

Crown Pastoral Land Act

Summary of consultation on regulations

Proactive Release



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Introduction

The Crown Pastoral Land Reform Act 2022 came into force on 17 November 2022, amending the Crown Pastoral Land Act 1998 (CPLA) and the Land Act 1948. It created new regulation and standard-making powers under the CPLA.

Toitū Te Whenua Land Information New Zealand undertook two phases of consultation on proposed regulations and draft standards to be made under the CPLA. The first round was undertaken between 4 July and 19 August 2022, and the second round was on farm plan regulations between 5 December 2022 to 23 January 2023.

This report summarises the responses and submissions received.

Submissions

As required by the CPLA, for both phases of consultation, Toitū Te Whenua consulted with:

- Relevant iwi
- Representatives of lease and licence holders
- The Director-General of Conservation
- The public, by publishing proposals on the LINZ website and seeking public submissions.

During the first phase of consultation, Toitū Te Whenua met with leaseholders and held public consultation meetings in Cromwell, Methven, Seddon, and Omarama between 25 July and 12 August 2022.

Toitū Te Whenua received 20 submissions through the first round of consultation. Submissions were made by Ngāi Tahu, the High Country Accord, the Department of Conservation, and a further 16 submissions from leaseholders and the public. In response to proposed farm plan regulations, 12 submissions were received. Submissions were made by Ngāi Tahu, the High Country Accord, and a further 10 submissions from leaseholders and the public.

Regulations

In the first phase of consultation, Toitū Te Whenua proposed making the following regulations under new section 100R(1) of the CPLA:¹

- Information to be included with applications for discretionary pastoral activities, commercial reaction permits and stock limitation exemptions.
- Matters to consider when determining the level of effects.
- Information to be included in enforceable undertaking agreements.

¹ Proposed regulations and standards to better manage Crown pastoral land:
<https://www.linz.govt.nz/consultations/proposed-regulations-and-standards-better-manage-crown-pastoral-land>

- Setting the infringement fee at \$600 (from a maximum of \$1000).
- Information to be included in infringement notices.

During consultation, submitters said that it would be helpful for the content of farm plans provided for under the Act to be set out in regulations. Farm plans are not compulsory under the Act but may help the discretionary consent process. They do this by providing context and information on how an activity fits into the leaseholder's overall farming operation. As a result of this feedback, Toitū Te Whenua then consulted further on a proposed regulation for the form and content of farm plans under section 100R(1)(c) of the CPLA.²

Commissioner and Chief Executive's standards

Toitū Te Whenua also consulted on a draft Commissioner's standard and Chief Executive's standard under the new standard making powers in the Act.³

The proposed Commissioner's standard under new section 100S(1) of the CPLA would address:

- Information to be included with applications for easements, transfer, and subleases.
- Negotiation process for addressing new public access provisions in the Land Act.

The Chief Executive's standard under new section 100S(2) of the CPLA proposed to address the following matters:

- Assessing sufficient information.
- Identifying inherent values.
- Determining no more than minor effects.
- Assessing reasonable alternatives.

After considering the submissions on the Chief Executive's standard, Toitū Te Whenua decided to convert the proposed content of the standard into guidance material to enable more flexibility. This guidance is available at: www.linz.govt.nz/guidance/crown-property/using-crown-property/leases-and-licences/helping-you-navigate-changes-cpla-0

This document does not include a summary of submissions made in relation to the draft standards.

Outcome and next steps

In general, the proposed regulations and standards were supported by submitters. Some submitters raised questions outside the scope of the proposed regulations and standards.

² Consultation on farm plans: <https://www.linz.govt.nz/consultations/consultation-farm-plans>

³ Proposed regulations and standards to better manage Crown pastoral land: <https://www.linz.govt.nz/consultations/proposed-regulations-and-standards-better-manage-crown-pastoral-land>

These questions mainly related to how the regulations and standards would be implemented or operationalised.

Having considered all responses, views and submissions, the Minister for Land Information recommended the following to Cabinet:

- Proceed with the proposed regulations, except those to set out the matters for assessing the level of effects of an activity on inherent values.
- Proceed with a regulation proposing the information to be included in a farm plan, which may be provided with applications to undertake discretionary activities on pastoral land.
- Set an infringement fee of \$600 if an applicant fails to obtain consent before undertaking a discretionary activity.
- Amend the information required from applicants to include map-related information.
- Remove the requirement for applications to include information on reasonable alternatives.

In April 2023, Cabinet agreed that the regulations would proceed. Final approval of the regulations is expected in July 2023.

In relation to the draft standards, Toitū Te Whenua will:

- Proceed with the Commissioner of Crown Lands standard with some minor technical amendments.
- Not proceed with the Chief Executive's standard. Aspects originally proposed in this standard have been addressed through guidance.

Summary of submissions

Regulations – Phase One

Suggestion or comment	Toitū Te Whenua response
<i>Information to be provided with applications – The discussion paper⁴ proposed a regulation to prescribe the information that an applicant must provide with an application for a discretionary pastoral activity consent, commercial recreation permit or stock limitation exemption.</i>	
Require applicants to provide a plan showing any legal public access near a proposed activity and the potential effects of the activity on that access.	Not accepted It is not necessary for the applicant to provide this information. Toitū Te Whenua will consider the proposed activity and its impacts on legal public access using land records already held by Toitū Te Whenua. Toitū Te Whenua will identify and establish whether existing legal public access could be impacted by the proposed activity and take this into its consideration when assessing applications.

⁴ Proposed regulations and standards to better manage Crown pastoral land: <https://www.linz.govt.nz/consultations/proposed-regulations-and-standards-better-manage-crown-pastoral-land>

Suggestion or comment	Toitū Te Whenua response
<p>Require applicants to provide a map of the activity showing its size and scale and its potential impacts on inherent values.</p>	<p>Accepted – Change to proposed regulation</p> <p>The Commissioner must understand the impact of the discretionary activity. Accurate maps will help provide a clear and accurate description of the proposed activity. The proposed regulations setting out information requirements for discretionary pastoral activities and grants of commercial recreation permits now include a requirement to provide a map indicating the location of the proposed activity and any potential inherent values affected.</p> <p>For applications for stock limitation exemptions, instead of a map, applicants will be required to set out the proposed stock numbers and classes of stock, where it will occur and any potential inherent values affected in the exemption application. This will help Toitū Te Whenua to identify grazing areas and potential adverse effects on inherent values from an increase in stock numbers when considering the application under the Act.</p>
<p>For stock limitation exemptions, require applicants to provide information showing the land can sustain the proposed stock numbers.</p>	<p>Not accepted</p> <p>The information to be provided with an application for a stock limitation exemption will include identification of any potential inherent values affected. Toitū Te Whenua will use this information to consider whether the land can sustain the proposed stock numbers when assessing the impact of the application on inherent values. Toitū Te Whenua will hold information on the land's capability from previous considerations of stock limitation exemptions and will obtain expert advice where necessary.</p>
<p>Require applicants to identify positive effects on inherent values.</p>	<p>Not accepted</p> <p>The assessment of the effects that a proposed activity will have on inherent values focuses on the adverse effects of the activity.</p>

Suggestion or comment	Toitū Te Whenua response
<p>Do not require applicants to identify reasonable alternatives to the proposed activity.</p>	<p>Accepted – Change to proposed regulation</p> <p>The Act requires the Commissioner to “be satisfied that any reasonable alternative to the proposed activity that has lesser adverse effects on inherent values has been considered” and the Commissioner may decline the proposed activity if satisfied there is a reasonable alternative with lesser adverse effects.</p> <p>Toitū Te Whenua’s application forms for consent will request information about the alternatives an applicant may have identified, but Toitū Te Whenua accepts that the applicant should not be required by regulation to do so.</p> <p>Toitū Te Whenua has published a “reasonable alternative” guide which outlines the approach the Commissioner and Toitū Te Whenua will adopt when assessing reasonable alternatives under the Act.</p>
<p>Toitū Te Whenua should only ask for information needed on a case-by-case basis due to differences between each lease.</p>	<p>Not accepted</p> <p>Toitū Te Whenua assesses each application on a case-by-case basis. Prescribing the information to be provided with each application provides certainty to applicants.</p>
<p>Information provided with applications may be commercially sensitive and needs to be protected.</p>	<p>Noted</p> <p>Information provided to Toitū Te Whenua can be requested under the Official Information Act 1982. Toitū Te Whenua will use procedures in accordance with the Ombudsman’s guidelines which recognise and provide certain protections for the privacy of the individual and commercially sensitive information, including mechanisms for consultation with affected parties before information is made publicly available. Toitū Te Whenua will work with leaseholders to give them the opportunity to comment and will give those views the appropriate weight before determining what information will be released.</p>

Suggestion or comment	Toitū Te Whenua response
<p>Various suggestions for further mandatory information, including whether the activity is best practice and whether it aligns with other consenting processes.</p>	<p>Not accepted</p> <p>Toitū Te Whenua considers information requirements are addressed through the proposed regulations, which meet the requirements in the Act.</p>
<p><i>Matters for level of effects – The discussion paper proposed a regulation setting out the matters the Commissioner must take into account in deciding the level of adverse effects that a pastoral activity or commercial recreation permit or stock limitation exemption may have on inherent values.</i></p>	
<p>Toitū Te Whenua should provide more information to set out the matters the Commissioner will take into account to identify the inherent values affected (ecological, heritage, social, cultural, scientific), rather than to decide the level of adverse effects on those values.</p>	<p>Noted - Proposed regulation removed</p> <p>Toitū Te Whenua has published an Inherent Values Framework which sets out how the Commissioner will identify inherent values and the effects on them by a proposed activity. Toitū Te Whenua will publish further guidance to outline the approach the Commissioner will adopt when assessing the level of adverse effects on inherent values.</p>
<p><i>Enforceable undertakings - The discussion paper proposed a regulation setting out the information that must be contained in or accompany an enforceable undertaking under s100B.</i></p>	

Suggestion or comment	Toitū Te Whenua response
<p>Require the Commissioner to seek suitable technical advice at the expense of the party who caused the breach.</p>	<p>Not accepted</p> <p>The Act enables the Commissioner to recover actual and reasonable costs of any action needed to remedy a breach of a consent. Some breaches may not require additional technical advice. Toitū Te Whenua intends to publish a compliance strategy that outlines how breaches will be investigated and responded to, including gathering of technical information as evidence.</p>
<p>Enforceable undertakings should state whether the breach is the first breach or whether there is a pattern of breaches to be addressed.</p>	<p>Noted</p> <p>Not within the scope of this regulation. Identifying repeated breaches is within the Commissioner's information gathering and administration responsibilities. Toitū Te Whenua will publish a compliance strategy that outlines how breaches will be investigated and responded to, including assessing patterns of breaches.</p>
<p><i>Infringements – The discussion paper proposed setting the fee for infringements under the Act at \$600 (from a maximum of \$1,000).</i></p>	
<p>The infringement fee should be set at the maximum of \$1,000.</p>	<p>Not accepted</p> <p>Toitū Te Whenua analysed options for the appropriate infringement fee and considered Ministry of Justice guidelines. Toitū Te Whenua concluded that \$600 is an appropriate fee given the nature of the infringement offence and is aligned with similar regulatory regimes. Infringement fees are not the only enforcement tool available under the Act. The Commissioner may take Court action for breaches of statutory or contractual provisions, and may accept an enforceable undertaking.</p>
<p>Other</p>	

Suggestion or comment	Toitū Te Whenua response
Include information for farm plans in regulations.	<p>Accepted</p> <p>Toitū Te Whenua recognises the value of farm plans in being a source of information to support a consent application and to help with planning through setting out what consents a leaseholder may require in the future.</p>

Regulations – Phase Two - Farm plan regulations

Suggestion or comment	Toitū Te Whenua response
<i>Farm plans – The discussion paper⁵ proposed the information to be included in farm plans provided with applications by leaseholders</i>	

⁵ Consultation on farm plans: <https://www.linz.govt.nz/consultations/consultation-farm-plans>

Suggestion or comment	Toitū Te Whenua response
<p>Information provided with applications may be commercially sensitive and needs to be protected.</p>	<p>Noted</p> <p>Information provided to Toitū Te Whenua such as farm plans can be requested under the Official Information Act 1982. Toitū Te Whenua will use procedures in accordance with the Ombudsman's guidelines which recognise and provide certain protections for the privacy of the individual and commercially sensitive information. These include mechanisms for consultation with affected parties before information is made publicly available. Toitū Te Whenua will work with leaseholders to give them the opportunity to comment and to understand their views and give those views the appropriate weight before determining what information will be released.</p>
<p>There could be inconsistencies between farm plan regulations under the Act and farm plan frameworks being developed by other government agencies, with CPLA proposals being too high-level.</p>	<p>Not accepted</p> <p>Toitū Te Whenua notes the Ministry for the Environment (MfE) and Ministry for Primary Industries (MPI) will introduce freshwater farm plan regulations in 2023. Toitū Te Whenua has designed its farm plan regulation at a high-level because interoperability across regulatory systems is intended. Toitū Te Whenua will accept and consider farm plans prepared to meet the requirements of freshwater farm plans, where they contain the information outlined in the CPLA regulation.</p>
<p>Farm plans should align with and set standards at the same level as other legislative and non-legislative instruments (as well as farm plan regulation), in particular standards relating to greenhouse gas emissions and protection of indigenous flora, fauna and habitats.</p>	<p>Not accepted</p> <p>Farm plans may include a description of how the lease or licence holder intends to meet their obligations under other legislation, but Toitū Te Whenua's role is to assess applications under the requirements of the Act.</p>

Suggestion or comment	Toitū Te Whenua response
<p>Farms plans must not be a substitute for a discretionary consent application.</p>	<p>Noted</p> <p>Farm plans may accompany an application, but do not replace the requirements for the information which must be provided with an application for discretionary consent. The regulations will prescribe the content of farm plans that may be provided so Toitū Te Whenua can extract the relevant information to inform its decision-making when considering consent applications and its impacts on inherent values.</p>
<p>Farm plan regulation should be enforceable.</p>	<p>Not accepted</p> <p>It is optional for farm plans to be provided. The issue of enforcement is outside the scope of the farm plan regulation, which prescribes the content of farm plans.</p>