Submission

Enduring stewardship of Crown Pastoral land

PREPARED BY: Ashburton District Council
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ASHBURTON 7774

SUBMITTED TO: Land Information New Zealand
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WELLINGTON 6145

Introduction

1. Ashburton District Council (“Council”) welcomes the opportunity to submit on the LINZ Enduring stewardship of Crown pastoral land – Discussion Document. This submission is being made on behalf of the Council.

2. Located between Selwyn and Timaru Districts respectively, more than 34,100¹ residents live in the District, with the main town of Ashburton accounting for 19,280 or 56% of residents. The rest of the residents live rurally or in smaller towns or villages.

3. Ashburton District is one of New Zealand’s fastest-growing districts in New Zealand following the 2013 Census². Since 1996 the district has grown by 23% and this period of rapid but consistent growth follows an earlier period of little to moderate growth.

4. Ashburton District has 22% of land under DOC control within its boundaries.

General Comments

5. Ashburton District Council supports the proposal to end the tenure review to increase the Crown’s ability to protect the natural and cultural values of the land by retaining Crown pastoral land in Crown ownership while providing for pastoral and appropriate non-pastoral activities that maintain and enhance the natural capital in Crown pastoral land.

6. Council believes this proposal does send a clear message that the Crown is committed to the ongoing ownership and enduring stewardship of Crown pastoral land.

7. Council supports the Summary of Themes that has been collated from the stakeholder meetings and recorded by LINZ staff. We believe this represents well the cross-section of views on the proposal.

¹ Source: Statistics New Zealand Population Estimates 30 June 2017
² Source: Statistics New Zealand 2013 Census
8. Council supports the establishment of the High Country Advisory Group to provide advice and insights to the Commissioner and LINZ. As a local authority, we believe that it is important to follow the principles of being transparent with our communities of interest and communicating with them clearly and well. It is these principles that we believe should underpin the work between the High Country Advisory Group, LINZ and the Commissioner.

9. Council is pleased to see reference has been made to the importance of collaboration among government agencies, and between agencies and leaseholders.

10. Council staff have had involvement in working with DOC, LINZ and ECan. We look forward to continuing discussions to improve processes and enhance working relationships and coordination with these parties, particularly with regard to regulatory functions.

11. Council supports the intent of the proposed outcomes as written in the discussion document. Council is interested in the detail of how the Crown will give effect to these outcomes, and looks forward to these being communicated to us in the future.

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

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

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

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

ADC thanks LINZ for the opportunity to submit on the Enduring stewardship of Crown pastoral land – Discussion Document

HAMISH RIACH
Chief Executive

DONNA FAVEL
Mayor
Organisation (if applicable) Ballance Agri-Nutrients  
Submission type Business / Industry

Q1

1a. What are your views on how significant natural values should be protected once tenure review is ended? N/A
1b. Are there any other mechanisms that could be used to protect significant natural values on Crown pastoral land?
1c. Do you have any views on the proposed transitional arrangements for ending tenure review?

Q2

2a. Do you agree with the proposed outcomes? Please comment N/A
2b. Do the proposed outcomes capture all the things the Crown should focus on? What’s missing?
2c. Do you agree with the use of “natural capital” rather than “ecological sustainability” in the proposed outcomes? No Please comment
Natural capital is a term that is not clearly defined with uncertain metrics and measurements. As such the term is susceptible to scope creep in what is captured within it's definition and how it is measured. Equally the term ecological sustainability needs to contain a community, social and economic component.
2d. How do you think the Crown should fulfil its obligations under the Treaty of Waitangi in respect to Crown pastoral land? How do you think Treaty of Waitangi principles should be applied to decision making?
2e. What are the qualities and features of Crown pastoral land that you value the most?
2f. What does enduring stewardship mean to you?

Q3

3a. Do you agree that the Commissioner should be required to develop a regular Statement of Performance Expectations, approved by the Minister for Land Information? Yes Please comment
In respect that as the Crown is a steward of lands they should report on a similar basis.
3b. Do you agree that this proposal will help improve accountability for decision making in the Crown pastoral land regulatory system? Please comment
3c. What other mechanisms could be used to improve accountability?
3d. Which mechanisms do you think would be most effective in improving accountability?
3e. Do you think there are any problems with the proposed change?

Q4
4a. Do you agree that the CPLA should be amended so that it explicitly provides for the Commissioner to release additional guidance and standards to support officials and leaseholders to understand and comply with legislative requirements?
   Please comment
   4b. Do you agree that this proposal will help improve the transparency of decision making in the Crown pastoral land regulatory system?
   4c. What other things do leaseholders, iwi, and stakeholders most need to have clarity about in order to better understand the Commissioner’s decision making?
   4d. How should standards be used to help increase transparency? How should guidance be used?
   4e. What other mechanisms could be used to improve transparency?
   4f. Which mechanisms do you think would be most effective in improving transparency?
   4g. Do you think there are any problems with the proposed change?

Q5

5a. Do you agree that the Commissioner should be required to give effect to the proposed outcomes in any discretionary consent decisions?
   Please comment
   5b. Do you think that the proposed approach ensures that decision making will support the proposed outcomes for Crown pastoral land?
   5c. What other mechanisms could be used to ensure decision making supports the proposed outcomes?
   Farm environment plans are a tool being widely advocated for use to manage externalities from land use. If this type of planning tool is to be applied in the context of pastoral leases what is needed is to ensure that these tools are fit for purpose and not overly beaurocratic and tailored for the outcomes being sought. There are existing templates that industry organisations have and Regional Councils support that can be considered in any design. The key point being if not focused these can be costly and ineffectual tools.
   5d. What specific matters should be considered when deciding whether to approve an application?

Q6

6a. Do you agree that the Commissioner should be required to obtain expert advice and consult on discretionary consent decisions? No
   Please comment
   Nutrient use expertise is sufficiently utilised and available to leaseholders. Nutrient advisors provided by Ballance and others are normally certified and subject to audit through industry schemes. Being a significant cost this expenditure already undergoes significant scrutiny. Further additional oversight would in all likelihood lack the site specific expertise required and duplicate an existing process adding unnecessary costs and creating delays to decisions which creates risks that fertiliser application is either not applied or applied under suboptimal conditions.
   6b. In what situations do you think the Commissioner should seek information from experts or the public on the impacts of proposed activities?
   6c. Do you think the Commissioner, an independent statutory officer, is the most appropriate decision maker for matters regarding Crown pastoral land? Is there a better decision making model? Please provide the reasons for your view.
Q7

7a. Do you agree that the CPLA should be changed to allow for fees to be charged for all discretionary consents?
Please comment
7b. How might charging application fees for all classes of discretionary consents impact on applicants? Please provide the reasons for your view.

Q8

8a. Do you agree that the Commissioner should be required to regularly report against a monitoring framework?
Please comment
8b. What other mechanisms could be used to ensure the outcomes of the Crown pastoral land regulatory system are better understood?
8c. What information do you think is most valuable to understand system performance?

Q9

9a. Do you have any feedback on the preliminary analysis in section 6?
9b. Are there any other comments you’d like to include in this submission?
Fertiliser and lime use are key tools that are required in pastoral grazed landscapes because the nature of animal grazing transfers fertility. Hence to maintain soil fertility nutrients need to be replaced which ensures existing grazed ecosystems are sustainable and are not exhausted through depleted soil nutrient status.
12 April 2014

Enduring Stewardship of Crown Pastoral Land Discussion Discussion Document

Submission from
Canterbury Aoraki Conservation Board
Te Rūnanga Papa Atawhai o Waitaha me Aoraki

The Canterbury Aoraki Conservation Board (the Board) is an independent body established by the Conservation Act 1987. Made up of 12 government-appointed members, the Board represents the community of interest not only in the work of the Department of Conservation but also in conservation in general within Canterbury.

Successive Canterbury Aoraki Conservation Boards have long been concerned about cumulative effects, and the scale and rate of change in high country landscapes and ecosystems resulting from tenure review decisions, variable pastoral lease management and discretionary consent decisions.

The current Board is grateful for the opportunity to comment on the discussion document “Enduring stewardship of Crown pastoral land” and commends the authors for the clarity of the discussion document. The questionnaire was useful but it would have been too time consuming for board members to reach consensus about every question. However key points the Board agreed on are listed below.

The Board welcomes the direction and approach of the proposals outlined in the discussion document which will result in better conservation outcomes for high country in the Canterbury area and beyond. The proposals will definitely help improve accountability for decision-making in the Crown Pastoral Lease regulatory system.

1. The Board supports the enactment of clear outcomes.

2. The Board is opposed to use of the term “natural capital” because it restricts consideration to the value of nature to humans and takes no account of the intrinsic or other values of natural systems. The term “ecological sustainability” is preferred because the term is well defined, and clearly understood by all.
3. Proposals to formalise the involvement of iwi in decision-making about Crown pastoral land are welcomed by the Board. However, taking Treaty principles “into account” allows considerable discretion and still leaves open the possibility that decisions may be made which are inconsistent with Treaty principles. It is the Board’s view that changes to the Crown Pastoral Land Act should significantly strengthen the kaitiakitanga partnership between iwi and the Crown.

4. The Board agrees the Commissioner of Crown Lands should be required to develop a regular Statement of Performance Expectations, approved by the Minister of Lands. The Board considers the Commissioner of Crown Lands, an independent statutory officer, is the appropriate lead for decision-making about pastoral land matters.

5. The Board supports proposals for systems which provide accountability, transparency and regular monitoring of ongoing pastoral lease management and the implementation of discretionary consent decisions. It agrees the Commissioner of Crown Lands should be required to regularly report against a monitoring framework and recommends the Commissioner’s reports be public documents.

6. The Board agrees that the production of guidelines and standards for the management of CPL will help officials and lessees understand and comply with legislative requirements and will help with transparency for all those with an interest in high county management.

Canterbury Aoraki Conservation Board members are aware that with the end of tenure review opportunities for some significant conservation gains have been lost and are concerned that there is currently no clarity about how places with very high conservation value within pastoral leases will be effectively protected.

The Board also discussed future recreational use and public access to Crown pastoral land which are not addressed specifically in the proposals and which is allowed at lessee discretion only. The end of tenure review means that some long-standing access and recreation issues in Canterbury (for example Lake Taylor) which may have been resolved through the tenure review process will now continue without hope of resolution. It is suggested a system of rent discounts would be one obvious mechanism to secure natural conservation values or public access and recreation opportunities on pastoral leases in the future.

Yours sincerely

Paula Smith
Land and Water Committee
Canterbury Aoraki Conservation Board
Enduring stewardship of Crown pastoral land

Submissions by the Environment and Conservation Organisations of NZ Inc to LINZ

Guide to this Submission

Introduction

This submission is in response to the We are glad of this opportunity to submit.

In this submission, we introduce ECO and our interest in the issues.

The Environment and Conservation Organisations of NZ (ECO) is the national alliance of 49 groups with a concern for the environment and conservation. We were established in 1971-72. Some of our member bodies are themselves federations or multiple groups. Many are area-based, some are focused on specific species or activities or impacts, some are not actually environmental groups but share our concerns.

ECO has followed issues of conservation and environmental management and practice, law and policy since its formation in 1971-2. We have member groups from all around New Zealand.

We support Te Tiriti o Waitangi, and ensuring that the “voice” of the environment is heard.

We have a long standing interest in and engagement with the systems, institutions, incentives and drivers of activities and impacts on the environment and with appropriate public policy responses as well as international agreements and community and individual responsibilities.
ECO has long been involved in thinking and action to protect and restore native biodiversity and to tackle the threats to it. We above all want private actions and public policy responses and law that is effective, timely, efficient, fair.

If you wish to discuss any element of this submission, please email eco@eco.org.nz AND with a contact number and we will call you back.

Some Key Points:

1. **ECO supports the end of Tenure Review.** We believe that there have been perverse outcomes for the Crown in relation to the massive transfer of market values to leaseholders who have gained freehold title – often without constraints on what can be done, and in lost biodiversity and landscape values due to intensification of use. The public interest has been sacrificed to the private interest of the leaseholders.

2. **ECO supports moves to insert an updated and more environmentally aware set of purposes and outcomes from leases of Crown Pastoral Land.** We note that there are a range of instruments that could be used to secure more of the land to public conservation purposes.

3. **We are grateful for the opportunity to submit.**

4. **We endorse much of the research, analysis and recommendations by Ann Brower** and we are very glad and appreciative of the work she has done in both exposing and analysing the failures of the Tenure Review Programme.

5. **We agree that natural capital and inherent qualities of the land and landscapes should be part of the objectives of the new arrangements, but we do not agree that the objective of looking after natural capital should be so limited as proposed to be for human purposes.**

6. **We support some measure of increased public access, but we consider that there must be a range of measures and controls to protect biodiversity, to control the introduction of biosecurity risks,** and to ensure that public access does not limit scope for biosecurity measures.
We support much greater transparency and accountability of the Commissioner of Crown Lands and those to whom the Commissioner’s powers and duties are delegated, to the public and to the Minister of Crown Lands.

Both the Lands Act 1948 and the Crown Pastoral Lands Act 1998 are now very outdated and need reform. Thus legislative change is needed as well as practice changes.

The urgency of the need for government and private action to protect biodiversity and to reduce greenhouse gas emissions while providing social justice.

In considering the urgent need to protect biodiversity and to reduce greenhouse gas emissions, there is an opportunity in the ending of Land Tenure Review to achieve those two goals and to achieve greater social justice.

Clearer goals and outcome statements which recognise the public good – to the planet and to people – of recognizing greenhouse gas sinks and sources in land use, and that require and reward biodiversity protection, are needed.

Environmental and social justice can be enhanced by protecting biodiversity and biophysical processes as well as limiting climate change. These goals can be achieved also by addressing Tangata Whenua claims for better inclusion in governance, for repatriation of land, recognition of contemporary and historic cultural and social significance of areas and in ending the huge economic rents that the Tenure Review process has allowed lease-owners to achieve by buying land at public use prices and selling it at private freehold prices.

ECO supports the end of this process but we concur with Ann Brower in her view that the provisions proposed are too weak and
are inadequate at protecting the environment and the public’s right to have a say – environmental democracy as she puts it.

It will be important to use the opportunity to partner with Tangata Whenua while respecting the interests of leaseholders – but not at the expense of the environment when the terms of their leases are changed.

IUCN, in an August 2018 paper on the revision of the Aichi Targets and Framework to the Convention on Biodiversity (CBD), said this about the need for conservation and for transformational change:

1. The conservation imperative and the need for transformational change

The conservation imperative is more urgent than ever. Biodiversity loss continues; the Earth’s sixth mass extinction is so severe that humanity must take measures to address the decimation of biodiversity immediately. Conservation actions are having significant impacts in reducing this loss, but are not yet implemented at sufficient scale to stabilise and ultimately reverse current trends. The loss of biodiversity leads to loss of ecosystem services and loss of livelihoods and human wellbeing. The severe consequences for humanity of biodiversity loss are a hidden terror already prevalent but rarely understood by society.

It is particularly sobering to reflect that over the last decade, despite commitment by the world’s governments that “By 2020 the extinction of known threatened species has been prevented” in Aichi Target 12 of the Strategic Plan for Biodiversity 2011–2020, The IUCN Red List of Threatened Species documents that five global extinctions have occurred……” “Given that it is likely that other species have been lost without such documentation, it is clear that irreplaceable loss of biodiversity is a scourge that still affects countries around the world.

To secure life on Earth, we need bold, new and transformative action, underpinned by sound science and effective policy. ….”
Section 1, Question 1:

What are your views on how best to manage the implications of ending tenure review?

Adopt several principles:

The interests of the environment must come first and natural biodiversity must not be depleted or degraded;

A partnership approach with tangata whenua as per the te Tiriti o Waitangi;

The precautionary approach to activities that may affect the environment;

Recognition that the land is Crown land and thus the public must have a say. Provide more “environmental democracy”.

Legislative change.

Legislative change to provide a Purpose for the two Acts.

Provide an environmentally aware Purpose to the Acts in question so that productive activity is subject to the protection of the environment and landscape;

Remove definitions and provisions for environmentally harmful activities to be classed as “improvements” and instead prohibit or stringently regulate these. For instance, roads and drains in some cases may need to be maintained, but further roading or draining should not be encouraged.

Ensure that the duties and functions of the Commissioner of Crown Lands are cast to require that the environment is not harmed in any significant way and that natural biodiversity and biophysical systems and features are protected;
Introduce requirements for management planning every five years with public input.

Provide for the public to have input to the Management Plans and to significant changes in intensity of use;

Provide for public monitoring and reporting requirements.

Where there are not biosecurity or other risks such as fire, provide for some degree of walking access while protecting the privacy of leasees in their domestic areas. Controls on access should include seasonal controls (E.g. lambing and calving closures, closures to preserve track quality OR provision for funding all weather tracks).

Controls on the use of vehicles and other transport means when off designated tracks.

Remove the autonomy of the Commissioner of Crown Lands for leases of Crown land.

• How should areas of Crown pastoral land with inherent values worthy of protection be secured once tenure review is ended?
  
  • Transfer the areas involved into DoC ownership and management;
  
  • Legal requirements in the Acts and in statutorily mandated management plans for the protection of inherent values. Covenants with QEII can augment these but must observe the legal restraints in the amended legislation.

• How should public access to Crown pastoral land be secured once tenure review is ended?
  
  • Public access should be provided for but only via management plans and controls on vehicles used (if any), seasonal closures, specified constraints to protect the environment and some particular activities, for biosecurity reasons and to provide leases with some degree of privacy.
  
  • Are there any other mechanisms that could be used to protect inherent values or secure access on Crown pastoral land?
• Covenants should have provisions for requiring consents from the Landowner (Crown), Ngai Tahu and DoC for some issues and via the RMA and the Commissioner in some circumstances.

Are there any other implications of ending tenure review that the Government should consider?

In this day and age, it is inequitable and unfair to allow for perpetual occupation and leasing of land, albeit highly desirable for the leases. Some form of termination and co-management with Ngai Tahu and with the Crown is needed.

Section 2: Articulating outcomes for stewardship of Crown pastoral land

• The Government is proposing a set of outcomes to articulate how it wants Crown pastoral land to be managed.

• 2.1 Proposed outcomes for Crown pastoral land

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

The Government is proposing to include a new set of outcomes within the CPLA to ensure that this land is stewarded to maintain and enhance its significant natural and social capital for present and future generations. This will change the way that statutory decisions are made by the Commissioner and how Crown pastoral land is managed.

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

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

• provide for pastoral and appropriate non-pastoral activities that support economic resilience and foster the sustainability of communities

• enable the Crown to obtain a fair financial return.\(^{22}\)

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

**Ecological sustainability**

The proposed outcomes do not include a specific reference to “ecological sustainability”, a concept that is currently included but not defined within the CPLA in relation to tenure review.\(^{23}\) This lack of definition has led to many different views on how the term should be interpreted and how it should be applied within tenure review.

Instead, the term has been replaced with a reference to natural capital in the proposed outcomes which, similarly to ecological sustainability, captures the capacity of the environment to meet the needs of the present generation without disadvantaging future generations.

The outcomes propose that natural capital should be maintained and enhanced. In some cases this would include the restoration and regeneration of natural capital, for instance through a leaseholder undertaking activity to promote environmental outcomes as a condition of a consent. This is discussed more in Section 4.3.

**Question 1.2:**

Do you agree with the proposed outcomes? Please provide reasons for your view.

ECO agrees that protection of the environment is a critical requirement and
we agree with the idea of cascading goals that subsidiary goals must be subject to.

1. ECO recommends that maintain and restore the natural environment and its systems and biodiversity is a better term than “natural capital”.

Natural Capital is too often perceived as stocks of “natural resources” rather than the biophysical systems that generate and maintain ecosystems, nutrient cycling and so on. The natural systems must be maintained, the natural character and natural biodiversity.

2. Further, there should be a requirement to preserve and restore natural landscape values and natural open space values.

3. The requirements to maintain social and cultural values should be subsidiary to the ecological values and systems.

4. Explicit provisions to require biosecurity and to avoid and control exotic species especially invasive species, should be inserted.

You may also wish to consider:

• Do the proposed outcomes capture all the things the Crown should focus on? What’s missing?

As above, we need to include natural systems, open space, natural character, and the “environment”.

• How should the Crown fulfil its obligations under the Treaty of Waitangi in respect to Crown pastoral land? How do you think Treaty of Waitangi principles should be applied to decision making?

• What are the qualities and features of Crown pastoral land that you value the most?

The natural values and open space, natural landscape

Other mechanisms

Covenants as a permanent requirement but with management requirements
2.3 Legislative change needed includes:

ECO considers that both the Acts need significant revision.

Under the Crown Pastoral Land Act, there is a definition of “improvement” of land that is so outdated, it includes clearing bush and “scrub”, draining wetlands, and a range of other activities as an improvement. We urge that environmentally harmful activities be removed from this definition and that instead there is a definition that includes environmental protection and sustainability measures as an improvement.

In the reproduction from the CPLA definition, we suggest that those sections that are highlighted be deleted and that other improvements such as restoration of the local ecology and soil stability etc be encouraged instead.

1) improvement—
   (a) means substantial improvement of a permanent character; and
   (b) includes bridging; clearing of broom, bush, gorse, scrub, or sweetbriar; constructing border dykes, head races, irrigation works, sheep dips, water races, water supplies, or water tanks; cultivation; draining; erecting any building; fencing (including rabbit-proof fencing); improving in any way the character or fertility of the soil; installing any electric lighting, electric power plant, or telephone; laying out and cultivating gardens; making embankments or protective works of any kind; planting with trees or live hedges; reclamation from swamps; roading; and sinking wells or bores

inherent value, in relation to any land, means a value arising from—
   (a) a cultural, ecological, historical, recreational, or scientific attribute or characteristic of a natural resource in, on, forming part of, or existing by virtue of the conformation of, the land; or
   (b) a cultural, historical, recreational, or scientific attribute or characteristic of a historic place on or forming part of the land

land
Treaty of Waitangi
Others are better placed than ECO to give advice on this, but it will be important that the environmental goals must be followed in the process.

Section 3 Ensuring decision making is accountable and transparent.

We agree accountability and transparency is vital. We consider that the independence of the Commissioner of Crown lands is a relic. It is unclear to us why that arrangement is in place. It must be changed and we agree that the Minister’s priorities within the revised legislation must be provided for.

We consider that management plans to which there is public input as well as KPIs that are reported on are in place as well as the Statement of Performance suggested, all should be public and available along with some form of reporting on performance.

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

The Crown is proposing that the legislation be amended to require the Commissioner to:

• regularly update and release a monitoring framework

• release regular reporting against that framework.

ECO considers that the reporting needs to be at a variety of scales: per lease and per area as well as for the whole of the Crown Pastoral Leases.

The monitoring should be on the basis of overall legislative requirements, on the management plan that is done every 5 years, and on specific environmental realms (wetlands, freshwater, Nox, etc, etc); qualities, recreational matters etc.

Question 8:

Do you agree that the Commissioner should be required to regularly report against a monitoring framework?
Please provide reasons for your view.

Yes. Because it is publicly owned land, and because the position of the Commissioner means that they are likely to become psychologically captured by the wishes of the leasees and to lose sight of the environmental and public interests.
We suggest that the environmental performance and consents should be assessed by DoC and others.

You may also wish to consider:

• What other mechanisms could be used to ensure the outcomes of the Crown pastoral land regulatory system are better understood?

Sunlight, open government, clarity of requirements, periodic public input.

• What information do you think is most valuable to understand system performance?

Environmental indicators; - natural biodiversity quality and extent assessments; water quality, sedimentation etc.

Presence and control of invasive species

Degree of intensification of use – a negative if intense.

The extent that the arrangements are regarded as workable by leasees

Ease of access and reasons for denials of access

Natural Landscape and open space values.

Funding for pest control and environmental protection.

• **Assessing effectiveness**  To assess the effectiveness of each proposed change, we have looked at how it contributes to the proposed outcomes: specifically to what degree it helps the Crown to manage the land to **maintain and enhance natural capital, and cultural and heritage values**; and subject to this to:

  provide for pastoral and appropriate non-pastoral activities that **support economic resilience** and **foster the sustainability of communities**

  enable the Crown to **obtain a fair financial return**.
We are unclear what you mean by “support economic resilience” – is this for the region or locality or for the leases?

The Table.
We have been under huge pressure with many submissions and other work to be done. We have yet to clearly understand and assess your table. We hope to get to it and get in further submissions.

Finally,
We have found the numbering in the paper very confusing. It would be helpful if you could use the system of 1.1, 1.2 etc, then 2.1, 2.2 etc rather than sections, proposals and question numbers apparently unrelated.

This has contributed to the somewhat disheveled organization of our responses to you.

Thank you for the extension.

We have not managed to do as much on this as we wished to.

Many thanks, and feel free to contact us on [blank] if you wish to discuss any matters, or send us an email with your phone numbers and name so we can call you back.

Cath Wallace
ECO co-chair.
9 April 2019

Crown Pastoral Land Consultation
Land Information New Zealand
CPLC@linz.govt.nz

To whom it may concern,

Consultation on Enduring stewardship of Crown pastoral land

We write this letter in support of LINZ’s proposals to strengthen the regulatory system to ensure enduring stewardship of Crown pastoral land. We especially want to acknowledge LINZ’s recognition of, and commitment to, the crucial stewardship role and responsibility for Crown pastoral land the Government has and the critical impact that the management of the high country has on the whole range of values ki uta ki tai.

Much of the high country is within the Canterbury region and Environment Canterbury, along with LINZ and other partners, is working through the Mackenzie Basin Agency Alignment Programme to align agencies and create successful working relationships. We welcome the significant progress made to date. Work to ensure enduring stewardship, effective management and better support decision making is a significant contribution towards increasing capability to protect natural, cultural and economic values in high country landscapes.

We are equally pleased with our collaborative partnership with LINZ and others on the associated Braided Rivers Action Group (BRAG) project. Significant Crown land holdings adjoin braided rivers, and this project seeks a partnership approach to the management of Crown land in braided river environments. This project is seeking positive and sustainable outcomes aligned with the Canterbury Water Management Strategy, enhancing natural character, ecological protection and support for prosperous pastoral stewardship of appropriate land.

It is timely to update legislative tools to support the transition arising from ending tenure review. The environment is under pressure, and economic conditions and community concerns have changed since regulations were adopted. With reference to the proposed changes outlined in the consultation, we make the following supportive comments:

- We agree with Proposal 1 to include a new set of outcomes for Crown pastoral land within the Crown Pastoral Land Act 1998 to support enduring stewardship and protect values for current and future generations. We broadly support the values identified in the document, which align with Environment Canterbury strategic priorities in indigenous biodiversity and freshwater management. Given the diversity of values held by stakeholders and community, it is important that outcomes are well articulated so there is a consistent message about what the regulatory system should deliver, and that an appropriate mix of land uses is supported. Treaty obligations should be explicitly realised in drafting outcomes and legislation, working in strong partnership with Ngāi Tahu as mana whenua.
• We agree with Proposals (2 and 3) to ensure decision making is transparent and accountable. Transparency and accountability are important to the community and with increasing concern about protection of the iconic natural values of high country over recent years and the diversity of interests, having a statement of expectations will provide clarity on how outcomes are being met.

• We also support the development of guidelines for officials and leaseholders to help support decision making and compliance. Guidance should complement agency alignment work in the Mackenzie Basin, and other areas including braided rivers. An example of advice that LINZ should (and do) seek from Environment Canterbury is in the braided river environment. This includes advice on how to protect their natural character, ecosystem health and biodiversity values and clarity about the rules/definition of river bed.

• We support proposals to ensure decisions give effect to the outcomes for Crown pastoral land in any discretionary consent decisions and the Commissioner have ability to obtain expert advice and consult as necessary. Decisions about consents and land use in the Mackenzie Basin are being made in a joined-up way through the Mackenzie Basin Agency Alignment Project. Collaboration and information sharing are critical to understanding different values, different types of land use and management issues, and the options to achieve outcomes. Farm environment plans (FEPs), are an important tool to help maintain and improve environmental outcomes through Good Management Practice. The use of FEPs as an integrated management approach across agencies is developing momentum and will help achieve shared outcomes.

• We agree with the principle of Proposal 7 to improve system information, performance and monitoring to understand impacts of decisions and measure outcomes as noted above. A consistent and aligned data set will be imperative. At present, all five agencies involved in the Mackenzie Basin Agency Alignment Project are collaborating to produce a shared digital set of maps with overlays displaying land use, tenure, landscape and ecological values.

We provide this high-level letter of support and recognise that we will have further opportunity to comment on proposals if a Bill is considered by Select Committee. We will continue to engage with LINZ to progress better agency alignment to protect values and achieve outcomes in the high country through initiatives such as the Mackenzie Basin Agency Alignment Programme and the Braided Rivers Action Group.

Yours sincerely,

Bill Bayfield
Chief Executive
Submission on
Enduring stewardship of Crown pastoral land

From: Federated Farmers High Country

Contact: FFNZ Regional Policy Advisor (High Country)
57A Theodosia Street
Timaru 7910

To: Crown Pastoral Land Consultation
Land Information New Zealand
PO Box 5501
Wellington 6145

By email cplc@linz.govt.nz

Date: 12 April 2019
1. BACKGROUND

1.1 Federated Farmers High Country (FFHC) is an Industry Group within the Federated Farmers of New Zealand structure. We have in excess of 430 members, the vast majority of whom are landholders in the South Island High Country.

1.2 We have a number of members who are, or have previously been, Crown Pastoral Lessees. We therefore have an extensive and personal understanding of the matters promulgated for feedback. Our members take pride in their environmental stewardship of the iconic New Zealand high country. For many of our members, this stewardship is inter-generational.

1.3 For record purposes, we advise that FFHC adopted a position statement on Tenure Review in May 2018. This is attached as “Appendix A” to this submission. In reference to this, we can further advise that FFHC is a willing participant in the LINZ-established Crown Property High Country Advisory Group. In that regard, and in our opinion, Government has acted without integrity in announcing a summary termination of Tenure Review so early in this Group’s deliberations.

1.4 It is our understanding that the Group was still considering options in this regard. That being whether repurposing tenure review to make it a more targeted tool, continuing with the status quo or ending tenure review, was a better way of meeting the government’s objectives for the high country. In our view, rather than an outright cessation of tenure review, these options should have been fully consulted on, alongside other aspects of the discussion document.

1.5 FFHC supports the individual submissions of our members. The matters they are addressing deeply concern and affect them, their families, their businesses and their communities.

1.6 FFHC has read and fully supports all matters detailed in the submission of the High Country Accord; in particular, we support and reinforce their detailed responses to the discussion document questions, which have been compiled following in-depth consultation with lessees. It should also be noted that Federated Farmers contributed to and was involved in the preparation of the submission made by the High Country Accord.

1.7 The FFHC submission that follows is to be considered in conjunction with the High Country Accord’s submission, and is made to re-emphasise some of the points about which FFHC has a particularly strong opinion.

2. GENERAL COMMENT

2.1 Although the discussion document seeks responses to some specific questions, we believe that to attain an accurate indication of opinion, more detail needs to be taken into account. We also question the credibility of the consultation, when a major outcome (the cessation of Tenure Review) is determined without consultation.

2.2 FFHC has been involved, in good faith, in discussions with the Minister and various other stakeholders, on the way ahead for Crown Pastoral leases. While we had indicated (e.g. Appendix A) that the time may be appropriate for a re-visit of the situation, including the future for Tenure Review, we consider that ANY decision related to Crown Pastoral leases, including Tenure Review, without evaluating all
relevant aspects and consequences is irresponsible, at best. The consequences of taking such a fast-tracked approach will not only impact the farming families and communities directly at issue, it will also lead to poorer environmental outcomes, and risks reduced public access. The only reasons we can see for such action is blind ideology and a pre-determined agenda.

2.3 In offering a reason for the cessation decision, the Minister states in the Foreword to the discussion document:

“I am aware of increasing public concern that there has not been enough focus on preserving the ecological, biodiversity and landscape values of Crown pastoral land,”

In the next paragraph, the Minister outlines some of the “concern” and concludes:

“For this reason, the Government has decided to end the tenure review process for Crown pastoral land.”

No rationale is given, at this point, as to how stopping Tenure Review will address these concerns. There appears to be confusion between cause and effect. In fact, little acknowledgement is given to the fact the remainder of the document laments the poor understanding of what the actual outcomes of tenure review have been, due to inadequate monitoring and reporting. The only consistent rationale for the abandonment of tenure review is noted as being due to ‘public perception’ and ‘stakeholder feedback’. This is not a sufficiently robust or scientific basis or justification for such an important decision.

2.4 At various places in the document, there are claims/suggestions that Tenure Review has not delivered the ecological sustainability expected by some sectors of the public. We question this opinion. The discussion document itself acknowledges (at p17) that:

“Tenure review has generated some positive environmental outcomes.”

2.5 While FFHC was encouraged by this statement, we believe that a degree of prejudice is shown in the subsequent figures and insinuations.

2.6 The figures quoted at the top of page 17 are correct insofar as they go. However, we believe it is misleading to omit reference to the further 125,792 hectares that have been returned to full Crown ownership following the five whole property purchases that came about through the Tenure Review process.

2.7 The implication that the approximately 353,000 hectares that has become freehold land has been detrimental to ecological values is also misleading. Section 18 of the Crown Pastoral Land Act 1998 (CPLA) makes it clear that before reviewable land is freeholded, the Commissioner must (1) refer to review to the Department of Conservation and (2) the desirability of protecting the inherent values of the land in question. Further, as explained in our response at 3.1.1 below, the freeholded land continues to have the full protection of the Resource Management Act 1991 (RMA).

2.8 In our view, the role the RMA has in the protection of the land, the landscapes, the biodiversity, and the heritage and cultural values, of both freehold and Crown pastoral lease land has been deliberately downplayed within the discussion document. There has been considerable effort, over the past five years in particular, across the country, by stakeholders, communities, individuals and communities in bolstering up the levels of protection within second-generation RMA plans. These processes have included substantial input from the Department of Conservation, and Forest & Bird amongst others, including the Environmental Defence Society, Fish & Game and many local environmental or ‘guardian’ groups. These matters predominantly have ended in Environment Court, generally amicably settled at
mediation, and have been confirmed by the Court as being consistent with the objectives of the RMA. Many of the plan review processes that are now complete are only at very early stages of implementation, so we are yet to see the full benefits of this increased protection.

2.9 Furthermore, the central government has its ‘year of action’ within its environmental regulatory programme. There is a pending National Policy Statement on Indigenous Biodiversity, which will have considerable impact on those with undeveloped and developed land, irrespective of tenure. There is also an amended National Policy Statement for Freshwater Management, a National Policy Statement on Soils (or similar title), a range of National Environmental Standards, and a programme of RMA Reform, amongst others. In summary, there has never been better protection for the landscapes, biodiversity, cultural and heritage matters of the high country. It is simply disingenuous to suggest that in the absence of tenure review, this land is now overly ‘vulnerable’ and unprotected.

2.8 In line with the foregoing, we suggest that, if there is validity in the “concern” referred to by the Minister, and elsewhere in the discussion document, the fault lies in the execution of the Tenure Review and previous discretionary consenting process rather than as a result of Tenure Review itself. This conclusion is consistent with those reached in the review of the system undertaken within the Crown Pastoral Land Regulatory System Assessment. We understand that Land Information New Zealand (LINZ) and the Commissioner for Crown Land have both committed to a programme of improvements to their internal processes, including via input with key stakeholders and NGOs, as a result of these findings. For this reason, we consider the summary cessation of the process is precipitous.

Page 24 of the discussion document suggests that there is uncertainty about the meaning of ecological sustainability as sought within the CPLA, and instead proposes the terminology “Natural Capital”. We do not accept this as being a valid basis for scrapping Tenure Review, and amending other key aspects of the Crown pastoral lease system, without full consultation on the implications and consequences.

2.10 If interpretation were a problem, a simple amendment to the CPLA would have been a simpler way to address the issue. We now have similar uncertainty on the full implication of “Natural Capital”, but have lost the fallback of Tenure Review.

3. SPECIFIC QUESTIONS

The document has identified some specific matters on which feedback is sought. Our selected response to these are as follows, but we do emphasise that these are not to be considered in isolation from our general comments above. We also reiterate our support to the responses detailed within the submission of the High Country Accord, as referred to at 1.3 above.

3.1 Implications of ending Tenure Review

What are your views on how significant natural values should be protected once tenure review is ended?

3.1.1 Qu 1A: How should areas of Crown Pastoral Lease land with inherent values worthy of protection be secured once tenure review is ended?

Inherent values on pastoral leases are already doubly protected. In addition to the restrictions on land use imposed by sections 15 and 16 of the CPLA, the land
also has the full protection applied by the RMA regime, as detailed more fully in paragraphs 2.8 and 2.9 above.

Any duplication between CPLA and RMA functions should be addressed to ensure a more efficient and effective joint approach between agencies is taken. This will ensure lessees, the Crown as landlord, and local government agencies can avoid unnecessary repetition, duplication of considerations, or contradiction in information gathered. A more aligned approach would avoid the consequent inconsistencies, uncertainty, delays and costs that would result from any unnecessary double handling. In our view, central and local government agencies need to work together smarter. There are already inadequate resources in this area, and it makes sense to get better outcomes from united or shared approaches, rather than patch protection and duplication.

In this respect, note section 17 of the CPLA:

*Permission under other enactments still needed*

(1) Before a person has obtained permission to do a thing that is contrary to any enactment unless permission has been obtained under that enactment, the Commissioner may for the purposes of this Act give the person consent to do the thing under section 15 or section 16; but the consent does not authorise the person to do the thing without the required permission.

3.1.2 Qu 1B: How should public access to Crown pastoral lease land be secured once tenure review is ended?
Land subject to Crown Pastoral Lease is alienated Crown Land. Landholders and residents on these properties are fully entitled to exclusive possession and quiet enjoyment of the land. Public access must continue to be as it is currently, at the lessee’s discretion and with their consent. Increased public access directly impacts ‘right of quiet enjoyment’ and at certain times of the year raises potential conflicts with vital farming activities (such as lambing, mustering), and raises potential health and safety risks.

Any erosion of these rights must only be given after negotiation with the leaseholder, and with his/her full agreement, without any threat or pressure. Full and adequate compensation should be available for the erosion of any of these rights.

3.1.3 Qu 1C: Are there any other mechanisms that could be used to protect inherent values on Crown pastoral land?
There is a number of other mechanisms that can be used to protect significant natural values on Crown pastoral land. Hon. Denis Marshall, the then Minister of Lands, outlined some of these in his address to the House when introducing the Crown Pastoral Land Bill:

“Other protective mechanisms available to the commissioner when alienating Crown land are covenants under the Conservation Act, the Reserves Act, and open-space covenants under the Queen Elizabeth the Second National Trust Act.”

Similar sentiments still apply. Of primary importance in this regard is that the Government fully commits to increasing both the QEIi Trust and the Nature Heritage Fund budgets to ensure they can meet leaseholder (and landowner) demand. These entities will not be able to meet their full potential or government’s objectives, without adequate funding. Government financial commitments to both entities have been disappointing to date, and we note no indication of any financial budgeting within the discussion document, which is worrying.
We understand that currently QEII cannot meet the demand for covenanting it receives from landowners. We similarly understand that the Nature Heritage Fund budget currently sits at about $4 million per annum (fluctuating between that figure and $10 million typically). That is wholly inadequate to purchase leases of land with significant or critically threatened values, given there will not be the offsetting ability previously (and currently) offered through tenure review.

3.1.4 Question 1D: Are there any other implications of ending tenure review that the Government should consider?
Of prime importance, when considering other implications, is the impact on lessees, their businesses and families, the land, and the wider community – these impacts and the stress continual public and Government interference have upon them, have not been appropriately considered. In many cases, the ending of tenure review, and the tinkering with ‘outcomes’ and discretionary consent provisions, will mean that opportunities for other land uses which would have no adverse conservation or ecological outcomes will not be realised.

The Crown will also need to assume a greater responsibility as a good neighbour and partner in the management of threats from pest animals and weeds, and appropriately consider what its role in active management will be, as landlord to these properties.

3.2 Proposed outcomes.

3.2.1 Question 2A: Do you agree with the proposed outcomes?
FFHC does not agree with the proposed outcomes as they have been presented in the document. A change in priorities for the land represents a major and significant variation of the terms of lease. One of the main reasons for the introduction of the Land Act 1948 was to give lessees a degree of certainty of tenure so giving them more motivation to invest in and protect the land.

Leaseholders have consequently invested markedly in the land and its infrastructure, in some cases over several generations, in the belief that the Crown would honour its commitments. The discussion document hints at a possible betrayal of this trust. We are particularly concerned with the proposed abandonment of farming as a dual consideration, instead focussing on the need to maintain and enhance natural capital and cultural and heritage values. The term natural capital is inherently uncertain, as we will detail further in 3.2.2 below. In short, there should be no obligation or expectation that lessees should resource and pay to ‘enhance’ natural capital, there seems no just basis for this requirement and in many cases, such enhancement will simply not be possible.

We are particularly concerned with reference to a ‘fair financial return’ for Crown, and given the lack of details in this regard in this discussion document, it is difficult to comment on what the Government is intending in this regard.

Any change to our response on this would depend significantly on the extent to which the Government is committed to the process noted in the Cabinet Minute:

10 noted that it will be important to engage with leaseholders and other groups on any proposed changes

3.2.2 Question 2C: Do you agree with the use of the term ‘natural capital’ rather than ‘ecological sustainability’ in the proposed outcomes?
As detailed above, in our view the term ‘natural capital’ is inherently uncertain.
We appreciate that there is substantial international and national interest in applying the concept, however, we understand that in New Zealand, the necessary frameworks or valuation methodologies required to ‘value’ natural capital are largely only theoretical, and not sufficiently certain, or able to be practically adopted, at this time.

Valuing nature in this way is inherently complex, as it involves ‘use values’ and ‘non-use values’ and is dependent on a robust methodology framework around it. There are inherent difficulties in ascribing a value to nature without such frameworks, with any resulting valuation being largely subjective, differing considerably depending on perspectives. For instance, in order to create a moratorium on development, all that would be needed is for a valuation to prescribe an infinite or disproportionately high value to something, without needing any real evidence to substantiate or justify the approach.

Until such time as New Zealand has a sufficiently robust framework, such considerations should be deferred.

3.3 Commissioner of Crown Lands

3.3.1 Questions 3, 4, 5, 6 and 8 in the discussion document all relate to the accountability of the Commissioner of Crown Lands. Our comments above are relevant in response to these.

In general terms FFHC believes that the decisions of the Commissioner should be transparent.

**FFHC is adamant that the role of the Commissioner must remain independent of any political interference.**

3.4 Fees and Charges

3.4.1 There is no justification for charging a fee where the action for which consent is required is to comply with a legal requirement (e.g. soil disturbance when building a fence to protect a wetland), or otherwise to meet the terms of the lease (for instance undertaking weed and pest management).

4. ONGOING CONSULTATION

4.1 Federated Farmers High Country wishes to remain in close dialogue with both the Minister and LINZ as this work stream continues. We appreciate the time the Minister has taken to date to meet directly with lessees, and respond to their questions.

4.2 FFHC wishes to be advised of, and allowed speaking rights at any forum that evaluates this and other submissions on this matter.

4.3 You may publish this submission with all details on it.

Remove any personal details from responses to Official Information Act requests
APPENDIX “A”

Federated Farmers High Country Position Statement on Tenure Review.

The current Tenure Review process was introduced by The Crown Pastoral Land Act 1998 (CPLA). While reviews of land tenure were possible under earlier legislation, the CPLA simplified the process while, at the same time, detailing various safeguards in relation to *(inter alia)* ecological sustainability, the protection of significant inherent values and the principles of the Treaty of Waitangi. The process is voluntary and made provision for public submission.

Approximately 60% of leaseholders have now completed the Tenure Review process; 10% have entered the process but are yet to complete and the balance have either elected not to enter the process or have entered and subsequently withdrawn.

In recent years, there has been an increasing call from some sectors for a “moratorium on” or “review of” the Tenure Review process from a variety of sources. In view of the fact that most lessees have had some 20 years to consider whether or not to enter the Tenure Review process and many have completed the process, Federated Farmers High Country believes that the time may be appropriate for an objective review as to the extent to which the objectives of the Act (Sn 24) have been achieved.

Federated Farmers High Country (with any strategic partner) would be willing to participate in any review discussions but emphasises that any variation to the status quo must:

- Allow leaseholders, who have entered the process and who are yet to complete it, to continue the process under existing legislative provisions
- Respect the current legislative and case law rights of those leaseholders who wish to continue under their current pastoral leases.

*Ends.*

24/05/18