

Crown Pastoral Land Reform Bill: proposed access provision for SOP

Current Bill Wording

- The *Crown Pastoral Land Reform Bill* (the Bill) currently amends section 89 of the *Land Act 1948* to provide that where the Commissioner of Crown Lands (the Commissioner) is considering an application to transfer a pastoral lease:

If the land under the lease or licence is pastoral land, the Commissioner must not consent to the transfer, sublease, or other disposal unless satisfied that the applicant has made reasonable endeavours to enhance public access to the land.

- After discussions with you and engaging with the High Country Accord, LINZ has developed a proposal to refine this provision in a way that enhances public access while taking account of lessees' property rights.
- The proposed focus of the amended provision would be on situations where **access has been unreasonably denied by a lessee in the past** to people wanting to cross a pastoral lease to public land.

Proposal

Include, in a *Supplementary Order Paper* (SOP) for the Bill, a provision to amend section 89 of the *Land Act 1948* as follows (key new elements highlighted).

New subsection (2A):

- Without limiting anything in subsection (2), when the Commissioner is considering whether to consent to the transfer or sublease of pastoral land, the Commissioner must consider whether requests for public access over this land have been unreasonably refused in the past.*
- If the Commissioner determines that access has been unreasonably refused, they may make their consent to the transfer or sublease subject to the condition that the lessee or licensee, and the potential transferee or sublessee, must enter into a negotiation process with the Commissioner, with the intention that access requests will not be unreasonably refused after the transfer or subleasing.*
- The matters necessary to give full effect to the steps set out in subsections (2A)(1) and (2A)(2) may be prescribed in a standard or directive set by the Commissioner under S100O(1) of the Crown Pastoral Land Act 1998.*

Proposed standard or directive

Powers under the *Crown Pastoral Land Act* will enable the standard/directive to be made specifying how the access provision will apply. (The power for the Commissioner to set standards or directives comes into effect six months after Royal Assent for the Bill.)

LINZ envisages the standard or directive will set out the following process for how the provision will apply:

1. Current lessee (or licensee) applies to the Commissioner for consent to transfer or sublease their interest in Crown pastoral land.
2. The Commissioner consults with the Walking Access Commission (WAC) and the Department of Conservation (DOC) – and any other entities and/or individuals the Commissioner considers appropriate (e.g. the local Fish and Game Council or local hapū) – to:
 - identify if there have been any complaints about access across the lease to public land (eg DOC and/or council owned land) being unreasonably denied over the history of the current lessee's holding of the lease, and
 - if so, obtain any views from WAC and DOC about how to address this situation in the future.
3. The Commissioner may also contact the complainant and/or the current lessee if further information is needed, to understand both sides of the story, and to confirm whether the complainant still has concerns about access.
4. If the Commissioner considers there has been an unreasonable denial of access, and nothing has since been done to remedy this situation, they will engage with the current lessee and transferee/sublessee to seek their support for a resolution.
5. The Commissioner can still approve the transfer/sublease but with a condition (under s89 of the Land Act) that either:
 - gives effect to any agreed outcome or commitment entered into by the current and new lessee/sublessee, or
 - if there is no resolution, requires the Commissioner and the current and new lessee/sublessee to engage in a negotiation process to resolve this.
6. This process could include:
 - further negotiations to determine how to address any similar requests for access in the future
 - the parties may agree to go to mediation if it becomes apparent that they are unable to reach a resolution. Note: mediation would be non-binding on the parties, but a final attempt to seek an agreed outcome.

Protocol

Further detail could, if necessary, be specified in a protocol agreed with leaseholders, which would be a non-statutory instrument.

Such a protocol could potentially set out issues for the Commissioner to take into account – e.g. cases where it may be *reasonable* for a leaseholder to refuse or limit access, some of which the High Country Accord has raised in previous discussions with LINZ (for example with respect to where access requests potentially conflict with farm management activities such as lambing or mustering; requests to hunt and/or bring animals or motorised vehicles onto the land; and requests involving a large number of people such as a school camp, concert or sporting event).

Feedback on proposed approach to date

Feedback	LINZ comment
<p>The High Country Accord (the HCA): considers that access issues should be resolved outside of legislation, through informal channels.</p> <p>However, preliminary indications are that the HCA may accept LINZ's proposed approach, on the condition that the provision would:</p> <ul style="list-style-type: none"> only apply to <i>walking</i> access across lease land for <i>members of the public</i> (i.e. refusals of access for rec groups would not trigger the provision) exclude requests to hunt, camp or undertake 4wd expeditions on lease land. 	<p>LINZ has reservations about limiting the provision to walking access, as this would exclude other forms of access that may be appropriate in certain circumstances, such as access for mountain bikes.</p> <p>LINZ also considers it appropriate that the provision be able to be triggered by groups (eg rec groups) as well as members of the public, given these groups comprise members of the public in any case.</p> <p>LINZ proposes to discuss further with the HCA its view that certain activities – such as hunting, camping and 4wd access – be excluded from the coverage of the access provision. LINZ considers it may be possible to cover these concerns in a non-statutory <i>protocol</i>, as outlined on the previous page – as it is questionable whether granting access for these activities would be considered reasonable in the first place in many cases, given that they would likely be disruptive to pastoral farming.</p>
<p>DOC and WAC: the provision should cover access “unreasonably <u>withheld</u>” rather than “unreasonably <u>refused</u>”, as this would cover a broader range of circumstances, rather than just explicit refusals of access.</p>	<p>[s 9(2)(h)]</p> <p>[s 9(2)(h)]</p>
<p>DOC: the provision should be extended to cover access for DOC staff and iwi, where there have been ‘unreasonable’ refusals of access for those parties in the past.</p>	<p>This would broaden the provision out beyond the current scope and intent:</p> <ul style="list-style-type: none"> at present access to Crown lease pastoral land for govt officials is strictly limited. Only designated LINZ officials can access lease land, and that's only for the purpose of carrying out the inspections necessary to administer the land – that's what is provided for in the Land Act and is consistent with the law of leasing, as landlords can't just enter leased property broadening the access provision to cover iwi access would raise a range of wider issues that in LINZ's view would be inappropriate to work through for the SOP at this stage. LINZ is currently engaging with Ngāi Tahu on implementation of the Bill, and expects that issues and opportunities for access will be identified as part of that process.
<p>DOC: coverage should include access <i>onto</i> lease land rather than just <i>through</i> it to other land.</p>	<p>There may be a legitimate case for this – e.g. people may wish to enter the property to shoot wild pigs or tahr, or fish a stream. They may also wish to access inherent values which are deemed important because of their rarity.</p>

Appendix: additional tools

Overseas Investment Consent

- Where transfer to an overseas person is proposed, Overseas Investment Office (OIO) consent will be required, as a pastoral lease will be sensitive land under the *Overseas Investment Act*. The OIO will consider walking access arrangements (including enhancing those arrangements) under its current processes, includes engaging with WAC. The Minister would be involved in the decision-making on the overseas consent (s17(2)(e) OIA).
- The above process will occur *prior* to the Commissioner's consideration of a lease transfer, so any conditions from the OIO consent will be factored into the decisions the Commissioner makes on a transfer.

Enhanced Information

- LINZ and the HCA could develop further information on access over pastoral leases, including:
 - best practice advice for lessees on how to provide for and support access over leases, including what constitutes reasonable access
 - information on lessee's and LINZ websites for the public on how to obtain consent to access a particular lease and situations where access may be declined
 - information on lessee's and LINZ websites for the public on the marginal strips that criss-cross each lease and how they serve to provide public access to waterways and lakes.
- The Bill also provides for the Commissioner to support lessees to engage with WAC to support its efforts to enhance public access. This could include better public information or supporting the Commission to engage with lessees directly.

Easements

- The Commissioner may grant a formal easement to a third party (such as WAC) to enable access over a lease to public land. This could be done where agreement cannot be reached with a lessee, however, a lessee is entitled to compensation for any impact on the value of their lease.