



Guide for pastoral leaseholders

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**GUIDE FOR
PASTORAL LEASEHOLDERS**

Land Information New Zealand
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Introduction

This booklet provides an overview of the rights and obligations associated with pastoral leases, and where more detailed information can be obtained. It also provides contact information for Land Information New Zealand (LINZ), the Government agency responsible for administering Crown pastoral leases on behalf of the Commissioner of Crown Lands (Commissioner).

The land in a pastoral lease is owned by the Crown, and the Commissioner has the statutory authority to make decisions about pastoral leases, including any requests or applications leaseholders may make to carry out activities for which the Commissioner's consent is required.

The Commissioner's relationship with the leaseholder is generally handled through the Pastoral team within LINZ's Crown Property and Investment group. LINZ contracts service providers to undertake inspections and to provide advice, but all decisions (and any questions) are handled directly by LINZ and the Commissioner.

Please note that the information contained in this booklet is intended to be a guide only, and leaseholders should obtain independent professional advice on all matters.

Statutory framework

The Crown Pastoral Land Act 1998 (CPLA) and the Land Act 1948 (Land Act) contain provisions governing pastoral leases.

The basis of pastoral lease tenure is set out in section 4 of the CPLA which gives the holder:

- the exclusive right of pasturage
- a perpetual right of renewal of the lease for terms of 33 years
- no right to the soil, and
- no right to acquire the fee simple of any of the land.

As well as the statutory provisions applying to a pastoral lease, each lease contains specific contractual requirements. These are set out in the lease document. Copies of lease documents can be obtained from Landonline, the New Zealand electronic survey and title system, through a solicitor or search agent.

To understand the obligations and constraints associated with a pastoral lease, it is important to consider both the contractual requirements in the lease, and the statutory requirements in the legislation.

Under section 24 of the Land Act, the statutory office of the Commissioner is responsible for ensuring that the requirements of a pastoral lease are met.

Government may, from time to time, establish policies that the Commissioner is required to take account of when administering pastoral leases. Information on relevant policies is available from the LINZ website: www.linz.govt.nz.

Pastoral lease provisions

Pastoral leases are governed by a number of statutory and contractual provisions. Some general statutory provisions relate to all Crown leases and these are found in the Land Act (for example, provisions governing good husbandry, timber and lease transfers). Specific statutory provisions relating to Crown pastoral leases are found in the CPLA (such as soil disturbance or burning). Other statutory provisions relating to Crown land are also relevant to pastoral leases (for example, the granting of easements under section 60 of the Land Act, or recreation permits under section 66A of the Land Act). Finally, some contractual provisions are contained in the lease document itself (for example, stock limitations and other conditions relating to the particular lease).

Lease term and lease renewals

The term of a pastoral lease is 33 years, as set out in the lease document and section 5 of the CPLA.

On expiry of the 33 year term, the leaseholder is entitled to obtain a new lease of the land, at a rent determined under section 8 of the CPLA, for a further term of 33 years subject to the same covenants and provisions as the previous lease. A Memorandum of Renewal is registered against the lease to record the renewal.

A renewal of a pastoral lease is a disposition of land by the Crown to which Part IVA of the Conservation Act 1987 (marginal strips) applies.

> See also [Marginal strips](#), page 6 and [Rent review](#), page 5.

Good husbandry

Leaseholders are required to farm the land diligently and in a husbandlike manner according to the rules of good husbandry, and not commit waste (section 99(a) of the Land Act).

The 'rules of good husbandry' are not precisely defined but can reasonably be taken to comprise careful prudent land management and adherence to responsible and 'accepted' farming practices. These provisions impose an obligation to farm the land appropriately and within the terms of the lease and the statutory provisions relating to the lease.

> See also [Weeds and pests](#), page 4.

Weeds and pests

Leaseholders are responsible for biosecurity issues under the terms and covenants of the pastoral lease and must also comply with the Biosecurity Act 1993.

> See also [Good husbandry](#), page 3.

Inspection programme

LINZ aims to inspect every lease once every five years. This is to ensure that information relating to each lease (including the condition of the land) is kept up to date and to verify that the terms of the lease (and any consents) are being complied with. The properties are assessed as objectively as possible against the obligations and covenants of the pastoral lease.

Under section 26(1) of the Land Act, the Commissioner (or any person authorised by him in writing) has the right to enter onto the land for the purpose of inspecting. You will be advised when an inspection is due to be carried out.

Breaches

Any contravention of a statutory or contractual provision of a pastoral lease is taken seriously and may lead to court action.

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

Alleged breaches are investigated by LINZ. An investigation may involve an on-ground inspection and/or a request for an explanation about the circumstances that led to the allegation.

Rent

A pastoral lease provides that the annual rent is payable without demand by equal half yearly payments on 1 January and 1 July each year.

At the time of publication, Cabinet had approved a new production-based rent setting system for Crown pastoral leases.

Rent review

The rent for a pastoral lease is reviewed every 11 years.

Residency

Section 96 of the Land Act provides that a leaseholder is to personally reside on the leased land or on adjoining land. However, section 98(2) of the Land Act provides that the Commissioner may grant an exemption from the residency requirements of the lease where a leaseholder is unable, by reason of his/her vocation, state of health or any other reason that the Commissioner considers sufficient, to reside on the lease.

Where a lease is held by a company, the company cannot, by its nature, fulfil the residency requirements, and an exemption is therefore required. In addition, where a lease is held by a company, the lease has usually been varied to specify that the residency provisions of the lease can be deemed to have been complied with if a person (approved by the Commissioner) resides on and manages the lease, on behalf of the company.

When considering a request for an exemption from residency (or consent to the appointment of an 'approved manager'), the Commissioner will generally require sufficient information to show that the proposed manager has appropriate expertise and experience to manage the lease and to ensure that the land is managed in accordance with the statutory and contractual obligations of the lease.

> See also [Transfers](#), page 6.

Marginal strips

A renewal of a pastoral lease is a disposition of land by the Crown to which Part IVA of the Conservation Act 1987 (marginal strips) applies.

The Department of Conservation is responsible for administering marginal strips and the provisions relating to marginal strips are contained in Part IVA of the Conservation Act. Further information can be obtained from the Department of Conservation.

Transfers

The consent of the Commissioner is required before a pastoral leaseholder can transfer, sublease or otherwise dispose of any interest in the lease (section 89 of the Land Act), except for the grant of a mortgage over the leasehold interest.

When considering an application for consent to transfer a lease, the Commissioner will take into account whether the proposed purchaser has the necessary skills and expertise to manage the pastoral lease and whether the transfer will allow the purpose of the lease to continue to be fulfilled.

Where the purchasers are trustees, special provisions apply (refer section 89(3B) of the Land Act) and purchasers are advised to seek legal advice in these circumstances.

> See also [Residency, page 5](#) and [Stock limitation and exemption from stock limitation, page 9](#).

Discretionary actions

Without the prior written consent of the Commissioner, some specified activities are prohibited on a pastoral lease. These 'discretionary actions or activities include:

- determining whether to grant an easement (section 60(1) Land Act)
- determining whether to consent to removal of timber (section 100 Land Act)
- exercising any discretion regarding recreation permits (section 66A Land Act)
- exercising any discretion regarding burning of vegetation (section 15 CPLA)
- exercising any discretion regarding activities affecting or disturbing soil (section 16 CPLA), and
- considering whether to grant, vary, or revoke, an exemption from any stock limitation (section 9 CPLA).

When considering a request for consent to a discretionary activity, the Commissioner is required to take into account the desirability of protecting 'inherent values' and the desirability of making it easier to use the land for farming (section 18 CPLA).

The Commissioner is required to consult with the Director-General of Conservation when considering requests for consent (section 18 CPLA).

The definition of 'inherent value' in the CPLA is quite wide and includes cultural, ecological, historical, recreational or scientific attributes or characteristic of the land.

Full details of any proposed activity, along with a good plan showing the location and extent of the proposed activity, will assist processing a request for consent.

A form for requesting discretionary action consent is available from the LINZ website, www.linz.govt.nz.

Burning of vegetation

The burning of any vegetation (whether felled or not), requires the Commissioner's prior written consent (section 15 CPLA).

A form for requesting consent to burn is available from the LINZ website, www.linz.govt.nz.

Recreation permit

A pastoral lease does not give a leaseholder the right to undertake any commercial activity other than pastoral farming.

However, under section 66A of the Land Act, the Commissioner may grant a recreation permit to any person to allow the land in a pastoral lease to be used for "any commercial undertaking involving the use of the land for any recreational, tourist, accommodation, safari, or other purpose that in the opinion of the Commissioner may be properly undertaken on the land".

If the land concerned is held in a pastoral lease, recreation permits cannot be granted to third parties (that is, parties other than the registered leaseholder) without the leaseholder's consent.

Easements

From time to time, the Commissioner may be asked to grant an easement across land held in a pastoral lease. Easements over Crown land are governed by section 60 of the Land Act and are granted for a variety of reasons (for example, easements may be for rights of way, conveyance of water, electricity, or telecommunication).

The Commissioner may grant an easement over land held in a pastoral lease without the leaseholder's consent, but leaseholders are entitled to compensation for any reduction in value of the lease arising from the grant of easement (section 60(1) of the Land Act).

Soil disturbance

Soil (or earth) disturbance activities require the Commissioner's prior written consent (section 16 CPLA).

Soil disturbance includes:

- clearing or felling any bush or scrub
- cropping, cultivating, draining or ploughing
- top-dressing
- sowing with seed
- planting trees
- forming any path, road or track
- any other activity affecting, or involving or causing disturbance to the soil.

Stock limitation, and exemption from stock limitation

When pastoral leases were first granted, they were issued subject to limits on the numbers and class of stock able to be grazed on the land. This limitation is sometimes referred to as the 'lease limit'. Details of this limitation can be found in the lease document (available from Landonline). The limitation in the lease represents the level of grazing available under the lease without any further consent being required.

Exemptions are regularly granted to allow leaseholders to carry numbers (and classes) of stock that differ from what is specified in the lease. Such exemptions are commonly called 'personal exemptions', and are personal to the holder of the lease at the time the exemption is granted. A personal exemption is not transferable to a new leaseholder. Prospective purchasers may need to apply for a new exemption if they wish to carry stock other than what the lease specifies.

> See also [Transfers](#), page 6.

Timber

Section 100 of the Land Act prohibits the felling, selling or removing of any timber, tree or bush growing, standing or lying on the land without the Commissioner's consent.

However, consent is not required if the timber or tree is required for any agricultural, pastoral, household, roadmaking or building purpose on the leased land, or has been planted or purchased by the leaseholder.

Rehearing

Decisions made by the Commissioner under Part 1 of the CPLA (such as a decision relating to a consent) or under the Land Act are subject to the rehearing provisions of section 17 of the Land Act.

An application for a rehearing must be made within 21 days of notification (commencing on the date the notification is received). An application for rehearing must be in writing and should specify the ground or grounds for the rehearing. All applications for rehearings should be made to the Commissioner of Crown Lands via the LINZ Pastoral team.

Once the application for a rehearing (including the grounds) has been considered, the Commissioner will decide whether or not to grant the application and hold a rehearing. Rehearings can be held 'on the papers' or may involve a formal hearing.

Tenure review

Part 2 of the CPLA sets out the statutory basis for the tenure review of a pastoral lease. A leaseholder may invite the Commissioner to undertake tenure review but the decision whether or not to undertake a tenure review is at the discretion of the Commissioner.

The process is voluntary and either party may withdraw at any time, up until the time a substantive proposal is accepted by the leaseholder.

Further details of the tenure review process can be found on the LINZ website, www.linz.govt.nz.

Further information

Further information is available on the LINZ website:

www.linz.govt.nz

and from the LINZ Pastoral Team:

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