

SOUTH ISLAND HIGH COUNTRY OBJECTIVES

REVIEW OF IMPLICATIONS OF INTRODUCING MARKET RENTS FOR PASTORAL LEASES

**TERMS OF REFERENCE
30 MARCH 2005**

Purpose

The work to be undertaken is an assessment of the implications of introducing market rents for pastoral leases when rents are reviewed every 11 years. This will require a review of the current pastoral lease rental regime, including an assessment of whether the specified level at which the rents are set in legislation accurately and fairly reflects open market levels, and an assessment of the options available if changes to the rental regime are to be made. This should include significant stakeholder consultation, and a comprehensive assessment of the fiscal, economic and legal implications of introducing market rents. This work would ascertain whether market rents could contribute to the government's objective of obtaining a fair financial return to the Crown on its high country land assets.

Background

Pastoral Leases

Pastoral Leases are leases established under s 66(1) of the Land Act 1948. Notwithstanding the repeal of s 66 of that Act, pastoral leases remain in force by virtue of Part 1 of the Crown Pastoral Land Act 1998 (CPLA) (pastoral leases are also defined as reviewable leases for the purposes of the CPLA).

Pastoral leases give the holder:

- a) the exclusive right of pasturage over the land to which they relate;
- b) a perpetual right of renewal for terms of 33 years;
- c) no right to the soil; and
- d) no right to the fee simple of any of the land to which they relate.

In August 2003, the Government adopted ten high country objectives in order to ensure that Crown land in the high country is managed in accordance with Government policy. One of these objectives is that the Crown obtains a fair financial return on its high country assets.

When tenure review under the CPLA commenced, it was underpinned by a philosophical view (though not embodied in the Act itself) that pastoral leases were anachronistic and a liability to the Crown. After the CPLA was passed, pastoral leases came to be regarded as a 'tenure in transition', with the Crown wishing to use

the tenure review process to exit its role as a high country lessor/landlord. In February 2005, however, the Government noted that it is willing for the Crown to be a high country pastoral lessor indefinitely in cases where doing so is consistent with all of the high country objectives, including the objective of obtaining a fair financial return to the Crown.

This means that for as long as the Crown retains high country pastoral leases, the Crown should obtain a fair financial return on the land – the means of doing so being through pastoral lease rents and charges for recreation permits and easements.

Valuations for Rent Purposes

Pastoral leases are valued in accordance with s131 of the Land Act 1948. Section 131 provides that not earlier than two years and not later than one year before the expiry of a pastoral lease the Commissioner of Crown Land shall cause the following values to be ascertained:¹

- a) the value of the improvements which are then in existence and unexhausted on the land included in the lease;
- b) the value at the commencement of the lease of all improvements included in the rental value at the commencement of the lease; and
- c) the value of the land included in the lease exclusive of the improvements referred to in paragraph (a).

In ascertaining the values under paragraphs (a) and (c) equal emphasis is placed on the value to be ascertained under each paragraph and the values are ascertained on an equitable basis, having regard to the relationship between lessor and lessee. The sum of the values under paragraphs (a) and (c) of this subsection are required by the Land Act to be equal to the capital value of the land (being the sum which the land and improvements thereon might be expected to realise at the time of valuation if offered for sale, unencumbered by any mortgage or other charge thereon, on such reasonable terms and conditions as a bona fide seller might be expected to require).

The yearly rent for the term of the lease is fixed in accordance with sections 6 – 8 of the CPLA at rates of either 1.5% or 2.25% of the value of land exclusive of improvements, and is reviewed every 11 years.

Outcome Sought

The Crown:

- a) seeks comment as to whether or not the rent payable by pastoral lessees is consistent with the Government's high country objectives (notably a fair financial return to the Crown on its high country assets) having regard to the nature of the rights associated with pastoral leases;

¹ Under the Crown Pastoral Land Act 1998, rent reviews occur every 11 years.

- b) an assessment of the implications of introducing market rents for pastoral leases; and
- c) the extent to which charges for recreation permits and easements contribute towards the objective of obtaining a fair financial return to the Crown on its high country land assets.

This will require a review of the current pastoral lease rental regime, including an assessment of whether the level at which rents specified by legislation accurately and fairly reflects market based rents, and an assessment of the options available if changes to the rental regime are to be made.

This review will inform a report by LINZ to the Minister for Land Information on what changes, if any, need to be made to better reflect the Government's high country objectives.

Where amendments to legislation are required to better ensure that the rent payable by pastoral lessees provides a fair financial return to the Crown, these amendments should be identified.

Review Methodology

In undertaking this review, it is expected that the reviewer will:

- (i) review the current pastoral lease rental regime, including an assessment of whether the specified level at which the rents are set in legislation accurately and fairly reflects open market levels;
- (ii) determine whether the setting of pastoral lease rents based on the value of the land exclusive of improvements concept is the most appropriate valuation methodology;
- (iii) assess the options available for changes to the rental regime if rents are to more accurately reflect 'market rents', including the fiscal, economic and legal implications of the options;
- (iv) determine the key issues and concerns when moving to a market-determined rental regime;
- (v) undertake a comparative review of other relevant statutory-based valuation regimes (especially the work undertaken for the West Coast Maori Reserve Land Act leases in Taranaki, where the statutory rent of 4% was changed to reflect market rents);
- (vi) examine the extent to which charges for recreation permits and easements contribute towards obtaining a fair financial return to the Crown on its high country land assets; and

- (vii) meet with key stakeholders to understand their concerns with the current rental regime and with any possible changes to the regime (including the High Country Accord, Council of Outdoor Recreation Associations of NZ, Federated Mountain Clubs of NZ, NZ Institute of Landscape Architects, Public Access NZ Inc, Royal Forest and Bird Protection Society, NZ Fish and Game Council, Ngai Tahu, High Country Committee of Federated Farmers and the NZ Historic Places Trust).

Support

LINZ will provide internal support for any meetings with stakeholders.

Timeline

The review is to be presented to General Manager Policy, LINZ (and other officials) on a date to be agreed with LINZ in order to inform a report to the Minister for Land Information.

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