

Initial advice on options to reintroduce tenure review under the CPLA

Purpose

Enabling secondary land use on Crown pastoral land may not fully achieve the outcomes of unlocking opportunities for innovation and growth. In some cases, making the land freehold to allow private ownership provides more opportunities and may better achieve the outcomes sought.

Background

Tenure review occurred prior to 1998, but the 1998 Act formalised this and provided for a process to review the tenure of high country pastoral lease land in the South Island. The Act also confirmed consenting arrangements and set out for the first time what the Commissioner had to consider when making decisions – balancing the protection of the inherent values on the land affected by the activity and enabling ongoing pastoral farming. The goal was to clarify land use, reduce overlap and reflect land value more fairly.

The Reform Act 2022 repealed part 2 and amended the purpose, which ended tenure review immediately. The process was formally ended following concerns over fairness, value for money for the Crown, Treaty implications and environmental outcomes.

Matters for us to consider

Financial. Reinstating tenure review will require careful management of operational and financial costs. These include administering the process, compensating leaseholders for changes in land value, managing complex boundary adjustments and acquiring land to be added to the conservation estate without any offsetting revenue. We will establish robust valuation approaches and mechanisms to ensure the land is not undervalued.

Treaty. Reinstating tenure review or introducing provisions to freehold Crown pastoral land has implications for Ngai Tahu. The 1998 Act, formalising the tenure review system, came into effect the same year Ngai Tahu's settlement legislation was passed. The original tenure review process did not trigger a Right of First Refusal obligation to Ngai Tahu, it is exempt in the Ngai Tahu Claims Settlement Act 1998. It is also exempt in the Te Taihū settlement legislation. We will need to consult iwi if a tenure review process is reintroduced.

Legislative. Options will require amending the purpose of the Crown Pastoral Land Act, which currently reflects a clear policy to keep the remaining Crown pastoral land in public ownership. This is reflected in the Act's purpose, outcomes and core documents. In contrast, the previous version of the Act supported disposing of Crown land through tenure review – either into freehold ownership or the conservation estate, depending on the land's values.

Engagement. To maintain public trust, any new tenure process will have to be transparent and demonstrate public value. We will design a process that ensures visibility of decision-making, appropriate protection of high value land and consultation, especially in areas where there may already be concerns (e.g. land use and access). We will also assess the best way to manage the residual estate left, including anticipating future land management costs.

Timeframe and scope. We will assess how reintroducing tenure review will integrate with the existing work programme. Our aim is to avoid duplication or delay, ensure coherence with key priorities such as enabling secondary uses and afforestation, and maintain overall programme momentum.

Purpose of the 1998 Act

To establish a system for reviewing the tenure of Crown land held under certain perpetually renewable leases; establish a system for determining how Crown land formerly held under pastoral occupation licence, and certain other Crown land, should be dealt with and otherwise provide for the administration of Crown pastoral land.

Amended purpose 2022 Reform Act

Provided for the administration of pastoral land to achieve the following outcomes: maintaining or enhancing inherent values across the Crown pastoral estate for present and future generations, while providing for ongoing pastoral farming of pastoral land; supporting the Crown in its relationships with Māori under the Treaty and enabling the Crown to get a fair return on its ownership interest in pastoral land.

Potential options to explore

Reinstate a form of tenure review with an improved process

Restore the repealed part 2 and amend the purpose. The advantages to this are that it is a familiar framework, and it signals a bold reset. But, it would require a major legislative shift, there are high fiscal and Treaty risks and it would be controversial. This is the best option if the aim is to make the option available to all lessees to undertake tenure review at their request.

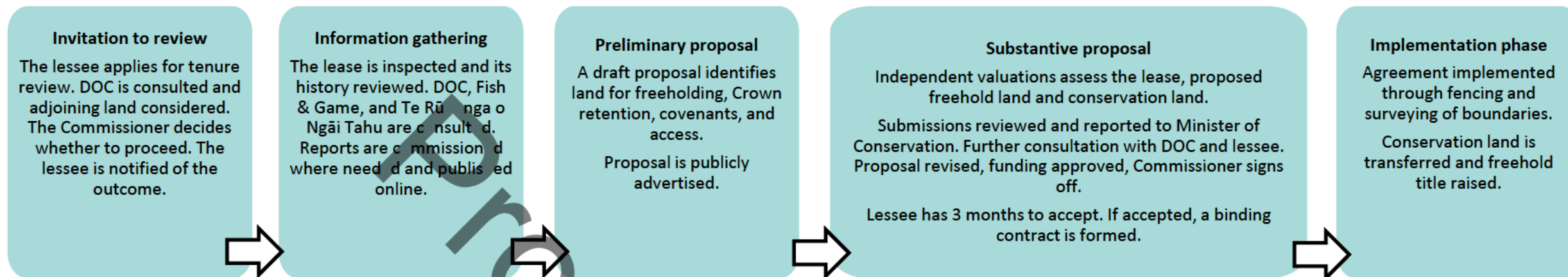
Targeted partial tenure review

Amend the purpose and introduce an option to enable the Commissioner, with the lessee's agreement, to remove specific areas of land from a Crown Pastoral lease where the land may be best used for other uses (e.g. infrastructure development). This is the best option if the aim is to increase flexibility for how Crown Pastoral Land can be used, and allows for control to be kept over costs and impacts on the conservation estate.

Next steps

We will send you an updated briefing on the review of Crown land legislation to share with your ministerial colleagues.

How the 1998 tenure review process worked



Data snapshot: Properties

Properties made freehold under tenure review

- At the time of the 1998 Act coming into force, there were 303 pastoral leases, covering 2.1 million hectares
- 179 leases acquired*
- 345,940 hectares moving into freehold tenure and 302,554 hectares moving to the Crown estate
- 40% of the leases went through tenure review: those that didn't were properties that did not lend themselves easily to freeholding propositions

Current properties in the Crown pastoral estate

- There are currently 160 Crown pastoral leases (with 4 going through tenure review)
- They collectively cover around 1.3 million hectares

* This includes full property purchase and reviews under both the Land Act and CPLA.
 ** The tenure review involved purchasing the whole block of land before splitting it into freehold or conservation land and then selling the agreed freehold area.
 *** This does not include costs incurred prior to the implementation phase – that is, costs associated with developing reports and proposals, undertaking consultation and analysing submissions that occur at other stages of the process, etc.

Data snapshot: Investment and timeframes

Settlement figures have varied across the 30-year process and numbers have not been cost adjusted for today's market. In the last 10 years of the process, **Out of scope** .**

Examples of settlement costs include: **Out of scope**

Since 2012, the average time for a tenure review to be completed is 13 years. The shortest time taken was 6 years. Various factors account for the time, including areas of non-consensus, the resourcing of all parties involved in the process and changes in government policy.

Data snapshot: Costs in the implementation phase***

	Simon's Pass (completed)	Godley Peaks	The Grampians	Hukarere	Dunstan Downs
Service provider & helicopter fees	████	████	████	████	████
Fencing consent	████	████	████	████	████
Survey prescription	████	████	████	████	████
Survey	████	████	████	████	████
Fencing	████	████	████	████	████