



Cabinet Business Committee

**Amended Minute
Sensitive
CBC Min (07) 23/18**

Copy Number:

Minute of Decision

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South Island High Country Pastoral Leases Valuation Reviews: Rent Setting and Rent Adjustment

On 29 October 2007, the Cabinet Business Committee:

Background

- 1 **noted** that Crown pastoral leases in the South Island high country (pastoral leases) were established under the Land Act 1948 (Land Act);
- 2 **noted** that the Land Act intended to give pastoral lessees greater incentive to look after the land through granting them secure rights to the land (perpetual right of renewal), exclusive occupation and the right to use the land for a limited purpose, namely pastoral farming;
- 3 **noted** that the rent of pastoral leases is set by the Land Act at an annual rate of 2.25% (2.0% if paid promptly) of the land value, exclusive of improvements (LEI);
- 4 **noted** that concerns have been raised that the Crown has been receiving rent from lessees at a level that does not fairly reflect the value of the land, and that the Crown, when participating in tenure review, is forced to pay a premium for land returned to full Crown ownership because the Crown's interest in the land is undervalued and the lessee's interest overvalued;
- 5 **noted** that in recent years, the market demand for pastoral lease land perceived to possess desirable characteristics has appreciated, which has led to substantially increased prices being paid for pastoral leases, to the extent that in some cases rent based on value may exceed what is affordable based on income generated from pastoral use alone;
- 6 **noted** that in February 2005, Cabinet directed Land Information New Zealand (LINZ) to report on the implications of introducing market rents for pastoral leases when rents are reviewed every 11 years, and the valuation methodology used in valuing lessor and lessee interests in tenure review [POL Min (05) 2/9 and CBC Memo (06) 5/2];

Review of valuation methodologies

- 7 **noted** that in July 2005, LINZ engaged a panel of valuers (the valuers) to undertake a review of pastoral lease rental and tenure review valuation methodologies and outcomes associated with pastoral lands;

- 8 **noted** that the valuers' *Interim Report: The High Country Pastoral Leases Review 2005* (the Interim Report) was publicly released in October 2006 [CAB Min (06) 37/6];
- 9 **noted** that the valuers considered that:
- 9.1 high country pastoral lessees should not be required to pay rent on amenity values¹;
 - 9.2 such an approach may not comply with the relevant legislation;
 - 9.3 the methodology being used in practice achieved fair outcomes for lessees by importing an affordability consideration into the calculation of rent for pastoral leases;
- 10 **noted** that a Preliminary Government Response to the Interim Report was publicly released in October 2006, at the same time as the Interim Report;
- 11 **noted** that the key conclusion of the Preliminary Government Response was that a proper interpretation of section 131 of the Land Act requires amenity values to be retained in the LEI;

Consultation on Preliminary Government Response

- 12 **noted** that following release of the Preliminary Government Response, officials consulted with lessees and stakeholders on the implications of this Response and options to address these implications, and received and considered submissions;
- 13 **noted** that in relation to rent setting, lessees opposed, and environmental non-governmental organisations supported, the conclusion of the Preliminary Government Response on the interpretation of section 131 of the Land Act;
- 14 **noted** that lessee submissions considered that the Preliminary Government Response was a "breach of contract", which has resulted in significant uncertainty for their businesses and, through the resulting rent increases, could force them into tenure review or sale of their pastoral leases;
- 15 **noted** that many lessees believe that rent increases may adversely affect provision of access and land stewardship above statutory requirements, as well as having impacts on the financial viability of pastoral activity;
- 16 **noted** that this decline in land stewardship is not expected to eventuate because it would also cause a decline in the value of lessees' investment in pastoral leases;
- 17 **noted** that environmental non-governmental organisations support a fair financial return to the Crown from pastoral lease rents;
- 18 **noted** that the valuers considered a summary of submissions on the Interim Report and provided a *Final Report: The High Country Pastoral Leases Review 2007* (the Final Report) to LINZ in October 2007, confirming the conclusions expressed in their Interim Report;

¹ 'Amenity values' include inherent and locational values and natural characteristics such as views.

Rent adjustment

- 19 **noted** that various options to address the implications of rent increases were considered by officials, namely rent adjustment, rent deferral, legal separation of pastoral and amenity rights, grandparenting the existing rent setting process, and adjusting restrictions on land use;
- 20 **noted** that the best option was found to be rent adjustment in exchange for additional land husbandry or heritage protection activities/improvements, or provision of public access;
- 21 **agreed** to the Commissioner of Crown Land (CCL) offering rent adjustment to lessees in appropriate cases;
- 22 **noted** that the implications of rent increases will vary considerably, and that rent adjustment will therefore address leases on a case by case basis;
- 23 **agreed** that all lessees, whether existing or new, will be eligible to seek rent adjustment;
- 24 **noted** that rent adjustment would provide the Crown with some opportunity to procure public access, biodiversity or landscape protection that would not otherwise be available unless a tenure review or lease purchase were completed;
- 25 **agreed** that if a lessee has nothing of value to the Crown to exchange for a rent adjustment, and in the CCL's opinion an increased rent is unaffordable, the CCL may still consider reducing the rent for part or all of the 11-year rental period;

Final Government Response

- 26 **agreed** that the Final Government Response to the valuers' Final Report be as follows:
- 26.1 the government recognises the value of the high country to the economy of New Zealand and the contribution farmers make to sustainable management of the high country;
- 26.2 a proper interpretation of section 131 of the Land Act requires amenity values to be retained in the land exclusive of improvements value;
- 26.3 there are significant economic and financial implications for the Crown and high country pastoral lessees, in that this approach may lead to increased rents that may in some cases exceed the income generated solely from pastoral use;
- 26.4 for the Crown to reduce rents without lessees giving up some of their rights would in effect be a capital transfer of value from the Crown (on behalf of taxpayers) to lessees for no value;
- 26.5 the government wants to achieve outcomes that are lawful, fair and reasonable for the Crown and lessees, and durable;
- 26.6 the best option for achieving such outcomes is Rent Adjustment in exchange for additional land husbandry or heritage protection activities/improvements, or provision of public access;

- 26.7 all pastoral lessees, whether existing or new, will be eligible to seek Rent Adjustment; and leases, with their varying circumstances, will be addressed on a case by case basis;
- 26.8 it is not the government's intention to make rents unaffordable;
- 26.9 if a lessee has nothing of value to the Crown to exchange for a Rent Adjustment, and in the Crown's opinion an increased rent is unaffordable, the Crown would still consider reducing the rent for part or all of the 11-year rental period;
- 26.10 the government will abide by the decision of the courts on the interpretation of section 131 of the Land Act and not legislate to overturn the outcome of a judicial determination;
- 27 **noted** that the Final Government Response confirms and builds upon the key points of the Preliminary Government Response;

Implementation of Rent Adjustment

- 28 **directed** officials to develop implementation and monitoring details for the Rent Adjustment option and report to the Minister for Land Information by the end of February 2008;
- 29 **noted** that implementation of the Rent Adjustment option will require ongoing annual Crown capital appropriations to cover the adjusted amount of rent (ie reduced Crown revenue), as well as any additional implementation, administration and monitoring costs to the Crown;
- 30 **approved** a new Crown capital appropriation from 2007/08 named "Access and Land Management Activities Acquisitions – Crown Pastoral Land", with the following scope: Purchase of access over Crown Pastoral Land and purchase of access or land management activities on Crown Pastoral Land;
- 31 **noted** that funding for this appropriation will be sought in the March 2008 Baseline Update, with the appropriation being fiscally neutral as it will be funded by the forgoing of additional rental revenue;
- 32 **noted** that this appropriation will also cover any access desired as a result of the scoping exercise referred to in paragraph 33.2 below, though if the capital cost of such access could not be fully funded from rental revenue, additional appropriations may need to be sought in due course;

Implications for public access

- 33 **noted** that in August 2007, in its response to the report of the Walking Access Consultation Panel, Cabinet:
- 33.1 noted that powers in the Land Act enable the Crown to provide access through pastoral lease land that, for historical reasons, was not achieved originally in the survey process, with the lessee being protected by a requirement for compensation and rent reduction;

- 33.2 invited the Minister for Land Information (lead) and Minister of Conservation to scope with their departments where reasonable public access is needed through pastoral lease land;
- 33.3 agreed that negotiation and agreement with lessees be the preferred means for determining the position of new access through pastoral lease land;
- 33.4 agreed that the Minister for Land Information may authorise LINZ to engage in such negotiations when addressing rental affordability issues, and on other occasions, as appropriate;

[POL Min (07) 18/20]

- 34 **noted** that the scoping work referred to in paragraph 33.2 is currently underway;
- 35 **noted** that the decisions referred to in paragraph 33 provide the basis for the Rent Adjustment option to be pursued, consistent with the government's overall walking access policy;

Judicial determination

- 36 **noted** that LINZ, Crown Law Office and lessee representatives and their legal counsel are progressing a judicial determination of the interpretation of section 131 of the Land Act through a case in the Land Valuation Tribunal (LVT);
- 37 **noted** that the Minister for Land Information has given a public assurance that the government will abide by the decision of the courts on the interpretation of section 131 and not legislate to overturn the outcome of a judicial determination;
- 38 **noted** that any lessee can make an approach to LINZ now for a Rent Adjustment, without prejudice to the lessee's right to contest the lessor's current assessment of rent via the LVT;

Publicity

- 39 **noted** that the Minister for Land Information proposes to publicly release the valuers' Final Report, the Final Government Response, the paper under CBC (07) 226, and the resulting minute;
- 40 **noted** that the subject of pastoral lease rents is sensitive and that the public release of materials referred to in paragraph 39 is expected to result in significant debate, which will be managed by LINZ officials and through a media release by the Minister for Land Information.

Adrian MacGregor
Secretary

Reference: CBC (07) 226

Secretary's note: This minute has been amended to correct a typographical error in paragraph 26.3.

Copies to: (see over)

Present:

Rt Hon Helen Clark (Chair)
Hon Dr Michael Cullen
Hon Jim Anderton
Hon Phil Goff
Hon Annette King
Hon Trevor Mallard
Hon Parekura Horomia
Hon Mark Burton
Hon Chris Carter
Hon David Cunliffe
Hon David Parker
Hon Nanaia Mahuta

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet