

Coversheet: Proposed changes to tenure review

Advising agencies	Land Information New Zealand
Decision sought	Whether to end tenure review for Crown pastoral land
Proposing Ministers	Minister for Land Information

Summary: Problem and Proposed Approach

<p>Problem Definition</p> <p>What problem or opportunity does this proposal seek to address? Why is Government intervention required?</p>
<p>It is not clear that tenure review is meeting its primary regulatory objective of delivering ecologically sustainable management. Some evidence suggests the process is having a detrimental environmental effect in relation to specific areas. In addition, tenure review is slow, costly, and many reviews are not completed.</p>
<p>Proposed Approach</p> <p>How will Government intervention work to bring about the desired change? How is this the best option?</p>
<p>The analysis presents two options:</p> <ul style="list-style-type: none"> ending tenure review repurposing it so that it is a targeted tool for the Government to achieve its desired outcomes for Crown pastoral land. <p>The analysis has not resulted in a preferred option, due to significant uncertainty on the impacts of both options. However, both options would likely deliver net benefits beyond the status quo.</p>

Section B: Summary Impacts: Benefits and costs

<p>Who are the main expected beneficiaries and what is the nature of the expected benefit?</p>
<p><i>Monetised and non-monetised benefits</i></p>
<p>Option 1: Ending tenure review</p> <p>The core non-monetised benefits would be to the public by securing the natural values of Crown pastoral land (this applies to land that would have become freehold, and have its management constraints removed through the process).</p> <p>Ending tenure review would result in monetised benefits in the form of savings to the Crown (though these would not be realised for approximately three years until transitional</p>

arrangements have been completed).

Option 2: Repurposing tenure review

It is expected that this approach will enhance the current outcomes delivered by tenure review, by ensuring that natural values of Crown pastoral land are protected in line with a high-level strategy that accounts for government priorities. This will still provide for this land to be added to the conservation estate, and public access to be secured across this land for recreation – though in a more joined up way that considers cross boundary effects (such as habitat fragmentation and securing ecological corridors).

The monetised costs to the Crown are expected to be approximately the same as the status quo if tenure review is repurposed. Though there may be some increased cost to agencies to administer the process.

Where do the costs fall?

Monetised and non-monetised costs; for example, to local government, to regulated parties

Option 1: Ending tenure review

Some regulated parties (163 leaseholders) will miss out on opportunities to diversify and intensify economic activities upon the land, as the restrictions on land use under a Crown pastoral lease are greater than those on freehold land.

There will likely be a public cost where it is more difficult to secure protections for Crown pastoral land that could have become public conservation land through tenure review. Subsequently this may impact on ecological outcomes for this land.

There will also be fewer opportunities to secure public access across this land for recreation.

Option 2: Repurposing tenure review

The non-monetised costs of repurposing are expected to be of a lesser magnitude than that of ending tenure review by still providing leaseholders with opportunities to acquire freehold title to some of the land.

The monetised costs to the Crown of repurposing tenure review are expected to be approximately the same as the status quo, though there may be some increased cost to administer the process.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

There are three key risks:

Risk to economic resilience: (primarily leaseholders) due to removing opportunities for future changes in land use. With the approval of the Commissioner tourism operations may be undertaken on the land (noting that not all leaseholders may be located in an area that enables them to take advantage of this).

Ecological risk: may increase where land could have been protected as public conservation land through tenure review. Operational improvements to the regulatory system and partnerships with leaseholders to steward this land will be critical in mitigating

ecological risks. There are also a number of tools (covenants and whole or partial purchases) that can be used to secure ecological protections for this land

Relationship risk: The relationship between the Crown and leaseholders may be negatively impacted by the changes, noting that the Crown and leaseholders have a landlord-tenant relationship. LINZ has prepared a stakeholder engagement plan to ensure that leaseholders – especially those currently in tenure review – are provided with adequate information to understand the changes and what it means for their individual situation.

Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.

None. Both options are consistent with the expectation that "we should seek to remove or redesign an existing regulatory system or system component if it is no longer delivering obvious net benefits".

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

How confident are you of the evidence base?

The amount of land that has undergone tenure review is well understood, but there is very limited information on the subsequent outcomes – both for freeholded land and land moved to the conservation estate. Land that has been through the tenure review process is not monitored by LINZ.

There is little information available about the environmental, cultural and economic outcomes for land held in Crown pastoral leases – largely because of limitations around the ongoing monitoring of this land under the current regulatory system.

These factors make it difficult to assess the overall impact that tenure review has had over time, and whether it has achieved the outcomes originally envisaged when it was introduced.

In addition, the proposal to end tenure review is part of a broader package of proposed changes, and the impact of this broader package has not been considered in this RIS.

There is some information available that relates to the impacts of tenure review in specific locations, as well as some stakeholder feedback on these impacts, and this information has been used to inform the analysis in this RIS.

Quality Assurance Reviewing Agency:

Land Information New Zealand

Quality Assurance Assessment:

The assessor considers that the information and analysis summarised in the Regulatory Impact Assessment partially meets the Quality Assurance criteria.

Reviewer Comments and Recommendations:

We do not have a good understanding of the impacts on leaseholders of the proposal to end tenure review because they have not been consulted on this proposal. Given that the Minister is proposing to consult broadly on managing the implications of ending tenure review, it would not be unfeasible to also consult on the impacts of the decision.

Proactively released

Impact Statement: Proposed changes to tenure review

Section 1: General information

Purpose
<p>Land Information New Zealand is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing a Cabinet decision on a policy change to end tenure review.</p>
Key Limitations or Constraints on Analysis
<p>Proposed changes to tenure review form part of a broader package of changes to improve the operation of the Crown pastoral land regulatory system. The Minister for Land Information (the Minister) is seeking Cabinet agreement to undertake consultation on this broader package of changes to the regulatory system, with the exception of tenure review.</p> <p>On 11 December, 2018, the Cabinet Environment, Energy and Climate Committee invited the Minister to submit a proposal to end tenure review. In response to that invitation, this Regulatory Impact Statement focuses solely on the tenure review process, independent of the further package of changes being proposed. This poses a number of constraints on our analysis.</p> <p>In addition, we have not consulted with stakeholders on the options set out in this regulatory impact statement - although we have engaged with them throughout the policy process, and have a good understanding of their perspectives.</p> <p>A further constraint is the lack of information available on the ecological, economic and cultural impacts of tenure review, partially because of the difficulty of gathering such information, and partly because the regulatory system does not require the monitoring that would be needed to assess these impacts.</p>
Responsible Manager (signature and date):
<p>Sarah Metwell Manager, Policy Crown Property and Information Policy Team Policy and Overseas Investment Business Group Land Information New Zealand</p>

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

Crown pastoral leases

1. The Crown began leasing high country land to farmers for pastoral use to farmers in the 1850s. In 1948, concerned by poor environmental outcomes on this land, the Government introduced the Land Act to promote better stewardship. The Land Act provided leaseholders with more security of tenure, giving them the incentive to take a longer-term approach to managing Crown pastoral land, including protecting the natural capital on which pastoral farming relies – specifically through the management of soil erosion and quality.
2. There are currently 171 Crown pastoral leases covering approximately 1.2 million hectares of the South Island. The majority are located across Canterbury and Otago with the remainder located across Marlborough, Southland and Westland. A map of all the current pastoral leases can be found in Appendix 1.
3. The leases are largely located in the South Island high country. Characterised by expansive tussock grasslands, beech forests, and snow-topped mountain ranges, it is home to many habitats and ecosystems that support rare indigenous wildlife and vegetation.
4. Crown pastoral leases are a form of tenure intended to protect the environmental, cultural and heritage values of high country land, while allowing for its economic use.
5. The leases have 33-year terms, but are perpetually renewable which means that the leaseholder enjoys exclusive possession of the land indefinitely. The leases provide a right to pasturage over the land and a right to quiet enjoyment. Leaseholders own any improvements to the land, such as buildings, fencing, and enhancements to soil quality.
6. Only a limited range of activities are permitted on Crown pastoral land. The leaseholder can only use the land for pastoral farming (i.e. the grazing of stock, such as sheep, and cattle) and cannot disturb the soil without consent from the Commissioner of Crown Lands (the Commissioner). Similarly they must obtain consent to burn vegetation or increase the number of stock they can have on the land.
7. The Commissioner can grant easements over pastoral land, and recreation permits for certain non-pastoral commercial activities, such as tourism, hunting, skifields or filming. These are separate legal rights to the pastoral lease and can be held by third parties.
8. Leaseholders are required to farm the land diligently and to keep it free from pests and weeds.¹ Leaseholders also have to comply with the Biosecurity Act 1993.

The importance of Crown pastoral land

Ecological values

9. Crown pastoral land has a wide range of ecological values, spanning altitudinal, hydrological and geological sequences. Much Crown pastoral land is at high altitude, though many river systems and lower altitude lands are also within pastoral leases. Habitats supporting threatened species are widespread, however there are significant pressures that affect the viability of these habitats.
10. Since human settlement, the decline in biodiversity in New Zealand has been dramatic. Ecosystems loss and modification is most pronounced in lowland and

¹Section 99 Land Act 1948

montane zones, and in dryland ecosystems.

11. Dryland ecosystems occur in the rainshadow zone east of the main axial ranges of the North and South Islands, and account for 19 per cent of New Zealand's land area. A significant proportion of dryland habitats are on Crown pastoral land. These habitats contain some of the most vulnerable indigenous ecosystems in New Zealand. For example, approximately half of New Zealand's threatened vascular flora occur in drylands.

Cultural and heritage values

12. Crown pastoral land, and the extensive pastoral farming it provides for, is an important part of the high country's cultural and historic heritage. Locations with significant cultural and heritage values that can be present on Crown pastoral land include, for example, old huts, woolsheds and other farming-related sites, and water races from gold mines. Access to or across this land for recreation activities (such as hunting, fishing or hiking) is valued as a core right for many New Zealanders across generations.
13. Māori have a deep connection to, and history in, the high country. Throughout the high country there are sites with significant cultural values, such as waterways, traditional food gathering sites and access ways. This land contains maunga, awa, roto, mahinga kai, wāhi tapu and wāhi taonga sites, and taonga species important to Māori.

Economic values

14. Crown pastoral land supports communities through economic activities. Though pastoral farming remains the primary use of this land, it is increasingly being used for tourism ventures such as to operate ski fields, mountain bike parks, undertake filming or allow helicopter landings.

Tenure review is a process that applies to Crown pastoral land

15. Tenure review is a voluntary process that provides for Crown pastoral land with significant inherent values,² or that is required by the Crown for some other purpose, to be removed from a lease and returned to full Crown ownership (mainly as public conservation land). The remainder of the land is freeholded and sold to pastoral leaseholders. Some of the freeholded land may be subject to covenants to protect values, or easements for Department of Conservation (DOC) or public access.
16. The Crown Pastoral Land Act 1998 (CPLA) formalised the process of tenure review. There are detailed procedural requirements for tenure review within the CPLA and reviews are conducted by the Commissioner with LINZ managing the process on the Commissioner's behalf (as set out in Appendix 2).
17. Tenure review was introduced to support the broad objectives of the Crown pastoral land regulatory system – to protect the natural values of the land while allowing for some economic use by freeing up some, less ecologically valuable land from the management constraints of the Crown pastoral lease system. However, it is important to note that outcomes from tenure review are the result of a process of negotiation between the Crown and the leaseholders, which limits the Crown's ability to achieve its first best outcomes in all cases.
18. The process was designed to enable the Crown to exit its lessor role over time and it was thought that all Crown pastoral leases would undergo tenure review. This has not

² Section 2 CPLA 1998: Significant inherent value, in relation to any land, means inherent value of such importance, nature, quality, or rarity that the land deserves the protection of management under the Reserves Act 1977 or the Conservation Act 1987.

been the case - more than half of the Crown's original pastoral estate remains and tenure reviews are becoming less frequent.³

19. While leaseholders could seek changes to tenure and the Crown could freehold land and/or buy leasehold land in negotiation with leaseholders before tenure review was introduced, tenure review provided a formal mechanism for doing this. The process is completely dependent on Crown appropriations that enable the buying of leases and selling of land.

The context surrounding Crown pastoral land is changing

20. The environmental, economic and social context for Crown pastoral land management has changed since the Land Act and CPLA were enacted:
 - There is greater recognition of the loss of high country ecosystems and the importance of areas that remain. The focus on conserving the soil and managing pests (as was the case when the Land Act was enacted in 1948) has now broadened to also include concerns about preserving New Zealand's indigenous biodiversity through the protection of areas and species, including their habitats, from pressures that threaten them. Drylands that might previously have been seen having low natural value (including being classified as such through the tenure review process) are now more widely recognised as ecologically important.
 - There is greater recognition that decisions about land use cannot be considered in isolation and must take account of interdependencies within a landscape and ecosystem. Decisions made in relation to individual leases or individual activities, including during tenure review, can have a cumulative impact that needs to be reflected in decision making processes.
 - The economics of pastoral farming have changed. As a result, pastoral farming in the wider high country is becoming more intensive. For instance, the stocking rate (stock-units per hectare) on high country farms has increased by approximately 30 per cent over the past 10 years.⁴
 - Economic activity in the high country is diversifying. The significant recent increase in international visitor numbers has seen the development of tourism activities such as farmstays, canyoning, fishing, hiking, heli-skiing, and mountain biking. At the same time, New Zealand's international tourism offering is heavily dependent on the quality of our natural environment.
 - A wide range of stakeholders, recreational users, and environmental groups, and iwi as Treaty partners, have increasingly sought to have their interests in Crown pastoral land recognised and to have a greater say in how it is used and managed, through tenure review and other processes.

What impact has tenure review had?

Data on impacts is limited

21. The amount of land that has undergone tenure review is well understood, but there is very limited information on the subsequent outcomes – both for freeholded land and land moved to the conservation estate. Land that has been through the tenure review process is not monitored by LINZ.
22. There is little information available about the environmental, cultural and economic

³ Prior to the CPLA, 36 leases were reviewed under the Land Act in an ad hoc fashion and resulted in about 107,000 hectares (61%) of land being freeholded and about 69,000 hectares (39%) of land being returned to full Crown ownership as public conservation land

⁴ Beef + Lamb New Zealand. Sheep and Beef Farm Survey - Performance Indicators Per Farm Analysis: Class 1 S.I. High Country - New Zealand. In Beef + Lamb New Zealand Economic Service. Retrieved from <https://beeflambnz.com/data-tools/sheep-beef-farm-survey>

outcomes for land held in Crown pastoral leases – largely because of limitations around the ongoing monitoring of this land under the current regulatory system.

23. These factors make it difficult to assess the overall impact that tenure review has had over time, and whether it has achieved the outcomes originally envisaged when it was introduced.
24. There is some information available that relates to the impacts of tenure review in specific locations, as well as some stakeholder feedback on these impacts (see below).

Amount of land that has undergone tenure review

25. As of December 2018, approximately 666,000 hectares of Crown pastoral land had been through tenure review. Of that, approximately 313,000 hectares of land was retained by the Crown with the majority becoming public conservation land. The remainder was freeholded and sold to the leaseholder. Approximately 60,000 of this freeholded land is subject to protective covenants.⁵
26. There have also been substantive proposals accepted by leaseholders over approximately 52,000 hectares of land. These are contractual agreements between leaseholders and the Crown to implement a review. It generally takes one to two years for these to be completed, at which point freehold title will be issued to the leaseholder and the remaining land will return to full Crown ownership.

Table 1: Hectares of land that have undergone tenure review under the CPLA

	Area	Crown	Freehold
Tenure reviews with an accepted substantive proposal but yet to be implemented (8 leases)	52,253	25,895 (49.5%)	26,358 (50.5%)
Implemented tenure reviews under the CPLA 1998 (127 leases)	666,175	313,380 (47%)	352,795 (53%)
Total land	718,428	339,275 (47%)	379,153 (53%)

Costs of tenure review

27. Tenure review costs the Crown approximately \$5.5 million annually.⁶ This includes operational and capital costs.
28. When completing a tenure review, the Crown first purchases the leasehold interest to all the land and then sells some of the land to the leaseholder as freehold. Over the past four years, the Crown has spent \$88.3 million to purchase the leasehold interest in pastoral land that has been through tenure review. This has been offset by \$78.3 million in receipts through the sale of freeholded land to leaseholders. The Crown has paid approximately \$10 million more than it has received from sales. In that same time, LINZ has spent \$6.2 million on implementation costs (predominantly fencing costs).
29. LINZ spends approximately \$1.4 million annually to administer the tenure review process.
30. There are no figures available on the cost of tenure review to leaseholders.

⁵ A covenant is a restriction on the use of land achieved by registering a legal obligation against the title to the affected land. A covenant is an enforceable obligation by someone to do, or not to do something in respect of that land.

⁶ This does not include operational costs to DOC or the cost to DOC of managing the land that has undergone tenure review and become public conservation land.

Table 2: Fiscal costs of tenure review

			Approximate annual spend
LINZ operational costs to administer the process (personnel and external service providers)			≈ \$1.4 million annually
LINZ costs to implement tenure reviews (includes fencing and survey costs)			≈ \$1.6 million annually ⁷
Balance of transaction to complete a review	Revenue from selling freehold interest	\$78.3 million (2014/15 through 2017/18)	≈ \$2.5 million annually
	Expenditure to purchase leasehold interest	\$88.3 million (2014/15 through 2017/18)	

Economic impacts

31. Tenure review has contributed to the diversification and intensification of land use in the wider high country, with the development of dairy farming, viticulture and horticulture on land that has been freeholded.
32. The limited data available means that it is not clear whether increased economic activity on this freeholded land has balanced out the reduced economic activity on the land that has either been added to the conservation estate,⁸ or protected through the use of covenants.
33. Any resulting increase in economic activity will also have provided flow-on benefits to regional communities through increased employment, spending and investment.

Ecological impacts

34. Tenure review is one of the main mechanisms for adding land to the conservation estate, enabling 313,000 hectares of Crown pastoral land to be given greater protection as conservation land, as well as enabling protective covenants over 60,000 ha of freehold land.
35. Historically, the majority of this land has been high altitude blocks that were used by the leaseholder to graze stock in summer. It is likely that this has resulted in overall better ecological outcomes for this land, although to be certain, the outcomes for this land under the Crown pastoral lease system would need to be directly compared to outcomes for this land under DOC management.
36. Tenure review has removed the management constraints of the lease regime (e.g. limits on the numbers of stock on the lease land) from 352,000 hectares of Crown pastoral land, enabling increased economic use of some former Crown pastoral land and likely to have had significant ecological impacts over time on some areas of land.
37. This effect has been exacerbated by the consequent reduction in farm sizes and the concentration of stock numbers or other economic uses on a smaller amount of land.

⁷ Based off \$6.2 million spend 2014/15 through 2017/18

⁸ It should be noted that, following tenure review, economic activities still occur on some areas of land that becomes public conservation land including through tourism or grazing concessions.

38. Stakeholders have consistently raised issues with tenure review, including that decisions do not adequately take account of environmental values.
39. The net ecological impacts cannot be identified at a national level, as there is no data to assess whether poorer ecological outcomes on land in some areas are balancing out better outcomes elsewhere.
40. However, data on Crown pastoral land use and impacts over time in the Mackenzie Basin can be used as a localised example. While the Mackenzie Basin is not completely representative of the broader Crown pastoral land estate, pastoral leases are facing similar issues driven by often competing environmental and economic objectives.

The Mackenzie Basin

41. The Mackenzie Basin has seen significant changes in land use, often resulting in the loss of ecological and natural landscape values. These have coincided with changing ownership patterns, in part due to tenure review. There has been a significant level of public interest in the changes in the Mackenzie Basin, especially in relation to the role Crown agencies and local government play, including through tenure review.
42. It is estimated that between 2009 and July 2016, 34,000 hectares of the Mackenzie Basin were changed from indigenous cover to exotic cover.⁹ During this time, the viability of the populations of numerous indigenous plant and animal species have declined and many species found only in the Mackenzie Basin are now on the brink of extinction or classified as under threat.¹⁰
43. The extent that tenure review has contributed to these changes is unclear. A 2018 study¹¹ which analysed aerial and satellite imagery data of the Mackenzie Basin concluded that 16,300 hectares of 58,600 hectares of new freehold land (i.e. former Crown pastoral land) had been 'intensified' by 2017 and that between 2003 and 2017 two-thirds of the intensification in the Mackenzie Basin occurred on new freehold land.
44. The research also showed that 22 per cent of land that had been through tenure review (both new freehold and new conservation land¹²) was intensified by 2017, compared to 13 per cent of Crown pastoral land. This indicates that less intensification might have occurred if no tenure reviews were completed in the Mackenzie Basin.
45. The main limitation of this research is that it does not provide insight on the benefits and costs of the intensification. For example, the study's classification of 'intensification' included land developed for residential purposes, allowing communities to expand, and cultivated land, allowing for more diverse economic use. The social and economic benefits of such uses could outweigh any environmental costs. The degree of intensification was not measured but classified as intensified or not intensified.

Other impacts

46. Tenure review has allowed communities to expand by opening up land to subdivision (to the extent provided for under the relevant RMA plan), enabling a number of social

⁹ Exotic cover can include exotic grasses or invasive species such as wilding pines. Source: <https://www.environmentcourt.govt.nz/assets/Documents/Decisions/2017-NZEnvC-053-Federated-Farmers-of-NZ-v-Mackenzie-District-Council.pdf>

¹⁰ These include the robust grasshopper, which is endemic to the Mackenzie Basin, and the kākī/black stilt, of which there are estimated to be only 132 wild adults remaining in New Zealand.

¹¹ Brower, A., Sprague, R., Vernotte, M., & McNair, H. (2018). Agricultural intensification, ownership, and landscape change in the Mackenzie Basin. *Journal of New Zealand Grasslands*, 80, 47-54.

¹² 600 of 19100 hectares of new conservation land and 16300 of 58600 hectares of new freehold land were intensified by 2017.

and economic benefits. However, the subdivision and on-selling of former Crown pastoral land has drawn some public concern.

47. Tenure review has contributed to improved public access and recreation across the high country¹³ including the formation of a number of high country parks, so people can enjoy the unique land or can travel across the land into more remote areas for recreation. It is common for easements securing public access, for example to areas of public conservation land, to be included in a tenure review.
48. The high country is of great cultural importance to Māori and tenure review provides an avenue for iwi to secure access to or across former Crown pastoral land. For example, during tenure review and following consultation with representatives of Ngāi Tahu, legal rights have been granted to access sites of cultural or historic significance, usually secured through easement or covenant.¹⁴

What future impact will tenure review have if it continues in its current form?

Amount of land that could undergo tenure review

49. The magnitude of the future impact of tenure review will be determined by the number of leases and amount of land that goes through the process.
50. There are currently 26 leases in tenure review that do not have accepted substantive proposals, covering approximately 300,000 hectares of land. There are 137 leases not in tenure review, covering approximately 900,000 hectares of land.
51. No leases have entered tenure review since 2016. Factors influencing a leaseholder's decision to enter tenure review include the economics of pastoral farming, rent levels, and the market value of the lease. Changes in any of these factors could make it more or less likely that leases will enter the process; due to this uncertainty our assessment of the future impact of tenure review assumes no further leases will enter tenure review in the future.
52. Tenure review is a negotiated process and it is difficult to predict how many reviews will be completed, even without any changes in tenure review. It is unlikely that all of the 26 leases (and 25 reviews)¹⁵ currently in the process will proceed through to completion. Since April 2018, four reviews have been discontinued (three were not able to reach an agreement and there was a change of ownership to one lease in tenure review) and four reviews have been completed. The table below provides a low estimate of 10 of the current reviews to be completed¹⁶ and a high estimate of 24.¹⁷

¹³ One of the objectives of tenure review is to secure public access: Section 24(c)(i) CPLA 1998

¹⁴ For example, rights have been granted as an outcome of the following tenure reviews: Cattle Flat (Otago), 2006, Cluden, 2013, Glendhu, 2005, Dingleburn, 2007, Wyuna, 2006.

¹⁵ One review is a joint review of two leases

¹⁶ Based upon reviews with a high likelihood of resulting in an acceptable outcome to both the Crown and leaseholders

¹⁷ If all reviews were to be completed (discarding the one review which is currently at information gathering stage).

Table 3: Estimated outputs and fiscal costs to the Crown of tenure review

	Low scenario	High scenario
Number of reviews completed	10	24
Area (hectares)	153,000	288,000
Conservation area¹⁸	88,000	174,000
Freehold area	65,000	113,000
Cost to Crown (balance of transactions)¹⁹	\$12.6 million	\$39.2 million ²⁰
Implementation capital costs to Crown²¹	\$1.5 – 2.5 million	\$3.5 – 5.8 million
Operational costs to Crown²²	\$8.4 – 11.2 million ²³	\$11.2 – 14.0 million ²⁴
Total fiscal costs	\$22.5 – 26.3 million	\$31.5 – 36.6 million

Future impacts of tenure review

53. The uncertainty discussed above means that it is difficult to predict the outcomes that tenure review will deliver – for instance its impact on indigenous biodiversity or economic opportunities for leaseholders.
54. If tenure review continues, Crown pastoral land will continue to exit the estate with a proportion leaving Crown ownership and the balance becoming public conservation land. The freeholded land will:
- no longer be subject to the lease regime’s restrictions on land use
 - in general, experience more intensive and diverse economic activity (this appears to be the case in the Mackenzie Basin)
 - be subject to increased risk of ecological degradation and biodiversity decline due to the ability to intensify or diversify land use.
55. It is also likely that some stakeholders will continue to have the view that tenure review decisions are leading to worse environmental outcomes overall.
56. Conversely, tenure review will:
- deliver economic productivity gains to leaseholders who acquire freehold land

¹⁸ Based on the latest available version of designation plans – not necessarily an agreed position or the final Crown position.

¹⁹ These amounts are based on the latest valuation information held by LINZ for the property. In some cases the valuations are out of date and/or have not been agreed to by the leaseholder.

²⁰ Five leases in the high scenario did not have valuation data but did have proposed designations. An average cost per hectare factor was used to estimate these valuations.

²¹ Assuming \$150,000 to \$250,000 fencing and surveying cost per lease

²² Based off LINZ’s operational costs only

²³ Assuming it takes 6 to 8 years to complete 10 reviews

²⁴ Assuming it takes 8 to 10 years to complete 23 reviews

- provide some flow-on benefits to regional communities
- secure public and DOC access to areas of the high country
- result in more land becoming public conservation land (noting that this will likely provide ecological benefits for that land, such as by protecting indigenous biodiversity).

57. In summary, while it is possible to estimate the amount of land likely to go through tenure review in the future, it is difficult to accurately assess the level of ecological, economic and cultural impacts that ongoing tenure review would have. More specifically:

- there is likely to be an environmental risk associated with the further freeholding of land through tenure review, although this will vary depending on what land is involved and what future use it is put to
- it's likely there will be some economic benefits, but we are unable to determine the size of this impact
- there will be some benefits in terms of access to land for the public and iwi
- there will be some environmental benefits as a result of potentially significant amounts of land being added to the conservation estate.

58. The context is not static. LINZ is making operational improvements to its management of its leases and there are other proposals to improve these functions. This work is discussed in section 3.1 below.

Proactively released

2.2 What regulatory system, or systems, are already in place?

Tenure review is a subset of the Crown pastoral land regulatory system.

58. The Crown pastoral land regulatory system is created by two pieces of legislation: the **Crown Pastoral Land Act 1998** and the **Land Act 1948**. This regulatory system is generally divided into four areas:
- **Tenure review:** discussed in section 2.1 above.
 - **Discretionary consents:** The discretionary consents process enables leaseholders to seek permission from the Commissioner to undertake activities on the land beyond those permitted under the terms of their lease, such as cultivation, clearing vegetation, top dressing, tracking, or burning. This process also enables leaseholders, and other applicants, to apply for recreation permits or easements.
 - **The rental regime:** The rental regime sets out how the Crown calculates rents on Crown pastoral land.
 - **Statutory land administration:** This relates to how leases can be renewed, transferred or subleased, as well as the statutory obligations on leaseholders as set out in the Land Act.²⁵
59. Both current and former Crown pastoral land is subject to a number of other regulatory regimes, including those created by the:
- **Resource Management Act 1991 (RMA)** which aims to ensure the sustainable management of natural and physical resources.²⁶
 - **Biosecurity Act 1993** which provides for long-term pest management on all land through national and regional level plans.
 - **Overseas Investment Act 2005** which requires overseas persons to meet certain criteria before owning or controlling sensitive New Zealand assets (including Crown pastoral land).

Why is Crown pastoral land regulated?

60. Crown pastoral land is regulated to:
- provide relatively high levels of environmental and other protections for this land in recognition of its particular environmental and cultural values. The Land Act and CPLA afford greater protection for this land than if it were solely regulated under the RMA
 - set the framework that governs the relationship between the Crown and leaseholders, and administer Crown pastoral land within this.
61. Tenure review provides a mechanism for assessing whether particular areas of land should be managed either under the regulatory system that applies to public conservation land, under the RMA (as freehold land), rather than continuing to be regulated as Crown pastoral land.

²⁵ For example under section 99 of the Land Act, leaseholders are required to “farm the land diligently and in a husbandlike manner according to the rules of good husbandry, and will not in any way commit waste”.

²⁶ This is distinct to the concept of ecologically sustainable management under the CPLA.

Objectives of the Crown pastoral land regulatory system

62. As outlined above, the Crown pastoral land regulatory system was broadly intended to protect the inherent values of the land while allowing for economic use – reflecting the ecological importance and sensitivity of this land and its use as pastoral farmland.
63. The CPLA sets out the objects of tenure review. These are to be taken into account by the Commissioner when conducting the process. They are:
- a) to -
 - (i) promote the management of reviewable land in a way that is ecologically sustainable;
 - (ii) subject to subparagraph (i), enable reviewable land capable of economic use to be freed from the management constraints (direct and indirect) resulting from its tenure under reviewable instrument; and
 - (b) to enable the protection of the significant inherent values of reviewable land—
 - (i) by the creation of protective mechanisms; or (preferably)
 - (ii) by the restoration of the land concerned to full Crown ownership and control; and
 - (c) subject to paragraphs (a) and (b), to make easier—
 - (i) the securing of public access to and enjoyment of reviewable land; and
 - (ii) the freehold disposal of reviewable land.
64. The Commissioner must also take into account the principles of the Treaty of Waitangi and any particular Crown purpose for the land.

A number of actors have a role in the Crown pastoral land regulatory system and tenure review

The Commissioner of Crown Lands and LINZ

65. The Commissioner is an independent statutory officer who acts as the landlord to leaseholders on behalf of the Crown. The Commissioner's duties include administering the leases, conducting the tenure review process, and administering the discretionary consent system. The Commissioner is bound by the Land Act and CPLA and cannot be directed on decisions by Ministers or anyone else.
66. LINZ officials act under delegated authority from the Commissioner to facilitate the management of Crown pastoral land and tenure review.

The Minister for Land Information

67. The Commissioner must report to the Minister for Land Information on the broad exercise and performance of the Commissioner's statutory powers and functions.²⁷

The Minister of Conservation and DOC

68. Under the CPLA, the Commissioner is required to consult the Director-General of Conservation before undertaking a review and before putting a preliminary or substantive proposal to the leaseholder.²⁸
69. The Minister of Conservation has a statutory role at various stages of the tenure review process. For example, Section 41 of the CPLA requires the prior written provisional

²⁷ Section 24AA (2) Land Act 1948

²⁸ Section 26 CPLA 1998

consent of the Minister of Conservation to certain designations in preliminary proposals.²⁹

70. Prior to developing a preliminary proposal LINZ obtains a report from DOC on the inherent values of the land and an assessment of their significance.

Iwi

71. Under the CPLA, the Commissioner is required to consult the relevant iwi authority on the preliminary proposal.³⁰ In the information gathering stage, or when the preliminary proposal is advertised, LINZ obtains a Cultural Values Report from the iwi authority (usually Te Rūnanga o Ngāi Tahu) which identifies cultural values and makes recommendations.

Leaseholders

72. The leaseholder is the occupier and user of the lease land and has:
- the exclusive right of pasturage
 - a perpetual right of renewal of the lease for terms of 33 years
 - no right to the soil
 - no right to acquire the fee simple of any of the land.
73. Leaseholders are required to farm the land appropriately and within the terms of the lease and the statutory provisions relating to the lease. Leaseholders are responsible for biosecurity issues under the terms and covenants of the pastoral lease and must comply with the Biosecurity Act 1993.
74. In addition to the statutory provisions applying to a pastoral lease, each lease contains specific contractual requirements

The public

75. Under Section 43 of the CPLA, the public are given the opportunity to provide written submissions on a preliminary tenure review proposal as it is notified. The Commissioner takes these into account to the extent they are consistent with the legislation.

Crown pastoral land regulatory system review

76. In 2018, LINZ carried out a review of the Crown pastoral regulatory system. The review assessed the system's performance (at a point in time) and made recommendations on improving it. As part of this process, LINZ engaged with representatives of Ngāi Tahu as Treaty partners and a range of stakeholders including leaseholders and their representatives, environmental groups, and other government agencies.
77. The conclusions of this review are discussed in section 2.3 below.

²⁹ Such as any concession or easement over land designated as conservation area, the disposal of conservation land, or creation of a protective mechanism over land designated as freehold.

³⁰ Section 44 CPLA 1998

2.3 What is the policy problem or opportunity?

A recent review of the regulatory system identified a number of issues

78. The 2018 review of the Crown pastoral land regulatory system concluded that:
- the system as a whole focuses too strongly on operational considerations and transactions, without a clear sense of what outcomes it should be achieving
 - the impacts of decisions are not being monitored and information is not being collected on system performance to assess what outcomes are being achieved
 - decisions are not made in a way that considers the outcomes of previous decisions, the cumulative impact of multiple decisions, or effects on other areas of the high country – largely because this is not required in the legislation
79. These issues apply to tenure review as well as the system as a whole. The regulatory review also highlighted a number of issues specific to tenure review. It found that tenure review:
- is not perceived by stakeholders as delivering ecological sustainability, and that it is negatively assisting land use change and intensification
 - is not effective at delivering its intended purpose of facilitating the Crown's exit from its lessor role. Of the 303³¹ Crown pastoral leases in 1998, only 127 have completed tenure review³²
 - is slow, which is expensive on many dimensions for all parties
 - is perceived by many stakeholders as not being transparent and that decisions are not made with the best information
 - does not interact well with the RMA.
80. The review also concluded that, should the Crown want to be a long-term landowner, then it needs to change the current legislation to establish a regulatory system that is focused on what the Crown is seeking to achieve by being a long-term landowner.

It is not clear that tenure review is achieving the regulatory objectives

81. The table below summarises and builds on the conclusions of the regulatory review, considering whether tenure review is achieving the intended objectives.

³¹ 303 leases covering approximately 2.1 million hectares.

³² Five leases have also been purchased outright by the Crown

Table 4: Regulatory objectives of tenure review

Regulatory objective	Has the objective been met?
Promote the management of reviewable land in a way that is ecologically sustainable	Unknown. Some high altitude land has been protected, though there is localised evidence of intensification and resulting biodiversity loss on land that has been freeholded. This has also been a factor in landscape changes in some areas of the high country. A number of stakeholders think tenure review is not delivering on this objective.
Subject to the above, enable reviewable land capable of economic use to be freed from the management constraints	To some extent. Tenure review has been effective in removing the management constraints from some low altitude land capable of economic use. This is evidenced by new uses such as viticulture and residential/lifestyle housing on former Crown pastoral land.
Secure public access to and enjoyment of reviewable land	To some extent. Tenure review has contributed to the formation of high country parks and increased access to public conservation land. It has also increased access to some Crown pastoral land by enabling the negotiation of easements.
Enable the Crown to exit its lessor role over time ³³	No. Only 132 of the 303 Crown pastoral leases in 1998 have completed tenure review 20 years after it was introduced.

82. It is not clear that tenure review is achieving the primary regulatory objective – promoting the management of reviewable land in a way that is ecologically sustainable. Conversely, some evidence suggests the process is having a detrimental effect in relation to specific areas (for example, in the Mackenzie Basin).
83. Tenure review has removed the specific protections conferred by the Crown pastoral land regulatory system from approximately 353,000 hectares of Crown pastoral land over 20 years.
84. Tenure review does appear to be achieving some of the objectives set out in the CPLA set out above, freeing up land for new economic use and securing public access

There are further problems with the tenure review process

85. **Reviews are slow and costly.** An average review takes upwards of four years, with some taking 10 to 20 years. Tenure review is a multi-staged process that involves identifying all inherent values on the land and then consulting on possible outcomes before proposals are put to the leaseholder. There can be high levels of uncertainty for leaseholders, if the tenure review is especially complicated. There are significant costs involved for both the Crown and for leaseholders.
86. **A number of reviews do not get completed.** It is common for reviews to be discontinued after years in the process. This is due to the voluntary nature of the process whereby both the Crown and leaseholder must agree on the outcome. . Since

³³ This objective is not set out within the legislation, however, as the regulatory review notes it was one of the core drivers behind the establishment of tenure review

2010, 68 reviews have been discontinued (either due to the Crown and leaseholder being unable to agree on an outcome or because the lease was transferred).

87. **Tenure review is not targeted.** In spite of having a limited pool of funding to complete reviews, there is not a clear way for the Commissioner to prioritise reviews so that the funding might be put to its best use where it will deliver the best outcomes.

Continuing with tenure review in its current form is likely to exacerbate these issues

88. LINZ has identified a number of operational improvements that could help to address some of the issues identified above (discussed in Section 3.).
89. However, even with these operational improvements, continuing with tenure review in its current form could result in a significant additional amount of Crown pastoral land (conservatively estimated at between 53,000 and 101,000 hectares) becoming freehold. The resulting impact on the inherent values on that land or the cumulative impacts on broader high country ecosystems is uncertain.
90. The status quo will also result in significant costs being incurred by both the Crown and leaseholders, with no clear sense that the regulatory objectives are being achieved.
91. Given the particular importance of the land as set out in paragraphs 9 to 14 and the irreversibility of the decisions made during tenure review, it is important to be confident that any further change to land tenure and ownership under the process will contribute positively to the intended objectives.

2.4 Are there any constraints on the scope for decision making?

Ministerial constraints

92. The Minister for Land Information has ruled out a first principles review of the Crown pastoral land regulatory system, or a review of the rental regime at this time.
93. Officials have been directed to consider targeted improvements to the system to clarify the outcomes the Government expects from the regulatory system, and make changes to support the achievement of those outcomes.
94. As part of this, officials have assessed whether tenure review is delivering on its objectives, and whether it should be retained as an independent statutory process. This RIS provides information to support Cabinet's consideration of whether to end tenure review. The accompanying Cabinet paper includes the Minister for Land Information's preference to end tenure review (option 1 in this RIS).

System constraints

95. The property rights of leaseholders constrain the scope of the options considered.

Broader work on improving the Crown pastoral land regulatory system

96. The Minister of Land Information is seeking Cabinet agreement to consult with stakeholders on a range of regulatory changes to improve the operation of the Crown pastoral land regulatory system, to ensure management enables better environmental and cultural outcomes.

2.5 What do stakeholders think?

97. Stakeholders directly impacted by the changes include:

- leaseholders and pastoral licensees
- iwi (both Ngāi Tahu and Rangitāne o Wairau)
- government agencies.

98. In addition, tenure review has received considerable attention from the public, academics, media, environmental groups and recreation groups.

99. While there has been limited consultation on the specific proposal set out in this RIS due to time constraints, officials and the Minister have engaged with stakeholders throughout the broader policy development process and have developed a good understanding of their perspectives.

- Officials undertook consultation with the Ministry for the Environment, the Office for Māori Crown Relations – Te Arawhiti, the Ministry for Business, Innovation and Employment (Tourism), the Ministry of Culture and Heritage, and the Treasury on proposals relating to Crown pastoral land, including tenure review. Their views were considered as part of this RIS. Te Puni Kōkiri and the Department of Prime Minister and Cabinet (Policy Advisory Group) were informed. DOC has contributed significantly to the policy development work supporting this RIS and supports its conclusions.
- The views of a number of stakeholders³⁴ were sought in relation to the Crown pastoral regulatory system, including on tenure review during LINZ's review of the Crown pastoral land regulatory system. The perspectives of these stakeholders have been considered in the development of this RIS
- As part of the broader policy development process on Crown pastoral land management, we have worked closely with Te Rūnanga o Ngāi Tahu (and to a lesser extent Rangitāne o Wairau) to understand their perspectives. Their views have been reflected in our analysis.
- The Minister has engaged with Federated Farmers and the High Country Advisory Group, discussing a range of issues with the regulatory system and testing the broad policy direction with them.

³⁴ Contributors to the regulatory review included representatives from: Pastoral Lessees and their representative bodies, Department of Conservation (policy and service delivery), Heritage New Zealand, Landcare Research, Ngāi Tahu, QEII Trust, Walking Access Commission, Federated Farmers, Fish & Game New Zealand, Forest & Bird, Environmental Defence Society, Federated Mountain Clubs, Environment Canterbury, Mackenzie District Council, Waitaki District Council and Boffa Miskell & Quotable Value (key LINZ Service providers).

Section 3: Options identification

3.1 What options are available to address the problem?

Operational improvements to the regulatory system

100. LINZ and the Commissioner are already working to address some of the issues identified through the regulatory system review – including improvements to the processing of discretionary consent applications, compliance monitoring for high-risk activities, and taking a more active role in pest and weed control in the high country.
101. LINZ is also making improvements to the system through collaboration among government agencies, and between agencies and leaseholders. In particular, collaboration in the Mackenzie Basin between agencies with regulatory oversight (LINZ, DOC, Environment Canterbury, Mackenzie District Council and Waitaki District Council) is helping ensure that decisions about consents and land use are being made in a joined-up way that recognises ecological and landscape values alongside pastoral stewardship.
102. Work is also under way to enable stakeholders to have a greater say in the management of Crown pastoral land. The High Country Advisory Group was recently established to provide advice and insights to the Commissioner and LINZ to enable greater transparency and communication in the management of Crown land in the high country. The Advisory Group will also look for collaborative projects, identify examples of good practice and recommend activities to support work programmes.
103. While these “within system” changes are helpful, they will not fully address the issues identified in Section 2 above. In particular, as tenure review is a statutory process, with detailed requirements in the legislation, substantive changes in its form or function will require legislative change.
104. The below options would affect 163 leaseholders, comprising of 26 leaseholders currently in the process and 137 leaseholders that are not.

Option 1: End tenure review

105. Tenure review could be ended by the current process as formalised by the CPLA in 1998 being removed from legislation. There would no longer be a formal statutory mechanism for the divestment of the Crown’s lessor interest in Crown pastoral land, although the Crown negotiating directly with leaseholders to acquire land on a willing buyer/willing seller basis would still be an option. This would result in Crown pastoral lease land remaining subject to the management constraints of the pastoral lease.
106. There are two further considerations in relation to this option:
 - **how to manage tenure reviews that are currently underway** – if tenure review is ended, it is proposed that all tenure reviews would end when legislation is enacted, except for those that have reached an accepted substantive proposal (a contractual agreement between the leaseholder and the Crown). In addition to recognising the contractual nature of these agreements, this would give leaseholders that reach this stage certainty around a process in which they have made a considerable investment.
 - **how to provide additional protection for land with significant inherent values** - ending tenure review would remove the primary mechanism for adding Crown pastoral land with inherent values worthy of further protection to New Zealand’s conservation estate. Alternative options for protecting these values on Crown pastoral land include using legal mechanisms, such as covenants, to help protect biodiversity

or using tools such as those in the Land Act 1948 to purchase parts of pastoral leases or whole leases from lessees on a willing buyer/willing seller basis (dependent on the necessary funding). These options will be tested with stakeholders through the proposed discussion document.

How does the option address the problems identified with tenure review?

107. Ending tenure review would mean the Crown retains control over how the remaining Crown pastoral land is used and managed and could help to ensure it is managed in an ecologically-sustainable way (particularly in the context of broader changes aimed at improving the operation of the regulatory system). Through its consenting function, the Crown would have more ability to protect the inherent values of the land, while allowing for pastoral farming and the other currently permissible activities. It will also potentially prevent certain land uses from occurring that would be permissible on private freehold land.
108. Ending tenure review would result in savings for the Crown (specifically LINZ) by no longer administering the tenure review process. It would also mean leaseholders do not expend considerable time and resources in tenure reviews that may not proceed through to completion.
109. In addition, this option acknowledges that it is unlikely the Crown will exit its role as lessor in relation to Crown pastoral land in the foreseeable future – which is why tenure review was introduced in the first place.
110. However, ending tenure review would also:
- remove the primary avenue by which land with inherent values has been added to the public conservation estate
 - limit opportunities to secure protective covenants over land and increase public access to Crown pastoral land and adjoining conservation land
 - make it more difficult for some areas of land (with no or low ecological, social or cultural values) to be put to their best economic use
 - limit the ability of communities adjacent to Crown pastoral land to grow and expand.

Option 2: Repurpose tenure review

111. Tenure review could be repurposed to become a targeted tool by which the Government can achieve its desired outcomes for Crown pastoral land.
112. This option could involve legislative change to:
- clarify the outcomes the Crown is seeking for Crown pastoral land and how the Commissioner should apply them in relation to tenure review decision-making
 - provide greater provision for decisions to be informed by a broader range of views and take account of wider implications
 - require that tenure reviews can only be initiated if it can be demonstrated that they will deliver results consistent with the proposed outcomes
 - require the Crown to identify leases or part-leases of high strategic value and proactively invite the relevant leaseholders to enter tenure review.

How does the option address the problems identified with tenure review?

113. This approach would help to ensure the objectives of the regulatory system are achieved by clarifying the desired outcomes and how the Commissioner should take account of them, and by improving information about the likely impacts of tenure review

through increased stakeholder input.

114. Repurposing tenure review would also create process efficiencies, as tenure reviews would be more targeted, and fewer reviews that are unlikely to progress through to completion would enter the process.
115. This option would retain some of the benefits of the current process as tenure review could still be used to add land with inherent values to the public conservation estate, negotiate protective covenants over land, and enable public access. There would also still be some ability to ensure some areas of land (with no or low ecological, social or cultural values) are be put to their best economic use.
116. However, retaining tenure review would result in Crown pastoral land continuing to be freeholded, opening up a wider range of land uses and potentially increasing land use intensity.
117. In addition, while there would be some more ability for stakeholders to provide input, and there would be clearer guidance about how decisions should be made to achieve the outcomes, tenure review decisions would continue to be made by an independent statutory officer, on the basis of the Commissioner's best judgement.
118. The expanded requirements surrounding decision making (and the evidence needed in order to make decisions) may lead to a more costly process for individual tenure reviews, although fewer tenure reviews are likely to proceed. It should also be noted that tenure review would still be a voluntary process where completion is not guaranteed.

Relevant experience from other countries

119. There are pastoral leases in places such as New South Wales and Western Australia, these leases are not perpetually renewable. This means that the lease terms are renegotiated when the lease expires. There are process allowing freeholding of Crown leases in some situation, however there is no equivalent mechanism to tenure review in these jurisdictions.

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

120. The following criteria have been used to assess the above options.

- **Effective:** Does the option ensure that the system delivers improved outcomes, including managing the land in an ecologically sustainable way, while allowing for economic use?
- **Flexible:** Does the option ensure that the system can respond to changing contexts, lessening the need for further regulatory change over time?
- **Efficient:** Does the option ensure that the Crown and leaseholders' resources are used in the most efficient way that maximises benefits?
- **Certainty:** Does the option provide certainty for leaseholders and others? Are decisions made in a way that is straightforward, understandable and fair?

There are some potential trade-offs between and within these criteria.

For instance, the effectiveness criteria includes both achievement of environmental sustainability and allows for economic use of the land – even though environmental considerations take precedence, some balancing of these objectives would still be required. Similarly, efficiency may need to be balanced against effectiveness.

In addition, the flexibility and certainty criteria are likely to have to be traded off against each other in some circumstances.

3.3 What other options have been ruled out of scope, or not considered, and why?

121. **Change tenure review so that it more effectively divests the Crown of its lessor interest (for example by introducing time limits into the legislation):** This option was discarded as exiting the lessor role is no longer a priority and it does not address the issues identified in Section 2.3.

122. **Make tenure review compulsory:** Mechanisms for compulsory acquisition already exist and exiting the lessor role is no longer a priority. In addition, compulsory acquisition falls outside the scope constraints identified in Section 2.4 because of its impact on leaseholders' property rights.

123. **End tenure review and prevent pastoral land from being made freehold:** This would remove the Crown's ability to negotiate with leaseholders to protect particularly sensitive or valuable parts of leases with no real gain, compared to simply ending tenure review.

124. **Charge leaseholders to enter tenure review:** A significant proportion of the benefits of tenure review flow to the Crown and the public. Charging a leaseholder to enter a voluntary negotiation may have an adverse impact on the outcome of a review.

125. **Require all land freeholded through future tenure reviews to be made subject to covenants that place restrictions on use (for example by limiting stock numbers):** Placing covenants over all freeholded land would drastically reduce the attractiveness of tenure review to leaseholders. It would also be effectively restoring some of the restrictions on use under the pastoral lease which could be achieved by preventing the lease from entering tenure review.

Section 4: Impact Analysis

Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?

	No action	End tenure review	Repurpose tenure review
Effective	0	<p style="text-align: center;">+</p> <p>Managing the land in an ecologically sustainable way</p> <p>Ending tenure review would reduce the amount of land leaving the Crown pastoral estate, with the Crown retaining its lessor role over the remaining Crown pastoral land. This would mean that:</p> <ul style="list-style-type: none"> the Crown could work with leaseholders to manage the land in accordance with its desired outcomes (and within an improved regulatory system, assuming changes are made to the Crown pastoral land regulatory system to address the issues identified by the regulatory review). the ecological risk associated with the removal of the constraints on land use provided for by the leases would be reduced. <p>However it is also likely to vastly reduce the amount of Crown pastoral land becoming public conservation land – even if another mechanism is identified for the Crown to add land to the conservation estate.</p> <p>Allowing for economic use</p> <p>The current pastoral lease tenure allows for pastoral farming and tourism activities. Ending tenure review and preventing leaseholders from acquiring freehold title to some of the land will limit future productive uses. Most notably this will prevent uses such as subdivision, horticulture and viticulture.</p>	<p style="text-align: center;">++</p> <p>Managing the land in an ecologically sustainable way</p> <p>Repurposing tenure review will help ensure that tenure reviews only take place where there is a clear contribution to desired outcomes. Overall, this could result in better outcomes for some Crown pastoral land. Repurposing tenure review would see a reduction in the overall amount of land leaving the Crown pastoral estate to become freehold land, and the associated environmental risks, by setting more stringent criteria for entry to the process.</p> <p>However it is also likely to result in less Crown pastoral land becoming public conservation land.</p> <p>Allowing for economic use</p> <p>Under this option, a leaseholder could still gain freehold title to some of the land and expand the range of possible land uses (in line with the relevant local government plan). However, it is likely that this option would be more restrictive than the status quo.</p>
Flexible	0	<p style="text-align: center;">--</p> <p>Removing tenure review would remove the main avenue by which the future use and ownership of Crown pastoral land is considered, which will tend to 'lock in' this land as Crown pastoral land.</p>	<p style="text-align: center;">0</p> <p>Unlikely to have a significant impact</p>
Efficient	0	<p style="text-align: center;">+</p> <p>Ending tenure review would reduce the associated fiscal costs to the Crown and leaseholders (noting that the Crown's expenditure on tenure review outpaces revenue by approximately \$2.5 million a year in practice, despite the appropriation being fiscally-neutral). Additional costs involved in continuing to administer Crown pastoral land that would have been freeholded would be offset to some degree by the continued collection of rent from these leases.</p> <p>However, the leaseholders currently in the process whose reviews are not completed before tenure review is ended will experience a loss due to their sunk costs, for instance legal costs.</p>	<p style="text-align: center;">-</p> <p>Repurposing tenure review would reduce costs to the Crown and leaseholders if tenure reviews with limited chance of success weren't proceeded with. However, it could also increase the complexity and cost of tenure reviews overall.</p>
Certainty	0	<p style="text-align: center;">++</p> <p>Ending tenure review would significantly increase certainty in the objectives of the regulatory regime as it would be a clear statement to stakeholder of the intended long-term status of Crown pastoral land</p>	<p style="text-align: center;">+</p> <p>Repurposing tenure review would improve certainty for leaseholders if the Crown is clearer about which tenure reviews would have more chance of success.</p>
Overall assessment		<p>In the absence of a complete understanding of the current and future impacts of tenure review, ending the process would be most effective in minimising the ecological risks associated with the freeholding of land as a result of tenure review – while also allowing for some ongoing economic use of the land. It would increase system certainty and efficiency.</p> <p>However, this option would also remove a formal mechanism for the Crown to add land to the conservation estate or negotiate access for recreational or other purposes. Ending tenure review may reduce the flexibility of the system to respond to particular circumstances or changing needs,</p>	<p>Repurposing tenure review would enable the Crown to use it as a mechanism to achieve its objectives, and continue to add land to the conservation estate while retaining the flexibility to respond to particular circumstances or changing needs. However, this option would still enable land to be freeholded, with the associated ecological risks, and has the potential to increase system efficiency and certainty, but not to the same degree as ending tenure review.</p>

Key:

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Proactively released

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

126. This analysis has not resulted in a preferred option, due to significant uncertainty on the impacts of both options (ending or repurposing tenure review):
- Ministerial direction has meant that officials have been unable to consult with stakeholders on these options which has prevented a full assessment of the likely impacts of both options.
 - Information needed to fully understand these impacts (particularly in relation to the outcomes for land that has been through the tenure review process) is not available. It is therefore not clear how limiting opportunities to freehold land will impact on leaseholders' economic opportunities or how limiting opportunities to add land to the conservation estate will impact upon environmental outcomes.
127. A further constraint is that proposed changes to tenure review form part of a broader package of measures to improve the operation of the Crown pastoral land regulatory system. The impacts of this broader package have not been assessed (as the Minister of Land Information is seeking Cabinet approval to consult on this package to help assess the overall impacts). However, it is likely that proposed changes in this package would also have an impact on the outcomes of tenure review.
128. However, our assessment is that either ending tenure review or repurposing it are preferable to the status quo:
- Tenure review is not achieving one of its intended purposes (for the Crown to exit its lessor role) and it is unclear whether tenure review in its current form is contributing to or detracting from the environmental and cultural objectives it was set up to achieve.
 - The objectives themselves need to be reassessed, given the significant changes in context that have taken place since the CPLA was first introduced.
 - Stakeholders have voiced a lack of confidence in the way the tenure process is working, and in the outcomes it is generating.
 - Both options assessed will increase the Government's ability to secure improved outcomes for Crown pastoral land and mitigate to varying degrees the increasing risks generated by the operation of tenure review as land moves out of the Crown pastoral estate, relative to the status quo.

5.2 Summary table of costs and benefits of the proposed options

Affected parties	Comment:	Impact	Evidence certainty
Additional costs of ending tenure review, compared to taking no action			
Regulated parties	Leaseholders will lose the opportunities that tenure review provided by removing the restrictions of the Crown pastoral land. This includes opportunities to diversify land use away from pastoral farming or to intensify their economic activities.	Medium - Land with a comparative advantage for diversified or intensified land use practices is likely to have already gone through tenure review over the past 20 years. Land that is currently Crown pastoral land is expected to have a lower marginal benefit from an alternative land use, and therefore represents a lower cost to leaseholders.	Low
	Leaseholders may experience a one-off decrease in the market value of their pastoral lease as removing tenure review (an avenue for the leaseholder to seek to obtain freehold ownership) makes it less valuable to prospective purchasers.:	Low - This impact would only be realised when a lease was sold. Removing tenure review does not change the fundamental bundle of rights that the leaseholder has, and pastoral leases will still be large properties that can be used for pastoral farming in iconic South Island high country locations. These will be intrinsically attractive to prospective buyers, and the	Low ³⁵

³⁵ There is not sufficient data to evaluate the premium that purchasers of Crown pastoral land have been willing to pay because tenure review exists. Other changes that are difficult to quantify such as the modifications to foreign buyers and the intrinsic amenity value of the Crown pastoral land would have an effect on the value and make it difficult to identify the effect of tenure review.

		removal of tenure review is not expected to cause buyers to significantly change the amount they are willing to pay to purchase a lease	
Regulators	LINZ will have higher ongoing management cost from Crown pastoral land, compared to the status-quo. This is because the leases that are expected to complete tenure review will remain as Crown pastoral land being managed by LINZ.	\$500,000 PV	Medium ³⁶
	LINZ will experience foregone revenue from the tenure review process where (after purchasing the leaseholder's interest in the Crown pastoral land) it sells former Crown pastoral land to the former leaseholder as freehold land	\$46,800,000 to \$102,500,000 (PV)	Medium ³⁷
Wider government	There are missed opportunities to secure conservation outcomes by adding land that tenure review would have identified as land with significant inherent values on it to the conservation estate. Tenure review has been an effective way to protect land by making it public conservation land.	Medium – tenure review is expected to add between 88,000 and 174,000 hectares of land that is identified by the Commissioner as having significant inherent values to the conservation estate. However, it is unclear what the nature of the significant inherent values might be e.g. rare ecosystems, endangered species, valuable reserve land that facilitates better conservation on or access to existing conservation land.	Low

³⁶ This is calculated assuming that 19 leases currently in tenure review will be completed over the next 10 years at a constant rate. It assumes no other leases exit through another avenue, and average administration/operational costs per lease does not change (holding all other variables such as regulatory expectations, staffing costs constant).

³⁷ This is calculated assuming that only leases currently in tenure review and in consultation for PP or further advanced will be completed (because no designation plan available for the tenure review at information gathering stage), with land designated as freehold or conservation as per the latest designation plans (which are not agreed with the leaseholder or the Crown). This is based on the high scenario of 23 reviews being completed and a low scenario of 10 reviews being completed. It excludes special leases and part 3 reviews that are currently underway because those leases are not perpetually renewable.

Other parties	Regional communities experience reduced opportunities for leaseholders to diversify and intensify economic activities - this may have flow on effects for regional communities.	Low – Land with a comparative advantage for diversified or intensified land use practices is likely to have already gone through tenure review over the past 20 years. Land that is currently Crown pastoral land is expected to have a lower marginal benefit from an alternative land use, and therefore represents a lower cost to regional communities.	Low
	Iwi miss opportunities to identify and protect sites of importance to iwi. Iwi do not have a mechanism to protect taonga on Crown pastoral land except through tenure review.	Medium – There are cultural sites on pastoral leases in tenure review that have been identified as important to iwi.	Medium
	Public access advocates and recreation groups miss opportunities to secure access over Crown pastoral land through tenure review	Medium – The 2018 South Island High Country Access Report prepared by Walking Access – Ara Hīkoi Aotearoa notes that tenure review is seen as having a key role to create new access for hunters and anglers. A number of current reviews contain proposals (yet to be agreed upon) to secure access.	Medium
Total monetised cost		\$47,300,000 to 103,000,000 (PV)	Moderate
Non-monetised costs		<i>Medium</i>	Low

Expected benefits of ending tenure review, compared to taking no action			
Regulators	The Crown will receive more rental revenue than the status quo because no leases will leave the estate through tenure review (in the long term).	\$760,000 to \$1,750,000 (PV)	Medium ³⁸
	LINZ experiences ongoing operational savings from not having to administer the tenure review process.	\$6,562,000 (PV)	Medium ³⁹
	LINZ/Crown experiences savings from forgoing expenditure to purchase the leaseholder's interest in Crown pastoral land.	\$53,800,000 to \$129,000,000 (PV)	Medium ⁴⁰
	LINZ experiences savings from not having to implemented tenure reviews, and the costs associated with that: predominantly fencing and surveying costs.	\$7,031,000 (PV)	Medium ⁴¹
Other parties	Benefits to the public through maintaining indigenous biodiversity and landscape values through preventing the intensification that is enabled by tenure review (and leads to exotic cover crowding out indigenous vegetation).	Medium	Low
Total monetised benefit		\$68,153,000 to 144,343,000 (PV)	Moderate

³⁸ The low level of rental benefit assumes that 19 leases complete tenure review in the next 10 years, starting with those that have a PP advertised on and then proceeding to those that are still at consultation for PP. For simplicity in calculating, only one is completed in the first year and 2 every year afterwards. Leases are completed from low rental income to high.

The high level of rental benefit assumes that 19 leases complete tenure review in the next 10 years, starting with those that have a PP advertised on and then proceeding to those that are still at consultation for PP. For simplicity in calculating, 2 are completed every year except the last where only one is completed. Leases are completed from high rental income to low.

³⁹ This assumes admin costs to LINZ remain at current levels of approximately \$1.4 million annually until tenure review is ended.

⁴⁰ This is calculated assuming that only leases currently in tenure review and in consultation for PP or further advanced will be completed (because no designation plan available for the tenure review at information gathering stage), with land designated as freehold or conservation as per the latest designation plans (which are not agreed with the leaseholder or the Crown). This is based on the high scenario of 23 reviews being completed and a low scenario of 10 reviews being completed. It excludes special leases and part 3 reviews that are currently underway because those leases are not perpetually renewable.

⁴¹ This assumes implementation capital costs to LINZ remain at current levels of approximately \$1.6 million annually until tenure review is ended.

Non-monetised benefits		<i>Medium</i>	Low
Additional costs of repurposing review, compared to taking no action			
Regulated parties	Some leaseholders will lose the opportunities that tenure review provided by removing the restrictions of the Crown pastoral land. This includes opportunities to diversify land use away from pastoral farming or to intensify their economic activities.	Low - A repurposed tenure review will still provide the opportunity to acquire freehold title to some of the land though the new regime's focus on things such as cross boundary effects (such as habitat fragmentation and securing ecological corridors) may make it harder to acquire freehold than under the status quo.	Low
Regulators	LINZ and DOC may experience increased cost to administer the tenure review process, due to new regulatory requirements under a repurposed tenure review.	Low – the current process involves a significant period of information gathering. Any additional requirements can be	Low
Other parties	Regional communities experience reduced opportunities for leaseholders to diversify and intensify economic activities this may have flow on effects for regional communities.	Low – Land with a comparative advantage for diversified or intensified land use practices is likely to have already gone through tenure review over the past 20 years. Land that is currently Crown pastoral land is expected to have a lower marginal benefit from an alternative land use, and therefore represents a lower cost to regional communities.	Low
Total Monetised Cost		-	
Non-monetised costs		<i>Low</i>	Low

Expected benefits of repurposing tenure review, compared to taking no action			
Other parties	Benefits to the public through maintaining indigenous biodiversity and landscape values through preventing the intensification that is enabled by tenure review (and leads to exotic cover crowding out indigenous vegetation).	Medium - It is expected that this approach will enhance the current outcomes delivered by tenure review by ensuring that natural values of Crown pastoral land are protected in line with a high-level strategy that accounts for government priorities. This will still provide for this land to be added to the conservation estate, and public access to be secured across this land for recreation – though in a more joined up way that considers cross boundary effects (such as habitat fragmentation and securing ecological corridors).	Low
Total Monetised Benefit		-	Moderate
Non-monetised benefits		<i>Medium</i>	Low

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5.3 What other impacts is this approach likely to have?

129. Ending tenure review will mitigate ecological risks facing Crown pastoral land. Environmental degradation is costly to remediate and in some cases is irreversible. Conversely, there will be less opportunity for areas of Crown pastoral land currently experiencing ecological pressures to be protected by becoming public conservation land.

5.4 Are the proposed options compatible with the Government’s ‘Expectations for the design of regulatory systems’?

130. Yes. Both options are consistent with the expectation that “we should seek to remove or redesign an existing regulatory system or system component if it is no longer delivering obvious net benefits”.

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Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

How could the options be given effect?

131. Tenure review is a statutory process set out in Parts 2 and 3 of the CPLA. Decisions are made by the Commissioner and put to the leaseholder who may accept or decline. The Commissioner is provided with administrative and operational support by LINZ officials, and must consult with the DGC at various points in the process.

Option 1: Ending tenure review

132. Tenure review can only be ended by amending/removing the relevant sections of the CPLA (and the Land Act where relevant).

133. Once the legislation is changed, the Commissioner, supported by LINZ, will not be able to start any new tenure reviews, or to put new proposals as part of existing tenure reviews, subject to the necessary transitional arrangements (see below).

134. Ending tenure review means current Crown pastoral land will remain as it is, to be managed by leaseholders within the management constraints of the pastoral regime. The leaseholder will not be able to enter tenure review, but can sell their pastoral lease, and can surrender part or all of their lease to the Crown.

Option 2: Repurposing tenure review

135. Option 2 will also require legislative changes because the decision making framework for Crown pastoral land (such as who is the decision maker and what they should consider when making decisions) is set within legislation.

136. Should the Government wish to repurpose tenure review, there are a number of different orientations that this could take. Further policy decisions would be required.

Timing of the legislative change (transitional arrangements) and parties involved in implementation

137. Under the current legislation, a tenure review substantive proposal (under section 46 CPLA) represents a binding agreement on the Crown and an obligation on the Commissioner to complete the review. Once the 'Substantive Proposal' is accepted by the leaseholder, it can take 12-24 months to implement the review, including surveying and fencing before the land is freehold and there is a financial transaction. Only then is a tenure review complete.

138. Whether tenure review is ended or repurposed the proposed transitional arrangements are that:

- at the time of enactment, all reviews with an accepted substantive proposal will be progressed through to completion
- all reviews that do not have an accepted substantive proposal will either cease (option 1 – ending tenure review), or be subject to the new system (option 2 – repurposing tenure review).

139. For option 2, this may mean that a number of reviews have to be reassessed according to the new regime, imposing a cost on both leaseholders and the Crown.

6.2 What are the implementation risks?

140. Due to time constraints in preparing this analysis, consultation with stakeholders has been limited. However, a number of implementation risks have been identified and are listed below.

Risk	Who is affected?	How will it be mitigated?
<p><i>Relationship risk</i> between the Crown and leaseholders may be negatively impacted by the changes, noting that the Crown and leaseholders have a landlord-tenant relationship. (assuming that leaseholders have an expectation to enter tenure review at some point). However, this risk is offset by the reducing frequency of reviews and that the opportunity has been available for 20 years (noting that ownership can change).</p> <p>Leaseholders who have already ended tenure review but have not reached substantive proposal stage by the time of any change will have their tenure reviews ended – this is likely to create some unhappiness especially as some leaseholders will have invested significant time and resources in the process (although without a guaranteed outcome).</p>	Leaseholders and the Crown	LINZ has prepared a stakeholder engagement plan to ensure that leaseholders – especially those in tenure review – are provided with adequate information to understand the changes and what it means for their individual situation.
<p><i>Risk to economic resilience</i> due to removing opportunities for future changes in land use (where external factors affect the viability of pastoral farming then leaseholders will have less opportunities to diversify).</p>	Leaseholders	With the approval of the Commissioner tourism operations may be undertaken on the land (noting that not all leaseholders may be located in an area that enables them to take advantage of this).
<p><i>Ecological risk</i> may increase where land could have been protected as public conservation land through tenure review</p>	The public, Crown and leaseholders	Evidence, such as biosecurity spend, shows that the active management by leaseholders is crucial in maintain the ecological values of the land. Operational improvements to the regulatory system and partnerships with leaseholders to steward this land will be

		critical in mitigating ecological risks. There are also a number of alternative tools ⁴² to tenure review that the Crown can apply to Crown pastoral land ⁴³ to secure environmental protections.
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⁴² For example covenants and whole or partial lease purchases.

⁴³ With the agreement of the leaseholder.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

141. Both options heighten the importance of understanding outcomes on Crown pastoral land. LINZ's 2018 regulatory review of the system noted that monitoring and evaluation needed to be improved.
142. LINZ does monitor and inspect all pastoral lease properties on a regular basis, although in some cases inspections are as much as five years apart. This monitoring focuses on whether the conditions of approvals are being complied with and whether the leaseholder is meeting their obligations under the lease. LINZ does not undertake ecosystem or other environmental monitoring and so lacks a comprehensive view of outcomes across the Crown pastoral land estate.
143. LINZ is undertaking operational improvements to deliver better data capture. The associated discussion document contains regulatory proposals to improve monitoring and information on compliance and system performance.
144. LINZ will need to broaden its focus from collecting data relating to specific consent conditions to collecting data on estate-wide performance to ensure that the impacts of ending tenure review are effectively monitored.
145. This could include identifying and monitoring environmental indicators such as:
 - indicator species
 - erosion through aerial imagery such as LiDAR
 - at risk habitats and signs of habitat fragmentation
 - the spread of exotic species (especially grasses) and their impacts on indigenous biodiversity.
146. This information will help the Government to understand whether Crown pastoral leases are delivering ecologically sustainable management.
147. LINZ is also seeking to increase the frequency of its inspections.
148. LINZ will engage with leaseholders to understand the impacts that ending tenure review has on their farming operations. A variety of other datasets are also available to identify trends in the economic resilience of leaseholders (such as Beef + Lamb survey data on Class 1 South Island high country farms).

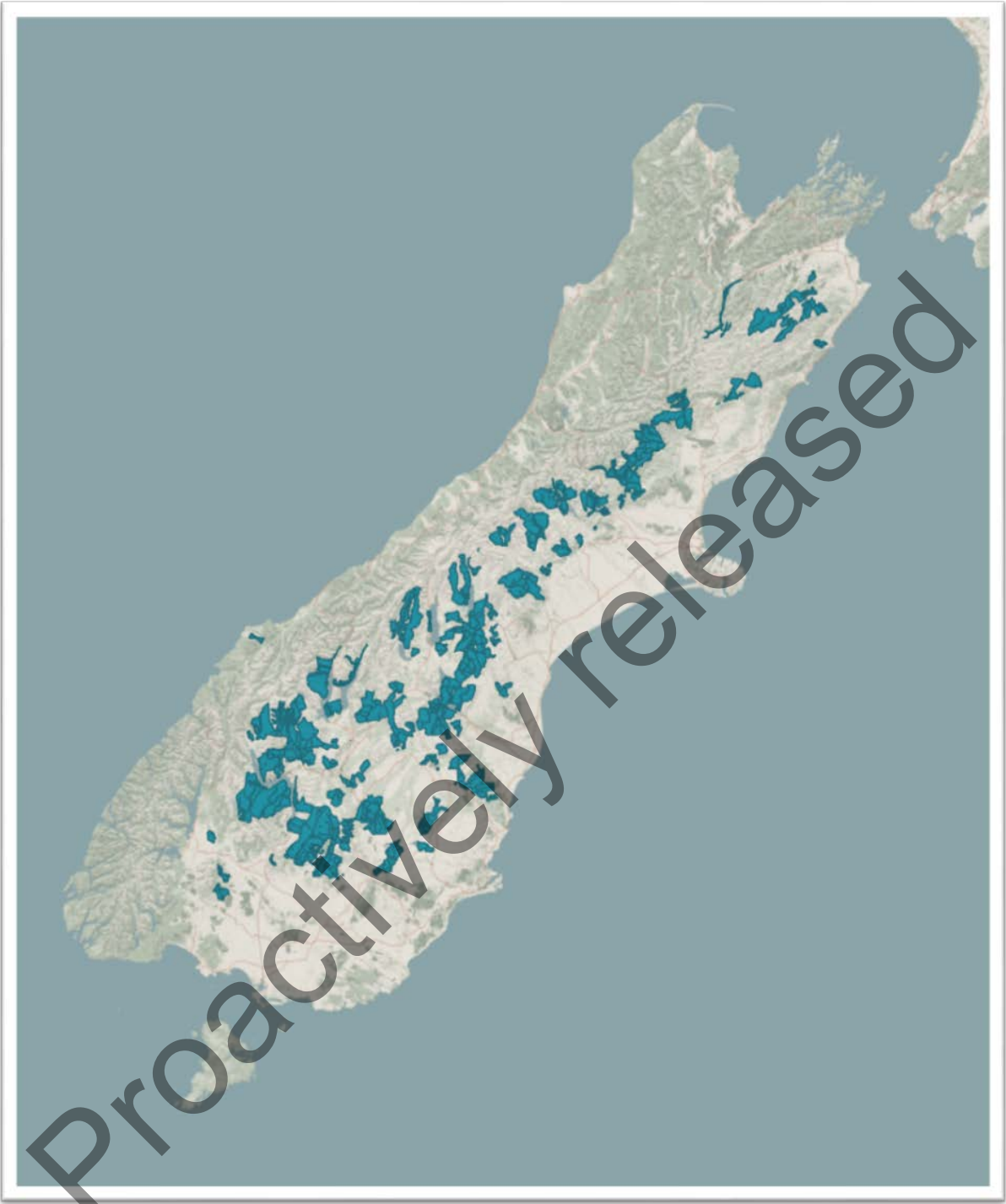
7.2 When and how will the new arrangements be reviewed?

149. In undertaking its regulatory stewardship responsibilities, LINZ aims to ensure that its regulatory systems are functioning effectively. The first regulatory review of the Crown pastoral land system was completed in 2018 and LINZ will carry out regular reviews of this system.
150. Reviews are undertaken by the Director of Regulatory Systems at LINZ. During this process, stakeholders are consulted and will be given the opportunity to raise concerns.
151. Ongoing monitoring of the indicators discussed above will go some way in determining whether Crown pastoral land is delivering the desired outcomes. If areas are not, other tools for securing enhanced protections over this land or for changing its tenure could be utilised. Critical to this will be a framework for determining the best use for that land – which in some cases may not be consistent with Crown

pastoral lease tenure.

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Appendix 1: Map of Crown Pastoral Land



Appendix 2: Overview of the tenure review process

Part 2 of the Crown Pastoral Land Act 1998 sets out requirements for tenure review.⁴⁴ The Commissioner and LINZ have operationalised the process as set out below.

<p>Stage 1: Information gathering</p>	<p>At the outset of the tenure review it is important for LINZ to obtain all relevant information associated with the land being reviewed.</p>
<p>Stage 2: Preliminary proposal</p>	<p>Information and views are sought from the leaseholder, DOC and Fish & Game. DOC evaluates the leasehold land and writes a report outlining conservation values (“significant inherent values”) on the land.</p> <p>All feedback and other information is used to produce a preliminary proposal for the land. This proposal will generally divide the land into freehold and conservation sections and show public access routes. These proposed sections are called ‘designations’.</p>
<p>Stage 3: Public submissions</p>	<p>Once the preliminary proposal has been put to the leaseholder by the Commissioner it is advertised for public submissions in local newspapers and on LINZ’s website. The local iwi authority is also consulted at this time. The Commissioner considers all of the public and iwi submissions and how they might affect the preliminary proposal for the reviewable land. The Commissioner will advise the Minister of Conservation on the extent to which these submissions are accepted. Copies of all public submissions and the Commissioner’s analysis are posted on our website. We then consult with DOC to develop a substantive proposal incorporating any changes resulting from submissions. Any changes to the preliminary proposal are worked through with the leaseholder.</p>
<p>Stage 4: Substantive proposal</p>	<p>Agreement is then sought from the Minister of Conservation to any special conditions or concessions attached to the land granted under the Conservation Act 1987 or Reserves Act 1977. Approval is sought from the Minister for Land Information to fund the substantive proposal and then approval from the Commissioner to put the substantive proposal to the leaseholder. If LINZ gets these approvals, the substantive proposal will be sent to the leaseholder. The leaseholder then decides whether to accept the substantive proposal.</p>
<p>Stage 5: Implementation</p>	<p>Once the leaseholder has accepted the substantive proposal LINZ then registers a notice on every leasehold or other title to which the substantive proposal relates in Landonline – LINZ’s digital title and survey plan system. That notice will show the area of freehold land to be owned by the leaseholder and the area that will be restored to the Crown. Once any required survey work has been completed, legal requirements met and payments have been made, a freehold title is issued to the leaseholder.</p>

⁴⁴ Part 3 (sections 83-94) extends the tenure review system to land held under an unrenovable occupation licence and to unused Crown land.