



# Cabinet Domestic Policy Committee

DOM Min (10) 12/5

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## Minute of Decision

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### Crown Pastoral Leases: Earning Capacity Rent

#### Portfolio: Land Information

On 28 July 2010, the Cabinet Domestic Policy Committee (DOM):

#### Background

- 1 **noted** that Crown pastoral leases are perpetually renewable every 33 years, are subject to rent review every 11 years, and require the land to be used for pastoral farming;
- 2 **noted** that in July 2009, Cabinet agreed that lessees of Crown pastoral land will be charged rent on the basis of the earning capacity of the property [CAB Min (09) 26/7C];
- 3 **noted** that Crown pastoral leases were created by the Land Act 1948 to incentivise increased production and sustainable management of the land;
- 4 **noted** that the existing system for setting rents for Crown pastoral leases:
  - 4.1 is specified in the Land Act 1948 and the Crown Pastoral Land Act 1998;
  - 4.2 is based on a valuation of the pastoral lease land in an unimproved state;
  - 4.3 does not adequately reflect the earning capacity of Crown pastoral leases;
  - 4.4 is complex, expensive, subjective, uncertain, difficult to audit, and frequently produces results that are disputed by lessees;
  - 4.5 has resulted in 113 lessees currently disputing rent before the Land Valuation Tribunal;
- 5 **noted** that analysis by officials shows that an improved land-value based system is likely to suffer many of the same problems as the current system, and will not meet government policy;
- 6 **noted** that the paper under DOM (10) 56 proposes a new system to set Crown pastoral lease rents, based on productive capacity and economic conditions;
- 7 **noted** that the new system will require legislation to amend the Crown Pastoral Land Act 1998, and that some subsidiary legislation will also be needed;

- 8 **noted** that any system for setting pastoral lease rents must recognise both the unimproved land originally leased and the platform for development that the leased land provides;

### **Rent-setting based on productive capacity and high country farming economics**

- 9 **agreed** to a new production-based rent-setting system for Crown pastoral leases that:
- 9.1 captures the productive capacity of a lease in standard stock units;
  - 9.2 assesses the current net value of those stock units by reference to objective data about the current economics of high country farming;
  - 9.3 calculates rent by reference to the net value of the stock units;

#### **Formula**

- 10 **agreed** that the new production-based system for setting rents incorporate in primary legislation the following formula:

$$\text{Rent} = \text{RATE} \times (\text{BASE} + (\text{INCREASE} \times 0.15))$$

- 11 **noted** the formula outlined in paragraph 10 above is consistent with the Crown pastoral lease, in that the formula:
- 11.1 attributes a portion of the productive capacity BASE to the unimproved land originally leased;
  - 11.2 attributes the rest of the productive capacity INCREASE to the sum of:
    - 11.2.1 the platform for development provided by the lease plus;
    - 11.2.2 the lessee's improvements;
  - 11.3 attributes a proportion of 0.15 of INCREASE to the lease as a platform for development;

#### **Capturing the productive capacity of a lease — BASE and INCREASE x 0.15**

- 12 **agreed** that BASE in the formula outlined in paragraph 10 above:
- 12.1 be set as far as possible from objective scientific data about land types found on the lease and, where required, historical evidence for individual leases;
  - 12.2 be set once and recorded on the pastoral lease;
- 13 **agreed** that INCREASE in the formula outlined in paragraph 10 above be calculated by subtracting BASE from the current plausible productive capacity of a lease;
- 14 **agreed** that the current plausible productive capacity of a lease:
- 14.1 be set using the concept of the average efficient carrying capacity of that lease, taking into account lease-specific characteristics;
  - 14.2 be set at each rent review;

- 15 **agreed** that INCREASE and BASE in the formula outlined in paragraph 10 above be in standard stock units;
- 16 **noted** that the proportion of 0.15 in the formula outlined in paragraph 10 above is consistent with the nature of a pastoral lease;
- 17 **noted** that the High Country Accord:
- 17.1 agrees with the use of a fixed factor to account for the platform for development; but
  - 17.2 disagrees with the specific value of 0.15, preferring a value of 0.1;

#### **Measuring the *economic value of a stock unit* — RATE**

- 18 **agreed** that an economic rental rate (RATE in \$/stock unit) be applied to the number of stock units attributable to what is leased;
- 19 **agreed** that RATE in the formula outlined in paragraph 10 above be calculated by a method that is set out in regulations and that:
- 19.1 identifies appropriate objective data series that measure comparable high country farm revenues and expenses;
  - 19.2 uses elements of these data series to determine the net value of a stock unit for a pastoral lease;
  - 19.3 determines the proportion of that net value to be attributed to rent;
- 20 **agreed** that the method for calculating RATE include a floor value to recognise that there is a value in a lease for pastoral purposes even if, for a time, the data series show a zero net return from pastoral farming;
- 21 **noted** that officials are working with agricultural economists, and consulting with the High Country Accord, to complete the RATE calculation;
- 22 **agreed** that the method for calculating RATE be specified in regulations to provide the correct level of certainty and flexibility for the future;
- 23 **delegated** decisions on the method for calculating RATE to the South Island High Country Ministers (the Minister of Agriculture, the Minister of Conservation, and the Minister for Land Information) as part of the power to make final policy decisions referred to in paragraph 41 below;

#### **Better processes to support the new system**

- 24 **noted** that the new system will be supported by a number of components to reduce administration costs and decrease disputes;

#### **A modern alternative dispute resolution procedure**

- 25 **agreed** that the new system will have an alternative dispute resolution process including:
- 25.1 the Crown and lessee (or their agents) endeavour to agree on rent;
  - 25.2 if there is no agreement, mediation;

25.3 if mediation fails, arbitration;

25.4 if arbitration fails, appeal to the High Court, preferably on points of law only;

26 **noted** that further work is required on the detail of the proposed alternative dispute resolution process;

27 **directed** the Ministry of Justice and Land Information New Zealand to report to South Island High Country Ministers and the Minister of Justice in September 2010 with a detailed proposal for an alternative dispute resolution scheme;

#### **A role for the Valuer-General assisted by expert panels**

28 **noted** that the Commissioner of Crown Lands will continue to be the statutory landlord under the new system, and will be responsible for carrying out rent reviews;

29 **agreed** that the Valuer-General will have a role as an independent statutory officer to set the details of the framework for the new system which are not in primary legislation or prescribed in regulations;

30 **agreed** that the Valuer-General's role under the new system include:

30.1 making binding rules about data and methods that must be used in assessing BASE and current carrying capacity;

30.2 setting out guidance, examples, and indicative figures for use in assessing BASE and current carrying capacity;

30.3 calculating and publishing RATE;

30.4 appointing and setting the procedure for an expert panel or panels to assist him or her in his or her functions;

30.5 monitoring how the new system is being implemented;

31 **agreed** that any Rules made by the Valuer-General are to be regulations for the purposes of the Regulations (Disallowance) Act 1989;

32 **agreed** that any expert panel should include someone nominated by a group (or groups) that represent the interests of pastoral lessees;

33 **noted** that an expert panel on productive capacities could deliver the mediation or arbitration roles as set out in paragraph 25 above;

#### **Revenue from the new system**

34 **noted** that modelling shows that rents under the new system would occupy the same range as rents that could be expected if the current system continued into the future;

35 **noted** that on 28 July 2010, DOM took decisions on the treatment of back-rent [DOM Min (10) 12/4];

36 **noted** that the administration and compliance costs under the new system are expected to be lower than under the current system;

## Transition and legislative provisions

- 37 **noted** that legislation will be required to implement the new system;
- 38 **noted** that a Land Acquisition, Management and Disposal Bill with a category 3 priority (to be passed if possible in 2010) is already on the 2010 Legislation Programme, and that the proposals for inclusion in that Bill only deal with one small facet of land management;
- 39 **agreed** to:
- 39.1 add a new bill, the Crown Pastoral Lease Rent Bill, to the 2010 Legislation Programme to give effect to the new rent system;
- 39.2 that the Crown Pastoral Lease Rent Bill have a category 2 on the 2010 Legislation Programme (must be passed in 2010);
- 40 **agreed** that legislation for the new system include a provision that allows lessees whose rents:
- 40.1 fell to be renewed on or after July 2002; and
- 40.2 are the subject of appeals to the Land Valuation Tribunal;
- to opt to have their rents set using the new system;
- 41 **authorised** South Island High Country Ministers to approve final policy decisions on any outstanding matters for earning capacity rents;
- 42 **invited** the Minister for Land Information to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;

## Publicity

- 43 **noted** that officials have developed a communications strategy to publicise the new rent system;
- 44 **noted** that the Minister for Land Information:
- 44.1 in conjunction with the other South Island High Country Ministers, will make a public announcement about the new rent system proposed in the paper under DOM (10) 56;
- 44.2 will direct that the officials' report (and associated modelling), the peer review panel report, the Regulatory Impact Statement, and the paper under DOM (10) 56 be posted on Land Information New Zealand's (LINZ) website;
- 45 **noted** that:
- 45.1 officials will meet with pastoral lessees at a series of meetings arranged by the High Country Accord and LINZ to explain the new rent system;
- 45.2 officials will meet with representatives of environmental organisations to explain the new rent system;

- 45.3 LINZ (in conjunction with the Ministry of Agriculture and Forestry and the Department of Conservation where required) will work with Ministers to manage the ongoing public communications.