DEV-21-MIN-0089

Cabinet Economic Development Committee

Minute of Decision

Crown Pastoral Land Reform Bill: Proposed Amendments

Portfolio **Land Information**

On 5 May 2021, the Cabinet Economic Development Committee:

Background

1 **noted** that:

1.1 the Crown Pastoral Land Reform Bill (the Bill) is currently being considered by the Environment Committee [CAB-19-MIN-0679];

1.2 following submissions, a number of amendments and clarifications to the Bill have been recommended, to better achieve the government's policy intention for the Crown pastoral land regulatory system;

2 **noted** that, following input from submitters and officials, a number of proposals have been refined to ensure that the objectives of the Bill will be achieved and that the changes to the Crown pastoral land regulatory system can be implemented effectively;

Proposed amendments

3 **agreed** to amend clause 6(2) of the Bill, to ensure that the definition of 'inherent value' does not exclude any landscape, cultural or heritage values associated with historic farming activity, on the basis that they are associated with farming;

4 **agreed** to amend clause 8, new section 5 of the Bill to replace the current wording *'In achieving the purpose of this Act'* with the following wording '*In order to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty'*;

5 **agreed** that the Bill specifically reference that the Crown's obligations regarding mana whenua are in accordance with the Te Runanga o Ngai Tahu Act 1996 or with any other affected iwi with interests in the particular takiwā;

6 **agreed** to add specific provision in clause 14, new section 100N of the Bill, for regulations to be made providing for the form and content of farm plans;

7 **agreed** to amend clause 8, new section 11(3)(b) of the Bill, to provide that the Commissioner of Crown Lands (the Commissioner) may consider government policy as reflected in a Cabinet decision, particularly in relation to the setting of national direction, where this is relevant to the matters considered;

8 **agreed** to:

8.1 delete clause 8, new section 12(6)(a) of the Bill, which currently restricts the Commissioner from considering the financial viability of farming under that lease or licence or the economic sustainability of the pastoral farming enterprise;

8.2 make consequential changes if required to clause 8, new section 12(6)(b), to allow economic benefits to be considered only in relation to the ongoing viability of the pastoral farming enterprise;

9 **agreed** to simplify the drafting of, but not substantially change, the process for the Commissioner's decision on applications to undertake activities on pastoral land set out at clause 8, new sections 11-13 of the Bill;

10 **agreed** to amend clause 4 of new Schedule 1AA (in Schedule 1 of the Bill) to require the Commissioner to deal with applications for consents, permits and easements that were lodged, but not finally dealt with, before the commencement date of the Bill under the existing provisions of the Crown Pastoral Land Act 1998;

11 **agreed** to allow the Commissioner to approve applications for recreation permits that have more than minor adverse effects on inherent values where existing infrastructure or buildings are proposed to be used for a different activity, or where an activity is necessary for the continuing use of existing infrastructure or buildings;

12 **agreed** to the amendments to new Schedule 1AB (in Schedule 2 of the Bill) set out in the table at Appendix B to the paper under DEV-21-SUB-0089, subject to any minor editorial changes authorised by the Minister for Land Information, and subsequent refinement by the Parliamentary Counsel Office;

13 **agreed** to amend clause 14, new section 100L(6) of the Bill, to include a requirement that the Minister also considers whether classifying an activity as prohibited could impact on leaseholders' ability to exercise their rights and obligations under their lease;

14 **agreed** to the addition of an emergency provision that would provide for discretionary activities to be undertaken in emergency situations without the Commissioner's permission;

15 **agreed** that, when a leaseholder is applying for consent under section 89 of the Land Act to transfer a lease of pastoral land, the applicant must satisfy the Commissioner that the transferee will make reasonable endeavours to enhance access to the pastoral land post-transfer;

16 **agreed** to delete clause 14, new section 100N(1)(i) of the Bill, as it is not necessary;

17 **agreed** to amend the title of clause 14, new section 100O of the Bill to 'Chief Executive or Commissioner may set standards and issue directives';

18 **agreed** to any technical changes to the Bill to ensure it complies with the Legislation Act 2019 and the Secondary Legislation Act 2021;

19 **agreed** to delete clause 14, new section 100O(1)(b) of the Bill, as it is not necessary;

20 **agreed** to amend clause 14, new section 100F of the Bill, to clarify that it is Land Information New Zealand's (LINZ) Chief Executive who has the ability to appoint warranted enforcement officers within LINZ who would be responsible for the issuing of infringement notices;

21 **agreed** to amend clause 2 of the Bill to allow for six months in between the new Act receiving Royal assent and it coming into force, to allow LINZ time to prepare the necessary secondary legislation and consult with leaseholders, iwi and stakeholders on how the Bill will be operationalised (with the exception of the repeal of tenure review, which will come into force the day after Royal assent);

22 **agreed** to the minor and technical changes set out in Appendix C of the paper under DEV-21-SUB-0089, subject to minor editorial changes authorised by the Minister for Land Information;

Legislative implications

23 **agreed** that a departmental report giving effect to the above proposals be lodged with the Environment Committee for its consideration;

24 **agreed** that if the above proposals are not adopted by the Environment Committee, the Minister for Land Information will introduce them as a Supplementary Order Paper for consideration by the committee of the whole House;

25 **invited** the Minister for Land Information to issue drafting instructions to the Parliamentary Counsel Office to draft the agreed changes as a Supplementary Order Paper if the Environment Committee does not adopt them.

Janine Harvey
Committee Secretary

Present:
Hon Grant Robertson (Chair)
Hon Dr Megan Woods
Hon David Parker
Hon Poto Williams
Hon Damien O'Connor
Hon Stuart Nash
Hon Kris Faafoi
Hon Michael Wood
Hon Dr David Clark
Hon Dr Ayesha Verrall
Hon Meka Whaitiri
Hon Phil Twyford
Rino Tirikatene, MP
Dr Deborah Russell, MP

Officials present from:
Office of the Prime Minister
Officials Committee for DEV

Hard-copy distribution:
Minister for Land Information

CAB-21-MIN-0151.01

Cabinet

Minute of Decision

Crown Pastoral Land Reform Bill: Proposed Amendments

Portfolio(s) **Land Information**

On 10 May 2021, following reference from the Cabinet Economic Development Committee, Cabinet:

Background

1 **noted** that:

1.1 the Crown Pastoral Land Reform Bill (the Bill) is currently being considered by the Environment Committee [CAB-19-MIN-0679];

1.2 following submissions, a number of amendments and clarifications to the Bill have been recommended, to better achieve the government's policy intention for the Crown pastoral land regulatory system;

2 **noted** that, following input from submitters and officials, a number of proposals have been refined to ensure that the objectives of the Bill will be achieved and that the changes to the Crown pastoral land regulatory system can be implemented effectively;

Proposed amendments

3 **agreed** to amend clause 6(2) of the Bill, to ensure that the definition of 'inherent value' does not exclude any landscape, cultural or heritage values associated with historic farming activity, on the basis that they are associated with farming;

4 **agreed** to amend clause 8, new section 5 of the Bill, to replace the current wording *'In achieving the purpose of this Act'* with the following wording '*In order to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty'*;

5 **agreed** that the Bill specifically reference that the Crown's obligations regarding mana whenua are in accordance with the Te Runanga o Ngai Tahu Act 1996 or with any other affected iwi with interests in the particular takiwā;

6 **agreed** to add specific provision in clause 14, new section 100N of the Bill, for regulations to be made providing for the form and content of farm plans;

7 **agreed** to amend clause 8, new section 11(3)(b) of the Bill, to provide that the Commissioner of Crown Lands (the Commissioner) may consider government policy as reflected in a Cabinet decision, particularly in relation to the setting of national direction, where this is relevant to the matters considered;

8 **agreed** to:

8.1 delete clause 8, new section 12(6)(a) of the Bill, which currently restricts the Commissioner from considering the financial viability of farming under that lease or licence or the economic sustainability of the pastoral farming enterprise;

8.2 make consequential changes if required to clause 8, new section 12(6)(b), to allow economic benefits to be considered only in relation to the ongoing viability of the pastoral farming enterprise;

9 **agreed** to simplify the drafting of, but not substantially change, the process for the Commissioner's decision on applications to undertake activities on pastoral land set out at clause 8, new sections 11-13 of the Bill;

10 **agreed** to amend clause 4 of new Schedule 1AA (in Schedule 1 of the Bill) to require the Commissioner to deal with applications for consents, permits and easements that were lodged, but not finally dealt with, before the commencement date of the Bill under the existing provisions of the Crown Pastoral Land Act 1998;

11 **agreed** to allow the Commissioner to approve applications for recreation permits that have more than minor adverse effects on inherent values where existing infrastructure or buildings are proposed to be used for a different activity, or where an activity is necessary for the continuing use of existing infrastructure or buildings;

12 **agreed** to the amendments to new Schedule 1AB (in Schedule 2 of the Bill) set out in the table at Appendix B to the paper under DEV-21-SUB-0089, subject to any minor editorial changes authorised by the Minister for Land Information, and subsequent refinement by the Parliamentary Counsel Office;

13 **agreed** to amend clause 14, new section 100L(6) of the Bill, to include a requirement that the Minister also considers whether classifying an activity as prohibited could impact on leaseholders' ability to exercise their rights and obligations under their lease;

14 **agreed** to the addition of an emergency provision that would provide for discretionary activities to be undertaken in emergency situations without the Commissioner's permission;

15 **agreed** that, when a leaseholder is applying for consent under section 89 of the Land Act to transfer a lease of pastoral land, the applicant must satisfy the Commissioner that the transferee will make reasonable endeavours to enhance access to the pastoral land post-transfer;

16 **agreed** to delete clause 14, new section 100N(1)(i) of the Bill, as it is not necessary;

17 **agreed** to amend the title of clause 14, new section 100O of the Bill to 'Chief Executive or Commissioner may set standards and issue directives';

18 **agreed** to any technical changes to the Bill to ensure it complies with the Legislation Act 2019 and the Secondary Legislation Act 2021;

19 **agreed** to delete clause 14, new section 100O(1)(b) of the Bill, as it is not necessary;

20 **agreed** to amend clause 14, new section 100F of the Bill, to clarify that it is Land Information New Zealand's (LINZ) Chief Executive who has the ability to appoint warranted enforcement officers within LINZ who would be responsible for the issuing of infringement notices;

21 **agreed** to amend clause 2 of the Bill to allow for six months in between the new Act receiving Royal assent and it coming into force, to allow LINZ time to prepare the necessary secondary legislation and consult with leaseholders, iwi and stakeholders on how the Bill will be operationalised (with the exception of the repeal of tenure review, which will come into force the day after Royal assent);

22 **agreed** to the minor and technical changes set out in Appendix C of the paper under DEV-21-SUB-0089, subject to any minor changes authorised by the Minister for Land Information;

Legislative implications

23 **agreed** that a departmental report giving effect to the above proposals be lodged with the Environment Committee for its consideration;

Michael Webster
Secretary of the Cabinet

Secretary's Note: *This minute replaces DEV-21-MIN-0089. Cabinet amended paragraph 22 and deleted paragraphs 24 and 25 of the DEV minute.*

In Confidence

Office of the Minister for Land Information

Chair, Cabinet Economic Development Committee

Proposed amendments to Crown Pastoral Land Reform Bill

Proposal

1 This paper seeks your agreement to amendments to the Crown Pastoral Land Reform Bill (the Bill), which is currently being considered by the Environment Committee (the Select Committee).

Executive Summary

2 Following input from submitters and officials, I recommend making a number of amendments to improve the Bill. I seek the Cabinet Economic Development Committee's approval to these amendments.

3 A draft departmental report reflecting these amendments is attached as **Appendix A**. The report is set out in three parts: key issues raised by submitters and officials where I propose changes to the Bill; key issues raised where I do not propose making changes; and a range of minor and or technical matters raised, the majority of which do not require any change to the Bill.

4 The Bill introduces a new set of outcomes that anyone exercising powers under this Bill and the Land Act 1948 must seek to achieve. Some submitters raised concerns with those outcomes as currently articulated, including that the outcomes would:

4.1 perpetuate further loss of biodiversity, landscape and cultural values

4.2 not sufficiently achieve the Government's intention of meeting its obligations as a Treaty partner

4.3 impact on rents paid by leaseholders[1].

5 In my view, these concerns are unfounded. The outcomes in the Bill represent a clear expression of what this Government wants to achieve in relation to Crown pastoral land.

6 The key changes I am recommending to the Bill will support achievement of these outcomes. The changes are to:

6.1 ensure the definition of inherent values reflects the intent that landscape, cultural and heritage values can include values associated with historic farming activity

[1] Note that 'leaseholder' is used throughout this paper to refer to both leaseholders and license holders in relation to Crown pastoral land.

6.2 better reflect the Crown's Treaty obligations and more clearly recognise mana whenua interests in Crown pastoral land

6.3 make greater provision for farm plans by providing for regulations to be made specifying the form and content of farm plans, in order to better support the provision in the Bill that enables the Commissioner of Crown Lands (the Commissioner) to take account of farm plans when considering applications for discretionary pastoral farming activities

6.4 clarify how the Commissioner should consider Government policy in decision-making

6.5 enable the Commissioner to consider the viability or economic sustainability of farming when considering applications to undertake activities on pastoral land

6.6 simplify the drafting of the provisions that set out the decision-making test that the Commissioner applies for discretionary pastoral farming activities

6.7 avoid retrospectivity in the transitional arrangements for applications for discretionary activities on Crown pastoral land made before the commencement of the Act

6.8 amend the decision-making process for recreation permits, to ensure it provides sufficiently for the ongoing operations of existing businesses using previously-permitted buildings or infrastructure

6.9 clarify the scope of activities in new Schedule 1AB in the Bill classifying pastoral activities; ensure consistency of activities with the classification criteria; address concerns with how the Schedule may be applied in practice (as outlined in **Appendix B**) and provide for greater protection of leaseholder rights from any subsequent additions to the list of prohibited activities

6.10 provide explicitly for activities undertaken in emergency situations

6.11 support increased public access to Crown pastoral land by providing for the consideration of increased public access at the time of lease transfer

6.12 remove any unnecessary sections (including an unnecessary regulation-making power), and clarify that both the Toitū te Whenua - Land Information New Zealand's (LINZ) Chief Executive and the Commissioner may set standards and issue directives

6.13 clarify who can issue infringement notices to help ensure the infringements scheme is implemented fairly and appropriately

6.14 provide for a longer period between Royal assent and the Act coming into force – to ensure that all the necessary regulations, secondary legislation, operational procedures and systems are in place and allow for meaningful consultation with leaseholders, iwi and stakeholders (with the exception of the repeal of tenure review, which will come into force the day after Royal assent).

7 I am also proposing some other additional minor and technical amendments to the Bill, which are set out in **Appendix C**.

Background

8 The Bill was introduced to the House on 16 July 2020 and contains proposals to amend the Crown Pastoral Land Act 1998 and the Land Act 1948 to end tenure review and set outcomes for the Crown's ongoing administration of Crown pastoral land. The Bill is intended to provide for clearer, more transparent decision-making, stronger accountability and more opportunity for public involvement. The Bill supports the evolving relationships between Māori and the Crown by recognising the relationship of Māori with their ancestral lands.

9 The proposals were informed by consultation on the discussion document *Enduring Stewardship of Crown Pastoral Land* that opened on 17 February 2019 and closed on 12 April 2019, as well as subsequent engagement with leaseholders, iwi and stakeholder groups.

10 Before taking final decisions on the classification of activities and statutory process for decision making on discretionary activities, Cabinet asked officials to engage with leaseholder representative groups (the High Country Accord Trust and Federated Farmers), key stakeholders (the Environmental Defence Society and Forest & Bird), and Ngāi Tahu [CAB-19-MIN-0679 refers]. This engagement confirmed that the policy proposals were workable, while providing feedback that informed the final decisions.

11 The Select Committee process has allowed further feedback on the proposed Bill. In addition to written submissions, public hearings of oral submissions were held in Wellington (11, 18 and 25 March 2021, and 8 April 2021), Christchurch (19 March 2021) and Queenstown (1 April 2021).

12 The Select Committee process has identified several areas where changes will improve the clarity, implementation and workability of the Bill. Officials have also identified some areas where changes to the Bill may be required.

13 Subject to your agreement, these changes will be included in the Departmental Report, which is due to be provided to the Select Committee on 11 May 2021 for its consideration on 13 May 2021. The Select Committee is due to report back to the House by 6 July 2021.

Main perspectives highlighted by submitters

14 The Select Committee received 161 substantive written submissions on the Bill. A further 1,733 duplicated form submissions in opposition to the Bill were received and treated by the Select Committee as a single submission. Numerous oral submissions were heard.

15 Submissions were received from five main groups with the following broad positions:

15.1 *Leaseholders and associated organisations such as Federated Farmers*: generally opposed the Bill in its entirety.

15.2 *Iwi*: generally considered that the Bill was a step in the right direction, but that it did not go far enough in recognising their particular interest in the land, and the obligations of the Crown as Treaty of Waitangi partner.

15.3 *Environmental groups*: generally supported the direction of the Bill but considered it did not go far enough to protect inherent values.

15.4 *Recreational groups*: had similar views to environmental groups and thought public recreational access should be granted over the land in a range of different ways.

15.5 *Technical experts such as the Law Society and Resource Management Law Association:* raised some suggested changes to address perceived issues with the legislation, such as concern the regulation-making powers were too broad.

Key issues raised that merit changes to the Bill

16 I recommend the following changes to the Bill:

Amend the definition of inherent values

17 Some submitters requested changes to the amended definition of inherent values. The current definition in the Bill is that -

Clause 6(2) …**inherent value**, in relation to any land,—

a) means a value that arises from an ecological, a landscape, a cultural, a heritage, or a scientific attribute or characteristic of a natural resource that—

(i) is in or forms part of the land or exists by virtue of the conformation of the land; or

(ii) relates to a historic place on or forming part of the land; but

(b) does not include any value that relates to or is associated with farming activity.

18 The intent of sub-section (b) above 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).

19 I therefore recommend amending clause 6(2) to ensure that the definition of inherent value does not exclude any landscape, cultural and heritage values associated with historic farming activity, on the basis that they are associated with farming.

Better reflect the Crown's Treaty obligations and recognise mana whenua interests more specifically

20 Te Rūnanga o Ngāi Tahu's (Te Rūnanga's) view was that clause 8, new section 5 of the Bill does not adequately reflect the strength of the Crown's obligations to it. This section currently reads: "In achieving the purpose of this Act, the Crown must recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands…and other taonga." Te Rūnanga recommended that this be amended to: "the Crown must interpret and administer the Act as to give effect to … Te Tiriti".

21 In addition, Te Rūnanga submitted that references in the Bill to "Māori" be amended to specifically reference the mana whenua and the Crown's relationship under Te Tiriti with Te Rūnanga for those pastoral leases within the Ngāi Tahu takiwā. This would avoid undermining the Te Runanga o Ngai Tahu Act 1996 (TRONT Act) which provides that Te Runanga o Ngāi Tahu is for all purposes the representative of Ngāi Tahu whānui.

22 In my view, a stronger recognition of the Crown's commitment to Te Tiriti o Waitangi and its principles in clause 8, new section 5 would bring the Bill more into line with provisions for Te Tiriti in other legislation, and give Te Rūnanga more assurance that their interests will be protected – while not committing the Crown to any obligations that would be very difficult to fulfil in the context of the contractual arrangements between the Crown and leaseholders.

23 LINZ officials have worked with Te Arawhiti to develop such a reference. As a result, I recommend that the current clause be replaced with the following wording (new text in italics):

"*In order to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty*, the Crown must recognise and provide for…"

24 I recommend a consequential change to clause 8, new section 5 to remove the phrase "in achieving the purpose of the Act" to clarify that this provision applies specifically to the provisions of new section 5.

25 I support the proposal to specifically reference the mana whenua and the Crown's relationship under Te Tiriti with Te Rūnanga for those pastoral leases within the Ngāi Tahu takiwā. However, care is needed to ensure any changes to reflect the mana whenua are sufficiently broad to recognise that, although the Ngāi Tahu takiwā encompasses the majority of the Crown pastoral estate, several leases fall within the territories of other iwi (i.e. a small number of leases are within the rohe of Te Tau Ihu iwi: Rangitāne o Wairau and Ngāti Apa ki te Rā Tō).

26 I recommend amending the Bill to specifically acknowledge that the Crown's obligations regarding mana whenua is in accordance with the TRONT Act or with any other affected iwi with interests in the particular takiwā.

Make greater provision for farm plans

27 Submitters (largely leaseholders and leaseholder organisations) called for replacement of the existing activities-based consenting system with contractually-binding farm plans – farm plans agreed between the Commissioner and a leaseholder, and developed for the purposes of achieving the outcomes of the Bill for that property.

28 Farm plans are becoming increasingly prevalent across New Zealand. For many regions, they are an essential document that aligns on-farm activities with district and regional plans. More use of farm plans could support a constructive, outcomes-focused relationship between LINZ and leaseholders, and could help streamline the consenting processes in the Bill.

29 Clause 8, new section 11(3)(c) of the Bill already specifies that, in deciding whether to grant an application, the Commissioner "may consider any plan for the management of part or all of the land subject to the reviewable lease or license."

30 However, in my view, replacing the current consenting system with contractually-binding farm plans would not be workable or desirable. Such plans would require significant time, cost and resource to develop, and would add significant complexity to decision-making processes if they are to meet the specificity needed to ensure the management of the lease was achieving the intended outcomes.

31 Instead, I recommend making provision in clause 14, new section 100N for regulations to be made providing for the form and content of farm plans. These regulations would support the existing provision in the Bill that enables the Commissioner to take account of farm plans when considering applications for discretionary pastoral farming activities.

32 In my view, such a provision would help to give farm plans more standing in the Crown pastoral regulatory system and provide some clear guidance on what they should cover to support consenting under this system - while providing flexibility to respond to developments in broader environmental policy settings. The provision would provide a clear signal of the desirability of farm plans as a basis for a constructive ongoing relationship between leaseholders and LINZ.

33 While this proposed regulation-making provision would be separate from the requirement under the Resource Management Act (RMA) for the content of Freshwater Farm Plans to be set by regulations, officials from LINZ and the Ministry for the Environment will work together to coordinate the practical future application of these regulations.

Clarify the provision relating to the Commissioner's consideration of government policy

34 Multiple submitters raised concerns about clause 8, new section 11(3) - that the Commissioner must consider current Government policy, except where the policy is inconsistent with this Act. These concerns included that the provision:

34.1 would compromise the Commissioner's independence, or permit ad hoc direction from the Minister that might compromise the integrity of the decision-making process

34.2 imposes too broad an obligation that would require consideration of matters of limited relevance and would be difficult for the Commissioner to comply with

34.3 could open up legal challenge because of the difficulty of ensuring full compliance with the provision.

35 I consider these concerns to be valid and that the intent of this provision – that the Commissioner takes account of relevant, established Government policy as part of the decision-making process – could be most easily achieved by allowing (rather than requiring) the Commissioner to do so, and by being more specific about what they can consider.

36 Accordingly, I recommend amending clause 8, new section 11(3) to provide that the Commissioner may consider Government policy as reflected in a Cabinet decision, particularly in relation to the setting of national direction, where this is relevant to the matters considered.

Amend the considerations that should not be considered relevant when making decisions on applications to undertake discretionary activities

37 The Bill sets out several considerations that should not be considered relevant to the Commissioner's decision making when determining an application to undertake activity on pastoral land.

38 Leaseholder groups and individual leaseholders were concerned that the Commissioner cannot consider the financial viability of farming, or the economic sustainability of the pastoral farming enterprise or any economic benefits associated with undertaking that activity, in making determinations in Step 2 of the statutory decision-making process (clause 8, new section 12(5)).

39 I do not agree that the restriction on the Commissioner regarding economic benefits as a standalone consideration should be changed, as this would be inconsistent with the Bill's outcomes, which do not set economic objectives for the regulatory system.

40 However, I agree that the viability of the pastoral lease and the economic sustainability of the pastoral farming enterprise could be relevant considerations for the Commissioner. For instance, a leaseholder may want 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. The leaseholder would need to demonstrate to the Commissioner's satisfaction that this was the case.

41 I therefore recommend the deletion of clause 8, new section 12(6)(a) which currently restricts the Commissioner from considering the financial viability of farming under that lease or licence, or the economic sustainability of the pastoral farming enterprise. A consequential change to new section 12(6)(b) may also be required to allow economic benefits only to be considered in relation to the ongoing viability of the pastoral farming enterprise.

Simplify the decision-making test for discretionary pastoral activities

42 Some submitters suggested that the discretionary test in clause 8, new section 12 should be significantly simplified and re-balanced, or otherwise may leave decision makers at risk of litigation.

43 The Bill as currently drafted provides for a two-step test at clause 8, new section 12 that is necessary and appropriate to enable the Commissioner to give due consideration to the outcomes for Crown pastoral land set out in the Bill.

44 However, I accept that the broader process for the Commissioner's decision making (which is set out in clause 8, new sections 11-13) could be simplified, for instance, by grouping together, in one section, all the matters the Commissioner may or must consider when considering an application for proposed activities on Crown pastoral land. Similar steps could be taken to simplify the decision-making process for recreation permits. These changes would help to make the new Act more accessible.

45 The more prescriptive matters listed in clause 8, new section 12(5) – which sets out the activities the Commissioner should take into account that are "necessary to enable the leaseholder or licensee to exercise their rights and obligations" – could also be moved to a Schedule. This would enable the Government to guide decision making in a more adaptable and flexible manner than by setting these out in the primary statute.

46 I therefore recommend amendments to clause 8, new sections 11 – 13 to simplify, but not substantially change, the process and tests the Commissioner applies when considering applications for discretionary activities.

Avoid retrospectivity in the transitional arrangements

47 The Law Society was concerned with the Bill's approach to pending decisions on applications for consents, recreation permits or easements. Clause 4 of new Schedule 1AA (in Schedule 1 of the Bill) currently says that for every application for consents, permits and easements that were lodged but not finally dealt with before the commencement date of the amended legislation, the Commissioner must deal with the application under the amended legislation.

48 This clause is inconsistent with the presumption against retrospectivity. There are some situations where retrospective legislation might be appropriate. I do not think it is necessary here.

49 I recommend amending clause 4 of new Schedule 1AA to require the Commissioner to deal with applications lodged, but not finally dealt with, before the commencement date of the Bill under the existing provisions of the Crown Pastoral Land Act 1998. This avoids retrospectivity.

Amend the decision-making process for recreation permits

50 Recreation permits allow leaseholders (or third parties) to undertake commercial activities such as tourism ventures on the lease. The Bill treats these activities consistently with pastoral farming activities in terms of their effects on inherent

values, in that these activities will not be permitted where they have a more than minor adverse effect on inherent values.

51 However, the Bill recognises that, where there has been significant investment in infrastructure (such as a ski field), the leaseholder or third party should be able to continue using that infrastructure for that activity. The Commissioner can therefore approve a recreation permit in circumstances where an activity has a more than minor adverse effect, where the activity is required to enable continued use of consented existing infrastructure or buildings.

52 In response to submissions, officials have identified a potential issue with the application of the decision making for recreation permits. The issue is that the Commissioner may be prevented from granting a permit to a recreational commercial activity that has a more than minor adverse effect on inherent values but that uses existing consented infrastructure or buildings and:

52.1 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

52.2 where the applicant needs to undertake some work to existing infrastructure or buildings to ensure a business operating under an existing recreation 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.

53 To address these issues, I propose amending the relevant clauses to allow the Commissioner (but not oblige the Commissioner) to approve activities that have more than minor adverse effects on inherent values where:

53.1 existing infrastructure or buildings, which have been used for an activity under a previous recreation permit, are proposed to be used for a different activity; or

53.2 an activity is necessary to enable the continued use of existing infrastructure or buildings for an activity that has previously been granted a recreation permit.

Amend the scope of the list of permitted, discretionary and prohibited activities and provide greater protection for leaseholder rights from any subsequent amendments to this list

54 Some submitters thought that the list of permitted activities set out in new Schedule 1AB *Classification of Pastoral Activities on pastoral land* (in Schedule 2 of the Bill) was too restrictive, or did not cover the right things, and made detailed suggestions for new activities to be added, or proposed amendments to the permitted activities. There were also recommendations in relation to the discretionary and prohibited lists of activities.

55 To address the concerns of submitters and provide sufficient clarity to leaseholders, I recommend a number of minor and technical changes to new Schedule 1AB in the Bill as set out in the table at **Appendix B**. These changes will clarify the scope of activities set out in the Bill, ensure consistency with the criteria for classifying activities, and address concerns with how new Schedule 1AB of the Bill, which sets

out permitted, discretionary and prohibited pastoral farming activities, may be applied in practice.

56 Relatedly, clause 14, new section 100L allows the Governor-General, on the recommendation of the Minister, to amend, replace or delete an item on the list of prohibited activities in new Schedule 1AB by Order in Council. The Law Society raised concerns that the breadth of the discretion could materially change the terms of a pastoral lease without any input from, or compensation to, the lease or licence holder. They consider that this may be a form of appropriation which ought not to be permitted by way of an Order in Council.

57 I therefore recommend amending clause 14, new section 100L(6) to include a requirement that the Minister also considers whether classifying an activity as prohibited could impact on leaseholders' ability to exercise their rights and obligations under their lease in any reasonably foreseeable circumstances.

Provide explicitly for activities undertaken in emergency situations

58 Submitters' feedback on new Schedule 1AB highlighted the broader issue of leaseholders' ability to undertake activities required to address emergency situations (for instance, emergency fire breaks).

59 Under the Bill as it currently stands, in cases where leaseholders have to undertake actions as part of an emergency, LINZ would issue a retrospective consent and waive any enforcement action.

60 However, for the avoidance of doubt, I recommend the addition of a provision which would provide for discretionary activities to be undertaken in emergency situations without the Commissioner's permission. The leaseholder would still need to notify the Commissioner and seek any retrospective consents necessary.

Provide for the consideration of increased public access at the time of lease transfer

61 A number of submitters were concerned at the lack of provision in the Bill for public access to Crown pastoral land, and wanted the addition of an outcome relating to public access, and the inclusion of recreational values as part of the definition of inherent values. Conversely, many submissions noted that leaseholders and residents on these properties are entitled to exclusive possession and quiet enjoyment of the land, and that increased public access directly impacts on those rights under the lease.

62 My intention is that this Bill should reflect leaseholders' rights to exclusive possession and quiet enjoyment of the land. I therefore do not support the addition of recreational values to the definition of inherent values, nor the addition of a public access outcome.

63 However, there is strong interest in increased public access to and through Crown pastoral leases. Clause 19 in the Bill recognises that the Commissioner can play a useful facilitative role in working with the New Zealand Walking Access Commission (WAC) to assist the negotiation of public access with leaseholders.

64 Major improvements to public access to Crown pastoral land can best be achieved when a lease is transferred. I therefore recommend that, when a leaseholder is

applying for consent under section 89 of the Land Act to transfer a lease of pastoral land, the applicant must satisfy the Commissioner that the transferee will make reasonable endeavours to enhance access to the pastoral land post-transfer. This could include that the transferee has consulted with WAC, iwi or other known interested parties about access to specific areas.

Remove any unnecessary sections and clarify that the LINZ Chief Executive or the Commissioner may set standards and issue directives

65 The Regulations Review Committee recommended consideration of whether the Commissioner's powers to issue standards and directives under clause 14, new section 100O should be more tightly prescribed and also be published on a government legislation website, on the basis that these powers may be too broad and likely to breach the Legislative Guidelines.

66 The current secondary legislation reforms (the Legislation Act 2019 and the just passed Secondary Legislation Act 2021) establish one unified and simple category of law that replaces legislative instruments, disallowable instruments and tertiary legislation replaced with one single category - secondary legislation. Under these reforms, the standards and directives in clause 14, new section 100O in the Crown pastoral reform legislation will have status as secondary legislation. They will be subject to the Parliament's disallowance under the Legislation Act 2019, must be notified in the New Zealand Gazette, and published in full online. Minimum legislative information may be published on the government's legislation website. A number of technical amendments will need to be made to the Bill to ensure the Bill complies with these secondary legislation reforms.

67 Clause 14, new section 100O enables the Commissioner and the Chief Executive, respectively, to set standards and issue directives on certain matters. The standards and directives have to be published.

68 For increased clarity I recommend:

68.1 the title of clause 14, new section 100O be amended to "Chief Executive or Commissioner may set standards and issue directives"

68.2 technical changes to the Bill be made to ensure it complies with the Legislation Act 2019 and the Secondary Legislation Act 2021

68.3 clause 14, new section 100O(1)(b) be deleted as there are sufficient compliance-related provisions in new section 100N, making this new sub-section unnecessary.

69 Through the course of considering submissions, it also became apparent that clause 14, new section 100N(1)(i) – which allows provisions that set out decision-making processes or otherwise provide for the administration of pastoral land and under this Act – is unnecessary and can be deleted. I recommend this occur to avoid unnecessary duplication.

Clarify who should issue infringement notices

70 A number of submitters were concerned about the clause 14, new Part 4A, which provides for recovery of remedial costs and enforceable undertakings, including infringement offences on the basis that this would 'criminalise' leaseholders. Concern was also raised regarding clause 14, new section 100F in Part 4A, regarding the ability for the Commissioner to delegate the issuing of infringement notices to "an employee" as being too vague and uncertain.

71 My view is that additional enforcement tools will be an important part of the effective operation of the Crown pastoral regulatory system. There is a particular need to provide a disincentive that does not involve court action, where leaseholders undertake activities without a consent.

72 Infringements would apply in cases where a leaseholder undertakes an activity without a necessary consent or permit, or contravenes a stock limitation. LINZ's first priority will be on educating and supporting leaseholders to comply with the need to apply for a consent – with the aim that infringement notices would rarely be issued, if at all.

73 Infringement regimes are well established, provide for a low-level financial penalty and do not result in conviction. They also have the oversight of the judiciary should the leaseholder wish to challenge the notice, which provides the leaseholder with a means of contesting their notice under the guidance of an impartial judge.

74 However, I acknowledge the concern from some submitters that the Bill should more clearly specify who can issue infringement notices, and agree there is a need to ensure anyone with the power to issue infringement notices has the necessary authority and training. I therefore recommend a change to clause 14, new section 100F to explicitly limit the ability to appoint warranted enforcement officers, who would be responsible for the issuing of infringement notices, to LINZ's Chief Executive.

Provide for a longer period between Royal assent and the Act coming into force

75 Many submitters raised concerns about LINZ's capacity and capability to implement the changes set out in the Bill, citing delays in LINZ's processing of applications and other operational issues.

76 LINZ is undertaking a range of operational improvements to enhance its capacity and capability in managing Crown pastoral land. This includes increasing the frequency of lease visits by LINZ staff (visiting every lease at least once every two years), to ensure the department is well informed about the properties and operations involved.

77 The Bill currently provides that the Act will come into force on the day after the date on which it receives the Royal assent. A longer period between Royal assent and the Act coming into force would help to ensure that all the necessary regulations, secondary legislation, operational procedures and systems will be in place, and that LINZ is well prepared to implement the changes. It would also provide for sufficient time for consultation with leaseholders, iwi and stakeholders on how the Bill will be operationalised. An additional period will not, however, be necessary for the repeal of tenure review.

78 I recommend amending clause 2 of the Bill to allow for six months between Royal assent and commencement, with the exception of the repeal of tenure review, which I propose will come into force the day after Royal assent.

Issues raised where no change is proposed

79 There were also a number of issues raised by submitters and considered in the attached draft departmental report where no change to the Bill is recommended. These include:

79.1 views that tenure review should be retained, repurposed or that all or some reviews currently underway should be allowed to continue through the process

79.2 views about the scope and balance of the outcomes in the Bill

79.3 concerns about the relationship and overlaps between the RMA and Crown pastoral land systems

79.4 concerns about the new decision-making process for discretionary pastoral activities and recreation permits

79.5 concerns about the Commissioner's role and independence

79.6 a desire for provision for public involvement in decision-making.

Further issues raised by Te Rūnanga

80 In addition to the issues discussed earlier in this paper, Te Rūnanga's submission recommended:

80.1 development of new statutory mechanisms for a Ngāi Tahu convenant to protect Ngāi Tahu values

80.2 a statutory mechanism providing for an easement to allow Ngāi Tahu access and use of the land

80.3 resourcing for Ngāi Tahu to come onto the land and catalogue its cultural values

80.4 that discretionary consents must be made in partnership with iwi/hapū and in accordance with the principles of Te Tiriti.

81 The Bill provides for heritage covenants at Schedule 1AC, clause 80(6), and section 39 of the Heritage New Zealand Pouhere Taonga Act 2014 provides that:

81.1 Heritage New Zealand Pouhere Taonga may enter into a heritage covenant with the owner of a historic place, historic area, wāhi tūpuna, wāhi tapu, or wāhi tapu area to provide for the protection, conservation, and maintenance of the place, area, wāhi tūpuna, wāhi tapu, or wāhi tapu area.

82 In my view, this provides sufficiently for cultural protection mechanisms over the land. If there is a desire for a separate Ngāi Tahu protection mechanism, this should

presumably apply more broadly than Crown pastoral land and this Bill is therefore not the appropriate vehicle to create such a mechanism.

83 On the easement issue, I recognise the interest Ngāi Tahu has in accessing pastoral leases and would therefore expect LINZ to seek to support this access by facilitating interactions between Ngāi Tahu and leaseholders. The proposed new provision around reviewing access at the time of lease transfer provides a further opportunity to do this. Similarly, resourcing for Ngāi Tahu is an operational issue that sits outside the provisions of the Bill.

84 Finally, my view is that clause 8, new section 5 of the Bill already provides for Te Runanga's involvement in identifying and assessing the impacts on cultural values where a consent for a discretionary pastoral activity is sought or other decisions are being made.

Concerns raised by leaseholders about the impact of the changes

85 Leaseholders and associated groups have expressed concern that the changes proposed in the Bill will have a significant negative impact on leaseholders compared with the status quo, including that the proposed changes will breach leaseholders' property rights, affect the way their rent is calculated, significantly increase their costs and fundamentally alter the relationship between leaseholders and the Crown.

86 The Bill does not make any changes to leaseholders' rights to pasturage, perpetual rights of renewal, exclusive possession or quiet enjoyment. It does not seek to overturn their existing consents or appropriate their improvements, nor does it affect the way their rents are calculated.

87 The Bill amends an existing regulatory system, so does not fundamentally change the relationship between the Crown and leaseholders, and most of the changes relate to the way that LINZ administers the land rather than imposing new expectations on leaseholders.

88 I therefore do not propose any changes to the Bill, besides the ones outlined earlier in this paper, to address these concerns.

Other technical amendments

89 I also propose other minor and technical changes to the Bill in response to submitters' concerns and advice from officials, which will provide greater clarity, consistency and coherency. These changes are set out in the table at **Appendix C**.

Next steps

90 A departmental report will be provided to the Select Committee on 11 May 2021. This will contain a summary and analysis of written submissions received on the Bill and recommendations for changes, including those agreed to through this paper. The Select Committee will consider the departmental report on 13 May 2021 and is due to report back to the house by 6 July 2021.

91 I expect the Bill to pass by the end of the year, provided the remainder of the process proceeds in a timely manner.

Financial Implications

92 There are no financial implications beyond those of the Bill as a whole, as previously agreed [CBC-19-MIN-001 refers].

Legislative Implications

93 These proposals require legislative change to the Crown Pastoral Land Act 1998 and the Land Act 1948, which will be progressed through the Bill, currently before the Environment Committee.

94 Regulations and other secondary legislation will be required to give effect to the new Act.

95 The Bill will be binding upon the Crown on commencement.

Impact Analysis

96 Treasury's Regulatory Impact Analysis team has determined that the amendments to the Crown Pastoral Land Reform Bill in this Cabinet paper are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that existing issues have been addressed by previous Impact Analysis ("Regulatory Impact Assessment: Improving the administration of Crown pastoral land", CAB-19-MIN-0679 refers); and the proposed regulatory changes have no or only minor impacts on businesses, individuals or not-for-profit entities.

Population Implications

97 There are implications for the particular rural community of Crown pastoral land leaseholders and licensees and for the following iwi: Ngāi Tahu and Te Tau Ihu iwi: Rangitāne o Wairau and Ngāti Apa ki te Rā Tō.

98 The proposals in this paper seek to maintain or enhance inherent values across the Crown pastoral estate for present and future generations, while providing for ongoing pastoral farming of pastoral land.

99 The proposals outlined in the paper will help shift the Crown pastoral land system from a regime that does not clearly recognise and provide for Treaty partnerships to one that provides for a strong and evolving relationship between the Crown and iwi and for the relationship of Māori with their ancestral lands.

Human Rights

100 The proposals in the paper are consistent with the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993.

Consultation

101 The following agencies have been consulted on the proposals in this paper: the Ministry for Primary Industries, the Ministry for the Environment, the Department of Conservation (DOC), Te Arawhiti, the Ministry of Justice, the Treasury, Te Kawa Mataaho Public Service Commission, the Department of Prime Minister and Cabinet.

102 The following agencies were informed: the Ministry for Culture and Heritage, Te Puni Kōkiri, the New Zealand Defence Force.

103 [s 9(2)(g)(i)]

103.1 [s 9(2)(g)(i)]

103.2 [s 9(2)(g)(i)]

[s 9(2)(g)(i)]

103.3 [s 9(2)(g)(i)]

Communications

104 I do not propose any public announcements following decisions made in this paper because the Bill remains before the Select Committee.

Proactive Release

105 I propose to publish this Cabinet paper on the LINZ website, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

I recommend that the Cabinet Economic Development Committee:

1 **note** that the Crown Pastoral Land Reform Bill (the Bill) is currently being considered by the Environment Committee and that following submissions, a number of amendments and clarifications to the Bill have been recommended, to better achieve the Government's policy intention for the Crown pastoral land regulatory system;

2 **note** that, following input from submitters and officials, I have refined a number of proposals to ensure that the objectives of the Bill will be achieved and that the changes to the Crown pastoral land regulatory system can be implemented effectively, which are outlined below;

3 **agree** to amend clause 6(2) of the Bill, to ensure that the definition of "inherent value" does not exclude any landscape, cultural and heritage values associated with historic farming activity, on the basis that they are associated with farming;

4 **agree** to amend clause 8, new section 5 of the Bill to replace the current wording "In achieving the purpose of this Act" with the following wording "In order to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty";

5 **agree** the Bill specifically reference that the Crown's obligations regarding mana whenua are in accordance with the Te Runanga o Ngai Tahu Act 1996 or with any other affected iwi with interests in the particular takiwā;

6 **agree** to add specific provision in clause 14, new section 100N of the Bill for regulations to be made providing for the form and content of farm plans;

7 **agree** to amend clause 8, new section 11(3)(b) of the Bill to provide that the Commissioner of Crown Lands (the Commissioner) may consider Government policy as reflected in a Cabinet decision, particularly in relation to the setting of national direction, where this is relevant to the matters considered;

8 **agree** to delete clause 8, new section 12(6)(a) of the Bill which currently restricts the Commissioner from considering the financial viability of farming under that lease or licence or the economic sustainability of the pastoral farming enterprise, and make consequential changes if required to clause 8, new section 12(6)(b), to allow economic benefits to be considered only in relation to the ongoing viability of the pastoral farming enterprise;

9 **agree** to simplify the drafting of, but not substantially change, the process for the Commissioner's decision on applications to undertake activities on pastoral land set out at clause 8, new sections 11-13 of the Bill;

10 **agree** to amend clause 4 of new Schedule 1AA (in Schedule 1 of the Bill) to require the Commissioner to deal with applications for consents, permits and easements that were lodged, but not finally dealt with, before the commencement date of the Bill under the existing provisions of the Crown Pastoral Land Act 1998;

11 **allow** the Commissioner to approve applications for recreation permits that have more than minor adverse effects on inherent values where existing infrastructure or buildings are proposed to be used for a different activity, or where an activity is necessary for the continuing use of existing infrastructure or buildings;

12 **agree** to the amendments to new Schedule 1AB (in Schedule 2 of the Bill) set out in the table at Appendix B, subject to any minor editorial changes authorised by the Minister for Land Information, and subsequent refinement by the Parliamentary Counsel Office;

13 **agree** to amend clause 14, new section 100L(6) of the Bill to include a requirement that the Minister also considers whether classifying an activity as prohibited could impact on leaseholders' ability to exercise their rights and obligations under their lease;

14 **agree** to the addition of an emergency provision which would provide for discretionary activities to be undertaken in emergency situations without the Commissioner's permission;

15 **agree** that, when a leaseholder is applying for consent under section 89 of the Land Act to transfer a lease of pastoral land, the applicant must satisfy the Commissioner that the transferee will make reasonable endeavours to enhance access to the pastoral land post-transfer;

16 **agree** to delete clause 14, new section 100N(1)(i) of the Bill, as it is not necessary;

17 **agree** to amend the title of clause 14, new section 100O of the Bill to "Chief Executive or Commissioner may set standards and issue directives";

18 **agree** to any technical changes to the Bill to ensure it complies with the Legislation Act 2019 and the Secondary Legislation Act 2021;

19 **agree** to delete clause 14, new section 100O(1)(b) of the Bill, as it is not necessary;

20 **agree** to amend clause 14, new section 100F of the Bill, to clarify that it is LINZ's Chief Executive who has the ability to appoint warranted enforcement officers within LINZ who would be responsible for the issuing of infringement notices;

21 **agree** to amend clause 2 of the Bill to allow for six months in between the new Act receiving Royal assent and it coming into force, to allow LINZ time to prepare the necessary secondary legislation and consult with leaseholders, iwi and stakeholders on how the Bill will be operationalised – with the exception of the repeal of tenure review, which will come into force the day after Royal assent;

22 **agree** to the minor and technical changes set out in Appendix C, subject to minor editorial changes authorised by the Minister for Land Information;

23 **agree** that a departmental report giving effect to these changes be lodged with the Environment Committee for its consideration;

24 **agree** that if these agreed changes are not adopted by the Environment Committee, the Minister for Land Information will introduce them as a Supplementary Order Paper for consideration by the committee of the whole House;

25 **authorise** the Minister for Land Information to instruct the Parliamentary Counsel Office to draft these agreed changes as a Supplementary Order Paper if the Environment Committee does not adopt them.

Authorised for lodgement

Hon Damien O'Connor

Minister for Land Information

Appendix A: Draft Departmental Report

Crown Pastoral Land Reform Bill

Departmental Report to the Environment Committee

May 2021

Contents

Executive summary

This report sets out Toitū te Whenua - Land Information New Zealand's (LINZ's) advice to the Environment Committee on the Crown Pastoral Land Reform Bill. The report sets out:

- key recommended changes to the Bill arising from submissions, LINZ's analysis and feedback from other government agencies
- other key points raised by submitters where LINZ does not recommend amending the Bill
- a clause-by-clause list of any other points raised by submitters or identified by officials, alongside LINZ's recommended approach.

The Crown Pastoral Land Reform Bill amends the Crown Pastoral Land Act 1998 (CPLA) and the Land Act 1948 with the aim of delivering improved outcomes for Crown pastoral land. The Bill implements the Government's decisions to:

- end the process of tenure review
- set clear outcomes for the Crown pastoral land regulatory system.

The Committee received 161 submissions on the Bill. Around 63 of these were from individuals, 31 from organisations (including iwi and businesses) and 67 from leaseholders and leaseholder-associated groups. Around 43 submitters supported the Bill in full or in part, while around 111 opposed the Bill in full or in part. The remainder (seven) were either neutral or uncertain.

LINZ has carefully considered these written submissions, as well as the oral evidence provided by submitters, in the context of the outcomes that the Bill is seeking to achieve, noting the Committee's requests for LINZ to focus on particular areas.

As a result of this, LINZ is recommending changes to the Bill in the following areas:

- ensure the definition of inherent values reflects the intent that landscape, cultural and heritage values can include values associated with historic farming activity
- better reflect the Crown's Treaty obligations and more clearly recognise mana whenua interests in Crown pastoral land
- make greater provision for farm plans by providing specifically for regulations to be made specifying the form and content of farm plans in order to better support the provision in the Bill that enables the Commissioner of Crown Lands (the Commissioner) to take account of farm plans when considering applications for discretionary pastoral farming activities
- clarify how the Commissioner should consider Government policy in decision-making, and enable the Commissioner to consider the viability or economic sustainability of farming when considering applications to undertake activities on pastoral land
- simplify the drafting of the provisions that set out the decision-making test that the Commissioner applies for discretionary pastoral farming activities
- avoid retrospectivity in the transitional arrangements for applications for discretionary activities on Crown pastoral land made before the commencement of the Act

- amend the decision-making process for recreation permits to ensure it provides sufficiently for the ongoing operations of existing businesses using previously-permitted buildings or infrastructure

- clarify the scope of activities in new Schedule 1AB classifying pastoral activities; ensure consistency of activities with the classification criteria and address concerns with how the Schedule may be applied in practice; and provide for greater protection of leaseholder rights from any subsequent additions to the list of prohibited activities

- provide explicitly for activities undertaken in emergency situations

- support increased public access to Crown pastoral land by providing for the consideration of increased public access at the time of lease transfer

- remove any unnecessary sections (including an unnecessary regulation making power) and clarify that both the LINZ Chief Executive and the Commissioner may set standards and issue directives

- clarify who can issue infringement notices to help ensure the infringements scheme is implemented fairly and appropriately

- provide for a longer period between Royal assent and the Act coming into force to ensure that all the necessary secondary legislation (including regulations), operational procedures and systems are in place and allow for meaningful consultation with leaseholders, iwi and stakeholders (with the exception of the repeal of tenure review, which should come into force the day after Royal assent).

There are a number of areas where LINZ does not think changes are required to the Bill. These relate to:

- views that tenure review should be retained, repurposed or that all reviews currently underway should be allowed to continue through the process

- views about the scope and balance of the outcomes in the Bill

- concerns about the relationship and overlaps between the RMA and Crown pastoral land systems

- a desire for new statutory mechanisms to protect Ngāi Tahu's cultural values

- resourcing for Ngāi Tahu to come onto the land and catalogue its cultural values

- concerns about the new decision-making process for discretionary pastoral activities

- concerns about the Commissioner's role and independence

- a desire to provide for stronger involvement by Ngāi Tahu and the public in decision-making by the Commissioner

- views that the changes proposed in the Bill will have a significant negative impact on leaseholders compared with the status quo.

LINZ acknowledges that positive, constructive working relationships between LINZ and leaseholders will be critical to the success of the proposed changes. LINZ has provided the Committee with information on its engagement with leaseholders (as well as iwi and stakeholders) throughout the development of the proposed changes. Should the Bill come into force, LINZ intends to continue this engagement, working closely with leaseholders in the development of secondary legislation and the operationalisation of the Bill.

Introduction

This report sets out LINZ's advice to the Environment Committee on the Crown Pastoral Land Reform Bill. The report sets out:

- key recommended changes to the Bill arising from submissions, LINZ's analysis and feedback from other government agencies (**Section 1**)
- other key points raised by submitters where LINZ does not recommend amending the Bill (**Section 2**)
- a clause-by-clause list of any other points raised by submitters or identified by officials, alongside LINZ's recommended approach (**Section 3**).

All recommended amendments to the Bill are subject to Parliamentary Counsel Office (PCO) advice on how to best express each recommended change in legislation. In addition, PCO may include in the revision-tracked version additional minor or technical amendments or editorial changes that are necessary for the overall coherence and quality of the Bill.

Background

The Crown Pastoral Land Reform Bill

The Crown Pastoral Land Reform Bill amends the Crown Pastoral Land Act 1998 (CPLA) and the Land Act 1948 with the aim of delivering improved outcomes for Crown pastoral land.

The Bill implements the Government's decisions to:

- end the process of tenure review
- set clear outcomes for the Crown pastoral regulatory system.

The Bill sets out how LINZ's administration of Crown pastoral land will seek to achieve these outcomes by:

- providing direction to LINZ and the Commissioner of Crown Lands (the Commissioner) on their roles and responsibilities as lessor and administrator of Crown pastoral land
- explicitly recognising the relationship between the Crown and its Treaty partner and providing for this relationship
- introducing measures to increase transparency, clarify accountability and provide for more public involvement.

Submissions

The Committee received 161 submissions. Around 63 of these were from individuals, 31 from organisations (including iwi and businesses) and 67 from leaseholders[1] and leaseholder-associated groups.

The Committee also received 1733 duplicated form submissions, which the Committee agreed to treat as one submission for the purposes of the departmental report. This has been included as an individual submission in the total above.

Around 43 submitters supported the Bill in full or in part, while around 111 opposed the Bill in full or in part. The remainder (seven) were either neutral or uncertain.

[1] Note that 'leaseholder' is used throughout this report to refer to both leaseholders and license-holders in relation to Crown pastoral land.

Section one: Key recommended changes to the Bill

LINZ has carefully considered the written submissions received by the Committee, as well as the oral evidence provided by submitters, in the context of the outcomes that the Bill is seeking to achieve - noting the Committee's requests for LINZ to focus on particular issues.

Consequently, LINZ recommends changes to the Bill to respond to concerns and suggestions raised in submissions, and issues identified in LINZ's further analysis. These changes relate to the following key areas:

1. The definition of inherent values
2. Reflecting the Crown's Treaty obligations
3. More specific recognition of mana whenua interests
4. Provision for farm plans
5. The Commissioner's consideration of Government policy in decision-making
6. Relevant considerations in decision-making on discretionary activities
7. Simplification of the decision-making process for discretionary consents
8. The retrospectivity of the transitional provision for discretionary consents
9. The decision-making process for recreation permits
10. The scope of the list of permitted and discretionary pastoral activities in the Schedule
11. Activities undertaken in emergency situations
12. Opportunities to improve access to Crown pastoral land
13. The broadness of the regulation-making powers
14. The CE's and the Commissioner's powers to issues standards and directives
15. The ability to amend the Schedule classifying activities by Order in Council
16. The issuing of infringement notices
17. LINZ's capability and capacity to implement the changes.

Further, more minor, changes to the Bill are set out in **Section 3** of this report.

1. Amend the definition of inherent values

Issue

Some submitters wanted changes made to the definition of 'inherent value' outlined in Clause 6(2) of the Bill:

- Some submitters expressed concern that the definition of 'inherent value' in Clause 6(2) excludes values that relate to, or are associated with, farming activity. The Lakes Station suggests wording that more carefully draws a distinction between historical farming and ongoing farming activity – 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 approach taken in the Bill – for instance, 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.'

- Te Rūnanga submitted that the definition of inherent values should specifically include a value that arises from an interest of Te Rūnanga o Ngāi Tahu in a natural resource.

- Many submitters wanted to see inclusion of recreational values in the definition of inherent values.

Response

The intent of the definition of 'inherent value' in Clause 6(2) 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 a drafting change to better reflect this intent.

The definition of 'inherent values' includes a value that arises from a 'cultural' characteristic of a natural resource. In LINZ's view a value that arises from a 'cultural' characteristic of the land would include an interest of Te Rūnanga in a natural resource. LINZ therefore recommends no change to this provision.

The issue of inclusion of recreational values in the definition of inherent values is covered in **Section 3** below.

Recommendation

1. LINZ recommends clarifying the definition of inherent value' in clause 6(2) so as not to exclude landscape, cultural and heritage inherent values associated with historic farming activity on the basis that they are associated with farming.

2. Better reflect the Crown's Treaty obligations

Issue

Te Rūnanga o Ngāi Tahu's (Te Rūnanga's) view was that clause 8, new Part 1, new section 5 of the Bill does not adequately reflect the strength of the Crown's obligations to it. Te Rūnanga recommended that new section 5(a) be amended from "the Crown must recognise and provide for the relationship with Māori … and other taonga" with "the Crown must interpret and administer the Act as to give effect to …Te Tiriti."

Te Rūnanga's concern that clause 8, new Part 1, new section 4 of the Bill does not meet the obligations required of the Crown under Te Tiriti is dealt with below.

Response

In LINZ's view, a stronger reference to Te Tiriti o Waitangi and its principles in clause 8, new Part 1, new section 5 would bring the Bill more into line with provisions for Te Tiriti in other legislation, and give Te Rūnanga more assurance that their interests will be protected.

LINZ recommends a consequential change to clause 8, new Part 1, new section 5 to remove the phrase "in achieving the purpose of the Act" to clarify that this provision applies specifically to the provisions of this section.

Recommendation

2. LINZ recommends that the following wording be inserted in Clause 8, new Part 1, new section 5 (a) (new text in italics).

"*In order to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty*[2], the Crown —

must recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, mahinga kai, wāhi tapu, and other taonga …"

3. Recognise mana whenua interests more specifically

Issue

Te Rūnanga recommended that references in the Bill to 'Māori' be amended to specifically reference the mana whenua and the Crown's relationship under Te Tiriti with Te Rūnanga for those pastoral leases within the Ngāi Tahu takiwā. In Te Rūnanga's view, this would avoid undermining the Te Runanga o Ngai Tahu Act 1996 (TRONT Act) which provides that Te Runanga o Ngāi Tahu is for all purposes the representative of Ngāi Tahu whānui.

Response

LINZ supports this proposal. Stating the specific requirement over the general is straightforward and workable. However, care is needed to ensure any drafting changes to reflect the mana whenua are sufficiently broad to recognise that although the Ngāi Tahu takiwā encompasses the majority of the Crown pastoral estate, several leases fall within the takiwā of other iwi (i.e. a small number of leases are within the rohe of Te Tau Ihu iwi: Rangitāne o Wairau and Ngāti Apa ki te Rā Tō). The legislation must also acknowledge and provide for these interests which may require specific drafting – e.g. to clarify which iwi the Crown consults with depends on the particular lease/s and rohe in question.

Recommendation

3. LINZ recommends the Bill be amended to specifically reference the Crown's obligations in accordance with the TRONT Act or with any other iwi with interests in the particular takiwā.

4. Make greater provision for farm plans

Issue

Many submitters wanted the existing activities-based consenting system replaced with contractually-binding farm plans – that is, a farm plan agreed between the Commissioner and a leaseholder developed for the purposes of achieving the outcome in clause 8, new section 4(1)(a) of the Bill for that property. These submitters proposed that activities outlined in these farm plans be included in the list of permitted activities under new Schedule 1AB. They argued that farm plans would provide a scalable solution that accounts for the unique inherent values and risks of each property, removes the need for a recurring complex consent application process and reduces the administrative burden for leaseholders. These submitters thought that a farm plan approach would be more consistent with the current government's direction.

Contractually-binding farm plans are not part of the proposed Bill, and were therefore not considered in other written submissions. However, Ngāi Tahu expressed its view to the Committee that farm plans were a valuable tool, but would not be an adequate replacement for the activities-

[2] Note that LINZ is also recommending a change to standardise Treaty references in the Bill to be defined by reference to the Treaty of Waitangi Act 1975 which refers to both the te reo and English language texts (see **Section 3** below).

based consenting scheme proposed in the Bill. Instead, they saw farm plans and the consenting regime working together to protect inherent values on particular leases.

Response

Farm plans are becoming increasingly prevalent and, for many regions, they are an essential document that aligns on-farm activities with district and regional plans.

Farm environmental plans are the most common type of farm plan - these are live documents used to mitigate the environmental risks of farming activities and help farmers streamline their auditing processes to meet various regulatory and industry requirements.

Currently, farm plans vary in their content and form. However, an amendment to the RMA will soon require all farm operators to produce a freshwater farm plan, or a farm plan which has a certified freshwater module. The content of a freshwater farm plan is outlined in Section 217F of the RMA. Generally, farm plans are approved, audited, and enforced by regional councils, or industry bodies and contain the following:

- a farm map identifying waterways, discharge areas, erosion prone land etc
- a risk assessment for specific activities such as nutrient application, irrigation, winter grazing, stock exclusion, and offal and rubbish pits
- a plan as to how the risks and features will be managed.

LINZ's view is that, in this context, the Bill could provide more explicitly for farm plans and their use in streamlining the CPLA consenting process and helping the Commissioner to assess cumulative effects – for instance, farm plans could be used to 'bundle' associated consents so they could be considered and approved by the Commissioner in tranches. An example of this is when a leaseholder receives approval to clear or burn scrub and then to oversow and top dress following clearance. Farm plans could be used as supporting documents to demonstrate why a group of consents is needed to provide for farming, why they should be granted together, and what their cumulative impact is on inherent values over time. The use of farm plans in this way could support a robust decision-making regime.

In addition, farm plans:

- could be used as substantial evidence in support of any application made to the Commissioner to show how a consent fits into farm planning and how the leaseholder will manage any associated risks
- could be considered by the Commissioner as a part of the information enabling them to assess an application under new sections 12 and 13 of the Bill
- could help to streamline CPLA and RMA consenting at an operational level if information pertaining to the requirements of both regimes could be provided for within one farm plan.

More use of farm plans could also support a constructive, outcomes-focused relationship between LINZ and leaseholders.

Clause 8, new section 11(3)(c) of the Bill already specifies that, in deciding whether to grant an application, the Commissioner "may consider any plan for the management of part or all of the land subject to the reviewable lease or license." In LINZ's view this could be strengthened by making

specific provision in clause 14, new part 4A, new section 100N of the Bill, for regulations to be made providing for the form and content of such a plan.[3] In LINZ's view, this would help to give farm plans more standing in the Crown pastoral regulatory system and provide some clear guidance on what they should cover to support consenting under this system - while providing flexibility to respond to developments in broader environmental policy settings.

LINZ notes that this amendment does not go as far as replacing the current activities-based consenting regime with contractually-binding farm plans as proposed by many submitters. In LINZ's view, doing this would not address some of the central concerns expressed by these submitters because there would be significant time, cost and complexity involved in developing a contractually-binding farm plan of the specificity needed to ensure the management of the lease was achieving the Bill's outcomes (and for the Crown to ensure it was protecting its ownership interest in the land). In addition, there would still be a need to update farm plans periodically, and in response to changing circumstances.

There are also some potential practical difficulties in replacing the current consenting system with contractually-binding farm plans, including that:

- there would be significant time and resource required for LINZ to agree farm plans with all leaseholders, likely leading to delays in leaseholders gaining the consents necessary for their farming operations
- there would still be the need to decide what leaseholders could and couldn't do under their farm plans, and there would need to be some process to address situations where LINZ and leaseholders disagreed about the content of a farm plan
- it is not clear how the provisions in a farm plan could be enforced if the plan is based on outcomes rather than on consent for specific activities
- there may be some loss of transparency compared to the proposed system where decision summaries are published, unless leaseholders were willing to make their plans publicly available.

4. LINZ recommends making specific provision in Clause 14, new Part 4A, new section 100N of the Bill for regulations to be made relating to the form and content of farm plans where they are to be considered under clause 8, new section 11 (3)(c).

5. Clarify the provision relating to the Commissioner's consideration of Government policy

Issue

Multiple submitters raised concerns about clause 8, new Part 1, new section 11(3)(b) of the Bill - that the Commissioner must consider current Government policy, except where the policy is inconsistent with this Act. These concerns included that the provision:

- would compromise the Commissioner's independence, or permit ad hoc direction from the Minister that might compromise the integrity of the decision-making process

[3] Note that section 217A of the RMA similarly sets the content of Freshwater Farm Plans by RMA Regulation - LINZ and the Ministry for the Environment would proactively work to identify synergies and streamline requirements for these sets of regulations.

- imposes too broad an obligation that would require consideration of matters of limited relevance and would be difficult for the Commissioner to comply with
- could open up legal challenge because of the difficulty of ensuring full compliance with the provision.

Submitters made alternative suggestions including providing for the creation of statutory policies or Government policy statements on Crown pastoral land, or referring only to Cabinet decisions.

Response

LINZ agrees that the provision as drafted is too broad and difficult to comply with, which could open the Commissioner's decisions to potential legal challenge. LINZ notes that, while the Commissioner is not independent in that they are accountable to the Minister for the exercise of their statutory functions (see below), the possibility of ad hoc direction from the Minister could make it more difficult for the Commissioner to exercise those functions in accordance with the legislation.

LINZ's view is that the intent of this provision – that the Commissioner takes account of relevant, established Government policy as part of the decision-making process - could be most easily achieved by allowing (rather than requiring) the Commissioner to consider relevant Government policy as reflected in a Cabinet decision, particularly in relation to the setting of national direction[4].

Recommendation

5. LINZ recommends that clause 8, new Part 1, new section 11(3)(b) of the Bill be amended to provide that the Commissioner may consider Government policy as reflected in a Cabinet decision, particularly in relation to the setting of national direction, where this is relevant to the matters considered.

6. Amend what considerations are not relevant when making decisions on discretionary activities

Issue

The Bill sets out a number of considerations that are to be treated as not relevant to the Commissioner's decision-making:

- clause 8, new Part 1, new section 12(4)(b) in of the Bill 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
- clause 8, new Part 1, new section 12(6) of the Bill says that the financial viability of farming under that lease or licence, or the economic sustainability of the pastoral farming enterprise, and any economic benefits associated with undertaking that activity are not relevant considerations in Step 2 of the decision-making process.

Some submitters questioned why the Commissioner wasn't allowed to consider offsetting, expressing the view that this approach is inconsistent with what is being proposed in the Draft National Policy Statement 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). This was seen as particularly problematic because of the vulnerability of remaining high country ecosystems and landscapes.

[4] This would include national policy statements and national environmental standards.

Submitters were also concerned about the restriction by which the Commissioner is not allowed to consider the financial viability of farming, or the economic sustainability of the pastoral farming enterprise or any economic benefits associated with undertaking that activity. Submitters argued that:

- 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
- 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.

Response

Offsetting

As noted in the General Policy Statement to the Bill, the proposed amendments are designed to better manage and control any further development and intensification of pastoral farming activity on Crown pastoral land. In LINZ's view, offsetting is inconsistent with this purpose, as it could potentially enable significant further development and intensification on some parts of Crown pastoral land. In addition, LINZ considers that offsetting is inappropriate on Crown pastoral land because of the particular fragility and importance of the ecosystems and landscapes found on that land. LINZ notes that the Draft National Policy Statement on Indigenous Biodiversity applies to decision-making in the context of the RMA: as outlined below, the RMA and the CPLA are different regulatory systems with different approaches to inherent values protection. LINZ recommends no change to this provision.

Economic benefits

LINZ's view is that the economic benefits associated with an activity in and of themselves are not relevant to the Commissioner's consideration of whether an activity is necessary for the leaseholder to exercise their rights and obligations under the lease (apart from their relevance to the ongoing viability of the pastoral farming enterprise – see below) and the existence of economic benefits therefore should not provide a reason for the Commissioner to consent to an activity. Consideration of broad economic benefits is also not consistent with the Bill's outcomes, which do not set economic objectives for the regulatory system. LINZ recommends no change to the exclusion of economic benefits as a standalone consideration.

Viability and sustainability

In LINZ's view, the viability of the pastoral lease and the economic sustainability of the pastoral farming enterprise could potentially be relevant considerations in a situation where a leaseholder may want 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 (for instance, their right to pastoralism).

LINZ acknowledges the potential difficulty of making an assessment of the ongoing financial viability of a lease, however:

- the Commissioner would not be required to make this assessment - the proposed amendment would simply make it possible for the Commissioner to consider financial viability under this part of the test

- the onus would be on the leaseholder to demonstrate to the Commissioner's satisfaction that viability is a concern
- there would be no obligation on the Commissioner to agree to the activity.

Recommendation

6. LINZ recommends the deletion of clause 8, new Part 1, new section 12(6)(a) of the Bill, and a consequential change to new section 12(6)(b) if required to allow economic benefits to only be considered in relation to the ongoing viability of the pastoral farming enterprise.

7. Simplify the process for decision-making on discretionary pastoral activities

The Environmental Law Initiative suggested that the process for decision-making on discretionary pastoral activities in clause 8, new section 12 of the Bill should be significantly simplified and re-balanced, or otherwise may leave decision-makers at risk of litigation. They suggest that this risk may be lowered by leaving the process itself more open-textured, and coupling it more effectively with better-defined environmental objectives.

LINZ considers that the substance of the decision-making process for discretionary pastoral farming activities is both necessary and appropriate in order to enable the Commissioner to give due consideration to the outcomes for Crown pastoral land set out in the Bill (this is covered in more detail below). Accordingly, LINZ is not proposing to change the substance of the process.

However, LINZ agrees that the drafting of clause 8, new sections 11-13 that set out the Commissioner's decision-making process could be simplified. In particular, these sections could be made more direct by grouping together, in one section, all the matters the Commissioner may or must consider when considering an application for proposed activities on Crown pastoral land.

The more prescriptive detail listed in clause 8, new section 12(5) – which sets out the activities the Commissioner should take into account that are "necessary to enable the leaseholder or licensee to exercise their rights and obligations" – could also be moved to a new Schedule attached to the Bill. This Schedule could then be amended by Order in Council - subject to consultation with stakeholders. This would enable the Government to guide decision-making in a more adaptable and flexible manner rather than setting these out in the primary statute.

Recommendation

7. LINZ recommends clause 8, new Part 1, new sections 11-13 of the Bill be simplified, with the matters in clause 8, new section 12(5) moved into a Schedule attached to the Bill, which could be amended by Order in Council.

8. Address the retrospectivity of the transitional arrangements for discretionary activities applications

Issue

The Law Society raised an issue about the approach in the Bill to pending decisions on applications for consents, recreation permits or easements. Clause 4 of new Schedule 1AA of the Bill currently says that for every application for consents, permits and easements that were lodged but not finally

dealt with before the commencement date of the amended legislation, the Commissioner must deal with the application under the amended legislation.

Response

LINZ agrees that this clause is inconsistent with the presumption against retrospectivity (i.e., that laws should not retrospectively change legal rights and obligations, which is reflected in section 7 of the Interpretation Act 1999).

There are some situations where retrospective legislation might nevertheless be appropriate – for instance, under section 389 of the RMA, some applications for permissions which were made before the commencement of the amendment legislation are considered under the new amended legislation.

In the case of the clause 4 of new Schedule 1AA, the provision was intended to provide for a quick transition to the new regime and avoid an influx of applications prompted by the impending change that would then need to be considered under the old legislation (resulting in an even slower transition to the new regime). However, in LINZ's view, this is less likely given the fact that the Bill has been before the House since July 2020 and the provisions relating to discretionary consents applications are likely well-known to potential applicants.

Recommendation

8. LINZ recommends amending clause 4 of new Schedule 1AA (in Schedule 1 of the Bill) to require the Commissioner to deal with decisions that were lodged, but not finally dealt with, before the commencement date of the Bill under the existing provisions of the CPLA.

9. Amend the decision-making process for recreation permits

Issue

Recreation permits allow leaseholders (or third parties) to undertake commercial activities such as tourism ventures on the lease. These activities provide additional revenue streams to leaseholders. In LINZ's view, these activities should be treated consistently with pastoral farming activities in terms of their effects on inherent values – and they are therefore subject to Step 1 of the decision-making process (noting that Step 2 is not relevant).

However, the Bill also recognises that, where there has been significant investment in infrastructure (such as a ski field), the leaseholder or third party should be able to continue that activity – the Commissioner can therefore approve a recreation permit in circumstances where an activity has a more then minor adverse effect, but where the activity is required to enable use of consented existing infrastructure or buildings.

In reassessing the decision-making process for recreation permits in the light of submissions, LINZ has identified a potential issue with the application of the decision-making process for recreation permits. In such a case, the Commissioner may be prevented from granting a permit to a commercial recreational activity that has a more than minor adverse effect on inherent values but that uses existing consented infrastructure or buildings and:

- 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 existing infrastructure or buildings to ensure a business operating under an existing recreation 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.

The intent of the Bill was to allow existing commercial recreational enterprises on Crown pastoral leases (such as ski fields) to continue to operate where significant investment had been made in buildings and infrastructure, and the enterprise could not simply move to another location – even if the activity has a more than minor adverse effect on inherent values. However, the process may currently be too strict to allow for the scenarios above.

Response

LINZ proposes amending the relevant clauses on the decision-making test for recreation permits to allow the Commissioner (but not oblige the Commissioner) to approve activities that have more than minor adverse effects on inherent values where:

- existing infrastructure or buildings, which have been used for an activity under a previous recreation permit, are proposed to be used for a different activity; or
- an activity is necessary to enable the continued use of existing infrastructure or buildings for an activity that has previously been granted a recreation permit.

The intention of this amendment is not to allow for expansion or further development of a business where that had a more than minor adverse effect on inherent values – unless it could be shown by the applicant that that expansion or development was essential to the ongoing survival of the business.

Recommendation

9. LINZ recommends amending the relevant clauses to allow the Commissioner to approve activities that have more than minor adverse effects on inherent values where:
   - existing infrastructure or buildings are proposed to be used for a different activity
   - an activity is necessary for the continuing use of existing infrastructure or buildings.

10. Amend the scope of the list of permitted and discretionary activities

Issue

Some submitters thought that the list of permitted activities set out in new Schedule 1AB (in Schedule 2 of the Bill) was too restrictive, or didn't cover the right things, and made detailed suggestions for new activities to be added, or proposed permitted activities amended. There were also recommendations in relation to the discretionary and prohibited lists of activities.

Response

LINZ has carefully reviewed these suggestions, noting that:

- any activity listed in the new Schedule 1AB as permitted needs to have a no more than minor adverse effects on inherent values in all reasonably[5] foreseeable circumstances (this is set out in clause 14, new section 100L(5))
- even if an activity is not permitted, it can still be applied for as a discretionary activity (unless it is classified as a prohibited activity)

[5] See the recommended minor change 72 in **Section 3** of this report.

- new Schedule 1AB only covers pastoral farming activities for which the Commissioner's consent would be otherwise needed – it is not a full list of all activities that leaseholders and other parties could undertake on Crown pastoral land
- for some permitted activities (e.g. lighting fires) consent may still be needed under other enactments.

LINZ has identified a number of recommended changes to new Schedule 1AB, which are set out below. These changes are aimed at clarifying the scope of activities in the Schedule, ensuring consistency of activities with the classification criteria, and addressing concerns with how the Schedule may be applied in practice.

Other feedback on new Schedule 1AB (where LINZ recommends no change) is set out in Section 3 of this document.

Proposed change	**Schedule 1AB**	**Response**	**Recommendation (subject to PCO advice on proposed wording)**
a. Make provision for lighting of fires for cooking and camping purposes – subject to any prevailing regional restrictions as an additional permitted activity. (High Country Accord)	Part 1	LINZ agrees that this activity has no more than minor effects on inherent values and should be treated as permitted, given that it is treated as such under the current regime.	Add a further provision: "Lighting of fires for the purposes of cooking and camping"
b. Avoid terminology that requires a value judgement in the description of activities in the Schedule (RMLA)	Part 1 clause 1(c)	LINZ agrees that activities should be specified without reference to a value judgement in Part 1 of the Schedule on the basis that there should be clarity on what activities leaseholders can undertake without a consent. This would require the removal of the phrase "are the dominant vegetation cover" in 1(c). LINZ's view is that this is less of an issue in Part 2 of the Schedule as the Commissioner will be making a judgement on the adverse effects of these discretionary activities.	Amend Part 1, clause 1(c) as follows: "the invasive exotic pest plants comprise no less than 90% vegetation cover."

c. The Bill should specify what an "appropriate volume or area limitation" means. (High Country Accord)	Part 1 clause 4	LINZ recommends replacement of this phrase with "as reasonably required for." This clarifies that the leaseholder is only allowed to disturb the soil to the degree necessary to undertake the activities set out in the list.	Amend Part 1, clause 4 as follows: Delete "(with an appropriate volume or area limitation) comprising" and replace with "as reasonably required for -"
d. The digging of offal pits and domestic rubbish holes should be a permitted activity (Federated Farmers)	Part 1 clause 4(c)	LINZ agrees that this should be a permitted activity, as this is consistent with current practice. Note that district plans have strict controls around these activities.	Amend Part 1, clause 4(c) as follows: "burying dead animals, *or digging offal pits or holes for domestic rubbish*…"
e. Provision for laying of water pipes in existing cultivated areas should not preclude establishing troughs (High Country Accord, Federated Farmers)	Part 1 clause 8	The intent was not to preclude establishing new troughs. LINZ agrees that when laying water pipes provision should be made to allow for the associated trough and the minor soil disturbances.	Amend as follows: "Laying of water pipes underground within existing cultivated areas using a ripper and mounted cable layer and provision for associated water troughs."
f. There should be provision for forming and maintaining fire breaks (William Sutherland, Hugo Pitts)	Part 1	Forming fire breaks could involve more than minor effects on inherent values and should be a discretionary activity – however LINZ agrees that maintaining existing fire breaks once they have been formed should be a permitted activity.	Add a further provision: "Maintain existing consented fire breaks." Also add a new category in Part 2 as follows for the purposes of clarity: "Creation of new fire breaks"
g. Soil disturbance for the construction of infrastructure should be added to the discretionary activities list (Federated Farmers)	Part 2 clause 2	LINZ agrees that this would provide more clarity.	Amend clause 2(j) as follows: "soil disturbance for the construction of buildings and infrastructure" Also add a new category in Part 2, clause 2 as follows for the purposes of clarity: "Construction of buildings and infrastructure"

h. Constructing water storage infrastructure should include dams (Federated Farmers)	Part 2 clause 2(m)	LINZ agrees that this would provide more clarity. The activity would still need consent from the Commissioner.	Amend as follows: "Constructing water storage infrastructure including dams."
i. Need to ensure that any other activity requiring soil disturbance not provided for in the schedule would be treated as a discretionary activity (and consent would be able to be applied for) (Federated Farmers)	Part 2 clause 2	In effect this does the same as new Schedule 1AB Part 2, Clause 2 "include, but are not limited to" – but it does provide more clarity.	Add a further provision in Part 2, clause 2: "Any other activity affecting, involving, or causing soil disturbance (other than that currently classified as a permitted or prohibited activity)."
j. The definition of cropping is too vague and could capture any domestic vegetable or fruit production (Federated Farmers)	Part 4	LINZ agrees it would be helpful to specify that cropping does not include household gardening while still preventing potentially invasive species being planted outside a very localised and controlled area home garden.	Amend the definition of "cropping" in Part 4 as follows: "Means growing forage crops for animals or producing vegetables, fruit, or grain, and similar products at a productive scale."
k. The national planning standard definition of 'cultivation' should be used (Federated Farmers)	Part 4	LINZ agrees that the definition of "cultivation" should be aligned with the National Planning Standards 2019.	Amend the definition of "cultivation" in Part 4 as follows: "Means the alteration or disturbance of land (or any matter constituting the land including soil, clay, sand and rock) for the purpose of sowing, growing, or harvesting of pasture or crops."
l. The definition of "indigenous vegetation" is too broad currently. (AgScience Ltd)	Part 4	LINZ agrees that a more specific definition is warranted	Amend the definition of "indigenous vegetation" in Part 4 as follows: "indigenous vegetation— (a) all species of plants, or lichens that are naturally occurring in any of the ecological regions of which the property forms part; but

			(b) does not include plants within a domestic garden that are planted for the screening or shelter purposes"
m. The definition of "invasive exotic plants" could be improved by amending to clarify that invasive exotic plants can include those listed "in a regional pest management plan". (Central Otago Wilding Conifer Control Group)	Part 4	LINZ agrees this definition should be amended as proposed	Amend the definition of "invasive exotic plants" in Part 4 as follows: "invasive exotic pest plants includes pests listed in the National Pest Plant Accord, in relevant regional pest management plans, and any other exotic pest plants."
n. Current definition of 'indigenous wetland' is too narrow (i.e. wetlands can be of ecological importance regardless of plant and animal species) and should be amended to match that in the RMA and Freshwater NPS (Environmental groups generally)	Part 4	LINZ agrees this definition should be amended as proposed	Amend the definition of "indigenous wetlands" in Part 4 to align with the RMA and Freshwater NPS.

Recommendation

10. LINZ recommends making the amendments to new Schedule 1AB set out in the table above (a to n), subject to refinement by PCO.

11. Provide explicitly for activities undertaken in emergency situations

Issue

The issue of fire breaks addressed above raises the broader issue of leaseholders' ability to undertake activities required to address emergency situations

Response

Under the Bill as it currently stands, in cases where leaseholders have to undertake actions as part of an emergency, LINZ would likely issue a retrospective consent and waive any enforcement action.

However, for the avoidance of doubt, 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. However, the leaseholder would still need to notify the Commissioner and seek any retrospective consents necessary.

Recommendation

11. 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.

12. Provide for the consideration of increased public access at the time of lease transfer

Issue

A number of submitters were concerned at the lack of provision in the Bill for public access to Crown pastoral land, and wanted the addition of an outcome relating to public access, and recreational values included as part of the definition of inherent values. These submitters focused on the fact that the land is owned by the Crown and that there should be some right of public access to or across it.

Conversely, many submissions noted that leaseholders and residents on these properties are entitled to exclusive possession and quiet enjoyment of the land, and that increased public access directly impacts on those rights under the lease. These submitters were also concerned about potential conflicts with farming activities such as lambing and mustering and potential health and safety risks. These submitters' view was that public access should only be provided for with the agreement of the leaseholders, with compensation available where appropriate.

Some submitters sought the deletion of Clause 19 of the Bill (which amends section 24 of the Land Act 1948 to provide that the Commissioner can support the New Zealand Walking Access Commission in meeting its public access objective in relation to pastoral land) on the basis that the current CPLA has enough flexibility to adequately provide for public access.

Response

The Government's intention is that this Bill should reflect leaseholders' rights to exclusive possession and quiet enjoyment of the land.

LINZ's view is therefore that no changes should be made to the Bill that impact on those rights.

LINZ does not recommend the addition of recreational values to the definition of inherent values, or the addition of a public access outcome as the Crown cannot commit itself to maintaining or engaging recreational values, or increasing public access as this would require the agreement of the leaseholder.

While the definition of inherent values under the current Act does include recreational values, the Commissioner is specifically excluded from considering recreational values when dealing with applications for discretionary consents. This is because the recreational values could not be given effect to as the leaseholder holds the rights to exclusive possession and quiet enjoyment of the land. Recreational values are only considered during tenure reviews, or reviews under Part 3 of the CPLA (Clause 10 of the Bill provides for consideration of recreational values as part of ongoing Part 3

reviews). This is to enable the Crown to pursue increased public access where land is going through a review process.

However, LINZ recognises that there is strong interest in increased public access to and through Crown pastoral leases. Clause 19 recognises that the Commissioner can play a useful facilitative role in working with the Walking Access Commission (WAC) to assist the negotiation of public access with leaseholders. In LINZ's view, this clause does not impact on leaseholders' property rights, and reflects the strong desire of many New Zealanders for increased public access to Crown pastoral land.

In addition, there is the potential to provide more explicitly for public access to Crown pastoral land to be considered when a lease is transferred. LINZ proposes that when a leaseholder applies for consent under section 89 of the Land Act 1948 to transfer a lease of pastoral land, the applicant must satisfy the Commissioner that the transferee will make reasonable endeavours to enhance access to the pastoral land post-transfer. This could include that the transferee has consulted with WAC, iwi or other known interested parties about access to specific areas, or they could undertake not to unreasonably refuse access if it doesn't interfere with farming or raise health and safety concerns. In LINZ's view, this would not affect the transferee's right to exclusive possession or quiet enjoyment of the land.

Recommendation

12. LINZ recommends that when an applicant is seeking consent under section 89 of the Land Act 1948 to transfer a lease of pastoral land, the applicant must satisfy the Commissioner that they have made reasonable endeavours to enhance access to the pastoral land post-transfer.

13. Clarify the application of regulation-making powers

Issue

The Resource Management Law Association (RMLA) and the Regulations Review Committee both expressed concerns that the regulation-making powers in the Bill (in particular, clause 14, new Part 4A, new section 100N(1)(b), (i) and (j) in Clause 14, new Part 4A of the Bill) are too broad and should be more tightly prescribed, to ensure they are tied more closely to the purpose of the primary legislation.

Response

Clause 14, new section 100N(1)(b)

Clause 14, new section 100N(1)(b) allows the Governor-General, by Order in Council made on the recommendation of the Minister, to make regulations prescribing matters the Commissioner must take into account in deciding the level of the adverse effects of a pastoral activity on inherent values. In relation to clause 14, new section 100N(1)(b), the RMLA's concern is that the clause effectively allows the Crown/ Minister to determine what is or is not an adverse effect through regulations, and the way in which this provision is framed risks promulgation of regulations that undermine or are contrary to the wider statutory framework.

In LINZ's view:

- clear prescription of the matters the Commissioner must consider in deciding the level of adverse effects of a pastoral activity on inherent values is required for certainty of decision-making and public transparency

- determining the level of adverse effects of a pastoral activity on inherent values is complex, and involves a wide range of variables that the Commissioner may take into account
- providing for all these matters in the primary legislation to the degree necessary to provide sufficient certainty would unnecessarily complicate the drafting in the Bill
- providing for these matters in regulation will allow for the necessary certainty as well as a transparent process of consultation
- the Minister must not recommend the making of regulations under this new section unless satisfied that the Chief Executive of LINZ or the Commissioner has consulted relevant iwi, leaseholders, licensees, and the public on the development of the regulations.

Clause 14, new section 100(N)(1)(i)

RMLA's recommendation in relation to clause 14, 100(N)(1)(i) - which allows provisions that set out decision-making processes or otherwise provide for the administration of pastoral land and under this Act – is that any such direction should be included in the legislation itself, as this is more transparent.

LINZ notes that this provision is not needed, given the existence of new sections 100N(1)(j) and new section 100O, and recommends its deletion.

Clause 14, new section 100(N)(1)(j)

RMLA's recommendation in relation to new section 100(N)(1)(j) - which provides for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect - is that any such direction should be included in the legislation itself, as this is more transparent.

LINZ's view is that there is nothing unusual in this clause. It is a common empowering clause for regulations and is used widely in other legislation.

Recommendation

13. LINZ recommends deleting clause 14, new Part 4A, new section 100(N)(1)(i) of the Bill.

14. Clarify the LINZ CE's and Commissioner's powers to issue standards and directives

Issue

The Regulations Review Committee recommended consideration of whether the Commissioner's powers to issue standards and directives under clause 14, new Part 4A, new section 100O of the Bill should be more tightly prescribed and also be published on a government legislation website on the basis that these powers may be too broad and likely to breach the Legislative Guidelines.

In considering this issue, the Regulations Review Committee recommended the following be clarified:

- who would be subject to standards and directives
- the impact on existing leaseholders' obligations under their leases and the consequences of failing to comply with standards and directives
- why the standards and directives are not legislative instruments (and so required to be approved by Cabinet and published on the government's legislation website, rather than on a departmental website).

Response

In response to the Regulations Review Committee's concerns, LINZ notes that:

- the new section allows **both** the Chief Executive and the Commissioner to set standards and directives (and the Commissioner's power to set standards and directives does not extend to the framework for determining applications for discretionary pastoral consents or recreation permits) – the title of the section could be amended to clarify this

- the standards and directives provide for the Commissioner to make transparent and informed decisions in deciding applications to undertake activities on pastoral land. Leaseholders are not subject to the standards and directives

- the standards and directives have no impacts on existing leaseholders' obligations under their leases, nor are they for the purposes of obtaining compliance from leaseholders

- the standards and directives do not need to be made legislative instruments as they are for the purposes of enabling the Commissioner to make effective and transparent decisions rather than for the purposes of obtaining compliance

- the things that are required of, or that may impact on, leaseholders are required to be prescribed as regulations made by Order in Council (clause 14, new section 100(N)).

LINZ also notes that the current reforms to secondary legislation making (the Legislation Act 2019 and the Secondary Legislation Act 2021) establish one unified and simple category of law that replaces legislative instruments, disallowable instruments and tertiary legislation with one single category - secondary legislation. Under these reforms, the new section 100O standards and directives will have status as secondary legislation. They will be subject to the Parliament's disallowance under the Legislation Act 2019, must be notified in the *New Zealand Gazette,* and published in full online. Minimum legislative information may be published on the government's legislation website. A number of technical amendments will need to be made to the Bill to ensure the Bill complies with these secondary legislation reforms.

New section 100(O)(1)

This section allows the Commissioner to set standards and issue directives in relation to:

- the administration of pastoral land and its inherent values, including monitoring the state of the land
- compliance by holders of reviewable instruments with requirements under this Act.

The purpose of clause 14, new section 100(O)(1)(a) is to set standards or issue directives with legislative effect that are transparent to iwi, stakeholders and the public and that focus on the sustainable management and effective monitoring of inherent values. These instruments are to primarily deal with cumulative effects. However, other issues in terms of managing inherent values may emerge over time that may be addressed with these instruments. Accumulating scientific information for monitoring purposes and setting limits for the management of inherent values (if necessary) through suitable standards/ directives would fall to the Commissioner given their responsibility for the administration of pastoral land in accordance with the legislation.

In relation to clause 14, new section 100(O)(1)(b), LINZ's view is that there are sufficient compliance-related provisions in clause 14, new section 100N, making this new sub-section unnecessary.

Clause 14, new section 100(O)(2)

New section 100(O)(2) provides for LINZ's Chief Executive to set standards and issue directives in relation to the framework for determining applications for discretionary pastoral consents or recreation permits.

The scope of this provision is confined to clause 8, new Part 1, new sections 11 - 13 in Clause 8, new Part 1 of the Bill, and reflects the LINZ Chief Executive's responsibility for administration of the Crown pastoral regulatory system.

In LINZ's view, a standard with legislative effect (subject to iwi, stakeholder and public consultation) that sets safe boundaries for 'level of adverse effects' is required to ensure transparency and accountability in decision-making on consent applications.

Recommendation

14. LINZ recommends that:

- the title of clause 14, new Part 4A, new section 100(O) of the Bill be amended to "Chief Executive or Commissioner may set standards and issue directives"
- technical changes to the Bill be made to ensure it complies with the Legislation Act 2019 and the Secondary Legislation Act 2021
- clause 14, new Part 4A, new section 100(O)(1)(b) of the Bill be deleted.

15. Ensure that leaseholders' property rights are not eroded through the amendment of new Schedule 1AB

Issue

Clause 14, new Part 4A, new section 100L of the Bill allows the Governor-General, on the recommendation of the Minister, to amend, replace or delete an item on the *Classification of Pastoral Activities* in new Schedule 1AB by Order in Council.

The Law Society raised concerns that the breadth of the discretion conferred risks allowing additions to be made to the list of prohibited activities currently in new Schedule 1AB. Its view is that this could materially change the terms of a pastoral lease without any input from or compensation to the lease or licence holder. They consider that this may be a form of appropriation which ought not to be permitted by way of an Order in Council.

Response

As submitters have noted, clause 14, new section 100L(6) creates a very high bar for an activity to be classified as prohibited.

However, LINZ acknowledges the concerns that the provision as it stands could be problematic if it prevented leaseholders exercising their property rights. In LINZ's view this could be addressed by requiring the Minister to consider whether classifying the activity as prohibited could impact on leaseholders' ability to exercise their rights and obligations under their lease in any reasonably foreseeable circumstances.

Recommendation

15. LINZ recommends amending Clause 14, new Part 4A, new section 100L of the Bill to include a requirement that the Minister also considers whether classifying the activity as prohibited could

impact on leaseholders' ability to exercise their rights and obligations under their lease in any reasonably foreseeable circumstances.[6]

16. Clarify who should issue infringement notices

Issue

A number of submitters were concerned about the new part 4A of the Bill, which provides for recovery of remedial costs and enforceable undertakings, including infringement offences (new sections 100D to 100J) including that:

- only civil penalties should be available given the contractual nature of the relationship between leaseholder and Crown
- introducing such penalties are discriminatory because they only apply in relation to Crown pastoral leases.

The Lakes Station recommended the proposed infringement notices be removed and that an administrative penalties regime could be used instead.

Concern was also raised regarding new section 100F in new Part 4A, regarding the ability for the Commissioner to delegate the issuing of infringement notices to "an employee" as being too vague and uncertain.

Response

LINZ's view remains that additional enforcement tools will be an important part of the effective operation of the Crown pastoral regulatory system – and there is a particular need to provide a disincentive for leaseholders to undertake activities without a consent (that does not require LINZ to take court action).

Infringements will apply to cases where a leaseholder undertakes an activity without a necessary consent or permit, or contravenes a stock limitation. In LINZ's view, the existence of such a tool will help to ensure compliance, and LINZ's first priority will be on educating and supporting leaseholders to comply with the need to apply for a consent – with the aim that infringement notices would rarely be issued, if at all.

In the development of the Bill, consideration was given to the choice between administrative penalties or infringement notices. On balance, providing the Commissioner with the ability to issue an infringement notice was considered to best meet the policy objective of providing a deterrent to leaseholders from undertaking activity without consent while ensuring natural justice protections. The Bill provides a District Court process for appeals against any infringement notice issued.

Although part of the criminal law, LINZ's view is that the infringement notices are appropriate in that the aim is to prevent conduct (e.g. burning of vegetation on pastoral land without a consent) that would be of concern to the community, but which does not justify the imposition of a criminal conviction, significant fine, or imprisonment. Infringement regimes in other areas of regulation are well established, have a low-level financial penalty and do not result in conviction. Infringement notices also have the oversight of the judiciary should the leaseholder wish to challenge the notice, which provides the leaseholder with a means of contesting their notice under the guidance of an impartial judge.

[6] See also the recommended minor changes 72 and 74 in **Section 3** of this report.

By contrast, administrative penalties do not have any protections or oversight by the court or a cap on the amount of penalty that a regulator can set for them. They therefore bring with them an increased risk of arbitrary use without the protections afforded by an infringement regime.

Infringement regimes often apply only to people or organisations working in a particular industry and doing quite specific conduct. LINZ does not consider this to make them discriminatory.

However, LINZ acknowledges the concern from some submitters that the Bill should more clearly specify who can issue infringement notices, and the need to ensure anyone with the power to issue infringement notices has the necessary authority and training. LINZ therefore recommends a change to new section 100F to give LINZ's Chief Executive the ability to appoint warranted enforcement officers within LINZ who would be responsible for the issuing of infringement notices.

Recommendation

16. LINZ recommends no substantive change to new Part 4A of the Bill, but that the Bill be amended to give LINZ's Chief Executive the ability to appoint warranted enforcement officers within LINZ who would be responsible for the issuing of infringement notices.

17. Ensure LINZ has the capacity and capability to implement the changes

Issue

Many submitters raised concerns about LINZ's capacity and capability to implement the changes set out in the Bill, citing delays in LINZ's processing of applications and other operational issues.

It has also been clear that leaseholders in particular are concerned about their relationship with LINZ and how it might be affected by the changes proposed in the Bill. In LINZ's view, preserving this relationship as any changes are implemented will be fundamental to the success of the new legislation.

Response

LINZ is undertaking a range of operational improvements to enhance its capacity and capability in managing Crown pastoral land. This includes:

- increasing the frequency of lease visits by LINZ staff (visiting every lease at least once every two years), to ensure LINZ is well-informed about the properties and operations involved
- increasing its in-house capability, including ecological, tenure review and programme management expertise
- mapping information currently held on consents granted by the Commissioner to ensure accurate and up-to-date information about leases to ensure well-informed decision-making
- working more closely with leaseholders in the pre-application stage to ensure they are providing the right level of detail required, and to share information about any lower impact alternatives to activities
- actively engaging with high country stakeholders, including by setting up the High Country Advisory Group, a mix of farming, iwi and industry experts to provide advice to LINZ and the Commissioner on land management.

However, further improvements will be required to implement the legislation.

The Bill currently provides that the Act will come into force on the day after the date on which it receives the Royal assent. In LINZ's view, a longer period between Royal assent and the majority of

the provisions of the Act coming into force would help to ensure that all the necessary secondary legislation (including regulations), operational procedures and systems were in place, and LINZ was well prepared to implement the changes. It would also provide for sufficient time for consultation with leaseholders, iwi and stakeholders on how the Bill will be operationalised, as well as helping to put resource into maintaining and improving relationships with leaseholders as the changes are implemented.

However, an additional period would not be necessary for the repeal of tenure review - which could still therefore come into force the day after Royal assent.

Recommendation

17. LINZ recommends amending clause 2 of the Bill to allow for six months in between the Act receiving Royal assent and it coming into force - with the exception of the repeal of tenure review, which should come into force the day after Royal assent.

Section two: Key issues raised where changes are not recommended to the Bill

Submitters raised concerns or suggested changes in a number of key areas which officials consider should not or cannot be addressed by amendments to the Bill. In summary, these key areas are:

1. views that tenure review should be retained, repurposed or that all reviews currently underway should be allowed to continue through the process
2. views about the scope and balance of the outcomes in the Bill
3. concerns about the relationship and overlaps between the RMA and Crown pastoral land systems
4. a desire for new statutory mechanisms to protect Ngāi Tahu's cultural values
5. resourcing for Ngāi Tahu to come onto the land and catalogue its cultural values
6. concerns about the new decision-making process for discretionary pastoral activities
7. concerns about the Commissioner's role and independence
8. a desire for stronger involvement by Ngāi Tahu and the public in decision-making
9. views that the changes proposed in the Bill will have a significant negative impact on leaseholders compared with the status quo.

1. Tenure review provisions

Issue

Many submitters did not agree with the Government's decision to end tenure review. Some submitters thought that tenure review should continue in its current form. Other submitters thought that tenure review should continue in a modified form.

The main reasons submitters gave for not ending or modifying tenure review were that:

- tenure review has been unfairly criticised and the significant economic, conservation and public access benefits that have been realised through land being moved into the conservation estate or freeholded have not been given sufficient consideration
- some of the land under Crown pastoral leases is not suitable for pastoral farming and tenure review provides a way of removing at least some of it from Crown pastoral leases
- leaseholders have a legitimate expectation that tenure review will remain an option for them.

In addition, many submitters wanted all leaseholders currently in tenure review to be able to continue through the process, regardless of tenure review ending. Some leaseholders who currently have tenure review applications in progress but are unlikely to reach the substantive proposal stage by the Bill's commencement date (Walter Peak Station, Glenmore Station, and Lake Taylor) wanted their applications to proceed through to completion. In particular, Walter Peak sought a grandparenting provision in relation to its tenure review process to allow this process to continue through to completion on the basis that there have been significant delays in the process on the part of the Crown - including delays resulting from the need for the Minister of Conservation to re-make a decision on Walter Peak's preliminary proposal.

Other submitters strongly supported the decision to end tenure review, citing their concerns about the impact tenure review has had on inherent values and about a perceived transfer of wealth from the Crown to private interests through the freeholding and on-selling of land.

Response

LINZ has previously analysed the costs and benefits of either ending tenure review, or repurposing it so that it becomes a targeted tool for the Government to achieve its desired objectives for Crown pastoral land, relative to the status quo. This analysis is set out in the Regulatory Impact Statement *Proposed Changes to Tenure Review*.

LINZ acknowledges that there are both benefits and costs associated with ending tenure review. However, on balance, LINZ's view is that ending tenure review and administering the land under an improved Crown pastoral land regulatory system is the best way to achieve the outcomes set out in the Bill – particularly the first outcome, which seeks both the protection of inherent values and the continuation of pastoral farming.

LINZ's view is also that tenure review should end on the Bill's commencement date (i.e. the day after the Bill receives Royal assent) in order to support achievement of the Bill's outcomes as soon as possible. While LINZ is recommending a longer timeframe for the remainder of the Bill to come into force, the provisions ending tenure review do not require additional supporting work - such as the development of, and consultation on, secondary legislation and operational policy.

However, LINZ still considers it appropriate that tenure reviews should be allowed to continue in cases where a substantive proposal has been put to a leaseholder, reflecting that a substantive proposal represents a contractual agreement between the leaseholder and the Crown.

Further to this, LINZ's view is that it would not be appropriate to make provision for the continuation of any tenure reviews that do not reach the substantive proposal put stage by the Bill's commencement date, noting that tenure review is a voluntary process and there is no guarantee that a final outcome will be achieved as a result of any tenure review process[7].

LINZ recommends no change to the Bill.

2. Outcomes

Issue

Some submitters thought that the first outcome in the Bill in clause 8, new Part 1, new section 4 of the Bill ("maintaining or enhancing inherent values across the Crown pastoral estate for present and future generations, while providing for ongoing pastoral farming of pastoral land") should be made into a clearer hierarchy, with protection of inherent values prioritised over the continuation of pastoral farming. These submitters saw the current wording as a 'balancing' approach to environmental and farming interests that was likely to perpetuate further loss of biodiversity, landscape and cultural values.

There were some concerns raised with the second outcome. Te Rūnanga's view was that the outcome needed 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 concerned about the lack of clarity in relation to the wording of the outcome.

There were also concerns raised in relation to the implications of the fair financial return outcome, and what it might mean for rents. Pai Ake Taiao Limited wanted the new section to be amended to provide for Māori as well as the Crown to "get a fair return on its interest in pastoral land."

[7] Note the proposed amendment to item 86 in **Section 3** below, which is intended to clarify that the Bill will not prevent a party from seeking judicial review of tenure review cases.

Other submitters wanted public access to be provided for in the outcomes.

Response

The outcomes in their current form represent the Government's articulation of what it wants to achieve from the Crown pastoral regulatory system, and the exact wording of the outcomes was agreed by Cabinet [CBC-19-MIN-0001 refers].

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 objectives, including in relation to the wording of the outcomes. LINZ notes that:

- the wording of the first outcome (clause 8, new section 4(1)(a)) reflects the Government's view that inherent values and pastoral farming should be given equal consideration
- the wording of the second outcome (clause 8, new section 4(1)(b)) follows the drafting of section 14(1) of the Public Service Act 2020
- the third outcome (clause 8, new section 4(1)(c)) is 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.

LINZ recommends no change to the Bill

3. The RMA and the Crown pastoral regulatory system

Issue

A number of submitters thought that the Bill largely duplicated matters covered under the RMA, particularly the consenting process for discretionary actions. Many submitters were also concerned that planned reform of the RMA could further increase duplication or leave the Crown pastoral regulatory system out of step with new resource management legislation. This was linked to a recommendation to replace the consenting system for discretionary pastoral activities with contractually-binding farm plans – this recommendation is considered in more detail above.

A smaller number of submitters expressed the view that the Crown pastoral land regulatory system had a different purpose and focus to the RMA and that any duplications were manageable at an operational level.

Some submitters were concerned about scenarios where leaseholders were only seeking a consent under the CPLA and not the RMA where an activity required both. These submitters wanted the Bill to be amended to require the Commissioner to consent to a discretionary action where a RMA consent had been obtained (where required).

Response

LINZ's view is that 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 some overlap between the two regimes in relation to the issuing of consents for farming activities:

- Under the current CPLA lessees need the Commissioner's consent as lessor to undertake specific activities such as burning, removal of timber, soil disturbance, or to change a personal stock exemption. The Bill preserves this requirement.
- The Commissioner's consent does not authorise the person to undertake the consented activity without required permissions under other enactments. Therefore, for some activities, leaseholders currently have to seek both an RMA consent and a consent from the Commissioner.
- However, RMA and CPLA discretionary consents consider different things. CPLA discretionary consents in effect involve the leaseholder seeking permission from the owner of the land to undertake activities - and the assessment of the effects on inherent values that the Commissioner undertakes aims to protect the Crown's ownership interest in the land.

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:

- The RMA reforms are to improve resource management system efficiency and effectiveness, reduce complexity, protect and restore the environment, enable development, better mitigate against climate change risk, and to give proper recognition to Treaty principles.
- The reforms do not address the specific outcomes for the management of Crown pastoral land set out in the CPLR Bill – namely providing for ongoing pastoral farming of Crown land while maintaining and enhancing inherent values of the high country's natural resources; supporting the Crown in its relationships with Māori; and enabling the Crown to receive a fair return on its ownership interest.

At this stage, the outcome of the resource management reforms and their impact on leaseholders is uncertain. However, as the reforms are developed and implemented, LINZ will continue to ensure that compliance requirements under the two regimes align where possible to minimise information requirements on leaseholders.

LINZ has considered the issue of whether the Bill should be amended to provide that the Commissioner could only consider an application for a consent where a RMA consent has been sought (if needed). However, in LINZ's view this is an issue of the leaseholders' compliance with their requirements under the RMA and therefore not appropriately dealt with under the Bill. Further, adding such a provision would prevent a leaseholder acquiring necessary consents in an order that makes most practical sense for them. Instead, this issue could be addressed through better communication and coordination between local councils and the Commissioner.

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. Existing forums such as the Mackenzie Basin Alignment Programme Te Mōkihi (which includes local councils, rūnanga and Crown agencies) and the High Country Advisory Group can be used to help improve this alignment.

LINZ recommends no change to the Bill.

4. New statutory mechanisms for Ngāi Tahu

Issue

Te Rūnanga's submission recommended:

- development of new statutory mechanisms 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.

Response

The Government's intention is that this Bill should reflect leaseholders' rights to exclusive possession and quiet enjoyment of the land. LINZ's view is therefore that no changes should be made to the Bill that impact on those rights.

On the covenant issue, LINZ notes that the Bill provides for heritage covenants at Schedule 1AC, clause 80(6), and that section 39 of the Heritage New Zealand Pouhere Taonga Act 2014 provides that:

> Heritage New Zealand Pouhere Taonga may enter into a heritage covenant with the owner of a historic place, historic area, wāhi tūpuna, wāhi tapu, or wāhi tapu area to provide for the protection, conservation, and maintenance of the place, area, wāhi tūpuna, wāhi tapu, or wāhi tapu area.

In LINZ's view, this provides sufficiently for protection mechanisms over the land. In addition, if there is a desire for a separate Ngāi Tahu protection mechanism, this should presumably apply more broadly than Crown pastoral land and the Bill is therefore not the appropriate vehicle to create such a mechanism.

On the easement issue, LINZ recognises the interest Ngāi Tahu has in accessing pastoral leases and would therefore seek to support this access by facilitating interactions between Ngāi Tahu and leaseholders. The proposed new provision around reviewing access at the time of lease transfer provides a further opportunity to do this.

LINZ recommends no change to the Bill.

5. Resourcing for Ngāi Tahu

Issue

Te Rūnanga submitted that the Bill should provide for resourcing for Ngāi Tahu to come onto the land and catalogue its cultural values.

Response

In LINZ's view, this is a funding issue that sits outside the provisions of the Bill.

LINZ recommends no change to the Bill.

6. New decision-making process for discretionary pastoral activities and recreation permits

Issue

There was significant feedback from a broad range of submitters on the new decision-making process for discretionary pastoral activities and recreation permits.

A number of submissions raised concerns about the discretionary activities consenting process (including the classification of activities) – see clause 8, new Part 1, new sections 10 to 12 of the Bill. Specific concerns from a range of submissions included:

- that the process takes a "one-size fits all" approach, which cannot adequately cater to the diversity of Crown pastoral leases
- the potential difficulty of how identifying a reasonable alternative to an activity that has lesser adverse effects on inherent values, and lack of clarity about who assesses that reasonableness
- that the discretionary consents test is too permissive and should not permit any activity that has a more than minor adverse effect on inherent values to be consistent with the outcomes
- that the standard that the activity be 'necessary' for a leaseholder to undertake their rights and obligations (in cases where that activity has a more than minor impact on inherent values) sets too high a bar, and is difficult to assess
- that the Commissioner is restricted to considering a list of six circumstances in which they can overlook more than minor effects, and that this list is too prescriptive.

There were similar concerns raised about the restrictiveness of the decision-making process for recreation permits outlined in clause 8, new Part 1, new section 13 of the Bill – note that this process has been covered off in Section 1 of this document.

Response

Intent and scope of the new decision-making process

The new decision-making process on discretionary pastoral activities is intended to give effect to the outcomes of the Bill. It therefore seeks to encourage pastoral farming activities to be undertaken in a way that has a no more than minor effect on inherent values (including cultural values). The outcomes do not allow for a balancing of inherent values against pastoral farming, or require one of these to be set above the other. Instead, the outcomes require that **both** provision for pastoral farming **and** maintenance or enhancement of inherent values are achieved in decision-making.

The new process (as well as the outcomes more broadly) is based on the premise that pastoral farming is a form of land use that has relatively low impacts on inherent values – this is consistent with submissions from Federated Famers, leaseholder groups and individual leaseholders that have presented the view that pastoral farming and good environmental outcomes are not mutually-exclusive, and have given specific examples of farming operations that are maintaining and enhancing inherent values across the pastoral lease. The process is designed to incentivise and support leaseholders in this exact current practice - undertaking pastoral farming activities in a way that is consistent with the maintenance and enhancement of inherent values.

Within this context, the decision-making process replaces the current process where the Commissioner is simply required to consider both:

- the desirability of protecting the inherent values of the land concerned (other than attributes and characteristics of a recreational value only), and in particular the inherent values of indigenous plants and animals, and natural ecosystems and landscapes
- the desirability of making it easier to use the land concerned for farming purposes.

The current process gives no direction to the Commissioner on how to weigh these two considerations against each other when they are in conflict. This was identified in the review of the

Crown pastoral regulatory system undertaken by LINZ in 2019 as a major flaw in the design of the current system.

The new process sets out far more explicitly how the Commissioner will consider inherent values when making decisions, in line with the outcomes. However, in relation to inherent values the Commissioner will be considering largely the same matters as they currently do in order to make this assessment (and seeking expert advice as needed). In LINZ's view, the assessment required under the Bill is therefore well within the capability of the Commissioner.

The process also enables the Commissioner to consider the particular inherent values that would be affected by the activity being applied for, and how those values would be affected on the particular part of the particular lease in question. In LINZ's view, the approach is therefore not a 'one size fits all' process.

Step 1 of the decision-making process

As part of the Step 1 of the decision-making process, the Commissioner will be required to assess whether they are satisfied that reasonable alternatives have been considered that have a lesser adverse effect on inherent values (clause 8, new Part 1, new section 12(4)(iii) of the Bill). This is not intended to be an onerous requirement, but is intended to provide the Commissioner with the ability to work with a leaseholder to identify how they can achieve their pastoral farming objectives in a more environmentally-sustainable way where feasible to do so. It will also help to prevent a situation where a leaseholder has to make a new application for an alternative method to achieve their pastoral farming objectives that has lower adverse effects. LINZ's view is that the qualification that any alternative must be "reasonable" should clarify that there is no expectation that every possible alternative has been considered, no matter how costly or difficult.

Step 2 of the decision-making process

Step 2 of the decision-making process in clause 8, new Part 1, new section 12(5), in Clause 8, new Part 1 of the Bill recognises the point made by some submitters that there will be circumstances where an activity that has more than minor adverse effects should still be continued. The Bill's approach, in keeping with the outcome that ongoing pastoral farming should be provided for, reflects that only permitting activities that have no more than minor effects on inherent values could result (either immediately or over time) in leaseholders no longer being able to exercise their rights or fulfil their obligations on the lease. This step in the process effectively provides a pastoral farming 'bottom line' to preserve leaseholders' property rights. Conversely, this part of the test should not be so permissive that decisions result in significant loss of inherent values over time, as this would be inconsistent with the outcomes.

LINZ's view is therefore that:

- removing this step would be inconsistent with that part of the outcome that says that the system should provide for ongoing pastoral farming
- making this step (and the process as a whole) more permissive would be inconsistent with that part of the outcome that says the system should maintain and enhance inherent values.

It should be noted that the list of considerations as part of this step of the process is open-ended, and the Commissioner would be able to consider any other relevant considerations that they identify.

LINZ recommends no change to the Bill.

7. The Commissioner's role and independence

Issue

Some submitters expressed concern that the Commissioner has too much power over decision-making and not enough accountability. Some submitters called for the role to be disestablished and replaced or supplemented by Ministerial decision-making (for instance through the ability for a Minister to call decisions in) or an independent panel.

Other submitters were concerned that the Commissioner's role should remain transparent and not subject to political interference.

Response

The Commissioner reports directly to the Minister for Land Information for the discharge of their functions under the legislation.

However, the Commissioner must carry out their functions in accordance with statute, and cannot be directed by the Minister or anyone else when performing these statutory functions (including decision-making under the Act).

In LINZ's view, there is nothing in the Bill that changes the statutory officer role of the Commissioner or means that the Commissioner will be subject to inappropriate "political interference" – bearing in mind that the Commissioner is currently accountable to the Minister as noted above (note that the issue of the Commissioner needing to take into account Government policy is discussed in **Section 1** above).

In LINZ's view, the issues raised by some submitters in relation to the high degree of discretion that the Commissioner currently has, along with concerns about transparency and accountability have been addressed through other changes to the Bill – such as more direction being given to the Commissioner in decision-making in the new Bill, publication of decision-summaries and clarification of accountability arrangements.

LINZ recommends no change to the Bill.

8. Increased iwi and public involvement in decision-making

Issue

A number of submitters expressed the view that there should be more public involvement in decision-making in relation to discretionary pastoral activities, recreation permits and easements. This included both public involvement in the making of decisions - for instance through the public notification of applications and the ability for the public to make submissions - as well as adding a public right of appeal on these decisions. The basis of these views included that:

- because these applications relate to activities that are not undertaken as of right, the public should have input
- the Bill in its current form still seems to allow too much agency discretion and not enough public accountability
- presently, decisions made by the Commissioner are almost beyond challenge (other than judicial review) and largely beyond scrutiny.

Te Rūnanga's view was that discretionary consents must be made in partnership with iwi/hapū and in accordance with the principles of Te Tiriti.

Other submitters were concerned about public involvement in consent applications on the basis that the lease contract is between the lessee and the Crown and should not involve other parties.

Response

The Bill reflects a position that public involvement is most appropriate and beneficial at a 'whole of system' level – for instance, through consultation on the monitoring framework and the Strategic Intentions document – rather than in relation to specific decisions because of:

- the context of the contractual arrangement between Crown and leaseholder.
- the significant additional costs and longer timeframes that would be associated with public participation and a public right of appeal.

In relation to Te Rūnanga's comment, LINZ's view is that clause 8, new Part 1, new section 5 of the Bill already provides for Te Rūnanga's involvement in identifying and assessing the impacts on cultural values where a consent for a discretionary pastoral activity is sought or other decisions are being made.

The issue of the Commissioner's accountability and discretion is covered off above.

9. Impacts on leaseholders

Issue

Many submissions raised concerns that the Bill taken as a whole would have a significantly negative effect on leaseholders. These concerns included that changes included in the Bill would:

- breach leaseholders' property rights
- affect leaseholders' ownership of their improvements
- affect the calculation of their rents
- significantly increase the regulatory burden for leaseholders
- fundamentally alter the relationship between LINZ and leaseholders
- be invasive of leaseholders' privacy.

Response

It is important to note that the Bill amends an existing regulatory system rather than creating a new one. Under this existing system, leaseholders are required to apply for the Commissioner's consent to undertake certain farming activities. The Bill does not change this.

LINZ acknowledges that the changes in the Bill will have some impact on leaseholders – however, our view is that these impacts are not as significant as some submitters suggest.

Property rights

A leaseholder's rights and responsibilities derive from a combination of the terms of the pastoral lease itself, statute law, including the CPLA, the Land Act and the common law of leasing applicable to all leases. 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.

Improvements

LINZ does not agree with the assertion that the Bill appropriates leaseholders' improvements by failing to recognise properly the lessees' property rights in their improvements, and their rights to repair and maintain those improvements. The High Country Accord's submission gives two specific examples of these concerns in relation to:

- historical improvements belonging to the lessee in the form of pre-1948 tracks (that is, before the Land Act came into force and the lease was granted)
- the protection of the right to clear vegetation from areas previously cleared and therefore forming an improvement.

In relation to the first example, the Bill classifies the maintenance of existing consented roads, paths, or tracks as a permitted activity. However, where tracks have been in place for so many years that they pre-date the lease, or the consent has been lost, the maintenance of historical unconsented improvements that belong to the lessee will also require the consent of the Commissioner as a discretionary pastoral activity. This is exactly the same requirement as under the current CPLA – the Bill does not change this.

In relation to the second example, consents relating to the clearance of vegetation are generally given as one-off consents under the current legislation. If the cleared land regenerates, then another consent will be required for subsequent clearances. Again, the Bill does not change this.

In a few cases, there may be existing consents that include an ongoing right to clear certain land. These consents will be preserved under the proposed Bill.

Leaseholders raise a further concern – that Step 2 of the discretionary decision-making process (which allows the Commissioner to consent to activities that have more than minor adverse effects if necessary for the leaseholder to exercise their rights and obligations) is too narrow to provide for historic tracks and clearances.

Clause 8, new Part 1, new section 12(5) of the Bill enables the Commissioner to take into account (among other considerations):

- 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
- 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
- any other relevant considerations.

Taken together, these considerations - including the ability to make any other relevant considerations - would allow the Commissioner to grant consent in all of the situations described in the Accord's submission, including where historical clearances have been for purposes other than "maintaining existing pasture created by oversowing, top-dressing or cultivation" (for instance, where clearances have been made for grazing access to unimproved land).

Rents

The third outcome (clause 8, new section 4(1)(c)) – enabling the Crown to get a fair rate of return on its ownership interest in pastoral land – has been interpreted as having an impact on the rents payable on Crown pastoral leases.

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.

As noted above, this outcome is intended to simply assert that the Crown has a right to a fair rate of return on its ownership interest.

Increased regulatory burden

The Bill's focus is on changing the way LINZ administers Crown pastoral land, and 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 RIS also noted that there would likely be opportunity costs through limitations on further intensification and development of pastoral leases.

LINZ currently sets out the information that leaseholders have to provide to support their applications, through application forms available on its website, in operational standards set by the Commissioner and through guidance documents such as the *Guide for Pastoral Leaseholders* and *Guide for Applicants*. LINZ also works with leaseholders pre-application on the level of detail required. The type of information sought from leaseholders will not differ significantly from what is already sought. It is also important to note that the Commissioner will likely also seek information from other sources in order to make the assessments they need to make, and any costs will not fall solely on the leaseholder.

The Bill includes regulation-making powers in relation to both the information required to both support an application and prescribe any fees and charges that might be set in relation to applications for consents for discretionary pastoral activities. LINZ will consult with leaseholders in the development of regulations, and there will be the opportunity to work with leaseholders to ensure any requirements are reasonable.

There are also some circumstances in which leaseholders will have to apply for a consent where they currently do not have to (these activities were previously covered in a letter sent by the Commissioner to leaseholders in 1999 giving blanket consent for a number of minor activities). These activities include:

- digging in posts, anchors, piles, or supports for the purpose of constructing buildings or clearing drains (maintaining drains is a permitted activity)
- new or additional irrigation
- new fencing (repairing and maintaining existing fencing within its existing footprint is a permitted activity).

However, this is offset by the classification of a number of activities as 'permitted' for which leaseholders previously had to apply for consent:

- controlling invasive exotic pest plants, but this does not include associated clearance of indigenous vegetation
- preparing bait lines for animal pest control

- maintaining existing stock water troughs
- clearing wind-felled trees, except where the timber is for sale or off-farm commercial use
- burning of slash, stumps, or dead vegetation within existing consented cultivated paddocks
- riparian planting using indigenous species sourced from local seeds
- boom spraying of exotic vegetation within existing consented cultivated paddocks.

Relationship between LINZ and leaseholders

Submitters have expressed concerns that the Bill signals a fundamental shift in the relationship between LINZ and leaseholders.

However, 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.

Submitters expressed particular concerns about new enforcement mechanisms and the impact that would have on the relationship. However, LINZ's approach will be to work with leaseholders to ensure they understand their obligations and to only use these enforcement mechanisms when absolutely necessary.

Privacy

Some submitters have expressed concerns about the privacy of details and potential misuse of leaseholder information and data under the Commissioner's requirement to report under clause 8, new Part 1, new section 22E of the Bill.

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, new section 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[8].

LINZ recommends no change to the Bill.

[8] 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'.

Section three: Other changes proposed to the Bill by clause

This section discusses issues that are not covered off in Sections 1 and 2 of the Departmental Report.

Part 1 **Clause 5** ***New section 1A inserted***				
Item	**Section**	**Raised by**	**Issue**	**Officials' comment**
1.	New 1A	NZ Law Society, Te Kahui Ture Taiao/the Association for Resource Management Practitioners (RMLA)	Amend the purpose statement to improve clarity. This section currently only describes the content of the Act (that the Bill provides for the administration of pastoral land). It needs to be clearer to meet requirements of Interpretation Act 1999. The NZ Law Society suggests replacing with the wording from the Explanatory Note to the Bill: "*To provide for the administration of pastoral land in a manner that maintains or enhances its ecological, landscape, cultural, heritage, and scientific values for present and future generations, while providing for ongoing pastoral farming of the land.*"	**Amend**. LINZ agrees that the purpose statement should be clarified. However, it should reflect all the outcomes that decision-makers under the principal Act and the Land Act 1948 are to seek to achieve, as set out in clause 8, new section 4 - rather than the proposed excerpt from the Explanatory Note to the Bill, which has a narrower scope.
Clause 6 ***Section 2 amended***				
2.	New 2	NZ Law Society, RMLA	Amend definition of inherent values to remove the word 'conformation'. NZ Law Society suggests consideration of a plain English alternative such as "characteristics" or "natural character of the land".	**Amend.** LINZ agrees that an amendment along these lines would improve the clarity of the Bill.

Clause 8 ***Part 1 replaced (with new Part 1)***				
Subpart 1 - Outcomes, activities on pastoral land, and decision-making process				
Outcomes				
3.	New 4(1)	Federated Mountain Clubs, NZ Law Society, Sue Maturin	Amend wording of 'seek to achieve', as this wording is not strong enough and not sufficiently linked to achieving the specified outcomes. Consider alternative wording (e.g. "strive to achieve").	**No change.** LINZ considers that this provision places a sufficient obligation on those exercising powers, functions or duties under the Act.
4.	New 4(1)	Federated Farmers of New Zealand (Federated Farmers)	Amend wording to clarify that leaseholders and licence holders are not "persons performing or exercising functions, duties, or powers required under the Bill".	**Amend.** LINZ considers that it would be helpful to clarify the application of this section for the avoidance of doubt.
5.	New 4(1)(a)	Environmental Law Initiative	Environmental 'bottom lines' of specific outcomes for air, soils, freshwater, flora, fauna, and species of the high country should be added as objectives to be achieved under the Act.	**No change.** In LINZ's view, introducing these outcomes in the way proposed would create significant compliance and other costs for both the Crown and leaseholders. However, greater use of farm plans and the introduction of a monitoring framework would help address support the setting of more specific environmental objectives for

				individual leases as well across all Crown pastoral land.
6.	New 4(1)(b)	Federated Farmers, High Country Accord Trust	This provision should be amended to clarify that the relationship under the Treaty is between the Crown and Māori, not leaseholders and Māori.	**No change.** This distinction is already made, as the provision refers to "the Crown in its relationship with Māori".
7.	New 4(1)(b)	LINZ	Treaty references in the Bill are not consistent	**Amend.** The Treaty of Waitangi/Te Tiriti o Waitangi should be defined by reference to the Treaty of Waitangi Act 1975, which refers to both the te reo and English language texts. This will avoid uncertainty in interpretation.
Classification of activities on pastoral land				
8.	New 6(1)	NZ Law Society	Amend section 6(1) to make it clear that the Commissioner's consent must be sought, if required, under sections 7-9.	**Amend.** Further clarification is warranted.
9.	New 6(3)	Federated Farmers, High Country Accord, Trust, individuals, The Lakes Station (leaseholder)	Introduce appeal rights regarding decisions made by Commissioner to classify activities into different categories.	**No change.** This power only applies to activities where there is some confusion as to their classification. Any changes to new Schedule 1AB are made by Order by Council under clause 14, new section 100L, and leaseholders would be consulted on these changes.
Provision related to burning				

10.	New 7	Federated Farmers, High Country Accord Trust	Section 7 is clumsily worded – it should be deleted and burning should instead be dealt with as part of new Schedule 1AB, using either the wording under the existing section 15 of the CPLA 1998 (Federated Farmers) or section 106 of the Land Act 1948 (High Country Accord Trust).	**Amend.** This section has been carried over from the CPLA, as burning is already a discretionary activity. However, there is scope to better integrate the drafting of these sections with the remainder of the Bill.
11.	New 7(4)	Kenneth Taylor	Amendment may be needed to clarify what timber is. The Bill clarifies that vegetation 'does not include timber' but does not define what timber is.	**No change.** This section has been carried over from the CPLA – the meaning of timber is that used in s100 of the Land Act 1948.
Further provisions relating to Clause 8				
12.	New 9(3)	The Lakes Station	Unclear drafting. Section 9(3) appears to stand by itself rather than only applying for the purposes of section 9. It is also unclear why section 9(1) is excluded in section 9(3).	**Amend.** In line with the policy intent, this provision should be amended to clarify that, where maintenance has been previously granted, it will be allowed to continue under those conditions outlined in the original consent (e.g., where maintenance has been granted for five years, it will be allowed to continue until the end of that period).
13.	New 9(4)	Kenneth Taylor, Environment and Conservations Organisations of NZ Inc	Concern that section 9(4) may allow activities to be undertaken (under the Public Works Act 1981 or the Crown Minerals Act 1991) that are inconsistent with the Bill.	**No change.** This clause relates to other regulatory systems, which have different purposes, and apply to land

				generally (including Crown pastoral land).
14.	New 10(1)	Kenneth Taylor	Amend to provide definition of 'sufficient information'.	**No change.** The information that leaseholders will need to provide will be outlined in the regulations (any issues on these can be raised by them during consultation). The issue of assessing whether the information is up to standard will be an operational issue.
15.	New 10(1)	Federated Farmers	Amend as follows to address concerns as to how leaseholders will be able to provide sufficient information, given the lack of data available: An applicant who wishes to undertake any activity on pastoral land should must provide sufficient information to enable the Commissioner to assess the application under **section 12 or 13**(as the case may be).	**No change.** Information that must be provided will be set in regulations and these concerns can be addressed through the consultation process on the regulations. The expectation is that LINZ will take a reasonable approach and work with leaseholders.
16.	New 10(3)	Canterbury Aoraki Conservation Board	Should specify that the Commissioner must be satisfied that the information provided to support an application is from someone suitably qualified, and if not, may seek peer review (at the cost of the applicant).	**No change.** This would be an operational matter to determine as part of the requirements of 10(2) and 10(3).
17.	New 10(3)	The Lakes Station	Amend to clarify that the Commissioner should seek 'expert' advice (to avoid broader consultation / ability for public input).	**No change.** LINZ's view is that the Bill is clear about when public consultation

				should and should not be provided for.
Process for Commissioner's decision				
18.	New 12-13	RMLA, environmental groups generally	It would be more helpful to state that the discretionary pastoral consent test is determined based on whether the effects are "minor" or not. This is more direct and may assist with providing some separation from the much more dense concepts which have developed under the RMA around the use of "more than minor".	**No change.** LINZ's view is that such a change would not improve the clarity of the decision-making process, which assesses (among other things) whether the adverse effects fall below a particular threshold (i.e. they are more than minor, or they are no more than minor)
19.	New 11-13	Environmental Law Initiative	Include a Ministerial "call-in" power.	**No change.** The approach taken in the Bill is that decisions are made by a Commissioner in accordance with the legislation and in the context of a contractual arrangement between the leaseholder and the Crown. LINZ's view is that Ministerial involvement in specific decision-making is therefore not appropriate.

20.	New 11-13	Environmental groups generally, Sue Maturin	Establish an independent 'High Country Advisory Group' to provide independent advice on consents and permits (similar to NZ Conservation Authority).	**No change.** A High Country Advisory Group already exists and provides advice to LINZ on high country issues, including Crown pastoral land. However, in LINZ's view, it would not be appropriate for such a group to be involved in decisions on specific consents and permits, given the contractual nature of the relationship between Crown and leaseholder.
21.	New 11(2)(a)(ii)	Sue Maturin	"The Commissioner must grant the application…including for the purpose of reducing the adverse effects on inherent values". This provision should be strengthened by replacing the use of "reducing" with "minimising" or "avoiding".	**No change.** LINZ's view is that the current wording is sufficiently strong and could include provisions to minimise or avoid (as well as reduce) effects.
22.	New 11(3)	New Zealand Walking Access Commission Ara Hīkoi Aotearo (Walking Access Commission)	Include a clause before (g) stating that the Commissioner *may* consider potential impacts on recreational access, including any enhancement that may be proposed.	**No change.** Any access would need to be negotiated with the leaseholder – LINZ's view is that therefore such a clause would not be appropriate.
23.	New 11(3)	Royal Forest & Bird Protection Society of New Zealand Inc (Forest & Bird)	Amend reference to cross-boundary effects to specify that the Commissioner "must" consider cross-boundary effects (currently is "may consider").	**No change** In LINZ's view, it will not be possible or reasonable for the Commissioner to consider cross-boundary effects in relation to every decision.

24.	New 11(3)	Forest & Bird	Amend to include specific consideration of the effects on Tū Te Rakiwhānoa Drylands.	**No change.** LINZ considers this too specific. Tū Te Rakiwhānoa Drylands is in the Mackenzie Basin, but Crown pastoral land exists throughout the South Island.
25.	New 11(3)	Environmental Defence Society Incorporated (EDS)	Amend to ensure the Commissioner must take account of the cumulative effects of discretionary actions *across different Crown pastoral leases.*	**No change.** The Commissioner can already consider this under section 11(3)(g) where relevant.
26.	New 11(3)(a)	Forest & Bird, RMLA	There should be a clearer link between the statutory decision-making process, the new outcomes, and the new 'Māori interests' section.	**No change.** As a general administrative law principle, any exercise of statutory power must be exercised in accordance with the purposes and objects of the relevant Act.
27.	New 11(3)	EDS	Amend to ensure the Commissioner must take account of the cross-boundary effects of discretionary actions across different Crown pastoral leases (i.e. the Crown pastoral estate as a whole, not just neighbouring properties).	**No change.** In LINZ's view, this is sufficiently covered by section 11(3)(g). Amending the provision in this way would create an overly onerous obligation on the Commissioner. The focus of individual decisions is intended to be geographically-limited to neighbouring land that may be affected.
28.	New 11(3)(e)	High Country Group	Amend section 11(3)(e) to include "…must avoid adverse effects of afforestation on and off site".	**No change.**

				In LINZ's view, this consideration would be covered in the first part of the decision-making process if relevant.
29.	New 11(3)(e)	Sue Maturin	Amend this provision to: "may must consider New Zealand's commitment to reducing greenhouse gas emissions".	**No change.** It would not be appropriate for the Commissioner to be required to consider this in cases where it is not relevant to an application.
30.	New 11(3)(f)	Sue Maturin	Amend section 11(3)(f) as underlined "must take into consideration the level of adverse effects and the importance of the how the effects on inherent values may also be impacted by climate change and…".	**No change.** LINZ's view is that 11(e) adequately provides for the Commission's consideration of climate changes responses and their application to Crown pastoral land.
31.	New 11(4)	Environmental groups generally, individuals	Expert advice should be required to come from DOC's technical experts (and suitably qualified people generally) rather than the Department more generally. Applications should not be approved in cases where DOC's technical experts do not agree that an activity should be undertaken.	**No change.** The Bill requires the Commissioner to consult the Director-General of Conservation - it is a matter for DOC to decide how they use their internal resources. Giving DOC an effective power of veto would effectively prevent the Commissioner from fully assessing an application under the proposed statutory decision-making process.
32.	New 11(4)	Central South Island Fish and Game Council, the North Canterbury Fish	Amend consultation requirements to include requirement to consult the relevant Fish and Game Council.	**No change.**

		and Game Council & the Otago Fish and Game Council (Fish and Game)		LINZ's view is that it is not appropriate to require the Commissioner to consult more broadly than already provided for in the Bill on specific consenting decisions given the contractual relationship between leaseholders and the Crown. However, the Commissioner may choose to seek information or views from whomever they see fit.
33.	New 11(4)	Walking Access Commission	Amend consultation requirements to include requirement to consult the Walking Access Commission alongside DoC.	**No change.** LINZ's view is that it is not appropriate to require the Commissioner to consult more broadly than already provided for in the Bill on specific consenting decisions given the contractual relationship between leaseholders and the Crown. However, the Commissioner may choose to consult with whomever they see fit.
34.	New 12-13	RMLA	Consideration of 'effect' is mostly confined to consideration of effects on inherent values (e.g. new section 12(4)(a)(ii) and section 13(4)(a)(ii)). This contrasts with the broader use of 'effect' in section 3 of the RMA, which carries with it considerable case law. The use of the common dictionary definition of 'effects' could therefore be considered in the Bill as an alternative.	**Amend.** LINZ's view is that the considerations of 'effect' here are as complex as those covered by the RMA, due to the need for the Commissioner to consider a wide range of actual and potential adverse effects (including cumulative effects) on inherent values. In LINZ's view, the common

				dictionary definition of 'effect' would be insufficient to cover this. LINZ does however recognise the potential issues that come with referencing the RMA's interpretation of 'effect'. LINZ therefore proposes amending the interpretation of 'effect' in clause 6(1) of the Bill to remove reference to the RMA, instead inserting the full definition of 'effect' from section 3 of the RMA directly into this Bill.
35.	New 12	Sue Mataurin	Remove the use of 'remedy' and 'mitigate' (but retain 'avoid') when assessing adverse effects on inherent values.	**No change.** 'Remedy' or 'mitigate' are valid actions to manage adverse effects on inherent values. In contrast, where it is clear that the natural resource (and the inherent value) is approaching its sustainable limit then 'avoid' may be appropriate.
36.	New 12(1)(a)	Forest & Bird, High Country Accord Trust	Clarify how the Commissioner will assess whether there are 'reasonable alternatives' to an activity.	**No change.** This will be clarified through operational policy.
37.	New 12	The Lakes Station	Amend to ensure that any adverse effects are considered within the context of the particular lease (rather than the Crown pastoral estate generally) – except where it may set a precedent for other leases.	**No change.** The intent is that the Commissioner should be able to make decisions in the appropriate context and this is not limited to Crown pastoral leases. An amendment to the effect

				suggested by the submitter would be contrary to several of the Commissioner's considerations outlined in section 11(3) and the outcomes of the Bill.
38.	New 12(1)	Mike Harding	Amend to specify that the Commissioner "must decline to consent the pastoral activity if that activity has adverse effects on an area that is significant indigenous vegetation or significant habitat of indigenous fauna (section 6 (c) RMA 1991), as defined by the National Policy Statement for Indigenous Biodiversity".	**No change.** The RMA applies to all land – including Crown pastoral land. Therefore, there is no need to duplicate this requirement in the Bill. In addition, the Commissioner will be able to consider the final NPS under 11(3)(b).
39.	New 12(1)	High Country Accord Trust	The Commissioner is not well placed to make the assessment set out in this section.	**No change.** The information that the Commissioner will need to consider will be set out in regulations. Consultation will be carried out in the development of the regulations.
40.	New 12(5)	High Country Accord Trust, Lakes Station	Substitute the word 'necessary' with 'reasonably required' in relation to Step 2 of the decision-making test for discretionary pastoral activities.	**No change.** Step 2 would only be arrived at only in situations where it is determined that an activity will have more than minor impacts on inherent values. It provides for the fact that sometimes there may be a need for an activity with more than minor adverse effects to be permitted to ensure

				leaseholders can continue to undertake their rights and obligations under the lease. This test is therefore a pastoral farming 'bottom line' and is intended to be strict. The test also needs to be applied with the Commissioner taking into account one or more of the factors outlined in 12(5) (a) to (f), which provides further context.
41.	New 12(5)(d)	NZ Law Society	Expand the section relating to health and safety to cover the risks to the health or safety of "any other person on the land", rather than just the "holder of the lease or licence" – as there are likely to be others on the property.	**Amend.** The majority of situations, particularly health and safety risks, are likely to now be covered by the new emergency works provision we are proposing in Section 1 of this report above, though there may be some utility in retaining this provision to cover other exceptional circumstances. We therefore propose that the provision be retained but the example cited in the provision be deleted.
Recreation permits				
42.	New 13	LINZ	The term 'recreation permit' as used in the Bill could be misleading, as it does not relate to recreational activities freely available to the public, but rather	**Amend.** Replace the use of 'recreation permit' in this provision (and

			commercial recreational activities that generally generate revenue for the leaseholder.	elsewhere in the Bill) with 'commercial recreation permit'. Note: this amendment would require a change to the use of the term 'recreation permit' for all recreation permits in the Land Act 1948 across the country, not just for pastoral land in the CPLA.
43.	New 13	Forest & Bird	Need statutory guidance for how recreation permits that meet the gateway test (i.e. found to have no more than minor effects) are to be considered.	**No change.** No change. Considerations for the Commissioner (once they have applied the 'test') are listed under Section 11(3).
44.	New 13	Fish and Game	At a minimum, DoC and the relevant Fish and Game Council should be consulted on applications for recreation permits.	**No change.** The Director-General of DOC will be consulted as part of the decision. In addition, the Commissioner may consult whomever else they consider appropriate. LINZ's view is that it is not appropriate to require the Commissioner to consult more broadly than already provided for by the Bill on specific consenting decisions given the contractual relationship between leaseholders and the Crown.

45.	New 13(5)(b)	LINZ	Delete duplicate words as follows: "If it is an activity that uses infrastructure or buildings, uses consented existing infrastructure or buildings."	**Amend.** This was a drafting error.
Subpart 2 – Tenure and related provisions				
Pastoral leases				
46.	New 16	Phil Murray	Stock limitation exemptions should be able to be applied on a block-by-block basis.	**No change.** Stock limitations are tied to the leaseholder, not the lease. Block-by-block numbers have been provided for in the past under the current legislation, so no change is considered necessary.
47.	New 16	Federated Farmers, High Country Accord Trust	Amend to reflect that, as long as the lease does not exceed the assessed Current Carrying Capacity, the Stock Limitation, or the agreed limits in the Approved Farm Plan (whichever is greater), it is permissible without need for an exemption. Amend the legislation so that the stock carrying capacity of a lease is set to the greater of the average efficient carrying capacity of the lease (set for the purposes of fixing rent) or any other stock limit agreed to by the Commissioner.	**No change.** New section 16(3) applies only to new exemptions (or varying/revoking existing exemptions). The fact that they will have to go through the new statutory process reflects the policy intent of the Bill. News section 16(4) exists because exemptions are tied to the leaseholder (not the lease) and the Commissioner needs to be able to assess whether the new leaseholder (after a transfer) is capable of carrying that number of stock and

				whether the land is capable of sustaining the number of stock.
48.	New 16(2)	Kenneth Taylor	Exemptions should be tied to the farm manager (not the owner) as they are the best-placed person to determine stocking.	**No change.** Stock limitations are tied to the leaseholder as this is who the Crown has the contract with.
49.	New 16(2)	Federated Farmers, High Country Accord Trust	Exemptions should be tied to the lease (not the leaseholder) as they have concerns around stock numbers reducing following a transfer.	**No change.** Stock limitations are tied to the leaseholder not the lease, to account for varying experience levels of leaseholders (when a lease is transferred, the new leaseholder may be less experienced at stocking). In LINZ's view, this is important to help protect the Crown's ownership interest in the land.
50.	New 18	Forest & Bird	The Bill should provide its own rehearing process, with specified criteria as to when a rehearing may be considered.	**No change** LINZ's view is that the current hearing process under section 17 of the Land Act 1948, is sufficient.
Occupation licenses				
51.	New 20	Kenneth Taylor	Remove clause 8, section 20 (Term and expiry) as all occupation licenses have now expired.	**No change.** This provision should remain in place while reviews of occupation licences under Part 3 of the Act are underway.
Subpart 3 – Monitoring, strategic intentions, and reporting				

Monitoring				
52.	New 22B	Environmental groups generally	The monitoring framework should require baseline monitoring and regular state and trend monitoring.	**No change.** The Bill does not prescribe the approach to be taken to monitoring. The framework will be developed after consultation as required, as set out in new section 22 B (2).
53.	New 22B	Fish and Game	The monitoring framework should assess whether the new outcomes are being achieved. Monitoring should cover the ongoing management of all of the Crown Pastoral Leases not just the discretionary consents issued	**No change.** The Bill does not prescribe the approach to be taken to monitoring. The framework will be developed after consultation as required, as set out in new section 22 B (2).
54.	New 22B	Canterbury Aoraki Conservation Board	The monitoring framework should assess the overall management of the Crown pastoral estate.	**No change.** The Bill does not prescribe the approach to be taken to monitoring. The framework will be developed after consultation as required, as set out in new section 22 B (2).
55.	New 22B(2)(b)	Environmental groups generally	Amend 'may consult' other stakeholders and the public to 'must consult'.	**No change.** Consultation for this purpose may not always be practicable or necessary. The intention is to work with leaseholders, and iwi interests in view of the Crown's particular obligations to, and relationship with, these groups. There is a lesser

				obligation in relation to the public and other groups, but it is anticipated in practice that consultation will be carried out with the public and other groups where necessary and appropriate.
56.	New 22B(2)(b)	Canterbury Aoraki Conservation Board	Monitoring framework should be developed in consultation with DOC and iwi.	**No change.** The monitoring framework must already be developed in consultation with iwi – see new section 22B(2)(a). Consultation may also be undertaken with other stakeholders – see new section 22B(2)(b), and this would include government agencies.
Crown's pastoral land strategic intentions document and reporting requirements				
57.	New 22D(4)(b)	RMLA, environmental groups generally	Amend section 22D(4)(b) to change from 'may consult' to 'must consult'.	**Amend.** To strengthen this provision, LINZ recommends that it be amended to "must consult where practical."
58.	New 22D(2)	Federated Mountain Clubs	Strategic intentions document should set out how the Commissioner will seek to improve public access to rivers, lakes and public land adjoining pastoral lease land.	**No change.** The content of the strategic intentions document will be determined though operational policy. Requiring reporting on access may also not be appropriate given

				that this is not currently an outcome of the Bill.
59.	New 22D	LINZ	As the strategic intentions document is intended to provide a long-term approach for the management of pastoral land, updating the document every three years may not be appropriate given the timeframe over which strategic direction is likely to be set, or proportionate given the consultation requirements each time.	**Amend.** LINZ proposes that the strategic intentions document be updated every five years.
60.	New 22E	Walking Access Commission	Commissioner must be required to publish summaries of all decisions.	**No change.** The Bill already provides for this – see new section 22E(1).
61.	New 22E	Canterbury Aoraki Conservation Board	Supports requirement to publicly report on consent applications. Would also like to see public reporting on the management of all leases.	**No change.** In LINZ's view, the provisions of the Bill are sufficient: the Bill provides clearer accountability and more transparency through the development of the Strategic Intentions document, monitoring framework and the provision for publication of decision summaries.
62.	New 22E	Federated Farmers	Commissioner should report to the Minister for Land Information and the Chief Executive of LINZ, not the public.	**No change.** The Commissioner is already accountable to the Chief Executive as a LINZ employee and is accountable to the Minister for carrying out their statutory functions.

63.	New 22E	RMLA	Clarify how regularly the Commissioner must publicly report.	**Amend.** This will be developed through regulations. However, the heading of this section should be amended to clarify that this section is about the publication of summaries of decisions when they are made.
Clause 14 **New Part 4A inserted** **Miscellaneous provisions** ***Further provisions relating to activities and regulations***				
64.	General	RMLA	Add an overarching notification provision at the start of Part 4A to introduce the recourse mechanisms the Commissioner may use (recover costs, enforceable undertakings, infringement offences).	**No change.** LINZ does not consider such an amendment necessary.
65.	General	Canterbury Aoraki Conservation Board	Introduce harsher penalties – the risk of forfeiture of a lease should be a very real prospect for those who break the rules.	**No change.** Forfeiture of the lease is already provided for under section 146 of the Land Act 1948 and new section 100K of the Bill.
Recovery of remedial costs				
66.	New 100A	RMLA	Amend section 100A to provide clarity about what happens next once the holder confirms they will take remedial action.	**No change.** Actions that the leaseholder has confirmed they will take will be recorded by LINZ and will be the subject of follow-up inspections as part of LINZ's ongoing management

				of the lease. LINZ's view is that it is unnecessary to provide for this process in the Bill.
67.	New 100A and 100B	RMLA	Amend to clarify whether 100A (costs of remedial action) and 100B (enforceable undertakings) are both needed, when there seems to be some duplication.	**No change.** LINZ's view is that both provisions are needed as they provide for a scaleable response to non-compliance.
Infringement offences				
68.	New 100G(2)	NZ Law Society	Amend the provision regarding sending infringement notices by post, given there are now fewer deliveries a week and some people are transient and may never receive an infringement notice posted to their last-known residential or business address. Suggest a more appropriate means of transport would be a 'signature-required courier'.	**Amend.** LINZ proposes that this provision be updated to reflect best current practice in legislation.
Further provisions relating to activities and regulations				
69.	New 100L	Environmental groups generally	Any proposed amendments to the Schedule should require public consultation. This is the intent as described in the Bill's explanatory note but it hasn't been drafted as such.	**Amend.** The absence of a reference to public consultation regarding amendments was a drafting error. It is intended that the public will be consulted.
70.	New 100L(1) and (6)	High Country Accord Trust, The Lakes Station	Remove these provisions on the grounds that it is inappropriate – eg too easy to change / too open to political interference.	**No change.** In LINZ's view, the criteria set out in new section 100L(5), the requirement for amendment by Order in Council, and the requirement for consultation will

				provide sufficient checks on this power.
71.	New 100L	NZ Law Society	Amend to provide clarity that any changes to new Schedule 1AB do not affect any consent already granted, for the duration of that consent.	**Amend.** LINZ agrees that this provision should be added to new section 100L.
72.	New 100L(5)	Federated Farmers	Concern that the criteria for a 'permitted activity' is "an impossible standard to meet." Section 100L(5) should be deleted.	**Amend.** The criteria for a permitted activity has a deliberately high threshold, reflecting that the Crown relinquishes any ability to control these activities and they are undertaken wholly at the leaseholder's discretion. However, we agree that the wording "in all foreseeable circumstances" may not be workable in practice. We therefore propose that wording be replaced with "in all <u>reasonably</u> foreseeable circumstances".
73.	New 100L (5)(b)(ii)	NZ Law Society, RMLA	Remove reference to 'good husbandry', as is outdated (and gendered) term.	**Amend.** LINZ proposes that this provision be reworded to specifically link to section 99 of the Land Act 1948, which provides suitable context/clarification for the use of the term:

				"contribute to the lessee meeting their obligations under section 99 of the Land Act 1948, or the maintenance or enhancement of inherent values."
74.	New 100L(6)	Forest & Bird	Concern that the criteria for a 'prohibited activity' sets such a high bar ("in any foreseeable circumstances") that activities may not be able to be classed as prohibited.	**Amend.** The criteria for a prohibited activity has a deliberately high threshold, reflecting that adding these activities to the Schedule prevents leaseholders being able to apply to undertake them in any circumstance. However, we agree that the wording "in all foreseeable circumstances" may not be workable. We therefore propose that wording be replaced with "in all reasonably foreseeable circumstances".
75.	New 100N(1)(h)	The Lakes Station	Amend to ensure there are not substantial costs to leaseholders and licence holders when having to provide information – suggest "provided the cost of collection and supply is not disproportionate to the value of the information".	**No change** LINZ currently sets out the information that leaseholders have to provide to support their applications, through application forms available on its website, in operational standards set by the Commissioner and through guidance documents such as the Guide for Pastoral Leaseholders and Guide for Applicants. LINZ also works with leaseholders pre-application on the

				level of detail required. The type of information sought from them will not differ significantly from what is already sought. It is also important to note that the Commissioner will likely also seek information from other sources in order to make the assessments they need to make, and the costs will not fall solely on leaseholders. LINZ will consult with leaseholders in the development of regulations relating to the provision of information, and there will be the opportunity to work with them to ensure any requirements are reasonable.
76.	100N(4)	LINZ	The Minister must not recommend the making of regulations under this section unless satisfied that the Chief Executive or the Commissioner has consulted relevant iwi, leaseholders, licensees, and the public on the development of the regulations. Given the objectives of the Bill encompass maintaining or enhancing inherent values, it is appropriate that the Director-General of Conservation also be consulted.	**Amend.** Add the Director-General of Conservation to the list of parties to be consulted.
77.	New 100O	RMLA	The use of the common dictionary definition of 'effect' could be considered as an alternative to the definition given to this word in s 3 RMA – as the consideration of effects by the Commissioner is predominantly confined to consideration of effects on inherent values.	**No change.** LINZ's view is that the common dictionary definition of 'effect' would be insufficient to cover the range of

				actual and potential adverse effects (including cumulative effects) on inherent values that the Commissioner would need to consider.
78.	100O(3)	LINZ	The Chief Executive or the Commissioner must not set a standard or issue a directive unless one of them has consulted iwi, representatives of holders of reviewable instruments, representatives of other persons who will be affected by the standard or directive, and the public. Given the objectives of the Bill encompass maintaining or enhancing inherent values, it is appropriate that the Director-General of Conservation also be consulted.	**Amend.** Add the Director-General of Conservation to the list of parties to be consulted.
Part 2 **Amendments to Land Act 1948** **Clause 18** ***Section 17 amended (Application for rehearing)***				
79.	General	Kenneth Taylor	There should be a requirement to complete rehearing under the Land Act 1948 in a reasonable period of time. The current process is very slow and if more applications are forthcoming this will create further delays.	**No change.** The Bill makes no changes to the process for rehearings set out in the Land Act 1948. In LINZ's view, a time limit is not desirable or necessary.

Clause 19 ***Section 24 amended (Powers and duties of Commissioner)***				
80.	New 1(ia)	Federated Farmers, High Country Accord Trust	Remove provision to support the Walking Access Commission in meeting its public access objectives.	**No change.** This section does not equate to granting access over pastoral land. Any right of access over pastoral land would still need to be negotiated with the leaseholder.
81.		LINZ	Replace reference to 'pastoral land' to 'Crown land'.	**Amend.** This would enable the Commissioner to comment on district plan changes that affect any Crown land, not just that classified as pastoral land (e.g. riverbeds adjoining a pastoral lease.
Clause 20 ***Section 60 of the Land Act 194 amended (Creation of easements)***				
82.	General	Forest & Bird	Introduce rental rebates for public access.	**No change.** Leaseholders are already entitled to compensation for any reduction in the value of the lease by reason of the grant of easements over their lease.

83.	General	Recreational groups and environmental groups generally	Provide public access across pastoral land adjacent to public conservation land.	**No change.** Such a change would conflict with leaseholders' rights to exclusive possession and quiet enjoyment of the land. Any right of access over pastoral land needs to be negotiated with them, and they would be entitled to compensation for any reduction in the value of the lease by reason of the grant of easements over their lease (as they are now).
84.	New 60(5)	Walking Access Commission	Commissioner must consider recreational access when considering whether to grant an easement.	**No change.** Any right of access over pastoral land needs to be negotiated with the leaseholder, and they would be entitled to compensation for any reduction in the value of the lease by reason of the grant of easements over their lease. (as they are now).

Schedule 1 New Schedule 1AA inserted Transitional, savings, and related provisions Part 1 *Provisions relating to Crown Pastoral Land Reform Act 2021*				
Item	**Clause**	**Raised by**	**Issue**	**Officials' comment**
85.	General	LINZ	A new clause is required to revoke the 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 – in particular: • The Bill includes "fencing within existing cultivated areas" as a permitted activity. This is less permissive than under the minor consent letter, which allows for "driving posts or poles". The change is required as fencing in undeveloped parts of some properties could have significant impacts on landscape values and/or habitat cohesion. The Bill classifies fencing outside of existing cultivated areas as a discretionary activity, ensuring the Commissioner can review the location and method of fencing. • The Bill includes "new or additional irrigation" as a discretionary activity. This is less permissive than under the existing system, where consent from the Commissioner has typically only been required where irrigation pipes and infrastructure disturb the soil, but not for the application of water. This has meant that the Commissioner could only consider the impacts of pipes and pivot wheels on inherent values, but not the impacts of the irrigation itself. The policy intent was always that the Schedule would replace the minor consents letter.	**Amend.** Revoke the minor consents letter, and include a transitional provision (modelled on similar provisions under the RMA) to allow leaseholders to complete activities where they can demonstrate to the Commissioner's satisfaction that they have already made material progress on them (including investing in necessary materials) based on existing consent requirements.
86.	3	Federated Farmers	Seeks that the right to judicially review decisions regarding tenure review cases be continued once process is removed.	**Amend.**

				The Bill will not prevent a party from seeking judicial review in relation to tenure review cases. However, for the avoidance of doubt, LINZ proposes that this be explicitly stated in this clause
87.	3	Forest & Bird, EDS, Federated Mountain Clubs	With the ending of tenure review, consider strengthening other mechanisms to protect inherent values and/or move land into the Conservation Estate.	**No change.** Other mechanisms (such as the ability to buy back land through the Nature Heritage Fund and QEII covenants) already exist and improvements to these sit outside the scope of this Bill.
88.	5	Glenlee Station	Seeks the inclusion of boundary freehold land being allowable for consideration within the 'Part 3' review process. (Raised in the context of a current review process.)	**No change.** The Part 3 review process is about reviewing Crown-owned land.
89.	6	Leaseholders and advocacy groups generally.	Remove the 'no compensation' clause – concern this may be contrary to natural justice.	**No change.** The clause has been included in the Bill for the avoidance of doubt.
Schedule 2 **New Schedule 1AB** ***Classification of pastoral activities on pastoral land***				
Part 1: Permitted pastoral activities (consent not required under this Act, but permission may be required under other enactments)				
90.	General	Federated Mountain Clubs	Non-commercial recreation should be a permitted activity.	**No change.** Non-commercial recreation is already allowed currently (although

				access to lease land requires the permission of the leaseholder)
91.	General	The Lakes Station	Sections relating to 'by-kill' – amend to simply refer to relevant environmental legislation generally.	**No change.** The CPLA exists specifically to protect the Crown's ownership interest in Crown pastoral land. Other relevant environmental legislation (e.g. RMA) still applies to Crown pastoral land.
92.	General	Leaseholders generally	Permitted activities should include: track maintenance of existing tracks; fence repairs and replacement of existing fences; new Fencing that does not involve more soil disturbance than hand tools; maintenance fertiliser on permitted areas; maintaining existing consented areas from scrub regeneration.	**No change.** • Maintaining existing tracks is already provided for • Maintaining existing fencing is already provided for • New fencing is already provided for (within existing cultivated paddocks) • Maintaining fertiliser on permitted areas is already provided for (existing consented top-dressing) • Maintaining existing consented areas from scrub regeneration is classified as a discretionary activity as it involves clearance.

93.	General	Leaseholders and advocacy groups generally	Concern at the use of "'for the time being" in relation to the classification of activities – remove to provide certainty to leaseholders.	**No change.** The use of "for the time being" reflects that the Schedule can be amended. While leaseholders may perceive a lack of certainty, any change to the Schedule would require consultation.
94.	General	The Lakes Station	Add exceptions in section 100 of Land Act (preservation of timber) to permitted activities.	**No change.** Part 1 (permitted activities) only applies in circumstances where the consent of the Commissioner is required under section 100 of the Land Act 1948 – new Part 1 of this Bill does not apply to other activities already permitted under section 100 of the Land Act 1948 (this means consent is not required "where any timber or tree is required for any agricultural, pastoral, household, roadmaking, or building purpose on the land comprised in the lease or licence, or has been planted or purchased by the lessee or licensee.")
95.	General	The Lakes Station	Add 'clearing vegetation by grazing' to permitted.	**No change.** Clearing vegetation by grazing is already permitted under the lease (the right to pasturage).
96.	General	Leaseholders generally	Maintenance of existing activities should be classed as permitted.	**No change.**

				There is already provision for the maintenance of some specific activities. Current consented activities that have the right to maintenance are preserved by the transitional provisions.
97.	General	The Lakes Station (leaseholder)	Add 'disturbing the soil with no material effect on inherent values' to list of permitted activities.	**No change.** Such a change would remove the power for the Commissioner to exercise their functions – in relation to the statutory process for decision making (i.e. it would be up to the leaseholder to decide whether an activity has 'no material effect').
98.	General	Federated Farmers leaseholders generally	Amend permitted activities to provide for fencing in cases where fencing is required under other legislation/regulations (requirements to keep stock out of waterways).	**No change.** LINZ does not agree that this should be a permitted activity, as fencing outside existing cultivated paddocks can have significant impacts on landscape and other values. Step 2 of the test allows the Commissioner to take into account the requirements of other legislation.
99.	1	High Country Accord Trust	Amend the Bill to make it easier to remove invasive exotic pest plants without conditions	**No change.** LINZ notes that the Bill makes it easier for leaseholders to undertake some pest plant control, as currently they have to apply for consent for all this activity. Permitting all invasive

				exotic plant pest control activities, even when these have a significant adverse effect on indigenous biodiversity, would be inconsistent with the criteria in clause 14, new section 100L(5)(a).
100.	1	Forest & Bird	Suggested strengthening this section by having a requirement for leaseholder to obtain ecological advice (when controlling invasive exotic pest plants).	**No change.** Once an activity is classed as permitted then it can be undertaken by leaseholders without LINZ's involvement – so it would not be appropriate to make it contingent on obtaining ecological advice.
101.	1	Federated Farmers	Delete section 1 as proposed and replace it with: "Controlling invasive pest plants, providing any associated clearance of indigenous vegetation is minimised."	**No change.** The Bill currently allows for permitted control with limited by-kill. Where there is more than a limited by-kill, consent can still be applied for and granted.
102.	1 and 2	RMLA	Clarify that 'indigenous by-kill' means by-kill of indigenous vegetation.	**Amend.** Currently by-kill is discussed but it is not clear as to what the by-kill is of. LINZ recommends that clauses 1 and 2 of Part 1 be amended to clarify that this is by-kill of indigenous vegetation.
103.	1(a)	Forest & Bird	Amend as underlined below: "Controlling invasive exotic pest plants where –	**No change.**

			(a) any associated indigenous by-kill does not exceed 200m2/ha occur where threatened or at-risk species occur and where ecological advice has been sought.“	The proposed wording requires judgement on the part of the leaseholder and makes it less clear when they can undertake the activity. Permitted activities are intended to be clear enough that leaseholders can undertake them without notifying LINZ.
104.	1(d)	Individual leaseholders	Remove section 1(d) of the permitted activities (new Schedule 1AB, Part 1) which relates to the area involved when controlling invasive exotic pest plants as it is too restrictive.	**No change.** Leaseholders could still undertake the control of invasive exotic pest plants if the plants in an area greater than 25 ha with the consent of the Commissioner.
105.	1(c)	Leaseholders and advocacy groups generally	Remove section 1(c). General concern that leaseholders would have to wait until the pest plant is the dominant vegetation cover (comprising no less than 90% of vegetation cover) before being able to control them as it is too restrictive.	**No change.** Leaseholders will be able to use other methods to control pest plans without by-kill of indigenous vegetation, and can undertake the control of invasive exotic pest plants with some by-kill of indigenous vegetation if the plants are not the dominant cover with the consent of the Commissioner.
106.	2	High Country Accord Trust Federated Farmers	The absence of any kind of materiality threshold makes this provision unworkable,. Amend as underlined: “Any other invasive pest plant control that does not unnecessarily involve associated indigenous by-kill”.	**No change.** Where there is a high chance of inherent values being impacted, the Crown would want expert knowledge on what those impacts

				might be. The proposed change is inconsistent with the criteria in new section 100L(5)(a).
107.	4(c) and (f)	LINZ	The use of the term 'waterbody' in these provisions as currently drafted would include aquifers ('waterbody' is not defined in the Bill but is defined in the RMA). Shallow acquifers commonly occur across a catchment where there is some type of stream, which means this provision as drafted could not be effectively applied.	**Amend.** Change 'water body' to '<u>surface</u> water body'.
108.	4(i)	Federated Farmers	Provision for soil disturbance for controlling invasive exotic pest plants should not be restricted to exotic species. Amend to: "provision for soil disturbance for controlling invasive exotic pest plants".	**No change.** In LINZ's view, the use of exotic should be retained for clarity. The suggested change would otherwise allow for the disturbance of soil for the control of native species, which contradicts the criteria in new section 100L(5)(a).
109.	5	Federated Farmers. High Country Accord Trust Leaseholders generally	Under paragraph 4 a lessee may dig a post hole outside a cultivated area but is not allowed to run wires between those poles and create a fence, because this paragraph only permits fencing within a cultivated paddock. When fencing is allowed to be a permitted activity should be broadened. An amendment should be made to avoid being required to fence by other regulations but needing a consent under the Bill to do so.	**No change.** LINZ does not agree that this should be a permitted activity, as fencing outside existing cultivated paddocks can have significant impacts on landscape and other values. The Commissioner would want some say on the type of fencing and its exact placement.
110.	6	RMLA High Country Accord Trust	This provision is unclear. Riparian planting using indigenous species sourced from local seeds is permitted – but what about non-locally sourced indigenous and exotic riparian seeds? What qualifies as 'local'?	**No change.** The Commissioner should retain the discretion as to what native species, using expertise, are being planted and where, when they are being

			The High Country Accord Trust also questions whether it is proportionate to prohibit riparian planting of seedlings from elsewhere on the lease (because this would involve soil disturbance).	sourced from outside the 'local' area. Leaseholders would still be able to plant non-local seeds, but they would require consent. This would ensure expertise can be used to determine whether pressure on endemic species or local genomes are avoided. Using species and genetics not characteristic of the local environment contradicts the Bill's outcomes. Removing seedlings and planting them elsewhere meets the soil disturbance test (under clause 8, new section 8) and is therefore a discretionary activity which can still be done with the Commissioner's consent.
111.	6	Federated Farmers High Country Accord Trust	Replace "Riparian planting using indigenous species sourced from local seeds" with "Planting of indigenous vegetation with naturally occurring native species for farm management, amenity or conservation purposes".	**No change.** Using species and genetics not characteristic of the local environment contradicts the criteria in new section 100L(5)(a). Leaseholders would still be able to plant non-local seedlings, but they would require consent. This would ensure expertise can be used to determine whether pressure on endemic species or local genomes are avoided.

112.	7	High Country Accord Trust	The prohibition of sale or off-farm commercial use of timber is already covered by other legislation.	**No change.** Although this is covered by other legislation, this provision provides clarity for leaseholders and LINZ staff. In cases where leaseholders wish to sell this timber, it is appropriate that this exception apply, particularly where the trees are Crown-owned.
113.	9	Federated Farmers High Country Accord Trust	The requirement that there is absolutely no clearance of indigenous vegetation means that this permission has no practical utility. There will inevitably be some small seedlings of indigenous vegetation. Amend clause 9 as follows: "Laying cables, domestic water pipelines and other infrastructure underground from the main source of supply to existing buildings, provided there is no associated <u>any associated clearance of</u> indigenous vegetation <u>is minimised</u> and cables/pipelines do not traverse water bodies."	**No change.** Lessees have maintenance rights under new Schedule 1AB Part 1, clause 17. The word 'minimised' would be too vague and give the leaseholder too much discretion about how much native vegetation is cleared. It would therefore contradict the criteria in new section 100L 5(a).
114.	10	Federated Farmers	Delete 'consented' as follows: "Burning slash, stumps, or dead vegetation within existing consented cultivated paddocks"?	**No change.** The use of the word 'consented' provides clarity that this should only occur in relation to consented activities.
115.	11	Federated Farmers	Delete 'consented' as follows: "Boom spraying of exotic vegetation within existing consented cultivated paddocks".	**No change.** The use of the word 'consented' provides clarity that this should only

				occur in relation to consented activities
116.	12	High Country Accord Trust	Lessees are being separately required to prevent stock accessing waterways for water but are prevented from establishing a new water trough. The phraseology does not allow for replacement (as opposed to maintenance) of existing infrastructure at the end of its life.	**No change.** Provisions have been made elsewhere for water troughs. How LINZ approaches the issue of maintenance will be developed through operational policy.
117.	13	Federated Farmers	Delete 'consented' as follows: "Maintaining existing consented top-dressing".	**No change.** The use of the word 'consented' provides clarity that this should only occur in relation to consented activities
118.	14	Federated Farmers	Delete 'consented' as follows: "Maintaining existing consented seed sowing".	**No change.** As above.
119.	15	Federated Farmers	Delete 'consented' as follows: "Maintaining existing consented cultivation".	**No change.** As above.
120.	16	Federated Farmers	Delete 'consented' as follows: "Maintaining existing consented roads, paths or tracks (including laying local gravel)"	**No change.** As above.
121.	17	Federated Farmers, High Country Accord Trust	Delete 'consented' as follows: "Maintaining any other existing consented activity as provided for in section 8(3))"	**No change.**

			Clarify that the rights to all existing improvements are retained – including to maintain, repair and replace.	The use of the word 'consented' provides clarity that this should only occur in relation to consented activities
122.	17	The Lakes Station	Add 'activity that it is required by law or by the terms of their lease' as a general item to the list of permitted activities	**No change.** This would be inconsistent with the criteria set out in new section 100L (5).
123.	18	High Country Accord Trust, Federated Farmers	Provision should be amended to take account of the impact of regular flood events and shifting watercourses on existing fence lines	**No change.** LINZ currently takes a reasonable approach, at an operational level, for situations where natural disasters such as flooding shift fence lines. This will not change under the Bill. Step 2 of the discretionary decision-making test anticipates exceptional circumstances and significant risk as well as obligations under other enactments.
Part 2: Discretionary pastoral activities (Commissioner may consent or decline)				
124.	1	Federated Farmers	Add an exemption as follows: "Where consent for the same activity has been granted by the applicable District or Regional Council and lodged with the Commissioner, and Fire and Emergency NZ requirements are met, no additional information will be sought."	**No change.** The Commissioner has a responsibility under this Bill to consider how this action would affect the Crown's ownership interest separate from considerations under other regimes.
125.	2(b)	Federated Farmers	Add an exemption to clause 2(b) as follows:	**No change.**

			"Where consent for the same activity has been granted by the applicable District or Regional Council and lodged with the Commissioner, and Fire and Emergency NZ requirements are met, no additional information will be sought."	The Commissioner has a responsibility under this Bill to consider how this action would affect the Crown's ownership interest separate from considerations under other regimes.
126.	2(c)	Federated Farmers	Add an exemption to clause 2(c) as follows: "Where consent for the same activity has been granted by the applicable District or Regional Council and lodged with the Commissioner, no additional requirements will be sought."	**No change.** As above.
127.	2(d)	Federated Farmers	Better align this section with section 100 of the Land Act 1948 by removing requirement that the removal of exotic timber, trees, or bush be discretionary pastoral activities requiring consent.	**No change.** The provisions relating to timber in the Land Act 1948 that give exemptions to the need for Commissioner's consent still apply to pastoral land.
128.	2(d)	High Country Accord Trust	Amend this clause so that the provisions of section 100 of the Land Act 1948 that give exemptions to the need for Commissioner's consent are replicated within this Bill (and the old section 100 is repealed).	**No change.** It is not necessary to take this step given the provisions in the Land Act still apply.
129.	2(e)	Federated Farmers	Clarify that cropping, cultivating, draining or ploughing only refers to new activities by amending as follows: "New cropping, cultivating, draining, or ploughing".	**No change.** Including 'new' could create issues as it implies pre-existing areas that were cropped, drained, ploughed, top dressed etc in the past can be maintained even if they were never consented for.

130.	2(f)	Federated Farmers	Clarify that 'topdressing' only refers to new activities by amending as follows: 'New topdressing'.	**No change.** As above.
131.	2(f)	Individual leaseholder	New oversowing and/or topdressing should be a discretionary activity.	**No change.** The Bill already defines top-dressing and sowing seed as discretionary activities.
132.	2(g)	Federated Farmers	Clarify that sowing seed only refer to new activities by amending as follows: 'New sowing of seed'.	**No change.** As above.
133.	2(h)	Federated Farmers	Recommends the planting vegetation (other than riparian planting) provision be amended as follows "Planting exotic trees other than as specified as a permitted activity"?	**No change.** The Commissioner should be able to determine what plants/species are planted in which location. The proposed change would presumably allow for the non-consented planting of native monocultures e.g. Manuka. It would also allow for species not local or endemic to that area to be introduced without expert assessment.
134.	2(k)	Individual leaseholder	Remove section 2(k) – New fencing (other than an activity that is a permitted pastoral activity).	**No change.** Fencing outside existing cultivated paddocks can have significant impacts on landscape and other values. The Commissioner would want some say on the type of fencing and its exact placement.

135.	2(m)	High Country Accord Trust	Reconsider which activities should be permitted (such as replacing existing water storage infrastructure and structures for stock water).	**No change.** Provisions have been made elsewhere for stock water. How LINZ approaches the issue of maintenance and replacement of existing infrastructure will be developed through operational policy.
136.	2(n)	LINZ	The term 'spray and pray', which is defined as a discretionary activity, should be clarified.	**Amend.** We suggest this term be replaced with: "the spraying of a slope to remove vegetation, and replanting the slope in stock or forage crops."
Part 3: Prohibited pastoral activities (consent cannot be given or applied for under this Act)				
137.	General	Forest & Bird	Include a clause in Schedule AB Part 3 that prohibits the planting of invasive species adjacent to areas that have significant (ecological and landscape) inherent values.	**No change.** LINZ considers this proposal would be too restrictive. It would be more appropriate to assess such activities on a case-by-case basis in relation to inherent values.
138.	General	Fish and Game	Clearance of indigenous vegetation near wetlands should be prohibited.	**No change.** LINZ's view is that that this would not meet the threshold for a prohibited activity in all foreseeable circumstances.
139.	General	Fish and Game	"Cropping, cultivation, and clearing indigenous vegetation within 20m of any water body" should be prohibited.	**No change.**

				LINZ's view is that that this would not meet the threshold for a prohibited activity in all foreseeable circumstances
140.	1	Federated Farmers	Delete the proposed activity	**No change.** LINZ's view is that this provision clearly links cropping, cultivating, draining and ploughing to indigenous wetlands. LINZ's view is that, for all foreseeable circumstances, this clause meets the threshold for a prohibited activity.
141.	2 and 3	LINZ	The use of the term 'waterbody' in these provisions as currently drafted would include aquifers ('waterbody' is not defined in the Bill but is defined in the RMA). Shallow acquifers commonly occur across a catchment where there is some type of stream, which means this provision as drafted could not be effectively applied.	**Amend.** Amend 'prohibited' activities in new Schedule 1AB, Part 3 clauses 2 and 3 as underlined below: 2. "Digging a long drop within 20 m of any <u>surface</u> waterbody." 3. "Burying a dead animal within 20 m of any <u>surface</u> waterbody."
Part 4: Interpretation				
142.	Part 4	Fish and Game	The definition of 'clearing vegetation' should include clearing by grazing.	**No change.**

			Concern that leaseholders will use stock grazing as a way to deplete an area of indigenous vegetation.	The application of this definition is clarified within the Schedule e.g. Part 2 (2)(c) refers to clearing indigenous vegetation. Leaseholders also have a right to pasturage across their leases.
143.	Part 4	The Lakes Station, Federated Farmers	Amend the definition of 'cultivated paddock'. Unclear where cultivation will be considered 'historic' or 'maintained'. Amend to define historic cultivation as cultivation having not occurred in the past 15 years.	**No change.** The current definition ensures that activities (fencing, burning of slash, stump or dead vegetation and boom spraying of exotic vegetation) are confined to areas of the lease which are already heavily modified and where risks to values from those activities is low. If 'cultivated paddock' was not defined then any area of the lease which has had even minor development occur in the past (including unconsented development) may be at risk of having these activities undertaken on it and any values threatened / lost. How LINZ approaches the issue of maintenance of historic (but unconsented, or consented but not documented) development will be addressed through operational policy.

144.	Part 4	Federated Farmers	Amend the definition of 'clearing vegetation' to the following: "Means the removal of indigenous vegetation including by cutting, mulching, spraying with herbicide, or burning; but does not include clearing by grazing."	**No change.** The definition of 'clearing vegetation' in this Part is intended to clarify what methods of removing any vegetation from an area are considered as 'clearance'. The Schedule already covers off vegetation types in each specific clause.
145.	Part 4	High Country Accord	Amend definition so that historical cultivation is within the definition of 'cultivated paddock' not excluded from it.	**No change.** As above.
146.	Part 4	High Country Accord	Amend the definition of 'curtilage' to read: "means the area surrounding a dwelling used for primarily domestic and household purposes and the area surrounding existing farm buildings used for stock management purposes rather than grazing."	**No change.** 'Curtilage' is limited as a legal concept to land attached to a residential house. We also foresee difficulty in determining the extent of any 'curtilage' around working buildings separate to the farm base.
147.	Part 4	High Country Accord Trust	Re-draft the definition of 'drain' to take account of natural behaviour of water to run downhill.	**No change.** As currently drafted a drain is artificial or constructed. LINZ does not support the proposed amendment, as the current wording is needed to avoid a situation where areas where water naturally runs down a hill, like a stream, are being maintained/changed without consent.

148.	Part 4	Federated Farmers	Delete the definition of 'draining'.	**No change.** The definition provides clarity that the discretionary and prohibited references to drainage fall outside of the existing consented drainage/maintenance.
149.	Part 4	Federated Farmers	Delete the words "or lichen" from the definition of 'Indigenous'.	**No change.** Lichen is a value not covered by vascular plants, or non-vascular plants.
150.	Part 4	Federated Farmers	Delete the word 'exotic' from the definition of 'Invasive exotic pest plants' and amend as follows: "Includes pests listed in the National Pest Plant Accord, Regional Pest Management Plan, and any other exotic pest plants that pose a production or biodiversity threat".	**No change.** LINZ's view is that this should remain as previously drafted to prevent an inadvertent impact on inherent values.
151.	Part 4	High Country Accord	Amend the definition of invasive exotic pest plants to provide bright-line test by reference to an independent external database which can adapt overtime to re-classification of plants.	**No change.** The National Pest Plant Accord (NPPA) specifies 'unwanted organisms' under the Biosecurity Act, thereby preventing their sale, propagation and distribution. It can also adapt over time because anyone can suggest a change to the NPPA list and with enough proposals the NPPA technical advisory group carries out a risk assessment and decision tree process.

152.	Part 4	High Country Accord	Include new definition 'Pastoral land' in parts 1 and 2 of this Schedule so that it excludes any curtilage.	**No change.** 'Curtilage' is limited as a legal concept to land attached to a residential house. Therefore, by default 'Curtilage' is not pastoral land. Activities within the curtilage are already accounted for under new Schedule 1AB, Part 1, clause 3.
Other general comments				
Item		**Raised by**	**Issue**	**Officials' comment**
153.		AG Talbot	Amend to require leaseholders to live on the property and/or be a New Zealand resident or citizen.	**No change.** There is already a requirement for leaseholders to live on the property (although exemptions can be sought). There is no requirement for leaseholders to be New Zealand resident/citizen. If a non-resident/citizen wanted to acquire a pastoral lease, they would need to go through the existing regime under the Overseas Investment Act 2005.
154.		AG Talbot	Control the use of aircraft over pastoral land (particularly noise level).	**No change.** This is regulated by other legislation. The activities that the Commissioner requires consent for are linked to burning, soil disturbance and stock exemptions.

155.		Fraser Ross	‘Ecologically sustainable management’ and ‘ecological’ needs to be defined throughout the Bill.	**No change.** in LINZ’s view, ‘ecological’ has a common usage definition appropriate for the purposes of the Bill.

Appendix B: Proposed changes to new Schedule 1AB

Proposed change	Schedule 1AB	Response	Recommendation (subject to PCO advice on proposed wording)
a. Make provision for lighting of fires for cooking and camping purposes – subject to any prevailing regional restrictions as an additional permitted activity. (High Country Accord Trust)	Part 1	LINZ agrees that this activity has no more than minor effects on inherent values and should be treated as permitted, given that it is treated as such under the current regime.	Add a further provision: "Lighting of fires for the purposes of cooking and camping"
b. Avoid terminology that requires a value judgement in the description of activities in the Schedule Association for Resource Management Practitioners (RMLA)	Part 1 clause 1(c)	LINZ agrees that activities should be specified without reference to a value judgement in Part 1 of the Schedule on the basis that there should be clarity on what activities leaseholders can undertake without a consent. This would require the removal of the phrase "are the dominant vegetation cover" in 1(c). LINZ's view is that this is less of an issue in Part 2 of the Schedule as the Commissioner will be making a judgement on the adverse effects of these discretionary activities.	Amend Part 1, clause 1(c) as follows: "the invasive exotic pest plants comprise no less than 90% vegetation cover."
c. The Bill should specify what an "appropriate volume or area limitation" means. (High Country Accord Trust)	Part 1 clause 4	LINZ recommends replacement of this phrase with "as reasonably required for". This clarifies that the leaseholder is only allowed to disturb the soil to the degree necessary to undertake the activities set out in the list.	Amend Part 1, clause 4 as follows: Delete "(with an appropriate volume or area limitation) comprising" and replace with "as reasonably required for:"
d. The digging of offal pits and domestic rubbish holes should be a permitted activity (Federated Farmers)	Part 1 clause 4(c)	LINZ agrees that this should be a permitted activity, as this is consistent with current practice. Note that district plans have strict	Amend Part 1, clause 4(c) as follows: "burying dead animals, *or digging offal pits or holes for domestic rubbish*…"

		controls around these activities.	
e. Provision for laying of water pipes in existing cultivated areas should not preclude establishing troughs (High Country Accord Trust, Federated Farmers)	Part 1 clause 8	The intent was not to preclude establishing new troughs. LINZ agrees that when laying water pipes provision should be made to allow for the associated trough and the minor soil disturbances.	Amend as follows: "Laying of water pipes underground within existing cultivated areas using a ripper and mounted cable layer and provision for associated water troughs."
f. There should be provision for forming and maintaining fire breaks (William Sutherland, Hugo Pitts)	Part 1	Forming fire breaks could involve more than minor effects on inherent values and should be a discretionary activity – however LINZ agrees that maintaining existing fire breaks once they have been formed should be a permitted activity.	Add a further provision: "Maintain existing consented fire breaks." Also add a new category in Part 2 as follows for the purposes of clarity: "Creation of new fire breaks"
g. Soil disturbance for the construction of infrastructure should be added to the discretionary activities list (Federated Farmers)	Part 2 clause 2	LINZ agrees that this would provide more clarity.	Amend clause 2j as follows: "soil disturbance for the construction of buildings and infrastructure" Also add a new category in Part 2, clause 2 as follows for the purposes of clarity: "Construction of buildings and infrastructure"
h. Constructing water storage infrastructure should include dams (Federated Farmers)	Part 2 clause2(m)	LINZ agrees that this would provide more clarity. The activity would still need consent from the Commissioner.	Amend as follows: "Constructing water storage infrastructure including dams."

i. Need to ensure that any other activity requiring soil disturbance not provided for in the schedule would be treated as a discretionary activity (and consent would be able to be applied for) (Federated Farmers)	Part 2 clause 2	In effect this does the same as new Schedule 1AB Part 2, clause 2 "include, but are not limited to" – but it does provide more clarity.	Add a further provision in Part 2, clause 2: "Any other activity affecting, involving, or causing soil disturbance (other than that currently classified as a permitted or prohibited activity)."
j. The definition of cropping is too vague and could capture any domestic vegetable or fruit production (Federated Farmers)	Part 4	LINZ agrees it would be helpful to specify that cropping does not include household gardening while still preventing potentially invasive species being planted outside a very localised and controlled area home garden.	Amend the definition of "cropping" in Part 4 as follows: "Means growing forage crops for animals or producing vegetables, fruit, or grain, and similar products at a productive scale."
k. The national planning standard definition of 'cultivation' should be used (Federated Farmers)	Part 4	LINZ agrees that the definition of "cultivation" should be aligned with the National Planning Standards 2019.	Amend the definition of "cultivation" in Part 4 as follows: "Means the alteration or disturbance of land (or any matter constituting the land including soil, clay, sand and rock) for the purpose of sowing, growing, or harvesting of pasture or crops."
l. The definition of "indigenous vegetation" is too broad currently. (AgScience Ltd)	Part 4	LINZ agrees that a more specific definition is warranted	Amend the definition of "indigenous vegetation" in Part 4 as follows: "indigenous vegetation— (a) all species of plants, or lichens that are naturally occurring in any of the ecological regions of which the property forms part; but (b) does not include plants within a domestic garden that are planted for the screening or shelter purposes.

m. The definition of "invasive exotic plants" could be improved by amending to clarify that invasive exotic plants can include those listed "in a regional pest management plan". (Central Otago Wilding Conifer Control Group)	Part 4	LINZ agrees this definition should be amended as proposed	Amend the definition of "invasive exotic plants" in Part 4 as follows: "invasive exotic pest plants includes pests listed in the National Pest Plant Accord, in relevant regional pest management plans, and any other exotic pest plants."
n. Current definition of 'indigenous wetland' is too narrow (i.e. wetlands can be of ecological importance regardless of plant and animal species) and should be amended to match that in the RMA and Freshwater NPS (Environmental groups generally)	Part 4	LINZ agrees this definition should be amended as proposed	Amend the definition of "indigenous wetlands" in Part 4 to align with the RMA and Freshwater National Policy Statement

Appendix C – Additional Minor and Technical Changes (provisions where LINZ agrees amendments are warranted)

Item	Section	Raised by	Issue	Officials' comment
Part 1 Clause 5 *New section 1A inserted*				
1.	1A	NZ Law Society, Association for Resource Management Practitioners (RMLA)	Amend the purpose statement to improve clarity. This section currently only describes the content of the Act (that the Bill provides for the administration of pastoral land). It needs to be clearer to meet requirements of Interpretation Act.	**Amend**. LINZ agrees that the purpose statement should be clarified. It should reflect all the outcomes that decision-makers under the principal Act and the Land Act 1948 are to seek to achieve, as set out in clause 8, new section 4 - rather than the proposed excerpt from the Explanatory Note to the Bill, which has a narrower scope.
Clause 6 *Section 2 amended*				
2.	New 2	NZ Law Society, RMLA	Amend definition of inherent values to remove the word 'conformation'. NZ Law Society suggests consideration of a plain English alternative such as "characteristics" or "natural character of the land".	**Amend.** LINZ agrees that an amendment along these lines would improve the clarity of the Bill.
Clause 8 *Part 1 replaced (with new sections 4 to 23)*				
Subpart 1 - Outcomes, activities on pastoral land, and decision-making process				
Outcomes				
4.	New 4(1)	Federated Farmers	Amend wording to clarify that leaseholders and licence holders are not "persons performing or exercising functions, duties, or powers required under the Bill".	**Amend.** LINZ considers that it would be helpful to clarify the application of this section for the avoidance of doubt.

7.	New 4(1)(b)	LINZ	Treaty references in the Bill are not consistent.	**Amend.** The Treaty of Waitangi/Te Tiriti o Waitangi should be defined by reference to the Treaty of Waitangi Act 1975, which refers to both the te reo and English language texts. This will avoid any uncertainty in interpretation.
Classification of activities on pastoral land				
8.	New 6(1)	NZ Law Society	Amend section 6(1) to make it clear that the Commissioner's consent must be sought, if required, under sections 7-9.	**Amend.** Further clarification is warranted.
Provision related to burning				
10.	New 7	Federated Farmers, High Country Accord Trust	Section 7 is clumsily worded – it should be deleted and burning should instead be dealt with as part of new Schedule 1AB, using either the wording under the existing section 15 of the CPL Act (Federated Farmers) or section 106 of the Land Act 1948 (High Country Accord Trust).	**Amend.** This section has been carried over from the CPL Act, as burning is already a discretionary activity. However, there is scope to better integrate the drafting of these sections with the remainder of the Bill.
Further provisions relating to clause 8				
12.	New 9(3)	The Lakes Station	Unclear drafting. Section 9(3) appears to stand by itself rather than only applying for the purposes of section 9. It is also unclear why section 9(1) is excluded in section 9(3).	**Amend.** This provision should be amended to clarify, in line with the policy intent, that where maintenance has been previously granted it will be allowed to continue under those conditions outlined in the original consent (e.g. where maintenance as been granted for 5 years, it will be allowed to continue until the end of that period).
Process for Commissioner's decision				
34.	New 12-13	RMLA	Consideration of "effect" is mostly confined to consideration of effects on inherent values (e.g. new s12(4)(a)(ii) and s13(4)(a)(ii)). This contrasts with the broader use of 'effect' in section 3 of the RMA, which carries with it considerable case law. The use of the common dictionary definition of 'effects' could therefore be considered in the Bill as an alternative.	**Amend.** LINZ's view is that the considerations of "effect" here are as complex as those covered by the RMA, due to the need for the Commissioner to consider a wide range of actual and potential adverse effects (including cumulative effects) on inherent values. In LINZ's view,

				the common dictionary definition of "effect" would be insufficient to cover this. LINZ does however recognise the potential issues that come with referencing the RMA's interpretation of "effect". LINZ therefore proposes amending the interpretation of 'effect' in clause 6(1) of the Bill to remove reference to the RMA, instead inserting the full definition of "effect" from section 3 of the RMA directly into this Bill.
41.	New 12(5)(d)	NZ Law Society	Expand the section relating to health and safety to cover the risks to the health or safety of "any other person on the land", rather than just the "holder of the lease of licence" – as there are likely to be others on the property.	**Amend.** The majority of situations, particularly health and safety risks, are likely to now be covered by the new "emergency works" provision being proposed, though there may be some utility in retaining this provision to cover other exceptional circumstances. We therefore propose that the provision be retained but the example cited in the provision be deleted.
Recreation permits				
42.	New 13	LINZ	The term "recreation permit" as used in the Bill could be misleading, as it does not relate to recreational activities freely available to the public, but rather commercial recreational activities that generally generate revenue for the leaseholder or licence holder.	**Amend.** Replace the use of "recreation permit" in this provision (and elsewhere in the Bill) with "commercial recreation permit". Note: this amendment would require a change to the use of the term "recreation permit" for all recreation permits in the Land Act 1948 across the country, not just for pastoral land in the CPLA.
45.	New 13(5)(b)	LINZ	Delete duplicate words as follows: "If it is an activity that ~~uses infrastructure or buildings,~~ uses consented existing infrastructure or buildings."	**Amend.** This was a drafting error.

Subpart 3 – Monitoring, strategic intentions, and reporting				
Monitoring				
Crown's pastoral land strategic intentions document and reporting requirements				
57.	New 22D(4)(b)	RMLA, environmental groups generally	Amend section 22D(4)(b) to change from 'may consult' to 'must consult'.	**Amend.** To strengthen this provision, LINZ recommends that it be amended to "must consult where practical."
59.	New 22D	LINZ	As the strategic intentions document is intended to provide a long-term approach for the management of pastoral land, updating the document every three years may not be appropriate given the timeframe over which strategic direction is likely to be set, or proportionate given the consultation requirements each time.	**Amend.** LINZ proposes that the strategic intentions document be updated every five years.
63.	New 22E	RMLA	Clarify how regularly the Commissioner must publicly report.	**Amend.** This will be developed through regulations. However, the heading of this section should be amended to clarify that this section is about the publication of summaries of decisions when they are made.
Clause 14 **New Part 4A inserted** **Miscellaneous provisions** ***Further provisions relating to activities and regulations***				
Infringement offences				
68.	New 100G(2)	NZ Law Society	Amend the provision regarding sending infringement notices by post, given there are now fewer deliveries a week and some people are transient and may never receive an infringement notice posted to their last-known residential or business address. Suggest a more appropriate means of transport would be a "signature-required courier".	**Amend.** LINZ proposes that this provision be updated to reflect best current practice in legislation.

Further provisions relating to activities and regulations				
69.	New 100L	Environmental groups generally	Any proposed amendments to the Schedule should require public consultation. This is the intent as described in the Bill's explanatory note but it hasn't been drafted as such.	**Amend.** The absence of a reference to public consultation regarding amendments was an error. It is intended that the public will be consulted.
71.	New 100L	NZ Law Society	Amend to provide clarity that any changes to new Schedule 1AB do not affect any consent already granted, for the duration of that consent.	**Amend.** LINZ agrees that this provision should be added to 100L
72.	New 100L(5)	Federated Farmers	Concern that the criteria for a 'permitted activity' is "an impossible standard to meet." Section 100L(5) should be deleted.	**Amend.** The criteria for a permitted activity has a deliberately high threshold, reflecting that the Crown relinquishes any ability to control these activities and they are undertaken wholly at the leaseholder's discretion. However, we agree that the wording "in all foreseeable circumstances" may not be workable in practice. We therefore propose that wording be replaced with "in all reasonably foreseeable circumstances".
73.	New 100L (5)(b)(ii)	NZ Law Society, RMLA	Remove reference to 'good husbandry', as is outdated (and gendered) term.	**Amend.** LINZ proposes that this provision be reworded to specifically link to section 99 of the Land Act 1948, which provides suitable context/clarification for the use of the term: "contribute to the lessee meeting their obligations under section 99 of the Land Act 1948, or the maintenance or enhancement of inherent values."
74.	New 100L(6)	Forest & Bird	Concern that the criteria for a 'prohibited activity' sets such a high bar ("in any foreseeable circumstances") that activities may not be able to be classed as prohibited.	**Amend.** The criteria for a prohibited activity has a deliberately high threshold, reflecting that adding these activities to the Schedule prevents leaseholders being able to apply to undertake them in any circumstance.

				However, we agree that the wording "in all foreseeable circumstances" may not be workable. We therefore propose that wording be replaced with "in all reasonably foreseeable circumstances".
76.	100N(4)	LINZ	The Minister must not recommend the making of regulations under this section unless satisfied that the Chief Executive or the Commissioner has consulted relevant iwi, leaseholders, licensees, and the public on the development of the regulations. Given the objectives of the Bill encompass maintaining or enhancing inherent values, it is appropriate that the Director-General of Conservation also be consulted.	**Amend.** Add the Director-General of Conservation to the list of parties to be consulted.
78.	100O(3)	LINZ	The Chief Executive or the Commissioner must not set a standard or issue a directive unless one of them has consulted iwi, representatives of holders of reviewable instruments, representatives of other persons who will be affected by the standard or directive, and the public. Given the objectives of the Bill encompass maintaining or enhancing inherent values, it is appropriate that the Director-General of Conservation also be consulted.	**Amend.** Add the Director-General of Conservation to the list of parties to be consulted.
Part 2 **Amendments to Land Act 1948**				
Clause 19 ***Section 24 of the Land Act 1948 amended (Powers and duties of Commissioner)***				
81.	New 2A	LINZ	Replace reference to "pastoral land" to "Crown land".	**Amend.** This would enable the Commissioner to comment on district plan changes that affect any Crown land, not just that classified as pastoral land (e.g. riverbeds adjoining a pastoral lease.

Schedule 1 New Schedule 1AA inserted Transitional, savings, and related provisions Part 1 *Provisions relating to Crown Pastoral Land Reform Act 2021*				
Item	**Clause**	**Raised by**	**Issue**	**Officials' comment**
85.	General	LINZ	A new clause is required to revoke the 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.	**Amend.** Revoke the minor consents letter, and include a transitional provision (modelled on similar provisions under the RMA) to allow leaseholders to complete activities where they can demonstrate to the Commissioner's satisfaction that they have already made material progress on them based on existing consent requirements.
86.	3	Federated Farmers	Seeks that the right to judicially review decisions regarding tenure review cases be continued once process is removed.	**Amend.** The Bill will not prevent a party from seeking judicial review of tenure review cases. However, for the avoidance of doubt, LINZ proposes that this be explicitly stated in this clause.
Schedule 2 **New Schedule 1AB** ***Classification of pastoral activities on pastoral land***				
Part 1: Permitted pastoral activities (consent not required under this Act, but permission may be required under other enactments)				
102.	1 and 2	RMLA	Clarify that 'indigenous by-kill' means by-kill of indigenous vegetation.	**Amend.** Currently by-kill is discussed but it is not clear as to what the by-kill is of. LINZ recommends that clauses 1 and 2 of Part 1 be amended to clarify that this is by-kill of indigenous vegetation.

107.	4(c)	LINZ	Change this provision as underlined: "burying dead animals, as long as the activity is undertaken at least 50 m away from any surface water body".	**Amend.** Change "water body" to "surface water body". Shallow acquifers commonly occur across a catchment where there is some type of stream, which means this provision as drafted could not be effectively applied.
107.	4(f)	LINZ	Change this provision as underlined: "digging long drops, which must be at least 50 m away from any surface water body".	**Amend.** The rationale is the same as for clause 4(c) above .
Part 2: Discretionary pastoral activities (Commissioner may consent or decline)				
136.	2(n)	LINZ	The term "spray and pray", which is defined as a discretionary activity, should be clarified.	**Amend.** We suggest this term be replaced with: "the spraying of a slope to remove vegetation, and replanting the slope in stock or forage crops."
Part 3: Prohibited pastoral activities (consent cannot be given or applied for under this Act)				
141.	2 and 3	LINZ	Change "prohibited" activities 2 and 3 listed in new Schedule 1AB Part 3 as underlined below: 2. "Digging a long drop within 20 m of any surface waterbody." 3. "Burying a dead animal within 20 m of any surface waterbody." Shallow acquifers commonly occur across a catchment where there is some type of stream, which means this provision as drafted could not be effectively applied.	**Amend.** The rationale is the same as for clause 4(c) above.