



BRF 26-160 Further decisions on the design of the pathway for removing land from the Crown pastoral estate

Ki / To:	Hon Chris Penk Minister for Land Information	Rā / Date:	10 December 2025
Priority Level	Priority: High	Action required by	15 December 2025

Purpose

This briefing seeks further decisions on the design of the land removal pathway, to enable LINZ to issue drafting instructions to the Parliamentary Counsel Office (PCO).

Toitū Te Whenua Land Information New Zealand

Whakapā/contacts

Ingoa/Name	Nama waea/ Contact number	Whakapā tuatahi/first contact
Becci Whitton Leader, Strategy and Policy	027 212 4943	<input checked="" type="checkbox"/>
Amy Helm Principal Advisor, Strategy and Policy	04 460 2710	<input type="checkbox"/>

Ngā kōrero a te Minita/Minister's comments

✓. PLEASE PROCEED!
PLEASE CONFIRM TO ME LATER (IE NOT TO SEND PCO INSTRUCTION) THAT C.C.L. DECISIONS ARE JUDICIAL ✓

REVIEWABLE.

Key messages

- You were authorised by Cabinet on 8 December 2025 to make further policy decisions on the design of the pathway to remove land from the Crown pastoral estate.
- This briefing seeks policy decisions on:
 - the application of Crown Pastoral Land Act (CPLA) section 4 (outcomes for decision makers) to the new land removal pathway
 - the application of CPLA section 5 (Māori interests) to the new land removal pathway
 - the delegability of the Minister’s decisions
 - whether there should be provision for appeal of the Minister’s decisions
 - the ability to appeal the Commissioner of Crown Land’s (the Commissioner) decisions.
- Following your decisions, LINZ will prepare drafting instructions on the CPLA and Land Act reforms to be provided to PCO by 19 December 2025.

Tohutohu/Recommendations

Toitū Te Whenua Land Information New Zealand recommends that you:			
1.	Indicate	On Appendix 1 your agreement with the recommended design choices for the new pathway for removing land from the Crown pastoral estate.	Indicated
2.	Authorise	LINZ to issue drafting instructions to PCO on the basis of the decision made in this briefing and BRF 26-140.	Authorise



Becci Whitton, Leader, Strategy and Policy
Toitū Te Whenua
Land Information New Zealand

Rā/Date: 10 December 2025



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

Rā/Date: 16.12.2025

Proactive release

Te Horopaki/Background

1. On 18 November 2025, you agreed to the objectives, gateway test design, consultation requirements, and decision-making roles for the new pathway for removing land from the Crown pastoral estate (BRF 26-127 refers). These decisions were reflected in the Cabinet paper.
2. On 3 December 2025, Cabinet agreed that the CPLA be amended to create a clearer pathway for removing land from the Crown pastoral estate where significant land use change is proposed, and authorised the Minister for Land Information to make further policy decisions and issue drafting instructions relating to the design of the removal pathway process (ECO-25-MIN-0203 refers).
3. On 9 December 2025 LINZ provided you with a briefing on decision criteria and the design of the disposal process, including preferential allotment, obtaining planning permissions, and ongoing conditions and monitoring to ensure benefits are delivered (BRF 26-140 refers).

Remaining policy decisions on the design of the land removal pathway

4. This briefing seeks the remaining policy decisions on the design of the land removal pathway to enable drafting instructions to be issued.
 - A. **Application of section 4 (outcomes for decision makers)**
5. Section 4 of the CPLA states the outcomes that all decision makers must seek to achieve in performing or exercising functions, duties or powers under the Act¹.
6. LINZ recommends that the outcome in section 4(1)(a) should not apply to the land disposal pathway, as the purpose of the removal pathway is to enable a change in use away from pastoral farming and the wider public benefit may outweigh any negative effects a proposal may have on inherent values.

¹ The outcomes for decision makers in section 4 the CPLA are:

- (1) All persons performing or exercising the Crown's functions, duties, or powers in relation to pastoral land under this Act or the Land Act 1948 must seek to achieve the following:
 - (a) maintaining or enhancing inherent values across the Crown pastoral estate for present and future generations, while providing for ongoing pastoral farming of pastoral land; and
 - (b) supporting the Crown in its relationships with Māori under te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (c) enabling the Crown to get a fair return on its ownership interest in pastoral land.
- (2) Subsection (1)(c) applies only to functions, duties, or powers that relate to rents, easements, or commercial recreation permits in respect of pastoral land.

7. LINZ considers it is appropriate that the outcomes for decision makers in section 4(1)(b) and (c) of the CPLA apply to decisions taken under the pathway. In practice, the outcomes operate as 'bottom lines' in ministerial decision making under the pathway. The Minister for Land Information will have the discretion to decide that the public benefits of the proposal outweigh keeping the land in the Crown pastoral estate, while ensuring the decision is consistent with seeking to achieve the outcomes of supporting the Crown in its relationships with Māori under te Tiriti of Waitangi/the Treaty of Waitangi and enabling the Crown to get a fair return on its ownership interest in pastoral land.

B. Application of section 5 (Māori interests)

8. Section 5 relates to the Crown's responsibilities under te Tiriti of Waitangi/the Treaty of Waitangi in relation to Crown pastoral land. It is a descriptive/specific form of Treaty clause that describes how the Crown's Treaty responsibilities are to be given effect to in the Act. You have already agreed that the duty to consult in section 5(1)(b) will apply to the gateway and full assessment stages of the pathway (BRF 26-127 refers).
9. Section 5(1)(a) of the CPLA requires that 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. It applies to specified regulatory processes under the CPLA.
10. LINZ recommends that section 5(1)(a) apply to the land removal pathway. LINZ considers the application of this existing provision to be the most appropriate way to provide for the Crown's Treaty of Waitangi responsibilities in respect of the land removal pathway.
11. In their letter to the Commissioner on 7 November 2025, Te Rūnanga o Ngāi Tahu said that broadening section 5 to apply to all processes and decisions concerning secondary land uses or the removal of land from the Crown pastoral estate is essential to ensure that Ngāi Tahu rights and interests are consistently upheld, including recognition and provision for Ngāi Tahu cultural, social, environmental and economic aspirations for their ancestral lands.
12. LINZ notes that there may be differing expectations and uncertainty about what 'recognising and providing for' the matters in section 5(1)(a) may require in relation to land removal decision-making. However, LINZ considers that developing a bespoke provision would create greater risk and likely be contentious.
13. LINZ does not recommend replicating the approach used in Part 3 of the CPLA (the existing process to review other Crown land). Part 3 uses an operative/general form of

Treaty clause², and in this case a more descriptive clause as contained in section 5 is appropriate.³

C. Delegability of the Minister's decisions

14. The Minister for Land Information will be the decision maker at the gateway point and following full assessment. LINZ recommends that both these decisions are non-delegable as the Minister's discretion and political accountability is essential to the decision.

D. Review of the Minister's decisions made under the land removal pathway

15. Because the Minister's discretion is essential to the decision, LINZ recommends that there be no rehearing or appeal rights in relation to the Minister for Land Information's decisions under the land removal pathway. As a statutory decision, judicial review will be available to any person affected by the decision.
16. LINZ has considered whether judicial review alone is adequate in this context, or whether additional pathways to enable the decision to be challenged should also be available. LINZ considers that the Minister for Land Information's decisions under the land removal pathway are better suited judicial review than reconsideration by the decision maker or appeal to the High Court on merit, because they involve a discretion that requires the balancing of policy matters rather than the finding of facts and the application of a legal yardstick.
17. This is consistent with the approach in Part 3 of the CPLA (the existing process to review other Crown land), where there are no rehearing or appeal rights except for rehearing rights for the holder of the land on the final decision. In the case of the land removal pathway, the equivalent to the holder of the land is the lessee. As the lessee's consent is needed to progress a proposal under the land removal pathway, an equivalent right of review is not required.

E. Review of the Commissioner's decisions

18. Under sections 17 and 18 of the Land Act, the Commissioner's decisions under both the CPLA and Land Act are subject to rehearing by any person, with lessees and licensees able to appeal decisions affecting their lease or licence to the High Court.
19. LINZ recommends that the Commissioner's decisions under the land removal pathway not be subject to the rehearing and appeal processes in sections 17 and 18 of the Land Act, where the decision is on a matter that has been decided by the Minister for Land Information (for example, where the Commissioner is making a recommendation to the Minister or the Commissioner is directly implementing the Minister's decision by reclassifying the land).

² Section 84 of the CPLA requires that in acting under Part 3, the Commissioner must (to the extent that those matters are applicable) take into account the principles of the Treaty of Waitangi.

³ According to guidance issued by Te Tari Whakataua: [Providing-for-the-Treaty-of-Waitangi-in-legislation.pdf](#)

20. The rehearing and appeal provisions in sections 17 and 18 will continue to apply to the Commissioner's other decisions under the land removal pathway, such as the surrender of leases and the allotment of land. Review of these decisions is important to maintaining transparency and accountability for the disposal of land, particularly if preferential allotment of land is undertaken (BRF 26-140 refers).
21. There is a risk that people not satisfied with the outcome of the Minister for Land Information's decision to remove land from the Crown pastoral estate will seek to challenge the Commissioner's disposal decisions. Given the significance of the decision to remove land from the Crown pastoral estate, LINZ considers the level of risk to be appropriate.

Mātanga kōrero/Consultation

22. LINZ has engaged with iwi partners, the High Country Advisory Group and the High Country Accord Trust on the concept of a new land disposal pathway, but not the details of the options presented in this briefing. A summary of feedback received through consultation was provided to you in BRF 26-127 *Policy decisions for new legislative pathway for removing land from the Crown pastoral estate*.

Ngā Tāwhaitanga/Next Steps and/or angawā/timeframes

23. Following your decisions, LINZ will prepare drafting instructions on the CPLA and Land Act reforms to be provided to PCO by 19 December 2025.

Tāpiritanga/Attachments

Document number	Name of attachment
1.	BRF 26-160 Appendix 1: Table for Minister's decisions

BRF 26 – 160 Appendix 1: Options table for Minister’s decisions

Policy issues and context	Options	Analysis and key trade-offs	Review criteria				Indicate your preferred options	Notes
			Efficiency	Effectiveness	Flexibility	Transparency		
<p>A. Application of CPLA Section 4 outcomes to decisions under the land removal pathway</p> <p>The pathway enables land use change away from pastoral farming when the public benefits of the proposed use outweigh the benefits of retaining land in the Crown pastoral estate.</p> <p>Decisions should align with the CPLA outcomes framework without undermining the pathway’s purpose. Note that section 4(1)(a) will not apply.</p>	<p>A1. The outcomes for decision makers in section 4(1)(b) and (c) of the CPLA apply to decisions taken under the pathway (LINZ preferred).</p>	<p>Benefits</p> <p>Aligns outcomes with the pathway’s purpose; keeps Treaty and fair return anchors; supports clear fiscal/public value judgments at Stage 2.</p> <p>Risks/Challenges</p> <p>Perception of weaker pastoral protection. Mitigate via robust assessment of inherent values and residual lease viability, clear reasons, and enforceable conditions.</p>	+	++	+	-	<input checked="" type="checkbox"/>	
	<p><i>The language of Section 4 is found in the footnote on page 3 of the briefing.</i></p>	<p>A2. The outcomes for decision makers in section 4(1)(b) and (c) of the CPLA do not apply to decisions taken under the pathway (not recommended).</p>	<p>Benefits</p> <p>Fewer formal bottom lines may be perceived as simplifying decision making.</p> <p>Risks/Challenges</p> <p>High judicial review risk and weaker alignment with CPLA outcomes, with reduced clarity at disposal on how land value is taken into account. Greater contestability overall.</p>	+	-	+	+	<input type="checkbox"/>
<p>B. Application of CPLA Section 5 (Māori interests) to the land removal pathway</p> <p>You have agreed that s5(1)(b) (consult relevant iwi listed in s5(2)) applies at gateway and full assessment.</p> <p>We recommend applying s5(1)(a) (recognise and provide for Māori relationships with ancestral lands, water, mahinga kai, wāhi tapu, taonga) to pathway decisions for a consistent, specific Treaty provision.</p>	<p>B1. Section 5(1)(a) and (b) apply to decisions taken under the new pathway (LINZ preferred).</p>	<p>Benefits</p> <p>Consistent recognition and provision across pathway stages; alignment with how the legislation works now.</p> <p>Risks/Challenges</p> <p>Expectations may differ on the meaning of “recognise and provide for”. Seek to mitigate via clear engagement steps, cultural effects analysis, and transparent reasons.</p>	+	0	0	+	<input checked="" type="checkbox"/>	
	<p>2B. Apply only Section 5(1)(b) (consultation) and not Section 5(1)(a) (not recommended).</p>	<p>Benefits</p> <p>Narrower obligation may reduce perceived ambiguity.</p> <p>Risks/Challenges</p> <p>Less consistent with expectations; inconsistent with how the CPLA works now; weaker alignment where Māori outcomes are integral to public benefit; high contestability risk; not supported in feedback from Ngāi Tahu.</p>	0	-	0	-	<input type="checkbox"/>	

BRF 26-160 Appendix 1: Options table for Minister's decisions

Policy issues and context	Options	Analysis and key trade-offs	Review criteria				Indicate your preferred options	Notes
			Efficiency	Effectiveness	Flexibility	Transparency		
C. Delegability of Minister's decisions You have agreed that the Minister will make decisions at the gateway and full assessment stages. Confirmation is needed as to whether these decisions can be delegated.	C1. Ministerial decisions at Gateway and Full Assessment are non-delegable (LINZ preferred).	Benefits As the Minister's discretion and political accountability is essential to the decision, LINZ's view is that making these decisions delegable is not appropriate.	+	++	-	++	<input checked="" type="checkbox"/>	
	C2. Ministerial decisions are delegable (not recommended).	Benefits Allowing decisions to be delegable would give the Minister flexibility to delegate decision making to the Commissioner. Risks/Challenges Delegating decisions of this level of significance is not appropriate and is not aligned with legislative good practice.	0	--	+	--	<input type="checkbox"/>	
D. Appeal pathways for Ministerial decisions LINZ recommends decisions may be challenged via judicial review only, given the policy discretion nature of these decisions (balancing public benefits rather than applying a legal yardstick).	D1. Do not allow for merits appeal rights associated with Ministerial decision-making under the new pathway. Judicial review is available. (LINZ preferred)	Benefits Timely/final decisions; aligns with constitutional practice; focuses challenge on lawfulness/procedure/reasonableness. Risks/Challenges Perceived limited recourse.	++	+	0	0	<input checked="" type="checkbox"/>	
	D2. Allow merits appeal rights on Ministerial decision-making under the new pathway. Judicial review is available (not recommended).	Benefits Greater perceived fairness to some parties. Risks/Challenges Added cost/delay; reweighs policy judgments; reduces finality and investor certainty.	--	-	0	-	<input type="checkbox"/>	
E. Rehearing/appeal of CCL decisions under the pathway LINZ recommends no rehearing for CCL recommendations at Gateway/Full Assessment (to avoid duplication/delay). Existing disposal stage appeal/rehearing rights under the Land Act/CPLA would continue to apply (e.g., allotment method, terms/conditions).	E1. The Commissioner of Crown Lands' decisions under the land removal pathway not be subject to the rehearing and appeal processes in sections 17 and 18 of the Land Act, where the decision is on a matter that is to be or has been decided by the Minister for Land Information. The rehearing and appeal provisions in sections 17 and 18 will continue to apply to the Commissioner of Crown Lands' other decisions under the land removal pathway such as the surrender of leases and the allotment of land.	Benefits Clear accountability; avoids duplication/delay; preserves disposal stage checks. Risks/Challenges Parties not satisfied with the Minister's decisions may use Commissioner disposal stage appeals as a way to oppose the process (mitigated by clear communication of basis for decisions).	++	+	0	+	<input checked="" type="checkbox"/>	
	E2. Allow for rehearing of Commissioner decision-making under new pathway (not recommended).	Benefits Extra safeguard against assessment errors. Risks/Challenges	--	-	0	+/-	<input type="checkbox"/>	

BRF 26-160 Appendix 1: Options table for Minister's decisions

Policy issues and context	Options	Analysis and key trade-offs	Review criteria				Indicate your preferred options	Notes
			Efficiency	Effectiveness	Flexibility	Transparency		
		<p>Duplicates JR; adds delay/cost; blurs accountability by second-guessing assessments that support Ministerial discretion.</p> <p>Parties not satisfied with the Minister's decisions may use Commissioner disposal stage appeals as a way to oppose the process (mitigated by clear communication of basis for decisions).</p>						

Proactive release

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