

Crown Pastoral Land Act

Summary of consultation on the Commissioner's Standard

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Introduction

The Crown Pastoral Land Reform Act 2022 came into force on 17 November 2022, amending the Crown Pastoral Land Act 1998 (CPLA) and the Land Act 1948. It created new regulation and standard-making powers under the CPLA.

Toitū Te Whenua Land Information New Zealand (Toitū Te Whenua) undertook three phases of consultation on proposed regulations and draft standards to be made under the CPLA. The first round on regulations and draft standards was undertaken between 4 July and 19 August 2022, the second round was on farm plan regulations between 5 December 2022 to 23 January 2023, and the third round on the Commissioner of Crown Land's Standard on Easements, Transfers and Subleases affecting Crown pastoral land (the Commissioner's Standard) concluded with written feedback on 29 June 2023.

Feedback on proposed regulations and farm plans is discussed further in the summary of submissions released on 30 June 2023. This summary of submissions and its discussion documents can be accessed at [Proposed regulations and standards to better manage Crown pastoral land](#).

This August 2023 report summarises the responses and submissions received on the Commissioner's Standard.

Submissions

As required by the CPLA, for the first phase of consultation, Toitū Te Whenua consulted with:

- Relevant iwi
- Representatives of lease and licence holders
- The Director-General of Conservation
- The public, by publishing proposals on the Toitū Te Whenua website and seeking public submissions.

During the first phase of consultation, Toitū Te Whenua met with leaseholders and held public consultation meetings in Cromwell, Methven, Seddon, and Omarama between 25 July and 12 August 2022. Toitū Te Whenua received 20 submissions through the first round of consultation. Submissions were made by Te Rūnanga o Ngāi Tahu (Ngāi Tahu), the High Country Accord, the Department of Conservation, and a further 16 submissions from leaseholders, interested groups, and the public.

During the third phase of consultation, Toitū Te Whenua met with Ngāi Tahu to discuss the Commissioner's Standard as part of discussions on other aspects of the CPLA. Final written feedback on this standard was received on 29 June 2023.

Commissioner's Standard

Toitū Te Whenua consulted on a draft Commissioner's Standard under the new standard-making powers in the CPLA. The proposed Commissioner's Standard under new section 100S(1) of the CPLA would address:

- information to be included with applications for easements, transfer, and subleases
- negotiation process for addressing new public access provisions in the Land Act.

Outcome and next steps

In general, the proposed Commissioner's Standard was supported by submitters. Some submitters raised questions outside the scope of the Commissioner's Standard, which may be addressed in other materials after it is operationalised.

Summary of submissions

Commissioner of Crown Land's Standard on Easements, Transfers and Subleases affecting Crown pastoral land (the Commissioner's Standard).

Suggestion or comment	Toitū Te Whenua response
General comments on the Commissioner's Standard	
Support the Commissioner's Standard and the transparency in information requirements, processes, effects on inherent values, and decision-making criteria that it will bring.	Noted No action required.
The changes need to address timeframe issues. For example, there needs to be greater timeliness in provision of reports to the Commissioner of Crown Lands (the Commissioner) from other parties, agreed timeframes for application processing, and the duration of consents.	Noted Not within the scope of this Standard. Setting out timeframes for application processing, input from other parties, and the duration of consents is more appropriately addressed through guidance. This allows greater flexibility and responsiveness, which is appropriate for timeframes for which context is directly relevant.
The Commissioner's Standard needs to clarify how the outcomes set out in section 4 of the Crown Pastoral Land Act 1998 (CPLA) influence decision-making.	Accepted A new clause 13 has been added for transfers and subleases which sets out the decision-making criteria for the application, including consideration of the outcomes set out in section 4 of the CPLA. This has also been made clearer for easements.
Implementation of the Commissioner's Standard must use processes which enable iwi to practice kaitiakitanga, protect Māori interests, and give access to mahinga kai. This involvement must be resourced.	Noted Not within the scope of this Standard. How Toitū Te Whenua consults and engages iwi, including meeting obligations under section 5 of the CPLA, will be addressed through separate relationship agreements.
There needs to be guidance to support the Commissioner's Standard which sets out detailed information on information requirements, operating systems, and processes, with examples.	Noted Not within the scope of this Standard. Further guidance requirements will be assessed following operationalisation of the Commissioner's Standard.

Suggestion or comment	Toitū Te Whenua response
Minimum information required for applications - the discussion document proposed that the Commissioner's Standard set out the minimum information that an applicant must provide with an application for an easement, transfer, or sublease to be considered.	
Support the minimum information requirements, which are consistent with the existing LINZ Standard LINZS45002.	Noted No action required.
Require information on how an easement supports the outcomes of the CPLA.	Accepted The Commissioner's Standard now requires an applicant to provide their view on the extent to which the proposed easement achieves the outcomes stated in section 4 of the CPLA.
Independent, technical advice is required to determine whether inherent values are likely to be affected by an easement, and if so, the potential effects of the easement on those values.	Accepted in part The Commissioner must assess the extent to which an application achieves the outcomes stated in section 4 of the CPLA, including assessment of any technical or expert advice sought in relation to the application. The Commissioner will determine whether the information provided meets the minimum requirements as set out in the Commissioner's Standard.
Be clearer when additional details about the proposed easement are relevant, and therefore must be provided.	Noted Not within the scope of this Standard. Further guidance requirements will be assessed following operationalisation of the Commissioner's Standard.
Consideration of easements should include iwi feedback when appropriate.	Accepted A new subsection has been added to section 9 to clarify that, as part of the decision-making process, the Commissioner will assess the requirements of section 5(1)(a) of the CPLA as they relate to the easement application.
Easements should require the leaseholders' consent, or at least written input from the leaseholder on the impacts on the easement on their ability to farm the land or their right to its quiet enjoyment.	Accepted in part A new subsection has been added to section 9 which requires that, as part of the decision-making process, the Commissioner will assess a summary of any views expressed by the lessee or licensee. Views will be sought when Toitū Te Whenua notifies the lessee or licensee in writing of the easement application.
Need to set out the decision-making process when determining whether to grant an easement.	Not accepted The easement decision-making process was included in the version of the Commissioner's Standard that was consulted on, under <i>Consideration of Easement Applications</i> .

Suggestion or comment	Toitū Te Whenua response
<p>The Commissioner's Standard should set out when consultation with iwi should take place in the transfer process.</p>	<p>Noted</p> <p>Not within the scope of this Standard, which sets out the minimum information requirements for easements, transfers, and subleases. Note that as part of the decision-making process for a transfer, the Commissioner will assess the extent to which the Application achieves the outcomes stated in section 4 of the CPLA.</p>
<p>The Commissioner's Standard should account for differences between intergenerational transfers and transfers to an unrelated party, whereby intergenerational transfers do not trigger stock limitation or marginal strip clauses.</p>	<p>Noted</p> <p>Not within the scope of this Standard. The Commissioner's Standard sets the minimum information requirements for easements, transfers, and subleases under section 89 of the Land Act 1948. This ensures a fair, consistent, and transparent approach to the management of Crown pastoral land. Transfers under other circumstances, such as a transfer by trustees under 91A of the Land Act 1948, have separate requirements.</p>
<p>An applicant should not be required to provide information that satisfies the Commissioner that they are respectable, responsible, and have the financial resources and ability to carry out the proposed easement activity.</p>	<p>Not accepted</p> <p>The Commissioner must have confidence that the easement is able to be constructed, operated, and maintained as proposed in the application.</p>
<p>Public access considerations - the discussion document proposed that the Commissioner's Standard support the identification and assessment of refused requests for public access when determining whether to consent to the transfer or sublease of pastoral land. This was to help determine whether those refusals were unreasonable and to provide certainty and transparency on how any negotiation conditions will be imposed and implemented whenever the Commissioner chooses to exercise their power to do so.</p>	
<p>The Commissioner's Standard needs to be clear on what would meet the threshold for acceptable evidence to demonstrate that a refused access request was unreasonable.</p>	<p>Not accepted</p> <p>Not within the scope of the Standard. The Commissioner's Standard ensures that where one party says they are denied unreasonably, and the other says they were not denied unreasonably, there is evidence to support one of these claims. The Commissioner will assess this evidence as part of the process to decide whether to impose a consent condition requiring a negotiation process on future requests for public access. Further guidance requirements will be assessed following operationalisation of the Commissioner's Standard.</p>

Suggestion or comment	Toitū Te Whenua response
Need clear definitions which clarify what it means for a public access refusal to be classified as "unreasonable" and clarify that this is assessed in relation to the request, not just the decision.	<p>Not accepted</p> <p>Clauses that define terms referred to in the primary legislation should not be included in the Commissioner's Standard. However, Toitū Te Whenua notes that this was a strong theme in feedback and important to give this certainty to relevant parties. Further guidance requirements will be assessed following operationalisation of the Commissioner's Standard.</p>
Should specify that when assessing whether any past requests for public access over the land were unreasonably refused, refusals must have been by the leaseholder.	<p>Accepted</p> <p>The Commissioner's Standard is amended to "to consider whether any past requests for public access over the land have been unreasonably refused by the lease or licence holder, the Commissioner will seek from LINZ..."</p>
Crown pastoral lessees and licensees have a right to 'exclusive possession' and 'quiet enjoyment' of the land. Therefore, they have a right to refuse access to the land, meaning there is no basis to determine that a refusal was unreasonable.	<p>Not accepted</p> <p>Section 89(2C) of the Land Act empowers the Commissioner to issue a standard under section 100S of the CPLA to give effect to public access considerations. Section 24(1)(ia) of the Land Act empowers the Commissioner of Crown Lands to support the New Zealand Walking Access Commission as far as practicable in meeting its public access objective where that relates to pastoral land.</p>
Crown must approach the issue of public access refusal with a high degree of care and without prejudice. There are many valid reasons why access may be refused, such as health and safety, biosecurity, and animal welfare concerns or existing recreational licences which provide income.	<p>Noted</p> <p>The Commissioner will only decide to impose a consent condition requiring a negotiation process on future requests for public access if claims of unreasonable refusal are supported by evidence. This may include evidence from the leaseholder demonstrating that the decision to refuse access was reasonable and justified.</p>
The Commissioner should prioritise consideration of refused public access requests which are for access to Crown pastoral land for the purpose of gaining access to other land beyond the lease or licence's boundaries. For example, access through a lease to public conservation land. This will ensure that these places are accessible to the wider public.	<p>Noted</p> <p>Not within the scope of this Standard. Further guidance requirements will be assessed following operationalisation of the Commissioner's Standard.</p>
Need to clarify the role of the Commissioner in supporting the NZ Walking Access Commission in meeting its public access objective where it relates to	<p>Accepted</p> <p>Have made it explicit in the Commissioner's Standard that the Commissioner must consider the outcomes set out in section 4 of the CPLA when assessing</p>

Suggestion or comment	Toitū Te Whenua response
pastoral land. This may conflict with iwi values such as cultural inherent values being damaged by a member of the public due to unrestricted access.	<p>an easement, transfer, or sublease application. This means that it is clear that objectives relating to inherent values and the impacts on pastoral farming, for example, will be considered in any decision.</p> <p>This means that while the Commissioner has an obligation to support the NZ Walking Access Commission in meeting their public access objective on pastoral land, the Commissioner must also seek to achieve the outcomes set out in section 4 of the CPLA when making decisions. Therefore, the Commissioner will manage access rights in a way that will reduce, mitigate, or avoid adversely impacting on inherent values, including those identified by iwi.</p>
Add to Clause 6 (Easements) a new clause 6(c)(vi)(C), 'public access to and along water bodies and to land administered by the Department of Conservation', to ensure that easements do not restrict existing access to the conservation estate.	<p>Not accepted</p> <p>Not within the scope of this Standard. Further guidance requirements will be assessed following operationalisation of the Commissioner's Standard.</p>
The Commissioner should consider 'all information pertaining to public access over the area affected by the proposed transfer or sublease', rather than just that which is on file at Toitū Te Whenua.	<p>Noted</p> <p>Additional information outside files stored by Toitū Te Whenua will be sought through engagement with other parties.</p>
The Commissioner should only seek a summary of views on past requests for public access from recognised groups the Commissioner has sought to consult.	<p>Not accepted</p> <p>There may be other relevant parties, including individuals, whose views will be sought. This section has been amended to capture those instances.</p>
<p>Set out how Toitū Te Whenua will work with the parties listed in 11(2)(b) of the discussion document.</p> <p>[These parties were relevant iwi for the land the subject of the Application (as defined in subsection 5(2) of the Act); the Director-General of Conservation; New Zealand Walking Access Commission; party(ies) denied access over the relevant land by the lease or licence holder, where they can be identified and located; and any other recognised representative recreational group the Commissioner has requested.]</p>	<p>Not accepted</p> <p>Not within the scope of the Standard. It is not necessary for the Commissioner's Standard to set out the process for Toitū Te Whenua obtaining the views of these parties. Further guidance requirements will be assessed following operationalisation of the Commissioner's Standard.</p>
Leaseholders should be required to record their justifications for any refusal to grant public access to their lease.	<p>Not accepted</p> <p>This would create a burden for leaseholders that would not outweigh the benefit of having this information.</p>