A3 for Minister's meeting - 22 March 2021

Issues warranting further consideration					
Decision-making on activities	**Treaty**	**Accountability, transparency and public involvement**	**Monitoring and enforcement**	**Transitional arrangements**	**Legislative design and drafting**
• We are examining whether modifications to the schedule of permitted activities may be needed to make greater allowance for certain activities, including those that may be necessary to meet requirements under other legislation (e.g. fencing obligations). • A new clause is required to revoke the blanket minor consent letter sent to leaseholders in 1999. Otherwise, the letter may provide for the continuation of some activities that do not match with the Schedule of "permitted" activities in the Bill. • We are looking at whether the Bill adequately protects leaseholders' ownership of their 'improvements'. Issues raised primarily relate to improvements that do not have a clear consent attached to them – e.g. historic tracks or historic clearances of land – either because they predate the Land Act 1948 or because LINZ may not have a record of them. • We are looking at whether there is room to strengthen provisions relating to farm plans – which could be used to help streamline the consenting process on a voluntary basis – for instance by helping support the Commissioner's consideration of cumulative impacts. • We may need to extend the definition of 'cultural values' to ensure historic or cultural sites buildings etc aren't inadvertently excluded because of a link to farming.	• We are working through Ngāi Tahu's proposals on the Bill: o The outcomes in the Bill should specify the "principles of te Tiriti should be given effect to" (rather than the current wording "support the Crown in its relationships with Māori under te Titiri") o There should also be: - more specific recognition of Ngāi Tahu's interests cf iwi more broadly - a stronger involvement by TRoNT in decision-making by the Commissioner and engagement in management activities - a statutory mechanism for a Ngāi Tahu convenant to protect Ngāi Tahu values - a statutory mechanism providing for an easement to allow Ngāi Tahu access and use of the land • Note that Ngāi Tahu is also seeking resourcing to come onto the land and catalogue its cultural values.	• We are considering whether the reference that the Commissioner "must consider Government policy" as part of the consenting decision-making process should be more tightly prescribed (e.g. the Law Society has suggested reference instead be made to a Cabinet resolution or in a policy statement issued by the Minister under the Act).	• We are looking at whether proposed infringement notices should be replaced with administrative penalties – which some leaseholders claim will unfairly 'criminalise' leaseholders.	• We are looking at whether cut-off points for applications for consents/permits is retrospective and undermines legitimate expectations – contrary to the LEG Guidelines. • We are considering whether the Bill unfairly prevents judicial review of tenure review decisions made prior to enactment of the Bill. • We are considering we should allow more time between Royal Assent and the Bill (or parts of the Bill) coming into force – to enable more time for the development of, and consultation on, regulations and other secondary instruments, and to ensure effective implementation. • There may be a need to make provision in the Bill if a decision is made that some tenure reviews should continue to progress after the Bill is enacted.	• We are considering concerns raised by the Regulations Review Committee that the Regulation-making powers in s100N and Commissioner's powers to issue standards and directives in s100O should be more tightly prescribed – otherwise these powers may be too broad. • Some of the language in the Bill drawn from the RMA (i.e. "effects", "more than minor") may need to be re-thought due to the 'baggage' (e.g. case law) their use has under the RMA. • We are looking at whether the provision allowing for amendments to Schedule 1AB "Classification of Pastoral Activities" to made by Order in Council (particularly the list of prohibited activities) could be viewed as "materially changing" the terms of a pastoral lease, thus eroding the rights of leaseholders. • We have developed thinking on how decision-making provisions (in particular the two-step process covered in s11-13) could be simplified with some of the more prescriptive detail being moved to secondary legislation, as advised by LDAC.

Note: This is not yet a comprehensive list of issues as LINZ is still working through the submissions and the Committee is still hearing evidence. It represents LINZ's identification of substantive issues to date and its initial thinking on them.

Suggested changes where our initial thinking is that there should be no change to the Bill

Suggested changes made by submitters (summarised)		Why these *should not* be addressed through amendments to the Bill
Tenure Review	**Some submitters (particular leaseholders and advocacy groups) propose that the tenure review process should be retained, but that improvements could be made to the process.** In addition, some environmental groups saw value in having some kind of tenure review-like process, although this was specifically in relation to the transfer of land into the Conservation Estate (not transfer into freehold ownership).	The Government decided to end tenure review on the basis that "the process has seen significant amounts of land move out of the Crown pastoral estate and become freehold land, enabling further intensification on that land and adding to public concern about the loss of biodiversity and landscape values." [CBC-19-MIN-0001 refers] The Government also decided that it wanted all reviews to cease immediately on enactment of the legislation – except where a substantive proposal had been put to a leaseholder, recognising at that point leaseholders have or are close to having a contractual agreement with the Crown. In LINZ's view, there has been no material information or evidence raised in submissions that has not already been considered by the Government in reaching their previous decisions on tenure review.
Intersection with Resource Management Act (RMA)	**There is no need for the Bill as it duplicates what is already provided for in other legislation (particularly the RMA)** Some submitters (particularly leaseholders and advocacy groups) argue that the Bill duplicates the RMA, and that the RMA already provides adequate regulation of Crown pastoral land. Further, it would be better to withdraw the Bill and wait and provide for any further outcomes the Governments to achieve with Crown pastoral land as part of the resource management reform process.	The RMA and the Crown pastoral land regulatory system have different purposes: • The Crown pastoral land regulatory system specifically protects the Crown's ownership interest in Crown pastoral land, as well as setting out how the Crown will administer the land, and what rights and obligations leaseholders have under their leases. • Crown pastoral land is therefore subject to additional protection over and above the protections afforded by the RMA in recognition of the Crown's ownership interest and the particular importance and fragility of the land. • In addition, the Crown pastoral regulatory system goes beyond land use to setting out the core rights and responsibilities for the Crown as landowner/lessor and leaseholders. There is likely to be the potential for better alignment between the RMA and the CPLA at an operational level, and LINZ will work with local councils and leaseholders to identify ways to improve this alignment. Increased use of farm plans may also be a way to streamline processes where leaseholders need to apply for both RMA and CPLA consents. LINZ's view is that the proposed changes to the RMA will not impact on the purpose or scope of the Crown pastoral regulatory system.
New outcomes that decision-makers must seek to achieve	Outcome 1: ***Maintaining or enhancing inherent values across the Crown pastoral estate … while providing for ongoing pastoral farming of pastoral land*** Some submitters (particularly environmental groups) took issue with the 'balancing' of protecting inherent values with providing for ongoing pastoral farming. It was proposed that a hierarchy be used in the outcomes statement prioritising the maintenance or enhancement of inherent values, and ***subject to this***, pastoral farming can be provided for (effectively an environmental 'bottom line'). Outcome 2: ***supporting the Crown in its relationships with Māori under te Tiriti o Waitangi*** Concerns were raised by Te Rūnanga o Ngāi Tahu that this outcome needs to be amended to place a stronger obligation on the Crown with the wording that "the principles of Te Tiriti o Waitangi be given effect to." The Law Society was also concerned about the lack of clarity in relation to the wording of the outcome. Outcome 3: ***enabling the Crown to get a fair return on its ownership interest in pastoral land*** There were concerns raised as to what this outcome might mean for rents. Pai Ake Taiao Ltd also wants the clause to be amended to provide for Māori as well as the Crown to "get a fair return on its interest in pastoral land."	LINZ has focused on identifying whether there are any issues or concerns raised by submitters that have implications for whether the Bill achieves the Government's agreed outcomes, including in relation to the wording of the outcomes. LINZ notes that: • the wording of the first outcome reflects the Government's view that inherent values and pastoral farming should be given equal weighting • the wording of the second outcome follows the drafting of section 14(1) of the Public Service Act 2020 • the third outcome is simply a statement of the Crown's right to seek a fair rate of return on its ownership interest, and has no impact on the calculation of rents, or on the interests of its Treaty partner. In LINZ's view, there has been no material information or evidence raised in submissions that has not already been considered by the Government in reaching their previous decisions on the wording of the outcomes.

Involvement in the new statutory decision-making process	**Providing for public and/or iwi involvement in the decision-making process for discretionary pastoral consents and recreation permits** Some submitters (particularly environmental and recreational groups, and iwi) sought public and/or iwi involvement in the decision-making process – for instance, that they are notified by the Commissioner as part of their decision-making process.	LINZ's view is that iwi and public involvement is not appropriate at the level of individual decisions made by the Commissioner - due to the contractual relationship between the Crown and leaseholder. However, it is appropriate at a broader system level (eg in the development of the monitoring framework and strategic intentions document). The Bill provides for this.
Farm plans *in lieu* of the regulatory system	**Legally-binding farm plans should be used *instead* of the regulatory system** Leaseholders and advocacy groups generally (particularly the High Country Accord Trust).	The Bill amends an existing regulatory system in which LINZ already controls the use of Crown pastoral land. Leaseholders will need to seek the Commissioner of Crown Land's consent for undertaking many activities just as they do now. While farm plans may be useful in helping to streamline the consenting process, they cannot simply replace them. The Commissioner will still need to decide whether to allow certain activities to go ahead, and this will require some sort of consenting process – just as farmers are still required to apply for RMA consents even if they have an existing farm plan.

Note: This represents LINZ's initial thinking on the above issues. It is also not a comprehensive list, as LINZ is still working through the submissions and the Committee is still hearing evidence.

A3 for Minister's meeting - 31 March 2021

Possible changes to the Bill

Outcomes and decision-making	Treaty	Accountability, transparency and public involvement	Monitoring and enforcement	Efficient and fair transition	Legislative design and drafting
Possible changes include: • clarifying the definition of 'inherent values' so as not to exclude landscape, cultural and heritage inherent values associated with historic farming activity • making greater provision for farm plans by providing for regulations to be made in relation to the form and content of farm plans • allowing the Commissioner to consider the viability of the pastoral lease and the economic sustainability of the pastoral farming enterprise when deciding whether to consent to an activity with more than minor adverse effects • simplifying the drafting and increasing the flexibility of the pastoral farming test by moving the more prescriptive detail into a Schedule to the Bill, which could then be amended by Order in Council • making minor modifications to the schedule of permitted activities to improve consistency and clarity and address anomalies (e.g. provision for water troughs). • revoking the blanket minor consent letter sent to leaseholders in 1999 to enable the Schedule to work as intended.	Possible changes include amending the Bill to specifically reference the Crown's obligations in accordance with the Te Rūnanga o Ngāi Tahu Act or with any other interests.	Possible changes include: • restricting the Commissioner's consideration of government policy to National Policy Statements • amending the way activities are classified as 'prohibited' to ensure leaseholder rights are sufficiently protected.	We are still working through leaseholders' concerns with an infringement system. A decision to be made here is whether LINZ should be taking enforcement action as a lessor or a regulator.	Proposed changes include: • requiring the Commissioner to deal with decisions that were lodged but not finally dealt with before the commencement date of the Act under the existing provisions of the CPLA • providing for more time between Royal Assent and the Bill coming into force – to enable more time for the development of, and consultation on, regulations and other secondary instruments, and to ensure effective implementation. There may be a need to make provision in the Bill if a decision is made that some specific tenure reviews should continue to progress after the Bill is enacted.	Proposed changes include: • minor changes to help address concerns raised by the Regulations Review Committee that the Regulation-making powers in s100N and Commissioner's powers to issue standards and directives in s100O should be more tightly prescribed • amending the way activities are classified as 'prohibited' to ensure leaseholder rights are sufficiently protected.

Areas where we are likely to recommend no changes to the Bill (in addition to ending tenure review)

Outcomes and decision-making	Treaty	Accountability, transparency and public involvement	Efficient and fair transition
• The Bill's outcomes as agreed by Cabinet (noting that Te Arawhiti has proposed a significantly strengthened outcome). • Regulatory alignment with the RMA (focus instead on operational alignment). • Replacement of consenting by compulsory binding farm plans (focus instead on use of farm plans to streamline consenting processes and strengthen the LINZ/leaseholder relationship). • The structure of the test for discretionary pastoral activities and recreational consents (focus instead on the simplifying set out above). • Stronger provision for recreational access 'as of right' (rather than by negotiation with the leaseholder). • Alternatives to the Commissioner as sole decision-maker.	• A desire for stronger involvement by Ngāi Tahu in decision-making, engagement in management activities, provision for access and specific protective mechanisms.	• Public involvement in decision-making (as opposed to public involvement at a whole-of-system level)	• Transitional arrangements for ending tenure review (noting possible carve-outs for specific tenure reviews)

Note: This represents LINZ's current thinking on substantive issues identified through the submissions analysis process – LINZ's advice is not yet finalised

Analysis of broad leaseholder concerns	
Issue	**LINZ comment**
The proposed changes will breach leaseholders' property rights	The CPLA provides that a pastoral lease gives the leaseholder: • the exclusive right of pasturage over the land, but no right to the soil • a perpetual right of renewal for terms of 33 years • no right to acquire the fee simple of any of the land. Leaseholders also have rights to exclusive possession and quiet enjoyment, as with all leases. The Bill does not make any changes to any of these rights.
The proposed changes will affect leaseholders' ownership of their improvements (more specifically, there's a failure to provide for historic tracks and re-clearing previously-cleared land).	The Bill: • will provide for any historic improvements in the same way that the current legislation does • will require a consent for re-clearing land, just as the current system does • preserves consents that include an ongoing right to clear land • makes specific provision in Step 2 of the discretionary consents test for periodic clearance of vegetation as part of a regular cycle to maintain existing pasture, and the maintenance of reasonable access by way of tracks.
The proposed changes will affect the way rents are calculated	Rents are set according to a formula that sits in the CPLA. Nothing in the Bill amends that formula or has any impact whatsoever on how rents are calculated
The proposed changes will significantly increase the regulatory burden/costs for leaseholders	The majority of the changes in the Bill put new obligations on LINZ rather than leaseholders. An assessment of the cost to leaseholders of the proposed changes was made in the Regulatory Impact Statement *Improving the Administration of Crown Pastoral Land*. That RIS concluded that increased costs to leaseholders were likely to occur as a result of: • increased information requirements when applying for consents • the introduction of application fees. The first of these costs was assessed as relatively minor. The impact of the fees will depend at what level they are set. Both of these will be set through regulations – which will require consultation with leaseholders. Overall, leaseholders will be able to undertake a wider range of activities without consent – although there will be some more restrictions in relation to fencing, clearing drains and irrigation where leaseholders have to now apply for consents. Leaseholders have raised concerns about potential delays in the issuing of consents – this will need to be managed operationally by LINZ.
The proposed changes will fundamentally alter the relationship between LINZ and leaseholders	The Bill does not change either LINZ's regulatory role or its contractual relationship with leaseholders. LINZ's view is that a constructive working relationship with leaseholders is critical in its ability to perform both those roles well.
The proposed changes will be invasive of leaseholders' privacy.	There is strong public interest in LINZ's administration of Crown pastoral land, and the publication of decisions summaries will help to address concerns expressed by other submitters about a lack of transparency in LINZ's decision-making. In LINZ's view, clause 22E(4) provides adequate protection for leaseholder privacy, as it allows information to be withheld if a reason for withholding would exist under the Official Information Act[1].

[1] Section 9(2)(a) of the OIA applies where withholding is necessary to 'protect the privacy of natural persons, including that of deceased natural persons'.

Note: This represents LINZ's current thinking on substantive issues identified through the submissions analysis process – LINZ's advice is not yet finalised

Issues for discussion		
Reference	**Issue**	**LINZ comment**
Offsetting *Pages 11,13 of Bill*	• New section 12(4)(b) in Clause 8 says that offsetting including as a way of counterbalancing adverse effects, is not a relevant consideration in deciding the adverse effects of an activity being applied for. • Some submitters (*incl. the Accord and Fed Farmers*) questioned why the Commissioner wasn't allowed to consider offsetting, as this approach is inconsistent with what is being proposed in the Draft National Policy Statement (NPS) for Indigenous Biodiversity, and will act as a disincentive for pastoral leaseholders to undertake positive environmental work. • Other submitters agreed that offsetting should be excluded because of the potential for significant adverse impacts on some inherent values (or adverse impacts on significant inherent values).	• Offsetting would require a trade-off between intensified pastoral activity on one part of a lease with the preservation or (or enhancement) of inherent values on another. • Even if the net effect of off-setting is enhanced inherent values, intensification is at odds with the Bill's intent of better managing and controlling *"…any further development and intensification of pastoral farming activity on Crown pastoral land"*. • While offsetting is proposed under the draft NPS Biodiversity, it doesn't necessarily follow that it is appropriate for Crown pastoral land because of its particular fragility and landscape values. • Operationally, offsetting would likely add significant cost and complexity to consent processing. Proposals for offsetting would require the Commissioner to weigh up the different attributes that give rise to inherent value across a lease (e.g. any effect on landscape values due to intensification).
Farming and inherent values *page 5 of Bill*	• New section 6(2)(b) which defines inherent values "does *not* include values that relate to, or are associated with, farming activity". • Some submitters (*incl. the Accord and Lakes Station*) were concerned that this provision fails to recognise the contribution of pastoral farming to NZ's culture and heritage – noting that many landscape, cultural and heritage values arising from the land may be associated with the history of farming on the land. • However, other submitters agreed with the Bill's approach – Forest & Bird supported the exclusion of farming values to avoid a confused decision-making framework and a lack of a clear statutory outcome and to clarify that farming values are not intended by the phrase 'cultural values.'	• LINZ recommends clarifying this issue through the Departmental Report. • The intent of this provision was to avoid a situation where it could be claimed that a pastoral farming activity applied for could itself be identified as having inherent value – for instance, because it was an activity that had happened historically. • However, the intent was not to exclude landscape, cultural and heritage values simply because they are associated with farming (for instance, an historic shed). LINZ therefore recommends clarifying this provision so as not to exclude landscape, cultural and heritage inherent values associated with historic farming activity.
Commissioner may obtain advice *Page 9 of Bill*	• New section 10(3) states that "*When assessing an application, the Commissioner may obtain any advice the Commissioner thinks necessary in order to make a decision under section 11*".	• This provision is intended to ensure that the Commissioner has the information available to them to make the necessary considerations and come to a decision. • The information required from the applicant will be set in regulation (and, therefore, consulted on), but there will be some cases where it may not be feasible or appropriate for the applicant to supply all the information. The Commissioner might need supplementary expert advice where needed (as currently happens in practice) which this section provides for.
Financial viability *page 12 of Bill*	• New section 12(6)(a) in Clause 8 of the Bill says that the financial viability of farming under that lease or licence, or the economic sustainability of the pastoral farming enterprise are not relevant considerations in Step 2 of the decision-making process for discretionary pastoral activities (when the Commissioner considers if an activity is necessary to enable the lessee to exercise their rights and obligations under the lease). • Submitters (*incl. the Accord and Fed Farmers*) were concerned with this provision as in their view: o the change effectively negates any considerations around the future viability of the pastoral farming enterprise at the heart of the lease, undermining the Crown's relationship with leaseholders o the role of the Commissioner is to consider the best use of land for the benefit of New Zealand, and therefore, economic sustainability and financial viability should be considered in terms of that benefit.	• LINZ agrees that new section 12(6)(a) should be deleted and recommends doing so through the Departmental Report. • The viability of the pastoral lease and the economic sustainability of the pastoral farming enterprise could potentially be relevant considerations if a leaseholder wants to establish that, if consent for an activity is not granted, the lease would no longer be viable or economically sustainable, and the leaseholder would no longer be able to exercise their rights and obligations under the lease. • However, the leaseholder would need to demonstrate to the Commissioner's satisfaction that this was the case.

"Reasonable alternative" *Page 10 of Bill*	• New section 12(1)(a) enables the Commissioner to test with the applicant whether there might a "reasonable alternative" way to achieve their farming objectives that has lesser adverse effects on inherent values -- when considering an application for a discretionary pastoral activity (e.g. through a different method of pest or weed control).	• The alternative has to be "reasonable" (i.e. not very costly or difficult). The test is only to the Commissioner's satisfaction (so not some external standard). • This provision could be particularly useful in the context of developing farm plans with leaseholders, ensuring that they're making decisions that are as consistent as possible with the protection of inherent values while providing for them to achieve their farming objectives.
Step 2 of the decision-making process for discretionary pastoral activities *page 11 of Bill*	• Step 2 of the decision-making process in new section 12(5) Clause 8 of the Bill recognises there will be circumstances where a discretionary pastoral farming activity that has *more than* minor adverse effects may still be permitted where the Commissioner is satisfied that the activity is: *"**necessary** to enable the leaseholder or licensee to exercise their rights and obligations under their lease or licence…"* • Some submitters (*incl the Accord*) consider that this provision sets too high a bar and that "necessary" should be replaced with "reasonably required".	• LINZ had initially proposed that an activity could be permitted if not granting consent "would unreasonably prevent the land from being pastorally farmed" but the Accord (and others) were concerned that that wording was not sufficiently clear. Factors (a) to (f)) were, therefore, adopted as (one or more) factors the Commissioner should take into account: *"….(a) whether the pastoral activity forms part of the periodic clearance of vegetation as part of a regular cycle to maintain existing pasture created by oversowing, top-dressing, or cultivation:* *(b) whether the pastoral activity is required to provide reasonable access by way of tracks to areas of the land that are currently subject to a programme of oversowing or top-dressing for the grazing of livestock:* *(c) whether the pastoral activity is required to use, maintain, or replace consented existing infrastructure or buildings:* *(d) whether the pastoral activity contributes to the leaseholder or licensee meeting their obligations under their lease or licence or other enactments:* *(e) whether the pastoral activity is required to address an exceptional circumstance, for example, where there is a significant risk to the health or safety of the holder of the lease or licence or their stock:* *(f) any other relevant considerations."* • The term *necessary* was also adopted, but needs to applied in the context of (a) to (f) above. • Consistent with the Bill's aim of better managing "…any further development and intensification of pastoral farming activity on Crown pastoral land", Step 2 is deliberately strict because it involves consent applications that will have more than a minor impact on inherent values. • By the time an applicant gets to Step 2, all the permitted activities, and discretionary activities with a no more than minor impact, have already been allowed. Step 2 is for circumstances where there may be a need for an activity with more than minor impacts to keep pastorally farming. The intent is to provide a pastoral farming 'bottom line'.

Timber *page 11 of Explanatory note* *pages 22, 29 of Bill*	There are references to "timber" throughout the Bill: • Clause 22 (see p 11 of Explanatory note/ p29 of Bill) amends section 100 of the Land Act 1948 by confirming that new sections 10 to 12 of the Bill (the new discretionary consenting process) apply to activities undertaken under section 100. • New sections 100D in Part 1 (see p22 of the Bill) provides for infringement offences relating to specified contraventions including: "felling, selling, or removing any timber without a consent (if a consent is required under section 100 of the Land Act 1948)." • In Schedule 1AB, permitted pastoral activities includes: *"7. Clearing wind-felled trees, except where the timber is for sale or off-farm commercial use."* • In Schedule 1AB, discretionary pastoral activities include: *"(d) felling, selling, or removing any exotic timber, tree, or bush (not including invasive exotic pest plant species where the activity is a permitted pastoral activity) under section 100 of the Land Act 1948"*	• Section 100 of the Land Act provides that: *"the lessee or licensee … will not … without the prior consent of the Commissioner …fell, sell, or remove any timber, tree, or bush growing, standing, or lying on the land … and that he will … prevent the destruction or burning of any such timber, tree, or bush, unless the Commissioner otherwise approves."* The Commissioner's consent is not required if the removal of the timber or tree is done for purposes on the land, or if the lessee has planted the trees. • As leases were granted for pastoral farming, section 100 enables the Commissioner to make decisions about removal of trees that are not owned by the lessee, including any conditions such as royalties where commercial timber logging is proposed. • Clause 22 mirrors section 18(1)(3) of the current CPLA to make it clear that the removal of timber, trees or bushes from Crown pastoral land is a discretionary consent.

Issues for discussion		
Reference	**Issue**	**LINZ comment**
Part 2 cl. 22 (p. 29)	**Treatment of non-native timber** You wanted to ensure that the Bill made it as easy as possible for leaseholders to remove pine trees on their leases.	• In LINZ's view the Bill makes it easier for leaseholders to remove pine trees and other exotic plant species that have grown unintentionally because: o these trees and plants are treated as an invasive exotic pest plants (wilding pines, gorse, broom etc) o control is therefore a permitted activity under Part 1 of Schedule 1AB (CPLR Bill) when there is no associated indigenous by-kill o control, where there is associated indigenous by-kill, is also permitted under Part 1 of Schedule 1AB as long as the control methods meet the applicable area tests (e.g. no more than 25ha in any 5 year period). • The Bill maintains the need to seek consents for removing intentionally planted exotic mature trees owned by either the leaseholder or the Crown. LINZ expects that in almost all cases consent will be given to remove exotic trees. But maintaining the consent process: o is necessary to minimise the risk of any adverse effects associated with clearing large tracts of mature trees (e.g. erosion) o allows the Commissioner to collect a royalty associated with the selling of Crown-owned timber. • The Bill also protects native trees generally, because consent from the Commissioner is required to clear any indigenous vegetation (s2(c) Part 2 Schedule 1AB) unless it is a part of the allowed indigenous by-kill associated with controlling invasive exotic pest plants (cl. 1(a) Part 1 schedule 1AB).
cl.100F (p.23)	**Provision for enforcement officers** The Ministry of Justice has raised concerns about the lack of specificity of the provision enabling the Commissioner to authorise an employee of the department, or other person, to issue infringement notices.	• To address MoJ's concerns, LINZ proposes that the issuing of infringement notices should be provided as a power to an enforcement officer. • 'Enforcement officer' will then need to be defined in the legislation to grant the Commissioner the ability to assign enforcement officers and ensure officers have the adequate training and skills required for this role.
Schedule 1AB Part 2 cl. 2(n) (p. 34)	**'Spray and pray'** You had questioned the appropriateness of this term (which is defined as a discretionary activity in the Schedule).	• LINZ proposes that this definition should be amended to read "the spraying of a slope to remove vegetation, and replanting the slope in stock or forage crops."
Part 1 cl. 13(5)(b) (p. 13)	**Further provision for recreational activities** LINZ has identified a potential issue with the application of the test for recreational permits where the Commissioner may be prevented from granting consent to an activity that uses existing consented infrastructure or buildings but: • where the application is for a different use of the existing buildings or infrastructure (for instance, if the applicant wanted to change the use of a lodge to a conference centre) or • where the applicant needs to undertake some work to ensure an existing business operating under an existing recreational permit can continue - for instance, where some work is needed to restore or improve access to buildings or infrastructure so that the business remains viable (note this would not allow for expansion or further development of a business where that had a more than minor adverse effect on inherent values).	• LINZ proposes amending the relevant clauses to allow the Commissioner (but not oblige the Commissioner) to approve activities that have more than adverse effects on inherent values where: o existing infrastructure or buildings are proposed to be used for a different activity o an activity is necessary for the continuing use of existing infrastructure or buildings. • In LINZ's view, this is in keeping with the policy intent - which is to ensure that: o new commercial recreational activities on Crown pastoral land *will not be allowed* where they have more than minor adverse effects on inherent values o existing activities *could be allowed* to continue where there has been significant investment in infrastructure or buildings (e.g. ski fields on Crown pastoral land) even if they have a more than minor adverse effect on inherent values o however, as with pastoral farming activities, any further development or intensification of those activities *is unlikely to be allowed* where it will have more than minor adverse effects on inherent values.

		The viability of the business could be a consideration for the Commissioner, consistent with the proposed changes regarding applications for pastoral farming activities – however, the applicant would have to satisfy the Commissioner that the viability of the business was in question.
New provision	**Undertaking of emergency works** Submitters have raised concerns about not being able to undertake emergency works under the Bill (e.g. emergency firebreaks) without the risk of enforcement action being taken by LINZ.	• LINZ's view has been that, where leaseholders have to undertake actions as part of an emergency, LINZ would just issue a retrospective consent and waive any enforcement action. • However, on further consideration, to address these concerns directly, LINZ recommends the addition of an emergency provision which would provide for discretionary activities to be undertaken in emergency situations without the Commissioner's permission.
s89 of Land Act	**Negotiation of enhanced public access at the time of lease transfer** LINZ has done some further thinking on provision of increased public access, including as a condition of lease transfer.	• The current legislative framework for granting access is unchanged by the Bill: o The Crown can create an easement which could be used for the purposes of public access with <u>or</u> without the permission of the leaseholder (section 60 of the Land Act) o If the Crown wanted to exercise that right, it could do so (e.g. by creating an easement in favour of, for instance, the Walking Access Commission or a Cycle Trail trust) o Compensation would need to be negotiated with the leaseholder. This is because leaseholder contracts confer rights to exclusive possession and quiet enjoyment. Imposing conditions would be considered a "taking." • The Bill builds on this framework, by making specific provision for the Commissioner to support the Walking Access Commission 'as far as practicable in meeting its public access objective where that relates to pastoral land' (Part 2 Amendments to Land Act 18(1)(i)(a)). • Under the current framework, LINZ does not use the mechanisms above to impose public access <u>without</u> leaseholders' agreement: o The process of tenure review has provided a vehicle for negotiating public access. o In LINZ's experience, there are very few leaseholders who refuse to negotiate access when asked. • In LINZ's view, the current framework obliges the Commissioner to facilitate access wherever possible. LINZ does not consider that additional legislation is required for providing more public access. • LINZ also recommends negotiating rather than imposing easements under the current framework. Negotiation provides a better basis for addressing leaseholders' property rights as well as the potential risks and costs (e.g. through disruption of farming activities, health and safety concerns) • [s 9(2)(g)(i)] [redacted]

A3 for Minister's meeting - 22 April 2021 [BRF 21-456]

Note: BRF 21-456 has been withheld in full under s9(2)(g)(i) of the OIA