

BRF 26-071 Crown land legislation review – Remaining secondary use decisions and proposed amendments to the Land Act 1948

Ki / To: Hon Chris Penk, Minister for Land Information

Rā / Date: 23 September 2025

Ngā mahi matua kia mahia/key actions required

Minita/Minister	Key action required:	Deadline
Hon Chris Penk, Minister for Land Information	Indicate on Appendix 1 your preferred options for changes to the Land Act 1948, and remaining decisions to enable secondary use (definition of secondary use, criteria and tests for decision making).	25 September 2025

Toitū Te Whenua Land Information New Zealand Whakapā/contacts

Ingoa/Name	Tūnga/Position	Nama waea/ Contact number	Whakapā tuatahi/first contact
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Ngā kōrero a te Minita/Minister’s comments

Pūtake/Purpose

- 1 The purpose of this briefing is to seek your decisions on remaining decisions to enable secondary use, and on amendments to the Land Act 1948 to modernise and improve the efficiency of Crown land management.

Pānui whāinga/Key messages

Remaining major decisions to enable secondary use

- 2 To date, you have made the following major policy decisions on enabling secondary use of Crown pastoral land (BRF 26-053 and BRF 26-064 refer):
 - Agreed for a permit system to be the main legislative mechanism, along with a list of activities set in a schedule.
 - Agreed that the decision-making criteria will combine principles set in legislation and the Commissioner of Crown Lands (the Commissioner) discretion.
 - Agreed that only lessees can apply for the secondary use permit.
 - Agreed that the secondary use permit will be a new permit, alongside the existing commercial recreation permit.
 - Agreed that the list of legislative requirements for secondary use permits is consistent with those for commercial recreation permits.
- 3 Your remaining major decisions are on:
 - How secondary use should be defined in legislation.
 - The criteria and tests for decision making.
- 4 LINZ recommends defining secondary use in relation to the schedule of activities¹. This is in addition to a power for the Commissioner to confirm if an activity is a secondary use, if there is any doubt. This approach gives applicants a clear, transparent guide on the approvable activities, while providing flexibility to address where there is uncertainty.
- 5 As a basis for decision-making, LINZ considers that all secondary use should be subject to the purpose and outcomes in sections 1A (purpose) and 4 (outcomes for decision makers) of the Crown Pastoral Land Act 1998 (CPLA). The purpose and outcomes centre on maintaining or enhancing inherent values, supporting the Crown in its relationship with Māori under Te Tiriti, and enabling the Crown to get a fair return on Crown pastoral land.

¹ The schedule includes an enabling provision for the Commissioner to approve any other activities consistent with the CPLA's purpose and criteria for secondary use.

- 6 LINZ recommends that secondary use be subject to a two-step test, consistent with existing permissions and in broad alignment with stakeholder expectations.
- Step one: the Commissioner may approve an activity if it has no more than minor adverse effects on:
 - i. Inherent values; and
 - ii. Pastoral farming activities.
 - Step two: the Commissioner may approve an activity that has more than minor adverse effect on inherent values and/or pastoral farming, only if satisfied that the activity:
 - i. Achieves the purpose and outcomes of the CPLA; and
 - ii. Meets one or more of a list of criteria specified in a new schedule in the CPLA.
- 7 LINZ recognises that activities with “more than minor” adverse effects on inherent values and pastoral farming may still align with the purpose of the CPLA and could be approved. An additional set of criteria is therefore required for the Commissioner to make decisions on these activities and consider the necessary trade-offs between benefits and risks.
- 8 Finally, LINZ considers that secondary use should be subject to the same matters for consideration as discretionary pastoral activities (DPAs) and commercial recreation permits. LINZ also recommends updating the remedial and infringement offences provisions of the CPLA.

Amendments to Land Act 1948 to improve the efficiency of Crown land management

- 9 Operational experience with the Land Act 1948 (the Land Act) has revealed constraints in areas such as short-term land use, trespass management, and land alienation (e.g. by lease or license) processes. LINZ recommends changes to the Act to address these issues.
- 10 One proposed change relates to marginal strips under the Conservation Act 1987. Excluding certain licenses to occupy Crown land from triggering marginal strip requirements could reduce unnecessary cost and complexity for short term use of Crown land where the Crown maintains ownership. This change would require agreement from the Minister of Conservation. LINZ recommends that you agree to officials discussing this change further with the Department of Conservation (DOC).
- 11 Overall, the proposed changes will:
- Better enable the temporary occupation of Crown land for short-term, low-impact activities.
 - Enable partnerships with councils for land management.
 - Provide a clearer pathway for commercial filming on the Crown estate.
 - Modernise the tools for dealing with trespass on the Crown estate.

- Allow digital advertising and flexible methods for the limited alienation and outright sale of Crown land.
- 12 Clarify and strengthen the Commissioner's statutory powers relating to determining the status of Crown land, negating implied covenants and allowing flexibility for rehearing timeframes.

Next steps

- 13 This is the final briefing on the Crown land legislation review's major policy decisions prior to Cabinet. On 29 September 2025, you will be provided with a draft Cabinet Paper for approval to circulate for departmental and Ministerial consultation. Cabinet consideration is scheduled for 12 November 2025.

Tohutohu/Recommendations

Toitū Te Whenua Land Information New Zealand recommends that you:

Indicate on **Appendix 1** your preferred options for changes to the Land Act, and the remaining decisions to enable secondary use.



Becci Whitton

Leader, Strategy and Policy

Toitū Te Whenua Land Information New Zealand

Rā/Date: 22/09/2025

Hon Chris Penk

**Te Minita mō Toitū Te Whenua/
Minister for Land Information**

Rā/Date:

Tāpiritanga/Attachments

Appendix 1: Detailed options table

Part A: Remaining decisions to enable secondary use

Te Horopaki/Background

14 You have made the following decisions on enabling secondary use:

LINZ briefing/meeting date	Decisions on enabling secondary use
BRF 26-053 – Enabling secondary use and land use flexibility Officials meeting on 11 September	<p>Agreed for a permit system to be the main legislative mechanism, along with a list of activities set in schedule</p> <p>Agreed that decision-making criteria combines principles set in legislation, and the Commissioner’s discretion</p> <p>Noted that a package of mechanisms is needed to manage liability risks</p>
BRF 26-064 – Secondary uses, land use flexibility and revenue arrangements Officials meeting on 18 September	<p>Agreed that only lessees can apply for the secondary use permit</p> <p>Agreed to the creation of a new secondary use permit, while retaining the commercial recreation permit</p> <p>Agreed that the list of legislative requirements for secondary use permit is consistent with those for commercial recreation permits</p> <p>Noted that the list of activities should include common secondary uses combined with a threshold for amendment</p> <p>Noted further advice on managing liability and RFR considerations</p>

15 At your meeting with officials on 18 September 2025, you further confirmed:

- That iwi consultation does not need to be a mandatory legislative requirement for the secondary use permit, an approach consistent with the commercial recreation permit. You noted that consultation already occurs in practice, that it has an associated cost, and that iwi have yet to provide feedback on whether consultation should be mandatory.
- Your comfort with seeking Cabinet agreement to delegate decision-making to you on certain matters, including the list of activities in the schedule, and any mechanisms to manage liability.

16 This briefing seeks your decisions on two remaining areas required to finalise the Cabinet paper:

- How secondary use should be defined in legislation.
- Criteria and tests for decision-making.

Definition of secondary use

- 17 A clear legislative definition of secondary use is important in guiding lessees and the Commissioner on what activities can be approved.
- 18 LINZ recommends defining secondary use as any activity contained in a schedule of activities². The schedule will also include “any other activities” as determined by the Commissioner. In making this determination, the Commissioner will be required to consider criteria (the specific criteria are discussed below) and whether the activity is consistent with the purpose of the CPLA.
- 19 This approach is consistent with the way pastoral activities are classified under the CPLA.³ LINZ also proposes that a threshold for amending the schedule of activities be included in the main body of the legislation.
- 20 LINZ considered whether secondary use should be defined as “non-pastoral activities”. LINZ considers that this should be avoided, as it would require defining pastoral activity and/or pastoralism. Pastoralism is generally well understood in its ordinary meaning (use of land for grazing animals) and attempting to define it in legislation could create unintended consequences across the CPLA, including for existing permissions and schedules (for example, schedule 1AB on discretionary pastoral activities).

Tests and criteria for approving secondary use applications

- 21 LINZ recommends approval for secondary uses should:
- Be subject to achieving the CPLA’s purpose and outcomes
 - Take account of inherent values and the impact on pastoral farming
 - Follow a two-step process whereby applications with “no more than minor” impacts on inherent values and pastoral farming are subject to more limited criteria, and applications with “more than minor” impacts are subject to more extensive assessment
 - For applications with “more than minor” impacts, additional criteria are needed
 - Be subject to the same matters for consideration as discretionary pastoral activities and commercial recreation permits.

² Based on stakeholder engagement and anticipated innovative land use, these activities would include arable farming, apiculture, horticulture, viticulture, hospitality, conservation initiatives, and renewable energy generation, gravel extraction. Final advice on the list of activities for inclusion in the schedule will be provided in October.

³ Similar to section 6(4) of the CPLA on classification of activities on pastoral land: “Any question arising as to the class within which any pastoral activity falls must be decided by the Commissioner, whose decision is final”.

Secondary uses should be subject to achieving the CPLA's purpose and outcomes

- 22 LINZ recommends that all secondary uses should be subject to the purpose and outcomes in sections 1A (purpose) and 4 (outcomes for decision makers) of the CPLA. This ensures consistency with all other permissions under the CPLA, and reinforces that secondary use must maintain or enhance inherent values while providing for ongoing pastoral farming, support the Crown in its relationship with Māori under Te Tiriti, and enable the Crown to receive a fair return on its ownership in pastoral land.
- 23 The High Country Advisory Group (HCAG) is also of the view that in enabling secondary use, the CPLA's purpose, outcomes and criteria for decision-making are key to protecting inherent values.

The tests should account for inherent values and the impact on pastoral farming

- 24 The policy objectives of enabling secondary use are to improve the viability of the pastoral leases through enabling additional and diverse income streams for lessees, while ensuring the viability of pastoral farming, and maintaining or enhancing inherent values.
- 25 Given these outcomes, the tests for secondary use must account for the activity's impact on inherent values and existing pastoral farming activities, but must also be broad enough to enable a range of activities.

A two-step approach should be taken for assessing secondary uses in relation to "no more than minor" or "more than minor" impacts

- 26 The existing mechanisms for commercial recreation permits and discretionary pastoral activities (DPAs) follow a two-step test:
- The Commissioner may grant permission for activities with no more than minor adverse effects on inherent values;
 - The Commissioner can only grant permission for activities which have more than minor adverse effects on inherent values where additional criteria are met.
- 27 For both steps, the definition of "no more than minor" is determined by the Commissioner, relying on evidence in each case and taking guidance from relevant case law, this is consistent with other legislation that requires determination on the severity of effects.
- 28 LINZ recommends also using a two-step approach for secondary uses to be consistent with existing processes, and because this aligns with stakeholder expectations. Tests that are radically different to those for DPAs and commercial recreation permits can result in compliance issues, and be difficult to justify. Given that lessees are already familiar with existing tests around the "more than minor" wording, similar wording (and two-step design) for secondary use is both straightforward to implement and justifiable to lessees.

29 HCAG is of the view that the Commissioner must follow current processes for assessing activities and impact on inherent values. The High Country Accord Trust (HCAT) is supportive of alignment between tests for secondary use, DPAs, and commercial recreation permits.

The two-step test for secondary use

30 The two-step approach that LINZ recommends for the secondary use permit is as follows:

- Step one: the Commissioner may approve an activity if it has **no more than minor adverse effects** on:
 - i. **inherent values**; and
 - ii. **pastoral farming activities** being undertaken on the lease, or enabled by the pastoral lease, considering any proposed actions to avoid, remedy or mitigate effects.

In deciding whether effects on pastoral farming activities are minor, the legislation will require the Commissioner to take into account:

- 1) Any likely effect on livestock carrying capacity by the proposed activity; and
- 2) The importance of any affected areas to the overall pastoral farming activity, including but not limited to access, loss of highly productive land, or creation or exacerbation of pest species or habitat for pest species.

Details on how the Commissioner assesses effects on inherent values, and pastoral farming activities, will be set out in operational policy.

- Step two: the Commissioner may approve an activity that has a **more than minor adverse effect** on inherent values and/or pastoral farming, only if satisfied that the activity:
 - i. Achieves the purpose and outcomes of the CPLA; and
 - ii. Meets one or more of a list of criteria specified in a new schedule in the CPLA.

31 The schedule will include detailed decision-making criteria for the Commissioner to assess whether the benefits of the activity (such as a significant contribution to climate change mitigation) outweighs the risks (such as liability risks to the Crown). The next section of this briefing advises you on the schedule's content.

32 This means that the Commissioner will have wider discretion for secondary use permit, than for DPAs. This creates the risk that for certain activities, the Commissioner could find it easier to grant a secondary use permit than allow DPAs. LINZ's view is that this is consistent with the policy intent and risks are adequately mitigated by the proposed decision-making criteria.

For applications with "more than minor" impacts, additional criteria are needed

33 An additional set of criteria is required for the Commissioner to make decisions on activities that have "more than minor" adverse effects, in relation to the benefits and risks in achieving

the CPLA's purpose and outcomes. Consistent with feedback from HCAG, LINZ proposes that the criteria should be based on effect (e.g. impact and scale of a particular activity) rather than being activity-based.

- 34 A risk with enabling activities with "more than minor" adverse effects is the tension between the purpose and outcome of the CPLA, and the activity itself. LINZ anticipates that this may be controversial with environmental stakeholders, for example on the Commissioner's power to enable activities that have more than minor adverse effects on inherent values (even if temporary).
- 35 Because of the significant stakeholder interest in these criteria, LINZ recommends that further stakeholder engagement is undertaken before a final list is provided to you for approval. LINZ recommends that you seek Cabinet approval to agree to the final list of criteria and to issue drafting instructions accordingly. LINZ will provide you with further advice on the finalised criteria and thresholds in October.
- 36 The following list is LINZ's working draft criteria:

Commissioner can approve activity with more than minor adverse effects if satisfied that activity **achieves the CPLA's purpose and outcomes, AND** will result in one or more of the following outcomes:

- a) Long-term maintenance or enhancement of inherent values across the lease;
- b) The long-term viability of the lease for pastoral farming purposes⁴;
- c) A significant contribution to broader biodiversity or other environmental enhancement in the area or nationally;
- d) A significant contribution singularly or as part of a wider project towards reducing greenhouse gas emissions or the effects of climate change;
- e) Reduces the risk or avoids or mitigates effects of a natural hazard, soil erosion, or contamination of land or freshwater;
- f) Significant social or economic benefit to the community or the nation; or
- g) Any other outcome the Commissioner considers relevant.

AND, the Commissioner is satisfied that:

- a) Any adverse effects on inherent values are temporary or are managed to achieve the outcomes in section 4 of the CPLA (outcomes for decision makers);
- b) The activity will not create or exacerbate a biosecurity issue or risk of an issue;

⁴ LINZ proposes that in considering the long-term viability of the lease for pastoral farming purposes under (b), consideration can be given to the values and characteristics of the property for pastoral farming and to market conditions, but not the personal fiscal circumstances of the lessee. This is so that activities with more than minor adverse effects are approved to achieve a public, not private, benefit.

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- c) Any adverse effects on pastoral farming activities undertaken on the land or enabled by the lease are temporary or are managed to achieve the outcomes in section 4 of the CPLA;
 - d) Any current or future risk or liability issues for the Crown as landowner are minor; and
 - e) The suitability of the activity to be located on a Crown pastoral land lease considering:
 - the nature and duration of the activity;
 - any effects on amenity values or activities on adjoining properties;
 - access and infrastructure requirements;
 - the tenure of the land and any current future expectations of being able to subdivide or otherwise separate the activity from the Crown Pastoral lease; and
 - any other matter the Commissioner considers relevant.
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Secondary use should be subject to the same matters for consideration as DPAs and commercial recreation permits

- 37 Section 10 sets the matters the Commissioner must consider approving DPAs and commercial recreation permits. As a high-level summary, the matters for consideration specify that the Commissioner:
- **Must** decline the application in whole, or must grant an application in whole or part.
 - **May** or may not specify conditions. If granting an application, **must** specify the period.
 - The Commissioner **must** not consider offsetting⁵
 - In determining whether to grant an application, the Commissioner **must** be satisfied that the inherent values impacted have been identified, the level of impact and mitigations identified, and alternative activities with less impact considered.
 - The Commissioner **may** consider relevant Government policies, land management plans, cross-boundary effects of the activity, reducing greenhouse gas emissions, and any other matters.
- 38 LINZ recommends that this set of matters applies to secondary use permits as well. As with the tests, given that lessees are already familiar with existing matters for consideration (for commercial recreation permits and DPAs), to have secondary use go through the same set of matters is both straightforward to implement, and justifiable to lessees.

⁵ Currently, section 10(4)(b) of the CPLA prohibits the Commissioner from considering offsetting when considering the potential effects of a DPA on inherent values. You agreed to LINZ's recommendation of a targeted amendment to clarify the prohibition of offsetting (BRF 26-056 refers), and work on the targeted amendment is now underway.

LINZ recommends updating the remedial and infringement offences provisions of the CPLA

39 To better manage liability risks and for consistency with DPAs and commercial recreation permits, LINZ recommends updating sections 100A (costs of remedial action) and 100D (infringement offences) so that:

- The Commissioner may recover, as a debt, the cost of remedial action, to remedy or mitigate a breach by a person undertaking secondary use.
- A person commits an infringement offence if the person undertakes secondary use without a permit.

Proactive release

Part B: Proposed changes to the Land Act 1948

Te Horopaki/Background

- 40 In March 2025, you agreed to the scope of the targeted review of the Crown Pastoral Land Act 1998 and Land Act 1948.
- 41 The Land Act 1948 is the principal legislation governing the administration, management, and disposal of Crown land. It provides the statutory framework for the Commissioner to oversee a wide range of land-related functions, including leasing, licensing, and sale of land, as well as managing unauthorised use.
- 42 While the Land Act continues to provide a solid foundation for the management of Crown land, operational experience has highlighted some practical limitations in the current framework, particularly in relation to the authorisation of short-term land use, trespass management, and land alienation (by lease, license or sale) processes.
- 43 LINZ seeks your agreement to changes to improve the efficiency of Crown land management in the following three areas:
- Addressing constraints on the use of Crown land
 - Modernising the trespass and allotment systems
 - Clarifying and strengthening the Commissioner's statutory powers.
- 44 **Appendix 1** sets out all of the proposals for your decisions.

Addressing constraints on the short-term use of Crown land

- 45 The current legislative framework is designed to manage long-term occupation of Crown land for farming, residential, or commercial purposes. While it does provide mechanisms for authorising short-term, low-impact activities, there are currently barriers that prevent these from being used effectively.
- 46 LINZ proposes changes to Act, and to the Conservation Act 1987 (the Conservation Act) to enable a more responsive and fit-for-purpose system for managing short-term land use, while maintaining appropriate safeguards for conservation and public access:

Clarify commercial filming as an allowable commercial recreation activity

- 47 Commercial filming (and photography) is an activity for which there is substantial and growing demand. LINZ considers that commercial filming is within the scope of Commercial Recreation Permits; however, there is some ambiguity for applicants and the Commissioner, as filming is not listed among the examples and may not be considered a recreational activity. Filming is well-suited to the commercial recreation permit system rather than a lease or license, as it is usually short-term. The Department of Conservation (DOC) uses concessions which are similar in nature to permits for filming on conservation land.

- 48 LINZ recommends amending the existing commercial recreation permit provisions to:
- *include commercial filming and photography.* This would provide legal clarity and consistency for applicants and decision makers and aligns with the existing commercial recreation provisions which already include a list of example activities.
 - *allow public notification to be made digitally as well as in newspapers.*

Exclude temporary authorisations and in some circumstances licenses under the Land Act from triggering marginal strips provisions

- 49 This proposal relates to the interface between the Land Act and the Conservation Act, specifically the treatment of marginal strips when authorising the use of Crown land. The Minister of Conservation is currently progressing a review of the Conservation Act which provides an opportunity to amend how it applies to land that is leased or licensed under the Land Act.
- 50 Section 24 of the Conservation Act 1987 requires that a 20-metre-wide marginal strip be automatically reserved from the disposal of Crown land where it adjoins a lake or a river with a bed averaging 3 metres or more in width. This applies to all forms of disposal, including leases and licences granted under the Land Act. A 2007 Cabinet decision requires these strips to be inspected and surveyed.
- 51 The intent of the marginal strip requirement is to support public access and conservation outcomes. However, the provisions apply to any licence of Crown land, including short-term permissions for temporary activities lasting only a few hours or days. This creates practical challenges for activities such as gravel extraction, which often need to occur in or adjacent to riverbeds. Because the requirement to set aside a marginal strip prohibits use within that area, such activities cannot proceed. The marginal strip provisions also constrain LINZ's ability to lease Crown land to local authorities for public space management, due to the cost and complexity of surveying the strip.
- 52 Section 24B of the Conservation Act provides a power to exempt dispositions from marginal strip requirements. However, the threshold is high and impractical to go through every time one of the identified situations occurs.
- 53 LINZ proposes that marginal strip requirements be reconsidered for the following two categories of Crown land use. LINZ has consulted with the Department of Conservation (DOC), who has confirmed agreement with the rationale and broad support for our proposals. However, the details and possible implications for the Conservation portfolio still need to be worked through to ensure the changes are workable.
- *Agreements with local authorities to manage land via lease or licence.* These arrangements typically involve rent-free arrangements in exchange for land maintenance and deliver clear public benefit, including enhanced public access.

- *Short-term use.* These are one-off, short-term activities such as wedding ceremonies on lake foreshores, community gala days by rivers, or temporary depots for pest management operations. These activities are low-risk, non-exclusive, and do not require long-term occupation of the land.

- 54 LINZ recommends that you engage with the Minister of Conservation to seek amendments to the Conservation Act 1987 to ensure that marginal strip requirements do not automatically apply to short-term authorisations under the Land Act, or, in some cases, to licences with local authorities.
- 55 Policy decisions on the Conservation Amendment Bill have already been made. However, if Cabinet agrees to this proposal, the change could be included in the version of the Bill that is presented back to the Cabinet Legislation Committee.
- 56 If you agree, LINZ will provide you with a separate briefing to support a discussion with the Minister of Conservation.

Modernising the trespass and allotment systems

- 57 The Act provides the Commissioner with powers to manage unauthorised use of Crown land, including through trespass powers, and to allot land through competitive or preferential processes by way of sale or other tenures available under the Land Act. LINZ recommends the following changes to give the Commissioner more modern tools to address contemporary land management challenges:

Strengthen the tools for managing unauthorised use of Crown land

- 58 The current trespass provisions lack the flexibility needed to respond effectively to modern land use pressures, such as abandoned vehicles, semi-mobile dwellings, and low-value chattels. The Land Act requires any seized property to be impounded in a public pound for a minimum of 21 days before it can be sold at public auction, with proceeds (after costs) returned to the owner.
- 59 These provisions reflect the context of 1948, when much Crown land was allocated for farming or settlement by public ballot. They are no longer practical or efficient for managing trespass in a modern context (for example, there are no public pounds for personal property).
- 60 LINZ recommends the following three amendments to improve the effectiveness of trespass management:
- *Introduce a direction-to-remove mechanism* as an alternative to impoundment, allowing the Commissioner to issue formal notices at the site of unauthorised use. This would serve as a direction to remove the property, providing a lawful and visible warning to the owner without requiring immediate impoundment. Transporting and storing impounded property is expensive and logistically challenging, especially in remote areas. A direction-to-remove mechanism avoids these costs by giving owners an opportunity to voluntarily remove their property before enforcement escalates. Notices placed directly on or near the property are

more likely to be seen by the owner, especially in high-use recreational areas where people may return to the site. This increases the likelihood of voluntary compliance and reduces the need for further enforcement.

- *Allow seized goods and livestock to be held in appropriate places or facilities, such as secure yards, rented paddocks, other suitable locations, or in situ, rather than requiring impoundment in a public pound. The current requirement to use a public pound is impractical, as there are few public pounds, they do not accept property other than animals, and many, due to their size cannot accommodate livestock.*
- *Allow the Commissioner to assess the value of unclaimed property and determine whether to auction or dispose of it by other means. Currently, the Land Act contemplates all unclaimed property being auctioned regardless of its value. While auctions are appropriate for higher-value items, much of the property left on Crown land is of minimal or no resale value, making auction impractical and inefficient. Granting the Commissioner discretion to assess the value of unclaimed property and to determine whether it should be auctioned or disposed of by other means would allow the Commissioner to dispose of low-value items, after fair notice, through alternative means such as donation, recycling, or removal to a landfill.*

Update land allotment processes to facilitate modern disposal and advertising practices

- 61 Some forms of alienation of Crown land (e.g. by lease) are currently carried out by competitive allotment, unless one of the exemptions in section 54 of the Land Act applies. Competitive allotment ensures all interested parties have an opportunity to participate and helps secure the best return for the Crown. However, the processes set out in the Land Act require modernisation to reflect contemporary land use and communication practices.
- 62 LINZ recommends two minor but important amendments to how Crown land is disposed of by sale or other tenure:
- *Enable modern advertising methods for public notification. Currently, the Land Act refers to public notices being published in newspapers when Crown land is proposed to be preferentially allotted. The proposed amendment would allow the Commissioner to use modern digital platforms such as the LINZ website and online property portals for public notification.*
 - *Expand the Commissioner's discretion to select the most appropriate disposal method. The Land Act currently prescribes public auction, tender, or application at a specified price. The proposed change would allow the Commissioner to consider alternative methods such as deadline private treaty, expressions of interest, or negotiated sale, particularly where public interest is limited (e.g. small or access restricted grazing leases to adjoining landowners), the cost of auction or tender exceeds the likely return, or a tailored approach better supports market conditions.*

Clarifying and strengthening the Commissioner's statutory powers

63 The Commissioner holds powers to manage and dispose of Crown land on behalf of the Crown. LINZ recommends the following amendments to the Land Act to clarify the Commissioner's statutory powers:

Clarify the power to determine Crown land status

64 While the Commissioner has powers to manage Crown land, including preventing trespass and defining boundaries, the Land Act does not explicitly state that the Commissioner may determine whether land is Crown land, although this is a necessary pre-requisite for the exercise of statutory powers and functions. An express reference to this power would support the Commissioner's decision-making in situations where ownership is unclear, records of title do not apply, or legal disputes arise. To avoid doubt, this would not be a general power to declare land as Crown-owned.

On grant of new leases, allow the Commissioner to vary or waive implied covenants when appropriate

65 The Land Act provides that specific obligations are automatically included in some types of agreements (i.e. implied covenants). These obligations relate to things such as the insurance and maintenance of buildings. The Act currently provides for these obligations to be varied or disapplied after, but not at the time of entry into the agreement. Amending the Land Act to allow for the latter would resolve this inconsistency and also align it with the position in the Property Law Act 2007.

Introduce discretion to extend or waive rehearing timeframes

66 A rehearing is a statutory process where an aggrieved party can ask the Commissioner to review a decision they or a delegate have made under the Land Act. The Commissioner will then undertake a rehearing and determine whether to confirm, overturn or modify the original decision.

67 The current timeframe for an aggrieved party to apply to the Commissioner to have a determination re-considered is 21 calendar days. The Land Act currently doesn't provide any discretion for the Commissioner to extend this period for common delays such as illness, travel, or limited access to legal advice. This creates challenges during periods with multiple statutory holidays (e.g. Christmas/New Year, Easter), when support services may be unavailable.

68 Providing a longer and more flexible timeframe would improve procedural fairness and accessibility to the rehearing process. LINZ recommends introducing a discretionary power for the Commissioner to extend or waive the timeframe when justice requires it, having regard to; the reason for the request; the time elapsed since the deadline; any disadvantage to the applicant if the waiver is not granted; and, any disadvantage to other parties if the waiver is granted.

Operational Implications

69 The proposed amendments to the Land Act are expected to be operationally manageable and will be implemented within existing LINZ systems and processes. Some changes such as new discretionary powers, temporary occupation authorisations, and modernised disposal methods, will require updates to operational policy and staff guidance. LINZ is preparing these materials to ensure consistent application and a smooth transition, and frontline teams are well positioned to support implementation. These changes can be delivered within existing baselines.

Mātanga kōrero/Consultation

70 Limited consultation has occurred on the proposed amendments to the Land Act through the targeted consultation undertaken on the review. As the proposed changes to the Land Act are minor and efficiency-focused, they are not expected to be controversial.

71 However, further policy work and stakeholder engagement is needed to work out the details of the secondary use permit system, including secondary use tests and their relationship to both the targeted amendment to offsetting, and the design of the new statutory process to remove land from the CPLA (BRF 26-064 refers).

72 LINZ will update you on departmental and stakeholder feedback on these proposals.

Ngā Tāwhaitanga/Next Steps

73 LINZ will incorporate your agreed proposals for changes to the Land Act, and policy decisions on enabling secondary use, into the draft Cabinet paper. You will receive the draft on 29 September 2025, for approval to circulate for departmental and Ministerial consultation.

74 As noted above, further work is needed on some detailed matters relating to secondary use permit system. LINZ will confirm the timing of this advice with your office.

BRF 26 – 071 Appendix 1: Options table for Minister’s decisions

Policy issues and context	Options	Analysis and key trade-offs	Cabinet-mandated criteria				Stakeholder Feedback	Indicate your preferred options	Notes
			Efficiency	Effectiveness	Flexibility	Transparency			
Part A: Remaining secondary use decisions									
1. Definition of “secondary use” in legislation	<p>1A. Defining “secondary use” in relation to a schedule of activities (recommended)</p> <p>Working definition: “Any activities as defined in Schedule X (to be determined) of the CPLA”</p> <p>In addition to a list of activities in the schedule, Commissioner can consider any other activities that Commissioner considers align with purpose of CPLA and criteria for secondary use.</p> <p>This is combined with power for Commissioner (set in main body of legislation) to determine, if in doubt, whether an activity is secondary use, and whether a more appropriate mechanism exists.</p>	<p>Strengths:</p> <p>Links applicants to a clear, transparent guide on approvable activities (set out in a schedule).</p> <p>Definition is consistent and closely tied to list of activities and the Commissioner’s discretion.</p> <p>Weaknesses:</p> <p>May give the impression that secondary use is restricted to the specific activities in the schedule.</p> <p>Mitigated by comms and guidance highlighting that Commissioner can consider “any other activities that the Commissioner considers that align with the purpose of CPLA and meets the criteria for secondary use”.</p>	+	+	+	+		<input type="checkbox"/>	
	<p>1B. Defining “secondary use” in relation to pastoralism, or specific secondary use activities</p> <p>Example definition: “Any non-pastoral activities undertaken on Crown pastoral land”.</p>	<p>Strengths:</p> <p>May be more intuitively easier to understand than a definition of secondary use that refers to another part of the legislation (i.e. the schedule).</p> <p>Weaknesses:</p> <p>Pastoralism is generally well understood in its ordinary meaning (use of land for grazing animals) and supported by dictionary definitions.</p> <p>Attempting to define it in legislation could create unintended consequences across the CPLA, including for existing permissions and schedules (for example, schedule 1AB on discretionary pastoral activities).</p>	-	-	-	-		<input type="checkbox"/>	

BRF 26-071 Appendix 1: Options table for Minister's decisions

Policy issues and context	Options	Analysis and key trade-offs	Cabinet-mandated criteria				Stakeholder Feedback	Indicate your preferred options	Notes
			Efficiency	Effectiveness	Flexibility	Transparency			
<p>2. Design of the test for secondary use</p> <p>LINZ recommended two-step approach consistent with other permissions in the CPLA:</p> <p>1. <u>Step one</u>: the Commissioner may approve an activity if it has no more than minor adverse effects on:</p> <p style="margin-left: 20px;">i. Inherent values; and</p> <p style="margin-left: 20px;">ii. Pastoral farming activities.</p> <p>2. <u>Step two</u>: the Commissioner may approve an activity that has more than minor adverse effect on inherent values and/or pastoral farming, only if satisfied that the activity</p> <p style="margin-left: 20px;">i. Achieves the purpose and outcomes of the CPLA; and</p> <p style="margin-left: 20px;">ii. Meets one or more of a list of criteria in relation to the activity's benefits and risks in achieving the CPLA's purpose and outcomes.</p>	<p>2A. A two-step approach consistent with other permissions in the CPLA (recommended)</p>	<p>Strengths:</p> <p>Lessees are already familiar with existing tests around the "more than minor" wording. Similar wording (and two-step design) for secondary use is both straightforward to implement and justifiable to lessees.</p> <p>Enables activities with "more than minor" adverse effects on inherent values and pastoral farming (that still achieve the purpose of the CPLA) to be approved, when combined with a robust set of criteria.</p> <p>Weaknesses:</p> <p>The Commissioner will have wider discretion for secondary use permit, than for DPAs. This creates the risk that for certain activities, the Commissioner could find it easier to grant a secondary use permit than allowing DPAs. This could cause perceptions of unfairness, which can be mitigated by comms and guidance.</p> <p>While legally workable, a risk with enabling activities with "more than minor" adverse effects is the potential clash between the purpose and outcome of the CPLA and the activity. LINZ anticipates that this may be controversial with environmental stakeholders, for example on the Commissioner's power to enable activities that have more than adverse effects on inherent values (even if temporary). This may also be subject to judicial review.</p>							
	<p>2B. An approach different to other permissions in the CPLA</p>	<p>Weaknesses:</p> <p>Tests that are radically different to those for DPAs and commercial recreation permits can result in compliance issues, and be difficult to justify. For example:</p> <ul style="list-style-type: none"> A test that does not consider inherent values will be inconsistent with the CPLA's purpose. A test that does not consider impact on pastoral farming will be inconsistent with the policy objective for secondary use to support the pastoral lease. A test that does not use a two-step approach runs the risk where, for example, the Commissioner has <i>no</i> ability 							

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		to grant consent for secondary uses where adverse effects are <i>more than minor</i> , which goes against the policy objective of enabling secondary use.							
3. Matters for consideration in assessing applications	<p>3A. Status quo, consistent with DPAs and commercial recreation permits (recommended)</p> <p>The high-level summary of section 10 of the CPLA (Commissioner's decision) is:</p> <p>a) Must decline the application in whole, or must grant an application in whole or part.</p> <p>b) May or may not specify conditions. If granting an application, must specify the period.</p> <p>c) The Commissioner must not consider offsetting.</p> <p>d) In determining whether to grant an application, the Commissioner must be satisfied that the inherent values impacted have been identified, the level of impact and mitigations identified, and alternative activities with less impact considered.</p> <p>e) The Commissioner may consider relevant Government policies, land management plans, cross-boundary effects of the activity, reducing greenhouse gas emissions, and any other matters.</p>	<p>Strengths:</p> <p>Given that lessees are already familiar with existing matters for consideration (for commercial recreation permits and DPAs), to have secondary use go through the same set of matters is both straightforward to implement, and justifiable to lessees.</p>	+	+	0	+	<input type="checkbox"/>	Agree to all	
	<p>3B. Different matters for consideration than status quo for DPAs and commercial recreation permits (please indicate your preferences)</p>	<p>Weaknesses:</p> <p>Different matters for consideration than the status quo is more difficult to understand, less straightforward to implement, and more difficult to justify to lessees.</p>	-	-	0	-	<input type="checkbox"/>		
4. Remedial action and infringement offence for secondary use	<p>4A. Consistent with DPAs and commercial recreation permits (recommended)</p> <p>LINZ recommends updating sections 100A</p>	<p>Strengths:</p> <p>Consistent set of remedial action and infringement offence for secondary use (with that of DPAs and commercial recreation permits) is both</p>	+	+	0	+	<input type="checkbox"/>	Agree to all	

¹ Currently, section 10(4)(b) of the CPLA prohibits the Commissioner from considering offsetting when considering the potential effects of a DPA on inherent values. You agreed to LINZ's recommendation of a targeted amendment to clarify the prohibition of offsetting (BRF 26-056 refers), and work on the targeted amendment is now underway.

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Policy issues and context	Options	Analysis and key trade-offs	Cabinet-mandated criteria				Stakeholder Feedback	Indicate your preferred options	Notes
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	<p>(costs of remedial action) and 100D (infringement offences) so that:</p> <ul style="list-style-type: none"> The Commissioner may recover as debt the cost of remedial action, to remedy or mitigate a breach by a person undertaking secondary use. <p>A person commits an infringement offence if the person undertakes secondary use without a permit.</p>	straightforward to implement, and justifiable to lessees.							
	<p>4B. Different wording to DPAs and commercial recreation permits (please indicate your preferences)</p>	<p>Weaknesses: Different set of remedial action and infringement offence than the status quo is more difficult to understand, less straightforward to implement, and more difficult to justify to lessees.</p>	-	-	0	-		<input type="checkbox"/>	

Proactive release

BRF 26-071 Appendix 1: Options table for Minister's decisions

Policy issues and context	Options	Analysis and key trade-offs	Cabinet-mandated criteria				Stakeholder Feedback	Indicate your preferred options	Notes
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Part B: Amendments to the Land Act									
1. Addressing constraints on the short-term use of Crown land The current legislative framework does not adequately support short-term activities that fall outside traditional pastoral or long-term commercial arrangements.	1A. (LINZ preferred option) Clarify commercial filming and photography are allowable commercial recreation activities. To clarify that the commercial recreation permit is the appropriate authorisation for commercial filming and photography taking place on Crown land.	Strengths: Provides legal clarity and ensures consistency with other short term commercial uses.	+	0	+	+	All stakeholders engaged during targeted consultation (High Country Advisory Trust (HCAT), High Country Accord Group (HCAG), and Iwi) were supportive of targeted changes to the Land Act for modernisation and efficiency.	<input type="checkbox"/>	
	1B. (LINZ preferred option) Enable digital notification of commercial recreation permit applications To allow notices to be made digitally as well as in newspapers.	Strengths: Improves accessibility and reach and aligns with public expectations.	+	+	+	+		<input type="checkbox"/>	
	1C. (LINZ preferred option) Agree to engage with the Minister of Conservation to seek amendments to the Conservation Act 1987 To exclude short-term uses and, in some circumstances, non-exclusive licences from the marginal strip provisions. Where the land remains in Crown ownership and will revert to Crown control on expiry.	Strengths: Removes unintended barriers to the short-term use of Crown land.	+	+	++	+		<input type="checkbox"/>	
2. Modernising the trespass system The Commissioner requires more modern tools to address contemporary trespass issues such as abandoned vehicles, semi-mobile dwellings, and the dumping of low-value property.	2A. (LINZ preferred option) Introduce a direction-to-remove mechanism for unauthorised property on Crown land To provide the Commissioner with an additional tool to impounding the property.	Strengths: Enables a proportional response to trespass and supports operational efficiency.	++	++	++	+		<input type="checkbox"/>	
	2B. (LINZ preferred option) Allow seized property and livestock to be held in any appropriate place or facility To remove the limitation that seized property must be held in a public pound.	Strengths: Modernises an outdated concept, supports operational flexibility, and improves Crown responsiveness.	+	++	++	+		<input type="checkbox"/>	
	2C. (LINZ preferred option) Allow the Commissioner to assess the value of unclaimed property and determine whether to auction or dispose of it by other means	Strengths: Allows the Commissioner to make the most cost-effective decision in relation to disposing unclaimed property.	++	+	++	0		<input type="checkbox"/>	

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Policy issues and context	Options	Analysis and key trade-offs	Cabinet-mandated criteria				Stakeholder Feedback	Indicate your preferred options	Notes
			Efficiency	Effectiveness	Flexibility	Transparency			
	To provide the Commissioner with more flexibility to dispose of low value property in a cost-effective way.								
3. Modernising the allotment (allocation of Crown land) system The current allotment process does not reflect contemporary land use and communication practices.	3A. (LINZ preferred option) Enable modern advertising methods for public notification of the sale or lease (or license) of Crown land To provide the Commissioner with flexibility to determine the advertising methods that will have the best reach, rather than solely newspaper advertising.	Strengths: Improves accessibility and reach and better meets public expectations for communication.	+	++	++	++	<input type="checkbox"/>		
	3B. (LINZ preferred option) Expand the Commissioner's discretion to select the most appropriate method to dispose of Crown land To enable the Commissioner to decide on the best disposal method based on market factors, rather than being restricted to public auction or tender.	Strengths: Supports flexibility based on market conditions and operational realities.	++	++	++	+	<input type="checkbox"/>		
4. Clarifying and strengthening the Commissioner's statutory powers. Areas of ambiguity and gaps in the Commissioner's powers have been identified which limit the Commissioner's effectiveness in these areas.	4A. (LINZ preferred option) State in the Act that, for the purpose of exercising their statutory functions, the Commissioner may determine whether land is Crown land. To support the Commissioner's decision-making in situations where ownership is unclear, records of title do not apply, or legal disputes arise	Strengths: Provides legal certainty and operational clarity.	0	+	0	+	<input type="checkbox"/>		
	4B. (LINZ preferred option) Allow the Commissioner to waive, or vary, implied covenants where appropriate on the grant of lease. To resolve inconsistency in the treatment of covenants and align with the position in the Property Law Act 2007.	Strengths: Provides legal clarity and supports consistency.	0	0	0	+	<input type="checkbox"/>		
	4C. (LINZ preferred option) Introduce a discretionary power for the Commissioner to extend or waive the legislated timeframe for a rehearing. To give the Commissioner discretion to allow flexibility on the timeframe for applicants to request a rehearing of decisions or determinations.	Strengths: Ensures fairness, provides flexibility and is consistent with modern practice.	0	+	++	+	<input type="checkbox"/>		

Key:

- ++ much better than doing nothing/the status quo/counterfactual
- + better than doing nothing/the status quo/counterfactual
- + / - a mixture of positive and negative effects
- 0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual

Green shaded is LINZ preferred option

Proactive release