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

This Standard is made under subsection 100S(1) of the Crown Pastoral Land Act 1998 by the Commissioner of Crown Lands.

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Schedule 1

Negotiation Process for ensuring that future access requests are not unreasonably refused

Legislation

1 Title

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

2 Commencement

This Standard comes into force on 1 September 2023.

3 Purpose

To prescribe minimum requirements for:

- (a) Easements over or under Crown pastoral land under section 60 of the Land Act 1948; and
- (b) Consent to a transfer or sublease of Crown pastoral land under section 89 of the Land Act 1948.

4 Interpretation

In this standard, the definitions in the Act, Land Act and Regulations apply, and unless the context otherwise requires, —

Act means the Crown Pastoral Land Act 1998

Commissioner means the Commissioner of Crown Lands

Crown pastoral land means Crown land for the time being so classified under section 51 of the Land Act 1948

Land Act means the Land Act 1948

LINZ means Toitū Te Whenua Land Information New Zealand

Subpart 1 - Easements over or under Crown pastoral land

5 Interpretation

In this subpart, -

Easement Application means an application for an easement under or over Crown pastoral land under section 60 of the Land Act 1948.

6 Easement Applications

An Easement Application should include the following information, where relevant, to enable the Commissioner to determine whether to grant an easement over or under Crown pastoral land:

- (a) If the applicant is an individual, details of the applicant(s) including their name(s), address(es) and contact details.
- (b) If the applicant is a company or other entity:
 - (i) details of the directors(s) and shareholder(s), or trustees or individuals in control of the applicant, and an address for service; and

- (ii) evidence of its legal status such as a certificate of incorporation, evidence of company registration or copy of a Trust Deed.
- (c) Details of the proposed easement, including (where relevant):
 - (i) Its purpose(s);
 - (ii) Any structures and equipment required to be used in the construction, operation or maintenance of the easement;
 - (iii) A map showing its size, scale, area and location, including which Crown pastoral land it relates to;
 - (iv) The proposed duration and reasons for that duration;
 - (v) The inherent values likely to be affected (if any);
 - (vi) An assessment of the potential effects of the easement on:
 - (A) Inherent values; and
 - (B) Current and future land uses
 - (vii) A description of the actions that the applicant proposes to take to avoid, remedy or mitigate any adverse effects; and
 - (viii) A description of how, if the easement application is approved, any adverse effects will be monitored and by whom.
- (d) Relevant information relating to the applicant(s) that is sufficient to satisfy the Commissioner that:
 - (i) The proposed easement is reasonably necessary for achieving the objectives of the applicant; and
 - (ii) The applicant is, or (if that applicant is not an individual) each of the individuals with control of the applicant are, respectable, responsible and have the financial resources and ability to carry out the proposed easement activity and meet their obligations under the easement if it is granted.
- (e) Advice setting out the applicant's view on the extent to which the proposed easement achieves the outcomes stated in section 4 of the Act.
- (f) A copy of the proposed easement document.
- (g) A copy of any written agreement(s) with the relevant lessee(s) or licensee(s).

7 Applications that lack required information

- (1) Where an Easement Application lacks part or all of the relevant required information the Commissioner will make a written request to the applicant to provide the required information within a timeframe set out in the written request, and pause consideration of the Easement Application until the information is provided.
- (2) Where information requested under subclause 7(2) is not provided within the requested timeframe, then the Commissioner will decide how to proceed with the Easement Application.

8 Notification to Lessee or Licensee

- (1) For the purposes of [section 60 of the Land Act](#), when making a decision to grant any easement under or over Crown pastoral land, the Commissioner will, in order to make a determination on the application, require LINZ to provide written notification to any lessee or licensee that is directly affected by the Easement Application.
- (2) The written notification will include:
 - (a) The name of the applicant;
 - (b) A summary of the application received, including plans which show the proposed easement and the extent to which it impacts on the lease or licence;
 - (c) Advice that:
 - (i) the consent of the lessee or licensee is not required for the grant of any easement;
 - (ii) the lessee or licensee is entitled to compensation for any reduction in value of the lease or licence under [subsection 60\(1\) of the Land Act](#);
 - (iii) the lessee or licensee may negotiate with the applicant for a payment or payment(s) and/or a settlement agreement in respect of the proposed easement, and that any negotiated agreement reached with affected lessees or licensees would be in lieu of compensation under the Land Act 1948 and the Public Works Act 1981;
 - (d) an invitation to the lessee or licensee to provide any additional information or views on the Easement Application regarding the effect of the proposed easement on the land subject to the lease or licence; and
 - (e) setting out a timeframe for provision of that additional information or views.

9 Consideration of Easement Applications

- (1) For the purposes of [section 60 of the Land Act](#), when making a decision to grant any easement under or over Crown pastoral land, the Commissioner will, in order to make a determination on the application, seek from LINZ:
 - (a) an independent valuation report:
 - (i) of the consideration payable to the Crown for the proposed easement; and
 - (ii) for the purposes of [subsection 60\(1\) of the Land Act](#), the lessee or licensee's entitlement to compensation where that lessee or licensee has not privately reached an agreement with the applicant.
 - (b) a summary of:
 - (i) any technical or expert advice sought in relation to the Application; and
 - (ii) the views of the Director-General of Conservation, if any, as sought under [subsection 60\(6\) of the Land Act](#); and
 - (iii) the views of the lessee or licensee, if any, as sought under clause 8 of this Standard.
 - (c) an assessment of the considerations under [subsection 60\(5\) of the Land Act](#) where relevant including:

- (i) whether the easement is reasonably necessary for achieving the objectives of the applicant;
- (ii) the extent to which the application achieves the outcomes stated in section 4 of the Crown Pastoral Land Act 1998; and
- (iii) any other relevant matters.
- (d) an assessment of the requirements of [subsection 5\(1\)\(a\) of the Crown Pastoral Land Act 1998](#) as they relate to the Easement Application.

Subpart 2 - Transfers and subleases of Crown pastoral land

10 Interpretation

In this subpart,-

Application means an application for consent under [section 89 of the Land Act](#) to a transfer or sublease of Crown pastoral land, other than for any application for consent made under [subsection 89\(3B\) of the Land Act](#).

11 Transfer and sublease/sublicence applications

- (1) For the purposes of [subsection 89\(2\) of the Land Act](#), an Application should include the following information, where relevant, to enable the Commissioner to determine whether to refuse or grant a transfer, sub-lease or sub-licence with consideration to the public interest:
 - (a) Details of the current lessee or licensee including name(s), address(es) and contact details.
 - (b) Details of the proposed transferee(s) or sublessee/sublicensee(s) including:
 - (i) name(s), address(es) and contact details; and
 - (ii) if the proposed transfer or sublease/sublicence is to a company or other entity:
 - (A) details of the directors(s) and shareholder(s), or trustees or individuals in control of the applicant, and an address for service; and
 - (B) evidence of its legal status such as a certificate of incorporation, evidence of company registration or copy of a Trust Deed.
 - (iii) relevant information that they are:
 - (A) respectable and responsible; and
 - (B) have the financial resources and ability to meet and comply with any covenant, condition, or obligation (expressed or implied) under the relevant lease, licence or sublease.
 - (c) Details of the proposed transfer or sublease/sublicence, including:
 - (i) The Crown pastoral lease(s) or licence(s), or part(s) thereof, affected;
 - (ii) The proposed transfer date or commencement date of the sublease or sublicence;

- (iii) Confirmation of the numbers of stock that the proposed transferee, sublessee or sublicensee proposes to carry on the land, and whether these are higher than those provided for in the lease or licence;
 - (iv) Confirmation whether the proposed transferee, sublessee or sublicensee will reside on the land; and
 - (v) A copy of the relevant transfer, sublease or sublicense documentation.
- (2) For the purposes of [subsection 89\(2A\) of the Land Act](#), 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:
 - (a) A summary of a review of LINZ's files on the relevant land that identifies whether any information is held on previous refusals of access over the land;
 - (b) A summary of the views of:
 - (i) Relevant iwi in relation to the land the subject of the Application;
 - (ii) The Director-General of Conservation; and
 - (iii) New Zealand Walking Access Commission; and
 - (iv) Party(ies) denied access over the relevant land by the lease or licence holder, where they can be identified and located;
 - (v) Any other recognised representative recreational group or any other person the Commissioner considers relevant; and
 - (c) A written response from the relevant lease or licence holder where cases of refused access are identified in subclause (2)(a) and (2)(b).
- (3) For the purposes of subsection 89(2A) of the Land Act, to determine whether any past requests for public access over the land were unreasonably refused, the Commissioner will require LINZ to, from the date of this Standard, actively seek and record any refusals to grant public access over the relevant land.

12 Applications that lack required information

- (1) Where an Application lacks part of all of the relevant required information the Commissioner will make a written request to the applicant to provide the required information within a certain timeframe, and pause consideration of the Application until the information is provided within the specified timeframe.
- (2) Where information requested under subclause 12(1) is not provided within the requested timeframe, then the Commissioner will decide how to proceed with the Application.

13 Consideration of Applications

- (1) For the purposes of [subsection 89\(2\) of the Land Act](#), when making a decision whether to refuse or grant a transfer or sub-lease of Crown pastoral land, the Commissioner will, in order to make a determination on the application, seek from LINZ:
 - (a) an assessment of the Application, and the information provided under subclause 11(1), including analysis of:

- (i) the extent to which the Application achieves the outcomes stated in section 4 of the Act;
 - (ii) whether the proposed transfer, sublease or sublicense meets the requirements of the Land Act;
 - (iii) the constitution/trust deed (if the proposed transferee, sublessee or sublicensee is a company or other legal entity);
 - (iv) for a transfer, whether the lease needs to be varied to limit the transfer of shares (if the proposed transferee is a company);
 - (v) the suitability of the proposed transferee, sublessee or sublicensee to hold a lease;
 - (vi) the effect of proposed transfer, sublease or sublicense on existing recreation permits, if any, over the Crown pastoral land.
- (b) the information sought under subclause 11(2);
 - (c) where the transferee, sublessee or sublicensee proposes higher stock numbers than those provided for in the lease or licence, an assessment on such a stock limitation change;
 - (d) an assessment of an exemption from the residency requirement of the lease or licence, if required; and
 - (e) a memorandum of dealing, legally approved, for execution by the Commissioner, if required.

14 Requests for public access

- (1) For the purposes of [section 89\(2B\) of the Land Act](#), a decision to impose a consent condition requiring a negotiation process on future requests for public access can only be made once the Commissioner has sought information and/or advice that assesses whether any:
 - (a) claims of access over the relevant land having been unreasonably refused are supported by evidence; and
 - (b) evidentiary disputes are resolved.
- (2) For the purposes of [section 89\(2B\) of the Land Act](#), the "negotiation process" will be the process prescribed in **Schedule 1** of this Standard.

Schedule 1
Negotiation Process for ensuring that future access requests are not
unreasonably refused

- (1) Parties – In this Schedule ‘parties’ means the Commissioner and the outgoing and incoming lessee or licence holder or sub-lessee or sub-licensee as the case may be.
- (2) Initiation – As soon as practicable after the lease or licence has transferred, the Commissioner will write to the lease or licence holder, or where the lease has been subleased, the Commissioner will write to the sublessee and the lease or licence holder:
 - (a) Advising that the Commissioner is commencing the negotiation process provided for as a condition of the consent to transfer, and
 - (b) Provide a brief outline of the access issues, as the Commissioner sees them, and the matters that the Commissioner wishes to negotiate, and
 - (c) Proposing the scope of the negotiation, including:
 - (i) When and where the negotiations will take place, and the timeframes for negotiations;
 - (ii) Who has the authority to represent and bind the parties;
 - (iii) Who may attend the negotiations, including legal counsel and/or experts on behalf of the parties;
 - (iv) Other persons the Commissioner would like to attend the negotiations if agreed by the other party;
 - (v) How the costs of the negotiations are to be met; and
 - (vi) Any other matters, that, having regard to the nature of the access issues, the Commissioner considers appropriate to best meet the needs and interests of the parties;
 - (d) Inviting the lease or licence holder or sublessee to respond on subclauses 1(a)-(c).
- (3) Procedure – the procedures for the negotiations process will be agreed in writing between the parties as soon as possible after the Commissioner writes to the lease or licence holder or sublessee under clause (2).
- (4) Negotiations – the negotiations between the parties will occur in the agreed process.
- (5) Mediation - if the parties to the negotiation are unable to reach a resolution, the parties may agree to refer the matter to mediation.
- (6) Resolution - if a resolution is reached as a result of negotiations or mediation, it will be recorded in an agreement that is binding on, and enforceable by, the parties.
- (7) Record keeping - the Crown agency will retain a record of the negotiations and outcomes on its files for future reference.

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Subleases affecting Crown pastoral land

Made at Wellington on 14 August 2023.

Craig Harris
Commissioner of Crown Lands

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This legislation is administered by the Toitū Te Whenua Land Information New Zealand.