12 April 2019.

Hon Eugenie Sage
Land Information Minister
Wellington.

Dear Minister,

Crown pastoral land consultation

We wish to be heard if such an opportunity is available.

Federated Mountain Clubs
FMC was founded in 1931 and advocates for New Zealand's backcountry and outdoor recreation on behalf of more than 22,000 members in over 80 clubs. This core function gives our organisation a strong interest in refining the purposes and management of Crown pastoral land, as improved long-term outcomes for conservation - and therefore recreation - are possible.

Through FMC’s eyes: the present and future of high country land in Crown pastoral leases
We welcome this timely korero, which we anticipate will bring direction on purposes for which the leases are held into line with contemporary understanding of the land's values.

Appreciation of the high country’s inherent riches - and its vulnerability - has developed over time. Looking at the land through productive, ecological, landscape, recreational, and other lenses, ever more is seen. While direct economic good comes from high country pasturage, the land’s less immediately calculable benefits - economic and other - including water sequestration and regulation, biodiversity, landscape values, recreation, general public well-being, and tourism, are enormous.

We acknowledge the conservation and recreation stewardship - in many cases, of very high quality - provided by numerous lessees.
A vital, yet understated, part of the common wealth springing from the high country is the nationhood that has been forged and is maintained there. A fusion of the endeavours of early Maori and more recent surveyors, naturalists, climbers, farmers, hunters, skiers, and others, it cuts across socio-economic lines and is a deep part of being a New Zealander.

In nature and on nature’s terms, recreation in the high country links us to our natural and social backgrounds and to one another. It is healthy and invaluable.

Existing statutes relating to Crown pastoral leases are things of their times. The kaupapa and direction resulting from this discussion process should express the now more extensive knowledge of values related to the land. In a century’s time - and beyond - the judgement should be that the right path was taken.

**A brief word on the existing statutory and processes landscape**

FMC’s view is that in their present forms, the Land Act 1948 and the Crown Pastoral Land Act 1998 and processes falling from them do not serve the relevant land, the wider environment, or the public well (with particular respect to tenure review, the alienation of environmental and recreational values has been costly). The tensions are marked and well-described; we refer to them below briefly as necessary.

Without statutory changes, that abrasion will only increase as understanding of the land’s wider values continues to outgrow the statutory tools’ ability to recognise them.

Both Acts need adjustment so that they focus proportionately on the land’s full range of values and set out appropriate ways to manage and protect them.

We believe that means of changing the land’s primary use should remain. They should ensure that options for its values’ protection include the end point of full Crown ownership and control as public conservation land as presently exists under tenure review provisions (we note preservation and enhancement are stated desired outcomes in the discussion document). This would guarantee public access to the land. To stop short of retaining such means would be a partial but significant loss. Our rationale and proposal are below.

**Ecological and landscape integrity (not ‘natural capital’)**

Central to the high country’s mauri are ecological and landscape integrity, which, when allowed to flourish normally, sustain various aspects of farming as well as larger-scale water provision and regulation, strength in biodiversity, climate regulation, recreation and tourism opportunities, amenity, and other interconnected values. Their positive influence on general environmental, human, and social health extends well beyond property boundaries and the high country itself.
There are officially mandated systems for measuring ecological and landscape integrity.

FMC believes the concepts should be central to ongoing management of Crown pastoral land because they are adept and recognise its comprehensive abundance. Despite their non-economic orientation, they are able to provide readily quantified and highly visible immediate, as well as indirect, economic advantage. They also validate the inherent worth of the high country’s natural components, including the most apparently insignificant. Further, they validate human respect for that worth.

‘Natural capital’, as set out in the discussion document, has an economic kaupapa. Tradeability - and its potential to incentivise perversely - is fundamental. Due to the fixedness of its frame of reference, it is incapable of appropriately representing the high country’s diverse values.

As a concept, natural capital comes up shortest with respect to honouring natural intrinsic worth. Indeed, FMC believes it is incapable of recognising nature’s own-sake values, or human respect for them.

Natural capital should be dropped from korero about high country land.

Maintenance and improvement of ecological and landscape integrity, including through use of scientifically-established indicators and related enforceable protective mechanisms, should become the focus of Crown high country management and purpose transition.

**Recommendations:**

* that the term *natural capital* not be used in relation to Crown pastoral management or purpose transition.
* that maintenance and improvement of ecological and landscape integrity become the focus of Crown pastoral management and purpose transition.

**A purpose for the Land Act 1948**

As you are aware, the Crown holds lands under the Land Act and uses them for a variety of purposes. Pastoral leases, mostly in the South Island's high country, are a large component of the land held.

A purpose would be a welcome addition to the statute, providing clarity and direction.

A purpose sub-section applying to Crown pastoral lands should direct that the lands be managed foremost for maintenance and improvement of ecological and landscape integrity. This will reflect contemporary understanding of the relevant land’s values as discussed above.
The statute’s present s99 (*Land to be properly farmed*) should be amended to set out principles for Crown pastoral lessees’ management of land for maintenance and improvement of ecological and landscape integrity.

The focus of the Commissioner of Crown Lands will change in line with the above proposed statutory alterations (this is addressed below).

Land Information New Zealand’s focus, including its relevant staff capability and expertise, will need adjustment to express the statutory direction that Crown pastoral lands be managed for maintenance and improvement of ecological and landscape integrity. This should include fostering and use of appropriate in-house and other expert advice; and in general giving effect to statutory purpose, including in the regular inspection of leases.

**Recommendations:**

* that a purpose be added to the Land Act 1948.
* that a Land Act purpose sub-section relating to Crown pastoral lands direct that the lands be managed for maintenance and improvement of ecological and landscape integrity.
* that the Land Act’s present s99 be amended to set out principles for Crown pastoral lessees’ management of the land for maintenance and improvement of ecological and landscape integrity.
* that Land Information New Zealand’s focus, including its relevant staff capability and expertise, be adjusted to express the statutory direction that Crown pastoral lands be managed for maintenance and improvement of ecological and landscape integrity.

**Crown Pastoral Land Act 1998: tenure review to be replaced by ‘land purpose review’**

FMC believes that management of Crown pastoral land for the purpose of maintaining and improving ecological and landscape integrity will be most meaningful if land is still able to be transitioned to an end-point designation of full Crown ownership and control for conservation and recreation purposes. Indeed, given what is known about the many and weighty economic, non-economic, immediate and downstream benefits of such land purpose, and that lessees’ evolving circumstances will continue to make it possible/desirable, we feel it is essential.

Additionally, we note that in some areas, pastoral farming is not suitable and there is no purpose in leaving these areas under lease.

Long-time criticism of the present tenure review system relates to a raft of statutory and process weaknesses, conflicts, and inappropriate incentives. This is despite the unambiguous nature of the fundamentals of Part 2 of the Act (*Tenure reviews*): natural values should come first. A clear lesson is that such flaws should be scrupulously avoided in the design of a system to supersede tenure review.
Any new system for reviewing the purpose of Crown pastoral land must, from statute level - including the Act’s s18 (*Discretionary actions*) - to process level, have clarity and consistency of purpose: that maintenance and improvement of ecological and landscape integrity are topmost priorities.

FMC proposes that land purpose review supersedes tenure review. The Land Act 1948 should set the scene for such review by adoption of a purpose that Crown pastoral lands be managed for maintenance and improvement of ecological and landscape integrity as discussed above. The Crown Pastoral Land Act 1998 should, consistent with this purpose, systematise land purpose review.

Land purpose review changes the focus of Crown pastoral holdings review from transition in land’s ownership to transition for the purpose for which the land is held (maintenance and improvement of ecological and landscape integrity). Of course, ownership matters may still be involved.

Creation of freehold designations, as has become usual in the tenure review process, is possible under land purpose review if the outcome is not inconsistent with the Act’s purpose. Creation of capable covenants* and/or other mechanisms, and/or payment to the Crown for subdivision value where loss of natural values is historic and unremediable is part of the process and ensures appropriate outcomes (*Covenancing mechanisms may need to be reviewed/amended to ensure they are fit for purpose (for example: responsive, enduring, and with appropriate available sanctions). Such a workstream is outside the direct ambit of this discussion; however, if deemed necessary, it should be recommended by this process*).

The Government’s proposals have implications for the dynamics, at all levels, of the Crown pastoral holdings review arena, for lessees, agencies, and the public - as do FMC’s proposals. Important relevant considerations include that:

- lessees’ relationships with and hopes for the land are naturally various. The present discussion process gives a chance to better recognise this human factor by enabling a broader range of ways to review land purpose within the kaupapa of maintenance and improvement of ecological and landscape integrity.
- lessees may be incentivised by any changes resulting from this discussion to surrender or on-sell parts of leases or whole leases, or diversify, with potential for positive and negative environmental, economic, and social effects.
- if a new Crown pastoral holdings review system is adopted, the potential for freehold title creation to be consonant with maintenance or improvement of ecological and landscape integrity must be taken into account.
- post-tenure review, the process’ relative cost neutrality will no longer exist.
- New Zealanders will continue to desire enabling recreational access to and through the high country, over and above what the Land Act’s s60 (*Creation of easements*) provides for.
Given these factors, and that tenure review’s relatively limited format has lacked the flexibility to accommodate all lessees and deliver actual environmental, recreational, economic, and social win-wins, FMC believes it is necessary and desirable to enable a genuine variety of viable ways for the Crown and lessees to approach land purpose review. Empowering relevant statutory bodies is a significant part of this.

FMC proposes land purpose review with the following features:

* It is optional for the Commissioner and lessees.
* The process is ‘owned’ by the Commissioner and not outsourced to contractors.
* The process is time-limited. Three years is our suggestion (we welcome discussion on this).
* The Department of Conservation has a mandated expert assessment and advisory role.
* The Walking Access Commission and regional Fish and Game councils have mandated expert assessment and advisory roles with respect to public access.
* Partial and whole lease surrender to enable restoration of the land concerned to full Crown ownership and control as public conservation land for conservation and recreation purposes is welcomed (partial and whole lease surrender are available under the Land Act’s s145, *Surrender of lease or licence*).
* The Nature Heritage Fund has a statutory mandate and appropriate resourcing to make partial and whole lease purchases for transition to full Crown ownership and control as public conservation land.
* Post-review designation and management of public conservation land created are planned for.
* The potential for post-review subdivision and intensification where land may be freeholded is dealt with upfront through, as appropriate, robust covenants and/or other mechanisms such as private district plan changes, and/or payment to the Crown for subdivision/onsale value where loss of natural values is historic and unremediable (an appropriate valuation system that determines the likely future values - including monetary value - of relevant land should be established).
* ‘Slow covenants’ are available: to allow gradual reduction in pasturage on leases and eventual transition to full Crown ownership and control as public conservation land over periods agreed case-by-case; and to spread the financial load.
* Grazing concessions are used more widely over periods agreed case-by-case to allow lessees to complete land purpose transitions, and to spread the financial load.
* The Walking Access Commission and Fish and Game councils have statutory mandates to advise on creation of recreation access under the Land Act’s s60 (*Creation of easements*) where land remains in leases or under slow covenants.
* Full public consultation including face-to-face hearings panels, potentially including independent experts.
The overarching aim of land purpose review is ongoing improvement in the ecological and landscape integrity of the South Island high country, from the paddock and holding level up. For some Crown pastoral land, this will culminate in transition to full Crown ownership and control for public conservation and recreation purposes. While this is unlikely to be the outcome for all Crown pastoral land, in the short-to-medium term at least, it will be a feature in a broader scenario of maintenance and improvement of natural values.

**Recommendations:**

* that tenure review be replaced by land purpose review under the Crown Pastoral Land Act 1998 as above (note also the above point regarding covenanting mechanisms’ review/amendment).

* that the Department of Conservation, the Nature Heritage Fund, the Walking Access Commission, and regional Fish and Game councils have mandated roles in land purpose review as above.

**Qualifying waterbodies to be removed from leases**

For the health and ongoing consistent management of lakes and rivers, the species and systems dependent on them and interconnected with them, and for recreation access along waterbodies’ margins, beds of qualifying lakes and rivers should be removed from leases and transferred to the Department of Conservation’s jurisdiction in a one-off review.

Marginal strips should be created alongside qualifying lakes and rivers to enhance recreational access and enjoyment.

The present procedure for creating marginal strips lacks appropriate transparency and robustness. A procedure that meets public expectations of transparency and rigour should be provided for in statute. Cadastral records of former and new marginal strips should be thorough and easily accessed by the public.

**Recommendation:**

* that beds of qualifying lakes and rivers be removed from leases and transferred to the Department of Conservation’s jurisdiction.

* that marginal strips be created along qualifying lakes and rivers.

* that appropriate formal procedures for creating and disseminating information about former and new marginal strips be adopted as above.

**Accountability and transparency**

FMC understands that the Commissioner is independent. However, her/his activities and delegated activities must be consistent with relevant statutes’ spirit, intent, and letter. It is reasonable to expect that the Commissioner report fully and regularly to the Minister; the discussion document
proposes a regular Statement of Performance Expectations, to be approved by the Minister for Land Information and made publicly available, and FMC endorses this.

The to-date obscurity of the Commissioner’s decision-making on Crown pastoral matters is out of step with fair public expectations of information availability, given that public property and funds are at stake.

Accountability and transparency are needed in all aspects of the Commissioner’s role, including through provision of detailed evidence of linkage between statutory purpose and outcomes expectations.

The discussion document proposes CPLA amendment that explicitly provides for the Commissioner to release guidance for officials and leaseholders on legislative requirements. FMC endorses this; officially mandated systems for measuring ecological and landscape integrity should be the sources of benchmarks for discretionary actions decision-making and for monitoring and enforcement of lease conditions.

**Recommendations:**

* that the Commissioner of Crown Lands regularly produce a Statement of Performance Expectations, to be approved by the Minister for Land Information.
* that the Crown Pastoral Land Act 1998 provide for the Commissioner to release guidance on legislative requirements as above.

**Discretionary actions**

Activities applied for by Crown pastoral lessees and consented by the Commissioner range widely from, for example, agricultural intensification to providing backpacker accommodation. Spatially and temporally, positive and negative environmental, economic, and social outcomes, separately and together, have likely been enormously varied; lack of comprehensive monitoring makes quantification impossible. Given what is now understood about the values of the high country, however, the existing discretionary consenting system seems cavalier.

This sphere of Crown pastoral administration needs improvement. Foremost, decision-making should express the statutory purpose of maintenance and improvement of ecological and landscape integrity. It should: not be inconsistent with relevant multi-disciplinary technical advice; be in accordance with officially mandated systems for measurement of ecological and landscape integrity (including consideration of wider environmental and cumulative effects); and allow for mitigation and/or remediation where these are not inconsistent with the former points.

The Director-General of Conservation’s role in the CPLA’s s18 (*Discretionary actions*) is in accordance with the purpose of maintenance and improvement of ecological and landscape integrity and related points as above; other aspects of s18 need changing to achieve consonance.
Given the public interest in the ongoing and improving health of the land in Crown pastoral leases, and due to the wealth of relevant knowledge within the community, a notification system should be introduced. Consent for activities with negligible negative environmental impacts, for example, low numbers of small-crew film projects, should be able to be gained readily, especially where more environmentally harmful activities cease in return. Notification triggers should include potential for wider environmental and spatial and temporal cumulative effects.

Ensuring discretionary actions are managed within the context of Crown pastoral land’s overarching purpose of maintenance and improvement of ecological and landscape integrity is the ongoing responsibility of lessees and the Commissioner. Monitoring, compliance activity, and reporting against that purpose should be responsibilities of the Commissioner.

Administration costs and ongoing appropriate activity fees should be covered by applicants, in the interests of fairness to the public, consistency with the principle of ‘benefitter pays’, and consistency with permissions systems generally.

**Recommendations:**
* that decision-making on discretionary actions be in accordance with the statutory purpose of maintenance and improvement of ecological and landscape integrity as above.
* that some aspects of the Crown Pastoral Land Act’s s18 be changed to be in accordance with the statutory purpose of maintenance and improvement of ecological and landscape integrity.
* that a discretionary actions notification system be introduced as above.
* that ongoing monitoring, compliance, and reporting be completed by the Commissioner as above.
* that administration costs and ongoing appropriate activity fees be covered by applicants as above.

**Taking stock across the Crown pastoral estate**
Systematic Crown pastoral holdings monitoring and reporting is necessary (within usual privacy provisions) for the public to be informed about: the effectiveness of properties’ ongoing management against their baseline and historic data and the purpose for which they are held; impacts of discretionary actions; spatial and temporal cumulative effects; and the condition of the wider Crown pastoral holding (acknowledging that this will be affected as land is redesignated as public conservation land through land purpose review).

Information gained through such robust monitoring and reporting will allow and should be used for purposeful guidance to be developed by the Commissioner for leaseholders.

Such a system will be consistent with others that monitor and report on the condition of Crown and other public property, especially where it is managed by private entities.
We understand that appreciable resourcing will be needed to ensure a thorough system, including appropriate baseline information, is established. This should be planned for.

**Recommendations:**

* that a system for monitoring and reporting on the Crown pastoral estate be implemented as above.
* that information gained through monitoring and reporting be used by the Commissioner for development of leaseholder guidance.

**Case study: Glenaray Station (combined Glenaray and Whitecoomb leases)**

* In 2017, with the support of Emeritus Professor, botanist Sir Alan Mark, FMC proposed creation of a Remarkables National Park, which we anticipate will fuse variously-classified public conservation land and other land under a single national park designation. Key to the concept’s fruition is future designation/s of Glenaray’s 62,498 hectares.

* The property is spread over the Garvie Mountains, the Old Man Range, the Umbrella Range, and the southern Old Woman Range. It drains primarily into the Waikaia River.

* Largely unmodified and in high health, Glenaray contains various beech and mixed forests, diverse shrublands and tussocklands, rockfields and fellfields, wetlands and seepages, cushion bogs, herbfields and snowbanks, tablelands, and glacial and periglacial landforms. Eight threatened native bird species, native bats (likely long-tailed), a variety of lizard species, and rich invertebrate life, including species endemic to the Waikaia Ecological Region, are found within it.

* There is significant potential for backcountry skiing, tramping, mountain biking, and many other recreational activities at Glenaray.

* The property contains several huts, some with historic value.

* Several parcels of public conservation land adjoin Glenaray. Designations include scenic reserve and conservation area.

* Parts of the property that have been modified and parts presently used for farming are mostly in the vicinity of Piano Flat Road and the homestead.

* Proposals for conservation and recreation-focused protection for parts of Glenaray date back to the early 1980s.

* While ongoing protection of Glenaray’s significant values is important in and of itself, creation of a Remarkables National Park, which turns on redesignation of land within the lease, would place a cloak of enduring protection over a far greater area of high significance to New Zealanders. Land purpose review that would see most of Glenaray become public conservation land, with land remaining dealt with in accordance with maintenance and improvement of ecological and landscape integrity, is crucial to this.
Conclusion
Since the present Crown pastoral lease system was established more than seven decades ago, appreciation of the high country’s extensive values, including its intrinsic worth, has deepened considerably.

New pastoral land management direction that expresses that understanding is needed. It should begin with a Land Act purpose of maintenance and improvement of ecological and landscape integrity (not ‘natural capital’, which is calibrated economically and unable to recognise the land’s full range of values). Activities of lessor and lessees, from management and management advice, to discretionary actions, and monitoring and compliance, should align with that purpose.

The role of the Commissioner of Crown Lands needs updating to meet contemporary public expectations. It should combine the transparent accountability expected of a person in charge of Crown property with the oversight of a diligent landlord (introduction of notification and fees systems akin to those found in other comparable processes is part of this).

Ending the Crown Pastoral Land Act’s tenure review process closes a period of significant hand-in-hand environmental and public-good benefit and loss. It also offers the opportunity to construct a more flexible process that focuses on ecological and landscape integrity of all relevant land and is fair to lessees and the public. FMC believes that land purpose review, as described above, is such a process.

We are aware this is an important moment in time for New Zealand and appreciate the need for care in the substance and detail of the legislative adjustments to come. We welcome korero on our proposals.

Yours sincerely,

Jan Finlayson,
vice-president, Federated Mountain Clubs.
INTRODUCTION

1 This is a submission on Land Information New Zealand (LINZ) Discussion Document on the Enduring Stewardship of Crown Pastoral Land (Discussion Document).

2 The Royal Forest & Bird Protection Society of New Zealand Inc (Forest & Bird) is New Zealand’s longest running independent conservation organisation. Its constitutional purpose is to take all reasonable steps within its power for the preservation and protection of the indigenous flora and fauna and the natural features of New Zealand.

3 The Environmental Defence Society Incorporated (EDS) is a not-for-profit, non-government national environmental organisation. It was established in 1971 with the objective of bringing together the disciplines of law, science, and planning in order to promote better environmental outcomes in resource management. EDS has been active in assessing the effectiveness of statutory processes in addressing key environmental issues including landscape, natural character, and biodiversity. It has previous involvement in processes relating to the South Island Intermontane Basin environment, in particular in the Mackenzie Basin.

4 Forest & Bird and EDS have a long-standing interest in the management of Crown pastoral leases because so many form part of iconic New Zealand landscapes and features and contain distinctive and rapidly diminishing native habitats, yet past management has resulted in poor environmental outcomes, including tragic, irreversible loss of ecological and landscape values.

5 Overall, our vision for Crown pastoral lease land is that it is effectively managed in a way that ensures:
a. Its natural landscapes and features and indigenous biodiversity are safeguarded and (where compatible) recreational values, public access opportunities and pastoral farming are provided for.

b. Pastoral land use occurs in a manner that is fully compliant with the requirements of the lease, including through effective monitoring and enforcement.

c. All other types of land use (commercial recreation, non-pastoral farming, forestry) are only provided for where they are consistent with safeguarding Crown pastoral land’s ecological, landscape, scientific and natural character values and ecosystem services, and in which cultural and recreational values are also maintained and enhanced, and that decisions about these uses are made in a framework that is transparent, ensures adequate technical information is obtained, provides for public input and independent advice, and is overseen by the Environment Court.

d. The end of tenure review does not jeopardise the objective of creating a Mackenzie Drylands Heritage Area.

6 Accordingly, we support the intention of the Discussion Document to make changes to how Crown pastoral land is managed in order to improve transparency and environmental outcomes. We recommend some significant changes and additions to the proposals in the Discussion Document. We are grateful for the opportunity to provide input to your consideration of this important topic.

REAL CHANGE IS NEEDED

7 The Mackenzie Basin has been confirmed by the Environment Court to be an outstanding natural landscape and an area of significant indigenous vegetation and significant habitat of indigenous fauna. Its protection is a matter of national importance. Its landscape and ecological features are glacial in origin, with many plants and animal taxa having a stronghold in the Basin – some are endemic to it – and many have co-existed with some form of human land use for centuries. However, as a result of recent land use change (predominantly to intensive farming but also some urban expansion) landscape and ecological values are rapidly being lost under our watch. Between 1990 and 2017 approximately 68,000 ha of indigenous vegetation was lost (22.5% of the Basin floor) – more than two thirds of that since 2014.

8 Outcomes in other parts of the country have also suffered significant biodiversity loss as a result of intensification. Recent reports indicate that the trends in declining water and stream quality are a cause for concern at a number of Crown pastoral land sites, particularly in terms of nitrogen. This declining water quality in these previously pristine lakes and streams raises serious concerns to the biodiversity within the waterbodies. Significant areas of tussock and shrublands have been sprayed under discretionary consents in the headwaters of the Pomahaka River, and cattle grazing have degraded upland cushion bogs both of which have resulted in loss of significant inherent values as well as impacting on the water quality of the Pomahaka River in South Otago.

---

1 High Country Rosehip Orchards Ltd & Ors v Mackenzie District Council [2011] NZEnvC 387 at [484].
2 Susan Walker evidence to Environment Court for Plan Change 13 hearing.
Recreation permits are being used for large scale skifield development with significant impacts on inherent values including landscapes. Glencoe Pastoral lease in Central Otago has a comprehensive recreation permit which enables the use and development of part of the pastoral lease for skifield development including heli-skiing, tracked vehicle operations, ski lifts, formation of trails and other terrain modification. The consenting process means the Crown has little control over these operations other than through a Restoration Protocol and the provisions within the permit.

Those changes have been allowed to occur through a combination of discretionary consent decisions and tenure review. Despite the priority given to environmental protection in s 24 CPLA, tenure review has not resulted in the protection of significant inherent values, and has tended to follow a pattern of protecting land with ecosystems that are less in need of protection, while freeholding land that is most threatened and least protected.

A series of public policy failures has caused these issues. Tenure review decisions are not achieving the objects of the CPLA and the possibility of establishing a Drylands Heritage Area is rapidly being compromised. Public input on tenure review is inappropriately “filtered”, meaning that the most critical points relating to issues like cumulative loss across landscapes and the potential for intensified land use on freeholded land are disallowed. The system is process-focused and viewed as being biased towards the desires of farmers. The use of external service providers exacerbates that issue. The Commissioner has no accountability for his or her decisions. The advice that the Commissioner receives from DOC is critical, yet both the quality and currency of DOC’s assessments, as well as how that is synthesised into overall DOC advice, has been poor. Environmental protection is not required to be prioritised when considering discretionary actions (including recreation permits), and appropriate technical input is seldom sought or provided.

Many discretionary consents have been granted that have (or will) result in the loss of significant inherent values, some contrary to technical advice from DOC. There is poor communication between LINZ and local authorities meaning opportunities are missed to ensure necessary resource consents under regional or district plans are sought and obtained before vegetation clearance occurs. Recreation permits are granted for safari hunting for deer, thar, and chamois and there are some instances where these may be impacting on the lessee’s willingness to undertake wild animal control and may also influence LINZ’s lack of enforcement for wild animal control. For example, we are aware that Mt Nicholas Station has had a history of not controlling thar and has previously denied access for DOC control. LINZ does not appear to ensure that lessees are undertaking wild animal control, especially thar, as thar numbers on pastoral lease lands are unknown, and thar have strayed into the exclusion zones.

All of those aspects of Crown pastoral land stewardship will need to change, both at the policy and institutional level, in order to improve environmental outcomes and safeguard what remains. There are some indications that agencies recognise this need through the work being advanced on the agency alignment project. We also acknowledge that LINZ is itself going through a process of renewal and internal reflection on the inappropriateness of past actions and performance.


Highlighted by the Mackenzie Review.

Review of Crown pastoral land regulatory system, page 27.

Expert advice from DOC’s Terrestrial Ecosystems Unit was only sought in respect of 2 of 14 discretionary consent applications for activities in the Mackenzie Basin considered by DOC between 24 January 2017 and 17 November 2017. Otherwise local DOC rangers or area managers, who are not suitably qualified to properly assess inherent values, provided DOC’s input. (Response to OIA request (OIA17-E-0516, docCM-3233946).)
SECTION 1: MANAGING THE IMPLICATIONS OF ENDING TENURE REVIEW

13 In this part of our submission we address:

a. How pastoral leases that have commenced tenure review but not reached the substantive proposal stage should be dealt with.

b. The implications of no longer having the ability to acquire land for the Crown using tenure review.

c. Related to (b), how the shared vision of a Drylands Heritage Area can be achieved.

d. The need to consider the implications of Government policy around expanding forestry in New Zealand.

How pastoral leases that have commenced tenure review but not completed the substantive proposal stage should be dealt with

14 The Enduring Stewardship Cabinet paper refers to advice from LINZ and DOC to the Commissioner on administering the tenure review process in advance of legislative change, which recommends that in light of existing constraints on time and resources, the Commissioner may wish to prioritise tenure reviews that are more likely to achieve an outcome that promotes the policy and objects of the CPLA, including promoting ecologically sustainable management, further advanced through the process, and more likely to be completed within a reasonable timeline."

15 The Societies consider that until the law changes, the question as to whether tenure review should continue on those properties that have not yet reached the substantive proposal stage is a matter for the Commissioner of Crown Lands to decide under the existing law. However, for any processes that do proceed, we request that the Commissioner ensures that they are proceeding on the basis of complete and up to date expert advice from DOC, and that they give reasons for their decisions. The Societies have previously identified a range of failings in tenure review processes (many of which are reiterated in this submission) and it is important that any tenure reviews that proceed do not perpetuate past failings.

16 Should any leases proceed to public notification the Societies consider there needs to be a change in how LINZ analyses public submissions and decides whether or not to accept a submission point. The current approach places too much emphasis on requiring submitters to raise new information or perspectives not previously considered. Many of the values being assessed are subjective, and the public perspective as expressed through submissions can help shed light on the degree of significance that might be accorded by the public to landscape and inherent values. The Commissioner also needs to take cumulative impacts across leases into account: we consider this is provided for under the existing legislation, but LINZ/the Commissioner have taken an unduly narrow interpretation which excludes values and impacts beyond the lease under consideration. This should change.

---

8 Cabinet Paper at [45].
The implications of no longer having the ability to acquire land for the Crown using tenure review

17 While it has resulted in some appalling environmental outcomes and lost opportunities, tenure review is the key mechanism presently available to secure better ecological, landscape and recreational outcomes on Crown pastoral land, either through return to full Crown ownership and control or other methods. Alongside the cessation of tenure review, alternative mechanisms to achieve those objectives are needed. These could include:

a. Resourcing the Nature Heritage Fund (NHF). We strongly suggest that the NHF is allocated a capital fund of at least $200 million targeted at acquiring highly valued leasehold land that should be managed as part of the DOC estate. Alternatively, this funding could be provided to DOC’s Land Acquisition Fund for the same purpose.

b. Easements – see discussion at [111] below.

c. An incentive framework involving rental rebates where additional public access (where not inconsistent with protection of intrinsic values of CPL) is voluntarily created by the leaseholder.9

18 EDS considers that covenants and Joint Management Agreements should also be part of the toolbox. Forest & Bird however consider that these mechanisms create an unnecessary layer of complication and instead the CPLA objects should prevail.

19 It may be that an alternative form of tenure review with appropriate safeguards, meaningful public participation and proper oversight of decisions should be considered in future. While we do not support further privatisation of Crown pastoral land, we are aware that a number of unofficial “tenure reviews” occurred under the Land Act before the enactment of the CPLA, and we would be concerned if the Commissioner reverted to this ad hoc approach to tenure review. However, any such legislative reform should be dealt with separately to the current proposals.

20 The Societies preferred outcome would be to strengthen the NHF to allow for properties to be acquired either wholly by the NHF or jointly by the NHF and private purchasers. This provides the most certainty for protection. If required developed parts of the property, that no longer contain significant inherent values, could subsequently be disposed of. There is a precedent of acquisition using this model, including at Birchwood and Castle Hill, however improvements to this process could certainly be made if this model was to become more prevalent.

21 This could be assisted by providing a first right of refusal of pastoral lease purchase to the Crown. The implications of this for the Crown’s treaty partner should be considered.

How the shared vision of a Drylands Heritage Area can be achieved

22 The Mackenzie Shared Vision Forum envisaged that the Drylands Heritage Area would be:

An extensive network of protected land (50,000 – 100,000ha) across a range of tenures that would be collectively managed to protect the natural, cultural, pastoral, recreational and electricity generation heritage values in the Mackenzie Basin

---

9 Compensation is available for easements and rights of way but not for other forms of access.
23 The Mackenzie Drylands Heritage Area concept originated in DOC Canterbury in 2004 with the ambition to recognise nationally significant values that are poorly protected and highly threatened.\textsuperscript{10} The Mackenzie Drylands Heritage Area intends to provide for landscape protection of significant inherent values, and recognise the importance of protecting ecological connectivity.

24 More recently, this concept has been developed by the Mackenzie Country Trust. The Trust proposes to work collaboratively with local communities and governmental agencies to ensure widespread support for the Mackenzie Drylands Heritage Area is obtained.

25 The Mackenzie Drylands Heritage Area would consist of a mix of ownership models, including Crown ownership and private leasehold land. The land would be managed in a way that is compatible with the protection of inherent values, while allowing for a mix of land uses including irrigated farmland, dryland agriculture, tourism, and biodiversity and landscape purposes. It is proposed that all Crown land within the Mackenzie Basin should come within the ambit of the Drylands Heritage Area. Crown owned land should be the core of the area, potentially surrounded by land under other ownership models. This would involve agreement between key agencies including DOC and the Ministry of Defence. It would create a core branding for the Basin that could expand over time by the willing addition of landowners, potentially encouraged by incentives.\textsuperscript{11}

26 Amendments to the CPLA could include an additional object of creating the Drylands Heritage Area. The Societies consider that unless there is legislative support for the Drylands Heritage Area concept, there is a real risk of the vision slipping away. A statutory “placeholder” would set the framework for ongoing work to identify which areas are appropriate for acquisition, and which would be suitable for inclusion under alternative forms of tenure, in the Drylands Heritage Area; a process that will need to be undertaken in partnership with Ngai Tahu, and with the involvement of a broad range of stakeholders. It would also provide support for applications to entities such as the Nature Heritage Fund and other sources, to fund acquisitions. Possible phrasing for this object is:

\begin{quote}
The Crown will establish the Mackenzie Dryland Heritage Area as a method to safeguard the nationally treasured inherent values of Crown pastoral land in the Mackenzie Basin. With the agreement of landowners, the Crown will seek to extend the Mackenzie Dryland Heritage Area to encompass inherent values on private land.
\end{quote}

\textbf{The implications of Government policy around expanding forestry in New Zealand.}

27 The Government has set a goal of planting 1 billion trees by 2028. This will require a significant expansion of currently forested areas. Most areas of Crown pastoral lease are unsuitable for forestry because it is incompatible with these areas’ landscape values and dryland ecosystems. Exotic plantation forestry also carries a significant risk of wilding conifer proliferation in these ecosystems (this is both a current environmental problem and a potential increased risk). It is essential that LINZ is vigilant to the potential for conflicting Government policy with respect to forestry, and ensures that forestry expansion on Crown pastoral land only occurs in appropriate locations: the right tree in the right place. Previous advice from Scion relied on by the Commissioner in the tenure review context demonstrates that all aspects of the suitability of forestry have not been taken into account.

\textsuperscript{10} Nicholas Head \textit{Ecological context for the Mackenzie Basin} DOC-3013271 dated 20 April 2017.

\textsuperscript{11} Forest & Bird have some reservations over current lack of certainty of the form of protection and processes for selecting areas to protect but supports the concept of a protected area in the Mackenzie Basin.
in the past. We would also like to know that LINZ is engaging with Te Uru Rakau to ensure that there is joined-up Government policy in this area.

SECTION 2: ARTICULATING OUTCOMES FOR STEWARDSHIP OF CROWN PASTORAL LAND

2.1 Proposed outcomes for Crown pastoral land

The existing legislation

At present, there is no express statement of outcomes for Crown pastoral lease land where it is being used for pastoral purposes. The leaseholder has obligations to farm the land diligently and in a “husbandlike” manner according to the rules of good husbandry, not to commit waste, to keep the land free from wild animals, rabbits, and other vermin, and generally comply with the provisions of the Biosecurity Act 1993, and to properly clean all creeks, drains, ditches, and watercourses and keep them open and clear from weeds. There is no definition of good husbandry but indicators were developed for LINZ in 2008 and applied in some pastoral lease inspections, and there is some judicial authority that good husbandry means that:

...farmland is to be managed holistically with the proper development of pasture and the integration of other natural features such as native bush.

“Waste” means an act or omission which causes a lasting alteration to the nature of the land in question to the prejudice of the person who has the remainder or reversion of the land.

Combined with the restrictions in the CPLA on non-pastoral uses of the land, the implied outcome for Crown pastoral land is that it is put to pastoral use, managed holistically by integrating natural features, and managed in a way that the nature of the land is not detrimentally altered (in particular by controlling pests and weeds). In principle, that approach is appropriate but the framework’s lack of an overall express outcome, dated language and lack of definitions or criteria mean that it is open to (mis)interpretation.

Where non-pastoral uses are provided for, the objects depend on the type of authorisation required:

a. When deciding whether to grant a discretionary consent for burning vegetation or activities affecting the soil (e.g. cultivation), an easement or a recreation permit for a commercial undertaking involving the use of the land for a recreational, tourist, accommodation, safari, or other similar purpose, and when considering whether to grant, vary, or revoke an exemption from any stock limitation, the Commissioner must take into account:

i. 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

---

12 Section 99, Land Act 1948.
13 Froggatt v Gollan (High Court, Hamilton, CP194/90, 26 November 1990, Anderson J).
15 Pastoral use in this context means low density, low impact grazing with the primary intention being to manage the land in accordance with the tenets of good husbandry.
16 Sections 15-16 CPLA.
17 Section 60 Land Act 1948.
inherent values of indigenous plants and animals, and natural ecosystems and landscapes; and

ii. the desirability of making it easier to use the land concerned for farming purposes.

b. In addition, recreation permits must not be incompatible with any water or soil conservation objectives relating to the land.

32 Those considerations evenly balance the protection of the environment with farming considerations, and in the case of recreational values these are not even a necessary consideration. It is clear that this approach does not safeguard the inherent values of Crown pastoral land and does not establish clear environmental bottom lines or protect ecosystem services.

33 The proposal to include a new set of outcomes for Crown pastoral land within the CPLA is therefore supported. However, the manner in which the outcomes are proposed to be framed will not ensure that environmental values are prioritised, but will instead perpetuate the types of trade-offs that are already occurring. A reframing of the outcomes is proposed below.

34 It will be essential to amend relevant functions, discretions and other aspects of the Land Act 1948 and the CPLA to give effect to the outcome statement.

35 It would be timely to also include a definition of pastoral use, which clarifies that it does not include intensive farming or agricultural conversion.

Inherent values

36 The CPLA defines inherent values as:

   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

37 Inherent values are a relevant consideration in tenure review and discretionary consenting decisions. Unless it is proposed to remove references to inherent values (not supported), it would be useful for the sake of consistency to use the term inherent values in the outcome statement.

The concept of ecological sustainability

38 The discussion paper notes that the proposed outcomes do not include a specific reference to “ecological sustainability” and asks “do you agree with the use of “natural capital” rather than “ecological sustainability” in the proposed outcomes?” Our answer depends on how the natural capital concept is incorporated and how ecological sustainability is defined.

39 The CPLA presently incorporates “the promotion of the management of reviewable land in a way that is ecologically sustainable” as an object of tenure review. It is not a concept that currently applies to pastoral land use, discretionary consents or recreation permits.
“Ecologically sustainable” is not defined in the CPLA. Previous advice to Ministers has interpreted it as relating to indigenous, exotic and mixed indigenous/exotic ecosystems, and equated it to productive capacity (in relation to exotic ecosystems). The advice was that ecological sustainability is achieved by freeholding land which has been converted to exotic pasture (making it easier for the farmer to maintain the life supporting capacity of the pasture system), including where fertiliser input will be used to maintain productive capacity.

The advice recognises that protection as conservation land or using a protective mechanism can be consistent with ecological sustainability in terms of capacity to support indigenous life forms. However, the advice about mixed exotic/indigenous ecosystems is that where the farmer will continue to apply fertiliser inputs, freeholding that land will maintain productive capacity and therefore promote ecological sustainability (despite the likely adverse effects on the sustainability of the indigenous component). There is no other advice as to what is required to ensure ecological sustainability of indigenous ecosystems where this would conflict with maintaining productive capacity.

Similarly, the suitability of crown pastoral lease land for commercial forestry has been a key, or sole, consideration of ecological sustainability in some tenure review proposals. Information supporting The Wolds Preliminary Proposal included a report with a covering title Ecological sustainability advice from SCION dated July 2009. Under that cover, the actual report is titled Can trees restore degraded soils and promote ecologically sustainable management in tenure review of dryland Mackenzie Basin properties. It relates to five Crown pastoral properties (it is not specific to The Wolds). Its investigation relates to the potential for trees/forestry in dryland high country, and adopts a definition of ecological sustainability that means “sustaining the life supporting capacity and productivity of the land on an ongoing basis” (emphasis added). That report appears to be the entirety of the advice received on The Wolds tenure review in relation to ecological sustainability.

This background information is relevant in three ways. First, it is relevant to whether the concept of “ecological sustainability” is still a useful one that should be kept in the CPLA as an aspect of enduring stewardship. Secondly, it demonstrates the extent to which apparently eco-centric provisions in legislation can be “re-purposed” by the agencies that are required to apply them. This is relevant to the need for certainty in how the outcomes for stewardship of Crown pastoral land are framed, and shows the need for structural as well as policy change. Thirdly, it contributes to consideration of what implications the Government’s One Billion Trees programme may have on Crown pastoral land and how this should be managed. Our point here is that it cannot be assumed that dryland ecosystems on Crown pastoral land will be seen as inappropriate locations for plantation forestry, and specific policy direction is likely to be required.

On any definition, ecological sustainability is a different concept to natural capital. For example, ecological sustainability would not include landscape values.

If the concept of ecological sustainability is to be retained, it should be defined. The Societies propose a definition below based on advice from Manaaki Whenua Landcare Research.
In setting an overall outcome that “the natural landscapes, indigenous biodiversity and cultural and heritage value of Crown pastoral land are secured and safeguarded for present and future generations”, the intention appears to be to prioritise the environmental values of Crown pastoral land in decision-making. However, the proposed framework does not achieve this, and rather than safeguarding ecological and landscape values of Crown pastoral land is likely to allow ongoing loss. This is largely due to the definition of natural capital. The definition of natural capital is useful to define part of why nature is valuable, but is focusses on human-centric rather than eco-centric elements. A definition that is based on what the environment can do for people, and which incorporates consideration of people’s needs, will perpetuate the existing lack of prioritisation of the natural environment. The definition currently includes elements which are in conflict in providing for society’s wellbeing (such as biodiversity and energy resources). The CPLA outcomes should prioritise intrinsic values of the natural environment, including ecosystem services, and set environmental bottom lines to protect them. Outcomes should not conflict.

In this context, “environmental bottom lines” should mean that existing landscape, natural character and biodiversity inherent values on Crown pastoral land are identified and that no further loss of those values is allowed to occur. Given the extent of loss that has already occurred, bottom lines have already been exceeded for many ecosystems, and a bottom line of no further loss is the least that should be applied. Ideally attempts should also be made to restore exotic pasture to native ecosystems where practicable.

“No further loss” does not only relate to loss through development but also through the impacts of pests and weeds. Given the existing statutory obligation on leaseholders to keep the land free from pest animals and control weeds (alongside Biosecurity Act obligations), this outcome is appropriate.

Clarity of outcomes is essential to ensure decision-making is principled and not subject to inappropriate Government intervention. An example of the latter is the Government Minute Crown Pastoral Land: 2009 and Beyond which set an “end outcome” for Crown pastoral land (and tenure review) that Crown pastoral land is put to the best use of New Zealand, which was stipulated to mean that Crown pastoral land is put to the best use for economic, environmental and cultural purposes. A paper supporting the Minute mandates an approach that is inconsistent with the CPLA, particularly in relation to tenure review, because it states that Whether the lessee of the Crown is the most appropriate party to protect [significant inherent] values should be considered on a case by case basis, rather than an objective stating a clear preference (c.f. s 24 CPLA). The Minute has been taken into account in tenure review decisions, despite being clearly inconsistent with the principles of the CPLA. This has arguably led to unlawful decisions being made in the past.

We are very concerned that the intention appears to be to apply the proposed Crown pastoral land outcomes in an ‘overall’ or averaged sense across a Crown pastoral lease. This is addressed below at [86].

---

19 For example carbon sequestration, water yield and quality, land stability, pollination.
20 Discussed further below in relation to monitoring at [115].
21 Cabinet Minute of Decision Crown Pastoral Land: 2009 and Beyond CAB Min (09) 26/7C.
Recreational and scientific values and attributes

51 The outcome statement and definition of natural capital do not refer to recreational or scientific values and attributes. An example of a scientific value is the information about past glaciation and climate change that can be derived from soil chemistry and landforms on parts of the Maryburn Crown pastoral lease. Recreation and scientific values are encompassed by the definition of inherent values in the CPLA, and should be provided for as part of the future stewardship of Crown pastoral land.

Enhanced public access

52 The wellbeing of present and future generations is enhanced by the ability to experience these special areas of New Zealand. The CCL is able to create new rights of way or other easements on Crown pastoral lease land, and this does not require the consent of the leaseholder. The desirability of creating new opportunities for the public to access and experience these places should be reflected in the outcome statement for Crown pastoral land. Alongside that outcome, a more accessible and robust framework for decisions on easements, which enables effects on inherent values and farming considerations to be taken into account, should be developed.\(^{22}\)

53 Despite the leaseholder’s rights under the Act being expressed as a right to pasturage, the High Court in *The New Zealand Fish & Game Council v Her Majesty’s Attorney-General in Respect of Commissioner of Crown Lands*\(^{23}\) held that Crown pastoral leases confer exclusive occupation – although the Court expressly limited the effect of its judgment as not determining what effect, if any, leases have on native title claims that might exist. In that decision, the High Court does not refer to section 60 Land Act 1948, which enables the CCL to create easements on Crown pastoral lease land without the requirement to obtain the leaseholder’s consent. The leaseholder is entitled to compensation for any reduction in the value of his lease or licence by reason of the grant of any such easement, rather than having the ability to approve or veto new easements. The reservation of this right to the Crown is inconsistent with the leaseholder having exclusive possession in the common law sense.

54 The discretion to grant a right of way or other easement to the CCL is an important mechanism that enables the CCL to ensure that the opportunity to experience these places is not limited to the leaseholder or recreation permit holder and their paying clients. It also demonstrates that an outcome of enhancing public access in a manner that is consistent with protection of inherent values, and which takes into account the leaseholder’s pastoral farming requirements and any approved discretionary activities, is consistent with the scheme of the two governing Acts.

55 Alongside a new public access object, amendments should be made to s 60 to provide a process to progress public access proposals. We suggest an outline of this process at [112].

Recommendation

56 The Societies recommend:

a. That a new set out of outcomes for Crown pastoral land is incorporated into the CPLA.

---

\(^{22}\) Discussed below at [112] – [113].

\(^{23}\) *The New Zealand Fish & Game Council v Her Majesty’s Attorney-General in Respect of Commissioner of Crown Lands* HC CIV-2008-485-2020 [12 May 2009].
b. That the proposed outcomes are amended as set out below in order to refer to and prioritise inherent values, incorporate recreational and scientific values and provide for an outcome of enhanced opportunities for public experience:

1. The Crown will ensure that the natural capital values of Crown pastoral land are maintained and enhanced.

2. To achieve this, Crown pastoral land will be managed to ensure that natural landscape, natural character, ecological and scientific inherent values and ecosystem services of Crown pastoral land are identified, secured and safeguarded for present and future generations, including by ensuring that there is no further loss of those inherent values or ecosystem services, maintain and enhance natural capital, and cultural and heritage values; and subject to this, to:

- Maintain and improve cultural, historic, and recreational inherent values.
- Provide for pastoral and appropriate non-pastoral activities that support economic resilience and foster the sustainability of communities
- Provide enhanced opportunities for the public to experience Crown pastoral land in a manner that is compatible with pastoral and approved non-pastoral activities
- Enable the Crown to obtain a fair financial return.

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

c. That the definition of natural capital is retained only if it is used in the order set out above. Otherwise, natural capital is not a useful concept for prioritising environmental protection and we recommend that it is not used.

d. That if the term “ecological sustainability” or “ecologically sustainable management” is retained and its application extended to apply to pastoral land use and discretionary actions, it is defined as:

Ecologically sustainable management means management that sustains, and avoids depletion of, the attributes and processes of the system of interacting living organisms and their environment, and of connected ecological systems and processes beyond land under consideration.

e. That a definition of pastoral use is incorporated in to the Land Act, which clarifies that it does not include intensive farming or agricultural conversion.

2.2 The Crown as a shared steward of Crown pastoral land

The Societies support a more express and enabling framework for mana whenua to exercise kaitiakitanga over Crown pastoral leases within their rohe, in accordance with the objects set out above.

We also support enhanced opportunities for broader stakeholders to have input into Crown pastoral land management. This is discussed further below at [99].
SECTION 3: ENSURING DECISION MAKING IS ACCOUNTABLE AND TRANSPARENT

CCL functions

59  The CCL’s functions are set out in s 24 of the Land Act. The substance of these functions all relate to the CCL’s role as landlord (they concern the right to evict trespassers, and so on). The CCL has additional functions under the CPLA as a decision-maker for tenure review and discretionary actions.

60  The CCL does not have any functions relating to protection of the vast areas of Crown pastoral land under his or her control. Neither does she or he have any function of advocating for an outcome for Crown pastoral land in other statutory processes. The Societies consider that this is a shortcoming in the statutory framework that has contributed to the policy failures described at [11] above.

61  If the CCL’s functions are aligned with the outcome statement for Crown pastoral land, this makes it more likely that the institutional changes needed to actually achieve those outcomes will be made. In particular:

   a. We would like to see a reframing of the pastoral lease relationship as being between a guardian of the leased land and the leaseholder as custodian, rather than LINZ and the CCL being passive process-focussed entities. This requires a change in the CCL’s functions.

   b. A corollary of this new function is that it should lead to LINZ engaging staff with appropriate expertise, to ensure that LINZ has the necessary technical information for its management of Crown pastoral lease land, and to avoid the issues with external service providers identified in LINZ’s Regulatory Review.

   c. If the CCL was charged with a function of advocating for the inherent and ecosystem values of Crown pastoral land to be safeguarded, this would lend itself to participation in Resource Management Act 1991 (RMA) planning processes, which would ensure better alignment between the CPLA and RMA instruments. We envisage the CCL’s role being similar to the manner in which DOC and Heritage New Zealand Pouhere Taonga currently advocate for their statutory interests through RMA policy statements and plans processes.

62  A function relating to management of biosecurity threats (primarily pests and weeds) on Crown pastoral land should also be included, in recognition of the partnership approach that is needed to effectively manage these pervasive issues. The Cabinet Paper specifies that LINZ is already working to improve the way the regulatory system as a whole operates, including by taking a more active role in pest and weed control in the high country. However, this this is only briefly provided for in the Discussion Document in relation to covenants. Covenants can include conditions relating to pest and weed control/ eradication or prohibition on planting exotic species (eg pines).

63  We recommend that s 24 of the Land Act is amended to include an express statement of the CCL’s functions as guardian of Crown pastoral land, in alignment with the outcome statement, and which incorporates a new function relating to biosecurity (pest and weed) management.
3.1 Enhancing accountability

We support the proposal to require the Commissioner to develop a regular Statement of Performance Expectations, to be approved by the Minister of Land Information. We prefer this to the other two options outlined on p 30. We support the intention to provide for public input into the Statement. We consider that:

a. It will be important to ensure that the Statement requires analysis of how the outcomes for Crown pastoral land will be achieved both on individual leases and cumulatively across Crown pastoral land.

b. As with many other aspects of the proposed changes, it will also require sufficient baseline information about the state of Crown pastoral land, pressures and trends to enable a meaningful analysis of issues and effectiveness of proposed management actions. This would be analogous to a comprehensive Conservation Resources Report and would likely require enhanced powers of inspection.

c. The Statement should include information on how the Commissioner intends to monitor performance and enforce compliance.

We support the creation of additional mechanisms to improve accountability. Accountability includes having appropriate mechanisms to ensure that Crown pastoral land is managed in accordance with the Acts. We have three proposals to improve accountability in that regard:

a. Updated mechanisms to enable public enforcement action and provide for meaningful enforcement remedies.

b. Independent advice to the Commissioner.

c. Oversight of decision-making by the Environment Court.

Updated mechanisms to enable public enforcement action and provide for meaningful enforcement remedies.

The Societies consider that these mechanisms need updating to reflect the challenges that leaseholders face in managing pests and weeds, and to ensure that where the CCL does not act in respect of breaches that affect the land, alternative mechanisms are provided.

Under s 19 of the CPLA, the CCL can apply to the District Court where a provision of a Crown pastoral lease or the statutory controls on felling timber, burning vegetation or disturbing the soil is breached. The Court may order that the breach is remedied, payment of exemplary damages of up to $50,000, or forfeiture of the lease. In addition, the CCL may seek the forfeiture of a lease under s 146 of the Land Act. These provisions have very seldom been used. In 2010, a leaseholder was required to pay exemplary damages of $25,000 for construction of a reservoir on Crown pastoral lease without consent. In 2001, the Commissioner sought the forfeiture of a lease following non-payment of rent, after a dispute over whether the lessees could construct roads or tracks and fence

Discussed at [115] below.

parts of the land. We could not locate any other examples. Yet it is quite clear that many leaseholders are not complying with the requirements of their lease, either because the issue has become difficult to manage (for example, wilding conifers) or because they choose not to. There are numerous examples of lessees developing beyond the area specified in their discretionary consent. For example, at Mount Prospect land was cleared that exceeded the area specified in the discretionary consent – including in a riparian area. Similarly, at Mount White, freeholded land surrounded by pastoral lease/reserve land was sprayed and oversown. The effects of this spraying clearly encroached onto the leasehold land. In both these examples the leaseholder’s actions were seemingly without repercussions.

68 The Societies submit that the accountability of the system of Crown pastoral land management would be enhanced by providing a framework for enforcement orders to be sought against leaseholders where the breach affects the inherent values of Crown pastoral land. As with the framework in the RMA for enforcement orders, this approach would recognise that the obligations on Crown pastoral leaseholders are there at least in part to protect the environment as a public good (they are not purely private, contractual obligations).

69 The enforcement provisions should also be amended to provide a framework that is more likely to ensure leaseholders to meet their obligations where – or ideally before - these have become overwhelming. For example, in response to a breach of provisions requiring that pests and weeds are controlled, the process could provide for the creation of a Farm Environment Plan to address these issues, including through mediation involving the parties and relevant experts. Meaningful enforcement is needed backed up by penalties.

70 The Environment Court rather than the District Court is the more appropriate entity to manage enforcement of Crown pastoral leases, other than where the breach relates to non-payment of rent or other purely contractual matters. This should provide a straightforward process, suitably tailored to the issues and a less complex and time-consuming process than judicial review.

Independent advice, and oversight of decision-making by the Environment Court

71 Past tenure review decisions have resulted in poor environmental outcomes despite the relatively protective objects of tenure review. This indicates that simply incorporating statutory objects that seek to further the protection of environmental values will not itself result in good outcomes. We recommend that independent advice on, and greater scrutiny of, discretionary consent decisions is essential.

72 While the Commissioner already receives advice from DOC on the technical aspects of decisions, there is also a role for independent advice to inform the Commissioner’s judgment. We envisage this as being analogous to the role that Conservation Boards play in informing DOC decisions on concessions and other decisions under the Conservation Act 1987. The High Country Advisory Group could be considered as an entity to provide this input. We recommend that this entity is provided for in the CPLA, including a requirement for appointees to represent a range of necessary experience, and the opportunity for key stakeholders including Forest & Bird, Fish & Game and

---

Federated Mountain Clubs to nominate appointees, similar to the framework for appointment of the New Zealand Conservation Authority.  

At present, decisions by the Commissioner are almost beyond challenge (other than where a decision’s lawfulness is challenged by way of judicial review) and therefore largely beyond scrutiny. Unless that changes, decision-making outcomes are unlikely to substantially change. The Societies propose that there should be a general right of appeal to the Environment Court of discretionary consent decisions that affect significant inherent values of Crown pastoral land. The right of appeal would apply to leaseholders and submitters (see proposal for public submissions at [112] below).

3.2 Enhancing transparency

The Societies strongly support proposals to enhance the transparency of decisions made by the CCL, LINZ and external service providers. We are pleased that the Regulatory Review identified this as an issue, because it is something that we raised with the reviewers as it has been a significant concern for many years.

We neither support nor oppose the proposal for the Commissioner to release guidance to support officials and leaseholders to understand and comply with legislative requirements. In our experience, non-binding guidance is of little assistance in hard cases, and can even contribute to misunderstandings of what the law requires. In contrast, we support a requirement for binding policy to be developed to give substance to the statutory requirements for stewardship of Crown pastoral land, and consider that the topics identified on page 33 are appropriate.

An alternative we have considered is a National Policy Statement for the High Country issued under the RMA. This could be applied directly to both discretionary action decisions (requiring amendments to the CPLA to refer to it), and RMA instruments and resource consent decisions. This would also assist with alignment of decision-making under the RMA and CPLA/Land Act. However, as it is likely to be difficult to produce a High Country NPS that implements the RMA and the new CPLA objects (where they differ), directive policy under the CPLA is necessary, but could be complemented by an RMA instrument like a High Country NPS.

Standards, guidance or policy may assist in increasing the transparency of decision-making generically, but unless the Commissioner is required to give reasons for individual decisions, the lack of transparency and accountability will remain. Reasons for decisions made by the CCL are not usually provided under the current regime. This mean people cannot see what information has been considered, how it has been taken into account or disregarded, and how the Commissioner has interpreted key terms.

The Societies recommend that decision-making provisions are amended to expressly require a statement of reasons for all statutory decisions under the Land Act/CPLA.

The Discussion Document addresses Farm Environment Plans under this topic. We are aware that Farm Environment Plans may become a requirement as a result of freshwater reforms, as a method

---

28 In addition, in the tenure review public submission process submissions that do not raise new information are disallowed (unless they support the proposal) yet the submitter has no way of knowing what information has already been considered or discussed with the leaseholder. That approach should not be perpetuated in any public consultation processes provided for under the new regime.
to demonstrate how regulatory limits and targets will be met over time. They could similarly be used to demonstrate how a pastoral leaseholder will meet the objects of the CPLA, Land Act, and their lease requirement (for example, pest and weed management obligations). If they are required anyway for another purpose, then having them also address Crown pastoral land-related would be useful, and they are strongly supported by EDS.

However Forest & Bird has reservations about their use:

a. We do not see farm plans as a mechanism to assist with transparency and accountability. To the contrary, farm plans are often private documents that are very un-transparent.

b. Theoretically, farm plans are a useful instrument for identifying environmental and landscape values and farming practices at the farm scale, and translating regulatory requirements into farm-scale management actions. However, we have concerns about their practical usefulness, largely due to a lack of capacity amongst ecologists and other necessary consultants to provide comprehensive, quality advice to inform farm plans of the number required. Farm plans that have not been prepared with appropriate expert input are not meaningful.

c. If farm plans are to be used, issues to be worked through include: who prepares them? Is expert input (expressly) required? Who holds them? Are they publicly available? How often are they updated? Are they used for compliance purposes? If so what is the link between the statutory outcomes and the farm plan actions?

SECTION 4: MAKING DECISIONS THAT GIVE EFFECT TO THE OUTCOMES

Lease renewal

When Crown pastoral leases are renewed, the lease terms (eg stocking limits) should be reviewed to ensure that they are consistent with the new legislation.

4.1 The discretionary consents process / 4.2 Issues with the discretionary consents process / 4.3 Ensuring decisions on discretionary consents reflect proposed outcomes

Provisions governing discretionary actions

We strongly agree with the statement that the lack of any clear outcomes that discretionary consents must give effect to is an issue with the current discretionary consents process. The existing statutory framework only requires that the desirability of protecting inherent values of the land concerned is “taken into account”, alongside the desirability of making it easier to use the land for farming. This is not sufficiently protective to ensure that the Crown’s and public’s interest in protecting the significant inherent values is achieved, and does not clearly enable consideration of cumulative impacts beyond the lease under consideration.

In addition to a new statement of outcomes, the provisions governing discretionary actions require amendment to require the Commissioner to give effect to the new outcomes. As discussed above, this will require that the outcomes themselves do not conflict, as it is not possible to give effect to internally conflicting outcomes. Relative priorities must be clearly stated. We consider this is a deficiency in the current objects, because “natural capital” contains internally conflicting concepts, such that “prioritising natural capital” does not necessarily result in the inherent values that are
part of natural capital (landscape, indigenous biodiversity, natural character) being prioritised over the ecosystem services from natural resources that are also part of natural capital.

Amendments to the provisions governing decision-making on discretionary actions should also expressly require that:

a. the cumulative effect of discretionary actions across different Crown pastoral leases; and

b. the effects of climate change;

are taken into account.

We are concerned at the statement that giving effect to the outcomes would:

... enable leaseholders to continue to make economic use of their land by providing for pastoral farming and appropriate non-pastoral activities that can be applied for under the discretionary consents process – where those activities do not result in an overall reduction of the natural capital in the land

We strongly oppose an “overall” or averaging approach to protection of environmental values. We cannot see how this would be applied in practice in a principled way. Many significant inherent ecological values of Crown pastoral land are already so reduced that they are at - or beyond - a tipping point, and no further loss should be allowed. The same is true of landscape values in many areas. Maintaining natural capital on an overall basis is a less protective approach than a requirement to protect significant inherent values (as required in the tenure review context, and a relevant consideration in the discretionary consent context). We do not agree that this approach will provide more certainty to applicants or clarify how the Commissioner will make decisions, it simply moves the uncertainty to the issue of whether impacts are acceptable “overall”. The Environment Court has found that overall approaches to resource management are fraught with uncertainty.29

We do not include mitigation and remediation in our criticism of the ‘overall’ approach to maintaining natural capital. Rather, these are measures which mitigate (lessen the severity of) or remedy (restore) an impact, and where it is acceptable for an activity to proceed, mitigation or remediation measures will often be appropriate to manage the activity’s effects.

However, we oppose the use of biodiversity offsets within a Crown pastoral land context:

a. The object should be to ensure that there is no further loss of significant inherent values, rather than a trade-off that allows some further loss in exchange for potential future gain.

b. Given the range of activities that pastoral leaseholders are already required to undertake as part of their “good husbandry” and other weed/pest control obligations, it is unlikely that meaningful additional actions could be taken as part of an offset.

c. There is a very high risk that offsetting would be relied on to authorise an impact that should not occur in the first place.

29 Ngati Kahungunu Iwi Inc v Hawke’s Bay Regional Council [2015] NZEnvC 50; Wellington Fish & Game Council v Manawatu Wanganui Regional Council [2017] NZEnvC 37.
d. The Government’s *Guidance on Good Practice Biodiversity Offsetting* does not provide sufficient clarity about when impacts are unacceptable. In particular, while it recognises the principle of “limits to offsetting” it provides very little guidance about when limits will apply.

89 Page 39 of the Discussion Document includes options to help ensure decision-making supports the Government’s proposed outcomes. The first option – retaining the current level of discretion while incorporating the new outcomes to guide decision-making – is not supported, as without other structural changes to increase the quality of information the Commissioner receives and his or her accountability, outcomes will not improve. We support the second option – preventing any decisions from contradicting a new set of outcomes - as long as the outcomes are themselves clear and clearly prioritised. We also support in part the third option - different scales for decision-making according to the scale and magnitude of the impacts of the proposed activity. That consideration should be relevant to whether public input is provided for, but should not affect the Commissioner’s decision-making role or their accountability. We do not agree that any of these options would unreasonably prevent activities on the land. Activities that would decrease natural capital or heritage or cultural values in any way should not be provided for. Why would the Crown seek to allow such an outcome?

90 Instead, a scheme of rental rebates could be applied to incentivise positive environmental, public good changes (such as fencing to protect significant natural areas). This is one of the tools that the EDS landscape project will examine in some more detail.

Technical advice

91 It is essential that technical advice on significant inherent values of Crown pastoral land, and the effects of proposed discretionary actions (both in the context of the particular lease and on high country ecosystems more broadly) is sought and followed by the Commissioner when making decisions on discretionary consents.

92 On balance, we continue to support DOC as the most appropriate entity to provide technical information to inform discretionary consent decisions.\(^{30}\) However, we do have significant concerns about the quality and timelines of advice provided by DOC in some existing processes. We are aware of many instances of DOC providing advice on discretionary consents from local DOC rangers or area managers who are usually not suitably qualified to properly assess the inherent values, resulting in the loss or potential loss of significant inherent values (eg Simons Pass Station). Expert advice from DOC’s Terrestrial Ecosystems Unit was only sought in respect of 2 out of 14 discretionary consent applications for activities in the Mackenzie Basin considered by DOC between 24 Jan 2017 and 17 Nov 2017.\(^{31}\) Synthesis of DOC technical advice into overall DOC advice on recommendations often results in fewer areas being identified as having significant inherent values, and fewer areas being recommended for protection. The issues with DOC science and how the science has been synthesised into the overall DOC advice are identified in the Regulatory Review.\(^{32}\)

The amended legislation should:

---

\(^{30}\) We acknowledge that Fish & Game also has a role in providing technical advice regarding its statutory responsibilities, and any legislative embedding of DOC’s role should also apply to Fish & Game.

\(^{31}\) Response by DOC to OIA request by EDS (OIA17-E-0516, docCM-3233946).

\(^{32}\) Page 28.
a. Embed a role for DOC experts’ technical advice (whether from staff or independent contractors), rather than recommendations from “the Department”.

b. Require that decisions do not provide for actions on Crown pastoral land that are contrary to recommendations by DOC experts’ technical advice (from qualified and experienced ecologists, landscape architects, and so on).

Legislative change should be accompanied by a review of DOC’s technical advisors’ capacity to provide timely advice to support Crown pastoral land decisions, with an increase in resourcing provided if necessary.

A further practical issue is that LINZ has the right to inspect Crown land but DOC does not have “as of right” access – it must be approved by the Commissioner. This access should be provided for, not only in relation to an application for a discretionary action but also for DOC to gather baseline information and monitor the status of significant inherent values.

Finally, it is time that LINZ’s role as guardian of a very large portion of New Zealand, including areas with very high ecological values, was appropriately recognised by LINZ engaging its own ecologists to assist LINZ critically assess the quality of advice it receives, and to be an effective repository of information about the significant ecological values on all Crown land that LINZ manages.

Accordingly, the Societies support the proposal that the Commissioner must obtain expert advice to ensure decisions are made with an adequate evidence base, but consider that more specificity is required as to who provides that advice and how it is used.

We disagree that providing detailed requirements for engagement and obtaining expert advice would limit the ability of the system to respond to changes in technology, information and evidence-gathering techniques. Appropriately qualified and experienced technical experts will provide information that is appropriate in terms of those considerations. The specificity needed is as to the qualifications and experience of the experts, and how their advice is used in decision-making.

Technical assessments of current ecological, landscape and other inherent values, and assessments of the effects of discretionary activities should be assessed using transparent criteria. These criteria could form part of policy direction.

Public input

As noted above, we consider that it is important to provide for broad public input into decisions on discretionary actions in order to ensure that discretionary action decision-making is based on appropriate information and is accountable.

The Societies do not support the proposal that the Commissioner may consult with any other party he or she considers appropriate. Instead, we consider that public notification of discretionary actions should be provided for, except where:

a. the discretionary consent

---

33 Section 26 Land Act.
34 Discussion paper, page 40.
i. is for the same activity (or an activity of the same character, intensity and scale) as has been carried out on the area of the lease in the last 6 months; or

ii. has effects that are limited to the area where the activity is carried out (for example, it does not affect downstream freshwater bodies); and

b. the activity does not adversely affect significant inherent or ecosystem service values.

That approach ensures that there is a quick, efficient approach to decisions on “routine” discretionary actions that are low risk or are a continuation of the leaseholder’s existing activities, while enabling appropriate public input into higher risk proposals. As the leaseholder’s only entitlement is to use the land for pasturage, there is no detriment to leaseholders rights in providing for public input into decisions on some activities that the leaseholder is not allowed to undertake as of right.

We agree that if all applications must be publicly notified, this would not be appropriate given the small scale and temporary nature of some discretionary actions. The Societies proposed threshold for notification avoids that outcome. We strongly disagree with the notion that public notification duplicates existing processes under the RMA, because the statutory objects differ and the Commissioner is considering different considerations to those that apply under the RMA. At present, there are activities that the Commissioner has authorised that the RMA consent authority may not grant resource consent for (for example on Simons Pass Station).

As the RMA consenting process becomes more robust, there will be a sharper focus on how to determine effects on landscape and indigenous biodiversity values. It is important that any reform to the RMA consent process is reflected in the discretionary consenting process to ensure alignment.

**Structural change**

The Regulatory Review found that LINZ is “process focussed and conservative” and that “with an operational focus on pastoral farming, LINZ is viewed by others as being biased towards the desires of farmers”. This analysis shows that structural changes are required, in addition to clear environmental objectives in the CPLA, to address this. History also proves this true: the objects of tenure review are inherently pro-environmental protection, yet decisions have repeatedly been made in purported accord with those objects which flagrantly fail to achieve that protection (eg The Wolds).

There are problems with external service providers. The Regulatory Review found that the service delivery model has resulted in LINZ having a stronger link to farming and economics than ecology. Unless that changes the structural bias towards enabling farming at the expense of environmental outcomes, and the public’s lack of faith in the Government’s stewardship of Crown pastoral land, is unlikely to be addressed. There needs to be a strong internal cultural shift within LINZ to reflect the new approach. External land management consultants are unlikely to have an ongoing role, given their primary role was in relation to tenure review. Our preference is that they are not used at all,

---

35 This recommendation should be checked with ecologists to ensure that it does not risk ongoing incremental loss of modified native habitat, e.g. overrowing and topdressing mixed native/exotic grassland.

36 Page 27.

37 see Regulatory Review, p 28 of Cabinet Business Committee paper.
and that instead LINZ ensures that it has sufficient staff with appropriate expertise to carry out the work currently being done by external service providers.

106 If LINZ is enabled to continue using external service providers, a tight framework is needed to ensure external service providers’ recommendations and decisions are consistent with statutory outcomes. A requirement for specific qualifications and experience relevant to the inherent values of CPL (eg ecology or landscape qualifications and experience) rather than land management experience is also essential.

Crown pastoral land and the RMA and conservation legislation

107 The Discussion Document mentions alignment with the RMA. Caution should be taken in attempting to align two statutory schemes which exist for different reasons. We are unable to comment on specific alignment options because the Discussion Document does not provide specifics. Concepts such as bundling consent requirements under both Acts would require careful consideration given the separate decision-makers and statutory schemes. Where Farm Environment Plans are required under the RMA, the inclusion of an additional section dealing with CLPA requirements would have the benefit of having all requirements and actions to meet those requirements in one document, which may be useful for the farmer, but this is unlikely to materially increase alignment with the RMA.

108 We would support measures to make leaseholders more aware of their obligations under regional and district plans, as we are aware of instances of leaseholders proceeding with activities like vegetation clearance on the basis of a discretionary consent, without seeking a resource consent from the district council. We also believe that communication between LINZ and local authorities could be improved so that local authorities are aware when consent has been granted by LINZ and can take steps to ensure their plan requirements are also complied with.

109 As discussed above, we propose a new function for the Commissioner to advocate for the protection of the inherent values of Crown pastoral land in RMA processes as a method of improving alignment between RMA instruments that apply to Crown pastoral land, and the CPLA objects. We also raise the option of a National Policy Statement that applies to both RMA and CPLA decision-making.

110 Alignment with management of conservation land could also be improved. In particular, thar management on pastoral leases needs to be integrated into DOC’s Thar Management Plan, and enforced.

A new process for enhancing public access

111 The Commissioner can grant an easement over a Crown pastoral lease without the consent of the leaseholder. This demonstrates that the grant of a lease does not confer the right to exclusive possession as against people using approved (existing and new) access pursuant to an easement or right of way.

---

38 Royal Forest and Bird Society of New Zealand v Waitaki District Council [2012] NZHC 2096.
There is no system in s 60 of the Land Act to enable proposals for public access to be put to the Commissioner or considered in a manner that takes into account the views of the public and the leaseholder. We recommend that s 60 is amended to create a process whereby:

a. Any person may make an application to the Commissioner for public or private access to be enhanced by the creation of a new easement on Crown pastoral land.

b. The Commissioner may reject applications that are clearly contrary to the objects of the CPLA.

c. Applications that are not rejected under (b) are sent to the leaseholder, mana whenua, and any entity with relevant statutory obligations (eg DOC and Fish & Game) and publicly notified.

d. After receiving public submissions and any comments from the leaseholder, the Commissioner holds a hearing at which any person who seeks to be heard may appear and call evidence. The hearing is to consider both the appropriateness of granting a new easement, any restrictions, conditions and covenants that are appropriate, and the compensation that should be provided to a leaseholder for any reduction in the value of his lease or licence by reason of the grant of any such easement.

e. The Commissioner issues a decision on whether to grant the easement.

This proposal appropriately balances the leaseholder’s rights to pasturage and their interests (and any other party’s interests) in undertaking approved discretionary actions, with the public’s interest (and some private landowners’ interests) in obtaining access to or through Crown land.

Section 5: Improving system information, performance and monitoring

LINZ does not currently undertake ecosystem or other environmental monitoring and so lacks a comprehensive view of outcomes across the Crown pastoral land estate. The Societies see this as a major shortcoming in the ability to effectively manage Crown pastoral land. We strongly support the recommendation from the Regulatory Review that monitoring is improved.

We support proposal 7. The CPLA should be amended to provide for baseline monitoring and regular state and trend monitoring as a requirement. The baseline monitoring should be used to produce a baseline statement of values in conjunction with the leaseholder. If Farm Environment Plans are used, they should reflect this baseline statement of values. Any discretionary actions should be assessed in the context of the baseline statement of values. The CPLA should require that criteria for these assessments are produced as part of a statement of policy for Crown pastoral land (this is different to the proposed monitoring framework. It relates to how values are assessed). Monitoring of compliance with the CPLA and Land Act, including any approved discretionary actions, should also be required by law.

An example where private access might appropriately be provided is Mt White, where there is a freehold land parcel that is landlocked by the pastoral lease.

Discussion document, page 42.
Conclusion

116 A significant opportunity exists right now to turn around the previous mismanagement and litany of loss that has occurred on Crown pastoral land, and provide a new framework that ensures remaining ecological and landscape values are safeguarded. This will require clear and uncompromising statutory direction and a major overhaul of the institutions involved. Cultural change must be led from the top via new statutory functions and accountability to the Minister, and from the bottom via enhanced public accountability and transparency. This will be a major undertaking but is essential in order to ensure that the high country’s nationally treasured landscapes are available for future generations to experience, and to halt (and ultimately remedy) the decline in habitats for native species that inhabit these places.

SUBMISSION ENDS
Greenpeace NZ welcomes the opportunity to submit on the proposed changes to the Crown’s management of pastoral land.

**Summary of key points**

**End of Tenure Review**

We support the Government’s commitment to ending tenure review. Tenure review has facilitated dairy conversions and land-use intensification in the high country which has led to environmental degradation. Tenure review has also resulted in a large scale transfer of public wealth into private hands. As such, we do not support its continuation in any form.

We ask that the Government immediately halt all existing tenure reviews that have not reached a final signed settlement to ensure there is no further environmental degradation or erosion of public wealth as a result of tenure review.

In particular, we ask that the Government retain Simons Pass Station in the Mackenzie Basin. This is the station on which the leaseholder is planning a mega dairy conversion which will be ecologically devastating, if it goes ahead.

While some construction has occurred for the conversion already the leaseholder has not gathered all the consents required from the Mackenzie District Council (MDC) to complete the conversion. There is no consent to irrigate the land and direct drill across a large part of the planned conversion and the Environment Court has just ruled that these are discretionary consents that must be obtained. The MDC now has the power to deny those consents which means the conversion would not go ahead at the scale planned.

The future of this precious and iconic piece of land just south of Lake Pūkaki hangs in the balance. If the dairy conversion goes ahead it will cause irreparable damage. Every effort should be made by the Crown to disincentive it.

If the Government were to go ahead with the sale of Simons Pass it would increase the financial incentive for the leaseholder to complete the dairy conversion. That’s because once the land is sold to the leaseholder, they can then subdivide and on-sell the land for tax free capital gain.

The capital gains made by private individuals through tenure review have already proven to be significant\(^1\). There is nothing to suggest Simons pass Station would be any different.

---

In this way, it is our opinion that the sale of the land would amount to both implicit and tangible support from the Government for the construction of a mega dairy farm in one of our most iconic and fragile landscapes.

We believe this to be out of line with stated commitment to “ensure that Crown pastoral land is managed in a way that preserves and enhances its significant natural and social capital for future generations.”

Prohibited activities on Crown Land

Leaseholders of public high country are currently able to gain discretionary consent to convert to dairying and to increase the number of livestock on the land despite widespread and incontrovertible evidence that this causes major environmental degradation.

We ask that the Government amend the regulatory system for Crown land so that dairy conversions and livestock intensification above current levels become prohibited activities.

Drylands Heritage Area

We ask that the Government commit to establishing a fully protected drylands heritage area which is created primarily through the strategic purchase of leaseholders interests in crown pastoral land, complemented by a range of other protective mechanisms such as covenants.

Specific questions posed in the consultation

Q1 How should areas of Crown pastoral land with inherent values worthy of protection be secured once tenure review is ended?

The Crown should purchase the leaseholders interest in land with high ecological, landscape and recreation values so that it can be protected within the conservation estate. To purchase and support the ongoing maintenance of the land the Natural Heritage Acquisition Fund and Department of Conservation budgets should be increased accordingly.

We believe that the New Zealand public has clearly signalled that they want to see the land protected therefore we believe that funding the purchase and maintenance of the land should be a priority.

Q1 Are there any other mechanisms that could be used to protect inherent values or secure access on Crown pastoral land?

Yes. The Government should directly regulate the agricultural inputs and practices known to cause environmental damage nationwide and in the high country. These inputs and practices include but are not limited to:
- New dairy conversions
- Livestock intensification
- The use of synthetic nitrogen fertiliser
- The use of imported animal feed
- The use of pesticides
- Winter cropping

2 Land Information New Zealand 2019 Discussion Document Enduring stewardship of Crown pastoral land
Q 2 Do you agree with the proposed outcomes?

No we do not agree with the proposed outcomes as they are presented in the consultation document. In summary, we do not support the use of the term natural capital and we do not support the omission of outcomes related to freshwater health and climate change.

We suggest the following amendments:

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

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

**Question 2: Do you agree with the use of “natural capital” rather than “ecological sustainability” in the proposed outcomes?**

Greenpeace is strongly opposed to the use of the term “natural capital”.

The term natural capital attempts to redefine nature as something that is only valuable when humans can use it, namely as capital for economic growth. “Natural capital” does not recognise that nature has intrinsic value in and of itself regardless of its use by humans. As such referring to nature as natural capital is a dangerous re-conceptualisation and revaluation of nature.

Nature is rivers, lakes, tussock lands, forests, the ocean and more. It is made up of living ecosystems which are interdependent and connected. Nature cannot be reduced and defined as “capital”.

Greenpeace supports using the term “nature” and providing a strong and unambiguous definition which includes recognition that nature is intrinsically valuable and should be afforded protection based on that intrinsic value, as well as for its use for human

**Q5: Do you agree that the Commissioner should be required to give effect to the proposed outcomes in any discretionary consent decisions?**

Yes. We support the proposal that the Commissioner must give effect to a set of outcomes in any discretionary consent decision, as long as those outcomes do (as is
currently proposed) set out an explicit hierarchy for decision making, which prioritises natural, and heritage and cultural values above farming interests.

There is little point in having stated outcomes if the regulatory body primarily responsible for managing land-use on Crown land has no requirement to give effect to these outcomes.

**Q5 What other mechanisms could be used to ensure decision making supports the proposed outcomes?**

As discussed, making new dairy conversion and intensification of livestock farming a prohibited activity on Crown land would support the proposed outcomes.

**Q 6: Do you agree that the Commissioner should be required to obtain expert advice and consult on discretionary consent decisions?**

Yes. The Commissioner does not and cannot be expected to have the level of locally specific terrestrial, aquatic and geological knowledge required to make sound decisions on discretionary consents in the high country. Therefore expert advice from independent experts must be obtained. We also support discretionary consents being opened to public consultation.

Furthermore, we believe cumulative impacts of discretionary consents must be taken into account.

**Q 7: Do you agree that the CPLA should be changed to allow for fees to be charged for all discretionary consents?**

Yes. Fees should be charged to applicants for all discretionary consents. The beneficiary of the discretionary consents is the applicant and therefore we believe the applicant should pay for the costs of processing consents, not the public. As the discussion document notes, the “benefiter pays” principle is common practice across Government already.

We do not wish to speak to our submission.

ENDS

on behalf of Greenpeace NZ
Enduring stewardship of Crown pastoral land

The Government welcomes your feedback on this consultation document.

For more information about the Government’s proposals read our Discussion Document.

Submissions close on Friday 12 April 2019

Making a submission

You can make a submission in three ways:

1. Use our online submission tool, available at www.linz.govt.nz/cplc

This is our preferred way to receive submissions.

2. Complete this submission form and send to us by email or post.

3. Write your own submission and send to us by email or post.

Publishing and releasing submissions

LINZ is bound by the Privacy Act 1993. Any personal information, including your name and address, which you supply to us in the course of making a submission or providing a point of view, will be used by LINZ only in conjunction with the purpose of collecting the submissions.

All or part of any written submission (including names of submitters) may be published on the Land Information New Zealand website www.linz.govt.nz. When you make your submission, you consent to your personal information being published, unless you tell us otherwise. If you do not want your personal information published, please tell us when you make your submission.
Submission form

The questions below are a guide only and all comments are welcome. You do not have to answer all the questions. To ensure others clearly understand your point of view, you should explain the reasons for your views and provide supporting evidence where appropriate.

Contact information

<table>
<thead>
<tr>
<th>Name*</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Organisation</td>
<td>Heritage New Zealand Pouhere Taonga</td>
</tr>
<tr>
<td>Address</td>
<td>P O Box 2629 Wellington 6140</td>
</tr>
<tr>
<td>Phone</td>
<td></td>
</tr>
<tr>
<td>Email*</td>
<td></td>
</tr>
</tbody>
</table>

Submission type*

- Individual
- NGO
- Local government
- Business / Industry
- Central government
- Iwi
- Other (please specify)
  - Crown entity

* Questions marked with an asterisk are mandatory
**Question 1:**

1a. What are your views on how significant natural values should be protected once tenure review is ended?

This question is inconsistent with the focus of Section 1 of the Discussion Document and also what we consider should be a key objective of any system that seeks to achieve enduring stewardship over Crown pastoral land – being enduring protection of significant inherent values of Crown land.

Currently section 83 of the Crown Pastoral Land Act 1998 (CPLA) sets out the objectives with regard to Crown land and at (b) states “to enable the protection of significant inherent values of Crown land”.

We consider that using the term “significant natural values” in this question is narrow and does not reflect the current objectives with regard to Crown pastoral land; nor does it reflect what the future objectives should be.

As such, we answer the question as though it were asking how inherent values (using the definition in s2 of the CPLA) should be protected following the abolishment of tenure review, in order to provide an answer of more value and relevance. This definition of inherent values includes “a value arising from a cultural, historical, recreational, or scientific attribute or characteristic of a historic place on or forming part of the land.” Historic place is also defined in the CPLA.

Our answers will concentrate on the cultural and historical values that are encapsulated in the inherent value definition as set out above. Notwithstanding, many of our comments can be extended to apply to other values that are considered inherent values.

With the end of tenure review as a potential mechanism for identifying historical and cultural heritage sites and areas, Heritage New Zealand would like to see a systematic heritage inventory of the remaining Crown pastoral land, an assessment of the impacts of current land use practices, risks to historical and cultural heritage values, and a programme of work to formally protect these values. This could be done via a rolling review and work programme targets set out in the proposed Statement of Performance Expectations.

Government Departments are obliged to follow the Policy for Government Departments’ Management of Historic Heritage 2004 (the Policy). A copy of the Policy is attached to this submission. This review is an opportunity to ensure that Crown management of Crown Pastoral Land complies with the Policy.

Page 1 of the Policy: “The policy requires each department to identify places which have historic heritage value and for which it is responsible. It establishes processes for best practice decision-making, including the preparation of conservation and maintenance plans.” The Policy promotes a best practice approach while recognizing operational constraints. It sets out overarching heritage principles and detailed policies including identification, planning for long term conservation, seeking the advice of the Historic Places Trust (now Heritage New Zealand), leasing and disposal, and recognizing and providing for the “relationship of Māori communities with their ancestral lands, water, sites, wāhi tapu and other taonga”.

Once these values are identified, then there are various mechanisms for the recognition and protection of historical and cultural heritage values under the RMA and
HNZPT Act, Reserves Act and other Acts:

- Scheduling in district plans and protection with appropriate rules
- Heritage orders under the RMA
- Entry onto the New Zealand Heritage List/ Rārangi Kōrero as a historic place,
- Protection via a heritage covenant under the HNZPT Act or other type of covenant
- Status as a historic reserve, with a reserve management plan (e.g. purchasing and classifying land as historic reserve)
- Identification as an archaeological site
- Declaration as an archaeological site (e.g sites in the Upper Nevis) to provide protection under the HNZPT Act.
- Protection of archaeological sites (recorded or unrecorded) under the HNZPT Act.

1b. Are there any other mechanisms that could be used to protect significant natural values on Crown pastoral land?

In addition to the mechanisms identified above:

Increased alignment with agencies where consents are required – this would ensure that all appropriate consents have been granted before an activity begins. For example – discretionary consents do not over-ride RMA or HNZPTA requirements.

Increased monitoring of consents to ensure that conditions are being complied with

Requirement for risk management plans where activities may be in the close proximity to places with inherent values

Greater information provided to lessees to understand and acknowledge inherent values of the land which would influence any potential future uses

Agreement with leaseholders to limit inappropriate land use, or encourage them to prepare conservation plans or management plans.

1c. Do you have any views on the proposed transitional arrangements for ending tenure review?

The leases going through tenure review at present should be subject to a full evaluation as above, not only the areas to be passed into freehold but the areas to be retained by the Crown. Note that any land disposed of out of Crown ownership must go through the Crown Land Disposal Process, including a heritage assessment and clearance by Heritage New Zealand Pouhere Taonga.
Question 2:

2a. Do you agree with the proposed outcomes?

☐ Yes  ☒ No  ☐ Unsure

Please comment

It is not clear which set of outcomes this question refers to. If they are the high level outcomes in the text box within section 2.1 then:

a) *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.* The appropriate term would be “historical and cultural heritage values”. In the context of historical and cultural heritage, “secured and safeguarded” do not relate to the way this concept is expressed in current policies or legislation. A better term would be “identified, protected and conserved…”

b) There should be further bullet points concerning the actions that will be taken to preserve these values and specific recognition of the relationship of Māori with land, water, sites of significance, wāhi tapu, wāhi tūpūna.

2b. Do the proposed outcomes capture all the things the Crown should focus on? What’s missing?

See above

2c. Do you agree with the use of “natural capital” rather than “ecological sustainability” in the proposed outcomes?

☒ Yes  ☐ No  ☐ Unsure

Please comment

We prefer the use of “natural capital” to the narrow term “ecological sustainability”, and we consider that natural and social capitals are inextricably entwined when we are talking about the High Country of the South Island. Use of a broader phrase – ‘physical and natural capital’ or ‘natural and social capital’ would make it clearer that both natural and cultural heritage values are associated with the High Country landscape and should be taken into account.

The South Island High Country is an iconic landscape. It has outstanding aesthetic significance and is linked with a unique set of intangible values that are integrally associated with New Zealand and New Zealand identities. The landscape evokes feelings and memories in New Zealanders and tourists alike.

The image of the rugged High Country farmer and the natural landscape has been used to promote many things from Speights to Icebreaker.

Images of the landscape are easily recognizable and also easily understood by many
people. The relationship between the lessees and the land must be recognized as a part of the history of the land, the area, and of New Zealand, combining the idea of both natural and social capital.

Overall the term natural capital takes in a wider range of values than ecological sustainability, such as the values associated with historical and cultural landscapes, the sense of remoteness and isolation.

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?

The Crown should recognize for the role of mana whenua as kaitiaki of the land, and engage with iwi as a treaty partner.

Meaningful partnership with iwi must include iwi participation in decision-making: on determining long term objectives and strategies for conservation and possible development of Crown pastoral lands; in making decisions on discretionary consents; and agreeing criteria on which decisions are made. Partnership should take full account of Te Ao Māori and mātauranga Māori, and in particular the “relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga” (RMA s.6(e)) Decision making must take account of the full range of values (e.g. spiritual, cultural, traditional, economic) associated with the land and water, and provision of access to sites of significance to iwi.

2e. What are the qualities and features of Crown pastoral land that you value the most?

The contributors to this submission would each have a different set of values associated with Crown pastoral land. These may be cultural and spiritual values, historical values, tangible evidence of earlier associations of people with the high country, landscape values, ecological values, recreational values, or a sense of isolation that is a key feature of this land and would have been experienced by all previous generations traversing, inhabiting and using this land. Values are also discussed in question 2c.

Overall as an organisation we value the story that the land tells, visible and tangible, or intangible, of peoples past.

Heritage New Zealand assesses historic and cultural heritage values associated with place using the criteria set out in the HNZPTA when considering heritage for inclusion on the New Zealand Heritage List. The criteria covers a broad range of values and sets thresholds for significance. Heritage New Zealand encourages the use of the criteria in the HNZPTA for assessment of heritage value.

2f. What does enduring stewardship mean to you? What is the role of the different groups that play a stewardship role – the Crown, leaseholders, iwi, and other stakeholders? How can these groups most effectively work together?

See the response to question 1. Stewardship suggests managing use and development to protect irreplaceable resources for current and future generations.

It is a privilege to have a relationship with this land and that needs to be respected. Enduring stewardship means respecting the land and its values and looking after the
land in order to protect these values for now, and for the future.

This could mean changing current practices, and equally it may mean continuing with some. But we do not want to be allowing change or existing practices that will adversely affect that land and its values.

**Question 3:**

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
- ☐ No
- ☐ Unsure

Please comment

The Commissioner should be required to produce not only a regular (say annual) Statement of Performance Expectations but also a Statement of Intent or Long Term Plan (say every five years) setting out long term goals, policies and management strategies for Crown pastoral land.

The SPE would set out specific targets and key performance indicators to give effect to the Statement of Intent. Each SPE would report on achievement of targets set out in the previous year’s SPE.

3b. Do you agree that this proposal will help improve accountability for decision making in the Crown pastoral land regulatory system?

- ☒ Yes
- ☐ No
- ☐ Unsure

Please comment (optional)

3c. What other mechanisms could be used to improve accountability?

- A clear decision-making framework for discretionary consents.
- Expert assessments for potential effects on inherent values from appropriate agencies, for example Heritage New Zealand Pouhere Taonga to be consulted with regard to any discretionary consent activities which may give rise to effects on cultural and historical values.
- A decision-making panel, with a range of expertise, relevant to the type of application
- A decision report, that evaluates the application and decision-making process and ultimate decision that is made.
- Increased participation – either limited or fully public notification depending on the
scale of the proposal and effects.

Appeal rights with regard to consent decisions.

3d. Which mechanisms do you think would be most effective in improving accountability?

As described above.

3e. Do you think there are any problems with the proposed change?

Add your response here.

Question 4:

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?

☒ Yes ☐ No ☐ Unsure

Please comment

Guidance would assist leaseholders to understand the expectations for their management of Crown land, and provide information to assist that management. For example, guidance on archaeological sites and the requirement of the HNZPT Act not to modify or destroy an archaeological site without first obtaining an archaeological authority. Planning activities to avoid sites. A high proportion of archaeological authority applications relate to developing tracks, and guidance could assist leaseholders negotiate the discretionary consent and archaeological authority processes.

Even if the Commissioner has granted a discretionary consent or the activity is a “minor activity”, it is important to note that the activity may still require an archaeological authority pursuant to the HNZPTA.
4b. Do you agree that this proposal will help improve the transparency of decision making in the Crown pastoral land regulatory system?

☒ Yes ☐ No ☐ Unsure

Please comment

Add your response here.

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?

The criteria and principles that are being applied to assess the activity;
The information that has been provided by the Lessee;
Expert assessments/peer reviews of the information provided;
The opportunity to participate in the process; and
Ultimately a copy of the decision report which sets out how the criteria have been applied and how the decision was reached.

4d. How should standards be used to help increase transparency? How should guidance be used?

Add your response here.

4e. What other mechanisms could be used to improve transparency?

Add your response here.
4f. Which mechanisms do you think would be most effective in improving transparency?

Add your response here.

4g. Do you think there are any problems with the proposed change?

Add your response here.

Question 5:

5a. Do you agree that the Commissioner should be required to give effect to the proposed outcomes in any discretionary consent decisions?

☒ Yes ☐ No ☐ Unsure

Please comment

Outcomes must be given effect to in decision-making on day-to-day activities that could affect the outcomes, individually or cumulatively.

5b. Do you think that the proposed approach ensures that decision making will support the proposed outcomes for Crown pastoral land?

Proposal 4 requires the Commissioner to give effect to a set of outcomes in any discretionary consent conditions, so provided the set of outcomes referred to is the same as the proposed outcomes for Crown pastoral land then it will.
5c. What other mechanisms could be used to ensure decision making supports the proposed outcomes?

| Requirement for the Lessee in their application to demonstrate how granting the consent will support/achieve the proposed outcomes. |
| Participation and input from relevant parties. For example – if you are going to talk about Treaty principles and effects on cultural values – talk to mana whenua; effects on historical and cultural heritage values – talk to Heritage New Zealand Pouhere Taonga. |
| Appeal rights where the decision does not support the outcomes. |

5d. What specific matters should be considered when deciding whether to approve an application?

| How granting the application would support/achieve the proposed outcomes |
| Any potential adverse effects that would be contrary to achieving/supporting the proposed outcomes |
| Any potential adverse effects arising from the proposed activity |
| Any potential adverse effects on the inherent values of the High Country, including effects on historical and cultural heritage values. |
| Effects on the natural and social capital of the High Country, using a broad approach that includes the iconic landscape and activity, described earlier as intangible heritage. |
| Views and assessments from appropriate agencies and parties. |
Question 6:

6a. Do you agree that the Commissioner should be required to obtain expert advice and consult on discretionary consent decisions?

☑ Yes  ☐ No  ☐ Unsure

Please comment

Yes, the LINZ Crown Property team may not have the resources or capability to be assessing all elements of discretionary consent applications. Just as LINZ is required to consult with DOC for their views, there are multiple other parties who are best to liaise with regarding other matters.

As stated above, – if you are going to talk about Treaty principles and effects on cultural values – talk to mana whenua; effects on historical and cultural heritage values – talk to Heritage New Zealand Pouhere Taonga – especially with regard to archaeology as the HNZPTA manages the legislative requirements with regard to archaeological sites, and it is a finable offence where any archaeological site is modified or damaged without an archaeological authority.

6b. In what situations do you think the Commissioner should seek information from experts or the public on the impacts of proposed activities?

See above. There may be synergies through considering discretionary consents alongside local authority processing of resource consent applications under the RMA, or archaeological authority applications under the HNZPT Act.

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.

The Commissioner has the ability to delegate his powers to another LINZ employee, and as such this may result in inconsistencies with the decisions that are reached. Guidance on decision-making could be considered where this occurs to help support consistency.

Decision-making is a specific skill, and as such, perhaps there should be a requirement for those who are performing as independent commissioners to be accredited, similar to those who operate in the RMA space.

Using an independent commissioner or Panel of independent commissioners avoids any real or perceived conflict and it removes any political pressures.

A combination of independent commissioners (including the Commissioner (of Crown Lands) depending on the potential effects or issues and scale of proposed activity would be an appropriate way to determine discretionary applications.
Question 7:

7a. Do you agree that the CPLA should be changed to allow for fees to be charged for all discretionary consents?

☐ Yes  ☐ No  ☒ Unsure

Please comment

Charging for discretionary consents would be in line with the way resource consents are charged for by local authorities, in accordance with their statutory administrative charging policy. However, charging for consents could mean non-compliance.

Currently Heritage New Zealand Pouhere Taonga does not charge for archaeological authority applications. A key driver for this is to ensure compliance with the Act without the consideration of fees as a deterrent.

7b. How might charging application fees for all classes of discretionary consents impact on applicants? Please provide the reasons for your view.

There are some activities which will require additional consents or instruments to be prepared. For example, resource consents which are on a user-pays basis, and instrument preparation by the Commissioner in some instances requiring registration, and archaeological authorities, which are currently not charged for (as described above).

It seems fair that the user of a public resource pay for activities not covered by the intentions of the lease, but charging could lead to non-compliance and damage.

Question 8:

8a. Do you agree that the Commissioner should be required to regularly report against a monitoring framework?

☒ Yes  ☐ No  ☐ Unsure

Please comment

See comments above relating to the requirements for reporting on the targets and key performance indicators in an SPE.

8b. What other mechanisms could be used to ensure the outcomes of the Crown pastoral land regulatory system are better understood?
Publication of an annual report

8c. What information do you think is most valuable to understand system performance?
Reporting against key performance indicators.

Question 9:

9a. Do you have any feedback on the preliminary analysis in section 6?

Heritage New Zealand supports:

Proposal 2 – and the SPE should give effect to a Statement of Intent, long term plan or strategy (say prepared 5-yearly). This should be publicly available, and it should cover the full range of values in the definition of “inherent value” and how these values will be identified, recognised and protected. The SPE should contain specific measurable targets and actions to achieve them. Heritage New Zealand supports a forward programme of identification, recognition and protection of inherent values.

Proposal 3 - guidance is critical to assist the understanding of the “inherent values” and how best to conserve these values – for leaseholders, and for LINZ and DOC staff. Guidelines should be prepared in consultation with relevant expert agencies.

Proposal 4: as mentioned above, criteria and anticipated outcomes should apply to all decision-making. These outcomes should be “given effect to” not optional.

Proposal 5: as discussed above, the Commissioner should be required to obtain expert advice, and this should not be optional. For example, where there is the potential for historical and cultural heritage (including archaeology), it should be mandatory to consult Heritage New Zealand.

Unsure: Proposal 6: charging distributes costs equitably but could have unintended consequences, see above.

Proposal 8: monitoring is critical to determining whether outcomes are being achieved, and should be linked to the proposed statement of performance expectations.

9b. Are there any other comments you’d like to include in this submission?

Overall, Heritage New Zealand recommends that a system is put in place for the systematic identification, protection and conservation of historical and cultural heritage values on Crown Pastoral land. Objectives covering this should be set out in a long term plan and specific targets and funding mechanisms in a statement of performance expectations, and the results reported on annually.

Any disposal of Crown land will need to go through the Crown Land Disposal
process, including an assessment of heritage values by Heritage New Zealand, and recommendations for protection of these values. The assessment can be complex, and is most effective if it is done when disposal is first being considered, rather than ticking a box when decisions have already been made.
Releasing submissions

We may choose to publish submissions from this consultation on the Land Information New Zealand website. We can remove your name from your submission if you want us to. Please let us know below.

(Required)

☐ You may publish my submission with my name on it.
☒ Please remove my name from my submission before you publish it.

Your submission will be subject to requests made under the Official Information Act (even if it hasn't been published). If you want your personal details removed from your submission, please let us know below.

(Required)

☐ Include my personal details in responses to Official Information Act requests
☒ Remove my personal details from responses to Official Information Act requests

Note that the name, email, and submitter type fields are mandatory for you to make your submission.

When your submission is complete

If you are emailing your submission, send it to cplc@linz.govt.nz as:

- PDF
- Microsoft Word document.

If you are posting your submission, send it to:

Crown pastoral land consultation
Land Information New Zealand
PO Box 5501
Wellington 6145
The High Country Accord Trust

Response to the Crown’s Discussion Document: Enduring stewardship of Crown pastoral land

11 April 2019
### Contact information

<table>
<thead>
<tr>
<th>Name*</th>
<th>Philip Todhunter - Chairman</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organisation (if applicable)</td>
<td>High Country Accord Trust</td>
</tr>
<tr>
<td>Address</td>
<td></td>
</tr>
<tr>
<td>Phone</td>
<td></td>
</tr>
<tr>
<td>Email*</td>
<td></td>
</tr>
</tbody>
</table>

### Submission type*

- [ ] Individual
- [x] NGO
- [ ] Local government
- [ ] Business / Industry
- [ ] Central government
- [ ] Iwi
- [ ] Other (please specify)

*Questions marked with an asterisk are mandatory*
Background to the Accord

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 Crown Pastoral Land Act 1998 (’CPLA’) and the Land Act 1948 (’LA’), 'with a view to ensuring the future economic, environmental and social sustainability of the South Island High Country.'

There is substantial alignment between the stated objectives of the Accord and the themes of the Discussion Document.

The Accord (and its members generally) acknowledge the Minister’s personal interest in the High Country and the high level of public interest in the Crown’s management of pastoral leases. The Accord looks forward to engaging with the Minister and her officials beyond the current Discussion Document.

As lessees, and the Crown’s contractual counterparty, we are the group most directly interested in, and affected by, any relevant policy, legislative or regulatory changes. Each of us has invested (in many cases over multiple generations) enormous human and financial capital in our properties. The decisions being foreshadowed in the Discussion Document will materially impact our daily lives, our families, our incomes, and our futures, as well as those of many others in our rural communities and in the many businesses which depend on our products.

Importantly, our relationship with the Crown is fundamentally contractual. It arises from the alienation of land by the Crown to us through the pastoral lease instrument.

The Accord will, therefore, be concerned to ensure that the Crown does not unlawfully erode the property rights granted to lessees under their respective contracts as it progresses this review of its role in managing its residual interest in the land.

The Accord will be vigilant in ensuring that, if and to the extent that the Crown takes existing private property rights, then the Crown must pay fair and appropriate compensation.

Summary of position

We disagree with the Government’s decision to end tenure review.

We comment on this decision in further detail below, but for the moment record that, having made the decision to remain a long term holder of the lessor’s interest, the Crown will only achieve its objectives through constructive engagement with lessees.

If the Crown is to remain the lessor of pastoral leases there is a need to establish a new relationship with lessees which is founded in an enduring recognition by both Crown and lessees that the effective and sustainable management and stewardship of Crown pastoral land requires the Crown and lessees to work together, with each party respecting the contract between us.

We note, and appreciate, that this theme is also recognised by officials in the briefing papers to the Minister released on 2 April 2019.

The future relationship between the Crown and lessees will require the Crown to stop periodically abusing its position of dominance, and instead recognise the positive contributions

---

1 Clause 4.1 of the High Country Accord Trust Deed dated 23 November 2003
made by High Country farmers and their families to the environment, their local communities and the national economy. It requires the Crown to recognise the alienation to lessees of the property rights represented by the lease contract, and that unilateral action is not an effective path to its desired outcomes.

The Accord, for its part, accepts that a corollary of such an approach by the Crown is that lessees must likewise work effectively with the Crown, the Commissioner of Crown Lands, and his delegates.

Separately from the decision to end tenure review, there are many themes in the Discussion Document with which the Accord sees potential for common ground to be established with a constructive engagement by the Minister. However, the present lack of detail as to implementation means the Accord reserves its final position on many matters. As the Crown’s contractual counter-party, the Accord and lessees expect, and look forward to, a constructive engagement with the Minister and officials in developing the detailed implementation of proposals to advance better environmental outcomes.

Since 1948 pastoral lessees have as a rule been steadily improving the quality and protection of the environmental values of the High Country as at that date. We have been the ‘delivery agent’ for addressing the Crown’s concerns for the environment. There are numerous examples of lessees’ extensive covenanting in favour of QEII Trust, voluntary grazing management practices, and predator control programs; all designed to enhance our indigenous biodiversity.

That process of incremental improvement can be continued. The remaining group of approximately 150 pastoral leases (after conclusion of the remaining tenure reviews) is large by land area but not a large group of individuals. It is of a size with which the Crown can engage. As a group, and as individuals, holders of the remaining pastoral leases can be collaboratively engaged as ‘solution seekers’.

The Accord believes that beyond the CPLA amendments necessary for ending tenure review many of the Government’s desired outcomes can, and should, be achieved with such engagement, and without legislative or regulatory reform. The Crown cannot achieve a relationship of partnership through regulation.

It is also important to recognise, however, that each pastoral lease is unique in its biodiversity, its landscape, its heritage and its farming proposition. No two leases are the same.

Two immediately adjoining pastoral leases are typically vastly different in their attributes. They will almost always involve substantially different farm management practices and they will all require individually tailored approaches to the management of their non-farm values.

If the Crown adopts such an individualised and collaborative approach, however, the prospects of achieving its stated vision increase significantly and will prove much more enduring.

The Government’s decision to end tenure review – general comment

The Government’s decision to end tenure review is a bad one.

It was made with no effective consultation with lessees, and the reasons justifying the decision lack merit. The Accord agrees with officials’ advice that there will be many instances where
tenure review would continue to be the best mechanism to achieve the Government’s objectives of safeguarding biodiversity, landscape and cultural values.²

The majority of the 127 completed and implemented tenure reviews have achieved good outcomes for all concerned. As the Discussion Paper records, more than 300,000 hectares have passed to the conservation estate and the public now has access to vast, sometimes previously inaccessible, areas. At the same time, substantial economic benefits have flowed to New Zealand from previously leased land being freed for more flexible land uses, albeit still regulated by a broad framework of existing legislation.³

The problems of perceived inappropriate subdivision, or inappropriate farm intensification, have arisen in only a small number of cases. They have usually been characterised by poor (and avoidable) decision making on the part of officials.

Unfortunately, the profile of these few have projected onto the process generally. The lack of a widespread understanding of the nature of the lease contract, and poor levels of public understanding of the benefits which have been achieved by the majority has had the unfortunate result of a bad political decision.

At the same time little attention has been paid to the monitoring and results of the management by DoC of the land which has passed from leasehold management to the conservation estate.

The more appropriate policy response to the perceived concerns would therefore have been to retain the option of tenure review within the Crown’s management toolbox, with attention focused on fixing the tactical and operational failings of the present process within LINZ and DoC.

The Government’s decision to end tenure review – what to do with existing tenure reviews

The Crown must obviously respect its contractual obligations arising from signed Substantive Proposals.

The Crown should also continue tenure review negotiations in good faith with all those leases identified in Table 2 of Annex 4 of the Minister’s Cabinet Paper who wish to do so.⁴

The requirement for good faith continuation of negotiations reflects the reasonable expectation of lessees within the tenure review process that their substantial investment of time and resources will be reciprocated by the Crown not acting unilaterally for political reasons outside the framework of the CPLA.

Continuation of these reviews will also ensure that the substantial investment of public funds is not wasted.

The Pastoral Lease Contract

The Government’s Discussion document provides an inadequate (and at time inaccurate) historical context to the pastoral lease. That context is complex, and arguably has never been

---

² Paragraph 13 of BRF19-009
³ See also BRF 19-009 generally
⁴ Page 34 of CBC-19-Min-001
adequately explained to the public. The result has been unfortunate misconceptions in the public mind about the ‘deal’ that was done in 1948 between the Crown and High Country land owners.

For present purposes it is enough to record that at that time (i.e. the 1920’s – 1940’s and continuing into the 1950’s) the Crown was disposing throughout rural and urban New Zealand of almost all its (at that time still very substantial) post-colonial interests as lessor in leasehold and licensed land.

An exception was made in the case of the South Island High Country pastoral land from other types of Crown land. At that time the Crown was concerned by the increasingly apparent adverse impacts of pest animals (primarily rabbits) and weeds. These were threatening biodiversity and soil stability.

The Minister of Lands at the time of the Land Act 1948 was passed, the Hon C F Skinner, observed (Hansard, Vol 284 NZPD p 3999) that the purpose of establishing pastoral leases was that “it may be necessary for some control to be exercised over the type of land contained in these leases for soil conservation purposes, to prevent erosion, and regenerate some of the hill country contained in the leases”.

The lease and licence holders of the time had little incentive, however, to manage these problems because of lack of security of tenure. In March 1949 the Minister of Lands wrote to lessees and licence holders and said:

I referred previously to pastoral land being held on pastoral lease or pastoral occupation licence. Neither of these tenures gives the lessee the right to acquire the freehold, for the reason that there are special circumstances relating to pastoral lands (soil erosion, control of rabbits, prevention of overstocking, prevention of indiscriminate burning, and so on) which can best be provided for if the land is held under lease or licence rather than on freehold tenure. However, to give as many holders of pastoral land as possible absolute security of tenure, provision is made for pastoral lands to be let on lease for thirty-three years, perpetually renewable as of right. This will be a considerable advance on the present pastoral run licence, under which on expiry the Governor-General determines whether or not the land is to be again let on licence and, if it is to be let again, whether the run should be subdivided. Where the land is not suitable for a pastoral lease, it will be let on pastoral occupation licence for any term up to twenty-one years.

You will see, therefore, that the tenancy of pastoral lands is definitely improved by abolishing the possibility of subdivision on expiry, and by making provision for a pastoral lease perpetually renewable as of right where the land is suitable for such a tenancy.

Therefore, instead of an outright alienation of all the bundle of rights associated with freehold ownership (as it was doing elsewhere in New Zealand), the Crown retained to itself the right to limit the use and disturbance of the land and to require the owner to undertake environmental management obligations of weed and animal pest control and erosion control.

---

5 See The New Zealand Fish and Game Council v A-G & Others CIV2008-485-2020 High Court Wellington, 26 March 2009, France J paragraph 75

6 Quoted in The New Zealand Fish and Game Council v A-G & Others at paragraph 77
In preferring a leasehold tenure which gave ‘absolute security of tenure’ the Crown locked in place an enduring contractual relationship. The monitoring and consent processes of the CPLA are consequently a function of that contractual relationship and the terms of the pastoral lease. They are not a separate and distinct regulatory system. Understanding the contractual nature of this relationship provides the key to the Crown achieving successful outcomes in the High Country.

Today, the environmental objectives of 1948 could have been achieved by a grant of freehold supplemented by other more creative legal mechanisms, but in 1948 the perpetually renewable pastoral lease was the mechanism chosen to deliver these goals. Except for the express limited retained rights the Crown alienated almost the entire bundle of property rights to the lessee to provide ‘absolute security of tenure’. The Crown’s residual interest is defined by the lease terms and constrained by the rule of law.

Central to the rights alienated to leaseholders are the right to exclusive possession and the right (and obligation) to undertake pastoral farming.7

As officials have noted the original goals of improved environmental outcomes have been delivered.8 The High Country of 2019 is in substantially better state than it was in 1948, and this process of environmental enhancement will continue under the stewardship of lessees.

To the extent that the Crown wishes to support that stewardship role in a collaboration with lessees as its lessor (not as a regulator), this sentiment is welcomed.

But the Crown must recognise that the extent to which the Crown can unilaterally achieve its environmental and social objectives today without the agreement of lessees is limited by the terms of the leases designed in 1948. These contracts delineate the Crown’s contractual rights of environmental control.

Officials have noted that the Crown does not have a right to control ecology and improve biodiversity.9 That is however precisely what is inherent in the Government’s proposed outcomes. These proposed outcomes therefore fundamentally seek to re-weight the property rights originally alienated by the lease by providing a mechanism for the imposition by the Crown of additional purposes against which all other activities, including pastoral farming, are subservient.

That is unacceptable to lessees. As officials have noted:

There are fundamental constitutional principles and values in New Zealand law and practice that often run so deep that the Courts will draw on them when interpreting legislation or otherwise deciding case. These principles include the rule of law and respect for property. 10

New Zealand’s reputation for observance of the rule of law and respect of private property rights should not be undermined.

That is not to say the Accord and lessees are not open to dialogue with the Minister and officials. Indeed, we are.

7 The New Zealand Fish and Game Council v A-G & Others ‘A lessee under a pastoral lease issued pursuant to the Land Act 1948 does acquire exclusive possession’ paragraph 84
8 See page 2 of the Paper ‘Background and History’ attached to BRF18-082
9 See diagram attached to BRF18-283
10 See paragraph 4 BRF18-283
The Accord believes that there is a way forward in which the Crown’s outcomes can be substantially advanced through representative dialogue and meaningful engagement at the level of individual farms.

Against the background of these comments we turn to the specific questions of the Discussion Document. Where the online form differs from the Discussion Document, the questions from the latter have been used.

**Question 1: What are your views on how best to manage the implications of ending tenure review?**

1a. How should areas of Crown land with inherent values worthy of protection be secured once tenure review is ended?

The question implies a process of assessment of inherent values across all leases. This is a substantial task, and one which should not be under-estimated.

Many tenure reviews highlighted the intensely subjective assessment of inherent values and especially those which met the threshold of ‘significance worthy of protection’.

This followed a lengthy (and presumably costly for DoC and LINZ) property specific values assessment which were often characterised by errors of detail and inappropriate generalisation.

Many tenure reviews were consequently bogged down by disagreements between the parties, resulting in delay, frustration and further cost.

Much of that was because the CPLA mandated a preference for Crown ownership of such inherent values. With Crown ownership of inherent values no longer an option, it is possible that the intensity of disagreement as to values may be less.

However, much will depend on the approach adopted by DoC, and LINZ and the nature of the proposed protective mechanism. A unilateral process of values identification would more likely lead to greater levels of dispute where the resolution process is more complex than a simple decision to end tenure review. The design of the process for identification and classification of values will accordingly require care and considerable consultation.

In each case where a value worthy of protection is identified, however, it needs to be recognised that the lease contract provides the leaseholder with the right to farm the entire leased area and the right of exclusive possession.

To the extent that the Crown wishes to protect inherent values by way of a legal mechanism (e.g. restrict grazing in any area of the lease or register conservation covenants) other than by way of ownership through tenure review (or any replacement mechanism), this will require a negotiated agreement between the Crown and lessee on a case by case basis (as has often historically occurred, for example through land improvement agreements).

Because the relationship between the Crown and lessee is fundamentally contractual, and the law already provides for a wide range of contractual mechanisms for land management, no legislative change is required. Indeed, legislation may result in limited flexibility by prescribing the terms of protective instruments, with a consequential impediment to agreements being reached.

It should also be noted that National Policy Statements, Regional Policy Statements, Regional and District Plans under the Resource Management Act all provide a general...
process of identification and protection of inherent values.

The need for any further legislative response must be seriously questioned when it would be directed not in any coherent general way to the High Country as a whole and the New Zealand public at large, but to a small discrete group of land owners.

1b. How should public access to Crown pastoral land be secured once tenure review is ended?

The Fish & Game decision in 2009 confirmed that the lease contract provides the leaseholder with the absolute right to exclusive possession and quiet enjoyment of the alienated land.

It is a major frustration to lessees that this fundamental right is once again implicitly questioned by the Discussion Document. The way the Discussion Document has been framed has served to generate further public expectations of ‘as of right’ access.

As happened when the Fish & Game Council decided to take the issue to Court, so too will this approach tend to deplete the goodwill of farmers and their willingness to grant public access.

The Crown should also recognise that this store of goodwill is increasingly drawn on by the inconsiderate and often destructive acts of a public who are increasingly unfamiliar with the expected standard of conduct by visitors to the High Country.

Securing public access starts with a recognition that access to leasehold land is granted as a privilege – not a right, and that the granting of that privilege requires reciprocated respect along with various responsibilities to act appropriately (such as leaving gates as they are found, no defecating, no rubbish, no camping etc.) and not outside the permission granted.

Developing this understanding will often obviate any need for formalised public access arrangements. Enforced formalisation has obvious risks to the relationship with the Crown and public.

While the Land Act provides a mechanism for the creation of easements for appropriate compensation, this mechanism should not be used generally for public access because it fundamentally undermines the farming proposition and the rights alienated by the Crown under the lease.

The quoted comments of the Minister of Lands in 1949 make it clear that it was never in his contemplation that the Land Act would be used in this manner, rather the relevant section was intended as a means by which pragmatic outcomes could be achieved for purposes of an incidental nature which did not go to the fundamental alienation (by way of example an adjoining land owner being able to take an irrigation pipe over an adjoining leasehold property).

Any general public access must, accordingly, only be by way of bi-lateral negotiations between Crown and Lessee underpinned by a recognition by the Crown that this requires fair compensation for what is effectively a resumption of ownership of a defined part of the demised land.

The Crown also needs to consider that many leaseholders own freehold land adjoining or in the vicinity of their pastoral leases, through which public access is provided. A consequence of unfair actions in connection with leasehold land may put at risk public access through such freehold land.
A critical element of the negotiation of any public access will be identification and allocation of responsibilities under Health & Safety legislation. Farmer concern about their liability for public safety is a major factor in public access decisions. Recent publicity of a serious twin fatality accident on a farm property involving unauthorised public access is an indication of the problems increasingly faced by lessees, whose ability to monitor access and respond to emergencies is constrained. They are nevertheless the unpaid and often unacknowledged first responders.

1c. Are there any other mechanisms that could be used to protect significant natural values or secure public access on Crown pastoral land?

No.

There are already enough covenancing mechanisms in existing legislation for use in bilaterally negotiated protection outcomes.

Separately the tools of National and Regional Policy Statements, along with Regional and District Plans are more than enough for general protection mechanisms.

1d. Do you have any views on the proposed transitional arrangements for ending tenure review?

Yes – all those leases already in tenure review should be given the opportunity to continue.

All those lessees which have had Preliminary Proposals published for public consultation have in effect reached an ‘in principle’ agreement with the Crown. Those lessees have a reasonable and legitimate expectation that the Crown will continue in good faith and allocate enough public resource to see the job done.

Not to do so will have a serious impact on those farms. Each will have elected to enter the tenure review process for a compelling commercial reason, and they will have incurred substantial cost in reaching this stage.

In the case of all leases in tenure review, the Crown’s unilateral proposal to end tenure review will result in substantial wasted expenditure of public money and the unreasonable depriving the lessee of the opportunity underlying the two parties’ decision to enter tenure review.

It will also mean that the Crown will not derive the benefits that have presumably motivated the decision to publish the Preliminary Proposal.

The reasonableness of the Minister’s decision to end tenure review is therefore open to question.

Separately, neither the Discussion Document, nor the Briefing Papers released on 2 April reflect, any consideration of the additional resources required by LINZ for transitioning to a different style of management. As outlined, many of the existing frontline staff of LINZ will need to be replaced by new staff with skills more
appropriate to the Government’s aspirations.

**Question 2:**

2a. Do you agree with the proposed outcomes?

☐ Yes  ☒ No  ☐ Unsure

Please comment

No.

While the Accord recognises that sound policy principles suggest that there should be clarity about the Crown’s desired outcomes, those outcomes in this context should:

- Be clear and unambiguous (so that officials and lessees (and Courts) have no difficulty in giving effect to their intended meaning)
- Be capable of straightforward and cost effective application
- Clearly allocate responsibilities for delivery of outcomes
- Be consistent with the existing private property rights already alienated by the Crown under the lease instrument
- Be consistent with the rule of law and established constitutional principles.

The proposed outcomes set out on page 23 of the Discussion Document do not meet these tests and require re-stating.

The Accord believes there is an opportunity to define outcomes which will be acceptable to both the Crown and lessees and provide an enduring foundation for the shared stewardship vision which is articulated by the Discussion Document. The Accord would welcome the opportunity to develop these ideas with the Minister and officials.

A better articulation of outcomes would be:

‘The Crown will:

- safeguard for present and future generations the natural landscapes, indigenous biodiversity and heritage values of Crown pastoral land whilst recognising the contractual rights of pastoral lessees and the principles of the Treaty of Waitangi;
- promote the enhancement of indigenous biodiversity in Crown Pastoral land through the sharing of responsibility for the stewardship of Crown pastoral land with lessees’

This articulation does not fundamentally change the contract of the pastoral lease in the way presently proposed by the Government.
It avoids the definitional uncertainties of ‘natural capital’\(^{11}\) (and consequential legal risks) but captures the key issues of Crown concern in plain accessible language.

It allows for the farming of the pastoral leased land in terms of the lease and does not make farming a subservient activity.

It reflects the concept of shared stewardship which will assist achieving better environmental outcomes.

Finally, it avoids the objectionable and threatening reference to the Crown deriving a ‘fair financial return’ which is legally misconceived and fundamentally inconsistent with the rent fixing mechanisms provided for by the Land Act in 1948 and more recently by the more certain codification of rent calculations in the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012.

The current rent mechanism was implemented with the support of the lessee community following a very successful collaboration and joint resolve to move forward from the *Minaret* decision. The present mechanism is consistent with the agreement enshrined in the 1948 legislation when enacted in 1948 and provides the right degree of certainty and flexibility to endure.

Importantly, it is also a mechanism which supports the lessees’ ability to share the stewardship responsibility sought by the Crown. It avoids the scaling back of expenditure by farmers on environmental enhancement projects, in both cases at the expenses of better environmental outcomes. Conversely, revisiting rents will inevitably create pressures to increase productivity and at the same time scale back environmental enhancement budgets.

To the extent that it is relevant to consider the Crown’s ‘financial return’, it should be recognised that this needs to be measured beyond the direct rental revenues generated by the leases, and needs to take account of:

- the costs of weed and pest control directly assumed by the lessee;
- the avoidance of further additional land management costs which would otherwise be borne by the Crown in the event the land is not managed by the lessees; and
- the overall, direct and indirect, economic benefits delivered to New Zealand by the pastoral lease sector.

There is an implicit proposition in the Discussion Document that the Crown wishes to place at risk the merino wool and meat sector and the various benefits it provides\(^{12}\). It is notable that none of the briefing papers prepared by officials and released to date seem to have addressed the wider economic risks of the regulatory change outlined.

That analysis needs to be undertaken before possible legislative change is advanced further.\(^{13}\)

---

\(^{11}\) See for example *The Start of a Conversation on the Value of New Zealand’s Natural Capital* New Zealand Treasury Discussion Paper 18/03 February 2018

\(^{12}\) See Pawson E. and others *The New Biological Economy* chapter 4 “The Merino Story”

\(^{13}\) See also the answer to 2(e)
2b. Do the proposed outcomes capture all the things the Crown should focus on? What's missing?

The Crown has insufficiently detailed its proposals for its contribution as a partner in stewardship of the land. What is the Crown proposing to bring to the table?

The Crown’s Discussion Document and the proposed outcomes likewise do not address by way of comparison the Crown’s stewardship of land in the South Island High Country which is already in wider Crown ownership (under either DoC or CCL management) or has come into Crown ownership through tenure review.

To that end, there is a need for the Crown to demonstrate leadership by transparently disclosing its own record of managing such properties, including detailing its investments in weed and pest control, as well as how it has benchmarked and measures its own performance as regards its stewardship of inherent values in such land.

Perhaps it might be helpful if the Crown should be required to develop and publish a regular Statement of Performance Expectations in relation to such land as well as the leasehold estate.

2c. Do you agree with the use of ‘natural capital’ rather than ‘ecological sustainability’ in the proposed outcomes?

☐ Yes ☒ No ☒ Unsure

Please comment

No - see above. One unsatisfactory term is substituted with one which is more uncertain and incapable of definition.

The term ‘ecological sustainability’ was only relevant for the purposes of tenure review. The repeal of the relevant part of the CPLA will remove any definitional difficulties with this term, and it cannot be used as a justification for the adoption of ‘natural capital’ as a test for measuring discretionary actions (which does not reference ‘ecological sustainability’).

Further, while there is substantial international and national interest in utilising the concept of ‘Natural Capital’, we believe that the necessary frameworks and methodologies required to identify natural capital are presently largely only theoretical, insufficiently certain, and unable to be practically adopted as a legal framework.\(^{14}\)

It is also highly questionable that the concept of ‘natural capital’ should be used without the context of the other capitals – social, human, financial and manufactured.

The utility of these concepts will depend much on how they are expressed to relate to each other.

Furthermore, there is a tendency to view the South Island High Country (freehold,

\(^{14}\) See for example ‘The Start of a Conversation on the Value of New Zealand’s Natural Capital’ New Zealand Treasury Discussion Paper 18/03 February 2018
leasehold, unallocated Crown land, and DOC land) as a landscape largely un-modified by human intervention. Such a view overlooks the substantial pre-European and post European human initiated landscape modifications.

In the case of freehold and leasehold land, from first occupation in the 1850’s, farmers throughout New Zealand have changed the unimproved capital of their land resource.

Applying the concept of an assumed Natural Capital to an already substantially man-modified landscape raises significant issues.

The term will inevitably give rise to increased numbers of disputed CCL decisions, cost and legal risk due, not least, to its uncertain meaning.

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?

We are not aware, and nor does the review document indicate, that there are any present issues in this regard, making it difficult to answer this question fully.

As a matter of general principle, however, the Accord welcomes consultation by the Crown with Ngai Tahu whenever the Crown is required to make a decision in respect of Crown pastoral land and Ngai Tahu interests are affected.

Appropriate procedures will need to be developed to ensure that where appropriate (e.g. the rights of the lessee are in issue) such consultation involves the lessee as the party with the right of exclusive possession.

Separately there will be scope for direct engagement between lessees and Ngai Tahu on matters of interest. For example the Ka Huru Manu (mapping project) is one area where there is no need for the Crown to interpose itself in the development of the iwi/lessee relationship.

2e. What are the qualities and features of Crown pastoral land that you value the most?

Pastoral leases – and indeed High Country pastoralism - have become part of the cultural fabric of New Zealand and are responsible for a significant part of New Zealand’s international image and reputation. We understand and appreciate the sense that the High Country represents part of what the ‘concept’ or character of New Zealand entails.

But beyond the ‘feel good’ factor are significant, tangible and intangible contributions to New Zealand’s primary and tourism/services economies, all of which need to be considered by the Crown when it reflects on the return generated by the High Country.

The New Zealand ‘100% Pure’ brand and New Zealand’s reputation for high quality, authentic and safe primary products are built largely off the back of the High Country farmer.

The direct economic benefits from a robust high country pastoral sector now being realised by the merino sheep and wool industry are enormous, but so too are the indirect economic benefits to New Zealand’s tourism and associated sectors.

How does one measure the indirect contribution to tourism (over and above the jobs
they create and the taxes they generate) of AllBirds shoes, Icebreaker, SmartWool, Kathmandu, the Italian high fashion industry, Silere lamb, the New Zealand venison industry and the Cervena brand (to name just a few)?

All these businesses have their foundations in a successful High Country sector.

Eroding the High Country sector by undermining its economic sustainability threatens those foundations and will ultimately harm the environment.

2f. What does enduring stewardship mean to you? What is the role of the different groups that play a stewardship role – the Crown, leaseholders, iwi, and other stakeholders? How can these groups most effectively work together?

The primary bi-lateral contractual relationship between lessee and lessor must remain the foundation of the way in which the Crown and lessees work with each other for the stewardship of the leased land.

Lessees do not have a contractual relationship with iwi and the public at large. Accordingly, whilst the Accord recognises that the Crown has stakeholders to which it needs to have regard, the Accord does not accept that any such parties, as of right, have a place in the stewardship of the leased land.

The Accord recognises that there are many successful examples of Stations working with groups on specific initiatives such as pest and predator control. Those initiatives are to be encouraged by informal processes – not mandated processes with centralised control.

With respect to the Crown’s aspiration for ‘enduring stewardship’ it needs to be recognised that under its contract with lessees the Crown allocated the responsibility for land stewardship to the lessee.

The Crown did not retain the right for adopting an active stewardship role. Rather it retained a contractual role of monitoring compliance with the environmental obligations in the lease, and a consenting role for discretionary actions.

To the extent that the Crown seeks to change that role by creating a new ‘regulatory’ framework it is inherently varying the terms of the lease contract.

That does not preclude, however, a discussion as to how the Crown can contribute in the discharge of stewardship responsibilities, as to how lessees might advance the Government’s objectives for biodiversity.

To the extent that individual properties establish relationships with other organisations within their communities for the purposes of shared stewardship, that is a matter to be driven by lessees and those organisations (with possible initiation or facilitation by the Crown in some instances). This does not require any legislative reform, but rather meaningful engagement.
Question 3:

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  ☒ No  ☐ Unsure

Please comment

It is appropriate that the Commissioner be accountable and be required to adopt a reporting process which enables that accountability and provides transparency.

This should promote a better public understanding of the respective interests and roles of the Crown, the Commissioner and lessees in pastoral leased land.

The Commissioner must, however, remain substantially independent of political direction. The Accord therefore supports a requirement that the Commissioner prepare and publish a statement of performance expectations prepared in consultation with the Minister.

The Commissioner may, but should not be required to, consult publicly on the Statement.

3b. Do you agree that this proposal will help improve accountability for decision making in the Crown pastoral land regulatory system?

☒ Yes  ☐ No  ☐ Unsure

Please comment (optional)

Question not answered.

3c. What other mechanisms could be used to improve accountability?

Question not answered.

3d. Which mechanisms do you think would be most effective in improving accountability?

Question not answered.

3e. Do you think there are any problems with the proposed change?
Question 4:

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?

☒ Yes ☒ No ☐ Unsure

Please comment

On balance - No.
We agree in principle with the idea of guidance and standards.
As a general proposition efficient (and hence cost effective) processes are enhanced by clear guidance.
But in our view the Commissioner does not require empowering legislation, and any such legislation may give rise to legal issues about the status of the guidance and standards. Hence there is a risk of increased dispute.
Developing such guidance requires care to ensure that enough flexibility remains to take account of the diversity in circumstances of each pastoral lease. No two leases are the same and the Commissioner needs to be able to make decisions on a case by case basis.

4b. Do you agree that this proposal will help improve the transparency of decision making in the Crown pastoral land regulatory system?

☐ Yes ☐ No ☒ Unsure

Please comment

Any improvement in transparency will be highly dependent on the quality of the standards and guidance.

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?
The general public needs a far better understanding of the history of pastoral leases and the nature of the contractual relationship between the Crown and lessee.

It would be helpful if there were a clear Government statement in the materials it distributes in future on this subject that the land held under Crown pastoral leases is, by its nature, privately held land.

4d. How should standards be used to help increase transparency? How should guidance be used?

Question not answered.

4e. What other mechanisms could be used to improve transparency?

The Commissioner could engage more frequently and meaningfully with leaseholders.

4f. Which mechanisms do you think would be most effective in improving transparency?

More frequent and meaningful engagement with leaseholders.

4g. Do you think there are any problems with the proposed change?

Question not answered.

Question 5:

5a. Do you agree that the Commissioner should be required to give effect to the proposed outcomes in any discretionary consent decisions?

☐ Yes  ☒ No  ☐ Unsure

Please comment

The Accord does not agree with the proposed outcomes as stated. Therefore, the Accord strongly disagrees with the proposal that the Commissioner should be required to give effect to the proposed outcomes in discretionary consent decisions.

As the outcomes are proposed, the farming activity is made subservient to the ‘maintenance and enhancement’ of conservation values.

In her answers to questions at the consultation meetings, the Minister made it clear that this was a deliberate and intended outcome.

As such there is a fundamental unilateral shift of the bundle of rights originally alienated by the Crown under the pastoral lease back to the Crown. This is contrary to
the Rule of Law.

Consents for discretionary actions cannot be withheld where to do so the Crown undermines the fundamental contract and objective of pastoral farming.

This appropriation of the lessees’ property rights would be demonstrated in practice by the carrying capacity of farms being steadily diminished as historic consents for maintenance of existing pastures, removal of re-generating weeds, replacing stock bridges etc. are withdrawn as being inconsistent with the stated outcomes.

This will lead to a cycle of diminishing capability for investment by lessees in desirable environmental outcomes and a progressive deterioration in the sustainability of the farming proposition. This will have directly adverse economic implications for lessees. There will, however, also be scope for considerably wider adverse economic implications for the businesses processing and selling our products.

The Government accordingly needs to be careful to ensure that its new approach does not have the pernicious result of undermining the achievement of its objectives.

If there were an agreed set of outcomes, then there is sense in discretionary consents being decided in a manner consistent with those agreed outcomes.

The Accord takes the view, however, that section 18 of the CPLA presently strikes broadly the right balance. The Discussion Document appears to regret the judgment allowed to the Commissioner. But the diversity of consents, values and farms is such that flexibility and judgment is required if the system is to work.

To the extent that there are problems with the current system, they stem from lack of transparency in the decision making process, inadequate staff resources, and lack of timely decision making. These are all matters which can be fixed without legislative change.

5b. Do you think that the proposed approach ensures that decision making will support the proposed outcomes for Crown pastoral land?

No. It is likely to slow processes, lead to disputes and legal challenges, as well as overlaying considerable costs. Ultimately it will undermine the objective of a partnership approach and the achievement of good environmental outcomes, including through eroding the capacity to invest.

5c. What other mechanisms could be used to ensure decision making supports the proposed outcomes?

Farm plans

The development of individual farm plans which align the processes under the RMA (a regulatory process) and the CPLA (a fundamentally contractual process) has the potential to substantially advance the Crown’s objectives for better environmental outcomes and at the same time provide a basis for a far better relationship between lessor and lessee.

Farm plans which agree the inherent values of a property, along with priorities for biodiversity, landscape and other values, and which then align farm management practices and plans have considerable potential to eliminate multiple consent processes.
The up-front investment by the Crown and lessees in achieving lessee and agency alignment should not be under-estimated, but over the longer term there will be considerable efficiencies, and a foundation laid for a much more constructive contractual relationship. If continuation of the existing cases under tenure review is ultimately not permitted, those properties which have had reports produced as to inherent values could utilise them in development of such farm plans.

Farm plans will typically contain sensitive information of a private or commercial nature and should not be available to the public.

**Offsetting**

As a matter of principle, the requiring of offsets for consents is an example of the Crown appropriating back to itself rights which it has previously alienated – namely the right to pastoral farming of the demised land.

The Accord therefore generally opposes the philosophy of offsets

Requiring offsets would also have negative practical outcomes. It would likely provide a disincentive to voluntarily undertake environmental projects, and instead incentivise such projects being kept for when they are needed.

It would also penalise those farmers who have historically undertaken environmental projects of their own initiative and reward farmers who have not with a greater ‘bank’ of future options to offer.

Notwithstanding these views there may be room for offsetting within the Commissioner’s toolbox to consider and apply in limited circumstances.

It will not be appropriate where the discretionary action has no adverse ecological impact and/or it is simply maintaining current farm management practices or obligations.

For example, the lessee is required to control gorse under the lease but in some circumstances is required to seek a consent. Such an application should not trigger an offset. Nor should a new fence or minor earthworks. The development of new pasture may, however, in some circumstances justify a proportionate offset.

Likewise, the cited example of a condition requiring the fencing of a wetland in response to an increase in a stock limit is unobjectionable if that requirement was proportionate to the consent being sought.

---

5d. **What specific matters should be considered when deciding whether to approve an application?**

The history of the property and consents already issued will be very relevant. The consent process should not be used to diminish the existing practice of farming and compromise the investments previously made in accordance with consents issued by the Commissioner.

It is also important that all conditions are proportionate to the consent being sought.

Therefore, the process has an inherent requirement for judgment and flexibility.
Question 6:

6a. Do you agree that the Commissioner should be required to obtain expert advice and consult on discretionary consent decisions?

☐ Yes ☒ No ☐ Unsure

Please comment

Most consent applications do not require special expert analysis. Requiring analysis and advice over and above the input provided by DoC is simply likely to cause delay and add expense. It may also hinder a culture of compliance and joint stewardship and partnership.

Some exceptional circumstances may require the Commissioner to seek expert advice beyond the resources immediately available within LINZ, if he is to meet his obligation to make a reasonable decision.

It is hoped, however, that if the Crown is to assume greater stewardship responsibility that will include appropriate (and efficient) resourcing of LINZ to provide that expertise.

6b. In what situations do you think the Commissioner should seek information from experts or the public on the impacts of proposed activities?

Consent applications should not be the subject of public consultation.

Introducing an element of public consultation fundamentally ignores the contractual (as opposed to regulatory) relationship between the Crown and lessee.

If public consultation is appropriate, then that will be a consequence of the proposed activity triggering the application of the existing rules of a District or Regional Plan. If not so triggered, then the matter is of insufficient significance to incur the costs and delay of a further process, which is, in effect, superfluous.

The High Country Advisory Group provides an informal forum for the Commissioner to gather wider views on non-property specific matters.

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.

Under the Land Act 1948 (as originally administered) a board rather than the Commissioner was the decision-making body. Consideration could be given to a governance model which re-established a board as the governance entity to which LINZ officials are delegated management and delivery responsibilities.
Such a model may result in better overall outcomes, but the Accord would only support such a change if it was satisfied that its composition ensured non-partisan decision making.

**Question 7:**

7a. Do you agree that the CPLA should be changed to allow for fees to be charged for all discretionary consents?

☐ Yes    ☐ No    ☐ Unsure

Please comment

Farm consents should not be the subject of a separate fee regime.

These are not provided for by the lease contract, and the imposition of such an arrangement is effectively a variation of the agreed rent setting mechanism.

A reasonable and proportionate charge for processing non-farm discretionary consent applications is unobjectionable in principle.

The issue is one of reasonableness and proportionality in fees, and process efficiency.

Presently LINZ is highly inefficient in dealing with consent applications. There are numerous examples of excessive delay (in many reported cases of more than a year), which implies high levels of avoidable cost, which lessees would object to shouldering.

In addition, to the extent there is duplication of processes within Crown and local authority processes because of their design, the consequential costs of such inefficiency should not be passed to lessees.

Lessees should certainly not incur the costs of any consultation process embarked upon by the Commissioner.

Where costs are imposed, they need to be set at levels which encourage a culture of voluntary compliance and co-stewardship, and which underpin a constructive relationship with the Commissioner and his delegates.

7b. How might charging application fees for all classes of discretionary consents impact on applicants? Please provide the reasons for your view.

As noted above, charging fees for pastoral activities would be a variation to the lease contract.

Economically, they will obviously reduce farm profits or increase farm losses (as the case may be).
Question 8:

8a. Do you agree that the Commissioner should be required to regularly report against a monitoring framework?

☒ Yes ☐ No ☐ Unsure

Please comment

Lessees accept that public officials are ultimately accountable to the public. Accountability implies a need for reporting.

8b. What other mechanisms could be used to ensure the outcomes of the Crown pastoral land regulatory system are better understood?

Better public reporting on the positive environmental outcomes being achieved by high country lessees.

8c. What information do you think is most valuable to understand system performance?

Question not answered.

Question 9:

9a. Do you have any feedback on the preliminary analysis in section 6?

The section 6 analysis is disappointing. Whilst necessarily in summary form, it reflects an unhelpful mindset of adversarial position taking by the Crown against lessees.

Further it confuses a contractual relationship under the leases with a regulatory function.

More fundamentally, it fails to acknowledge the possibility that the Crown and lessees might work together to achieve better and mutually advantageous environmental outcomes without legislative change (other than the acknowledged wish to repeal the tenure review provisions).

The opportunity to do so is there.

9b. Are there any other comments you’d like to include in this submission?

The Accord looks forward to taking up the Minister’s invitation for further consultation following the close of submissions on the Discussion Document.
Releasing submissions

We may choose to publish submissions from this consultation on the Land Information New Zealand website. We can remove your name from your submission if you want us to. Please let us know below.

(Required)

☒ You may publish my submission with my name on it.

☐ Please remove my name from my submission before you publish it.

Your submission will be subject to requests made under the Official Information Act (even if it hasn’t been published). If you want your personal details removed from your submission, please let us know below.

(Required)

☐ Include my personal details in responses to Official Information Act requests

☒ Remove my personal details from responses to Official Information Act requests

Note that the name, email, and submitter type fields are mandatory for you to make your submission.

When your submission is complete

If you are emailing your submission, send it to cplc@linz.govt.nz as a:

• PDF
• Microsoft Word document.

If you are posting your submission, send it to:

Crown pastoral land consultation
Land Information New Zealand
PO Box 5501
Wellington 6145
Enduring Stewardship of Crown Pastoral Land Consultation

11th April 2019

Contact information:

Carolyne Latham
Latham Ag Consulting Ltd

You may publish my submission with my name on it.

Please remove my personal details from responses to Official Information Act requests.
Enduring Stewardship of Crown Pastoral Land - Submission

My view on the end of tenure review is that tenure review should remain in the CPLA. Tenure review is a tool for dealing with the tenure of Crown pastoral leases. If no funding is made available by the Crown or if the CCL or lessee chooses to withdraw, it effectively ends. It is up to the CCL to decide if an invitation is accepted. It could suit the Crown in the future to encourage invitations from lessees of particular properties. The Crown has made an investment in developing the tenure review process and it would be pragmatic to keep the tool in the toolbox rather than throwing it away.

The best option for formally protecting significant inherent values on a pastoral lease is in a QEII covenant, in agreement with the lessee. Increased government funding could be provided to QEII National Trust to facilitate this more widely. Another option is for LINZ or other agencies such as DOC and Regional Councils to work in partnership with the lessee to identify and protect values. Full lease purchase by the Crown is also an option, provided there is a willing seller and the Crown has the resources to manage it.

Lessees already provide a high level of public access to their leases. Pastoral leases are working farms with associated hazards, some extreme, that must be managed. 24/7 unrestricted public access is often not practical. Post-tenure review, public access could be negotiated by the Crown in good faith with individual lessees, with appropriate compensation paid if agreement can be reached. Walking Access New Zealand is an agency that could be involved with this.

Funding is urgently needed for ongoing wilding conifer control programmes to protect inherent values.

Question 1:
What are your views on how best to manage the implications of ending tenure review?
You may also wish to consider:
- How should areas of Crown pastoral land with inherent values worthy of protection be secured once tenure review is ended?
- How should public access to Crown pastoral land be secured once tenure review is ended?
- Are there any other mechanisms that could be used to protect inherent values or secure access on Crown pastoral land?
- Are there any other implications of ending tenure review that the Government should consider?

- What does "secured and safeguarded" in the outcomes mean, in this context? Nature is constantly changing. What is the baseline?
- "Natural Capital" could be open to interpretation, so the outcomes should be stated more clearly.
- The outcomes understate the value and importance of high country pastoral farming to New Zealanders, and to the economy, communities, environment, and tourism.
- A suggested high level outcome: “The Crown will manage pastoral lease lands in a way that protects and balances indigenous biodiversity, water quantity and quality, mahi kai values, cultural values, significant natural landscapes, heritage values, high country farming values and communities, in a mountains to the sea context.” This values all aspects of the high country.
- The Crown should consult with iwi regarding how they see their involvement with pastoral lease administration.
- The quality and features of Crown pastoral land that I value the most is when there is a sustainable balance achieved between farming and conservation. I value the fact that the lessees are managing and living in our high country lands in what can be a very hostile climatic environment. I value the fact that the majority of lessees welcome visitors onto their properties.
At the consultation meeting it was confirmed that “Farm Plans” largely referred to Farm Environment Plans, but with a more holistic approach. Farm Environment Plans (FEP) (or Land Environment Plans) are becoming a widely understood and accepted tool for managing environmental risks on farms. A Farm Management Plan is different, it generally covers all activities on a farm and there will be a big range in how this is documented by individual lessees.

LINZ’s lease inspection reports already include a lot of relevant farm management information.

In Canterbury at least, all permitted land use activities require registration in the Ecan farm portal and preparation of a “Management Plan” under schedule 7A of the Land & Water Regional Plan. A Management Plan in this context is essentially a Farm Environment Plan and is to be provided to Ecan on request. As landlord, LINZ should at least require a copy of lessees FEPs as they are completed. It is important to note that different lessees will be at different stages in preparing an FEP, some may have one already but others will take longer to complete theirs. High Country FEP’s are among the most difficult and costly to prepare. Lessees should be allowed a reasonable time to have one completed. Once received by LINZ, the FEP could be reviewed with the lessee at each full lease inspection.

It would make sense for any additional LINZ requirements in terms of “Farm Plans” to fall within the existing framework of an FEP, as this is something most farmers will already be required to have under regional council rules. There is also a push from industry bodies for FEPs on all farms regardless of council rules. LINZ could consider what other aspects might be appropriate for a pastoral lease to include in their FEP if a more holistic approach is needed. For example an FEP has a section for “Other Objectives”. Or additional information could be required for the lease inspection report.

Farming and conservation is a long term business whereas politics can have a short cycle, therefore I don’t support approval by the Minister for Land Information.

LINZ receives a lot of information about leases including mapping, and there may be ways that this information can be better utilised collectively to provide information to stakeholders and for internal reporting within LINZ.

If there is inconsistency across Service Providers then this needs to be rectified by better communication and consistency from LINZ. However the nature of some of the work is not necessarily black and white, which in itself can result in inconsistency.

The CCL already releases guidance and standards. It may be more prudent for LINZ to initially implement operational changes to better understand what, if any, changes to the CPLA might be required.

The CCL could provide more information about how and why a discretionary consent decision was arrived at, in the Notice of Decision.
I have suggested an alternative outcome under question 2. I agree with the principle of having a balanced, appropriately worded high level outcome, and it would be a bit pointless having it if the CCL didn’t give effect to it in any discretionary consent decisions.

The outcome/s need to enable balanced decisions to be made.

There is merit in something like the biodiversity off-set proposal.

The CCL is already required to, and does, obtain expert advice from DOC under the CPLA for discretionary consents. It is therefore important that DOC are sufficiently resourced with the appropriate expertise to provide this advice. DOC may also arrange specific expertise for an assessment of other inherent values, eg heritage values, landscape values.

The CCL already obtains expert information from the lessee about the pastoral system.

The CCL already obtains expert information from the Service Provider who has both pastoral and conservation knowledge to assess the application and analyse the information provided by DOC and the lessee. The Service Provider may also seek other expert advice, such as an indication of resource management requirements under the district and/or regional council.

It would be very cumbersome and expensive trying to consult with NGOs and the public on discretionary consents. Perhaps the High Country Advisory Committee could be consulted as a representative body, for specific types of higher risk discretionary consents.

I agree a suitably experienced CCL is the most appropriate decision maker. It provides consistency.

Much of the obvious development has been done after many years of pastoralism, it therefore seems likely that the requirement for discretionary consents is decreasing?

I’m not convinced the “benefiter pays” principle applies to a good proportion of discretionary consents, because they are ordinary farm maintenance activities and lessees meeting the requirements of their lease. There is often a conservation benefit. When I reviewed some of the consents I have recently been involved with I found:

(a) Wilding conifer logging and clearance operations and associated works required for ongoing wilding conifer control. It is understood that these are generally break even operations at best, given the follow up costs. Wilding control can have significant conservation benefits.

(b) Scrub clearance, to regain stock access ways and grazing areas that have been previously cleared and lost to re-growth. The scrub is often induced by fertiliser. It is not new clearance so there is no additional benefit.
(c) Burning of scrub or tussock, as above to regain access and lost grazing areas. This is also often required to improve farm management access for pest control which can have a conservation benefit.

(d) Scrub clearance for gorse and broom control. Regional council require gorse and broom control, and a condition of the lease is to control noxious weeds. In the high country this often has to be done by helicopter so is very costly. There are usually conservation benefits.

(e) Maintenance oversowing and topdressing to prevent fertility and pasture declining. Topdressing also enhances shrubland and tussock growth.

(f) Tracking, generally to provide for a safer workplace. Tracks are also used by the public for access.

- If the Crown’s objective is to form a partnership with lessees to improve outcomes on pastoral leases, applying new fees doesn’t seem constructive and may discourage lessees from doing the right thing and obtaining consent when required to. Every consent request provides the opportunity for the Crown to engage and build on their partnership with lessees, and it should just be part of the cost of the Crown taking its responsibilities for the oversight of our high country.

- Under regional council rules all farmers are under increasing pressure to improve management of stock around waterways and wetlands and look after biodiversity values. Some lessees need resource consent to farm. All farmers will need an FEP. Compliance costs for farmers are increasing significantly, and charging for discretionary consents would add further to the cost making it harder for lessees to invest in actions that will actually protect values and contribute towards meeting the outcome/s.

- The information provided is suggesting that the requirements for considering a discretionary consent should be expanded, which would potentially make consents more expensive.

- If the Crown’s objective is to improve outcomes on pastoral leases it could consider:
  
  (a) LINZ employing a biodiversity officer to provide free “no strings” advice to lessees on managing areas with biodiversity.
  
  (b) Establishing a fund that lessees can apply to, to fund or partly fund activities that will for example protect important values or facilitate access on leases.
  
  (c) Providing funding to assist QEII National Trust setting up covenants on leases where the lessee is willing.
  
  (d) Encouraging and supporting catchment groups and catchment management plans.
  
  (e) Ensuring that LINZ and DOC are controlling weeds and pests on lands they are responsible for.

- Requesting a discretionary consent could be made easier for lessees. An indicative time for a consent to be processed could also be clearly communicated to lessees to assist with farm management planning.

- If monitoring is to be improved, then it makes sense that it is recorded in a way that the CCL can report on.

- Regardless of the assessed “risk”, all discretionary consents should be monitored, with follow up inspection/s after the activity has taken place. Monitoring should preferably be done by whoever did the initial consent inspection and recommended the consent conditions, as they are familiar with the request and saw the site prior to the activity. This will provide very good feedback in terms of the practicality of consent conditions and whether they achieved the mitigations that were intended. This type of monitoring also builds on the relationship with the lessee and reinforces LINZ as the landlord.

- Whenever a lease is taken over by a new lessee, or a new Farm Manager appointed, there should be a visit within 6-12 months to see how things are going and ensure that they are clear on the obligations of a being a lessee and what current consents apply to the property. This may reduce the potential for breaches to occur.
A full lease inspection should occur every 5 years, with perhaps an interim visit between if necessary, if there has been no other contact with the lessee. Recommendations in full lease inspection reports should be followed up to ensure the lessee is taking whatever actions may be required.

Increased monitoring and better recording may identify breaches and there needs to be a clearer process for dealing with these. Some flexibility is required because, in dealing with a living system, things don’t always go to plan or according to the best of intentions. Improving aerial imagery technology would also assist with identification of breaches.

A lot of information and mapping is already provided to LINZ, and there may be better ways of using this for reporting and monitoring.

There should be better communication between DOC, LINZ, Service Providers and lessees to support reporting and monitoring.

LINZ could also increase their engagement with other organisations such as Regional and District Councils on common matters.