



Cabinet

Minute of Decision

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Delivering Better Outcomes for Crown Pastoral Land: Final Decisions

Portfolio Land Information

On 16 December 2019, following reference from the Cabinet Environment, Energy and Climate Committee, Cabinet:

Background

- 1 **noted** that there has been increasing public concern about the management of Crown pastoral land by Land Information New Zealand (LINZ) and a loss of biodiversity and landscape values on current and formal pastoral land over time;
- 2 **noted** 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 [CBC-19-MIN-0001];
- 3 **noted** 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 [CBC-19-MIN-0001];
- 4 **noted** 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 **noted** 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 **noted** 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 **agreed** 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 **agreed** 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 **agreed** that activities currently requiring consent be classified as permitted, discretionary and prohibited based on their likely impact on inherent values;

10 **agreed** 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 **agreed** that a power be provided in the legislation to amend the schedule by Order in Council;

12 **noted** that LINZ will work to improve the operational interface between the Crown Pastoral Land Act 1998 (CPLA) and other regulatory regimes;

Applying the outcomes to decision-making

13 **agreed** that the decisions on discretionary consent applications must be consistent with the outcomes referred to in paragraph 7 above;

14 **noted** that there are a range of options for how such a statutory process for discretionary consents could be configured, and what the Commissioner of Crown Lands (the Commissioner) would consider in making their decisions, while still being consistent with the outcomes;

15 **agreed** 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;

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

16 **agreed** 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 paragraph 15, subject to paragraph 13;

17 **agreed** 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 **agreed** 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 **agreed** that, in relation to discretionary consent decisions, the legislation:
- 19.1 require 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 require 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 provide the Commissioner with the ability to decline an application if the application is deemed insufficient or to commission further advice where required;
 - 19.4 enable 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 require 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 **agreed** that the legislation provide a regulation-making power to specify the information required for a discretionary consent application, including, for example, description and location of activity, inherent values impacted, mitigation;
- 21 **agreed** 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 **agreed** 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 **agreed** 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 **agreed** that the legislation provide additional enforcement tools, which would be subject to section 17 of the Land Act 1948:
- 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 **agreed** 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 paragraph 7 above;
- 26 **noted** 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 **agreed** 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 **agreed** that the legislation require the Commissioner to publish a detailed summary of each discretionary consent/rehearing decision (under the current section 18 of the CPLA and section 17 of the Land Act as they relate to Crown pastoral land) and shortly after the decision is made;
- 29 **agreed** 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 **agreed** 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 **agreed** 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 **agreed** 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 **agreed** 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 **agreed** 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 **agreed** that changes to the decision-making criteria for discretionary consents will apply only to decisions made after the date the bill is enacted and that discretionary consents granted under the previous systems will not be affected;
- 36 **noted** 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 [CBC-19-MIN-0001];
- 37 **agreed** 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 [s 9(2)(h)]
- 39 **agreed** 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 **noted** that these changes will not have a significant net financial impact on LINZ;
- 41 **invited** 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 agreed changes to the Crown pastoral land regulatory system;
- 42 **authorised** 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 **agreed** that the Minister for Land Information and officials engage with leaseholders and other key stakeholders during the legal drafting process.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
Deputy Prime Minister
Minister for Land Information