[In Confidence]

Office of the Minister for Land Information

Chair, Cabinet Environment, Energy and Climate Committee

Delivering better outcomes for Crown pastoral land: Final decisions

Proposal

1. This paper seeks Cabinet's agreement to make changes to the Crown Pastoral Land Act 1998 (CPLA) and the Land Act 1948 to maintain or enhance the ecological, landscape, cultural, heritage and scientific values of Crown pastoral land for present and future generations while providing for ongoing pastoral farming of Crown pastoral land.
2. It follows on from previous Cabinet decisions to end tenure review and consult on a proposed package of changes to the Crown pastoral land regulatory system (CAB-19-MIN-0016 refers).

Executive Summary

3. The Crown owns approximately 1.2 million hectares of Crown pastoral land, largely in the South Island high country, making up five per cent of New Zealand's total land area. Most of this land is leased by the Crown for pastoral farming. This land encompasses some of New Zealand's most iconic landscapes and is a taonga for New Zealanders. In addition, the land supports a thriving pastoral farming industry that produces high-quality food and fibre products, including fine wools, velvet and venison.
4. The existence of a specific regulatory system for Crown pastoral land in addition to the Resource Management Act reflects the need to protect the Crown's ownership interest in the context of long-term pastoral stewardship of land with unique inherent values[1] and soils and indigenous vegetation cover vulnerable to pests and over-grazing.
5. Land Information New Zealand (LINZ) is responsible for the regulatory system that controls how this land is used by leaseholders, and therefore significantly affects the long-term outcomes for the land.
6. There has been increasing public concern about the management of Crown pastoral land by LINZ, the tenure review process, and the loss of biodiversity and landscape values on current and former Crown pastoral land over time.
7. Resolving these issues and increasing public confidence in the regulatory system will require three key shifts in the way that the system currently functions.
8. The first shift is from a process-based approach that delivers discrete decisions and actions to an outcomes-based approach that considers cumulative impacts on the whole Crown pastoral land estate over time. This will be achieved by:
   8.1 developing a clear set of outcomes that ensure the protection of the land's inherent values while providing for ongoing pastoral farming, and that would apply to all functions carried out, and decisions made in relation to, Crown pastoral land

1 Inherent value, in relation to any land, means a value arising from an ecological, landscape, cultural, heritage, scientific attribute or characteristic of a natural resource or historic place.

8.2 improving decision-making by setting classes of activity for discretionary consents to reflect their impact on inherent values, and clarifying how expert advice and other inputs should inform the Commissioner of Crown Land's decision-making

8.3 providing for more effective monitoring and enforcement to help ensure the regulatory system is delivering on the outcomes over time.

9. The second shift is from a system where it is unclear whether the land is being managed in the best interest of New Zealanders and leaseholders to a system that has clearer, more transparent decision-making, stronger accountability, and more opportunity for public and leaseholder involvement. This will be achieved by:

9.1 strengthening and clarifying accountability across the system

9.2 increasing transparency by requiring publication of the Commissioner's decisions and the rationale behind them

9.3 providing for increased public involvement at a 'whole of system' level.

10. The third shift is from a regime that does not clearly reflect the Crown's obligations under Te Tiriti o Waitangi (Te Tiriti) to one that supports strong and evolving relationships between Māori and the Crown and recognises the relationship of Māori with their ancestral lands. This will be achieved by including provisions in the legislation that set out how the Crown will consult with Māori and provide direction for the Crown in how to recognise the above when exercising particular powers and functions in relation to Crown pastoral land.

11. It is important to acknowledge that this is a pastoral farming regulatory system, and the proposed changes are not intended to prevent or reduce the amount of pastoral farming activity happening on Crown pastoral land. Leaseholders have helped sustain the inherent values of the land – and this stewardship will continue to be an important part of the regulatory system.

12. There is also no intent to change the leaseholders' tenure, right to pasturage and quiet enjoyment of their leasehold properties, along with their perpetual rights of renewal.

13. In implementing these shifts, it will be important to provide for an efficient, fair transition, particularly for leaseholders. This requires addressing a number of consequential and transitional issues that arise from ending tenure review and implementing the proposals.

Background

Crown pastoral land is a taonga for New Zealanders

14. The Crown owns approximately 1.2 million hectares of Crown pastoral land, largely in the South Island high country, making up five per cent of New Zealand's total land area. Most of this land is leased by the Crown for pastoral farming. This land encompasses some of New Zealand's most iconic landscapes and is a taonga for New Zealanders. It has importance to:

14.1 leaseholders and their families, who live and work on the land and have invested in its upkeep and stewardship over generations in some cases

14.2 Māori – the Ngāi Tahu takiwā encompasses the majority of the estate, and Ngāi Tahu values the land's mahinga kai opportunities, its taonga species, and the historical routes traditionally travelled by their iwi. A small number of leases are within the rohe of Te Tau Ihu iwi: Rangitāne o Wairau and Ngāti Apa ki te Rā Tō.

14.3 the public, who benefit from its landscape values, ecological values and ecosystem services, and from the contribution that the estate makes to regional communities and the economy.

The Crown pastoral land regulatory system protects the Crown's interest in the land

15. The existence of a specific regulatory system for Crown pastoral land in addition to the Resource Management Act reflects the need to protect the Crown's ownership interest in the context of long-term pastoral stewardship of land with unique inherent values and soils and indigenous vegetation cover vulnerable to pests and over-grazing.

16. LINZ is responsible for the regulatory system that controls how this land is used by leaseholders, and therefore significantly contributes to the long-term outcomes for the land. The Commissioner of Crown Lands (the Commissioner) administers this land on behalf of the Crown. The Department of Conservation (DOC) supports LINZ as the Government's advisor on conservation. The attached regulatory impact statement provides an outline of the system and how it currently operates (**Annex 1**).

17. It should be noted that the Crown can approve activities that enable pastoral farming on Crown pastoral land within the context of this regulatory system, but this does not remove the requirement for leaseholders to obtain relevant permissions under other Acts[2], such as consent under the Resource Management Act 1991 (RMA) – this reflects that the regimes serve different purposes.

Cabinet has agreed to make legislative changes to improve the regulatory system

18. On 11 February 2019, Cabinet agreed to end tenure review and invited the Minister for Land Information to issue drafting instructions to make the necessary legislative amendments to achieve this (CAB-19-MIN-0016 refers).

19. Alongside this, Cabinet agreed to release a discussion document setting out a number of proposed additional changes to the regulatory system. Consultation on the discussion document *Enduring Stewardship of Crown Pastoral Land* opened on 17 February and closed on 12 April. Over 3,000 submissions were received, and have helped to shape the final proposals set out in this paper. A summary of these submissions can be found on LINZ's website[3].

20. The following legislative amendments to improve the Crown's administration of Crown pastoral land will be progressed in conjunction with the legislative amendments to end tenure review.

This legislative change is needed to safeguard the Crown's interest and increase public confidence, while providing for ongoing pastoral farming

21. There has been increasing public concern about the management of Crown pastoral land by LINZ, and a loss of biodiversity and landscape values on current and former Crown pastoral land over time. A recent review of the Crown pastoral land regulatory system attributed much of this concern to unclear system outcomes, a lack of transparency and accountability, and limited understanding about the cumulative impacts of the Commissioner's decision-making over time. There have also been concerns about the process of tenure review which has resulted in much former Crown pastoral land being freeholded and subject to much more intensive farming.

2 See section 17 of the CPLA

3 https://www.linz.govt.nz/crown-property/crown-pastoral-land/crown-pastoral-land-management/consultation-enduring-stewardship-crown-pastoral-land/submissions-enduring-stewardship-crown-pastoral-land

22. Resolving these issues and increasing public confidence in the regulatory system will require both legislative and operational changes.

23. LINZ is already working to improve the way the regulatory system operates. This includes a stronger operational focus, greater contact with leaseholders, and developing a better understanding about the state of Crown pastoral land and the impacts of pastoral farming on ecological and other values through improving its monitoring and information. LINZ is also working more closely with DOC at an operational level to ensure DOC's expertise better informs decision-making.

24. While these 'within system' improvements will help to address some of the issues identified by stakeholders and in the regulatory review, they will not be sufficient to address public concerns about the operation of the system as a whole, and ensure that ongoing pastoral farming is provided for while the ecological, landscape, and cultural values of the land as a whole are maintained or enhanced for future generations.

Overview of proposed approach

The Crown pastoral land regulatory system needs to make three key shifts

25. The Crown pastoral land regulatory system needs to make three key shifts to address the issues identified through the regulatory review, formal consultation process and further stakeholder engagement. Those shifts are:

    25.1 from a process-based approach that delivers discrete decisions and actions to an outcomes-based approach that considers cumulative impacts on the whole Crown pastoral land estate over time.

    25.2 from a system where it is unclear whether the land is being managed in the best interest of New Zealanders and leaseholders to a system that has clearer, more transparent decision-making, stronger accountability, and more opportunity for public and leaseholder involvement.

    25.3 from a regime that does not clearly recognise and provide for the Crown's obligations under Te Tiriti to one that supports strong and evolving relationships between Māori and the Crown and recognises the relationship of Māori with their ancestral lands.

A strong relationship between the Crown and leaseholders is critical to achieving these shifts…

26. Strong relationships between the Crown and leaseholders will underpin the effectiveness of the Crown pastoral land regulatory system by ensuring that there is mutual understanding of the role of both the Crown and leaseholder, and the context within which both are operating.

27. The importance of the Crown-leaseholder relationship will be recognised in many of the current and planned operational changes – noting that much of the strength of the relationship with leaseholders will be determined by LINZ's capability and capacity to implement these system shifts in an effective way.

…and leaseholders' ongoing ability to farm their leases must be provided for…

28. The proposed changes are not intended to prevent or reduce the amount of pastoral farming activity happening on Crown pastoral land. Instead, the changes will encourage leaseholders to undertake pastoral farming activities in a way that reduces their impact

on, or enhances, inherent values so these values are sustained. Engagement with leaseholders has shown this sort of pastoral farming already occurring across Crown pastoral land, and these changes would complement this best practice.

29. In addition, there is no intent to change the leaseholders' tenure, right to pasturage and quiet enjoyment of their leasehold properties, or their perpetual rights of renewal.

30. Any system changes must therefore recognise leaseholders' rights, and ensure leaseholders can continue to carry out pastoral farming activities under their lease agreement in accordance with their contractual and statutory obligations. The system should also enable leaseholders (and third parties with the agreement of leaseholders) to continue to undertake other uses on the land where these uses are consistent with the overall system outcomes.

…and the transition to the new system must be efficient and fair for all parties

31. In implementing these shifts, it will be important to provide for an efficient, fair transition, particularly for leaseholders. This requires addressing a number of consequential and transitional issues that arise from ending tenure review and implementing the proposals.

Shifting to an outcomes-based approach

Developing a clear set of outcomes

32. I propose that the overall outcomes of the Crown pastoral land regulatory system are to:

    32.1 maintain or enhance the inherent (ecological, landscape, cultural, heritage and scientific) values across the Crown pastoral estate for present and future generations while providing for ongoing pastoral farming of Crown pastoral land

    32.2 support the Crown in its relationships with Māori under the Treaty of Waitangi, both in terms of how the system as a whole operates, and in relation to specific decisions. It should be noted, however, that it is the Crown rather than the leaseholder that has responsibilities under Te Tiriti, and these responsibilities are not intended to diminish the property rights of leaseholders

    32.3 enable the Crown to get a fair return on its ownership interest in Crown pastoral land (although the rent-setting process is outside the scope of the current changes).

33. I propose that all persons performing functions and making decisions under the relevant legislation should seek to achieve these outcomes in relation to Crown pastoral land.

Classifying activities according to their impact

34. The discretionary consent process allows leaseholders to seek permission from the Commissioner to undertake certain activities on the land. It exists to protect the Crown's ownership interest as landowner and lessor.

35. Leaseholders must get consent for activities beyond those permitted under the terms of their lease, such as for cultivation, clearing scrub or bush, top dressing, forming tracks or burning. This process also enables leaseholders, or other parties, to apply for recreation permits or easements – for instance to allow them to run tourism ventures.

36. I have looked at how decision-making processes can be improved to better promote achievement of the outcomes. One way to do this is to set classes of activities in the legislation to reflect their likely impact on inherent values:

36.1 Some pest and weed control and minor activities would be classed as permitted, so that leaseholders do not need to apply for consent.

36.2 Most activities would remain discretionary, and leaseholders would have to apply for consent to undertake them, with no guarantee that consent would be granted.

36.3 A 'prohibited' category would also be created containing those few activities that are considered inappropriate across all pastoral leases (for example, draining or cultivating natural wetlands).

37. Activities would be classified as 'discretionary' unless they meet a test based on the likely level of impact on inherent values. To become permitted, the activity must have no more than minor impacts on inherent values in all foreseeable circumstances. To become prohibited, the activity must be one that would cause significant loss of inherent values in all foreseeable circumstances.

38. This approach will help to streamline the process and improve efficiency in some cases – in particular, for leaseholders wanting to undertake pest control and minor maintenance activities.

39. It will also provide an opportunity to improve the interface between the CPLA and RMA. For example, definitions between the two regimes can be better aligned where practical through the activity classification process. LINZ is also working more closely with other consenting bodies to ensure the two consenting processes are joined up and how they interact is well understood – this approach is currently being piloted through the Mackenzie Basin alignment programme in collaboration with councils.

40. I recommend that:

40.1 in the interest of timeliness and efficiency, that classification of activities (into permitted, discretionary, and prohibited) be set in a schedule to the legislation when it is introduced. Decisions on the final content of the schedule would be delegated to the Minister for Land Information in consultation with the Minister of Agriculture and the Minister for the Environment.

40.2 a power be provided to amend the schedule by Order in Council, with a provision for periodic review of the schedule and a requirement to undertake leaseholder and public consultation as part of any review on the future classification of activities on pastoral leases (along with consulting DOC and MPI as part of the usual departmental consultation). This periodic review would allow for adjustments based on the outcomes we see on Crown pastoral land through monitoring.

Applying the outcomes to decision-making on discretionary consents[4]

41. The Commissioner's decision-making on discretionary consents is a crucial process for ensuring the outcomes are achieved. These decisions need to both ensure inherent values are maintained or enhanced, and provide for ongoing pastoral farming by leaseholders.

42. Leaseholders will still require a discretionary consent from the Commissioner before they can carry out activities in the 'discretionary' category of the schedule. Any new process that the Commissioner applies needs to be consistent with the outcomes, while

4 The term 'discretionary consents' is used in place of the term discretionary actions as set out in section 18 of the CPLA. This includes pastoral consents, easements and recreation permits.

being practical, workable and ensuring that it does not prevent responsible, sustainable pastoral farming.

43. I am proposing a change to how the Commissioner makes decisions on whether to approve consents that leaseholders apply for. Currently the Commissioner balances the desirability of protecting inherent values against the desirability of making it easier to farm the land when making a discretionary consent decision.[5]

44. There are two key issues with the current approach to discretionary consents:

    44.1 it provides no guidance to the Commissioner in terms of how these two considerations should be weighed up

    44.2 the "desirability of making it easier to use the land" wording is very permissive, and factors in the benefits of additional pastoral farming to decision making. This has allowed for significant development and intensification of pastoral land with impacts on and the loss of inherent values over time. The extent of this is not well understood due to a lack of monitoring and information on system performance.

45. As it currently stands, this approach is not consistent with the new proposed outcomes for the regulatory system.

46. I recommend the current approach be replaced with the following process for decision-making on discretionary consents:

    46.1 The Commissioner be required to consider the classification of the activity in the schedule before proceeding with the following process.

    46.2 The Commissioner decides if the activity impacts on inherent (ecological, landscape, cultural, heritage and scientific) values. This would involve the identification of inherent values and their significance, an assessment of the adverse effects of an activity on these values, and whether those effects could be avoided, remedied or mitigated. This approach would provide some flexibility to allow minor impacts (for instance, modifying areas of already modified indigenous vegetation) to ensure it achieves the outcomes in a practical and workable way.

    46.3 In a scenario where a consent is declined, the Commissioner would be able to consider a subsequent application from the leaseholder. This would require the leaseholder to demonstrate to the Commissioner's satisfaction that the activity is necessary for pastoral farming on the lease.

    46.4 The Commissioner may put any reasonable conditions, limitation, direction and restriction on any consents they approve.

    46.5 There would be no obligation on the Commissioner to approve any discretionary consent application.

47. The existing consultation requirement with the Director-General of Conservation would be retained, and an obligation to engage with iwi would be introduced.

48. There are a range of options for how such a process could be configured, and what the Commissioner would consider in making their decisions, while still being consistent with the outcomes. I recommend that a final decision on the configuration of this process be

5 Refer to section 18 of the CPLA.

delegated to the Minister for Land Information in consultation with the Minister of Agriculture and the Minister for the Environment.

Clarifying how expert advice and other inputs inform decision-making

49. I also propose clarifying how expert advice and other inputs should inform the Commissioner's decision-making, and who should be responsible for providing this advice. Currently, there is no formal requirement for the Commissioner to obtain expert advice outside the requirement to consult with the Director-General of Conservation.

50. Consultation also supported a view that farm plans could be used to support the Commissioner's decision-making, particularly in relation to the possible cumulative impacts of consent decisions. In addition, farm plans could support monitoring of whether leaseholders are meeting the conditions of their leases. There are already requirements in most regions for farm plans, so I do not propose duplicating these requirements – rather clarifying that farm plans can be considered by the Commissioner where that is appropriate.

51. While the Commissioner should not be directed in their decision-making by the Minister for Land Information or LINZ staff, I consider that they must have regard to government policy where that is not inconsistent with the legislation, and this should be clarified in the new legislation.

52. I therefore recommend that, in relation to discretionary consent decisions:

    52.1 the applicant be required to provide sufficient information for the Commissioner to assess the application in accordance with the legislation, including any advice needed to support their application. The information required would depend on the nature, scale, and potential impacts of the activity they want to undertake.

    52.2 the Commissioner be required, when assessing an application, to obtain any other expert advice they consider necessary to satisfy themselves that the impact of an activity on inherent values is accurately identified. This places an onus on the Commissioner to obtain the right types of advice from the right experts and to consider this advice in the light of the outcomes. The Commissioner will still have an obligation to consult the Director-General of Conservation over discretionary consent decisions

    52.3 the Commissioner have the ability to decline an application if the application is deemed insufficient or to commission further advice where required

    52.4 the Commissioner be able to consider a plan for the management of part or all of a pastoral property (e.g. a farm plan in the discretionary consent decision-making process)

    52.5 the Commissioner be required to consider current government policy as an input to their decision-making where this is not inconsistent with the legislation.

Providing for secondary legislation – regulations and statutory instruments

53. For the purposes of consistency, I recommend that a regulation-making power is provided for in legislation to allow all applications for discretionary consents to be charged for in the future on a cost recovery basis. Currently, there is no power to set

fees for applications for stock exemptions and those activities listed in sections 15 and 16 of the CPLA[6] such as burning and cultivation of indigenous vegetation.

54. I also recommend that a broad power be provided to:

    54.1 make secondary legislation providing for other matters contemplated by the legislation that are necessary for its administration, or necessary for giving it full effect

    54.2 specify the information required for a discretionary consent application.

Improving monitoring and enforcement

55. Effective monitoring and enforcement will be critical to a well-performing Crown pastoral land regulatory system. It is clear from the regulatory review and the feedback from the consultation process that current monitoring and enforcement arrangements are inadequate.

56. An essential part of effective monitoring will be a stocktake of inherent values across Crown pastoral land to provide a baseline (over time, this will also to help inform decision-making on discretionary consents). I recommend that LINZ is tasked with developing this baseline.

57. To improve monitoring, I also recommend that the legislation requires:

    57.1 LINZ's Chief Executive to regularly update and release a monitoring framework for, and to report on, the overall performance of the Crown pastoral land regulatory system in relation to the outcomes (however, the content of this framework would not be specified in legislation). This would ensure that a robust monitoring framework is put in place, but leave enough flexibility for this framework to change over time as needed

    57.2 the Commissioner to monitor the compliance of leaseholders with their lease obligations and consents. Information gathered from this would feed into LINZ's system monitoring.

58. LINZ is already making operational changes that will help to increase compliance (for instance through more regular lease visits). However, there is also a need for some more effective enforcement tools to bridge the current gap between non-statutory measures such as written warnings, and high impact tools in the CPLA such as application to the District Court for exemplary damages and/or forfeiture of the lease.

59. I recommend additional enforcement tools are introduced that focus on promoting the achievement of the outcomes and providing a disincentive for non-compliant behaviour:

    59.1. *Introduce a power for the Crown to take remedial action and recover costs.* Where an alleged breach is identified, the Commissioner would issue a notice instructing that the effects of the breach be remedied or adequately mitigated. If this does not occur within a set period of time,[7] then LINZ on behalf of the Commissioner could undertake the remedial action and recover any reasonable costs incurred as a debt. This enforcement tool would only be appropriate in situations where a breach is capable of being remedied, and where it is urgent that remediation works occur as soon as possible.

6 This includes burning, cultivation, over-sowing and top dressing and other activities that disturb the soil.
7 It is intended that this period of time would be at the discretion of the regulator and reflect the severity of the risk posed by continued action or inaction.

59.2. *Enable the Commissioner to accept enforceable undertakings.* An enforceable undertaking provides an alternative to court proceedings. For example, where LINZ alleges a breach (or has already begun court proceedings to establish a breach), the relevant leaseholder can voluntarily agree to certain actions (for instance, remediation works or creating a farm management plan), in exchange for LINZ not proceeding with charges. LINZ would be required to publicly release a notice of decision to accept the enforceable undertaking along with reasons for the decision. It would be entirely on the leaseholder to initiate the process - LINZ would not approach the leaseholder recommending an undertaking.

59.3. *Introduce an administrative penalty where an activity is undertaken without consent.* An administrative penalty would apply if a leaseholder or third party undertakes an activity listed under section 18 of the CPLA[8] without first obtaining consent from the Commissioner[9]. The penalty would be applied automatically where the breach is confirmed. However, the Commissioner would have the discretion to waive an administrative penalty in certain circumstances[10]. This tool is intended to penalise non-compliance with administrative requirements and not necessarily to reflect the magnitude of the adverse effects on inherent values of any non-compliance. In cases where the non-compliance has significant adverse effects, other enforcement tools should also be considered. The size of the penalty should reflect this intent and would be a fixed amount set in regulations[11]. Final decisions on the size of the penalty will be made as the relevant regulations are developed.

60. I consider that the administrative penalty should not come into effect until at least six months after new legislation is passed to allow affected parties to become familiar with the new system.

61. Any new enforcement tools are to be made subject to section 17 of the Land Act which provides for the Commissioner to rehear a decision. Regulated parties affected by enforcement decisions will also have access to judicial review.

Increasing public confidence in the system

62. To help increase public confidence in the system, it is important that there are clear system roles and responsibilities and strong accountability arrangements, and that the system operates in a transparent way. It will also be important to ensure the system provides for appropriate opportunities for public involvement in the system.

Clarifying system roles

63. While some submitters proposed that the Commissioner should be replaced with a board or other external body, my view is that a statutory officer within LINZ is the appropriate decision-maker on the basis that:

63.1 other options considered are not likely to significantly improve effectiveness or transparency (when the other proposed changes set out below are taken into

8 It may also be appropriate for this to apply to other administrative activities requiring consent such as transfers of the lease and residency exemptions.

9 This approach is similar to the penalties applied in the Western Australia pastoral lease context. For example, see section 109 of the Land Settlement Act 1997 where the penalty is $10,000.

10 For example, where an activity had to be undertaken with urgency where stock were at risk or in severe weather events.

11 The size of the penalty would not be subject to the discretion of LINZ or the Commissioner.

account), and may reduce efficiency and certainty, compared to a single statutory decision-maker

63.2 stakeholder concerns around the lack of transparency and accountability associated with the Commissioner can be addressed through other means – for instance clarifying accountability arrangements and increasing transparency and public involvement in the system.

64. There is also merit in some submitters' suggestions that the Commissioner should take on more of an advocacy role, given the Commissioner's responsibility for representing the Crown's ownership interest in Crown pastoral land. Such a role could help support achievement of the outcomes by participating in processes outside the Crown pastoral land regulatory system – for instance, commenting on changes to district plans that might impact on Crown pastoral land. There is also benefit in extending this to relate to other Crown land.

65. I therefore recommend that the legislation enable the Commissioner to take on an advocacy role to provide comment or input to processes and decisions that may impact them in their role as representative of the Crown as landowner and on the achievement of outcomes for Crown pastoral land as set out in recommendation 7.

66. I also recommend that LINZ establishes a Crown pastoral land office within LINZ to provide certainty of resourcing and a clear line of communication between the Minister and officials. This office would support the Commissioner in the performance of their functions.

67. DOC currently has a role in providing expert advice to LINZ in relation to decision-making on discretionary consents. The legislation provides for the Commissioner to consult with the Director-General of Conservation, recognising DOC's particular expertise, and its interest in Crown pastoral land and in important species that have habitats on the land. It is important that that this expertise and interest is given due weighting in the system, without cutting across the Commissioner's responsibility for making decisions in line with the statutory framework. I recommend that:

66.1 the status quo requirement for the Commissioner to consult with the Director-General of Conservation on applications for discretionary consents be retained

66.2 DOC's role in the discretionary consents process is clarified through clear operational guidance and agreed ways of working between the two agencies.

Strengthening accountability arrangements

68. As well as clarifying roles in the system, it will be important to hold LINZ and the Commissioner clearly accountable for their respective functions, and to increase transparency through public reporting on how LINZ and the Commissioner are performing these functions.

69. I therefore propose including the following in the legislation:

    69.1 LINZ and the Commissioner would be required to produce a 'Crown pastoral land Strategic Intentions' (Strategic Intentions) to be approved by the Minister and published. The Commissioner and LINZ would be required to work with leaseholder representatives and iwi during the drafting process (and could engage with broader stakeholders as appropriate). The Strategic Intentions would be part of LINZ's departmental reporting process, meaning it would need to be updated at least once every three years, or at the request of the Minister.

    69.2 note that updating the 'Crown pastoral land Strategic Intentions' does not necessarily mean that the LINZ departmental Strategic Intentions need to be updated.

    69.3 in line with departmental reporting, the Strategic Intentions would be required to set out how LINZ and the Commissioner propose to exercise their relevant statutory responsibilities (in relation to Crown pastoral land), how government policies and priorities should be reflected in the management of the land (to the extent that they are consistent with the legislation), and relevant key performance indicators of how the exercise of their powers and functions is contributing to achieving the outcomes of the regulatory system.

    69.4 a requirement for LINZ and the Commissioner to report annually to the Minister on progress against the Strategic Intentions, and include that report into the LINZ Annual Report.

Increasing transparency

70. I have also considered how the transparency of the system as a whole could be further increased, to help interested stakeholders and the broader public to easily understand what decisions have been made, on what basis they have been made, and what the impact of those decisions is likely to be.

71. Currently, there is no obligation on the Commissioner to publicly release decisions on discretionary consents, and in relation to rehearings.[12] Any requests for information are processed under the Official Information Act 1982 (OIA). However, there are costs to the Crown and other parties associated with making more information available, and it is important that these are weighed against the benefits brought by increased transparency.

72. In this context, I propose that the transparency of the system be increased by requiring the Commissioner to publish:

    72.1 a detailed summary of each discretionary consent and rehearing decision (under the current s18 of the CPLA and s17 of the Land Act as they relate to Crown pastoral land) shortly after the decision is made, setting out details of what the decision relates to, what the decision enables (including any conditions attached to the consent), and the reasons the Commissioner reached their decision.

    72.2 a summary of enforcement decisions that sets out the nature of the non-compliance and the reasons for taking enforcement action. This would apply to

12 The rehearings process provides a mechanism for those aggrieved by discretionary consents decisions to ask for a decision to be reconsidered if they are unhappy with the original decision and the Commissioner determines that justice requires a rehearing. 'Aggrieved persons' only includes leaseholders, applicants (e.g. for recreation permits), or grantees of easements. It does not include people who are not a party to the decision.

both the existing power under s19 of the CPLA as well as the proposed administrative penalty and powers for the Commissioner to accept enforceable undertakings, and to take remedial action and recover costs.

Providing for more public involvement

73. The proposals to increase transparency and accountability in the system set out above, and to improve decision-making set out below, will help to address some of the concerns that lie behind the desire of some submitters for more public participation in decision-making. The discretionary consent process exists to protect the Crown's interest as landowner in Crown pastoral lands. The public needs to be confident that the Commissioner's decisions on applications for discretionary consent protect those interests, particularly in relation to inherent values.

74. Further to this, there are a range of benefits that would likely result from increased public participation in the Crown pastoral land regulatory system, including potentially increased trust in the system, a better understanding of how the system works, and a likelihood that the system will evolve in line with public expectations, increasing the durability of the system over time.

75. Allowing for public participation can also result in considerable costs, and significantly decrease the timeliness and certainty of decision-making. In addition, increased public involvement in relation to individual decisions within the Crown pastoral land regulatory system would risk duplication of RMA public notification processes in cases where an applicant also requires resource consent for the activity the Commissioner is considering.

76. For these reasons, the net benefits of increased public participation in the process are likely greatest at a 'whole of system' level as opposed to an individual decision-making level.

77. I therefore recommend that:

    77.1 LINZ be required to consult with leaseholders and the public on the development of any secondary legislation that shapes the decision-making process and administration of Crown pastoral land. This could include, for example, the classification of activities and information requirements

    77.2 there is no public involvement in specific decisions made by the Commissioner, noting that all decisions made by the Commissioner are judicially reviewable.

Supporting Māori Crown relationships

78. The majority of Crown pastoral leases are within the takiwā (tribal territory) of Ngāi Tahu, with the remainder within that of Te Tau Ihu (the top of the South Island) iwi.

79. Since the release of the discussion document, LINZ and DOC officials have worked with Ngāi Tahu to reflect the Crown's relationship with iwi and mana whenua in relation to the regulatory system.

80. The approach has been discussed with Te Tau Ihu iwi, Rangitāne o Wairau and Ngāti Apa ki te Rā Tō who also have some pastoral leases within their rohe.

81. Crown Law has also provided advice on how best to reflect the Crown's obligations under Te Tiriti in relation to Crown pastoral land.

82. In this context, my recommended approach to how best to support the Māori Crown relationship is based on:

    82.1 the understanding that obligations under Te Tiriti sit with the Crown (and not with leaseholders) and the need to ensure that the practical effects of any obligations on decision makers are clear and well-understood, including assessing these effects in the context of the contractual relationship between Crown and leaseholder

    82.2 a desire to recognise the connection of Māori with their ancestral lands, water, mahinga kai, wāhi tapu and other taonga

    82.3 enabling Māori Crown relationships to grow and strengthen over time, without locking it into any prescribed steps.

83. In addition, the proposed new outcomes for the Crown pastoral land regulatory system include maintaining or enhancing inherent values across the Crown pastoral estate, including cultural values, while providing for ongoing pastoral farming

84. I recommend that the legislation:

    84.1. require the Crown to recognise and provide for the relationship of Māori with their ancestral lands, water, mahinga kai, wāhi tapu and other taonga in relation to considering discretionary consents and any protection mechanisms over Crown pastoral land

    84.2. require the Crown to consult with iwi in relation to developing the Strategic Intentions, regulatory instruments, and a monitoring framework for Crown pastoral land

    84.3.

85. Officials engaged with Ngāi Tahu multiple times during the development of policy proposals. From this, I note that Ngāi Tahu did not consider that this approach provides a sufficiently firm obligation on the Crown and wanted an obligation on the Crown to ‘give effect to’ the principles of Te Tiriti o Waitangi in relation to Crown pastoral land.

Enabling an efficient, fair transition to the new system

86. There are a number of consequential and transitional issues arising from the ending of tenure review and the implementation of these proposals.

Securing better access to Crown pastoral land

87. The objective of promoting public access to and across the high country is important to many stakeholders. Though public access is not a proposed outcome of the Crown pastoral land regulatory system – reflecting the property rights of the pastoral lease – there are still potential ways to ensure the Crown's administration of the estate contributes to this broader public access objective.

88. I recommend making a legislative change to explicitly enable the Commissioner to support the Walking Access Commission (WAC) in meeting its public access objective where it relates to Crown pastoral land. In practice, this could include the Commissioner supporting WAC in promoting public access to the estate by facilitating negotiations with leaseholders.

The future use of unleased Crown pastoral land

89. There may be instances where decisions need to be made on the future use of Crown pastoral land that is not held under a pastoral lease.

90. Part 3 of the CPLA provides a process through which decisions on the future use of unleased Crown pastoral land can be made. Part 3 is not an alternative to tenure review – firstly because the land is not subject to pastoral lease and secondly because, when land is designated for freehold disposal, there is no guarantee that it will return to a previous leaseholder (unlike tenure review which allowed land to be designated for freehold disposal to the leaseholder).

91. Under a Part 3 review, this land can currently be designated as conservation land, reserve land, Crown land for some other specified Crown purpose, land for disposal by special lease under the Land Act, and land for freehold disposal under the Land Act.

92. I recommend retaining the system set out in Part 3 of the CPLA to ensure that the Crown retains the flexibility to deal with this land into the future. I also recommend that the current process be amended so that:

    93.1 it is consistent with the new outcomes

    93.2 the Commissioner must obtain approval from the relevant Minister before adopting any proposed designations for the future use of this land

    93.3 the range of available designations are expanded to provide for land to be added to an existing Crown pastoral lease, the granting of new pastoral leases (perpetual or time-bound), reclassification to another form of Crown land, and the freehold disposal of land under the Land Act subject to conservation covenants and/or public access easements.

93. Part 3 also provides a way to review non-renewable occupation licences, of which there are two remaining that are currently under review. I recommend that, should these reviews not be completed by the time new legislation is enacted, that they be enabled to continue as if under the old system – this reflects the fact they are mandatory reviews and not a voluntary process like tenure review.

Transitional issues

94. To provide an orderly and fair transition to the new regulatory regime, while ensuring the changes are implemented as quickly as possible, I recommend that:

    95.1 discretionary consents granted under the previous system will not be affected

    95.2 [redacted]

    95.3 there is a slight amendment to the current agreed transitional arrangements so that, upon the enactment of legislation to end tenure review, all reviews will cease except where the Commissioner has put a substantive proposal to the leaseholder. The leaseholder would then have three months to formally accept the proposal in writing, dating from when the proposal was put.

95. [redacted]

Consultation

96. LINZ has worked with DOC to prepare this paper. LINZ also undertook consultation with the following departments and agencies:

    97.1 the Ministry for the Environment, the Ministry for Primary Industries, Te Arawhiti (the Office of Treaty Settlements and Māori Crown Relations), the Ministry of Business, Innovation and Employment (Tourism), the Ministry of Culture and Heritage, the Office of the Privacy Commissioner, the New Zealand Defence Force, the Ministry of Justice, the State Services Commission, and The Treasury.

    97.2 Te Puni Kōkiri and the Department of the Prime Minister and Cabinet were informed.

97. Officials have discussed the policy proposals with the Legislation Design and Advisory Committee.

98. Following the formal consultation process, officials and I have continued to undertake further targeted engagement with the High Country Accord Trust (which represents a large number of leaseholders), iwi, and environmental and recreational advocacy groups to seek further information to help better understand their perspectives and the potential impact of the revised proposals.

99. Officials have also discussed the policy proposals as they have developed with the High Country Advisory Group – a group of experts, leaseholders, stakeholders and iwi whose purpose is to provide advice and insights to the Commissioner and LINZ on policy and operational issues affecting the high country.

100. These perspectives have significantly shaped the final package of proposals – in particular, helping to identify how the regulatory system can provide for ongoing pastoral farming without compromising the inherent values of the estate.

[redacted] I therefore recommend that such a clause be included in the legislation.

Te Tiriti Partner comment - Te Rūnanga o Ngāi Tahu

104. Ngāi Tahu has strong cultural connections to the high country, which have been disrupted by tenure review and the leasing of land by the Crown. Ngāi Tahu strongly desires to be reconnected to Crown pastoral land, and in relation to this, be engaged as the Crown's Te Tiriti partner. It is the position of Ngāi Tahu that the Crown is obligated to actively protect that connection and give effect to the principles including partnership, protection, and participation as required under Te Tiriti.

105. Whilst some of the proposals represent a positive direction of travel by the Crown, Ngāi Tahu considers that the proposals do not meet the Crown's obligations under Te Tiriti. It is the position of Ngāi Tahu that the Crown has an obligation to 'give effect to' the principles of Te Tiriti o Waitangi in relation to Crown pastoral land and this must be reflected in the legislation by the use of imperative language. The current language does not satisfy this. In addition, Ngāi Tahu expects engagement by the Crown as its Te Tiriti partner in the exercise of all and any power or function under the Act.

Te Tiriti Partner comment - Te Tau ihu iwi: Rangitāne o Wairau and Ngāti Apa ki te Rā Tō

106. Te Tau ihu iwi, Rangitāne o Wairau support the overall direction of the work but do not have a record of cultural values across Crown pastoral leases in their rohe.

13 The principle of non-derogation from grant '*provides that no one who has granted another a right of property, whether by sale, lease or otherwise, may thereafter do or permit something which is inconsistent with the grant and substantially interferes with the right of property which has been granted*.'

107. Te Tau ihu iwi, Ngāti Apa ki te Rā Tō have one pastoral lease in their rohe and want to be involved in matters relating to access across that lease to a site of cultural significance.

Financial implications

108. These changes will not have a significant net financial impact on LINZ. LINZ considers that it can implement these changes along with planned operational improvements within existing baseline funding.

109. LINZ currently has $4.05 million per annum for general pastoral lease management and the administration of the tenure review process – which includes additional funding from the previous Budget for an improved inspections programme. Based on current estimates, these changes will impose additional costs of around $1.65 million per annum to implement and administer.

110. This will be offset by approximately $1.58 million per annum of existing operating expenditure progressively becoming available with the ending of tenure review. The changes to discretionary consents will likely also deliver a number of efficiency gains, and introducing the power to charge fees will enable LINZ to recover some, or all of its costs to process consents where LINZ currently spends $1.04 million per annum.

Human rights, disability or gender implications

111. There are no human rights, disability or gender implications for these proposals.

Legislative implications

112. As described above, securing enduring land management outcomes for Crown pastoral land will require legislative or regulatory change. This will include amendments to the Crown Pastoral Land Act 1998 and Land Act 1948, and new delegated legislation under the CPLA.

113. I am therefore seeking Cabinet's approval for LINZ to issue the Parliamentary Counsel Office with drafting instructions to make the necessary amendments to implement the recommendations set out in this paper.

Impact Analysis

114. A Quality Assurance Panel with representatives from Land Information New Zealand and the Treasury Regulatory Quality Team has reviewed the 'Improving the administration of Crown pastoral land' Regulatory Impact Assessment (RIA) produced by Land Information New Zealand and dated November 2019.

115. The Panel considers that the RIA **partially meets** the Quality Assurance criteria.

116. Land Information New Zealand has clearly and completely described the status quo including the regulatory system, identified a wide range of options, and undertaken comprehensive consultation.

117. A clear understanding of the underlying causes and significance of the issues, and the likely impact of options to address them, is inhibited by insufficient quantitative data. To assess the effectiveness and efficiency of the proposals in achieving Government's objectives, and to enable adjustments and corrections, it will be critical for Land Information New Zealand to build thorough monitoring and post-implementation review into its ongoing stewardship of the Crown Pastoral land regulatory system. Ministers

could invite Land Information New Zealand officials to report back on the effect of the proposals within two years of them being incorporated into legislation.

Publicity

118. I will liaise with my colleagues – the Minister for the Environment and the Minister of Agriculture – to decide on the appropriate time to announce the Government's decisions to progress legislation to improve the administration of Crown pastoral land. Shortly before the announcement, LINZ officials will contact leaseholders, iwi, and key stakeholders to inform them of the decisions and outline the proposed changes.

Proactive Release

119. I intend to proactively release this paper at an appropriate time, subject to the redaction of any material as consistent with the Official Information Act 1982.

Recommendations

The Minister for Land Information recommends that the Committee:

1. **note** that there has been increasing public concern about the management of Crown pastoral land by LINZ and a loss of biodiversity and landscape values on current and formal pastoral land over time

2. **note** that on 11 February 2019, Cabinet agreed to end tenure review and invited the Minister for Land Information to issue drafting instructions to make the necessary legislative amendments to end tenure review (CAB-19-MIN-0016 refers)

3. **note** that at the same time Cabinet agreed to consult on a number of changes to the Crown pastoral land regulatory system to improve the Crown's administration of Crown pastoral land (CAB-19-MIN-0016 refers)

4. **note** that the following legislative amendments to improve the Crown's administration of Crown pastoral land will be progressed in conjunction with the legislative amendments to end tenure review

5. **note** that the Crown pastoral land regulatory system does not remove the requirement for leaseholders to obtain permissions under other Acts, such as consent under the Resource Management Act 1991

6. **note** that in making any regulatory changes, there is no intent to change leaseholders' exclusive right to pasturage and quiet enjoyment of their leasehold properties, along with their perpetual rights of renewal

Developing a clear set of outcomes

7. **agree** that the overall outcomes of the Crown pastoral regulatory system are to:

    7.1. maintain or enhance the inherent (ecological, landscape, cultural, heritage and scientific) values across the Crown pastoral estate for present and future generations while providing for ongoing pastoral farming of Crown pastoral land

    7.2. support the Crown in its relationships with Māori under the Treaty of Waitangi

7.3. enable the Crown to get a fair return on its ownership interest in Crown pastoral land

8. **agree** that all persons performing functions and making decisions under the relevant legislation should seek to achieve these outcomes in relation to Crown pastoral land

Classifying activities according to their impact

9. **agree** that activities currently requiring consent be classified as permitted, discretionary and prohibited based on their likely impact on inherent values

10. **agree** that the classification of activities be initially set in a schedule to the legislation when it is introduced, with final decisions on the content of the schedule delegated to the Minister for Land information in consultation with the Minister of Agriculture and the Minister for the Environment

11. **agree** that a power be provided in the legislation to amend the schedule by Order in Council

12. **note** that LINZ will work to improve the operational interface between the CPLA and other regulatory regimes

Applying the outcomes to decision-making

13. **agree** that the decisions on discretionary consent applications must be consistent with the outcomes in recommendation 7.

14. **note** that are a range of options for how such a statutory process for discretionary consents could be configured, and what the Commissioner would consider in making their decisions, while still being consistent with the outcomes

15. **agree** that the statutory process for decisions on a discretionary consent application be required to include consideration of:

    15.1 the impact of an activity on inherent values, and

    15.2 the impact that declining an application would have on a leaseholder's ability to practically and workably farm their lease

16. **agree** to delegate to the Minister for Land Information in consultation with the Minister of Agriculture and the Minister for the Environment decisions on how a statutory process would apply the considerations set out in recommendation 15, subject to recommendation 13.

17. **agree** that, as part of the statutory process, the Commissioner may:

    17.1 decline the application where the applicant has not supplied sufficient information

17.2 impose any reasonable conditions the Commissioner deems necessary on any successful application to reduce the impact on inherent values

18. agree that as part of the statutory process the existing consultation requirement with the Director-General of Conservation be retained, and an obligation to engage with iwi be introduced

Clarifying how expert advice informs decision-making

19. agree that, in relation to discretionary consent decisions, the legislation:

19.1 requires the applicant to provide sufficient information for the Commissioner to assess the application (depending on the nature, scale, and potential impacts of the activity)

19.2 requires the Commissioner, when assessing an application, to obtain any other expert advice they consider necessary to satisfy themselves that the impact of an activity on inherent values is accurately identified

19.3 provides the Commissioner with the ability to decline an application if the application is deemed insufficient or to commission further advice where required

19.4 enables the Commissioner to consider any plan for the management of part or all of a pastoral property in the discretionary consent decision-making process

19.5 requires the Commissioner to consider current government policy as an input to their decision-making where this is not inconsistent with the legislation

Providing for required secondary legislation (regulations and statutory instruments)

20. agree that legislation provide a regulation-making power to specify the information required for a discretionary consent application (e.g. description and location of activity, inherent values impacted, mitigation, etc)

21. agree that the legislation provide a regulation-making power to allow all applications for discretionary consents to be charged for in the future on a cost recovery basis using (but not limited to) a general charge and actual and reasonable costs in respect of the activity

22. agree that the legislation provide a power to make secondary legislation providing for other matters contemplated by the legislation, necessary for its administration or necessary for giving it full effect

Improving monitoring and enforcement

23. agree that the legislation require:

23.1 LINZ's Chief Executive to regularly update and release a monitoring framework for, and to report on, the overall performance of the Crown pastoral land regulatory system in relation to the outcomes

23.2 the Commissioner to monitor the compliance of leaseholders with their lease obligations and consents

24. agree that the legislation provide additional enforcement tools, which would be subject to section 17 of the Land Act:

24.1 the power for the Commissioner to take remedial action and recover costs

24.2 the power for the Commissioner to accept enforceable undertakings

24.3 the introduction of an administrative penalty where an activity requiring consent is undertaken without consent

Clarifying system roles

25. agree that the legislation enable the Commissioner to take on an advocacy role in relation to processes and decisions that may impact on Crown land and on the achievement of outcomes for Crown pastoral land as set out in recommendation 7.

26. note that LINZ will establish an internal Crown pastoral office to increase certainty of resourcing and establish clear lines of communication with the Minister

Strengthening accountability requirements

27. agree that the legislation:

27.1 require LINZ and the Commissioner to work with iwi and leaseholder representatives, along with broader stakeholders as appropriate, to produce a Crown pastoral land Strategic Intentions as part of LINZ's departmental reporting requirements – to be approved by the Minister and updated every three to four years, or at the request of the Minister

27.2 require LINZ and the Commissioner to report annually to the Minister against the Strategic Intentions

Increasing transparency

28. agree that the legislation require the Commissioner to publish a detailed summary of each discretionary consent/rehearing decision (under the current s18 of the CPLA and

s17 of the Land Act as they relate to Crown pastoral land) and shortly after the decision is made

29. **agree** that the legislation require LINZ and the Commissioner to publish a summary of enforcement decisions that sets out the nature of the non-compliance and the reasons for taking enforcement action

30. **agree** that the legislation require LINZ and the Commissioner, with Ministerial or Cabinet approval as necessary, to consult with leaseholders and the public on the development of any Secondary Legislation (Regulations and Statutory instruments) that shapes the decision-making process and administration of Crown pastoral land

Supporting Māori Crown relationships

31. **agree** that the legislation:

    31.1 require the Crown to recognise and provide for the relationship of Māori with their ancestral lands, water, mahinga kai, wāhi tapu and other taonga in relation to considering discretionary consents and any protection mechanisms over Crown pastoral land

    31.2 require the Crown to consult with iwi in developing the Crown Pastoral Land Strategic Intentions document, regulatory instruments and a monitoring framework for Crown pastoral land

Enabling an efficient, fair transition

32. **agree** that the legislation explicitly enable the Commissioner to support the Walking Access Commission in meeting its public access objective in relation to Crown pastoral land

33. **agree** to retain and update the system set out in Part 3 of the CPLA to ensure that the Crown retains the flexibility to deal with unleased Crown pastoral land in the future

34. **agree** that reviews of non-renewable occupation licenses be enabled to continue as if under the old system in cases where they have not been completed by the time new legislation has been enacted

35. [redacted]

36. **note** that Cabinet previously agreed that, upon the enactment of legislation to end tenure review, all reviews will cease except where a substantive proposal has been accepted by the leaseholder

37. **agree** that, upon the enactment of legislation to end tenure review, all reviews will cease except where the Commissioner has put a substantive proposal to the leaseholder, with the leaseholder then having three months to formally accept the proposal in writing, dating from when the proposal was put

Legal and financial recommendations

38. [redacted]

39. agree that a 'no compensation' clause be included in the legislation to make clear that the Crown is not liable to pay compensation to lessees arising from the changes or their lawful application

40. note that these changes will not have a significant net financial impact on LINZ

41. invite the Minister for Land Information to issue drafting instructions to the Parliamentary Counsel Office to make the legislative changes to the Crown Pastoral Land Act 1998 and the Land Act 1948 needed to implement the recommended changes to the Crown pastoral land regulatory system

42. authorise the Minister for Land Information to make technical policy decisions, as needed to support the development of these drafting instructions, including any technical decisions arising out of feedback on an exposure draft provided that they do not materially change the policy intent of proposals.

43. agree that the Minister for Land Information and officials engage with leaseholders and other key stakeholders during the legal drafting process

44. note that the Minister for Land Information intends to proactively release this paper at an appropriate time, subject to the redaction of any material as consistent with the Official Information Act 1982.

Authorised for lodgement

Hon Eugenie Sage

Minister for Land Information