

# BRF 26-109 Crown land legislation review – final set of decisions to enable secondary use

<b>Ki / To:</b>	Hon Chris Penk Minister for Land Information	<b>Rā / Date:</b>	17 November 2025
<b>Priority Level</b>	Priority: High	<b>Action required by</b>	20 November 2025

## Purpose

- This briefing seeks your decisions on:
  - decision-making criteria for activities with more than minor adverse effects
  - finalised list of secondary use activities in a schedule
  - mechanisms to manage liability issues
  - [s 9(2)(f)(iv)]
  - seeking Cabinet delegation on final decisions on the relativity between the secondary use permit and other permissions in the CPLA.
- This briefing also provides you with Toitū Te Whenua Land Information New Zealand's (LINZ) initial advice on iwi interests in relation to secondary use.
- Your decisions on these matters will be reflected in the Cabinet paper for consideration by ECO on 3 December (rather than seeking delegated authority, as originally planned).

## Toitū Te Whenua Land Information New Zealand Whakapā/contacts

Ingoa/Name	Nama waea/ Contact number	Whakapā tuatahi/first contact
<b>Stacey Newlands</b> <b>Acting Head of Strategy and Policy</b>	021 242 3602	<input type="checkbox"/>
<b>Becci Whitton</b> <b>Leader, Strategy and Policy</b>	027 212 4943	<input checked="" type="checkbox"/>

## Ngā kōrero a te Minita/Minister's comments

PLEASE SEE PARA 5: UPDATE TO CRITERION RE LEASE VIABILITY  
THANKS!

## Pānui whāinga/Key messages

### *Decision-making criteria for secondary use activities with **more than minor** adverse effects*

- 1 The finalised decision-making criteria aim to ensure secondary use activities will achieve the purpose and outcomes of the CPLA. The criteria also aim to achieve a degree of relativity and alignment between the tests for secondary use and discretionary pastoral activities. They are largely aligned with the previous iteration provided to you, with minor refinements (BRF 26-071 refers). ✓
- 2 LINZ considers that the criteria for secondary use should not be more liberal than the criteria for pastoral farming activities (including discretionary pastoral activities) and commercial recreation permits. LINZ recommends that you seek Cabinet delegation to make final policy decisions on the relativity between the tests for the secondary use permit, the commercial recreation permit, and discretionary pastoral activities. ✓

### *The list of secondary use activities in a schedule, s 9(2)(f)(iv)*

- 3 The finalised list consists of secondary use activities that allow diversification in land uses in rural areas, and reflects stakeholder feedback. Examples include viticulture, horticulture, native plantation forestry, and renewable energy generation. ✓

s 9(2)(f)(iv)

### *Mechanisms to manage liability issues*

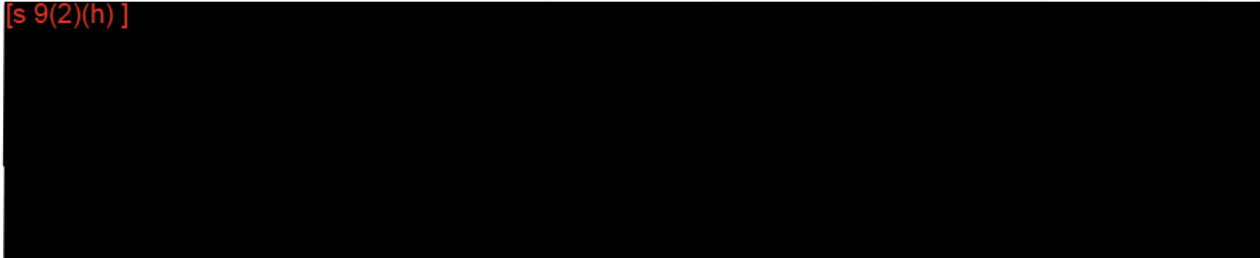
- 5 Setting terms and conditions in the secondary use permit is the most adaptable and practical approach to manage liability. Given this, the only legislative amendments LINZ proposes are for the remedial action (section 100A), enforceable undertakings (section 100B), and infringement offences (section 100D) provisions in the CPLA to also cover the secondary use permit.

### *LINZ's initial advice on secondary use and iwi interests*

- 6 Ngāi Tahu's feedback on the proposals emphasised that the High Country is culturally significant for iwi, and secondary uses could undermine the CPLA's purpose and outcomes. Ngāi Tahu considers that broadening secondary uses could effectively transfer ownership and control from the Crown to lessees without triggering RFR obligations, which is not consistent with the spirit or wording of settlement legislation.
- 7 Consistent with Ngāi Tahu's expectations, LINZ is committed to upholding the principles of Te Tiriti, and working in genuine partnership with iwi. LINZ notes that the latest tranche of policy work should address some areas of Ngāi Tahu and iwi concern. For example, all secondary use must seek to or achieve the CPLA's purpose and outcomes,

and LINZ recommends that the Māori interests provision in the CPLA (section 5) apply to secondary use.

[s 9(2)(h)]



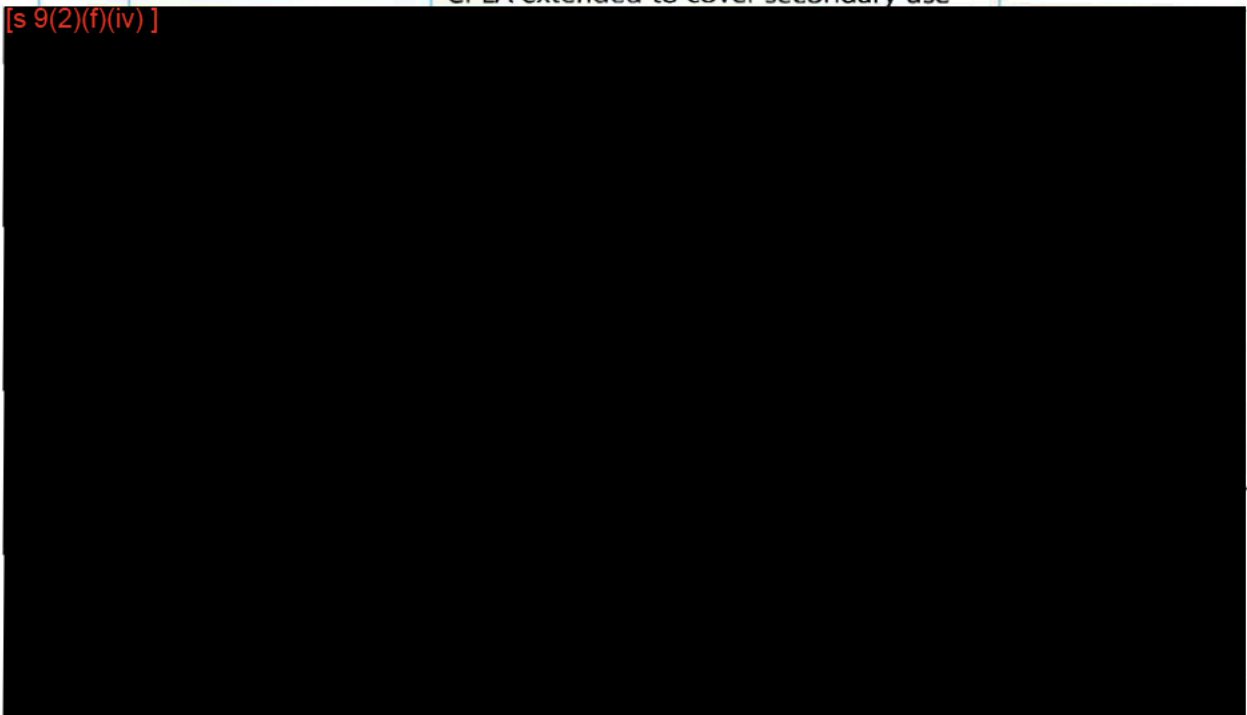
9 LINZ will continue to engage proactively with Ngāi Tahu and iwi, as well as undertaking further Treaty implications analysis of the overall reforms.

**Tohutohu/Recommendations**

Toitū Te Whenua Land Information New Zealand Recommends that you:			
1.	<b>Āmine/Agree</b>	to the finalised decision-making criteria for secondary use in paragraph 5	Agree / Disagree
2.	<b>Āmine/Agree</b>	to finalised list of secondary use activities in a schedule, in paragraph 17	Agree / Disagree
3.	<b>Āmine/Agree</b>	that liability issues will be managed primarily through terms and conditions, with section 100A, 100B, and 100D of the CPLA extended to cover secondary use	Agree / Disagree

*BUT IN AMENDMENTS; SEE p. 5/11*

[s 9(2)(f)(iv)]



[s 9(2)(f)(iv)]

5.	<b>Āmine/Agree</b>	to seek Cabinet delegation to make final decisions on the relativity between the criteria for the secondary use permit,	Agree / Disagree
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**Toitū Te Whenua Land Information New Zealand Recommends that you:**

	commercial recreation permit, and discretionary pastoral activities	
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Becci Whitton  
**Leader, Strategy and Policy**  
**Toitū Te Whenua Land Information New Zealand**

Rā/Date: 17/11/2025



Hon Chris Penk  
**Te Minita mō Toitū Te Whenua**  
**Minister for Land Information**

Rā/Date: 19 NOV 2025

Proactive release

## Te Horopaki/Background

- 1 You previously made decisions on the design of the secondary use permit system in the following tranches of briefings:
  - BRF 26-053 (8 September) – high level design principles
  - BRF 26-064 (16 September) – who can apply, permit design, and operational considerations
  - BRF 26-071 (25 September) – decision-making criteria
  - BRF 26-092 (13 October) – minor decisions.
- 2 This briefing advises you on final decisions you need to make to enable secondary use. It was originally proposed for you to seek Cabinet delegation on these final decisions due to additional stakeholder engagement required. Given the revised timelines, your final decisions will now be incorporated into the Cabinet paper.

## Decision-making criteria for secondary use activities with more than minor effects

- 3 You previously agreed that where an activity has **more than minor** adverse effects on inherent values or pastoral farming (even after actions to avoid, remedy, or mitigate the effects have been undertaken), the Commissioner will be able to approve the application only if satisfied that further criteria to manage risks are met (BRF 26-071 refers).
- 4 The purpose of these criteria is to ensure the secondary use activities, even with more than minor adverse effects, will help achieve the purpose and outcomes of the CPLA. The proposed criteria also ensure relativity and alignment between the tests for secondary use and discretionary pastoral activities.
- 5 LINZ recommends the following criteria:

The Commissioner can approve application with **more than minor adverse effects only** if satisfied that the proposed activity meets one or more of the following criteria:

- a) the activity will make use of existing, lawfully established buildings or infrastructure on the leased land (but cannot otherwise be approved by a commercial recreation permit, as it is not a commercial recreation activity)<sup>1</sup>;
- b) the activity supports long-term maintenance or enhancement of inherent values when the lease is considered as a whole, or within the local Ecological District<sup>2</sup>, or the South Island High Country;
- c) the activity supports the long-term viability of the lease for pastoral farming purposes;

✓  
 ) OR DOES NOT PRECLUDE,

<sup>1</sup> This criterion is a reference to the commercial recreation permit, under which commercial recreation activities with more than minor adverse effects can be approved if using existing infrastructure or buildings.

<sup>2</sup> Ecological District is a specific classification that the Department of Conservation (DOC) uses, and is the basis on which DOC often provide the assessment of ecological values across New Zealand.

- d) the activity makes a significant contribution to biodiversity, freshwater or other environmental management goals nationally or regionally;
- e) the activity will make a significant contribution singularly or as part of a wider project towards reducing greenhouse gas emissions or the effects of climate change;
- f) the activity will reduce the risk or avoid or mitigate effects of a natural or anthropogenic hazard, or a pest or other biosecurity incursion; or
- g) the outcome of the activity will, in any other way, support the purpose and outcomes of the CPLA.
- 6 Previous versions of the draft criteria included the following additional matters that the Commissioner must consider (and be satisfied with) in assessing all secondary use applications.
- a) the activity seeks to/achieves the outcomes in section 4 of the CPLA (outcomes for decision makers); **AND**
- b) the activity is suitable to be located on a Crown pastoral land lease, considering:
- any current or future risk or liability issues for the Crown
  - the nature and duration of the activity
  - any biosecurity issue or risk of a biosecurity issue
  - access and infrastructure requirements
  - the tenure of the land and any likely current or future expectations of being able to subdivide or otherwise separate the activity from the Crown Pastoral lease; and
  - any other matters the Commissioner considers relevant.
- 7 LINZ now recommends that these matters be set out in operational policy instead of legislation. This is because even without being explicitly mentioned in the legislation, the Commissioner will be required to consider these matters when assessing whether an activity aligns with the CPLA's purpose and outcomes.
- 8 Previous versions of the draft criteria also included "significant social or economic benefit to the community or the nation" as a criterion under which an activity with more than minor adverse effects may potentially be approved. This criterion has since been removed. LINZ considers that activities that offer significant social and economic benefits (especially on a national scale) will likely result in the displacement of pastoral farming as the primary activity, and therefore not are unlikely to align with the purpose and outcomes of the CPLA.
- 9 The policy intent is to enable secondary use with criteria that are relatively consistent with other related permissions in the CPLA, such as the commercial recreation permit and

the discretionary pastoral activities. This means that LINZ is recommending a fairly structured approach to the design of the legislative provisions for secondary use.

- 10 The High Country Accord Trust (HCAT) and High Country Advisory Group (HCAG) are comfortable with this approach. Ngāi Tahu have concerns around the proposals for secondary use. LINZ considers that the approach of aligning secondary use with other permissions should address some of Ngāi Tahu's concerns. LINZ's initial advice on secondary use and iwi interests are set out later in this briefing.

### Relativity between the criteria for secondary use, discretionary pastoral activities, and commercial recreation permits

- 11 The decision-making criteria for secondary use are intended to be relatively aligned to the criteria for discretionary pastoral activities and commercial recreation permits. Your previous decisions have reflected this position.
- 12 LINZ has identified an alignment issue between the secondary use permit and the commercial recreation permit. Commercial recreation permits can be issued for activities such as commercial recreation, tourism and accommodation. Where the activity has more than minor effects on inherent values, a commercial recreation permit can only be approved if the activity uses **existing** infrastructure. In contrast, under the new secondary use permit activities involving **new** infrastructure can potentially be approved.
- 13 Left as is, this approach will result in unintended inconsistency between the ability to grant a commercial recreation permit when effects are more than minor and a secondary use. An example is a situation where a new fruit processing facility with more than minor adverse effects is approved under a secondary use permit, but a new tourism lodge (with similar more than minor adverse effects) cannot be approved under a commercial recreation permit as it is not using existing infrastructure.
- 14 You previously agreed to seek Cabinet delegation to make final policy decisions on relativity between the tests for discretionary pastoral activities and secondary use (BRF 26-092 refers). LINZ recommends that this is extended so that the criteria for commercial recreation permits is considered as well.
- 15 LINZ's view is that it is likely that these criteria will be refined during the drafting process, with the benefit of input from Parliamentary Counsel Office (PCO). LINZ recommends that you seek this delegation to avoid any doubt that you can make final decisions on this matter. ✓

### Finalised list of secondary use activities in a schedule

- 16 You previously agreed that secondary use be defined as a list of activities, set in a schedule, which will signal to leaseholders the types of activities that can generally be enabled, while also reflecting activities that leaseholders are likely to undertake (BRF 26-053 refers).
- 17 The Commissioner will be able to give permission for activities not listed in the schedule, provided the Commissioner is satisfied that the activity is not a pastoral farming activity,

not more appropriately enabled by another permission applicable to Crown pastoral land, and will be consistent with the purpose and outcomes of the CPLA (BRF 26-071 refers). The recommended list of secondary use activities is below. The activities allow diversification in land uses in rural areas, and reflect stakeholder feedback.

- arable farming (other than activities that are ancillary to pastoral farming)
- viticulture or horticulture
- apiculture (beekeeping)
- aquaculture
- native plantation forestry or native carbon forestry<sup>3</sup>
- environmental restoration or enhancement activities including carbon/biodiversity programmes involving indigenous bush, wetlands or other activities beneficial to inherent values
- gravel extraction, stockpiling, processing, or screening<sup>4</sup>
- renewable energy generation
- processing or sale of products grown or reared locally
- research, fieldwork, training facilities and activities associated with primary production, conservation, or outdoor education.

17 LINZ notes that you previously agreed for this schedule to be amendable through Order in Council (BRF 26-092 refers). A new activity will only be able to be included in the schedule if the Minister is satisfied the activity is not a pastoral farming activity, is not more appropriately provided for using another applicable permission, that it will be consistent with the purpose and outcomes of the CPLA, and that consultation with Ministers, iwi, leaseholder representatives, and the public has been undertaken.

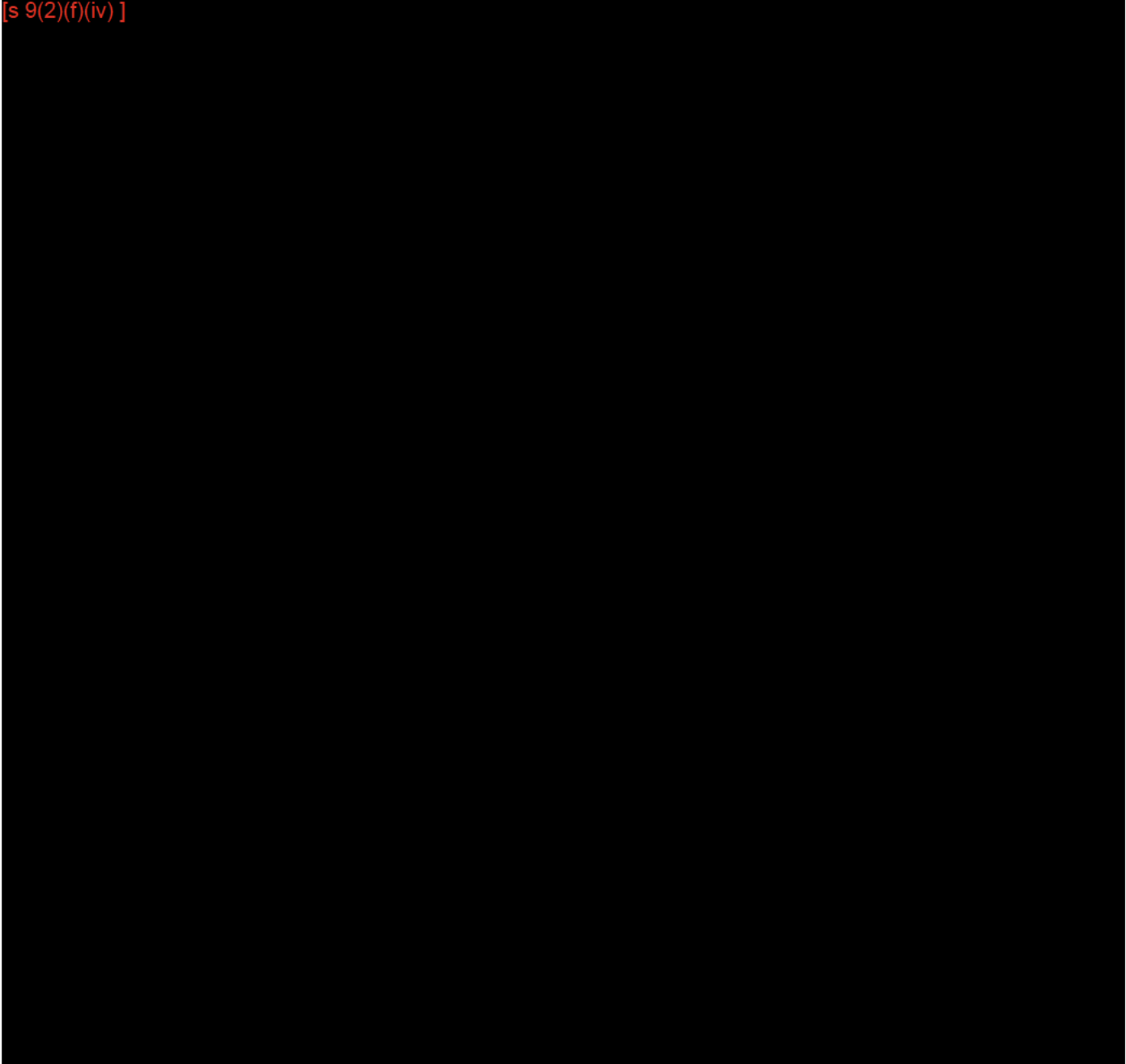
s 9(2)(f)(iv)

[s 9(2)(f)(iv) ]

<sup>3</sup> Tree planting associated with pastoral farming (for example shelterbelts and woodlots) and to manage soil erosion is not to be considered as a form of afforestation, as these have already been classified as discretionary pastoral activities under Schedule 1AB.

<sup>4</sup> The secondary use permit is a more appropriate and fit-for-purpose mechanism to enable gravel-related activities than the permissions historically used (e.g. easements). Gravel extraction licenses can be issued for unalienated Crown land, but not where there is a pastoral lease (which is by definition alienated Crown land).

[s 9(2)(f)(iv)]



### Mechanisms to manage liability

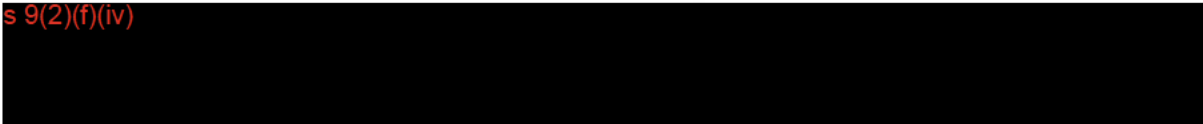


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[s 9(2)(f)(iv)]



[s 9(2)(f)(iv)]



- 23 Secondary uses may introduce new liability risks for the Crown as landowner, such as where a permit holder fails to remediate environmental degradation, fails to maintain improvements, or a third-party contractor abandons the land without complying with the permit.
- 24 While these risks already occur to some degree with existing permissions, the secondary use permit will enable a much wider, varied range of potential activities, potentially exposing the Crown to a more significant degree of liability risk.
- 25 LINZ considers that **setting specific terms and conditions in the secondary use permit** is the most adaptable and practical approach to manage liability.<sup>7</sup> The variety of secondary uses lends itself to a flexible approach that can account for the individual circumstances of the proposed activity.<sup>8</sup>
- 26 This approach is also consistent to how liability on commercial recreation permits are managed, an approach that LINZ considers is working well.

27 s 9(2)(h)

- 28 Some examples of terms and conditions include indemnity and insurance requirements, remedy and termination clauses, bank guarantees, and cash bonds. In addition, if desired, the Commissioner can link a breach of the secondary use permit to a breach of the lease.
- 29 Following this approach, LINZ proposes that the only legislative amendments required are that the remedial action (section 100A), enforceable undertakings (section 100B), and infringement offences (section 100D) provisions of the CPLA are updated. This is so that along with discretionary pastoral activities and other permissions, the secondary use permit is also covered by these provisions.
- 30 As you previously agreed to update sections 100A and 100D (BRF 26-071 refers), the only remaining decision is to update enforceable undertakings (section 100B) to cover secondary use. This will enable the Commissioner to accept enforceable undertakings and seek District Court orders to remedy breaches or impose up to \$50,000 in exemplary damages in relation to breaches of secondary use permits.

### Initial advice on iwi interests and secondary use

- 31 LINZ received feedback from Ngāi Tahu on 7 November as part of ongoing consultation on the proposed reforms. Ngāi Tahu provided feedback on both the proposed secondary use permit and pathway for land disposals.
- 32 Key points from Ngāi Tahu's feedback on the proposed secondary use permit are:

<sup>7</sup> Consistent with discretionary pastoral activities and commercial recreation permits, you agreed that the Commissioner will be able to grant the application with or without any conditions, limitations, directions, or restrictions (BRF 26-064 refers).

- Ngāi Tahu emphasised that the High Country is culturally significant for iwi. Secondary uses could undermine the CPLA's purpose and outcomes by prioritising commodification over protection and stewardship, threatening economic, landscape, cultural, and scientific values.
- Broadening secondary uses could effectively transfer ownership and control from the Crown to lessees without triggering RFR obligations, undermining Treaty settlement obligations.

33 Consistent with Ngāi Tahu's expectations, LINZ is committed to upholding the principles of Te Tiriti and working in genuine partnership. LINZ notes that the latest tranche of policy work has addressed some areas of Ngāi Tahu and iwi concern:

- Consistent with other permissions, section 5 of the CPLA (Māori interests) will apply to the secondary use permit.<sup>9</sup> ✓
- All decisions on secondary use must seek to, or achieve, the CPLA's purpose and outcomes. This includes maintaining or enhancing inherent values (including ecological, landscape, cultural, heritage, or scientific values), and supporting the Crown in its relationships with Māori under Te Tiriti. ✓
- The Commissioner regularly consults with iwi on decisions as standard operational practice and in the spirit of being a good Treaty partner. ✓

[s 9(2)(h)]

35 LINZ will also undertake further work on addressing this issue at an operational level. ✓

36 LINZ will continue to engage proactively with Ngāi Tahu and iwi and support you in your upcoming meeting with Ngāi Tahu. LINZ is also undertaking further Treaty implications analysis of the overall package of reforms (including land disposal), and this advice will be provided to you by 1 December 2025. ✓

#### Ngā Tāwhaitanga/Next Steps and/or angawā/timeframes

37 LINZ recommends that you make decisions by 20 November at the latest, so that they can be incorporated into the updated Cabinet paper. Another round of departmental and Ministerial consultation is planned to run from 20 to 25 November, ahead of lodgement on 27 November. ✓

<sup>9</sup> Under section 5 of the CPLA, the Crown must recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, mahinga kai, wāhi tapu, and other taonga in any case where a permission on Crown pastoral land is sought.