

Coversheet: Improving the administration of Crown pastoral land

Advising agencies	<i>Land Information New Zealand</i>
Decision sought	<i>Final policy decisions to improve the administration of Crown pastoral land by amending the Crown Pastoral Land Act 1998 and making consequential amendments to the Land Act 1948</i>
Proposing Ministers	<i>Minister for Land Information</i>

Summary: Problem and Proposed Approach

Problem Definition

What problem or opportunity does this proposal seek to address? Why is Government intervention required?

A regulatory review and public consultation have identified a number of issues with the Crown pastoral land regulatory system, including:

- a lack of clear system outcomes
- low public trust in LINZ's administration of the system, and
- a lack of provision for Te Tiriti partnerships within the system.

The Minister for Land Information has clarified her desired outcomes for the regulatory system, including a clear prioritisation of the maintenance or enhancement of inherent values¹ over pastoral farming considerations.

Changes are needed to the regulatory system to ensure that it operates in alignment with these outcomes, and to address the identified issues.

Proposed Approach

How will Government intervention work to bring about the desired change? How is this the best option?

The proposal outlines changes to the Crown pastoral regulatory system that, supported by operational changes, will help shift the system:

- from a process-based approach that delivers discrete decisions and actions, to an outcomes-based approach that considers cumulative impacts on the whole Crown

¹ Inherent value, in relation to any land, means a value arising from an ecological, landscape, cultural, heritage, scientific attribute or characteristic of a natural resource or historic place.

pastoral land estate over time

- from having low levels of public trust that the land is being managed in the best interest of New Zealanders, to a system that has clearer, more transparent decision-making, stronger accountability, and more opportunity for public involvement
- from a regime that does not clearly recognise and provide for Te Tiriti partnerships, to one that provides for a strong and evolving relationship between the Crown and iwi and for the relationship of Māori with their ancestral lands.

These shifts will be achieved through a number of changes, including to the decision-making framework, the introduction of information requirements and new enforcement tools, improvements to accountability mechanisms and clarifications of the role of iwi and the public in the system.

Legislative amendments will be required, as the central feature of the Crown pastoral regulatory system is a statutorily independent decision-maker (the Commissioner for Crown Lands, 'the Commissioner') who can only make decisions in accordance with the statutory framework and cannot be directed in relation to individual decisions.

Officials consider that this package will address the issues raised by LINZ's regulatory review of the system and in subsequent consultation, in a way that increases the ability of the regulatory system to maintain or enhance inherent values while providing for pastoral farming.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

Non-monetised benefits

The proposals will deliver moderate public benefits, noting that the actual impact will depend on a range of factors including how the changes are implemented.

Improvements to accountability mechanisms and public involvement will strengthen stakeholders' trust in institutions, increasing cultural capital. An increased focus on inherent values will deliver diverse benefits to the public and broader stakeholders from encouraging a sustainable high country environment, that will support sustainable communities, enable the interest of iwi in the inherent values of Crown pastoral land to be recognised, and enable the public to benefit from the estate's ecological and landscape values, and the ecosystem services they provide.

The magnitude of these benefits will depend upon the circumstances of each lease and inherent values affected by an application for discretionary consent.

Regulated parties (primarily pastoral leaseholders and applicants under the discretionary consents system) will likely see some benefits from improving the decision-making framework, which should reduce the complexity of the consenting regime, resulting in time savings and efficiency gains.

Monetised benefits

Proposals to introduce information requirements and the authority to cost recover may also result in savings to the Crown (estimated net present value (NPV)² of up to \$19.893 million over 50 years).

Where do the costs fall?

Non-monetised costs

These costs will primarily fall on regulated parties. Changes to decision-making will impact on the future ability of leaseholders to change the use of the leased land – this could affect future productivity gains enabled through discretionary consents.

The actual impact will depend on the new outcomes for the regulatory system, how the new statutory test is applied, the individual circumstances of each lease, and the importance of the inherent values affected by an application. Due to the high levels of uncertainty, this opportunity cost has not been monetised.

Monetised costs

² All NPVs are for 50 years

The monetised costs will primarily fall on those leaseholders who require discretionary consents in the future, and on the Crown to implement the changes.

Regulated parties will be subject to increased information requirements to support applications and depending on future decisions could be charged for all, or part of the costs for the Crown to process the application (estimated NPV of up to \$19.893 million over 50 years).

The Crown will incur additional costs to support the development and updating of secondary legislation; transitioning to a new consenting system; administering a range of new enforcement tools; and producing new accountability documents (estimated NPV of \$15.492 million over 50 years).

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

Changes to how discretionary consents are granted may affect a leaseholder's ability to diversify how they use the leased land to respond to changes in economic and environmental contexts, although this will depend on the individual circumstances of the lease and application. There is a small risk that this may have flow-on effects on the sustainability of local communities, cross-boundary weed and pest control, and on the wider sheep and beef sector.

The changes may also affect LINZ's relationships with key groups:

- Leaseholders – Consultation has shown that leaseholders consider that regulatory changes will negatively impact the relationship between the Crown and leaseholders, where they have a landlord-tenant relationship. LINZ will engage with leaseholders – especially those that will require discretionary consents in the future – to ensure they are provided with adequate information to understand the changes and what they mean for their individual situation.
- Iwi – Iwi, especially Ngāi Tahu, have an interest in how the estate is administered, due to it being a significant area within their takiwā and containing many important cultural values. LINZ will continue to engage closely with affected iwi to ensure that it is clear how these changes affect their interests, and work to develop effective relationships at all levels of the regulatory system.
- Advocacy groups – Several advocacy groups have a strong interest in the Crown's administration of the estate, due to its inherent values which are of high public interest. LINZ has been strengthening its relationship with these groups by ensuring that it considers, and where appropriate responds to their concerns when administering the estate.

Strong relationships between the Crown and these groups will significantly contribute to the effectiveness of the Crown pastoral land regulatory system.

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

These proposals are consistent with the expectations, including introducing clear objectives to the system and seeking to achieve those objectives in a way that has the least impact on regulated parties.

The core area where these proposals risk being inconsistent with the expectations relates to flexibility – because of the regulatory change objectives, which focus on certainty and durability, these proposals will limit the flexibility and discretion available to the Commissioner when making decisions on discretionary consents. However, our view is that this does not represent a significant incompatibility but reflects the Minister's objectives for the system – that it delivers outcomes in an enduring way.

Further, until LINZ has obtained an adequate baseline of current values and outcomes across the estate it will face issues with measuring the performance of the regulatory system in delivering on the new system outcomes.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

LINZ has a robust understanding of the issues with the performance of the regulatory system through a 2018 regulatory review (undertaken by LINZ), and subsequent consultation and analysis.

The main area where information is lacking is on the impact that these issues have had on the inherent values of the land, and their impacts on iwi, leaseholders and key stakeholders.

There is significant public concern that the Crown's administration of the estate has led to the degradation of inherent values. There is anecdotal and localised evidence of this, for example, through the historic granting of discretionary consents that have degraded inherent values, or through non-compliance, such as the unconsented burning of vegetation. However, due to the limitations on historic data collection, LINZ does not have a complete picture across the estate.

Within the time and resources available it was not possible to collect this information. This lack of readily available information was highlighted by LINZ's review of the regulatory system and by public consultation.

Section 9 outlines how LINZ plans to improve the information it holds on the estate to address this.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

A Quality Assurance Panel with representatives from Land Information New Zealand and the Treasury Regulatory Quality Team has reviewed the 'Improving the administration of Crown pastoral land' Regulatory Impact Assessment (RIA) produced by Land Information New Zealand and dated November 2019.

Quality Assurance Assessment:

The Panel considers that the RIA **partially meets** the Quality Assurance criteria.

Reviewer Comments and Recommendations:

Land Information New Zealand has clearly and completely described the status quo including the regulatory system, identified a wide range of options, and undertaken comprehensive consultation.

A clear understanding of the underlying causes and significance of the issues, and the likely impact of options to address them, is inhibited by insufficient quantitative data. To assess the effectiveness and efficiency of the proposals in achieving Government's objectives, and to enable adjustments and corrections, it will be critical for Land Information New Zealand to build thorough monitoring and post-implementation review into its ongoing stewardship of the Crown Pastoral land regulatory system. Ministers could invite Land Information New Zealand officials to report back on the effect of the proposals within two years of them being incorporated into legislation.

Impact Statement: Improving the administration of Crown pastoral land

Section 1: General information

Purpose

Land Information New Zealand is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by or on behalf of Cabinet.

Key Limitations or Constraints on Analysis

The Government has already decided to end tenure review, meaning that the Crown will remain the long-term lessor and landowner of Crown pastoral land.

The Minister has ruled out wholesale change to the regulatory system and has specified several areas of the regulatory system that are out of scope:

- how rents are calculated under Part 1A of the Crown Pastoral Land Act 1998 (CPLA)
- the power for the Commissioner for Crown Lands ('the Commissioner') to apply to the District Court under section 19 of the CPLA
- rehearings under section 17 of the Land Act 1948 ('Land Act')
- statutory appeals under section 18 of the Land Act.

LINZ has a robust understanding of the issues with the performance of the regulatory system through a 2018 regulatory review and subsequent consultation and analysis. However, LINZ does not have a good understanding of system performance due to issues with the historic collection of data and information on outcomes across the estate. Within the time and resources available, it was not possible to collect this information. This affects the following impact analysis, as LINZ can qualitatively describe the impacts through localised evidence but cannot accurately describe the magnitude of the impacts.

The range of options considered relate to ensuring the system will deliver on the outcomes articulated by the Minister. These options have been assessed for their effectiveness, efficiency, flexibility, certainty and fairness, transparency, and durability. In line with the Minister's objectives, effectiveness and durability have been given more weight than the other criteria; this is to ensure that the regulatory system delivers on the proposed outcomes in an enduring way.

Responsible Manager (signature and date):



Sarah Metwell

Manager Policy Crown Land and Information

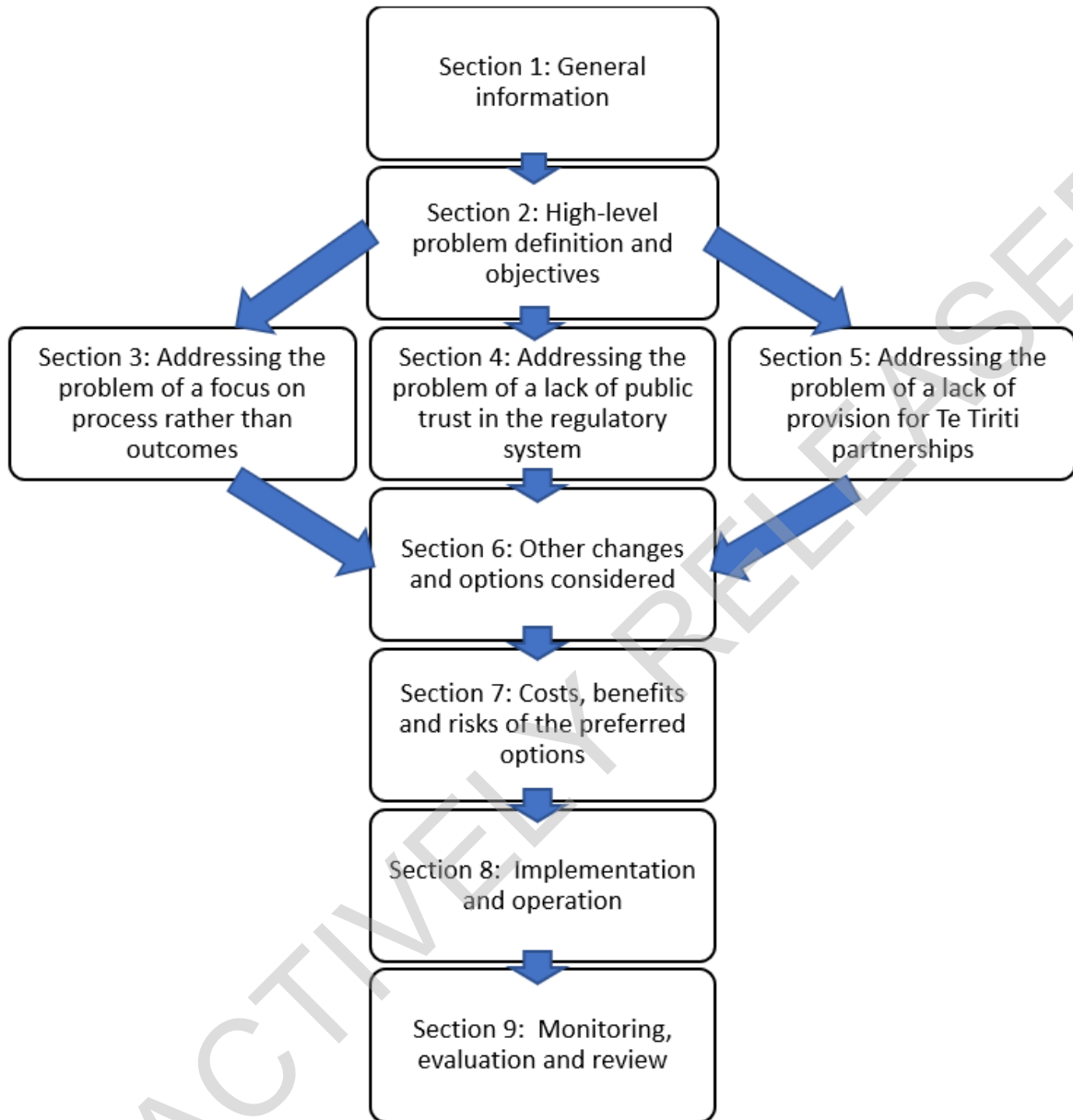
Policy and Overseas Investment

Land Information New Zealand

Date: 07/11/2019

PROACTIVELY RELEASED

High level document structure



Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

In January 2019, the Government decided to end tenure review, the statutory process by which leaseholders can gain freehold to some areas of their leased land, with the remainder returning to full Crown ownership, usually as public conservation land. As a result, the Crown will remain the long-term owner of approximately 1.2 million hectares of Crown pastoral land, being approximately five per cent of the land in New Zealand.

Crown pastoral land comprises 162³ Crown pastoral leases, with smaller areas of unleased pastoral land and land under time-bound special leases⁴. Crown pastoral leases range in size from 250 hectares to 50,000 hectares, with the average lease being approximately 8,000 hectares. These leases are subject to the Land Act and CPLA, are perpetually renewable, and grant the holder the exclusive right to pasturage over the land but no right to the soil or to the fee simple⁵.

Some high country farms are made up of both pastoral leases and freehold land (and, in a few rare cases, include grazing concessions over conservation land). Other farms are made up entirely of leased Crown pastoral land. This influences how Crown pastoral land is farmed across different leases; for example, the freehold can be the core of the farming operation with the leasehold used more as a run-off to graze stock in summer, or the entirety of the farming activity could occur on the leased land. This means that the size of the lease does not necessarily directly translate to the level of farming activity occurring over it.

Crown pastoral land contains high inherent values...

Crown pastoral land encompasses some of New Zealand's most iconic landscapes and is a taonga for New Zealanders. The land has high inherent values,⁶ in particular:

- **Ecological and landscape values** – the estate is home to unique and important environmental values – the flora and fauna of the land, both indigenous and in some cases introduced; the open space and natural landscapes; the natural landforms; ecosystem services; and unique ecosystems. More than half of the estate is indigenous cover, with the vast majority of this being tussock grasslands, iconic to the high country, and the remainder being indigenous forest and scrub/shrubland.

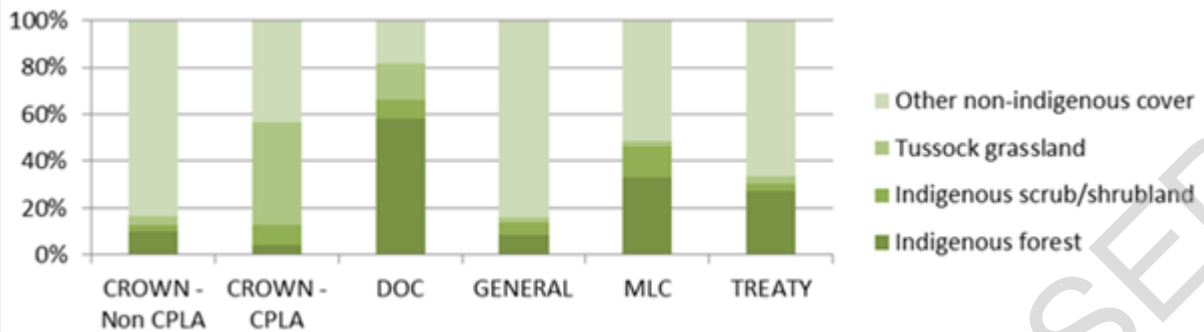
³ As at 1 August 2019 there were an extra five in implementation. Before legislation ending tenure review is enacted, a limited number of pastoral leases may leave the estate.

⁴ Special leases are a separate form of tenure to Crown pastoral leases, but also enable pastoral farming or other uses, and are subject to the CPLA and Land Act.

⁵ The rights granted by a pastoral lease are set out in s4 of the CPLA. Note that in addition to those things specified in the legislation, the leases provide the holder exclusive possession of the leased land [refer High Court Judgement CIV 2008-485-2020].

⁶ Inherent value, in relation to any land, means a value arising from an ecological, landscape, cultural, heritage, scientific attribute or characteristic of a natural resource or historic place

Figure 1: Proportion of each cover type within each tenure type⁷



'CROWN-Non CPLA' = Crown land not covered by the CPLA. 'CROWN-CPLA' = Crown land covered by the CPLA.
 'DOC' = public conservation land. 'GENERAL' = general land. 'MLC' = land covered by the Māori Land Court.
 'TREATY' = land returned as part of Treaty settlements.

- Cultural and heritage values** - Ngāi Tahu takiwā encompasses the majority of Crown pastoral land, and Ngāi Tahu values the land's mahinga kai opportunities, its taonga species, and the historical routes traditionally travelled by their iwi. A small number of leases are within the rohe of Te Tau Ihu iwi: Rangitāne o Wairau and Ngāti Apa ki te Rā Tō. Crown pastoral land is also of cultural and historic importance to leaseholders who in some cases have lived and worked on the land for many generations.

...while providing for economic use

Pastoral farming on this land contributes to local communities and economies as well as providing benefits at the national level.

Crown pastoral lease tenure was created to provide for pastoral farming in a way that recognised the unique constraints of the high country environment. The security of tenure offered by these leases was intended to encourage leaseholders to invest in the land's improvement and upkeep over the long term. Leaseholders have helped sustain the inherent values of the land – for instance, by undertaking pest and weed control. However, the Crown retained significant controls over how the leaseholder could use the leased land (i.e. restrictions on stock numbers and on further development) – this reflected that the land was seen as unsuitable for more intensive uses.

Pastoral leases are generally farmed over broad areas with relatively low stocking rates, compared to other farms. As pastoral leases support commercial operations, there is a reasonable expectation that leaseholders will seek to maximise their productivity and profitability. The key way to do this is through the discretionary consents process, which allows leaseholders to develop more land, increase the use of existing developed land, or to undertaking other allowable commercial activities such as tourism.

⁷ Data from the Threatened Environments Classification. Data is a slight variation of that publicly available on the BCG website (sourced from <https://www.biodiversitynz.org/documents.html>, entitled 'MFE, Analysis from data on land ownership land cover and Threatened Environments Classification, 2018'). The difference between the publicly available document and this one is that the land categorised as 'CROWN' is split up into 'CROWN-Non CPLA' and 'CROWN-CPLA'.

Pastoral farming contributes to high quality export products – including tourism, which is increasingly allowing some leaseholders to diversify their income streams to support extensive, low-impact pastoral farming – and plays a role in supporting New Zealand’s international ‘100% pure’ brand. These activities largely rely on the maintenance of high inherent values across Crown pastoral land.

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

The existence of a specific regulatory system for Crown pastoral land reflects the need to protect the Crown’s ownership interest in the context of the land’s unique inherent values and the vulnerability of its soils and indigenous vegetation cover to pests and over-grazing.

As noted above, the Crown pastoral land regulatory system is created by two pieces of legislation – the CPLA and the Land Act.

The 1948 Land Act provided for the first perpetually-renewable Crown pastoral leases, which were broadly intended to protect the inherent values of the land while allowing for economic use.

The CPLA was introduced with the objective of the Crown exiting this ownership/lessor role. This formalised the process of tenure review. At the time, this was seen as the best way to free up land suitable for broader economic use while providing greater protection for particularly important land with significant inherent values.

Roles and responsibilities

There are a number of roles within the regulatory system.

- The Minister for Land Information is responsible for determining both the policy direction and the priorities of LINZ, and the performance of LINZ and how it uses public funds.
- The Chief Executive (CE) of LINZ is responsible for the overall performance of the Crown pastoral land regulatory system and for stewarding its governing legislation.
- The Commissioner of Crown Lands acts as the lessor on behalf of the Crown and is an employee of the Chief Executive of LINZ. The Commissioner is responsible for fulfilling powers and functions assigned to the Commissioner in legislation.
- The Director-General of Conservation⁸ provides advice to the Commissioner where they make decisions on discretionary consents.

As the Commissioner’s decision-making is statutory, they cannot be directed to make a decision in a particular way by another party. Because of this, legislative amendments will be required to change the framework by which decisions are made.

The roles and interests of leaseholders, iwi, advocacy groups and the public are outlined in

⁸ The Minister of Conservation plays a role in part 3 reviews and tenure review.

section 2.5.

Accountability and transparency

LINZ must include reporting on the management of Crown pastoral land in its strategic reporting documents⁹. Under the Land Act, the Commissioner must also report directly to the Minister on the exercise and performance of their statutory powers and functions¹⁰. Reporting under both of these mechanisms has been historically minimal.

Where an affected party wants a decision by the Crown to be challenged or reviewed there are two possible avenues:

- *Rehearings under section 17 of the Land Act.* A rehearing is a process of internal review that allows those aggrieved by administrative decisions to ask for a decision to be reconsidered. Rehearings apply for other decisions made under the Land Act as well as those relating to Crown pastoral land. The Commissioner decides on approximately 10 rehearings a year.
- *A statutory right of appeal under section 18 of the Land Act.* In cases where a decision affects the lease, leaseholders can appeal to the High Court. This avenue has rarely been used¹¹.

Beyond these avenues, affected parties can also make appeals to the High Court via judicial review if they consider that due process has not been followed.

There are limited avenues for the public to be engaged in the ongoing administration of the estate¹².

Decision-making and discretionary consents

Decision-making within the regulatory system falls into three broad categories:

- Discretionary consents¹³ – which include:
 - *Pastoral (or landlord) consents.* These enable the leaseholder to maintain and/or further develop the land for pastoral purposes.
 - *Recreation permits.* These grant the applicant (leaseholder or otherwise) the

⁹ The Commissioner must supply the LINZ CE with any information they require to meet their obligations under s34 of the Public Finance Act 1989 (PFA), as per s37 PFA. The LINZ CE is accountable to the Minister for Land Information for reporting on the Department's financial management and use of appropriation funding under s35 and 36 PFA. It is these funding accountability measures that require LINZ to establish measures of the quality of outputs/outcomes resulting from LINZ's work and the Commissioner's powers & functions in relation to Crown pastoral land. Additionally, section 181 of the Land Act requires reporting info to be included in LINZ Annual Report. This is usually completed as an appendix.

¹⁰ Section 24AA(2) Land Act 1948.

¹¹ The only reference in case law is that of Feary v. Commissioner of Crown Lands, where it was acknowledged that this process was available for a decision to forfeit a lease under section 146 of the Land Act.

¹² There is a statutory requirement to consult the public on tenure reviews and part 3 reviews, and LINZ engages with stakeholders when updating its standards relating to Crown pastoral land administration.

¹³ The term 'discretionary consents' is used in place of 'discretionary actions' as set out in section 18 of the CPLA.

ability to use the land for tourism related commercial activities.

- *Easements.* These grant rights to use the land in a certain way – such as to convey water.
- Lease administration. The Commissioner makes decisions relating to general lease administration, such as approving lease transfers, subleases, the subdivision of a lease, and changing the tenure of a lease¹⁴ – these are set out both in the Land Act and the CPLA. A list of these functions is provided in Appendix 1.
- The setting of rents.

Decision-making on discretionary consents

When making a decision on a discretionary consent, section 18(2) 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.*

These considerations are not hierarchical, and both criteria must be taken into account by the Commissioner. There is no direction on how each should be weighted.

Appendix 2 provides information on the volumes and approval rates of discretionary consents granted by LINZ.

Fees

There are currently fees for recreation permit and easement applications over Crown pastoral land. However, the Crown has no ability to charge cost recovery fees for the consideration of discretionary consents under the CPLA, such as applications for burning of vegetation, applications affecting or disturbing the soil, and applications for stock limitation exemptions¹⁵. A high-level Stage One Cost Recovery Impact Statement (CRIS) is included as Appendix 3.

¹⁴ Part 3 of the CPLA allows for Crown pastoral land not held under lease to be reclassified or disposed of. The provisions within the Land Act that provided for the alienation of Crown pastoral land – in particular, the ability to grant new pastoral leases, perpetual or otherwise, sell pastoral land and to reclassify pastoral land to enable it to be used for other Crown purposes – were repealed by the CPLA.

¹⁵ Two existing types of discretionary consents under the Land Act 1948 have an associated cost recovery fee:

• The creation of easements under section 60:	\$168.67 (inc. GST)
• Recreation permits under section 66A:	\$115.00 (inc. GST)

This is because section 184 of the Land Act 1948 provides the authority for fees to be prescribed on any application under the Land Act, and the fees are specified in the Land Information New Zealand (Fees and Charges) Regulations 2003. There is not an analogous authority within the CPLA relating to the other classes of discretionary consents.

Monitoring and enforcement

Monitoring

The legislation does not contain any statutory requirements surrounding monitoring the estate. Current monitoring is focused on the legal and on-the-ground compliance with the terms of the lease and any consents granted. LINZ does not undertake ecosystem or system performance monitoring.

Enforcement tools

The only enforcement tool provided by the legislation is section 19 of the CPLA under which the Commissioner may apply to the District Court for the examination of any alleged breach. If the District Court is satisfied that a breach has been committed, it may order the leaseholder to remedy the breach and/or pay exemplary damages of up to \$50,000. The Court also has the power to declare the lease forfeit and award costs and damages.

Rents

The methodology for setting rents was last changed in 2012 with the enactment of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Bill. Part 1A of the CPLA prescribes the methodology by which rents are to be set for Crown pastoral leases. The purpose of the part is to:

establish a framework for specifying an efficient, predictable, and objective process to set rents for pastoral leases based on—

- (a) the productive capacity of the land when used for pastoral farming; and*
- (b) the earnings available from that productive capacity.*

Has the regulatory system been reviewed?

As noted in the previous section, the Crown pastoral land regulatory system was last reviewed in 2018 – a summary of the review is available on LINZ's website¹⁶. The changes within this RIS were prompted by the review and subsequent consultation.

How robust is the supporting evidence?

LINZ has a robust understanding of the issues with the operation of regulatory system through the 2018 regulatory review and subsequent consultation and analysis.

The core area where information is lacking is the nature of the impact that these regulatory system issues have – especially in relation to the inherent values of Crown pastoral land.

There is anecdotal and localised evidence of the degradation of inherent values resulting from the Crown's administration, for example, through the granting of discretionary consents that degrade inherent values, or through non-compliance, such as the unconsented burning of vegetation. However, due to the limitations on historic data collection, we do not have a complete picture across the system. In order to understand this, more comprehensive

¹⁶ <https://www.linz.govt.nz/regulatory/regulatory-stewardship-and-strategy/our-regulatory-systems>

information would be needed on:

- the amount of the estate that has been enabled by the Crown, through discretionary consents, to be cultivated, oversown, topdressed, and irrigated – and the impact that this has had on inherent values, such as decreases in biodiversity through an increase in exotic pasture, and any reduction in the integrity of affected ecosystems.
- the role that any increase in stock plays in weed and pest control, such as by grazing on wilding pine saplings, or by enabling leaseholders to spend more on non-fixed costs such as weed and pest control and other environmental projects.
- the role that discretionary consents have played in enabling leaseholders to undertake weed and pest control and other environmental projects (or in some cases, creating a barrier to this).

Within the time and resources available, it was not possible to collect this information. This lack of readily available information was highlighted by LINZ's review of the regulatory system and by public consultation. This constrains the assessment provided in this RIS.

Section 9 outlines how LINZ plans to improve the information it holds on the estate to address this issue.

2.3 What is the policy problem or opportunity?

Issues have been identified with the Crown pastoral land regulatory system

There has been increasing public concern about the way Crown pastoral land has been administered by LINZ, and a loss of biodiversity and landscape values on current and former Crown pastoral land over time.

In 2018, LINZ carried out a review of the Crown pastoral regulatory system – a system created by the Land Act and CPLA. As part of this process, LINZ engaged with representatives of Ngāi Tahu as Treaty partners, leaseholders, and a range of stakeholders including environmental groups and government agencies.

The regulatory review identified three broad problems with the regulatory system:

- It is process-focused and delivers discrete decisions and actions that do not consider cumulative impacts on the whole Crown pastoral land estate over time.
- There are low levels of public trust that the land is being managed in the best interest of New Zealanders – compounded by a perceived lack of transparency and accountability in relation to decision-making, and limited opportunities for public involvement.
- The system does not clearly recognise and provide for Te Tiriti partnerships.

The regulatory review also concluded that the Crown should clarify its objectives for the system and ensure that the system operates to deliver those objectives.

LINZ is making a number of operational changes...

LINZ is undertaking a number of operational changes to address some of the issues identified in the regulatory review. These include increasing the frequency of inspections¹⁷, improving the information held on the leases, and working more closely with DOC. LINZ has also established the High Country Advisory Group (HCAG)¹⁸ to advise LINZ and the Commissioner on issues affecting the high country.

...but regulatory changes are also needed to fully address these issues

However, as the regulatory review noted, many of the issues identified by the regulatory review cannot be addressed without regulatory change. This is largely because the central feature of the Crown pastoral regulatory system is a statutorily-independent decision-maker (the Commissioner) who can only make decisions in accordance with the statutory framework, and cannot be directed in relation to individual decisions.

This also means that clarifying the system outcomes, as recommended in the regulatory review, requires legislative change, as the Commissioner cannot make decisions that align with particular outcomes unless those outcomes are specifically set out in the legislation.

The Government has already signalled its intent to make regulatory changes

At the same time as announcing the decision to end tenure review outlined above, the Government released a discussion document seeking feedback on a number of regulatory change proposals to address the issues identified in the regulatory review. This consultation process, and the feedback received, is discussed further in section 2.5.

Subsequently, the Minister for Land Information clarified the outcomes that the regulatory system should be aiming to achieve. Chief among these outcomes is a refocusing of the system to prioritise the maintenance or enhancement of inherent values over pastoral farming considerations. These outcomes are set out in more detail in section 3.3.

In the absence of regulatory change, the operation of the system will likely improve

In the absence of the proposed regulatory changes, it is likely that operational changes being made by LINZ will help to improve the way the system operates. In particular, changes are being made that will help to:

- improve information-gathering and monitoring of the performance of the system as a whole, and on the cumulative impacts on the land's inherent values
- provide for closer engagement with iwi and broader stakeholders on the administration of the estate
- improve LINZ's inspection regime for compliance and build relationships with

¹⁷ In Budget 2019, \$3.1 million over four years has been set aside to support LINZ to increase its land management capability and capacity. As part of this, the additional resources will mean LINZ can carry out site visits more regularly.

¹⁸ Members of the group come from a diverse range of backgrounds and expertise including iwi, industry, environmental, and recreation groups.

leaseholders

- improve LINZ's processes and the guidance it provides to leaseholders on their obligations under the legislation.

Non-regulatory options are provided in sections 3 and 4 for addressing specific issues with the regulatory system.

Other proposed changes will also have an impact

The Government is currently progressing changes that will affect future land use and resource management across all New Zealand – including Crown pastoral land. These include initiatives under the Resource Management Act 1991 to improve water quality and biodiversity outcomes and work on the New Zealand Biodiversity Strategy and Action Plan.

These changes focus on ensuring the ongoing health of New Zealand's environment so that it can be enjoyed by, and benefit, current and future generations, as well as supporting a thriving and sustainable economy. There appears to be much alignment between these proposed changes and the outcomes identified by the Minister for Land Information for the Crown pastoral land regulatory system. However, the exact impact of these proposed changes will not be clear until they are finalised.

However, some issues will remain unresolved

Should regulatory changes not be made, the system outcomes would remain unclear, and the Commissioner would be required to continue to balance the protection of inherent values against pastoral farming considerations in his or her decision-making, rather than prioritising inherent values.

In addition, LINZ will continue to face issues with efficiently and effectively managing compliance, and the legislation will not provide guidance on how the principles of Te Tiriti o Waitangi should be reflected in the Crown's administration of Crown pastoral land.

The exact environmental, economic and other impacts of a continuation of the current system are unclear, as the amount of development on a lease depends on a number of factors besides the operation of the regulatory system, such as commodity prices and climatic trends, as well as the financial position of each individual pastoral lease/farm. There are also several issues with LINZ's understanding of what activity is happening on Crown pastoral land (as distinct from what activity has been consented), and on the impact of that activity on inherent values.

The proposed regulatory changes aim to address the three key problems identified in the regulatory review...

The proposed package of regulatory changes set out in this RIS aim to address the three broad problems with the current Crown pastoral land regulatory system identified by the regulatory review:

1. A focus on process rather than outcomes (see **Section 3**)
2. A lack of public trust in the system (see **Section 4**)

3. A lack of provision for Te Tiriti partnerships (see **Section 5**)

More details on each of these policy problems and the underlying factors that contribute to these problems are set in sections 3, 4 and 5, along with proposed options to address each problem.

...and achieve three high-level objectives for regulatory change

The overarching objective for the proposed regulatory changes is to refocus the regulatory system on delivering the Minister's desired outcomes – in particular, to enable a clear prioritisation of the maintenance or enhancement of inherent values over pastoral farming considerations. This requires three key shifts:

- from a process-based approach that delivers discrete decisions and actions to an outcomes-based approach that considers cumulative impacts on the whole Crown pastoral land estate over time
- from having low levels of public trust that the land is being managed in the best interest of New Zealanders to a system that has clearer, more transparent decision-making, stronger accountability, and more opportunity for public involvement
- from a regime that does not clearly recognise and provide Te Tiriti partnerships to one that provides for a strong and evolving relationships between the Crown and iwi and for the relationship of Māori with their ancestral lands.

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

The Government has already decided to end tenure review, meaning that the Crown will remain the long-term lessor and landowner of Crown pastoral land (CAB-19-MIN-0016 refers).

The Minister has ruled out wholesale change to the regulatory system. The system should continue to provide for pastoral farming and there is no intent to change leaseholders' tenure, right to pasturage and quiet enjoyment of their leasehold properties, or their perpetual rights of renewal.

These changes will only apply to statutory functions and duties under the CPLA and the Land Act so far as they relate to Crown pastoral land, unless specified otherwise.

The Minister has decided that the following specific areas of the regulatory system are out of scope of these changes:

- how rentals are calculated under part 1A of the CPLA
- the power for the Commissioner to apply to the District Court under section 19 of the CPLA
- rehearings under section 17 of the Land Act
- statutory appeals under section 18 Land Act.

2.5 What do stakeholders think?

Who are the stakeholders?

Leaseholders

Leaseholders of the 162 remaining leases, who manage the land and whose livelihoods are closely linked to its wellbeing, are directly affected by these proposed changes. A large majority of leaseholders are represented by the High Country Accord and Federated Farmers High Country.

The High Country Accord is a trust established in 2003 for the purposes of promoting and protecting the rights of holders of pastoral leases under the CPLA and the Land Act 1948, “with a view to ensuring the future economic, environmental and social sustainability of the South Island High Country”. The Accord has been active in informing leaseholders and their affiliates of the proposals within the discussion document and coordinating responses. Almost 100 individual submitters from the pastoral lease community endorsed the submission by the Accord.

Organisations

Many organisations have an active interest in Crown pastoral land. These include industry, environmental and recreational advocacy groups, as well as a number of territorial authorities and statutory bodies.

List of organisation submissions

These submissions can be found on LINZ’s website

Ashburton District Council	New Zealand Deerstalkers Association Hutt Valley Branch
Ballance Agri-Nutrients	New Zealand Deerstalkers Association South Island Access Committee
Canterbury Aoraki Conservation Board	New Zealand Fish and Game Council
Environment and Conservation Organisations of New Zealand	New Zealand Game Animal Council
Environment Canterbury	New Zealand Law Society
Federated Farmers High Country	North Canterbury Fish & Game Council
Federated Mountain Clubs	Otago and Central South Island Fish and Game Councils
Forest & Bird / Environmental Defence Society (joint submission)	Otago Conservation Board
Greenpeace NZ	QEII National Trust
Heritage New Zealand Pouhere Taonga	Recreation Aotearoa

High Country Accord	Regional Film Offices of New Zealand and Film Otago Southland
Latham Ag Consulting Ltd	Save the Rivers Mid-Canterbury
Mackenzie Country Trust	Te Rūnanga o Ngāi Tahu
Mackenzie Guardians Inc	The New Zealand Merino Company Limited
New Zealand Archaeological Association	Tourism Industry Aotearoa
New Zealand Conservation Authority	Walking Access Commission Ara Hīkoi Aotearoa

The public

LINZ has heard from members of the public, academics and ecologists, all of whom have a significant interest in the Crown's administration of the estate.

What consultation has already taken place?

Public consultation took place from 17 February to 12 April on the proposals set out in the discussion document '*Enduring stewardship of Crown pastoral land*'. LINZ, supported by DOC, held a number of consultation meetings during this time.

During the consultation LINZ received 3248 submissions. These include:

- 32 organisation submissions, including from iwi, councils, industry groups, environment and recreation advocacy groups and statutory bodies
- 477 individual submissions
- 2739 form submissions¹⁹

Further consultation

Following the close of public consultation, further targeted engagement has been undertaken with the Accord, iwi, and environmental and recreational advocacy groups.

This has included several field visits to pastoral leases by LINZ staff, facilitated by the Accord. These have provided a greater understanding of the practical impact of the proposals on the day-to-day management of the leases.

Policy developments have been discussed with the High Country Advisory Group²⁰, a group of experts, stakeholders and iwi, which includes two lessees.

Engagement with affected iwi

The majority of Crown pastoral leases are within the takiwā (tribal territory) of Ngāi Tahu,

¹⁹ This included 104 overseas submissions.

²⁰ The High Country Advisory Group was established in 2018 to provide advice and insights to the Commissioner of Crown Lands and LINZ to enable greater transparency and communication in the management of Crown land in the South Island High Country. The group also look for collaborative projects, identify examples of good practice and recommend activities to support work programmes. It is made up of representatives from sectors such as the environment, farming, industry, iwi and government.

with the remainder within that of Te Tau Ihu (the top of the South Island) iwi.

LINZ has been working closely with Te Rūnanga o Ngāi Tahu during the policy process in order to understand the interest of the iwi in Crown pastoral land.

LINZ has also engaged with Te Rūnanga a Rangitāne o Wairau and Ngati Apa ki te Rā Tō on the changes, where a small number of leases are situated within their rohe.

Feedback from consultation

The discussion document invited feedback on seven proposals. Overall, there was general support for the case for change and for the specific proposals. However, a significant number of submitters directly affected by the changes disagree that the proposals, as presented, are an effective way to achieve improved outcomes for Crown pastoral land.

List of proposals

Proposal 1: Include a new set of outcomes for Crown pastoral land within the CPLA

Proposal 2: Require that the Commissioner of Crown Lands (the Commissioner) develop a regular Statement of Performance Expectations, approved by the Minister for Land Information

Proposal 3: Explicitly provide for the Commissioner to publicly release guidance and standards to assist officials and leaseholders to understand and comply with the legislative requirements

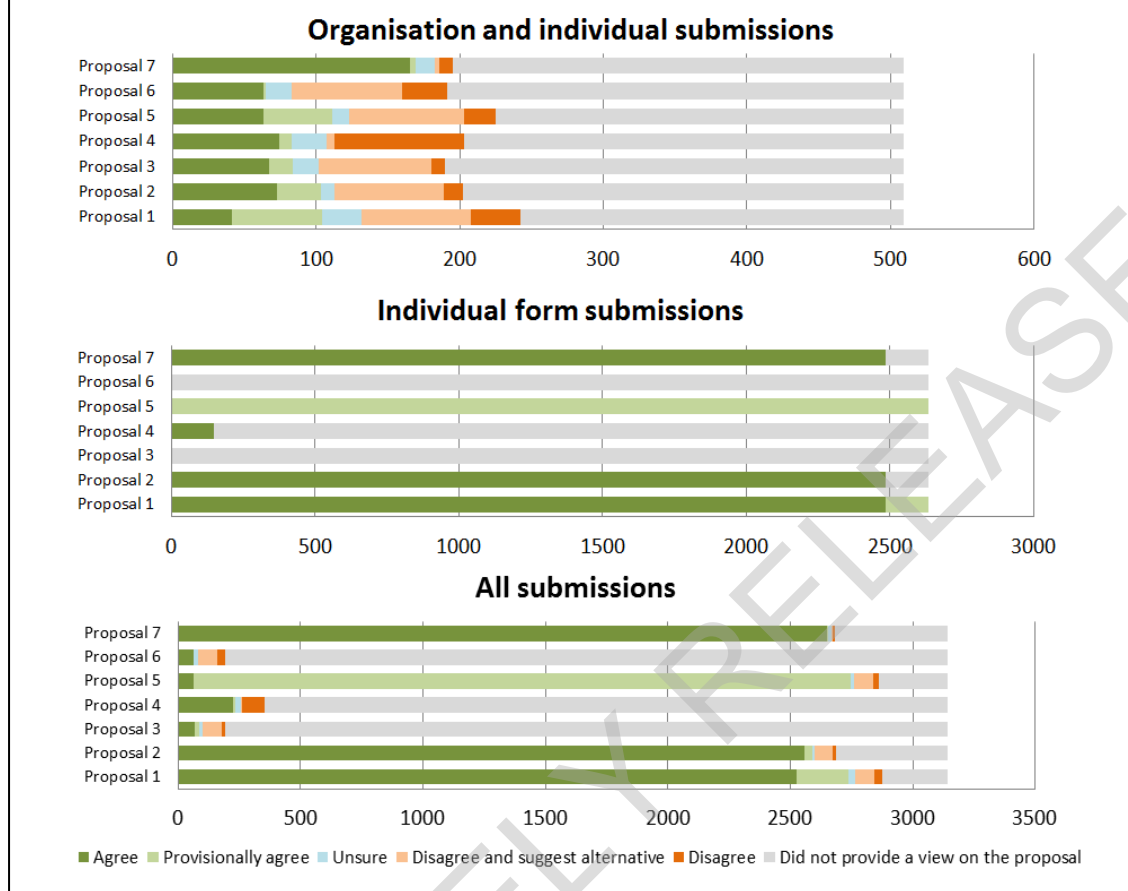
Proposal 4: Require the Commissioner to give effect to the outcomes in any discretionary consent decisions

Proposal 5: Require the Commissioner to obtain expert advice and consult as necessary on discretionary consent applications

Proposal 6: Update the fees and charges framework

Proposal 7: Require the Commissioner to regularly report against a monitoring framework

Figure 2: How submitters responded to the proposals



Consultation on these proposals has helped to shape the options and analysis in this document.

What are stakeholders’ and Treaty partners’ views on the issues and their causes?

A detailed breakdown of how submitters responded during public consultation is found in the submission summary published on LINZ’s website²¹. Stakeholder and iwi views on the issues and their causes are outlined below.

Group	General summary of views
Leaseholders	<ul style="list-style-type: none"> Consider that there are issues with the Crown’s administration of this land – however, they consider that the root cause of this is a loss of capability and capacity within LINZ, and a loss of relationships between LINZ and leaseholders. Consider that clear outcomes would be beneficial, however, the best way to achieve these would be through collaboration as opposed to regulation.

²¹ <https://www.linz.govt.nz/crown-property/crown-pastoral-land/crown-pastoral-land-management/consultation-enduring-stewardship-crown-pastoral-land/submissions-enduring-stewardship-crown-pastoral-land>

<i>Iwi</i>	<ul style="list-style-type: none"> • Te Rūnanga o Ngāi Tahu (Te Rūnanga) has strong cultural connections to the high country, which they consider have been disrupted by tenure review and the leasing of the land by the Crown. Te Rūnanga strongly desires to be reconnected to the land, and be engaged as the Crown's Treaty partner in relation to the administration of Crown pastoral land. • It is Te Rūnanga's view that the Treaty partnership needs to be improved both operationally and to be better reflected in the legislation.
<i>Environmental advocacy groups and statutory bodies</i>	<ul style="list-style-type: none"> • Consider that there is an urgent need to improve how decisions are made on Crown pastoral land to protect its inherent values. The cause of the issues is seen as flowing from both the statutory framework and operational practice. The Crown is seen as not fulfilling its obligations to steward the land on behalf of the public.
<i>Recreation advocacy groups and statutory bodies</i>	<ul style="list-style-type: none"> • Mixed views on whether the issues are purely operational or a result of the statutory framework. • Consider that the Crown's administration should include negotiating public access as part of its objectives for the estate.
<i>Academics and ecologists</i>	<ul style="list-style-type: none"> • Consider that the Crown's administration has contributed to the degradation of inherent values across the estate – provided detailed case studies to support this. • Consider that there are serious flaws with the statutory framework – especially with the role of the Commissioner and associated accountability mechanisms.
<i>Industry groups</i>	<ul style="list-style-type: none"> • Did not provide views on the cause of the issues but consider that any changes should acknowledge the important role that viable high country farming plays in the sheep and beef industry and in supporting New Zealand's 'pure' brand. • Considers that there are process issues with the issuing of discretionary consents that make it cumbersome for some industries to engage with.
<i>The public</i>	<ul style="list-style-type: none"> • The vast majority view that the Crown is not doing enough to steward the land on behalf of the public. Raised serious concerns with specific cases of intensive farming occurring on the estate. • Demonstrated a significant lack of confidence in the regulatory system's operation.

Structure of analysis throughout sections 3, 4 and 5

This diagram demonstrates the relationship between each broad problem, the underlying factors that contribute to these problems, and the options considered to address these underlying factors.



Section 3: Addressing the problem of a focus on process rather than outcomes

3.1 What is the nature of the policy problem?

The regulatory system currently focuses on process rather than outcomes – this delivers discrete decisions and actions, as opposed to ones that consider cumulative impacts on the whole Crown pastoral land estate over time. Most stakeholders agree that refocusing the system around clear outcomes for Crown pastoral land would be beneficial, especially as a way to improve the quality and consistency of decision making, though leaseholders consider that these outcomes are best achieved through collaboration as opposed to regulatory changes.

In analysing submissions, LINZ has identified five underlying factors to this broad problem:

- The system lacks clear outcomes setting out what the Crown’s administration of the estate should be seeking to achieve
- The current discretionary consents system does not recognise the different impact of different activities on inherent values
- The current statutory decision-making framework is inconsistent with the Minister’s desired outcomes
- The information and advice that informs decisions is inadequate to support high-quality decision-making in line with the outcomes
- The regulatory system lacks the tools required to effectively and efficiently manage compliance and support the delivery of the system outcomes.

The system lacks clear outcomes setting out what the Crown’s administration of the estate should be seeking to achieve

The regulatory review concluded that “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 focused on what the Crown is seeking to achieve by being a long-term landowner”.

The relevant legislation does not provide clear guidance for the Crown on what the regulatory system as a whole should be seeking to achieve – in particular, how the protection of inherent values should be prioritised relative to the development of the land for pastoral farming. This increases the likelihood that the regulatory system will result in poor outcomes for inherent values.

Following consultation, the Minister for Land Information has proposed new outcomes for the Crown pastoral regulatory system, which articulate what the regulatory system should be achieving – these will need to be incorporated within the legislation if they are to guide statutory decision making. These outcomes are outlined in section 3.3.

The current discretionary consents system does not recognise the different impact of different activities on inherent values

The regulatory system currently follows the same process for discretionary consents regardless of their potential impact on inherent values. For example, leaseholders can be required to apply for consents to undertake activities required by their lease (such as pest control) or that contribute to the maintenance or enhancement inherent values, or for other minor or low-risk activities. The Commissioner is required to follow the same decision-making process to consider each application. This creates inefficiencies and prevents resources being focused on those activities likely to have the most impact on inherent values.

Consultation has shown that leaseholders want these issues addressed to make it easier for them to steward the leased land. Other stakeholders consider that some activities should be explicitly identified that require increased scrutiny by the Crown.

The current statutory decision-making framework is inconsistent with the Minister's desired outcomes

The Minister's desired outcomes for the system envisage a hierarchy where the maintenance or enhancement of inherent values should be prioritised over pastoral farming considerations.

However, the Commissioner is currently required to balance the desirability of protecting inherent values against the desirability of making it easier to farm the land when making a discretionary consent decision²². That means that the current statutory decision-making framework will be unlikely to provide for the Minister's desired outcomes without specific changes to the legislation.

If these changes are not made, then the types of activities approved by the Commissioner will likely lead to more intensive use of Crown pastoral land and a potentially greater negative impact on inherent values. For instance, in their submission ecologists Harding, Head and Walker²³ outline a number of cases where lawful application of the current legislation has led to significant adverse effects on inherent values.

It should be noted that LINZ has been improving its operational processes for the granting of discretionary consents – working closely with the Department of Conservation to ensure that adverse effects on inherent values are identified and appropriate conditions or restrictions are imposed on consent to remedy, mitigate or avoid those adverse effects. However, this will not resolve the issue outlined above.

The information and advice that informs decisions is inadequate to support high-quality decision-making in line with the outcomes

For decision-making to effectively deliver on the proposed outcomes, it is important that the Commissioner can consider high-quality, relevant information and advice as part of his or

²² Refer section 18 CPLA.

²³ This submission can be found on LINZ's website. <https://www.linz.govt.nz/crown-property/crown-pastoral-land/crown-pastoral-land-management/consultation-enduring-stewardship-crown-pastoral-land/submissions-enduring-stewardship-crown-pastoral-land>

her decision. The regulatory review and subsequent consultation highlighted that the quality of information that informs discretionary consent decisions has been inconsistent.

This is because:

- there are no clear standards for the information on which decisions should be based, beyond a requirement to consult with the Director-General of Conservation
- there is not enough information on system performance to assess how individual decisions contribute to overall outcomes
- the onus of addressing information gaps generally falls on the Crown.

Without high-quality information it is unlikely that decision-making will have a clear understanding of an applications impact on the new system outcomes, reducing the effectiveness of the discretionary consents process in achieving the desired outcomes.

The regulatory system lacks the tools required to effectively and efficiently manage compliance and support the delivery of the system outcomes

Effective monitoring and enforcement are needed to ensure that the system is delivering on the intended outcomes over time, and protects the Crown's ownership interest in the land, by encouraging compliance and, as appropriate, taking enforcement action for non-compliance.

The regulatory review found that both stakeholders and LINZ require better information to understand and improve system performance. This is especially the case for supporting decision-making and understanding the cumulative impacts of the Crown's administration.

As LINZ improves its information on the estate, both through more regular lease inspections and the gathering of information on system performance, it will also gain a better understanding of compliance. Non-compliance has a negative impact on inherent values – such as through unconsented burning, soil disturbance, and cultivation – though its extent is not currently well understood.

LINZ's lease inspections indicate that non-compliance is an issue. Since July 2014 approximately 90 lease inspections have been undertaken; during that same period approximately 40 warning letters were sent to leaseholders relating to non-compliance identified during the inspections. The severity of this non-compliance varies and is often related to technical and minor issues. However, there are some cases of significant non-compliance: for example, where burning of indigenous vegetation has been undertaken without consent and resulted in irreversible losses to inherent values.

One key problem with the current system is that the only effective enforcement tool (applications to the District Court which may include a lease forfeit) is costly, time-consuming, and is not appropriate for breaches at the lower end of the scale. This is reflected by the fact that this mechanism has been used only rarely²⁴.

The lack of appropriate tools impacts on how enforcement is managed – for instance, leaseholders who are found to be undertaking activities without a proper consent are

²⁴ LINZ is only aware of two instances of section 19 of the CPLA being used.

generally required to apply for a consent after an activity has already been undertaken, rather than being penalised in any way. This in turn creates a potential disincentive to apply for the proper consents in the first place, eroding the ability of the regulatory system to achieve specific outcomes.

3.2 Objective for regulatory change to address this problem

To address this problem, the regulatory system needs to shift to an outcomes-based approach that considers cumulative impacts on the whole Crown pastoral land estate over time.

This will be achieved by:

- articulating clear outcomes within the legislation
- ensuring the discretionary consents system recognises the different impact of different activities on the system outcomes
- ensuring statutory decision-making on discretionary consents is consistent with the proposed outcomes for the regulatory system
- ensuring decisions are underpinned by high quality information and advice on how they are likely to impact on the system outcomes
- ensuring the regulator can effectively and efficiently manage compliance to support the delivery of the system outcomes.

3.3 What options are available to address the problem?

The following options present different ways in which to ensure the system supports this outcomes-based approach by addressing the underlying factors identified earlier in this section.

The system lacks clear outcomes setting out what the Crown's administration of the estate should be seeking to achieve

The Minister's proposed outcomes for the management of the estate will be included in the purpose of new/amended legislation. This purpose would apply to all persons performing statutory functions relating to Crown pastoral land under the legislation. This will address the first issue identified in 2.3 above – that the system lacks clear outcomes setting out what the Crown's administration of the estate should be seeking to achieve.

The proposed outcomes are to:

- provide for ongoing pastoral farming of Crown pastoral land in a way that maintains or enhances the inherent values across the Crown pastoral estate for present and future generations
- reflect the Crown's partnerships with iwi under Te Tiriti, both in terms of how the

system as a whole operates, and in relation to specific decisions. It should be noted, however, that it is the Crown rather than the leaseholder that has responsibilities as a partner of Te Tiriti, and these responsibilities are not intended to diminish the property rights of leaseholders

- enable the Crown to get a fair return on its ownership interest in Crown pastoral land (although the rent-setting process is outside the scope of the current changes).

These outcomes set out a clear hierarchy where the maintenance or enhancement of inherent values should be given priority over provision for pastoral farming. The implications of this are discussed further below.

The current discretionary consents system does not recognise the different impact of different activities on system outcomes

Options considered

The status quo

Activities requiring consent are set out in the CPLA and Land Act. Updating which activities require consent requires legislative change. Because of this there is a risk of over-regulation in cases where requiring consent may not be appropriate in light of the activity's likely impacts.

Option 1.1: Retain the status quo and release enhanced non-statutory guidance on activities requiring consent from the Commissioner

The status quo allows for operational improvements to how LINZ manages the risks posed by consented activities to inherent values. LINZ and the Commissioner could also develop non-statutory guidance for all activities that require consent and whether they are considered low or high risk by the Crown. This guidance could specify activities in terms of scale, location and duration. The guidance could not remove the requirement for consent and could not prohibit activities. It could then be used by potential applicants to inform how and if to apply for consent, and by the Crown to inform its operational processes.

This would be most effective if adopted in conjunction with **option 7.1** which would entail regular consultation with leaseholders and broader stakeholders and engagement with relevant iwi on the development of non-statutory standards and guidance. This consultation would help ensure that the full impact of an activity is understood.

Option 1.2: Introduce a regulation-making power²⁵ to classify certain activities as permitted or prohibited within a schedule of the CPLA – provided that doing so is consistent with the outcomes

For an activity to be classified as permitted, decision-makers would need to be confident

²⁵ This could also be achieved through classifying activities in secondary legislation.

that permitting the activity is consistent with the outcomes – i.e. that the potential impacts of permitting the activity across the estate will be less than minor. Under this approach permitted activities could be defined in terms of scale, duration and location.

Prior to this, the Minister would be required to consult with the Director-General of Conservation and engage with relevant iwi. Regulated parties and broader stakeholders would also be provided the opportunity to submit on the proposal.

Classifying an activity as prohibited would follow the same process, and would only occur where decision-makers are confident that undertaking the activity would result in significant impacts in every foreseeable instance.

This option would streamline the discretionary consent process by allowing for decision-making resources to be targeted at higher risk activities and decrease the burden on regulated parties so they would no longer have to apply for consent to undertake some minor activities and enhancement projects such as pest control.

The Cabinet paper proposes to delegate final decisions on the content of the schedule to joint Ministers.

The current statutory decision-making framework is inconsistent with the Minister's desired outcomes

Options considered

The status quo

Section 18 of the CPLA requires the Commissioner to balance environmental and farming outcomes when considering discretionary consent applications.

The current decision-making process involves the Commissioner (or their delegate) receiving advice from DOC²⁶ on whether a proposed activity will have adverse effects on inherent values. If these adverse effects are unable to be avoided, remedied or mitigated then the Commissioner considers whether the desirability of making the land easier to farm outweighs the desirability of protecting inherent values from the remaining adverse effects – this includes considering the benefits of the activity to pastoral farming based on the information provided by the applicant. Should this be the case, the activity is approved. This therefore allows for a trade-off between inherent values and pastoral farming considerations.

The legislation does not provide any instruction on how the two should be weighted as the desired outcomes of decision making is not articulated in the legislation - this is a matter for the Commissioner's discretion and judgement to be exercised in accordance with administrative law principles. This has led to a perception among stakeholders that this discretion is exercised in an arbitrary and often inconsistent way.

²⁶ This is a requirement under the CPLA, section 18(1).

Option 2.1: Replace section 18 with a requirement that the Commissioner only consent to activities that he or she considers are consistent with the outcomes set out in the purpose of the Act

How this assessment is made would be left to the discretion of the Commissioner, who would consider the purpose, outcomes and intent of the legislation. The Commissioner would have to be confident that the decision is consistent with the outcomes, noting that the outcomes specify what the Crown's overall administration of the estate should be aiming to achieve. Whether each individual decision contributes to that overall outcome would be at the determination of the Commissioner.

Option 2.2: Replace section 18 of the CPLA with an effects-based test

This option would involve:

- checking that the activity is classified as 'discretionary' in the schedule,
- identifying inherent values of the land at the appropriate scale and recognising the varying nature and importance of inherent values,
- evaluating if the activity will have any adverse effects on those inherent values including if:
 - the adverse effects are temporary
 - they modify/degrade the inherent value
 - there are any cumulative adverse effects,²⁷
- determining whether any adverse effects can be avoided, remedied or mitigated, and
- determining the magnitude of any residual adverse effect that the activity could be have.

The Commissioner could also be required to consider alternative ways of achieving the relevant activity,²⁸ in case any of those have a lower adverse effect²⁹.

The Commissioner could only approve an activity that has no residual adverse effects or minor residual adverse effects – minor in quantity, severity, size or degree; this would mean that some small adverse effects from an activity across an entire lease could be

²⁷ This would include cumulative adverse effects across the leases and within the lease. Cumulative effects may only be identified through longer-term monitoring of the land to inform what cumulative effects activities have on inherent values.

²⁸ It is likely that DOC would be consulted on this step, as they are often aware of actions that could be less damaging to values than those applied, for example spraying vs. burning vs. mechanical clearance of vegetation to provide for stock access.

²⁹ This matches the obligation on the Minister when compulsorily acquiring land under s24(7) of the Public Works Act 1981 to consider alternative sites, routes or other methods for achieving the objectives of the public work.

approved. Expert advice and consultation would play a vital part in the Commissioner determining what is an acceptable minor adverse effect.

This option would not explicitly provide for the Commissioner to consider pastoral farming values when making decisions.

The existing consultation requirement with the Director-General of Conservation would be retained, and an obligation to engage with iwi would be introduced (refer to the associated Cabinet paper).

Option 2.3: Replace section 18 of the CPLA with the effects-based test described in option 2.2 and provide a 'gateway' for certain activities necessary for ongoing pastoral farming that fail the effects-based test

This option comprises two components. First, the application of an effects-based test as described in option 2.2 – then, where an application fails this test the leaseholder can apply to have it considered through the 'gateway'.

The gateway is intended to ensure that the Crown does not unreasonably prevent the leaseholder from exercising their right to pasturage over the leased land, where the Commissioner must be satisfied that not allowing the activity would prevent the leaseholder from conducting pastoral grazing when the lease is considered as a whole.

Once an activity has qualified through the gateway, the Commissioner would then be obliged to consider the purpose of the legislation, any other obligations on them when carrying out their powers/function (e.g. relevant Government policy), and also to ensure that they exercised their powers in accordance with administrative law principles. A provision stating that the Commissioner is under no obligation to grant a discretionary consent would be included to clarify the discretionary nature of the consents. The application of this gateway would not involve considering the benefits of developing the land further or intensifying land use.

A requirement to consult with DOC (and engage with iwi if relevant) would be included at this stage of the test.

Appendix 4 provides a process-map for this test.

There are a number of ways this option could be configured, while still being consistent with the outcomes. These could range along a spectrum, for example, from providing for the minimum level of pastoral farming as specified in the lease agreement to providing for the reasonable pastoral use of the land – where what is reasonable is informed by the purpose and outcomes within the Act and a range of contextual factors.

The associated Cabinet paper proposes to delegate final decisions on how the test should be configured to joint Ministers.

Option 2.4: Only allow for activities that have no adverse effects on any inherent values

This option follows the same process as option 2.3. However, no amount of residual adverse effects would be allowed for.

Under this option the Commissioner would not consider farming values and there would be little to no discretion. It would likely lead to a significant number of current applications being declined.

A non-regulatory option has not been provided as these changes deal with statutory decision-making.

The information and advice that informs decisions is inadequate to support high-quality decision-making in line with the outcomes

Options considered

The status quo

Currently the applicant fills out a form that typically provides minimal information. The applicant is not required to provide supporting ecological (or other) information on the effects of an activity to inform their application. LINZ often commissions assessments from service providers to assist with decision-making. This means there is effectively no cost to the applicant for the Commissioner to gather this information and the evidential burden is on the Crown.

The Commissioner can release non-statutory standards specifying what information should be contained within an application.

The Commissioner is currently required to consult with the Director-General of Conservation on each application. DOC provides ecological advice and assessments from within its operating budget. Operational improvements are underway to improve this process so that more detailed (and relevant) information is provided by the applicant. Parties beyond DOC with an interest, or specialising in specific inherent values, such as iwi, are not currently consulted in the process.

Option 3.1: Retain the status quo and release enhanced non-statutory standards and guidance that sets out information requirements and what parties LINZ will consult in relation to discretionary consent applications

The standards would set out what information should be provided with an application, considering the scale, location and duration of the potential activity.

This would be most effective if adopted in conjunction with **option 7.1** which would entail regular consultation with leaseholders and broader stakeholders, and engagement with

relevant iwi on the development of non-statutory standards and guidance.

Option 3.2: Introduce a regulation-making power to set minimum requirements for consent applications to specify the information that applicants need to provide

These minimum requirements would be set out in secondary legislation. The Commissioner would have the ability to decline to consider an application if it provides insufficient supporting information.

This would largely shift the evidential burden of providing information on the impacts of an activity to the applicant. Applicants could be required to provide levels of information proportionate to the nature and scale of the proposed activity.

As the requirements would be set out in secondary legislation, any updates to the schedule would undergo Cabinet oversight.

This option would be enhanced when adopted with **option 3.3**.

Option 3.3: When assessing an application, require the Commissioner to obtain any other expert advice they consider necessary to satisfy themselves that the impact of an activity on inherent values is accurately identified

Should the information requirements (**option 3.2**) be met but the Commissioner is still not satisfied that they have enough information on the impacts then the Commissioner would be obligated to seek further expert assessments.

For example, if heritage values are affected this would see the Commissioner consult with iwi and relevant parties such as Heritage New Zealand Pouhere Taonga. The decision to obtain further expert advice would be the Commissioner's and reflect the particular circumstances of the application. However, in line with **option 6.1** the Commissioner would be required to publish a decision summary outlining who was consulted and why.

A variation to this option is to specify these parties within the legislation. This was supported by a number of submitters during consultation. However, due to the diversity of values present across the estate, a degree of flexibility is seen as necessary.

This option would be enhanced when adopted with **option 3.2**.

The regulatory system lacks the tools required to effectively and efficiently manage compliance and support the delivery of the system outcomes

Options considered

The status quo

The Crown pastoral land regulatory system currently provides limited enforcement options

where a breach in the conditions of a lease or consent is confirmed.

The two existing enforcement measures are:

- *Written notice (letter/direction/warning)* – To prevent further breaches or to remedy or mitigate the effects of non-compliance, the Commissioner can give a written direction for a party to take or cease a particular action. (This has no legislative power). This measure is regularly utilised.
- *Take legal action* – Section 19 of the CPLA provides that the Commissioner may apply to the District Court for the examination of any alleged breach. This action has been utilised two times since the enactment of the CPLA.

Option 4.1: Enable the Commissioner to accept enforceable undertakings

An enforceable undertaking provides an alternative to court action. For example, where the regulator alleges a breach (or court action has already commenced), an applicant can voluntarily agree to certain actions, in exchange for the regulator not filing (or dropping) charges.

It would be entirely on the regulated party³⁰ to initiate the process - the Crown would not approach the regulated party recommending an undertaking.

The content of an enforceable undertaking would depend on the context of the breach – actions could include:

- creating a farm management plan acceptable to the regulator
- remediation works
- agreement to LINZ recovering its costs of monitoring compliance with the enforceable undertaking.

The Commissioner would be required to publicly release a notice of decision to accept the enforceable undertaking along with reasons for the decision.

Option 4.2: Introduce an administrative penalty where an activity is undertaken without consent

An administrative penalty would apply if a regulated party undertakes an activity listed under section 18 of the CPLA³¹ without first obtaining consent from the Commissioner. This approach is similar to the penalties applied in the Western Australia pastoral lease context³².

³⁰ Regulated party is used to refer to leaseholders and other potential applicants – such as under recreation permits and easements.

³¹ It may also be appropriate for this to apply to other administrative activities requiring consent, such as transfers of the lease and residency exemptions.

³² For example, see section 109 of the Land Administration Act 1997 where the penalty is \$10,000

The penalty would be applied automatically where the breach is confirmed. However, the Commissioner would have the discretion to waive an administrative penalty in certain circumstances³³.

Under this option, the decision of the Commissioner not to waive an administrative penalty would be made subject to the current rehearings process under section 17 of the Land Act.

This tool is intended to penalise non-compliance with administrative requirements and not necessarily to reflect the magnitude of the adverse effects on inherent values of any non-compliance. In cases where the non-compliance has significant adverse effects, other enforcement tools should be considered.

The size of the penalty should reflect this intent and would be a fixed amount set in regulations³⁴. Final decisions on the size of the penalty would be made when policy approvals for the relevant regulations are sought.

Should an administrative penalty be introduced it is recommended that it should not come into effect until at least six months after new legislation is passed to allow regulated parties to become familiar with the new system.

A summary of enforcement action utilising this tool would be publicly released.

This option is an alternative to **option 4.3**.

Option 4.3: Introduce an infringement system for where an activity is undertaken without consent

Infringement systems are common enforcement tools for breaches that are relatively minor. Where the regulator has reasonable grounds that an individual has committed an infringement offence (in this case the commencement of an activity without consent), a notice is issued that sets out the offence and the fee payable. Should the individual contest the infringement then they can dispute it and the matter is dealt with by the Courts, where the prosecution must prove the offence.

The core difference between an administrative penalty and an infringement system is that an infringement system provides a well-understood process for recourse to the courts.

A summary of enforcement action utilising this tool would be publicly released.

This option is an alternative to **option 4.2**.

³³ For example, where an activity had to be undertaken with urgency where stock were at risk or in severe weather events.

³⁴ The size of the penalty would not be subject to the discretion of LINZ or the Commissioner.

Option 4.4: Introduce a power for the Commissioner to take remedial action and recover costs

This enforcement tool would only be appropriate in situations where a breach is capable of being remedied and it is urgent that remediation works occur as soon as possible. This power would entail two steps.

First, where an alleged breach is identified, a notice would be issued by LINZ setting out the grounds for, and nature of, the alleged breach of the Act, along with any recommendations the regulator considers necessary to remedy or adequately mitigate the effects of the breach. The regulated party would have a set period by which to commence works to remedy the breach³⁵ and would be informed of the process by which the Commissioner can instruct LINZ to undertake the remedial action.

Second, where it is established that the notice is not being complied with, the Commissioner may instruct LINZ to undertake specific actions on a property to remedy a previous action or lack of action by the regulated party; and following this may seek to recover any reasonable costs from the regulated party as a debt.

A summary of enforcement action utilising this tool would be publicly released.

Note that this issue primarily relates to the range of tools provided within the legislation and as such a non-regulatory option is not included.

Access to justice

Any new enforcement tools would be made subject to section 17 of the Land Act which provides for the Commissioner to rehear a decision. Regulated parties affected by enforcement decisions would also have access to judicial review. There is no proposal to introduce an independent statutory right of appeal in relation to enforcement decisions.

The right of appeal to the High Court under section 18 of the Land Act will be available in relation to decisions 'affecting the lease or license'³⁶.

³⁵ It is intended that this period of time would be at the discretion of the regulator and reflect the severity of the risk posed by continued action or inaction.

³⁶ *Where any lessee or licensee under any lease or licence granted under this Act or any former Land Act considers himself aggrieved by any decision of the Board affecting the lease or licence, he may appeal to the High Court if, within 1 month after being notified of that decision, he gives notice of appeal to the Board, and also to such persons (if any) as have appeared before the Board as opponents of the case or claim or application to which the decision relates, and also gives security, to be approved by the Registrar of the court, for the costs of the appeal:*

provided that no such appeal shall lie—

(a) where by any provision of this Act the decision of the Board is final:

(b) [Repealed]

(c) against any decision of the Board in relation to the allotment of land:

(d) where the Board has made a determination of an administrative nature.

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

In assessing the options, the following criteria have been used.

Effectiveness criteria

This analysis employs three effectiveness criteria to assess whether each option will promote the achievement of the regulatory change objectives. These criteria are based upon the three desired shifts for the regulatory system articulated by the Minister. These shifts are outlined in sections 3.2, 4.2 and 5.2.

This focus on effectiveness mean that these criteria have been given more weight than the other criteria.

1. **Effectiveness (outcomes-based):** will the option promote an outcomes-based approach where the Crown's administration of Crown pastoral land maintains or enhances inherent values while providing for ongoing pastoral farming?

Note: the proposed outcomes also include a fair financial return and reflecting Te Tiriti partnerships. The effectiveness of an option for enabling the Crown to obtain a fair financial return has not been assessed; this is because rents are out of scope so there will be no significant change beyond the status quo. The effectiveness of the option in relation to reflecting Te Tiriti partnerships is covered in criterion 3.

2. **Effectiveness (public trust):** will the option increase public trust in the regulatory system by ensuring clearer, more transparent decision-making, stronger accountability, and more opportunity for public involvement?
3. **Effectiveness (Te Tiriti partnerships):** will the option provide for strong and evolving relationships between the Crown and iwi and for the relationship of Māori with their ancestral lands?

Other criteria

These criteria assess whether each option will ensure that the regulatory system operates in line with the principles of regulatory stewardship.

4. **Efficiency:** will the option deliver on these objectives in the most cost-effective way (including avoiding unnecessary cost and duplication), and with the least adverse impacts on regulated parties?
5. **Certainty:** will the option help support predictable and consistent outcomes for regulated parties across time, and are expectations and obligations easy to understand?
6. **Durability:** will the option ensure enduring best practice and enable evolution in response to changing circumstances or new information on the regulatory system's

performance?

Note: In line with the Minister's objectives, durability has been given more weight than the other criteria. This is to ensure that the regulatory system delivers on the proposed outcomes in an enduring way.

There are several potential trade-offs within the criteria:

- Between effectiveness and efficiency – where an option is more effective at delivering the outcomes, it could possibly reduce the ability of leaseholders to change how they utilise the leased land.
- Between certainty, and durability – where the more prescriptive an option is the less potential it has to respond to evolving circumstances.

Note that these criteria have been used for impact analysis in sections 3, 4 and 5.

3.5 Impact Analysis

Key:

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo (also no likely *net* difference from the status quo).
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Options 1.1 to 1.2: The current discretionary consents system does not recognise the different impact of different activities on system outcomes

	Option 1.1: Retain the status quo and release enhanced non-statutory guidance on activities requiring consent from the Commissioner	Option 1.2: Introduce a regulation-making power to classify certain activities as permitted or prohibited within a schedule of the CPLA – provided that doing so is consistent with the outcomes
Effectiveness (outcomes-based)	0 No significant change beyond the status quo. This option will not affect structural issues with the decision-making framework.	++ This option will ensure the discretionary consents system recognises the different impact of different activities on the system outcomes (i.e. where an activity has minor to no impacts it can be permitted, while high risk activities will still require consent or in some cases be prohibited). On balance this approach will increase the likelihood that the discretionary consents process will deliver on the outcomes through ensuring that activities are regularly reviewed, classified and processed according to this risk profile. This option would: <ul style="list-style-type: none"> • enhance the regulatory system’s ability to maintain or enhance inherent values (+) through increasing the ease with which certain weed and pest control activities can be undertaken, potentially increasing the effectiveness of leaseholder’s pest management. The benefits from this will depend on the final decisions on the content of the schedule. • promote the regulatory system’s ability to provide for pastoral farming (+) by encouraging low impact pastoral farming activities where they will no longer require the consent of the Commissioner. Where activities are prohibited this could impact on the ability of the regulatory system to provide for pastoral farming, though this will depend on the final decisions on the content of the schedule.
Effectiveness (public trust)	+ This option could improve transparency to stakeholders by increasing publicly available information and increase public involvement through LINZ undertaking a consultation process during development of the guidance.	++ This option will improve transparency to stakeholders and increase public involvement through requiring that a consultation process is undertaken where the schedule is being updated, during which stakeholders will be given the opportunity to submit. The Cabinet process will also ensure that the Government has oversight of the decision-making framework.
Effectiveness (Te Tiriti partnerships)	+ This option could increase the involvement of iwi in the decision-making framework. However, engagement has shown that this may not be to the degree articulated by affected iwi through engagement.	++ This option will require increased involvement of iwi in the decision-making framework, increasing the likelihood that the regulatory system provides for a strong and evolving relationships between the Crown and iwi and for the relationship of Māori with their ancestral lands.
Efficiency	0 No significant change beyond the status quo.	+ This option would result in the more efficient and targeted use of existing Crown resources. However, there will be an additional cost to implementing this option, such as through consultation, and transitioning between the two consenting regimes. A more streamlined process for minor/low risk activities is also likely to be more efficient for leaseholders when undertaking day-to-day farming operations that require consent. Currently this would result solely in time savings to leaseholders as they are not required to pay fees for the processing of discretionary consents. In a situation in the future where fees are introduced (refer to the associated CRIS) then this option will mitigate costs to leaseholders.
Certainty	0 No significant change beyond the status quo.	+ Introducing a new system of activity classification may initially decrease certainty; however, over the medium to long term certainty will likely increase. The approach will also likely improve certainty by providing simpler processes for leaseholders to undertake activities that are required by the legislation and terms of the lease.
Durability	0 No significant change beyond the status quo.	+ This option will likely to be more responsive to changing contexts and innovations in land management.
Overall assessment	0 This option is not recommended compared to option 1.2, as there would likely be minimal benefits beyond the status quo.	++ This option is preferred primarily due to its potential to address structural issues with the decision-making framework that prevents the framework being outcomes-based, its potential to increase public trust in the system and its process benefits which will make the existing decision-making framework more efficient and allow decision-making effort to be targeted where it is needed most.

Options 2.1 to 2.4: The current statutory decision-making framework is inconsistent with the Minister's desired outcomes

	Option 2.1: Replace section 18 with a requirement that the Commissioner only consent to activities that he or she considers are consistent with the outcomes set out in the purpose of the Act	Option 2.2: Replace section 18 of the CPLA with an effects-based test	Option 2.3: Replace section 18 of the CPLA with the effects-based test described in option 2.2 and provide a 'gateway' for certain activities necessary for ongoing pastoral farming that fail the effects-based test	Option 2.4: Only allow for activities that have no residual adverse effects on any inherent values
Effectiveness (outcomes-based)	<p style="text-align: center;">+</p> <p>This option would likely be effective at ensuring statutory decision-making on discretionary consents is consistent with the proposed outcomes for the regulatory system through providing a wide degree of flexibility to the Commissioner to account for the individual contexts of applications. However, the effectiveness of this option would largely depend on how LINZ and the Commissioner implement a new decision-making process to give effect to this requirement.</p>	<p style="text-align: center;">-</p> <p>On balance, the effectiveness of this option would vary for ensuring statutory decision-making on discretionary consents is consistent with the proposed outcomes for the regulatory system. This is because this option would:</p> <ul style="list-style-type: none"> significantly enhance the regulatory system's ability to maintain or enhance inherent values (+)³⁷ through preventing any activities from being approved that degrade these values potentially negatively affect the regulatory system's ability to provide for pastoral farming (--) through likely preventing some activities from being undertaken that are necessary for ongoing pastoral farming. The exact impact of this would depend on the circumstances of an application. <p>There is a risk that the negative impacts of this approach on pastoral farming would outweigh the benefits to inherent values.</p>	<p style="text-align: center;">++</p> <p>On balance this option would be highly effective at ensuring statutory decision-making on discretionary consents is consistent with the proposed outcomes for the regulatory system. This is because this option would:</p> <ul style="list-style-type: none"> significantly enhance the regulatory system's ability to maintain or enhance inherent values (++) through preventing activities from being approved that degrade these values (subject to the application of the 'gateway' retain the regulatory system's ability to provide for pastoral farming (0) by providing a 'gateway' for those situations where declining a consent would significantly undermine the ability of a leaseholder to undertake pastoral farming. <p>The combined impact of this approach is that the likelihood that inherent values are maintained or enhanced will increase, while related negative impacts on pastoral farming will be mitigated to a degree by providing a 'gateway' for some activities – noting that this would not involve considering the benefits of developing the land further or intensifying land use.</p>	<p style="text-align: center;">-</p> <p>On balance the effectiveness of this option would vary for ensuring statutory decision-making on discretionary consents is consistent with the proposed outcomes for the regulatory system. This is because this option would:</p> <ul style="list-style-type: none"> significantly enhance the regulatory system's ability to maintain or enhance inherent values (+)³⁸ through preventing any activities from being approved that degrade these values negatively affect the regulatory system's ability to provide for pastoral farming (--) through likely preventing many activities from being undertaken that are necessary for ongoing pastoral farming (whether to maintain existing development or expand pastoral farming), where further activities are prevented no matter how small their residual adverse effects. The exact impact of this would depend on the circumstances of an application. <p>There is a risk the negative impacts of this approach on pastoral farming would likely outweigh the benefits to inherent values.</p>
Effectiveness (public trust)	0 No significant change beyond the status quo.	0 No significant change beyond the status quo.	0 No significant change beyond the status quo.	0 No significant change beyond the status quo.
Effectiveness (Te Tiriti partnerships)	0 No significant change beyond the status quo.	0 No significant change beyond the status quo.	0 No significant change beyond the status quo.	0 No significant change beyond the status quo.
Efficiency	<p style="text-align: center;">0</p> <p>This option will likely have a minor impact on the capacity of leaseholders to realise additional productivity from their farming operation, due to a stronger driver on the Crown to make decisions that prioritise inherent values. Likely the same administrative cost to the Crown to implement this option.</p>	<p style="text-align: center;">--</p> <p>Depending on the circumstances of an application, this option could negatively impact on the capacity of leaseholders to realise additional productivity from their farming operation. Likely a small reduction in costs to the Crown to implement this option, as the only decision-making step would be an assessment of the inherent values and remaining adverse effects.</p>	<p style="text-align: center;">-</p> <p>Depending on the circumstances of an application, this option could have a minor negative impact on the capacity of leaseholders to realise additional productivity from their farming operation, due to a focus of the test on maintaining existing farming and not providing for consideration of the benefits of developing the land further. Likely a small additional administrative cost to the Crown to implement this option due to increased complexity of the statutory test.</p>	<p style="text-align: center;">--</p> <p>Depending on the circumstances of an application this option will likely negatively impact on the capacity of leaseholders to realise additional productivity from their farming operation. Likely a small reduction in costs to the Crown to implement this option as the only decision-making step would be an assessment of the inherent values and remaining adverse effects.</p>

³⁷ Note that the (+) rating is due to the risk from undermining ongoing pastoral farming where leaseholders may no longer be able to effectively steward the land through weed and pest management and other environmental projects.

³⁸ See previous footnote.

Certainty	0 No change from the status quo. The degree to which outcomes for regulated parties are predictable and consistent would depend on how LINZ and the Commissioner operationalise the process.	+ As the legislation would be more prescriptive regarding the statutory test, this option would help support predictable and consistent outcomes for regulated parties across time.	+ As the legislation would be more prescriptive regarding the statutory test, this option would help support predictable and consistent outcomes for regulated parties across time.	+ As the legislation would be more prescriptive regarding the statutory test, this option would help support predictable and consistent outcomes for regulated parties across time.
Durability	0 No change beyond the status quo.	- This option would prevent decision-making from accounting for changes in the conditions of pastoral farming.	0 The 'gateway' will allow decision-making to account for any changes in the context of pastoral farming in a similar way to the status quo.	- This option would prevent decision-making from accounting for changes in the conditions of pastoral farming.
Overall assessment	+ This option is not preferred, however, it is a good fit with an outcomes-based system that allows flexibility for regulators to achieve the system objectives.	- This option is not preferred as although it will enhance the regulatory system's ability to maintain or enhance inherent values, it will significantly reduce its ability to provide for pastoral farming.	++ This option is preferred as it will ensure the regulatory system is highly effective at delivering on the outcomes in a way that minimises the negative impacts on regulated parties.	- This option is not preferred as although it will enhance the regulatory systems ability to maintain or enhance inherent values, it will significantly reduce its ability to provide for pastoral farming.

Options 3.1 to 3.3: The information and advice that informs decisions is inadequate to support high-quality decision-making in line with the outcomes

	Option 3.1: Retain the status quo and release enhanced non-statutory standards and guidance that sets out information requirements and what parties LINZ will consult in relation to discretionary consent applications	Option 3.2: Introduce a regulation-making power to set minimum requirements for consent applications to specify the information that applicants need to provide	Option 3.3: When assessing an application, require the Commissioner to obtain any other expert advice they consider necessary to satisfy themselves that the impact of an activity on inherent values is accurately identified
Effectiveness (outcomes-based)	+ This option would promote the achievement of the outcomes through ensuring decision-making is informed by high-quality information and advice on an application's impacts.	+ This option would promote the achievement of the outcomes through ensuring decision-making is informed by high-quality information and advice on an application's impacts.	+ This option would promote the achievement of the outcomes through ensuring decision-making is informed by high-quality information and advice on an application's impacts.
Effectiveness (public trust)	+ This option will likely enhance public trust in the system, as publicly available application requirements will increase stakeholders' understanding of what informs decision-making. Further, where the application requirements are updated there may be an opportunity for consultation and increased public involvement.	+ This option will likely enhance public trust in the system, as publicly available application requirements will increase stakeholders' understanding of what informs decision-making. Further, where the application requirements are updated there may be an opportunity for consultation and increased public involvement.	0 No significant change beyond the status quo.
Effectiveness (Te Tiriti partnerships)	0 No significant change beyond the status quo.	0 No significant change beyond the status quo.	+ This option will require increased involvement of iwi in the decision-making framework through requiring expert advice from relevant iwi on cultural values affected by applications.
Efficiency	0 No significant change beyond the status quo. Minor additional administrative costs.	0 Transfers several costs from the Crown (+) to leaseholders (-) that relate to gathering information to support an application.	- Minor cost to the Crown to facilitate additional consultation. May result in a longer consenting process for applicants.
Certainty	+ Clearer application and process standards will increase certainty through making expectations and obligations on regulated parties easier to understand.	+ Clearer application and process standards will increase certainty through making expectations and obligations on regulated parties easier to understand.	+ Clearer consultation and process requirements increase certainty to applicants, iwi and broader stakeholders.
Durability	0 No significant change beyond the status quo.	++ This change will ensure that information requirements are kept up to date and account for changing contexts, improving the durability of the regulatory system.	++ Consultation requirements will ensure that changes in context and expert advice are reflected in decisions, improving the durability of the regulatory system.
Overall assessment	+ This approach is not recommended, as it is mutually exclusive to option 3.2, which is expected to deliver greater benefits.	++ This approach is preferred primarily due to its broad certainty and transparency benefits to all parties. However, the majority of the costs of this approach will be incurred by regulated parties. This option would be enhanced when adopted in conjunction with option 3.3.	+ This approach is preferred due to its potential to improve the quality of decisions and clarify to stakeholders how decisions are made. This option would be enhanced when adopted in conjunction with option 3.2.

Options 4.1 to 4.5: The regulatory system lacks the tools required to effectively and efficiently manage compliance and support the delivery of the system outcomes

	Option 4.1: Enable the Commissioner to accept enforceable undertakings	Option 4.2: Introduce an administrative penalty where an activity is undertaken without consent	Option 4.3: Introduce an infringement system for where an activity is undertaken without consent	Option 4.4: Introduce a power for the Commissioner to take remedial action and recover costs
Effectiveness (outcomes-based)	+	+	+	+
	This option will support the delivery of the outcomes by providing an appropriate tool to effectively and efficiently manage compliance.	This option will support the delivery of the outcomes by incentivising compliance with the consenting requirements under the CPLA, increasing the effectiveness of the discretionary consents process.	This option will support the delivery of the outcomes by incentivising compliance with the consenting requirements under the CPLA, increasing the effectiveness of the discretionary consents process.	This option will support the delivery of the outcomes by providing an appropriate tool to effectively and efficiently manage compliance where urgent remediation is required to address a breach.
Effectiveness (public trust)	+	+	+	+
	This option will enhance public trust in the system, as the requirement to publish a decision to accept an enforceable undertaking and reasons will be more transparent than a situation where the matter is settled outside of Court in an ad hoc manner.	This option will enhance public trust in the system where enforcement actions are required to be published (whether in a cumulative or more detailed way), increasing the information available to stakeholders on the Crown's management.	This option will enhance public trust in the system where enforcement actions are required to be published (whether in a cumulative or more detailed way), increasing the information available to stakeholders on the Crown's management.	This option will enhance public trust in the system where enforcement actions are required to be published (whether in a cumulative or more detailed way), increasing the information available to stakeholders on the Crown's management.
Effectiveness (Te Tiriti partnerships)	0	0	0	0
	No significant change beyond the status quo.	No significant change beyond the status quo.	No significant change beyond the status quo.	No significant change beyond the status quo.
Efficiency	+	0	0	-
	This will provide a less costly alternative to legal action, reducing costs to both regulated parties and the Crown.	There is high uncertainty around potential costs to leaseholders due to incomplete information on compliance. The Crown will receive this penalty (though not LINZ specifically).	There is high uncertainty around potential costs to leaseholders due to incomplete information on compliance.	The costs of remediating breaches will ultimately fall on the leaseholder. This reflects the obligations that exist under the status quo. The magnitude of these costs would depend on the circumstance of each breach and how this mechanism is applied.
Certainty	+	-	--	-
	An enforceable undertaking is likely to be seen as a more certain way to settle a dispute than legal action, particularly as the potential use of this tool would be initiated by the regulated party.	Without an effective enforcement framework, additional enforcement tools may introduce uncertainty as to how they will be employed by LINZ, and how this will affect regulated parties.	Without an effective enforcement framework, additional enforcement tools may introduce uncertainty as to how they will be employed by LINZ, and how this will affect regulated parties. This uncertainty would be significant as it would apply to all breaches under the legislation.	Without an effective enforcement framework, additional enforcement tools may introduce uncertainty as to how they will be employed by LINZ, and how this will affect regulated parties.
Durability	+	0	0	+
	This option will allow the regulator to undertake enforcement in a way that is tailored to the specific context of the breach.	No significant change beyond the status quo.	No significant change beyond the status quo.	This option will allow the regulator to undertake enforcement in a way that is tailored to the specific context of the breach.
Overall assessment	++	+	+	+
	This option is preferred as it has broad benefits and will be consistent with a partnership approach to managing compliance.	This option will likely deliver minor benefits beyond the status quo. However, it is recommended to be adopted in line with similar regulatory regimes such as with pastoral lease legislation in the Western Australia context.	This option is not recommended as it is mutually exclusive with option 4.2.	This option is preferred as it will complement options 4.2 and 4.3 along with existing enforcement tools.

3.6 Conclusions

To help ensure that the regulatory system shifts to an outcomes-based approach that considers cumulative impacts on the whole Crown pastoral land estate over time, this analysis recommends that:

- **a regulation-making power is introduced to classify certain activities as permitted or prohibited within a schedule of the CPLA (option 1.2).** This option will be able to respond to changing contexts and innovations in land management; proposed classifications will undergo Cabinet oversight; it will increase public participation in the decision-making framework; and it will deliver greater clarity to regulated parties regarding what activities require consent.
- **the current discretionary consents test be replaced with an effects-based test described and also provide a ‘gateway’ for certain activities necessary for ongoing pastoral farming that fail this test (option 2.3).** This option will shift the balance of decision-making to prioritise the maintenance or enhancement of inherent values, while ensuring that consideration is given to ongoing pastoral farming. This approach is relatively prescriptive and limits the discretion of the Commissioner. It may impact on the ability of leaseholders to change how they utilise the leased land, depending on the context of each application and the inherent values affected.
- **a set of minimum requirements for consent applications be introduced, and that the Commissioner be required to obtain any other expert advice they consider necessary to satisfy themselves that the impact of an activity on inherent values is accurately identified (options 3.2 and 3.3).** These options would promote high-quality information and advice to inform decisions; provide the public and regulated parties greater clarity on what information is required for decision-making; and increase public participation in the process through consulting on any changes to information requirements.
- **a range of mid-tier enforcement tools be introduced that include enabling the Commissioner to accept enforceable undertakings, introducing an administrative penalty where an activity is undertaken without consent, and introducing a power for the Commissioner to take remedial action and recover costs (options 4.1, 4.2 and 4.4).** These options will deliver a package of mid-level enforcement tools that focus on remediation and encouraging compliance. A core benefit of these tools is that they provide alternatives to using the high-impact tool of pursuing alleged breaches through the District Court, which can be costly and onerous to all parties.

The primary uncertainty with these preferred options relates to changes to the discretionary consents test (option 2.4). How the test will impact leaseholders depends on their future need for the process to change how they utilise the leased land, the effects of the activity applied for, and the importance of the inherent values affected. This uncertainty has been reflected in the design of the test through recommending a ‘gateway’ to ensure further consideration of activities critical to ongoing pastoral farming.

3.7 Stakeholder views

Stakeholders are likely to have a range of views on each preferred option.

Engagement with leaseholders has shown that they consider the best way to improve outcomes for the estate is through collaboration and partnering, as opposed to through regulation. Changes to the decision-making framework that prioritise inherent values over pastoral farming considerations (specifically option 2.4) will likely be opposed by leaseholders, who have raised concerns with such an approach, considering that it will negatively impact ongoing viability of pastoral farming.

The recommended package of options seeks to address some of the process issues raised by leaseholders. Though it has not been possible to incorporate all of leaseholders' views on the issues, specific regard has been given to addressing the concerns they raised through the development of the options.

Public consultation has shown that there is strong support for shifting the system to focus on outcomes that focus on the maintenance or enhancement of inherent values. However, many submitters consider that whole system change is needed, such as reassessing the system providing for ongoing pastoral farming. Environmental advocacy groups are likely to support the changes to decision-making; however, they may have concerns with a 'gateway' that provides for certain pastoral farming activities which have adverse effects on inherent values.

Section 4: Addressing the problem of a lack of public trust in the regulatory system

4.1 What is the nature of the policy problem?

During public consultation, LINZ received over 3,200 submissions. A significant amount of this feedback demonstrated a lack of public trust in how the Crown is administering the estate. This was also highlighted in LINZ's 2018 regulatory review.

The discussion below identifies the underlying factors contributing to this lack of public trust in the regulatory system.

- A perception that the Commissioner and LINZ are not adequately held to account for decision-making and the estate's administration
- A perceived lack of transparency in relation to how and why decisions are made
- A lack of opportunity for public involvement in the system.

Stakeholders do not consider that the Commissioner and LINZ are adequately held to account for decision-making and the estate's administration

LINZ and the Commissioner's administration of the estate is of significant public interest, considering it represents approximately five percent of New Zealand's most iconic land. As such, it is important that LINZ and the Commissioner are held clearly accountable for their respective functions in administering this land.

Consultation has shown that there is significant public concern that the current framework combines significant discretion on the part of the statutory decision-maker with a lack of accountability; this is especially the case from environmental advocacy groups, ecologists and academics. In addition to perceptions surrounding the role of the Commissioner, this lack of public confidence is in a large part due to minimal accountability reporting on Crown pastoral land, compounded by a lack of information on system performance and on the impact of the Crown's decision-making and administration of the land.

Stakeholders consider that there is a lack of transparency surrounding how and why decisions are made

Some of the decisions made by the Commissioner are of broad public interest, for example, when considering discretionary consent applications that will enable significant changes of land use over large areas. Consultation has shown a strong desire from stakeholders for more visibility of the decision-making process, where it is currently seen as opaque and arbitrary.

This perception is largely due to the limited information available to the public as to how and why these decisions were made, for example, what information the Commissioner considered in making their decision, and which parties were consulted.

There are limited opportunities for public involvement in the regulatory system

There are limited opportunities for the public to input into the Crown's administration of Crown pastoral land. As such, there are a range of benefits from increased public participation that are not being realised, including potentially increased trust in the system, a better understanding of how the system works, and a likelihood that the system will evolve in line with public expectations, increasing the durability of the system over time.

Consultation has shown that many broader stakeholders want a greater role for the public. However, leaseholders consider that public involvement in specific decisions is inappropriate considering the lease contract, and that that an adequate level of public consultation is already provided for under the RMA.

While acknowledging that public involvement should not cause unnecessary duplication and should reflect the landlord-tenant relationship, LINZ does not consider that increased public involvement is inappropriate in relation to Crown pastoral land, as it provides opportunities for the public to have greater say in how the Crown administers the estate, which is important for ensuring the Crown administers its ownership interest effectively on behalf of the public.

4.2 Objective for regulatory change to address this problem

To address this overarching problem, the regulatory system needs to shift to a system that has clearer, more transparent decision-making, stronger accountability, and more opportunity for public involvement.

This will be achieved by:

- ensuring that LINZ and the statutory decision-maker (currently the Commissioner) are able to be held clearly accountable for their respective functions
- improving transparency to stakeholders in relation to how and why decisions are made
- providing for increased public involvement in the regulatory system.

4.3 What options are available to address the problem?

The following options consider different ways to address the underlying factors previously identified in this section that contribute to a lack of public trust in the system. They seek to increase the accountability and transparency of the regulatory system, and provide for appropriate public involvement, while reflecting that the contractual relationship between the Crown and leaseholder.

Stakeholders do not consider that the Commissioner and LINZ are adequately held to account for decision-making and the estate's administration

The below options consider whether other decision-making roles would be more accountable than the current role of an independent statutory officer within LINZ.

Options considered

The status quo

The Commissioner's decision-making and any related discretion is outlined in legislation. The legislation sets minimal transparency and accountability requirements on the Commissioner, and historically the role of the Commissioner has been opaque and largely closed to the public. This does not mean that the Commissioner cannot take steps to improve the information available to the public on the exercise of his or her powers and functions; improving transparency is a part of LINZ's planned operational improvements.

Option 5.1: Retain the role of the Commissioner in conjunction with other proposals to improve the transparency and accountability of the role

This would mean retaining a single statutory officer in conjunction with related proposals to improve the transparency and accountability of the role.

The associated proposals listed above will require all persons performing powers and functions under the CPLA to seek to achieve a new set of outcomes articulated within the legislation and introduce new decision-making requirements in relation to discretionary consents. These options are intended to ensure that the Commissioner's statutory decision-making is consistent with the proposed outcomes for the system; it will also have the effect of limiting the Commissioner's current discretion.

Option 5.2: Shift the powers and functions of the Commissioner (that relate to Crown pastoral land) to the Chief Executive of LINZ

The Chief Executive's decision-making would still be bound by statute and subject to related proposals to improve accountability and transparency. Under this approach the roles within the system would be consolidated to sit with the Chief Executive who would be responsible for both statutory decision-making and the overall performance of the regulatory system. Additional parameters may need to be set around the delegation of decisions, reflecting the context of the estate.

Option 5.3: Shift the powers and functions of the Commissioner (that relate to Crown pastoral land) to the Minister for Land Information

The Minister's decision-making would still be bound by statute and subject to related proposals to improve accountability and transparency. Under this approach the Minister would have greater oversight of decision making. Additional parameters may need to be set around the delegation of decisions, reflecting the context of the estate.

Option 5.4: Return to a decision-making panel, like the previous Land Settlement Board

The panel's decision-making would still be bound by statute and subject to related proposals to improve accountability and transparency. Under this approach a panel would be established of suitably qualified persons which could also include representative positions for stakeholder groups and iwi. Additional parameters may need to be set around the delegation of decisions, reflecting the context of the estate.

The below options address the need for accountability and transparency at a whole-of-system level, as well as specifically in relation to the Commissioner.

Options considered

The status quo

Currently the Chief Executive of LINZ is required to report on the estate in its accountability documents³⁹ and the Commissioner is required under the Land Act⁴⁰ to report directly to the Minister on the exercise and performance of the Commissioner's statutory powers and functions.

Currently, none of these mechanisms are being used to their full extent and there is minimal specificity around what LINZ and the Commissioner should be reporting on, i.e. what indicators and measures should be used.

Option 5.5: Strengthen existing accountability mechanisms

This would be achieved by:

- requiring the Commissioner to report annually to the Minister on the exercise and performance of their statutory powers and functions in relation to Crown pastoral land
- affirming the accountability obligations of the LINZ CE under the Public Finance Act 1989 to report on the operation of the Crown pastoral land regulatory system and on the exercise of the powers and functions of the Commissioner.

The Minister would be able to provide LINZ and the Commissioner with a letter of expectations that sets out what the reporting should cover and which parties LINZ should be working with or consulting when developing its strategic intentions for the administration of the estate – for example, relevant iwi, leaseholder representatives, and environmental and recreational advocacy groups. This will provide certainty to the responsible Minister that the performance and outcomes of the system are being

³⁹ LINZ Strategic Intentions, Estimates, and Annual Report.

⁴⁰ Section 24AA Land Act 1948.

adequately reported on by LINZ and the Commissioner.

This option will also be complemented by the proposal within the Cabinet paper to establish a 'Crown pastoral land office' within LINZ that is intended to provide certainty of resourcing and a clear line of communication between the Minister and officials.

Option 5.6: Require the Commissioner and LINZ to produce a 'Crown pastoral land Strategic Intentions' (strategic intentions) to be approved by the Minister

This option incorporates the key aspects of the proposal within the discussion document to "Require the Commissioner to create and regularly report against a Statement of Performance Expectations (SPE) at the request of the Minister for Land information (via a Letter of Expectations)". This proposal received broad support across all stakeholder groups during consultation.

The proposed strategic intentions will achieve the same objectives as the previous 'statement of performance expectations' – however, it will broaden the mechanism to include the Chief Executive of LINZ.

Key aspects of the proposed strategic intentions are:

- It would set out how LINZ and the Commissioner propose to exercise their relevant statutory responsibilities, how government policies and priorities (at that point in time) should be reflected in the management of the land – to the extent that they are consistent with the legislation, and relevant key performance indicators of how the exercise of their powers and functions is contributing to achieving the outcomes of the regulatory system.
- It would be approved by the Minister. This will ensure that the responsible Minister's expectations and priorities are clearly accounted for in the creation of the document
- It would operate on a three or four year time-horizon
- The Commissioner and LINZ would be required to work with leaseholders and iwi during the drafting process (this would also include LINZ working closely with DOC)
- The finalised strategic intentions would be a public document
- The Commissioner and LINZ would report annually to the Minister on progress against the Strategic Intentions, and include that report into the LINZ Annual Report
- It would include an affirmation of the LINZ Chief Executive's obligations to create relevant key performance indicators and report on how LINZ's functions are contributing to achieving the outcomes of the Crown pastoral land regulatory system.

Option 5.7: Establish a Crown entity under the Crown Entities Act 2004 responsible for the administration of Crown pastoral land external to LINZ

This option would leverage the existing suite of accountability mechanisms required of Crown entities. LINZ would no longer have a role in the regulatory system, which would be a fundamental shift for how the estate is managed. Accountability for managing the estate would fall solely on the new Crown entity. Existing consultation requirements with the Director-General of Conservation would be retained along with a new obligation to engage with relevant iwi.

There are several powers available to the responsible Minister for instructing Crown entities on their operations. This includes appointing board members, requesting information, reviewing performance, and setting its strategic direction.

There is a perceived lack of transparency surrounding how and why decisions are made

Options considered

The status quo

There is no requirement under the CPLA for the Commissioner to make decisions public, and any requests for information are processed under the Official Information Act 1982 (OIA). However, there is nothing preventing LINZ and the Commissioner from proactively publishing decisions, similar to how detailed information on ongoing tenure reviews are published on the LINZ website.

Option 6.1: Require that the Commissioner publish decision summaries

Providing the applicant has not requested a rehearing of a decision within 20 days, the Commissioner would be required to publish a detailed summary of each discretionary consent/recreation permit/rehearing decision (under the current section 18 of the CPLA and section 17 of the Land Act) within 30 working days of the decision covering:

- which pastoral land a decision was made for
- which parties were consulted on the impact of the activity on inherent values
- what activity the decision allows the leaseholder (or other person) to undertake, and how long they are allowed to undertake that activity
- the land area affected by the activity
- any specific conditions attached to the consent
- what factors the Commissioner considered when making the decisions (e.g. how the

activity aligns with the outcomes).

The required content of the summaries would be set in secondary legislation so that they might be updated following a cabinet process including public consultation should the need arise.

In preparing the summary, any information that would not be released under the OIA would not be included, and the Commissioner would be required to consult with the leaseholder (and applicant if the applicant is not a leaseholder) before publishing the summary.

Note that options 5.5 through 5.7 will also have significant impacts on the transparency of the regulatory system.

There are limited opportunities for public involvement in the regulatory system

Options considered

The status quo

Currently public involvement happens on an ad hoc basis at the discretion of LINZ and the Commissioner. Outside tenure review, public participation is not required by the legislation. When releasing non-statutory guidance, the Commissioner may undertake public consultation, though these standards have not been updated recently. LINZ may also publicly consult on operational policies relating to the administration of the estate.

Option 7.1: Retain the status quo and regularly consult on non-statutory standards and guidance

This non-regulatory option is a combination of previous decision-making options, and would entail regular consultation with leaseholders and broader stakeholders, and engagement with relevant iwi on the development of non-statutory standards and guidance.

Option 7.2: New opportunities for public participation are provided at the 'whole of system' level

This option entails providing for points of public consultation on the development of regulations, and standards/guidelines that shape the decision-making process. It has informed, and is essentially a combination of, several of the options already outlined. For example, providing for public consultation on:

- the classification of activities as permitted or prohibited
- information requirements for discretionary consent applications

- the details of what the Chief Executive and Commissioner are required to report on.

This option could be combined with **option 7.3**, or it could stand alone.

Option 7.3: Require the Commissioner to notify *significant* applications and enable any party or individual that has an interest in the application to make submissions

The definition of what meets the threshold for *significant* could include consideration of:

- the scale/potential effects/proposed location of the activity and its effects on inherent values
- whether it is a pastoral or non-pastoral activity (for example, recreation permits are not a part of the landlord/tenant relationship)
- the likely level of public interest in the activity
- whether the activity is already required to be publicly notified under any other enactment (such as a relevant resource management plan).

The methodology for what constitutes a *significant* application could be either be left to the discretion of the Commissioner or set through secondary legislation. The cost of submitting on the application would be borne by the submitter.

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

The criteria to assess these options is set out in section 3.4.

4.5 Impact Analysis

Key:

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo (also no likely *net* difference from the status quo).
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Options 5.1 to 5.7: Stakeholders do not consider that the Commissioner and LINZ are adequately held to account for decision-making and the estate's administration

	Option 5.1: Retain the role of the Commissioner in conjunction with other proposals to improve the transparency and accountability of the role	Option 5.2: Shift the powers and functions of the Commissioner (that relate to Crown pastoral land) to the Chief Executive of LINZ	Option 5.3: Shift the powers and functions of the Commissioner (that relate to Crown pastoral land) to the Minister for Land Information	Option 5.4: Return to a decision-making panel, similar to the previous Land Settlement Board
Effectiveness (outcomes-based)	0 For this analysis this option has been assessed as the status quo.	0 No significant change from the status quo.	0 No significant change from the status quo.	0 No significant change from the status quo.
Effectiveness (public trust)	0 As above.	0 No significant change from the status quo as the statutory decision-maker would still be a role within LINZ.	+ This option would enhance public trust in the system by improving accountability, where there is a wider range of ways that elected representatives can be held to account and required to justify decisions.	+ This option would enhance public trust in the regulatory system by improving involvement where a board will enable individuals from more stakeholder groups to have a say in decision-making.
Effectiveness (Te Tiriti partnerships)	0 As above.	0 No significant change beyond the status quo.	0 No significant change beyond the status quo.	+ A board may improve iwi involvement in the regulatory system, increasing its ability to provide for a strong and evolving relationship between the Crown and iwi and for the relationship of Māori with their ancestral lands.
Efficiency	0 As above.	+ There are likely to be slight efficiency gains should the responsibility for the regulatory system, and the roles within it, be consolidated and sit solely with the Chief Executive of LINZ.	0 No significant change from the status quo. May introduce minor decreases in efficiency in relation to decisions that are not delegated.	-- Compared to the status quo there is a significant cost to establishing and maintaining a board (dependent upon the agreed structure of the board).
Certainty	0 As above.	- It is likely that this option will erode the certainty of regulated parties in the process. Consultation has shown that these parties value the role of the Commissioner and independence it provides (--) – this independence gives them certainty that decisions will be made in a predictable and consistent way. Conversely this option will likely improve broader stakeholders' certainty in decision making, as many consider the role of the Commissioner leads to arbitrary decisions (+).	- It is likely that this option will erode the certainty of regulated parties in the process. Consultation has shown that these parties value the role of the Commissioner and independence it provides (--) – this independence gives them certainty that decisions will be made in a predictable and consistent way. Conversely this option will likely improve broader stakeholders' certainty in decision making, as many consider the role of the Commissioner leads to arbitrary decisions (+).	+ Consultation has shown that there is broad agreement (from leaseholders and broader stakeholders) that a board would be beneficial for improving certainty in decision making ⁴¹ .
Durability	0 As above.	0 No significant change from the status quo as, regardless of the decision maker, decision making is statutory with limits on the exercise of discretion.	0 No significant change from the status quo as, regardless of the decision maker, decision making is statutory with limits on the exercise of discretion.	0 No significant change from the status quo as, regardless of the decision maker, decision making is statutory with limits on the exercise of discretion.

⁴¹ Submitters from the pastoral lease community emphasise that they would only support it if it ensured non-partisan decision making with appropriate representation and appointment processes.

Overall assessment	Retaining the Commissioner is preferred as the alternative options do not deliver clear benefits beyond the current arrangements.	0 There is no clear net benefit to this option beyond the status quo.	0 There is no clear net benefit to this option beyond the status quo.	0 There are benefits to this option, where individuals with a broader range of experiences and expertise will have a say in decision making. However, these benefits are offset by the increased cost to establish and maintain a Board and the impact this may have on the timeliness of decision making. Consultation has shown that this option is broadly supported by stakeholders.
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	Option 5.5: Strengthen existing accountability mechanisms	Option 5.6: Require the Commissioner and LINZ to produce a 'Crown pastoral land Strategic Intentions' (strategic intentions) to be approved by the Minister	Option 5.7: Establish a Crown entity under the Crown Entities Act 2004 responsible for the administration of Crown pastoral land external to LINZ
Effectiveness (outcomes-based)	+ This option will increase the likelihood that the regulatory system will deliver on the proposed outcomes. Improved accountability mechanisms will help ensure high quality statutory decision-making and management, where the outcomes of the Crown's management will be more open to scrutiny by regulated parties, Treaty partners and broader stakeholders. This will be enhanced when adopted with option 6.1.	+ This option will increase the likelihood that the regulatory system will deliver on the proposed outcomes. Improved accountability mechanisms will help ensure high quality statutory decision-making and management, where the outcomes of the Crown's management will be more open to scrutiny by regulated parties, Treaty partners and broader stakeholders. This will be enhanced when adopted with option 6.1.	+ This option will increase the likelihood that the regulatory system will deliver on the proposed outcomes. Improved accountability mechanisms will help ensure high quality statutory decision making and management, where the outcomes of the Crown's management will be more open to scrutiny by regulated parties, Treaty partners and broader stakeholders.
Effectiveness (public trust)	++ Broader stakeholders and regulated parties will be provided with more information than the status quo, increasing public confidence in the system through greater visibility of decision making and the Crown's administration.	++ Broader stakeholders and regulated parties will be provided with more information than the status quo, increasing public confidence in the system through greater visibility of decision-making and the Crown's administration.	++ Broader stakeholders and regulated parties will be provided with more information than the status quo, increasing public confidence in the system through greater visibility of decision-making and the Crown's administration.
Effectiveness (Te Tiriti partnerships)	0 No significant change beyond the status quo.	+ This option will improve iwi involvement in the regulatory system, increasing its ability to provide for a strong and evolving relationship between the Crown and iwi and for the relationship of Māori with their ancestral lands.	0 No significant change beyond the status quo.
Efficiency	- Minor additional administrative costs that would be largely captured by LINZ's existing reporting processes. The largest additional cost would arise from consultation when developing the accountability mechanisms.	- Minor additional administrative costs that would be largely captured by LINZ's existing reporting processes. The largest additional cost would arise from consultation when developing the accountability mechanisms.	-- Compared to the status quo there is a significant cost to establishing a new Crown entity.
Certainty	+ Regulated parties will be provided with more information regarding the Crown's management of the estate and how it makes decisions, increasing certainty where their interests are affected. New requirements on reporting will ensure this continues into the future.	0 As previous. However, consultation has shown that a greater role for Ministers may decrease certainty for regulated parties.	0 As previous. However, moving to a completely new system may result in less certainty for regulated parties in the short term.
Durability	+ The current accountability mechanisms already allow for evolution in response to changing contexts. However, this requirement will ensure that best practice is enduring, and working with regulated parties, stakeholders and Treaty partners on strategic intentions for the estate and when developing accountability documents will ensure that decision-makers are informed of opportunities to collaborate with and reflect stakeholders' views and changing contexts in the administration of the estate.	+ The current accountability mechanisms already allow for evolution in response to changing contexts. However, this requirement will ensure that best practice is enduring, and working with regulated parties, stakeholders and Treaty partners on strategic intentions for the estate and when developing accountability documents will ensure that decision-makers are informed of opportunities to collaborate with and reflect stakeholders' views and changing contexts in the administration of the estate.	+ The current accountability mechanisms already allow for evolution in response to changing contexts. However, this requirement will ensure that best practice is enduring, and working with regulated parties, stakeholders and Treaty partners on strategic intentions for the estate and when developing accountability documents will ensure that decision-makers are informed of opportunities to collaborate with and reflect stakeholders' views and changing contexts in the administration of the estate.

Overall assessment	++ This option is preferred, especially in light of the clarified system roles and responsibilities as set out in the associated Cabinet paper. The effectiveness of this option will be enhanced by option 6.1	++ This option is not recommended because, though it is expected to deliver similar benefits to option 5.5, option 5.5 is expected to be easier to implement.	+ This option is not recommended as it is expected to deliver fewer benefits than options 5.5 and 5.6. The core downsides of this option are the increased costs to establish a new Crown entity and the uncertainty that this will create for regulated parties.
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Option 6.1 There is a perceived lack of transparency surrounding how and why decisions are made

Option 6.1: Require that the Commissioner publish decision summaries.	
Effectiveness (outcomes-based)	+ This option will increase the likelihood that the regulatory system will deliver on the proposed outcomes. Publishing decision summaries will mean that the Crown's decision making is more open to scrutiny, introducing a driver for high quality decisions. This option will be enhanced when adopted with any of the three previous options (5.5-5.7).
Effectiveness (public trust)	++ The public will be provided with a significant amount of information to build confidence in the decision-making process. Regulated parties, Treaty partners and broader stakeholders will have a better understanding of how and why the Commissioner made a decision.
Effectiveness (Te Tiriti partnerships)	0 No change beyond the status quo. LINZ would not be prevented from releasing additional information relating to decisions.
Efficiency	- Small additional administrative cost to publish decision summaries. However, this can be built into BAU processes. Will likely reduce the amount of official information requests due to more information being publicly available.
Certainty	++ Access to previous decisions will greatly increase the consistency and predictability of decisions to regulated parties. Regulated parties' privacy may be affected in some circumstances – this should be mitigated through consultation.
Durability	+ The current accountability mechanisms already allow for evolution in response to changing contexts. However, this requirement will ensure that best practice is enduring.
Overall assessment	++ This option is preferred to the status quo as it will significantly increase the transparency of the system and drive high quality decision-making.

Options 7.1 to 7.3: There are limited opportunities for public involvement in the regulatory system

	Option 7.1: Retain the status quo and regularly consult on non-statutory standards and guidance	Option 7.2: New opportunities for public participation are provided at the 'whole of system' level	Option 7.3: Require the Commissioner to notify significant applications and enable any party or individual that has an interest in the application to make submissions
Effectiveness (outcomes-based)	0 No significant change beyond the status quo.	0 No significant change beyond the status quo.	0 No significant change beyond the status quo.
Effectiveness (public trust)	+ Public consultation on instruments that shape decision-making and reporting requirements will ensure that a broader range of views are reflected in the Crown's general administration of the estate. This will increase the availability of information on the Crown's general administration of the estate to regulated parties, Treaty partners and broader stakeholders.	+ Public consultation on instruments that shape decision-making and reporting requirements will ensure that a broader range of views are reflected in the Crown's general administration of the estate. This will increase the availability of information on the Crown's general administration of the estate to regulated parties, Treaty partners and broader stakeholders.	+ Public notification of individual decisions will likely provide wider perspectives and more information on the values of the land impacted by a proposed activity, driving high quality decisions. Broader stakeholders will have greater access to the decision-making process, and hence information on how specific decisions are made.
Effectiveness (Te Tiriti partnerships)	0 No significant change beyond the status quo.	0 No significant change beyond the status quo.	0 No significant change beyond the status quo.
Efficiency	0 Minor additional administrative costs to Crown – not expected to be greater than the status quo.	- Minor additional administrative costs to Crown from consultation when developing secondary legislation.	-- Moderate additional administrative costs to Crown from notification of individual decisions and consideration of submissions. Could result in a longer process for applicants that may result in flow on effects for productivity (i.e. due to an increase in processing times for applications).

Certainty	<p style="text-align: center;">0</p> <p>No significant change from the status quo.</p>	<p style="text-align: center;">+</p> <p>This option will support predictable outcomes by allowing for regulated parties, Treaty partners and broader stakeholders to have a say in the decision-making framework.</p>	<p style="text-align: center;">-</p> <p>Public notification will increase certainty for broader stakeholders, as they will have access to the details of an application prior to a decision being made (+). However, consultation has shown that leaseholders view public notification as inconsistent with the lease contract and as reducing certainty in decision-making (--).</p>
Durability	<p style="text-align: center;">0</p> <p>No significant change from the status quo.</p>	<p style="text-align: center;">++</p> <p>Public participation will increase the likelihood that decision makers are aware of changing contexts and incorporate new information into the administration of the regulatory system. This option will ensure that this involvement is enduring.</p>	<p style="text-align: center;">+</p> <p>Public participation will increase the likelihood that decision-makers take account of all relevant information and views when making individual decisions.</p>
Overall assessment	<p style="text-align: center;">+</p> <p>This option is not recommended as it is mutually exclusive to option 7.2 which is expected to deliver greater benefits.</p>	<p style="text-align: center;">++</p> <p>This approach is preferred due to its broad benefits across all stakeholders. Public participation at a 'whole of system' level will be critical for the achievement of the Governments objectives.</p>	<p style="text-align: center;">0</p> <p>The benefits of this approach will be dispersed among broader stakeholders, while the costs will be concentrated on leaseholders and the Crown. As such this option is not recommended due to the uncertainty whether this will deliver benefits beyond the status quo.</p>

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4.6 Conclusions

In order to increase public confidence in the regulatory system, this analysis recommends that:

- **the role of the Commissioner of Crown Lands is retained (option 5.1).** This is primarily on the basis that the alternatives do not provide clear benefits beyond the status quo; the related proposals will address the accountability and transparency issues raised during consultation; and retaining the Commissioner role will provide a level of certainty to leaseholders.
- **existing accountability arrangements are strengthened, and the Commissioner is required to publicly release decision summaries (option 5.5 and 6.1).** The requirement to release summaries will significantly increase the transparency of decision-making and provide greater certainty to applicants surrounding how their applications are likely to be treated. This analysis also recommends that existing accountability mechanisms are strengthened, which will require LINZ to improve its reporting through existing pathways. The associated Cabinet paper, however, proposes that the Commissioner and LINZ are required to produce a 'Crown pastoral land Strategic Intentions' to be approved by the Minister (option 5.6). This analysis considers that either of these options will deliver benefits beyond the status quo.
- **new opportunities for public participation are provided at the 'whole of system' level (option 7.2).** This option because will ensure the decision-making framework responds to public input, while balancing this with the constraints of the landlord/tenant relationship.

4.7 Stakeholder views

From public consultation there is broad support for improving accountability, transparency and public involvement. The core concern raised by leaseholders was that these increased requirements on the Crown should not affect the independence of the Commissioner.

Section 5: Addressing the problem of a lack of provision for Te Tiriti partnerships

5.1 What is the nature of the policy problem?

During public consultation there was broad feedback that the system should better reflect Te Tiriti partnerships. Many submitters, especially iwi and environmental and recreation groups, expressed strong support for improving how the role of iwi is reflected in the system.

The regulatory system does not clearly recognise and provide for Te Tiriti partnerships

The legislation does not include a clause to guide persons performing powers and functions in relation to Crown pastoral land. Further, with the ending of tenure review the legislation will no longer contain a requirement to consult with iwi or an explicit requirement to consider the principles of Te Tiriti – though this was limited to tenure review.

This has led to iwi, especially Te Rūnanga o Ngāi Tahu, articulating a strong desire for the Crown to recognise the Treaty partnership within the legislation to recognise the strength of their interest in the land, and the Crown's Treaty obligations.

5.2 Objective for regulatory change to address this problem

To address this problem, the regulatory system needs to shift to one that provides for a strong and evolving relationships between the Crown and iwi and for the relationship of Māori with their ancestral lands.

5.3 What options are available to address the problem?

The following options present different ways in which to ensure the system better reflects Te Tiriti partnerships. Note that many of the options in sections 3 and 4 will also go some way towards achieving this objective – this has been captured in the 'Effectiveness (Te Tiriti partnerships)' criterion of the previous impact analysis.

Options considered

The status quo

The legislation does not include a general clause that applies to all functions relating to the administration of Crown pastoral land to give direction as to how Te Tiriti partnerships should be reflected. It does provide a general obligation to take account of the principles of Te Tiriti, specifically in relation to tenure review⁴². Engagement with iwi on tenure review, specifically Ngāi Tahu, has generally been effective, however, with it ending their

⁴² Refer section 25 CPLA.

involvement is limited relating to the general administration of Crown pastoral land.

Option 8.1: Retain the status quo and improve Te Tiriti partnership through closer engagement with iwi

Broadly this would entail LINZ and the Commissioner engaging with iwi on the development of operational policies and its strategic intentions for the estate (whether under existing reporting obligations or new ones); and ensuring that, where cultural values of importance to iwi are impacted by the Crown's administration, iwi are closely engaged in the decision-making process.

Option 8.2: Reflect Te Tiriti partnerships in the legislation

This could be achieved in a variety of ways. The approach within the Cabinet paper to reflecting Te Tiriti partnerships is based on:

- the understanding that obligations under Te Tiriti sit with the Crown (and not with leaseholders) and the need to ensure that the practical effects of any obligations placed upon decision-makers are clear and well-understood, including assessing these effects in the context of the contractual relationship between Crown and leaseholder
- a desire to recognise the connection of Māori with their ancestral lands, water, mahinga kai, wāhi tapu and other taonga
- enabling Māori Crown relationships to grow and strengthen over time throughout the system, without locking it into any prescribed steps. For Ngāi Tahu meaningful Crown Māori relationships should be empowered on three-tiers: Minister – Kaiwhakahaere, LINZ Chief Executive/Commissioner – Te Runanga o Ngāi Tahu Chief Executive, and LINZ staff – Runaka/Iwi boards. Officials are working with Te Tau Ihu iwi, Rangitāne and Ngāti Apa ki te Rā Tō to establish an understanding of the relationships that they seek to build within the system.

The Cabinet paper proposes:

- that the connection of tangata whenua to the land be recognised
- that a general obligation be placed on the Crown to reflect Te Tiriti partnerships with iwi when carrying out any power or functions in relation to the land
- an obligation to recognise and provide for the relationship of Māori with their ancestral lands, water, mahinga kai, wāhi tapu and other taonga be placed on the Crown in relation to specific powers and functions under the CPLA – namely, considering discretionary consents (especially with regard to cultural values) and considering protection mechanisms such as a covenant over any Crown pastoral land
- a requirement that the Crown engage with iwi over specific activities in relation to Crown pastoral land to help meet partnership obligations under Te Tiriti. These

activities are developing the Strategic Intentions, regulatory instruments and operational policy, and development and administration of a monitoring framework

- that the General Policy Statement to the Bill is used to set out Māori Crown relationships in relation to Crown pastoral land, acknowledge the respective settlements of iwi, and acknowledge the Crown-leaseholder relationship.

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

The criteria to assess these options is set out in section 3.4.

5.5 Impact Analysis

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo (also no likely *net* difference from the status quo).
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Options 8.1 to 8.2: The regulatory system does not clearly recognise and provide for Te Tiriti partnerships

	Option 8.1: Retain the status quo and improve Te Tiriti partnerships through closer engagement with iwi	Option 8.2: Reflect Te Tiriti partnerships in the legislation
Effectiveness (outcomes-based)	0 No significant change beyond the status quo.	0 No significant change beyond the status quo.
Effectiveness (public trust)	0 No significant change beyond the status quo.	0 No significant change beyond the status quo.
Effectiveness (Te Tiriti partnerships)	+ This will go some way towards ensuring the Crown acknowledges the interests of iwi in the estate – such as through increasing collaboration with iwi on how to manage cultural values they have identified across the estate. However, it does not address the issues that affected iwi have raised with the regulatory system and its legislation.	++ This approach would be effective at providing for a strong and evolving relationship between the Crown and iwi relating to the administration of the estate – though in practice this will depend on how the responsible Minister, LINZ and the Commissioner engage with iwi.

Efficiency	0 No significant change beyond the status quo. May result in the Crown and iwi incurring minor additional costs when engaging on the administration of the estate.	0 No significant change beyond the status quo. May result in the Crown and iwi incurring minor additional costs when engaging on the administration of the estate.
Certainty	0 This option will provide more certainty to relevant iwi, though depending on the final changes may reduce the certainty of leaseholders (for example, when applying for discretionary consents that affect cultural values).	0 This option will provide more certainty to relevant iwi, though depending on the final changes may reduce the certainty of leaseholders (for example, when applying for discretionary consents that affect cultural values).
Durability	0 No significant change beyond the status quo.	++ This option will ensure enduring best practice, where the legislation will set out how the Crown should operate to reflect the Crown-iwi relationship.
Overall assessment	+ This option will go some way in providing for a strong and evolving relationship between the Crown and iwi. However, it is not recommended as option 8.2 is expected to provide more durable improvements.	++ This option is preferred, as it is expected to deliver enduring improvements to the Crown-iwi relationship.

5.6 Conclusions

In order to improve how Te Tiriti partnerships reflected in the regulatory system, this analysis recommends that:

- **a clause be included within the legislation that provides direction to persons performing functions under the CPLA (option 8.2).** The core advantage of this approach will be that it ensures improvements to Te Tiriti partnerships are enduring.

5.7 Stakeholder and iwi views

Engagement with iwi has shown that they consider that reflecting Te Tiriti within the legislation is critical to building Crown-Māori relations. Further, the position of Te Rūnanga is that the Crown has an obligation to 'give effect to' the principles of Te Tiriti o Waitangi in relation to Crown pastoral land and this must be reflected in the policy.

There was broad support during public consultation for better reflecting the role of iwi in the regulatory system, though some stakeholders, such as leaseholders, considered that this could be done through building better relationships between the Crown and iwi as opposed to through legislative changes.

Section 6: Other changes and options considered

6.1 Technical amendments and introducing the authority to charge fees

The associated Cabinet paper contains several additional proposals that are technical in nature and likely to have low impacts outside of government. An overview of these proposals and their advantages and disadvantages is included as Appendix 5.

The Cabinet paper also proposes to introduce the authority to charge for all classes of discretionary consents. A high-level Stage One Cost Recovery Impact Statement (CRIS) is included as Appendix 3. The information provided in the CRIS is indicative and reflects the high uncertainty as to what the process for discretionary consents will look like operationally after legislative changes are made.

After an authority to charge is introduced and the changes to decision-making are implemented LINZ will revisit these estimates as part of any work to set regulations to cost recover through fees. This will entail further consultation with leaseholders on proposed fee levels.

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

Replacing or removing the discretionary consents process. During consultation some submitters considered that the discretionary consents process overlaps unnecessarily with the RMA. Removing or replacing the requirement was not considered because the discretionary consent system is a result of the rights granted to leaseholders and reserved to the Crown.

Section 7: Costs, benefits and risks of the preferred options

7.1: Summary table of costs and benefits of the preferred options

The below table summarises the costs and benefits of the package of preferred options as set out in sections 3.6, 4.6 and 5.6. This package will make changes to the decision-making framework for discretionary consents, introduce new enforcement tools, introduce new information requirements, improve accountability mechanisms and clarify the role of iwi and the public in the system.

Affected parties	Comment	Impact	Evidence certainty
Additional costs of proposed approach, compared to taking no action			
<p>Leaseholders of approximately 162 Crown pastoral leases</p> <p>There is significant variety in the size and environments of Crown pastoral leases. These proposals will primarily impact on those leases that plan to increase the utilisation of the leased land and require discretionary consents to do so.</p>	<p>The costs to leaseholders from these proposals primarily relate to the changes to discretionary consents. As such they will only impact the cohort of leaseholders that will require discretionary consents in the future – noting that 46% of leases have not applied for a pastoral consent or stock exemption in the past six years.</p> <p>These costs will vary according to the context of the lease, and the importance of the inherent values impacted by an application.</p> <p><u>Application costs – increased information requirements</u></p> <p>Preferred option 3.2 will mean that applicants will have to provide increased information, which will likely include expert assessments of an activity's adverse effects. The cost of procuring this assessment will vary according to the class, size and complexity of a proposed activity.</p> <p><u>Application costs – cost recovery fees</u></p> <p>The associated Cabinet paper proposes introducing the power to charge fees for all classes of discretionary consents. Fees would be set after this authority to charge is introduced and an initial fees review, including consultation with leaseholders, is completed.</p> <p><u>Opportunity cost – development</u></p> <p>Changes to decision-making under preferred option will change the likelihood of an activity being approved, partially approved or declined. This will impact on the ability of leaseholders to change the utilisation of the leased land; this could affect future productivity gains enabled through discretionary consents.</p> <p>The actual impact will depend on how the new statutory test is applied, the individual circumstances of each lease, and the importance of the inherent values affected by an application.</p> <p><u>Note: Compliance costs</u></p> <p>Preferred options 4.1, 4.2 and 4.4 will introduce a range of new enforcement tools. However, as these would be enforcing compliance with existing obligations under the lease, this is not included as a cost.</p>	<p><u>Application costs – increased information requirements</u></p> <p>NPV of between \$2.864 and \$3.501 million</p> <p>These costs will accrue more to those leases seeking consents both to maintain existing farming operations <i>and</i> to increase how they utilise the leased land.</p> <p><u>Application costs – cost recovery fees</u></p> <p><i>Note that these costs are indicative and would not be incurred until after the authority to charge is introduced to the legislation and further decisions are made.</i></p> <p>NPV of up to \$16.392 million⁴³</p> <p>These costs will accrue more to those leases seeking consents both to maintain existing farming operations <i>and</i> to increase how they utilise the leased land.</p> <p>Total monetised costs: NPV of up to between \$19.256 and \$19.893 million*</p> <p>Total non-monetised costs: Moderate</p> <p><i>*This does not include any opportunity costs values which were not able to be estimated</i></p> <p><u>Opportunity cost – development</u></p> <p>Maximum NPV of \$41.637 million (low scenario) and \$67.260 million (high scenario)</p> <p>This figure represents the estimated additional profit that would be realised under the status quo if all required consents were granted – noting that virtually every consent would have to be wholly declined under the new system for the opportunity cost to approach the figure described above.</p> <p>Because each decision under the preferred option 2.3 will be entirely dependent on the context of the application, this analysis has not been able to estimate the proportion of this additional profit that would be impacted by these changes. Instead, these figures are provided to give a sense of scale.</p>	<p>Low - medium</p> <p><i>Application costs are based on primary data on processing costs to LINZ.</i></p> <p><i>LINZ does not have access to primary data on pastoral lease financial outcomes.</i></p> <p><i>Information on farm profits per stock unit is drawn from data that includes both pastoral lease and freehold properties.</i></p> <p><i>Information on the categories of pastoral leases is based on a number of assumptions based on the evidence available to LINZ, as opposed to primary data.</i></p> <p><i>There is also a likelihood that many of the discussed costs will not eventuate.</i></p>

⁴³ This is based off LINZ's current costs to process discretionary consents of \$1.04 million per annum – which then assumes they will stay constant.

<p>Regulators</p>	<p>LINZ will incur several costs to implement the preferred options.</p> <p><u>Administrative costs to support the development and updating of secondary legislation</u></p> <p>This includes:</p> <ul style="list-style-type: none"> • updating the schedule within the CPLA through regulation-making power • regularly reviewing and consulting on secondary legislation. <p>See options 1.2, 3.2, 7.2</p> <p><u>Transitioning to a new consenting system</u></p> <p>This includes:</p> <ul style="list-style-type: none"> • additional consultation requirements (see option 3.3) • establishing existing consents and activities to ensure consistency between old and new regimes (see option 1.2) • establishing a baseline to support changes to decision-making and system performance reporting. <p>There is significant uncertainty in the costs to establish the baseline, though this cost will significantly reduce after the baseline is established.</p> <p><u>Administering a range of new enforcement tools</u></p> <p>This includes:</p> <ul style="list-style-type: none"> • costs to administer the administrative penalty system (option 4.2) • enforceable undertakings and remedial action power (options 4.1 and 4.4). <p>There is significant uncertainty surrounding the costs to administer new enforcement tools</p> <p><u>Producing a Crown pastoral land strategic intentions</u></p> <p>This includes:</p> <ul style="list-style-type: none"> • consulting with leaseholders and iwi • reporting against the strategic intentions (see option 5.6). 	<p>NPV of \$15.492 million</p> <p><i>Note: LINZ is currently building its capability and capacity in order become a more active manager of Crown pastoral land. The below financial implications are only the estimated costs resulting directly from the preferred options.</i></p> <p>This estimate includes:</p> <ul style="list-style-type: none"> • Administrative costs to support the development and updating of secondary legislation – estimated additional yearly costs of \$0.180 million • Transitioning to a new consenting system – estimated additional yearly costs of \$1.020 million • Administering a range of new enforcement tools – estimated additional yearly costs of \$0.360 million • Producing a Crown pastoral land strategic intentions – estimated additional yearly costs of \$0.090 million 	<p>Medium</p> <p><i>Based on internal estimates of FTE and expert services required to administer new system.</i></p>
<p>Total Monetised Cost</p>		<p>NPV of between \$34.748 and \$35.385 million</p> <p><i>The monetised costs of these preferred options will fall primarily on those leaseholders that will require discretionary consents in the future.</i></p>	<p>Medium</p>
<p>Non-monetised costs</p>		<p>Low</p> <p><i>The non-monetised costs of these preferred options will fall primarily on stakeholders with an interest in the resilience of the broader high country.</i></p>	<p>Low</p>

Expected benefits of proposed approach, compared to taking no action			
<p>Leaseholders of approximately 160 Crown pastoral leases</p>	<p><u>Time savings – a clearer discretionary consents process</u> Preferred option 1.2 is intended to make it clearer to stakeholders what activities require consent from the Commissioner.</p> <p><u>Time savings – weed and pest control</u> Preferred option 1.2 proposes to remove the requirement to obtain consent for some forms of weed and pest control will reduce the time leaseholder's spend applying for consents.</p>	<p><u>Time savings – a clearer discretionary consents process</u> Low This will reduce the complexity of the current discretionary consents process and the time applicants spend preparing applications.</p> <p><u>Time savings – weed and pest control</u> Low This will reduce the time spent preparing applications.</p>	<p>Low LINZ has not been able to gather substantive evidence for these impacts (e.g. actual time spent by leaseholders preparing applications)</p>
<p>Regulators and wider government</p>	<p><u>Increased information requirements</u> Increased information requirements will likely reduce the amount of information LINZ must gather to process applications, resulting in savings compared to the status quo.</p> <p><u>Cost recovery fees</u> Should the power to charge be introduced then LINZ will be able to recover some or all of its costs to process discretionary consents from applicants.</p>	<p><u>Increased information requirements</u> NPV of between \$2.864 and \$3.501 million⁴⁴</p> <p><u>Cost recovery fees</u> Note that these savings are indicative and would not be incurred until after the authority to charge is introduced to the legislation and further decisions are made, such as whether to recover all or some of LINZ's costs to process discretionary consents. NPV of up to \$16.392 million⁴⁵ Note: LINZ currently spends approximately \$1.036 million per annum (including overheads) on the processing of discretionary consents (approximate NPV of \$16.392 million).</p>	<p>Medium Application costs are based on primary data on processing costs to LINZ.</p>
<p>Public benefits</p>	<p><u>Reduction in future loss of inherent values</u> The preferred options relating to discretionary consents will shift the balance of the current decision-making framework to better prioritise the maintenance or enhancement of inherent values. Noting that the main lever for the protection and enhancement of inherent values is not the discretionary consents process and the Crown pastoral land regulatory system, but the day-to-day management of leaseholders.</p> <p><u>Increased public trust in the Crown's administration of the estate</u> The preferred options aim to increase the public's confidence through improved accountability, reporting and transparency mechanisms. Public trust is important for ensuring the durability of the regulatory system and its ability to incorporate broader views into its functioning.</p>	<p><u>Reduction in future loss of inherent values</u> Medium An increased focus on inherent values will deliver diverse benefits to the public and broader stakeholders from encouraging a sustainable high country environment. For example:</p> <ul style="list-style-type: none"> all stakeholders benefit from maintaining its landscape values and ecological values, and the ecosystem services these provide high country communities can benefit from ensuring the future sustainability of the estate, for both the services it requires and the tourism opportunities it provides iwi can have increased confidence that the estate's mahinga kai opportunities, its taonga species, and the historical routes traditionally travelled by their iwi are maintained in recognition of their ancestral connection to the land. <p>The size of these benefits is likely medium. Crown pastoral land is 5% of New Zealand's land, however, the discretionary consents process only relates to discrete areas where leaseholders require consents to change how it is utilised. The changes could increase natural capital compared to the status quo, although this</p>	<p>Medium These benefits are largely based off the results of extensive feedback received from the public, iwi, ecologists, and advocacy groups during consultation.</p>

⁴⁴ This assumes that the Crown will save the corresponding amount incurred by applicants to meet new information requirements.

⁴⁵ This is based off LINZ's current costs to process discretionary consents of \$1.04 million per annum.

		<p>has not been quantified.</p> <p><u>Increased public trust in the Crown's administration of the estate</u></p> <p>Medium</p> <p>The preferred options would likely increase cultural capital through strengthening the public's trust in institutions, although this has not been quantified. The changes will provide better interfaces between stakeholders and the Crown as it fulfils its functions under the legislation. For example, stakeholders will be able to contribute to the Crown's strategic direction for the administration of the estate, and to updates to the decision-making framework through consultation on secondary legislation.</p>	
Total Monetised Benefit	-	<p>NPV of up to between \$19.256 and \$19.893 million</p> <p><i>The monetised benefits of these preferred options will occur primarily to the Crown through a reduction in existing costs.</i></p>	Low - Medium
Non-monetised benefits	-	<p>Medium</p> <p><i>The non-monetised benefits of these preferred options will be dispersed and be realised by leaseholders, iwi, broader stakeholders and the public.</i></p>	Medium

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7.2 What other impacts is this approach likely to have?

Decreasing risks to inherent values: Improving the way the Crown makes decisions on land use and development across the estate will mitigate risks to inherent values facing Crown pastoral land. Degradation of inherent values can be costly to remediate and in some cases is irreversible.

Reflecting Te Tiriti partnerships in the legislation: The changes are intended to provide the framework for a strong and evolving relationship between the Crown and iwi – in relation to the administration of the estate – and for the relationship of Māori with their ancestral lands. There is also corresponding relationship risk to this relating to how the legislation is implemented and how engagement with iwi is undertaken in practice.

Impact on resilience: There is a small risk that changes to how discretionary consents are granted may affect a leaseholder's ability to diversify how they utilise the leased land to respond to changes in economic, and environmental contexts. This will depend on the individual circumstances of each lease and application.

- **Impact on the sheep and beef sector:** Pastoral leases are an important part of the sheep and beef sector, contributing to its international reputation and performance. There is a small risk that opportunity costs incurred by leaseholders may have flow-on effects to the wider industry. This is likely to have a low impact on overall sector due to limited affected cohort. However, there may be a greater impact on specialist brands supplied by high country farms.
- *Parties to cross-boundary weed and pest control:* Decreased resilience may mean that where leases come under financial pressure – instead of increasing how they utilise the leased land – they are forced to cut back on non-fixed costs such as weed and pest control spend. There is a small risk that this could affect ecological outcomes on the leased land and neighbouring land. This is likely to have a low impact on balance, depending on how the new decision-making framework is applied and the impact this has on leases' resilience. This impact will be mitigated by preferred option 1.2 which would remove the requirement to obtain consent for some forms of weed and pest control.

7.3 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

These proposals are consistent with the expectations, including introducing clear objectives to the system and seeking to achieve those objectives in a way that has the least impact on regulated parties.

The core area where these proposals risk being inconsistent with the expectations relates to flexibility; because of the regulatory change objectives which focus on certainty and durability these proposals will limit the flexibility and discretion available to the Commissioner when making decisions on discretionary consents. However, our view is that this does not represent a significant incompatibility but reflects the Minister's objectives for the system – that it delivers outcomes in an enduring way.

Further, until LINZ has obtained an adequate baseline of current values and outcomes across the estate it will face issues with measuring the performance of the regulatory system in delivering on the new system outcomes.

Section 8: Implementation and operation

8.1 How will the new arrangements work in practice?

Implementation

The preferred options will be given effect through changes to the Crown Pastoral Land Act 1998, consequential amendments to the Land Act 1948 and secondary legislation.

LINZ, as regulatory system owner, will be responsible for the new arrangements; the department will work closely with DOC. LINZ has developed an initial implementation framework with a set of principles and actions to guide the development of operational policies and the standing-up of new operational processes to meet the new legislative requirements.

LINZ is developing an implementation plan – priority areas include:

- **Discretionary Consents:** Information and guidance on decision-making and considerations, updated process and templates (e.g. application form), capability development for staff, system changes.
- **Monitoring, compliance & enforcement:** Monitoring framework, collection of baseline, reporting requirements, system changes, split of responsibilities (e.g. monitoring vs education, compliance and enforcement).
- **Tenure Review:** Guidance and messaging about stopping and what it means, system changes.
- **Establishment of Crown Pastoral Office:** Organisational design logistics, ring-fenced funding, guidance on role of office, implications for existing team.
- **Crown Pastoral Strategic Direction:** Outline of the strategic direction of the 'system', including annual reporting and key performance indicators. To be delivered by the Commissioner and LINZ with Ministerial approval.
- **Secondary legislation:** The process for the regulations that need to be in place for day of ascent is likely to be truncated to ensure there is enough in place for day one to support LINZ, leaseholders, iwi partners and broader stakeholders.
- **Fees:** Should the power to charge fees be included within the legislation then LINZ will undertake a subsequent fees review involving further consultation with affected parties. Fees will then be included as a schedule in regulations.
- **Working with iwi:** LINZ will engage closely with relevant iwi to ensure that operational processes are put in place that reflect their role as Treaty partner and the new requirements within the CPLA (such as in relation to discretionary consents).

Throughout the implementation process LINZ will engage closely with leaseholders, iwi partners and broader stakeholders. A communications and engagement plan will be developed that informs leaseholders and applicants of the changes to the discretionary consents process and how this will affect them.

Transitional arrangements

Part 3 reviews of unleased Crown pastoral land

The associated Cabinet paper proposes that the current process for dealing with Crown pastoral land not held under lease⁴⁶ be amended so that it is consistent with the new purpose of the CPLA and that all designations should be approved by the relevant Minister. This is to ensure that unused Crown land can still be dealt with under the new Act.

Discretionary consents

Existing discretionary consents granted under the current system will not be affected. If they are ongoing then they will continue, but if they are time-bound then upon expiry any new application will be subject to the new framework. When the legislation comes into force all current applications with LINZ that are yet to be decided upon by the Commissioner will be considered under the new system.

The new application process will entail:

- the application of the new statutory tests
- applying the new classifications set within a schedule of the CPLA
- new information requirements.

These components will need to be stood up prior to the date of commencement and under the new requirements a number of applicants may need to provide additional information, which may result in some delays.

LINZ will engage with potential applicants in advance of this to allow sufficient time for the affected parties to prepare for the changes.

Enforcement tools

Should the administrative penalty be included within legislation then it is recommended that this should not come into force until at least six months after enactment to give regulated parties time to become familiar with the new requirements. LINZ will also need time to implement the operational processes and policies required to appropriately administer the new enforcement tools.

8.2 What are the implementation risks?

Risk	Who is affected?	How will it be mitigated?
<i>Relationship risks</i> The changes may also affect LINZ's relationships with key groups. Leaseholders – Consultation has shown that leaseholders consider regulatory changes will	Leaseholders, iwi, advocacy groups and the Crown	LINZ has been undertaking continued engagement with the High Country Accord Trust throughout the process. LINZ has prepared a stakeholder engagement plan to ensure that leaseholders are provided with information to understand the changes

⁴⁶ Part 3 CPLA.

<p>negatively impact the relationship between the Crown and leaseholders where they have a landlord-tenant relationship.</p> <p>Iwi – Iwi, especially Ngāi Tahu, have an interest in how the estate is administered due to it being a significant area within their takiwā and containing many important cultural values.</p> <p>Advocacy groups – Several advocacy groups have a strong interest in the Crown’s administration of the estate, due to its inherent values which are of high public interest.</p> <p>Strong relationships between the Crown and these groups will significantly contribute to the effectiveness of the Crown pastoral land regulatory system.</p>		<p>and what it means for their individual situation.</p> <p>LINZ will continue to engage closely with affected iwi to ensure that it is clear how these changes affect their interests and work to develop effective relationships at all levels of the regulatory system.</p> <p>LINZ has been strengthening its relationship with these groups by ensuring that it considers, and where appropriate responds to their concerns when administering the estate.</p>
<p><i>Risk to economic resilience</i> due to impacting opportunities for future changes in land use (where external factors affect the profitability of pastoral farming then leaseholders will have fewer opportunities to diversify).</p>	<p>Leaseholders</p>	<p>LINZ will work with leaseholders to ensure that it is clear what opportunities are available to change how they utilise the leased land. For example, with the approval of the Commissioner, tourism operations may be undertaken on the land (noting that not all leaseholders may be located in an area that enables them to take advantage of this).</p>
<p><i>Ecological risk</i> may increase in situations where economic resilience is impacted.</p>	<p>The public, Crown and leaseholders</p>	<p>Evidence, such as biosecurity spend, shows that the active management by leaseholders is crucial in maintain the ecological values of the land. Operational improvements to the regulatory system and partnerships with leaseholders to steward this land will be critical in mitigating ecological risks. There are also a number of protective tools⁴⁷ that the Crown can apply to Crown pastoral land⁴⁸ to secure environmental protections through negotiation with leaseholders.</p>

⁴⁷ For example covenants and whole or partial lease purchases.

⁴⁸ With the agreement of the leaseholder.

<p><i>Capability risk</i> Stakeholders have raised concerns with LINZ's capability to effectively administer the estate.</p>	<p>The Crown and leaseholders</p>	<p>LINZ is actively building its capability and expertise, such as by employing staff with ecological and farming backgrounds and improving our training programmes. This will put LINZ in good stead to implement the changes and stand up the new system.</p>
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Section 9: Monitoring, evaluation and review

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

System level monitoring and evaluation

LINZ is improving how it manages, collates and stores information on Crown land. However, the quality of information LINZ holds is inconsistent and not currently fit for purpose to draw conclusions about system performance.

Recognising this, LINZ is establishing a baseline for Crown pastoral land in order to support the implementation of the changes to discretionary consents, improve its understanding of the estate, and meet its new and existing reporting obligations. LINZ intends to take a targeted approach to establishing this baseline, focusing on leases actively seeking discretionary consents and those with high inherent values as identified by DOC.

LINZ is currently building a database of spatial information on each pastoral lease, showing land use classifications, areas of high ecological value, cultural and historical sites, farming practices, granted consents and district and regional plan restrictions. This will enable LINZ, DOC, Territorial Authorities and lessees to have a clearer picture of what consents have been granted, their cumulative impact, and where inherent values are present.

There will be an element of collecting extra data to assess the system level impacts, such as detailed aerial imagery or remote sensing and/or on-the-ground assessments of inherent values. This will be complemented by leveraging existing datasets, held by both LINZ and externals; and through partnering with other cross-government initiatives that are aiming to improve the information on natural indicators.

This work will then be complemented by LINZ’s enhanced inspection programme. Through Budget 2019 LINZ received funding to bring inspections in-house (where they were previously undertaken by service providers) and have increased the frequency of visits so that every leaseholder can expect to be visited every two years by their portfolio manager.

Assessing whether the regulatory system is maintaining or enhancing inherent values while providing for pastoral farming

When the changes are implemented, LINZ will monitor a number of indicators in order to assess whether the regulatory system is achieving the new outcomes.

The below table sets out the indicators that LINZ has identified so far that will demonstrate how the Crown’s administration of the estate is affecting pastoral farming and inherent values. This data will be useful at both a system level, and in relation to individual decisions.

Inherent value indicators	Pastoral farming indicators
Land cover and use Natural values and biophysical landscape values <ul style="list-style-type: none"> Water quality 	Good husbandry indicators Farming practices <ul style="list-style-type: none"> Stock numbers

<ul style="list-style-type: none"> • Erosion • Flora and fauna quality and condition • Flora and fauna extent assessments • Soil type and fertility status • Soil nutrient levels <p>Pest and weed threat and infestation extent</p> <p>Associative landscape values (e.g. sites of cultural significance, archaeological and heritage sites)</p>	<ul style="list-style-type: none"> • Farming techniques • Annual topdressing details • Consented activities • Pest and weed management practices <p><i>Note: this could also be supplemented by information on commodity prices and market conditions, however, the core indicators relate to farming activity occurring across the leases, as opposed to profitability.</i></p>
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Appendix 6 sets out how these indicators can be used, the methods by which they can be collected or sourced, and whether the data is currently available to LINZ or is still to be collected. Note that this work is ongoing and the range of indicators has not yet been finalised.

Assessing whether the regulatory system is reflecting Te Tiriti partnerships

In order to assess whether the regulatory system is reflecting the Crown’s partnerships with iwi under Te Tiriti, LINZ will gather information on how cultural values are impacted by decisions and engage with relevant iwi to understand how effective they consider their involvement in the system. LINZ will also work with iwi to incorporate information they hold, such as from the Ngāi Tahu cultural mapping project (which has identified sites of cultural significance across the Ngāi Tahu Takiwā).

Understanding impacts on leaseholders

LINZ will engage with leaseholders following implementation to understand the impacts of these changes on land management practices and commercial operations. This will be done through targeted engagement, such as during regular lease inspections, as well as through the new requirements. For example, the new strategic direction will require LINZ to consult with leaseholders on its development, providing an opportunity to assess the impact of the regulatory system. LINZ will need to develop indicators to aide it in assessing this.

Reporting

LINZ and the Commissioner will report on the performance of the regulatory system through LINZ’s annual reporting documents, and to the Minister on meeting their requirements under the Crown pastoral land strategic intentions.

9.2 When and how will the new arrangements be reviewed?

In undertaking its regulatory stewardship responsibilities, LINZ aims to ensure that its regulatory systems are functioning effectively. The first regulatory review of the Crown pastoral land system was completed in 2018, and LINZ will carry out regular reviews of this system – this is expected to occur every 4 years. LINZ is responsible for a number of regulatory systems and as such the timing for these reviews may be subject to change.

Reviews are undertaken by the Director of Regulatory Systems at LINZ. During this process, stakeholders are consulted and will be given the opportunity to raise concerns.

These arrangements will be reviewed sooner than is planned under the current review programme if it becomes clear through the monitoring of system performance that decision-making is having unintended adverse consequences. Most likely this will occur if indicators significantly decline that relate to inherent values or pastoral farming.

Within a year after the legislation goes live, the secondary legislation and operational policies put in place will be reviewed using a thorough, consultative process.

Appendices

Appendix 1: Functions under the CPLA and Land Act that relate to Crown pastoral land

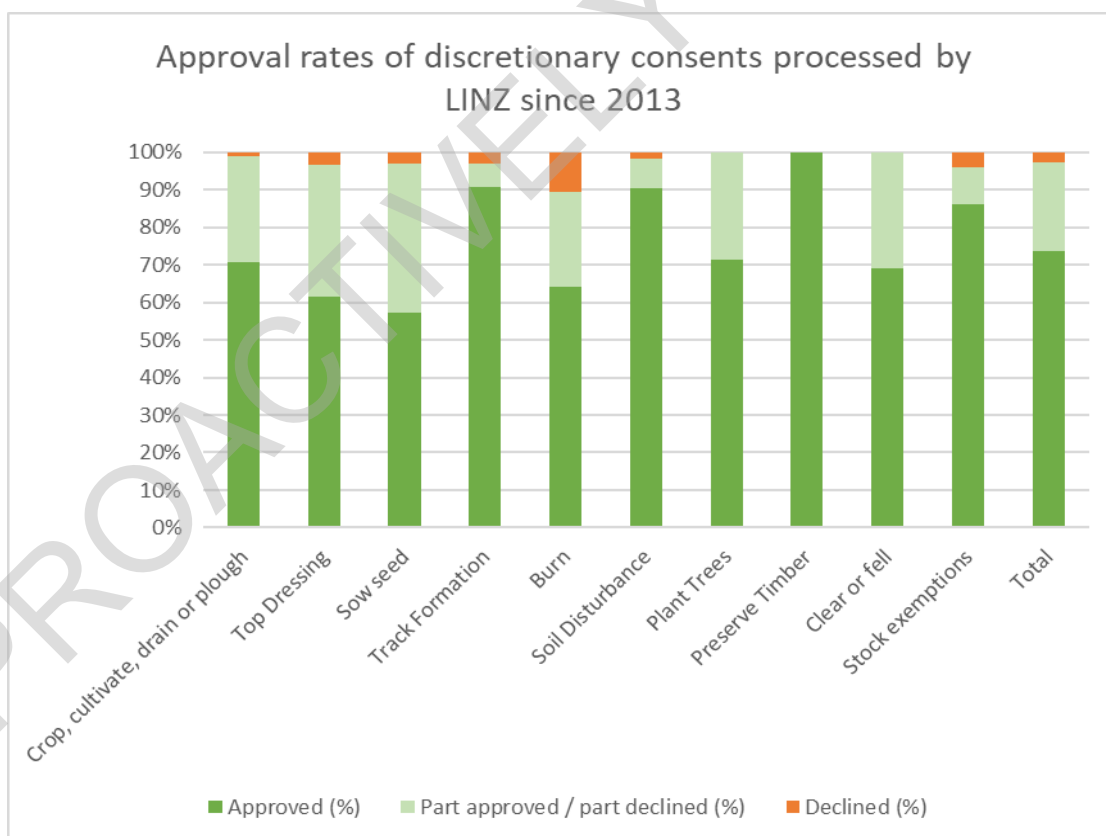
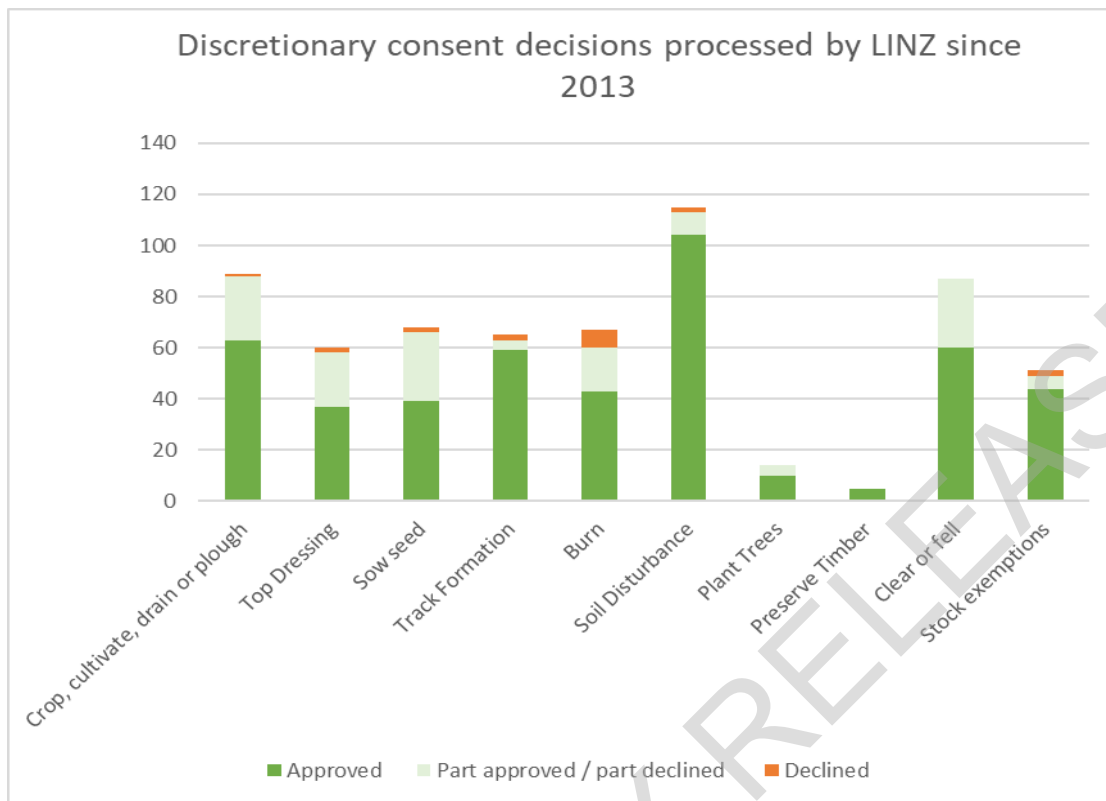
CPLA

- Renewal of lease after expiry (CPLA, s10)
- Discretionary actions relating to easements/ recreation permits/ felling of timber/ burning of vegetation/ activities affecting or disturbing the soil/ stock limitations (CPLA, s18)
- Taking an action when there is a breach of statutory or contractual provisions (CPLA, s19)
- Determining boundary dispute or adjustments to lease (CPLA s20 & s21)
- Changing the use/classification of Crown pastoral land not held lease or license (CPLA, Part 3)
- The setting of rents (CPLA, Part 1A)

Land Act

- Approve or decline transfers of pastoral lease (LA, s89)
- Grant easements over land (LA, s60)
- Grant a recreation permit (LA, s66A)
- Exercise trespass rights over unalienated pastoral land (LA, s176)
- Approve any surrender of all or part of lease or licence (LA, s145)
- Forfeiting a lease or licence (LA, s146)
- Grant exemption from residence requirements (LA, s98)

Appendix 2: Information on the volumes and approval rates of discretionary consents granted by LINZ



Appendix 3: Stage 1 Cost Recovery Impact Statement

Introducing the authority to charge fees for discretionary consents under the CPLA

Status quo

Due to the property rights of a Crown pastoral lease and legislative requirements, leaseholders need the consent of the Crown prior to undertaking certain activities. These are referred to as discretionary consents, which are listed in section 18 of the Crown Pastoral Land Act 1998 (CPLA) and consist of pastoral (or landlord) consents, recreation permits and easements. The purpose of discretionary consents is to protect the Crown's ownership interest in the land and ensure that decision-making on future land use accounts for this.

Discretionary consents relate to powers in the Land Act 1948 and the CPLA. Section 184 of the Land Act sets out the authority to prescribe fees payable on any application under the Act; as a result there is a fee in place for recreation permits and easements⁴⁹.

In 1998 some powers were removed from the Land Act and put into the CPLA. However, there is currently no statutory authority to charge a fee for powers or functions in the Crown Pastoral Land Act 1998.

Discretionary consents (referred to as discretionary actions in section 18 of the CPLA) include:		
Act	Description	Authority to charge
Land Act	Determining whether to grant an easement under s 60(1) Land Act	Yes
Land Act	Determining whether to grant a recreation permit under s 66A(1) Land Act, or exercising any discretion in relation to a permit	Yes
Land Act	Determining whether to approve the felling or removal of timber under s100 Land Act	Yes
CPLA	Exercising any discretion under s15 or 16 of the CPLA, including allowing the lessee or licensee to: <ul style="list-style-type: none"> • burn vegetation; • clear or fell any bush or scrub; • crop, cultivate, drain, or plough any part of the land; • top-dress; • sow any part of the land with seed; • plant any tree or trees; • form any path, road, or track; • undertake any other activity affecting, or involving or causing disturbance to, the soil. 	No
CPLA	Considering whether to grant, vary, or revoke an exemption from any stock limitation.	No

LINZ's costs to process these consents are currently Crown funded⁵⁰. A proposal to charge fees was consulted on in the discussion document 'Enduring stewardship of Crown pastoral land' that was released February 2019.

Policy Rationale: Why a user charge? And what type is most appropriate?

A cost recovery model is appropriate as the economic benefits of obtaining a discretionary

⁴⁹ See *Land Information New Zealand (Fees and Charges) Regulations 2003*.

⁵⁰ Noting that leaseholders currently pay rents on the leases. However, this reflects the return to the Crown on its ownership interest in the land.

consent accrue primarily to the applicant. A discretionary consent is a private good where the benefits are excludable and rivalrous. This is because the activity is generally undertaken by the owner of the leasehold estate on the leased land, of which they have the right to exclusive possession.

Discretionary consents do result in some broader public benefits due to the Crown's decision-making having regard to protecting the inherent values of the land and from enabling some pest and weed control activities, and environmental projects (for example, where consent is needed to erect a fence to protect a wetland).

Without pre-empting the processes of setting fees by regulations, from an early evaluation it seems likely that the proposed fee model would incorporate both fixed and variable costs. For example, a set application cost, and an hourly rate to reflect the variable size of applications, where some can be for activities affecting 5 hectares of land and others 500 hectares.

LINZ makes approximately 90 to 110 decisions on discretionary consents per year⁵¹. The charge would be incurred by the applicants under these, noting that in some cases one application results in multiple decisions. Applications are primarily from leaseholders, though some easement and recreation permit applications are from third parties.

Final decisions have not been made on whether to recover all or part of the Crown's costs to process consents. These will be made after the authority to charge is introduced and a more robust analysis of the nature of the activities is conducted as part of the fees review process, which includes consultation.

High level cost recovery model (the level of the proposed fee and its cost components)

The current process costs incurred by LINZ are on average \$13,300 per application – noting that an application may involve multiple decisions and consents being issued⁵². The minimum cost is approximately \$3,700, with additional costs of up to approximately \$23,200 depending on the complexity of the applied for activities and the hours it takes to process.

From reviewing a sample of consents over the past financial year, the main costs in processing consents are site inspections, preparing advice to decision-makers, and general administration. This mainly includes direct costs to LINZ, such as LINZ staff time and employing contractors, and some indirect costs such as overheads from corporate staff.

The figures above are informed by LINZ's *current* costs to process discretionary consents under the *current* process. Depending on final legislative changes to statutory decision-making and how they are implemented, this may change the process by:

- requiring additional steps such as engagement with relevant iwi
- removing the requirement for consent for some minor activities.

Operational improvements are also underway that may affect process steps. As such, the future costs that LINZ may incur from discretionary consents may well change from current levels.

⁵¹ Based on average volumes across the past 6 years, noting that there is significant variability in these due to the small and changing number of pastoral leases.

⁵² Of the applications sampled, 30% contained more than one decision. As such this may affect the average and maximum variable costs, making them larger than they are in reality.

LINZ's current expenditure to process discretionary consents is approximately \$1.04 million per annum. If fees are introduced at the above levels, then this would generate revenue⁵³ to LINZ of between \$0.87 million⁵⁴ and 1.31 million⁵⁵. The legislative changes may also introduce additional information requirements for applications, which would reduce LINZ's expenses but shift these costs onto applicants.

After an authority to charge is introduced and the changes to decision-making are implemented, LINZ will revisit these estimates as part of any work to set regulations to cost recover through fees.

Consultation

Public consultation has been undertaken on whether to introduce the authority to charge for all discretionary consents; this was part of a broader package of legislative changes. This did not include consultation on a proposed cost model or fee levels.

During this consultation there was limited support to introduce the authority to charge, with the majority of respondents not answering the question. Those who supported it raised the principle that the benefiter of an activity should pay. There was strong opposition from leaseholders who raised several potential issues with the proposal which include the following:

- Cost recovery may lead to unreasonable fees in light of the current inefficiencies in the administration of the discretionary consents process.
- Fees could reduce the viability of pastoral farming and reduce non-fixed-cost spending such as on weed and pest control, new fencing and environmental projects or compliance.
- Fees should not be charged for farm-related consents, as this was not provided for within the terms of the lease.
- Fees could incentivise non-compliance, especially in the case of minor, low-impact activities that require consent.

Following the introduction of the authority to charge, these perspectives will be considered as part of a detailed fees-review and consultation process that LINZ will run with leaseholders, key stakeholders and iwi.

A detailed engagement plan will be prepared in line with LINZ's current fees review programme. This work will be progressed as resourcing allows within LINZ's fees review programme and in line with other LINZ priorities relating to charging fees.

⁵³ This figure is dependent on future volumes which are difficult to predict considering the potential number of applicants for pastoral consents – which is already small – has been decreasing as leases have completed tenure review.

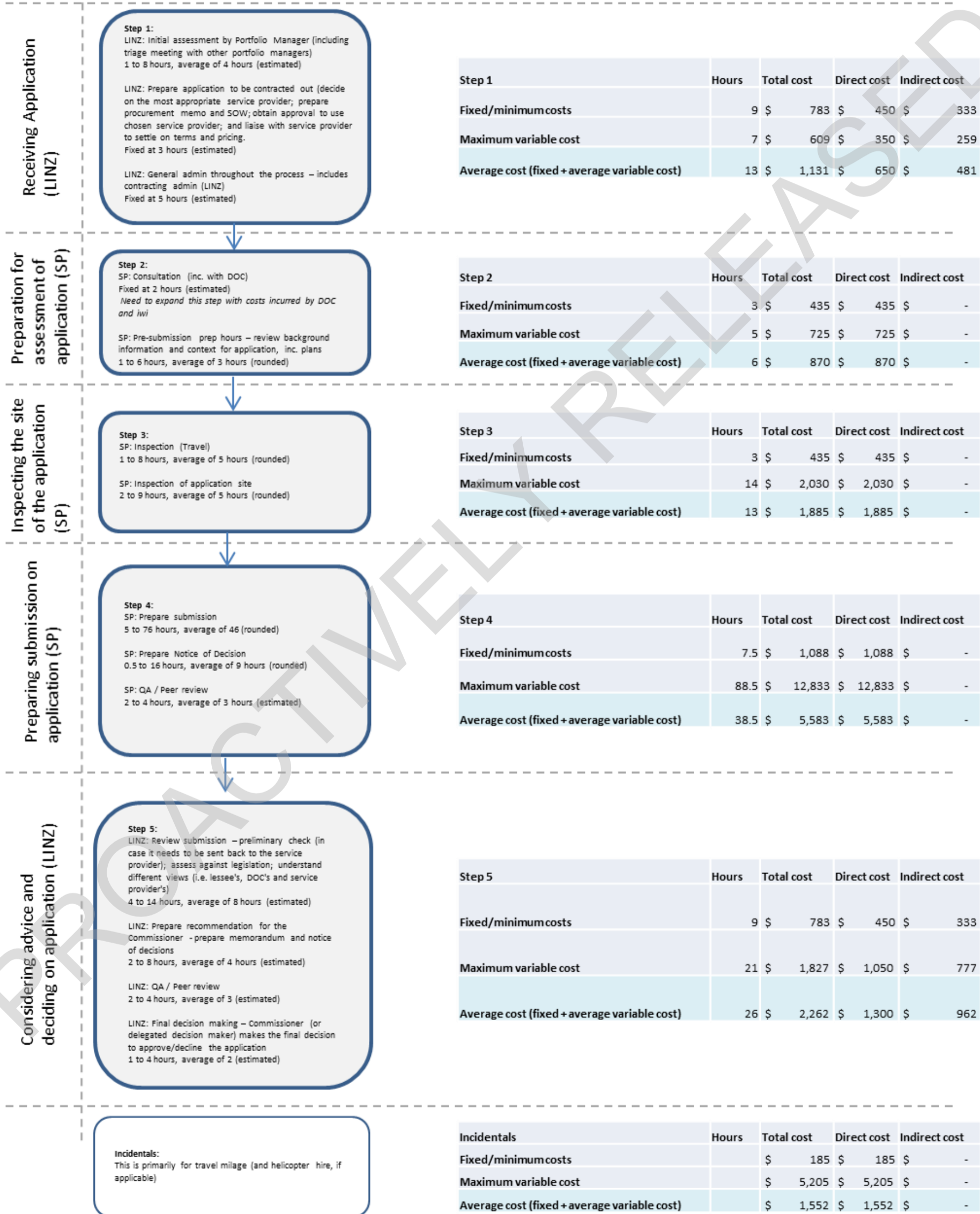
⁵⁴ Based on the volume of pastoral consents received during 2018.

⁵⁵ Based on the volume of pastoral consents received during 2017.

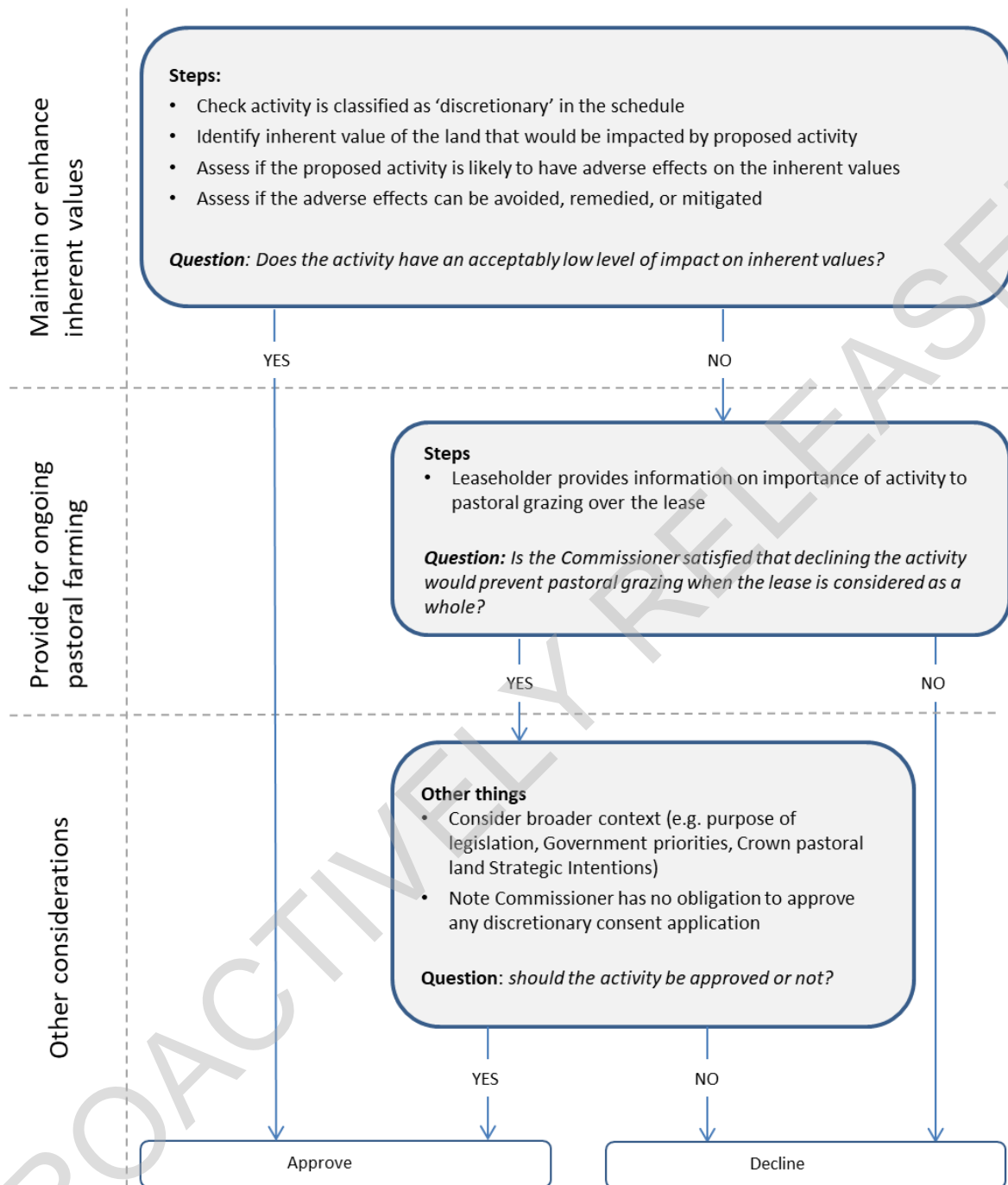
Current state cost model for processing applications

Cost of processing application = fixed costs (\$3,709) + variable cost ([service provider variable hours x \$145] + [LINZ variable hours x \$87]) + incidentals
 This model does not yet include estimated costs to DOC and iwi to provide advice on inherent values.
 Where hours are (rounded) this is based off a sample of SOWs, where they are (estimated) this is based off information provided by the pastoral team.

	Total cost	Direct cost	Indirect cost
Total process w/ incidentals			
Fixed/minimum costs	\$ 3,709	\$ 3,043	\$ 666
Maximum variable cost	\$ 23,229	\$ 22,193	\$ 1,036
Average cost (fixed + average variable cost)	\$ 13,283	\$ 11,840	\$ 1,443



Appendix 4: Diagram outlining the process proposed by option 2.3



* Flow diagram doesn't indicate where the Commissioner would be required to consult with DOC or engage with relevant iwi

Appendix 5: Technical changes

The below changes are technical in nature and are likely to have minimal direct impacts outside of Government.		
Description	Advantages	Disadvantages
<p>Require the Commissioner to consider current government policy as an input to their decision-making where this is not inconsistent with the legislation.</p> <p><i>This would clarify the existing ability of the Commissioner to have regard to Government policy when making decisions by making it a mandatory consideration. This would not allow for Government policy to direct the Commissioner's decision-making, which is a concern raised by many leaseholders during consultation.</i></p>	<p>Would ensure that decision-making on Crown pastoral land is better aligned with broader government objectives.</p>	<p>Stakeholders, especially leaseholders, may view this as undermining the independence of the Commissioner.</p>
<p>Empower the Commissioner to take on an advocacy role.</p> <p><i>This role would reflect the Commissioner's responsibility for representing the Crown's ownership interest in Crown pastoral land, for example, through submitting on updates to relevant Resource Management Plans.</i></p>	<p>Would encourage alignment between the CPLA and RMA consenting regimes, resulting in potential efficiency gains to stakeholders and Government.</p> <p>Would ensure that the Crown's interest in Crown pastoral land is reflected in other relevant regulatory systems.</p>	<p>Minor additional administrative costs to the Crown.</p> <p>There may be a possible impact on how stakeholders view the impartiality of the Commissioner's role.</p>
<p>Introduce a function for the Commissioner to support the Walking Access Commission when negotiating with leaseholders.</p> <p><i>This would see the Commissioner being mandated, as owner of the underlying land, to support WAC to improve public access to and across Crown pastoral land.</i></p>	<p>Could contribute to improved access to and across the estate – depending on the funds available, the individual circumstances of each lease and the willingness of the holder to voluntarily agree access.</p>	<p>Minor additional administrative costs to the Crown.</p>
<p>Establish a "Crown pastoral land office" within LINZ.</p> <p><i>The office would support the Commissioner in undertaking their functions and undertake general administration of the estate.</i></p>	<p>Would provide certainty of resourcing and a clear line of communication between the Minister and officials (note that LINZ intends to stand up the proposed changes within existing baseline funding)</p>	
<p>Require LINZ's Chief Executive to regularly update and release a monitoring framework for, and to report on, the overall performance of the Crown pastoral regulatory system in relation to the outcomes.</p> <p><i>The content of this framework would not be specified in legislation.</i></p>	<p>This would ensure that a robust monitoring framework is put in place but leave enough flexibility for this framework to change over time as needed.</p>	<p>Medium additional administrative costs to the Crown – LINZ is already progressing this work as part of its operational improvements.</p>

<p>Require the Commissioner to monitor the compliance of leaseholders with their lease obligations and consents.</p> <p><i>Information gathered from this would feed into LINZ's system monitoring. This would clarify LINZ's mandate to understand compliance across the estate.</i></p>	<p>Would drive improvements to the information LINZ holds on compliance.</p>	
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Appendix 6: Key indicators for monitoring of system performance

Attribute	Purpose	Collection approach/data source	Currently known
General property description (e.g. rainfall, altitude, contour, shelter, reversion, drainage, fencing & access, legal roads, marginal strips)	Summary of property and key features. Indicates the type of activities that may occur and farming practices etc	<ul style="list-style-type: none"> Lease agreement Farm plan Inspections/monitoring visits 	Yes
Good husbandry indicators	Indicates overall compliance with the intentions of the lease	<ul style="list-style-type: none"> Lease agreement Farm plan Inspections/monitoring visits 	Yes
Land cover and use	Show changes in cover and identify possible areas for follow-up. Identify potentially unconsented activities and impacts of consented activities	<ul style="list-style-type: none"> Wilding Conifer Information System Land cover database Satellite imagery 	Yes, high level
Natural values and biophysical landscape values <ul style="list-style-type: none"> Water quality Erosion Flora and fauna quality and condition Flora and fauna extent assessments Soil type and fertility status 	<p>One of the elements of inherent values</p> <p>Show nutrient loading as a result of fertilizer use, impact of farming practices on ground water</p> <p>Indicate areas with reduced value and identify surrounding land that is at risk of reduced value</p> <p>Show wild animal impacts and show changes over time that may be due to farming practices or other activity and require follow up</p> <p>Show extent of indigenous and native species to determine changes over time that may be due to farming practices or other activity and require follow up</p> <p>To identify changes over time that may be due to farming practice or other activity and require follow</p>	<ul style="list-style-type: none"> Landscape type index LAWA published data c/- Regional councils Ground survey Landcover database Farm plan Satellite imagery Inspections/monitoring visits Land cover database Satellite imagery Drones Inspections/monitoring visits Ground truth Landscape type index Satellite imagery Inspections/monitoring visits Ground truth Lease agreements Farm plans Inspections/monitoring visits Ground truth 	<p>Overall No to Limited</p> <p>No</p> <p>Yes, high level</p> <p>No</p> <p>No</p> <p>No</p>

<ul style="list-style-type: none"> • Soil nutrient levels 	<p>up</p> <p>To identify changes over time that may be due to farming practice or other activity and require follow up</p>	<ul style="list-style-type: none"> • Lease agreements • Farm plans • Inspections/monitoring visits • Ground truth 	No
<ul style="list-style-type: none"> • Pest and weed threat and infestation extent 	<p>To identify the nature of the threats to our biosecurity and where the existing infestations are so that we can see how they change, particularly in response to weed and pest management practices</p>	<ul style="list-style-type: none"> • Wilding Conifer information system • Consent data • Satellite imagery • Inspections/monitoring visits • Ground truth 	Limited
<p>Farming practices</p> <ul style="list-style-type: none"> • Stock numbers • Farming techniques • Annual topdressing details • Consented activities • Pest and weed management practices 	<p>Identify what activity will be occurring on the land to predict impacts on land cover and some inherent values</p> <p>Identify stocking levels and predict impacts on land cover and some inherent values</p> <p>Identify what activity will be occurring on the land to predict impacts on land cover and some inherent values</p> <p>Identify what activity will be occurring on the land to predict impacts on land cover and some inherent values</p> <p>Identify what is approved to occur on the lease and what the impact of that activity is</p> <p>Identify what activity will be occurring on the land to predict impacts on land cover and some inherent values</p>	<ul style="list-style-type: none"> • Lease agreement • Consent data • Farm plans • Inspections/monitoring visits • Lease agreement • Consent data • Farm plans • Inspections/monitoring visits • Lease agreement • Consent data • Farm plans • Inspections/monitoring visits • Lease agreement • Consent data • Farm plans • Inspections/monitoring visits • Consent data • Satellite imagery • Inspections/monitoring visits • Ground truth • Farm plans • Consent data • Inspections/monitoring visits • Lease agreement • Satellite imagery • Ground truth 	<p>Overall limited</p> <p>Yes</p> <p>Limited</p> <p>Yes</p> <p>Yes</p> <p>Limited</p>
<p>Experiential landscape values (e.g. landscape views)</p>	<p>One of the elements of inherent values</p>	<ul style="list-style-type: none"> • Photography • Landscape type index 	Limited
<p>Associative landscape values (e.g. sites of</p>	<p>One of the elements of inherent values. To</p>	<ul style="list-style-type: none"> • Landscape type index • Regional plans and unitary 	No

cultural significance, archaeological and heritage sites)	identify protected areas and areas in need to protection	plans <ul style="list-style-type: none"> • New Zealand Heritage List/Rārangi Kōrero • The New Zealand Archaeological Association's Archaeological Site Recording Scheme • Land Online 	
Public access arrangements (or potential areas suitable and desirable for public access)	Identify what activity will be occurring on the land to predict impacts on land cover and some inherent values	<ul style="list-style-type: none"> • Lease agreement • Consent data • Land Online • Farm Plan 	Limited

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