

The Chair
Cabinet Policy Committee

GOVERNMENT OBJECTIVES FOR THE SOUTH ISLAND HIGH COUNTRY: REPORT BACKS

Proposal

- 1 This paper provides reports requested by Cabinet on issues related to the achievement of the Government's objectives for the high country, and an update on other work items noted by Cabinet [POL Min (03) 19/7, and CBC Min (03) 10/3 refer].

Executive Summary

- 2 Land Information New Zealand (LINZ), the Department of Conservation (DOC), and the Ministry of Agriculture and Forestry (MAF) have completed the following reports requested by Cabinet on the following issues related to the achievement of the Government's high country objectives and other related work items:
 - the results of consultation with environmental non-government organisations and landscape architects (LINZ);
 - the results of investigations into public access issues related to the identification of marginal strips in the tenure review process, and legal roads (LINZ);
 - effects of tenure review on the national economy (MAF);
 - the promotion of land management that is ecologically sustainable (DOC);
 - effects on significant inherent values (DOC);
 - efficiency and effectiveness of administration practices (DOC).
- 3 Officials, led by LINZ, will report on further reports required by Cabinet, to support the achievement of the Government's high country objectives over the period November-December 2004.
- 4 Over the next few months officials, led by LINZ, will develop a strategic framework to support the achievement of the Government's objectives for the high country. The development of the strategic framework will address many of the issues raised by stakeholders. The framework is discussed in the companion Cabinet paper titled: *Government Objectives for the South Island High Country: A Strategic Framework*.

Background

- 5 On 11 August 2003 Cabinet agreed to objectives for the South Island high country that include conservation, social, and economic outcomes [POL Min (03) 19/7 refers].
- 6 Cabinet also approved a comprehensive programme of work to explore how best to achieve the objectives, and invited the Minister of Agriculture and for Rural Affairs, the Minister for Land Information and the Minister of Conservation to report to the Cabinet Policy Committee on the results of the work undertaken [POL Min (03) 19/7 refers].
- 7 The three Ministers provided a first report back to Cabinet in December 2003 [CBC Min (03) 10/3 refers]. The original work programme (August 2003) and decisions arising from the December paper required agencies to provide further reports, and complete specific work items.

Reports

- 8 This Cabinet paper reports on the following topics:
 - consultation with environmental non-government organisations (ENGOS) and landscape architects (LINZ);
 - public access issues comprising the identification of marginal strips in the tenure review process, and the legality of using the Crown Pastoral Land Act 1998 (CPLA) to create legal roads (LINZ);
 - land management that is ecologically sustainable (DOC);
 - effects on significant inherent values (SIVs) (DOC);
 - efficiency (and effectiveness) of the administration processes (DOC); and
 - effects of tenure review on the national economy (MAF).
- 9 The status of all related high country reports and other actions directed/noted by Cabinet is summarised in Appendix 1.

Consultation with ENGOS and landscape architects

- 10 Cabinet directed officials to consult with ENGOS and landscape architects to clarify their concerns, and to report on options for addressing their concerns by 31 March 2004 [CBC Min (03) 10/3, recommendation 14 refers]. Since January 2004 LINZ has led consultation with the Federated Mountain Clubs of New Zealand, Council of Outdoor Recreation Associations of New Zealand, Public Access New Zealand, the Royal Forest and Bird Protection Society, and New Zealand Institute of Landscape Architects.
- 11 The large number of issues raised by these groups and their desired solutions/outcomes are presented in Appendix 2. The groups raised common issues as well as specific issues relating to their areas of interest. Common issues included:
 - the concept of ecological sustainable management;
 - criteria used for identifying SIVs;
 - the use of covenants;
 - conservation value versus productive use;
 - the Resource Management Act 1991;
 - discretionary consents under the CPLA; and
 - unsustainable land practices on existing leases.

- 12 LINZ, DOC and ENGOs meet together regularly to discuss issues related to tenure review under the CPLA.

Public access

- 13 Cabinet noted that officials would: (i) identify ways in marginal strips created as a result of tenure review or lease renewal can be efficiently identified for public use, and (ii) identify and clearly depict what public access will be provided through marginal strips or easements on tenure designation plans before the preliminary proposal being advertised for public submissions [CBC Min (03) 10/3, recommendations 18 and 19 refer]. Marginal strips provide the right of access to land. It has always been a statutory requirement to show on survey plans (for disposal of Crown owned land) a notation that disposal is subject to Part IVA of the Conservation Act 1987. LINZ has led this work, and made recent amendments to operational guidelines to ensure that obvious marginal strips, as well as proposed marginal strips (that will be created when a substantive proposal is implemented) will now be shown on designation and survey plans.
- 14 Cabinet also directed officials to report on the legality of whether the CPLA can be used to create legal roads [CBC Min (03) 10/3, recommendation 22 refers]. LINZ legal advice is that the CPLA cannot be used to reserve land for access by creating roads. Although s.35(2) of the CPLA provides the Commissioner of Crown Land the ability to designate land for a specified Crown purpose, this provision relates to land to be restored to or retained in full Crown ownership and control. This provision cannot be used to create a legal road because a road must be vested in a local authority not the Crown. Notwithstanding this, a legal road could subsequently be created from Crown or freehold land, under the Public Works Act 1981, but this process is outside the ambit of both tenure review and the CPLA.
- 15 Public access could, however, be provided for through tenure review under the CPLA by the creation of reserves under Part 3 of the Reserves Act 1977.
- 16 A related road access issue is that roads on reviewable land frequently don't follow legal roads owing to, for example, the terrain. This creates difficulties that LINZ and DOC have agreed to address: e.g. the potential need and costs to create new easements to secure access, and risks that the landowner might deny access in the future over the actual road or that users might try to force access over the legal road.
- 17 Cabinet also noted that the Minister for Rural Affairs' Land Access Reference Group would report back to the Cabinet Policy Committee (POL) on land access issues generally [CBC Min (03) 10/3 recommendation 21 refers]. The Group reported to POL on 5 May 2004. MAF will report back to POL on the development of a New Zealand Land Access Strategy by 1 December 2004 [POL Min (04) 9/6.2 refers].

Effects of tenure review on the national economy

- 18 Cabinet directed officials to report to the Ministers for Land Information, Conservation and Agriculture on the effects of tenure review on the national economy to inform the LINZ/DOC Budget Bid [CBC Min (03) 10/3 recommendation 34 refers]. MAF commissioned a report on some of the potential initial effects arising from the return of reviewable land to full Crown ownership and control, as well as an independent review of the report. The report and the review were both completed in February 2004.

- 19 This work estimated that tenure review could result in some 663,000 merino stock units being displaced from reviewable land, which is 30% of the total—although both the author of the report and the reviewer admit that the confidence level around the estimate is broad. The figure is, however, based on an assumption that a larger proportion of land will be returned to full Crown ownership and control under tenure review than is actually happening. In addition, a reduction in merino stock unit numbers may happen anyway owing to a reduction in price for merino wool (a significant proportion of the wool clip has not been sold at recent auctions) and other changes in farm stock practices.
- 20 The report estimated the loss of gross economic output at the farm gate per year to be \$33 million; the net value of the output is estimated to be between \$9 and \$12 million. The author and the reviewer disagreed about the impact of stock unit losses in relation to the merino industry.
- 21 The effects on the national economy of diversification or intensification of newly freeholded land and of lands returned to full Crown ownership and control were beyond the scope of the report, and have yet to be determined. Anecdotal accounts suggest that completed tenure reviews have had significant positive economic outcomes.

Land management that is ecologically sustainable

- 22 Cabinet asked DOC to assess the ability of current practice, capacity and legislation to meet the objective to promote management of reviewable land and ex-pastoral land in the high country in a way that is ecologically sustainable, and to recommend changes [POL Min (03) 19/7, objective (a) refers]. The report is included in this paper as Appendix 3, and the main findings are reproduced in the recommendations section of this paper.

Effects on significant inherent values (SIVs)

- 23 Cabinet asked officials to report on the effect on significant inherent values (SIVs) arising from non-participation or withdrawal of lessees from tenure review, and how SIVs on land subject to pastoral lease or licence should be actively managed by the landlord (CBC Min (03) 10/3 paragraph 27 refers). A report prepared by DOC is included as Appendix 4, and the main findings are reproduced in the recommendations section of this paper.

Efficiency and effectiveness of the administration processes

- 24 Cabinet asked officials to report, as appropriate, on the efficiency and effectiveness of the administration processes for achieving the Government's high country objectives (POL Min (03) 19/7 paragraph 13 - implementation principle b. refers]. Administrative issues that have been resolved as a result of analysis prompted by this implementation principle are summarised in the recommendations section of this paper.

Further Reports

- 25 Officials, led by LINZ, are still required to report to Cabinet on the following items from the work programme:
- improvements to decision-making responsibilities;

- additional costs for more effectively taking into account the principles of the Treaty of Waitangi;
- how the high country objectives relate to and impact on one another;
- how the high country objectives affect other Government objectives;
- how other legislation and policy affect the achievement of the high country objectives;
- progress made against objectives, specifically stakeholder response to progress, lessee participation in tenure review, and socio-economic effects of specific park proposals.

26 These items will be reported to Cabinet in the period November-December 2004.

Strategic Framework

27 As part of the 2004 Budget Package: Vote Lands, Cabinet required LINZ to report back on possible options for achieving the Government's high country objectives, including the costs, in order to enable final funding decisions to be made in the 2005 budget [CAB Min (04) 13/3 (39) refers]. Over the next few months officials, led by LINZ, will develop a strategic framework to support the achievement of the Government's objectives for the high country. The framework will address many of the issues raised by stakeholders and some of the items in paragraph 23 above. The framework is discussed in the companion Cabinet paper titled: *Government Objectives for the South Island High Country: A Strategic Framework*. The strategic framework will be included in a report back to Cabinet in the period November-December 2004.

Consultation

28 This paper has been prepared in consultation with the Ministry of Agriculture and Forestry, The Treasury, the Department of Prime Minister and Cabinet, Te Puni Kokiri, and the Ministry for the Environment.

29 The preparation of this paper included consultation with ENGOs and landscape architects, who confirm that the summary in Appendix 2 fairly reflects their views.

30 The results of consultation with Ngai Tahu and other stakeholders (e.g. the High Country Accord) are summarised in the companion paper titled *Government Objectives for the South Island High Country: A Strategic Framework*.

Human Rights

31 There are no human rights issues.

Legislative Implications

32 There are no legislative implications arising from this paper (but there may be some once further work is completed).

Recommendations

33 It is recommended that the Committee:

Report Backs

1. **note** that Land Information New Zealand (LINZ), the Ministry of Agriculture and Forestry (MAF), and the Department of Conservation (DOC) have reported on:
 - 1.1 the results of consultation with environmental non-government organisations (ENGOS) and landscape architects (LINZ report);
 - 1.2 the results of investigations into public access issues related to the identification of marginal strips in the tenure review process, and legal roads (LINZ report);
 - 1.3 effects of tenure review on the national economy (MAF report);
 - 1.4 land management that is ecologically sustainable (DOC report);
 - 1.5 effects on significant inherent values (DOC report);
 - 1.6 efficiency and effectiveness of administration practices (DOC report);

Consultation with ENGOS and Landscape Architects

2. **note** that LINZ has led consultation with the Federated Mountain Clubs of New Zealand, Council of Outdoor Recreation Associations of New Zealand, Public Access New Zealand, the Royal Forest and Bird Protection Society, and New Zealand Institute of Landscape Architects, to clarify their concerns and to report on options for addressing their concerns, as directed by Cabinet [CBC Min (03) 10/3, recommendation 14 refers];
3. **note** that the groups raised common issues as well as specific issues relating to their areas of interest (Appendix 2);

Public Access

4. **note** that LINZ has led work to address public access issues, as requested by Cabinet [CBC Min (03) 10/3, recommendations 18, 19 and 22 refer];
5. **note** that LINZ has made recent amendments to operational guidelines to ensure that obvious marginal strips, as well as proposed marginal strips (that will be created when a substantive proposal is implemented) will now be shown on designation and survey plans;
6. **note** that the Crown Pastoral Land Act 1998 (CPLA) cannot be used to reserve land for access by creating roads, although a legal road could subsequently be created from Crown or freehold land, under the Public Works Act 1981 (but this process is outside the ambit of both tenure review and the CPLA);
7. **note** that public access could be provided for through tenure review under the CPLA by the creation of reserves under Part 3 of the Reserves Act 1977;
8. **note** that LINZ and DOC have agreed to address difficulties when roads on reviewable land frequently don't follow legal roads owing to, for example, the terrain;

Effects of Tenure Review on the National Economy

9. **note** that a report on the potential initial effects arising from the return of reviewable land to full Crown ownership and control and an independent review of the report were commissioned by MAF, and were completed in February 2004 [CBC Min (03) 10/3, recommendation 34 refers];
10. **note** that the effects on the national economy of diversification or intensification of newly freeholded land were beyond the scope of the report, and have yet to be reported;

Land Management that is Ecologically Sustainable

11. **note** that DOC has completed a report about land management that is ecologically sustainable (Appendix 3), as requested by Cabinet [POL Min (03) 19/7 refers];
12. **note** that the report referred to in recommendation 11 above concluded that promoting the management of land in a way that is ecologically sustainable means “encouraging and supporting land management practices that:
 - 12.1 enable on-going natural interactions between indigenous organisms and their environments;
 - 12.2 maintain the current numbers and extent of indigenous organisms and their environments;
 - 12.3 maintain the chemical and physical properties of indigenous soil and water resources;
 - 12.4 promote the recovery of indigenous organisms and their environments to mitigate any adverse effects of management;
 - 12.5 minimise spill-over effects of management activities from one area onto another;”
13. **note** that the promotion of management that is ecologically sustainable:
 - 13.1 is provided for: (i) as a tenure review outcome for reviewable land because this is one of the objects for tenure review under Part 2 of the CPLA (s.24(a)(i)), and (ii) over lands returned to full Crown ownership and control as public conservation land, because conservation management practices promote ecological sustainability;
 - 13.2 is not provided for on reviewable land outside of tenure review because it is not specified under the lease and licence provisions of the Land Act 1948 or the discretionary consent provisions of Part 1 of the CPLA;
 - 13.3 does not fit well with the intention under the CPLA that lands freeholded unencumbered in a tenure review may be developed to their best economic use (if allowed under the Resource Management Act 1991);
14. **note** that lessees are currently required to manage land that has significant inherent values under the good husbandry and diligence clauses for each lease (arising from the s.99 Land Act requirement that the land is to be properly farmed), but that good husbandry does not necessarily involve the retention of indigenous vegetation, which would be required under management that is ecologically sustainable;
15. **note** that the promotion of management that is ecologically sustainable is prescribed under s. 97 of the CPLA through sustainable management covenants

over lands (not water bodies) freeholded under tenure review, in order to safeguard the delivery of community ecosystem services such as water yield, quality and flow services (but not as fully prescribed as under conservation covenants);

16. **note** that the report referred to in recommendation 11 above is a starting point for further work by officials, in consultation with stakeholders, to:
 - 16.1 clarify the principles and practices of management that is ecologically sustainable;
 - 16.2 clarify the outcomes that would be expected from the good husbandry clauses of pastoral leases and occupation licences under management that is ecologically sustainable; and
 - 16.3 determine whether legislative amendments are required to achieve the Government objective to promote management that is ecologically sustainable (Objective a.) on reviewable land outside of tenure review (i.e. to the CPLA and/or the Land Act 1948);

Effects on Significant Inherent Values

17. **note** that DOC has completed a report (Appendix 4) on the effect on significant inherent values arising from non-participation or withdrawal from tenure review of lessees, and how significant inherent values on land subject to pastoral lease or licence should be actively managed by the landlord [CBC Min (03) 10/3, para. 27 refers];
18. **note** that pastoral leases and pastoral occupation licences are granted under the Land Act for the purpose of pastoral farming;
19. **note** that lessees are currently required to manage their properties under the good husbandry and diligence clauses of the lease, and the Commissioner of Crown Land has authority to ensure compliance with the clauses;
20. **note** that the adoption by the Government of the objective to protect significant inherent values of reviewable land (Objective c.) demonstrates that the Government considers it desirable to protect the sub-set of inherent values that are “significant”, and this is a factor that the Commissioner of Crown Land should consider when exercising discretionary powers under Part 1 of the CPLA;
21. **note** that adverse effects on significant inherent values on reviewable lands arising from non-participation or withdrawal of lessees from tenure review can occur through: normal farming practices; unauthorised actions; other actions authorised under discretionary consents; approved recreation permits; and access arrangements under the Crown Minerals Act 1991;
22. **note** that some adverse effects on significant inherent values are the result of historical land degradation processes and that this degradation continues to be a significant land management problem;
23. **note** that LINZ considers that there is currently little evidence that a change in normal farming practices or unauthorised actions is occurring on reviewable lands

that will increase adverse effects on significant inherent values in order to justify increased action by the Crown (e.g. through inspections of properties, improving awareness of inherent values, and enforcement);

24. **note** that in a relatively small number of cases, some significant inherent values (and some farming practices) have been adversely affected through actions authorised under a discretionary consent (issued under Part 1 of the CPLA);
25. **note** that the Government high country objective to protect significant inherent values for recreation:
 - 25.1 is achieved over properties within the tenure review programme by the Commissioner of Crown Land only issuing short-term recreation permits;
 - 25.2 will only be able to be achieved outside of tenure review if the Part 1 CPLA s.18(2)(a) criteria that excludes considering the “attributes and characteristics of a recreational value only” is amended;
26. **note** that LINZ seeks advice from DOC when access arrangements are made (on behalf of the Minister) for activities under the Crown Minerals Act 1991;

Efficiency and Effectiveness of Administration Processes

27. **note** that, as a result of analysis prompted by the work related to the efficiency and effectiveness of the administration processes for achieving the Government’s objectives [POL Min (03) 19/7, recommendation 14, implementation principle b. refers], LINZ and DOC have:
 - 27.1 agreed to review operating procedures to ensure that clear feedback is provided by LINZ to DOC about the Commissioner’s decisions on individual applications for discretionary consents (including feedback about the advice from DOC);
 - 27.2 agreed that:
 - 27.2.1 in order for the Commissioner to meet his/her obligations under s.15 and 16 of the CPLA to consult with the Director-General of DOC before making a decision about a discretionary consent, the Director-General must be given an opportunity to comment if any new information arises during a rehearing where if such information had been available at the time of the initial decision, the Commissioner would have included it in his consultation with the Director-General, and the Commissioner considers the new information relevant to his/her final decision; and
 - 27.2.2 under s.17 of the Land Act the Director-General is not able to attend the actual rehearing;
 - 27.3 confirmed that, in general, information about the inherent and significant inherent values of a property (i.e. not financial or personal details) obtained by the Crown or its contractors in the course of a tenure review is official information and that, in general, such information is publicly available under the Official Information Act 1982 (unless there is a good reason to withhold information).

Further Reports

28. **note** that officials, led by LINZ, will report to Cabinet in the period November-December 2004 on the following items from the work programme:
- 28.1 improvements to decision-making responsibilities;
 - 28.2 additional costs for more effectively taking into account the principles of the Treaty of Waitangi;
 - 28.3 how the high country objectives relate to and impact on one another;
 - 28.4 how the high country objectives affect other Government objectives;
 - 28.5 how other legislation and policy affect the achievement of the high country objectives; and
 - 28.6 progress made against objectives, specifically stakeholder response to progress, lessee participation in tenure review, and socio economic effects of specific park proposals;

Strategic Framework

29. **note** that as part of the 2004 Budget Package: Vote Lands, Cabinet required LINZ to report back on possible options for achieving the Government's high country objectives, including the costs, in order to enable final funding decisions to be made in the 2005 budget [CAB Min (04) 13/3 (39) refers];
30. **note** that over the next few months officials, led by LINZ, in consultation with stakeholders, will develop a strategic framework to support the achievement of the Government's objectives for the high country, which will address many of the issues raised by stakeholders;
31. **note** that the framework is discussed in the companion Cabinet paper titled: *Government Objectives for the South Island High Country: A Strategic Framework*.

Hon John Tamihere
Minister for Land Information

Hon Chris Carter
Minister of Conservation

Appendix 1: High Country Reports and Other Actions Directed/Noted by Cabinet

POL Min (03) 19/7 (August 2003)

Shaded items are either annual reports or other reports that are yet to be completed.

Report/Action	Lead agency	Deadline	Status
1. Recommendation 11.1 Report against the new Government objectives for the high country as part of each year's October baseline update process [Same as CBC 10/3 Recommendation 42]	None specified	Annually in October	CBC (03) 91 reports on items related to the achievement of the objectives. Ongoing
2. Recommendation 12.2.1 Report on alignment of operating procedures and practices with the objectives [Same as Recommendation 14, implementation principle b. below] Recommendation 14, Implementation principle b. Report on the alignment of the operating procedures and practices for implementation tools with the Government's high country objectives, and the effectiveness and efficiency of the tools [Same as Recommendation 12.2.1 above]	None specified None specified	None specified 31 March 2004	Aspects investigated by DOC and LINZ, and results reported in this Cabinet paper
3. Recommendation 12.2.2 Report on whether decision-making responsibilities required to achieve the objectives could be improved [Same as Recommendation, Implementation principle b. below] Recommendation 14, Implementation principle b. Report on whether the decision-making responsibilities required to achieve the Government's objectives for the high country—i.e. decision makers for discretionary consents, decision makers for tenure review outcomes, and legislative outcomes—could be improved [Same as Recommendation 12.2.2 above]	None specified LINZ	None specified 31 March 2004	Will be reported in November-December.
4. Recommendation 12.3.1 Report on how the high country objectives relate to and impact on one another [Same as Recommendation 14, Implementation principle c below] Recommendation 14, Implementation principle c Report on how the high country objectives relate to and impact on one another [Same as Recommendation 12.3.1 above]	None specified "As relevant"	None specified "As relevant"	Will be reported annually in November-December
5. Recommendation 12.3.2 Report on how the high country objectives affect other Government objectives [Same as Recommendation 14, Implementation principle c below] Recommendation 14, Implementation principle c Report on how the high country objectives affect other Government objectives [Same as Recommendation 12.3.2 above]	None specified "As relevant"	None specified "As relevant"	Will be reported annually in November-December
6. Recommendation 12.3.3 Report on how other legislation and policy affect the achievement of the high country objectives [Same as Recommendation 14, Implementation principle c below] Recommendation 14, Implementation principle c Report on how other legislation and policy affect the achievement of the high country objectives [Same as Recommendation 12.3.3 above]	None specified "As relevant"	None specified "As relevant"	Will be reported annually in November-December

Report/Action	Lead agency	Deadline	Status
Recommendation 14 Report on the work program for the objectives and implementation principles in Appendix 1 [note: items listed above are not repeated below]:	-	-	-
7. Objective a. Assess how well current practice, capacity and legislation promote the management of the Crown's high country land—both reviewable and ex-pastoral land—in a way that is ecologically sustainable	DOC	31 March 2004	Reported in this Cabinet paper (Appendix 4). Ongoing.
8. Objective b. Report on achievement of freeing reviewable land capable of economic use from management constraints	MAF	1 December 2003	Reported in CBC (03) 91.
9. Objective c. Report on comprehensive guidance on what constitutes a significant inherent value, and how to protect SIVs	DOC	1 December 2003	Reported in CBC (03) 91. Ongoing.
10. Objective d. Report on issues associated with securing public access and enjoyment.	MAF	1 December 2003 (and relationship to Reference Group in early 2004)	Reported in CBC (03) 91, and in this Cabinet paper.
11. Objective e. Report on options for and any additional costs to the Crown arising from more effectively taking into account the principles of the Treaty of Waitangi (seek views of relevant South Island iwi)	LINZ	31 March 2004	Work has been initiated. Will report to Cabinet in November-December 2004.
12. Objective f. Report on how to take into account other particular purposes the Crown may intend to use reviewable land (e.g. for minerals)	"As relevant"	"As relevant"	
13. Objective g. Report on methods to identify biodiversity values that are SIVs.	DOC	1 December 2003	Reported in CBC (03) 91. Work ongoing.
14. Objective h. Report on priorities for land suitable for inclusion in a network.	DOC	1 December 2003	Reported in CBC (03) 91.
15. Objective i. Report on consequences of land use change for rural infrastructure, society and economy (including the national economy).	MAF	1 December 2003	Reported in CBC (03) 91.
16. Objective j. Report on options to achieve a fair financial return to the Crown on its high country land assets.	MAF	1 December 2003	Reported in CBC (03) 91.
17. Implementation principle a. Report on costs and benefits of possible tools for achieving the Government's objectives for the high country.	LINZ	30 September 2003	CBC (03) 91 includes a list of tools, and a description of protection mechanisms.
18. Implementation principle a. Report on impact of rising land prices on the ability of the Government to achieve its objectives.	LINZ	30 September 2003	Reported in CBC (03) 91.
19. Implementation principle c. Assess options for achieving the Government's high country objectives and the funding required as part of the Budget process	"As appropriate"	1 December 2003	Done as part of Budget process

CBC Min (03) 10/3 (December 2003)

Shaded items are either annual reports or other reports that are yet to be completed.

Report/Action	Lead agency	Deadline	Status
20. Recommendation 13 Officials will increase efforts to ensure that completed tenure reviews and whole property purchases protect biodiversity and landscape SIVs, provide adequate access and enable land capable of having productive use to be freeholded	None specified	None specified	Progress will be reported in November-December.
21. Recommendation 14 Report on the results of new consultation with ENGOs and landscape architects to clarify their concerns about the protection of significant inherent values	None specified	31 March 2004	Reported in this Cabinet paper
22. Recommendation 18 Officials will identify ways in which marginal strips created as a result of tenure review or lease renewal can be identified for public use, whether or not formal surveying is involved	None specified	Not specified	Reported in this Cabinet paper
23. Recommendation 19 Officials will identify and clearly depict what public access will be provided either through marginal strips or easements, on tenure review designation plans prior to a preliminary proposal being advertised for public submissions	None specified	Not specified	Reported in this Cabinet paper
24. Recommendation 21 Minister for Rural Affairs Land Access Ministerial Reference Group will report to POL on access issues generally	MAF	31 March 2004	Reported to POL on 5 April 2004
25. Recommendation 22 Report on legality of whether CPLA can be used to reserve land for access by creating roads (for foot, cycle, horse, motor vehicle passage or combination thereof)	None specified	31 March 2004	Reported in this Cabinet paper
26. Recommendation 27 Report on effect on significant inherent values arising from non-participation or withdrawal from tenure review of lessees, and how SIVs on land subject to pastoral lease or licence should be actively managed by the landlord	None specified	31 March 2004	Reported in this Cabinet paper (Appendix 4)
27. Recommendation 34 Report to Ministers for Land Information, Conservation and Agriculture on the effect of tenure review on the national economy to inform the LINZ/DOC Budget bid	None specified	Before Budget bid finalised	Draft results of one study were provided to inform the Budget process
28. Recommendation 42 Report on progress and issues against the Government's objectives for the high country, and to specifically report on stakeholders' response, lessee participation in tenure review, and socio-economic effects of specific park proposals [Same as POL Min (03) 19/7 Recommendation 11.1 above]	None specified	Each year in October	First report will be provided in November-December 2004

Appendix 2: Summary of Issues Raised by Environmental Non-Government Organisations and Landscape Architects

Federated Mountain Clubs of NZ

Issue	Desired solution/outcome
1. Public access. That public access is not the only requirement for recreation and that conservation (recognition and protection of SIV's) is also important as the setting is an intrinsic part of the recreation experience. Also, public access involves passage through other land as well as within the area itself.	<ul style="list-style-type: none"> Public conservation land created through tenure review should include public access. Marginal strips along all qualifying waterways should be laid off on every lease under review. Recreational access should be considered in a geographic context (not just the lease under review). An assessment should be made of the needs for a recreation network. Access and setting should be recognised as equally important for recreational enjoyment.
2. Landscapes should be protected from adverse effects. The Resource Management Act 1991 is weak and variable. Landscape protection policies can be subject to electoral changes and Plan Variations.	<ul style="list-style-type: none"> Return high quality landscapes to Crown ownership or use strong covenants. Where landscapes are extensive full Crown ownership is preferred as in the CPLA. Landscapes are an SIV because of the value and context they provide for recreation activities. Add recreation value to list of criteria for landscape assessment.
3. Recreation experience. An appreciation of landscape and natural values that contribute significantly to the quality of recreation experience.	<ul style="list-style-type: none"> Recreational value should be a criterion for assessing an SIV.

Council of Outdoor Recreation Associations of New Zealand

Issue	Desired solution/outcome
1. Protecting natural landscape values of water bodies: Recognition and adequate protection of lakes and rivers and their surrounding tussock grasslands.	<ul style="list-style-type: none"> River/lake/wetland corridor protection (e.g. as an amenity reserve) to ensure grasslands and water bodies are not crowded out by exotic forestry and protection of river vistas hack to hills behind.
2. Ecological sustainability and economic use: Consideration needs to be given to the water and soil values including allowance for natural variability and flood areas of water bodies.	<ul style="list-style-type: none"> Don't freehold land important for ecological sustainability and erosion prone lands and water courses. Protect flood ways along major rivers for water and soil conservation reasons.
3. No state agency to advocate for natural landscapes:	<ul style="list-style-type: none"> LINZ to contract out landscape/landform assessment and protection to an agency (other than DOC) with the expertise in recommending adequate protection of natural landscape and landform values.
4. Inflexibility of tenure review negotiations: Lessees don't appear to want to negotiate and the Crown has never withdrawal from an application therefore raising lessee's expectations.	<ul style="list-style-type: none"> Employ professional negotiators; enforce conditions of leases; parking negotiations where the public interest is not being achieved and as a last resort withdraw form negotiations.
5. Dealing with degraded land: Conditions placed on TR deals to resolve issues of degraded land are unenforceable. Is tenure review stock piling future problems?	<ul style="list-style-type: none"> Don't freehold degraded land as many leases with wilding/erosion/weed and other problems will get worse once freeholded.
6. Inadequacy of covenants: DOC considers these undesirable because of monitoring and enforcement difficulties.	<ul style="list-style-type: none"> There is greater control with Crown ownership.
7. Excessive lease settlement and sale prices.	<ul style="list-style-type: none"> Increase rentals to reflect land not grazing leases, or enforce original conditions relating to lessee (no cultivation, production forest plantings, and irrigation) and don't allow freehold management practises until the land is freeholded under Tenure review.
8. Inadequacy of Resource Management Act and District Plans. Anything is possible under the RM Act if a Council can be convinced its adverse effects can be avoided, remedied and mitigated.	<ul style="list-style-type: none"> Tenure review is the last opportunity the crown has to protect SIV's
9. Existing tenure review applications. Review unfinished tenure applications under new policies proposed for tenure review.	<ul style="list-style-type: none"> Illustrate new policies achieve better outcomes.

Issue	Desired solution/outcome
10. Inadequacy of RAP's. These small reserves protect endangered species but give no landscape or recreation protection.	<ul style="list-style-type: none"> Identify more extensive reserves for botanical reasons.
11. Unsustainable practises on pastoral leases. Tussock and shrubland burning, tracking, cultivation and clearance continue on pastoral leases compromising SIV's prior to tenure review negotiations.	<ul style="list-style-type: none"> Strengthen lease conditions and monitoring to stop loss of SIV's prior to tenure review. Amend CPLA to more effectively protect SIV's.

Public Access New Zealand Inc

Issue	Desired solution/outcome
1. Failure to secure access: Particularly for marginal strips and public roads. This hinders DOC's ability to provide access to and along water margins and to new public reserves.	<ul style="list-style-type: none"> Public access to and along water margins and new public reserves.
2. Recreation outcomes:	<ul style="list-style-type: none"> The provision of access for recreation purposes and recreation management during the tenure review process.
3. Tenure review process is bureaucratic	
4. Failure of LINZ to act in interest of Crown.	<ul style="list-style-type: none"> Government recognition of the perpetual need for Crown Land and an effective Crown Lands administration.
5. Tenure review submission process: Lacks open minded analysis	
6. Network of parks and reserves: Policy implies predetermination of parks prior to completion of DOC conservation reports and public input.	

Royal Forest and Bird Protection Society

Issue	Desired solution/outcome
1. Ecologically sustainable management (ESM). The high country objective and provisions in CPLA not being implemented. There are no criteria for ESM. SIV is narrowly defined to 'nature conservation criteria'.	<ul style="list-style-type: none"> Consult and develop criteria for ESM. In draft preliminary proposal require an assessment of ESM of current and future land uses on land proposed for freehold promotes ESM.
2. Water and soil conservation values. Lack of recognition of ecological/economic value of tussock grasslands for water harvesting and conservation. Freeholding and lack of tussock cover will have cumulative impacts on downstream waterways. This is contrary to high country objectives.	<ul style="list-style-type: none"> Recognise the value of tussock for water harvesting when promoting ESM. In draft preliminary proposal require an assessment will result tin loss of tussock and have potential effects on water yield. Include importance for ecosystem services as part of criteria for SIV's.
3. SIV's. Not adequately protected. LINZ/DOC prioritise and trade off SIV's.	<ul style="list-style-type: none"> Revise DOC's ecological criteria for SIV's Crown must withdraw from negotiations if all SIV's aren't protected. Develop criteria or ESM to determine what land is suitable for freeholding. Increase funding for whole property purchase for both LINZ & Nature Heritage Fund. Increase funding for equity exchange payments; Recognise the difference between land value for pastoral and other uses belongs to the Crown. The lessee can only subdivide if the land if freeholded. Review all tenure proposals that have not reached the SPP stage to ensure that they are consistent with new objectives. Do not progress tenure reviews past the Conservation Resource Report phase, while reviews are being done, and prior to finalising policies after June/July 2004
4. DOC criteria for SIV's (Davis, November 2002) are poorly applied. There is a focus on representativeness to the exclusion of other criteria such as diversity, and pattern, size, shape, and buffering.	<ul style="list-style-type: none"> Apply criteria using all of them not just representativeness. Don't negotiate away SIV's. Include criteria similar to the TAG (1980's allocation criteria)

Issue	Desired solution/outcome
<p>Representativeness is narrowly defined as 'best examples' rather than 'full range of inherent values'.</p> <p>The NZBS is not being implemented. There is inadequate recognition of restoration of indigenous habitats/ecosystems.</p> <p>DOC Criteria do not refer to NZBS hence preservation emphasis in conservation i.e. DOC emphasis on high ecological value means modified areas that have potential for restoration are not protected. Therefore the lack of representation of lower altitude ecosystems will continue.</p>	<p>where land which was indigenous in character was allocated to DOC.</p> <ul style="list-style-type: none"> • Revise SIV criteria to increase emphasis on protection of modified lands that have potential for restoring SIV's or who can contribute to healthy ecosystem functioning (e.g. through protection of altitudinal sequences). • Recognise modified areas have SIV's and can be especially important if occur in 'environments' that are not well represented.
<p>5. Crown interest in leases. Crown lack of interest in leases means SIV's are being traded away in order to reach agreements.</p>	<ul style="list-style-type: none"> • Amend Land Act 1948 to require lessee to give Crown first option to purchase when a lease is sold. • Recognise pastoral leases as a valid and continuing form of tenure. Areas of mixed conservation and production values should be protected from freehold by retention as a pastoral lease.
<p>6. Discretionary consents. SIV's not protected on leases whilst tenure review process is being undertaken. Discretionary consents for burning and vegetation clearance degrade SIV's.</p>	<ul style="list-style-type: none"> • No approvals to be given for discretionary consent applications once a property enters tenure review.
<p>7. SIVs not adequately defined. There is a focus on botanical values at the expense of invertebrates.</p>	<ul style="list-style-type: none"> • Apply precautionary approach in SIV identification and protection and include buffer areas. • Revise DOC SIV criteria to recognise value of modified grasslands as invertebrate habitat.
<p>8. Connectivity between protected areas. No strategy exists to ensure connectivity between protected areas on different leases means there is a high risk of discontinuous and fragmented sequence of protected areas.</p>	<ul style="list-style-type: none"> • Revise DOC criteria to include reserve design (connectivity and buffering). • The Commissioner use greater discretion under s 32 CPLA to adopt a 'whole range' approach to tenure review.
<p>9. Freeholding land. Lack of criteria on what land to freehold while promoting sustainable management. Lack of Crown accountability and transparency as to why land is freeholded.</p>	<ul style="list-style-type: none"> • Develop criteria to evaluate whether specified uses promote ecological sustainable management. • Require LINZ to report on whether and how freeholding promotes ESM in draft preliminary proposals.
<p>10. Recreation values. Lack of coherent or obvious strategy to protect landscapes with potential recreation value.</p>	<ul style="list-style-type: none"> • DOC to undertake a 'recreation opportunities spectrum' exercise for pastoral leases to better understand opportunities for new recreation routes/activities and priorities for protection for recreation purposes.
<p>11. Covenants. Covenants over large areas means SIV's are not protected. Problems with covenants include: don't protect SIV's; rarely allow public access; no public input into management; lack of resources to monitoring conditions of covenant; enforcement is unlikely as it requires legal action; future disagreements over interpretation go to Court; covenants and their conditions can be forgotten over time; they contribute to fragmentation of biodiversity into small pockets; on private land they won't be a DOC funding priority for protective management; the court can extinguish a covenant without public involvement; real costs long term are likely to be higher than Crown ownership.</p>	<ul style="list-style-type: none"> • Adopt policy that covenants are only to be sued for small discrete areas.
<p>12. Resource Management Act. District and regional plans won't protect SIV's (including landscapes) because: plans are usually inadequate; there is strong landholder opposition to rules, and rules that exist maybe non-notified; lack of expertise/commitment to protection of indigenous biodiversity in rural councils; sustainable management has a strong use and development element; high time/person costs for DOC/ENGO's participating in RM Act;</p>	<ul style="list-style-type: none"> • Recognise the inadequacies and uncertainties of RM Act. • Commit to full Crown ownership as preferred option to safeguard SIV's.
<p>13. DOC's advocacy role. DOC is unwilling to advocate protection of SIV's under RM Act on freeholded land.</p>	<ul style="list-style-type: none"> • DOC to advocate for mechanisms to control activities that adversely affect conservation values regardless of land tenure and participate in the RM Act. • Increase funding for DOC's RMA advocacy to achieve new High Country objectives.

New Zealand Institute of Landscape Architects

Issue	Desired solution/outcome
<p>1. Areas with Significant Inherent Landscape Value (SILV) are not adequately protected.</p>	<ul style="list-style-type: none"> All SILV are protected including retrospective protection of SILV found in tenure review applications at preliminary and substantive stage of process. Advice to be provided by LINZ/DOC on how protection of SILV is to be achieved. [Cab Min CBC (03) 91, recommendation 13.2 refers]
<p>2. Weighting in favour of private ownership and economic use in areas with SIVs. CPLA does not provide weighting in favour economic use requires protection of all SIV's (not just some SIV's).</p>	<ul style="list-style-type: none"> All areas with SIV must receive protection Develop policy for dealing with lower altitude productive land that have SILV and maintains integrity of landscape on a valley/basin scale. Trading these areas for protection of other SIV areas is unacceptable. Develop criteria for land to be freeholded and policy/operating procedure for contestable areas in individual property negotiation strategies.
<p>3. Definition of ecological sustainability is required. Grazing, OSTD, burning etc of tussock does not ecologically sustain indigenous plant associations if native species are progressively replaced by exotics or ploughed up.</p>	<ul style="list-style-type: none"> Engage professional team including ecologist with experience in indigenous ecosystems (especially tussock) to define conditions/criteria that it is ecologically sustainable management of reviewable land [S 24(a)(i) CPLA]. This should include addressing under what conditions it is ecologically sustainable to continue farming SIV areas. LINZ use above definition to prove an area can be used for private economic use.
<p>4. Lack of criteria for landscape as a SIV. Develop clear criteria and appropriate protection mechanisms for their application. No trade off of SIV values.</p>	<ul style="list-style-type: none"> Engage a professional landscape consultant to draft landscape criteria and standard landscape report format for approval and adoption.
<p>5. Insistence on ecological purity. DOC's current policy is that credible SIV status means high ecological value. This dismisses modified areas that may have other values of significance. Under CPLA 'natural resource' is not just indigenous resources, it may include exotic vegetation. Although existing legislation refers to indigenous vegetation, the NZ Biodiversity strategy seeks to broaden this narrow interpretation.</p>	<p>That DOC:</p> <ul style="list-style-type: none"> Advocate protection of landscapes as a natural resource (consistent with the Conservation Act 1987). Recognise modified areas may constitute a SIV under the CPLA and are not necessarily of lesser inherent value than areas of high ecological value.
<p>6. Only protects the status quo. Identifying protected areas of existing discrete units does not give them an opportunity to expand in the future and restore indigenous cover in long term (NZBS). Landscape features need to retain landscape context and buffer zones.</p>	<ul style="list-style-type: none"> Protected areas should address SIV recovery (consistent with the NZBS) and recognise and include landscape context and buffer zones. Recognise that landscape is a large scale entity. Protection of larger areas for landscape integrity and context for remnants or discrete features. Modified areas be considered for their potential to return to a more indigenous state, restoring more complete ecological sequences, rather than be traded off.
<p>7. Use of covenants. Reluctance to use covenants on freehold land. Covenants can be an appropriate means to achieve protection of some landscape values over freehold land.</p>	<ul style="list-style-type: none"> Greater use be made of covenants and other protection mechanisms (e.g. special leases) on freehold land in addition to Crown ownership (not instead). Engage professional consultant to provide landscape criteria and guidelines on when Crown covenants are appropriate for landscape values. Paper be prepared outlining various protection mechanisms for tenure review, review their capability and effectiveness, and advise on whether additional mechanism are needed. Landscape consultant be involved in preparation of protection mechanisms (e.g. covenants) for protection of land under CPLA. The performance of covenants be monitored and reviewed by appropriately experienced professional landscape architect. New LINZ administrative structure with appropriate permanent professional landscape and ecological expertise to monitor/ manage crown pastoral leases and protection of values under different protection mechanisms (e.g. covenants, agreements, leases etc) and applications for non-pastoral private uses.

Issue	Desired solution/outcome
8. District plans are ineffective. District plans are ineffective for protecting landscape values and greater controls are required for freehold land released under the CPLA.	<ul style="list-style-type: none"> Freehold land with SIV on them should be retained, covenanted or otherwise protected rather than left to provisions of district plan to protect significant values.
9. Boundaries. Adverse functional and visual impact of boundary lines dividing conservation and freehold land.	<ul style="list-style-type: none"> That existing fence lines only be used as an interim measure, or where they are logical, and do not result in significant reduction in the landscape integrity of the proposed protected area.
10. Tenure review process inadequately managed for landscape values. Lack of formal participation of landscape professionals in tenure review process since 1996/7.	<ul style="list-style-type: none"> A consultant landscape should be involved in all parts of the tenure review process for each property i.e. CRR, PDR, draft PP and SP and included during negotiations where SILV are at issue. Process to wait for landscape input to all current reports. An experienced landscape architect be employed as part of the tenure review team to co-ordinate landscape contracts, outcomes and ensure consistency LINZ to report 6 monthly to ENGO's (as part of agreed 6 monthly meetings) on progress achieving government objectives.
11. Parks and reserves network. Landscape experts be consulted on selection of conservation parks to give input on landscape integrity and selection of boundaries and buffer zoning (amongst issues). This advice also be sought for whole property purchases.	<ul style="list-style-type: none"> The High Country Landscape Group be invited to comment on proposed network of parks and reserves. Landscape advice be sought on the design and management of parks and reserves identified, and, when subdividing land in whole property purchases.
12. Discretionary activities. Activities such as tracking (including upgrading), tree planting, cultivation, over sowing, top dressing, and burning occur often as discretionary use consent by the Commissioner. These activities can irreversibly degrade landscape values and used to be assessed.	<ul style="list-style-type: none"> Landscape advice be sought on effects of discretionary activities. Where a property has not applied for tenure review SIVs will need to be identified to determine impact before discretionary activity approved.
13. Timetables and programmes outcomes. The time taken to resolve the above issues when tenure review applications are being processed as 'business as usual'	<ul style="list-style-type: none"> Suspend tenure review process and engage landscape expertise to assist with review.

Appendix 3: Report on Management that is Ecologically Sustainable

1. Cabinet asked the Department of Conservation (DOC) to assess the ability of current practice, capacity and legislation to meet the objective to promote management of reviewable land and ex-pastoral land [i.e. “ex-reviewable land”, which land freeholded through tenure review] in the high country in a way that is ecologically sustainable, and to recommend changes [POL Min (03) 19/7 refers].
2. This report is a starting point for further work by Land Information New Zealand (LINZ), DOC and the Ministry of Agriculture and Forestry (MAF), in consultation with stakeholders, which is required to clarify the principles and practices of management that is ecologically sustainable, and how to promote it.

Definition and concept

3. The expression “promote the management....in a way that is ecologically sustainable” occurs in Objective a. of the Government’s objectives for the high country. It was derived from one of the Crown Pastoral Lands Act 1998 (CPLA) objects for tenure review (Part 2) (s.24(a)(i)). The expression “management that is ecologically sustainable” is not defined in the CPLA, other government policy statements, or in other legislation, and there is no relevant case law.
4. It is useful to note that section 2 of Part IIIA of the Forests Act 1949 defines “sustainable forest management” as “the management of an area of indigenous forest land in a way that maintains the ability of the forest growing on that land to continue to provide a full range of products and amenities in perpetuity while retaining the forests natural values (section 2).”
5. The phrase “ecologically” means “with respect to ecology”, and the meaning of “ecology” in this context is “the interactions between organisms and their environment.” Sustaining the ecology therefore means sustaining interactions between organisms and their environment. Promoting the management of land in a way that is ecologically sustainable can be defined to mean “encouraging and supporting land management practices that:
 - enable on-going natural interactions between indigenous organisms and their environments
 - maintain the current numbers and extent of indigenous organisms and their environments
 - maintain the chemical and physical properties of soil and water resources
 - promote the recovery of indigenous organisms and their environments to mitigate any adverse effects of management
 - minimise spill-over effects of management activities from one area onto another.
6. Management that is ecologically sustainable is therefore a conservative management regime, with a focus on the managed use of organisms and their environments. Where an area comprises a tussock-grassland or wetland then, using the definition above, management that is ecologically sustainable would sustain the biota and ecological processes (including vegetation cover and succession processes). Land management activities such as the conversion of indigenous scrub or tussock grassland into exotic

pasture or forestry do not, according to the definition above, equate to management that is ecologically sustainable.

7. Where the vegetation cover of an area has been predominantly modified for farming purposes (e.g. exotic pasture establishment), then management that is ecologically sustainable would not necessarily maintain the same type of biota (e.g. the conversion of the grassland to exotic forest), but it could maintain the chemical and physical properties of soil and water resources.

Management of reviewable land

8. Current legislation has the ability to promote the management of reviewable land in a way that is ecologically sustainable as an outcome of tenure review because this is one of the objects of Part 2 of the CPLA (s.24(a)(i)).
9. Part 1 of the CPLA does not have a specific statutory instruction that promotes management that is ecologically sustainable. LINZ advises that the good husbandry and diligence clauses of the lease apply. These clauses arise from the s.99 Land Act 1948 requirement that the land is to be properly farmed. Good husbandry does not however necessarily involve the retention of indigenous vegetation, which would be required under management that is ecologically sustainable. LINZ and DOC have agreed to clarify the outcomes that would be expected from the good husbandry clauses of the lease.
10. There is also no specific statutory instruction that promotes management that is ecologically sustainable under the discretionary consent provisions of Part 1 of the CPLA (i.e. consents for soil or vegetation disturbing activities, adjustments in stock numbers, and for non-pastoral economic activities such as forestry or commercial recreation (sections 15 and 16)). The Commissioner of Crown Lands (the Commissioner) is only required to take account of the desirability of both making it easier to use the land for farming and of protecting the inherent values (s.18(2)).
11. The approval of discretionary consents for activities such as the conversion of indigenous scrub or tussock grassland into exotic pasture or forestry, directly compromises the potential achievement of the Government objective to promote management that is ecologically sustainable (Objective a.) on reviewable lands. (Such approvals can also compromise the achievement of the other Government objectives to protect significant inherent values and to ensure conservation outcomes that are consistent with the New Zealand Biodiversity Strategy).
12. If Ministers wish to achieve the objective to promote management that is ecologically sustainable (Objective a.) through the discretionary consent process on reviewable lands, then it is likely that the CPLA and/or the Land Act 1948 will have to be amended to make this explicit.

Ex-reviewable land

13. Lessees and licensees going into tenure review have an expectation that they will be able to develop lands freeholded unencumbered in a tenure review to their best economic use (if allowed under the Resource Management Act 1991 (RMA)). For lands agreed to be freeholded unencumbered:

- (i) it is not logical to expect that future land management will always be ecologically sustainable, because the landowner may expect to alter the current indigenous vegetation cover and numbers and extent of indigenous organisms;
 - (ii) it is reasonable however to expect that future land management will maintain the ability of the chemical and physical properties of soil and water resources to continue to provide a full range of products, and to minimise spill-over effects of management activities from one area onto another. This is not management that is ecologically sustainable—it could be considered to be “sustainable soil and water management”.
14. Land returned to full Crown ownership and control is managed under conservation legislation. Conservation management promotes ecological sustainability.

Ecosystem services

15. Reviewable lands generally lie in the headwaters of rivers and streams that provide downstream communities with desirable water yield, water quality and water flow services (including flood risk reduction). The management of reviewable and ex-reviewable lands in a way that is ecologically sustainable can help to safeguard the delivery of these community ecosystem services.
16. The options for safeguarding community ecosystem services are:
- i. rules and plans under the RMA to ensure that this happens: In reality, this doesn't happen consistently across reviewable lands;
 - ii. the use of “sustainable management covenants” (CPLA s.97) in favour of the Commissioner on reviewable lands where there is an agreement under tenure review to freehold them: One sustainable management covenants has been implemented, and another is being investigated. LINZ advise that sustainable management covenants are used to promote management that is ecologically sustainable over land freeholded under the CPLA;
 - iii. the return of reviewable land to full Crown ownership and control under Part 2 of the CPLA: Indeed, the protection of soil and water ecosystem services was the historical basis for the establishment of many national parks and conservation parks in New Zealand;
 - iv. under Part 1 of the CPLA (s.18), the Commissioner can decline to grant discretionary consents for activities likely to adversely affect ecosystem services, or issue consents subject to conditions that maintain the services: The Commissioner may equally decide to favour making it easier to use the land for farming purposes, which may adversely affect the services.

Appendix 4: Report on Effects on Significant Inherent Values

1. Cabinet asked officials to report on the effect on significant inherent values (SIVs) arising from non-participation or withdrawal of lessees from tenure review, and how SIVs on land subject to pastoral lease or licence should be actively managed by the landlord (CBC Min (03) 10/3 para. 27 refers). The Department of Conservation prepared the following report.
2. Adverse effects on SIVs can occur through: normal farming practices; other actions authorised under discretionary consents; approved recreation permits; access consent for prospecting; and unauthorised actions

Land Act Context

3. Pastoral leases and pastoral occupation licences are granted under the Land Act 1948 for the purpose of pastoral farming. Lessees manage their properties under the good husbandry and diligence clauses of the lease, and the Commissioner of Lands has authority to ensure compliance with the clauses.
4. Some adverse effects on SIVs are the result of historical land degradation processes and that this degradation continues to be a significant land management problem.

Normal farming practices

5. The adverse effects on SIVs that can occur through normal farming practices include:
 - i. death of individual indigenous shrubs, as a result of grazing by cattle (even at low densities);
 - ii. collapse of river banks, as a result of cattle movements;
 - iii. nutrient enrichment and pugged margins of wetlands, as a result of stock movements;
 - iv. local invasion and dominance of exotic grasses that out-compete native vegetation, e.g. on terraces and floodplains generally and where sheep concentrate at camps;
 - v. spread of seeds of woody weeds, by cattle and sheep movement and nutrient enrichment;
 - vi. irreversible local depletion of indigenous ecosystems, such as former bog pine – *Phyllocladus* shrublands, and the degradation of dry beech forest ecosystems and retreat of their margins.
6. The Commissioner of Crown Lands (the Commissioner—i.e. the landlord) can actively manage reviewable land to achieve the Government high country objective to protect SIVs (Objective c.) by: (i) negotiating with the lessee to adjust the good husbandry (and diligence) clauses of the lease; and/or (ii) managing the effects through the discretionary consents process (under Part 1 of Crown Pastoral Lands Act 1998 (CPLA)).
7. Land Information New Zealand (LINZ) advises that it does not monitor normal farming practices to measure compliance with the terms and conditions of pastoral leases (including approved discretionary consents). It will however investigate reported suspected breaches where these are identified by LINZ or its contractors, DOC or the public. LINZ also advises that it proposes to include an inspection regime in the contract it has with service providers.

8. DOC staff do notice adverse effects during surveys of reviewable land (e.g. for tenure review), but will only bring the effects to the attention of the Commissioner in relation to SIVs. This is not a welcome role however because it makes it difficult for DOC to later establish good neighbour relations (as manager of new public conservation land arising from tenure review) with the former holders of reviewable land.
9. LINZ considers that there is currently little evidence that a change in land use (and management practices) on reviewable lands is occurring that will increase adverse effects on SIVs to justify increased action by the Crown (e.g. through inspections of properties, improving awareness of inherent values, and enforcement).
10. The Commissioner can also apply to a district court for an examination of anything that the Commissioner alleges to be a breach of the reviewable instrument (CPLA s.19). A district court may order the holder to take actions to remedy the breach or to pay the Commissioner exemplary damages (not exceeding \$50,000), or declare the instrument forfeit to Her Majesty.

Applications for discretionary consents

11. Part 1 of the CPLA specifies that the discretionary consent of the Commissioner is required for activities that disturb soil or vegetation (e.g. to clear or fell bush or scrub, drain, plough or top-dress the land), adjustments in stock numbers, and for non-pastoral economic activities (e.g. forestry or commercial recreation) (s.15 and 16). The CPLA requires the Commissioner to consult with the Director-General of Conservation before making a decision (s.18(1)). In practice the Commissioner has delegated his powers to LINZ officials in Christchurch and the Director-General has delegated his advice role to Conservators and Area Managers. No public or Ngai Tahu participation is required but the Commissioner has discretion to consult other bodies besides DOC.
12. When exercising discretionary powers the Commissioner must take into account—(a) the desirability of protecting the inherent values of the land concerned (other than attributes and characteristics of a recreational value only), and in particular the inherent values of indigenous plants and animals, and natural ecosystems and landscapes; and (b) the desirability of making it easier to use the land concerned for farming purposes (s.18(2)). There is no weighting in favour of inherent values or making it easier to farm the land. The Government’s adoption of the objective to protect the SIVs of reviewable land (Objective c.) demonstrates that the Government considers it desirable to protect the sub-set of inherent values that are “significant”.
13. Most applications for discretionary consents can be approved without compromising the achievement of the Government’s high country objectives. Between 1999 and the end of 2003, the Commissioner consulted DOC on 969 discretionary consent applications. DOC is not funded for providing advice on these applications, which means that Area Managers are highly selective and acutely aware of the consents they need to engage in. In 80% of cases, DOC considered that inherent values will not be adversely affected by the proposed actions. Of the small number of cases where DOC recommends that consent be unconditionally declined the Commissioner’s delegate follows that advice about 50% of the time.
14. The Commissioner’s delegate can however “take account of” the inherent values that are significant, and then consent to them being damaged or destroyed in order to make

it easier to use the land for farming purposes. Cases where discretionary consent was approved include applications to:

- bulldoze farm tracks and allow oversowing and topdressing across areas with significant inherent landscape and vegetation values;
- clear shrubland and allow new cultivation and drainage of indigenous vegetation in land environments that are not well represented in the protected area network;
- plant Douglas fir (which has a significant potential for wilding spread) across significant indigenous vegetation and landscapes.

15. LINZ advises that all of the decisions made by the Commissioner's delegates are defensible. Notwithstanding this, when the delegate takes account of the inherent values that are significant and then consents to them being damaged or destroyed in order to make it easier to use the land for farming purposes, then the discretionary consents process is not an effective process for achieving the Government's objectives to enable the protection of the SIVs of reviewable land (Objective c.). Such decisions also do not help to ensure that conservation outcomes are consistent with the New Zealand Biodiversity Strategy (Objective g.).
16. The adoption by the Government of the objective to protect significant inherent values of reviewable land (Objective c.) demonstrates that the Government considers it desirable to protect the sub-set of inherent values that are "significant" when the Commissioner exercises discretionary powers. Doing so does not weigh decision-making in favour of protecting inherent values over making it easier to farm the land—it is simply one standard of desirability.

Approved recreation permits

17. Lessees have exclusive occupancy rights, and their consent is needed for public access. Recreational opportunity is an inherent value of reviewable land. The protection of significant recreational opportunities is therefore a Government high country objective, as well as an object of the CPLA.
18. Commercial recreation consents or "recreation permits" are issued over reviewable land under the authority of s.66A of the Land Act, but are governed by the procedure and criteria of the discretionary consents provisions of s.18 of Part 1 of the CPLA. The criteria exclude considering the "attributes and characteristics of a recreational value only" from consideration (s.18(2)(a)). If a permit is sought for heli-skiing on reviewable land, the effect that commercial activity could have on the quality of other recreational experiences nearby—on reviewable land or public conservation land—is not able to be considered. For example, the likely effects of a proposal to build a tourist lodge on Mount Aspiring pastoral lease on nearby recreational opportunity within Mount Aspiring National Park were unable to be considered during the assessment of the proposal.
19. The Commissioner usually issues short term (5 year) recreation permits on land undergoing tenure review and likely to be returned to full Crown ownership (although each case is considered on its own merits). One reason for doing this is to minimise the potential for authorising commercial recreational that will be inappropriate in the wider recreational management context that DOC will apply in the event that the reviewable land is returned to full Crown ownership and control. Attempts to shorten the life of an authorised business once the land is returned to full Crown ownership could involve the

Crown paying compensation. Occasionally however the Commissioner does approve a long-term recreation permit for a commercial recreation activity in an area likely to be returned to full Crown ownership. For example, on Craigroy pastoral lease, the Commissioner authorised a long-term recreation permit for a commercial snowmobiling business in an area that DOC will manage as a remote experience cross country skiing opportunity if the land is returned to full Crown ownership.

20. The Government high country objective to protect SIVs, including recreation values, on properties within the tenure review programme can be achieved by the Commissioner only issuing short-term recreation permits. This does not conflict with the CPLA s.18(2)(a) criteria because securing public access to and enjoyment of reviewable land is an object of the tenure review (Part 2) provisions of the CPLA.
21. The objective to protect significant recreation values on properties outside of the tenure review programme will only be able to be achieved if the s.18(2)(a) criteria that excludes considering the “attributes and characteristics of a recreational value only” is amended.

Access consents for prospecting

22. Prospecting permits are issued by the Minister of Energy under the Crown Minerals Act 1991. The holder of a permit to carry out minimum impact activity can either serve 10 days notice on the owner and occupier of intent to enter the land, or obtain the written consent from the owner and occupier (Sec 49 Crown Minerals Act).
23. There is no lawful justification to refuse access over reviewable land, except for some classes of land described in s.55(2)(a)-(g) of the Crown Minerals Act. There is no obligation in the Crown Minerals Act or the CPLA for LINZ to consult with DOC in relation to consenting to access for minimum impact mining activity. In terms of the permit holder's right to access under Section 49 it would make no difference in any case.
24. LINZ seeks advice from the Department of Conservation when access arrangements are made (on behalf of the Minister) for activities under the Crown Minerals Act. This enables the Crown to prepare conditions of access that will protect the values where the area covered by a permit or access to it contains SIVs. Where reviewable land has been agreed to be returned to full Crown ownership and control but has yet to be registered (e.g. on Glen Nevis pastoral lease) consultation also enables DOC to assess whether the authorised prospector complied with conditions of access, and to decide whether to continue to consent to access to ex-reviewable land now managed under the Conservation Act 1987 or any other Act specified in the First Schedule to the Conservation Act (s.55(2)(a) Crown Minerals Act). (Access consents issued by LINZ are terminated if the Final Plan is registered and the land consequently vests in the conservation estate).

Other unauthorised actions

25. Significant inherent values can also be modified or destroyed by through the unauthorised actions of lessees or licensees without discretionary consent. Recent examples include:
 - i. the clearing of indigenous shrublands prior to any consent being issued;

- ii. the cultivation of low river terraces without consent, including breeding habitat for endemic riverbed birds.
26. In addition, SIVs on reviewable lands can be damaged or destroyed through grazing and tracking by holders harbouring wild introduced animals such as chamois, thar, fallow deer and even emu. There are strict controls on the movement of fallow deer and outside a recognised feral range, their release will not be authorised—yet they have turned up on pastoral lease properties well away from the feral range. The lease obligation is for the holder to keep the property clear of “noxious animals and weeds”—some holders clearly do not see game animals in this category.
27. As reported in para. 6, LINZ considers that there is currently no evidence that a change in land use (and management practices) on reviewable lands is occurring that will increase adverse effects on SIVs to justify increased action by the Crown (e.g. through inspections of properties, improving awareness of inherent values, and enforcement). DOC staff notice adverse effects during surveys of reviewable land but, as before, will generally only bring the effects to the attention of the Commissioner in relation to significant inherent values. Again, this role makes it difficult to later establish good neighbour relations between DOC (as manager of new public conservation land arising from tenure review) and the former holders of reviewable land. Nevertheless, DOC has obligations under the Wild Animal Control Act 1977 to respond to wild animal issues on lands of any tenure.
28. When made aware of unauthorised actions, the Commissioner’s delegate can either retrospectively issue a discretionary consent or to apply to a district court to examine anything the Commissioner considers a breach of the reviewable instrument (s.19), with penalties as outlined in para. 7.