

**In Confidence**

Office of the Minister for Land Information

Cabinet Environment Committee

**Regulations to support implementation of the Crown Pastoral Land Reform Act 2022**

**Proposal**

- 1 This paper seeks Cabinet’s authorisation for the Minister for Land Information to issue instructions to the Parliamentary Counsel Office (PCO) to draft regulations to support the implementation of the Crown Pastoral Land Reform Act 2022.

**Relation to government priorities**

- 2 The government has identified the need to improve freshwater quality and protect biodiversity to contribute to a more sustainable future for New Zealand. Through the changes to the Crown pastoral land regulatory system, the Crown Pastoral Land Reform Act 2022 and the subsequent proposed regulations contribute to improvements in freshwater and biodiversity and the priority of laying the foundations for a better future.
- 3 The Crown Pastoral Land Reform Act 2022 ended tenure review and made changes to the Crown pastoral land regulatory system to deliver improved outcomes for pastoral land.

**Executive Summary**

- 4 Section 100R of the Crown Pastoral Land Act 1998 (the Act), which came into effect on 17 November 2022, provides for the making of regulations by Order in Council for specified purposes relating to the administration of Crown pastoral land.
- 5 I propose regulations are made under the Act consisting of:
  - 5.1 the minimum information to be provided when applying for consent to carry out a discretionary pastoral activity, stock limitation exemption and when applying for a commercial recreational permit;
  - 5.2 the content of farm plans under the Act;
  - 5.3 the information that must be contained in or accompany an enforceable undertaking under the Act;
  - 5.4 the penalty for infringement offences under the Act; and
  - 5.5 the form of infringement notices and infringement offence reminder notices.
- 6 In June 2022, Cabinet approved the release of a discussion document on proposals for the development of regulations [CAB-22-MIN-0246]. In November 2022, I approved consultation on a further proposal relating to the form and content of a farm plan regulation.

- 7 Consultation involved releasing the discussion documents online, holding face-to-face meetings, and other targeted statutory consultation. In total, thirty written submissions were received through the consultation processes. Submissions were largely supportive of proposals. Some submitters made suggestions outside the scope of the proposals.

## Background

- 8 The Crown Pastoral Land Reform Act 2022 received Royal assent on 17 May 2022. It amended the Act and the Land Act 1948. Those amendments relating to the ending of tenure review came into force on the day after Royal assent. All other amendments came into effect on 17 November 2022.
- 9 Section 100R of the Act allows for regulations to be made by the Governor-General by Order in Council on my recommendation. The intention of the regulations is that they provide detailed requirements that support the effective and efficient implementation of the Act.
- 10 In June 2022, Cabinet agreed to release a discussion document on the proposed regulations [CAB-22-MIN-0246]. The discussion document set out proposed content for regulations to support implementation of the Crown Pastoral Land Reform Act 2022, including information to be included with applications, infringement fee amounts and information to be included in enforceable undertaking agreements.
- 11 In consultation on the proposals, submitters raised that it would be helpful for the content of farm plans provided under the Act to be set out in regulations. I considered it was appropriate to consult further on a proposed regulation for the form and content of farm plans.

## Proposals for regulations

- 12 I seek Cabinet's agreement to make the following regulations under section 100R of the Act to support the effective implementation of the Act:
- 12.1 prescribe the minimum information required to be provided with an application for:
- 12.1.1 consent to undertake a discretionary pastoral activity under section 11 of the Act (which is an activity by a pastoral leaseholder that requires the consent of the Commissioner, such as clearing indigenous vegetation or constructing a building), including the applicant's personal details, a description of the proposed activity, where it will occur including a map indicating the location of the proposed activity, and any potential inherent values affected;
- 12.1.2 the grant of a commercial recreation permit under section 12 of the Act and section 66A of the Land Act 1948, including the applicant's personal details, a description of the proposed activity, where it will occur including a map indicating the location of the proposed activity, evidence of the relevant lease or licence holder's consent,

**I N C O N F I D E N C E**

- any potential inherent values affected, and proposed financial projections to support calculation of a permit fee;
- 12.1.3 a stock limitation exemption under section 15(3) of the Act, including the applicant's personal details, the proposed stock numbers and classes of stock, where it will occur, and any potential inherent values affected; and
- 12.1.4 a stock limitation exemption under subsection 15(4) of the Act, including the applicant's personal details, the proposed stock numbers and classes of stock, information showing the applicant's capability to manage those stock, and information showing the land is capable of sustaining the proposed stock numbers and classes in its current state;
- 12.2 prescribe that farm plans that may be considered under section 10(4)(d) of the Act, must include the date of the farm plan; and may include:
- 12.2.1 the proposed programme of development or activities for the duration of the farm plan for which consent (under the Act) is likely to be required and how development or activities are proposed to be undertaken;
- 12.2.2 a map of the lease including areas of land use showing how the farm is split into different land uses (Maps are intended to gain a broader understanding of current and future land use and boundaries, and to align with the proposals for mapping within the proposed freshwater farm plan regulations being developed by the Ministry for the Environment and Ministry for Primary Industries);
- 12.2.3 a monitoring plan indicating progress against the farm plan to be undertaken by the lease or licence holder;
- 12.2.4 a description of how the lease or licence holder intends to meet their obligations under other legislation; and
- 12.2.5 (where relevant) a description of areas of the lease to be protected or retired from pastoral farming.
- 12.3 prescribe that applicants may provide a farm plan used for another purpose (in full or part), if the farm plan contains the prescribed content;
- 12.4 prescribe the information that must be contained in or accompany an enforceable undertaking under section 100B of the Act including the applicant's personal details, details of the breach that the undertaking applies to, and the proposed legal agreement setting out key information on what is proposed to be undertaken by the applicant;
- 12.5 prescribing the infringement penalty for all infringement offences against section 100D of the Act at \$600. Section 100R provides that the infringement fee can be set at no more than \$1,000. The \$600 penalty was determined in accordance with the Ministry of Justice guidelines and takes into

consideration, proportionality, similarity across regimes and accountability;  
and

- 12.6 prescribing the form of infringement notices and infringement offence reminder notices to contain the particulars in section 100I of the Act, which sets out what an infringement notice must contain.

## Consultation

### *Consultation process*

- 13 The proposed regulations are informed by two phases of consultation. Consultation on the first phase of the proposed regulations was undertaken for a period of seven weeks from 4 July 2022 to 19 August 2022 and on the second phase, six weeks from 5 December to 23 January 2023. As required under section 100R(4)(b) of the Act, the proposed regulations were published on the LINZ website and public submissions were sought. In phase one of the consultation, 19 submissions were received.
- 14 LINZ held separate leaseholder and public consultation meetings at four locations – Bannockburn, Omarama, Methven and Seddon – and held another online. Leaseholders were informed by email and the public sessions were advertised in local newspapers and through social media advertising. The leaseholder sessions were mostly well attended but the public sessions were not.
- 15 Consistent with section 100R(4)(a) of the Act, targeted consultation was also undertaken with:
- 15.1 Te Rūnanga o Ngāi Tahu (Ngāi Tahu);
- 15.2 The High Country Accord Trust, an organisation whose membership includes the majority of lease and licence holders. LINZ was also invited to present on the proposed regulations and the Crown Pastoral Land Reform Act 2022's changes more broadly during the High Country Accord's Conference; and
- 15.3 The Department of Conservation on behalf of the Director General of Conservation.
- 16 In consultation on these proposals, submitters raised that it would be helpful for the content of farm plans provided under the Act to be set out in regulations. Farm plans are not compulsory under the Act but may assist the discretionary consent process by providing context and information on how an activity fits into the lessee's overall farming operation. I considered it was appropriate to consult further on a proposed regulation for the form and content of farm plans.
- 17 The subsequent consultation on the form and content of farm plans was undertaken in December 2022 and January 2023. Consultation was undertaken as required under section 100R(4)(a) and section 100R(4)(b) of the Act outlined above. Key stakeholders were also informed by email about the proposals and provided with an opportunity to engage with LINZ. In this subsequent consultation on farm plans, 11 submissions were received.

- 18 In both phases of consultation, LINZ provided remaining Iwi listed in section 5(2) of the Act with the consultation documents and offered to meet Iwi representatives, however, no submissions were made. I am satisfied that consultation requirements have been met.

*Submissions summary*

- 19 In the initial round of consultation, the following submissions were received from statutory consultees:
- 19.1 Ngāi Tahu provided a submission that noted any regulations sit within a wider regulatory system that must function as one. The Ngāi Tahu submission primarily focused on how decision makers will recognise and respect the Crown's responsibilities to give effect to the principles of the Treaty of Waitangi as required by new section 5 of the Act.
  - 19.2 The High Country Accord Trust had minimal feedback on the proposed regulations. Its submission focused on the proposal for applicants to provide information on 'reasonable alternatives' to be assessed under section 10(4)(a) (iii) of the Act and whether this is something an applicant could reasonably do. It also raised a question around the security of commercial information included in an application and held by LINZ.
  - 19.3 Department of Conservation officials, acting on behalf of the Director-General of Conservation, made a submission with some technical suggestions. Their submission focused on the need for guidelines or frameworks to be provided and used when making assessments introduced by the Act. Of particular interest were assessments of other government policy and cross-boundary and cumulative effects that the Commissioner may consider under section 10(4) of the Act.
- 20 In addition to the three submissions above, the public submission process generated a further 16 submissions. Of these, seven related to the proposed regulations and came from a mix of organisations and individuals. Many asked questions on implementation or suggested minor technical suggestions. None opposed the making of the proposed regulations.
- 21 In the subsequent consultation relating to the form and content of farm plans, the following submissions were received from statutory consultees:
- 21.1 The High Country Accord Trust supports the high-level and adaptable approach taken for this proposal. It recognises that information on farm plans will enhance LINZ's understanding of farm operations and this proposal may help streamline the overall consenting process, reduce costs, and avoid duplication. However, it has expressed concerns about privacy and commercially sensitive information being in the public domain.
  - 21.2 Ngāi Tahu is generally supportive of new regulations setting out the information requirement for farm plans. They have raised questions about how these farm plans regulations will integrate with the Ministry for the Environment and Ministry for Primary Industries regulation of fresh water

farm plans, and how LINZ will implement and operationalise the regulations. LINZ continues to engage with Ngāi Tahu on the implementation of the regulations.

21.3 The Department of Conservation did not make a submission.

- 22 In addition to the submission above, the public submissions process generated a further ten submissions. These submitters were a mix of organisations and individuals. Six submitters were in favour of the proposed approach to the form and content of farm plans, and a further three were opposed and one was neutral. The three submitters who were opposed were primarily concerned about private and commercially sensitive information in farm plans being made publicly available. Four other submitters, that did not oppose the proposed regulations also expressed similar information concerns.
- 23 I intend that the farm plan regulation aligns with the proposed freshwater farm plan regulations being developed by the Ministry for the Environment and Ministry for Primary Industries, which sit within the wider integrated farm plan workstream. Integrated farm planning is intended to make compliance in the primary sector more efficient by reducing duplication. The proposed farm plan regulation under the Act would specify requirements at a high level, so that farm plans produced for other regulated farm planning mechanisms can be adapted to fulfil the requirements of the Crown pastoral land system. This will enable interoperability across regulatory systems.

*Response to submissions*

- 24 Submitters raised concerns regarding sensitive information in farm plans being made publicly available. Information provided to LINZ such as farm plans can be requested under the Official Information Act (OIA). LINZ will use procedures in accordance with the Ombudman's guidelines which recognise and provide certain protections for the privacy of the individual and commercially sensitive information, including mechanisms for consultation before such information is made publicly available.
- 25 On the advice of LINZ, I no longer propose progressing with regulations that prescribe the matters the Commissioner may take into account when assessing the level of effects on inherent values. These matters have been incorporated into guidance published by LINZ which sets out the approach the Commissioner will adopt to assess adverse effects on inherent values. This approach allows for greater flexibility which is important in the early implementation of the Act because improvements can be made based on early experiences with greater efficiency.
- 26 I also no longer propose that the proposed regulations include a requirement for applicants to provide an assessment of the reasonableness of alternative options to the proposed activity. Submitters noted this was an issue that the Commissioner will determine while considering the application.
- 27 As most submissions sought further guidance on how decisions will be made in practice, LINZ has also published on its website guidance for lease and licence holders alongside operational policy and staff guidance that will support decision-

making. This is particularly focused on supporting the identification of inherent values as required under section 10(4)(a)(i) of the Act.

- 28 LINZ will publish a summary of submissions on its website alongside LINZ's responses, including identifying amendments that were made to the proposed regulations, once drafting instructions have been sent to PCO.

### **Financial Implications**

- 29 This paper does not have direct financial implications for the Crown. The proposals for regulations could have financial implications on leaseholders if they need to pay third parties to gather some of the information they need to provide with an application. LINZ is continuing to develop and refine the consenting process to make the best use of existing information wherever possible to reduce any undue duplication and resulting costs. The proposals will have a financial implication for anyone issued with an infringement notice under section 100F of the Act.

### **Legislative Implications**

- 30 The main body of the Act came into force on 17 November 2022. Regulations will be made under the Act using regulation-making powers introduced in section 100R of the Act.
- 31 This paper will result in the issuing of instructions to PCO for drafting the Crown Pastoral Land regulations. PCO have indicated that drafting the regulations should take around two months.
- 32 Once the regulations have been drafted and finalised by PCO I will be submitting the proposed regulations to the Cabinet Legislation Committee and Cabinet for authorisation for submission to the Executive Council, and subsequent notification in the New Zealand Gazette. The 28-day rule will apply. I expect the regulations to come into effect around the end of the first half of 2023.
- 33 Leaseholders have been able to apply for consents or permits since the Act came fully into force on 17 November 2022. LINZ will continue to use an education and engagement approach, working with leaseholders to obtain the required information, consulting with key stakeholders, enabling the Commissioner to make decisions. Until the regulations come into effect, LINZ will not be able to issue infringement notices. However, LINZ will be able to use other enforcement mechanisms under the Act.

### **Impact Analysis**

#### ***Regulatory Impact Statement***

- 34 The Treasury's Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

- 35 The Regulatory Impact Statement for the Crown Pastoral Land Reform Bill covered the matters that would eventually be contained in regulations rather than the primary legislation.

### *Climate Implications of Policy Assessment*

- 36 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

### *Population Implications*

- 37 There are implications for the particular rural community of Crown pastoral land leaseholders and licensees and for the following iwi: Ngāi Tahu and Te Tau Ihu iwi: Rangitāne o Wairau and Ngāti Apa ki te Rā Tō.
- 38 The proposed regulations support the implementation of the Crown Pastoral Land Reform Act 2022. Implementation of this Act seeks to:
- 38.1 maintain or enhance inherent values across the Crown pastoral estate for present and future generations, while providing for ongoing pastoral farming of pastoral land; and
  - 38.2 shift the Crown pastoral land system from a regime that does not clearly recognise and provide for Treaty partnerships to one that provides for a strong and evolving relationship between the Crown and iwi and for the relationship of Māori with their ancestral lands.

### **Human Rights**

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

### **Consultation**

- 40 The Department of Conservation, Ministry for the Environment, Ministry for Primary Industries, Ministry of Justice and Te Arawhiti were consulted on this paper and feedback has been incorporated where appropriate. The Department of the Prime Minister and Cabinet has been informed.

### **Communications**

- 41 LINZ officials will contact leaseholders, iwi, and key stakeholders to inform them of the decision to proceed with regulations and advise the timeframe for implementation. LINZ will also work with my office to plan for and respond to media enquiries arising from implementation of the regulations.

### **Proactive Release**

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



## Recommendations

The Minister for Land Information recommends that the Committee:

- 1 **note** that in June 2022, Cabinet agreed to the release of a discussion document on proposals for regulations to give effect to the Crown Pastoral Land Act 1998 (the Act) [CAB-22-MIN-0246] and that I approved consultation on a further proposal relating to the form and content of a farm plan regulation;
- 2 **note** that feedback received during public consultation was generally supportive of the proposed regulations;
- 3 **note** that a summary of submissions received on the public discussion documents will be proactively released;

### *Minimum information requirements*

- 4 **agree** that the minimum information required to be provided with any application for:
  - 4.1 consent to undertake a discretionary pastoral activity under section 11 of the Act (such as clearing indigenous vegetation or constructing buildings and infrastructure), should include: the applicant's personal details, a description of the proposed activity, where it will occur including a map indicating the location of the proposed activity, and any potential inherent values affected;
  - 4.2 the grant of a commercial recreation permit under section 12 of the Act, should include: the applicant's personal details, a description of the proposed activity, where it will occur including a map indicating the location of the proposed activity, evidence of the relevant lease or licence holder's consent, any potential inherent values affected, and proposed financial projections to support calculation of a permit fee;
  - 4.3 a stock limitation exemption under subsection 15(3) of the Act, should include: the applicant's personal details, the proposed stock numbers and classes of stock, where it will occur, and any potential inherent values affected; and
  - 4.4 a stock limitation exemption under subsection 15(4) of the Act, should include the applicant's personal details, the proposed stock numbers and classes of stock, information showing the applicant's capability to manage those stock, and information showing the land is capable of sustaining the proposed stock numbers and classes in its current state.

### *Farm plans*

- 5 **agree** that farm plans that may be considered under section 10(4)(d) of the Act, must include the date of the farm plan and may include:
  - 5.1 the proposed programme of development or activities for the duration of the farm plan for which consent (under the Act) is likely to be required and how development or activities are proposed to be undertaken;

- 5.2 a map of the lease including areas of land use showing how the farm is split into different land uses (Maps are intended to gain a broader understanding of current and future land use and boundaries, and to align with the proposals for mapping within the proposed freshwater farm plan regulations being developed by the Ministry for the Environment and Ministry for Primary Industries);
  - 5.3 a monitoring plan indicating progress against the farm plan to be undertaken by the lease or licence holder;
  - 5.4 a description of how the lease or licence holder intends to meet their obligations under other legislation; and
  - 5.5 (where relevant) a description of areas of the lease to be protected or retired from pastoral farming.
- 6 **agree** that applicants may provide a farm plan used for another purpose (in full or part), if the farm plan contains the prescribed content set out in recommendation 5;

*Enforceable Undertakings*

- 7 **agree** that the information that must be contained in or accompany an enforceable undertaking under section 100B of the Act should include: the applicant's personal details, details of the breach that the undertaking applies to, and the proposed legal agreement setting out key information on what is proposed to be undertaken by the applicant;

*Infringements*

- 8 **agree** that the penalty for infringement offences under section 100D of the Act should be \$600;
- 9 **agree** to prescribe the form of infringement notices and infringement offence reminder notices to contain the particulars in section 100I of the Act;

*New guidance instead of regulations*

- 10 **note** that proposed regulations that were included in the discussion document to prescribe the matters the Commissioner must take into account when assessing the level of effects on inherent values will not be progressed. Instead a guidance document has been published by LINZ setting out the approach the Commissioner will adopt to assess adverse effects on inherent values;

*Next steps*

- 11 **authorise** the Minister for Land Information to issue drafting instructions to the Parliamentary Counsel Office to give effect to the regulatory proposals in this paper;
- 12 **authorise** the Minister for Land Information to make decisions consistent with the proposals in these recommendations on any minor and technical issues which arise during the drafting process;

- 13 **note** that the Minister for Land Information is expecting to be able to report back to the Cabinet Legislation Committee seeking final approval of the regulations around end of June 2023;
- 14 **note** that this paper and the Cabinet minute will be released under the Government's proactive release policy.

Authorised for lodgement

Hon Damien O'Connor

Minister for Land Information

Proactive Release