



Cabinet Business Committee

Minute of Decision

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Delivering Better Outcomes for Crown Pastoral Land

Portfolio Land Information

On 29 January 2019, the Cabinet Business Committee:

- 1 **noted** that the South Island high country is one of New Zealand's most iconic landscapes and a taonga for many New Zealanders;
- 2 **noted** that there is increasing public concern about the management of Crown pastoral land, and the loss of biodiversity and landscape values on current and former Crown pastoral land over time;
- 3 **noted** that a recent regulatory review identified a number of problems with the performance of the Crown pastoral land regulatory system, including a lack of clear outcomes and a regime that is overly focused on operational matters;

Ending tenure review

- 4 **noted** that the tenure review process has seen significant amounts of land move out of the Crown pastoral estate and become freehold land, enabling further intensification on that land and adding to public concern about the loss of biodiversity and landscape values;
- 5 **agreed** to make changes to the Crown Pastoral Land Act 1998 and the Land Act 1948 to end tenure review;
- 6 **agreed** that, upon the enactment of legislation to end tenure review, all reviews will cease except where a substantive proposal has been accepted by the leaseholder, which will proceed through to implementation in recognition of the fact that those leaseholders have a contractual agreement with the Crown;
- 7 **invited** the Minister for Land Information to issue drafting instructions to the Parliamentary Counsel Office to make the necessary amendments to end tenure review;
- 8 **authorised** the Minister for Land Information to make technical policy decisions, as needed, to support the development of these drafting instructions to end tenure review;

Consulting on further legislative and regulatory changes

- 9 **noted** that some further legislative and regulatory changes will be needed to ensure good outcomes for Crown pastoral land;
- 10 **noted** that it will be important to engage with leaseholders and other groups on any proposed changes;

- 11 **agreed** to release a public discussion document, attached under CBC-19-SUB-0001, signalling the government's decision to end tenure review and setting out a number of proposed additional changes to the regulatory system to ensure better management of Crown pastoral land by:
- 11.1 clarifying the outcomes that the Crown is seeking for Crown pastoral land, including how it will prioritise the maintenance and enhancement of the natural capital on which pastoral farming relies, and more strongly articulating how the Crown will achieve enduring stewardship of this land in partnership with others;
 - 11.2 ensuring accountable and transparent decision making by requiring the regular development and public release of a Statement of Performance Expectations and providing for the release of additional guidance and standards, developed in consultation with iwi and stakeholders;
 - 11.3 ensuring decisions give effect to the outcomes by requiring the Commissioner to give effect to the outcomes in land use decisions, obtain expert advice and consult as necessary, as well as enabling fees for discretionary consents to be charged on a cost recovery basis;
 - 11.4 improving system information, performance and monitoring by requiring the development of, and regular reporting against, a monitoring framework;
- 12 **authorised** the Minister for Land Information to make minor editorial changes to the discussion document as required, prior to its public release;
- 13 **invited** the Minister for Land Information to report back to the Cabinet Environment, Energy and Climate Change Committee (ENV) on the results of consultation by June 2019;
- 14 **noted** that the Minister for Land Information will be seeking Cabinet approval for further legislative or regulatory amendments relating to the other proposed changes following the release of the discussion document and analysis of the feedback received;

Financial implications

- 15 **noted** that there is currently funding appropriated to facilitate tenure reviews, and that ending tenure review would entail the current appropriation arrangements for tenure review continuing over the transitional period and then ceasing once all tenure reviews at substantive proposal stage have been implemented;
- 16 **noted** that the changes proposed in the discussion document would have the following financial implications:
- 16.1 implementing these proposals would impact on Land Information New Zealand and the Department of Conservation's baselines [REDACTED];
 - 16.2 allowing fees to be charged on a cost recovery basis for the consideration of all discretionary consent applications would enable the Crown to recover its costs of administering the regime.

Vivien Meek
Committee Secretary

Hard-copy distribution (see over)

Present:

Rt Hon Jacinda Ardern (Chair)
Hon Kelvin Davis
Hon Grant Robertson
Hon Phil Twyford
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Andrew Little
Hon Dr David Clark
Hon Nanaia Mahuta
Hon Tracey Martin
Hon James Shaw
Hon Eugenie Sage

Officials present from:

Department of the Prime Minister and Cabinet

Hard-copy distribution:

Minister for Land Information
Minister for Regional Economic Development

Proactively Released

Budget Sensitive

Office of the Minister for Land Information

Chair, Cabinet Business Committee

Delivering better outcomes for Crown pastoral land

Proposal

- 1 This paper seeks Cabinet's agreement to end the tenure review process for Crown pastoral land and release a discussion document that seeks feedback on:
 - 1.1 managing the implications of ending tenure review
 - 1.2 defining clearer outcomes to support better decision making in relation to Crown pastoral land
 - 1.3 making additional changes to the Crown pastoral land regulatory system to ensure these outcomes are delivered.

Executive summary

- 2 On 11 December 2018, the Cabinet Environment, Energy and Climate Committee considered my paper *Enduring Stewardship of Crown Pastoral Land: Release of Discussion Document*. The Committee noted the paper and invited me to submit a revised paper to the Cabinet Business Committee on 29 January 2019 (ENV-18-MIN-0050).
- 3 The Crown owns approximately 1.2 million hectares of Crown pastoral land. Much of this land is leased by the Crown for pastoral farming and managed under the Crown Pastoral Land Act 1998 (CPLA) and Land Act 1948 (Land Act). Both the Land Act and CPLA were enacted with a focus on how the natural capital of Crown pastoral land could best be protected (specifically through the management of soil erosion and quality), while enabling some economic use of the land.
- 4 There are currently 171 perpetually renewable Crown pastoral leases. The leaseholder can only use the land for grazing stock and must apply for a discretionary consent¹ from the Commissioner of Crown Lands (the Commissioner)² to undertake other land uses.

¹ The discretionary consent process allows leaseholders to seek permission from the Commissioner to undertake activities on the land where the prior consent of the Commissioner is required by the CPLA. These include activities beyond those permitted under the terms of their lease, such as cultivation, clearing scrub or bush, top dressing, forming tracks, or burning. This process also enables leaseholders, or other parties, to apply for recreation permits or easements – for instance to allow them to run tourism ventures.

² The Commissioner acts as the Crown's agent and makes statutory decisions under the CPLA and Land Act, independent of the Minister for Land Information and the Chief Executive of Land Information New Zealand .

- 5 The environmental, economic, and social context for Crown pastoral land management has changed since the CPLA and the Land Act were introduced. The high country has come under greater pressure through increased intensity of farming practice and other activities. There has been significant public concern about the loss of biodiversity and landscape values on current and former Crown pastoral land.
- 6 The Crown pastoral land regulatory system is not operating effectively to address these issues. A recent regulatory review carried out by Land Information New Zealand (LINZ) found a number of problems with the performance of the regulatory system, including a lack of clear outcomes and a regime that is overly focused on operational matters. This review is appended as Annex 3.
- 7 Tenure review³ has resulted in approximately 353,000 hectares of former Crown pastoral land becoming freehold land. This has enabled intensified activity on that land and added to public concern about the loss of biodiversity and landscape values. The tenure review process has reduced the environmental protection for this freeholded land.⁴
- 8 The regulatory review also noted that tenure review has not resulted in the Crown exiting its role as a lessor of Crown pastoral land, as was intended when the CPLA was enacted. Over 20 years later, over half of the Crown pastoral land estate remains and a request to enter tenure review has not been received since late 2016. The process is slow and costly for both leaseholders and the Crown.
- 9 For these reasons, I am seeking agreement to end tenure review by amending the CPLA and the Land Act.
- 10 Ending tenure review means the remaining Crown pastoral land will continue to be managed under the existing regulatory system, making it more important to address the other issues identified in the regulatory review. While LINZ is making some operational changes to improve the performance of the regulatory system, further legislative changes will be needed to ensure good outcomes can be delivered for Crown pastoral land.
- 11 The proposed legislative changes to the regulatory system will respect leaseholders' current property rights for quiet enjoyment and pastoral farming. They will affect the process of applying for, and the Commissioner's consideration of, applications for discretionary consents and activities other than pastoral farming.
- 12 There is a strong public interest in the management of the high country and of Crown pastoral land, and it will be important to engage with leaseholders, iwi and stakeholders such as environmental groups and local authorities on the proposed changes. This reflects that stewardship of this land is a shared responsibility with leaseholders, iwi and key stakeholders – the Crown cannot achieve improved outcomes for Crown pastoral land on its own.

³ Tenure review is a voluntary process that provides for land with significant conservation values to be removed from the lease and returned to full Crown ownership and management; and for land which has economic value to be freeholded and sold to pastoral leaseholders. There are detailed procedural requirements for tenure review within the CPLA.

⁴ The Resource Management Act 1991 (RMA) applies to Crown pastoral land, just as it does to any other land.

13 I am therefore seeking Cabinet's agreement to release a discussion document outlining the Government's decision to end tenure review, and consulting on proposed additional changes to the regulatory system to support better management of Crown pastoral land.

14 These changes include:

14.1 *articulating a set of outcomes for Crown pastoral land, as set out below*

Enduring stewardship of Crown pastoral land

The Crown will ensure that the natural landscapes, indigenous biodiversity and cultural and heritage values of this land are secured and safeguarded for present and future generations.

To achieve this, Crown pastoral land will be managed to maintain and enhance natural capital, and cultural and heritage values; and subject to this:

- provide for pastoral and appropriate non-pastoral activities that support economic resilience and foster the sustainability of communities; and
- enable the Crown to obtain a fair financial return.

The Crown's management of this land will take into account the principles of the Treaty of Waitangi.

14.2 *including the proposed outcomes in the CPLA to clarify how the Commissioner would recognise and consider the environmental, cultural and economic values of Crown pastoral land when making decisions*

14.3 *ensuring accountable and transparent decision making through a Statement of Performance Expectations issued by the Commissioner, and additional guidance and standards*

14.4 *ensuring the Commissioner's decisions give effect to the outcomes and the Commissioner consults and obtains expert advice*

14.5 *improving system information, performance and monitoring, including the development of, and regular reporting against, a monitoring framework.*

15 To ensure the Crown's costs are appropriately recovered, and those who benefit pay, I also propose the Commissioner be able to charge application fees for discretionary consents on a cost-recovery basis.⁵

16 The draft discussion document also seeks feedback on managing the implications of ending tenure review, including on other mechanisms for securing public access and

⁵ Discretionary consent applications under the Land Act (easements and recreation permits) already have an associated cost recovery fee. However, this proposal would enable a fee to be charged for all discretionary consent applications.

acquiring Crown pastoral land with inherent values worthy of further protection for the conservation estate.

- 17 I do not propose that changes to the rental regime be considered at this point in time as this would not address the main purpose of the proposals in the discussion document.
- 18 A draft public discussion document is attached as Annex 5. I propose that the discussion document be released in February 2019 and be open for comment for a period of six weeks. Public feedback will be used to inform further policy proposals for changes to the Crown pastoral land regulatory system.

Background

- 19 The South Island high country is one of New Zealand's most iconic landscapes and a taonga for New Zealanders. Pastoral farming in the high country is an important part of New Zealand's cultural heritage, and generates both environmental and economic benefits. The land itself is home to a mosaic of habitats and ecosystems that support rare indigenous wildlife and vegetation.
- 20 The Crown owns approximately 1.2 million hectares of Crown pastoral land, mostly in the high country. Much of this land is leased by the Crown for pastoral farming. There are currently 171 of these Crown pastoral leases, shown on the map attached as Annex 1. The majority are located across Canterbury and Otago, with the remainder located across Marlborough, Southland and Westland.
- 21 The Crown pastoral land regulatory system is created by two pieces of legislation: the CPLA and the Land Act. Under this system, leaseholders have the right to exclusive possession of the land under perpetually renewable, 33-year term leases. However, 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. Similarly, the leaseholder must obtain consent to burn vegetation or increase the number of stock they can have on the land.
- 22 Crown pastoral land is important to New Zealanders' wellbeing, forming a key part of New Zealand's **natural capital**, and contributing significantly to its:
- 22.1 **financial/physical capital** through the contribution made by pastoral farming and tourism to New Zealand's national and regional economies
 - 22.2 **social capital** through the important connections between leaseholders and other New Zealanders to this land.
- 23 Because of these factors, the decisions the Crown makes about land use and ownership of Crown pastoral land, along with the way leaseholders steward the land, have a direct impact on environmental, cultural, and economic outcomes in the high country.

There are significant public concerns about outcomes for Crown pastoral land

- 24 The Land Act and CPLA were intended to promote better stewardship of Crown pastoral land, including ensuring that the natural capital in the land was maintained

(specifically through the management of soil erosion and quality), while supporting appropriate economic uses. Leaseholders have had a key role in this stewardship. Annex 2 provides further information on the intent of, and changes to, the Crown pastoral land regulatory system over time.

- 25 The environmental, economic, and social context for Crown pastoral land management has changed since the Land Act and CPLA were introduced. Changes include a greater recognition of the impacts of land use changes on indigenous biodiversity and landscape values and a broader focus on preserving New Zealand's rich biodiversity and ecosystems, rather than just conserving the soil and managing pests.
- 26 At the same time, the high country has come under greater pressure through increased intensity of farming practice and other activities, in part driven by tenure review. This also reflects the changes in the economics of high country farming over time.
- 27 Given this context, there has been significant public concern about the loss of biodiversity and landscape values on current and former Crown pastoral land, as approvals under the discretionary consent process have contributed to more intensive use of this land, without having regard to the cumulative impacts of these activities across boundaries and over time.
- 28 Despite these issues, the pastoral lease framework provides greater scope to protect this land than under freehold. However, the tenure review process has seen more land moving out of pastoral leases and become freehold or public conservation land. Intensification has occurred to a greater degree on freehold land than on Crown pastoral land.

The current regulatory system does not effectively articulate or deliver clear outcomes for Crown pastoral land

- 29 In 2018, LINZ undertook a review of the Crown pastoral land regulatory system, which assessed the performance of the system and made recommendations on improving it. A summary of this regulatory review is attached as Annex 3.
- 30 The review found that the Crown was not sufficiently clear about the outcomes it was seeking through the operation of the regulatory system, and that many stakeholders did not view this system as achieving the environmental and other outcomes it was originally intended to deliver. Instead, the system has a strong focus on operational considerations and transactions. The outcomes of decisions are not monitored and no information is collected on system performance.
- 31 The review recommended that government more clearly articulate the outcomes it wants to achieve for Crown pastoral land, and make changes to the regulatory system to support those outcomes. Other recommendations include collecting better information and improved outcome and compliance monitoring, as well as improving system processes.

Tenure review

- 32 Significantly, the regulatory review noted that tenure review has not resulted in the Crown exiting its role as a lessor of Crown pastoral land, as was intended when the CPLA was enacted. Given this, the review noted that tenure review may need to be reconsidered in light of the Government's desired outcomes for the regulatory system.

Ending tenure review would secure the Crown's ability to protect this land

- 33 Tenure review has contributed to the creation of new conservation parks,⁶ but has also resulted in approximately 353,000 hectares of former Crown pastoral land becoming freehold land (under the CPLA)⁷. This freeholding has also contributed to intensified activity on that land and added to the public concern about the loss of biodiversity and landscape values. In effect, the tenure review process has reduced the environmental protection for land that has been freeholded.

Table 1: Hectares of Crown pastoral land that have undergone tenure review

	Area	Crown	Freehold
Tenure reviews with an accepted substantive proposal but yet to be implemented (8 leases)	52,253	25,895 (49%)	26,358 (51%)
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%)

- 34 Ending tenure review will secure the Crown's long term ability to protect the natural and cultural values of the land by retaining Crown pastoral land in Crown ownership, while providing for other activities that maintain and enhance (rather than degrade) these values. This reflects the understanding that extensive pastoralism as provided for by the Crown pastoral land system, is the best way to manage and preserve much of this land.
- 35 I therefore seek agreement to progress changes to the CPLA and to the Land Act, to end tenure review.
- 36 Officials have considered alternative options to ending tenure review, including repurposing tenure review as a targeted tool for the Crown to achieve the desired outcomes for Crown pastoral land.
- 37 However, on balance, it is my judgement that ending tenure review is the best way to ensure there are positive outcomes for Crown pastoral land. Ending tenure review will achieve two important things that repurposing tenure review would not.

37.1 It would end a time-consuming and costly process

⁶ Five leases have also been purchased by the Crown, covering 125,792 hectares (external to tenure review by LINZ or the Nature Heritage Fund).

⁷36 leases also underwent an ad hoc form of tenure review under the Land Act 1948 (pre 1998). This covered approximately 176,000 hectares of land with 39% being retained by the Crown.

37.2 It would prevent the further freeholding of Crown pastoral land through tenure review, and the associated environmental impacts, while still providing for appropriate economic use of this land.

Implications of ending tenure review

38 A detailed analysis of the regulatory implications of ending tenure review is provided in the regulatory impact analysis (see the Regulatory Impact Analysis section below). The key implications of ending tenure review are summarised below.

Proposed cut-off for ending tenure review

39 Once legislative changes are enacted to end tenure review, there will be a number of reviews at different stages in the process. I propose that all in progress reviews will end at this time, except for those that have reached an accepted substantive proposal (i.e. a contractual agreement between the leaseholder and the Crown).

40 Once a substantive proposal is accepted, it can take one to two years to implement the tenure review. Reviews that have reached an accepted substantive proposal would proceed through to implementation after legislation has been passed. 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.

41 Funds are currently appropriated to facilitate the tenure review process. This funding will cease following the enactment of legislation ending tenure review and the implementation of reviews with an accepted substantive proposal.⁸

42 There are currently eight reviews with accepted substantive proposals and 26 tenure reviews that have yet to reach an accepted substantive proposal between the Crown and leaseholder (Annex 4 provides further details on these leases). These reviews cannot all be completed within the available timeframe, given the structure of the tenure review process and limits on resources. It is not possible to accurately predict the number of reviews that will progress to substantive proposal stage by the time legislation is enacted.

43 Tenure reviews usually take upwards of four years. Therefore it is highly unlikely that any leases that enter the process before legislation is enacted, will progress through to having an accepted substantive proposal.

Management of tenure review in the interim

44 Until legislation ending tenure review is enacted, the Commissioner and LINZ officials with delegated responsibilities are legally required to continue to apply the current legislation in relation to tenure review. This prevents the Commissioner from anticipating legislative change by discontinuing tenure reviews in a wholesale manner, or adopting a blanket policy to refuse all requests to initiate tenure review (although the Commissioner retains the discretion to discontinue any review at any time).

⁸ It is expected that these will take one to two years to implement.

45 LINZ officials, in consultation with the Department of Conservation (DOC), have provided advice to the Commissioner on administering the tenure review process in advance of legislative change, noting that the Commissioner remains independent. This advice recommends that, in light of existing constraints on time and resources, the Commissioner may wish to prioritise tenure reviews that are:

45.1 more likely to achieve an outcome that promotes the policy and objects of the CPLA, including promoting ecologically sustainable management

45.2 further advanced through the process

45.3 more likely to be completed within a reasonable timeline.

Implications for property rights

46 Officials have considered whether ending tenure review would impact on leaseholders' current property rights. As tenure review is a discretionary process, so requiring both leaseholders' and the Crown's agreement to enter into, then ending tenure review will not impact on leaseholders' property rights. Unlike most other features of the Crown pastoral land regulatory system, tenure review was not in place when the modern pastoral lease system was established and the current set of property rights were granted.

Securing access

47 One of the objectives of tenure review is to secure public access⁹ so people can enjoy the unique land, or can travel across the land into more remote public conservation areas for recreation.

48 Without tenure review, access across Crown pastoral land can still be secured on a case-by-case basis. Access can take the form of negotiated agreements or legal instruments such as an easement under section 60 of the Land Act.

Inherent values worthy of protection

49 Ending tenure review would remove the primary mechanism for adding Crown pastoral land with inherent values worthy of further protection¹⁰ to New Zealand's conservation estate. These values, especially ecological values, exist on many leases. Alternative options for protecting these values on Crown pastoral land include:

49.1 using legal mechanisms, such as covenants, to support the protection of biodiversity on private land. These might be applied to Crown pastoral land through negotiation with leaseholders.¹¹ The protection offered depends on the conditions and duration of the covenant. Some covenants can be in

⁹ Section 24(c)(i) CPLA 1998

¹⁰ Inherent values, as defined within the CPLA include cultural, ecological, historical and recreational characteristics of the land.

¹¹ For example, the Queen Elizabeth II (QEII) National Trust provides perpetual covenants that can be used to protect native biodiversity values (currently prioritising wetlands, sand dune systems, and indigenous lowland ecosystems), as well as historical and archaeological sites or areas with high scenic and recreational values.

perpetuity with conditions that include fencing off certain areas from stock, preventing harvesting/clearing of indigenous species, and prohibiting planting exotic species.

49.2 using tools, such as those in the Land Act, to purchase parts of pastoral leases (or whole leases) from lessees. These purchases are possible if the lessee is willing to sell part (or all) of their pastoral lease and would be dependent on the necessary funding.

50 The attached discussion document seeks to test these options further with stakeholders and consults on ideas for other means of protecting these values.

51 The Crown retains the ability to purchase all or part of Crown pastoral leases in the future. Currently, funds are appropriated to facilitate the tenure review process. This funding is expected to be fiscally neutral, in that any expenditure incurred by the Crown acquiring the leasehold interest in part of the lease land is expected to be offset by revenue from the leaseholder purchasing the remainder of the lease land as freehold. Once tenure review is ended, this appropriation will no longer be available for the Crown to acquire Crown pastoral land.

52 The fiscally-neutral requirement was introduced as a matter of policy by the previous government. Until the Labour-led government left office in 2008, it was expected that there would be a significant net cost to the Crown of tenure review or, in lieu of it, whole property purchases by LINZ (Michael Peak in 2007 and Twinburn in 2008).¹² For the three years ended 30 June 2008, Crown capital expenditure by LINZ on tenure review and whole property purchases totalled \$36,385,000, and revenue from leaseholders purchasing freehold title \$4,137,000 – giving a net LINZ expenditure of \$32,248,000 (or an annual average of about \$10,750,000).¹³

53



Further improvements to the Crown pastoral land regulatory system will also be needed

54 When tenure review is ended, the remaining Crown pastoral land will continue to be managed under the Crown pastoral land regulatory system, making it more important to address the other issues identified in the regulatory review.

¹²The Nature Heritage Fund (NHF), administered through DOC made whole property purchases, of Birchwood in 2004, Hakatere in 2007, St James in 2008, and of freehold land associated with Michael Peak in 2007. The NHF currently lacks financial capacity for such purchases.

¹³ *Report on Government Objectives for the South Island High Country: For the three years ended 30 June 2008* – Jointly produced by the Department of Conservation, Land Information New Zealand and the Ministry of Agriculture and Forestry.

- 55 LINZ is already working to improve the way the regulatory system as a whole operates, including improving the processing of discretionary consent applications and taking a more active role in pest and weed control in the high country. These “within system” improvements will help to address some of the process issues identified by stakeholders and in the regulatory review.
- 56 However, as highlighted in the regulatory review, operational changes alone will not be sufficient to address stakeholder concerns and move the regulatory system away from a focus on processes to a focus on delivering good outcomes for Crown pastoral land. Legislative and regulatory changes in addition to ending tenure review will be needed to achieve this.
- 57 There is a strong public interest in the management of the high country and of Crown pastoral land and it will be important to engage with leaseholders, iwi and stakeholders such as environmental groups and local authorities on the proposed changes. This reflects that stewardship of this land is a shared responsibility with leaseholders, iwi and key stakeholders – the Crown cannot achieve improved outcomes for Crown pastoral land on its own.
- 58 I am therefore seeking Cabinet’s agreement to release a discussion document outlining the Government’s decision to end tenure review and consulting on proposed additional changes to the regulatory system to support better management of Crown pastoral land.
- 59 A draft discussion document, *Enduring stewardship of Crown pastoral land*, is attached as Annex 5, and the proposed changes are summarised below.

Proposed additional changes to Crown pastoral land regulatory system

Clearer articulation of desired outcomes

- 60 The review of the Crown pastoral land regulatory system recommended that the Crown needs to more clearly articulate what it wants to achieve in relation to Crown pastoral land.
- 61 I am therefore proposing the below outcomes for Crown pastoral land. Following consultation and once finalised, the outcomes would be incorporated into the CPLA. These outcomes would see the Crown taking an enduring stewardship role and would clarify how the Commissioner would recognise and consider the environmental, cultural and economic values of Crown pastoral land when making decisions.

Enduring stewardship of Crown pastoral land

The Crown will ensure that the natural landscapes, indigenous biodiversity and cultural and heritage values of this land are secured and safeguarded for present and future generations.

To achieve this, Crown pastoral land will be managed to maintain and enhance natural capital, and cultural and heritage values; and subject to this to:

- provide for pastoral and appropriate non-pastoral activities that support economic resilience and foster the sustainability of communities; and
- enable the Crown to obtain a fair financial return.

The Crown's management of this land will take into account the principles of the Treaty of Waitangi.

- 62 If agreed, these high-level outcomes would be translated into specific requirements, which would provide more detailed expectations of what the Crown pastoral land regulatory system should deliver. This would guide the Crown's statutory decision making (including decisions the Commissioner makes around discretionary consents), and how the Crown would share the stewardship of Crown pastoral land with key stakeholders, particularly leaseholders, and with iwi as Treaty partners.
- 63 The shared stewardship responsibility for Crown pastoral land to achieve improved outcomes includes the following:
- 63.1 leaseholders who live and farm on the land have a key role in the management and stewardship of Crown pastoral land
 - 63.2 iwi have a significant relationship with the land, with the majority of Crown pastoral land located within the takiwā (tribal territory) of Ngāi Tahu
 - 63.3 local authorities contribute to the stewardship of Crown pastoral land in exercising their functions under the Resource Management Act 1991
 - 63.4 broader stakeholders such as community organisations, environmental groups, philanthropic organisations, and members of the public, work with leaseholders, iwi and the Crown on wilding conifers and predator control work, and initiatives, such as Te Manhuna Aoraki, to help achieve improved outcomes for Crown pastoral land.
- 64 This enduring, shared stewardship role is consistent with this Government's broader focus on wellbeing and the four capitals in the Treasury Living Standards Framework.¹⁴

¹⁴ In particular, the management of Crown pastoral land has the potential to impact on the natural capital associated with the land. Natural capital in Crown pastoral land includes individual assets such as land, soil and indigenous trees, plants and wildlife. It also includes broader habitats and ecosystems and their

Ensuring accountable and transparent decision making

- 65 Changes are also needed to the regulatory system to improve its transparency, accountability and responsiveness and ensure that stakeholders are engaged appropriately, and reasons for decisions are clear.
- 66 I am therefore proposing that the Commissioner be required by statute to develop and consult the public on a regular Statement of Performance Expectations, to be approved by the Minister for Land Information.
- 67 This Statement would set out priorities for addressing issues on Crown pastoral land, how the Commissioner proposes to exercise their statutory responsibilities and how current government policies and priorities should be reflected in the management of the land, to the extent that this is consistent with the legislation. This Statement would then provide a base against which the regulatory system's performance could be measured.
- 68 I am also proposing that the legislation explicitly provide for the Commissioner to release additional guidance to help officials and leaseholders understand and comply with the legislative requirements. This guidance would be public.
- 69 Additional guidance would help provide greater certainty for leaseholders and applicants under the discretionary consent system on the Commissioner's decision making process. This could include setting out how the Commissioner will make decisions, what information or evidence will be considered, and what expectations the Commissioner has of leaseholders (for instance, whether farm plans could help inform the Commissioner's decision making).

Making decisions that give effect to the outcomes

- 70 To ensure that decisions on discretionary consent applications support the Crown's desired outcomes, I propose that the Commissioner is required to give effect to the proposed outcomes in any decisions on discretionary consents. The Commissioner is currently required to take account of a range of criteria.¹⁵ However, it is not a requirement that decisions result in improved outcomes.
- 71 I propose introducing a hierarchy for decision making that prioritises natural capital to ensure that this capital is given sufficient consideration, and to reduce the potential for future environmental degradation on Crown pastoral land. Similarly, prioritising heritage and cultural values recognises both the current and historic relationship of communities to this land and that of iwi as mana whenua.
- 72 At the same time, a hierarchy for decision making would enable pastoral leaseholders to continue to make appropriate economic use of their land – although

associated services. More broadly, the health of Crown pastoral land and the wider high country environment supports regional economic success; pastoral farming relies on the ecosystem services that biodiversity supports; and tourism relies on the ongoing beauty and health of the natural environment and landscape.

¹⁵ Section 18 of the CPLA requires the Commissioner to take into account :

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

it may result in more conditions and controls on activities, such as burning indigenous vegetation.

73 The Commissioner would retain the flexibility to mitigate the negative impacts of a proposed activity and secure overall improved outcomes as a condition of the application approval.

74 I also propose:

74.1 requiring that the Commissioner obtains expert advice as necessary on discretionary consent applications to inform their decisions and consults with any other party s/he considers appropriate. This would help to increase the transparency of the Commissioner's decision making and ensure the Commissioner has a robust understanding of the likely impacts of any decision. However, receiving advice from a greater range of sources may make the process less certain and more complex

74.2 allowing fees to be charged on a cost recovery basis for the consideration of all discretionary consent applications to align this with discretionary consent applications under the Land Act (easements and recreation permits) that already have an associated application fee. This would help ensure the Crown appropriately recovers its costs from processing discretionary consent applications, and that those who benefit from this service pay for it.

Improving system information, performance and monitoring

75 I am proposing to improve system information, performance and monitoring by requiring the Commissioner to develop a monitoring framework, and release a regular report of monitoring and compliance activities. This would make monitoring the impacts of decisions compulsory, increase transparency, and help give the Commissioner better information to inform future decisions. It would also provide flexibility for the decision maker to change what is monitored, as circumstances change.

Rental regime

76 Although the proposed outcomes include enabling the Crown to obtain a fair financial return, I do not propose that changes to the Crown pastoral lease rental regime be considered at this point in time.

77 Changes to the rental regime are unlikely to contribute to the main purpose of the proposals in the discussion document. It is also likely to make the issue of rents a focus of the consultation process, detracting stakeholders' attention from the proposals.

78 Leaving rents out of scope also supports the Crown's efforts to deliver better outcomes through the legislative change by partnering with leaseholders and being a good long-term landlord.

79



Release of the discussion document

- 80 Subject to Cabinet approval, I propose that the discussion document be released in February 2019 and be open for comment for a period of six weeks until mid-March 2019. The discussion document will be publicly available and released on the LINZ website.
- 81 The public feedback will then be used to finalise the outcomes that the Crown is seeking for Crown pastoral land and further policy proposals for legislative or regulatory changes to the Crown pastoral land system.

Consultation

- 82 LINZ has worked closely with the Department of Conservation (DOC) to prepare this paper and the discussion document. LINZ undertook consultation with the following departments and agencies:
- 82.1 The Ministry for the Environment, the Ministry for Primary Industries, the Office for Māori Crown Relations – Te Arawhiti, the Ministry of Business, Innovation and Employment (Tourism), the Ministry of Culture and Heritage, and the Treasury.
- 82.2 Te Puni Kōkiri and the Department of the Prime Minister and Cabinet (Policy Advisory Group) were informed.

Treasury comment

- 83 The Treasury supports this proposal to clarify the outcomes the Government seeks to achieve from Crown pastoral land. In our view, however, consulting on ending tenure review (and other options for tenure review, including repurposing it) would have strengthened the evidence base for the impact of the proposed changes. In particular, we are concerned that ending tenure review would remove access to a fiscally-neutral mechanism for acquiring Crown pastoral land, for example to bring this land into the conservation estate. Other mechanisms to bring additional Crown pastoral land into the conservation estate may have greater fiscal impact.

Other engagement

- 84 Officials have been working closely with representatives of Ngāi Tahu in developing this discussion document, reflecting the fact that the majority of Crown pastoral land is located inside their takiwā (tribal territory). Officials have also engaged with representatives of Rangitāne o Wairau, whose rohe cover Crown pastoral land located in the upper north-east of the South Island.
- 85 I have already discussed a range of issues with the Crown pastoral land regulatory system with the High Country Advisory Group, and Federated Farmers.
- 86 LINZ officials have developed a targeted consultation plan so that the Government can proactively engage with key stakeholders most likely to be impacted by the proposals.

87 LINZ officials will reflect best practice when engaging with rural communities in line with the guidance set out in the Government's rural-proofing policy.

Financial implications

88 The proposed changes to the Crown pastoral land regulatory system would have the following financial implications:

- There is currently funding appropriated to facilitate tenure reviews. Ending tenure review would entail the current appropriation arrangements for tenure review continuing over the transitional period and then ceasing once all tenure reviews with agreed substantive proposals have been implemented. This would include the current multi-year appropriation (MYA) set aside for purchasing Crown pastoral land through the tenure review process expiring as scheduled on 30 June 2019 and joint Ministers approving technical changes at the March 2019 baseline update to give effect to the reestablishment of the annual appropriation. The current MYA and the future annual appropriation would be expected to remain fiscally neutral in that any expenditure incurred by the Crown acquiring the leasehold interest in part of the lease land should be offset by revenue from the leaseholder purchasing the remainder of the lease land as freehold.
- Implementing the proposals set out in the discussion document would impact on LINZ and DOC's baselines. [REDACTED]
- Allowing fees to be charged for the consideration of all discretionary consent applications would enable the Crown to recover its costs of administering the regime (in line with Government expectations for cost recovery).

89 [REDACTED]

90 The cost of releasing the discussion document and coordinating the public consultation process will be met by LINZ.

Human rights, disability or gender implications

91 There are no human rights, disability or gender implications for these proposals.

Legislative implications

92 As described above, securing enduring land management outcomes for Crown pastoral land will require legislative or regulatory change. This will include amendments to the Crown Pastoral Land Act 1998 and Land Act 1948, and possibly new delegated legislation under the CPLA.

- 93 I am therefore seeking Cabinet's approval for LINZ to issue the Parliamentary Counsel Office with drafting instructions to make the necessary amendments to end tenure review.
- 94 I will be seeking Cabinet approval for further legislative or regulatory amendments relating to the other proposed changes, following the release of the discussion document and analysis of the submissions received.

Regulatory Impact Analysis

- 95 A Regulatory Impact Assessment is attached to inform Cabinet's decision on whether to end tenure review. The Regulatory Impact Assessment has been reviewed by an independent expert within LINZ.
- 96 The assessor considers that the information and analysis summarised in the Regulatory Impact Assessment partially meets the Quality Assurance criteria. The assessor concluded that 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. The reviewer noted that, 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.
- 97 The Regulatory Quality Team at the Treasury has determined that the other proposed regulatory decisions in this paper are exempt from the requirement to provide an Impact Assessment, as the relevant issues have been addressed in the discussion document.

Publicity

- 98 Subject to Cabinet approval, I will announce the Government's decision to end tenure review and release the discussion document in February 2019. The consultation process will run for six weeks.
- 99 Shortly before the announcement and release of the discussion document, LINZ officials will contact leaseholders and key stakeholders to inform them of the decision and outline the proposed changes. Officials will also discuss with leaseholders currently in tenure review what the changes mean for their specific situation.
- 100 The discussion document will be publicised through a media release from my office, communications to iwi, leaseholders and broader stakeholders, and via social media. The discussion document will be published on the LINZ website for the general public and the link will be sent directly to stakeholders. There will be targeted engagement with iwi, leaseholders and key stakeholders as part of the consultation process.

Proactive release

- 101 I intend to proactively release this paper, subject to the redaction of any material as consistent with the Official Information Act 1982, and coordinating with the planned timing of the consultation process outlined above.

Recommendations

The Minister for Land Information recommends that the Cabinet Business Committee:

- 1 **note** that the South Island high country is one of New Zealand's most iconic landscapes and a taonga for many New Zealanders
- 2 **note** that there is increasing public concern about the management of Crown pastoral land, and the loss of biodiversity and landscape values on current and former Crown pastoral land over time
- 3 **note** that a recent regulatory review identified a number of problems with the performance of the Crown pastoral land regulatory system, including a lack of clear outcomes and a regime that is overly focused on operational matters

Ending tenure review

- 4 **note** that the tenure review process has seen significant amounts of land move out of the Crown pastoral estate and become freehold land, enabling further intensification on that land and adding to public concern about the loss of biodiversity and landscape values
- 5 **agree** to make changes to the Crown Pastoral Land Act 1998 and the Land Act 1948 to end tenure review
- 6 **agree** that, upon the enactment of legislation to end tenure review, all reviews will cease except where a substantive proposal has been accepted by the leaseholder, which will proceed through to implementation in recognition of the fact that those leaseholders have a contractual agreement with the Crown
- 7 **direct** LINZ to issue the Parliamentary Counsel Office with drafting instructions to make the necessary amendments to end tenure review
- 8 **authorise** the Minister for Land Information to make technical policy decisions as needed to support the development of these drafting instructions to end tenure review

Consulting on further legislative and regulatory changes

- 9 **note** that some further legislative and regulatory changes will be needed to ensure good outcomes for Crown pastoral land
- 10 **note** that it will be important to engage with leaseholders and other groups on any proposed changes.
- 11 **agree** to release a public discussion document signalling the Government's decision to end tenure review and setting out a number of proposed additional changes to the regulatory system to ensure better management of Crown pastoral land by:
 - 11.1 clarifying the outcomes that the Crown is seeking for Crown pastoral land, including how it will prioritise the maintenance and enhancement of the natural capital on which pastoral farming relies, and more strongly articulating

how the Crown will achieve enduring stewardship of this land in partnership with others

11.2 ensuring accountable and transparent decision making by requiring the regular development and public release of a Statement of Performance Expectations and providing for the release of additional guidance and standards, developed in consultation with iwi and stakeholders

11.3 ensuring decisions give effect to the outcomes by requiring the Commissioner to give effect to the outcomes in land use decisions, obtain expert advice and consult as necessary, as well as enabling fees for discretionary consents to be charged on a cost recovery basis

11.4 improving system information, performance and monitoring by requiring the development of, and regular reporting against, a monitoring framework

12 **authorise** the Minister for Land Information to make minor editorial changes to the discussion document as required, prior to its public release

13 **invite** the Minister for Land Information to report back on the results of consultation by June 2019

14 **note** that the Minister for Land Information will be seeking Cabinet approval for further legislative or regulatory amendments relating to the other proposed changes following the release of the discussion document and analysis of the feedback received

Financial implications

15 **note** that there is currently funding appropriated to facilitate tenure reviews, and that ending tenure review would entail the current appropriation arrangements for tenure review continuing over the transitional period and then ceasing once all tenure reviews at substantive proposal stage have been implemented

16 **note** that the changes proposed in the discussion document would have the following financial implications:

16.1 Implementing these proposals would impact on LINZ and DOC's baselines.

[REDACTED]

16.2 Allowing fees to be charged on a cost recovery basis for the consideration of all discretionary consent applications would enable the Crown to recover its costs of administering the regime

Proactive release

17 **note** that this Cabinet paper will be proactively released, subject to any appropriate redactions

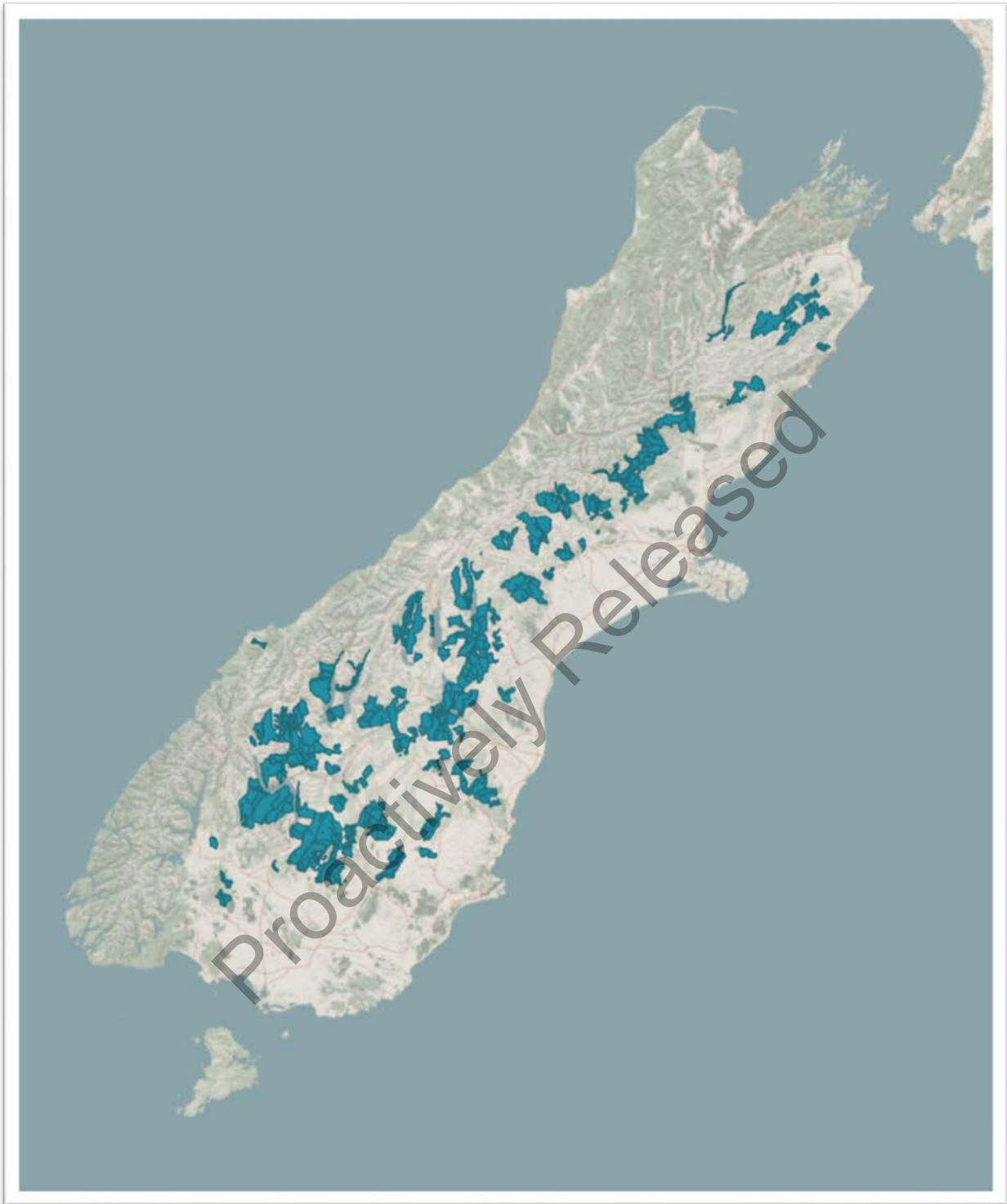
Authorised for lodgement

Hon Eugenie Sage

Minister for Land Information

Proactively Released

Annex 1: Map of current Crown pastoral leases



Annex 2: A brief history of Crown pastoral land

The Crown's role in the high country dates back to the 1800s, with its initial purchases of land in the high country from Māori. These purchases were not without controversy – Ngāi Tahu chiefs raised concerns immediately about the methods used in purchasing their lands, including that land they wished to keep was included in the purchases.

The Crown began leasing high country land to farmers in the 1850s and, over time, passed most of its rights and obligations on to leaseholders on the basis that the land was not considered viable for non-pastoral uses and farming was the best way to manage it.

This land has a long history of poor environmental outcomes. The Land Act was enacted in 1948 to address environmental concerns, particularly in relation to soil degradation. The Land Act promoted better stewardship of the land by providing leaseholders with security of tenure, giving them the incentive to take a longer-term approach to managing the land, including protecting the natural capital on which pastoral farming activities rely. The Land Act converted the original leases into the current system of Crown pastoral leases to encourage better land management. The new system gave leaseholders more security through perpetually-renewable 33 year leases, and gave the leaseholder ownership of any improvements on the land. The Land Act also imposed new conditions to protect the soil.

Over time, some leaseholders were able to obtain freehold rights from the Crown to some of the land covered by their lease, with the balance being transferred into the conservation estate. However, the Land Act did not provide any guidance about how decisions should be made, or what processes needed to be followed.

In 1998, the CPLA was brought in to standardise this process, known as “tenure review”. By this time, the Crown wanted to exit its lessor (landlord) role; the cost of administering Crown pastoral leases was greater than the rental revenue received and it was viewed that environmental outcomes achieved through the Land Act (as well as through the Resource Management Act 1991) had improved since the 1940s. The Crown expected that all leases would eventually go through the tenure review process and all Crown pastoral land would either become public conservation land or transfer into private ownership.

Since 1998, approximately 300,000 hectares of land has been returned to Crown ownership through tenure review and approximately 350,000 hectares have been transferred into private ownership. At least 60,000 hectares of that freeholded land is subject to conservation or other covenants; half of the total land that has gone through tenure review has either been returned to the Crown or has some form of mechanism in place to protect it. The Crown has also purchased five leases, adding an additional 125,792 hectares to the conservation estate.

Currently, 34 pastoral leases out of a total of 171 leases are in the process of tenure review, with eight of these having agreements that are currently being implemented. No new leases have entered tenure review since late 2016.

Annex 3: Review of Crown pastoral land regulatory system

Context

Land Information New Zealand (LINZ) has regulatory stewardship responsibilities for four regulatory systems. A regulatory system includes the rules, institutions, skilled workforce, practices and understandings which combine to make regulation of an activity or sector effective.

The State Sector Act was amended in 2013 to make it clear that Departmental Chief Executives have regulatory stewardship responsibilities. Taking a stewardship approach requires Chief Executives to look beyond their direct statutory responsibilities to the capability and resilience of the regulatory system over time, including the other agencies which form part of the system as well as LINZ.

LINZ has developed a regulatory systems strategy to ensure it discharges these stewardship responsibilities well. LINZ carries out regulatory systems assessments to ensure that individual systems are performing well, and are able to respond to emerging issues and trends so that they remain fit-for-purpose. Looking systematically across different regulatory systems enables LINZ to transfer learning and innovation more readily (including drawing on the experiences of other agencies).

One of the tools LINZ, like other agencies, is using to be an effective steward of its regulatory systems is a periodic assessment of each system. These assessments are a snapshot rather than an in depth analysis. The assessments check how the system is working now rather than what the rules should be (i.e. they are not a policy review), and they look to identify the main areas that should be the focus of LINZ's attention in the short to medium term, rather than be more in depth analyses of the strengths and weaknesses of an institution (i.e. they are not a Performance Improvement Framework review).

The Crown Pastoral Land Regulatory System

The Crown Pastoral Land Regulatory System is part of the broader Crown Land Regulatory System. The Crown Land Regulatory System creates the framework by which the Crown can buy and sell land, in a way that balances both public interests and private property rights. The system seeks to protect the rights of private landowners, iwi and others while enabling the Crown to efficiently and effectively acquire or dispose of land for government purposes. This is achieved by:

- a. Administration of relevant legislation (e.g. Public Works Act, Land Act) and government policies relating to Crown property
- b. Provision of statutory decision-making under that legislation under delegation, and support to the Minister and Commissioner of Crown Lands for their decision
- c. A suite of standards and guidelines for Crown agencies and service providers, setting out the requirements
- d. A programme of accrediting service providers to undertake activities under the Public Works Act 1981

- e. Access to historic Crown records necessary to investigate and analyse obligations in relation to Crown-owned Land
- f. Programmes to build capability within LINZ and in the wider public sector on Crown property matters, strategic portfolio planning and whole of life asset management

The Crown Pastoral Land Regulatory System includes the role of the Commissioner of Crown Lands, who is an independent statutory officer who acts as landowner for Crown Land held under the Land Act 1948 and Crown Pastoral Land Act 1998. LINZ provides technical and administrative resources to enable the Commissioner to execute their role.

The Crown's original intention was to enable appropriate settlement and management of the land. This has required a balance between enabling the land to be used for pastoralism and managing the impacts of the use and pests on the land.

The Crown Pastoral Land Regulatory System is about establishing the relationship between Crown and lessee, which is:

- a. Lessee has the right to exclusive occupation, right to reside, right to graze the land for pastoral farming, and with consent the right to disturb the soil or a different land use (e.g. tourism). These rights are in perpetuity following the Land Act 1948
- b. The lessee does not have the right to freehold the land, nor the right to subdivide the land.
- c. Lessees have the responsibility to manage pests (e.g. wilding conifers, hieracium, and rabbits) on the land and must farm with 'good husbandry' practices.
- d. The Crown has right to the land exclusive of improvements, and manages this right through requiring lessees to get consents for activity that disturbs the soil. The rental regime is currently based on earning capacity rents based on stock carrying capacity. This is designed to ensure extensive pastoralism is possible (otherwise Crown would have to incur the cost of looking after the land)

To manage the relationship between the lessee and the Crown and the need to balance use and impact the Crown Pastoral Land Regulatory System has three core interacting subsystems:

- a. The Tenure Review system – the system for transferring pastoral lease land to other forms of tenure
- b. The Discretionary Consents system – the system for obtaining permission from the Crown to impact the land if the lessee does not have that right (eg consents, permits, exemptions)
- c. The Rental regime – the system by which the Crown obtains a return from the lessee for their use of the land

The Assessment Process

The Assessment team was Richard Hawke, Director Regulatory Systems (lead) and Stephen Trebilco. The process was one of: internal material analysis followed by semi-structured interviews following provision of a background note (February 2018).

There was heightened awareness of the Crown Pastoral Land System, and its components, due to the release of the Mackenzie Basin – Opportunities for Agency Alignment report on 20 February 2018, completed by Dr Hugh Logan and John Hutchings.

Participants included representatives from: Pastoral Lessees and their representative bodies, Ngāi Tahu, Department of Conservation (DOC), government agencies, non-government agencies, local government and organisations providing key services for the operation of the system.

Summary of assessment

Where we are at today is strongly influenced by decisions taken a long time ago...

The Crown's role in the South Island high country (high country) dates back to the 1800's with the initial purchase of land in the high country from Māori orchestrated by the Government.¹⁶ The first complaints about the purchasing of land were almost immediate.¹⁷ The first leases in the high country were set up in 1851.¹⁸

- a. One of the roles of the provincial government in the South Island was to transition the land to farmers. The Government exercised a right of transition partly to avoid conflict with Māori and partly because a gap between purchase price and the selling price to settlers was intended to finance immigration and infrastructure development. Regulations in 1856 established leasing conditions. The Land Act of 1877, which followed the abolition of the provinces, set tenure terms for the leasehold farmers. These terms were initially 10 years, but were extended to 21 years by 1892.
- b. Since this time the Crown has largely been an absentee landowner, aside from responding to the requests of farmers or concerns others had about the land. The Crown has not defined a clear outcome sought, other than exiting being a landowner.

The Land Act (1948) was driven by two related concerns:

- a. Environmental degradation was taking place as a result of farmers not taking a long-term view of land management due to their short-term and insecure leases
- b. Soil conservationists were concerned about the protection of the soil.

¹⁶ Resources on the early development of pastoral farming in the South Island high country:

<http://www.doc.govt.nz/Documents/science-and-technical/sap240entire.pdf>

<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.821.7904&rep=rep1&type=pdf>

¹⁷ As early as 1849 Ngāi Tahu chiefs complained about the methods used in purchasing their lands, including that land they wished to keep was included in the purchases.

¹⁸ The Crown Lands Ordinance (New Ulster) 1849, which excluded Canterbury and Otago, until the Crown Lands Amendment and Extension Ordinance 1851.

Hence, the Act made conditions to protect the soil and tenure was made perpetually renewable on a 33 year term with any improvements belonging to the lessee to provide the incentive for long-term management. The 33 year perpetual lease, and the right of exclusive occupation, meant most of the value of the land transferred to the lessee; a decision that has caused much concern during the tenure review process (the Martin and Clayton reports contain history and background).¹⁹

Soil and water plans of the 1970s (developed by catchment boards, the precursor to regional councils) continued the process of trying to reduce the pressure on the high elevation high country by retiring land (removing stock) and controlling pests. A key focus of conservationists was deer and rabbit control and the removal of sheep from the higher elevation areas.

Over the 1980s and 1990s there was substantial work undertaken to reconsider and reform pastoral land management in the high country and the pastoral leases. The Clayton report (1982) expected that perhaps 80% of land could go to freehold. The Martin Report (1994) stated that “pastoral lease tenure is not achieving sustainable management and does not provide the flexibility to make the necessary changes towards ecological sustainability and economic viability.....a review of pastoral lease tenure is required with the objective of freeholding all the land not required by the Crown for the public interest”.²⁰ When the CPLA was passed it was expected that it would spell the end of the Crown managing pastoral leases and that by 2008 no pastoral leases would remain;²¹ and, the RMA was the mechanism to achieve environmental outcomes.

The Crown Pastoral Land Act (CPLA) 1998 was really just an amendment to the Land Act 1948 and continued the themes of the Land Act. By 1998 a number of lessees had come to an agreement with the Crown to obtain freehold rights to a part of their former lease, with the balance of the lease area transferred into the conservation estate. These agreements were carried out in an ad-hoc fashion under the Land Act 1948. The Crown wanted to regularise and standardise the “tenure review” process and remove the management constraints of the leasehold tenure. The Crown also wanted to exit from its role as lessor, partly because the cost of managing the leases was greater than the rental revenue received and because environmental outcomes had improved since the 1940s.²²

Historically decisions on land are contentious. Decisions about how land should be sold to settlers were a principal political issue for much of the nineteenth century. The Crown Pastoral leases are, in some sense, a historic relic, but one which has attracted new public interest. To operationalise the core processes and reduce political interference a large amount of power was vested with an administrator, the Commissioner of Crown Lands (CCL), to enable them to make decisions on tenure review, discretionary consent and the management of pastoral leases.

¹⁹ Clayton (1982) *Crown Pastoral Leases and Leases in Perpetuity: Report of the Committee of Inquiry and Martin (1994) South Island High Country Review – Final Report from the Working Party on Sustainable Land Management.*

²⁰ From, Minister of Lands (1994) *Crown Pastoral Lands Tenure Review – An economic analysis [paper 2]*, which noted “There is a potential to add between 600,000 and 1,000,000 hectares to the Conservation Estate as a result of a land allocation opportunity that would arise with tenure reform. Similarly, there is also the potential to freehold between 1,500,000 and 1,900,000 hectares for more diverse uses than are currently permitted under pastoral lease tenure.”

²¹ Cabinet Policy Committee (2003) Government objectives for the South Island high country: POL Min (03) 19/7

²² From, Minister of Lands (1994) *Crown Pastoral Lands Tenure Review – A background paper [paper 1]*, which noted that “The cost of administering Crown pastoral leases currently exceeds the revenue obtained from rentals. Present rental and permit income is approximately \$1 million annually. This compares with a cost of approximately \$2.4 million to administer the leases.”

While accountable to the Minister for Land Information, the CCL, as a statutory officer, is guided by the legislation.

The combined effect of the Crown's apparent strategic intent to exit leases, a strong administrative decision-making role, and a short-term focus has meant that operational considerations have become overly important and the focus has been on transactions. To many it appears that LINZ (and DOC) became more and more process-focussed and conservative in their thinking, primarily to avoid legal risks.

For many, tenure review has not resulted in what was expected on a number of dimensions: the split of land across conservation, freeholding and mixed use; ecological sustainability; access to valuable land; and public land. Current frustrations and the cumulative effect of numerous actions suggest that just the Crown being better coordinated will not be enough to satisfy all external stakeholders.

.... and since the passing of the CPLA the environmental and economic conditions and LINZ's processes have changed ...

Early tenure review processes basically employed an "altitude model," meaning the high-elevation high country became the basis for conservation parks while the lower high country, which had already been more modified, became more intensively farmed except for any specific protected areas.

Conservation is no longer "pests and sheep off the higher elevation land," but is about protection of areas or species, including their habitats, from pressures that may alter them, and it also includes facilitating recreation and enjoyment of protected areas. This means that what is considered valuable conservation land today is not just the high-elevation high country, as was commonly envisaged when the CPLA was passed.

Since 1998 the environment, and environmental values, have changed. Interest in the high country has increased. Demands for access and protection from recreation, tourism and environmental interests have diversified and increased. The competition among hunters, trampers, tourism operators and environmentalists means the (relatively straightforward) deal of freehold and transfer to DOC in exchange for freedom from fear of rent increases is no longer viable. The early stages of tenure review slipped under the radar and then the numerous interest groups caught on. Overall, more interests want a say in the process and outcomes sought, which challenges the nature of lessee-CCL relationship and a system focussed on process.

Relative to the rest of the world New Zealand farming has a history of being productive, flexible and changing. The economics of farming are challenging, and are influenced by factors far outside the control of New Zealanders and the New Zealand government. Since 1998, farming has changed across New Zealand. Particularly evident is the growth of dairying and some of the most recent area to be converted to dairying has been the lower elevation high country. Tenure review is associated with land use intensification, primarily because the tenure review has usually resulted in retiring about 50% of the lease as it is transferred to the conservation estate (often at the higher elevations) and freeholding lower elevation land that is capable of more intensive economic use. At the same time the pressures, and interests from others, on farmers in terms of farm and environmental management have increased.

When the CPLA was enacted the cabinet papers acknowledged concern about the CPLA–RMA interface; this remains. Given the soil protection objective of the CPLA the discretionary consent regime specifically protects the Crown’s property right interest in the land. This interest merits an additional level of protection above and beyond the RMA regime. An example of the additional level of protection is the requirement that lessees obtain a discretionary consent if they wish to burn vegetation. Under many RMA plans this is an “existing use” and would not require consent. However, for many people discretionary consents are perceived as ‘preparing land for later intensification’ assisted by the process of tenure review. With an operational focus on pastoral farming, LINZ is viewed by others as being biased toward the desires of farmers.

Consistent with its process-focus LINZ has had its processes audited and altered.²³ The Commissioner of Crown Lands promulgated a standard on information and consultation required to carry out tenure review (LINZS45003). The Tenure Review Quality Assurance Board, established in 2009, reviews all tenure review proposals to provide confidence that proposals have been robustly analysed. The Board consists of DOC and LINZ staff. There is also a LINZ–Ngāi Tahu agreement to ensure clarity over how and when LINZ and Ngāi Tahu engage on stages of the tenure review process.

The process for setting rents was changed in 2012 from rents set on the basis of the value of the land exclusive of improvements²⁴, to a system of earning capacity rents determined by the stock units on the property, with a value-per-stock unit set by the Valuer-General. Rent, and the mechanism for setting it, is crucial for influencing the attractiveness of the tenure review process. Many farmers entered tenure review when they were uncertain if they may face large rent increases between 2007 and 2009. The rental changes in 2012 eased those fears and have resulted in fewer entrants to tenure review since. Those involved in the rental process commented that it was a well understood and clear regime that works from a stock carrying capacity perspective. It is less clear whether the Crown is getting value from other rights it confers to the lessee, for example the right to reside and have workers reside on the property, or any concessions allowing non-pastoral activity on the land. The 2012 changes to the rent regime reflect the changed nature of the system: from rents being a mechanism by which the Crown got some use of the land until it could find a purchaser, who would buy the land freehold and use the land to its full potential, to Crown pastoral leases being part of the Government as an entrepreneur.

Compliance activities have become more structured. For example, LINZ undertakes a monitoring programme, which prioritises leases that have a current ‘high-risk’ consent (eg burning consent). In addition to monitoring the consent activity, LINZ evaluates the lessee against a set of ‘good husbandry’ criteria that were created in 2007.²⁵ The criteria were developed from the ‘good husbandry’ requirement that the Land Act (section 99) places on the lessee, and covers a broad range of land management practices.

A key part of the tenure review process is the advice the CCL receives from DOC on inherent values. There has been criticism of the quality of the DOC underlying science advice (both

²³ For example, the Warwick Tuck review (2007) and the KPMG review (2013)

²⁴ This was not the first time the process for setting rents had changed. Rents were set on a per-stock unit base carrying capacity from 1948-1979, then on the 2% LEI from 1979-2012

(https://www.linz.govt.nz/system/files_force/media/pages-attachments/earning-capacity-rents-report-to-sihc-ministers.pdf?download=1)

²⁵ LINZ’s good husbandry report from 2007

content and timeliness) and how the science advice has been synthesised into the overall DOC advice. DOC has been trying to get better at giving definitive advice for both discretionary consents and tenure review to help enable the CCL to make decisions.

Despite the recent efforts to improve processes, the external perception is that key processes in the system, such as discretionary consents and tenure review, are not transparent. Neither the content of the processes nor the processes themselves are well understood by many stakeholders. The situation is further clouded because the Crown does not appear to have a clear strategic objective, other than exiting the arrangements.

The regulatory system operates alongside other key systems, particularly the resource management, conservation and overseas investment systems. Stakeholders expect the interfaces to work better.

... and the various parts of the regulatory system have been given uneven attention ...

... the policy function has been under-invested in...

LINZ has only a small policy function and the policy function has not devoted much attention to the overall system. DOC has also not devoted much policy resource to this system (both agencies have devoted operational resources). Hence, the system has been seen as operational in nature, which has encouraged a focus on processes at the expense of outcomes.

... and the operational policy, service design and standards-setting have been process-focussed...

The system has developed a process focus that is directed towards outputs rather than outcomes. For example, processing a discretionary consent request rather than what is the impact of the decision on the ease of farming or on the inherent values of the land, or completing a tenure review, in negotiation with the lessee, rather than evaluating the extent to which the outcome will improve ecologically sustainable management of the land.

The CCL has delegated some decision making to LINZ. However, the delegations have not been accompanied by clear directives indicating what the CCL expects from LINZ (other than in relation to process). The CCL has not helped because it has not been clear to LINZ staff, service providers or external stakeholders about how the CCL makes important judgement decisions. For example, the weighting of improving farming practices versus protecting inherent values when considering a discretionary consent.

The service delivery model and its implementation by LINZ includes portfolio managers and external contacted service providers (SPs), which has resulted in LINZ having a stronger link to farming and economics than ecology, e.g. "capability of economic use and not warranted protection." There is also the perception that LINZ staff just rubber stamp what SPs provide, but it is also noted that SPs are variable and don't all know what LINZ wants.

Overall, the combination of stronger farming links, poor or variable quality ecological advice, and the desire to complete deals has meant development has resulted.

Following the passing of the CPLA, LINZ and the CCL prioritised completing tenure reviews..

Following the passing of the CPLA, LINZ and the CCL prioritised completion of tenure reviews (almost 'any deal is a good deal'), even previously funding SPs and offering incentives to complete the stages of the tenure review process. When trying to improve management of

Crown pastoral leases, the focus of LINZ has been the process and not how decisions are made. For example, a focus on engagement processes with DOC rather than how to reconcile competing objectives.

While the key system processes (e.g. tenure review) are around the Crown's exit strategy, the outcomes are challenging what people thought would happen and it is no longer clear if tenure review is attractive to leaseholders. The change in focus represents a challenge for central and local government, particularly LINZ, because the system is being asked to deliver something it was not designed to deliver.

... so LINZ's advice and education function is focussed on the lessee...

LINZ's advice and education function has been focused on engagement with lessees and has not adequately ensured the system is transparent to other stakeholders. This work has often been overly process focused and unable to consider things beyond a narrow view of the process.

... and there has been limited compliance and monitoring...

The compliance and enforcement function lacks adequate tools to enforce non-complying behaviour. The compliance inspection regime has been variable over the years. Overall compliance, monitoring and enforcement are hampered by a lack of information – there is not much data on landuse, the state of the environment, or the effect of land use changes.

Dispute resolution is focused towards lessees, and with many processes appearing to favour the lessees the external perception is one of a lack of transparency (e.g. there is limited ability for stakeholders to dispute discretionary consent decisions but lessees can).

LINZ uses a number of service providers. There is concern that there is inconsistency across those contractors with the advice and service they provide. Also there does not appear to be any joining up of compliance, enforcement and monitoring across LINZ, DOC and local government.

... so with a lack of clear outcomes and information on the system it has been difficult to reconcile the competing views on the system...

LINZ records the outcomes of tenure review in terms of land area and financial transfers and outcomes of discretionary consent applications (approved / part approved / declined). LINZ is charged with, and is focussed on, running the process, so has no information on what happens after tenure review. There is no systematic recording of ecological outcomes and as such, no way of using history to inform current practice.

The lack of information (on farming and environmental values) and no overall indicators of Crown strategic priorities all feed into the prioritisation of process over outcome. Despite this there is still discontent with the process.

Testing against the key 4 criteria

Effectiveness

Out of 303 Crown pastoral leases in 1998, 125 have completed tenure review, with a large amount of land added to both the conservation estate and to freehold tenure. Of the current 173 leases, only 40 are in tenure review. Given the initial expectation that all leases would have

gone through tenure review in a reasonably short period of time the system has not delivered. Approximately 40% of Crown pastoral leases have completed tenure review.

Many stakeholders argue that tenure review and discretionary consents have assisted land use change and intensification and that the system has not delivered ecological sustainability.

In its current form the system is unlikely to result in many of the remaining leases, beyond those in the tenure review system, completing tenure review.

Efficiency

The system is not efficient:

- a. Tenure review is slow, which is expensive on many dimensions for all parties
- b. Discretionary consents do not cost the farmers, but do cost the Crown
- c. Service Providers are not clear enough on what is expected of them
- d. Stakeholders are still arguing about the necessary process steps, causing considerable inefficiency
- e. The interface with the RMA is poor, which is generating considerable extra work for all.

Durability and resilience

The system has continued to deliver tenure review; discretionary consents have continued to be issued and concern over rents has reduced.

The system is not able to cope with the wider range of stakeholders that want to have input into the system.

The system was designed to enable the Crown to exit the lease arrangements, and is struggling as pressures change. For example, discretionary consents are now for a much larger number of activities and the Crown is likely to be a long-term landowner.

Fair and accountable

The CCL is only accountable to the Minister for Land Information so stakeholders do not see the CCL as accountable (especially as there has been very limited visibility of the CCL for a number of years).

The processes are opaque and not well understood and there is not widespread agreement that the system is fair.

Processes are weighted towards farmers (eg appeal rights on discretionary consents) and are not perceived as fair (eg the process of tenure review is perceived to exclude many perspectives).

Key issues

Priority 1: Clarify the system objectives.

The current system is designed to enable the Crown to exit being a long-term landowner. Expectations of the system have changed and the Crown needs to articulate what it is seeking to achieve from the system.

The Crown needs to articulate the outcomes it wants from the system. Then the Crown needs to find a way to give effect to that articulation.

- If the Crown is comfortable with the system being about exiting being a long-term landowner then it needs find a way of ensuring lessees enter the tenure review process.²⁶
- If the Crown wants to be a long-term landowner then it needs to change the current legislation to establish a regulatory system that is focussed on what the Crown is seeking to achieve by being a long-term landowner.

Priority 2: Improve information, monitoring and transparency.

Stakeholders and LINZ all require better information to understand and improve system performance.

To understand what the system is delivering in terms of outcomes requires good information. At the moment information such as the outcomes of tenure review processes is not easy to obtain and is not part of what is used by the policy teams.

- Monitoring and evaluating the regulatory system requires appropriate information on the outcomes the system is delivering. Such information should include farming practices, ecological outcomes, process performance, and cultural/historical sites. The data needs to move beyond the number of hectares in the various forms of tenure after a tenure review.
- The data should be used to inform stakeholders and decisions on the management of Crown pastoral land.

Priority 3: Continue process improvement.

LINZ has considerable scope to improve its understanding of what the regulatory system is achieving. How processes (particularly tenure review, discretionary consents and rent setting) support the system and involve (consult / inform / allow input from) stakeholders matters to the overall performance of the system.

Process improvement alone is unlikely to satisfy key stakeholders because their main concern is the system objective. However, the processes are important and improving them can improve system performance.

²⁶ The alternative to tenure review being the Crown could, as it has done, purchase who property leases, but then it has to decide on the tenure arrangements for that land (e.g. unalienated Crown Land) or it could become part of the conservation estate.

Without legislative change the system will remain process-focussed because the system objective is process-focussed. As the key service design and operational agency it is incumbent on LINZ to ensure the processes deliver as best as possible.

Priority 4: Reconsider the underlying legislation and supporting institutional arrangements.

The nature of this reconsideration is the Government's objective for the system. The system has been able to flex and respond to the changes sought by government since 1998. However, it has not been able to satisfactorily respond to the changes in economics and the environment. As the system objective shifts further from the original objective (that the government should exit being the long-term landowner of Crown pastoral leases) the regulatory system becomes increasingly stressed.

If the government is going to continue to be a long-term landowner of pastoral leases then the legislation, regulations and institutional arrangements that support this objective need to be reconsidered.

- Issues around land are sensitive to New Zealanders and the Minister having no ability to influence the regulatory system or decision maker – i.e. the Commissioner of Crown Lands (CCL) - seems too narrow as the issues are broad and politically sensitive.
- The current processes, and the role of the CCL in those processes, were established to deliver tenure review and enable pastoral farming, which was largely extensive merino sheep farming. The processes should be designed to ensure delivery of the system objective.
- If the objective is not changed it is still appropriate to revisit the current systems to ensure they are fit for purpose, particularly as non-pastoral activities are becoming increasingly important for high country lessees.
- Over the past twenty years there has been a move to increase the ability of interested parties to be involved in regulatory processes. At present there is limited ability for such parties to be involved in the Crown Pastoral Land Regulatory System, other than during a particular tenure review process. Given the major regulatory system that interfaces the Crown Pastoral Land System is the RMA the difference is marked.
- The legislation and regulations could be improved. For example, it is necessary to read the Crown Pastoral Land Act and the Land Act together, the legislation does not contain clear outcomes and key terms (e.g. ecologically sustainable) are not defined.
- The current system does not contain a framework to decide on non-pastoral activities to ensure the Crown obtains a fair return from those activities.

Priority 5: Reconsider the interfaces.

The system operates alongside other key systems, particularly the resource management, conservation and overseas investment systems. Stakeholders expect the interfaces to work better.

At the process level the interfaces can work better. Having lessees apply to multiple government agencies for the one activity is inefficient and creates too much opportunity for uncertainty and

inconsistency. For agencies this approach does not work either. The Crown can do better at enabling local authorities to do the job the Crown and New Zealanders expect them to do.

- If the legislation is revisited then an objective should be to make the revised legislation works better with, at least, the Resource Management Act.

Key strengths

The system has delivered 125 tenure review outcomes (out of a total of 303 leases) since 1998 and this has resulted in:²⁷

- a. 302,554 ha moving into the Crown Estate (47% of the 648,494 ha), which has enabled the creation of a number of high country conservation parks²⁸
- b. 345,940 ha moving into freehold tenure (53% of the 648,494 ha)

The system is flexible and could deliver a range of outcomes largely because the key decision point in the system is the CCL and, under statute, they have a high degree of autonomy.

The operational focus taken has resulted in the delivery of tenure review, operational improvements and an ability to deliver the necessary processes to support the desired outcome.

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²⁷ Figures as at 30 November 2017. In addition to the tenure review process the Crown has purchased 5 leases with 125,792 ha moving into the Crown Estate.

²⁸ Under the 2003 Government Strategic direction [POL Min (03) 19/7 refers] five conservation parks were created, ie Ahuriri, Korowai-Torlesse, Te Papanui, Eyre Mountains/Taka Ra Haka and Ruataniwha, through pastoral lease land obtained from tenure review and lease purchases being combined with existing conservation land. Five additional parks were progressed through tenure review and lease purchase, which, in addition to Molesworth brings the number of parks to 11. Priority was to be given to these parks that were being progressed [CBC (07) 86, CBC Min (07) 10/12 refers]. Two of the subsequent parks were made of pastoral lease land purchased outright by the Crown:

- Oteake Conservation park made up of Michael Peak (purchased in 2007) and Twinburn (purchased in 2008)
- St James conservation area made up of the St James pastoral lease (purchased in 2008)

Annex 4: Information on leases currently in tenure review

Table 1: Leases with an accepted substantive proposal

Lease	Area under lease (hectares)	Crown (hectares)	Freehold (hectares)
HAPPY VALLEY	3,278	1,038	2,240
HUXLEY GORGE - Pt 106	6,860	13,747	620
HUXLEY GORGE - Pt 139	7,507		
LONGLANDS STATION	2,083	225	1,858
MIDDLE HILL STATION	3,218	2,718	500
MORVEN HILLS	14,207	3,647	10,560
MT DASHER	7,134	2,924	4,210
THE WOLDS	7,966	1,596	6,370
Total	52,253	25,895 (49.5%)	26,358 (50.5%)

Table 2: Leases currently in tenure review

Lease	Area under lease (hectares)	Current stage
FERINTOSH	2,561	Preliminary Proposal Advertised: The preliminary proposal has been presented to the leaseholder and released for public written submissions. This precedes final negotiations with the leaseholder where a final substantive proposal is put by the Commissioner.
GODLEY PEAKS	14,493	
HUKARERE STATION	7,177	
ISLAND HILLS	5,083	
OMAHAU HILL	2,299	
SIMONS PASS	5,575	
THE GRAMPIANS	16,057	
TWIN PEAKS	3,533	
AWAPIRI STATION	6,880	
BEAUMONT - OTAGO	21,137	Consultation for Preliminary Proposal: A preliminary proposal is developed that sets out the areas that will return to full Crown ownership, be freeholded, public access rights and whether any covenants or easements should be created. This is done in consultation with the leaseholder.
DUNSTAN DOWNS	12,348	
EREWHON	13,575	
GLEN LYON	31,800	
GLENARAY STATION	50,988	
GLENMORE STATION	18,819	
LAKE TAYLOR	7,301	
LOWBURN VALLEY	5,814	
MINARET STATION	19,753	
MT HOPE	1,033	
SAWDON	7,632	
SHENLEY	3,234	
STONY CREEK	7,640	
THE DASHER	6,224	
THE LAKES	4,284	
WHITECOMB - SOUTHLAND	11,464	
MT BURKE STATION	9,998	Information gathering: LINZ conducts property inspections, and consults with DOC, Te Rūnanga o Ngāi Tahu, and Fish & Game on any features of the land that may require protecting.

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