals do not provide for public involvement in individual decision-making. However, we think the cumulative impact of the proposed changes will lead to a significant overall increase in transparency and support more public confidence in the system (refer to p.14 and annex 2 in attachment 1).

Development of the draft Cabinet paper

16. The draft Cabinet paper is being developed and will be based on the recommendations in the attached paper as we discuss them with you. This will help us to build a narrative for the legislative change and ensure that the policy proposals are woven together into a package.
17. In addition to the package of policy proposals, we think the draft Cabinet paper needs to cover:
    - the framing of the Crown's Treaty partnership at the levels of the Minister, LINZ, and the Commissioner
    - the approach to building a relationship with leaseholders in order to ensure that LINZ and the Commissioner can deliver the desired outcomes of the system, including the possible effect of any changes to property rights (noting that we will seek Crown law advice)
    - the level of public involvement in the system, given that many submitters expressed a strong desire to have more involvement in various places but leaseholders mostly opposed public involvement on individual decisions by referencing their private property rights and contractual relationship
    - contextualising the proposed changes to the Crown pastoral land system alongside other changes such as new instruments under the RMA, and shifts caused by climate change policies, and
    - the operational implications for LINZ that result from the suite of policy proposals.

Next steps and timeframes

18. Officials are preparing for the meeting with you on Wednesday 12 June. An agenda for the meeting is provided (attachment 2).
19. Analysis is ongoing, in particular on transitional arrangements and enforcement options. We will provide this advice for discussion at a future meeting. The analysis will be reflected in the draft Cabinet paper as it is developed.

Recommendations

It is recommended that you:

1. **note** the contents of this briefing and the attached “Crown pastoral land regulatory changes: initial options analysis and recommendations”
2. **discuss** the package of proposed regulatory changes with officials on Wednesday 12 June.

Crown pastoral land regulatory changes: initial options analysis and recommendations

Table of Contents

Purpose

1. This document sets out LINZ's analysis and initial recommendations on a package of proposed regulatory changes to support the achievement of better outcomes for Crown pastoral land. It:
   - clarifies and confirms the overall context for, and scope of, the proposed changes in the light of previous Cabinet decisions and discussions with you
   - outlines our thinking on a number of overarching issues relating to the Crown pastoral regulatory system as a whole that have arisen out of our consideration of feedback and further analysis
   - outlines our thinking on issues relating to the component parts of the system, building on the proposals set out in the discussion document and other proposals raised in the feedback
   - provides a set of recommendations, which are summarised in the final section of this document.
2. There are a number of issues where we have not yet developed recommended options, including the need for any additional enforcement mechanisms.
3. Once we have confirmed your views on preferred options for change we will:
   - provide a draft Cabinet paper for your review
   - report back to you on issues relating to the implications of regulatory change, including transitional arrangements.

Context and scope

4. Much feedback from submitters goes beyond the specific questions asked in the discussion document. In particular, submitters have differing views about the role of the Crown as lessor/regulator, the nature of the Crown/leaseholder relationship and the future place of pastoral farming in the system.
5. Broadly, leaseholders see the contract between Crown and leaseholder, and the property rights alienated from the Crown and granted to them under this lease, as the critical part of the system. In this context, they think the primary objective of the system should be providing for ongoing pastoral farming, and see the proposed changes as a way of re-weighting this contractual arrangement through regulation. They argue that any changes should take place through discussion and negotiation, rather than regulation.
6. Other submitters, particularly environmental NGOs, focus on the fact that the Crown retained ownership of, and certain rights to, the land, and see the focus on preserving natural values as the critical part of the system. In this context, the continuation of pastoral farming is not necessarily seen as a priority - and stakeholders' views range from only allowing pastoral farming within very narrow limits, or stopping it altogether in some areas of the estate, potentially in favour of other land uses.
7. Given this divergent feedback, it is worth confirming with you a number of the assumptions we have made in our options analysis (based on previous discussions and decisions):
   - The primary objective of these changes (and of an improved Crown pastoral land regulatory system) is to protect the land's natural (and other selected) values for current and future generations. This objective takes precedence over all other system objectives.

- However, there is no intent to do away with the pastoral farming construct, or to change leaseholders' exclusive right to pasturage and quiet enjoyment of their leasehold properties, along with perpetual rights of renewal. Instead the focus is on better managing pastoral farming activities to preserve the land's natural and other values.
- The system therefore needs to acknowledge these rights, and enable leaseholders to carry out pastoral farming activities under their lease agreement in accordance with "good husbandry" and other contractual/statutory obligations.
- The system should also enable leaseholders and third parties where appropriate to undertake other uses on the land, providing that the impacts of these uses on the natural, and other values of the land is consistent with the primary system objective (protecting natural values).
- Other objectives the Government has indicated it wants to achieve are:
    - articulating its right to get a fair return on its ownership interest in Crown pastoral land as one of the key objects of the system - while being clear that the rent-setting process is outside the scope of current changes
    - ensuring that its Treaty partnership relationship with iwi is appropriately reflected, at both whole-of-system and specific decision-making levels – this is covered in more detail below.

8. The following options analysis is based on these assumptions.

Assessing the options

9. In assessing the options, we have used the following criteria, which we discussed with you at a previous meeting:

    - **Effectiveness** - to what extent does the option promote the achievement of the government's objectives for Crown pastoral land - that is, increasing the likelihood that the regulatory system will deliver on the outcomes?
    - **Efficiency** - does the option deliver on these objectives in the most cost effective way (including avoiding unnecessary cost and duplication), and with the least adverse impacts on regulated parties? Our assessment in this area largely focuses on process efficiency and costs to parties in the system.
    - **Flexibility** - does the option allow sufficient flexibility in the way these objectives are met? This includes giving the decision-maker as much flexibility as possible in how the outcomes are achieved (though no flexibility in what outcomes are achieved).
    - **Certainty and fairness** - does the option help support predictable and consistent outcomes for regulated parties across time, and are expectations and obligations easy to understand? Does the option impact on property and other rights? Does it take account of the Crown's obligations?
    - **Transparency** - does the option help to ensure it is clear how and why decisions are being made? This includes ensuring that a broad range of stakeholders can access information about these decisions and the operation of the system more widely.
    - **Durability** - does the option enable evolution in response to changing circumstances or new information on the regulatory system's performance? This is particular important in the context of our changing understanding of ecological values.

Overarching issues

10. This section discusses a number of overarching issues that have arisen out of our consideration of feedback from submitters, and the further analysis we have done. They generally do not relate to specific proposals or particular parts of the system, but focus on the Crown pastoral regulatory system as a whole.

Roles and responsibilities

What are the different roles played by the Crown in the system?

11. In developing our advice, we identified a lack of clarity in our thinking about roles and responsibilities in the system – particularly in terms of what the Commissioner and LINZ are, or should be, accountable for.

12. We have therefore identified four particular roles that the Crown plays in the regulatory system, and considered who should "own" those particular roles:

    - *As system owner*, working to ensure that the system as a whole functions in a way that is consistent with the desired outcomes (both through system design and implementation) – this would be a role for **LINZ**
    - *As decision-maker*, ensuring that decision-making powers and functions are exercised in accordance with the legislation (including the outcomes as set down in legislation) – this would be the role of the **Commissioner** on behalf of the Crown (assuming the Commissioner remains the decision-maker – see below)
    - *As landowner and lessor*, ensuring that the Crown's ownership interest in the land is maintained and properly administered – this would be the role of the **Commissioner**
    - *As Treaty partner*, working in partnership with iwi on both the design and operation of the system as a whole – this would be the role of **LINZ**, the **Commissioner** and the **Minister** given the approach to iwi relationships set out below.

13. Table One below shows how these roles play out in the system.

14. This formulation of the different roles has a number of implications for the specific responsibilities given to LINZ and the Commissioner, and sets a framework for our thinking on accountability below.

15. In particular, this definition of roles more clearly assigns LINZ responsibility for ensuring the system is delivering as it is intended (including achieving the outcomes over time), with the Commissioner's responsibility focused on carrying out functions within the system in accordance with the legislation.

16. Annex 1 summarises how this model might translate into specific functions under the proposals.

Should the Commissioner still be the decision-maker?

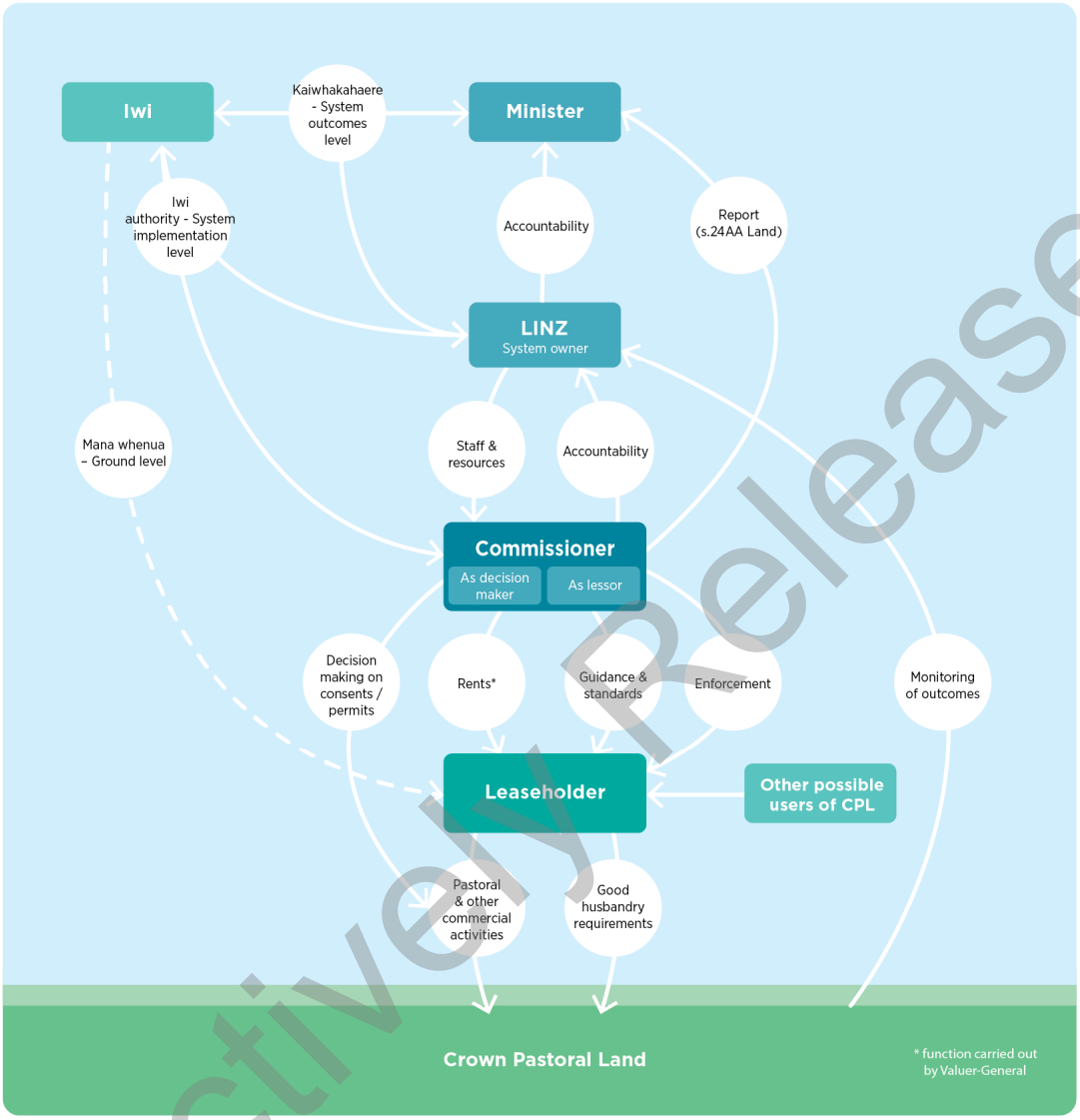
17. A number of submissions recommend changes to the decision maker.

18. The most common recommendation is to move decision-making to a board with representative appointees - such as the previous Land Settlement Board. An alternative proposal is to retain the Commissioner, but require them to escalate significant decisions to a board.

19. Another recommendation is that the role of the Commissioner should be abolished and that the decision maker should be external to LINZ - such as an external panel, or the Environment Court.

20. Based on this feedback, we have reviewed whether decisions should continue to be made by an independent decision-maker.

Table one: System roles and relationships



21. We have considered a number of alternative options to an independent Commissioner, including:
    - shifting the powers and functions of the Commissioner to the Chief Executive of LINZ, with the ability to delegate powers/functions as necessary
    - returning to a Land Settlement Board to act as lessor and decision maker on Crown pastoral land
    - giving the powers and functions of the Commissioner to the Minister for Land Information.

Recommendation: Retain the Commissioner role

22. Our recommendation is that a statutory officer is still an appropriate decision-making mechanism on the basis that:
    - other options considered are not likely to significantly improve effectiveness or transparency (when other proposed changes are taken into account), and may reduce efficiency and certainty, compared to a single statutory decision-maker
    - stakeholder concerns around the lack of transparency and accountability associated with the Commissioner can be addressed through other means – for instance clarifying accountability arrangements and increasing transparency and public involvement in the system
    - there is good reason to retain the functions of lessor and decision-maker in the Commissioner of Crown lands. The Commissioner is seen by leaseholders as a long-standing and valuable role, and as underpinning the Crown-leaseholder relationship – which is a key part of the system (see discussion below).

Should the Commissioner take on different/additional functions and powers?

23. Assuming the Commissioner role is retained, a further question is whether the functions and powers of the Commissioner should be changed in any way.
24. In particular, some submitters have argued that the Commissioner should take on more of an advocacy role in relation to Crown pastoral land. This could range from a largely reactive role – for instance, making submissions on district plans – to a more substantive, proactive role which could entail the Commissioner actively providing input into any instrument or decision where there could be some impact on achievement of the desired outcomes for Crown pastoral land (e.g. inputting into agricultural or environmental policy development/legislative processes).
25. Based on our assessment above, the Commissioner's role is one of a decision-maker and lessor. Therefore:
    - if the Commissioner were to take on more of an advocacy role, this role would most appropriately be at the 'reactive' end of the spectrum – for instance, commenting on changes to district plans that might impact on Crown pastoral land
    - as system owner, LINZ would most appropriately have responsibility for the other end of the spectrum - for instance inputting into policy and legislative processes that could potentially impact on the achievement of the overall system outcomes (this is also a normal part of a departmental policy function).
26. Giving the Commissioner more of an advocacy role could potentially help to increase overall effectiveness, by helping influence processes outside the Crown pastoral land regulatory system. However, there would be additional costs associated with the Commissioner taking on such a role.

Recommendation: Enable the Commissioner to take on a limited advocacy role

27. On balance, our recommendation is that there is merit in the Commissioner taking on a defined advocacy role, but that the Commissioner should be enabled rather than required to take on this role as resources allow.

What should the role of the Minister be in decision-making?

28. As they currently stand, the proposals do not provide for an explicit role for the Minister, nor do they explicitly require the decision-maker to consider government priorities.

29. However, the proposals do implicitly allow for a degree of ministerial input through the role of LINZ as system owner set out above - specifically the LINZ CE who has regulatory stewardship under s32 of the State Sector Act and is the employer of the Commissioner (who is appointed as a member of the department under s59 of the State Sector Act).

30. This is because LINZ as an agency is answerable to the Minister and must be responsive to the performance expectations of the Minister. This includes being answerable to the Minister for the use of Vote Lands funding when it is used to manage Crown pastoral land and provide for the functions of the Commissioner. In addition, the LINZ Annual Report must include reporting on the performance of the Commissioner's functions where they are funded by Vote Lands.

31. While the Commissioner cannot be directed by the Minister when carrying out statutory functions, the Commissioner must carry out statutory functions in accordance with any empowering legislation directives and guidelines. These legislative instruments are able to be influenced by the Minister –such as through regulations made by the Governor General on recommendation of the Minister.

32. In this way, the Minister may provide input to the operational work of LINZ and through the processes of secondary legislation (including public consultation where required) may be able to provide input to how the Commissioner carries out their functions to deliver on the outcomes in the primary legislation.

Recommendation: The Commissioner should not be required to consider Ministerial priorities when they carry out their powers and functions

33. Our recommendation is that the Commissioner should not be required to consider Ministerial priorities when they carry out their powers and functions, as this could reduce certainty and transparency, and there are no clear checks or balances. Instead, the Minister can help to ensure the system is delivering on the outcomes through a number of other existing and proposed additional mechanisms including the setting of regulations and expectations for how LINZ operates.

Relationships

34. Submissions and subsequent engagement with some submitters have illustrated the importance of the role that relationships can and should play in the system.

35. Our view is that the system is underpinned by two key relationships - the relationship between the Crown (LINZ and the Commissioner) and leaseholders, and the relationship between the Crown and iwi. The system as a whole relies on the effective functioning of these relationships.

How should we reflect the Crown-leaseholder relationship in the system?

36. Feedback from leaseholders and others demonstrates a strong desire for a relationship-based approach to the Crown-leaseholder relationship, which they saw as being inconsistent with a regulator/regulated approach.

37. However, we do not agree with a view that the Crown playing a stronger role (including potentially increased monitoring and enforcement) comes at the expense of strong relationships. While there will be inevitable tensions between building strong relationships and playing a regulator role, this does not mean the Crown/leaseholder relationship should focus on one at the expense of the other.

38. Instead, our view is that strong relationships should enhance the Crown's effectiveness as a regulator – by ensuring that there is mutual understanding of the role of both the Crown and leaseholder, and the context within which both are operating.

Recognise the importance of the Crown-leaseholder relationship through operational changes and acknowledgement in the Purpose statement in the Act

39. We recommend that the importance of the Crown-leaseholder relationship can be recognised in two ways:
    - through many of the current or planned operational changes – noting that much of the strength of the relationship with leaseholders will be determined by LINZ's capability and capacity to implement these system changes in an effective way
    - through explicit acknowledgement of the need for a strong, ongoing partnering relationship with leaseholders in the Purpose statement in the Act.

How should we reflect the Crown-iwi relationship in the system?

40. The majority of submitters acknowledge that the Crown has obligations under Te Tiriti that should be reflected in how Crown pastoral land is managed.

41. Submissions vary in terms of how those obligations should be reflected. Leaseholders argue that, because the primary relationships in Crown pastoral leases are between the Crown and the leaseholder, there is little scope for iwi to be involved in decision-making. Ngāi Tahu considers that some pastoral lands are taonga lands and express a wish to re-establish connection to those lands and taonga species on them.[1]

42. In terms of the specific proposal that the regulatory system should "take into account" the principles of Te Tiriti, some submitters argue that the proposed wording does not go far enough and that the Crown should 'give effect' to the principles.

Feedback from Ngai Tahu

43. Te Rūnunga o Ngāi Tahu (TRoNT) provided a detailed submission and conveyed their views to officials in a series of hui.

44. Overall, Ngāi Tahu is supportive of improving the stewardship of the high country, and agrees with the general direction of the reform. Ngāi Tahu considers that respect for current property rights is an important underlying principle.

45. The main focus of Ngāi Tahu's feedback has been on how the regulatory system should better reflect its relationship with the Crown as Treaty partners and mana whenua. Historically, outside of tenure review, Ngāi Tahu has felt largely shut out from the Crown pastoral lease regulatory system – particularly at the Ministerial and Commissioner levels.

46. Since the release of the discussion document, LINZ and DOC officials have participated in three hui with Ngāi Tahu, considering how best to reflect the Crown's relationship with iwi and mana whenua throughout the regulatory system. What has emerged from these discussions is the concept of a three-tiered approach to the ongoing relationship between the Crown and Ngāi Tahu:
    - a strong 'mana to mana' relationship between the Kaiwhakahaere (Chair of Ngāi Tahu) and the Minister/Chief Executive of LINZ at a system-outcomes level, including setting the strategic direction for Crown pastoral land
    - a relationship between the iwi authority (Chief Executive of TRoNT), and the Commissioner at a system-implementation level, including developing and setting standards, policies and guidance

[1] No submission was received from the Te Tau Ihu iwi, although officials have been in touch with them

- a "ground-level" relationship between mana whenua, LINZ/DOC staff and leaseholders, including in relation to processes for identifying, maintaining and enhancing cultural values.

47. Ngāi Tahu sees legislation as a way of cementing these relationships, providing specific statutory "touch-points" between the Crown and iwi while noting that the Treaty relationship is dynamic and constantly evolving – and that legislation should enable the relationship to continue developing rather than constrain it.

48. As part of this, Ngāi Tahu is seeking the inclusion of a provision that requires the legislation to *give effect* to the principles of the Te Tiriti o Waitaingi and requires individuals making decisions under the Act to apply Treaty principles to all decision making.

Advice from the Legislation Design and Advisory Committee and Crown Maori Relations – Te Arawhiti

49. Advice provided to us by LDAC and Te Arawhiti included that:

- Treaty obligations should sit specifically with the Crown (rather than leaseholders)
- the nature of those obligations need to be very clear - including the practical effects of any obligations placed upon decision makers
- a blanket "giving effect to" probably places too strong an obligation on the Crown in terms of its ability to give practical effect to this requirement, in the context of the contractual relationship between Crown and leaseholder
- a preamble section could be used to articulate the nature of the Crown-iwi relationship, and iwi's aspirations in relation to Crown pastoral land - however LDAC's view was that this would be better expressed in a Purpose statement or a General Policy Statement.

LINZ advice

50. Based on the advice we received from LDAC and Te Arawhiti, we have based our recommended approach on:

- the basis that the Treaty duty sits with the Crown (and not leaseholders or other actors in the system)
- the desire to enable the Treaty relationship to grow and strengthen over time throughout the system, without locking it into any prescribed steps.

51. It should be noted that we are meeting again with Ngāi Tahu on 11 June and so the options and our recommended approach set out below may change following that hui.

Treaty clause

52. In light of this, various options and potential constructs for a Treaty clause have been considered. Our conclusion is that a blanket "giving effect to" the Treaty probably places too strong an obligation on the Crown in terms of its ability to give practical effect to this requirement, in the context of the contractual relationship between Crown and leaseholder.

Recommendation: Take into account the principles of the Treaty when specified powers or functions are being exercised

53. Instead, we recommend that:

- the Purpose statement in the Bill includes a sub-section that creates a duty to take into account the principles of the Treaty when specified powers or functions are being exercised. The purpose statement would impose a duty to recognise and provide for the relationship of Maori with their ancestral lands, water, mahinga kai, wahui tapu and other taonga when these powers are being exercised. It would provide examples of ways that this may be done. It would also impose a duty to consider the interests and values associated with Crown pastoral land that have been identified by iwi in any Iwi management plan recognised by the Iwi
- the proposed three-tier relationship framework is appropriate but that it should not be specified in the legislation as doing so would lock into place that particular mechanism, which may not suit future generations. Instead, we recommend a clause to empower the establishment of ongoing relationships, which can be supported by operational policy, is a more flexible and enduring approach. This would include facilitating and/or supporting any relationships between mana whenua and leaseholders, where appropriate.

54. An example of how this might translate into legislative drafting is as follows (bearing in mind we are still discussing this with Ngāi Tahu and that PCO will ultimately be responsible for the drafting of this clause):

1) In order to provide a practical commitment to the principles of the Treaty of Waitangi (te Tiriti o Waitangi), all persons exercising functions or powers under sub-sections [specify the sections to which this applies: they include any decisions on the future use of unused pastoral land; and discretionary consent process and recreation permit/easements consideration] shall take into account the principles of the Treaty of Waitangi, and in doing so–

a) shall consider the relationship of Maori with their ancestral lands, water, mahinga kai, wahui tapu and other taonga, and

b) may, without limitation – (illustrative only)

i) establish ongoing relationships to build and maintain a shared understanding of the importance of the land and its features to iwi, hapū and whānau as tangata whenua

ii) seek the participation of iwi in the input that the Commissioner has to development of the Strategic Intention document, and for the CE of LINZ to have regard to any views expressed by iwi before approving any statement

iii) seek the participation of iwi in the development of operational policy and procedure documents applying to the administration of Crown Pastoral land

2) *in [subparts xy and xz] consider the interests and values identified by iwi in an iwi management plan.*

55. This wording:

- could be adapted in 1 to either impose a general duty on all powers and functions (which makes the clause broadly applicable) or to specify which subparts this applies to
- applies a s.6-like RMA duty in 1(a) to "provide for" the relationship. In practice, this will require the creation of a mechanism to gain an understanding of the relationship and that the Commissioner/LINZ will have to consult in order to inform and be informed. It would

also require an explicit "turning of the mind" to the outcome of the consultation when making decisions
- provides discretion in principle through the use of the word 'may' in 1(b), however, providing a power is likely to raise an expectation that they will be applied as tools to help give practical effect to the Treaty in the Crown-iwi relationship
- provides flexibility in 1(b)(i) for relationships that are considered suited to the times and situation, rather than locking in the three tier approach.

56. The reference to an iwi management plan could be defined as in the RMA s.61(2A)(i) as "any relevant planning document recognised by an iwi authority."

57. Our view is that this option provides a high degree of flexibility and therefore durability, while still providing a strong legislative basis for the Crown-iwi relationship. When read with the proposed General Policy Statement (see below), it should empower the sorts of relationships that Ngāi Tahu have requested, while allowing flexibility that may see other mechanisms be adopted if they prove more suitable to achieve the outcome of a strong Treaty relationship that requires the Treaty principles to be taken into account.

General Policy Statement

58. We agree with Ngāi Tahu's view that the legislation should identify the outcomes expected from the Treaty relationship. This could be achieved either through:
    - a clause in the Purpose statement
    - use of the General Policy Statement that is required to accompany the Bill.

59. Our view is that setting the relationship in the Purpose results in potential drafting conflict with the overall purpose for the Bill, which is to facilitate better environmental outcomes.

Recommendation: Use the General Policy Statement to set out the Treaty relationship

60. Our recommendation is therefore that we use the General Policy Statement to set out that the Treaty relationship is between iwi and the Crown (and not with leaseholders) and to state (recognise) the connection of tangata whenua to the land and the resources on it, and the desire of the Crown and iwi for different outcomes from the Treaty relationship in the future.

61. We consider that the interpretation of the clauses in the Bill should create the expectation that the operation of the system will empower the reconnection of tangata whenua to Crown pastoral land through the administrative actions of government agencies and their officers, particularly through the exercise of powers and functions by the Minister for Land Information, the Commissioner and CE of LINZ (or delegates). A possible formulation for this statement could be as follows:

    Crown Pastoral land is land to which tangata whenua (iwi, whānau and hapū) have ancestral connection. Through leases over this land in perpetuity, and because of operational decisions made by government agencies and their officers, the connection of iwi, whānau and hapū to these lands and the taonga associated with it has been disrupted.

    The intent of this legislation is to empower reconnection of tangata whenua to CPL through the administrative actions of government agencies and their officers, particularly through the exercise of powers and functions by the Minister for Land Information, the Commissioner and CE of LINZ (or delegates). The intention is also to point to practical ways that the principles of the Treaty of Waitangi can be recognised and provided for.

How should the broader public be involved in the system?

62. We have also considered how the broader public can participate across the different parts of the regulatory system, given the strength of public interest in in how this land is managed.

63. A significant amount of feedback centred on the appropriate role for the public including the possibility of introducing a public notification for discretionary consents. Some submissions also recommended that individual decisions should be able to be appealed by members of the public. Other submissions argue that an adequate level of public consultation is already provided for under the RMA. Input into the setting of standards and guidelines is seen by some submitters as removing the need for public input into individual decisions.

64. Public participation in different parts of the system is discussed in detail in the relevant section below. However, we have identified some broad considerations to guide our thinking about stakeholder involvement:

- Stakeholder involvement in the system could range from having input into individual decisions to input at a 'whole of system' level (for instance, through input to monitoring and reporting processes, and guidance and standards-setting).
- Stakeholder involvement is not the same as expert advice (for instance on the ecological values of the land). However, given the move towards a more 'values-based' system, some degree of stakeholder input could potentially help improve the quality of decision-making by helping clarify what some of these values mean to the New Zealand public.
- Increasing stakeholder involvement is also not the same as increasing transparency (which is more about the ability to understand how and why decisions are made in the system) or accountability (which is about ensuring those with responsibilities are discharging them correctly). However, these three things are complementary and mutually-reinforcing.
- Stakeholder involvement brings with it a range of benefits including potentially increased trust in the system, a better understanding of how the system works, and a likelihood that the system will evolve in line with public expectations, increasing the durability of the system over time.
- However, stakeholder involvement can also involve considerable costs, and significantly decrease the timeliness and certainty of decision-making. In addition, increased stakeholder involvement in relation to individual decisions within the Crown pastoral land system would increase duplication of RMA public notification processes in many cases.
- Any provision for increased stakeholder involvement in any part of the system will therefore need to carefully weigh up the costs and benefits involved.

Recommendation: Focus public participation at a 'whole of system' level

65. Looking across the proposals, our overall view is that:

- the proposals to increase transparency and accountability in the system set out below will help to address some of the concerns behind the desire for more public involvement in decision-making
- beyond this, the net benefits of increased public participation in the process are likely greatest at a 'whole of system' level (for instance in inputting to standards and guidance) as opposed to an individual decision-making level.

66. Options for how greater public participation might be achieved in specific parts of the system are set out in the relevant section below and summarised in Annex 2.

Other overarching issues

67. Other overarching issues we received significant feedback on, and are considering, include how leaseholders' property rights should be reflected in the system, how access to pastoral land should be provided for, and protections afforded to some pastoral land with the ending of tenure review, and the intersection between the Crown pastoral land regulatory system and the Resource Management Act.

How should leaseholders' property rights be reflected in the system?

68. Leaseholders voice strong concerns that the proposals will impact on their property rights – in particular the prioritisation of environmental considerations above pastoral farming by the proposed hierarchy within the outcomes.

69. However, while legislative change will impact on the terms of the lease - because the pastoral lease incorporates the relevant provisions in the CPLA and Land Act – this does not necessarily amount to a 'taking' of property rights. In fact, legislative changes to the terms of pastoral leases have occurred multiple times across the last few decades – most notably with the passing of the CPLA and the 2012 changes to rents.

[s 9(2)(h)]

[s 9(2)(h)]

Access

72. A further concern from leaseholders was the possibility that their rights of exclusive possession and quiet enjoyment were being eroded.

73. There is no intention to make changes to allow the Commissioner to grant public access to Crown pastoral land without the consent of leaseholders consent. Issues around the ability to secure access resulting from the decision to end tenure review are considered in more detail below.

Access and protection implications from ending tenure review

74. The discussion document consulted on how to manage the implications of ending tenure review, including how to protect land with significant inherent values, and how to secure access to Crown pastoral land.

75. Leaseholders and associated parties were not supportive of new mechanisms to protect values on the land. They thought any protection of inherent values using a legal mechanism should require a negotiated agreement between the Crown and leaseholder on a case-by-case basis.

76. Many other submitters supported the use of protective mechanisms, including a revolving land acquisition fund. A right of first refusal to the Crown if a lease is transferred was suggested.

77. Leaseholders and associated parties emphasised their right to exclusive possession and quiet enjoyment, they opposed creating public expectations of 'as of right' access. They think the best way to deliver access is through growing respect and understanding without needing formal agreements. However, other submitters want new options to deliver public access, provided that access is not inconsistent with protection of the inherent values of Crown pastoral land.

78. The need for changes to mechanisms for securing protection or access, given tenure review is ending, was evaluated by looking at the existing tools and processes to deliver protection or access. Consideration was given to whether delivering improved protection or access should be the role of the Commissioner or LINZ, or should reside with an expert third-party.

Is anything to protect inherent values needed?

79. There are a range of existing mechanisms for protection of inherent values on Crown pastoral land. This includes the purchase of land for addition to the conservation estate, and protection mechanisms on land such as covenants.

80. However, with the removal of tenure review there is a loss of a Crown pastoral land 'property-specific' process that leaseholders had an incentive to enter and included public involvement to identify land with inherent values meriting protection. Existing protection processes used by the Nature Heritage Fund or QEII National Trust rely mostly on the land owner approaching them, and don't involve public consultation.

Recommendation: No legislative change but LINZ to work to influence providers of protection mechanisms

81. While tenure review removes a process to protect inherent values, it does not automatically follow that LINZ and the Commissioner are best placed to create a new process that incentivises leaseholders to protect inherent values on their property with public consultation.
82. It is unclear how the changes to the Crown pastoral land regulatory system will change the need for extra protection of inherent values on the land.
83. Because of this, no legislative change is recommended. LINZ should work to influence providers of protection mechanisms to take a more proactive property-specific approach, in partnership with the relevant landowner/occupier.
84. LINZ and the Commissioner can support such a process but are not best placed to lead the process. One way LINZ could assist would be through partnering with leaseholders who choose to put in place greater protection of inherent values on the land.

Other options

85. Other options we have considered include:

- creating a right of first refusal – requiring leaseholders to offer either the whole lease or parts of the lease to DOC prior to a transfer. However, this option is a reactive approach that relies leaseholders offering up parts or all of their lease – which may or may not include land with important inherent values
- requiring the Commissioner to reduce the rents that leaseholders would pay if they protect land – This option would require changes to the rents system which is out of scope, and would impact on the Crown's ability to secure a fair rate of return. It would also be difficult to implement and monitor
- creating some form of new protection process to be run by the Commissioner – for example requiring the Commissioner to consult with the public and experts on what land has inherent values worthy of protection and then negotiating with leaseholders to agree on ways to protect that land.

Are changes to enhance access needed?

86. Tenure review didn't create any new access mechanisms. Existing mechanisms to provide access include informal agreements with leaseholders, application of legal instruments (e.g. easements) on a case-by-case basis, and purchasing land for the Conservation Estate.
87. Similar to protection, ending tenure review did remove a Crown pastoral land 'property-specific' process with public involvement to identify land where public access is desirable. Existing access processes, such as those of the Walking Access Commission (WAC) rely mostly on the proactive landowner/occupier and don't involve public consultation.
88. Given leaseholders' concerns around the use of the easement powers in s60 of the Land Act, [redacted]

[s 9(2)(h)]

[redacted]

[s 9(2)(h)]

89. [s 9(2)(h)] In our view it is not desirable to have a tool to unilaterally force public access on the leaseholder, and the Walking Access Easement is the appropriate tool for the leaseholder and Crown to agree on secure access.

90. In essence, the outcomes for stewardship of Crown pastoral land not including access make it difficult for the Commissioner to agree to an access easement that the leaseholder wants to create. This is because any access easement is likely to result in people crossing the land in a way that might damage ecological/inherent values (e.g. motorbikes/bikes on tracks), or may disturb the farm – both of which are in the outcomes.

Recommendation: Enable the Commissioner to consider recreational values in some decisions/Build operational connections with WAC

91. We recommend that the Commissioner should be required to consider public access to the land for the purposes of recreation, subject to the outcomes when making decisions to either:
    - agree to the Leaseholder signing any access agreement, or
    - grant or agree to an access easement (with leaseholder agreement).
92. In addition, we recommend that LINZ and the Commissioner should focus efforts on the role of WAC in providing Walking Access Easements providing they are agreed to by both the leaseholder and Commissioner. This includes influencing WAC to build a public consultation process to identify where public access over land (private, public, and leased public land) is desirable and to support the implementation of Walking Access Easements across pastoral lease land with the support of leaseholders and the Commissioner.

Other options

93. Other options we have considered include the following:
    - requiring LINZ or the Commissioner to financially support leaseholders who provide access – which would involve helping fund infrastructure of tracks, or advocating for leaseholders to receive financial support from other avenues.
    - creating a new process for public consultation around the Commissioner's use of an easement power in favour of public access over Crown pastoral land– where the Commissioner would be required to accept applications from any person for an easement and follow a process including consultation with iwi, leaseholders, and the public.
94. These options were not recommended because the first can be implemented without legislative change (it would require funding), and the second requires the Commissioner to coordinate a process for securing access when access is not one of the outcomes for the management of Crown pastoral land. This may make it difficult to maintain the relationship between the Commissioner and leaseholder.

How should the Crown pastoral land regulatory system align with other regimes?

Resource Management Act

95. Multiple submissions suggest that Crown pastoral land regulatory system processes can be improved so that they align more with the RMA. This includes recommendations such as providing common guidance on how leaseholders should apply for related consents under the systems, releasing a high country policy statement under the RMA that both systems can take into account, introducing an advocacy role for the Commissioner, using farm plans, and central and local government working more closely together.

96. The New Zealand Law Society's view is that activities could be managed solely under the RMA without the need to amend the CPLA. However, other submitters argue that the discretionary consents process serves a different purpose to the RMA; that is, for the Crown to steward its ownership interest in the land on behalf of the public and mana whenua.

Recommendation: Improve alignment between the RMA and the CPLA through operational improvements

97. Our view is that, while the RMA and CPLA are superficially similar, they are very different systems:

- The RMA is a permissive regime (where the default position is that landowners can carry out activities on their land) based on the principle of sustainable management of resources, and involves considering effects of activities on the environment now and in the future. The RMA applies to all land, including Crown pastoral land. Under the RMA, activities involving the use of land, and the taking or discharge of water or discharges of contaminants to soil, water or air, as well as management of soil erosion, are managed through a combination of provisions in district and regional council plans (and resource consents issued under those plans).
- The Crown pastoral land system is a more restrictive regime (where leaseholders can only carry out a small number of activities on the land without first seeking permission) and specifically protects the Crown's property right interests in Crown pastoral land, providing an additional level of protection above and beyond the RMA regime.

98. In its advice to LINZ, LDAC notes that, while there is some overlap between the regimes, a different regime is needed as there are specific outcomes intended for the management of Crown pastoral land associated with the Crown's role as lessor.

99. However, there are ways in which the regimes could work better together at an operational level – for instance by improved agency alignment across central and local government such as in the Mackenzie Basin agency alignment work. The operational phase of the project will therefore look at solutions to increase alignment or reduce duplication across these two regulatory systems

Other processes

100. There could be value in considering the proposed national policy statement for indigenous biodiversity (NPSIB), and how the Commissioner could have regard to this instrument in consent decision making.

101. Developments in other regulatory systems may also be worth exploring. For example, MPI is working with industry to develop an integrated farm planning framework to ensure better coordination between regulators and ease compliance and reporting burdens on farmers. There may be value in the Commissioner working with MPI as this is developed, to avoid duplication in the development of farm planning in the pastoral lease context.

The Crown pastoral land regulatory system

102. This section outlines our thinking in relation to the different components of the regulatory system, including on the proposals set out in the discussion document.

Articulating outcomes for stewardship of Crown pastoral land

What was proposed?

103. Proposal 1 in the discussion document was to include a new set of outcomes for Crown pastoral land within the CPLA. The discussion document presented a proposed set of high level outcomes for Crown pastoral land and invited feedback on them.

What do the submissions say?

104. There is mixed support for the proposed outcomes for Crown pastoral land.

105. Most submitters agree that articulating clear outcomes for Crown pastoral land would be beneficial. However, most raise issues with how they are currently presented. There is clear divergence on a number of key issues, such as whether the outcomes should be included in legislation, what terms should be used and how they should be defined, who the outcomes should apply to, and whether there should be a hierarchy that places natural capital and culture and heritage values above pastoral farming.

106. Submitters also highlighted the importance of ensuring that the terms used in the outcomes and how it is structured did not create uncertainty for future decision making. Any ambiguity would likely lead to disputes surrounding decision making and how outcomes should be measured.

What is LINZ's advice?

107. As a result of this feedback and further analysis, we have broadened our thinking to how the legislation could best articulate:

- the context in which the Act is set – in particular, acknowledging the historic connections iwi and leaseholders have with the land
- the overall purpose of the system
- how the Crown will work with iwi and leaseholders to deliver on that purpose
- how decisions will be made in different parts of the system.

How should the historic and cultural context be set?

108. Both iwi and leaseholders have noted their particular historic and cultural connections to the land, and want these connections to be specifically acknowledged in the legislation. However, this needs to be balanced against the risk of the Crown making commitments that might conflict with other parts of the legislation, or that may not be in its power to honour.

Recommendation: Set out historic and cultural context in the General Policy Statement

109. Based on advice from LDAC and Te Arawhiti, we recommend that we set out this historic and cultural context in the General Policy Statement accompanying the Bill. While this will not form part of the new Act, it will be a key part of the Parliamentary record for the Bill.

What should the purpose clause contain?

110. LDAC's advice is that the purpose clause should give a clear statement of what the legislation is seeking to achieve. The underlying provisions should then clearly relate to the purpose of the Bill, and the purpose should provide sufficient detail to act as criteria for statutory decision-making, while remaining succinct.

111. Based on this, we see the Purpose section as potentially containing the following elements:

- *Overarching purpose* - this would set out exactly what the legislation is intended to achieve
- *Leaseholder acknowledgement* - this would acknowledge the role leaseholders have in enduring stewardship, and the centrality of pastoral leases to the regulatory system
- *Iwi acknowledgement* - this would recognise this whenua as taonga to iwi and set an obligation on the Crown to take account of the Treaty of Waitangi (options for how this could be done are covered in more detail above)
- *Criteria for statutory decision-making* (the outcomes) - these are covered in more detail below.

112. There may also be a need to provide explicitly for other Crown pastoral land that is, for example, currently not leased or is held in different types of leases and may need to be leased or otherwise dealt with in the future. We will report back to you in more detail on this as part of our further advice on implementation issues and transitional arrangements.

What should the statement of the overarching purpose of the Act contain?

113. According to LDAC'S formulation above, the current purpose statement would form the overarching statement above the outcomes:

Enduring stewardship of Crown pastoral land: The Crown will ensure that the natural landscapes, indigenous biodiversity and cultural and heritage values of this land are secured and safeguarded for present and future generations.

114. We have reviewed this wording in the light of LDAC's advice on what it should cover as a statement about the 'high level goal' of the regulatory system. As it currently stands, the statement does not reference the main reason for the system's existence, which is the administration and management of pastoral leases and other pastoral rights by the Crown.

115. Our original thinking was that this statement should indicate the government's intent to prioritise natural, cultural and heritage values over other values in decision-making about activity on Crown pastoral land. However, that can already be done through the hierarchy in the decision-making criteria (outcomes) that sit below the overarching purpose statement.

116. In addition, we are recommending defining "cultural and heritage" values in the legislation, as this is likely to create confusion about whether this covers pastoral farming.

Recommendation: Update the overarching purpose statement

117. Our recommendation is therefore to redraft the overarching purpose statement so it acknowledges that the purpose of the regulatory system is to:

administer activity on Crown pastoral land in a way that ensures that the natural landscapes, indigenous biodiversity and cultural and heritage values of this land are secured and safeguarded[2] for present and future generations

[2] Or this could be changed to "maintained and enhanced" in line with the outcomes below

How would the outcomes guide decision-making?

What should the outcomes cover?

118. As noted above, the outcomes should provide the specific criteria that the Commissioner applies to decision-making (and set out how they should be applied).

119. As a result of the feedback, we have considered whether the outcomes should be expanded to cover a number of additional areas:

- the heritage and ongoing stewardship of leaseholders – our view is that, while these are better covered off as part of the broader Purpose statement, rather than in the outcomes that will be used for statutory decision-making purposes
- recreational and access values - given that the government's intention is not to impact on leaseholders' right to quiet enjoyment and exclusive possession of their leases, it is unlikely that either of these could be provided for in legislation. Instead, we are looking instead at other ways of improving access to Crown pastoral land, including the role of the Walking Access Commission in negotiating access with leaseholders
- scientific values - one option here is using the term 'inherent values' which is currently defined in the CPLA and includes scientific values. This specific wording is discussed further below.

120. We have also considered how the broader impacts of activities (i.e. beyond their immediate impacts) could be factored into decision-making. This is currently missing from the outcomes and could include, for example, cumulative, cross-boundary, ecosystem or landscape scale effects/impacts. It could also include other specific considerations suggested by submitters, such as climate change.

121. There was some feedback from both leaseholders and other that enabling the Crown to obtain a fair financial return should not be in the outcomes. We do not think there is a strong case for fair financial return to be in the outcomes as the rents are out of scope and the current means of charging already have provisions to consider fair return. However, we do not think there are strong reasons not to include it.

Recommendation: Amend the outcomes to include consideration of cumulative impacts

122. We recommend that the outcomes:

- are not expanded to include the heritage and ongoing stewardship of leaseholders or recreational and access values
- are expanded to include consideration of cumulative impacts.

How should the outcomes be framed?

123. While some stakeholders challenged the need for a hierarchy of outcomes, Cabinet has clearly signalled its intent to impose a hierarchy on all decision-making in relation to Crown pastoral land that prioritises the protection of certain considerations (e.g. natural and cultural values) over others (e.g. pastoral farming). It will be important to ensure that it is clear how the Commissioner will apply this hierarchy in decision-making.

124. The Commissioner's ability to translate the outcomes into clear decision-making will also depend on the clarity of the language used in the outcomes given that these are fulfilling the role of decision-making criteria – in particular, how well-understood each term is (or how well-defined the term is in the legislation).

125. We have reviewed the wording of the current outcomes in the light of this. While final drafting will be done by PCO, we think that some changes to some of the terms and phrasing are likely to be needed to ensure the outcomes work as decision-making criteria. In particular:

- Based on feedback received, we no longer consider the term "natural capital" suitable for the outcomes statement as this is a concept that focuses heavily on the environment's "use" values as opposed to inherent values. We have considered a range of alternatives, including natural values, inherent values, natural heritage, ecological and landscape integrity, ecological sustainability, and ecologically sustainable management.
- We consider that the phrase "that support economic resilience and foster the sustainability of communities" would unduly restrict the nature of pastoral and non-pastoral activities that can take place by implying that they would only be enabled if they are necessary to economic resilience/sustainability.
- We have also reviewed the use of the term 'cultural and heritage values' given that this could be interpreted to include the pastoral farming 'way of life,' which would make the intended hierarchy less clear.

126. Another focus is being clear about the obligations imposed by the outcomes on system participants. Our initial thinking in relation to this is that the current proposed terms "maintain and enhance" and alternatives including "improve", "identify" or "safeguard" impose different obligations on the Crown and Commissioner, and by extension the leaseholder. On balance, we prefer the proposed wording as it clearly relates to the current state of the land, and doing no further harm to/improving the natural values of the land – while recognising that this land will continue to be farmed.

Recommendation: Amend the outcomes to clarify some terms

127. We recommend:

- using the term "inherent values" in place of "natural capital, and cultural and heritage values". The term is understood and defined in the CPLA, and includes historical and cultural, and scientific values. However, the definition would need to be further refined to explicitly exclude recreational values and clarify that historical and cultural values do not include pastoral farming
- that the phrase "that support economic resilience and foster the sustainability of communities" is removed, as it unnecessarily restricts assessment of potential pastoral and non-pastoral activities
- including consideration of broader impacts, which would be defined. Broader impacts could, for example, include cumulative, cross-boundary, ecosystem or landscape scale effects or impacts, climate change and recovery periods
- retaining the "maintain and enhance" wording proposed in the discussion document.

What would the outcomes apply to?

128. A further consideration is whether the outcomes would apply to all functions/decisions under the Act, or whether they would just apply to specific decisions – for instance, decisions made on discretionary consents.

129. The Commissioner has responsibility for a range of decisions in relation to Crown pastoral land including:

- Boundary adjustments (CPLA s21)

- Granting exemption from residence (LA s97)
- Rent reviews (which occur every 11 years)
- Lease transfers

130. It may well be that applying the criteria set out in the outcomes may not be appropriate in relation to all these decision-making functions. We are working through this issue and will report to you on it in more detail.

Ensuring decision-making is accountable and transparent

What was proposed?

132. Proposal 2 in the discussion document was to require that the Commissioner develop a regular Statement of Performance Expectations, approved by the Minister for Land Information. The discussion document asked for views on a proposed Statement of Performance Expectations and for other ways in which accountability within the system could be improved.

133. Proposal 3 in the discussion document was to explicitly provide for the Commissioner to release guidance and standards, which would help officials and leaseholders to understand and comply with the legislative requirements. The discussion document asked for feedback on how on other options to improve transparency within the system, in particular in relation to how decisions are made.

What do submissions say?

134. There was in-principle support from most submitters for a Statement of Performance Expectations to help build public confidence that the Commissioner and LINZ are performing their functions effectively. However, leaseholders raised concerns that Ministerial approval could impact on the independence of the Commissioner, and thought that public consultation should be at the discretion of the Commissioner. Many submissions made recommendations for what a Statement would include, noting the importance that any performance expectations are measurable.

135. Some submitters also suggested other tools by which the transparency and accountability of the system could be improved, including giving the Commissioner an advocacy role, providing for an Advisory Board in legislation, introducing an appeal process independent to the Commissioner and requiring the Commissioner to publish decision summaries.

136. Submitters generally agreed that more guidance would be beneficial, especially in light of the perceived lack of transparency in the decision-making process. However, many submitters did not think that there was a need for empowering legislation to achieve this. There was a strong consensus from leaseholders that guidance should account for the broad variations between individual leases and that guidance should not be used as a way to change property rights.

137. Conversely, some submitters argued that non-binding guidance had limited uses and that there should be provision for the development of binding policies that delineate and supplement existing statutory obligations. These submitters also thought that any guidance, standards or policies should be set following public consultation.

138. Most submitters who commented on farm plans viewed them as a useful tool for a number of reasons, especially if they become a requirement under other reforms, including providing a long-term vision for the land's management, and streamlining consenting processes. Submitters also raised a number of issues such as who would pay for the creation of farm plans, whether they would be used for compliance, who would provide advice into their creation, and whether there is enough capacity amongst experts to create the number required.

What is LINZ's advice?

139. The feedback from stakeholders and further analysis has helped to clarify what we are trying to achieve through increasing accountability and transparency in the system, namely:

- increasing public confidence that the overall outcomes of the Crown pastoral land regulatory system are being achieved

- helping to ensure that the Commissioner's decisions are consistent with the statutory framework
- clarifying what parts of the system are a function carried out by LINZ - and can therefore be directed by the Minister for Land Information - compared to the statutory decision making of the Commissioner that cannot be fettered.

Who is accountable for what?

140. As noted earlier, we have identified a lack of clarity in our earlier thinking about roles the powers and responsibilities functions in the system. This was identified as we progressed our thinking about – particularly in terms of what the Commissioner and LINZ are, or should be, accountable for.

141. Based on this further thinking, we have identified distinct functions for LINZ and the Commissioner in ensuring the outcomes are delivered:

- As system owner, LINZ has responsibility for ensuring that the system as whole is delivering on its intended outcomes over time. In this role, LINZ's functions range from system monitoring to developing regulatory policy, to regulatory system design.

- As decision-maker and landlord, the Commissioner should be responsible for discharging their particular functions in a way that is consistent with the legislation. The Commissioner is therefore not accountable for delivery of the outcomes, but accountable for delivering on their powers and functions in line with the outcomes. In carrying out this role, the Commissioner's decision-making powers cannot be fettered by another person (e.g. LINZ or the Minister), and the Commissioner is constrained by the decision-making framework set out in legislation.

What accountability mechanisms should be used?

142. Following on from this, it is clear that there are existing mechanisms available to hold both LINZ and the Commissioner accountable for these roles.

143. In LINZ's case, existing mechanisms include:

- the publication of a 'LINZ Strategic Intentions' approximately every three years – which could set out LINZ's intended approach to managing Crown pastoral land (including the functions of the Commissioner, as an employee of the department)
- the publication of the Estimates including the Vote: Lands funding appropriated for the management of Crown pastoral land and the functions of the Commissioner, which are tabled in Parliament, and the Minister for Land Information must attend Select Committee to be questioned on the estimates
- reporting on performance at the end of the financial year through the LINZ Annual Report – which could include reporting on the performance of Crown pastoral land, including the functions of the Commissioner. This Annual Report is independently audited, and then tabled in Parliament. The Chief Executive of LINZ must attend Select Committee to be questioned on the annual performance of the department (including statutory officers within the department).

144. Separate to this, the Commissioner must report directly to the Minister on the exercise and performance of their statutory powers and functions (S24AA Land Act). The Commissioner is obligated to carry out their powers and functions under the Act. In addition to this, they are a LINZ employee (under the State Sector Act), which makes the LINZ CE (their employer) responsible for ensuring that they are fulfilling their statutory officer position appropriately.

145. However, none of these mechanisms are currently being used to their full extent – for instance, LINZ provides very limited information on the operation of the Crown pastoral land regulatory system or the activities of the Commissioner in its accountability documents.

Recommendation: Strengthen existing accountability mechanisms

146. Given the above, LINZ's recommendation is to clarify and strengthen existing accountability mechanisms, rather than creating an entirely new accountability mechanism (a SPE). This would involve including the following in the legislation:

- A requirement for the Commissioner to report annually to the Minister on the exercise and performance of their statutory powers and functions in relation to Crown pastoral land, including reporting on the decisions that they have made (as decision-maker), and to report on the state of Crown pastoral land (as landowner and lessor)
- An affirmation of the LINZ CE accountability obligations under s33-37 of the Public Finance Act (to report on the powers and functions of statutory officers like the Commissioner who are fully funded by a departmental appropriation), and the system-owner 'regulatory stewardship' responsibilities under s32 of the State Sector Act, and an obligation on LINZ to report on these responsibilities through the LINZ Strategic Intentions (s39-40 PFA)/Estimates/Annual Report. Where the Commissioner is providing content to the LINZ CE for the LINZ Strategic Intentions, they must work with leaseholder and iwi representatives in recognition of these key system relationships, and may consult with other persons as they see fit
- A requirement for an annual agreement of expectations and resourcing between the LINZ CE and the Commissioner, which would include setting out the resources LINZ is providing to the Commissioner, the key performance indicators LINZ will use to report on the performance of the Crown pastoral land regulatory system over the upcoming financial year, the information required from the Commissioner to support this, and the Commissioner's approach to exercising their statutory powers. This would be produced at the start of the financial year, and the Minister could be consulted as part of the drafting process

147. The options above do not provide an accountability mechanism for the Minister to direct the Commissioner in how they carry out their statutory functions. However, the standards and guidance section below identifies the ways that LINZ can affect the Commissioner's exercise of their powers and functions through regulations or non-regulatory instruments.

148. In LINZ's view, this option is likely to increase effectiveness by clarifying the specific functions of LINZ and the Commissioner in the regulatory system and holding them clearly accountable for those functions. It would also increase transparency through public reporting on how LINZ and the Commissioner are performing their roles, and through the involvement of the Minister, leaseholders and iwi at different points of the system

Other options

149. Other options we have considered include the following:

- *Requiring the Commissioner to create and report against a SPE at the request of the Minister for Land information (via a Letter of Expectations).* The SPE would be approved by the Minister and the Commissioner would be required to work with leaseholders and iwi during the drafting process. This could also be supplemented by a resourcing agreement between LINZ and the Commissioner.
- *Developing a bespoke accountability framework based on the Crown entity accountability framework*. This would in effect implement a full Crown entity framework for the

Commissioner. LINZ and the Commissioner would be required to produce a single 'Crown pastoral land strategy' to be approved by the Minister. This would allow LINZ and the Commissioner to set a strategic direction for Crown pastoral land for a three or four year time period, and they would work with leaseholders and iwi during the drafting process. Again, this could be supplemented by a resourcing agreement between LINZ and the Commissioner.

150. While both these options would improve accountability and transparency relative to the status quo, these options are likely to both duplicate existing LINZ reporting responsibilities, and create additional costs for both the Commissioner and LINZ.

How should guidance and standards be used?

151. 'Secondary legislation' is used under the authority of the primary empowering law to create, alter or remove rights and obligations and determine or alter the content of the law. It is often used for detailed technical requirements and procedures for regulatory systems. It is also broader than guidance and standards and includes regulations; rule making powers; statutory standards and directives; and non-statutory standards, guidelines and other instruments.

152. In its current state, the regulation making powers in the CPLA are restricted to rents and the powers in the Land Act don't cover powers in the CPLA. There are no powers to create rules or statutory standards and directives apart from the rule making power that Valuer-General has for rents.

153. Adding new secondary legislation powers to the regulatory system will give the ability to clarify matters around decision-making (including how outcome(s) could be implemented in decision-making), bring direction to monitoring and reporting, and provide a range of relevant guidance for all stakeholders.

154. Either LINZ (as the system owner) or the Commissioner (as the statutory decision-maker) could make standards depending on what part of the system they applied to. For instance, the Commissioner could make rules for things that are done to enable them to carry out their functions e.g. advice on environmental values to feed into their decision-making function. The LINZ CE might need to make rules to clarify how any given part of the system (e.g. Commissioner's decision making) should operate in order to deliver on the outcomes/purpose of the legislation. Regulations would be authorised by the Governor-General, on recommendation of the Minister.

155. These instruments would have a strong role in ensuring the Crown achieves its goals as a long-term landowner. They will also provide clarity and transparency to the whole regulatory system, while providing an opportunity for public participation in the regulation making process.

Recommendation: Add the minimum secondary legislation required to implement the regulatory change

156. Given the above, LINZ's recommendation is to add in the minimum secondary legislation powers that are necessary to implement the legislation and deliver a transparent and accountable system for Crown pastoral land.

157. The exact powers to create secondary legislation that will be required are dependent upon final package of proposed changes. The initial proposals for legislation are:

- powers for the Governor-General, on recommendation of the Minister to create regulations in relation to discretionary consents, and in relation to the monitoring of discretionary consents or other aspects of the management of the land. This function would allow scope

for new regulations to implement Government policy, provided it does not contravene the purpose/outcomes of the legislation

- powers to enable cost recovery through fee setting powers for discretionary consents through regulations
- powers to set and issue statutory standards, policies and directives (and provide supporting guidance). Instruments created with this power would explain how the outcomes in the legislation will be given effect to through decision-making on consents.

158. The Commissioner's existing standards could continue as non-statutory instruments but with amendment as appropriate to give effect to the new regime. This would be supported by ongoing education and advice on the operation of the system.

159. Having a range of regulatory tools will better enable LINZ and the Commissioner to set the appropriate level of intervention to address any issues that arise.

160. Once we have finalised proposals, we will report back to you in more details about where those proposals fit into standards or guidelines.

Other options

161. Other options we have considered include the following:

- *Creating fees setting powers and implementing statutory standards and directives.* This would restrict the ability to set regulations for Crown pastoral land to fees for cost recovery. The proposals in the discussion document (Annex 3) are all included in this option.
- *Creating broad regulation setting powers and implementing statutory standards and directives.* This option would seek to provide a broad regulation setting power covering decisions on discretionary consents, monitoring of consents, setting fees, and any other functions or duties of the Commissioner.

162. The two options either under provide or over provide the regulation-setting powers. The first would result in putting issues better suited for regulations (in s117(a) above) into standards and guidelines. The second creates regulation setting powers that are unnecessarily broad.

What are other ways to increase transparency?

163. The improved accountability arrangements outlined above will create more transparency in the system by making information about how LINZ and the Commissioner are broadly fulfilling their responsibilities publicly available.

164. A further consideration is transparency around specific decisions made by the Commissioner – in particular, those made in relation to discretionary consents and recreation permits, and in relation to rehearings (note that rehearings are covered in more detail below). Currently, there is no obligation on the Commissioner to make these decisions public, and any requests for information are processed under the OIA.

165. There are a range of possible options for increasing transparency ranging from the status quo (where the Commissioner can choose to proactively release information) to a requirement to publish a brief summary of decisions to a requirement to publish individual decisions in full.

Recommendation: Publish detailed summaries for each relevant decision

166. LINZ's recommendation is that the Commissioner be required to publish a detailed summary of each discretionary consent/recreational permit/rehearing decision (under the current s18 of the CPLA and s17 of the Land Act) within 20 working days of the decision covering:

- which pastoral land a decision was made for
- what activity the decision allows the leaseholder (or other person) to undertake, and how long they are allowed to undertake that activity
- the land area affected by the activity
- any specific conditions attached to the consent
- what factors the Commissioner considered when making the decisions (e.g. how the activity contributed to the outcomes).

167. In preparing the summary, any information that would not be released under the OIA would not be included , and the Commissioner would be required to consult with the leaseholder (and applicant if the applicant is not a leaseholder) before publishing the summary.

168. In LINZ's view, this option would be likely to result in a significant increase in transparency, while not being as costly as releasing entire decisions. It would also provide some flexibility around what is proactively released, while ensuring that the key information is being made available in a timely way.

169. The option is similar to current Overseas Investment Office practice around proactive release. It doesn't stop LINZ or the Commissioner from choosing to proactively release more information if the circumstances arose.

Other options

170. Other options we have considered include the following:

- *Publishing summaries of decisions* – this would provide minimal information and is unlikely to satisfy public expectations for transparency
- *Publishing individual decisions* – this would require the processing and release of significant information, which would probably be costly and may not add a great deal of transparency compared to releasing a detailed decision summary.

Making decisions that give effect to the outcomes

What was proposed?

171. Proposal 4 in the discussion document was to require the Commissioner to give effect to a set of outcomes in any discretionary consent decisions. The discussion document asked for views on how to ensure decision making best supports the achievement of the outcomes, and what other tools could be used, such as offsetting.

172. Proposal 5 in the discussion document was to require the Commissioner to obtain expert advice and consult as necessary on discretionary consent decisions. The discussion document asked for feedback on how to ensure that decisions are made with the best possible advice and information.

173. Proposal 6 in the discussion document was to update the fees and charges framework. The discussion document asked whether the CPLA should be changed to allow for fees to be charged for all discretionary consents.

What do submissions say?

174. Support for the proposal that decision making give effect to the outcomes is mixed, with some submitters viewing it as a bare minimum to ensure effective decision making and others viewing it as undermining the pastoral lease contract and impacting on property rights. There is concern from environmental groups that such an approach will still result in unacceptable losses by allowing for 'an overall' approach where immediate losses are justified by potential future gains; and that the proposals do not allow for meaningful public participation in the process.

175. Leaseholders also think that any new process should only apply to new development and new uses, as existing development and use that was made in accordance with consents under the current regime represents a significant investment on the part of leaseholders. There were also a number of recommendations for improving the process, to allow for scaled decision making and so it aligns more with the RMA.

176. There is limited support for updating the fees and charges framework. Submitters raise a number of potential issues with introducing new fees such as increasing cost pressures on leaseholders which could impact how they manage the land. Those that support it endorse the principle that the benefiter should pay for the cost of the application but emphasise that the fee should be fair and reasonable.

177. In the light of this feedback, our thinking on discretionary consents has centred on how we can better focus the discretionary consents process on achievement of the desired outcomes. This also includes considering the role and responsibility of the Commissioner, what the Commissioner should consider in the decision-making process, and how interested parties beyond the Crown and leaseholders can and/or should be involved.

What is LINZ's advice?

How can we ensure discretionary consents decisions are aligned with the outcomes?

178. Based on the feedback received and our further analysis, we have broadened our thinking on how decision-making on discretionary consents can best give effect to the outcomes (beyond just considering how the Commissioner should be bound by the legislation). This includes thinking about how the decision-making and rehearing processes can be improved to better promote achievement of the outcomes.

179. It should also be noted that clarifying the outcomes and what they apply to (as discussed above) will enable the outcomes to be translated more easily into specific decisions.

How should the Commissioner be bound by the legislation?

180. There are a number of possible options in terms of what requirements are placed on the Commissioner to make discretionary consents decisions in accordance with the outcomes.

181. In considering these options, we have considered the need to ensure the Commissioner is clearly required to make decisions in line with the outcomes, while providing enough flexibility to ensure decisions can respond to changes in context, knowledge and farming practices, and take account of the wide range of pastoral leases and types of consent applications that exist.

182. We have also been mindful of our articulation of the Commissioner's and LINZ's roles above – LINZ as system owner is responsible for the system as a whole, including whether the system outcomes are being achieved over time while the Commissioner is responsible for making decisions that are consistent with the outcomes. This means that the Commissioner should not be given responsibility for overall achievement of the outcomes in the legislation.

183. Our recommended approach therefore comprises:

- a tightly defined set of outcomes, which the Commissioner is required to do everything within their power (but no more) to achieve
- an effective monitoring system, along with clear accountability arrangements and increased system transparency that will help ensure the Commissioner is making decisions in line with the outcomes
- some discretion in the Commissioner's decision-making - bounded by the two parameters above.

184. Within this context, we have considered how to articulate the relationship between the outcomes and the Commissioner's decision-making in legislation.

185. The current proposal requiring the Commissioner to "give effect to" the outcomes effectively gives the Commissioner responsibility for overall achievement of the outcomes – which, as noted above, is not consistent with how we are thinking about the Commissioner's role in the system.

Recommendation – Promote achievement of, or act consistently with and seek to further, the outcomes

186. Our recommendation is that the legislation should require the Commissioner to promote the achievement of the outcomes, or to act consistently with and seek to further the outcomes.

187. This is similar to the relationship articulated in relevant legislation in Australia - both the Northern Territory Pastoral Land Act 1992 and Western Australian Pastoral Land Management and Conservation Act 1989 require decision-makers to "act consistently with and seek to further the objects of the Act".

188. We consider that this approach provides for effective decision-making by providing for clear direction to the decision-maker, while retaining an appropriate level of flexibility. It is an obligation that is within the Commissioner's powers to fulfil and is therefore likely to be durable. Like all the options we have considered, clear standards and guidance and transparency mechanisms will be required to ensure decision-making is efficient and transparent.

189. Legislation requiring the Commissioner to promote the achievement of the outcomes could also give the Commissioner a mandate to take the advocacy role discussed earlier.

190. We propose to test this wording further at the drafting stage.

How can we make the discretionary consents process more outcome-focused?

191. In addition to thinking about how the Commissioner is bound by the legislation, we have been looking at how we could help ensure that the decision making process supports an outcome focus - by concentrating efforts on decisions relating to activities likely to have the most impact.

Recommendation – set classes of activities to reflect their likely scale/risk

192. We recommend setting classes of activities to reflect their scale/risk profile.

193. Pest plant control and minor activities (such as fencing) could be classed as permitted, so that consent is automatically granted subject to conditions (such as using appropriate methods of pest control, or only fencing within existing pasture blocks). Other activities (such as increasing a stock limitation) would be subject to greater scrutiny and discretion about whether they are appropriate, with no guarantee that consent would be granted. A "prohibited" category could also be created – we envisage this as small and only containing activities that are considered non-negotiable across all pastoral leases (for example, wetland modification)

194. This approach would help LINZ to target its efforts and resources where they will have the most impact, leading to more effective decisions on high risk activities. It could also help to streamline the process and improve efficiency in some cases – in particular, for leaseholders wanting to undertake pest control and minor maintenance activities

195. An example of how particular activities could be classified is set out below.

Permitted activities (consent not required, but set conditions must be followed)	Discretionary activities (full discretion to approve or decline)	Prohibited activities
Removal of pest plants (as defined by LINZ Biosecurity Strategy or standards/guidelines) Routine repair and maintenance of existing tracks Planting of indigenous trees/plants Digging in posts, anchors, piles or supports Clearing drains, water races or culverts Laying electric fence cables under gates Burying dead animals Digging rabbit warrens Laying gravel on tracks Removing tree stumps	Topdressing and oversowing Crop, cultivation, draining or ploughing Irrigation Construction of buildings and earthworks New tracking Commercial outdoor recreational activities Planting/sowing of exotic species Exemptions to stock limitations Clearing, felling or burning Easements Any activity which is not	Clearing, felling or burning at risk or threatened indigenous vegetation (except where required for health and safety reasons (e.g. a fire break) Native wetland modification/ drainage

	provided for as a permitted, minor or prohibited activity	

196. If this approach is followed, the classification of activities could be set in publically notified regulation with a set review period built into the legislation. This would ensure that the classification takes account of the wide range of public views about what types of activities should be allowed or avoided on pastoral leases. Periodic review would also allow for adjustments based on the outcomes we see on Crown pastoral land through monitoring.

197. However, LDAC has recommended that an initial classification of individual activities is done in the legislation (rather than by regulation), with an empowering provision for activities to be added, removed or moved between categories through regulation. This would avoid a judicial review challenge in the initial classification of activities. However, it would not provide as much opportunity to seek public views on this classification, potentially lessening the transparency of the process. It would also require significant work in advance of the legislation being drafted, which may not be practical. We will investigate this option further and report back to you.

What is the role of other tools in supporting decision-making?

198. There was broad agreement that offsetting was not appropriate in the Crown pastoral land context. However, the rationale behind why this is the case varied.

199. One view is that offsetting unfairly favours farmers who do not have a good track record of environmental stewardship. It would also act as a disincentive to farmers undertaking voluntary environmental projects - this was the view of many leaseholders.

200. Another view is that offsetting allows for the degradation of inherent values now, in exchange for possible future gains. This was viewed as unacceptable especially by ecologists, and environmental group. In the groups' joint submission Environmental Defence Society and Forest & Bird add that current guidance on offsetting is not clear and that there is a risk that it will be used to rationalise consents that should never have been granted in the first place.

Recommendation: Do not provide additional tools for offsetting in legislation

201. We do not consider that additional tools to provide for offsetting are required in order to enable decisions that are consistent with the outcomes – in particular, we do not consider that providing for a process of offsetting can be consistent with a hierarchy of outcomes that prioritises natural values. Rather than providing for specific tools in legislation, we consider that any issues around considering the overall impact of decisions are provided for through clear direction in standards and guidelines.

Should we change the rehearings process?

202. The rehearings process provides a mechanism for those aggrieved by decisions[3] to ask for a decision to be reconsidered if they are unhappy with the original decision and the Commissioner determines that justice requires a rehearing.

203. The current approach to rehearings is seen by some stakeholders as lacking transparency and independence, as it currently involves the Commissioner rehearing decisions either the Commissioner or their delegates have made, and does not provide for external involvement. In

[3] "Aggrieved persons" only includes leaseholders, applicants (e.g. for recreation permits), or grantees of easements. It does not include people who are not a party to the decision.

addition, only applicants can currently ask for decisions to be reconsidered – the rehearing process is not open to the broader public.

204. In considering whether the rehearing process needs to be changed to address these concerns, there is a clear tension between a desire for more independence and transparency on the part of some stakeholders, and leaseholders' desire for certainty and consistency in decision-making. In addition, it is important that any rehearing mechanism is proportionate to the number and scale of cases being reheard, and does not impose costs either on the Crown or on applicants that would outweigh any benefits associated with increased public participation or transparency.

205. A further consideration is that changes across the regulatory system will:

- help to clarify the ground on which decisions will be made
- enable the right types of expert advice to be sought from the right experts at the right time and to be appropriately considered by decision-makers
- provide for more public involvement at a 'whole of system level'
- increase transparency - for instance through the publication of detailed decision summaries and the publication of detailed summaries of rehearing results
- strengthen monitoring and accountability arrangements.

206. In this context, we have examined options for increasing the transparency and independence of, and public involvement in, rehearings including:

- using a board to support the Commissioner's decision-making in the rehearing process – the board could make recommendations to the Commissioner, who would then make a final decision. There would be significant cost involved in this option, as well as reduced certainty for the applicant
- making the board the sole decision-maker - however, it would probably be very difficult to get a truly representative board to come to a consensus decision, it would be administratively costly, and it would significantly reduce certainty
- widening who can seek a rehearing – this could significantly inflate costs and reduce certainty for the applicant, particularly if stakeholders could challenge decisions on relatively weak grounds.

Recommendation: Do not change the rehearing process

207. On balance, our recommendation is to not change the rehearing process, aside from requiring that detailed summaries of decisions are released publicly, as discussed earlier. However, we can do further work on any of these options if you wish.

208. In addition, we propose looking at the possibility of introducing an external audit function to regularly assess whether the Commissioner's decisions are being made in accordance with the legislation.

How should expert advice inform decision-making?

209. Expert advice has an important role to play in discretionary consents decision-making. It is also used extensively within the status quo. While the discussion document proposed a requirement for the Commissioner to obtain expert advice, we have also looked more broadly at the issue of expert advice and consent applications including what expert advice should be commissioned and how it should be used; how the quality and independence of that advice is assured, and who should bear the costs and 'evidential burden.'

What obligation is on the Commissioner to seek expert advice?

210. The legislation should ensure that it is clear when the Commissioner as decision-maker should seek expert advice, and when that advice should be used. Currently, there is no formal requirement for the Commissioner to obtain expert advice outside the requirement to consult with the Director-General of Conservation. However, other expert advice (e.g. from third party ecologists, valuers or farm consultants) is also obtained to support most decisions.

Recommendation – Require the Commissioner to seek expert advice to satisfy themselves that the proposed activity is consistent with legislative requirements.

211. We recommend that the legislation should require the Commissioner to seek expert advice to satisfy themselves that the proposed activity is consistent with legislative requirements (including the outcomes). This places an onus on the Commissioner to obtain the right types of advice from the right experts and to consider this advice in the light of the outcomes.

212. The Commissioner would also then be responsible for clarifying whether input provided by DOC to the decision-making process was as part of the requirement to consult them, or as providers of expert advice.

Other options

213. Other options include the proposal in the discussion document to require the Commissioner to obtain expert advice "as necessary." Our view is that this would not be as effective as our preferred option in achieving the outcomes, as it does not specify the precise purpose for which the Commissioner is seeking advice, nor how the Commissioner should use that advice. In addition, a threshold for "as necessary" would be difficult to define and operationalise. That is turn could result in more or less expert advice being sought than needed, which could have impacts on effectiveness, efficiency and certainty.

Who should the 'evidential burden' fall on in consent applications?

214. Related to the above, it is important to ensure that the 'evidential burden' – the obligation to produce sufficient evidence that an activity meets the requirements of the Act– falls on the appropriate party.

215. At present, the applicant is not required to provide supporting ecological (or other) advice to inform their application. DOC provides ecological advice from within its operating budget and LINZ often commissions and pays for other external advice to assist with decision-making, so there is no cost to the applicant. The evidential burden is therefore on the decision-maker to both provide the evidence about whether an activity is appropriate and also make a decision.

216. This is unusual compared to other consent regimes. For example, the RMA requires applicants to provide an assessment of environmental effects with their application to the consenting authority. There is a legislative requirement on applicants to provide this information in sufficient detail to satisfy the purpose for which it is required (i.e. assessing the application). The Conservation Act also requires applicants by legislation to include particular information in concession applications, including about the potential effects of the activity.

Recommendation – the evidential burden of providing expert advice should fall on the applicant

217. Our view is that the evidential burden (and risk) should be on the applicant to show that the proposed activity is consistent with the outcomes. This would require applicants to ensure their applications provide sufficient information depending on the nature/scale/potential impacts of the activity they want to undertake. This option would mean that the applicant is required to commission and pay for the necessary advice. However, one issue with this approach is that it might affect the independence of the advice provided.

218. A set of minimum requirements for consent applications would be needed if this option is pursued (similar to Schedule 4 of the RMA). This could be specified in regulation and the Commissioner could have the ability to push back an application if it is deemed insufficient.

219. To mitigate the risk of applicants providing biased advice, LINZ would need to develop capability in how to assess expert advice (similar to the type of training that consent managers in local government would undertake). The Commissioner should also have the ability to commission further advice where required (for example, where the application standard is met, but LINZ and DOC do not have the required in-house expertise, or where the Commissioner considers further information is needed to satisfy themselves that the activity is consistent with the outcomes).

Other options

220. Another option could be for the Commissioner to commission any advice required, as per the status quo, and recover the cost of this. In this case, the applicant would follow the standard application process. This would give the Commissioner better visibility over the quality and independence of advice commissioned. However, the evidential burden (and risk) of showing that the activity is consistent with the outcomes would remain on the Commissioner, who is also the decision-maker.

What should DOC's role be in the process?

221. Many submitters want DOC to play a more central role in the discretionary consents process. Some submitters thought that that the quality and consistency of DOC's advice had historically varied and that advice on inherent values was too often provided by relationship managers as opposed to technical experts. There were also instances identified of LINZ and the Commissioner granting consents contrary to the DGC's advice. One recommendation was that the legislation should require advice from DOC's technical experts (rather than from the DGC) and that decisions by the Commissioner should be required not to contradict or go against this advice.

Recommendation: Do not change the status quo requirement for the Commissioner to consult with the Director-General of DOC when making a decision on a discretionary action

222. We do not consider there is a need to change the status quo requirement for the Commissioner to consult with the Director-General of DOC when making a decision on a discretionary action. We also do not think that it is necessary to require the Commissioner not to contradict this advice as a new outcomes statement that prioritises natural and cultural values, coupled with a requirement for the Commissioner to act consistently with those outcomes, will ensure that the appropriate weight is given to DOC advice.

223. However, we agree that there is merit in further exploring options for giving the Commissioner the ability to require specific types of advice (e.g. technical advice) from DOC. We will provide you with further advice on this if you wish to explore this option further.

224. We also note that there is some tension between DOC's dual roles as both an ecological/conservation expert and an advocate in the decision-making process. Currently, the Commissioner is required to consult with the Director-General of Conservation – however, in practice, the DGC or his/her delegate's response is largely informed by DOC's in-house expert advice. It is important for these two roles to be distinguished. However, we consider that this can be done through clear operational guidance and agreed ways of working between the two agencies.

What is the role of iwi in decision-making?

225. The role of iwi in the Crown pastoral land system is covered in more detail above. We have considered how this role might be operationalised in the discretionary consent process based on discussions we have had with Ngāi Tahu.

Recommendation: Iwi involvement in decision-making should be guided by the overarching obligation set in the Purpose statement of the legislation

226. We expect that this will involve all consent applications being referenced against known sites of cultural significance – this information would be supplied by the relevant iwi. Engagement triggers for LINZ could then be built in to consent processes (including filming permits and negotiation/proposal of covenants).

227. LINZ is also likely to have a role facilitating/connecting mana whenua with leaseholders/other consent applicants as appropriate. This would involve encouraging conversations about how proposed activities may impact or intersect cultural values, in addition to just referencing these in the application.

What role is there for public input to decision-making?

228. As discussed earlier, stakeholder involvement in the system could range from having input into individual discretionary consents decisions on leases to input at a 'whole of system' level (for instance, through input to monitoring and reporting processes, and guidance and standards-setting). Deciding on the right level of public involvement requires a weighing up of the increased transparency and public trust built through greater involvement against the likely increase in costs and decrease in the certainty of decision-making.

Recommendation - Require consultation on the development of regulations, and standards/guidelines that shape the decision-making process

229. Weighing up the factors above, we recommend that public participation in the system should be provided for at a "whole of system" level (for instance, through input to monitoring and reporting processes, and publically notified regulations, guidance and standards-setting) rather than in relation to individual decisions.

230. This would allow the public to have a say in how the system shapes decision-making and provide for transparency in how the legislation is operationalized. However, it would not duplicate existing opportunities for public engagement.

Other options

231. Another option would be to require the Commissioner to consult on significant individual applications. The definition of what meets the threshold for 'significant' could include consideration of issues such as the scale/potential impact/proposed location of the activity and the likely level of public interest in the activity.

232. This option would provide greater opportunity for the public to be involved in the decision-making process.

233. However, it would also be very difficult to develop a durable definition that could account for the wide range of circumstances, various locations and types/scale of activities given the diversity of the pastoral estate. This option is also likely to have significant efficiency implications (consultation and appeal processes are costly and time-consuming) and could duplicate RMA public notification processes for significant activities.

234. Another option could be to provide for a public right of rehearing on 'significant' discretionary consent decisions (see earlier discussion). This provides greater accountability in that the public have a chance to hold the decision-maker accountable for decisions (as opposed to just having a chance to provide input via consultation), but this option has similar issues in terms of time and cost requirements, difficulty of defining a threshold, and effects on the certainty and efficiency of decision-making.

235. It should be noted that changes we are proposing elsewhere in the system, including the publication of detailed decision summaries, should help to increase the transparency of, and public trust in, the system. In our view, this should lessen the need for public involvement in decision-making on discretionary consents.

What place should farm plans have in decision-making?

236. Our view is that farm/property management plans could support the leaseholder/Crown relationship and may also play a role in the discretionary consent application, monitoring and other processes in the future. It would therefore be useful to have some mechanisms enabling them to be taken into account or used in these processes, at the Commissioner's discretion.

Recommendation – Enable the Commissioner to require management plans in decision-making

237. We recommend that the legislation enables the Commissioner and leaseholder to agree a plan for the management of part or all of a pastoral property, and that this is set out as a relevant consideration in the discretionary consent decision-making process.

238. We also recommend that the Commissioner is able to require a management plan where he/she is concerned about the management of the lease (for example, the cumulative impacts of multiple minor applications, or whether the leaseholder is meeting good husbandry requirements). This would also enable the Commissioner to correct non-compliance or repair unauthorised degradation of land as an enforcement mechanism.

Alternative option

239. An alternative option is to make plans mandatory (through either legislation or regulation). However, this would impose significant costs on leaseholders with potentially limited benefit over our preferred option. Stakeholders have also noted the impartiality of mass development of farm plans due to the limited number of expert resource available to do this.

What fees and charges should be in place?

240. The discussion document proposed that the fees and charges framework be updated to enable fees to be charged for the Commissioner to consider all classes of discretionary consents, including stock exemptions and those activities listed in sections 15 and 16 of the CPLA.

Recommendation: provide for a fee-enabling power in the legislation

241. We recommend providing for a fee-enabling power in legislation to allow these discretionary consents to be charged for in the future.

Improving system information, performance and monitoring

What was proposed?

243. Proposal 7 in the discussion document was to require the Commissioner to regularly report against a monitoring framework. The discussion document asked for feedback on what information is needed about Crown pastoral land to ensure it is effectively managed.

What do submissions say?

244. There is general support for improving the information that the Crown holds about the state of Crown pastoral land. Some submitters argue that that enhanced monitoring can be achieved under the current legislative framework, provided LINZ has enough capacity and capability. However, other submitters argue that establishing a monitoring system in legislation is important.

245. Submitters suggest a number of different aspects of the land that should be monitored to assess what outcomes are being delivered, ranging from natural and cultural values to pest and weed management practices and the creation of job opportunities. Some submitters focused on the costs of monitoring with leaseholders arguing that the Crown should pay the costs of any increased monitoring.

246. Multiple submitters noted that there appeared to have been a lack of enforcement by LINZ in the past and that firm disciplinary action is needed where breaches are found. A number of additional enforcement mechanisms were recommended. However, leaseholders argued that too much focus on regulation and enforcement would undermine a partnering approach between the Crown and leaseholders.

What is LINZ's advice?

247. Based on feedback and further analysis, our thinking has focused on:

- what a monitoring framework would look like and who should be responsible for what monitoring within the system
- how data should be collected
- what further enforcement options might be needed.

What should a monitoring framework look like?

248. Currently, monitoring of Crown pastoral land is focused on legal and on-the-ground compliance with the terms of the lease and any consents granted. To understand how the system is performing against the outcomes (not just who is complying with lease and consent requirements), there will need to be a greater focus on monitoring the natural and physical health of the land.

249. Based on the articulation of the roles and responsibilities above:

- both LINZ as the system owner, and the Commissioner as the landowner will have monitoring roles within the system
- the Commissioner would remain responsible for monitoring whether leaseholders and other applicants are complying with the terms of the lease and any consents granted, as well as monitoring the state of the estate. Further funding was allocated in Budget 2019 to increase

the frequency of visits to properties to ensure that leaseholders are meeting their good husbandry requirements

- the responsibility for assessing how the system is performing against the outcomes is a role for LINZ as the system owner and will be a new monitoring requirement going forward to support the reporting requirements.

250. The information collected by the Commissioner in regard to leaseholders' performance in managing the land and on the general state of the land will be a key input to report on the system as a whole - however a much a broader range of information will also be required. This will need to draw on other information sources such as regional councils, environmental reporting, or information collected by the Ministry for Primary Industries.

251. As part of the development of a monitoring framework, a series of indicators will be identified and a performance framework developed. In order to monitor and report on the performance of the system outcomes a baseline will need to be established.

Recommendation – LINZ is required to regularly update and release a monitoring framework and to report on the overall performance of the system

252. In regard to LINZ's monitoring of the system, our recommended option is that the legislation requires LINZ's CE to regularly update and release a monitoring framework for, and to report on, the overall performance of the system. The frequency and detail of reporting would be further specified in the secondary legislation. The exact aspects of the system that would be monitored would be set by the LINZ CE in standards, and LINZ would outline how the information would be collected. Our view is that this would provide a good balance between ensuring that a robust monitoring framework is put in place, but leaving enough flexibility for this framework to change over time as new technology is available and greater emphasis is placed on different factors.

253. We consider that the Commissioner's current role in monitoring the performance of leaseholders and compliance with consents and the general condition of the land/estate is appropriately provided for already. However, it is likely that the Commissioner will need to increase the frequency and intensity of this monitoring to ensure that there is an appropriate level of understanding of the level of compliance and performance of leaseholders, and to provide an information base to support the overall monitoring of the system by LINZ.

Other options

254. Other options we considered included:

- specifying the details of the monitoring framework in legislation – however this would significantly reduce the ability of the framework to change over time as needed
- not specifying any reporting requirements in legislation- this would make it less likely robust monitoring would take place on a regular basis.

What further enforcement options might be needed?

255. The CPLA provides limited enforcement options where a breach in the conditions of a lease or consent is confirmed. There are two statutory mechanisms available:

- *Legal action* - Section 19 of the CPLA provides that the Commissioner may apply to the District Court for the examination of any alleged breach. If the District Court is satisfied that a breach has been committed, it may order the leaseholder to remedy the breach and/or pay exemplary damages of up to $50,000. The Court also has the power to declare the lease forfeit and award costs and damages. Legal action may be considered appropriate when the

matter is sufficiently serious to warrant the intervention of the courts under the CPLA. The Commissioner will seek advice from the Solicitor-General before undertaking any action.

- *Lease forfeiture* - A lease can be declared forfeit under section 145 of the Land Act 1948 This is where the Commissioner has reason to believe that a leaseholder is not fulfilling the conditions of the lease in a bona fide manner according to their true intent and purport, on the grounds set out in section 145.

256. There are then a number of non-statutory tools available, including information provision, written direction, and a written warning.

257. With increased monitoring – both on the ground and at an outcomes level, there is an assumption that more instances of non-compliance may be identified. While LINZ's focus on developing stronger on-the-ground relationships is likely to help ensure greater compliance over time, it will be important to ensure that there is an adequate range of tools to deal with any breaches.

258. We are currently looking at a range of possible additional enforcement tools including:

- the use of farm plans as discussed above
- infringement systems - these are widely used by other operational agencies. Infringement systems are likely to provide greater deterrence for non-compliant activities. However, there is a risk that introducing an infringement regime may be seen by leaseholders as working against a collaborative relationship between leaseholders and the Crown. In addition, while issuing infringement notices is relatively low cost, significant costs can be incurred when notices are challenged, as well as the costs associated with unpaid infringements.

259. We will report back to you shortly with recommendations.

Summary of recommendations

Overarching issues	
Roles and responsibilities	
What are the different roles played by the Crown in the system? *This approach has shaped our recommendations in other aspects of the system.* **p.6**	**Recommendation: Clarify the roles and responsibilities within the system** We have identified four particular roles that the Crown plays in the regulatory system, and considered who should "own" those particular roles: • *As system owner*, working to ensure that the system as a whole functions in a way that is consistent with the desired outcomes (both through system design and implementation) – this would be a role for **LINZ** • *As decision-maker*, ensuring that decision-making powers and functions are exercised in accordance with the legislation (including the outcomes as set down in legislation) – this would be the role of the **Commissioner** (assuming the Commissioner remains the decision-maker – see below) • *As landowner and lessor*, ensuring that the Crown's ownership interest in the land is maintained and properly administered – this would be the role of the **Commissioner** • *As Treaty partner*, working in partnership with iwi on both the design and operation of the system as a whole – this would be the role of **LINZ**, the **Commissioner** and the **Minister** given the approach to iwi relationships set out below.
Should the Commissioner still be the decision-maker? **p.6**	**Recommendation: Retain the Commissioner role** Our recommendation is that a statutory officer is still an appropriate decision-making mechanism on the basis that: • other options considered are not likely to significantly improve effectiveness or transparency (when other proposed changes are taken into account), and may reduce efficiency and certainty, compared to a single statutory decision-maker • stakeholder concerns around the lack of transparency and accountability associated with the Commissioner can be addressed through other means – for instance clarifying accountability arrangements and increasing transparency and public involvement in the system • there is good reason to retain the functions of lessor and decision-maker in the Commissioner of Crown lands. The Commissioner is seen by leaseholders as a long-standing and valuable role, and as underpinning the Crown-leaseholder relationship – which is a key part of the system (see discussion below)
	Alternative option(s) • Shifting the powers and functions of the Commissioner to the Chief Executive of LINZ, with the ability to delegate powers/functions as necessary • Returning to a Land Settlement Board to act as lessor and decision maker on Crown pastoral land • Giving the powers and functions of the Commissioner to the Minister for Land Information

Should the Commissioner take on different/additional functions and powers? **p.8**	**Recommendation: Enable the Commissioner to take on a limited advocacy role** On balance, our recommendation is that the Commissioner should take on a defined advocacy role, and that this should be articulated in the legislation.
What should the role of the Minister be in decision making? **p.8**	**Recommendation: The Commissioner should not be required to consider Ministerial priorities when they carry out their powers and functions** Our recommendation is that the Commissioner should not be required to consider Ministerial priorities when they carry out their powers and functions, as this could reduce certainty and transparency, and there are no clear checks or balances. Instead, the Minister can help to ensure the system is delivering on the outcomes through a number of other existing and proposed additional mechanisms including the setting of regulations and expectations for how LINZ operates.
Relationships	
How should we reflect the Crown-leaseholder relationship in the system? *This approach has shaped our recommendations in other aspects of the system.* **p.9**	**Recommendation: Recognise the importance of the Crown-leaseholder relationship through operational changes and acknowledgement in the Purpose statement in the Act** We recommend that the importance of the Crown-leaseholder relationship can be recognised in two ways: • through many of the current or planned operational changes – noting that much of the strength of the relationship with leaseholders will be determined by LINZ's capability and capacity to implement these system changes in an effective way • through explicit acknowledgement of the need for a strong, ongoing partnering relationship with leaseholders in the legislation in the Purpose statement in the Act.
How should we reflect the Crown-iwi relationship in the system? *This approach has shaped our*	**Recommendation: Take into account the principles of the Treaty when specified powers or functions are being exercised** We recommend that: • the Purpose statement in the Bill includes a sub-section that creates a duty to take into account the principles of the Treaty when specified powers or functions are being exercised. • Include a clause to empower the establishment of ongoing relationships, which can be supported by operational policy, is a more flexible and enduring approach. This would include facilitating and/or supporting any relationships between mana whenua and leaseholders,

recommendations in other aspects of the system. **p.10**	where appropriate. **We are still working through potential approaches with Te Rūnanga o Ngāi Tahu.**
	Alternative option(s) • A clause requiring the principles of the Treaty to be "given effect to" • A clause requiring the principles of the Treaty to be "had regard to"
General Policy Statement **p.13**	**Recommendation: Use the General Policy Statement to set out the Treaty relationship** Use the General Policy Statement to set out that the Treaty relationship is between Iwi and the Crown (and not with lessees and to state (recognise) the connection of tangata whenua to the land and the resources on it, and the desire of the Crown and Iwi for different outcomes from the Treaty relationship in the future.
	Alternative option(s) • a clause in the Purpose statement • use of a Preamble setting out the relationship and desired outcomes • lock in the three-tier approach in legislation
How should the broader public be involved in the system? *This approach has shaped our recommendations in other aspects of the system.* **p.14**	**Recommendation: focus public participation at a whole of system level** Looking across the proposals, our overall view is that: • the proposals to increase transparency and accountability in the system set out below will help to address some of the concerns behind the desire for more public involvement in decision-making • beyond this, the net benefits of increased public participation in the process are likely greatest at a 'whole of system' level (for instance in inputting to standards and guidance) as opposed to an individual decision-making level.
Other overarching issues	
[s 9(2)(h)]	[s 9(2)(h)]

[redacted]	[redacted] [s 9(2)(h)]
Are any extra tools to protect inherent values needed? **p.16**	**Recommendation: DOC should take a more proactive property-specific approach to protection** We recommend that DOC should take a more proactive property-specific approach to protection, in partnership with the relevant landowner/occupier. There are no legislative impediments stopping DOC from doing this. LINZ and the Commissioner can support DOC in such a process but are not best placed to lead the process. A key element of supporting the process would be through partnering with leaseholders who choose to put in place greater protection of inherent values on the land.
	Alternative option(s) • Creating a right of first refusal – requiring leaseholders to offer either the whole lease or parts of the lease to DOC prior to a transfer. However, this option is likely to result in expensive whole-lease purchases to protect parts of the lease with inherent values • Requiring the Commissioner to financially incentivise protection – through reducing the rents that leaseholders would pay if they protect land. This option would require changes to the rents system which is out of scope, and would impact on the Crown's ability to secure a fair rate of return. It would also be difficult to implement and monitor • Creating a new protection process to be run by the Commissioner – requiring the Commissioner to consider the need for additional protection of inherent values when conducting monitoring and to work with leaseholders and protection mechanism providers (e.g. DOC and/or QEII National Trust) to try and reach agreement on ways to protect that land.
Are changes to enhance access needed? **p.17**	**Recommendation: Enable the Commissioner to consider recreational values in some decisions/Build operational connections with WAC** We recommend that the Commissioner should be required to consider public access to the land for the purposes of recreation, subject to the outcomes when making decisions to either: • agree to the Leaseholder signing any access agreement, or • grant or agree to an access easement (with leaseholder agreement). In addition, we recommend that LINZ and the Commissioner should focus efforts on the role of WAC in providing Walking Access Easements providing they are agreed to by both the leaseholder and Commissioner. This includes influencing WAC to build a public consultation process to identify where public access over land (private, public, and leased public land) is desirable and to support the implementation of Walking Access

	Easements across pastoral lease land with the support of leaseholders and the Commissioner.
	Alternative option(s) • Requiring LINZ or the Commissioner to financially support leaseholders who provide access – which would involve helping fund infrastructure of tracks, or advocating for leaseholders to receive financial support from other avenues. • Creating a new process for public consultation around the Commissioner's use of s60 Land Act to create access easements – where the Commissioner would be required to accept applications from any person for an easement under s60 of the Land Act and follow a process including consultation with iwi, leaseholders, and the public.
How should the Crown pastoral land regulatory system align with other regimes? **p.18**	**Recommendation: Improve alignment between the RMA and the CPLA through operational improvements** Our view is that, while the RMA and CPLA are superficially similar, they are very different systems: • The RMA is based on the principle of sustainable management of resources, and involves considering effects of activities on the environment now and in the future. The RMA applies to all land, including Crown pastoral land. Under the RMA, activities involving the use of land, and the taking or discharge of water or discharges of contaminants to soil, water or air, as well as management of soil erosion, are managed through a combination of provisions in district and regional council plans (and resource consents issued under those plans). • The Crown pastoral land system specifically protects the Crown's property right interests in Crown pastoral land, providing an additional level of protection above and beyond the RMA regime. In its advice to LINZ, LDAC notes that, while there is some overlap between the regimes, a different regime is needed as there are specific outcomes intended for the management of high country pastoral land associated with the Crown's role as lessor. However, there are ways in which the regimes could work better together at an operational level – for instance by improved agency alignment across central and local government such as in the Mackenzie Basin agency alignment work. The operational phase of the project will therefore look at solutions to increase alignment or reduce duplication across these two regulatory systems

Articulating outcomes for stewardship of Crown pastoral land	
How should the historic and cultural context be set? **p.20**	**Recommendation: Set out historic and cultural context in the General Policy Statement** Based on advice from LDAC and Te Arawhiti, we recommend that we set out this historic and cultural context in the General Policy Statement accompanying the Bill. While this will not form part of the new Act, it will be a key part of the Parliamentary record for the Bill.
What should the statement of the overarching purpose of the Act contain? **p.21**	**Recommendation: Update the overarching purpose statement** Our recommendation is therefore to redraft the overarching purpose statement so it acknowledges that the purpose of the regulatory system is to: *administer activity on, Crown pastoral land in a way that ensures that the natural landscapes, indigenous biodiversity and cultural and heritage values of this land are secured and safeguarded for present and future generations*
How would the outcomes guide decision making?	
What should the outcomes cover? **p.22**	**Recommendation: Amend the outcomes to include consideration of cumulative impacts** Our recommendation is therefore that the outcomes: • are not expanded to include the heritage and ongoing stewardship of leaseholders or recreational and access values • are expanded to include consideration of cumulative impacts.
	Alternative option(s) The outcomes could cover: • the heritage and ongoing stewardship of leaseholders • recreational and access values
How should the outcomes be framed? **p.22**	**Recommendation: Amend the outcomes to clarify some terms** We recommend: • using the term "inherent values" in place of "natural capital, and cultural and heritage values". The term is understood and defined in the CPLA, and includes historical and cultural, and scientific values. However, the definition would need to be further refined to explicitly exclude recreational values and clarify that historical and cultural values do not include pastoral farming

	• that the phrase "that support economic resilience and foster the sustainability of communities" is removed, as it unnecessarily restricts assessment of potential pastoral and non-pastoral activities • including consideration of broader impacts, which would be defined. Broader impacts could, for example, include cumulative, cross-boundary, ecosystem or landscape scale effects or impacts, climate change and recovery periods • retaining the current "maintain and enhance" wording.
What would the outcomes apply to? **p.23**	**It may well be that applying the criteria set out in the outcomes may not be appropriate in relation to all decision-making functions. We are working through this issue and will report to you on it in more detail.**

Ensuring decision-making is accountable and transparent	
What accountability mechanisms should be used? **p.26**	**Recommendation: Strengthen existing accountability mechanisms** Given the above, LINZ's recommendation is to clarify and strengthen existing accountability mechanisms, rather than creating an entirely new accountability mechanism (a SPE). This would involve including the following in the legislation: • A requirement for the Commissioner to report annually to the Minister on the exercise and performance of their statutory powers and functions in relation to Crown pastoral land • An affirmation of the LINZ CE accountability obligations under s33-37 of the Public Finance Act (to report on the powers and functions of statutory officers like the Commissioner who are fully funded by a departmental appropriation) • A requirement for an annual agreement of expectations and resourcing between the LINZ CE and the Commissioner
	Alternative option(s) • Requiring the Commissioner to create and report against a SPE at the request of the Minister for Land information (via a Letter of Expectations). • Developing a bespoke accountability framework based on the Crown entity accountability framework.
How should guidance and standards be used? **p.28**	**Recommendation: Add the minimum secondary legislation required to implement the regulatory change** Add in the minimum secondary legislation powers that are necessary to implement the legislation and deliver a transparent and accountable system for Crown pastoral land.
	Alternative option(s) • Creating fees setting powers and implementing statutory standards and directives. This would restrict the ability to set regulations for Crown pastoral land to fees for cost recovery. The proposals in the discussion document (Annex 3) are all included in this option. • Creating broad regulation setting powers and implementing statutory standards and directives. This option would seek to provide a broad regulation setting power covering decisions on discretionary consents, monitoring of consents, setting fees, and any other functions or duties of the Commissioner.
What are other ways to increase transparency? **p.29**	**Recommendation: Publish detailed summaries of decisions for each relevant decision** LINZ's recommendation is that the Commissioner be required to publish a detailed summary of each discretionary consent/recreational permit/rehearing decision (under the current s18 of the CPLA and s17 of the Land Act) within 20 working days of the decision covering: • which pastoral land a decision was made for • what activity the decision allows the leaseholder (or other person) to undertake, and how long they are allowed to undertake that activity • the land area affected by the activity

	• any specific conditions attached to the consent • what factors the Commissioner considered when making the decisions (e.g. how the activity contributed to the outcomes).
	Alternative option(s) • *Publishing summaries of decisions* – this would provide minimal information and is unlikely to satisfy public expectations for transparency • *Publishing individual decisions* – this would require the processing and release of significant information

Making decisions that give effect to the outcomes	
How should the Commissioner be bound by the legislation?	
How should the Commissioner be bound by the legislation? **p.32**	**Recommendation – Promote achievement of, or act consistently with and seek to further, the outcomes** Our recommendation is that the legislation should require the Commissioner to promote the achievement of the outcomes, or to act consistently with and seek to further the outcomes.
	Alternative option(s) • Require the Commissioner to give effect to a set of outcomes in any discretionary consent decisions
How can we make the discretionary consents process more outcome-focused? **p.33**	**Recommendation: set classes of activities to reflect their likely scale/risk** We recommend setting classes of activities to reflect their scale/risk profile. This approach would help LINZ to target its efforts and resources where they will have the most impact, leading to more effective decisions on high risk activities. It could also help to streamline the process and improve efficiency in some cases – in particular, for leaseholders wanting to undertake pest control and minor maintenance activities
What is the role of other tools in supporting decision-making? **p.34**	**Recommendation: Do not provide additional tools for offsetting in legislation** We do not consider that additional tools to provide for offsetting are required in order to enable decisions that are consistent with the outcomes – in particular, we do not consider that providing for a process of offsetting can be consistent with a hierarchy of outcomes that prioritises natural values. Rather than providing for specific tools in legislation, we consider that any issues around considering the overall impact of decisions are provided for through clear direction in standards and guidelines.
Should we change the rehearings process? **p.34**	**Recommendation: Do not change the rehearing process** On balance, our recommendation is to not change the rehearing process, aside from requiring that detailed summaries of decisions are released publicly, as discussed earlier. However, we can do further work on any of these options if you wish. In addition, we propose looking at the possibility of introducing an external audit function to regularly assess whether the Commissioner's decisions are being made in accordance with the legislation.
	Alternative option(s) • using a board to support the Commissioner's decision-making in the rehearing process • making the board the sole decision-maker

	• widening who can seek a rehearing
How should expert advice inform decision-making?	
What obligation is on the Commissioner to seek expert advice? **p.36**	**Recommendation: Require the Commissioner to seek expert advice in order to satisfy themselves that the proposed activity is consistent with legislative requirements.** We recommend that the legislation should require the Commissioner to seek expert advice in order to satisfy themselves that the proposed activity is consistent with legislative requirements (including the outcomes). This places an onus on the Commissioner to obtain the right types of advice. The Commissioner would also then be responsible for clarifying whether input provided by DOC to the decision-making process was as part of the requirement to consult them, or as providers of expert advice.
	Alternative option(s) Other options include the proposal in the discussion document to require the Commissioner to obtain expert advice "as necessary."
Who should the 'evidential burden' fall on in consent applications? **p.36**	**Recommendation: the evidential burden of providing expert advice should fall on the applicant** Our view is that the evidential burden (and risk) should be on the applicant to show that the proposed activity is consistent with the outcomes. This would require applicants to ensure their applications provide sufficient information depending on the nature/scale/potential impacts of the activity they want to undertake.
	Alternative option(s) • Require the CCL to commission any advice required, as per the status quo, and recover the cost of this. In this case, the applicant would follow the standard application process. This would give the CCL better visibility over the quality and independence of advice commissioned.
What should DOC's role be in the process? **p.37**	**We will provide you with further advice on this if you wish to explore this option further.** We do not consider there is a need to change the status quo requirement for the Commissioner to consult with the Director-General of DOC when making a decision on a discretionary action. We also do not think that it is necessary to require the Commissioner not to contradict this advice as a new outcomes statement that prioritises natural and cultural values, coupled with a requirement for the Commissioner to act consistently with those outcomes, will ensure that the appropriate weight is given to DOC advice. However, we agree that there is merit in further exploring options for giving the Commissioner the ability to require specific types of advice (e.g. technical advice) from DOC.
Other considerations	
What is the role of iwi in decision-making? **p.38**	**Recommendation: Iwi involvement in decision-making should be guided by the overarching obligation set in the Purpose statement of the legislation** We expect that this will involve all consent applications being referenced against known sites of cultural significance – this information would be supplied by the relevant iwi. Engagement triggers for LINZ could then be built in to consent processes (including filming permits and

	negotiation/proposal of covenants). LINZ is also likely to have a role facilitating/connecting mana whenua with leaseholders/other consent applicants as appropriate. This would involve encouraging conversations about how proposed activities may impact or intersect cultural values, in addition to just referencing these in the application.
What role is there for public input to decision-making? **p.38**	**Recommendation: Require consultation on the development of regulations, and standards/guidelines that shape the decision-making process** Weighing up the factors above, we recommend that public participation in the system should be provided for at a "whole of system" level (for instance, through input to monitoring and reporting processes, and publically notified regulations, guidance and standards-setting) rather than in relation to individual decisions. This would allow the public to have a say in how the system shapes decision-making and provide for transparency in how the legislation is operationalized. However, it would not duplicate existing opportunities for public engagement.
	Alternative option(s) • Require the Commissioner to consult on significant individual applications. The definition of what meets the threshold for 'significant' could include consideration of issues such as the scale/potential impact/proposed location of the activity and the likely level of public interest in the activity. • Provide for a public right of rehearing on 'significant' discretionary consent decisions (see earlier discussion).
What place should farm plans have in decision-making? **p.39**	**Recommendation: Enable the Commissioner to require management plans in decision-making** We recommend that the legislation enables the Commissioner and leaseholder to agree a plan for the management of part or all of a pastoral property, and that this is set out as a relevant consideration in the discretionary consent decision-making process. We also recommend that the Commissioner is able to require a management plan where he/she is concerned about the management of the lease (for example, the cumulative impacts of multiple minor applications, or whether the lessee is meeting good husbandry requirements). This would also enable the Commissioner to correct non-compliance or repair unauthorised degradation of land as an enforcement mechanism.
	Alternative option(s) • Make plans mandatory (through either legislation or regulation). However, this would impose significant costs on leaseholders with potentially limited benefit over our preferred option. Stakeholders have also noted the impartiality of mass development of farm plans due to the limited number of expert resource available to do this.
What fees and charges should be in place? **p.40**	**Recommendation: provide for a fee-enabling power in the legislation** We recommend providing for a fee-enabling power in legislation to allow these discretionary consents to be charged for in the future.

Improving system information, performance and monitoring	
What should a monitoring framework look like? **p.41**	**Recommendation: LINZ is required to regularly update and release a monitoring framework and to report on the overall performance of the system** Require that the legislation requires LINZ's CE to regularly update and release a monitoring framework and to report on the overall performance of the system. The frequency and detail of reporting would be further specified in the secondary legislation. The exact aspects of the system that would be monitored would be set by the LINZ CE in standards, and LINZ would outline how the information would be collected. Our view is that this would provide a good balance between ensuring that a robust monitoring framework is put in place, but leaving enough flexibility for this framework to change over time as new technology is available and greater emphasis is placed on different factors. We consider that the Commissioner's current role in monitoring the performance of leaseholders and compliance with consents is appropriately provided for already. However, it is likely that the Commissioner will need to increase the frequency and intensity of this monitoring to ensure that there is an appropriate level of understanding of the level of compliance and performance of leaseholders, and to provide an information base to support the overall monitoring of the system by LINZ.
	Other options • specifying the details of the monitoring framework in legislation – however this would significantly reduce the ability of the framework to change over time as needed • not specifying any reporting requirements in legislation- this would make it less likely robust monitoring would take place on a regular basis.
What further enforcement options might be needed? **p.42**	**We will provide further advice on enforcement shortly.** We are currently looking at a range of possible additional enforcement tools including: • the use of farm plans as discussed above • infringement systems - these are widely used by other operational agencies. Infringement systems are likely to provide greater deterrence for non-compliant activities. However, there is a risk that introducing an infringement regime may be seen by leaseholders as working against a collaborative relationship between leaseholders and the Crown. In addition, while issuing infringement notices is relatively low cost, significant costs can be incurred when notices are challenged, as well as the costs associated with unpaid infringements.

Annex 1: Comparison of LINZ and Commissioner powers and functions

What part of system?	LINZ power or function as system owner	Commissioner of Crown Lands power or function as lessor and decision-maker
Overarching policy (administer legislation)	Administration of the Land Act 1948 (LA) and Crown Pastoral Land Act 1998 (CPLA), including policy advice on Crown pastoral land. LINZ Chief Executive has regulatory stewardship responsibilities under the State Sector Act 1988 (s32).	
Regulatory instruments & standards	Develop regulations to be promulgated by Governor General. e.g. regulations for Crown pastoral lease rents (s23N of CPLA). *Possible new regulation making powers are being considered*	
Operational policy/ service design	Guidance and processes for LINZ staff managing Crown pastoral land, and supporting the Commissioner.	Set out rules for LINZ and/or leaseholders to ensure the Commissioner can carry out their functions.
Service delivery	Service delivery, such as: • receiving and advising on any applications, • liaison with DOC, and iwi, and other parties when needed (sometimes this is a Commissioner's function) • administrative and IT support LINZ staff also carry out the following : • any investigations following monitoring reports, • provision of support on any enforcement action • ongoing improvement of service delivery for efficiency *Possible new powers/functions are being considered*	Discharge the functions of the board and Commissioner under LA and CPLA. Commissioner's functions are set out in LA,s24. Specific functions in relation to Crown pastoral land: • Decide on activities/easements/recreation permits (CPLA, s18) • Approve or decline transfers of pastoral lease (LA, s89) • Determine boundary dispute or adjustments to lease (CPLA s20 & s21) • Grant easements over land (LA, s60) • Exercise trespass rights over unalienated pastoral land (LA, s176) • Approve any surrender of all or part of lease or licence (LA, s145) • Grant exemption from residence requirements (LA, s97) *Possible new powers/functions are being considered*

What part of system?	LINZ power or function as system owner	Commissioner of Crown Lands power or function as lessor and decision-maker
Educate/ inform	*Possible publishing of decisions function*	*Possible new advocacy function.* *Possible publishing of decisions function*
Compliance/ enforcement	Conduct lease inspections and monitoring (with Commissioner's approval) as needed to provide information to the Commissioner. Ensure appropriate compliance and enforcement tools are available, provide support for Commissioner to use tools when necessary.	Use Compliance and enforcement tools: • Approve inspect lease (LA, s26) • Take action for breach of lease or conditions (CPLA, s19)
Disputes	Support Commissioner in rehearings and judicial proceedings	Decide on Rehearings of consents (LA, s17) Act in relation to any judicial proceedings
Monitor/ evaluate system	Monitor outcomes of system and report on: • reporting on Crown pastoral land regulatory system (e.g. Annual Reports) • financial management for pastoral land (e.g. Estimates)	Monitoring of the land & consents Estate-level reporting Report on powers and functions (LA, s24AA)

Annex 2: Public involvement in the Crown pastoral regulatory system

Part of system	Current public involvement	Proposed public involvement	Summary of changes	Possibility of more public involvement
Treaty	No specific requirements	No specific public involvement but propose to have a broader duty to consider Treaty implications for more decisions made by Commissioner and LINZ CE, and Treaty partners will get to shape any statement of expectation or 'policy' that the Commissioner/LINZ CE must have regard to	Increase for Treaty partners.	
Discretionary consents	Public participation is not provided for	(recommended option) Require consultation on the development of regulations, and standards/guidelines that shape the decision-making process. This could include, for example, classification of activities and the CME strategy.	Increase in public involvement on overarching system components. No increase on individual decisions.	Option to add public consultation on individual consents, could be restricted to consents above a certain threshold.
Rehearings & appeals	Only notified persons are able to request rehearings. Anyone can seek a Judicial review of the exercise of a statutory power.	(recommended option) Retain status quo	No changes	Could increase rehearing rights and allow the public to request a rehearing. However, this could create significant administrative costs and time delays.
Monitoring & Enforcement	No specific requirements	(recommended option) Public involvement in the development of the	Invite public involvement in establishing monitoring framework	

Part of system	Current public involvement	Proposed public involvement	Summary of changes	Possibility of more public involvement
		monitoring framework		
Access and protection issues	No specific requirements	Possible option for the Walking Access Commission (WAC) to be responsible for public consultation on where access over Crown pastoral land is desirable. WAC could then leadnegotiations with leaseholders and Commissioner on whether they will agree to access. WAC would need to be resourced to carry out this role, but would not require legislative change Also option to influence DOC to build processes around the use of NHF to build public process for the use of protection mechanisms over inherent values on Crown pastoral land.	Possible creation of consultation processes led by WAC or DOC to identify where access or protection are desirable. No guaranteed outcomes from those processes.	Could influence WAC or DOC to have larger public process
Treaty	No specific requirements	No specific public involvement but propose to have a broader duty to consider Treaty implications for more decisions made by Commissioner and LINZ CE, and Treaty partners will get to shape any statement of expectation or 'policy' that the Commissioner/LINZ CE must have regard to	Increase for Treaty partners.	

24 June 2019 BRF 19-420

MEMORANDUM

Hon Eugenie Sage, Minister for Land Information

HIGH COUNTRY ADVISORY GROUP'S FEEDBACK ON CROWN PASTORAL LAND POLICY THINKING

Purpose statement

1. To provide you with the High Country Advisory Group's feedback on initial Crown pastoral land policy thinking.

Actions required

2. **Note** the High Country Advisory Group's feedback.
3. **Note** that the Group's next meeting is on 21 August 2019. The timing and progress of policy decisions will determine the focus of this meeting.

Background

4. At its most recent meeting on 23 May 2019, the High Country Advisory Group agreed to provide you with consolidated feedback for your consideration as part of the Crown Pastoral Land Act reform work. This feedback is attached in **Appendix 1**.

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Land Information New Zealand
Toitū te whenua

BRF 19-420

Appendix 1: High Country Advisory Group's feedback on initial Crown Pastoral Land policy thinking for Minister for Land Information

High Country Advisory Group feedback on initial Crown Pastoral Land policy thinking for Minister for Land Information – 24 June 2019

Context: At **its most recent meeting on 23 May 2019 the Group agreed to provide consolidated feedback to the Minister for Land Information for her consideration as part of the Crown Pastoral Land Act reforms work. The feedback on the initial policy thinking LINZ provided to the Group is set out below.**

The Group were broadly in agreement that:

- **Simple, clear, and methodical** process and language are important for the outcomes statement and direction to decision-makers to achieve the outcomes.
- The **outcomes statement** needs to be sharper. It is currently not clear how much change is envisaged – either to the protection of inherent values or the property rights of lessees.
- The identification of an **appropriate baseline** is paramount to make the right decisions – for example, whether the Crown is seeking maintenance of the status quo or restoration.
- The **discretionary consent process** needs to respond to the specifics of each individual property.
- The consent process is reactive and there is a **gap for proactive tools** to work with leaseholders. Other tools, support and resource (for example, better monitoring information) were necessary to sit alongside regulation.
- Some form of **public scrutiny of decision-making** is important. This should take into account the difference between transparency and accountability, and the implications for the efficiency and certainty of decision-making. The Group recognised that transparency and having the right information in front of decision makers is important, but this is not necessarily the same as greater public involvement. Instead, the nature of public involvement needs to be considered carefully. There was a divergence of views as to the appropriate mechanism for public scrutiny:
    - Input into the framework for decisions (regulations, standards/guidance);
    - Input on significant consent decisions;
    - A public appeal right on decisions; and/or
    - Another external scrutiny mechanism.
- Appropriate **recognition of the Treaty partnership** is important. The Crown and iwi need to work out together what "giving effect to the principles of the Treaty" means in a Crown pastoral land context.
- **Capability building** and appropriate resourcing is vital for LINZ and DOC to successfully implement the changes.

Other topics the Group discussed, but did not have a consensus view on, included**:**

- The **use of a hierarchy** in the outcomes statement and the degree to which this would impact lessees' property rights
- The amount of change needed to the **discretionary consents process** – particularly the nature of public involvement.
- Opportunities to **diversify land use**– for example, by undertaking conservation as the primary land use rather than restricting it to pastoral farming. Most Group members thought that conservation-driven land uses should be an option provided they are consistent with the outcomes, but others thought that removing the pastoral nature of the leases could have unintended consequences.
- The appropriate **role of lease management plans** – most Group members agreed that there was value in utilising management plans to support the achievement of the outcomes and build relationships with lessees. However, others were concerned that there may not be capacity among the relevant experts to create and maintain plans for all lessees.
- The **ecological sustainability of pastoralism** – some Group members thought that the sustainability of existing pastoralism in some areas was an issue and that the effects of most further development are likely to be adverse. Some thought that pastoral lessees had greatly improved the health of their land, and others thought that greater sustainability could be achieved by fostering systems that allow pastoralism, conservation, recreation and cultural values to co-exist.
- The importance of **LINZ and DOC staff** and contractors taking a holistic long-term view and working collaboratively with high country farmers.
- The acknowledgement of recreational access – some Group members thought that this could reasonably be included as an outcome while still respecting lessees' rights.

Land Information New Zealand
Toitū te whenua

To: Minister for Land Information

Briefing on implications of changes to Crown pastoral land regulatory system

Date	28 June 2019	**Classification**	In confidence
LINZ reference	BRF 19-431	**Priority**	High

Action sought

Minister	Action	Suggested Deadline
Minister for Land Information	**Discuss** the content of this briefing with officials on Monday 1 July	1 July 2019

LINZ Contacts

Name	Position	Contact number	First contact
Jamie Kerr	Acting Deputy Chief Executive Policy and Overseas Investment	021 819 826	☐
Sarah Metwell	Manager Policy	027 809 6953	☒

Minister's office to complete

1 = Was not satisfactory 2 = Fell short of my expectations in some respects 3 = Met my expectations
4 = Met and sometimes exceeded my expectations 5 = Greatly exceeded my expectations

Overall Quality	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5

Comments

☐Noted	☐Seen	☐Approved	☐Overtaken by events
☐Withdrawn	☐Not seen by Minister	☐Referred to:	

Purpose statement

1. This briefing provides LINZ's advice on issues that arise from the decision to end tenure review and from proposed further changes to the Crown pastoral land regulatory system, including:
   - the treatment of properties in tenure review at the date of enactment of legislation
   - funding of transitional arrangements for ending tenure review
   - the need for powers to enable decisions on the future use and tenure of pastoral land that is not under lease or licence
   - transitional arrangements for existing discretionary consents, and in-progress discretionary consent applications when the proposed legislative changes are enacted.
2. This briefing supplements our earlier options analysis and recommendation paper provided as an attachment to BRF 19-408. That paper included advice on options for enhancing access and protecting significant inherent values once tenure review ends.

Key messages

3. In advance of finalising the package of proposed changes to the Crown pastoral land regulatory system, we have been exploring how the new system might be implemented and what this means for transitional arrangements - this paper provides associated recommendations.
4. In relation to discretionary consents this has raised some issues that we would like to discuss with you on Monday 1 July and update you on our approach going forward. These issues are compounded by the absence of readily accessible overall data on existing discretionary consents across the Crown pastoral land estate.
5. In response to this we are collating information on discretionary consents over a sample of leases. We will provide you with additional advice once we have collated this information and obtained further legal advice on existing consents and property rights.

Recommendations

1. **Note** that officials want to discuss with you:
   a. the proposal to amend the current agreed transitional arrangements for tenure review
   b. the proposal to repurpose the current system for changing the use of Crown pastoral land not held under lease or licence
   c. possible approaches to transitional arrangements for discretionary consents, specifically:
      i. whether to maintain existing activity or to maintain the current state of inherent values
      ii. the future use of stock exemptions
   d. the proposal that when the legislation comes into force all current applications will be considered under the new system.

Jamie Kerr

Acting Deputy Chief Executive Policy and Overseas Investment

Date: / /

Hon Eugenie Sage

Minister for Land Information

Date: / /

Background

1. On 7 June, LINZ provided you with an options analysis and recommendations paper in relation to Crown pastoral land regulatory reform [BRF 19-408 refers]. In that paper, we noted that we would report back to you on the implications of regulatory change, including transitional arrangements.

Implications of regulatory change

2. The ending of tenure review and further proposed changes to the Crown pastoral regulatory system require that we determine the transitional arrangements, particularly:
   - how access and protection of significant inherent values can be achieved in the absence of tenure review
   - the treatment of properties in tenure review at the date of enactment of legislation to end tenure review
   - funding of transitional arrangements for ending tenure review
   - the need for powers to enable decisions on the future use and tenure of unleased pastoral land
   - transitional arrangements for existing discretionary consents, and in-progress discretionary consent applications.
3. The first of these issues was covered in the options analysis and recommendations paper previously provided to you. This briefing focuses on the remaining four issues.

Treatment of properties in tenure review at the date of enactment of legislation

4. On 11 February, Cabinet agreed that all tenure reviews will cease on the enactment of legislation to end tenure review, except where a substantive proposal has been accepted by the leaseholder. In these cases, the tenure review would be able to proceed through to implementation, in recognition of the fact that those leaseholders have a contractual agreement with the Crown.
5. A number of submitters provided recommendations on amendments to the transitional arrangements for ending tenure review. These ranged from giving every leaseholder currently in the process the option to progress their review (given the time and resources that some leaseholders have put into these reviews), to immediately ending all reviews regardless of where they are in the process (and therefore minimising the associated impacts).
6. Weighing up the feedback, our view is that the cut-off point of an accepted substantive proposal remains the best way to balance recognition of a contractual agreement between a leaseholder and the Crown against the policy intent to end tenure review.
7. However, we have identified a possible minor amendment to the current transitional arrangements that would ensure leaseholders have a fair and reasonable time period to consider, and accept or reject a substantive proposal.
8. This would address a situation where a proposal is put to the leaseholder close to the date of enactment[1], and the leaseholder therefore could have inadequate time to make a decision and to complete the necessary steps to accept the proposal (including securing the consent of all parties having an interest in the pastoral lease such as mortgagees). The Crown Pastoral Land Act (CPLA) currently provides for a three-month period for leaseholders to accept a substantive

[1] The Commissioner is legally required to continue to undertake the review process up and until the date of enactment so cannot manage this issue by ceasing to put proposals three months prior to that date.

proposal and the proposal is deemed to have been rejected if not accepted within this timeframe.

9. We therefore recommend amending the current transitional arrangements so that, upon the enactment of legislation to end tenure review, all reviews will cease except where a substantive proposal has been put to the leaseholder. The leaseholder would then have three months to formally accept the proposal in writing from when the proposal has been put.
10. This would help to address any perception of unfairness in a case where a leaseholder was unable to complete the necessary steps to finalise a tenure review because the enactment of the new legislation has reduced the time frame for acceptance.

Funding of transitional arrangements

11. LINZ currently has a capital and revenue appropriation for tenure review transactions. The capital is used to purchase the leaseholder's interest in the pastoral lease and the revenue is the amount received from freeholding land to the leaseholder. The tenure review appropriation is intended to operate as close as possible to a fiscally neutral net position.

	Capital MYA ($m)	Revenue ($m)
Original appropriation (1 July 2014 – 30 June 2019)	480.570	
Actual spend/revenue to 2017/18-year end	92.344	78.276
2018/19 forecast	24.945	21.600

12. While the current multi-year appropriation expires on 30 June 2019, that does not end the funding for tenure review. Instead, funding will revert to an annual appropriation of approximately $96 million, to be matched by revenue. The appropriation can provide for tenure reviews that are finalised before the legislation is enacted. If necessary, the appropriation expenditure and anticipated receipts can be adjusted through October Baseline Update or March Baseline Update to provide for expenditure over $96 million in the financial year.
13. Operational costs for running reviews will continue to be funded through LINZ's baseline funding.

Enabling decisions on the future use of unleased Crown pastoral land

14. Currently Crown pastoral land can only be alienated (i.e. sold, leased or otherwise disposed of) through Part 2 of the CPLA (tenure review, which applies primarily to pastoral land held under Crown pastoral leases) or through a review under Part 3 of the CPLA (which provides a process for determining the future status of all other Crown pastoral land). The provisions within the Land Act that provided for the alienation of Crown pastoral land – in particular, the ability to grant new pastoral leases – perpetual or otherwise, sell pastoral land and to reclassify pastoral land to enable it to be used for other Crown purposes – were repealed by the CPLA.
15. Even with tenure review ending, there may be future instances where decisions need to be made on the future management of Crown pastoral land – for instance, where a pastoral lease has been terminated or surrendered. In addition, the Crown may want to decide on the future use of Crown land that has a pastoral classification, but is not held under a pastoral lease. It is important that there is clarity surrounding this process under the future system.

16. Part 3 of the CPLA would provide an ongoing means to do this[2] – however, in its current form:
    - it requires the Commissioner to consider a number of objects that are not entirely consistent with the proposed new regulatory system outcomes[3]
    - while it provides for a range of future uses (including as conservation area, reserve and other Crown purposes and for disposal under the Land Act by special lease or sale[4]), it does not provide for the consideration of a full range of uses. In particular, it does not provide for disposal in fee simple subject to conservation covenants or public access easements or for the granting of new pastoral leases administered under the CPLA (currently it only provides for the granting of special leases administered under the Land Act).
17. Part 3 could also be improved by making provision for other land to be included in the review with the consent of the relevant parties – for example adjoining unalienated Crown land, or conservation areas and reserves.
18. To address these issues, we recommend:
    - repurposing the Part 3 review process to ensure consistency with the new proposed outcomes – this would ensure decisions on the future use of unalienated Crown pastoral land are consistent with the purposes of the Act and outcomes
    - providing a role for Minister for Land Information in the decision-making process (for instance, all designations would need to be approved by a Minister) as well as retaining current public and iwi notification requirements. This would help to ensure high levels of transparency and clear accountability, and provide for appropriate public participation
    - providing for a broader/more comprehensive range of future designations to be considered and making provision for consideration to be given to the inclusion of other land in the review process.

Transitional arrangements for discretionary consents[5]

19. The proposed changes to the regulatory system would significantly change the way any discretionary consents for new activity and development are considered and issued. However, when any legislation is enacted, there will be discretionary consents already in place – some that are timebound and some that are ongoing. There will also be discretionary consent applications that are in the process of being considered. This section provides an overview of the different types of discretionary consents that are granted and our advice on transitional arrangements regarding these two scenarios.
20. There was limited feedback from submitters on transitional arrangements for discretionary consents. The High Country Accord and a number of leaseholders submitted that any changes to the discretionary consents regime should only apply to new development and new uses. Other submitters recommend that some existing consents should be revisited.

[2] Part 3 of the CPLA also provides for the review of unrenewable occupation licences. There are two remaining unrenewable occupation licences that have yet to complete the Part 3 review process (Soldier's Syndicate and Glenlee). Provision will need to be made for the completion of those reviews if they have not been completed by the date of enactment and a decision is made to revoke or amend Part 3 of the CPLA.

[3] These objects are to promote the management of Crown land in a way that is ecologically sustainable; and enable the protection of significant inherent values of Crown land; and subject to this to make easier the securing of public access to and enjoyment of Crown land; and the freehold disposal of Crown land capable of economic use.

[4] Where land is designated for disposal by sale or lease under the Land Act, the normal Crown land disposal process would apply.

[5] The term discretionary consent is used in the place of discretionary actions, which under section 18 of the CPLA includes easements, recreation permits and farm related consents.

How many existing discretionary consents are there?

21. Discretionary consents are set out in section 18 of the CPLA and consist of pastoral consents, stock exemptions, recreation permits and easements.

22. Due to a lack of estate-wide monitoring and reporting we do not have an accurate picture of the number of discretionary consents currently in operation on Crown pastoral land, or the scale and impact of the activity these consents cover. In addition:

    - we cannot accurately distinguish between the level of activity that leaseholders undertake as a part of the base rights provided within the lease and the level that is enabled over and above this by the discretionary consents process
    - we do not have information on whether activity across the estate is exceeding the level that is enabled by discretionary consents (i.e. we do not have a high level of certainty as to whether some leases are exceeding their stocking limits or have developed pasture that was not approved by the Commissioner)
    - we do not have information on whether there are ongoing discretionary consents that have not yet been given effect to/are not currently being used.

23. We are currently collating information on discretionary consents over a sample of leases. This will include the total number of consents that have been granted, the type of activity they support, and the area they cover. We will use this information to test our further advice on transitional arrangements and their impact.

Pastoral consents

24. The Commissioner approves approximately 85 pastoral consents a year.

25. The majority of pastoral consents are primarily focused on the development of new pasture and as such are often bundled. For example an application to develop an area into pasture might include a consent to burn vegetation; to cultivate; to top-dress and oversow; and finally to disturb the soil to install irrigation infrastructure.

26. The following table breaks down those consents approved since January 2013 into classes of activity.

Class of pastoral consent	≈ Approved per year	Approved	Part approved / part declined	Total approved; and part approved / part declined
Crop, cultivate, drain or plough	14	63	25	88
Top Dressing	10	37	21	58
Sow seed	10	39	27	66
Track Formation	9	59	4	63
Burn	9	43	17	60
Soil Disturbance	17	104	9	113
Plant Trees	2	10	4	14
Preserve Timber	1	5	0	5
Clear or fell	13	60	27	87
Total	85	420	134	554

27. All pastoral consents are issued with a time limit to undertake the initial work, for example, five years.

28. Some consents – such as to burn vegetation, to plant or fell trees, and to clear and fell bush or scrub – provide the leaseholder with the one-off ability to undertake the activity within a specified timeframe. However, in the case of the classes of pastoral consents highlighted in green, leaseholders effectively have a consent to continue this activity indefinitely under section 16 (3) of the CPLA.[6] This means that, of the 554 pastoral consents granted since January 2013, around 338 of them are likely to be in use or have ongoing consent[7].

29. Because of the way LINZ records information on discretionary consents applications, we are not easily able to provide overall numbers for the land area that these consents apply to, nor for the areas of land where the Commissioner has granted a consent subject to conditions to mitigate the activity's impact on inherent values. This means that the above figures do not distinguish between consents to cultivate five hectares and consents to cultivate 500 hectares. Collating this information would take a significant amount of resource and time.

Stock exemptions

30. Since 2013 the Commissioner/LINZ has approved or part approved 49 stock exemptions. These exemptions are personal to the holder of the lease. Many of these approvals were made when leases were transferred or to provide an exemption to the incoming leaseholder.

Recreation permits

31. Recreation permits are generally granted for medium-to-long terms such as between 5 to 10 years, and are capable of being granted in perpetuity. Since January 2013 we have approved 170 recreation permits, 71 of which are currently active[8]. These active permits are mainly for mountain biking, sightseeing tours, 4WD tours, nature tourism, tourist accommodation, skiing and filming.

Easements

32. Easements are generally granted in perpetuity. Since January 2013 we have granted 14 easements. These are mainly for rights to convey water or telecommunications.

What does this mean for transitional arrangements for the discretionary consents regime?

33. Based on the above, there would likely be a large number of ongoing discretionary consents in place at the time any new legislation is enacted, potentially covering significant amounts of ongoing activity.

34. The activities covered by these consents may or may not be consistent with the proposed new outcomes and may have some ongoing impacts on natural values. As Harding, Head and Walker raised in their submission during the consultation process:

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[6] For example a consent to top-dress includes:

> *a consent to undertake an ongoing programme of top-dressing on the land or any part of it,—(i) in accordance with every condition, direction, and restriction subject to which the Commissioner gave it; and (ii) using the fertiliser or mixture of fertilisers consented to,— to maintain the pasture created or enhanced by the top-dressing consented to.*

[7] We cannot confirm the exact numbers of these that are ongoing without looking into the conditions of every consent which can expressly rule out the granting of the ongoing consent under section 16 (3) CPLA. Some of these consents may be for one-off activities that do not require ongoing maintenance.

[8] This is not the total number active.

Many existing discretionary consents will be causing ongoing loss of natural heritage (e.g. maintenance of tahr herds for commercial hunting). We suggest that there needs to be a process to review existing consents, and resolve conflicts where they are causing ongoing or cumulative damage.

35. There is therefore a high-level policy choice to be made between:
    - maintenance of existing activity - by allowing existing consents to continue and only applying the proposed changes to new uses and development
    - providing mechanisms to promote the maintenance of the current inherent values or environmental state – this may entail reassessing some or all existing consents and the land uses they enable. This approach is closely related to the baseline of inherent values which the standard to 'maintain and enhance' would be assessed against - this would be developed as part of a monitoring framework.
36. Variation to existing uses and consents is enabled in other regulatory systems[9]. In deciding on which approach to pursue, it is important to weigh up a number of considerations including ensuring changes are fair and give as much certainty as possible to holders of discretionary consents, and maximising the effectiveness of the proposed changes:
    - Only applying these changes to future uses and development will provide the most fairness and certainty to holders of discretionary consents, and will reflect the considerable investment that has been made in reliance on these consents. However, it may reduce the overall capacity of the new system to give effect to the new outcomes. For example, some activities that rely on existing discretionary consents may result in compounding degradation beyond the baseline of inherent values – noting that this depends on how the baseline is set.
    - Enabling some or all existing consents to be reassessed (and, if necessary, varied through the imposition of further conditions to mitigate their impacts) could potentially increase the effectiveness of the changes but significantly reduce certainty to discretionary consent holders, and could be seen as unfair given they have planned and invested on the basis that they would have an ongoing ability to carry out certain activities. This approach is not the 'norm' for regulatory changes. There may also be implications for property rights – we will be seeking legal advice on this.
37. Because of the issues with information availability discussed above, it is difficult to accurately assess the relative costs and benefits of each approach, and an 'in principle' decision on which approach is likely to be needed. We would like to discuss this issue with you further at our meeting on 1 July.

The use of stock exemptions

38. In light of these considerations, it should be noted that the current system provides the Commissioner with the power to vary or revoke stock exemptions[10]. This means that the Crown has control over the upper limit of stock that can be run on the land - this is set out in both in the legislation and written into the terms of the lease contract[11].

[9]Under the section 128 of the Resource Management Act (RMA), the conditions of a consent can be reviewed. For example a Council may have empirical evidence that establishes sustainable limits for a resource under pressure, such as groundwater. It might through plan change set "non-complying" activity status backed up by strong objectives and policies for the resource in question. It could then review the conditions of granted consents to limit the use of the resource.

[10] We are not aware of an instance that a stock exemption has been proactively revoked by the Commissioner. Stock exemptions are most commonly revoked and reissued at the point of transfer of the lease so the new holder can continue to run the current amount of stock or when the holder wishes to increase stock numbers or change the type of stock.

[11] For example: *The Lessee may with the prior written consent of the Land Settlement Board carry such additional stock on such terms and conditions as may therein be specified subject nevertheless to the right of the Land Settlement Board to revoke or vary such consent at any time*.

39. Stock exemptions determine both the numbers and the type of stock. In general, other classes of discretionary consents, such as to oversow and top-dress, are sought by leaseholders to improve the productive capacity of the land in order to reach this stock limit.

40. In the context of existing discretionary consents, stock exemptions might provide a blunt tool to mitigate the cumulative impacts from existing activity. LINZ could institute a programme to periodically review stock exemptions against the new outcomes and provide advice to the Commissioner on whether additional conditions are required. To supplement this, standards could be released that outline the circumstances in which the Commissioner may vary stock exemptions with conditions that mitigate any identified adverse effects – such as where existing high-impact activities are causing compounding degradation.

41. The legislation could also require that all stock exemptions be reviewed periodically, for example every five years, to ensure that existing grazing is not having compounding impacts beyond an established baseline of inherent values and for additional conditions to be applied. The frequency of review would depend upon resourcing and it may be more practical to adopt a risk-based, targeted approach.

Applications with LINZ when legislation comes into force

42. There are a number of ways that applications for discretionary consents could be dealt with through transitional arrangements. The core question is whether to provide for applications to be considered under the old system after the new legislation comes into force, or to require that they are considered under the new system. In considering this, we need to take into account that when the arrangements are announced there may be an increase of applications if leaseholders consider they would be more likely to be approved under the old system.

43. The first option is that all applications that have been confirmed *complete to commence*[12] by the date the legislation comes into force are considered under the old system. This option would provide the most certainty to applicants and be viewed as the most fair. However, it may be ineffective at ensuring that the regulatory system is consistent with the new outcomes. The scale of this issue would depend on the volume of applications received between announcing the changes and enactment of new legislation.

44. Another approach would be for the new legislation to require consents submitted prior to enactment and decided upon after enactment to only be granted for a short timeframe and not on an ongoing basis. This would allow them to be reassessed under the new system within due course.

45. Our recommended approach is that when the legislation comes into force all current applications with LINZ that are yet to be decided upon by the Commissioner will be considered under the new system. This would be the most effective approach to ensuring the system is delivering on the outcomes as soon as possible.

46. Under this approach, applicants would have to meet the new burden of evidence and the new decision making criteria would be applied. This would likely require that many applications would have to provide supplementary information in order to progress. This option would provide the least certainty to applicants and depends upon final changes to the discretionary consents process which are outlined in our previous advice [BRF 19-408 refers].

47. Operationally, there could be some process issues with standing up the new system upon the date of enactment – these will become clearer as the package of proposals is finalised. This is because LINZ will have to ensure that the new process is operationalised and communicated to applicants. In the case that issues arise, we will provide you with advice on how to mitigate these issues through operational policy work.

[12] This is the point at which an application is deemed sufficient and is entered into the system for processing

Next steps

48. We would like to discuss our recommended approach to the issues above at our meeting with you on Monday 1 July.
49. We will be commissioning legal advice from Crown Law about the impact of the proposals, including transitional arrangements, on property rights.

Recommendations

50. **Note** that officials want to discuss with you:
    a. the proposal to amend the current agreed transitional arrangements for tenure review
    b. the proposal to repurpose the current system for changing the use of Crown pastoral land not held under lease or licence
    c. possible approaches to transitional arrangements for discretionary consents, specifically:
        i. whether to maintain existing activity or to maintain the current state of inherent values
        ii. the future use of stock exemptions
    d. the proposal that when the legislation comes into force all current applications will be considered under the new system.

Land Information New Zealand
Toitū te whenua

To: Minister for Land Information

Briefing on enforcement approach for Crown pastoral land regulatory system

Date	28 June 2019	**Classification**	In confidence
LINZ reference	BRF 19-442	**Priority**	High

Action sought

Minister	Action	Suggested Deadline
Minister for Land Information	**Discuss** the content of this briefing and the attachment with officials on Monday 1 July	1 July 2019

LINZ Contacts

Name	Position	Contact number	First contact
Jamie Kerr	Acting Deputy Chief Executive Policy and Overseas Investment	021 819 826	☐
Sarah Metwell	Manager Policy	027 809 6953	☒

Minister's office to complete

1 = Was not satisfactory 2 = Fell short of my expectations in some respects 3 = Met my expectations
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Overall Quality	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5

Comments

☐Noted ☐Seen ☐Approved ☐Overtaken by events
☐Withdrawn ☐Not seen by Minister ☐Referred to:

Purpose statement

1. This briefing sets out a proposed approach to enforcement under the Crown pastoral land regulatory system.
2. It supplements our earlier options analysis and recommendation paper provided as an attachment to BRF 19-408.

Recommendations

3. It is recommended that you:
   a. **note** the contents of this briefing
   b. **discuss** LINZ's recommended approach to enforcement under the Crown pastoral land regulatory system with officials on Monday 1 July.

Jamie Kerr	Hon Eugenie Sage
Acting Deputy Chief Executive Policy and Overseas Investment	Minister for Land Information
Date: / /	Date: / /

Background

4. On 7 June, LINZ provided you with an options analysis and recommendations paper in relation to Crown pastoral land regulatory reform [BRF 19-408 refers]. In that paper, we noted that we would report back to you on a proposed approach to enforcement.

Objectives and characteristics of effective enforcement

5. The primary objective of enforcement in the Crown pastoral land system is to support the delivery of the system outcomes, and protect the Crown's ownership interest in the land, by encouraging leaseholder compliance and deterring non-compliance.
6. Good regulatory practice requires enforcement regimes to be:
   - timely
   - proportionate and risk-based – providing a graduated response to non-compliance, based on likely and actual impacts
   - lawful and accountable – including being fully documented so that decisions can be understood
   - transparent, flexible and predictable – providing certainty to the regulated community, which reduces the costs of compliance and ensures they understand what the consequences of non-compliance will be.
7. An effective enforcement regime will also be underpinned by a strong mutual understanding between Crown and leaseholder of the roles of both, the context within which both are operating, and the nature of any obligations and expectations.

Status quo

8. The Crown Pastoral Land Act (CPLA) currently provides limited enforcement options where a breach in the conditions of a lease or consent is confirmed.
9. Section 19 of the CPLA provides that the Commissioner Crown Land (CCL) may apply to the District Court for the examination of any alleged breach. If the District Court is satisfied that a breach has been committed, it may order the leaseholder to remedy the breach and/or pay exemplary damages of up to $50,000. The Court also has the power to declare the lease forfeit and award costs and damages. Legal action may be considered appropriate when the matter is sufficiently serious to warrant the intervention of the courts under the CPLA. The Commissioner will seek advice from the Solicitor-General before undertaking any action.
10. There are then a number of non-statutory tools available, including information provision, written directions, and written warnings. However, these rely on voluntary compliance on the part of leaseholders.
11. Table one below sets out the current range of enforcement mechanisms.

Table one: Current enforcement mechanisms

Mechanism	Description of Action
Provide education or information on possible remedial action	Provide information to the lessee or other entity to support compliance, with recommended actions for addressing the issues that have been identified.
Written direction/warning	To prevent further breaches or to remedy or mitigate the effects of non-compliance, the CCL could give a written direction for a party to take or cease a particular action.
Take legal action	Section 19 of the CPLA provides that the CCL may apply to the District Court for the examination of any alleged breach. If the District Court is satisfied that a

	breach has been committed, it may order the leaseholder to remedy the breach and/or pay exemplary damages of up to $50,000.[1] The Court also has the power to declare the lease forfeit and award costs and damages.

12. One major problem with the current system is that the only effective enforcement tool (applications to the District Court which may include a lease forfeit) is costly, time-consuming, and are not appropriate for breaches at the lower end of the scale. This is reflected by the fact that these mechanisms have been used only rarely.
13. This lack of appropriate tools impacts on how enforcement is managed – for instance leaseholders who are found to be undertaking activities without a proper consent are generally required to apply for a consent after an activity has already been undertaken, rather than being penalised in any way. This in turn creates a potential disincentive to apply for the proper consents in the first place.
14. With the increased monitoring (both on the ground and at an outcomes level) proposed under the changes, more instances of non-compliance may be identified and more enforcement action potentially taken. While LINZ's focus on developing stronger on-the-ground relationships is likely to help encourage compliance over time, it will be even more important to ensure that there is an adequate range of tools to deal with any breaches if the broader proposed changes are implemented.

Public submissions

15. Multiple submitters noted that there appeared to have been a lack of enforcement by LINZ in the past and that firm disciplinary action is needed where breaches are found. Conversely, submitters from the pastoral lease community noted that too much focus on regulation and enforcement will undermine a partnering approach between the Crown and leaseholders.

Proposed approach

16. Based on the objectives and the characteristics of a good enforcement regime, we propose the development of a more graduated response to non-compliance that provides an 'escalation path' depending on the severity of the non-compliance along the following lines:
    - *Step 1 – Preventative measures*. These would centre on engagement with, and education of, leaseholders to ensure they understand their obligations and how to comply with them. This would be managed largely though site visits and clear standards and guidance around expectations and requirements (including any penalties for non-compliance).
    - *Step 2 – Persuasive measures*. These are mechanisms to advise leaseholders of a compliance issue, and to give them an opportunity to address it. The current written notice mechanisms fall into this category.
    - *Step 3 – Directive measures*. These measures would involve directing a leaseholder to stop or change a non-compliant activity, and/or to rectify any impacts (they could also include built-in disincentives for non-compliance such as administrative penalties). These measures would be enforceable and would not rely on voluntary compliance. Under the current system, applying to the District Court is the only way in which leaseholders can be directed to do/not do something.
    - *Step 4 – Punitive measures*. These 'last resort' mechanisms are applied only in cases where other mechanisms have been unsuccessful in addressing non-compliance and are at the most serious end of the spectrum. They involve imposing a significant penalty on the

[1] Note that any damages paid to the Commissioner can not be retained by LINZ for future land management, but are included in the Crown accounts.

regulated party. Under the current system, revoking the lease and seeking exemplary damages fall into this category.

17. In effect, this approach initially takes a relationship-based approach, and gradually moves to a more formal regulator/regulated party approach depending on the level of non-compliance.

Possible new enforcement mechanisms

18. Looking at the current suite of enforcement mechanisms in the light of this proposed approach, it is clear that the main gap in available mechanisms relates to a lack of easily-available directive measures. Options for additional mechanisms in this area include:

- *Power to direct remedial action or cease action* – this would enable the Crown to direct a leaseholder to undertake specific actions to remedy non-compliance. To prevent further breaches or to remedy or mitigate the effects of non-compliance, the Crown could also give a written direction for a party to take or cease a particular action. This would be most appropriate where a party has failed to address the issue voluntarily, and where the breach is of a minor nature and could be quickly and simply put right by prompt action of the leaseholder.
- *Crown may take remedial action and recover costs* - the Crown may decide to undertake specific actions on a property to remedy a previous action or lack of action by the leaseholder, and may seek to recover the associated costs from the leaseholder. This would be most appropriate where a leaseholder is not willing to address the issue and where the breach is of a moderate impact and requires immediate action (which the leaseholder is not prepared to undertake).
- *Enforceable undertaking* - the Crown and the leaseholder agree on a course of action as appropriate, such as a management plan or remedial action (farm management plans could be used here). This would be most appropriate in cases where a party is willing to address the issue and where the breach is of a moderate nature and can be put right over time.
- *Administrative penalty/fine* – a penalty fee/fine would be payable to the Crown for serious breach of consent conditions or lease agreement, failure to apply for consent prior to an activity (where a penalty fee would be added to the costs of applying for a consent – addressing the current disincentive to apply for a consent), repeated non-compliance, or a high-risk or prohibited activity that cannot be immediately remedied. This would be most appropriate in cases where there are aggravating factors such as a history of non-compliance, a clear intent not to comply or there has been significant harm caused as a result of the activity.
- *Infringement system* - the Crown could introduce an infringement system for all breaches, similar to the RMA. Under the RMA, infringement notices can only be issued by council enforcement officers. A conviction is not imposed for an infringement offence and the only penalty is the infringement fee. An infringement system could be designed for all types of breaches.

19. Our initial thinking is that providing for the first four enforcement mechanisms above would help to create a sensible, proportionate ‘escalation path’ that:

- is underpinned by a strong relationship between the Crown and the leaseholder and an assumption that many breaches can be managed by better engagement, education and persuasion
- centres on achievement of the outcomes, by focusing on mechanisms to remedy the impacts on inherent values from non-compliance, while disincentivising non-compliant behaviour
- is cost effective, with a variety of relatively low-cost mechanisms available that should address the majority of non-compliant behaviour

- will encourage compliance by providing disincentives, and removing incentives, for non-compliant behaviour.

20. To increase certainty and transparency, guidelines could be developed documenting the factors to consider when deciding on an enforcement response, such as the leaseholder history, scale of breach, impact, attitude to compliance and the public interest.
21. On balance, we do not recommend the establishment of an infringement system as this:
    - focuses on financial penalties rather than on remedying impact on inherent values
    - may be inappropriate when there is an ongoing relationship between the regulator and regulated parties (note that DOC advised us that it did not propose to use its infringement regime in relation to non-compliance by concessionaries because they saw it as inconsistent with the ongoing relationship)
    - could be relatively costly to set up and administer.
22. There is also a question of whether the Crown should have the ability to prosecute leaseholders in the criminal system – for instance where non-compliance has caused significant harm and all other enforcement mechanisms have been exhausted. However, our initial view is that the Crown's ability to seek exemplary damages and for the lease to be forfeited already provide adequate penalties in these cases.
23. Annex One summarises the full range of existing/proposed enforcement tools discussed above.

Who should be responsible for enforcement?

24. There is a decision to be made on whether LINZ or the Commissioner should be responsible for enforcement. Currently the function sits with the Commissioner, though alternatively, enforcement could be seen as part of LINZ's role as system owner. Regardless of where this sits, as part of the overall management of the system, LINZ will be developing a compliance strategy which will direct the approach to enforcement.
    - Keeping the enforcement function with the Commissioner reflects their role as the decision-maker and representative of the Crown's ownership interest – and the ability to enforce the conditions of statutory decisions and the lease contract can be seen as part of fulfilling those roles. It also enables LINZ, as the system owner, to focus on monitoring the Commissioner's exercise of their enforcement functions.
    - If LINZ holds the responsibility to undertake individual enforcement actions, this does ensure that there is some degree of distance between the enforcement and the decisionmaker, however there is the risk that it might shift LINZ's focus away from system performance.
25. LDAC's view was that there is merit in both approaches, depending on whether enforcement is seen as part of a decision-making function, or whether it is preferable to keep it separate to the decision-maker.
26. On balance, our view is that the Commissioner should remain responsible for enforcement.
27. Regardless of who is responsible for enforcement, it will be important that the function is adequately resourced (the proposal to ring-fence funding to the Crown pastoral land administration function could help support this). This would reflect that LINZ is responsible for the overall operation of the system and ensuring it is consistent with the outcomes.

Next steps

28. We would like to discuss our recommended approach to the issues above at our meeting with you on 1 July.

29. Following further conversations with you, we plan to work through our proposals with LDAC and the Ministry of Justice. Once we have firmed up options, we will assess them against the criteria through the RIS process.

Recommendations

30. It is recommended that you:

    a. **note** the contents of this briefing

    b. **discuss** LINZ's recommended approach to enforcement under the Crown pastoral land regulatory system with officials on Monday 1 July.

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Annex One: Possible suit of enforcement tools

Enforcement tool	Description of Action	When might this be appropriate?	How will this tool support giving effect to the outcomes?
Provide education or information on possible remedial action	• Provide information to guide and support compliance, with recommended actions for addressing the issues that have been identified. • Provide education to address knowledge gaps.	• Where the party is willing to address the issue but requires additional knowledge or information to achieve and maintain compliance. • Where there is a minor breach with little to no impact and is not sufficiently serious to commit further resource. • Where a breach is due to a genuine lack of awareness.	• Opportunity to guide leaseholder actions and encourage voluntary compliance. • Identify information knowledge gaps and design specific material.
Compliance letter or warning	• Letter to advise leaseholder of minor breach and educate. May provide a warning and/or advise of possible enforcement action if repeated non-compliance in future. • Can be used in conjunction with other enforcement options. • The warning forms part of a history of non-compliance and will be considered if there are future incidents of non-compliance. This may also include a direction to undertake remedial action as part of the warning letter.	• Where leaseholder is usually compliant, no prior compliance issues, is willing to remedy, no impact. • Where the breach is of a minor nature and can be quickly and simply put right.	• Supports the partnership approach, using education to encourage future compliance.
New - **Power to direct remedial action or cease action**	• The Crown may direct a leaseholder to undertake specific actions to remedy non-compliance. • To prevent further breaches or to remedy or mitigate the effects of non-compliance, the CCL could give a written direction for a party to take or cease a particular action.	• Where a party is not willing to address the issue and where the breach is of a minor nature and could be quickly and simply put right by prompt action of the party. • Impact of non-compliance is sufficiently serious to warrant direct action to be undertaken by the leaseholder. • Failure to meet conditions and no indication of commitment, or continued failure to remedy.	• Remedial action directed will be consistent with outcomes and enduring stewardship.
New - **Crown may take remedial action and recover costs**	• The Crown may decide to undertake specific actions on a lease to remedy a previous action or lack of action by the leaseholder. The Crown may seek to recover these costs from the leaseholder.	• Where a party is not willing to address the issue and where the breach is of a moderate impact and requires immediate action (which the leaseholder is not prepared to do)	• Remedial action directed will be consistent with outcomes and enduring stewardship.
New - **Enforceable undertaking**	• The Crown and the leaseholder agree on a course of action as appropriate, such as a management plan or remedial action.	• Where a party is willing to address the issue and where the breach is of a moderate nature and can be put right over time.	• Supports partnership approach with leaseholders, shared understanding of goals/outcomes working towards. • Agreed actions to give effect to outcomes.
New - **Administrative penalty/fine**	• A penalty fee/fine payable to the Crown for: • serious breach of consent conditions or lease agreement, • failure to apply for consent prior to an activity	• Where a leaseholder failed to apply for prior consent to an activity, a penalty fee would be applicable.	• Additional cost to discourage non-compliance with discretionary consent regime and/or lease.

	• repeated non-compliance • a high risk or prohibited activity that cannot be immediately remedied.	• This could be used in conjunction with other tools such as a direction or management plan. • Breach of lease or consent conditions – where the factors considered (history, leaseholder conduct, attitude to compliance, impact) require a penalty to be applied. • Where a directed action is not undertaken and there has been a history of non-compliance.	• Retrospective consents would be reduced, enabling the Crown to make decisions that give effect to the outcomes.
Legal action	• Section 19 of the CPLA provides that the Commissioner may apply to the District Court for the examination of any alleged breach. If the District Court is satisfied that a breach has been committed, it may order the leaseholder to remedy the breach and/or pay exemplary damages of up to $50,000. The Court also has the power to declare the lease forfeit and award costs and damages.	• Legal action may be considered appropriate when the matter is sufficiently serious to warrant the intervention of the courts under the CPLA. The CCL will seek advice from the Solicitor-General before undertaking any action.	• This operates under the current regime.
Tools not recommended			
New - **Infringement system**	• The Crown could introduce an infringement system for all breaches, similar to the RMA. • Under the RMA infringement notices can only be issued by council enforcement officers. A conviction is not imposed for an infringement offence and the only penalty is the infringement fee.	• An infringement system could be designed for all types of breaches.	• Risk that introducing an infringement system may be seen by leaseholders as working against a collaborative relationship. • This approach would likely require additional resourcing and capability.
Criminal/prosecutions	• The Crown could seek to prosecute leaseholders for failing to act on a notice or direction, or for breaching the conditions of a consent or terms of lease.	• Where the leaseholder has been sufficiently non-compliant and all other enforcement tools have not remedied.	• This approach may not support the partnership approach with leaseholders or delivery of outcomes. • This approach would likely require additional resourcing and capability.

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To: Minister for Land Information

Update on further work on changes to the Crown pastoral land regulatory system

Date	29 July 2019	**Classification**	In confidence
LINZ reference	BRF 20-027	**Priority**	High

Action sought

Minister	Action	Suggested Deadline
Minister for Land Information	**Discuss** the content of this briefing with officials on Wednesday 31 July	31 July 2019

LINZ Contacts

Name	Position	Contact number	First contact
Jamie Kerr	Acting Deputy Chief Executive Policy and Overseas Investment	021 819 826	☐
Sarah Metwell	Manager Policy	027 809 6953	☒

Minister's office to complete

1 = Was not satisfactory 2 = Fell short of my expectations in some respects 3 = Met my expectations
4 = Met and sometimes exceeded my expectations 5 = Greatly exceeded my expectations

Overall Quality	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5

Comments

☐Noted ☐Seen ☐Approved ☐Overtaken by events
☐Withdrawn ☐Not seen by Minister ☐Referred to:

Purpose statement

1. This briefing provides you with an update on further work and provides further advice on the proposed changes to the Crown pastoral regulatory system including:
   - [s 9(2)(h)] [redacted]
   - further thinking on the application of the outcomes to discretionary consents decision-making
   - progress with developing an approach to enforcement and additional enforcement tools
   - further advice on the introduction of an independent appeals process in relation to discretionary consents
   - identification of secondary legislation needed
   - an update on discussions with iwi.
2. In addition, this briefing attaches a draft of the Cabinet paper and package of A3s to support consultation with your Ministerial colleagues, as well as summarising feedback from agencies on the package of proposals and an initial draft of the Cabinet paper

Recommendations

3. **Note** that officials want to discuss with you:
   a. your views on whether there is a need to provide for a degree of flexibility around the application of the outcomes to discretionary decision-making and, if so, how that flexibility could be provided for
   b. whether there are factors that would suggest that an independent right of appeal for leaseholders in relation to discretionary consent decisions would be inappropriate
   c. whether you are comfortable with our proposed approach to the development of secondary legislation
   d. your feedback on the initial draft Cabinet paper and A3 package
   e. whether you are still comfortable with the current timeline.

Jamie Kerr

Acting Deputy Chief Executive Policy and Overseas Investment

Date: / /

Hon Eugenie Sage

Minister for Land Information

Date: / /

Background

1. On 7 June, LINZ provided you with an options analysis and recommendations paper in relation to Crown pastoral land regulatory reform [BRF 19-408 refers]. In that paper, and during subsequent discussions, we noted that we would report back to you on a number of outstanding issues, including on enforcement and rehearings.
2. Since our last meeting, we have also [s 9(2)(h)] undertaken further iwi consultation, received initial feedback from agencies on the package of proposals, and done further thinking on how the outcomes might be applied to decision-making on discretional consents, and what secondary legislation is likely to be needed.
3. In addition, we have developed a draft of the Cabinet paper and a package of A3s to support consultation with your Ministerial colleagues. An initial draft of the Cabinet paper was circulated to agencies, and their comments are summarised in this briefing.

[s 9(2)(h)]

Application of the outcomes to discretionary consents decision-making

5. Previous decisions in relation to the Crown pastoral land regulatory system have clarified and confirmed that your expectation is that the reforms will both:
   - establish a hierarchy of outcomes prioritising the achievement of inherent (ecological, landscape, cultural, heritage and scientific) values over pastoral farming
   - provide for ongoing pastoral farming of Crown pastoral leases.
6. In light of this, we have focused on how the outcomes can be practically translated into decision-making on specific discretionary consent applications.
7. While we have very limited evidence on the state of Crown pastoral land (from both an ecological and farming perspective), making it difficult to know exactly what impact the new outcomes might have, we have identified some potential risks relating to how the outcomes might translate into decision-making.
8. There is a likelihood that any pastoral activity enabled by the discretionary consent system will reduce inherent values in some way, even marginally. A strict application of the hierarchy of outcomes would then make it unlikely that the Commissioner grants any further discretionary consents, no matter how minor the impacts.).

9. While this will result in better immediate environmental outcomes, it may also create unintended consequences over the long term ,that could inhibit the achievement of the outcomes for the system - for instance, if leaseholders are less able to invest in pest and weed control, or in projects with environmental benefits, or are incentivised to intensify activity on parts of their lease that are already subject to discretionary consents.
10. Given this risk, we have investigated ways to enable some flexibility in the application of the outcomes to decision-making on discretionary actions through definitions, processes, or tests, while retaining the overall focus on improved ecological outcomes. These options include:
    - applying the outcomes using a process that considers impacts over a broader land area (e.g. the lease or a broader ecosystem) or longer period of time (rather than just looking at the immediate impacts of a specific activity)
    - requiring a test where activities are only allowed if their impact on inherent values is minor (that is, setting a threshold in terms of impact)
    - defining inherent values as arising only from certain biodiversity or ecosystems, or only arising from biodiversity or ecosystems over a certain threshold (that is, setting a threshold in terms of what is deemed to be an inherent value)
    - allowing the Commissioner to still balance inherent values and farming considerations, but strongly weighting this balance in favour of inherent values.
11. We are continuing to consider the pros and cons of these options. However, we would like to discuss your view on whether it is desirable to provide for more flexibility around the application of the outcomes to discretionary decision-making and, if so, how that flexibility could be provided for.

Enforcement approach and tools

12. We have been working through the broad enforcement approach proposed in BRF 19-442 with the Ministry of Justice. This approach included a number of potential new enforcement tools which we have narrowed down to the following:
    - the power for the Commissioner to take remedial action and recover costs
    - the power to set an administrative penalty where activity is undertaken without a consent (to act as a disincentive for leaseholders to fail to apply for a consent and then seek one retrospectively)
    - the introduction of enforceable undertakings as an alternative to court action (for example, agreements to remediate or farm management plans).
13. We are also investigating the possibility of increasing the maximum amount of damages that can be awarded
14. We are currently waiting for the Ministry of Justice's view on the proposed approach, and will update you as soon as we receive it.

Right of appeal on discretionary consents decisions

15. At our last meeting, you asked us to consider whether there could be a role for an external appellate function for CPLA appeals, similar to the independent external commissioners sometimes used by councils to hear and decide on resource consent applications. This is likely to be in addition to the current rehearings process.
16. LDAC has subsequently clarified its advice to us on the provision of a right of appeal, noting that:
    - as a general principle, an appeal should be available unless there are factors that would make an appeal inappropriate.

- the cost of taking appeal action is not a reason to not provide for a right of appeal to someone other than the Commissioner.

17. LDAC also confirmed its view that the landowner and tenant relationship between the Crown and leaseholders justifies both a rehearing and/or appeal right being limited to leaseholders (and those directly affected by a decision such as persons who have submitted a recreation permit application), rather than being available to the public.
18. We have therefore focused on identifying whether there are factors that would suggest that an independent right of appeal for leaseholders in relation to discretionary consent decisions would not be appropriate. These factors could include:
    - impact on achievement of the regulatory system outcomes
    - costs to the Crown
    - impact on efficiency and certainty of decision-making
    - impact on public trust in the system.
19. We are keen to discuss these factors with you in more detail.
20. The current system already provides an avenue under section 18 of the Land Act by which decisions 'affecting the lease or license' may be appealed to the High Court (as compared to rehearings which relate to decisions 'of an administrative nature'[1]). While we are not aware of this statutory appeal right ever being used in relation to discretionary consents, it may be that this already confers an existing right for the leaseholder to appeal discretionary consents decisions. LINZ's Legal team is investigating this issue, and we will report back to you on this when we have their advice.

Identification of secondary legislation needed

21. In our previous options analysis briefing [BRF 19-408 refers] we recommended providing for the minimum secondary legislation[2] required to implement the regulatory changes. Following our discussions with you, we now have a clearer picture of what this will look like, including:
    - what should be provided for in secondary legislation
    - who makes the secondary legislation
    - what should be left to non-statutory standards and guidelines.

What should be provided for in secondary legislation?

22. There are four key pieces of secondary legislation that we anticipate would be empowered by the primary legislation. These would cover:
    - the methodology by which the discrete values[3] that make up 'inherent value' as set out in the hierarchy should be identified and measured, along with how te Tiriti principles are to be taken into account by the decision maker
    - any record-keeping/forward planning requirements on leaseholders or recreation permit holders. This information would both relate to information on farm-related outputs and the leaseholder's strategic intentions for the management of the lease. The Commissioner could then request this information when making statutory decisions
    - the details of what the Chief Executive of LINZ must cover when reporting on the performance of the regulatory system and the achievement of the outcomes; and the details

[1] Section 18 cannot be used to appeal decisions of an administrative nature.
[2] Secondary legislation is that which is defined as secondary legislation in the Secondary Legislation (Access) Bill, expected to be introduced in November.
[3] Ecological, landscape, cultural, heritage and scientific values.

of what the Commissioner must report on in relation to the state of the estate. This is closely linked to the monitoring framework by which LINZ and the Commissioner set out how they will achieve the reporting requirements set in the regulations (which we see as a non-statutory framework)

- fees and charges.

23. These are in addition to introducing a regulation making power that enables schedules of the primary legislation to be varied. These schedules would cover:
    - the classification of activities by risk/scale of impact as either permitted, discretionary or prohibited. The schedule would also set out any general conditions or terms.
    - minimum requirements for consent applications to specify the information that applicants need to provide.

Who makes this secondary legislation?

24. The secondary legislation would be made by the Governor-General by Order in Council and on the recommendation of the Minister for Land Information. There are a number of standard safeguards that apply to the creation and amendment of secondary legislation such as:
    - being drafted and certified by the Parliamentary Counsel Office
    - being reviewed by the Regulations Review Committee
    - receiving Cabinet scrutiny.

What should be left to non-statutory standards and guidelines?

25. Our view is that a number of matters are best covered by non-statutory standards and operational guidelines. These would cover:
    - general operational guidance to LINZ staff exercising delegations from the Commissioner, for example for compliance monitoring - this would cover the processes that LINZ staff would follow when monitoring conditions of consents and whether leaseholders are meeting their statutory and contractual obligations
    - standards for how the Commissioner will obtain expert advice. This would be closely related to the application requirements set out in the schedule of the Act
    - guidelines surrounding how the rehearings process will be conducted
    - general guidance for leaseholders, including clarifying their statutory or contractual obligations, such as the requirement to farm the land diligently and according to the rules of good husbandry
    - the monitoring framework by which LINZ and the Commissioner intend to meet their respective reporting requirements as set out in secondary legislation.
26. We would like to discuss whether you are comfortable with this proposed approach to the development of secondary legislation.

Update on iwi engagement

27. On 16 July, LINZ officials met with representatives of Rangitāne o Wairau and discussed the proposals with them. They were broadly comfortable with the policy intent relating to Treaty matters. We have also had initial engagement with Ngati Apa ki te Rā Tō as there is one lease that overlaps with their access to Paratitahi Tarns.
28. We are waiting on a date to meet again with Ngāi Tahu to discuss their feedback on the Treaty policy intent. They are also comfortable with the intent, but want to further discuss how this might translate to legislation. We would also like to discuss with them how their views are reflected in the Cabinet paper.

Draft Cabinet paper and A3 package

29. We have now completed a draft of the Cabinet paper for your review – while noting that there are still a number of areas where our approach has not yet being finalised. We have also developed draft A3s to support consultation with your Ministerial colleagues. The draft Cabinet paper is attached as Annex 1 and the A3s as Annex 2.

Initial agency feedback on proposals

30. We sought agency feedback on an earlier draft of the Cabinet paper, and agencies' comments have been reflected in the latest draft as appropriate.

31. The Department of Conservation (DOC) has provided some initial feedback seeking to ensure there is appropriate recognition of DOC's role in the legislation. We are working closely with DOC to address these issues and will update you on progress next week.

32. The Ministry of Business, Innovation, and Employment (Tourism) and the State Services Commission supported the paper. The Department of Prime Minister and Cabinet had only small points of clarification around the timing of the publication of decisions, and Te Puni Kōkiri provided no comment.

33. The Treasury provided no comment on the draft proposals, but has requested to be involved in identifying any financial implications of the policy proposals. LINZ is working through possible financial implications as part of the development of the regulatory impact statement and will be consulting with the Treasury on this.

34. Other agencies had more substantive comments, and this feedback is set out in the table below, along with our initial response.

Agency feedback	**Initial response from LINZ**
Ministry for the Environment	
The Ministry was supportive of the proposals but commented that:	
• the outcomes should be aligned with other environmental legislation such as the Environment Act and Conservation Act through using the term 'intrinsic values', and that the 'heritage' aspect of the outcomes might allow for farming heritage values	While 'intrinsic values' is a clear environmental term, we think that the existing phrase 'inherent values' is well understood and aligned with Conservation terms. We have clarified that 'heritage' values does not include farming heritage.
• the Treaty of Waitangi expectations that are proposed for the General Policy Statement could be in the legislation	The policy proposes using the General Policy Statement to acknowledge Treaty Settlements and set out the intent for the Crown to Partner with iwi. Māori/iwi relationship to the land will be mentioned as well. In addition to the General Policy Statement, there will be a specific section in the legislation setting out the Treaty Partnership obligations and providing for Māori/iwi involvement.
• alignment between the RMA and CPLA could be improved, for example by requiring discretionary	Not all CPLA discretionary actions require a resource consent, and some resource consent activities may not require a CPLA discretionary consent. The status

actions to be sought after a resource consent, like section 37 of the Building Act 2002, and clarifying that RMA controls apply to all land.	quo where leaseholders, of which there are only 170, must identify which they need, and may choose which to apply for first is acceptable. We agree that RMA applies to all land, but think this is more of an education issue, or possibly a district/regional plan issue. The advocacy function for the Commissioner would also help to address MfE's concerns.
Ministry for Primary Industries	
The Ministry was supportive of the proposals but commented that:	
• any proposal to enable the Commissioner to agree with leaseholders on a farm plan (or equivalent) should be streamlined with existing work/plans that require farm plans in many regions	LINZ is engaging with MPI on farm plans to ensure this is well aligned. We think this is mostly an operational issue and the policy proposals enable the use of farm plans without prescribing any type of farm plans that may cause unnecessary duplication.
• the ending of tenure review was a significant loss of opportunity for establishing public access to the outdoors. The suggestions provided included that recreation/access should be part of the outcomes, and that incentives should be provided to encourage leaseholders consider opportunities where they can provide access.	We have not added recreation/access to the outcomes, for reasons explained in the Cabinet paper. However, access can be specifically considered in relation to recreation permits. LINZ sees an opportunity to provide for an organisation like Walking Access Commission to advocate for, and with leaseholder and Commissioner agreement, provide access to and across Crown pastoral land. The need for incentives (some possibly financial) could be investigated, but is not within the remit of this policy work.
Ministry for Culture and Heritage	
The Ministry supported the proposed policy changes, specifically the inclusion of cultural and heritage values within 'inherent value', and the proposed advocacy role of the Commissioner but commented that:	
• Heritage New Zealand Pouhere Taonga (HNZPT) is NZ's leading national historic heritage agency and there may be situations where they will need to be consulted with	LINZ agrees with this point and is looking at whether the role of HNZPT needs to be specified in legislation or can be left at an operational level.
• MCH asked if relevant iwi would be involved in all discretionary action applications in regard to their role identifying cultural values.	LINZ is working with Rangitāne o Wairau, Ngāi tahu, and Ngāti Apa on this issue. Ngāi tahu have a good awareness of cultural sites, Rangitāne o Wairau have signalled that they may need assistance identifying cultural sites and increasing their capacity to advise on cultural issues, while only the Rainbow lease (Nelson Lakes) is of concern for Ngāti Apa.

Te Arawhiti	
Te Arawhiti supported the proposed policy changes [s 9(2)(h)] [redacted]	[s 9(2)(h)] [redacted]
New Zealand Defence Force	
NZDF broadly supported the proposed policy changes but raised specific concerns about their ability to enter Crown pastoral land near Tekapo to carry out training exercises.	We don't think this is an issue relating to the current policy changes. We are working to engage with NZDF on this from an operational perspective.

Next steps

35. The current timeline to progress the Cabinet paper is set out below.

Action	Date
Meeting with LINZ officials	Wednesday 31 July
Two week cross-party consultation	Thursday 1 to Wednesday 14 August
Meeting with Ministerial colleagues	Monday 5 August
Cabinet paper lodgement	Thursday 15 August
Cabinet paper considered at Environment, Energy and Climate committee meeting	Thursday 22 August
Cabinet paper considered by Cabinet	Monday 26 August

36. It would be useful to check whether you are still comfortable with this timeline.

Recommendations

37. **Note** that officials want to discuss with you:

a. your views on providing for more flexibility around the application of the outcomes to discretionary decision-making and how that flexibility could be provided for

b. whether there are factors that would suggest that an independent right of appeal for leaseholders in relation to discretionary consent decisions would not be appropriate

c. whether you are comfortable with our proposed approach to the development of secondary legislation

d. your feedback on the initial draft Cabinet paper and A3 package

e. whether you are still comfortable with the current timeline.

Land Information New Zealand
Toitū te whenua

To: Minister for Land Information

Crown pastoral land regulatory changes: further advice on enforcement, appeals, and access

Date	22 August 2019	**Classification**	In confidence – legally privileged in part
LINZ reference	BRF 20-072	**Priority**	Medium

Action sought

Minister	Action	Suggested Deadline
Minister for Land Information	**Discuss** the content of this briefing with officials.	5 September 2019

LINZ Contacts

Name	Position	Contact number	First contact
Jamie Kerr	Group Manager, Policy	021 819 826	☐
Sarah Metwell	Manager, Policy	027 809 6953	☒

Minister's office to complete

1 = Was not satisfactory 2 = Fell short of my expectations in some respects 3 = Met my expectations
4 = Met and sometimes exceeded my expectations 5 = Greatly exceeded my expectations

Overall Quality	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5

Comments

☐Noted	☐Seen	☐Approved	☐Overtaken by events
☐Withdrawn	☐Not seen by Minister	☐Referred to:	

Purpose statement

This briefing is intended to support a discussion with officials on a number of aspects of the Crown pastoral land regulatory changes. It provides advice on:

- the package of additional enforcement tools, specifically in relation to the administrative penalty
- [s 9(2)(h)] whether to progress with changes to appeals at this time
- promoting and facilitating the negotiation of public access across the Crown pastoral estate (the estate).

It also provides an update on our engagement with the New Zealand Defence Force (NZDF) in relation to an operational issue they have encountered when seeking to use Crown pastoral land for short-term defence training exercises.

Key messages

1. *Enforcement tools:* Following conversations with the Ministry of Justice we are close to finalising a proposed package of additional enforcement tools. Our work has focused on the proposed administrative penalty where an activity is undertaken without the consent of the Commissioner; and ensuring that it contains safeguards and limitations that address a number of issues raised by the Ministry.
2. *Appeals:* [s 9(2)(h)] However, our recommended option is to leave appeals out of scope at this time.
3. *Access:* We have further investigated the possibility of requiring the Commissioner to consider the benefits of public access when deciding on recreation permits. However, we have identified a range of issues with this option, including the possibility that it could disincentivise leaseholders from diversifying their land use to low-impact recreational opportunities. An alternative approach would be to enable the Commissioner to support the Walking Access Commission (WAC) in negotiating access to the Crown pastoral estate.
4. *NZDF:* We are engaging with NZDF on their desire to more easily access land subject to Crown pastoral lease for short-term defence purposes. We see this as an issue that can be resolved operationally, rather than through any legislative change.
5. *Next steps*: We will be providing you with a briefing on the application of the outcomes to decision making on discretionary consents during the week of 2 September. We are working with your office to organise a meeting to discuss both of these papers along with the process for returning to Cabinet following your meeting with colleagues on 29 August.

Recommendation

1. **Discuss** the content of this briefing with officials.

Jamie Kerr
Group Manager, Policy
Date: / /

Hon Eugenie Sage
Minister for Land Information
Date: / /

Background

1. We have previously provided you with advice on:
    - developing an approach to enforcement and recommendations for additional enforcement tools
    - the introduction of an independent appeals process in relation to discretionary consents.
2. Following subsequent conversations with you, this briefing provides further advice on these areas and in addition:
    - advice on considering the benefits of public access when granting recreation permits
    - an update on our discussions with the NZDF.

Recommended additional enforcement tools

3. We have been finalising an enforcement approach for encouraging and, where appropriate, enforcing compliance across the estate - the objective of this being to build public confidence in the system and support the delivery of the outcomes [BRF 19-442 refers]. Following discussions with you on this approach we have met with the Offence and Penalties team from the Ministry of Justice to seek specific advice on the package.
4. Based on this advice, our thinking has developed on the administrative penalty – one of the three additional enforcement tools we are recommending. Our focus has been on ensuring that the administrative penalty contains safeguards and limitations that address a number of issues raised by the Ministry:
    - *Clarifying when an administrative penalty would apply* - An administrative penalty would apply if a leaseholder[1] undertakes an activity listed under section 18 of the CPLA[2] without first obtaining consent from the Commissioner.
    - *Limiting any discretion as to when the penalty would be applied* - The penalty would be applied automatically where the breach is confirmed. However, the Commissioner would have the discretion to waive an administrative penalty in certain circumstances[3].
    - *Limiting any discretion as to the size of the penalty* – The penalty amount would be set in regulations and not subject to the discretion of the Commissioner (i.e. it would be a fixed amount as opposed to a maximum amount). The Ministry has advised that the penalty should be proportionate to the application fee. As part of our regulatory impact analysis, we are working to calculate an approximate discretionary consent fee. When this is complete we will update you on a proposed penalty level.
    - *Ensuring there are avenues for leaseholders to challenge the penalty* - Under this approach, the decision of the Commissioner not to waive an administrative penalty would be made subject to the current rehearings process under section 17 of the Land Act. In light of the discussion in the following section, we do not currently propose making it subject to an independent right of appeal[4].
    - *Exploring how unpaid penalties would be handled* – A leaseholder could not apply for future discretionary consents until the penalty is paid.

[1] Foreseeably this could also apply to third party recreation permit applicants. If this were the case then the penalty would only apply to the party undertaking the commercial activity that requires a recreation permit – and not to the leaseholder as well.
[2] It may also be appropriate for this to apply to other administrative activities requiring consent such as transfers of the lease and residency exemptions.
[3] For example where an activity had to be undertaken with urgency where stock were at risk or in severe weather events
[4] Noting that judicial review would still be available.

5. The Ministry is also investigating the limit on damages that can be awarded by the District Court. This will determine any recommended changes to the maximum damages payable under section 19 of the CPLA. We will report back to you on this along with any other developments in the enforcement space.

Right of appeal

6. The mechanisms by which statutory decisions can be contested are an important part of a regulatory system. As part of our work on decision making we have been looking at whether any changes may be appropriate.

7. Previously we provided advice on a statutory right of appeal for discretionary consent decisions [BRF 20-027]. [s 9(2)(h)]

[s 9(2)(h)]

9. [s 9(2)(h)] we consider that the most appropriate approach is to leave changes to appeals out of scope of the current proposed package of changes.

10. However, if you wish, LINZ could commence work to clarify the scope of section 18 of the Land Act as part of the proposed package of changes. This could either:

    - clarify that the appeal is unavailable to discretionary consent decisions, which may be viewed by stakeholders as limiting the current right of appeal
    - explicitly broaden the right of appeal to cover all decisions, including discretionary consents and as appropriate new enforcement tools.

11. In either case parties affected by decisions will also have access to judicial review, and the current rehearings process under section 17 of the Land Act.

Public access and recreation permits

12. The objective of promoting public access to and across the high country is important to many stakeholders. Though public access is not a proposed outcome of the Crown pastoral land regulatory system - reflecting the property rights of the pastoral lease - there are still potential ways to ensure the Crown's administration of the estate contributes to this broader public access objective.

13. We have previously provided advice on access [BRF 19-408 refers] and in subsequent conversations we discussed the possibility of amending the recreation permit process so that the Commissioner is required to consider public access benefits when making a decision – in addition to assessing the proposed activity against the outcomes. The intention behind this was

[s 9(2)(h)]

to prevent a situation where access across the estate is only provided through high value tourism experiences and not freely to the general public.

14. After considering this option, our advice is that it is inconsistent with the overall aim of the proposed changes because imposing such a test may act as a disincentive to leaseholders to diversify into recreational activities that have a lower impact on inherent values. It would also be difficult for the Commissioner to weigh up this test against achievement of the overall outcomes.
15. An alternative would be to make a legislative change to explicitly enable the Commissioner to support WAC in meeting its public access objective[7] where it relates to Crown pastoral land. In practice, this could include the Commissioner supporting WAC in promoting public access to the estate[8] by facilitating negotiations with leaseholders.
16. If required, we could explore other options, such as financial incentives (e.g. through recreation permit fee rebates) to leaseholders to provide public access.

Update on our consultation with NZDF

17. During consultation on the draft Cabinet paper, the New Zealand Defence Force (NZDF) expressed concerns about their lack of ability to enter land that is subject to Crown pastoral lease near Tekapo to carry out temporary training exercises - as it often does over private and Conservation land. The training could be weeks or months, and can involve some impacts on the land such as from heavy vehicles and temporary campsites.
18. Our view is that there are already existing mechanisms through the Public Works Act 1981 for NZDF to acquire an interest in land that is subject to lease and undertake defence activities. We are continuing to engage with NZDF on this issue and will keep you updated.

Next steps and timeframes

19. We will be providing you with a briefing on the application of the outcomes to decision making on discretionary consents during the week of 2 September. This will reflect recent discussions with the High Country Advisory Group and the Department of Conservation. We are working with your office to organise a meeting to discuss both of these papers along with the process for returning to Cabinet following your meeting with colleagues on 29 August.

[7] The objective of WAC is “to lead and support the negotiation, establishment, maintenance, and improvement of walking access and types of access that may be associated with walking access, such as access with firearms, dogs, bicycles, or motor vehicles.”
[8] Both in relation to leased and unleased Crown pastoral land.

Land Information New Zealand
Toitū te whenua

5 September 2019 BRF 20-094

MEMORANDUM

Crown pastoral land policy proposals: Decision making on discretionary consents

Purpose

This memorandum is to inform a discussion with you at our meeting on 12 September on a proposed approach to a statutory test for discretionary consents.

Background

1. On 29 July, LINZ provided advice outlining issues with the strict application of the hierarchy of outcomes to individual discretionary consent applications - in particular that this would make it unlikely that the Commissioner grants any further discretionary consents, no matter how minor the impacts [BRF 20-027 refers].
2. [s 9(2)(h)] [redacted]
3. At a discussion with you on 31 July, you agreed that we should explore a test that allowed for some flexibility as to how the outcomes were applied to individual discretionary consents decisions.
4. LINZ has undertaken further work on what such a statutory test might look like. This test would replace the current section 18 of the Crown Pastoral Land Act 1998 (CPLA) under which the Commissioner decides on things like pastoral consents, recreation permits, and easements.[2]
5. This memorandum reflects our current thinking and is not our final advice.

What the test is intended to achieve

6. The primary intention of such a test would be to promote the achievement of the outcomes for the regulatory system – these will be included in the purpose of the Act. The outcomes would clearly articulate what the Commissioner's decision-making should be aiming to achieve across the estate and over time – that is, to prioritise the maintenance or enhancement of inherent values across the estate, over pastoral farming.
7. The test also needs to ensure that it does not have the effect of preventing a leaseholder from exercising their rights under the lease.
8. It should be noted that the test would only apply to those discretionary consents that are classified as "discretionary" in the proposed schedule of activities.

[s 9(2)(h)] [redacted]

[2] The current statutory test requires the Commissioner to take into account both the desirability of protecting inherent values and of making the land easier to farm. This allows for acceptable losses of inherent values as a result of statutory decision making [BRF 20-098 refers].

What the test could look like in practice

9. A statutory test could take a variety of forms. We want to discuss one possible approach with you that we believe will prioritise the protection of inherent values, while addressing the previously discussed issues. This approach comprises two components:

   - *the application of an effects-based test for assessing an activity's impact on inherent values*. This would involve the identification of inherent values, an assessment of the adverse effects of an activity on these values,[3] and whether those effects could be avoided, remedied or mitigated. The threshold for allowable residual adverse effects could be set at 'no more than minor' or a bespoke limit based upon the system objectives. The amount of applications that would qualify to be assessed against the following stage would depend on how this test is calibrated.
   - *a 'gateway' test that enables further consideration of activities that fail the effects-based test*. This 'gateway' would apply to certain activities that relate to ongoing pastoral farming across the lease. It is intended to minimise the risk that the new decision making framework will impact on existing property rights. This gateway could be designed so that it provides for the minimum pastoral activity to protect leaseholders' property rights [s 9(2)(h)] [redacted], or it could apply to a level of pastoral farming beyond this.

10. The existing consultation requirement with the Director-General of Conservation would be retained, and an obligation to engage with iwi (proposed in the Treaty of Waitangi component of the CPLA change) would be introduced.

11. The approach outlined below is primarily related to landlord consents (i.e. to cultivate, oversow, topdress etc.). We are still working through whether the same approach would work in the case of recreation permits and easements.

Component 1: An effects-based test for inherent value		
1) After an application is received, an assessment would be undertaken to determine whether the relevant land has inherent values that are likely to be impacted on by the activity. As currently defined, inherent value arises from ecological, cultural, landscape, heritage, and scientific values that are found in attributes or characteristics of natural resources and historic places.		
2) An assessment would then be undertaken of the likely adverse effects on the identified inherent values resulting from the proposed activity		
3) An assessment would be undertaken as to whether the adverse effects can be avoided, remedied or mitigated • *Note: The range of acceptable effects management tools would not include offsetting.*		
4) Based upon these expert assessments, a decision would be made, and either:		
The activity would be consented (along with appropriate conditions) if there are no adverse effects after appropriate effects management tools applied.	The activity would be consented (along with appropriate conditions) if the remaining adverse effects fall below a certain threshold.	The activity would be declined if the remaining adverse effects exceed a certain threshold *except* where the proposed activity qualifies through the 'gateway' *(see below).*

[3] This would include cumulative adverse effects across the leases and within the lease.

<table>
<tr><th colspan="2">Component 2: A ‘gateway’ for certain qualifying activities</th></tr>
<tr><td colspan="2">1) In order to qualify for the gateway, the Commissioner must be confident that the activity is necessary to sustain a ‘level’ of pastoral farming (which, as noted above, could range from a bare minimum upwards) and that declining the activity would make this level of farming unachievable.
• Note: The impact of a decision would have to have a significant impact on the ability of a leaseholder to farm their lease, not just that the activity would make pastoral farming more profitable.</td></tr>
<tr><td colspan="2">2) The Commissioner would then consider the significance of the inherent value that would be lost due to the unavoidable adverse effects and whether the activity should still be prevented due to the importance of protecting that inherent value. This would help to prevent major loss of significant inherent values even where this would impact on leaseholders’ reasonable use of their lease.</td></tr>
<tr><td colspan="2">3) A decision is made, and either:</td></tr>
<tr><td>The activity is declined in spite of the fact that it qualified for the gateway, because the inherent value is of such significance.</td><td>The activity is approved in spite of its unavoidable adverse affects on inherent values.
• Note: Due to the high-risk nature of these decisions it may be appropriate to impose blanket conditions that these approvals be reviewed periodically to ensure adverse affects are not compounding or accumulating.</td></tr>
</table>

Next steps and timeframes

12. At our meeting with you on 12 September, we would like to discuss:
    - whether this approach is consistent with the overarching objectives for the system - noting that a ‘gateway’ acknowledges that decision-making may still result in the loss of inherent value – though only in tightly specified circumstances.
    - how the test could be calibrated in order to reflect the outcomes – for example, how this could affect the setting of thresholds.
13. Once you have provided your feedback on our broad approach to a statutory test for discretionary consent decisions, we will provide you more detail on a relevant policy proposal.

Actions required

14. **Discuss** the proposed approach with officials at the meeting on 12 September.

LINZ Contacts

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Jamie Kerr	Group Manager, Policy	021 819 826	☐
Sarah Metwell	Manager, Policy	027 809 6953	☒

23 September 2019 BRF 20-132

MEMORANDUM

Flow diagram of the proposed discretionary consent process

Purpose statement

1. To provide you with a flow diagram of the proposed discretionary consents process.

Background

2. On 19 September we discussed a proposed approach to a statutory test for discretionary consents [This test is outlined in BRF 20-094].

Summary of the test

3. Attached is a flow-diagram demonstrating how a discretionary consents process that incorporates this test would work (**Appendix 1)**. The flow-diagram has three stages: the classification of activities, the effects-based test on inherent values and then – if needed – a gateway test for certain qualifying activities.

The Classification of activities

4. The flow-diagram starts with the classification of activities into permitted, discretionary and prohibited will be done through a schedule in the Act. Only activities in the discretionary category could require a discretionary consent.

5. We are working closely with the Department of Conservation to create an initial draft of this schedule, taking a precautionary approach – i.e. activities will remain in the discretionary category unless we are satisfied that the cumulative effects of the activity will be no more than minor. We expect this to be most activities in the first iteration of the schedule.

Calibration opportunities in the effects-based test and the gateway

6. There are three places in the test where calibration will occur:
   - the 'threshold' of the effects-based test,
   - the 'level' and 'significance' in the gateway component.

7. We can provide more detailed advice on how the 'threshold', 'level' and 'significance' can be calibrated and how they will work together as part of the discretionary consents process.

LINZ Contacts

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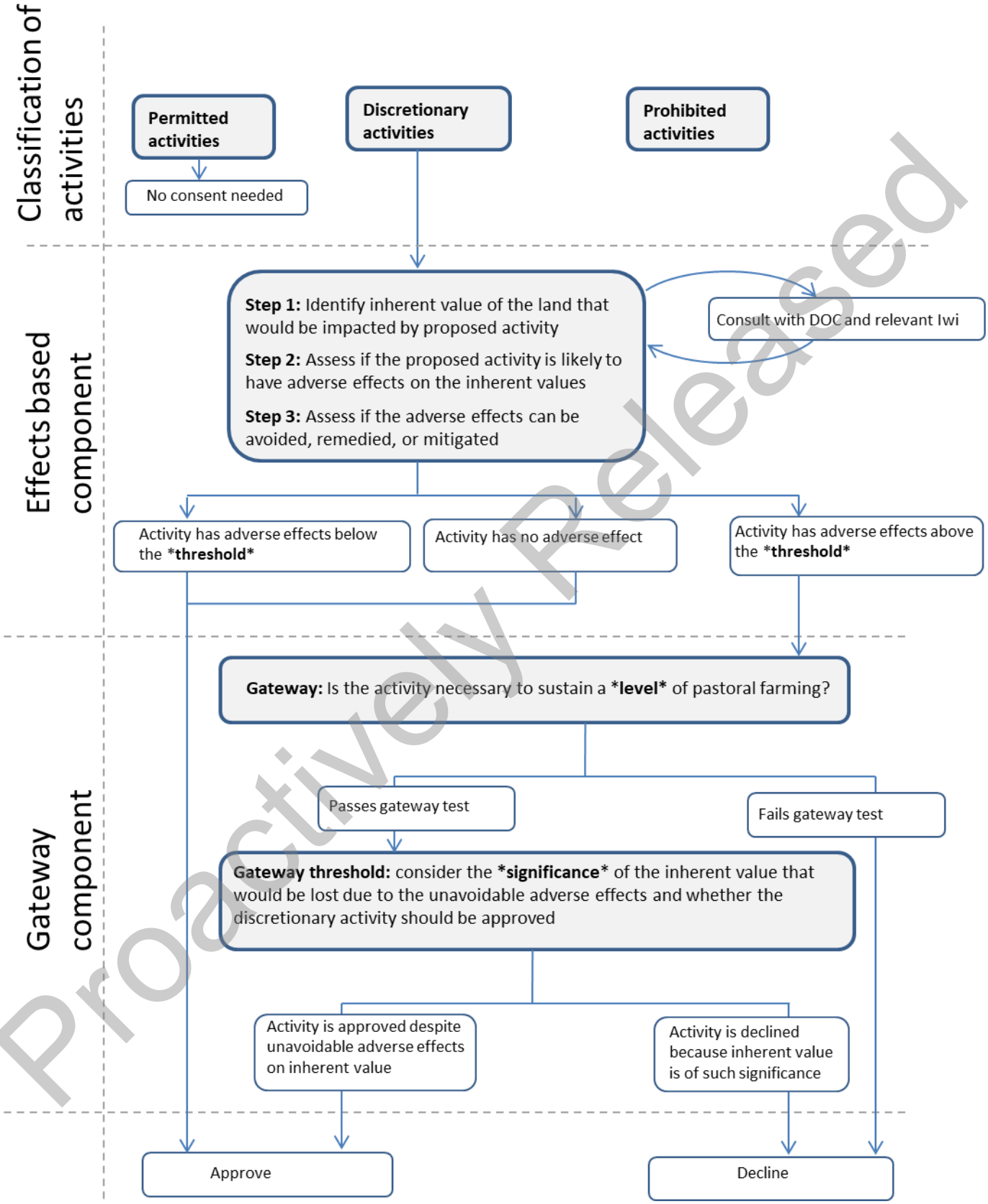
Jamie Kerr	Group Manager Policy	MOB: 021 819 826	☒

Appendix 1: Flow diagram of discretionary consents process



27 September 2019 BRF 20-142

MEMORANDUM

Crown pastoral land reforms: Calibrating the discretionary consent process

Purpose statement

1. This memo provides you with options for how the proposed discretionary consents process could be calibrated, and the impact these different options may have for achieving outcomes.

Background

2. On 23 September we discussed a proposed approach to a statutory test for discretionary consents [BRF 20-132 and BRF 20-094 refer] and undertook to provide you with further advice on how such a test might be calibrated to deliver on your policy intent.
3. This memo expands on the intent of the test and the potential to calibrate points identified on the flow diagram attached as **Appendix 1.**
4. The test would only apply to those activities that fall within in the 'discretionary' category of the proposed activity classification schedule. LINZ is working closely with the Department of Conservation (DOC) to create an initial draft of this schedule, using the principle that activities will remain in the discretionary category unless we are satisfied that the effects of the activity (both immediate and cumulative) will have minimal impacts in all circumstances. We expect this to be most activities in the first iteration of the schedule.

How the outcomes relate to a discretionary consent test

5. On 29 July, LINZ provided advice outlining issues with the strict application of the hierarchy of outcomes to individual discretionary consent applications - in particular that this would make it unlikely that the Commissioner could grant any further discretionary consents, no matter how minor the impacts [BRF 20-027 refers].

[s 9(2)(h)]

7. We have therefore focused on developing a test that clearly prioritises inherent values while providing for leaseholders' ongoing ability to undertake pastoral farming on their leases.

[s 9(2)(h)]

Summary of the proposed discretionary consents test

8. The proposed discretionary consents test would replace the current statutory test in s18 of the Crown Pastoral Land Act 1998 with an effects-based test for assessing an activity's impact on inherent values.
9. A second (gateway) test could then be applied at the request of the leaseholder to enable further consideration of activities that fail the effects-based test. This would act as a backstop, to minimise the risk that this new decision-making process will prevent leaseholders undertaking activities that are critical to the continued pastoral farming of a lease - while still ensuring that inherent values are not significantly adversely affected.

Calibration opportunities in the effects-based test and the gateway

10. As we previously advised, decisions would need to be made about how to calibrate these tests in three places:
    - the extent to which the decisions allow adverse effects on inherent values (i.e. the 'threshold'),
    - the extent to which continued pastoral farming of the entire lease should be considered (i.e. the 'level' of the gateway), and
    - any further things considerations, relevant to inherent values, that the Commissioner should take into account where the gateway is being used.

The effects-based test

11. The proposed effects-based test would involve:
    - identifying inherent values of the land at the appropriate scale and recognising the varying nature and importance of inherent values,
    - evaluating if the activity will have any adverse effects on those inherent values including if:
        - the adverse effects are temporary
        - they modify/degrade the inherent value
        - there are any cumulative adverse effects,[2]
    - determining whether any adverse effects can be avoided, remedied and mitigated, and
    - determining the magnitude of any residual adverse effect that the activity could be have.
12. The Commissioner could also be required to consider alternative ways of achieving the relevant activity,[3] in case any of those have a lower adverse effect.[4]
13. The 'threshold' is only relevant to any residual adverse effects that could not be avoided, remedied or mitigated.

[2] This would include cumulative adverse effects across the leases and within the lease. Cumulative effects may only be identified through longer-term monitoring of the land to inform what cumulative effects activities have on inherent values

[3] It is likely that DOC would be consulted on this step, as they are often are aware of actions that could be less damaging to values than those applied, for example spraying vs. burning vs. mechanical clearance of vegetation to provide for stock access.

[4] This matches the obligation on the Minister when compulsorily acquiring land under the PWA to consider alternatives sites, routes and methods for achieving the objectives of the public work - s24(7).

The extent to which the decisions allow adverse effects on inherent values - the 'threshold'

14. The key consideration in setting a threshold is what level of adverse effect ought to be allowable for an activity to be approved.
15. The aim of the changes is to maintain or enhance inherent values over the whole of the Crown pastoral estate over time, a 'threshold' could be either:
    - set at 'zero' - this would mean that no activity with any adverse effect could be approved by the Commissioner, or
    - set at a low level (e.g minor in quantity, severity, size or degree) – this would mean that some small adverse effects from an activity across an entire lease could be approved.
16. Based on our previous advice to you, we think that the 'threshold' for the effects-based test should be calibrated to a low level. This means the Commissioner could approve an activity that has no adverse effect or has only a small adverse effect.
17. Our recommended approach gives the Commissioner some flexibility to approve specific activities on individual leases with low level impacts, while still seeking to achieve the system outcomes of maintaining or enhancing inherent values broadly over the whole of the Crown estate over time.
18. In this approach, DOC will play a critical role in considering the scale and duration of the adverse effect and the specific nature and importance of the inherent value in its context in any operational policy. This will ensure the right expert advice is provided to the Commissioner to enable robust decisions.
19. We expect that there would be consultation with DOC and engagement with relevant iwi before the Commissioner decides whether an activity passes the 'threshold'. This will be important to ensure expert views are provided to the Commissioner in addition to information LINZ holds or the leaseholder/applicant provides.
20. As a safeguard, it will be critical to undertake effective monitoring to ensure that the effects of any activity are well understood, and this understanding of the effects can be factored into future decision-making. LINZ will be working on implementing improved monitoring as part of other system changes.

The process of linking the effects-based test and the gateway

21. From a process perspective, applications that fail the effects-based test would be declined. Leaseholders could then choose whether to apply to enter the gateway test. Making the transition from the effects-based test to the gateway test optional has a few benefits:
    - it reduces the information requirements for the initial application because leaseholders will not have to initially provide information justifying how central the activity under the application is to their farming operation, and
    - it could result in some leaseholders voluntarily choosing not to try and enter the restrictive gateway that will take extra time, cost and effort.

The gateway

22. The gateway is intended to minimise the risk that this new decision-making process will prevent leaseholders undertaking activities that are **critical** to the continued pastoral farming of a lease [s 9(2)(h)] - while still ensuring that inherent values are not significantly adversely affected.

[s 9(2)(h)]

23. Our initial thoughts are that the test should require the leaseholder to demonstrate to the Commissioner's satisfaction that not allowing the activity would prevent the leaseholder from conducting pastoral grazing (when the lease is considered as a whole).
24. This means that applicants would only be successful in passing this test in exceptional circumstances.
25. If an activity fails the effects-based test and doesn't pass the gateway, the consent would be declined.

The extent to which continued pastoral farming of the entire lease should be considered - the 'level' of the gateway

26. A key issue is setting a 'level' at which an activity could be considered critical to ongoing pastoral farming of the lease. This could be either:
    - **option 1-** set so the Crown doesn't *unreasonably prevent the leaseholder from exercising their right to pasturage over their leased land*, where the Commissioner must be satisfied that not allowing the activity would prevent the leaseholder from conducting pastoral grazing when the lease is considered as a whole, or
    - **option 2** - set so only activities which are *necessary for the reasonable use of the land for pastoral farming* are approved, noting the constraints of the lease agreement.
27. Option 1 is likely to be more restrictive in the long term and may result in a decline of pastoral farming activity over the leases. A challenge in pursuing this option would be developing operational policy and guidelines that provide enough clarity to determine whether an activity, if declined, would prevent a leaseholder from conducting pastoral grazing over the lease as a whole.
28. Option 2 is a broader gateway that would be informed by development in farming practices and having regard to what is reasonable. [6] Compared to option 1, however, it is likely to lead to a wider range of activities being approved.

Further things the Commissioner should take into account as part of the gateway

29. This step would provide a final decision-making check to help ensure that activities are not approved that would lead to major adverse effects on inherent values, even if declining them would prevent a leaseholder continuing to farm their lease.
30. It would involve the Commissioner considering the scale and duration of the adverse effects and the specific nature and importance of the inherent value that would be lost if any activity were approved.

What are the further things that should be taken into account?

31. There are two options for how a threshold for this consideration would be set:
    - **option 1:** no more than moderate effects - this would mean that, even if the activity is deemed to be critical for ongoing pastoral farming of the lease, an activity with a *more than moderate* adverse effect on the inherent values of the land would be declined, or
    - **option 2:** the Commissioner could make a judgement about whether the activity should still be declined due to the scale and duration of the adverse effect and the specific nature and importance of the inherent value, as well as considering information from the leaseholder about the importance of the activity for pasturage over the whole lease. A formal

[6] 'Reasonable use' is a common term in landlord and tenant legislation. In this context, the test of what is 'reasonable' is what the average 'reasonable' person would do in the circumstances, not what the applicant considers to be reasonable. For pastoral leases this could require consideration of the land at question, the proposed activity, and the restrictions of the lease agreement.

requirement to consult with DOC (and engage with iwi if relevant) could be included as part of this test.

32. **Option 1** requires setting a 'threshold' for a level of adverse effect on inherent values that is acceptable. From high-level engagement, DOC's initial view is that setting a threshold to achieve this will be highly subjective and very difficult. They also have a reservation around permitting a relatively high-bar of acceptable loss – even if it only applies to a narrow gateway.
33. If a 'threshold' for option 1 could be created, then this would put a clear limitation on the adverse effects that the gateway would allow.
34. **Option 2** is more nuanced and obliges the decision maker to re-consider all information on the inherent value and adverse effect and information on the farming activity. This option avoids setting an amount of adverse effect that is permissible – where this might cause unintended outcomes in the future, and avoids the risk of legislating an unworkable level of 'significance' into the regulatory system.
35. Option 2 is both tightly bounded by the outcomes, consultation/engagement with DOC and relevant iwi, as well as monitoring, accountability, and transparency requirements. However, it would still require a decision to be made by the Commissioner exercising their judgement on the information they received.

Other matters to consider

36. The test is expected to be a focus of attention from key stakeholders in the future. We expect the calibration of the test will receive a significant amount of attention. [s 9(2)(h)] [redacted]
37. High Country Advisory Group could provide some expert comments on the proposed test from their respective perspectives. We indicated to the Advisory Group that we may engage with them on the discretionary consents test when we initially discussed it in August.
38. In October we will be meeting with the Legislation Design and Advisory Committee and can ensure the test fits with the outcomes of the regulatory system. We expect that any advice they have will fall within the minor policy decisions that you would be able to make.
39. We will be checking ways to ensure good administrative alignment with any Resource Management Act hearings (similar to alignment of DOC's concessions with RMA hearings) to ensure information sharing can happen where possible.

Next steps

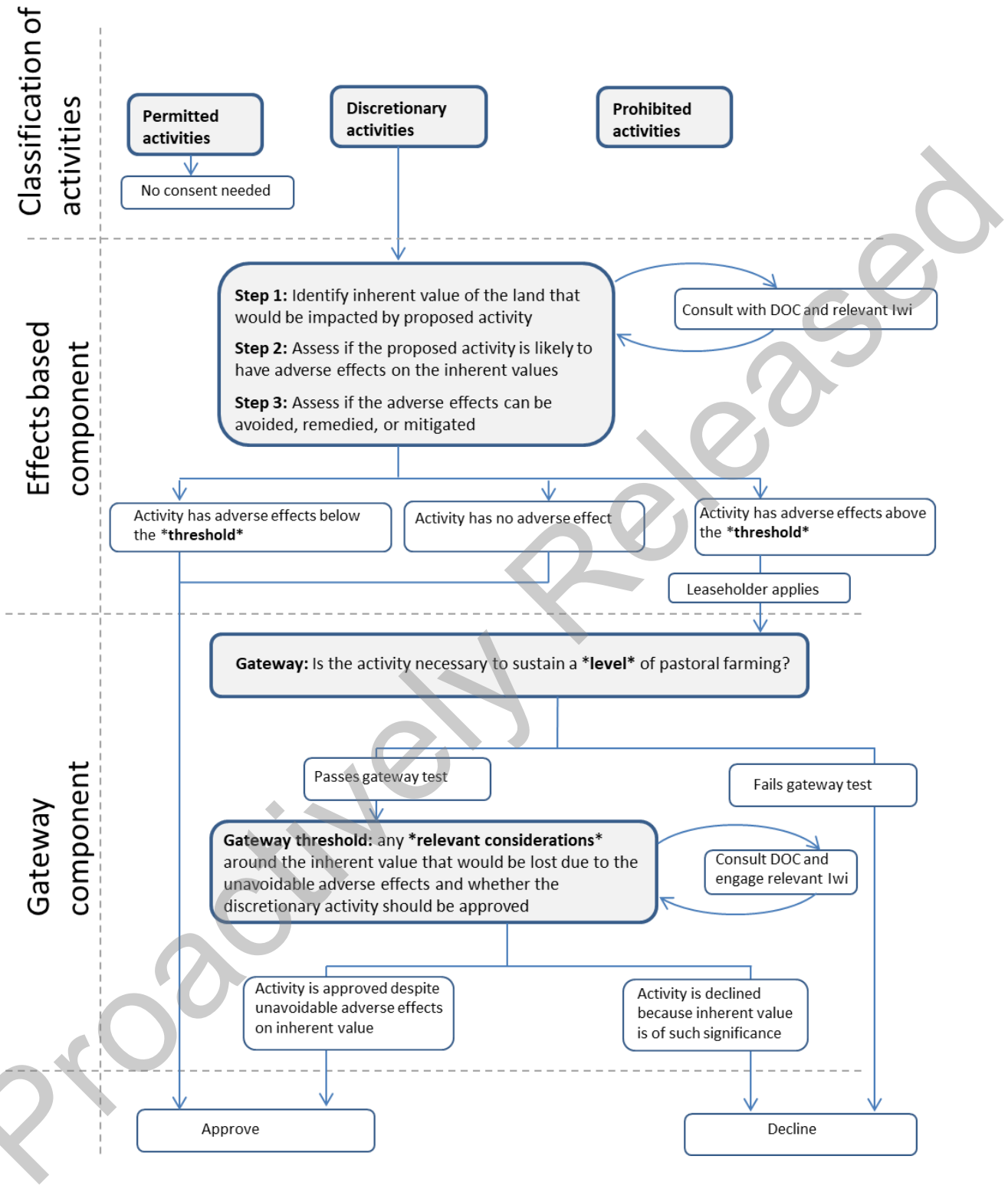
40. Officials will discuss this briefing with you at the regular weekly meeting on Monday 30 September.
41. While we have had initial discussions with DOC on the test, we have not yet had time to work through the details of calibrating the tests with them. This would be an important next step in developing this work further, assuming you are comfortable with us taking this work further.
42. It should also be noted that the tests outlined above primarily relate to discretionary consents (i.e. to cultivate, oversow, topdress etc.). We are still working through whether any specific provisions are required for the Commissioner to make decisions on things like recreation permits and easements.
43. In the week starting on 30 September, we will provide you with further advice on the following matters:
    - the activity classification work,
    - our engagement with iwi, including how to reflect the views of Te Rūnanga o Ngāi Tahu in the Cabinet paper,

- requiring the Commissioner of Crown Lands (the Commissioner) to take account of Government policy,
- a Crown pastoral land Strategic Intentions and further reporting requirements (in place of a Statement of Performance Expectations),
- timelines for legislative change, and
- advice on the concepts of ‘good husbandry’ and ‘waste’.

LINZ Contacts

Name	Position	Contact number	First contact
Stephen Trebilco	Policy Advisor	DDI: 04 496 9468	☐
Jamie Kerr	Group Manager Policy	MOB: 021 819 826	☒

Appendix 1: Flow diagram of discretionary consents process



Extract

Land Information New Zealand
Toitū te whenua

1 October 2019 BRF 20-152

AIDE MEMOIRE

Crown pastoral land policy proposals: updated Cabinet paper and speaking points for Ministerial consultation

Explanatory Note:

Advice that informed decision-making, provided in this briefing, can be found below as an extract.

The rest of this briefing is out-of-scope of this proactive release (i.e. not policy advice).

Extract

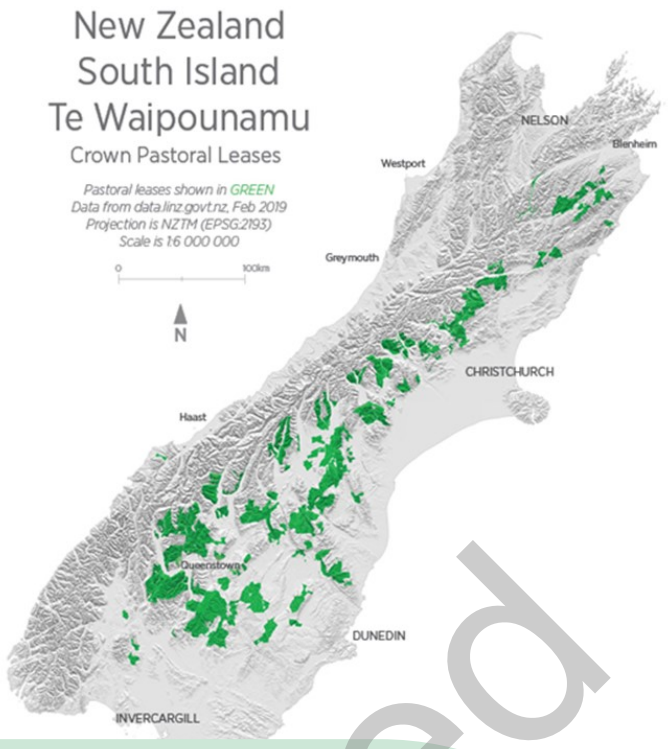
Note on updated Cabinet paper

Specific changes for your attention

5. **Paragraph 49**: We have also included a proposal to require the Commissioner and LINZ to produce a 'Crown pastoral land Strategic Intentions' (strategic intentions) to be approved by the Minister. We consider that this will achieve the objectives of the previous 'statement of performance expectations' – holding the Commissioner and LINZ clearly accountable to the Minister for how they are performing their respective functions. The draft Cabinet paper outlines how this new accountability mechanism would function.

Extract

Crown pastoral land regulatory changes



The South Island high country is an iconic landscape and a taonga for many New Zealanders. Increasing public concern about loss of biodiversity and landscape values and the management of Crown pastoral land required ***regulatory changes****.*

In January 2019, Cabinet agreed to end tenure review *and committed to being a long-term owner and lessor of 1.2 million hectares of Crown pastoral land.*

Cabinet also agreed to consult on further regulatory changes *to ensure that the Crown's enduring stewardship of the land will maintain and enhance ecological, landscape, cultural, heritage, and scientific values (inherent values) of the land for present and future generations.*

The proposed changes reflect a need to:

- ***safeguard the Crown's interest in pastoral land****—particularly the land's inherent values — and restore public confidence to the management of Crown pastoral land,*
- *while* ***recognising that the land is farmed by leaseholders*** *who have rights to exclusive pasturage of the land and exclusive occupation, and are obliged to control pests and weeds.*

The changes centre around key shifts so that Crown pastoral land is managed in an effective, efficient and trusted way to enhance the inherent values for present and future generations of New Zealanders.

Three key shifts

Current state → **Future state**

Crown pastoral land is managed using a process-based approach that delivers discrete decisions and actions without a clear outcome for New Zealand.

Create outcomes for the regulatory system

A clear set of outcomes will be created. Outcomes will prioritise inherent values of the land over providing for pastoral farming and other activities. The outcomes will apply to all functions carried out in relation to Crown pastoral land.

A **new discretionary consent process**, which is aligned with the outcomes, will ensure about 100 discretionary consents requested by leaseholders are decided by the Commissioner in a way that contributes to the outcomes. The outcomes will be complemented by **improved monitoring and enforcement** of the land to ensure the outcomes are being delivered over time.

Iwi and ENGOs are supportive of creating outcomes for Crown pastoral land. Leaseholders worry these outcomes will restrict their ability to farm the land.

There are low levels of public trust that the land is being managed in the best interest of New Zealanders.

Increase public trust

Increase public trust in the regulatory system by having more **transparent decision making**, **stronger accountability** and more **opportunity for public involvement** at a 'whole-of-system' level.

This includes clarifying the roles and responsibilities within the regulatory system, and strengthening the accountability for performance of those roles through regular reporting, and publishing decisions made by the Commissioner.

Iwi and ENGOs support improvements to transparency, accountability and public involvement. Some ENGOs wanted more accountability and public involvement than is proposed. Leaseholders worry that public involvement encroaches on what they see as contractual matters between them and the Crown.

The legislation doesn't recognise and provide for te Tiriti o Waitangi or for the relationship of Māori with their ancestral lands.

Te Tiriti o Waitangi

Take into account the principles of te Tiriti o Waitangi. Provide for a strong and evolving relationship between the Crown and iwi and for the relationship of Māori with their ancestral lands.

Specific provisions in legislation will set out how the Crown engages with iwi when exercising powers and functions in relation to Crown pastoral land.

This won't put obligations on leaseholders to partner with iwi. The Crown is the treaty partner and has the relevant responsibilities to work with iwi.

Iwi, ENGOs and leaseholders support these changes. Iwi would like a stronger duty on the Crown, but recognise that the Crown must also work with leaseholders. Leaseholders support the role of iwi in cultural values and agree that they should not be obligated to partner with iwi, as this is the Crown's role.

These key shifts will be supported by ***operational changes****. LINZ is up-skilling staff, working more collaboratively in the Mackenzie Basin, and improving its understanding of what is on the land.*

Feb 2018:Mackenzie Basin Report published

Feb 2019 Cabinet decision [CAB-19-MIN-0001] to end tenure review and consult on regulatory changes

Feb 2019: Crown Pastoral Land Regulatory system assesment completed and published

Feb 2019: Discussion document released for 8 weeks

Apr 2019: Public consultation ended with over 3000 submissions, many from leaseholders, ENGO's, Ngāi Tahu, and High Country Accord

June 2019: Summary of submissions released

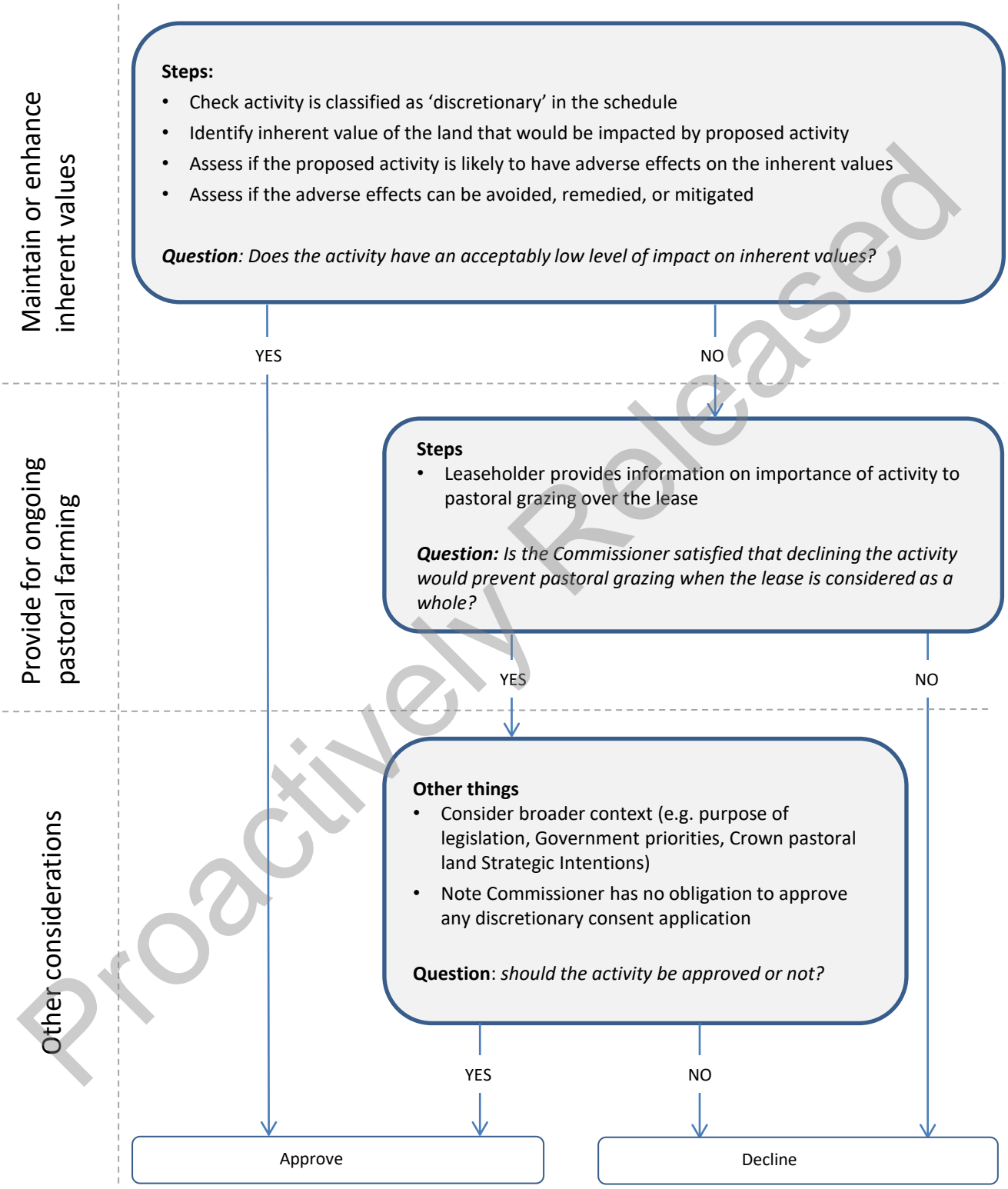
May-September 2019: Multiple Hui with iwi, working with DOC, engagement with High Country Advisory Group, and Leaseholders

June-July 2019: Agency consultation on draft proposals and Cabinet paper

Nov 2019: Cabinet considers proposals

Jan/Feb 2020: draft bill before the House

New discretionary consents process



** Flow diagram doesn't indicate where the Commissioner would be required to consult with DOC or engage with relevant iwi*

Extract

Land Information New Zealand
Toitū te whenua

To: Minister for Land Information

Further information requested following ENV's consideration of the Crown pastoral land reform Cabinet paper on 23 October

Date	30 October 2019	**Classification**	In confidence
LINZ reference	BRF 20-209	**Priority**	High

Explanatory Note:

Policy advice provided through this briefing (i.e. sheep numbers on Crown pastoral land) can be found below as an extract.

The rest of this briefing is either out-of-scope of this proactive release (i.e. not policy advice) or has been withheld under the relevant grounds of the Official Information Act 1982.

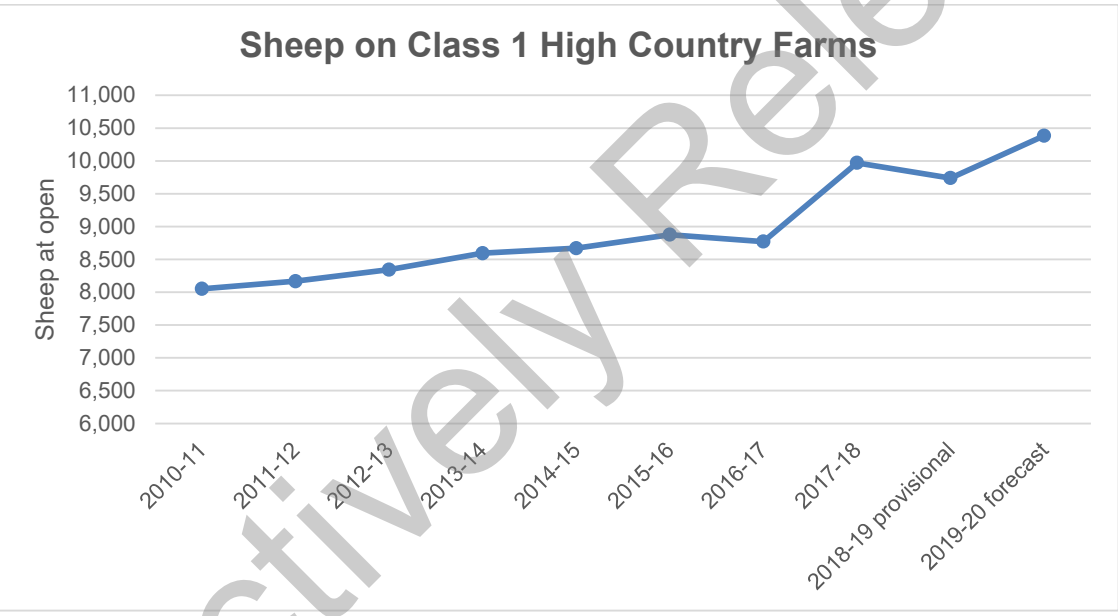
Extract

Sheep numbers on Crown pastoral land

6. ENV also asked about the impact of a decline in sheep numbers across New Zealand over time – in terms of whether Crown pastoral land is now in effect being farmed less intensively.

7. Across New Zealand, there has been a significant decrease in sheep numbers – with a 44 per cent decline between 1994 and 2017[1]. However, **Annex 2** shows that this reduction has primarily occurred at lower altitudes in the Southland and Canterbury regions, as opposed to in the high country.

8. Most Crown pastoral leases are located within the high country. Recent trends show that sheep numbers are increasing across all types of sheep and beef farms in the high country, with sheep numbers on an average high country farm growing from 8,052 in 2010/11 to 9,970 in 2017/18 – an approximate increase of 24 per cent over eight years[2]. Stocking rates for these farms have also increased by 40 per cent over this time from 1.0 to 1.4 stock units per hectare – noting that some of this increase is due to stock numbers, and some is due to the average size of high country farms reducing, for example from tenure review - where some land previously available to graze has become public conservation land.



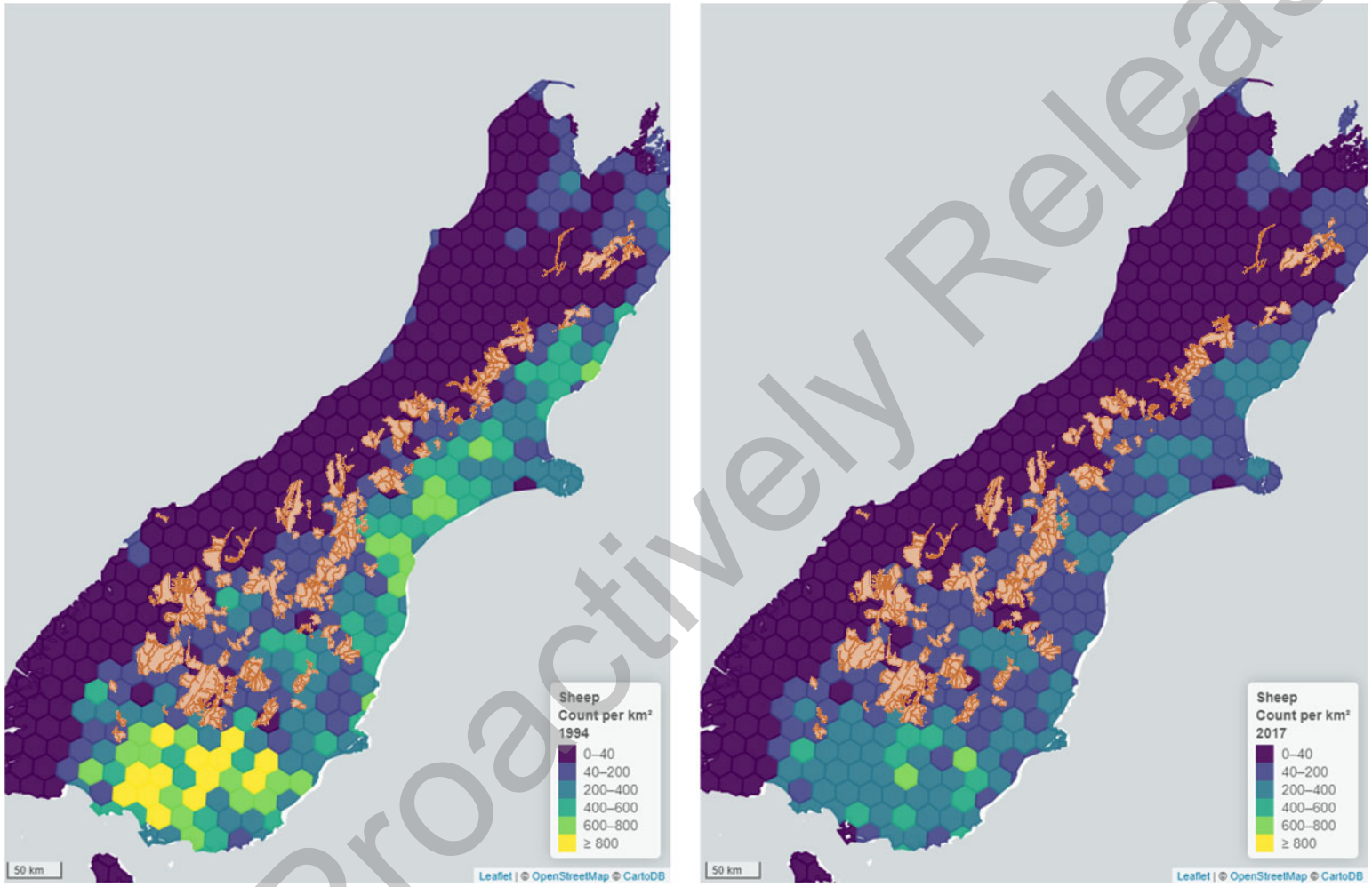
9. LINZ does not have data on current stock numbers specifically on Crown pastoral land. Leaseholders must apply to the Commissioner if they want to increase their stock numbers beyond the limit within the lease. LINZ holds data on these stock limitations, however, not in a form that allows LINZ to assess overall trends in maximum allowable stock numbers. LINZ is currently working to address this issue by improving its data collation and information systems; and through an improved inspection regime that will reconcile the existing stock limitations against the actual stock run on the land.

[1] Data from Statistics New Zealand
[2] Data from Beef + Lamb on Class 1 South Island High Country Farms. These Class 1 farms comprise of "*extensive run country at high altitude carrying fine wool sheep, with wool as the main source of revenue. Located mainly in Marlborough, Canterbury and Otago*" – these farms would include both land held under Crown pastoral lease and as freehold.

Extract

Annex 2: Change in sheep numbers between 1994 and 2017

Note: Data on sheep count from Statistics NZ. Indicative boundaries of Crown pastoral leases are overlaid in orange.



Land Information New Zealand
Toitū te whenua

To: Minister for Land Information

Crown Pastoral Land Reforms: possible approaches to a new discretionary consent process

Rā / Date	19 November 2019	**Kōmakatanga / Classification**	In confidence
LINZ reference	BRF 20-250	**Whakaarotau / Priority**	High

Ngā mahi e hiahiatia ana / Action sought

Minitia / Minister	Hohenga / Action	Deadline
Minister for Land Information	**Provide** feedback on possible approaches to a new discretionary consent process at your meeting with officials on 20 November 2019 **Confirm** that you still wish LINZ officials to seek input from key external groups on these possible approaches **Agree** to officials providing material on the possible approaches to key external groups for their input	20 November 2019

LINZ Contacts

Ingoa / Name	Tūnga / Position	Contact number	First contact
Elisa Eckford	Acting Manager Policy	027 237 7695	☒
Stephen Trebilco	Policy Advisor	04 496 9468	☐

Te Tari o te Minitia ki te Whakaoti / Minister's office to complete

1 = Was not satisfactory 2 = Fell short of my expectations in some respects 3 = Met my expectations
4 = Met and sometimes exceeded my expectations 5 = Greatly exceeded my expectations

Overall Quality	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
Comments					

☐Noted ☐Seen ☐Approved ☐Overtaken by events
☐Withdrawn ☐Not seen by Minister ☐Referred to:

Pūtake / Purpose statement

To test a range of potential approaches to the development of a discretionary consent process.

Pānui whāinga / Key messages

1. We have identified a number of ways of approaching a new discretionary consent process – specifically focusing on the second part of the process which deals with further considerations around a leaseholder's ability to farm their lease (**Annex One** refers). Key feedback we are seeking is:
   - Are there any approaches in **Annex One** that you would not be comfortable progressing?
   - Are there any approaches missing from **Annex One** that you want us to consider?
2. Subject to your feedback and agreement, we could modify a version of **Annex One** to send out to key external groups (including the High Country Accord, the High Country Advisory Group, Ngāi Tahu, and selected NGOs) for their input – however, these groups will not have a great deal of time to consider the proposals.

Tohutohu / Recommendations

It is recommended that you:

1. **provide feedback** on possible approaches to a new discretionary consent process at your meeting with officials on 20 November 2019
2. **confirm** that you still wish LINZ officials to seek input from stakeholders on these possible approaches
3. **agree** to officials providing a modified version of **Annex One** – subject to Cabinet decisions and changes resulting from your feedback– to key external groups for their input.

Elisa Eckford	Hon Eugenie Sage
Acting Manager Policy	Te Minitia mō Toitu te Whenua
Rā / Date: / /	Rā / Date: / /

Tāpiritanaga / Attachments

1. **Annex One** Possible approaches for developing a new discretionary consent process

Te Horopaki / Background

Cabinet paper to date

3. A new discretionary consent process is being developed on the basis that Cabinet will agree to a number of amendments to the Crown pastoral land regulatory system. Cabinet is likely to:
    - agree that the decisions on discretionary consent applications must be consistent with the outcomes
    - note that there are a range of options for how such a statutory process for discretionary consents could be configured, and what the Commissioner would consider in making their decisions
    - agree that the statutory process for decisions on a discretionary consent application be required to include consideration of the impact of an activity on inherent values, and the impact that declining an application would have on a leaseholder's ability to farm their lease.
4. Final decisions on the process have been delegated to the Minister for Land Information in consultation with the Ministers for the Environment and of Agriculture.

Design of the discretionary consent process

5. Our proposed new discretionary consents process comprises two components (in-line with BRF 20-186):
    - the application of an effects-based test for assessing an activity's impact on inherent values. This would involve the identification of inherent values, an assessment of the adverse effects of an activity on these values, and consideration of whether those effects could be avoided, remedied or mitigated.
    - a 'pastoral farming' test that enables further consideration of activities intended to provide for those situations where declining a consent would significantly impact on the leaseholder's ability to continue pastoral farming of the leased land.
6. The consultation requirement with the Director-General of Conservation would be retained, and an obligation to engage with iwi would be introduced.
7. This process would only apply to pastoral farming activities classified as 'discretionary' in the schedule of activities, plus all other activities listed in the current Crown Pastoral Land Act section 18(3).

Potential approaches to a new discretionary consent process

8. A range of approaches for the discretionary consent process have been prepared in collaboration with officials from the Department of Conservation (DOC) and Ministry for Primary Industries (MPI), **Annex One** refers.

Protecting inherent values

9. The focus of **Annex One** is on the second part of the test, because there was a general consensus among agencies around the policy intent for the effects-based part. Following discussions between LINZ, DOC and MPI, the 'no more than minor adverse effect' seems like a practical option, but officials are still considering whether there are other ways of framing this part of the test.

Further considerations relating to pastoral farming

10. This component would only apply to pastoral farming activities that have a more than minor impact on inherent values. The intent of this component of the test is to provide for those

situations where declining an application would impact a leaseholder's ability to farm the leased land.

11. This pastoral farming test would replace section 18 of the CPLA where under the status quo the Commissioner is required to take account of the desirability of protecting inherent values and the desirability of making it easier to farm the land. Retaining current wording is considered out of scope because it doesn't align with the new outcomes.

12. There are a number of possible ways in which this part of the tests could be put together, and **Annex One** outlines four possible considerations (that are not necessarily mutually exclusive).

Questions for feedback

13. We are seeking your feedback on the new discretionary consent process before we develop up specific options. In particular:

    - Are there any approaches in **Annex One** that you would not be comfortable progressing any further?
    - Are there any approaches missing from **Annex One?**

Tūkupu / Comment

14. Introducing a Bill to the House in March 2019 requires you taking delegated policy decisions – in consultation with relevant Ministers - before the end of 2019. This means there is only a small amount of time available for us to engage with key external groups on the discretionary consent policy to help inform our advice to you.

15. The table below sets out a possible timeline of engagement with key groups (including the High Country Accord, the High Country Advisory Group, Ngāi Tahu, and selected NGOs) noting these timing constraints.

Date	Activity
25 November	Paper considered by Cabinet
25 November	Contact key stakeholders to ask who is available to engage with LINZ, including a meeting, between 28 November and 4 December to discuss the delegated policy work. LINZ will confirm the relevant people and seek assurances of confidentiality.
25 November	Provide information to HCAG and Ngāi Tahu
28 November	Provide high-level information to Forest & Bird, Environmental Defence Society (ENGOs), and the High Country Accord Trust (the Accord)
28 November – 4 December	Iterative engagement with HCAG, ENGOs, the Accord, and Ngāi Tahu to answer any clarification questions & then receive their comments.

16. If you still wish us to engage with external parties, we propose to modify a version of **Annex One** based on your feedback to use as the basis for this engagement.

Ngā Tāwhaitanga / Next Steps

17. We propose to provide you with specific options for a discretionary consents process by 28 November, for discussion at the regular officials meeting on 4 December.

18. The initial advice will be informed by our engagement with DOC and MPI. Where possible, any early input from external groups would be incorporated.

19. We plan on providing final advice on the proposed discretionary consent process on 10 December. This advice would reflect any engagement with external groups, DOC and MPI. The advice will seek a policy decision from you – in consultation with the Minister for the Environment and Minister of Agriculture.

Annex One Possible approaches for developing a new discretionary consent process

Annex one: Possible approaches to developing a new discretionary consents process

Note: The Cabinet paper seeks agreement that the new discretionary consents process should include consideration of the impact of an activity on inherent values and the impact that declining an application would have on a leaseholder's ability to farm the leased land. Section 3 of the below table sets out several considerations that could inform this pastoral farming assessment by the Commissioner. The potential considerations set out below are not necessarily mutually-exclusive – a combination of these considerations could be used in formulating a new process. The final discretionary consents process will need to clarify how these components interact when they are being considered by the Commissioner.

<table>
<tr><th colspan="3">Developing a new discretionary consents process</th></tr>
<tr><td>1. Applying the effects-based test</td><td colspan="2">The effects-based test
This test will assess whether an activity will likely have no more than minor adverse effects[1], or significant adverse effects on inherent values (IVs). Where an activity has more than minor adverse effects then it fails this effects-based test[2].</td></tr>
<tr><td>2. Qualifying for further consideration</td><td colspan="2">Reasonable alternatives
Before accepting the application for further consideration, the Commissioner could be required to be satisfied that the applicant has considered reasonable alternatives to the activity, such as alternative ways of undertaking the activity that would have no more than minor adverse effects on inherent values. This will ensure that further consideration is only given to activities with unavoidable adverse effects.

Note: there could be further limitations on whether activities are given further consideration based on the level of the adverse effects – for instance, activities with significant adverse effects could be limited to being considered only in exceptional circumstances.</td></tr>
<tr><td rowspan="4">3. Further consideration</td><td>Potential considerations</td><td>Impact of this consideration being factored into decision-making in cases where an activity has:
• more than minor but less than significant adverse effects, or
• significant adverse effects.</td></tr>
<tr><td>Exceptional circumstances
Before making a final decision, the Commissioner could be required to consider whether the application is necessary to address an exceptional circumstance. For example, this could include where the activity is necessary to provide access to the homestead, address safety risks to persons and stock, address the effects of natural disaster or extreme weather event etc[3].

Note: this consideration could be scaled by how broadly exceptional circumstances are defined.</td><td>This approach could enable activities to be approved in exceptional circumstances.

<u>Initial analysis</u>
• Risk to IVs: Minor increase in risk of adverse effects to IVs (minor to moderate increase in risk where an activity has significant adverse effects).
• Risk to ongoing pastoral farming: Decreases the risk that application of the test would unreasonably prevent ongoing pastoral farming.
• Discretion required from Commissioner: Minimal level of additional discretion required.
• Efficiency/feasibility: Straightforward to assess exceptional circumstances.
• Flexibility: Would ensure decision-making can account for evolving contexts.</td></tr>
<tr><td>Unreasonably preventing the leaseholder from farming the leased land
Before making a final decision, the Commissioner could be required to consider whether declining that activity would unreasonably prevent the leaseholder from farming the leased land.

Note: this consideration could be limited to not include additional use or further development.</td><td>This approach could enable activities to be approved after considering whether declining the activity would unreasonably prevent the applicant from farming the leased land.

<u>Initial analysis</u>
• Risk to IVs: Minor increase in risk of adverse effects to IVs (minor to moderate increase in risk where an activity has significant adverse effects).
• Risk to ongoing pastoral farming: Decreases the risk that application of the test would unreasonably prevent ongoing pastoral farming (the extent to which it does this depends on the calibration of the test).
• Discretion required from Commissioner: Moderate level of discretion required when making assessment.
• Efficiency/feasibility: May be difficult to assess whether declining an application would prevent farming of the leased land.
• Flexibility: Would ensure decision-making can account for evolving contexts.</td></tr>
<tr><td>Providing for current levels of pastoral farming of the leased land
Before making a final decision, the Commissioner could be required to consider the impact of declining an activity on current levels of pastoral farming. This would require the Commissioner to assess the 'current level' of pastoral farming occurring across the lease. In practice this could be a judgement of the overall effects of current pastoral farming activity</td><td>This approach would enable activities to be approved after considering the impact of declining the activity on current levels of pastoral farming – this could effectively lock in a level of pastoral farming that is informed by current levels of pastoral farming

This consideration could be excluded in cases where an activity has significant adverse effects in order to mitigate this approaches risk to IVs.</td></tr>
</table>

[1] Following consideration of whether the adverse effects can be avoided, remedied or mitigated.
[2] More detail on an effects-based test can be found in BRF 20-094.
[3] Categories of exceptional circumstances could be set out in the legislation (for example similar to in s 138(1) Land Act) and there would be some further discretion as to what constitutes an exceptional circumstance – noting that this discretion would be coloured by the content of the list in the legislation.

	on inherent values – this level would then inform the magnitude of the impact of declining the activity. *Note: This consideration could be limited to not include additional use or further development.*	<u>Initial analysis</u> • *Risk to IVs:* Moderate increase in risk of adverse effects to IVs, especially in cases where an activity has significant adverse effects. • *Risk to ongoing pastoral farming:* Significantly decreases the risk that application of the test would unreasonably prevent ongoing pastoral farming. • *Discretion required from Commissioner*: Moderate level of discretion required when making impact assessment. • *Efficiency/feasibility*: Is likely to be difficult to assess magnitude of impact on current levels of pastoral farming. • *Flexibility*: Would ensure decision-making can account for evolving contexts.
	Providing for the reasonable use of the leased land Before making a final decision, the Commissioner could be required to consider the impact of declining an activity on the leaseholder's ability to make reasonable use of the leased land. This would require the Commissioner to have a view on what constitutes reasonable use. The legislation could set out what factors the Commissioner should consider when determining what constitutes reasonable use, such as environmental limitations and the potential productivity of the land. *Note: Depending on how it is defined, reasonable use may include further development or intensification that has more than minor adverse effects on inherent values. The definition of reasonable use could be limited so that it does not include activities with significant adverse effects.*	This approach would enable activities to be approved after considering whether the activity is a part of the reasonable use of the leased land – this could effectively lock in a level of pastoral farming that is informed by what the Commissioner determines is reasonable use. This consideration could be excluded in cases where an activity has significant adverse effects in order to mitigate this approaches risk to IVs. <u>Initial analysis</u> • *Risk to IVs:* Moderate to significant increase in risk of adverse effects to IVs, especially in cases where an activity has significant adverse effects. • *Risk to ongoing pastoral farming:* Significantly decreases the risk that application of the test would unreasonably prevent ongoing pastoral farming. • *Discretion required from Commissioner*: The level of discretion required would depend on how reasonable use is defined. • *Efficiency/feasibility*: Depending on how reasonable use is defined it may be difficult to assess and implement operationally. • *Flexibility*: Would ensure decision-making can account for evolving contexts.
	Considerations that could be excluded from decision making To calibrate the test certain considerations could be explicitly excluded from decision-making. At this stage we have ruled out considering the desirability of making it easier to farm the land (which is currently considered under the status quo) as the Cabinet paper notes that the status quo is inconsistent with the outcomes. Other similar considerations include the benefits of additional pastoral farming and the impact on financial viability.	

Land Information New Zealand
Toitū te whenua

To: Minister for Land Information

Crown Pastoral Land Reforms: update on developing a new decision-making process for discretionary consents

Rā / Date	29 November 2019	**Kōmakatanga / Classification**	In confidence
LINZ reference	BRF 20-251	**Whakaarotau / Priority**	High

Ngā mahi e hiahiatia ana / Action sought

Minitia / Minister	Hohenga / Action	Deadline
Minister for Land Information	**Discuss** the contents of this briefing with officials on 4 December	4 December 2019

LINZ Contacts

Ingoa / Name	Tūnga / Position	Contact number	First contact
Sarah Metwell	Manager, Policy	027 809 6953	☒

Te Tari o te Minitia ki te Whakaoti / Minister's office to complete

1 = Was not satisfactory	2 = Fell short of my expectations in some respects	3 = Met my expectations		
4 = Met and sometimes exceeded my expectations	5 = Greatly exceeded my expectations			
Overall Quality	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
Comments				
☐Noted	☐Seen	☐Approved	☐Overtaken by events	
☐Withdrawn	☐Not seen by Minister	☐Referred to:		

Pūtake / Purpose statement

To provide an update on work to develop a new decision-making process for discretionary consents and support a discussion with officials on 4 December.

Pānui whāinga / Key messages

1. This paper provides a proposed new process for decision-making on discretionary consents – this includes the following steps:
    - **Step 1:** the application of an effects-based test and a requirement to consider alternatives
    - **Step 2:** consideration of whether the activity is necessary to practicably and workably pastorally farm the leased land
    - **Step 3:** consideration of exceptional circumstances.
2. We understand that the overall aim of the new discretionary consents process is to enable and encourage pastoral farming activities that have the least adverse effects on inherent values, while not having the unintended consequence of preventing pastoral farming.
3. In this context, **Step 1** of the new process has been designed with the aim of encouraging leaseholders to undertake discretionary pastoral farming activities in a way that minimises their impact on inherent values – in particular, by requiring leaseholders to consider alternative, lower-impact ways of carrying out the activity and requiring them to consider how to avoid, remedy or mitigate any adverse effects.
4. **Step 2** and **Step 3** of the new process then aim to ensure that declining a consent does not have the unintended consequence of unreasonably preventing pastoral farming from being undertaken on the leased land.
5. We would like to confirm that you agree with these aims.
6. This paper outlines a number of options for how **Step 2**, the pastoral farming component of the process, could be configured. We have not provided alternative options for **Step 1** and **Step 3** and would like to confirm you are comfortable with the respective approaches.
7. A key consideration in reviewing these options is whether additional development should only be provided for in cases where it has no more than minor impacts on inherent values. This consideration is likely to impact on the regulatory system's achievement of the new outcomes.
8. Once we have your feedback on the approach set out in this paper, we will continue to work with DOC and MPI to provide more detailed advice on the new process.

Tohutohu / Recommendations

It is recommended that you:

Discuss the contents of this briefing with officials on 4 December, with a focus on:

- whether you agree with the aims of the new process
- whether you are comfortable with the overall approach to the new process
- whether you are comfortable with the specific approaches taken to Step 1 and Step 3 of the new process
- which option(s) for Step 2 best reflect your objectives for the regulatory changes
- your views on how additional development of Crown pastoral land should be treated under the new process.

Sarah Metwell
Manager Policy
Rā / Date: / /

Hon Eugenie Sage
Te Minitia mō Toitu te Whenua
Rā / Date: / /

Te Horopaki / Background

1. Land Information New Zealand (LINZ) is developing options for a new decision-making process for discretionary consents, on the basis that Cabinet will agree a number of amendments to the Crown pastoral land regulatory system. This paper has been informed by input from the Ministry for Primary Industries (MPI) and the Department of Conservation (DOC).
2. LINZ has developed these options on the assumption that the main aim of the new process is to enable and encourage pastoral farming activities that have the least adverse effects on inherent values, while not having the unintended consequence of preventing pastoral farming.
3. The new process should be consistent with the outcomes proposed in the Cabinet paper and will interact with several other proposals that will affect decision-making on discretionary consents. These include:
    - a requirement that all persons performing functions and making decisions under the relevant legislation should seek to achieve these outcomes in relation to Crown pastoral land
    - the classification of activities, where activities classed as discretionary will undergo the new discretionary consents process
    - a requirement for the Commissioner to obtain any other expert advice they consider necessary to satisfy themselves that the impact of an activity on inherent values is accurately identified
    - a requirement for the Commissioner to consider current government policy as an input to their decision-making where this is not inconsistent with the legislation
    - a requirement to take account of the relationship of Māori with their ancestral lands, water, mahinga kai, wāhi tapu and other taonga in relation to considering discretionary consents and any protection mechanisms over Crown pastoral land
    - a requirement for the Commissioner to publish summaries of decisions on discretionary consents.
4. Final decisions on the new process are likely to be delegated to the Minister for Land Information in consultation with the Ministers for the Environment and of Agriculture.
5. This paper follows on from BRF 20-250 which provided a range of possible approaches to developing a new discretionary consents process.

Overview of the proposed new process

6. A proposed process for decision-making on discretionary consents is outlined in the following diagram (see **Figure 1**) – this includes:
    - **Step 1**: the application of an effects-based test and a requirement to consider alternatives
    - **Step 2**: the consideration of whether the activity is necessary to practicably and workably pastorally farm the leased land
    - **Step 3**: the consideration of exceptional circumstances.
7. During the process, the Commissioner would be required to consult with the Director-General of Conservation as well as Māori. The specific points at which this would occur would be worked through operationally with DOC and relevant iwi after final decisions on the process are made.
8. **Step 1** of the new process has been designed with the aim of encouraging leaseholders to undertake discretionary pastoral farming activities in a way that minimises their impact on inherent values – in particular, by requiring leaseholders to consider alternative, lower-impact ways of carrying out the activity and requiring them to consider how to avoid, remedy or mitigate any adverse effects.

9. **Step 2** and **Step 3** of the new process aim to ensure that declining a consent does not have the unintended consequence of unreasonably preventing pastoral farming from being undertaken on the leased land.
10. We consider that **Step 1** and **Step 3** are straightforward in how they should be configured – although defining the significance of the adverse effects may be challenging. There are then several options for configuring **Step 2**, the pastoral farming component of the process.

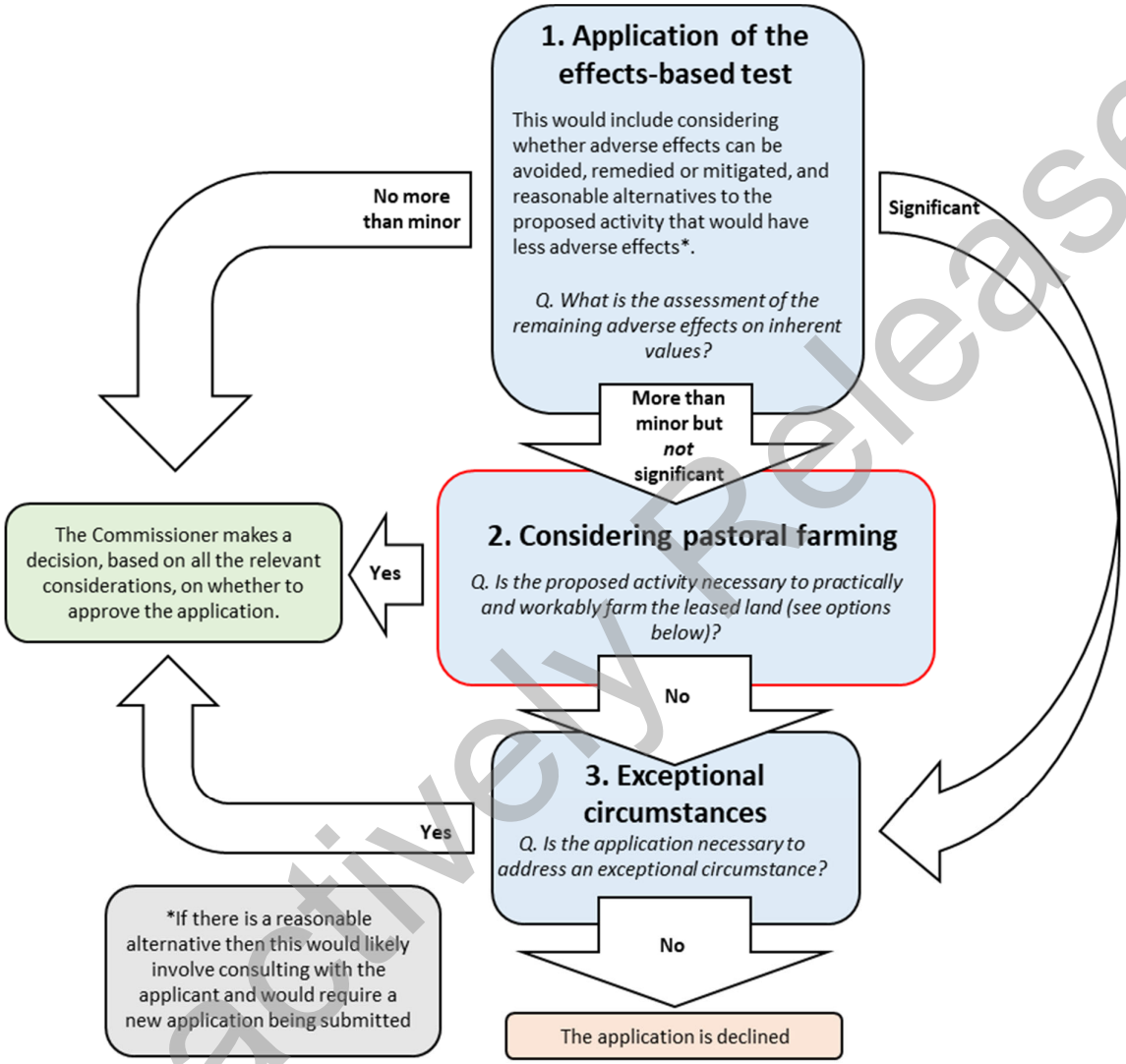


Figure 1: A proposed process for decision-making on discretionary consents

Making a final decision

11. Discretion and judgment would still be required from the Commissioner, however, the purpose of the test is to give a framework and parameters in which the Commissioner's decision-making is exercised. **Table 1** below, outlines when activities may be approved under this proposed process.
12. Before making any final decision on a discretionary consent the Commissioner would consider where relevant:
    - the new outcomes within the purpose of the legislation
    - the adverse effects on inherent values resulting from the proposed activity (**Step 1**)

- the necessity of the proposed activity (**Step 2**):
  - **Option 1:** for the reasonable pastoral use of the leased land
  - **Option 2:** for the reasonable pastoral use of the leased land except where the proposed activity is for additional development/intensification
  - **Option 3:** to maintain current levels of pastoral farming
  - **Option 4:** for the land to be pastorally farmed. *Note that these options are discussed in more detail in the section 'Options for considering pastoral farming'.*
- the necessity of the proposed activity to address an exceptional circumstance (**Step 3**)
- current government policy where this is not inconsistent with the legislation
- the relationship of Māori with their ancestral lands, water, mahinga kai, wāhi tapu and other taonga
- any other matter relevant to, and necessary for, assessing the application.

13. There would be no obligation on the Commissioner to approve any discretionary consent application. Discretionary consents could be approved 'in part' and with reasonable conditions, and the Commissioner would then be required to publish a summary of the decision along with the reasons behind it.

	Assessment of remaining adverse effect on inherent values[1]		
	No more than minor	**More than minor**	**Significant**
Following **Step 1,** the Commissioner considers that the proposed activity or an agreed reasonable alternative would have no more than minor remaining adverse effects	May be approved after considering relevant matters[2]	Cannot be approved	Cannot be approved
Following **Step 2,** the Commissioner is satisfied that the proposed activity is necessary: ▪ **Option 1:** for the reasonable pastoral use of the leased land ▪ **Option 2:** for the reasonable pastoral use of the leased land except where the proposed activity is for additional development/intensification ▪ **Option 3:** to maintain current levels of pastoral farming ▪ **Option 4:** for the land to be pastorally farmed	May be approved after considering relevant matters	May be approved after considering relevant matters	Cannot be approved
Following **Step 3,** the Commissioner is satisfied that the proposed activity is necessary to address an exceptional circumstance	May be approved after considering relevant matters	May be approved after considering relevant matters	May be approved after considering relevant matters

Table 1: Types of activities that could be approved under the proposed process

[1] After considering whether they can be avoided, remedied, or mitigated
[2] Refer to paragraph 12

Questions for discussion

- Is our assumption correct that the process should aim to enable and encourage activities that have the least adverse effects on inherent values while not having the unintended consequence of preventing pastoral farming?
- What are your views on the overall approach set out above?

Components of the new process

Step 1: Application of the effects-based test

14. The intent of this step of the process is to encourage discretionary pastoral farming activities to be undertaken in a way that minimises their impact on inherent values.
15. When assessing an application, the Commissioner would need to be satisfied that:
    - the inherent values likely to be affected by the proposed activity have been identified, and their importance assessed
    - the adverse effects (including cumulative, cross-boundary effects) of the proposed activity on those inherent values have been identified along with whether they can be avoided, remedied or mitigated.
16. The Commissioner would then need to make a judgement on whether the adverse effects are no more than minor, more than minor, or significant – this would be based on advice on the nature of the adverse effects and the importance of the affected inherent values received from DOC, and as applicable, from iwi and other experts.
17. LINZ is working with DOC on how this assessment would work in practice – it would likely be based off current standards for identifying inherent values under the CPLA[3] and for assessing significance under other systems, such as in the marine and coastal management context.
18. If the Commissioner judges that the adverse effects are no more than minor then the Commissioner may make a decision, based on all the relevant considerations, on whether to approve the application.

Considering alternatives

19. When considering the application, the Commissioner would need to be satisfied that the applicant has considered reasonable alternatives to the proposed activity that would result in fewer adverse effects on inherent values. This step would ensure applicants are encouraged to undertake low-impact pastoral farming, and that further consideration is only given to activities with unavoidable adverse effects.
20. If the Commissioner is satisfied that the applicant has considered all reasonable alternatives and the proposed activity likely has the least adverse effects on inherent values, *or* that there are no reasonable alternatives available, then the application would continue to **Step 2** (see options for considering pastoral farming). Where the remaining adverse effects are judged as significant, then the proposed activity could only be approved if the Commissioner considers it is required to address an exceptional circumstance (see **Step 3**).
21. If the Commissioner is confident that there is a reasonable alternative to the activity, then the Commissioner could decline the application – in practice this is likely to be done in discussion with the applicant as they would need to resubmit their application (to ensure the amended/new activity is subject to the full effects-based test).

[3] Currently assessments of inherent values under the CPLA don't account for scale, however, the new test would allow the importance of inherent values to be identified on the lease, catchment, regional and whole of New Zealand scale.

Questions for discussion

- Are you comfortable with:
  - the identification of adverse effects as no more than minor, more than minor and significant for the purposes of the effects-based test?
  - the provision that the Commissioner must consider if there are reasonable alternatives where an activity has more than minor impacts?
  - the proposal that activities with significant impacts should only be considered (noting that this would mean they would not necessarily be approved) where exceptional circumstances apply?

Step 2: Further considerations of pastoral farming

22. The intent of this step is to ensure that the new process does not result in the unintended consequence of preventing ongoing pastoral farming. The assumption is that this would only apply to activities with more than minor adverse effects (and less than significant adverse effects).
23. We have identified four options for how the impact of declining an activity on a leaseholder's ability to practicably and workably pastorally farm the leased land could be assessed. These options are mutually exclusive.
24. This component will affect the achievement of the outcomes – in particular, how this component treats additional development/intensification is likely to have an impact on inherent values across the Crown pastoral estate.
25. A key consideration is therefore if additional development should only be enabled in cases where it has no more than minor impacts on inherent values. Conversely, additional development/intensification could be enabled to an extent – for example, where development is required to continue to farm the land at the current or a reasonable level. This would increase the relative risk to inherent values.

Options that are not considered in this paper

26. We have not considered options that involve balancing the desirability of making the land easier to farm (such as under the status quo) or that would be overly onerous on applicants and the Crown. For example:
    - *considering the benefits of making the farming operation more productive and sustainable.* We understand that this approach would be inconsistent with your objective that the new process should focus on protecting the Crown's ownership interest. In addition, assessing benefits in this way is likely to be administratively complex, placing significant costs on leaseholders and the Crown.
    - *only allowing more than minor impact in exceptional circumstances*. Our view is that this approach would unreasonably restrict pastoral farming and inhibit the leaseholder's ability to practicably and workably farm the leased land.

Option 1: Considering reasonable pastoral use

27. Where an activity has more than minor adverse effects on inherent values, the Commissioner could be required to consider whether the activity is necessary for the reasonable pastoral use of the leased land.
28. This would be a higher standard than is currently required under the CPLA, where the Commissioner considers the desirability of making it easier to farm the land. Some of the

activities that have been approved under the current system may not be considered necessary to maintain a reasonable level of pastoral farming.

29. There would always be some level of discretion when assessing whether an activity is necessary for reasonable pastoral use, however, the legislation could set out what considerations should inform this.

30. In practice, the key factors that could inform this assessment include:

- *the capability of the leased land to support pastoral farming.* I.e. the suitability of the leased land to support the proposed activity and the effects this has on its inherent values. Information that could support this consideration includes, the susceptibility of the land to erosion and pests, soil type and fertility, incline and aspect, historic land management (including inputs such as programmes for topdressing, and oversowing), and existing vegetation cover
- *whether the activity is necessary to make use of existing consents or stock limitations*. I.e. what consents have already been granted to the leaseholder and whether the proposed activity impacts on how they can be used
- *any other matter the Commissioner considers relevant and necessary to determine reasonable use.* Crown pastoral leases and discretionary consent applications have a large degree of variety and are subject to many different contexts – an open-ended list of considerations to assess reasonable use would ensure that these can be accounted for in decision-making, increasing the durability of the new process. These other matters could include things such as:
  - the applicant's plans for future land management and the likely effects of this
  - whether an activity is necessary to meet management requirements under other regulatory regimes such as the RMA
  - whether the application supports effective management of the land and stock, such as improving stock wellbeing and maintaining permanent pasture in line with good husbandry obligations under the legislation.

Initial analysis	
Likely impact on pastoral farming	*Low relative risk to pastoral farming* This approach could enable leaseholders to continue to pastorally farm at a level that is informed by reasonable use. It would enable applications for additional development to be approved, providing the Commissioner is satisfied they are necessary for reasonable use. Conversely, some activities may be assessed as not being necessary for reasonable use because the leased land is already being utilised beyond reasonable pastoral use.
Likely impact on inherent values	*Moderate to high relative risk to inherent values* This approach would make it possible for activities with more than minor adverse effects to be approved, provided the Commissioner is satisfied that the activity is necessary for reasonable use (noting that proposed activities with significant adverse effects would not qualify for reasonable use).
Practicality and workability	This approach could be complex to implement due to the information and advice required to support judgements on reasonable pastoral use.

Option 2: Considering reasonable pastoral use except where the proposed activity is for additional development/intensification.

31. Considering reasonable pastoral use (as outlined in **Option 1**) may lead the Commissioner to assess some additional intensification and development activities as necessary for the reasonable pastoral use of the leased land.

32. In light of this, another option is for the legislation to explicitly limit what can inform the Commissioner's assessment of reasonable use. For example, the Commissioner could be prevented from considering:

    - *the desirability of making the land easier to farm.* This is currently a consideration under the status quo and is an incentive for applicants to demonstrate how they will put the leased land to its highest pastoral use. For clarity in decision-making, the legislation could explicitly prevent this consideration.
    - *the benefits of additional pastoral farming.* This is similar to the previous consideration where applicants are incentivised to demonstrate how their application will deliver the highest possible benefits to increase the likelihood that it will be approved. This is inconsistent with the concept of reasonable use which is informed by the context, constraints, and limitations of the leased land that restrict how it should be used.
    - *financial viability.* Crown pastoral leases are often incorporated into larger farming operations and in some cases alongside tourism ventures – this means that financial viability is a combination of these, alongside other external factors such as commodity prices and market conditions. As such, considering financial viability as a part of reasonable use will significantly increase the complexity of the process – both for applicants and the Crown.

Initial analysis	
Likely impact on pastoral farming	*Moderate relative risk to pastoral farming* This approach could enable leaseholders to continue to farm at a level that is informed by reasonable use but would likely place tighter controls on any additional development with more than minor adverse effects. This may lead to a reduction in farming if the Commissioner considers the land is already being used in a way that exceeds its reasonable pastoral use.
Likely impact on inherent values	*Low relative risk to inherent values* This approach would make it possible for activities with more than minor adverse effects to be approved, provided the Commissioner considers that the activity is necessary for reasonable pastoral use. This approach would reduce the likelihood that activities for additional development/intensification would be approved.
Practicality and workability	This approach could be complex to implement due to the information and advice required to support judgements on reasonable pastoral use. Limiting the considerations that may inform reasonable use may make this approach more workable than **Option 1**.

Option 3: Considering current levels of pastoral farming

33. This option involves the Commissioner being required to consider the impact of declining an activity on current levels of pastoral farming. This would then be factored into the Commissioner's final decision, increasing the likelihood that activities that are within the current level of pastoral farming of the leased land would be approved.

34. There would be a limited level of discretion when making this assessment, as it would be informed by observations of current inputs and outcomes across the leased land. When

assessing the current level of pastoral farming across the leased land, the Commissioner could consider:

- *current stocking rates and grazing patterns.* i.e. the type and number of stock currently (and recently) run on the leased land, and where and how often stock are grazed on discrete areas of the leased land (i.e. some areas may be unable to be grazed while other areas are intensively grazed).
- *existing consents or stock limitations.*
- *current inputs to the leased land.* i.e. inputs, such as the programme of topdressing programme for the leased land and levels of supplementary feed, required to support current stocking rates and grazing patterns.

35. Under this approach, should the Commissioner consider that the activity is a part of maintaining the current pastoral activity of the leased land then this will increase the likelihood that the activity would be approved.

36. This approach would effectively 'grandfather' levels of pastoral farming without an assessment of whether those levels are appropriate – rewarding leaseholders that are farming intensively and penalising those farming extensively by reducing their ability to develop the leased land.

Initial analysis	
Likely impact on pastoral farming	*Moderate relative risk to pastoral farming* This approach could effectively 'lock in' a level of pastoral farming that is informed by current consented levels of pastoral farming (whether this is intensive or extensive). It would likely prevent any further development with more than minor adverse effects.
Likely impact on inherent values	*Low to moderate relative risk to inherent values* This approach would make it possible for activities with more than minor adverse effects to be approved, provided the Commissioner considers that the activity is necessary to maintain current levels of pastoral farming. This approach would reduce the likelihood that activities for additional development would be approved.
Practicality and workability	This approach would be moderately complex to implement where it will require less information than other options to consider current levels.

Option 4: Considering whether the leased land will be prevented from being pastorally farmed

37. This option involves the Commissioner being required to consider whether declining the activity would prevent the leased land from being pastorally farmed. For example, this would be relevant in cases where an activity is required to access areas of the leased land for the grazing of livestock. It could also extend to maintaining, replacing or expanding critical farm infrastructure.

38. This would then be factored into the Commissioner's final decision, increasing the likelihood that activities would not be declined where doing so would prevent the land from being pastorally farmed.

Initial analysis	
Likely impact on pastoral farming	*Moderate to high relative risk to pastoral farming* This approach would mean activities with more than minor adverse effects would likely be declined, however, it would likely provide for activities required to exercise existing consents and the right to pasturage. This could lead to a

	reduction in pastoral farming activity on some leases if certain consents are not granted.
Likely impact on inherent values	*Low to moderate relative risk to inherent values* This approach would make it unlikely that activities with more than minor adverse effects would be approved – reducing immediate risks to inherent values. However, this could then have flow-on effects on the ability of leaseholders to effectively manage the leased land – especially in relation to weed and pest control.
Practicality and workability	This approach would be moderately straightforward to implement.

Questions for discussion

- What is your view on each of the options in terms of their consistency with the outcomes and their practicability/workability?
- How should these options account for additional development/intensification?
- Are you comfortable with the assumption that the pastoral farming test should only apply to those activities with more than minor effects – noting that these activities would have already been classified as "discretionary" in the schedule, and would be subject to the 'reasonable alternatives' test (to ensure that this activity is the lowest-impact way to achieve the desired pastoral farming objective)?

Step 3: Considering exceptional circumstances

39. The intent of this step is to ensure that decision-making accounts for situations where an activity is required to address an exceptional circumstance.

40. An exceptional circumstance would likely be defined as something that:

- could not have been reasonably foreseen, and either
- poses an acute or immediate risk to the health or safety of a leaseholder or their stock; and/or
- poses a risk of significant damage to a leaseholder's belongings that are associated with the leased land (for example, dwellings or significant farm infrastructure), or render them incapable of use.

41. An example of this is where a discretionary consent is necessary to respond to a natural disaster, or to prevent stock from accessing dangerous areas of the leased land[4].

42. If an activity with significant adverse effects is necessary to address an exceptional circumstance then the Commissioner may make a decision, based on all the relevant considerations, on whether to approve the application. If the Commissioner does not consider it is necessary to address an exceptional circumstance, then it would be declined.

Question for discussion

- Do the above considerations seem appropriate for an exceptional circumstances test?

[4] This is not intended to apply to other factors such as significant market shocks or changes in the profitability of pastoral farming.

Recreation permits and easements

43. The new process described above is focused on ensuring the system retains the ability to provide for pastoral farming. This process does not easily translate to recreation permits and easements because they do not necessarily directly contribute to ongoing pastoral farming and, in many cases, the permit or easement activity may be undertaken by a third party, not the leaseholder.

44. Recreation permits and easements could be considered in a different way to other discretionary consents. We have identified two possible approaches.

Approach 1: Evaluate recreation permits or easements against the new outcomes

45. This approach sets the outcomes of the Crown pastoral land regulatory system as the criteria to evaluate any recreation permit or easement – the Commissioner would also be required to consider current government policy (where it is consistent with the legislation). The Commissioner could then approve recreation permits or easements, subject to other considerations, where they are satisfied that the activity is in line with the outcomes.

46. The advantage of this process is that it allows the Commissioner to consider the range of possible benefits from the recreation permit or easement, including:

- a lasting positive relationship between the recreational activity and maintaining or enhancing inherent values
- whether the activity supports ongoing pastoral farming
- any financial benefits to the Crown
- any possible cultural benefits from the activity
- if the activity contributes to a broader Government policy

47. The disadvantage of this process is that it will not be a clear legislative process for applicants. This could be addressed through the preparation of operational policy and information for applicants that sets out the approach to such decision-making.

Approach 2: Evaluate recreation permits or easements against their impact on inherent values

48. This approach establishes inherent values as the single criterion to evaluate any recreation permit or easement. The Commissioner can approve recreation permits or easements provided they have no more than minor impact on inherent values (**Step 1** above).

49. The advantage of this process is that it will be clear to everyone exactly what the Commissioner must consider when deciding on a recreation permit or easement.

50. The disadvantage of this process is that it will place a stricter standard on the granting of recreation permits, which may serve to disincentivise leaseholders from diversifying into related uses of the land.

51. We will do further work on how the new process should treat easements and recreation permits and we will provide you with this as soon as possible.

Questions for discussion

- What is your initial view on these approaches?

Ngā Tāwhaitanga / Next Steps

52. Once you have provided us with your feedback on the proposed approach and options set out above, we will continue to work with DOC and MPI to provide you with final advice by 10 December.
53. This advice will provide a more detailed assessment of the options, as well as examples of how applications would be treated under each option.
54. The current timeline aims to enable you to make final decisions on a new discretionary consents process, in consultation with the Minister for the Environment and the Minister of Agriculture, by 16 December.

Extract

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To: Minister for Land Information

BRF 20-252 Crown pastoral land reforms: further advice on classification of activities and the statutory process for discretionary consents

Rā / Date	10 December 2019	**Kōmakatanga / Classification**	In confidence
LINZ reference	BRF 20-252	**Whakaarotau / Priority**	High

Explanatory Note:

Much of the advice originally provided in this briefing can be found in BRF 20-298 and BRF 20-368. The remaining advice not captured elsewhere, and not withheld under the relevant grounds of the Official Information Act 1982, can be found below as an extract.

While this briefing was provided as 'draft', it helped to inform decision-making and is therefore in-scope of this proactive release.

Extract

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Classification of activities

Aim of the classification process

9. Proactive messaging and guidance for lessees on activities will be required to successfully implement the schedule. Guidelines will assist applicants and decision-makers and provide a predictable process. Guidelines will also be needed on what good husbandry and ongoing maintenance means.

Design of a new discretionary consents decision-making process

Overview of the proposed new process

36. Before making any final decision on a discretionary consent the Commissioner could consider a range of issues including:
    - the importance of the inherent values that would be affected by the proposed activity and the size of the unavoidable adverse effects on inherent values resulting from the proposed activity (Step 1)
    - whether declining the activity would prevent the leased land from being pastorally farmed (Step 2)
    - current government policy where this is not inconsistent with the legislation
    - the relationship of Māori with their ancestral lands, water, mahinga kai, wāhi tapu and other taonga
    - any other matter relevant to, and necessary for, assessing the application.

Components of the proposed new process

Setting a threshold for an 'acceptable' level of adverse effects

43. Most pastoral activities enabled by the discretionary consent system are likely to reduce inherent values in some way, even if only temporarily or marginally. Requiring that any future applications have no impact on inherent values would therefore make it difficult for the Commissioner to grant discretionary consents in the future, no matter how minor the impacts (although this would be tempered to some degree by the application of the second part of the test below).

44. Given this, we recommend that a threshold is set where activities can be approved if their impact on inherent values is *no more than minor*.

45. LINZ is working with DOC on how this assessment could work in practice – it would likely be based on current standards for identifying inherent values under the CPLA,[1] guidelines for assessing significant ecological values,[2] and literature on adverse effects.

[1] Currently assessments of inherent values under the CPLA don't account for scale. However, the new test would allow the importance of inherent values to be identified on the lease, catchment, regional and whole of New Zealand scale.
[2] https://www.doc.govt.nz/documents/science-and-technical/sfc327entire.pdf

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46. If the Commissioner judges that the adverse effects are no more than minor then the Commissioner can decide, based on all the relevant considerations, whether to approve the application. Again, the Commissioner would not be obliged to approve any discretionary consent application.

Recommended process for recreation permits and easements

Overview of the proposed new process

64. The new discretionary consents process does not easily translate to recreation permits or easements because they do not necessarily contribute to ongoing pastoral farming, and may be undertaken by a third party (in the case of easements, it can be the Crown).

65. Recreation permits and easements can have broader non-pastoral benefits to the Crown, communities and leaseholders. Some flexibility is needed to allow beneficial recreation permits and easements to be approved.

Recreation permits

66. Recreation permits allow leaseholders (or third parties with leaseholder agreement) to undertake certain non-pastoral activities on their land.[3] They provide additional revenue streams often linked to tourism-type activities.

Easements

67. Easements are not typically applied for by leaseholders,[4] but often are required for infrastructure (for example, the Te Araroa trail, cycle-trails pipelines, or electricity transmission), or to establish access in favour of particular persons (for example, competitors in the Alps to Ocean race). Easements do not require the leaseholder's approval, but leaseholders are entitled to compensation.[5]

Recommended approach

68. Our recommended approach is to for the Commissioner to decide on recreation permits and easements by considering them against the new outcomes for the regulatory system and any other relevant matters. The outcomes provide clear and workable criteria (maintaining or enhancing inherent values, ongoing pastoral farming, fair financial return, Treaty of Waitangi provision), while other considerations could include cultural benefits, contribution to broader Government policy, and public benefits (restricted to easements).

69. To ensure workability and provide consistency, there will be a need to provide for some flexibility to enable easements and recreation permits with no more than minor impacts on inherent values to be approved.

[3] The non-pastoral activities that may be carried out with a recreation permit are limited to recreational, tourist, accommodation, safari, and other activities per section 66A of the Land Act 1948
[4] Generally, easement applications from leaseholders for things like water takes over adjoining pastoral lease land.
[5] The Crown is also entitled to receive consideration for any easement granted.

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Annex 3: Proposed permitted activities

Activity	Relevant section of CPLA	Explanation
All earthworks, planting, felling, sowing of seed or topdressing within the existing curtilage of dwellings, provided this does not include the planting/sowing of any invasive exotic pest plants.	16(1)	This activity will have no more than minor impacts on inherent values as there are little/no inherent values present within the curtilage of existing dwellings. This activity contributes to allowing lessees to make reasonable use of the land for pastoral farming by ensuring that lessees can use the gardens/surrounds around homesteads and workers' accommodation. It was also included in the 1999 consent regarding minor activities. We have had discussions about whether this rule should apply to all buildings (e.g. wool sheds) as well as dwellings – however, our research suggests the term "curtilage" is limited as a legal concept to land attached to a residential house. We also foresee difficulty in determining the extent of any 'curtilage' around working buildings separate to the farm base.
Soil disturbance within an area of (with an appropriate volume or area limitation) comprising: • Digging in posts, anchors, piles or supports (except for the purpose of constructing or supporting buildings) • Laying electric fence cables • Burying dead animals, provided this is at least 50m away from any water body • Clearing humps or filling hollows along existing fence lines • Digging rabbit warrens • Digging long drops, provided this is at least 50m away from any water body • Facilitating existing wild flood irrigation • Removing tree stumps • Invasive exotic pest plant control • Preparation of bait lines for animal pest control	16(1)(g)	These activities will have no more than minor impacts on inherent values as there is very low risk attached to minor soil disturbance for these purposes. The activities are all standard farming activities and are required for lessees to make reasonable use of the land for pastoral farming. We recommend that an area/volume limitation is placed on this activity to be clear that it permits minor levels of soil disturbance only. We will provide you with further advice when we've developed a suitable limitation.

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Fencing within existing consented cultivated paddocks	16(1)(g)	This activity will have no more than minor impacts on inherent values as inherent values typically do not remain in cultivated areas (our advice is that indigenous vegetation does not remain in cultivated areas – in comparison, areas that have been oversown and top-dressed still have tussocks and other indigenous plants interspersed with pasture). Fencing is a standard farming activity, often used to improve grazing management, and is required for lessees to make reasonable use of the land for pastoral farming.
Riparian planting using indigenous species sourced from local seeds	16(1)(e)	This activity is likely to enhance inherent values. It is also an activity that many farmers are being required or encouraged to do by local government – we consider that the Crown should not create any barriers to undertaking this activity, where it is happening within a pastoral lease (noting that some riparian areas may no longer be part of the lease, but part of the adjoining marginal strip that was excluded through lease renewal).
Clearing fallen trees, except where this is for sale or off-farm commercial use	Land Act s 100	This activity will have no more than minor impacts on inherent values and will allow lessees to make reasonable use of the land for pastoral farming by clearing wind-felled trees as necessary. This permitted activity does not extend to the commercial use or sale of the timber cleared – permission under s 100 of the Land Act is still required (and the payment of a royalty).
Laying of water pipes underground within existing cultivated areas using a ripper and mounted cable layer	16(1)(g)	This activity will have no more than minor impacts on inherent values as this method of cable laying causes minimal soil disturbance and the activity is permitted in cultivated areas only. The activity will also assist lessees to make reasonable use of the land for pastoral farming – water pipes are often required to provide stock water.
Laying cables, domestic water pipelines and other infrastructure underground from the main source of supply to existing buildings, provided there is no associated clearance of indigenous vegetation and cables/pipelines do not traverse water bodies		This activity will have no more than minor impacts on inherent values as it will involve minimal soil disturbance and excludes any associated indigenous vegetation clearance or cables crossing water bodies. Cable-laying also assists lessees to make reasonable use of the land for pastoral farming by providing for electricity,

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		telecommunications, and other services to be provided to the property.
Burning of slash/stumps/dead vegetation within existing consented cultivated paddocks	15	This activity would still require any necessary fire authority or other consents and does not include the burning of domestic rubbish. Burning domestic rubbish does not require CPLA consent.
Ground boom-spraying of existing consented cultivated paddocks	16(1)(b)	There is confusion about whether this is part of the cultivation cycle currently. Stating this is a permitted activity would ensure it is clear that existing consents to cultivate include the ability to undertake ground boom-spraying, which helps to improve the life cycle of subsequent pasture species and increase the time between cultivation cycles.

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Annex 4: Proposed discretionary activities list

Activity	Relevant section of CPLA	Notes
New or additional irrigation	16(1)(g) – irrigation is not currently treated as soil disturbance; however, it is an activity that affects the soil and can have significant impacts on inherent values (in much the same way as top-dressing)	Lessees would not need to apply for consent for existing irrigation. However, we recommend that any new or additional irrigation should require consent – this is because of the potential impacts on inherent values of irrigation, and associated activities that currently require the CCL's consent – for example, affecting soil or clearing indigenous vegetation. We are working on a definition for new/additional irrigation (considering the relationship with RMA water allocation consents, whether this applies to upgrading infrastructure, and assessing a baseline from which to measure new/additional) and will provide you with further advice when this is completed.
Burning vegetation	15	This discretionary action is unchanged from the status quo.
Clearing indigenous vegetation	16(1)(a) – change of definition from "clear bush or scrub" to "clear indigenous vegetation" – this will make it clear that clearance of indigenous tussocks/ lichens/ etc. also require consent	We recommend expanding the existing definition (bush or scrub) to include all indigenous vegetation. This would encompass tussock as well as woody vegetation, ensuring that decision-makers consider impacts on the inherent values of these species for activities such as herbicide application, mulching, crushing or topping. Section 100 of the Land Act would still require lessees to apply for consent to fell, sell or remove timber, trees or bushes – this would cover clearance of exotic trees/bushes as per the status quo. This activity would also cover pest control activities where there is an element of indigenous by-kill, subject to decisions made on pest

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		plant control in the permitted category.
Fell, sell or remove any exotic timber, tree or bush (not including invasive exotic pest plants as provided in the permitted category), provided that the consent of the CCL shall not be necessary where any timber or tree is required for any agricultural, pastoral, household, roadmaking, or building purpose on the land comprised in the lease or licence, or has been planted or purchased by the lessee or licensee.	Land Act s 100	This discretionary action is unchanged from the status quo.
Cropping, cultivating, draining or ploughing	16(1)(b)	This discretionary action is unchanged from the status quo.
Top-dressing	16(1)(c)	This discretionary action is unchanged from the status quo.
Sowing seed	16(1)(d)	This discretionary action is unchanged from the status quo.
Planting vegetation (other than for riparian planting)	16(1)(e)	This activity has been expanded to include all vegetation, not just trees. This would also only apply to planting that is not riparian planting or planting within the curtilage, as listed in the permitted activities category.
Forming new paths, roads or tracks	16(1)(f)	This discretionary action is unchanged from the status quo.
Soil disturbance for the construction of buildings	16(1)(g)	This discretionary action is unchanged from the status quo, but ensures it is clear the construction of buildings requires CCL consent.
New fencing (other than provided for in the permitted category)	16(1)(g)	The allowance of fencing as a tool to improve grazing management needs to be balanced with the need to ensure appropriate fence lines in respect of inherent values and areas of indigenous vegetation. We consider that it's appropriate to ensure any impacts on inherent values are considered by making new fencing outside existing consented cultivated areas a discretionary activity.
Any other activity affecting, involving or causing soil	16(1)(g)	This discretionary action is unchanged from the status quo.

Extract

disturbance (other than provided for in the permitted category)		
Construction of water storage dams	16(1)(g)	This discretionary action is unchanged from the status quo.
Spray and pray	16(1)(a)-(d)	While this activity is covered by consent requirements for sowing seed and/or cultivation, there is currently nothing to stop this practice being adopted.

Extract

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Annex 5 - Proposed prohibited activities list

Cropping, cultivating, draining or ploughing indigenous wetlands	16(1)(b)	The effects of widespread historic wetland drainage and cultivation are well understood, and they support the greatest concentrations of wildlife of any habitat. Very few (if any) applications are received for activities involving drainage of indigenous wetlands now – however, making this activity prohibited makes it clear that indigenous wetlands will be protected in all circumstances and without exception.
Burying dead animals within 20m of waterbodies	16(1)(g)	Prohibiting this activity would assist in reducing leaching resulting from this activity occurring too close to a water body.
Digging long drops within 20m of waterbodies	16(1)(g)	Prohibiting this activity would assist in reducing leaching resulting from this activity occurring too close to a water body

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16 December 2019 BRF 20-293

PŪKETE ĀWHINA / AIDE MEMOIRE

Crown pastoral land update and talking points for Minister's meeting with Minister of Agriculture and Minister for the Environment

Pānui whāinga / Purpose statement

1. To provide background information and talking points to support your meeting with Ministers Parker and O'Connor on Tuesday 17 December.

Ngā mahi e hiahiatia ana / Actions required

2. We recommend you:
   - **note** the contents of this briefing.
   - **note** the talking points (**Attachment 1)**

Background

3. You have a meeting with Minister Parker and Minister O'Connor to discuss the classification of discretionary consents activities, and the design of a statutory test for discretionary consents decisions. The intent of the meeting is for you to make in-principle decisions (delegated by Cabinet's decision on 16 December) to enable initial drafting of legislation to take place.
4. Last Friday, you provided Minister Parker and Minister O'Connor with a briefing (BRF 20-298 refers) which included MPI and DOC comments. MPI has also provided Minister O'Connor with a briefing (AM19-1087), which was forwarded to you.

Comment on MPI's briefing

5. LINZ agrees with MPI's broad view that the regime needs to 'make sense on the ground' and to promote uptake of innovative, sustainable, pastoral farming:
   - On the former, we have previously agreed with you that officials should work with leaseholders and others early next year to ensure the classification and statutory test is practicable. This should help ensure the regime 'makes sense on the ground.'
   - On the latter, LINZ considers that the first part of the statutory test will encourage leaseholders to consider how to achieve their pastoral farming objectives in more innovative and sustainable ways – by considering ways to achieve the same objectives while having a lower impact on inherent values. In addition, the second part of the statutory test seeks to ensure that leaseholders will not be unreasonably prevented from farming their leases.
6. However, there are a number of areas where we do not agree with MPI's broad assessment of the proposals:

The proposed statutory test would be too restrictive and would result in the majority of discretionary consents being declined

7. It is not clear on what basis MPI has made this assessment. The test has not yet been designed in detail, nor subject to rigorous testing with real world examples.
8. In addition, much pastoral farming activity can occur even with a relatively restrictive test (including activity with ongoing consents, permitted activity, and activity with low impact on inherent values).

9. The type of activities likely to be most restricted under the proposed statutory test are likely to relate to further development and intensification, for instance converting areas of native vegetation to exotic vegetation for new pasture.

The test will effectively cap current levels of pastoral farming and over time will lead to lower levels of pastoral farming

10. There is no "capping" of activity under the proposed test. It is likely that there will be lower levels of pastoral farming than if a more permissive system was in place (mainly in terms of further development/intensification), but there is no evidence that there would be a decline in current levels over time.

[s 9(2)(h)]

Schedule for classification of activities

13. In regard to decisions on classifying discretionary consents activities in a schedule, MPI is proposing that:

    - controlling invasive pest plants should be a permitted activity even where there is some by-kill of indigenous plants
    - the clearance of drains should be a permitted activity.

14. LINZ's view is that the criteria agreed by all agencies for classifying activities requires the activity to be classified as permitted only where the activity will have no more than minor impacts on inherent values in all foreseeable circumstances. In our view, neither of MPI's proposed reclassifications fulfils this criterion as there will be a large degree of variation in the type of inherent values that would be affected by these activities, and in the level of impact caused. Because of this, we cannot be certain that these activities would have a no more than minor impact in all foreseeable circumstances

15. MPI's proposal appears to arise from a concern that classifying these activities as discretionary would place extra regulatory burden on leaseholders. However, leaseholders already have to apply for discretionary consents to carry out these activities.

Design of statutory test for discretionary consents decisions

16. In regard to the design of a statutory test for discretionary consents decisions, MPI is proposing that:

    - all activities with less than significant impacts on inherent values be able to be approved (without further consideration), and
    - all other activities (with significant impacts) can still be approved if they are either 'necessary for the reasonable pastoral use of the leased land' or if they 'provide benefits for making the farming operation more productive and sustainable.'

17. LINZ's view is that the altering of the threshold from 'less than minor' to 'less than significant' is unlikely to be consistent with an outcome of 'maintaining and enhancing inherent values while providing for pastoral farming' - as it would enable significant cumulative loss of inherent values over time.

18. This is likely to have a particular impact on land with high inherent values, which would likely have been protected as conservation land under tenure review. This land will continue to be pastorally farmed, and it is unlikely MPI's proposed test would offer sufficient protection.
19. As we have previously advised you, a test allowing activities to be approved if they are necessary for 'the reasonable pastoral use of the leased land' could be consistent with the outcomes, depending on what considerations were part of assessing this reasonable use.
20. We have previously advised against a test involving assessment of increased productivity and sustainability on the basis that this approach would be inconsistent with your objective that the new process should focus on protecting the Crown's ownership interest. In addition, assessing benefits in this way is likely to be administratively complex, placing significant costs on leaseholders and the Crown.
21. Taken together, MPI's proposal is likely to result in a test that is much more permissive than the current test.

Farming activities permitted by existing discretionary consents

22. You requested further information on *ongoing discretionary consents.* In many cases, discretionary consents granted to leaseholders provide them with the ability to *undertake an ongoing programme/maintenance.* This is not time-limited, but is restricted to the same conditions/terms as the original consent.
23. For example, a consent to over-sow and top-dress an area of land allows the leaseholder to over-sow and top-dress that land and, after that initial activity, to carry out an *ongoing programme of over-sowing and top-dressing* in accordance with any consent conditions, unless the consent specifically includes an expiry date.
24. We discussed this with you in July, and agreed that these *ongoing programmes/maintenance* provisions in consents would continue.
25. There may be a case to review consents that are not being used, in line with RMA practices. We would need to provide you with further advice on this issue. In the future, the issue of lapsed consents can be avoided by placing conditions on the consents.

Changes to the classification of activities

26. The latest version of the schedule classifying activities that you were provided on Friday (BRF 20-298 refers) has the following minor changes incorporated:
    - Ground boom spraying is limited to exotic vegetation within consented cultivated paddocks
    - The burning of slash/stumps/dead vegetation within existing consented cultivated paddocks is not permitted
    - Irrigation, is included in the discretionary category, and is not limited to 'new/additional'. Specifying only new/additional irrigation would ensure that leaseholders with existing irrigation would not be required to retrospectively apply for a consent.
    - Facilitating existing wild flood irrigation is not permitted. This is a dated method of irrigation, and the 'facilitating' involves digging out irrigation channels to help with water flow.
    - Cultivation is more tightly defined as "*for the purposes of the permitted category, a cultivated paddock means a paddock that is currently cultivated and does not include paddocks where cultivation was carried out historically but was not maintained.*"

LINZ Contacts

Ingoa / Name	Tūnga / Position	Contact number	First contact
Elisa Eckford	Principal Advisor	DDI: 04 474 1033	☐
Sarah Metwell	Manager, Policy	MOB: 027 809 6953	☒

[Out of Scope]

[Out of Scope]

Land Information New Zealand
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To: Minister for Land Information

BRF 20-298 Crown pastoral land reforms: further advice on classification of discretionary consents activities and a statutory test for discretionary consents decisions

Rā / Date	12 December 2019	**Kōmakatanga / Classification**	In confidence
LINZ reference	BRF 20-298	**Whakaarotau / Priority**	High

Ngā mahi e hiahiatia ana / Action sought

Minita / Minister	Hohenga / Action	Deadline
Minister for Land Information	**Refer** this paper to the Minister for the Environment and the Minister of Agriculture in advance of your meeting with them on 17 December **Consult** with those Ministers on: • the proposed schedule classifying discretionary consent activities set out in Attachment 2 • the proposed new statutory test for discretionary consents decisions.	13 December 2019

LINZ Contacts

Ingoa / Name	Tūnga / Position	Contact number	First contact
Sarah Metwell	Manager, Policy	027 809 6953	☒

Te Tari o te Minita ki te Whakaoti / Minister's office to complete

1 = Was not satisfactory 2 = Fell short of my expectations in some respects 3 = Met my expectations
4 = Met and sometimes exceeded my expectations 5 = Greatly exceeded my expectations

Overall Quality	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
Comments					

☐Noted ☐Seen ☐Approved ☐Overtaken by events
☐Withdrawn ☐Not seen by Minister ☐Referred to:

Pūtake / Purpose statement

This paper provides advice to help you make in-principle decisions, in consultation with the Minister for the Environment and the Minister of Agriculture, on classification of discretionary consents activities on Crown pastoral land, and the design of a statutory test for discretionary consents decisions.

Pānui whāinga / Key messages

1. Cabinet has been asked to delegate final decisions on the content of a schedule classifying discretionary consent activities, and design of a new statutory test for discretionary consents decisions to the Minister for Land Information, in consultation with the Minister of Agriculture and the Minister for the Environment.
2. Once Ministers have made these in-principle decisions, officials will work with groups including the High Country Accord, Federated Farmers and environmental NGOs, along with iwi to test the workability of these proposals.
3. In combination, these two proposals will streamline and clarify the discretionary consents process, while helping protect inherent values.
4. Under the new proposed process:
    - farming activities permitted by existing discretionary consents could continue
    - all discretionary consent activities would be classified as *permitted*, *discretionary*, or *prohibited*, enabling leaseholders to more easily undertake some activities such as appropriate pest and weed control without having to apply for a consent
    - new applications for activities classified as *discretionary* would be subject to a statutory test which would allow the Commissioner to approve any activities with no more than minor impact on inherent values
    - the statutory test would also provide a safeguard to ensure that the leased land was not being unreasonably prevented from being pastorally farmed.
5. LINZ has worked with DOC and MPI to develop the proposed classification schedule and the statutory test set out in this paper, and has sought input from MfE.

Tohutohu / Recommendations

It is recommended that you:

1. **refer** this paper to the Minister for the Environment and the Minister of Agriculture in advance of your meeting with them on 17 December.
2. **consult** with those Ministers on:
    - the proposed schedule classifying discretionary consent activities set out in Attachment 2
    - the proposed new statutory test for discretionary consents decisions set out in Attachment 3.

Sarah Metwell	Hon Eugenie Sage
Manager Policy	Te Minita mō Toitu te Whenua
Rā / Date: / /	Rā / Date: / /

Tāpiritanga / Attachments

1. Agenda for Ministers meeting on Crown pastoral land reforms with the Minister for the Environment and Minister of Agriculture
2. A3: Crown Pastoral Land Act – proposed classification of activities
3. A3: Crown Pastoral Land Act – proposed statutory test for discretionary consents decisions

[s 9(2)(g)(i)]

Te Horopaki / Background

1. You have a meeting with Minister Parker and O'Connor on 17 December to discuss the proposed schedule of activities and discretionary consents statutory test. This briefing provides advice to support this meeting. Attached is a suggested agenda **(Attachment 1).**
2. Cabinet has been asked to agree that activities on Crown pastoral land currently requiring consent be classified as *permitted*, *discretionary* or *prohibited* in a schedule to the legislation when it is introduced.
3. Cabinet has also been asked to agree that a new statutory test for decisions on discretionary consents[1] be developed in the context of new outcomes for Crown pastoral land, including consideration of the impact of an activity on inherent values, and the impact that declining an application would have on a leaseholder's ability to practically and workably farm their lease.
4. Cabinet has been asked to delegate final decisions on these two issues to the Minister for Land Information in consultation with the Minister of Agriculture and the Minister for the Environment.

Overview of the proposed new discretionary consents process

5. This paper sets out a proposed new process for consideration of discretionary consent activities including:
   - a schedule for classification of discretionary consents activities on Crown pastoral land
   - the design of a statutory test for discretionary consents decisions.
6. Taken together, these two changes will streamline and clarify the discretionary consent process, while helping protect inherent values.
7. Under the new proposed process:
   - farming activities permitted by existing discretionary consents could continue
   - all discretionary consent activities would be classified as *permitted*, *discretionary*, or *prohibited*, enabling leaseholders to more easily undertake some activities such as some invasive exotic pest plant control and preparation of bait lines for animal pest control without having to apply for a consent
   - new applications for activities classified as "discretionary" would be subject to a statutory test which would allow the Commissioner discretion to approve any activities with no more than minor impact on inherent values
   - a safeguard would be provided to ensure that the leased land was not being unreasonably prevented from being pastorally farmed.

Classification of activities

Aim of the classification process

8. Developing a schedule classifying discretionary consent activities[2] into *permitted*, *discretionary*, or *prohibited* is intended to improve the timeliness and efficiency of the discretionary consents decision-making process. It should also enable LINZ to focus resources on higher-risk consents, while allowing leaseholders to undertake activities that are part of day-to-day farming and have

[1] The discretionary consent process allows leaseholders to seek permission from the Commissioner to undertake certain activities on the land. Leaseholders must get consent for activities such as for cultivation, clearing scrub or bush, top dressing, forming tracks or burning.
[2] The activities being classified are those in sections 15-16 of the CPLA and s 100 of the Land Act, as well as several new activities.

less than minor impacts, including as some invasive exotic pest plant control and preparation of bait lines for animal pest control without having to apply for a consent.

9. Cabinet has been asked to agree that the schedule is set in the primary legislation, along with provisions setting out the criteria used to classify activities. The schedule itself could then be amended by Order in Council following public consultation and would be reviewed regularly.

10. Classification of any activity under the CPLA would not remove the need for consent under any other regulatory frameworks (e.g. the RMA) and inclusion of an activity in the permitted category would not automatically authorise any associated discretionary activities – for example, fencing as a permitted activity would not authorise clearance of indigenous vegetation to construct the fence.

Approach to developing the draft schedule

11. The development of the draft schedule was carried out by a working group of LINZ staff, DOC ecological and planning experts, and MPI policy staff using the criteria set out below. The High Country Advisory Group have also provided feedback on the draft schedule.

- Activities remain as *discretionary* unless they meet the criteria to be *permitted* or *prohibited*.

- Activities may be classified as *permitted* only if:
  - the activity as defined will have no more than minor impacts on inherent values in all foreseeable circumstances. This includes considering the possible impacts of an activity in all possible locations across the Crown pastoral estate (including short, long term and cumulative impacts as well as the net positive and negative impacts); and
  - the activity is required for pastoral farming; and/or
  - the activity contributes to good husbandry, pest plant and animal control, or the maintenance and/or enhancement of inherent values.

- Activities may be classified as *prohibited* only if the activity as defined would be likely to cause significant loss of inherent values which cannot be avoided or mitigated in all foreseeable circumstances. This includes considering the possible impacts of an activity in all possible locations across the Crown pastoral estate (including short, long term, and cumulative impacts as well as the net positive and negative impacts).

12. The group agreed a set of definitions to support the proposed classification, and these are attached as **Attachment 2**.

Proposed classification

13. **Attachment 2** also sets out the proposed classification of activities.

14. Many of the activities included in the proposed *permitted* activity list are already subject to a standing consent issued by the Commissioner to all leaseholders in 1999, authorising activities that were part of day-to-day farming and considered to have no more than minor impacts on the land. As well as considering whether those existing activities meet the test for the *permitted* category, we have recommended some additions – most notably the inclusion of pest plant control. The need to apply for consent to control pest plants was raised by many lessees and service providers as a barrier to undertaking this work in submissions on the discussion document, especially where it is required as part of Regional Pest Management Plan compliance or good husbandry.

15. The proposed *discretionary* activities mostly reflect the activities that require the Commissioner's consent in sections 15-16 of the CPLA and s.100 of the Land Act, with the addition of:

- new/additional irrigation

- clearing indigenous vegetation – the status quo requires consent for clearance of bush/scrub, but we have recommended expanding this to vegetation to ensure it includes indigenous tussocks/lichens/etc.
- clearing drains

16. All discretionary activities would be subject to the new statutory test set out below.
17. Proposed *prohibited* activities comprise cropping, cultivating, draining or ploughing indigenous wetlands; burying dead animals within 20m of waterbodies and digging long drops within 20m of waterbodies.

Design of a new statutory test for discretionary consents decisions

Aim of the new statutory test

18. The new statutory test will translate the proposed high-level outcomes into specific decision-making on discretionary consent applications. The proposed new outcomes are to:
    - maintain or enhance the inherent[3] values across the Crown pastoral estate for present and future generations, while providing for ongoing pastoral farming of Crown pastoral land
    - support the Crown in its relationships with Māori under the Treaty of Waitangi
    - enable the Crown to get a fair return on its ownership interest in Crown pastoral land.
19. Consistent with these outcomes, the aim of the test outlined below is to enable and encourage pastoral farming activities that have the least adverse effects on inherent values, while ensuring that the leased land is not being unreasonably prevented from being pastorally farmed.

What would the new test apply to?

20. In effect, much existing pastoral farming activity will not be affected by the application of a new process because:
    - leaseholders have ongoing consents for a lot of their current pastoral farming activity, and Cabinet has been asked to agree that discretionary consents granted under the previous systems will not be affected by the proposed changes
    - some activity will now be classified as *permitted*, meaning that leaseholders will not have to apply for consent to carry out these activities.
21. The new test would only apply to applications for new discretionary consent activities that have been classified as *discretionary* under the schedule of activities (i.e. not *permitted* or *prohibited*).

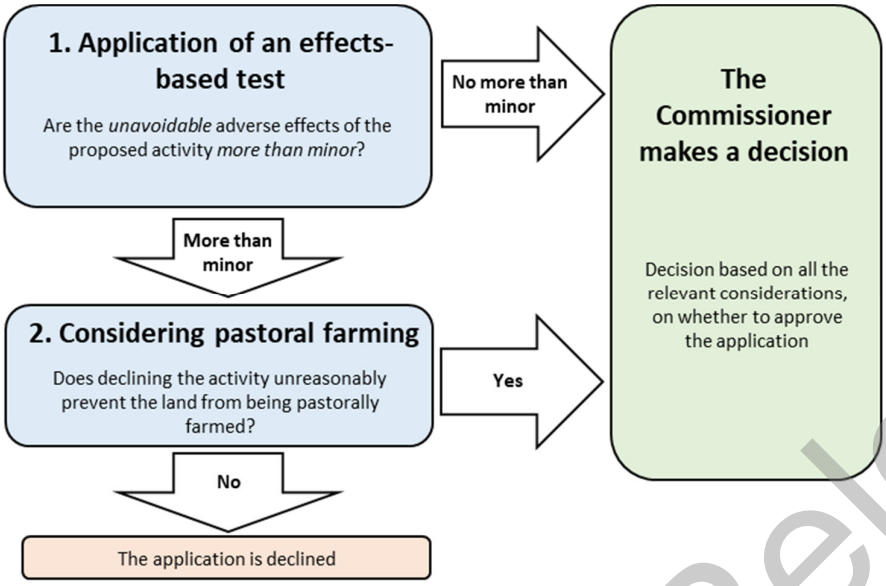
Overview of the new statutory test

22. The purpose of the new test is to provide a framework and parameters within which the Commissioner's decision-making is exercised. There would still be a significant degree of discretion and judgement required.
23. The proposed test for decision-making on discretionary consents is outlined in **Figure 1** below. It includes:
    - the application of an effects-based test and a requirement to consider alternatives (Step 1)
    - a consideration of whether declining the activity would unreasonably prevent the leased land from being pastorally farmed (Step 2).
24. There would be no obligation on the Commissioner to approve any discretionary consent application. Discretionary consents could be approved 'in part' and with reasonable conditions,

[3] Ecological, landscape, cultural, heritage and scientific

and the Commissioner would then be required to publish a summary of the decision along with the reasons behind it.

Figure 1: A proposed test for decision-making on discretionary consents



Components of the proposed new test

Step 1: Application of an effects-based test

25. The intent of this step of the proposed test is to encourage discretionary pastoral farming activities to be undertaken in a way that minimises their impact on inherent values.
26. When assessing an application, the Commissioner would need to be satisfied that the leaseholder had identified:
    - the inherent values likely to be affected by the proposed activity, and the importance of those values
    - the level of adverse effects (including cumulative, cross-boundary effects) of the proposed activity on those inherent values and whether these effects could be avoided, remedied or mitigated – note that offsetting would not be allowed.
27. The latter consideration would include the Commissioner being satisfied that the leaseholder had considered other options, and the option for which consent is being sought is the least impactful option.
28. Both these considerations would be taken together to enable the Commissioner to identify the adverse effects of the activity (after appropriate effects management tools were applied). If the Commissioner judges that the adverse effects are *no more than minor* then the Commissioner can decide, based on all the relevant considerations, whether to approve the application. Again, the Commissioner would not be obliged to approve any discretionary consent application. If the adverse effects are *more than minor*, then the pastoral farming test set out below could be applied.
29. In making these considerations, the Commissioner would be required to obtain any expert advice they deemed necessary to satisfy themselves that the impact of an activity on inherent values has been accurately identified.
30. Allowing a *minor* adverse effect recognises that most pastoral activities enabled by the discretionary consent system are likely to reduce inherent values in some way, even if only temporarily or marginally.

31. LINZ is working with DOC on how this assessment could work in practice – it would likely be based on current standards for identifying inherent values under the CPLA,[4] guidelines for assessing significant ecological values, and literature on adverse effects.

Step 2: Further consideration of pastoral farming

32. The intent of this step is to ensure that the new test does not result in the unintended consequence of preventing ongoing pastoral farming on the leased land. Step 2 of the test would apply only to activities that the Commissioner has identified as having more than minor unavoidable adverse effects during Step 1 of the test.
33. This step would require the Commissioner to consider *whether declining the activity would unreasonably prevent the land under the lease from being pastorally farmed.*
34. This would then be factored into the Commissioner's final decision, helping ensure that activities would not be declined where doing so would prevent the land from being pastorally farmed. [s 9(2)(h)]

How would this consideration be made?

35. The onus would be on the leaseholder to demonstrate to the Commissioner's satisfaction that declining the activity would unreasonably prevent the land under the lease from being pastorally farmed.
36. In making this decision, the Commissioner could consider a range of issues including whether an activity is required to:
    - access areas of the leased land for the grazing of livestock
    - enable the leaseholder to protect or continue to use their belongings that are associated with the leased land (for example, dwellings)
    - maintain or replace critical farm infrastructure
    - address an exceptional circumstance – for instance, where there is a significant risk to the health or safety of a leaseholder or their stock.
37. Note that this is an indicative list only and would be developed further based on input from leaseholders and other groups.
38. We do not recommend that, as part of this step, the Commissioner should be required to consider the ongoing financial viability/profitability of the Crown pastoral lease. Crown pastoral leases are often incorporated into larger farming operations and, in some cases, alongside tourism ventures. This makes it difficult to assess the financial viability of a lease as a standalone economic unit. In addition, external factors such as commodity prices will have a significant and variable impact. For this reason, considering financial viability as part of assessing whether declining the activity would prevent the land under the lease from being pastorally farmed would likely make the process very hard to implement.

Likely impacts of the proposed new test

39. As noted earlier, the proposed new test would not apply to the large amount of pastoral farming activity permitted by ongoing discretionary consents, activities classified as *permitted* in the schedule, or activity that has a no more than minor adverse effect on inherent values. It would also enable activities where the Commissioner considers that declining the activity would prevent the land under the lease from being pastorally farmed.

[4] Currently assessments of inherent values under the CPLA don't account for scale. However, the new test would allow the importance of inherent values to be identified on the lease, catchment, regional and whole of New Zealand scale.

Impact on inherent values

40. Inherent values would be given greater protection under the new test than under the current test. In particular, the new process would make it much less likely that inherent values would be adversely affected by new development.

41. However, it is likely that there would still be some further adverse impact on inherent values through the effects of ongoing consented activity and possibly through the cumulative impacts of new activities with minor impacts. The Commissioner's ability to consider cumulative effects should help to address this latter issue to some degree.

Impact on farm development

42. The biggest impact of the application of this new test is likely to be on the development of new areas of land for more intensive farming, as the new process would not include considerations such as the desirability of making the land more productive, or the benefits of additional pastoral farming. The application of this test could limit the further intensification and land development where this is at the expense of inherent values. However, development may not be restricted if it has a minor (or less than minor) adverse effect on inherent values.

43. In addition, the proposed new test could prevent approval of applications where more than minor impacts on one part of the lease could enable enhancement of other areas of the lease – for instance, cultivating one area to enable more stock to be put on it, moving them from more sensitive areas.

What farming activities are likely to be approved?

44. Activities that are deemed necessary to continue to pasture stock on the lease, move stock around, and the infrastructure for pastoral farming are likely to be able to be consented under the new process. This may include access across the lease and to buildings (scrub clearance/track building and maintenance), maintaining mixed-exotic pasture or improved pasture (scrub clearance/oversowing and top-dressing), and fencing.

45. Activities that are for new development such as new cultivation or breaking in new land (burn/clear scrub/oversowing and top-dressing) are less likely to be consented under the new process.

46. [s 9(2)(g)(i)] However, we will need to do further work (including working with groups including the High Country Accord, Federated Farmers and environmental NGOs, along with iwi) to fully work through how decisions would be made in more detail.

MPI comment

47. MPI supports the long-term stewardship of Crown pastoral land, including maintaining and enhancing inherent values while providing for ongoing pastoral farming. However, MPI seeks to ensure that the regime provides enough flexibility so it makes sense on the ground and uptake of innovative sustainable pastoral farming practices can continue.

48. MPI's main concern with the proposed discretionary consent test is MPI considers that the majority of discretionary consent applications would be declined. Step 2 considers whether pastoral farming of the leased land as a whole would be prevented from being pastorally farmed, rather than the site of the proposed activity. MPI considers that would be a very hard test to meet. MPI recommends that the test is more permissive by setting the threshold for Step 1 to target activities that would have a significant impact on inherent values.

49. Pastoral farming in the high country is dynamic. It requires farmers to respond to adverse events, changes to river courses, the spread of invasive species and climate change. Currently there are many opportunities for leaseholders to expand pastoral farming into scrubland areas to respond to these changes, and there are likely to be further opportunities as technologies develop. However, the low threshold under Step 1 would likely find the clearance of scrub to

have a more than minor impact on inherent values, particularly if the scrubland areas included some native species. These activities would be declined.

50. The proposed discretionary test would also see applications for additional inputs to support pastoral farming being declined. There are risks involved with locking in levels of agricultural inputs. The ongoing pastoral farming of indigenous grasses requires inputs to control agricultural pests such as hieracium. When levels of inputs are not sufficient, additional treatments may be necessary to maintain the productivity of the land. MPI is concerned that the proposed test does not recognise such situations and may result in lower productivity and an increase in agricultural pests.
51. Regarding the classification of activities, MPI's preferred position is that:
    - controlling invasive exotic pest plants, provided this does not include a component of more than 10% associated clearance of indigenous vegetation be a *permitted* activity. MPI has significant concerns about the effectiveness of permitting controlling invasive exotic pest plants if it does not allow any indigenous by-kill, as there is often no way to prevent this when boom spraying (which is the only viable method for controlling expansive areas of exotic scrub). This also needs to be weighed against the benefits of being able to quickly control gorse/broom and other pest plants which spread quickly and have significant impacts on biodiversity and productivity.
    - maintenance of drains be a *permitted* activity. MPI understands the reasoning for classifying drain clearance as a discretionary activity. However, it is difficult to gauge the impact of this without an understanding of how many unconsented drains exist that do not have a consent.

DOC comment

52. The Department of Conservation strongly supports the new outcome for the administration of Crown Pastoral land. DOC considers that the proposed policy settings for administration of the Crown pastoral estate are an improvement over the current administrative settings.
53. DOC considers that the proposed consenting regime, when combined with a closer working relationship between the Crown, iwi and lessees, should provide for ongoing pastoral farming of the estate, while limiting adverse effects on inherent values. Because of continued exercise of perpetual discretionary consents, however, some additional losses of inherent values is possible.
54. DOC considers that a threshold of "no more than minor" for adverse effects in the discretionary consent test and for recreation permits is necessary to enable the outcome of maintenance or enhancement of inherent values to be achieved. DOC is aware that the Crown pastoral estate is classified for pastoral farming, and that the classification deliberately has limits on what farming activities may be carried out on the land. The administrative classification and evidential basis for requiring sensitive, considered management of the land is strong. Generations of researchers and farm management experts have advised the Crown that these lands can and will degrade if pushed too hard, yet can sustain grazing if well managed, sometimes with inputs to help sustain productivity for pastoral purposes.
55. When pushed hard, however, or when discretionary consents are granted without strong reference to the evidence-base that cautions against an overly permissive regime, inherent values have been lost. The regulatory failure that LINZ exposed in their regulatory stewardship work on the Crown Pastoral system in 2018 is only going to be prevented from occurring again under the new policy settings if operational policy and practice by the Crown (i.e. DOC and LINZ) supports the policy outcome of long-term stewardship.
56. The policy settings proposed are strongly dependent upon operational policy design to deliver the expected outcomes. There are risks leaving the success of the new regime primarily in the operational policy space. Counterbalancing this are several factors which help alleviate the risk: the changes enhancing transparency, reporting and accountability, and the forthcoming work

preparing to implement the proposed changes (including developing operational policy and processes) that LINZ and DOC will be working closely on.

57. Regarding the classification of activities, DOC's preferred position is that burning, oversowing, and topdressing above 900m above sea level be a *prohibited* activity. LINZ understands DOC's view is that there are high values above 900m in almost all circumstances and little benefit to farming from undertaking activities at that altitude. Burning has significant and long-lasting adverse effects, particularly when combined with grazing.

Ngā Tāwhaitanga / Next Steps

58. Following in-principle decisions by Ministers, we intend to work with leaseholders, iwi and key stakeholders early next year to help ensure the workability of the process.

Attachment 2: Crown Pastoral Land Act – proposed classification of activities

Land Information New Zealand
Toitū te whenua

BRF 20-298

Permitted activities (consent not required from CCL but may be required under other enactments)	Discretionary activities (discretion to approve or decline consent)	Prohibited activities (consent cannot be granted by the CCL and cannot be applied for)

• Controlling invasive exotic pest plants, provided this does not include associated clearance of indigenous vegetation
• All earthworks, tree planting, tree felling, sowing of seed or topdressing within the existing curtilage of dwellings
• Soil disturbance (with an appropriate volume or area limitation) comprising:
  ○ Digging in posts, anchors, piles or supports (except for the purpose of constructing buildings)
  ○ Laying electric fence cables
  ○ Burying dead animals, provided this is at least 50m away from any water body
  ○ Clearing humps or filling hollows along existing fence lines
  ○ Digging rabbit warrens
  ○ Digging long drops, provided this is at least 50m away from any water body
  ○ Removing tree stumps
  ○ Invasive exotic pest plant control
  ○ Preparation of bait lines for animal pest control
• Fencing within existing cultivated paddocks
• Riparian planting using indigenous species sourced from local seeds
• Clearing wind-felled trees, except where this is for sale or off-farm commercial use
• Laying of water pipes underground within existing cultivated areas using a ripper and mounted cable layer
• Laying cables, domestic water pipelines and other infrastructure underground from the main source of supply to existing buildings, provided there is no associated clearance of indigenous vegetation and cables/pipelines do not traverse water bodies
• Ground boom spraying of exotic vegetation within existing consented cultivated paddocks
	• Irrigation
	• Burning vegetation
	• Clearing indigenous vegetation
	• Fell, sell or remove any exotic timber, tree or bush (not including invasive exotic pest plant species as provided in the permitted category) as per s 100 of the Land Act
	• Cropping, cultivation, draining or ploughing
	• Top-dressing
	• Sowing seed
	• Planting vegetation (other than riparian planting)
	• Forming new paths, roads, or tracks
	• Soil disturbance for the construction of buildings
	• New fencing (other than provided for in the permitted category)
	• Clearing drains
	• Construction of water storage dams
	• Spray and pray
	• Any other activity affecting, involving, or causing soil disturbance (except as provided for in the permitted category)
		• Cropping, cultivating, draining or ploughing indigenous wetlands
		• Digging long drops within 20m of waterbodies
		• Burying dead animals within 20m of waterbodies

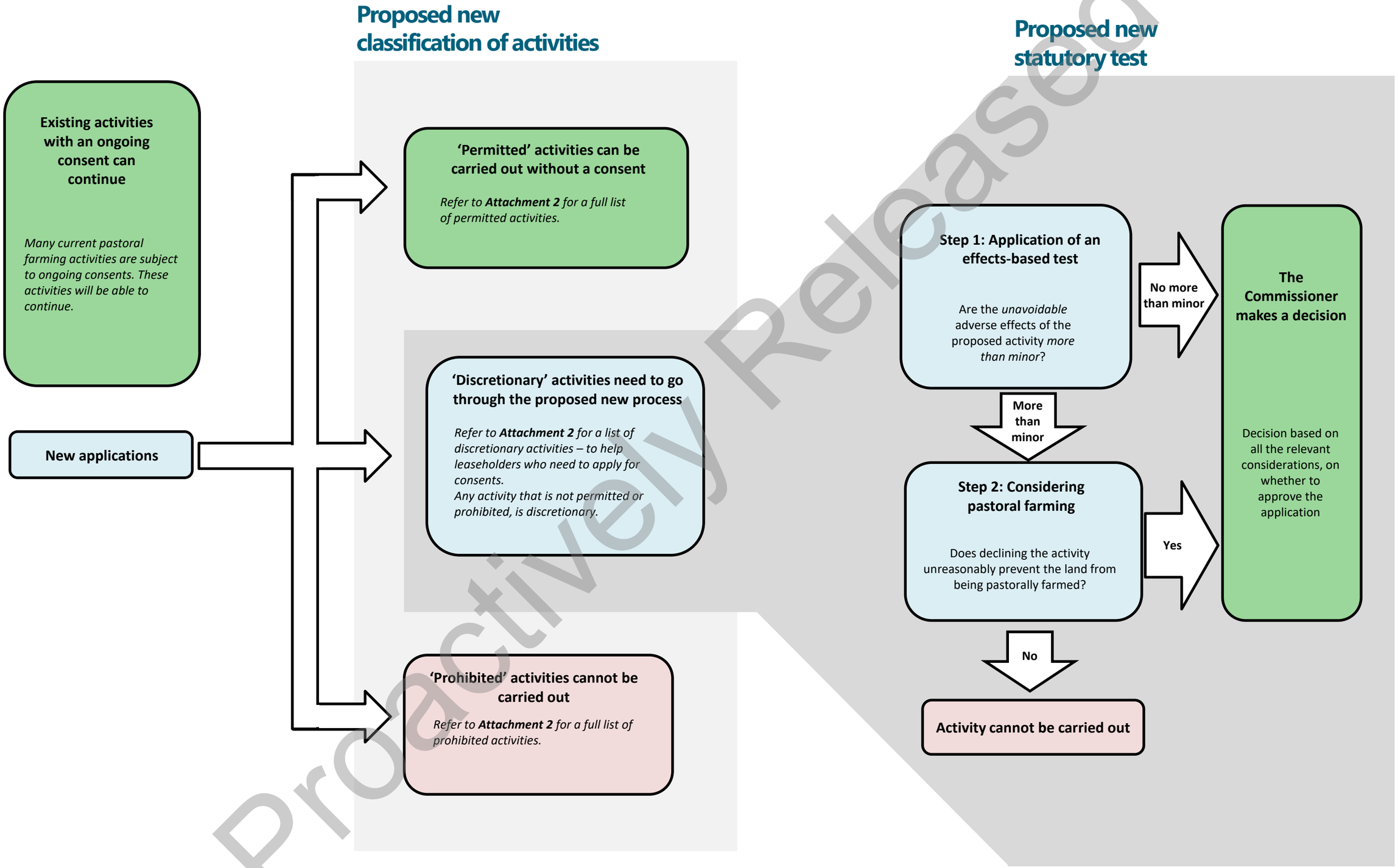
Definitions

Indigenous wetlands – Includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions
Invasive exotic pest plants – including but not limited to pests listed in the National Pest Plant Accord
Indigenous vegetation – means vegetation or groundcover containing vascular and/or non-vascular plants and/or lichens that are indigenous to any of the ecological regions of which the property is part, but does not include plants within a domestic garden, planted for the use of screening / shelter purposes e.g. as farm hedgerows
Cropping, cultivating, draining or ploughing
Cultivation - mechanical tillage of soil to introduce seed or fertiliser, including but not limited to ploughing, discing or direct drilling.
Draining – verb – causing water to be drawn off land gradually or completely, where this is not part of ongoing maintenance of previously consented drainage works
Cropping – growing forage crops for animals and production of vegetables, fruit, grain, etc.
Ploughing – turning over soil in preparation for cropping/cultivation
Drain – noun – artificial and constructed waterway or subsurface drainage structure that starts and drains water from predominantly flat land
Clearing vegetation – the removal, felling, mechanical/chemical topping, or modification of any vegetation, including cutting, crushing, mulching, spraying with herbicide or burning, and not including clearance by grazing
Curtilage – the enclosed space of ground and buildings immediately surrounding a dwelling.
Spray and pray – where slopes are sprayed to remove vegetation, replanted in stock/forage crops, then grazed.
Permitted activity – an activity for which the Commissioner of Crown Land's consent is not required. Consent may still be required under other regulatory frameworks – for example, the Resource Management Act.
Discretionary activity – an activity for which the Commissioner of Crown Land's consent is required. The Commissioner may (a) decline the consent; or (b) grant the consent, with or without conditions, if he/she is satisfied the activity meets the requirements of the discretionary decision-making test. Consent may still be required under other regulatory frameworks – for example, the Resource Management Act.
Prohibited activity – an activity that requires a consent to be lawfully conducted, but for which the CCL cannot grant a consent, and for which an application will not be received.
Cultivated paddocks – within the permitted category, a cultivated paddock is a paddock that is currently cultivated. This does not include paddocks where cultivation was carried out historically, but was not maintained.

Attachment 3: Crown Pastoral Land Act reforms

Land Information New Zealand
Toitū te whenua

BRF 20-298



Land Information New Zealand
Toitū te whenua

To: Minister for Land Information

BRF 20-336 Crown pastoral land reforms: Update and further advice

Rā / Date	7 February 2020	**Kōmakatanga / Classification**	In confidence
LINZ reference	BRF 20-336	**Whakaarotau / Priority**	Medium

Ngā mahi e hiahiatia ana / Action sought

Minita / Minister	Hohenga / Action	Deadline
Minister for Land Information	**Discuss** the issues set out in this briefing with officials. **Note** that officials propose to pick up some of these issues in the development of operational policy and guidance. **Note** that we will provide you with a briefing in the week beginning 17 February summarising stakeholder feedback and providing advice on whether any changes should be made to the schedule and statutory test. [Out of Scope] [redacted]	12 February 2020

LINZ Contacts

Ingoa / Name	Tūnga / Position	Contact number	First contact
Sarah Metwell	Manager, Policy	027 809 6953	☒

Te Tari o te Minita ki te Whakaoti / Minister's office to complete

1 = Was not satisfactory 2 = Fell short of my expectations in some respects 3 = Met my expectations
4 = Met and sometimes exceeded my expectations 5 = Greatly exceeded my expectations

Overall Quality	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5

Comments

☐Noted ☐Seen ☐Approved ☐Overtaken by events
☐Withdrawn ☐Not seen by Minister ☐Referred to:

Pūtake / Purpose statement

1. This briefing updates you on progress with the Crown pastoral land reform work, including engagement with leaseholders and other groups. It also identifies and provides advice on a number of policy and operational areas that need clarification or further decisions, for discussion at your meeting with officials on 12 February.

Pānui whāinga / Key messages

2. Officials have recently begun a programme of engagement with leaseholders and other stakeholders to test the workability of the proposals. Information gathered from this engagement will be used to help inform the drafting of a Bill and identify what operational policies will be needed to support the Act in the future.
3. Officials have now had initial meetings with the High Country Accord, Forest & Bird, EDS and Federated Farmers to explain the proposed changes, and provide information on the classification schedule and statutory test for discretionary consents decision-making. We have follow-up meetings scheduled with each of these groups for them to provide further feedback on the workability of the schedule and test.
4. There are a number of issues yet to be resolved or clarified to enable the draft Bill to be completed, or that need to be picked up in operational policy/guidance supporting the Bill. Some of these issues have already been identified in briefings to you prior to Christmas as requiring us to provide further advice to you, and others were identified at your meeting with Ministers Parker and O'Connor. In addition, we received further advice from the Legislative Design Advisory Committee (LDAC) late last year raising concerns about the use of an administrative penalty.
5. This briefing provides you with advice on these issues, for discussion at your meeting with officials on 12 February.

Tohutohu / Recommendations

6. It is recommended that you:
    - **discuss** with officials:
        - clarifying the intent of the changes in line with your discussion with Ministers Parker and O'Connor
        - the proposed approach to using different terminology to avoid confusion with the RMA
        - how easements and recreation permits should be treated
        - how applications for stock limitation exemptions relating to the transfer of a lease would be treated
        - whether a further Cabinet decision should be sought to use an infringement notice rather than an administrative penalty in cases where leaseholder have undertaken activities without the Comm consent
    - **note** that officials propose to pick up the following issues in the development of operational policy and guidance:
        - managing possible adverse consequences for leaseholders of the publication of decisions
        - ensuring that rehearings carried out after legislation has come into effect on decisions made under the old system should be considered in the context of the old system
        - the proposed approach to addressing potential issues associated with ongoing consents

- **note** that we will provide you with a briefing in the week beginning 17 February summarising stakeholder feedback and providing advice on whether any changes should be made to the schedule and statutory test.

[Out of Scope]

Sarah Metwell	Hon Eugenie Sage
Manager Policy	Te Minita mō Toitu te Whenua
Rā / Date: / /	Rā / Date: / /

Tāpiritanga / Attachments

1. Annex 1: Summary of feedback from initial engagement
2. [s 9(2)(h)]

Te Horopaki / Background

7. On 17 December 2019, you met with Ministers Parker and O'Connor to consult on the proposed schedule of activities and discretionary consents statutory test. Following that meeting, you made decisions on the schedule and the test to enable drafting instructions to be provided to the Parliamentary Counsel Office (PCO) prior to Christmas.
8. Officials subsequently began a programme of engagement with leaseholders and other stakeholders to test the workability of the proposals. Information gathered from this engagement will be used to help inform the drafting of a Bill and identify what operational policies will be needed to support the Act in the future.
9. In addition, there are a number of issues yet to be resolved or clarified to enable the draft Bill to be completed, or that need to be picked up in operational policy/guidance supporting the Bill. Some of these issues have already been identified in briefings to you prior to Christmas as requiring us to provide further advice - others were identified at your meeting with Ministers Parker and O'Connor. In addition, we received further advice from the Legislative Design Advisory Committee (LDAC) late last year raising concerns about the use of an administrative penalty.

Progress update

Legislative process

10. Drafting instructions were provided to the Parliamentary Counsel Office (PCO) on 23 December 2019. PCO has now provided us with a first draft of the Bill, and we are working to provide comments back to them.
11. We will provide you with an updated draft of the Bill and the Cabinet Legislative Committee paper as soon as it is available, with a view to lodging it with the Committee for its meeting on 17 March. This is an ambitious timeline and is dependent on when PCO can finish a draft Bill to your satisfaction, and the support of the Leader of the House and the chair of the relevant Select Committee

Engagement with leaseholders, iwi, and other stakeholders

12. LINZ has now met with the High Country Accord, Forest & Bird, EDS and Federated Farmers to provide information on the proposed changes, and seek initial feedback on the workability of the classification schedule and statutory test for discretionary consents decision-making.
13. These meetings have been very constructive, and have confirmed that the discretionary consents test and schedule are workable in principle. Discussions to date have largely focused on the contents of the schedule, and on how the discretionary consents test should be calibrated:
    - Both the Accord and Federated Farmers thought that the schedule needed to be more permissive, particularly in relation to the control of invasive exotic pest plants. Similarly, they were concerned about the restrictiveness of the pastoral farming component of the proposed statutory test for discretionary consents decision-making. The Accord was also keen to see economic/farming considerations added to the test, some consideration of viability of farming operations, or some explicit linking of the test to current levels of farming.
    - Forest & Bird provided initial feedback on the criteria for classifying activities, including expressing concerns about the use of 'net positive' and noted that the requirement that the activity be assessed 'across the Crown pastoral estate' meant that few activities were likely to be put in the 'prohibited' category.

- EDS suggested that the test as a whole could focus more on increasing positive outcomes than reducing negative ones, and was concerned that public access was not one of the considerations.
- Both EDS and Forest & Bird wanted the wording of the pastoral farming test to be clarified, particularly the link between the high-level intent of the test and the list of considerations, as they were concerned about it being too permissive. Forest & Bird suggested adding a list of things that the Commissioner is not permitted to consider

14. Other issues raised include the following:
    - The Accord questioned whether the publication of summaries the Commissioner's decisions could impact adversely on leaseholders in some situations if the name of the lease was published. EDS also raised potential privacy issues with publication of summaries. We will look at what options are available to address this situation as part of the development of operational policy & guidance on publication of decision summaries.
    - We also identified the need to provide for cases where a discretionary consent is considered under the current system, but the changes are enacted before an associated rehearing is completed. In these cases, our view is that the rehearing should consider the decision in the context of the old system –otherwise the Commissioner would effectively be making a new decision under a different statutory regime. We will ensure that this is clarified in the Bill.
15. **Annex 1** provides a summary of specific issues raised by these groups. We will be having follow-up meetings with stakeholders over the week of 10 February, after they have had time to further consider the information we provided on the schedule and discretionary consents test.
16. In light of the feedback to date, we are already doing some thinking about the pastoral farming component of the statutory test – focusing on clarifying what the Commissioner can and can't consider, and how existing activity/land use is treated.
17. We will provide you with a briefing in the week beginning 17 February summarising stakeholder feedback and providing advice on whether any changes should be made to the schedule and statutory test.

[s 9(2)(g)(i)]

[s 9(2)(g)(i)]

[redacted]

Issues to be resolved

25. In summary, issues we have identified to-date requiring further consideration from you include:

- clarifying what the "no more than minor" threshold would mean in practice, drawing from RMA examples
- investigating different terminology to avoid confusion with the RMA
- considering how the statutory decision-making process should apply to recreational permits and easements
- identifying how stock exemption applications should be considered, particularly in the context of lease transfers
- considering the use of an infringement notice rather than an administrative penalty identifying how applications for recreational permits and easements should be considered
- considering potential limitations on timeframes for existing consents.

26. The remainder of this briefing sets out our initial advice on these issues.

Clarifying the "no more than minor" threshold

[s 9(2)(h)]

[redacted]

[s 9(2)(h)]

[redacted]

Investigating different terminology

[s 9(2)(g)(i)]

[redacted]

34. PCO has provided the following suggestions when drafting the Bill:
    - 'permitted' activities could be renamed 'permitted pastoral' activities
    - 'prohibited' activities could be renamed 'prohibited pastoral' activities
35. In addition, 'discretionary consents' could revert to the current terminology of 'discretionary actions'
36. If you agree with this proposed approach, we could test this issue further with leaseholders and stakeholders during the engagement process, as well as with the Ministry for the Environment. This issue will also need to be covered off in the report back to Minster Parker and O'Connor.

Process for decision-making on recreation permits and easements

37. As noted in BRF 20-251, decisions still need to be made on how recreation permits and easements should be considered in the new system.
38. Recreation permits allow leaseholders (or third parties with leaseholder approval) to undertake certain non-pastoral activities on their land[1]. They provide additional revenue streams and are often linked to tourism-type activities. The Crown as landowner also receives revenue from recreation permits. Recreation permits are time-limited, and must be also re-applied for at lease renewal.
39. Easements are not typically applied for by leaseholders,[2] but often are required for infrastructure (for example, the Te Araroa trail, cycle-trails, pipelines, or electricity transmission), or to establish access in favour of particular persons (such as the Walking Access Commission). Easements do not require the leaseholder's approval, but leaseholders are entitled to compensation.[3]
40. Applying the proposed new statutory test to recreation permits or easement applications may be problematic because:

[1] The non-pastoral activities that may be carried out with a recreation permit are limited to recreational, tourist, accommodation, safari, and other activities per section 66A of the Land Act 1948. These sorts of activities include: nature tourism, mountain biking, horse trekking, helicopter tourism, 4wd tours, filming, and tourist accommodation, etc.
[2] Generally, easement applications from leaseholders are for things like water takes over adjoining pastoral land.
[3] The Crown is also entitled to receive consideration for any easement granted.

- recreation permits or easements do not necessarily contribute to ongoing pastoral farming, and it would therefore be difficult to make a case for a recreation permit or easement under the second part of the test as it currently stands
- only applying the first part of the test could be unduly restrictive, as activities carried out under both easements and recreation permits may have more than minor impacts on inherent values, but may have broader benefits that would not be captured in the test. For instance, recreation permits can allow access to Crown pastoral land for recreational use by New Zealanders (for instance through the ongoing operation of ski fields), and easements can provide public benefits – such as national infrastructure provision of things like cycleways or electricity transmission networks. Some services – such as a water pipeline for private landowner use – cannot access the Public Works Act's provisions for acquiring rights over land.

Treatment of easements

41. We consider that easements should be considered under the broad outcomes of the Act. This would help to ensure that the impact of easements on inherent values would be considered, but it would not be as restrictive as requiring easements to have no more than minor impacts. We will do further work to identify whether further considerations will need to be provided in the Bill, so that the Commissioner can consider issues like public benefits.

Treatment of recreation permit applications

42. There are two broad options for addressing consideration of recreation permit applications.
    - *Not having a specific statutory test for recreation permits, but allowing the Commissioner to consider applications for recreation permits under the broad outcomes of the Act (with a requirement to consult DOC)* – while this approach would provide flexibility for the Commissioner to approve a wide variety of potential uses, it could lead to a lack of clarity in how the Commissioner should weigh up the different parts of the outcomes.
    - *Applying a modified version of the statutory test* – Such a test could first consider whether recreation permits had a no more than minor adverse effects on inherent values, but supplement this with further considerations, for instance to ensure that there was some provision for significant existing recreational operations (such as an existing ski field) to continue. This approach could provide more clarity, but could constrain other used of the land.
43. We would like to discuss these broad options with you. We will then provide you with further advice as part of our briefing containing our final advice on the schedule and statutory test following stakeholder engagement.

Process for decision-making on stock exemption applications

44. Pastoral leases have a stock limitation that was set around 1948, when the land was in its largely undeveloped state. Subsequent development has enabled a large increase in the land's carrying capacity, and most leaseholders rely on a relatively large exemption in order to graze the number of stock and types of stock they have on the pastoral lease.
45. Under the proposed changes, it is likely that the leaseholder will have to demonstrate that an increase or change in the stock exemption will have no more than minor effects, because such an increase or change is unlikely to pass the second stage of the test as it is currently configured.
46. Exemptions from the stock limitation set in the pastoral lease are personal to the leaseholder and cease when the leaseholder changes. This includes when a lease is transferred to another family member. One reason for this is that it requires the Commissioner to assess whether the

new leaseholder is capable of managing the number of stock that the previous leaseholder had on the lease.

47. This means that, where the lease has been transferred and the new leaseholder is seeking to have the same stock limitation exemption as the previous leaseholder, the Commissioner would have to consider whether approving the stock limitation exemption (to the same stocking rates as the previous leaseholder) would have a more than minor adverse effect on inherent values compared to not approving the exemption – where the leaseholder would only be able to carry the stock numbers specified in the lease (as of 1948).
48. Our view is that many of these exemption applications should pass the first part of the test, as the inherent values in the land will already have been affected by the previous number of stock on the land, and the land will generally have already been developed to support those stock levels.
49. However, to avoid introducing significant uncertainty to the lease transfer process, and ensuring consistency with the government's undertaking to not seek to reduce the amount of pastoral farming happening across the Crown pastoral estate, we may wish to make some specific provisions for approval of stock limitation exemptions where the lease is being transferred.
50. This could be done by making a separate provision for applications for stock exemption limitations where the lease is being transferred (that is, not making the application subject to the statutory test). This could involve the Commissioner being required to assess whether the new leaseholder is capable of managing the number of stock that the previous leaseholder had on the lease, and check that the previous exemption isn't causing unacceptable damage.
51. We would like to discuss this proposed approach with you in more detail.

Limitations on timeframes for existing consents

52. In BRF 20-293, we undertook to report back to you on the possibility of limiting timeframes for existing discretionary consents.
53. There are a number of provisions in the CPLA for ongoing consents:
    - Section 16 of the CPLA provides that any consent to drain, top-dress, sow seed, form tracks, or any other activity listed in s 16(1) includes a consent to undertake an ongoing programme of maintenance of that activity, provided that the consented activity is completed before the expiry of the consent e.g. if a leaseholder has five years to fully construct a track, then they will only have ongoing rights to maintain the track if the full construction of that track has occurred within the five year timeframe.
    - Section 16(3)(b) to (c) provides that, unless explicitly stated otherwise, a consent to sow seed or top-dress includes a consent to undertake an ongoing programme of sowing and top-dressing to maintain the pasture the consent applies to.
    - Section 16(3)(a), (d) and (e) provides that, unless explicitly stated otherwise, a consent to drain, form a road/path/track, or do any other thing in s 16(1) includes a consent to undertake ongoing maintenance of that activity in accordance with the original consent conditions.
54. The ongoing maintenance in these consents is limited to the conditions of the original consent, and there is no time limitation or expiry date (unless the consent specifically includes one).
55. There may be cases where consent was originally held for an activity, but the activity has not been continued for a long period of time, and inherent values have started re-establishing. This could be a particular problem where drains have not been cleared for long periods of time, and indigenous wetlands have re-established. Unless the terms of the existing consent are altered, it would not currently be possible to prevent the leaseholder from reinstating the activity. It is hard to determine how widespread this issue might be, because LINZ does not have good records on existing consents.

56. Our view is that we could address this issue through developing operational policy (working with the Accord, service providers, iwi and DOC) on what is meant by "maintenance" in s 16(3) – this would apply to all existing and new consents. Maintenance could be defined as something along the lines of "preserving existing pasture, tracking or infrastructure in accordance with the conditions of the original consent, not including activities required to recreate pasture, tracking or infrastructure where the original consented activity was not maintained as part of an ongoing programme." This operational policy would also address what other activities are part of ongoing maintenance - for example, it is currently unclear whether clearing vegetation from a previously cultivated paddock is part of "ongoing maintenance" or whether it is a new one-off activity (clear bush or scrub).

Considering the use of an infringement notice rather than an administrative penalty

57. Late last year, LDAC provided LINZ with a letter of advice questioning the appropriateness of the administrative penalty proposed under the CPLA, noting that “[a]dministrative penalties like these are unusual in New Zealand law. While they may be justifiable in the context, such provisions concentrate power in the Commissioner and raise natural justice concerns. LDAC also notes that if a leaseholder fails to pay the penalty then the Commissioner would need to use the courts to enforce payment.”

58. Our original reasoning for recommending an administrative penalty was based on an analysis of whether introducing a whole infringement system to apply to a variety of breaches was appropriate. We did not recommend the establishment of an infringement system [BRF19-442 refers], as it would:

- focus on financial penalties rather than on remedying adverse effects on inherent values
- be inappropriate when there is an ongoing relationship between the regulator and regulated parties (note that DOC advised us that it did not propose to use its infringement regime in relation to non-compliance by concessionaries because they saw it as inconsistent with the ongoing relationship)
- be relatively costly to set up and administer
- not provide the flexibility we were seeking given the advised limit of $1000 per infringement.

59. However, LDAC has pointed out that these arguments are less valid when considering a single infringement notice as opposed to a whole infringement system. LDAC has therefore suggested that LINZ do further work comparing use of an administrative penalty with using an infringement notice.

60. In general, an administrative penalty and infringement notice would achieve a similar outcome: both are relatively straightforward to set up with similar costs to apply/enforce and both provide a financial disincentive for non-compliance. In addition, there is not likely to be much difference in applying an administrative penalty versus issuing an infringement notice in terms of the Crown’s ongoing relationship with leaseholders. Leaseholders may in fact be more comfortable with an infringement notice as it enables them to have an independent right of appeal.

61. The main differences between the two options relate to an independent right of appeal, and the maximum penalty allowed:

- For an infringement notice, independent appeal and review rights are set up under the Summary Proceedings Act 1957 and the Summary Proceedings Regulations 1958.
- Under an administrative penalty the leaseholder has the right under the CPLA to apply for a waiver of the penalty in specific circumstances. Rehearings would also available under section 17 of the Land Act. However, the leaseholder would not have any independent right of appeal.

62. Administrative penalties enable more flexibility with the penalty amount – noting that the penalty would be proportionate to the discretionary consent fee, set through regulations. Infringement

fees should be no more than $1000 unless, in the particular circumstances of the case, a high level of deterrence is required. The Ministry of Justice has advised that exceptions to over $1,000 per infringement are possible but not common and the general expectations that higher penalties should be administered by the courts.

63. Our initial thinking was that the size of the penalty/fee should be proportionate to the discretionary consent fee, which will be calculated and set in regulations. An administrative penalty would provide flexibility to charge a higher amount, given that the consent fee is currently unknown. However, an infringement fee is likely to still provide a reasonably strong disincentive as the leaseholder would be required to pay both the infringement and the original discretionary consent fee.

64. On balance, given that the Ministry of Justice and LDAC have a strong preference for an infringement notice, and that there are no significant disadvantages associated with the introduction of a single infringement notice compared to an administrative penalty, our view is that an infringement notice would be a better option than an administrative penalty. This will require a further Cabinet decision, which could be sought in the LEG paper.

Ngā Tāwhaitanga / Next Steps

65. By 14 February, we expect to have received more detailed feedback on the proposals for the schedule classifying activities and the discretionary actions. As noted above, we will provide you with a briefing with our advice on the schedule and statutory test – including how to provide for recreation permits and easements, and stock limitation exemptions here the lease is being transferred.

[Out of Scope]

Annex 1: Summary of feedback from initial engagement

Table 1: Initial feedback on schedule classifying activities

Issue	Stakeholder	Initial feedback
Permitting by-kill	High Country Accord Trust (HCA)	There was a general view that the schedule needed to be more permissive (e.g. allowing for some by-kill of native plants in the permitted activities) so there is an incentive for leaseholders to control invasive exotic pest plants and 'make weed clearance practical'
Permit additions to existing buildings	HCA	There was a request to expand the permitted activities to allow for additions to existing buildings (cf dwellings) and also for replacing fencing
Permit activities for 'improved pasture', not just 'cultivated paddocks'	HCA	HCA wanted the schedule changed to refer to 'improved pasture' rather than 'cultivated paddocks'
Statutory criteria are used to put activities into permitted or prohibited.	Forest & Bird (F&B)	Expressed concern around the use of the phrasing of 'net positive' as it could lead to a possible 'balancing' Pointed out that they'd like the prohibited category to be bigger, specifically, the "across the Crown pastoral estate" has both positive and negatives because it creates a very high test that even that "Cropping, cultivating, draining *or ploughing of indigenous wetlands might not meet* Suggested we may want to note that the discretion about whether any activity fits within the 'permitted category list' lies with the Commissioner
Controlling invasive exotic pest plants	F&B	Asked for the schedule be modified to not allow control if the exotic pest plants are habitat to indigenous species (e.g. gorse as a habitat for robust grasshopper). Saw a need to complement this proposal with guidance on the types of indigenous species that may live in dryland environment/habitats
Wild flood irrigation	F&B	Wanted to use "maintenance" rather than "facilitate" of wild flood irrigation – maintenance has a more specific definition
Ground boom spraying	F&B	Supported the use of 'ground boom spraying of existing consented cultivated paddocks (because there's a difference between what's on land that has been cultivated vs. what's on land that is 'improved pasture' by oversowing/topdressing.

Wording of schedule	Environmental Defence Society (EDS)	Pointed out that some of the wording used has specific meanings in the RMA context and may cause some confusion.
Effects-based regime	EDS and F&B	Noted that we are creating an effects-based regime, and that the RMA review is looking at moving away from an effects-based regime, due to concerns around long slow degradation.
Clarity for leaseholders	Federated Farmers	Initial concern that, if leaseholders do not have clarity on what they can/can't do, then some may think they are doing the right thing but later face enforcement action.

Table 2: initial feedback on discretionary consents test

Issue	Stakeholder	Initial feedback
Framing of part 2	HCA	A general view that the threshold for the pastoral farming component of the test is too high and would significantly constrain farming operations. There was a preference expressed for 'economic' considerations to be included, or some assessment of ongoing viability of farming operations.
Providing for leaseholders ability to control woody weeds	HCA	There were concerns about leaseholders' ability to control woody species to enable ongoing pastoral grazing – this was seen as a particular issue with land that had been modified but wasn't currently cultivated, and where these plants tend to grow back in. There was discussion about how leaseholders could have confidence/certainty that they would be able to continue to use this land in the context of a strict pastoral farming test. Alternative options discussed included enabling the Commissioner to consider the need for access to areas of 'improved' or 'modified' areas for the grazing of livestock.
Current levels of farming	HCA	There was discussion about whether the test could be linked more to current levels of farming – for instance by looking at carrying capacity.
Framing of part 1	Federated Farmers	Needs to be clearer that the test will be used to deal with the residual effects after they have been avoided/remedied/mitigated. Also asked if the first part of the test relating to the need to consider lower-impact alternatives will consider cost/feasibility. We need to do further thinking on this.
Framing of part 2	F&B	Wanted the second part of the test to be more explicit that it is not to enable intensification/development or land-use change. E.g. something along the lines of: 'does declining […] prevent the existing pastoral farming activity from continuing?'
	EDS	Also noted that the wording is not clear enough.

Framing of part 2	F&B	See a disconnect between the high-level "unreasonably prevent the pastoral land subject to the lease from being pastorally farmed" and the more detailed considerations that followed. Suggested adding a list of things the Commissioner may not consider.
Framing of part 2	Fed Farmers	Initial response was that the framing of part 2 is strict. Asked if there is a definition of 'critical farm infrastructure'. We acknowledged that this is yet to be defined and we are happy to hear further feedback on this.
Advice from DOC	EDS	Want to see something specific that ensures DOC's advice is taken into account, e.g. 'pay particular regard to DOC's advice'.
Publishing decisions	EDS	Noted there may be privacy implications for leaseholders when publishing summaries of decisions. We are doing further thinking on what the summaries may look like, although they are likely to be similar to the decision summaries published by the Overseas Investment Office. Also suggested that decision summaries should include both why enforcement was undertaken and why it was not undertaken.
Encouraging positive outcomes	EDS	Suggested that the test is focused on reducing negative outcomes and could also focus on increasing positive outcomes
Public access	EDS	Concerned that public access is not necessarily considered when making decisions on discretionary consent applications.
Judicial Review of decisions	Fed Farmers	Asked if a leaseholder is granted consent for an activity, but then this consent is judicially reviewed, can the leaseholder continue the activity during the judicial review process. We need to follow up on this.

[s 9(2)(h)]

18 February 2020 BRF 20-367

PŪKETE ĀWHINA / AIDE MEMOIRE

Crown pastoral land reforms: Further advice for the CPLA meeting between Hon Eugenie Sage, Minister for Land Information, and Hon Damien O'Connor, Minister of Agriculture, Wednesday 19 February (1:00pm)

Pānui whāinga / Purpose statement

1. This aide memoire provides an update on Crown pastoral land reforms for your discussion, including:
   a) high-level initial stakeholder feedback on the workability of the schedule and discretionary actions process,
[s 9(2)(h)] [redacted]
   c) how possible confusion from a terminology overlap between the CPLA & RMA can be avoided.

Ngā mahi e hiahiatia ana / Actions required

2. **Note** the contents of this briefing.
3. **Refer** this briefing to Hon Damien O'Connor, Minister of Agriculture, and Hon David Parker, Minister for the Environment – who was invited but could not attend the meeting.
4. **Discuss** the contents of this briefing at your meeting on 19 February 2020.

Te Horopaki / Background

5. On 16 December 2019, Cabinet delegated final decisions on the proposed schedule of actions and discretionary consents statutory test, to the Minister for Land Information, in consultation with the Minister for the Environment and the Minister of Agriculture [CAB-19-MIN-0679 refers].
6. On 17 December 2019, the Minister for Land Information met with the Minister for the Environment and the Minister of Agriculture to consult on the proposed schedule of actions and discretionary consents statutory test [BRF 20-298 refers].
7. At this meeting, Ministers agreed that the proposed schedule and statutory test should encourage leaseholders to undertake pastoral farming actions with a 'minor' or 'less than minor' impact on inherent values, [s 9(2)(h)] [redacted]
8. It was acknowledged that, with tenure review ending, there would be a need to ensure land with particularly high inherent values is sufficiently protected.
9. Ministers also agreed that the proposed schedule and statutory test should not prevent ongoing pastoral grazing.
10. A diagram of the proposed discretionary actions process is provided in **Attachment One**.
11. Following the December meeting, the Minister for Land Information requested that LINZ provide drafting instructions to the Parliamentary Counsel Office.
12. This briefing was prepared by LINZ with input from officials from the Ministry for Primary Industries, Ministry for the Environment and Department of Conservation.

Stakeholder Feedback

13. Officials have also been having discussions with leaseholders and other stakeholders to test the workability of the proposed schedule and statutory test. Officials have now met with the High Country Accord Trust (Accord), the Environmental Defence Society (EDS), Forest & Bird, Te Rūnanga o Ngāi Tahu, and Federated Farmers to seek their feedback.
14. These meetings have been very constructive and indicated that the proposed schedule and test will be workable in principle, although with each stakeholder recommending some modifications.
15. Officials are yet to receive final written feedback from the Accord and Ngāi Tahu.
16. Note that the views expressed by Federated Farmers below are from Federated Farmers Policy, not the collective view of farmers.

Proposed schedule of pastoral actions

17. In general, stakeholders are supportive of the intent of the schedule classifying activities as it improves clarity and reduces the regulatory burden on leaseholders. Stakeholders provided helpful suggestions around how to improve the wording in the schedule to best achieve its intent. Officials are making minor adjustments to reflect this feedback.
18. There is ongoing tension between stakeholders who want the schedule to include more activities as 'permitted pastoral actions', and those preferring a precautionary approach with more narrowly defined activities in the 'permitted pastoral actions'.
19. This tension is unlikely to be perfectly resolved, but officials are looking at ways to incorporate the feedback provided by stakeholders in a way that is consistent with the direction of the changes as currently agreed.

Proposed statutory test for discretionary actions

20. Initial feedback indicates that stakeholders understand the intent of the proposed statutory test for discretionary consents, and there were no major issues raised around the 'no more than minor' threshold, although it was noted that robust operational policy would be needed to support this. The workability will depend on how this operational policy is developed, which will need to take into account both the 'on the ground' impact and the individual circumstances of each pastoral lease.
21. However, the Accord and Federated Farmers indicated that they are keen to ensure that ongoing pastoral actions can continue (even if these have a more than minor adverse effect). Some of the points they raised relate to accessing land for grazing and clearance of woody vegetation growing in land that is subject to a programme of oversowing and topdressing.
22. All stakeholders provided views on whether financial viability should be in step 2 of the test – with some strongly supportive of including it and others strongly opposed. In line with previous advice on this matter, and the direction of Ministers, officials will not recommend consideration of ongoing financial viability of pastoral farming as part of the statutory test. This would be extremely difficult and costly to measure with any certainty, and would be heavily influenced by external factors besides the restrictions of the Crown pastoral land regulatory system.
23. ENGOs were worried that the overarching intent of step 2 - "to not unreasonably prevent the land from being pastorally farmed" – could be undermined by the more permissive considerations relating to accessing land for grazing, using personal property or critical farm infrastructure. However, Federated Farmers had the opposite concern and wanted the relevant considerations to be framed more broadly to provide for reasonable access, use of property and existing farm infrastructure. Officials are looking at whether these specific considerations should be modified.
24. EDS suggested that the test as a whole could focus more on increasing positive outcomes than reducing negative ones and were concerned that public access was not one of the considerations.

25. Federated Farmers noted their support for allowing existing activities to continue, and wanted the process to have the discretion and judgement to cater for particular circumstances of different leases.

26. Generally, stakeholders supported allowing existing pastoral activities to continue, but there were differing views around whether restrictions should be placed on further land intensification. The intent of the changes is to limit further intensification and development on Crown pastoral land that has more than minor adverse effects.

[s 9(2)(h)]

[s 9(2)(h)]

What are DOC's views on how 'no more than minor' could work in practice for ecological values on Crown pastoral land?

35. Operational policy will be needed to provide further direction on how 'no more than minor' would work in practice across all the inherent values. Officials will work with stakeholders to develop this.

36. As an example of how this might look, DOC has identified a number of factors relevant to the determination of 'less than minor' and 'minor' affects on ecological and landscape values:

    a) the effect is temporary or non-permanent

    b) the activity is at a small/localised scale (although a localised activity could be in a very significant site)

    c) there is an ability to contain or mitigate the adverse effects of an activity by way of conditions

    d) there are no, or already heavily modified, inherent values present

    e) effects do not affect a 'significant' site (as defined by its rarity, representativeness, diversity and pattern, naturalness and context).

37. DOC has also identified a number of factors relevant to the determination of 'more than minor' impacts on ecological and landscape values:

    a) it impacts on rare and/or threatened inherent values

    b) it would irrevocably remove an irreplaceable inherent value

    c) it could alter the 'role' of the inherent value, i.e. the effect of an activity on one inherent value may have resulting impacts on associated inherent values

    d) it would impact on a significant[4] inherent value for an extended time

    e) it encompasses a large area (because this increases the likelihood that pockets of, or scattered, high inherent values are present[5])

    f) it would alter the ecological integrity (structure, function and composition) of ecosystems, communities and habitats

    g) it would fragment networks and connected sequences of indigenous ecosystems, communities and habitats

    h) it would contribute to cumulative impacts whereby successive consents may lead to significant incremental deterioration in inherent values

    i) it would contribute to modification or removal of a predominantly indigenous natural environment

    j) it would alter the 'role' of a 'site' that is an integral component of the character of the landscape, i.e. the 'site' may be part of a large natural area and altering the 'site' may have a landscape scale effect.

38. When considering discretionary actions applications, the Commissioner would be required to consult with the Director-General of Conservation, and must ensure they recognise and provide

[4] The test, as it stands, does not require an inherent value to be 'significant'. However, we are working to allow some scope to consider the relative importance of an inherent value.

[5] Although a larger area increases the likelihood that pockets of, or scattered, high inherent values are present, this does not necessarily guarantee that there will always be other pockets of inherent values on the land

for the relationship of Māori with their ancestral lands, water, mahinga kai, wāhi tapu, and other taonga.

The use of 'minor' is expected to be workable and understood

39. Although work is needed further tease out the use of 'minor' within the CPLA context, including in regards to inherent values other than ecological and landscape, LINZ expects that the use of 'minor' will be workable and understood.

40. However, this is dependent on clear operational policies and processes for LINZ and guidance for leaseholders. This is because, unlike the RMA, the CPLA does not have a large body of regional or district plans setting out how land may be used as further clarification for what is a 'minor' effect on the environment.

41. It is possible that 'minor' in a pastoral context will be further determined by the courts, particularly if leaseholders contest decisions by the Commissioner, or any decisions are subject to judicial review. There may also be some initial uncertainty with this as case law is built up over time.

Summary of advice

42. [s 9(2)(h)] LINZ considers that the use of 'minor' in the CPLA context is expected to be workable and understood (although it is possible that this will be further determined by the courts).

43. Further operational policy will be needed to provide direction on how 'minor' will work in practice across inherent values in the CPLA context and given the outcomes set out in the revised Act to support the Commissioner's decision-making.

Further advice: how possible confusion from a terminology overlap between the CPLA & RMA can be avoided

44. In collaboration with Ministry for the Environment, officials have investigated ways to reduce the possibility of confusion between the CPLA – particularly the terminology for the schedule classifying actions – and the RMA.

45. It is considered that the risk of confusion from the small number of leaseholders (there are only 163 Crown pastoral leases) can be sufficiently reduced by a combination of minor terminology changes, specifying for the avoidance of doubt that regardless of the status of an activity under the CPLA, permissions from other regimes – such as the RMA – are still needed, and providing clear guidance to leaseholders.[6]

46. The legislative changes are as follows:

    a) renaming 'permitted' activities in the schedule as 'permitted pastoral actions' and 'prohibited' activities as 'prohibited pastoral actions' in the schedule,

    b) retaining the term 'discretionary actions', and ensuring that LINZ uses this wording in a consistent manner across all correspondence and documentation

    c) specifying in the schedule that, regardless of the classification of, or permissions for, particular pastoral actions under the CPLA, permissions under other relevant legislation are still needed before carrying out 'permitted pastoral actions'

    d) retaining the provision in the statutory discretionary action process (currently s17 CPLA) specifying that permissions under other relevant legislation are still needed before carrying out any discretionary action that the Commissioner has approved.

[6] Officials do not consider that there is potential for decisions under one regime to undermine another (e.g. 'minor' in the CPLA context but 'more than minor' in the RMA context). This is because the RMA is based on a plan framework and considers effects on the environment, whereas CPLA decisions will consider the effects on inherent values.

47. LINZ's view is that these changes reduce the terminology overlap and will avoid possible confusion, and ensure leaseholders know their regulatory responsibilities. PCO and MfE support this approach.
48. LINZ notes that, through discussions with the Accord and leaseholders, it appears that leaseholders are already well aware that the CPLA and RMA are separate regimes with separate requirements.

Agency Contacts

Ingoa / Name	Tūnga / Position	Contact number	First contact
Sarah Metwell	Manager Policy	MOB: 027 809 6953	☒

Proposed new decision-making process for discretionary actions

Land Information New Zealand
Toitū te whenua

BRF 20-367

Existing activities with an ongoing consent can continue

Many current pastoral farming activities are subject to ongoing consents. These activities will be able to continue.

New applications

Proposed new classification of activities

'Permitted' activities can be carried out without a consent

*Refer to the **schedule of activities** for a full list of permitted activities.*

'Discretionary' activities need to go through the proposed new process

Any activity that is not permitted or prohibited, is discretionary.

'Prohibited' activities cannot be carried out

*Refer to the **schedule of activities** for a full list of prohibited activities.*

Proposed new statutory test

Step 1: Application of an effects-based test

Are the adverse effects of the proposed activity *more than minor*?

No more than minor

The Commissioner makes a decision

Decision based on all the relevant considerations, on whether to approve the application

More than minor

Step 2: Considering pastoral farming

Does declining the activity unreasonably prevent the land from being pastorally farmed?

The Commissioner may consider whether the activity:

- *Is required to access areas of cultivated land for the grazing of livestock*
- *Would enable the leaseholder to protect / continue to use personal property associated with the leased land*
- *Is required to maintain or replace critical farm infrastructure*
- *Is required to address exceptional circumstance, and*
- *Any other relevant considerations.*

Yes

No

Activity cannot be carried out

Land Information New Zealand
Toitū te whenua

To: Minister for Land Information

BRF 20-368 Crown pastoral land reforms: Report back on engagement and further advice on discretionary actions

Rā / Date	25 February 2020	**Kōmakatanga / Classification**	In confidence
LINZ reference	BRF 20-368	**Whakaarotau / Priority**	High

Ngā mahi e hiahiatia ana / Action sought

Minita / Minister	Hohenga / Action	Deadline
Minister for Land Information	**Note** the feedback provided from LINZ's engagement with the High Country Accord, Ngāi Tahu and NGOs **Agree** to the recommended changes to • the classification of activities • the statutory test for decision-making on discretionary actions • treatment of recreation permits, easements and stock limitation exemption applications during lease transfers **Discuss** this advice with officials on Thursday 27 February	25 February 2020

LINZ Contacts

Ingoa / Name	Tūnga / Position	Contact number	First contact
Sarah Metwell	Manager, Policy	027 809 6953	☒
Elisa Eckford	Principal Advisor, Policy	027 237 7695	

Te Tari o te Minita ki te Whakaoti / Minister's office to complete

1 = Was not satisfactory 2 = Fell short of my expectations in some respects 3 = Met my expectations
4 = Met and sometimes exceeded my expectations 5 = Greatly exceeded my expectations

Overall Quality	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5

Comments

☐Noted ☐Seen ☐Approved ☐Overtaken by events
☐Withdrawn ☐Not seen by Minister ☐Referred to:

Pūtake / Purpose statement

1. This briefing provides you with a report back on officials' engagement with leaseholders, iwi and stakeholders on the proposed changes to the Crown pastoral land regulatory system, with a specific focus on the workability of the proposed classification schedule and new statutory test for decision-making on discretionary actions.
2. It also provides advice to enable you to make a number of decisions relating to the schedule and the test, for discussion at your meeting with officials on Thursday 27 March.

Pānui whāinga / Key messages

3. LINZ has now engaged with the High Country Accord, Federated Farmers, Ngāi Tahu, Forest & Bird and the Environmental Defence Society (EDS) to seek their feedback on the workability of the classification schedule and the statutory test for decision-making on discretionary actions. Unfortunately, we have not yet received final feedback from the Accord, although we have had two meetings with them (on 22 January and 10 February) to discuss their views.
4. The process of engagement confirmed LINZ's view that the classification schedule and statutory test are workable in principle. As a result of feedback received, we are recommending a number of changes to the proposed test and schedule.
5. We recommend that the framework and criteria for the schedule, and the activities in the schedule should remain largely the same. Our recommended changes mainly centre around tightening the language used in the schedule and expanding and clarifying some of the activities covered.
6. On the statutory test, our main focus has been on addressing concerns raised by the Accord and Federated Farmers about the impact of the test on existing activity, as well as concerns raised by Forest & Bird and EDS about making the test too permissive, resulting in ongoing degradation of inherent values. Our further work has concentrated on the calibration of the pastoral farming part of the test and clarifying how the different parts of the test relate to each other.
7. In addition, we have provided you with final advice on recreation permits and easements.

Te Horopaki / Background

8. On 12 February, you met with officials to discuss feedback received during the engagement process to date and officials' advice on a number of outstanding policy issues.
9. At that meeting, you:
    - agreed to change the terminology used in the Bill to "permitted/prohibited pastoral actions" and "discretionary actions"
    - agreed that stock exemption applications should be considered under the new test - however there should be specific provision for situations where the stock exemption application is being considered as part of a transfer of the lease
    - agreed that easements be considered under the broad outcomes of the Act
    - agreed that an infringement notice should be used rather than an administrative penalty in cases where leaseholders have undertaken activities requiring a consent without applying for that consent.
10. We undertook to provide further details on what the Commissioner of Crown Lands would consider when deciding on a stock exemption limitation during a transfer of lease. You also

asked that we provide further advice on the treatment of recreation permits and what further considerations the Commissioner should make in relation to easements.

11. This paper provides this advice, along with final advice on the classification of activities and the statutory test for decision-making on discretionary actions, in the light of our further thinking and feedback received from stakeholders.

Engagement with leaseholders, iwi and other stakeholders

12. LINZ has now received substantial feedback on the workability of the classification schedule and the statutory test for decision-making on discretionary actions, from the High Country Accord Trust, Te Rūnanga o Ngāi Tahu, Forest & Bird, Federated Farmers, and the Environmental Defence Society. This follows constructive conversations between officials and stakeholders [BRF 20-336 refers].

13. Because the Accord has not yet provided final written feedback to us on the statutory test, we have not been able to consider this feedback as part of our final advice. The advice has however been informed by the two meetings we had with the Accord, and their written feedback on the schedule.

14. Ngāi Tahu provided feedback on the new discretionary actions test. However, due to capacity constraints, it is possible that some of the permitted activities may have an impact on cultural values that we are not aware of.

Statutory test for decision-making on discretionary actions

15. Feedback from stakeholders has been useful in understanding the implications of the two-stage test as it is currently worded.

16. On part one of the test, feedback included that the Commissioner should recognise the importance of the inherent values affected by an activity, that there was a need to clarify how 'unavoidable adverse effects' are determined before considering whether the activity will have more than minor effects, and that any alternative ways a leaseholder can carry out an activity must be 'reasonable'.

17. Federated Farmers and the Accord were mainly focused on how their existing pastoral farming activity would be treated under the proposals, and wanted to see some provision for that existing activity both as part of the test, and reflected in the classification schedule. [s 9(2)(g)(i)] [redacted]

Proposed schedule classifying pastoral actions

18. Stakeholders support a schedule that classifies actions and allows for some permitted pastoral actions. We have received some useful feedback helping us to clarify and tighten the terminology to ensure the schedule appropriately supports the outcomes.

19. We received a mixture of high-level and detailed feedback. At a high level, stakeholders would like the schedule to clarify that activities listed on the schedule do not take into account remediation or mitigation. Stakeholders would also like the schedule to have clearer definitions, and for it to be clear that the Commissioner retains the discretion on where activities are placed on the schedule.

20. In addition, the Accord and Federated Farmers would like to expand the category of permitted actions to allow, for example, some degree of by-kill when controlling exotic pest plants. There were a number of similar suggestions that we have not incorporated as they do not fit with the intent of 'permitted pastoral actions'.

Need for supporting legislation and robust, clear operational policy

21. Many of the improvements stakeholders suggested will require supporting secondary legislation and clear operational policy to ensure that they work in practice. For instance, clear guidance will need to be developed on what "no more than minor" means in the Crown Pastoral Land Act

(CPLA) context and what information leaseholders will need to provide to the Commissioner when applying to undertake discretionary actions.

22. Operational processes will also need to be developed, such as how decisions on discretionary actions are communicated and/or notified.
23. **Annex 1** provides a summary of issues raised during engagement and LINZ's response.
24. We have drawn on the feedback we received on the engagement process, along with further discussions with the Department of Conservation and the Ministry for Primary Industries in the advice set out below.

Classification of actions

25. The key issues raised by stakeholders and LINZ's recommendations in response to those issues are set out below. Discussion centred largely around what should or shouldn't sit in the "permitted pastoral actions" category.
26. In addition to the changes below, we have made some minor changes to clarify some actions. A final version of the schedule incorporating all proposed changes is attached as **Annex 2**.

Criteria for setting the classification

27. There was some feedback from stakeholders on the criteria used to determine how an action should be classified.

Issue	Discussion	Recommendation
Use of "net effects"	Forest & Bird recommended removing any consideration of "net effects" from the criteria from the "permitted" category as they were concerned about cross-value impacts. LINZ agrees with this concern.	We recommend removing of the phrase "net effects" from the criteria
Implications of "in all foreseeable circumstances"	Forest & Bird noted that this term raises a very high bar for the prohibited category. Similarly, Federated Farmers noted that it raises a very high bar for the permitted category. In LINZ's view, the bar should be high, and activities should remain discretionary unless there are compelling reasons for moving them to either the permitted or prohibited categories.	We recommend no change

Permitted pastoral actions

Issue	Discussion	Recommendation
Existing activity vs existing consented activity	Federated Farmers would like all references to existing consented activity to instead be 'existing activity'. Likewise, the High Country Accord would like to see existing uses provided for as permitted actions. In LINZ's view, such a change would be inconsistent with the current legislation, which only provides for ongoing maintenance rights for existing consents.	We recommend no change

Drawing a distinction between controlling exotic pest plants on *improved* and *unimproved* land	The Accord suggest drawing a distinction between improved and unimproved land. LINZ does not think that such a distinction is workable – there are often inherent values within improved land that has been oversown/top-dressed. Developing a definition of "improved pasture" has also proven difficult in the biodiversity space, and we consider it would be too subjective and would rely on the leaseholder's view on what is/isn't improved.	We recommend no change
Allowance for indigenous by-kill	Federated Farmers and the High Country Accord want to see a minimal or reasonable amount of by-kill permitted. LINZ and DOC's view is that would be difficult for leaseholders to determine what is minimal/reasonable and such an assessment should only be done by a qualified ecologist. MPI's view is that the activity would be impractical without permitting a small component of indigenous by-kill.	We recommend no change
Disturbance of protected species' habitats	Forest and Bird recommended adding "or disturbance of protected species' habitats" to the pest plant control activity. However, DOC advises this would be very difficult to practically implement.	We recommend no change
Fencing required to comply with national or local stock exclusion regulations	Federated Farmers suggested including fencing required to comply with national or local stock exclusion regulations as a permitted activity. LINZ's view is that the Crown has a different interest than the Resource Management Act regulations and may want to exercise control over the location/materials used for the fence. We can do further work operationally to reduce the burden on leaseholders having to apply for consent to fulfil their RMA responsibilities.	We recommend that this remain a discretionary activity
Planting of indigenous vegetation	Federated Farmers suggested expanding riparian planting using indigenous species to "Planting of indigenous vegetation sourced from local seeds for farm management, amenity or conservation purposes" to promote enhancement of inherent values. However, the Crown would	We recommend no change

	want to have control of what was planted and where it was planted.	
Maintenance of existing drains	Federated Farmers and the High Country Accord noted that lessees are required to keep drains clear under s 99(c) of the Land Act – because of this, drains might not have an existing consent and this should therefore be a permitted action. LINZ and DOC's view is that this could be provided for by including "maintenance of existing drains, water races or culverts" as a permitted action. However, "maintenance" would have to be clearly defined to exclude the recreation of something that was not maintained as part of an ongoing programme.	We recommend: • including maintenance of existing drains, water races or culverts as a permitted action • developing clear operational policy on what "maintenance" does and doesn't include
Actions provided for in whole property management plans	The High Country Accord suggested including "any [action] contemplated by an approved whole property management plan." MPI notes farm planning is proposed to be a mandatory requirement (by 2025) under the Essential Freshwater package. It is important that the CPLA framework does not act as a barrier for leaseholders undertaking actions required by a farm environment plan. There may also be opportunities to align the two frameworks to reduce administration and duplication for leaseholders. However, in LINZ's view the thinking isn't far enough developed on what an approved plan would contain to include this at this stage. LINZ and MPI agree that this could be reconsidered when the Schedule is reviewed.	We recommend no change
Repair and maintenance of existing fencing	Federated Farmers suggested including "repair and maintenance of existing fencing within its existing footprint."	We recommend including "repair and maintenance of existing fencing within its existing footprint" as a permitted pastoral activity
Clearing trees (alignment with the Land Act)	The High Country Accord suggested including "clearing any standing non-	We recommend including this as a

	indigenous tree where permitted by section 100 of the Land Act" as a permitted activity.	permitted pastoral activity
Activities permitted within the curtilage of dwellings	The High Country Accord suggested expanding the current wording to "all earthworks, plantings, gardening, sowing of seed or topdressing within the curtilage of dwellings *and node of farm buildings*" LINZ agrees that all plantings and gardening should be included, but not that the definition of curtilage be expanded to include farm buildings. It would be difficult to determine how this would apply more broadly (e.g. farm buildings) as "curtilage" is a legal concept that applies only to dwellings.	We recommend expanding the wording to include all plantings and gardening We recommend that no changes are made to the existing wording around 'curtilage'

Discretionary actions

Issue	**Discussion**	**Recommendation**
Planting vegetation	Federated Farmers and the High Country Accord suggested that consent should only be required for planting trees, not other vegetation. However, LINZ's view is that the Crown wants to retain the ability to control the planting of shrubs and other vegetation, as well as trees.	We recommend no change
Taking account of non-pastoral activities	The High Country Accord suggested including "any non-pastoral activity" as a discretionary activity LINZ's view is that the schedule of activities only covers pastoral activities. Recreation activities and easements will remain discretionary.	We recommend no change
Soil disturbance for the construction of buildings	The High Country Accord suggested that "soil disturbance for the construction of buildings" should not be a discretionary activity where the proposed buildings are compliant with any volume/area limitation rules of the relevant local authority. LINZ's view is that this activity should remain discretionary as it is about protecting the Crown's interest in the soil. The Crown	We recommend no change

	has different interests in the land and its use than local authorities.	
Burning vegetation	The High Country Accord suggested that burning vegetation be limited to "burning vegetation other than by way of disposal of vegetation cleared pursuant to a permitted or consented activity". LINZ's view is that this would be more permissive than the existing regime, and would remove any ability for the Commissioner to place conditions limiting the risk of fire spread.	We recommend no change
Irrigation	The High Country Accord suggested changing the wording of new/additional irrigation to "irrigation of land not already irrigated for the purposes of pastoral production". LINZ is not sure in what circumstances irrigation would not be for the purposes of pastoral production – the proposed wording does not address the situation where the land is already irrigated but the lessee is proposing to undertake significant additional irrigation within the same footprint.	We recommend no change

Prohibited pastoral actions

Issue	**Discussion**	**Recommendation**
Sowing some seeds	Forest & Bird suggested including "sowing certain species of seed" e.g. Russell lupin as a prohibited activity. We think that this would be too much detail to include in the legislation and operational policy can specify species that aren't appropriate to sow on Crown pastoral land.	We recommend no change
Taking water from wetlands for stock water	The Accord suggested that the definition of drain be amended to reflect a steady state e.g. where a wetland is used as a source for stock water to troughs, without diminishing the overall wetland. Otherwise there is a risk that the prohibited activity "crop, cultivate, drain or plough indigenous wetlands" might prohibit lessees from using water from a wetland for stock.	We recommend the wording be changed to "Cropping, cultivating, draining or ploughing indigenous wetlands (except where taking water for stock water troughs where this does

		not affect natural wetland water levels)"

Statutory test for decision-making on discretionary actions

28. As a result of feedback received during engagement, we are proposing some changes to clarify how the Commissioner will approach the first part of the statutory test.

29. We also propose changes to clarify the intent of the second part of the test. These changes are aimed at addressing concerns raised by the Accord and Federated Farmers about the impact of the test on existing activity, as well as concerns raised by Forest & Bird and EDS about making the test too permissive, resulting in ongoing degradation of inherent values.

Part one of the statutory test – the effects-based test

30. Part one of the test sets out a number of considerations that the Commissioner must make to determine the level of adverse effects of a discretionary action. The groups LINZ engaged with focused solely on how the level of adverse effects would be determined, and what would be included in making this assessment (rather than on the "no more than minor" threshold itself). Ngāi Tahu noted that this assessment would need to include consideration of cultural values.

31. As noted in BRF 20-367, LINZ considers that using "no more minor" in a CPLA context is workable, but will need to be underpinned with supporting secondary legislation and robust, clear operational policy. This will include setting out exactly how each of the values, including cultural values, will be determined.

Recognising the importance of inherent values

32. In their feedback, EDS noted that the importance of inherent values affected by a discretionary action should be considered as well as identified. In the current proposal, the importance of the inherent value is considered in the first part of the test, and will form part of the Commissioner's determination of the level of adverse effects.

33. To provide further protection in cases where an important inherent value is affected by a discretionary action, we recommend adding another consideration to the Commissioner's final decision-making by requiring consideration of the importance of the inherent value.

Assessing cross-boundary effects on inherent values

34. In determining the adverse effects on an inherent value, the Commissioner will be required to consider both the importance of that value and the level of adverse effects.

35. When determining the importance of an inherent value, the Commissioner can consider that inherent value in a broader context – for instance, in determining whether an ecological value is rare/threatened. In effect, this will require the Commissioner to think about the importance of inherent values across all Crown pastoral land and beyond.

36. However, as part of the assessment of the adverse effects on an inherent value, the current definitions in the Crown Pastoral Land Act of "land' and "inherent values" do not allow for the Commissioner to fully consider "cross-boundary effects on inherent values" because the Commissioner can only consider inherent values on Crown pastoral land.

37. LINZ does not recommend widening the definition of inherent values as this is likely to make the requirement that leaseholders and the Commissioner have sufficiently identified all the adverse impacts on inherent values too onerous. LINZ's view is that cross-boundary impacts are more appropriately considered in an RMA context.

38. Instead, LINZ recommends that the Bill provides that the Commissioner *may* consider cross-boundary effects when making a final determination on whether the activity should be approved or not. This would enable the Commissioner to consider effects on landscapes (i.e. wider view

corridors), and take into account "good neighbour" considerations – such as helicopter noise on adjoining properties.

Clarifying that any alternatives must be 'reasonable'

39. Federated Farmers noted that the process of establishing whether there are alternative ways in which the leaseholder can carry out an activity (in order to establish that the activity being applied for is the lowest-impact way of them achieving their pastoral farming objectives) needs to consider only reasonable alternatives – that is, ones that are not prohibitively expensive or not practical. We recommend clarifying that any alternative considered needs to be "reasonable."

Clarifying how 'unavoidable adverse effects' are determined

40. An important part of the test requires the Commissioner to establish if there are any alternative ways in which the leaseholder can carry out the activity that have lower adverse effects, and then to establish whether the effects can be avoided, remedied or mitigated. We described this to stakeholders as the Commissioner determining the level of 'unavoidable' adverse effects. Both Federated Farmers and Forest & Bird wanted this to be clarified

41. This will be clarified in the Bill.

Recognising where effects are temporary

42. LINZ has also identified the need to ensure the Commissioner can consider the duration of adverse effects, including establishing whether adverse effects are temporary or permanent. We recommend enabling the Commissioner to consider whether an adverse effect is temporary and whether it can be remedied or mitigated to 'minor' within an acceptable time as part of the first part of the test.

Part two of the statutory test – the pastoral farming test

43. This part of the test will apply only to those activities that don't have an existing consent, aren't permitted pastoral actions, and have a more than minor impact on inherent values.

[s 9(2)(g)(i)]

Clarifying the intent of the test

45. There was consistent feedback across stakeholders that the current wording of the intent of the pastoral farming test (that is, the Commissioner determining whether "declining to allow the action would unreasonably prevent the land from being pastorally farmed") was unclear. In particular, there was confusion about what 'unreasonably prevent' and 'pastoral farming' meant in this context. There was also a lack of clarity around how the specific considerations related to the intent of the test.

46. More specifically, the Accord were concerned about how this intent would apply to the issue of clearing woody vegetation that has grown back on previously cleared, oversown and top-dressed hillsides. This is a discretionary action and does not have an 'ongoing maintenance' provision in the CPLA.[1]

47. Given the intent of the changes, we propose that the overarching statement be changed to clarify that this part of the test is intended to allow, but *only* intended to allow, that additional activity that enables a leaseholder to exercise their rights under their lease, including the right to pasturage. Our proposed new wording is:

[1] Sometimes the 'woody vegetation' can include indigenous species like matagouri, manuka and kanuka. These can flourish as the fertility of the soil is improved through topdressing.

The action is necessary to enable the leaseholder to exercise their rights and obligations under the lease

48. In our view, this will allow the addition of a new consideration under the test to help address the Accord's concerns (see below), while also being clear that this test does not provide for further development and intensification of Crown pastoral land.

49. It is also important to note that the structure of the test will mean that any application to undertake the clearance of vegetation will first have to satisfy the Commissioner that the action being applied for is the lowest-impact way of achieving that objective, and any effects have been avoided, mitigated or remedied as far as possible.

Clarifying current considerations

50. The test specifies a series of considerations that the Commissioner must take into account when deciding whether the action applied for meets the test above.

51. The engagement identified some issues with the framing of the proposed considerations under the test. Each of the current considerations are set out below, along with the issues identified and LINZ's recommendation on how to address these issues.

Current consideration	Discussion	Recommendation
Whether the action is required to access areas of cultivated land for the grazing of livestock	Access is likely to be a relevant consideration for activities like tracks, fences, and some clearance (for stock access routes). The Accord was keen for 'cultivated land' to be expanded to 'improved pasture' which would be more permissive. DOC's view is that access to 'cultivated' land should not be given particular consideration as cultivation is not an ongoing right. Federated Farmers wanted it to be specified that any access should be 'reasonable'.	We recommend replacing this consideration with "whether the action is required to provide reasonable access to areas of land that are currently subject to a programme of oversowing or topdressing for the grazing of livestock.
Whether the action would allow the leaseholder to protect and use their personal property associated with the land	In discussions, it became apparent that this provision could be interpreted very broadly. A particular issue is what the leaseholder is considered to 'own' and whether or not this includes any improvements (such as improved soil fertility). On balance, our view is that this provision could be covered off by expanding the infrastructure provision below to include buildings.	We recommend removing this consideration.
Whether the action is required to maintain or replace critical farm infrastructure	This is likely to be a consideration in relation to soil disturbance for buildings, maintaining pipelines, replacement fencing, tracks/roads, and culvert/drain maintenance.	We recommend altering this consideration slightly to "whether the action is required to use, maintain, or replace consented existing

	Feedback noted a lack of clarity around what would constitute 'critical' farm infrastructure. As noted above, including "buildings" in this provision enables the proposed consideration relating to personal property to be removed. There may be merit to adding "use" to "maintain or replace" to address cases where declining a permit would render buildings or infrastructure unusable. Adding this provision may require a definition of "infrastructure" and "buildings" to be provided in the Bill.	infrastructure or buildings."
Whether the action is required to address an exceptional circumstance	There was general agreement to this provision.	We recommend retaining this consideration as part of the pastoral farming test
Any other relevant considerations	There were mixed views on whether the list of considerations should be closed or open ended. An open-ended list would help to ensure that we are not closing off any relevant future considerations that we have not identified. However, there were some concerns raised that allowing an open-ended list could result in unlimited other considerations being introduced to the Commissioner's decision-making. The legal principle of *ejusdem generis* means that any further considerations would have to be similar to the specific considerations listed. Adding in specific exclusions would also help to limit what could be considered.	We recommend retaining an open-ended list along with identification of specific exclusions (see below).

Adding in new considerations

52. The table below sets out two possible new considerations that we recommend be added to the test.

New consideration	**Discussion**	**Recommendation**
Whether the action contributes to the leaseholder meeting	This further consideration was identified to ensure that the Commissioner could consider the leaseholder's obligations such	We recommend this consideration be added.

their obligations under the lease or other legislation	as weed and pest control, or those under animal welfare legislation for instance. This addresses issues raised by the High Country Accord and the Federated Farmers.	
Whether the action forms part of the periodic clearance of vegetation as part of a regular cycle to maintain pasture created by oversowing, top-dressing or cultivation	This further consideration is based largely on the current provision in the draft NPS on Indigenous Biodiversity covering how existing activities in Significant Natural Areas will be treated – specifically in cases where indigenous vegetation has regenerated in areas that have previously been cleared. Forest & Bird recommended we look at this approach as a way of appropriately providing for the future use of land that has been oversown and topdressed but has woody vegetation regrowth that the leaseholder wants to clear. It is likely that this would address some of the Accord's concerns about the changes significantly reducing the amount of pastoral farming that could be undertaken on their leases. The proposal to add in a requirement that the Commissioner consider the level of adverse effects and the relative importance of the inherent value would act as a safeguard in cases where the adverse effects are significant and/or the inherent value is particularly important.	We recommend that this consideration be added, and that the level of adverse effects and the relative importance of the inherent value be included as final considerations.

Specifying what cannot be considered

53. The table below sets out possible exclusions – things that the Commissioner would not be allowed to consider in making a determination under part two of the test, along with LINZ's recommendations on both. The purpose of adding in these specific exclusions would be to help clarify what could not be considered in the provision for the Commissioner to take into account "any other considerations" above.

Possible exclusion	**Discussion**	**Recommendation**
The financial viability of farming that lease or the economic sustainability of the pastoral farming enterprise	While the Accord wanted this to be a consideration, LINZ's view is that it would be extremely difficult and costly to measure, and could require an understanding of the potentially complex financial structure of a farming business. Providing for exceptional circumstances will enable consideration of any unforeseen events that may compromise the leaseholder's ability to farm that lease.	We recommend specifying that the Commissioner cannot consider this

Any economic benefits associated with undertaking that action	LINZ's view is that consideration of economic benefits lies outside the intended outcomes.	We recommend specifying that the Commissioner cannot consider this

54. A diagram of the process incorporating all the proposed changes above, is attached as **Annex 3**.

Other issues

Treatment of recreation permits

55. At our meeting on 12 February, you sought further advice from us on how applications for recreation permits should be treated.

56. We recommend that all new recreation permits, including those relating to the expansion of current activity, should be considered using the first part of the discretionary actions test, allowing the Commissioner to approve only those activities with a no more than minor impact on inherent values.

57. Activities covered by recreation permits provide an alternative revenue stream to leaseholders to supplement their pastoral farming activity. As such, there are no good reasons for allowing applications for new activities covered by a recreation permit to be assessed less strictly than pastoral farming activities. Instead, these activities should only be permitted where they provide a relatively low-impact alternative to pastoral farming activity.

58. This approach will reduce the likelihood of new recreational activities being approved unless they have no more than minor impacts on inherent values. This will in turn reduce leaseholders' ability to get an additional income stream from recreation activities. It will also affect third parties who may be seeking to obtain recreation permits on pastoral land (such as ski operators, film companies etc).

59. However, as noted in our previous advice, we may wish to treat applications for the renewal of existing recreation permits differently from those for new activities, particularly in the case of "site-specific" activities where the activity could not easily be moved to an alternate location. This would particularly apply where there has been significant infrastructure built on Crown pastoral land to support that business (e.g. a ski field or a lodge).

60. In our view, this issue could be addressed by allowing the Commissioner to consider whether the action is required to use, maintain, or replace consented existing infrastructure or buildings in cases where an applicant is seeking a renewal of an existing recreation permit. This would largely apply to activities which can't easily be moved to another site (such as ski fields), while preventing the expansion of those activities where the adverse effects are more than minor.

61. The application of the first part of the test to existing activities seeking a renewal of their recreation permit would give the Commissioner the opportunity to ensure that the adverse effects of the activity were being avoided, mitigated or remedied as far as possible.

Treatment of easements

62. On 12 February, you agreed that easements should be considered under the broad outcomes of the Bill to reflect that, while we want the Commissioner to consider the maintenance and enhancement of inherent values, easements can have purposes beyond the specific intent of the Bill. This decision recognised that easements are not typically for pastoral purposes, or even for the benefit of the leaseholder.

63. Enabling the Commissioner to consider the maintenance and enhancement of inherent values as well as provision for ongoing pastoral farming should enable the Commissioner enough flexibility to make decisions in most circumstances. However, there are some circumstances

where these considerations will be limiting – because easements serve a different role to the Public Works Act 1981, and provide for private infrastructure across property boundaries and a low-cost method to build infrastructure that is not a 'public work'.

64. The Commissioner's decision on an easement should be made by considering a range of factors. This reflects that easements are often not related to pastoral farming activity and provide broader benefits to New Zealand. Also, most easements for infrastructure that cross property boundaries require RMA approval, and RMA processes consider adverse effects on the environment (including across boundaries).

65. Therefore, we recommend that there is an additional provision for easements in relation to Crown pastoral land to allow the Commissioner to consider cases where there is some broader public good reason for creating an easement – for instance, "the Commissioner is able to consider whether creating an easement over Crown pastoral land is fair, sound, and reasonably necessary for achieving the objectives of the applicant"[2]. This decision criterion should ensure that the easement is necessary and cannot be completed in another way with lower impact.

66. We note that it will be important to develop robust operational policy in consultation with leaseholders, iwi and relevant agencies detailing the process the Commissioner will follow when creating an easement.

Providing for stock limitation exemptions during lease transfers

67. At our meeting on 12 February, we undertook to report back to you on how we would provide for stock limitation exemptions to be treated on the context of a lease transfer.

68. This would only apply to cases where the new leaseholder is applying for the same exemption as (or a lower exemption than) the previous leaseholder. Any application for an increase in the exemption would be treated as a new discretionary action application.

69. We recommend that, in these cases:

- the application for the stock limitation exemption does not go through the statutory test for discretionary actions
- the Commissioner considers the following:
  - whether the leaseholder is capable of managing the number of stock that the previous leaseholder had on the lease
  - whether the land in its current state is capable of sustaining the number and types of stock in the previous exemption
  - other relevant considerations
- based on that consideration, the Commissioner may agree to the current stock limitation exemption or to any lower level of stock exemption limitation.

DOC comment

70. While DOC assisted to test some of the responses recommended in this briefing, DOC was unable to provide comment on the final draft of the briefing in the time available to them.

71. DOC considers that making the second part of the test tie-back to "the ability to exercise rights and obligations under the lease" creates uncertainty for all interested parties in CPL administration. DOC understands that some will regard that previously granted discretionary activity approvals may be regarded as a right, and that improvements to the land are considered personal property, which a lessee has a "right" to use/benefit from. DOC has strong concerns that the second stage of the test should tie-back to activities necessary for pastoral farming

[2] This could include a relevant Minister, department, local authority, state-owned enterprise or private individual.

activity. DOC prefers the initial stage 2 policy setting where the Commissioner determined whether "declining to allow the action would unreasonably prevent the land from being pastorally farmed".

Ngā Tāwhaitanga / Next Steps

72. We propose discussing the advice and recommendations in this paper at your phone meeting with officials on Thursday 27 February, to assist you to make decisions on the outstanding policy issues.
73. Once you have made decisions, we will provide you with a briefing on Monday 2 March setting out the proposed shape of the classification schedule and statutory test for referral to Hon David Parker, Minister for the Environment, and Hon Damien O'Connor, Minister of Agriculture.
74. Once any further decisions have been made, we will be able to provide you with a draft LEG paper, and submit final drafting instructions to the Parliamentary Council Office.
75. To make Cabinet Committee on Tuesday 31 March, Ministerial consultation will run concurrently with departmental consultation from Tuesday 10 March to Wednesday 25 March. Ministers will need to have made all substantial policy decisions by the time this consultation begins, as the Cabinet paper will be lodged the day Ministerial consultation ends.

Tohutohu / Recommendations

76. It is recommended that you:

a. **note** the feedback from LINZ's engagement with leaseholders, iwi and stakeholders

Classification of activities

b. **agree** that the phrase "net effects" be removed from the classification criteria

c. **agree** that the following be added to the list of permitted pastoral actions:

i. maintenance of existing drains, water races or culverts, noting that clear operational policy will be needed to define "maintenance"

ii. repair and maintenance of existing fencing within its existing footprint

iii. clearing any standing non-indigenous tree where permitted by s100 of the Land Act

d. **agree** to expand the permitted action "all earthworks, plantings, gardening, sowing of seed or topdressing within the curtilage of dwellings" to include "and node of farm buildings"

e. **agree** to change the current prohibited pastoral action from "crop, cultivate, drain or plough indigenous wetlands" to "crop, cultivate, drain or plough indigenous wetlands (except where taking water for stock water troughs where this does not affect natural wetland water levels)"

Statutory test for discretionary actions

f. **agree** that the following should be added to the first part of the test:

i. consideration of the importance of the inherent value when determining the level of effects

ii. whether an adverse effect is temporary and whether it can be remedied or mitigated to 'minor' within an acceptable time

g. **agree** that, in the first part of the test, the Commissioner should only consider reasonable alternative ways in which the leaseholder can carry out an activity

h. **agree** that the intent of the second part of the test should be amended to "the activity is necessary to enable the leaseholder to exercise their rights and obligations under the lease", with the following considerations:

   i. whether the action forms part of the periodic clearance of vegetation as part of a regular cycle to maintain pasture created by oversowing, top-dressing or cultivation

   ii. whether the action is required to provide reasonable access to areas of land that are currently subject to a programme of oversowing or topdressing for the grazing of livestock

   iii. whether the action is required to use, maintain, or replace consented existing infrastructure or buildings

   iv. whether the action contributes to the leaseholder meeting their obligations under the lease or other legislation

   v. whether the action is required to address an exceptional circumstance

   vi. any other relevant considerations

i. **agree** that, in the second part of the test, the Commissioner must not consider:

   i. the financial viability of farming that lease or the economic sustainability of the pastoral farming enterprise

   ii. any economic benefits associated with undertaking that action

j. **agree** that, as part of making the final determination on whether to approve a discretionary action, the Commissioner:

   i. must consider the level of adverse effects and the relative importance of the inherent value

   ii. may consider cross-boundary effects (rather than in the first part of the test)

Treatment of recreation permits

k. **agree** that all recreation permits should be considered using:

   i. the first part of the discretionary actions test to establish whether the activity in question would have more than minor adverse effects on inherent values

   ii. a further consideration only for the renewal of existing recreation permits (not including expansion of current activity) that allows the Commissioner to consider whether the recreation permit is required to use, maintain, or replace consented existing infrastructure or buildings

Treatment of easements

l. **agree** that provision be made to allow the Commissioner to consider cases where there is some broader public good reason for creating an easement.

m. **note** that easements will not be considered under the statutory test for discretionary actions

Stock exemption limitations

n. **agree** that, when considering applications for stock exemption limitations when a lease is being transferred:

i. the application for the stock limitation exemption should not go through the statutory test for discretionary actions

ii. the Commissioner should consider the following:

- whether the leaseholder is capable of managing the number of stock that the previous leaseholder had on the lease
- whether the land in its current state is capable of sustaining the number and types of stock in the previous exemption
- any other relevant considerations

iii. based on that consideration, the Commissioner may either agree to the current stock limitation exemption, or may lower the stock exemption limitation.

Next steps

o. **note** that we propose discussing the advice and recommendations in this paper at your phone meeting with officials on Thursday 27 February, and will then reflect your decisions in a paper to Minister Parker and O'Connor.

Sarah Metwell	Hon Eugenie Sage
Manager Policy	Te Minita mō Toitu te Whenua
Rā / Date: / /	Rā / Date: / /

Tāpiritanga / Attachments

1. **Annex 1**: Summary of feedback from engagement
2. **Annex 2**: Current version of the classification of activities schedule
3. **Annex 3:** Current version of the statutory test for decision-making on discretionary actions

Annex 1 – Summary of issues raised during engagement

Statutory test for decision-making on discretionary actions

Issue	Stakeholder	Comment
Considering the significance of inherent values	Environmental Defence Society	Noted the importance of considering the *significance* of inherent values affected by an activity – not just identifying what inherent values are affected.
Step 1: **'Are the unavoidable adverse effects more than minor?'**	Federated Farmers	Concerned that the use of 'unavoidable' creates confusion. The test needs to be clearer that Step 1 is dealing with the 'residual' effects after considering what can be avoided/remedied/mitigated
	Forest & Bird	The test needs an additional step before Step 1 to determine what adverse effects are avoidable and unavoidable
	Ngāi Tahu	Need to include consideration of effects on cultural values (which will require cultural impact assessments)
	High Country Accord	The test needs additional steps before Step 1 (e.g. what are the effects of the proposed activity; are those effects impacting indigenous biodiversity; are those effects unavoidable; are those unavoidable affects adverse?)
Step 2: **'Does declining the activity unreasonably prevent the land from being pastorally farmed?'**	Forest & Bird	Need to be clear that the intent is not to provide for further intensification.
	Federated Farmers	Concerned about the use of 'unreasonably' – was unsure who defines what is unreasonable.
	Forest & Bird EDS	Also concerned about the use of 'unreasonably'. In addition, unsure how 'pastoral farming' is defined.

Step 2: **Commissioner's considerations** *Whether the action is required to access areas of cultivated land for the grazing of livestock*	Federated Farmers	Would like it to be specified that any access should be 'reasonable'
	High Country Accord	The Accord was keen for 'cultivated land' to be expanded to 'improved pasture' which would be very permissive.
	DOC	DOC's view is that access to 'cultivated' land should not be given particular consideration as cultivation is not an ongoing right.
Step 2: **Commissioner's considerations** *Whether the actions would allow the leaseholder to protect and use their personal property associated with the land*	Federated Farmers	Would like to see the reference to 'personal' property removed (i.e. just property)
	High Country Accord	The Accord argued that leaseholders own all improvements
Step 2: **Commissioner's considerations** *Whether the action is required to maintain or replace critical farm infrastructure*	Federated Farmers	Noted a lack of clarity around what would constitute 'critical' farm infrastructure.
Step 2: **Commissioner's considerations** *The financial viability of farming that lease or the economic sustainability of the pastoral farming enterprise*	Federated Farmers and the High Country Accord	Both noted that the Commissioner should have to consider whether an activity will have a negative economic impact on leaseholders
	Forest and Bird	Noted that economic viability should *not* be a consideration
Step 2: **Commissioner's considerations** *Whether the action is a continuation of an existing activity, including as part of an*	Forest & Bird	Agreed that existing use of the land could be a relevant consideration, but this would need to distinguish between 'existing use' and 'historic use'

ongoing programme or cycle of use of the land		
Step 2: **Commissioner's considerations** *Any other relevant considerations*	High Country Accord	Step 2 does not currently reflect all of the considerations that the Commissioner must take into account
	Ngāi Tahu EDS	'Any other relevant considerations' is too broad. Leaving this open-ended could result in unlimited other considerations being introduced to the Commissioner's decision-making
Communicating final decisions	Ngāi Tahu	Would like affected parties (including iwi authorities) notified of all decisions
	High Country Accord	Had some privacy concerns around what will be published in decision summaries

Proposed schedule classifying pastoral actions

Issue	Stakeholder	Comment
Criteria for setting the classification *Use of 'net effects'*	Forest & Bird	Recommended removing any consideration of 'net effects' from the criteria as they were concerned about cross-value impacts LINZ agrees with this concern.
Criteria for setting the classification *Implications of 'in all foreseeable circumstances'*	Forest & Bird	Noted that this term raises a very high bar for the prohibited category.
	Federated Farmers	Similarly, Federated Farmers noted that it raises a very high bar for the permitted category.
Permitted pastoral actions *Existing activity vs existing consented activity*	Federated Farmers	All references to existing consented activity should instead be 'existing activity'.
	High Country Accord	Likewise, the High Country Accord would like to see existing uses provided for as permitted actions.
Permitted pastoral actions *Discretion as to whether an activity is permitted*	Forest & Bird	Clarify that the Commissioner is responsible for determining whether something meets the definition of one of the permitted actions, and that the leaseholder needs to check if unsure.
Permitted pastoral actions *Allowance for indigenous by-kill*	Federated Farmers High Country Accord	Want to see a minimal or reasonable amount of by-kill permitted (when undertaking exotic pest plant control)
Permitted pastoral actions *Drawing a distinction between controlling exotic pest plants on improved and unimproved land*	High Country Accord	The Accord suggest drawing a distinction between improved and unimproved land.
Permitted pastoral actions *Disturbance of protected species' habitats*	Forest & Bird	Recommended adding "or disturbance of protected species' habitats" to the pest plant control activity. However, this would be very difficult to practically implement.

Permitted pastoral actions *Fencing required to comply with national or local stock exclusion regulations*	Federated Farmers	Suggested including fencing required to comply with national or local stock exclusion regulations as a permitted activity.
Permitted pastoral actions *Planting of indigenous vegetation*	Federated Farmers	Suggested expanding riparian planting using indigenous species to "Planting of indigenous vegetation sourced from local seeds for farm management, amenity or conservation purposes" to promote enhancement of inherent values.
Permitted pastoral actions *Maintenance of existing drains*	Federated Farmers High Country Accord	Noted that lessees are required to keep drains clear under s 99(c) of the Land Act – because of this, drains might not have an existing consent and this should therefore be a permitted activity.
Permitted pastoral actions *Activities provided for in whole property management plans*	High Country Accord	Suggested including "any activity contemplated by an approved whole property management plan"
Permitted pastoral actions *Repair and maintenance of existing fencing*	Federated Farmers	Suggested including "repair and maintenance of existing fencing within its existing footprint"
Permitted pastoral actions *Clearing trees (alignment with the Land Act)*	High Country Accord	The High Country Accord suggested including "clearing any standing non-indigenous tree where permitted by section 100 of the Land Act" as a permitted activity.
Permitted pastoral actions *Activities permitted within the curtilage of dwellings*	High Country Accord	The High Country Accord suggested expanding the current wording to "all earthworks, plantings, gardening, sowing of seed or topdressing within the curtilage of dwellings *and node of farm buildings*"
Discretionary pastoral actions *Planting vegetation*	Federated Farmers High Country Accord	Suggested that consent should only be required for planting trees, not other vegetation.

Discretionary pastoral actions *Taking account of non-pastoral activities*	High Country Accord	Suggested including "any non-pastoral activity" as a discretionary activity.
Discretionary pastoral actions *Soil disturbance for the construction of buildings*	High Country Accord	Suggested that "soil disturbance for the construction of buildings" should not be a discretionary activity where the proposed buildings are compliant with any volume/area limitation rules of the relevant local authority.
Discretionary pastoral actions *Burning vegetation*	High Country Accord	Suggested that burning vegetation be limited to "burning vegetation other than by way of disposal of vegetation cleared pursuant to a permitted or consented activity".
Discretionary pastoral actions *Irrigation*	High Country Accord	Suggested changing the wording of new/additional irrigation to "irrigation of land not already irrigated for the purposes of pastoral production".
Prohibited pastoral actions *Sowing some seeds*	Forest & Bird	Suggested including "sowing certain species of seed" e.g. Russell lupin as a prohibited activity.
Prohibited pastoral actions *Taking water from wetlands for stock water*	High Country Accord	Suggested that the definition of drain be amended to reflect a steady state, e.g. where a wetland is used as a source for stock water to troughs, without diminishing the overall wetland. Otherwise there is a risk that the prohibited activity "crop, cultivate, drain or plough indigenous wetlands" might prohibit lessees from using water from a wetland for stock.

Crown Pastoral Land Act – Proposed Classification of Actions

'Activities' now 'pastoral actions'

Changes reflect discussions with MfE around terminology [BRF 20-367 refers]

Permitted pastoral actions (consent not required from CCL but may be required under other enactments) – CCL has discretion to determine whether something meets the definition of a permitted activity, leaseholders need to check if it is unclear

- Controlling invasive exotic pest plants, provided this does not include associated clearance of indigenous vegetation
- All earthworks, planting, tree felling, gardening, sowing of seed or topdressing within the existing curtilage of dwellings
- Soil disturbance (with an appropriate volume or area limitation) comprising:
  - Digging in posts, anchors, piles or supports (except for the purpose of constructing buildings)
  - Laying electric fence cables
  - Burying dead animals or digging offal pits, provided this is at least 50m away from any water body
  - Clearing humps or filling hollows along fence lines
  - Digging rabbit warrens
  - Digging long drops, provided this is at least 50m away from any water body
  - Maintenance of existing wild flood irrigation
  - Removing tree stumps
  - Invasive exotic pest plant control, provided this does not include associated clearance of indigenous vegetation
  - Preparation of bait lines for animal pest control
  - Maintenance of existing bores
  - Maintenance of stock water troughs
- Fencing within existing cultivated paddocks
- Riparian planting of indigenous vegetation sourced from local seeds
- Clearing wind-felled trees, except where this is for sale or off-farm commercial use
- Laying of water pipes underground within existing cultivated areas using a ripper and mounted cable layer
- Laying cables, domestic water pipelines and other infrastructure underground from the main source of supply to existing buildings, provided there is no associated clearance of indigenous vegetation and cables/pipelines do not traverse water bodies
- Burning of slash/stumps/dead vegetation within existing consented cultivated paddocks
- Boom spraying of existing consented cultivated paddocks
- Maintenance of existing drains, water races or culverts
- Maintenance of other existing consented drainage works
- Maintenance of existing consented top-dressing
- Maintenance of existing consented seed sowing
- Maintenance of existing consented cultivation
- Maintenance of existing consented roads, paths, or tracks (including laying local gravel)
- Maintenance of any other existing consented activity as provided for in s 16(3)
- Repair and maintenance of existing fencing within its existing footprint

← 'Planting' and 'gardening' added

The High Country Accord suggested expanding the current wording to allow planting and gardening to occur within the existing curtilage of dwellings

'Maintenance of existing wild flood irrigation'

Words 'maintenance of' replace 'facilitating' to ensure alignment with the changes below

'Boom Spraying'

'Ground broom spraying' now 'boom spraying' to reflect that boom spraying can also be undertaken by helicopter

'Maintenance of existing consented drainage works' now 'maintenance of existing, drains, water races or culverts'

Federated Farmers and the High Country Accord noted that lessees are required to keep drains clear under s 99(c) of the Land Act – because of this, drains might not have an existing consent and this should therefore be a permitted action

As a result of this change, 'other' has been added to 'maintenance of existing consented drainage works'

Note: "maintenance" needs to be clearly defined to exclude the recreation of something that was not maintained as part of an ongoing programme

Maintenance of existing consented top-dressing
Maintenance of existing consented seed sowing
Maintenance of existing consented cultivation

These three additions replace 'maintenance of pasture subject to existing consented top-dressing, seed sowing, and/or cultivation'

These three actions were split up to increase clarity – in response to Forest & Bird's feedback that the former phrasing may allow for 'method swap' (e.g. cultivating land that has been top-dressed)

Discretionary pastoral actions (CCL has discretion to approve or decline)

- New/additional irrigation
- Burning vegetation

'Repair and maintenance of existing fencing within its existing footprint' added

Change reflects feedback from Federated Farmers that lessees need the ability to maintain *existing* fencing

- Clearing indigenous vegetation
- New Cropping, cultivation, draining or ploughing
- New top-dressing
- New sowing seed
- Planting vegetation (other than riparian planting)
- Forming new paths, roads, or tracks
- Soil disturbance for the construction of buildings
- New fencing (other than provided for in the permitted category)
- Clearing drains except as provided for in the permitted category
- Construction of water storage infrastructure
- Spray and pray
- Any other activity affecting, involving, or causing soil disturbance (except as provided for in the permitted category)

'Clearing drains except as provided for in the permitted category'

Words 'except as provided for in the permitted category' added to ensure alignment with the changes above

'Construction of water storage infrastructure'

Word 'infrastructure' replaces 'dams' – to reflect that water can be stored by other means (e.g. tanks)

Prohibited pastoral actions (consent cannot be granted by the CCL and cannot be applied for)

- Cropping, cultivating, draining or ploughing indigenous wetlands (except where taking water for stock water troughs where this does not affect natural wetland water levels)
- Digging long drops within 20m of waterbodies
- Burying dead animals within 20m of waterbodies

'Cropping, cultivating, draining or ploughing indigenous wetlands'

Added the words 'except where taking water for stock water troughs where this does not affect natural wetland water levels'

Changes reflect feedback from the High Country Accord that the definition of drain be amended to reflect a steady state, e.g. where a wetland is used as a source for stock water to troughs, without diminishing the overall wetland. Otherwise there is a risk that the prohibited activity "crop, cultivate, drain or plough indigenous wetlands" might prohibit lessees from using water from a wetland for stock.

Definitions

Indigenous wetlands – Includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of predominantly indigenous plants and animals that are adapted to wet conditions

'Predominantly indigenous'

Words 'predominantly indigenous' added to reflect feedback from the High Country Accord

Invasive exotic pest plants – including but not limited to pests listed in the National Pest Plant Accord

Indigenous vegetation – means vegetation or groundcover containing vascular and/or non-vascular plants and/or lichens that are indigenous to any of the ecological regions of which the property is part, but does not include plants within a domestic garden, planted for the use of screening / shelter purposes e.g. as farm hedgerows

Cropping, cultivating, draining or ploughing

Cultivation - mechanical tillage of soil to introduce seed or fertiliser, including but not limited to ploughing, discing or direct drilling.
Draining – verb – causing water to be drawn off land gradually or completely
Cropping – growing forage crops for animals and production of vegetables, fruit, grain, etc.
Ploughing – turning over soil in preparation for cropping/cultivation

Drain – noun – artificial and constructed waterway or subsurface drainage structure

Clearing vegetation – the removal, felling, mechanical/chemical topping, or modification of any vegetation, including cutting, crushing, mulching, spraying with herbicide or burning, and not including clearance by grazing

Curtilage – the enclosed space of ground and buildings immediately surrounding a dwelling.

Spray and pray – where slopes are sprayed to remove vegetation, then replanted in stock/forage crops.

Permitted activity – an activity for which the Commissioner of Crown Land's consent is not required. Consent may still be required under other regulatory frameworks – for example, the Resource Management Act.

Discretionary activity – an activity for which the Commissioner of Crown Land's consent is required. The Commissioner may (a) decline the consent; or (b) grant the consent, with or without conditions, if he/she is satisfied the activity meets the requirements of the discretionary decision-making test. Consent may still be required under other regulatory frameworks – for example, the Resource Management Act.

Prohibited activity – an activity that requires a consent to be lawfully conducted, but for which the CCL cannot grant a consent, and for which an application will not be received.

Proposed criteria for classifying activities

Removed references to 'net positive' from criteria

Words 'as well as the net positive and negative impacts' removed from the possible effects considered under 2(a) below – in response to feedback from Forest & Bird, who were concerned about cross-value impacts.

1. The starting point is that activities are considered discretionary and remain so unless they meet the criteria to be permitted or prohibited.

2. In advising the Minister on which activities should become permitted, LINZ (based on expert advice, consultation with the DGC, iwi, and public submissions) must be satisfied that:
   a. Considering the possible effects of an activity across the Crown pastoral estate (including short, long term, and cumulative), the activity as defined will have no more than minor effects on inherent values in all foreseeable circumstances; and
   b. The activity is required for pastoral farming; and/or
   c. The activity contributes to good husbandry, pest plant and animal control, or the maintenance and/or enhancement of inherent values.

3. In advising the Minister on which activities should become prohibited, LINZ (based on expert advice, consultation with the DGC, iwi, and public submissions) must be satisfied that:
   a. Considering the possible effects of an activity across the Crown pastoral estate (including short, long term, and cumulative), the activity as defined would be likely to cause significant loss of inherent values which cannot be avoided in all foreseeable circumstances.

Removed 'or mitigated' from "…which cannot be avoided in all foreseeable circumstances" – consideration 3(a)

Words 'or mitigated' removed from consideration 3(a) above, in response to feedback from Forest & Bird that 'or mitigated' would mean that any amount of mitigation would stop the activity from being able to be classed as 'prohibited'

'Effects' replaces 'impacts'

References to 'impacts' in the Criteria above have been replaced with 'effects'

Crown Pastoral Land Act reforms

Land Information New Zealand
Toitū te whenua

Changes to STEP 1:

Changes include clarifying what the commission must consider including the importance of the inherent value, and whether an adverse effect is temporary

Proposed new classification of actions

Existing actions with an ongoing consent can continue

Many current pastoral farming actions are subject to ongoing consents. These actions will be able to continue.

New applications

'Permitted' pastoral actions can be carried out without a consent

*Refer to the **schedule of actions** for a full list of permitted actions.*

'Discretionary' actions need to go through the proposed new process

Any action that is not permitted or prohibited, is discretionary.

'Prohibited' pastoral actions cannot be carried out

*Refer to the **schedule of actions** for a full list of prohibited actions.*

Proposed new statutory test

Step 1: Application of an effects-based test

Are the adverse effects (including cumulative effects) of an action on inherent values are no more than minor?

The Commissioner must consider:

- *the inherent values on the land*
- *the importance of those values*
- *the expected adverse effects of the proposed action (including cumulative and temporary)*
- *whether there are reasonable alternatives to the action that have a lower adverse effect on inherent values*
- *any ways in which the effects can be avoided, remedied or mitigated to 'minor' within an acceptable time*

The Commissioner must not consider offsetting

No more than minor

More than minor

Step 2: Considering pastoral farming

Is the action necessary to enable the leaseholder to exercise their rights and obligations under the lease?

The Commissioner may consider whether the action:

- *forms part of the periodic clearance of vegetation as part of a regular cycle to maintain pasture created by oversowing, top-dressing or cultivation*
- *is required to provide reasonable access to areas of land that are currently subject to a programme of oversowing or topdressing for the grazing of livestock*
- *is required to use, maintain, or replace consented existing infrastructure or buildings*
- *contributes to the leaseholder meeting their obligations under the lease or other legislation*
- *is required to address an exceptional circumstance*
- *any other relevant considerations*

The Commissioner must not consider:

- *the financial viability of farming that lease or the economic sustainability of the pastoral farming enterprise*
- *any economic benefits associated with undertaking that action*

Yes

No

ot be carried out

The Commissioner makes a decision

As well as applying the discretionary action test and consulting the DG of Conservation, the Commissioner:

- *must ensure their decision seeks to achieve the outcomes*
- *must consider the level of adverse effects and relative importance of an inherent value affected by a discretionary action*
- *must recognise and provide for the relationship of Māori with their ancestral lands, water, mahinga kai, wahi tapu and other taonga*
- *must consider current government policy except where this is inconsistent with the Act*
- *may consider any plan for the management of part or all of the land*
- *may consider cross-boundary effects*

Changes to Final STEP:

Addition of requirement for Commission to consider

- Level of adverse effects and relative importance of inherent value(s)
- Cross boundary effects (moved from first part of test)

Changes to STEP 2:

- Reworded overarching intent statement to clarify intent of test
- Addition of bullet points 1 (periodic clearance) and 4 (obligations under lease)
- Also added exclusions Commission must not consider

Treatment of recreation permits and easements

New recreation permits will be permitted where they have no more than minor adverse impacts

Renewal of existing recreation permits, the Commission may consider whether the permit is required to use maintain or replace consented infrastructure or buildings

Enable Commissioner to consider public good reasons when deciding to create an easement

Minister for Land Information

Crown pastoral land reforms: Delegated decisions on schedule and statutory process

Rā / Date	28 February 2020	**Kōmakatanga / Classification**	In confidence
LINZ reference	BRF 20-401	**Whakaarotau / Priority**	High

Ngā mahi e hiahiatia ana / Action sought

Minita / Minister	Hohenga / Action	Deadline
Minister for Land Information	**Refer** this briefing to the Minister for the Environment and the Minister of Agriculture	28 February 2020
Minister for the Environment Minister of Agriculture Minister for Land Information	**Note** the contents of this briefing **Sign** and return this briefing to officials.	4 March 2020

LINZ Contacts

Ingoa / Name	Tūnga / Position	Contact number	First contact
Sarah Metwell	Manager Policy	027 809 6953	☒
Elisa Eckford	Principal Advisor, Policy	027 237 7695	☐

Te Tari o te Minita ki te Whakaoti / Minister's office to complete

1 = Was not satisfactory 2 = Fell short of my expectations in some respects 3 = Met my expectations
4 = Met and sometimes exceeded my expectations 5 = Greatly exceeded my expectations

Overall Quality	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5

Comments

☐Noted ☐Seen ☐Approved ☐Overtaken by events
☐Withdrawn ☐Not seen by Minister ☐Referred to:

Pūtake / Purpose statement

1. This briefing summarises decisions the Minister for Land Information has made on the classification of pastoral farming activities in a schedule, and on the design of a statutory process for decision-making on discretionary actions.

Pānui whāinga / Key messages

2. Ministers met in December to discuss the approach to the classification of pastoral farming activities in a schedule, and on the design of a statutory process for decision-making on discretionary actions, as delegated by Cabinet. [CAB 19-MIN-0679 refers].
3. Since then, LINZ officials have sought feedback from the High Country Accord, Federated Farmers, Forest & Bird, EDS and Ngāi Tahu, and worked with officials from DOC, MPI and MfE to incorporate this feedback in a way that is consistent with the overall purpose of the reforms.
4. The final schedule and statutory process are attached. Together, they aim to translate the high-level outcomes agreed by Cabinet into specific statutory decisions in a way that:
   - provides sufficient protections for inherent values, particularly by restricting any further intensification or development on Crown pastoral land
   - ensures pastoral farming is not unreasonably restricted
   - is transparent and workable.

Tohutohu / Recommendations

5. It is recommended that the Minister for Land Information:
   a. **refer** this briefing to the Minister for the Environment and the Minister of Agriculture.
6. It is recommended that joint Ministers (the Minister for the Environment, Minister of Agriculture, and the Minister for Land Information):
   a. **note** the contents of this briefing
   b. **sign and** return this briefing to officials.

Hon David Parker	Hon Damien O'Connor
Minister for the Environment	Minister of Agriculture
Rā / Date: / /	Rā / Date: / /

Hon Eugenie Sage	Sarah Metwell
Minister for Land Information	Manager Policy (LINZ)
Rā / Date: / /	Rā / Date: / /

Tāpiritanga / Attachments

1. Annex 1 – Classification of pastoral farming activities
2. Annex 2 – Statutory process for decision-making on discretionary actions

Te Horopaki / Background

7. On 16 December, Cabinet agreed to make changes to the Crown Pastoral Land Act 1998 and the Land Act 1948 aimed at improving the way LINZ administers Crown pastoral land. As part of this, Cabinet delegated decisions on the classification of pastoral farming activities in a schedule, and on the design of a statutory process for decision-making on discretionary actions, to the Minister for Land Information, in consultation with the Minister of Agriculture and the Minister for the Environment [CAB 19-MIN-0679 refers].
8. LINZ has been working with agencies including DOC, MPI and MfE to provide the Minister for Land Information with advice in these two areas.

Engagement on the changes

9. LINZ officials undertook a programme of engagement on a proposed schedule and statutory process with the High Country Accord, Federated Farmers, Forest & Bird, EDS and Ngāi Tahu. This engagement was extremely constructive and useful in helping shape final advice. It confirmed that the overall approach – a schedule classifying activities, followed by a two-part test for discretionary actions - is workable.
10. Most issues raised through the engagement have been addressed in the final proposals in a way that is consistent with the overall purpose of the reforms. Some feedback has not been reflected as it either related to decisions already made by Cabinet, or it was not consistent with the intent of the changes.
11. Federated Farmers and the Accord mainly focused on how existing pastoral farming activity would be treated under the proposals, and wanted to see some provision for that existing activity as part of the test. In particular, the Accord wanted provision to be made to ensure that leaseholders can continue to use land that has been oversown and top-dressed, but has woody vegetation regrowth that would need to be cleared to permit ongoing use. This has been specifically provided for through a consideration in the statutory test.
12. However, a further issue raised by Federated Farmers and the Accord – wanting to see a minimal or reasonable amount of by-kill allowed for as part of the "permitted" activity of controlling invasive exotic pest plants – has not been addressed, as this does not fit with the agreed definition of "permitted" as "having no more than minor impacts on inherent values in all foreseeable circumstances."
13. All stakeholders noted the need for further definition of '"no more than minor" effects and detailed secondary legislation and operational policy. LINZ will develop all this during the legislative process, working closely with stakeholders.

Aim of the proposed changes

14. With the Cabinet decision to end tenure review, the Crown will remain the owner of approximately 1.2 million hectares of Crown pastoral land. It will be critical that LINZ administers this in the long-term interests of all New Zealanders through an effective regulatory system.
15. In agreeing to a package of changes, Cabinet noted that there has been increasing public concern about the management of Crown pastoral land by LINZ, and a loss of biodiversity and landscape values on current and formal pastoral land over time.
16. At the same time, Cabinet clarified that there was no intent to change leaseholders' exclusive right to pasturage and quiet enjoyment of their leasehold properties, along with their perpetual rights of renewal.

17. Cabinet agreed to clarify the outcomes of the regulatory system as being to:
    - maintain or enhance the inherent (ecological, landscape, cultural, heritage and scientific) values across the Crown pastoral estate for present and future generations while providing for ongoing pastoral farming of Crown pastoral land
    - support the Crown in its relationships with Māori under the Treaty of Waitangi
    - enable the Crown to get a fair return on its ownership interest in Crown pastoral land.
18. The Commissioner must consider applications for discretionary actions – activities that the leaseholder is required to seek permission to undertake - in the context of these outcomes.

Classification of pastoral farming activities

Aim of the classification schedule

19. Developing a schedule classifying discretionary actions[1] into permitted, discretionary, or prohibited is intended to improve the timeliness and efficiency of the discretionary consents decision-making process. It should also enable LINZ to focus resources on higher-risk consents, while allowing leaseholders to undertake activities that are part of day-to-day farming and have no more than minor impacts, including some invasive exotic pest plant control and preparation of bait lines for animal pest control without having to apply for a consent.
20. Cabinet agreed that the schedule will be set in the primary legislation, along with provisions setting out the criteria used to classify activities. The schedule itself can be amended by Order in Council following public consultation, and will be reviewed regularly.
21. Classification of any activity under the CPLA would not remove the need for consent under any other regulatory frameworks (e.g. the RMA) and inclusion of an activity in the permitted category would not automatically authorise any associated discretionary activities – for example, fencing as a permitted activity would not authorise clearance of indigenous vegetation to construct the fence.

Criteria for classification of activities

22. The starting point is that activities are considered discretionary and remain so unless they meet the criteria to be permitted or prohibited.
23. In advising the Minister on which activities should become permitted, LINZ (based on expert advice, consultation with the DGC, iwi, and public submissions) must be satisfied that:
    - considering the possible effects of an activity across the Crown pastoral estate (including short, long term, and cumulative), the activity as defined will have no more than minor effects on inherent values in all foreseeable circumstances; and
    - the activity is required for pastoral farming; and/or
    - the activity contributes to good husbandry, pest plant and animal control, or the maintenance and/or enhancement of inherent values.
24. In advising the Minister on which activities should become prohibited, LINZ (based on expert advice, consultation with the DGC, iwi, and public submissions) must be satisfied that:
    - considering the possible effects of an activity across the Crown pastoral estate (including short, long term, and cumulative), the activity as defined would be likely to cause significant loss of inherent values which cannot be avoided in all foreseeable circumstances.

[1] The activities being classified are those in sections 15-16 of the CPLA – activities involving burning vegetation or affecting/disturbing soil - and s 100 of the Land Act.

Final classification of activities

25. Many of the activities included in the permitted activity list are already subject to a standing consent issued by the Commissioner to all leaseholders in 1999, authorising activities that were part of day-to-day farming and considered to have no more than minor impacts on the land.
26. In addition, the permitted activity list includes other activities such as pest plant control, provided it does not include associated clearance of indigenous vegetation, along with "maintenance" of existing consented activities. These latter activities require a clear definition of "maintenance" that provides for the preservation of the original activity in accordance with the terms of the consent, but excludes the recreation of something that was not maintained and has been lost/fallen into disrepair.
27. The discretionary activities capture all other activities that require the Commissioner's consent in current sections 15-16 of the CPLA and s.100 of the Land Act, with the addition of:
    - new/additional irrigation
    - clearing indigenous vegetation – the status quo requires consent for clearance of bush/scrub, but we have recommended expanding this to vegetation to ensure it includes indigenous tussocks/lichens/etc
    - clearing drains.
28. All these discretionary activities would be subject to the new statutory test.
29. Prohibited activities comprise cropping, cultivating, draining or ploughing indigenous wetlands except where taking water for stock where this doesn't affect natural wetland water levels; burying dead animals within 20m of waterbodies and digging long drops within 20m of waterbodies.
30. **Annex 1** sets out the current schedule of activities, along with the criteria and definitions.

Statutory process for decision-making on discretionary actions

Context for decision-making

31. As noted by Cabinet, the proposed changes are not intended to prevent, or reduce the amount of, pastoral farming activity happening on Crown pastoral land.
32. Instead, the changes are intended to encourage leaseholders to undertake pastoral farming activities in a way that reduces their impact on, or actively enhances, inherent values. In this context, the focus is on pastoral farming as a means of helping steward and care for an iconic and vulnerable landscape, rather than as a way of getting economic returns from the land.
33. Protecting inherent values will be particularly critical with the ending of tenure review, because land with particularly high inherent values that would previously have been identified as needing to be protected as public conservation land as part of the tenure review process will continue to be pastorally farmed. It is essential that the regulatory system offers sufficient protection for this land into the future.
34. Cabinet has already decided that existing activity with an ongoing consent will be allowed to continue. In addition, leaseholders do not need to apply for consent for activities that are classified as "permitted" in the schedule. The statutory process therefore only applies to pastoral activities classified as "discretionary" in the schedule.

Overview of the statutory process

35. The process is intended to translate the high-level outcomes agreed by Cabinet into specific statutory decisions. This means it needs to:
    - provide sufficient protections for inherent values, particularly by restricting any further intensification or development on Crown pastoral land
    - ensure it does not unreasonably restrict pastoral farming

- be transparent and workable.

36. The new process provides a framework and parameters within which the Commissioner's decision-making is exercised. There will still be a degree of discretion and judgement required.
37. The process for decision-making on discretionary consents is outlined in **Annex 2**. It includes:
    - the application of an effects-based test and a requirement to consider alternatives (Step 1)
    - a 'pastoral farming' test to establish if there are any reasons to grant permission for an action that has a more than minor adverse effect on inherent values (Step 2)
    - a final decision-making stage where the Commissioner can make a range of further considerations before approving the application in full or in part, with or without reasonable conditions, or declining it.
38. During the process, the Commissioner will be required to consult with the Director-General of Conservation and engage with Māori. The specific points at which this would occur will be worked through operationally with DOC and relevant iwi.
39. There will be no obligation on the Commissioner to approve any discretionary consent application. Discretionary consents can be approved 'in part' and with reasonable conditions, and the Commissioner will be required to publish a summary of the decision along with the reasons behind it.

Step 1 – the effects-based test

40. In the first step of the process, the Commissioner must consider whether the adverse effects (including cumulative effects) of an action on the inherent values are no more than minor. However, this part of the test is not just intended to assess the effects, but to ensure that Commissioner and leaseholders do everything reasonably possible to ensure that those effects are minimised.
41. In making this determination, the Commissioner must consider:
    - the inherent values on the land
    - the importance of those values
    - the expected adverse effects of the proposed action (including cumulative and temporary effects)
    - whether there are reasonable alternatives to the action that have a lower adverse effect on inherent values
    - any ways in which the effects can be avoided, remedied or mitigated.
42. The Commissioner must not consider offsetting as part of this test.
43. If the adverse effects of an action on inherent values are no more than minor, the Commissioner may proceed to making a final determination.
44. If the adverse effects are more than minor, the Commissioner must proceed to Step 2.

Step 2 – the pastoral farming test

45. The second part of the test is intended to provide for situations where an activity may have more than minor adverse effects, but where preventing that activity would unreasonably restrict the leaseholder from undertaking pastoral farming on their lease. [s 9(2)(h)] [redacted]
46. This part of the test is intended to be restrictive, and to provide specific, clear circumstances in which the Commissioner can allow an activity that has more than minor adverse impacts.

47. In making this determination, the Commissioner must determine whether the action is necessary to enable the leaseholder to exercise their rights and obligations under the lease. To make this determination, the Commissioner may consider whether the action:
    - forms part of the periodic clearance of vegetation as part of a regular cycle to maintain pasture created by oversowing, top-dressing or cultivation
    - is required to provide reasonable access by way of tracks to areas of land currently subject to a programme of oversowing or topdressing for the grazing of livestock
    - is required to use, maintain or replace consented existing infrastructure or buildings
    - contributes to the leaseholder meeting their obligations under the lease or other relevant legislation
    - is required to address an exceptional circumstance, for example, where there is a significant risk to the health or safety of the holder of the reviewable lease or their stock
    - any other relevant considerations.
48. In making this determination, the Commissioner cannot consider:
    - the financial viability of farming that lease, or the economic sustainability of the pastoral farming enterprise
    - any economic benefits associated with undertaking that action.
49. If the Commissioner cannot determine that the action is necessary to enable the leaseholder to exercise their rights and obligations under the lease, then the application must be declined.
50. If the Commissioner determines that the action is necessary to enable the leaseholder to exercise their rights and obligations under the lease, the Commissioner must proceed to making a final determination.

Making a final determination

51. Even if an application has passed one or both stages of the test, the Commissioner must still make a final determination before deciding whether to approve it. The considerations under this part of the process include ensuring that the decision is consistent with the outcomes and providing extra protections in case where an action would have particularly large adverse effects, or have adverse effects on particularly important inherent values.
52. The final determination requires the Commissioner to consult with the Director-General of Conservation. In addition, the Commissioner:
    - must ensure their decision seeks to achieve the outcomes
    - must consider the level of adverse effects and the relative importance of the inherent values in question
    - must recognise and provide for the relationship of Māori with their ancestral lands, water, mahinga kai, wahi tapu and other taonga
    - must consider current government policy where that is consistent with the outcomes
    - may consider New Zealand's commitment to reducing greenhouse gas emissions, where that is consistent with the outcomes
    - may consider any plan for the management of part or all of the land
    - may consider cross-boundary effects.

Other statutory decision-making

53. In addition to discretionary actions, the Commissioner must make decisions on stock limitation exemptions, recreation permits and easements.

Stock exemption limitations

54. Pastoral leases have a stock limitation that was set around 1948, when the land was in its largely undeveloped state. Subsequent development has enabled a large increase in the land's carrying capacity, and most leaseholders rely on a relatively large exemption in order to graze the number of stock and types of stock they have on the pastoral lease. This exemption is personal to the leaseholder rather than associated with the lease.
55. Applications for new stock limitation exemptions will be considered using the statutory process for discretionary actions set out above.
56. However, there is an exception for stock limitation exemption applications in cases where the lease is being transferred, and the new leaseholder is applying for the same exemption as (or a lower exemption than) the previous leaseholder. In these cases:
    - the application for the stock limitation exemption does not go through the statutory test for discretionary actions
    - the Commissioner considers the following:
        - whether the leaseholder is capable of managing the number of stock that the previous leaseholder had on the lease
        - whether the land in its current state is capable of sustaining the number and types of stock in the previous exemption
        - other relevant considerations
    - based on that consideration, the Commissioner may agree to the current stock limitation exemption or to any lower level of stock limitation exemption.
57. This exception will avoid introducing significant uncertainty to the lease transfer process, and will ensure consistency with the government's undertaking to not seek to reduce the amount of pastoral farming happening across the Crown pastoral estate
58. Any application for an increase in the exemption will be treated as a new discretionary action application.

Recreation permits

59. Recreation permits allow leaseholders (or third parties with leaseholder approval) to undertake certain non-pastoral activities on their land[2]. They provide additional revenue streams and are often linked to tourism-type activities. The Crown as landowner also receives revenue from recreation permits. Recreation permits are time-limited, and must be re-applied for at lease renewal.
60. All applications for recreation permits will be considered using the first part of the discretionary actions test, allowing the Commissioner to approve only those recreational activities with a no more than minor adverse effect on inherent values.
61. In cases where an application is made to continue existing activity, the Commissioner may make a further consideration on whether the action is required to enable use of consented existing infrastructure or buildings. This will largely apply to activities which can't easily be moved to another site (such as ski fields).
62. The application of the first part of the test to existing activities seeking a renewal of their recreation permit will give the Commissioner the opportunity to ensure that the adverse effects of the activity are being avoided, mitigated or remedied as far as possible.

[2] The non-pastoral activities that may be carried out with a recreation permit are limited to recreational, tourist, accommodation, safari, and other activities per section 66A of the Land Act 1948. These sorts of activities include nature tourism, mountain biking, horse trekking, helicopter tourism, 4wd tours, filming, and tourist accommodation.

Easements

63. Easements are not typically applied for by leaseholders, but often are required for infrastructure (for example, the Te Araroa trail, cycle-trails, pipelines, or electricity transmission), or to establish access in favour of particular persons (such as the Walking Access Commission). Easements do not require the leaseholder's approval, but leaseholders are entitled to compensation.
64. When deciding whether to grant an easement, the Commissioner will consider:
    - the broad outcomes of the Act
    - whether creating an easement over Crown pastoral land is fair, sound, and reasonably necessary for achieving the objectives of the applicant.
65. This approach reflects that easements are often not related to pastoral farming activity and provide broader benefits to New Zealand. The test will help ensure that the easement is necessary and cannot be completed in another way with lower impact.
66. LINZ will develop robust operational policy in consultation with leaseholders, iwi and relevant agencies detailing the process the Commissioner will follow when creating an easement.

Ngā Tāwhaitanga / Next Steps

67. We will aim to provide the Minister for Land Information with a draft LEG paper early next week, with the aim of the paper being considered by LEG at its Tuesday 31 March meeting.
68. Ministerial consultation is expected to run concurrently with departmental consultation from Tuesday 10 March to Wednesday 25 March.

Crown Pastoral Land Act – Proposed Classification of Activities

Reference number: BRF 20-401

Permitted pastoral actions (consent not required from CCL but may be required under other enactments) – CCL has discretion to determine whether something meets the definition of a permitted activity, leaseholders need to check if it is unclear	Discretionary pastoral actions (CCL has discretion to approve or decline)	Prohibited pastoral actions (consent cannot be granted by the CCL and cannot be applied for)

• Controlling invasive exotic pest plants, provided this does not include associated clearance of indigenous vegetation
• All earthworks, planting, tree felling, gardening, sowing of seed or topdressing within the existing curtilage of dwellings
• Soil disturbance (with an appropriate volume or area limitation) comprising:
  ○ Digging in posts, anchors, piles or supports (except for the purpose of constructing buildings)
  ○ Laying electric fence cables
  ○ Burying dead animals or digging offal pits, provided this is at least 50m away from any water body
  ○ Clearing humps or filling hollows along fence lines
  ○ Digging rabbit warrens
  ○ Digging long drops, provided this is at least 50m away from any water body
  ○ Maintenance of existing wild flood irrigation
  ○ Removing tree stumps
  ○ Invasive exotic pest plant control, provided this does not include associated clearance of indigenous vegetation
  ○ Preparation of bait lines for animal pest control
  ○ Maintenance of existing stock water troughs
• Fencing within existing cultivated paddocks
• Riparian planting of indigenous vegetation sourced from local seeds
• Clearing any standing non-indigenous tree where permitted by s 100 of the Land Act
• Laying of water pipes underground within existing cultivated areas using a ripper and mounted cable layer
• Laying cables, domestic water pipelines and other infrastructure underground from the main source of supply to existing buildings, provided there is no associated clearance of indigenous vegetation and cables/pipelines do not traverse water bodies
• Burning of slash/stumps/dead vegetation within existing consented cultivated paddocks
• Boom spraying of existing consented cultivated paddocks
• Repair and maintenance of existing fencing within its existing footprint
• Maintenance of any other existing consented activity as provided for in s 16(3) including:
  ○ Maintenance existing consented top-dressing
  ○ Maintenance of existing consented seed sowing
  ○ Maintenance of existing consented cultivation
  ○ Maintenance of existing consented roads, paths, or tracks (including laying local gravel)
	• Any other activity affecting, involving, or causing soil disturbance or burning (except as provided for in the permitted category), such as:
	  ○ New/additional irrigation
	  ○ Burning vegetation
	  ○ Clearing indigenous vegetation
	  ○ New Cropping, cultivation, draining or ploughing
	  ○ New top-dressing
	  ○ New sowing seed
	  ○ Planting vegetation (other than riparian planting)
	  ○ Forming new paths, roads, or tracks
	  ○ Soil disturbance for the construction of buildings
	  ○ New fencing (other than provided for in the permitted category)
	  ○ Clearing drains
	  ○ Construction of water storage infrastructure
	  ○ Spray and pray
		• Cropping, cultivating, draining or ploughing indigenous wetlands (except where taking water for stock water troughs where this does not affect natural wetland water levels)
		• Digging long drops within 20m of waterbodies
		• Burying dead animals within 20m of waterbodies

Proposed activity classification definitions

Reference number: BRF 20-401

Indigenous wetlands – Includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of predominantly indigenous plants and animals that are adapted to wet conditions

Invasive exotic pest plants – including but not limited to pests listed in the National Pest Plant Accord

Indigenous vegetation – means vegetation or groundcover containing vascular and/or non-vascular plants and/or lichens that are indigenous to any of the ecological regions of which the property is part, but does not include plants within a domestic garden, planted for the use of screening / shelter purposes e.g. as farm hedgerows

Cropping, cultivating, draining or ploughing

Cultivation - mechanical tillage of soil to introduce seed or fertiliser, including but not limited to ploughing, discing or direct drilling.
Draining – verb – causing water to be drawn off land gradually or completely
Cropping – growing forage crops for animals and production of vegetables, fruit, grain, etc.
Ploughing – turning over soil in preparation for cropping/cultivation

Drain – noun – artificial and constructed waterway or subsurface drainage structure

Clearing vegetation – the removal, felling, mechanical/chemical topping, or modification of any vegetation, including cutting, crushing, mulching, spraying with herbicide or burning, and not including clearance by grazing

Curtilage – the enclosed space of ground and buildings immediately surrounding a dwelling.

Spray and pray – where slopes are sprayed to remove vegetation, then replanted in stock/forage crops.

Permitted pastoral action – an activity for which the Commissioner of Crown Land's consent is not required. Consent may still be required under other regulatory frameworks – for example, the Resource Management Act.

Discretionary action – an activity for which the Commissioner of Crown Land's consent is required. The Commissioner may (a) decline the consent; or (b) grant the consent, with or without conditions, if he/she is satisfied the activity meets the requirements of the discretionary decision-making test. Consent may still be required under other regulatory frameworks – for example, the Resource Management Act.

Prohibited pastoral action – an activity that requires a consent to be lawfully conducted, but for which the CCL cannot grant a consent, and for which an application will not be received.

Proposed criteria for classifying activities

1. The starting point is that activities are considered discretionary and remain so unless they meet the criteria to be permitted or prohibited.

2. In advising the Minister on which activities should become permitted, LINZ (based on expert advice, consultation with the DGC, iwi, and public submissions) must be satisfied that:
    a. Considering the possible effects of an activity across the Crown pastoral estate (including short, long term, and cumulative), the activity as defined will have no more than minor effects on inherent values in all foreseeable circumstances; and
    b. The activity is required for pastoral farming; and/or
    c. The activity contributes to good husbandry, pest plant and animal control, or the maintenance and/or enhancement of inherent values.

3. In advising the Minister on which activities should become prohibited, LINZ (based on expert advice, consultation with the DGC, iwi, and public submissions) must be satisfied that:
    a. Considering the possible effects of an activity across the Crown pastoral estate (including short, long term, and cumulative), the activity as defined would be likely to cause significant loss of inherent values which cannot be avoided in all foreseeable circumstances.

Crown Pastoral Land Act reforms

Land Information New Zealand
Toitū te whenua

Reference number: BRF 20-401

Proposed new classification

Existing actions with an ongoing consent can continue

Many current pastoral farming actions are subject to ongoing consents. These actions will be able to continue.

New applications

'Permitted' pastoral actions can be carried out without a consent

*Refer to the **schedule of actions** for a full list of permitted actions.*

'Discretionary' actions need to go through the proposed new process

Any action that is not permitted or prohibited is discretionary.

'Prohibited' pastoral actions cannot be carried out

*Refer to the **schedule of actions** for a full list of prohibited actions.*

Proposed new statutory test

Step 1: Application of an effects-based test

Are the adverse effects (including cumulative effects) of an action on inherent values are no more than minor?

The Commissioner must consider:

- *the inherent values on the land*
- *the importance of those values*
- *the expected adverse effects of the proposed action (including cumulative and temporary)*
- *whether there are reasonable alternatives to the action that have a lower adverse effect on inherent values*
- *any ways in which the effects can be avoided, remedied or mitigated to 'minor' within an acceptable time.*

The Commissioner must not consider offsetting.

No more than minor

More than minor

Step 2: Considering pastoral farming

Is the action necessary to enable the leaseholder to exercise their rights and obligations under the lease?

The Commissioner may consider whether the action:

- *forms part of the periodic clearance of vegetation as part of a regular cycle to maintain pasture created by oversowing, top-dressing or cultivation*
- *is required to provide reasonable stock access by way of tracks to areas of land that are currently subject to a programme of oversowing or topdressing for the grazing of livestock*
- *is required to use, maintain, or replace consented existing infrastructure or buildings*
- *contributes to the leaseholder meeting their obligations under the lease or other legislation*
- *is required to address an exceptional circumstance*
- *any other relevant considerations.*

The Commissioner should not consider:

- *the financial viability of farming that lease or the economic sustainability of the pastoral farming enterprise*
- *any economic benefits associated with undertaking that action.*

Yes

No

Action cannot be carried out

The Commissioner makes a decision

As well as applying the discretionary action test and consulting the DG of Conservation, the Commissioner:

- *must ensure their decision seeks to achieve the outcomes*
- *must consider the level of adverse effects and relative importance of an inherent value affected by a discretionary action*
- *must recognise and provide for the relationship of Māori with their ancestral lands, water, mahinga kai, wahi tapu and other taonga*
- *must consider current government policy except where this is inconsistent with the Act*
- *may consider any plan for the management of part or all of the land*
- *may consider cross-boundary effects*
- *may consider New Zealand's commitment to reducing greenhouse gas emissions, where consistent with the outcomes.*

Approved with/without conditions

Partially approved with/without conditions

Declined

Extract

Land Information New Zealand
Toitū te whenua

To: Minister for Land Information, Hon Eugenie Sage

Crown Pastoral Land Reforms: Updated Bill for Ministerial Consultation

Rā / Date	23 March 2020	**Kōmakatanga / Classification**	In confidence
LINZ reference	BRF 20-443	**Whakaarotau / Priority**	High

Explanatory Note:

Policy advice provided through this briefing (i.e. advice on indigenous by-kill) can be found below as an extract.

The rest of this briefing is out-of-scope of this proactive release (i.e. not policy advice).

Extract

Changes to the Bill

Key changes that have been made

9. The permitted pastoral activity relating to indigenous by-kill when clearing exotic pest species has been clarified (Schedule 1AB, Part 1). The clause is highly prescriptive of the amount of pest species that must be present, the maximum permitted by-kill (2% by land-area) and limits the maximum area that may be cleared to 25 hectares over five years.
10. This clause balances the different views of the Department of Conservation (DOC) and the Ministry for Primary Industries (MPI). DOC wanted the maximum permitted by-kill to be 1% and considered a maximum area/time limit important to have included, while MPI favoured 2-3% permitted by-kill and no maximum area/time limit.