Enduring stewardship of Crown pastoral land

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Submissions close on Friday 12 April 2019

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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>Emeritus Prof Sir Alan Mark, FRSNZ.</th>
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<tbody>
<tr>
<td>Organisation (if applicable)</td>
<td>Dept of Botany, University of Otago</td>
</tr>
</tbody>
</table>

Submission type*

☐* Individual

☐ NGO

☐ Local government

☐ Business / Industry

☐ Central government

☐ Iwi

☐ Other (please specify)

Add your details

* 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?

Land that has already reverted to the Crown as Stewardship land through tenure review and which currently remains as stewardship land should be reassessed, without delay, given the known vulnerable status of Stewardship lands, and it should be given a status consistent with its known inherent values: Conservation Park, Ecological Area, Scenic Reserve, Scientific Reserve, etc., and national park status then evaluated for the larger areas, at least for areas gazetted as Conservation Parks. This would go some way towards balancing the current predominance of the western high-rainfall (and high mountain) areas with substantial forest cover, dominating the current national parks and reserve system, as has long been the situation in New Zealand (reported on by the Ombudsman in his review of the Nardoo case on the eastern Otago uplands in 1982.

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

Conservation covenants and/or purchased by the Crown for reserve purposes, but with the lessee's agreement. This could be trialed as a mechanism for acquiring the remaining lands needed to achieve the Remarkables National Park, as justified and proposed, and with which I have been involved in endorsement, on behalf of both the FMC and the Forest & Bird Protection Society.

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

Only leases where the substantive stage has been reached in the extended process should be finalised, unless there are special circumstances.

Question 2:

2a. Do you agree with the proposed outcomes?

☐* Yes  ☐ No  ☐ Unsure

Please comment

No further comment.
2b. Do the proposed outcomes capture all the things the Crown should focus on? What’s missing?

Where proposals are being considered, such as the proposed The Remarkables National Park, every effort should be made to acquire for the Crown the land still remaining in pastoral lease, through negotiating direct purchase by the Crown.

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

☐ Yes  ☐ No  ☐* Unsure

Please comment

Both are relevant and important in different situations: Ecological sustainability is universally relevant. My publications on Ecosystem services (2013) and Sustainable Utilisation (Mark, 1993) are relevant here.

2d. How do you think the Crown should fulfill 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?

With adequate consultation with tangata whenua.

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

There are many values: see co-authored paper on Ecosystem Services of tussock grasslands (Mark, Barratt & Weeks; 2013) for a full description and assessment of such values. Public access to these areas must remain a high priority.

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 Crown needs to convene joint meetings with reps of all of these groups, as used to be done with QUANGO’s, several of which I served on in past times (see my Memoirs: Mark. 2015: “Standing My Ground: A voice for nature conservation.” Nelson. Craig Potton Pubs.).

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

Only then will the Crown’s standards/expectations be known by all concerned/interested parties. The Crown (CCL or deputy) has a right of access to pastoral leasehold property, under the Land Act, 1948, to obtain such information.

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)

The proposal needs to be amplified and formalised, and the outcome report should be available for public response.

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

See above.

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

A requirement to maintain the many inherent values of, and services provided by, the individual properties, with periodic (5-yr recommended) reviews, and also with a public right of access negotiated to any higher elevation conservation lands beyond.

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

Yes. Considerable areas of the Land Use Capability Class VIII and Class VIIe high elevation (i.e., >1000 m) Crown pastoral leasehold lands, which it has been Government policy since the 1980s, under the Soil Conservation and Rivers Control Act, 1941, to retire such lands from productive use and conserve them for their soil conservation (and water production, indigenous biodiversity, recreation and landscape values), is still as relevant to-day. Ideally there should be a procedure whereby Regional Councils (as with the Catchment Boards they succeeded), continue with this practice, or a comparable practice, with Crown funding and oversight.
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

Such amendments are crucial to clarify the lessees responsibilities to the Crown; the land owner. There should be a requirement, through an amendment to the CPL Act, that any future use and/or development on Crown pastoral leasehold lands will not be allowed to increase nutrient runoff or greenhouse gas emissions that, in any way, further facilitate adverse responses to global warming and associated climate disruption.

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

Yes, it should, but this will depend on the oversight provided.

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?

Adequate clarification.

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

Adequate site monitoring of all CPL land as was in place, and conducted by appropriately qualified LINZ staff and its predecessors, under the Land Act

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

Adequate permanent site monitoring by qualified field ecologists, including permanent photo-points recorded at 5-yr intervals, as is being used in Mt Aspiring NP, on completion of a vegetation survey, since the early 1970’s, is strongly recommended.
4f. Which mechanisms do you think would be most effective in improving transparency?

Periodic monitoring (as above) and reporting to an specially appointed and qualified oversight committee, on all pastoral leasehold high country properties.

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

Uncertain at this stage but tenure review had the potential to deal adequately with the many issues inherent in tenure review and inherent in the CPLA, 1998: appropriate protection and management, in perpetuity, of the higher elevation more vulnerable Land Capability Class VIII and VIIe lands. Provision of adequate public access for recreation and ecotourism was to be negotiated, while discretion was to be used on the lower elevation, potentially more productive lands, by applying information derived from the Protected Natural Areas Survey Programme (that was terminated prematurely), to determine those areas which justified formal protection. Such an approach would have the distinct benefit of consistence from property to property and thus achieve consistent integrated landscape and catchment planning.

As has been acknowledged, tenure review did not deliver as originally proposed and predicted, and as specified in the CPLA, 1998, because of the way it was overseen and managed; economic valuations attached to the two categories of disposal (land to be transferred to the Crown was generally more highly valued than land to be freeholded), a situation unjustified and inexplicable, while the role of DoC and the interested public in their submissions on the individual proposals, were highly ineffective, and for individual submitters, highly frustrating.

A classic example was the outcome of Omarama Station tenure review where the strong majority of public submissions were quite ineffective in challenging the proposed designation of the vulnerable high elevation Class VIII and VIIe lands (to >2000 m elevation), with high heritage values, to freehold, under covenants. This appeared to quite contrary to the provisions of the CPL Act. Another case was Dingle Burn leasehold in relation to the differential monetary values attached to the lands that were conserved/protected and that which was to be free-held, a situation unjustified and inexplicable, while the role of DoC and the interested public in their submissions on the individual proposals, were highly ineffective, and for individual submitters, highly frustrating.

The future situation, given the Government’s decision to terminate the tenure review process and continue with Crown pastoral leases, remains uncertain at this stage, but **I strongly recommend** that serious consideration be given to reverting to the Government policy of the 1970-80’s (which to my knowledge has never been rescinded or replaced), where pastoral lessees were encouraged to undertake a run conservation plan which had as a condition, the retirement and surrender to the Crown, all Land Capability Class VIII and VIIe lands. The Crown covered the full cost of securely fencing out that land, which would be managed by the Crown for its multitude conservation values: to-day, this would be the DoC. As a Catchment Board (Otago) member over much of this period (1974-86), I observed these Run Plans being exercised and was deeply concerned that the Land and Survey Department did not exercise its responsibility of requiring the retirement aspect of this policy (though some lessees voluntarily surrendered this class of lan on their property), while the MWD were responsible for the oversight of the remainder of the run plans, and ensured this was fulfilled. See: NWASCA & LSB. June 1985. "Review of Policies for Destocking and Land Surrender – South Island High Country." 41pp.
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

Quite obviously, since such activities are very likely to fall outside the privileges of the lessee under the Land Act.

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

It should do; but a major concern is public access, particularly to any higher elevation conservation lands, without easements being negotiated, where justified and/or needed. Periodic reviews, with public input, should be required.

I note that s. 60 of the Land Act, 1994 provides for establishment of easements, even on leasehold lands (see p. 21 -22 of the enduring stewardship document re easements under S60 Land Act):

60. Creation of easements.
   (1) The Board may from time to time grant or reserve any right of way, or other easements over or under any Crown land:
   provided that where that Crown land is held under lease or licence the lessee or licensee shall be entitled to compensation for any reduction in the value of his lease or licence by reason of the grant of any such easement.
   (2)[Repealed]
   (3) Any grant or reservation of a right of way, or other easement under this section may be subject to such conditions, restrictions, and covenants as the Board determines.
   (4) Every instrument granting, pursuant to this section, an easement over any Crown land not held under lease or licence may be registered with the Registrar-General of Land in the same manner, with the necessary modifications, as any lease or licence of Crown land under this Act. Any such instrument granting an easement over Crown land held on lease or licence may be registered with the Registrar-General of Land in the same way as any dealing with that lease or licence.

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

Uncertain with the amount of information available at this stage.

5d. What specific matters should be considered when deciding whether to approve an application?
That the inherent values of the property will not be undermined. My research has shown that post-fire grazing of upland snow tussock grassland should not be permitted for at least one full year, and preferably two years, to allow adequate recovery of the plants that dominate the ecosystem (this issue was widely debated and published by the New Zealand Mountain Lands Institute, 1992: see “Guidelines on burning tussock grasslands” JNZ Mountain Lands Inst.49:51-63; also G. Martin, 1994. “South Island High Country Review” and see Mark, 1993).

This should be the basis for a directive to the relevant regional councils.

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

The positive answer should be obvious, given the record of some Commissioners to date.

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

With the exercise of discretion but erring on the conservative side: the tussock grassland ecosystems are potentially vulnerable to traditional pastoral farming (see Mark, 1993): this should not be surprising since mammalian grazing is an unnatural phenomenon in these grasslands (unlike those of the South African Serengeti, where the native grasses have been shown to respond positively to mammalian grazing).

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.

Depending on his experience, they should be, but expert advice should be sought whenever questions requiring expert knowledge arise.

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  ☐ X Unsure

Please comment

Discretion is needed here.

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

No, provided discretion is used and fees are levied in relation to the predicted physical impacts and the financial benefits likely to be realised.

Question 8:

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

☐ X Yes  ☐ No  ☐ Unsure

Please comment

The only way to ensure sustainability is not compromised.

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

If all of the above are implemented, the outcome should be acceptable.

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

Adequate on-site monitoring and reporting, and an adequate knowledge and understanding of the ecosystems involved, with resource sustainability being the prime requirement.

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

No, at this stage.

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

Adequate knowledge of the ecosystems involved.

NOTE, Undocumented in the information publicised to date, is the Crown's purchase of Camberleigh PL, on the Rock & Pillar Range, Central Otago, in Feb, 1998, by the Crown (J. Luxton as Minister of Lands), that contributed ~1500 ha to the conservation estate after a land rationalization exercise with the adjacent Glengreag PL.

I strongly recommend that the extensive Riversdale Flats, now on the Mt White Pastoral Lease, that were formally reserved for national park purposes in 1901 and, apparently by mistake, added to the Mt White leasehold in 1956, be retrieved as formally protected conservation lands and added to Arthurs Pass National Park (which essentially encloses it). The Flats unique ecological values and habitat for an important range of indigenous plants and animals, complement those of the present national park, and is readily accessible to the interested public.

I also recommend reference be made to the 1994 Final Report of the Working Party on the Sustainable Land Management of the South Island High Country (G. Martin, Convener), to the Ministers of Conservation, Agriculture and Environment. This wide ranging report concluded that traditional pastoral farming on extensive areas of the high country pastoral leasehold lands was unsustainable. Also relevant here, is the comprehensive Joint Submission to this Ministerial High Country Review Committee from the N.Z. Ecological Society and the N.Z. Society of Soil Science (N.Z.). Ecol.18: 69-81, of which I was one of the 14 co-authors.


I wish to acknowledge the Miss E.L. Hellaby Indigenous Grasslands Research Trust for funding much of my research cited and referenced in this submission, as well as the University of Otago, Department of Botany where I was employed and resided for much of my research career, including in retirement.

Signed,

Alan F. Mark, FRSNZ, KNZM.

Emeritus Professor, Department of Botany, University, PO Box 56, Dunedin. alan.mark@otago.ac.nz March 27, 2019.
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☒ You may publish my submission with my name on it.
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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.

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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

Question 1:

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

Any areas that have any significant natural resources/habitats/ecosystems should be protected as much as possible. So much land has already been privatized through tenure review, fragmenting ecosystems and denying public access. I think that any land being leased needs to be re-evaluated in terms of natural values, and if any important values are found that land should be transferred to the Department of Conservation for the best protection. Just one example of the degradation caused by tenure review is in the Mackenzie Basin. It is in danger of losing its natural value as it gets turned into dairy farms. Irrigation schemes crowd the landscape and have invaded into habitats of the extremely endangered Kaki (Blacks Stilt). Dr Susan Walker a Conservation Ecologist said, “studies a decade ago showed that tenure review was falling short of its first goal of ecological sustainability – protecting the remaining native ecosystems, animals and plants of the interior South Island pastoral land – and was having a clear opposite effect,” (Walker and Norton 2019) .Thus, the changes that are being proposed need to right this wrong and do more for the environment.

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

Covenants and purchasing areas of significant natural value, is a great start, this ensures some important pieces of land are protected the best way possible. I also think that keeping the public regularly updated on the state of all significant natural features is important. A regular review to ensure there is no degradation or eminent danger to these features to prove that the changes are working, and holding leaseholders, DOC, the Commissioner accountable for ensuring these values are being looked after, especially on pieces of land not purchase and retired.

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

It would be interesting to compare the state of how things are now to how they were when tenure review started, if there is any information on this. And comparing how things are now to how they are in 20 years, this would reflect how the changes made have worked and whether there needs to be another review to ensure ecological sustainability. Understandably, this would take time and money but would physically show how the transition was or was not beneficial.

Question 2:

2a. Do you agree with the proposed outcomes?
I think that the proposed outcomes are suitable, but if the government is not looking at the way rent is calculated they may need to do so, as land is being sold on at much higher prices. I also think they need to discuss with Iwi how the Treaty of Waitangi will be used so that there is not any miscommunication or mis-interpretations.

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

I feel as though the Crown needs to have a much bigger focus on ensuring leaseholders are doing their part in protecting the land. They also need to look at the on-selling of previous Crown Pastoral Lands, that are sold on at heavily inflated prices. A piece of land in Damper Bay, Wanaka, was sold in tenure review to the lease holder for $50,000 and then a short time later, just 6% of this land was sold for an astonishing $10.2 million dollars (Mitchell 2018). This piece of land was right on the waterfront and will maybe be developed, meaning more profit for private enterprises as they develop some of New Zealand best landscapes. While tenure review is finishing and this may not be the case anymore, they need to ensure that this privatization isn’t going to harm the natural features in any way.

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

The discussion document defined natural capital as “the aspects of our environment that sustain society’s present wellbeing and improve intergenerational wellbeing. This includes land, soil, water, biodiversity, minerals, energy resources, and ecosystem services (the benefits that humans gain from the natural environment and from properly-functioning ecosystems),” ((LINZ) 2019). Whereas ecological sustainability means “some stocks of environmental assets be prevented from rising above or falling below certain threshold levels,” (Perrings 1991). So basically, we meet the needs of the present generation, without hindering future generations from being able to meet their needs. I feel like ecological sustainability is a more scientific whereas natural capital seems more holistic talking about wellbeing. Ultimately, they are both similar and I feel either would be appropriate in the proposed outcomes. I do however understand that natural capital works with other aspects of New Zealand’s wellbeing (human, social and financial/physical capitals) which I really like and makes sense to have a similar frame work for everything.

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?

It may be important for Iwi to create Iwi Management Plans for the Crown Pastoral Land they wish to have a say on. This means that if anything was being done to these areas’ Iwi would have a large input and could use the Treaty of Waitangi in specific cases. It would be up to the Crown to uphold these management plan and ensure they are respected. These plans would mean that Iwi have an authority and must be heard not just as a formality.

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

I value public access highly as I believe we all have a right to explore our country. But I also value the conservation of native species and their habitat. If public access endangered these
species and habitats, I think that conservation should come first and if need be, public access restricted. I value the natural landscape as well. Visiting the Mackenzie Basin overtime, it clear to see how the environment has changed with large irrigation systems changing the landscape from its natural dryness to bright green and unnatural. This is disappointing, and I hope that the proposed changes will mitigate this happening even more.

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?

I think it is important to get everyone working together towards a common goal, and I believe that this goal must be the preservation of New Zealand’s natural environment for future generations. I think that all the groups involved (Crown, Iwi, DOC, Leaseholders) will have their own interpretation of this. Iwi want to preserve their history, lease holders who’ve lived on the land for generations want to preserve their futures, the Crown wants to preserve an asset and other stakeholders will have all different aspects of this environment that they want to preserve. Some of their ideas and values may clash and some compromises may need to be sought. Effective communication will be key so to not make the same mistake of the past like the misinterpretation of Maori land ownership, where they had, “disputes over whether these land purchases extended from the coast to the first range of hills (as Ngāi Tahu chiefs asserted) or inland to the Southern Alps (as the Crown claimed)” ((LINZ) 2019).

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?

I think this would be a good way for the Commissioner to be held accountable and for all affected parties to understand what is expected of them.

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

☒ Yes ☐ No ☐ Unsure

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

A yearly review of actions that have been taken to ensure the protection of the land would give everyone knowledge that work is being done and progress to ensuring the natural capital is maintained.

3d. Which mechanisms do you think would be most effective in improving accountability?
A Statement of Intent along with regular reporting. This sets out a goal or direction to head for and regular reporting can prove whether, in practice, they are moving the right and way and taking the right steps to acknowledge the Statement of intent.

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

I think more experts need to be brought in for consulting with the commissioner so that expert advice is always on hand from a range of different people so that deals are fair, and things of great importance aren’t being missed. The Commissioner is not an expert on everything and therefore he/she should not be responsible for all decisions without proper information.

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?

More transparency for everyone involved would make processes a lot easier and less daunting for people. It also means that everyone is held accountable for their actions if they understand what is expected. It keeps leaseholders apart of the process so they can see what’s going on and keep up to date on any further information they may need to provide or information that might aid their application. It could also make the job of the Commissioner easier as it would be more structured and hold the commissioner accountable if this process is understood by everyone.

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

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?

I feel that the proposal will clearly outline the decision-making process.

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

I think that the decision-making process should be transparent enough that it is its self a guide for all applicants. Where more guidance is needed it should be readily available to anyone seeking it so that there is little or no frustration with the current system. Standards should also be readily available
4e. What other mechanisms could be used to improve transparency?

I believe the mechanisms outlined would sufficiently improve transparency.

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

I think the following mechanisms are most effective:
- What information must be provided by the applicants
- How specific values will be identified
- What further information will be collected
- Clarifying the statutory obligations of leaseholders
I feel that these mechanisms are most effective in aiding understanding and transparency for applicants.

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, by basing decisions on the proposed outcomes, it will mean both applicants and the Commissioner know exactly what should be acceptable. It would mean that there is a lot more information backing the decisions so hopefully all applications that are accepted will have little or no effect on the environment.

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

Yes, I believe that natural capital must be valued the most, above profiting off the land. It may limit what lease holders can do on the land, as they might want to do activities that are non-complying or could affect the land negatively. This could be frustrating for those leaseholders but in the long-term it will result in positive changes to the land as it is constantly protected.

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

Professor David Norton of the University of Canterbury stated, “High country farmers have, always seen land stewardship as central to their management and the good condition of so much of the high country is a reflection of this. It is encouraging that as we move into this next phase of high country management that Beef+Lamb New Zealand is aiming for every sheep and beef farmer in New Zealand to have a farm environment plan that includes biodiversity by 2021,” (Walker and Norton 2019). I think if these farm plans also incorporated the proposed outcomes, farmers would already be working alongside the
outcomes and therefore decisions should be easily accepted because farmers are working towards the same outcomes.

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

Long-term effects and effects branching off this application (as in the example, the application is for a helipad but the tourist coming in on that helipad may make the most impact on the land). And what has previously been approved on the land i.e. has there previously been consent granted to increase stock numbers. Work that has previously done could be important to decision making as overworking the land could lead to a lot of damage. Looking into the future of this property should also be considered as it may have significant value in the future or may lose all its significance and this could affect if any semi-permanent/ permanent changes to the property are acceptable.

Question 6:

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

The Commissioner is not an expert on many things and therefore should not have the authority to make decisions without actual experts putting in their advice. Ill informed decisions could lead to greater issues and the degradation of our environment.

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

Any situation that may alter the environment or have an ongoing effect, or in cases where the effect may not be physically visible, i.e. a helipad may not alter the environment significantly but the tourist and noise it brings in may affect the area negatively. Or increasing stock may not alter the landscape/ environment immediately but over time it will affect the soil and the water quality so this scenario may not need public input, but expert advice from ecologist might be important.

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.

I think that the Commissioner is an appropriate person for making decisions, but they must have expert opinion and advice when making decisions. They may also need to consult with Iwi, DOC, and members of the public that could be affected. This ensures all decisions are looked at from lots of different points of view and the most reasonable decision is accepted.

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

The people applying for these consents are ultimately going to be the ones benefiting and reaping the rewards of the activity, so charging a fee shouldn't be a huge problem. It may also mean consents are taken more seriously as they are paying for them now, so they want to get them correct and get them approved.

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

Applicants may be denied their consent but still charged. This may seem unfair, but it will mean people are a lot more thoughtful in how they present their consent and think about it a lot more, so it could work positively. The activity would also need to be considered when deciding the fee, as some activities may bring in a lot of revenue and therefore should be charged an appropriate fee.

Question 8:

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

Yes, providing a report and a monitoring framework would mean there are standards that need to be upheld and would hold people accountable. It would also keep those concerned, up to date with what work is being done to protect the environment. Leaseholders will all have to adhere to the framework so insuring it is followed is in their best interest, so they are ahead of the game when they get monitored.

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

Clearly setting out a list of expectations would make it very clear for everyone to understand. Also making sure that any applicants for consents clearly understand these expectations by getting them to sign it as a sort of terms and conditions before they embark on the consent process. This will get them thinking about the outcomes and how they can ensure their activity fits with these outcomes.

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

Soil quality and the degradation of the land since previous visits. If the quality has been maintained, then we can say the system is adequate. If the quality has deteriorated, then the system may need to be rethought as there is obviously something missing. Monitoring being 5 years apart at the moment and there being no monitoring framework or no check on the soil means that we are only taking efforts to conserve the land at face value, where the real problems may be laying under the surface. So, a more hands on approach need to
be taken when checking performance. It is important to catch a problem before irreversible damage it done to the environment.

Question 9:

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

It seems that a lot of the proposals, would significantly increase costs to the Crown and therefore use tax-payer money. But, if these proposals are going to better protect natural capital as well as an important heritage and cultural place, it may be a worthwhile price to pay to secure the future of New Zealand’s image. It also looks like the preferred proposals do a lot more for protecting the environment and making processes and decision making a lot more efficient, transparent and understandable, than the alternative options. Some of the alternative options have some major flaws. For example, the second alternative option for Proposal 5 suggests it “Would significantly increase the costs involved in some decisions to both the Crown and leaseholders. In some cases, it may make the cost of an application greater than any expected benefits of the proposed activity.” These seems unreasonable as an applicant would probably not wish to get consent if they are not going to benefit from the activity. This is where I believe fees should be considered case by case and relative to the expected benefits. Another example is for Proposal 4, where no activity that decreases natural capital in any way would be accepted, this option “Would significantly reduce the flexibility and durability of the regulatory regime because of the rigid decision-making process.” The system being this rigid would discourage a lot of applicants and may affect their livelihoods if they are unable to expand or pursue a future that may only slightly touch the natural capital in the short term but potentially not at all in the long-term. Overall, I believe these proposals are reasonable and will improve the current system juristically.
Bibliography


INTRODUCTION

I am a resource management planner and a former member of the New Zealand Conservation Authority (NZCA) 2002-11. The NZCA gave advice on tenure review in 2003, which was an ongoing topic for the Authority’s consideration during my term. I have visited several of the high country parks that have been established as a result of the tenure review process, as well as areas purchased directly through the Nature Heritage Fund. These parks are a huge asset to New Zealand, and provide inspiration and enjoyment, as well as protection of their outstanding ecological and landscape values. I have taken an ongoing interest in the process and have been extremely disturbed by many of the outcomes that have resulted in the loss of outstanding landscapes and extremely rare ecosystems, and the poor provision of practical public access e.g. to the Pisa Range through the Snow Farm.

I note that some of the questions in this submission form are not the same as the questions in the discussion document.

Question 1:

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

Crown purchase, and enforcement of terms of leases, together with legislative change further discussed below.

Purchase provides potential in some cases to place covenants on part of the land and privatise some parts if justified e.g. buildings and curtilage if not required for management purposes or amalgamate highly modified/developed areas with adjoining leases. This might result in all or part of the lease being declared conservation land, or the continuation of farming through a Crown manager under a management regime subject to a public process such as the St James. Nature Heritage Fund purchases of Birchwood and St James are excellent examples of Crown purchase.

Protected Natural Area Programme surveys funded by the Crown should be carried out on all remaining leases to both prioritise leases for purchase and provide a baseline of information against which to assess discretionary applications. Similar studies should
be completed for landscape, recreation, cultural and historic values as well.

Public access can either be negotiated with the lessee e.g. using the Walking Access Commission, or directed by the Commissioner as provided for under s18 of the CPLA (p22 of the Discussion Document).

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

Amendment of the purpose of the Act to prioritize the protection of significant natural values. I consider that the wording of legislative change should use the word “avoid”, as in “avoid adverse effects on those values”, similar to its use in the New Zealand Coastal Policy Statement, and the interpretation given to that word by the Supreme Court in the King Salmon case.

There also needs to be an extension of the types of activity for which a discretionary consent is required e.g. technology has now been developed to sow crops from the air without soil disturbance. The types and area of new exotic crops able to be grown needs careful scrutiny. I understand that some lessees are killing native vegetation e.g. matagouri by aerial spraying – not burning or cultivation.

Cumulative effects should also be specifically addressed through legislative change.

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

I understand that either party to tenure review can walk away at any stage. It is a great concern that further land could be privatized even when the decision has been made to end the process. Therefore I consider that all remaining reviews should be terminated.

Other Implications

Resource Management Act

It is important that the government not rely on district plan provisions to protect inherent values. Under s 10 of the RMA, existing uses are provided for. This can lead to ongoing degradation of significant values, when pastoral use should be ceased or reduced. Under most district plans, farming is a permitted activity, and the definition of farming (or “rural production”) includes more intensive use than envisaged by pasturage in the Act e.g. dairying and horticulture which have increased negative effects on indigenous habitats and outstanding landscapes.

Under the RMA, assessment on the basis of avoid, remedy or mitigate does not equate to the protection of significant inherent values under the CPLA, and values are almost always traded off. Very few applications are declined, resulting in cumulative degradation. This has been documented by Dr Marie Brown of Waikato University.

Management of weeds and pests also needs consideration. This is currently an obligation for lessees. Multi-lease-conservation land joint pest management plans could be useful for all parties and assist with better outcomes.
Question 2:

2a. Do you agree with the proposed outcomes?

☐ Yes  ☐ No  ☒ Unsure

Please comment

I agree with “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” but I don’t agree with the use of the term natural capital. I also think that recreation or at least public access values should be included.

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

Legislation should directly protect and enhance ecological values, geological features, cultural, landscape and recreational values. Ecosystem services could be included as it is vital to retaining tussock grasslands which have a higher water yield than forests. There is also an ongoing concern about stock access to waterbodies, and regional plan provisions for freshwater can’t necessarily be relied upon in this regard.

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

☐ Yes  ☒ No  ☐ Unsure

Please comment

Natural capital is not well understood in the same way that ecological sustainability has not been understood in the administration of the Act. Natural capital could include increasing production of exotic ecosystems, including forestry (the appropriateness of which in the high country is questionable). Natural capital does not include landscapes or recreation either. It would be preferable to continue to use “inherent values” or “intrinsic” values.

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?

A requirement to act upon the principles of the Treaty of Waitangi but the views of mana whenua should guide this.

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

Naturalness, landscape, indigenous vegetation and species, lack of built environment
and man-made modification such as shelter belts and plantations, opportunities to walk in this environment. Even the low intensity farming does detract from this experience when fouling of waterways and heavily grazed native vegetation is apparent.

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?**

It means maintaining the natural landscapes and indigenous components in perpetuity (which may require enhancement, remediation and pest control), as well as sharing these values with New Zealanders. Currently the public is “locked out” of a lot of areas.

I understand that prior to the CPLA, there were Land Settlement Boards with a wide range of representation. Consideration should be given as to whether a similar model should be introduced or whether to extend the role of conservation boards. There certainly needs to be changes to the decision-making process to provide for a panel to make decisions rather than be considered by the CCL alone (further discussed below).

**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 principles and purpose of such should be in the legislation and the purpose of the 1948 Act changed.

The CCL is not the same as the Parliamentary Commissioner for the Environment who reports directly to parliament (i.e. not to a Minister) but who effectively only has powers of advice. To date the CCL has effectively been a law unto him or herself and not accountable to either the government or the people of New Zealand and has allowed private individuals and entities to gain enormous wealth at the expense of the taxpayers. The CCL may be the Crown’s landlord, but landlords are given direction by law and their powers strictly fettered. I use the word “fettered” deliberately. The scope and power of the CCL to manage crown leases on the public’s behalf should be fettered and be made accountable through ministerial oversight. This does not mean that the minister can interfere in a commercial transaction (which would not be allowed under the Cabinet rules in any case).

Effectively the CCL is the administrator of a Crown process and must be accountable to the Crown.

3b. *Do you agree that this proposal will help improve accountability for decision making in the Crown pastoral land regulatory system?*
3c. **What other mechanisms could be used to improve accountability?**

A set of criteria relating to the values against which the management of leases can be checked.

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

As above

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

Not if it is clearly written into legislation.

**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

This depends entirely on the quality of the guidance and whether it is consistent with the purpose of the Act. The use of consultants to process tenure review proposals has been a disaster as many did not actually have the qualifications and experience to assess inherent values. Use of in-house ecologists and landscape architects and public availability of technical information and reasons for decisions would be a great improvement.

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
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?**

Participation in the process (this is public land), information on values, previous history of the matter (if any), criteria and reasons for the decision all in the public domain.

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

Use of templates and criteria.

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

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

A public process with all information in the public domain.

An appeal process that is more user-friendly and affordable than judicial review.

An appeal process open to any party to be under the Environment Court where commissioners have experience in assessing environmental effects (provided that there was at least one commissioner with experience of conservation and land management legislation.)

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

Guidelines and standards would need to be clear, measurable and not open to interpretation.

**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
To be colloquial, this is a no-brainer. What other outcome could there be?

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

Probably, especially if there is an appeal process to focus the decision-maker’s mind, but there needs to be an amendment to the act so that the CCL must recognize and provide for the statutory purpose and the protection of inherent values. The current wording “take into account” is weak in legal terms and should be replaced.

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

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

I am concerned that the Discussion Document includes reference to off-setting. There is no place for off-setting on crown pastoral lands. Offsetting implies there is an adverse effect to be offset and discretionary consents should not be given in that situation. Lessees should sell or forfeit their lease and buy elsewhere if they want to pursue that level of agricultural development.

Any voluntary enhancements could be rewarded with rent reductions or holidays depending on their extent but should not be offset.

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

It is unthinkable that a decision-maker on resource use would NOT have expert advice. However it is equally important the advice received should be applied. In many tenure reviews, DoC’s expert ecological advice has been ignored or watered down.

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

Anything that is not a continuation of the existing level of effects (provided those effects have been monitored and are minor), or is minor/maintenance.
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 decision-making is akin to the Director-General of Conservation making decisions on concession applications on public conservation land. This is usually delegated, and frequently done by a panel including representatives from a conservation board and planning experts. Significantly, that decision-making is guided by conservation management strategy and plans. There is no equivalent for high country.

Another similar process could be permissions sought by QEII covenantors to carry out activities that may compromise their covenant e.g. felling of trees overhanging buildings or re-aligning a road or track.

It seems that the CCL should be supported by a panel of expert ecologists or land managers or otherwise relevant policy. The Land Act should be amended so that General Policy could be developed, similar to the Conservation Act, to guide management decisions.

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

No fee means that the taxpayer is subsidizing a lessee to apply for an activity that is not part of the basic lease and may have adverse effects.

There could be provision where the CCL deemed the application was actually for an activity with minor effects would be exempt a fee. This would help to encourage lessees to apply for consents.

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

Applicants will no doubt be unhappy with this, and may be incentivised to not apply. However there should be a clear pathway for monitoring activity on high country leases with penalties for breaches of terms, including assessment of whether a lease should be forfeited in cases of repeated breaches.

Question 8:

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

Again, it is common sense that monitoring and reporting should be required of a senior public officer.

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

As alluded to above, there should be a regular programme of monitoring leases and effects of activities. QEII covenants are monitored at least every 2 years.

The CCL annual Statement of Expectation should be annually reported on as well.

In addition there should be a programme of environmental monitoring on a 3-5 year cycle.

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

Environmental outcomes.

Question 9:

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

I have not had sufficient time due to other work to analyze the proposals to this level.

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

Given the demonstrated problems with the current system, I would like to see any further discretionary consents put on hold until there is a clear legislative purpose to uphold the significant inherent values, and sufficient data against which to assess such applications. These are in fact “discretionary” in the literal sense of the word, and not a right under the terms of the lease.

I would also like to emphasize the need to amend the legislation so that cumulative effects of activities on pastoral lease land, both at the property and wider landscape level, have to be considered and avoided.
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.
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.

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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

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<th>Name*</th>
<th>Michael Ellison</th>
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Submission type*

☒ Individual

☐ NGO

☐ Local government

☐ Business / Industry

☐ Central government

☐ Iwi

☐ Other (please specify)

Add your details

* 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?

With no tenure review taking place and creating new areas of conservation land, finding new ways of protecting the lands natural values must be of high priority. I believe that the protection of these natural values must strive to include not only the natural ecosystems and habitat but also the natural appearance of the landscapes. Being a keen user of the outdoors particularly conservation areas for hunting and tramping I feel that both of these aspects are of significant value and should be protected in order for these areas to be enjoyed in their most pure forms.

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

Although protective mechanisms such as covenants are used successfully in order to protect natural values they have a weakness in the sense that they must be negotiated with the leaseholder and must also be agreed upon by a covenanting body. This may lead to some objectives being missed or the impacts not reaching the desired goal. A possible additional mechanism may be to introduce a policy where by areas worthy of protection are identified and the protecting of these areas incentivized for the leaseholder. This may lead to better protection of these values as instead of seeing protection as a loss of grazing area or similar the land users may actively look to protect the areas in order to benefit in some other way.

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

I feel that the arrangements regarding existing tenure review applications are appropriate and that where legally required these processes which have already begun should be continued. I also think that the plan to arrange how the land will now be managed has been started quickly and should be the main focus in ensuring that the remaining pastoral lease land is protected and maintained as quickly as possible whilst ensuring that all outcomes are well considered and agreed upon by all interested parties.
Question 2:

2a. Do you agree with the proposed outcomes?

☒ Yes   ☐ No   ☐ Unsure

Please comment

I support all of the outcomes which the Crown are aiming for as outlined in Section 2 of the discussion document. The desire to manage the land with ‘enduring stewardship’ is made clear as well as that these goals will be met through consultation of interested parties particularly Leaseholders and Iwi. I also agree with the proposal that management should ‘maintain and enhance natural capital, cultural and heritage values’ as I feel that these encompass all of the important aspects of the land which should be protected for all to enjoy as discussed in 1a.

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

The outcomes focus on stewardship of the land with input from mostly Leaseholders and iwi however it does not appear that significant weight is given to the general public or other interested parties such as environmental groups which may also share interest in looking after the land for future generations and have valuable opinions on what aspects may need to be protected when considering what natural capital may include for different groups. I feel that consultation with these groups would be vitally important and if it is to be included should be included explicitly in the desired outcomes of this process.

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

☐ Yes   ☐ No   ☒ Unsure

Please comment

‘Ecological Sustainability’ is the term currently used in the Crown Pastoral Land Act however at no point in the act is a clear definition provided which has led to multiple different interpretations being used over the years. If this term was to be used in the new documents it would be important that a clear definition is provided in order to ensure consistent and desirable outcomes. The proposed term ‘national capital’ however does have a clear definition which would achieve the desired results for the ecological side of the environment as well as the cultural and heritage values which would likely not be considered if ecologically sustainability was used alone. Although
I feel the definition already understood of natural capital meets the objectives the term may not make it as clear upon initial reading what is included where as it is clear that the environmental aspects are at the forefront of ecological sustainability.

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?

I feel that as one of our founding documents the Treaty of Waitangi should definitely be recognized within the management of CPL. The treaty shows the obligation of the Crown to Maori in recognizing their connection with the land and should be included in the process in order to allow cultural connections and access to areas of importance for local iwi to be protected and enhanced. The treaty should be applied in order to not only allow access and protection for sites such as wahi tapu and areas for gathering mahinga kai but also in recognizing local Iwi as mana whenua with the ability to exercise kaitiakitanga in contributing to management and protection of the lands for future generations.

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

Personally spending a significant amount of time travelling around the South Island high country, one feature I particularly value is the visual amenity of the Crown pastoral areas and enjoy the natural untouched appearance. The health of native ecosystems and species is also important to me despite not necessarily experiencing this first hand in many of the areas.

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?

To me enduring stewardship would be managing and looking after the land with a view not only for the current state of the land but also for how it should be in the future. This protection should be sustainable and have be planned to continue indefinitely.
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

This requirement will ensure that there is a clear aim for the management of the land described regularly by the Commissioner. As a result it will be made clear what is being planned and how this should be achieved. The proposal for this statement to be prepared by the Commissioner and include consultations with interested parties and the public also carries the benefit that these statements will consider the opinions of all interested parties and be clearly understood by the commissioner who has written the statement and will be responsible for working towards reaching the objectives. This will increase accountability for the commissioner to achieve the management as there will be no question as to whether the goals and plans are executed.

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)

As above, accountability will be improved as the Commissioner will be responsible for preparing the statement of expectations as well as working towards achieving them. There will be no question as to whether the performance expectations are known and understood meaning that if they are not achieved accountability would be simple.

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

Unsure

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

I feel that the proposed requirement for a statement of performance expectations to be regularly prepared will be very effective as discussed in 3b
3e. Do you think there are any problems with the proposed change?

There are no clear issues with the change and I believe that the need for the commissioner to prepare a publicly released document is a great improvement over the current system where the information is simply reported to the Minister for Land Information with no requirement for this to go any further. This may obviously lead to lower accountability as the public and interested parties will not necessarily know what has been decided as the expected performance.

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

This will ensure that it is clear what is required from all parties and that there is no confusion. This will again ensure that there is accountability where requirements have not been met as failure to understand them will not be a justifiable excuse if they have been clearly outlined. This will also benefit Leaseholders and officials as they will have a better understanding of expectations without having to consult others or further investigate requirements themselves.

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

If it is made clear in the guidance released what is required as well as the rationale for these requirements, then transparency will certainly be improved. Regardless of the opinions Leaseholders have on the requirements they should still be clearly described as well as transparent reasoning making it clear why all requirements are set and what they hope to achieve.
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?

One aspect which could clarify this is ensuring that not only the decisions and justification is included but also factors considered and sources of information for making these justifications. To be clear on why decisions are made it would be beneficial if the decision making process and factors considered are made clear. This would also provide an opportunity to ensure that all parties are confident no important considerations have been overlooked in the process and help them to trust that the right decisions have been made.

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

I feel that standards should be used in order to provide a clear understanding of what will be expected of them and what they must do or not do and what they should be working towards. Guidance should be added in order to provide clarity on what must be done to meet the standards as well as suggestions on possible methods or strategies to ensure that standards are met. They may also include ways of achieving these standards through clear guidelines.

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

Arrangements which allow a time or forum for further questions to be asked to the Commissioner may further improve transparency where some uncertainty is still present having already considered the standards and guidance provided. This further eliminates the possibility that uncertainty regarding how to achieve the legislative requirements exists.

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

I think clearly set standards as well as the justification for these standards are the most beneficial method in achieving this. The use of guidance to help with understanding and working to the standards will also simplify the understanding for why these standards are set up.

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

No, I think that the proposals will work well in enhancing transparency for all interested parties.
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

This will ensure that no discretionary activities are granted which would impact natural capital in a negative way. This will ensure that the outcomes which are a significant part of sustainable management of the land are not disregarded and that enduring stewardship will be achieved protecting not only the natural ecosystems but also cultural and heritage values for future generations.

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

Yes, having a requirement for the factors to be considered and given effect to ensures that they can not be overlooked and acted against as is currently the case where the Commissioner is simple tasked to weigh up these factors with the considerations of running a profitable farm. This will achieve the outcomes as it will be clear that they are at the forefront of the decisions and are not simply one of many factors to be considered as has been the case until now.

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

Although it can not be completely discounted I feel that the current system which has been said to focus more on the viability of farming activity should be reversed with this being a more secondary consideration and not having weight to work against the proposed outcomes.

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

First and foremost, the impacts on natural capital should be considered, this is one of the most important outcomes and should not be overlooked. This should be used to ensure that consents with negative impacts on these are carefully considered and not granted if the overall effect is not neutral or positive. In cases where impacts on natural capital can not be avoided then the mitigation and remedial actions which may be taken should be also considered. This may be in the form of further protection requirements to offset or minimize the negative impacts and leave natural capital in the same or better state if the consent is issued.
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

I think this is an important requirement and should be included. This will ensure that an informed decision is made where consents are likely to have an impact on environmental, cultural or heritage values rather than just a best guess from the commissioner and other parties involved in the decision.

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

I think expert knowledge should be used in all cases where it is identified that a granting of consent will have any impact on natural capital including not only environmental but also cultural and heritage values. This will be necessary to ensure that decisions reflect the desired outcomes to be added to the CPLA particularly in avoiding negative effects on natural capital and also allowing local Iwi to be recognized as kaitiaki and uphold the values of the Treaty of Waitangi.

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.

I do not think there is any issue with the Commissioner being responsible for making these decisions. They are clearly familiar with the aims and expectations of the CPLA and can be held accountable to working towards the desired outcomes. This makes them an ideal candidate and when the additional requirements to consult interested parties and experts as well as being familiar with clear decision making principals and guidelines. As a result, I do not see any reason why this model should be changed in terms of making appropriate decisions.
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

I think it is fair that fees should be charged in order to recuperate costs associated with processing and deciding on discretionary consents. This process is initiated by Leaseholders when they wish to undertake an activity outside of their permitted grazing rights such as altering soils, clearing vegetation or making tracks. As these activities are to benefit the Leaseholder it seems fair that they should at least cover the associated costs and they should not be made at a cost to the Crown.

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

If an application fee is added to Leaseholders it may make them more tentative to lodge applications as a result of the financial cost. This may lead to many issues such as motivation to undertake activities without obtaining consents in order to avoid the new costs associated with the process. Alternatively it may prevent applicants from seeking consent where they are not certain it will be granted in order to avoid expending finances with no return. This could have detrimental effects not only in terms of natural capital if activities are undertaken without consents but also in terms of farm viability if improvements to infrastructure and farming practices are not made to avoid these costs. To avoid non consented activities increased monitoring may also need to be introduced.
Question 8:

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

☒ Yes ☐ No ☐ Unsure

Please comment

This will provide a clear report on whether or not the activity on each lease is achieving or working towards the desired outcomes. It will also enable progress to be monitored if completed regularly to ensure that outcomes continue to be met and worked towards over time as is expected if enduring stewardship is to be achieved.

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

Unsure

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

I think that system performance should be monitored mostly by comparing the monitoring of managed land to the proposed outcomes as outlined in Section 2. This should expand on what is currently required under the act and include analysis of natural capital including environmental monitoring, cultural and heritage values as well as the current monitoring of whether lease and consent obligations are being met satisfactorily.
Question 9:

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

The analysis provides a good summary of the proposed changes as well as commentary on how these proposals will work towards achieving the Crowns desired outcomes as well as comment on the clarity, cost efficiency and longevity of these proposals. I feel that this analysis is well thought out and highlights the important notes on these proposals.

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

Thank you for the chance to be a part of this process.
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.

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

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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.

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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
Thank you for the opportunity to contribute to the discussion on your proposals. My contributions are my own. They are based on research conducted under my university employment, but I do not speak for the University of Canterbury.

I congratulate you on the decision to stop tenure review and reform governance of Crown land going forward. But I also see a few problems, and welcome the opportunity to suggest improvements to your proposal.

**The problem = vast changes in the landscape**

The ecosystem changes to the Mackenzie Basin since the 1998 passage of the Crown Pastoral Land Act are visible from space. Figures 1-4 use satellite imagery of the Mackenzie Basin.

Taken together, Figures 1-4 show that Crown decisions allowed about two-thirds of the intensification of the Mackenzie. Note that we only measured change that is visible from space. Smaller scale changes are not reflected in these maps (Brower et al 2018 [https://www.nzgajournal.org.nz/index.php/JoNZG/index](https://www.nzgajournal.org.nz/index.php/JoNZG/index))

**The cause = Crown decisions about Crown land**

The leading driver of landscape change in the Mackenzie seems to be the Crown and its decisions. The Commissioner of Crown Lands has a lot of power over a lot of land. This is the focus of my submission.
Figure 1 shows the Mackenzie Basin, with some cultivation visible even in such a small photograph.

Figure 2 highlights the cultivation and intensification that has taken place in the past few decades.
Figure 3 The yellow bits show what is or was Crown pastoral land. The green, cultivated bits, inside the yellow show the end-result outcomes of decisions by the Commissioner of Crown Lands, either to freehold land under tenure review or grant discretionary consents on existing Crown land.

Figure 4 counts the same hectares that Figure 3 maps. It separates by ownership category the number of hectares cultivated, as visible from space, in 2003, 2008, 2014, 2017. In 2003, the majority of intensification was on freehold land. By 2017, the majority of intensification was on current or former Crown land.
The solution = public accountability by expanding the environmental democracy of the RMA onto Crown land

Executive Summary

In this submission, I would like to discuss the problem I see, the cause, and the solution I suggest.

The problem is that pattern of outcomes on high country land do not meet the statutory goals of the Land Act and CPLA. Spatial and economic analyses show this in spades. I have analysed tenure review outcomes in some detail, so most of my examples will relate to tenure review. But the problems, causes, and thus solutions apply just as much to ongoing Commissioner-led management of pastoral land through discretionary consents as to tenure review.

A good example of the problem in discretionary consents, and its causes, is visible at Riversdale Flats on Mount White Station. I am aware of the submission on Mount White Station from the University of Canterbury’s EnviroSoc, and I support their assessment of the case, its causes, and its solutions.

For illustration of the problem with Commissioner-led decisions in tenure review, a primary goal of the CPLA (S. 2) is to “enable the protection of significant inherent values [SIVs] of reviewable land”. CPLA defines SIVs in land, as the “inherent value of such importance, nature, quality, or rarity that the land deserves the protection of management under the Reserves Act 1977 or the Conservation Act 1987”.

Yet spatial analysis in Figure 5 shows that, under tenure review, the more rare and threatened values, the more likely it was to be freeholded under tenure review. And the more common and already protected a value is, the more likely it was to shift into conservation. So the process has freeholded the most rare values, and protected those that least need it (Brower et al 2017). Figure 5 shows this pattern of outcomes in the Mackenzie Basin, where the redder (and rarer) land values go freehold (with boundaries), the more common (greener) land goes to conservation.
Figure 5 shows the redder (and rarer) land values go freehold (with boundaries), the more common (greener) land goes to conservation (coloured, but with no boundaries). The striped land areas are those with identified SIVs. So the striped land with boundaries are land identified as valuable for conservation, that got freeholded.

The cause of the historical problems lies in ‘information asymmetry’ which allows for ‘organisational slack’ (Brower et al Land Economics 2010).

The public does not know what the Commissioner of Crown Lands is doing, and cannot appeal his or her decisions once made. This creates information asymmetry, which gives a power advantage to those who have more information over those who do not. In this case, it gives more power to the Commissioner and LINZ and DOC officials than to the public. In short, officials know more than the public so can do things with impunity.

Information asymmetry creates slack, or “a zone of freedom of action for regulators. . .in which they can operate with lessened fear of punishment by the polity for decisions that deviate from those the polity would adopt on its own” (Levine 1998:269).

I submit that the polity on its own (the public) would not have adopted the decision to retrospectively allow cultivation of the wrong patch of Riversdale Flat, and grant a further 1000 ha of discretionary consents on Mount White Station. I submit that the closed-doors and unaccountable Commissioner-led decisions create room for decisions that fail to serve the public interest.

This means the Commissioner can freehold all the red bits of land on the map in Figure 5 with no public accountability. In other words, while the cat is away the mice can play.

The current proposal perpetuates the historical causes, allowing the problem to continue.
As for a **solution, ‘sunlight is the best disinfectant.’** We must create public accountability on Crown land by extending the infrastructure environmental democracy unto Crown land. The sunlight of public accountability is the best, and only, solution to the information asymmetry and organisational slack that are built into the office of the Commissioner of Crown Lands.

There are 2 ways to address this:

1) do away with the office of the Commissioner, or  
2) create at least as much public notice, accountability, and rights of appeal for the Commissioner’s decisions on Crown land as the public has on freehold land.

Unless we do one of these, I fear little will change in the high country.

The most important principle for governance of Crown land in the future is that there should be no discretion without accountability. By accountability I mean public openness, participation, transparency. NZ already has the tools to do so.

I suggest we treat the Land Act 1948 as the equivalent of a Crown plan for Crown land. It says the pastoral estate is ‘suitable for pastoral purposes only’. So any proposed intensification of Crown land, that is more intensive than extensive pastoralism envisioned in the Land Act, would be the equivalent of a notified consent application under the RMA.

In other words, we should extend NZ’s environmental democracy into Crown lands. I suggest:

- the Commissioner should be required to consider cumulative effects in all CCL decisions (I acknowledge and support EnviroSoc’s submission to this effect)  
- **Public notification of cumulative effects on surrounding ecosystems** of any and all proposed changes on Crown lands, including downstream watershed effects. By changes in Crown lands, I include: Crown purchases of lease rights, or Crown alienation of Crown lands, discretionary consents on pastoral leases, or changes in the lease arrangements  
- Opportunity for **public submissions and consent hearings**, on the proposed land use changes  
- **Rights of appeal** to the Environment Court  
- **Ministerial call-in powers** on any actions proposed or approved by the Commissioner of Crown Lands, similar to the call-in powers under the RMA 1991

All of the necessary democratic infrastructure to do the above exists in NZ. Let’s extend it onto land owned by the Crown. If this requires amendments to the Land Act, then I suggest changing the Land Act 1948.

I am concerned the present proposal will perpetuate many of the ecological and landscape-level mistakes we have witnessed over the past several decades. The current proposal neither addresses, nor fixes, the cause of the problem.

In this submission, I will  
A. dispel some eloquent but impractical suggestions put forth in Radio NZ interviews for reasons we should retain tenure review.  
B. Describe ways to achieve some of the desired outcomes of tenure review in ways that will be more beneficial, and less costly, to the public.
C. Describe a vision for high country outcomes that might be more suitable for 21st century bicultural governance than either natural capital or ecological sustainability.

D. Outline a proposal for enhanced democracy in the governance of Crown land and conclude.
Part A
Dispelling impractical arguments that support continuation of tenure review

I recognise and applaud the Minister’s statement that the option of keeping tenure review is not up for discussion, but I have heard comments on Radio NZ that lead me to wonder if you will receive submissions saying tenure review should be continued. In case that happens, I’d like to dispel a few arguments for continuing tenure review that I’ve heard in the media since the Minister’s announcement of 17 February.

1) Capital gains seen post tenure review are about what we’d expect to see with a change in land use (Federated Farmers on Morning Report)

When pastoral land intensifies in its land use in NZ, it increases in value by a factor of between 2-14 (Stillman 2005), or between 100% - 1300%. In other words, when it intensifies in land use, a hectare that was worth $100 increases in value to somewhere between $200 and $1400.

Post tenure review, the median onselling price observed is 500 times the Crown selling price (Brower et al 2012, 2017). This is a 49,900% increase, which is far greater than the 100% - 1300% expected with land use change. And 49,900% capital gain is just a median or mid-way point, meaning that half of all sales are above that and half are below.

2) The financial outcomes are fixable, if we properly evaluate the future value of the land (Federated Mountain Clubs on Nine to Noon).

Tenure review has always employed valuers to do just this. Employing more or different valuers will not change the outcomes.

3) Stopping tenure review will “lock up” land, rendering it forever inaccessible to recreationists (Federated Mountain Clubs on Nine to Noon).

We don’t need tenure review to acquire recreation access. We don’t need to acquire land to secure recreation access (see Sections B, and C below). The Crown could exercise its option to require access, legislate, buy, or otherwise negotiate an access easement across Crown pastoral land for recreational purposes. I would imagine the Crown has ample experience with such easement negotiations, perhaps during the establishment of the Te Araroa Trail.

4) Covenants are an ‘obvious fix’ for landscape modification post tenure review (Kathryn Ryan on Nine to Noon)

Covenants have always been an option in tenure review, but have been used in only 14% of newly freeholded land that has gone through tenure review. Covenanting might not always be the most effective way to conserve ecological values in perpetuity. Here I list a few examples where the language of covenants does not protect ecological values that the CPLA promises to protect:

At Glentanner Station, a covenant constrains the use of 1783 hectares ‘in perpetuity’ by a deed of covenant that precludes inter alia grazing, burning, disturbing soil, diverting water flows, or removing vegetation. More generically, it requires the owner to ‘not carry out any activity that may adversely affect the land’s Values’. Values are separately
defined as ‘any or all of the land’s natural environment, biodiversity… landscape
amenity, wildlife, freshwater life or historic values’. 1

Yet Schedule 2 of the Glentanner covenant places qualifying ‘Special Conditions’ onto
the protective constraints of the covenant. Most significantly, Schedule 2.2 specifies that
the current owner is allowed to spray indigenous vegetation ‘for the purposes of
continued pastoral use.’ 2 It thus appears that the protection for indigenous vegetation
commences at change of ownership, not at change of tenure. This appears to contradict
Part 6 of the covenant, which states ‘the covenant binds the minister and owner in
perpetuity’ but is consistent with Part 7, which binds future owners to the rights and
responsibilities of the covenant. 3 Postponing ‘in perpetuity’ covenants to future changes
of ownership, or the use elsewhere of limited term covenants of 15 years 4 casts
significant doubt over the effectiveness of covenants to protect SIVs. Indeed Glentanner
has since exercised his exemption that allowed him to clear in the covenant, using
herbicide.

Another example can be found in the conservation covenant over part of the proposed
freehold at The Grampians, also in the Mackenzie Basin. Part 2 sets out the objectives of
the covenant. Other covenants we reviewed state a simple objective: ‘The Land must be
managed so as to preserve the Values.’ 5 The Grampians covenant appears to narrow the
interpretation of ‘Values’ to ‘minimization of soil erosion’. 6 To accomplish this, Part 2.2
prescribes expanding the vegetative cover to reduce the area of bare ground.

This risks encouraging, or even requiring, land use intensification in the form of
oversowing (grass seeds) and topdressing (with fertiliser). While this might cover the
soil and reduce erosion, exotic grasses will soon out-compete the indigenous plants that
constituted the values that s. 24(b) promises to protect. In short, while it is likely that
many conservation covenants do protect SIVs, our review of covenants in the Mackenzie
suggests it would be an exaggeration to say that all covenants protect SIVs. (from Brower
and Page, 2017, NZ Universities Law Review)

Calling these ‘ecologically sustainable covenants’, as tenure review agreements did,
strikes me as false advertising at best. The covenant conditions requires the lessee to
increase the cover of exotic grasses through intensification – effectively destroying
ecological values - an oxymoron when it comes to ecological sustainability

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1 http://www.linz.govt.nz/crown-property/crown-pastoral-land/status-and-location-crown-pastoral-
land/glentanner
2 page 103 of Glentanner Full Substantive Proposal and Appendices, at http://www.linz.govt.nz/crown-
property/crown-pastoral-land/status-and-location-crown-pastoral-land/glentanner
3 Parts 6 and 7 are on pages 97 and 98 of the Glentanner Substantive Proposal
4 For example, part 6 of the covenant at Irishman Creek, seeks to protect about 7 kilometres of the eastern
shoreline of Lake Pukaki, yet this covenant is set to endure for ‘a period of up to 15 years from the date of
registration’. Page 75 of Irishman Creek Full Substantive Proposal at: http://www.linz.govt.nz/crown-
property/crown-pastoral-land/status-and-location-crown-pastoral-land/irishman-creek
5 See for example page 37 of the Maryburn Full Substantive Proposal and Appendices at:
land/marbyburn
6 page 67 of The Grampians Full Substantive Proposal and Appendices at: http://www.linz.govt.nz/crown-
property/crown-pastoral-land/status-and-location-crown-pastoral-land/the-grampians

‘2.1 The objectives of this covenant are to better achieve ecologically sustainable management of the land by
the minimization of soil erosion through the improvement of vegetation cover and maintenance thereafter, and
any other means of reducing the exposure of the soil to erosion, particularly wind erosion.’
Part B
What to do with the Crown pastoral estate after tenure review

Tenure review had multiple goals, all of which could be achieved through other mechanisms. The Crown does not need to freehold land in order to protect ecological values and provide recreation access. Indeed ‘freeholding’ and ‘providing access’ are rather contradictory, on their face.

There are several ways the Crown could provide access and protect ecological values on Crown land differently, and in a way more obviously beneficial to the New Zealand public. Here are a few suggestions for how the Crown might simultaneously generate revenue, allow for land use diversification on productive land, protect conservation values, and provide universal recreation access to land with ‘significant inherent values’. (see Brower 2016 https://ojs.victoria.ac.nz/pq/article/download/4581/4070/)

1) Revisit the legal foundations of pastoral runholders’ rights to exclude recreationists

In the briefing in Christchurch, 28 March, the Minister mentioned that neither the leaseholders’ right to graze nor to quiet enjoyment as conveyed by the Land Act is up for discussion.

There is nothing in the text of the Land Act that conveys to leaseholders the right to exclude recreationists. In Fish and Game Council v. Attorney General and Others (2009), the High Court found that exclusionary powers were implied. The Court could not find them anywhere written down explicitly.

Instead, leaseholders' rights to exclude the public rest entirely on one sentence from one High Court judge who "prefers the minority opinion" in a seminal Australian Supreme Court case.

Justice France noted, “eminent jurists can reasonably disagree. . . . I make no attempt to add to the debate, but note that, with respect, I prefer the minority reasoning.” Justice France explained his choice by referring to another minority opinion from another Australian High Court case where Justice Michael McHugh argued that “there is nothing about the grant of a lease for pastoral purposes that is inconsistent with the lessee having the legal right to exclusive possession. . . .” (The New Zealand Fish and Game Council v. Attorney General and Others (2009))

In other words, the High Court’s preference for a minority opinion in turn rests on another minority opinion. That second minority opinion in turn rests on a confusing double-negative that says that a pastoral lease is not inconsistent with exclusive possession. The second minority opinion doesn’t say the pastoral lease definitively grants exclusive possession, just that it might.

A minority opinion is not settled law. It is merely recorded for posterity. It is extraordinary for access to over a million hectares of Crown land to rest on two minority opinions that, taken together, say pastoral leases might grant the right to exclude trespassers.

The Crown could secure legal recreation access just by revisiting the High Court’s reliance on minority opinions and preference for implied rights over explicit rights. Implied rights are written, in invisible ink, in the spaces between the lines of the law;
while explicit rights are written into the black letter law. It is extraordinary to favour invisible ink over black letter law on an issue as important as public access to over a million hectares.

It could do so by **legislating to clarify property rights in pastoral leases.** This would **make the rights explicit, in black letter law, not implied and assembled through a series of Australian minority opinions.**

I submit that the purported right to quiet enjoyment *should* be on the table because it is not explicitly in the Land Act.

I appreciated the Minister’s response at the briefing to the question of why reconsidering property rights is off the table. But I submit that if the Crown, as landowner, were to reconsider and clarify property rights, then it would no longer need to rely on partnerships and good will to create change in the million hectares of the high country that remain.

I disagree with the Commissioner’s comment at the briefing on 28 March. He said the land has been alienated. This is not true. Only a few rights have been alienated, and these alienations are not permanent. They are not even in perpetuity, as perpetually renewable is not in perpetuity.

The Crown owns the land. I submit that it should start acting like it.

**2) Negotiate the desired outcome, with compensation when required, without freeholding**

The Crown could acquire covenants or recreation access easements. Neither requires freeholding. Indeed freeholding land before (or even while) asking for an access easement is a bit like asking for a promotion after quitting one’s job.

**3) Buy and sell**

The Crown could buy the entire lease. Following the purchase, the government could identify the significant inherent values worthy of protection through a consultation process similar to tenure review. As the government would be the holder of the complete bundle of property rights, identification of protected land would not be constrained by the lessee’s interest. After reserving some land for the Department of Conservation, the government could offer *tangata whenua* first right of refusal, then sell the remaining land ‘capable of economic use’ at auction. This would allow a market mechanism to determine the value of potential and actual property rights, rather than a private negotiation administered by LINZ. It would also increase the likelihood of the Crown capturing potential value from the assets it is disposing of. Though the initial cash outlay for the whole property purchase would be high, the aforementioned observation that land freeholded under tenure review sells for 500 times the Crown’s selling price (Brower et al 2012) suggests that the revenues generated at auction would be higher. Administrative costs would be much lower than under tenure review.

**4) Create reserves and amend the Land Act**

The Land Act 1948 gives ministers and the governor-general authority to create reserves on land under pastoral lease. Hence, the government could create reserves on land sections with desired values, and create access easements across the pastoral land.
surrounding the reserves. The Land Act does not explicitly require compensation to the lessee for creation of the reserves themselves, but posterity might require compensation for any value lost due to the easements or exclusion of sheep from the reserves. At the same time, Parliament could amend the Land Act to allow more uses on pastoral land – from viticulture to ski fields to golf courses – as desired by parliamentarians and as permitted by the Commissioner and the Resource Management Act. This option would not allow for any freeholding, and would likewise not extinguish the lease over land designated as reserves. But it would allow for protection of values, recreation access and land use diversification. The cost would be administrative and any compensation owed to the lessee. Ideally, that compensation would be determined by a court such as the Land Valuation Tribunal.

5) **Buy some and amend**

The government could buy the lessee’s interest in land deemed to be of conservation, recreation or heritage value, and thus regain ‘full Crown ownership’ of land going into the conservation estate. As a condition of the government purchasing the lessee’s use rights, the government could amend and relax the Land Act’s pastoral requirement, allowing for diversification but no subdivision. This would not allow a freehold option, but would convey many of the property rights associated with freehold, and many of the rights in the non-pastoral bundle desired by lessees.

6) **Farm environment plans and creating more ‘science-like’ decision-making won’t change outcomes on the ground. Clear requirements will.**

The discussion document mentions possibly aligning with ECan’s mandatory Farm Environment Plans. While these seem a valuable tool for gathering information, and supporting farmers to think more ‘environmentally’, there is little evidence that requiring an organisation or person to think environmentally means they will act more environmentally. Less than 15% of an individual’s environmental behaviour directly aligns with and derives from his or her environmental knowledge and attitudes (Kollmuis and Argemyun 2006). This does not give me faith that the environmental thinking and education, and even attitudinal shifts that might come with Farm Environment Plans will make any difference on the ground. Indeed when tested on US federal agencies, requiring environmental thinking, planning, and assessment (under National Environmental Policy Act) did not directly change agency decisions and behaviour.

Taylor (1984 *Making bureaucracies think: the environmental impact statement strategy of administrative reform*) looked at the institutional impacts of the National Environmental Policy Act, and its imposition of science-like rules and procedures onto the decision-making process of the corps of engineers, forest service, and other agencies. He asked whether the new in process had institutionalized a greater sensitivity to environmental risk and enhanced the intelligence capabilities of the organizations; and do procedures help or hinder democratic politics?

Taylor concluded that the degree to which the NEPA process did produce more environmentally friendly outcomes depended on: organizational slack in the benefit cost ratio (a.k.a. when the cat is away, the mice will play), distribution of political power, and credibility of scientific environmental predictions.
Rules designed to enhance procedural rationality are more general but less powerful than decision-making rules to enhance substantive rationality; politics needs a balance in a science-like system. In other words, a procedural change like requiring FEPs will do far less on the ground than making a clear and measurable substantive change to what the outcomes must look like.

7) Re-consider the role of the Commissioner for Crown Lands

It seems to me that the independence that is built into the Commissioner’s office is at the heart of the cause of the problematic and extra-legal outcomes in tenure review and pastoral discretionary consents. Statutory independence creates power that is devoid of public accountability, over 5% of the country. That’s a lot of power over a lot of land. I as a tax-payer and citizen, struggle to find a way to appeal or influence the Commissioner’s land use decisions on pastoral land.

I acknowledge the Minister’s response to my question at the briefing about why we need a Commissioner. Yes, it is an artefact of history. We have it because we have it. But that doesn’t mean we need to keep it. Yes, I understand leaseholders value the continuity, dependability, and lack of accountability of the Commissioner. But that doesn’t mean we need to keep it. Indeed I submit that the more strongly one group advocates to retain one thing, the more closely we should scrutinise who benefits from that thing and whether that is fair.

These same arguments apply to the US Electoral College. It is an artefact, and those who benefit from it support its continuation. This is because they value its over-representation of under-populated states. I am not convinced by any of these arguments.
Part C
Vision for outcomes
I think the high country outcomes should be a mix of Aldo Leopold’s land ethic and Matauranga Maori along the following lines:
“A thing is right when it tends to preserve the mauri, integrity, stability, beauty, and access of the biotic community. It is wrong when it tends otherwise.”
In this section I will explain my thinking, and relate my proposed Vision to the Natural Capital vision in the discussion paper.
Aldo Leopold owned a farm. His land ethic has agriculture in its vision, and is very much a mixed use model, where we can have multiple land uses (e.g. production and conservation) on one patch of ground. It is not a separatist land ethic in which conservation and production are done on different patches owned by different entities, and never the twain shall meet.
Aldo Leopold’s land ethic says “A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.”
This is sustainable agriculture at its best. It is also good public policy, with clear goals that would yield measurable targets and KPIs.
We could also adapt the land ethic, to make it reflect NZ’s bicultural and inclusive 21st century society. Borrowing from Matunga’s (unpublished) Mauriora Systems Framework, and extending the land ethic into Matauranga Maori, high country, and Treaty terms, I would say “A thing is right when it tends to preserve the mauri, or life force, of the high country. It is wrong when it tends otherwise.”
I think our vision for the high country should be a Te Tirity-based Land Ethic, which has 5 clear standards and publicly-oriented goals (mauri, integrity, stability, beauty, and access) built into it. This is more reflective of New Zealand in 2019 than ecological sustainability or natural capital. Both of these are also too ambiguous and vague.
Ambiguous and vague policies don’t tend to work well. “Ambiguity yields statutes and regulations obscure enough to please all parties, vague enough to be unenforceable, and so ill-defined that failures to implement the policy will be difficult to detect and impossible to litigate. Ambiguous policies sound lofty but may accomplish little.”
(Walker et al, 2008 https://newzealandecology.org/nzje/2881.pdf) Ambiguous policies tend to favour the vested interests, with a measurable financial stake in the outcome of a decision. In the high country context, they will favour development over protection, and exclusion over access.
While I appreciated James’ clarification during the briefing that the proposed Natural Capital Vision offers a clear hierarchy, in which protection supercedes agriculture, I have a few reservations about Natural Capital as the vision.
1) Neither the hierarchy nor the order of it was obvious to me in the present version. This degree of ambiguity would be bad public policy. Clarification is required.
2) Natural capital, as it’s described in the proposal, gives off an air of “Ask not what we can do for the land; ask what the land can do for us.” It’s quite anthropocentric. A bicultural Land Ethic for the 21st century would be more land-centric.
Part D
Conclusion: Environmental democracy for ethical governance of Crown land

I find the Discussion Document’s question 4 extraordinary. Do I agree that we should change the law to support public officials to comply with the law? When I took my oath of citizenship in NZ, I had to promise to obey the law. From the outside looking in, one would expect that public officials would be required to comply with the law no matter what, with or without support from a law change.

However, I have watched many pastoral land decisions – in both tenure review and discretionary consents – that leave me wondering which section of which statute allowed for that decision.

Mount White Station springs to mind. The leaseholder seems to have cleared and cultivated the wrong patch of land – not the land for which they had resource consent. In response, the Commissioner of Crown Lands does not seem to have prosecuted or fined the runholder. Instead the Commissioner granted retrospective consent, and then a further large bundle of discretionary consents to clear and develop land on the doorstep of the Arthurs Pass National Park, some of which is a designated reserve and even gazetted to go into the park.

Which section of which statute allowed for that?

And as a concerned citizen, how can I appeal the discretionary consents on Mount White Station? Can someone please explain to my students why we can appeal resource consent decisions on freehold land but not discretionary consents on Crown land? I’ve tried explaining it, but I can’t explain something that doesn’t make sense.

On this subject I commend to you my students’ video and petition to Hon Eugenie Sage, asking the Crown to put Riversdale Flats into Arthurs Pass National Park. The video, with a link to the petition, is here:

https://www.youtube.com/watch?v=2-yXmB8eNNQ

The Mount White problem brings us back to the beginning of this submission – problem, cause, and solution.

The problem here is that we have pastoral land outcomes that are extra vires at best. I will give 2 examples. In 2017, Judge Jackson wrote in: “Without a covenant it is difficult to see how the [Commissioner of Crown Lands] can justify freeholding as consistent with the purpose of tenure review under the CPLA.” (Federated Farmers of New Zealand (Inc) v Mackenzie District Council [2017] NZEnvCourt 53 at [551]). At the briefing on 28 March, the deputy director of LINZ responded to a question about the legality of decisions on Mount White Station with the words “mea culpa.”

The cause of these extra-legal outcomes is discretion without accountability. The problems illustrated above were allowed because the decisions took place behind the closed doors of the bureaucracy. It wasn’t any section of any law that allowed these outcomes. It was the information asymmetry and organisational slack that lulled the public to sleep and allowed an unconsented big green patch in the shadow of Arthurs Pass National Park.
Back to question 4, do I agree we should change the law to support the high country infrastructure to avoid allowing extra-legal outcomes? No. As voters and tax-payers, I think we deserve outcomes that comply with the law. This is not too much to ask.

What do I think might help to avoid future extra-legal outcomes?

1) change the Land Act to modify or abolish the role of the Commissioner of Crown Lands; or if not that,
2) Change the CPLA and possibly the Land Act to create clear lines of accountability between the Commissioner and the public. This should include public notification and rights to appeal Commissioner’s decisions and their cumulative effects to the Environment Court, at the very least.
3) Instil NZ’s environmental democracy into the Crown pastoral estate. I will expand on this below.

The discussion document focuses on internal accountability, still within the walls of the bureaucracy. To me, accountability is to the public. True accountability comprises openness about the cumulative effects of a proposal, followed by public notification, participation, and, most importantly, appeal rights. In other words, we should extend NZ’s environmental democracy into Crown lands. (If appeal rights require amendment or repeal of the ECan Act of 2010, then I add that to my suggestion as well).

Crown lands should be governed in a way that respects and advances the ideals of NZ’s environmental democracy. This democratic infrastructure exists, and should extend onto Crown land.

These ideals of environmental democracy (as I read the RMA 1991) include for all Commissioner of Crown Lands decisions:

- Prediction and consideration of cumulative effects
- Public notification, submissions, and public participation
- Rights of appeal
- Ministerial call-in powers

In short, there should be no discretion (of the CCL or any DoC or LINZ official) without public notification of proposals and their cumulative effects, accountability, and appeal-ability.

Thank you for the opportunity, and for your attention.

Ann Brower
A. INTRODUCTION

1. We make this submission as professional ecologists with extensive experience on Crown pastoral land and across the high country more generally (Appendix 1).

2. Our submission does not necessarily represent the views of our employers, clients, professional organisations or bodies.

3. We generally agree with most of the conclusions of the recent Regulatory System Assessment. We commend the government for acknowledging the failures of tenure review, and for taking the decision to end it.

4. However, we have strong reservations about the proposals for a new regulatory system for Crown pastoral land contained in the Cabinet Paper and Discussion Document.

5. Those proposals will not achieve meaningful and enduring stewardship of ecological and landscape values of land that the Crown administers in the High Country because they embed the failings of the past system.
6. Our submission sets out the problems with the Cabinet Paper and Discussion Document proposals.

7. A key problem is that the papers propose to preserve the same structural imbalance that has led to the demise of natural heritage in the high country. They
   a. fail to provide for meaningful and influential public participation in decision making on Crown pastoral land, and
   b. preserve the discretion of unelected officials without providing any real accountability to the public for their decisions.

8. A further important problem is that the natural capital outcome proposed for Crown pastoral land is unclear and ambiguous, and will facilitate continued loss of natural heritage.

9. Our submission suggests solutions which would correct these failings and which are necessary to achieve enduring stewardship of the Crown pastoral land in the high country.

10. We thank the Government for the opportunity to contribute to this important review.

B. KEY ECOLOGICAL MATTERS

Maintaining remaining ecological values is a bottom line for enduring stewardship

11. Over the last 2-3 decades, the failings of tenure review and the regulatory regime for Crown pastoral land have resulted in severe and permanent losses of the high country’s unique ecological values.

12. Losses of ecological values have been greatest in the most threatened natural ecosystems, which were already significantly under-represented nationally and poorly protected, and which supported the rarest and most threatened indigenous species. To illustrate this
   a. in Appendix 2 we show how numbers of threatened and declining high country plant species have increased across three recent assessments (2008, 2012, 2016). The changes mainly reflect the loss of species’ habitats to intensive agriculture, and much of that loss resulted from the failings of tenure review and the regulatory regime for Crown pastoral land
   b. in Appendix 3 we summarise some recent examples of the loss of ecological values through the granting of Crown Pastoral Land Act 1998 (CPLA) discretionary consents.

13. A primary ecological concern is that very little, if any, additional Crown pastoral land could now be developed without significant and permanent loss of ecological values. Additional development would also further extinguish ecological sustainability and landscape values, compromise soil conservation and water quality, and reduce carbon sequestration.

14. Therefore, we submit that the need to maintain all the remaining ecological values on Crown pastoral land is a bottom line for enduring stewardship. Activities and uses which destroy, modify and degrade ecological values further are inappropriate.

15. The high country’s remaining ecological values are already greatly depleted, and vulnerable. They cannot be exchanged, replaced, or restored once lost, and their loss cannot be mitigated. We oppose, in the strongest terms, giving officials the flexibility to approve non-pastoral activities that they consider “do not result in an overall reduction of the natural capital in the land”\(^1\).

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\(^1\) See also ‘Offsetting’ in Appendix 5.
Ongoing degradation of remaining ecological values on leases must be addressed

16. A further important ecological concern is that many of the ecological values of the high country are degrading under current pastoral management (Appendix 4).

17. High country pastoral land was intentionally not alienated by the Crown because of its high inherent vulnerability to extractive and exploitative use, and its importance for providing ecological services (especially water yield and soil retention). In many cases, ongoing pastoral use of undeveloped land is not sustainable, especially when effects of plant and animal pest infestations are taken into account.

18. Therefore, if ecological values are to be sustained, enduring stewardship will also require management that is different from the present across many areas of land in the high country. This change may involve retirement from extensive pastoral grazing, or stock limitations, and will involve more active management of pests and weeds.

19. New legislation will need to direct and enable far more active oversight by Land Information New Zealand (LINZ) of pastoral lease management, with a new focus on maintaining and enhancing natural heritage values.

C. PURPOSE OF A NEW REGULATORY SYSTEM

The purpose and outcome should be to secure and safeguard natural heritage, not natural capital

20. We agree that the environmental, economic, and social context for Crown pastoral land management has changed since the Land Act 1948 (LA) and CPLA were introduced (Cabinet Paper para 5, Regulatory System Assessment paras 9 to 11); for example, “the focus on conserving the soil and managing pests ... has shifted to broader concerns about preserving New Zealand’s indigenous biodiversity ...”; and “what is considered valuable conservation land today is not just the high-elevation high country...”.

The DD states on page 36: “At the same time, it 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. This could include undertaking actions to mitigate the impacts of a proposed activity (see below for more details on this).”.

The Cabinet Paper at para 73 states: “The Commissioner would retain the flexibility to mitigate the negative impacts of a proposed activity and secure overall improved outcomes as a condition of the application approval”. 
21. The outcome and definitions of natural capital proposed in both the Cabinet Paper and Discussion Document are at odds with this shift, and are thoroughly ambiguous.

22. The ambiguity in the proposed outcome makes it “obscure enough to please all parties, vague enough to be unenforceable, and so ill-defined that failures to implement [it] will be difficult to detect and impossible to litigate”.

23. The proposed outcome and definition are ambiguous because they confuse and conflate:
   a. natural heritage values (including indigenous biodiversity and landscape values, which the Crown holds in trust for NZ) and
   b. natural resources (e.g. minerals and energy resources, which are conceived as having potential for human use and exploitation).

24. Management of natural capital is in conflict with securing and safeguarding natural heritage values. The idea of natural capital derives from economics, in which:
   a. capital is conceived as resources, which exist not for their own sake but in order to provide flows of goods and services to people. This human-use centred view is evident in the framing

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2 Cabinet Paper para 14.1, DD pages 23–24:
Enduring stewardship of Crown pastoral land
The Crown will ensure that the natural landscapes, indigenous biodiversity and cultural and heritage values of this land are secured and safeguarded for present and future generations.
To achieve this, Crown pastoral land will be managed to maintain and enhance natural capital, and cultural and heritage values; and subject to this:
• provide for pastoral and appropriate non-pastoral activities that support economic resilience and foster the sustainability of communities
• enable the Crown to obtain a fair financial return.
The Crown’s management of this land will take into account the principles of the Treaty of Waitangi.

3 The Cabinet Paper does not define natural capital, but says (footnote 14 to para 64): “Natural capital in Crown pastoral land includes individual assets such as land, soil and indigenous trees, plants and wildlife. It also includes broader habitats and ecosystems and their associated services. More broadly, the health of Crown pastoral land and the wider high country environment supports regional economic success; pastoral farming relies on the ecosystem services that biodiversity supports; and tourism relies on the ongoing beauty and health of the natural environment and landscape.”

The DD (page 10) defines Natural capital as follows
“Natural capital can be thought of as the aspects of our environment that sustain society’s present wellbeing and improve intergenerational wellbeing. This includes land, soil, water, biodiversity, minerals, energy resources, and ecosystem services (the benefits that humans gain from the natural environment and from properly-functioning ecosystems). Natural capital is one of the four capitals in the Treasury’s Living Standards Framework, alongside human, social and financial/physical capitals. The four capitals are interdependent and together support the wellbeing of New Zealanders. Environmental degradation may impact on multiple capitals. For example, threats to biodiversity have the potential to reduce social and physical capital as well as natural capital.”

4 Walker et al. (2009) (see References).

5 Murray and Swaffield (1994) suggest that the term ‘resource’ is culturally constructed (an ecological entity only takes meaning as a resource when it has been classified and recognised for potential use by humans) and anachronistic (evoking familiar, positive images of a cultural heritage based on resource exploitation). They point out that the term ‘resource’ departs from the ecological view of ecosystems as complex, interdependent webs (rather than discrete exploitable elements) and hides the threat this ecological view poses for development interests ‘in so far as it may require stronger limits on resource exploitation’.
in the Discussion Document definition, which states that natural capital is “those aspects of our environment that sustain society’s present wellbeing and improve intergenerational wellbeing”. Use and development are likely to dominate as a consequence.

b. in a ‘weak sustainability’ paradigm, different types of capital are interchangeable\(^6\). Hence natural capital is maintained if, for example, indigenous vegetation is transformed into an energy resource (e.g. biofuel). This is inconsistent with safeguarding and securing.

25. If government’s intention is that indigenous natural heritage values are secured and safeguarded into the future, we suggest that the purpose and the outcome must make it unambiguously clear that natural heritage has primacy, and is valued for its own sake. The purpose and outcome must also clarify that this natural heritage is not a resource valued for use, exploitation and/or transformation by people.

26. Valuing indigenous natural heritage for its own sake is consistent with the changed environmental, economic, and social context for Crown pastoral land. The natural capital-focused purpose and outcome proposed in the Cabinet Paper and Discussion Document are out of step with this change, and are inappropriate in a new regulatory system.

27. We submit an alternative purpose and definition for amended legislation (Box 1). The outcome we propose uses the term natural heritage instead of natural capital. It defines natural heritage, and clarifies what it excludes and which activities are not appropriate.

**Box 1: Suggested purpose and outcome for Crown pastoral land**

The **purpose** of the legislation is enduring stewardship. Enduring stewardship **means** securing and safeguarding natural heritage in perpetuity. Natural heritage **means** natural landscapes and indigenous biodiversity, including but not limited to natural landforms, indigenous ecosystems, communities, vegetation, species, the habitats of indigenous flora and fauna, and the natural physical and ecological processes that sustain these. Natural heritage **excludes** instrumental and use values\(^1\), such as:

- ecosystem services other than those arising inherently from natural heritage\(^1\)
- recreation
- minerals, energy and tourism resources
- cultural and pastoral heritage.

Activities and uses that conflict with enduring stewardship do not achieve the purpose, and are therefore **not appropriate**.

28. We submit that the purpose and outcome for Crown Pastoral land should **give effect to** the Treaty of Waitangi (and not just take it into account, as proposed in the Discussion Document).

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\(^6\) The DD does not set out whether strong or weak sustainability is intended. Within weak sustainability, unconditional substitution between the various kinds of capital is allowed. This means that natural resources may decline as long as human capital is increased. In weak sustainability, natural capital is not depleted if, for example, indigenous biodiversity capital is transformed into an energy resource (Cart 2001).
D. ACCOUNTABILITY – GENERAL

Discretion without accountability is business as usual

29. Permanent losses of the high country’s natural heritage over the last 2 to 3 decades have resulted from a regulatory system in which the discretion to make decisions is given to unelected officials with little accountability to the public for outcomes.

30. The primary decision maker is the Commissioner of Crown Lands (CCL) and, in practice, many decisions are also de facto determined by other government employees and officials in LINZ and the Department of Conservation (DOC) and by contracted consultants 7.

31. We submit that this is an undemocratic and discreditable way to manage decisions on Crown pastoral land. Even on private land, notified consent applications are open to public scrutiny and submission, and a public appeals process under the Resource Management Act 1991 (RMA).

32. We are extremely concerned that the Cabinet Paper and Discussion Document contain little to provide greater public involvement in decision making.

33. We think the Cabinet Paper and Discussion Document proposals to increase ‘accountability’ and ‘transparency’ are completely inadequate. They will plainly preserve the behind-closed-doors discretion of unelected officials, and the inability of the interested public and mana whenua 8 to influence or appeal decisions.

34. The Discussion Document rightly describes Crown pastoral land as a taonga 9. The land is held in trust for New Zealanders with only a narrow set of rights alienated. Natural heritage can be grazed, within stock limitation constraints, but otherwise natural heritage on Crown pastoral land is the property of the Crown and managed on behalf of all New Zealanders. Therefore mana whenua and the general public have an even stronger legitimate interest in decisions that affect natural heritage than on private land 10.

35. We submit that Crown pastoral land therefore warrants both a very much higher level of mana whenua and public input and scrutiny, and a far higher level of accountability to these stakeholders for outcomes.

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7 RSA paragraph 22 “The CCL has delegated some decision making to LINZ. However, the delegations have not been accompanied by clear directives indicating what the CCL expects from LINZ (other than in relation to process). The CCL has not helped because it has not been clear to LINZ staff, service providers or external stakeholders about how the CCL makes important judgement decisions.”

8 In this context, mana whenua means the indigenous people (Māori), in particular iwi and hapu, who have historic and territorial rights over the land.

9 DD page 9: “The South Island high country (high country) is one of New Zealand’s most iconic landscapes and a taonga for many New Zealanders…” “Māori have a deep connection to, and history in, the high country. Māori also have an important kaitiaki role in relation to high country public conservation land…”

10 This is acknowledged in the Regulatory System Assessment at page 5 (para 13) which says “This interest merits an additional level of protection above and beyond the RMA regime”.

36. These roles of mana whenua and the wider public must be both meaningful and influential\textsuperscript{11}. The roles proposed for them in the Cabinet Paper and Discussion Document are neither\textsuperscript{12}.

**Two requirements for a new regulatory system**

37. We suggest that enduring stewardship of the Crown pastoral land requires a very different regulatory system to that proposed in the Cabinet Paper and Discussion Document.

38. The key requirement of this different system is that it provides clear accountability to the public for decisions in order to ensure that they individually and cumulatively achieve enduring stewardship.

39. Two ingredients of the system are essential
   
a. unambiguous purpose and outcomes set out in legislation which direct precedence to safeguarding and sustaining natural heritage in decisions, and do not invite a ‘balancing’ approach to decision making
   
b. mana whenua and public participation, and appeals, are enabled through a full public notification and hearing process consistent with the RMA. Ultimate decision-making authority is vested in the Environment Court.

40. Adopting one of these ingredients without the other will perpetuate the loss and degradation of natural heritage that we have seen in recent decades, because
   
a. in the absence of a full public notification and appeals process through the Court, delivering a new purpose and statutory outcome to the same unaccountable officials will provide little incentive for officials to give them effect; and the public and mana whenua will be unable to ensure they are given effect
   
b. it will be futile to vest decision-making authority in the Court without providing unambiguous legislation to direct the decisions on purpose and intended outcome.

E. ACCOUNTABILITY – SPECIFIC SUGGESTIONS

**Discontinue the office of Commissioner of Crown Lands (CCL)**

41. We submit that the role of the CCL should be discontinued.

42. We consider that the position of the CCL has been at the heart of the unaccountability and lack of democracy in the administration of Crown pastoral land to date.

\textsuperscript{11} Involvement of the public and environmental NGOs in planning and resource consent deliberations through the Environment Court has led to important improvements in the environmental performance of rural councils. For example, it is unlikely that any improvements would have been made in the management of the outstanding natural landscape of the Mackenzie Basin (Discussion Document pages 14-15) without the legitimate involvement of public interest groups in plan changes.

\textsuperscript{12} In our opinions, some of the proposals are patronising. In particular, paragraph 63 of the Cabinet Paper states that iwi have an interest, but does not suggest any tangible pathway for them to influence outcomes, and implies that the role of the public is to contribute to “wilding conifers and predator control work, and initiatives”. 
44. There is ample evidence that the CCL has failed the public as a landlord of Crown pastoral land and kaitiaki of its natural heritage in the last 2 to 3 decades. Their decisions in tenure review and discretionary consents have transferred enormous public wealth — the intrinsic value of natural heritage, and tens of millions of dollars — to a few individuals. Those few have been greatly enriched at the public’s permanent cost.

45. We are surprised that the Government (in the Cabinet Paper and Discussion Document) proposes to retain the CCL. The evidence is that the CCL role has rendered decisions on Crown land susceptible to capture by a very few vested interests. We submit that correcting this requires more than merely giving the CCL and their officials more guidance, and hoping that they will follow it, while preserving their ‘independence’.

46. Abolishing the role of the CCL and giving decision-making responsibility to independent commissioners — with appeal rights to the Environment Court — retains the advantage of the decision-maker being independent of the government of the day. But most importantly it also ensures that the decision-maker is bound by the legislation, and is required to consider the submissions from a wide range of interested parties, who have appeal rights.

47. Transferring decision-making responsibility as we suggest also has a very considerable efficiency advantage. It would create a single process that joins up the functions of LINZ, DOC and regional and district councils in environmental decisions.

48. The joined-up system would also resolve concerns raised in the Regulatory System Assessment at paragraph 36, and at page 10 (Priorities 4.4 and 5.1). It would give effect to the LINZ response (Regulatory System Assessment page 12, Issue 5).

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13 The DD does not explain why it government still regards the CCL’s role as ‘essential’ and ‘critical’

14 Vested interests are those parties who stand to gain financially from the transactions. The public has no pecuniary interest, so is not a vested interest.

15 The Court provides the obvious avenue to ensure that decisions do actually “comply with legislative requirements” (Discussion Document Question 4a). We do not support the approach suggested, of promulgating a new outcome, along with guidance and standards, and simply hoping that these will be voluntarily adhered to in the absence of genuine accountability to give effect to the legislation.

16 “d. Stakeholders are still arguing about the necessary process steps, causing considerable inefficiency; e. The interface with the RMA is poor, which is generating considerable extra work for all.”

17 “Over the past twenty years there has been a move to increase the ability of interested parties to be involved in regulatory processes. At present there is limited ability for such parties to be involved in the Crown Pastoral Land Regulatory System, other than during a particular tenure review process. Given the major regulatory system that interfaces the Crown Pastoral Land System is the RMA the difference is marked.”

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

19 “Reconsider the interfaces with other key systems
We recognise that Crown pastoral land is managed within a range of related systems. We will work with key agencies to implement the findings of the 2017 Mackenzie Review. This work will also provide a model for how we can work with other agencies elsewhere in the South Island High Country, and how interlinked regulatory systems, such as the Resource Management and Crown Pastoral Land Acts can better collaborate.”
Make the Environment Court the ultimate decision-maker on discretionary consents

49. We suggest that all types\(^{20}\) of new and renewed discretionary consents on Crown pastoral land should be publicly notified as a matter of course.

50. Because even recreational discretionary consents risk alienating public values to private interests (see below), we think there should be no, or few, exceptions to public notification.

51. We do not accept that non-notification is justified because some activities are small in scale and impact (Discussion Document page 40). If small, truly harmless activities (e.g. one-day filming activities) are numerous, a short schedule of exemptions could be compiled. The public would need to be consulted on this schedule, and loopholes avoided\(^ {21}\).

52. Public notification of discretionary consents could be undertaken by LINZ, or delegated to the appropriate district council or councils. We envisage a two-stage process:

   a. Stage 1: the notifying agency would notify any consent application under the RMA in parallel, process submissions, and arrange public hearings with independent commissioners. This stage would determine whether there were substantive concerns about the activity and its effects.
   b. Stage 2: appeals on hearing decisions would go to the Environment Court, as they do already with RMA consents. The Court would need to ensure that the purpose of the LA and CPLA, as well as the RMA, were considered and given effect to in decisions.

53. In sum, we submit that these changes to the regulatory system for discretionary consents are efficient as well as fair, and will also be seen to be fair, because

   a. the apparatus and process for public notification is established and in train under the RMA
   b. RMA, LA/CPLA consent applications will be bundled and therefore dealt with in a single process
   c. this bundling will also enable the full suite of potential effects of a proposed activity to be considered together
   d. Mana whenua and the wider public have a greater interest in enduring stewardship on Crown land than on private land, so a high standard of outcome and scrutiny is appropriate
   e. the function of the Environment Court as a legislative body is to apply and uphold the law in an independent manner (in contrast to the CCL), and it has a track record that gives it credibility.

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\(^{20}\) The different types are

- Section 60 Land Act: The creation of easements
- Section 66A Land Act: Recreation permits
- Section 100 Land Act: Preservation of timber
- Section 15 CPLA: Burning of vegetation
- Section 16 CPLA: Activities affecting or disturbing the soil
- Section 18 CPLA: Stock exemptions

\(^{21}\) e.g. activities should not be able to be ‘stacked’ as multiple small-scale applications to avoid notification
Remove agency officials from decision-making roles

54. Delegated unelected agency officials (in LINZ, and DOC) and contracted consultant farm advisors have been the High Country’s *de facto* decision makers on discretionary consents in the past.\(^{22}\)

55. LINZ has had few (if any) staff with the qualifications to assess natural heritage values. Their external contractors have been drawn largely from farm property advisors with farm development perspectives.

56. DOC has increasingly delegated the role of advising on impacts on inherent ecological and landscape values to community relations staff rather than technical experts. These community relations staff have repeatedly provided advice that has underestimated the inherent values and significance of the values at stake.\(^{23}\)

57. These unbalanced streams of advice have contributed to substantial losses of natural heritage of the highest significance, as illustrated by our examples in Appendix 2 to this submission.

58. We suggest that the decision-making roles of LINZ and DOC staff with respect to discretionary consents are discontinued, and replaced by purely technical expert roles to advise an external decision-maker (ultimately the Environment Court, but initially a panel of commissioners).

59. Our suggestion is that legislation should require that for each discretionary consent application:
   a. In LINZ, an evaluation of the appropriateness of the proposal in achieving the purpose of the CPLA/LA should be prepared by an expert planner
   b. In DOC, submissions on natural heritage values and planning matters should be prepared by experts (including but not limited to ecologists, landscape architects, recreational experts, and planners).

60. Decisions should be made by a panel of independent hearing commissioners, and (if appealed) by the Environment Court.

61. Costs to agencies and submitters associated with applications, including appeals, should be able to be sought from the applicant.

Notify and consult on any discretionary consents applied for ahead of legislative change

62. We are very concerned that there is potential for a ‘gold rush’ on discretionary consents ahead of the new legislation, which will be expected to increase the difficulty of obtaining those consents in future.

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\(^{22}\) The Regulatory System Assessment describes some aspects of the delegation, and its deficiencies, at paragraphs 22, 23, 30, and 17.

\(^{23}\) We disagree with the Regulatory System Assessment at para 17 where it says “DOC have been trying to get better at giving definitive advice”. We have seen no evidence of such improvement. To the contrary, we have seen a trend for advice to be delegated to unqualified community relations officers, and written up or signed off on by operational managers, with few ecological qualifications. It is our experience that community relations staff are compromised by their primary obligation to maintain partnerships and cordial relationships rather than to maintain natural heritage. We consider that they cannot be expected (and it is unrealistic to require them) to provide objective advice about discretionary consents.

\(^{24}\) To maintain opportunities for the public to access and enjoy their natural heritage
63. We therefore submit that the CCL should notify all such consent applications and consult the public on them. Failure to do this could result in loss of many of the natural heritage values that changes to the legislation are intended to safeguard.

64. We are also very concerned that DOC is currently training community relations staff to undertake CPLA discretionary consent assessments. The public cannot be confident that assessments by community relations staff are reliable and objective, because staff in these roles typically
   a. do not have the requisite ecological or landscape qualifications
   b. are employed to assist good relationships between DOC and the local community, which will mean they have an interest in not providing advice that results in saying ‘no’ to applicants and occupiers.

65. The public needs assurance that all ecological assessments are made by qualified and independent expert ecologists. Those experts should have ecological experience in the high country, strong track records of providing independent ecological advice and assessing inherent ecological values25. There are similar requirements for landscape assessments.

66. All assessments need to be peer reviewed and made available publicly.

**Do not use mechanisms that allow officials to circumvent or relax safeguards for natural heritage**

67. The in-house, behind-closed-doors, and unchallengeable nature of the advisory and decision-making roles of DOC and LiNZ officials, and the CCL, has been the major contributor to loss of natural heritage on Crown pastoral land over the past 2 to 3 decades. Officials have operated outside the public view, guided largely by personal or institutional senses of appropriate compromise in the safeguarding of natural heritage26. They have not been required to adhere to clear legislated direction or been subject to the full light of public scrutiny.

68. Obscure in-house advisory and decision-making by officials would be preserved and perpetuated through the use of
   a. offsetting in discretionary consents (Discussion Document page 37),
   b. covenants as a protection mechanism on Crown pastoral land (Discussion Document pages 20–21), and
   c. farm plans (Discussion Document page 32).

In Appendix 5 we set out in detail why we consider that each of these mechanisms is at odds with meaningful enduring stewardship of Crown pastoral land in the high country.

69. An overarching problem with the three potential tools (i.e. offsetting, covenants, and farm plans) is that each requires a case-by-case assessment of values and then a choice of ‘appropriate compromise’ by agency officials. Each offset, covenant, or farm plan will also then require ongoing and repeated compliance monitoring, assessment, and possibly enforcement over time27. At each iteration, officials may settle on a further compromise. In our experience, these compromises lead to further degradation of natural heritage.

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25 We note that there is a current lack of capacity within the profession to provide this service

26 For example, para 22 of the Regulatory System Assessment

27 Research shows that New Zealand’s regulatory agencies usually fail to ensure compliance, monitoring, and enforcement of environmental law (Brown et al. 2013; Brown 2017; Brower et al. 2018).
70. This high administrative and monitoring load makes it very difficult for public interests to quality-check and have input into assessments, and to challenge and update them as new information comes to hand.

71. We submit that offsetting, covenants and farm plans are inappropriate tools for the management of Crown pastoral land and should be avoided.

F. ALIENATION: TRANSFER OF PUBLIC WEALTH TO PRIVATE INTERESTS

72. The Discussion Document suggests (page 41) that the Crown is funding the costs of processing certain discretionary consent applications, and in effect subsidising those who will ultimately benefit from their approval. We agree, and submit that the costs of processing consents should be borne by the applicant. These costs will be greater if there is mana whenua and wider public participation in decisions, as we have suggested above.

73. The Regulatory System Assessment (paragraph 36) states that “discretionary consents do not cost the farmers, but do cost the Crown”. It also notes (page 6, para 15) that it is not clear whether the Crown is getting value from rights conferred on lessees, including the right to reside and house workers on the property, and concessions for non-pastoral activities.

74. In our opinion, discretionary consents impose costs on the Crown and the public that are of greater concern than mere consent processing costs, and these costs warrant greater focus in regulatory system reform.

75. These costs are considerable, and often include loss of natural heritage (see Appendices 2 to 4) and/or loss of opportunity to protect and enjoy that heritage in the future. For example
   a. a recreation consent granted for exclusive guided walks or hunting precludes public access and creates a property right for the lessee, which will make it more difficult and expensive to secure public access in future
   b. agricultural conversion of land, especially through cultivation and irrigation\(^\text{28}\), has both destroyed significant landscape and ecological values and created private ownership of the improvements. This has made it either impossible, or far more expensive, for those values to be protected in future.

76. It is clear to us that the Crown has not only failed to get value in return for rights conferred through discretionary consents, but has also destroyed and/or alienated areas of enormous value to New Zealand. New Zealanders’ natural heritage on Crown pastoral land is both alienated and privatised, by
   a. land use intensification
   b. construction of permanent infrastructure (e.g. tourist lodges, subdivision fences)
   c. granting of long term rights for private tourism and recreational businesses.

77. Many existing discretionary consents will be causing ongoing loss of natural heritage (e.g. maintenance of tahr herds for commercial hunting). We suggest that there needs to be a process

\(^{28}\) We summarise some examples in Appendix 3. The two most well publicised of these may be
   • the agricultural conversion of National Park land on Mt White station effectively prevented its realisation as part of Arthurs Pass National Park for the benefit and enjoyment of all New Zealanders
   • large areas of documented significant inherent ecological and landscape values on Simons Pass Station were cleared in the Mackenzie Basin Outstanding Natural Landscape under a discretionary consent which allowed their spraying and cultivation
to review existing consents, and resolve conflicts where they are causing ongoing or cumulative damage.

78. For new discretionary consents, the legislation needs to contain clear statutory obligation to avoid long-term alienation of public values through the development of private property rights.

79. We strongly oppose using fees or rents to ‘compensate’ for the alienation, because charges could become an incentive for the Crown to allow activities in order to generate revenue.

G. PROTECTION OF INHERENT VALUES/NATURAL HERITAGE ON CROWN PASTORAL LAND

80. A higher level of protection is warranted for natural heritage on parts of most current pastoral leases, and across the whole area of some other leases. Box 2 (below) describes some options for protection of inherent natural heritage values.

81. We identify three favoured options which involve either the purchase of the lessee’s interest or the establishment of easements. We do not favour the use of covenants.

82. Our preferred option is a ‘buy and sell’ model which involves outright purchase (for conservation) of the lessee’s interest across whole pastoral leases. Following purchase, some land may be sold by the Crown so that it can be used for purposes other than conservation. Sales should only occur where there is

a. no natural heritage value, and

b. no potential that future land uses (on land to be sold) will have adverse offsite effects on natural heritage on other high country land.

83. Sales revenue should be put into a revolving fund for the purchase of lessees’ interest on other properties.

84. Government should budget adequate funds for purchase of lessees’ interests for conservation. As a transitional arrangement (e.g. if there is inadequate funding in the May 2019 budget) another source of interim funding should be found.

85. The order of lease purchase (whether by Nature Heritage Fund or otherwise) should be guided by a rigorous, prioritisation process involving technical experts in high country natural heritage. While a Mackenzie Dryland Park is obviously desirable, protection needs and opportunities elsewhere in the high country should also be considered in this process.

86. Mechanisms should be explored to ensure that purchase prices for the Crown are not inflated. For example

a. valuations should be independently reviewed to ensure there is no inflation of lease values through collusion between valuers and lessees

b. other mechanisms to elicit realistic prices should be explored. One option is a reverse auction, where lessees bid confidentially against one another for Crown lease purchase money.

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29 Including but not limited to Crown pastoral land. Covenants may be required on the title of on-sold land to avoid future offsite effects.

30 A reverse auction is a type of auction in which the roles of buyer and seller are reversed. In an ordinary auction, buyers compete to obtain goods or services by offering increasingly higher prices. In a reverse auction, the sellers compete to obtain business from the buyer and prices will typically decrease as the sellers underbid each other.
Box 2: Options for protection of inherent natural heritage values on Crown pastoral land

FAVOURED OPTIONS

1. **Buy and sell**

We suggest that the government should sequentially purchase entire leases (and not only land with natural heritage values) on a willing buyer-willing seller basis. They should then identify and consult on natural heritage values, and transfer those to DOC administration and management.

Any remaining areas could be sold, creating a revolving fund for further purchases. After reserving some land under the administration of the Department of Conservation, the government could offer tangata whenua first right of refusal, then auction the remaining land. Revenue generated at auction would reflect the market value of disposed land, and create a revolving fund to partially or wholly fund future lease purchases. Protection as public conservation land would increase the likelihood that enduring stewardship would be achieved.

If tenure review is ‘replaced’ in any form, this is the mechanism that should be used.

2. **First right of refusal for the Crown**

In association with the above, the government should legislate to ensure that first right of refusal on sale of a lease is given to the Crown, which could then treat it as a ‘buy and sell’ property. That is, the option to purchase the lease must be offered to the Crown before any other buyer.

As a transitional arrangement, the Crown must also have first option to purchase any lease offered for sale prior to the new legislation.

3. **Use the Land Act to create reserves and easements**

A third, less preferred option would be to use the Land Act provisions which allow government to create reserves on pastoral leases, and to create access easements across the pastoral land surrounding the reserves. Although the Land Act does not explicitly require compensation to the lessee for creation of the reserves, it is likely that compensation for the loss of pastoral grazing would be warranted. Thus, partial purchase of leases is also feasible.

OPTION NOT FAVOURED

**Covenants**

Covenants are an inappropriate mechanism for the protection of natural heritage values on pastoral lease land. A pastoral lessee has no rights to natural heritage values except to the extent that the lessee’s pasturage rights affect those values. Thus, covenants imply that a leaseholder will forgo rights to natural heritage that they don’t actually hold. There is already a mechanism for addressing the effects of pasturage rights on natural heritage values, through a change in stocking limits (numbers or extent of grazing).

Our experience is that covenants are also generally an ineffective form of protection for natural heritage in the high country, and that the Mahu Whenua example provided in the Discussion Document is atypical and misleading. Covenant conditions are often weak and permissive. Compliance with conditions requires regular monitoring, and effective enforcement is constrained by the difficulty proving breaches (to the necessary legal standard) and limited resources for identifying and prosecuting breaches.
H. ENDURING STEWARDSHIP ON REMAINING PASTORAL LEASES

87. With the cessation of tenure review, the Crown needs a better system for managing leases to maintain and enhance natural heritage values in perpetuity (assuming leases are not purchased for conservation; see Box 2 in Section G).

88. As noted earlier in our submission, new legislation will need to direct and enable far more active oversight by LINZ of ongoing pastoral lease management.

89. This new legislation needs to provide for:

A. An independent oversight body to ensure the accountability of officials to public interests, and to prevent capture by the regulated community of lessees over the long term. This body needs to be external to LINZ, and it is critical that there is no ‘revolving door’\(^{31}\) between oversight body and regulator (i.e. LiNZ). The oversight body should have powers to direct LINZ to take action to achieve the legislated purpose and outcome, including (but not limited to) to:

a. respond to reported breaches of lease conditions with appropriate enforcement and remediation
b. address issues arising from lease monitoring reports (changing stock limitations/retirement, require pest and weed control etc.)
c. review and overturn decisions inconsistent with the purpose of the legislation
d. review administrative procedures
e. provide information (e.g. we suggest one of the first tasks would be to direct LINZ to undertake a review of where natural heritage is and is not being sustained with current pastoral use, and pest and weed management practices, across all remaining Crown pastoral leases).

We suggest that the most appropriate oversight model for long term pastoral lease management would be a new parliamentary commissioner’s office similar to the Parliamentary Commissioner for the Environment. The office would answer to Parliament (and not the Government of the day). The commission would be independent and able to undertake investigations of its choosing, but with responsibilities to ensure that the purpose of the legislation is being achieved.

B. Modern definitions of

a. good husbandry
   
   i. if this term remains in legislation, it needs to be defined so it is consistent with giving effect to enduring stewardship, so that good husbandry maintains or enhances natural heritage generally and not only soils and water

b. pasturage
   
   i. means sheep grazing within stock limits that sustain natural heritage
   
   ii. does not include pastoral intensification and agricultural conversion
   
   iii. does not include grazing, on undeveloped land, by any stock other than sheep, or by any feral or commercially harvested animals (e.g. tahr, deer)

\(^{31}\) i.e. exchange of staff between the two organisations
c. developed land
   i. means land that has been mechanically cultivated.

Our reasons for these definitions are that undeveloped land (that has not been mechanically cultivated) has natural heritage values, which will certainly be compromised by pastoral intensification, agricultural conversion, and grazing by any stock other than sheep\(^{32}\).

C. New administrative tools for the regulator (i.e. LINZ). In order to embed pastoral practice consistent with our definition of enduring stewardship, the legislation needs to provide more and different compliance monitoring and enforcement tools and options. These include

a. obligation to record and respond to complaints from any party
b. inspection powers enabling officers to monitor compliance and investigate complaints
c. mechanisms to achieve cessation of breaches (e.g. enforcement orders) and require remedial actions
d. a regime of proportionate penalties for smaller and more moderate breaches of lease conditions
e. lease forfeiture for major or repeated infringements (this already exists, but is rarely used currently).

D. A monitoring and independent audit system for the leases that comprises

a. monitoring of adherence to lease conditions, including
   i. stock numbers
   ii. non-pastoral farm activities
b. monitoring of natural heritage values
c. monitoring of weeds and pests.

E. A statutory obligation, and a new process, for LINZ to receive and take into account technical advice\(^ {33}\) and advocacy for securing and safeguarding natural heritage from the Department of Conservation (DOC), Councils, mana whenua and the wider public, including on:

a. purchases of lessee’s interest for conservation (and on-selling by the Crown of land without natural heritage values, if relevant) (see Box 2 in Section G)
b. compliance with and enforcement of lease conditions
c. natural heritage outcomes of pastoral lease management.

As for discretionary consents, we suggest parties should have rights to appeal LINZ’s decisions and actions on matters of long term pastoral lease management to the Environment Court. Further consideration needs to be given to the legislative change, structure and process that will give effect to these principles.

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\(^{32}\) Sheep grazing can also be unsustainable. However, we assume here that (in line with our definition) pasturage means sheep grazing within stock limits that sustain natural heritage

\(^{33}\) As noted above, technical advice on natural heritage values and planning matters should be prepared by experts (including but not limited to ecologists, landscape architects, recreational experts, and resource management planners). Its content should not be edited by non-expert officials.
90. There must be sufficient budget provided to fund these institutions and processes.

I. CONCLUSION

91. We appreciate the opportunity to make this submission.

92. We would be willing to present the submission and/or to discuss it further in person, should this be useful for the review team.

Yours sincerely

Mike Harding, Nick Head and Susan Walker

Thursday, 11 April 2019
REFERENCES


Appendix 1. Submitter qualifications and experience

Each of the three submitters (Mike Harding, Nick Head, and Susan Walker) has decades of experience as a professional ecologist working in the high country. We make this submissions in our private capacity, rather than representing the views of our organisations, clients, and/or employers.

**Mike Harding** (Michael Arthur Coupland Harding) is an independent environmental consultant based at Geraldine, South Canterbury. He holds a Diploma in Parks and Recreation Management (with Distinction) from Lincoln University (1986) and Intermediate papers in Botany and Geology from Otago University (1980). He had seven years’ experience in national park management (Arthur’s Pass National Park) and conservation advocacy in the high country, followed by a further twenty-five years’ experience as an independent ecologist.

Mike’s consultancy work that is relevant to high country pastoral leases includes survey and assessment of significant inherent values on 75 high country pastoral leases (Marlborough, Canterbury and Otago) and survey and assessment of inherent values for CPLA consent applications (1994 to 2018). Other work relevant to the high country includes survey of naturalised plant (weed) distributions in the upper Rangitata, Rakaia, Waimakariri and Clarence valleys (1998 to 2019), and survey of riverbed vegetation throughout the Mackenzie Basin (2002 and 2003).

Over recent years Mike has worked on the identification and review of Sites of Natural Significance (SONS) for Timaru, Mackenzie and Waitaki district councils, including sites throughout the Mackenzie and upper Waitaki basins. Other work for Mackenzie District Council has been the assessment of vegetation clearance, provision of advice on consent applications, and presentation of expert evidence on ecological matters at Council and Environment Court hearings.

Mike’s consultancy work has included provision of advice on protection priorities to the Nature Heritage Fund, participation in Environment Canterbury’s ecologists’ working party to develop ecological criteria for the Canterbury Regional Policy Statement, and advice to the Biodiversity Collaborative Group on the National Policy Statement on Indigenous Biodiversity (2018 and 2019). Mike is an appointed member of Government’s recently-established High Country Advisory Group.

Mike has spent many hundreds of hours over more than 25 years traversing high country pastoral lease land and adjacent Crown land surveying indigenous biodiversity values and threats (especially plant pests). Through this work, Mike has met and worked with many lessees, specialists, and agency and Council representatives, and developed a good understanding of high country values and issues, and the complexity of the solutions.

**Nick Head** (Nicholas John Head) is Senior Ecologist at the Christchurch City Council. He has a Master of Science degree in plant ecology from Lincoln University and a BSc with a double major in plant ecology and physical geography from the University of Canterbury. Following employment by the Crown Research Institute Landcare Research as a botanist for the Rabbit and Land Management Programme and Semi-Arid Lands Programme, Nick became a plant ecology advisor for the Department of Conservation’s Southern Service Centre, where he held ecological technical advisory roles for 23 years.

Nick has extensive field experience assessing, recording and reporting on botanical matters throughout New Zealand, with a particular focus on eastern South Island dryland ecosystems. He has undertaken countless botanical assessments ranging in size from greater than 20,000 hectares to less than one hectare. These include involved in three Protected Natural Area Programme (“PNAP”) surveys in Canterbury, surveying hundreds of sites that form the basis of Significant Natural Areas (“SNAs”) in numerous district plans, and preparing many successful land protection proposals in
Canterbury. Nick was part of Environment Canterbury’s ecologists’ working party to develop ecological criteria for the Canterbury Regional Policy Statement, and responsible for the preparation of DOC’s best practice guidelines for assessing significant ecological values. He has presented evidence on ecological matters in numerous hearings at the district and regional level, including in the Environment Court. He has undertaken or been involved in botanical assessments on the majority pastoral leases in Canterbury that have been involved in the tenure review. Nick has also initiated or been involved in numerous research projects and programmes related to the management of threatened plant species and rare ecosystems, undertaken in-depth studies on threatened species’ populations and ecosystem health over time and assessments of responses to various management actions. In 2013 Nick was awarded the Loder Cup for outstanding services to plant conservation.

Susan Walker is a conservation ecologist, researcher, and research programme leader in the Crown Research Institute Manaaki Whenua – Landcare Research, based in Dunedin, where she has worked since 1997. Susan has MSc and PhD degrees in Botany from the University of Otago. She currently co-leads Manaaki Whenua’s Conservation Ecology research priority area, and now also leads a 5-year MBIE-funded Endeavour research programme (2018-2023).

Susan has published more than 65 peer-reviewed scientific journal papers and book chapters in international and national literature, and produced more than 40 peer-reviewed contract reports. These cover the botany, ecology, and conservation management of drier eastern inland South Island; biodiversity assessment and quantitative field sampling and measurement, assessment of ecological significance; long-term changes in New Zealand’s land cover and indigenous bird fauna; forest rodent dynamics; ecology and conservation of threatened plants, evolutionary patterns of plant radiation, and effects of climate change on indigenous biodiversity.

Susan’s research in the high country has addressed ecological responses to land tenure changes, management and invasion, and past and future trajectories of habitat change, and involving experimental ecosystem restoration trials, long-term monitoring, and vegetation, lizard, and invertebrate survey. She is frequently engaged to provide advice and reports to central and local government agencies on matters of ecology and biodiversity assessment and protection, present ecological information at public forums, give talks and advice to variety of government, statutory and community organisations, and provide expert evidence for Resource Management Act (RMA) hearings. In 2018, Susan was awarded the New Zealand Ecological Society ‘Ecology in Action’ award which recognises outstanding contribution to the practice and application of ecology.

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35 For example, Nick has undertaken the plant ecological survey of 23 pastoral leases in the Mackenzie Basin alone. These include Sawdon Station, Mt Hay Station, Balmoral Station, Holbrook Station, Irishmans Creek Station, Glenmore Station, Braemar Station, The Wolds Station, Maryburn Station, Simons Pass Station, Mt Dalgety Station, Mt Gerald Station, Grampians Station, Black Forest Station, Curragmore Station, Streamlands Station, Stony Creek Station, Kirkliston Station, Omahau Hill Station, Ferintosh Station, Quailburn Station, and Twin Peaks Station.
Appendix 2. Changes in numbers of threatened and declining high country plant species across three recent assessments

Between 2008 and 2016, there was a 73% increase in the number of plant species in the Southland, Otago and Canterbury high country which are listed as Threatened or Declining. The number of plants listed as Nationally Critical and Nationally Endangered increased by 39 and 48%, respectively, and the numbers listed as Nationally Vulnerable and Declining doubled.

Figure 1. Numbers of high country plant species in Southland, Otago and Canterbury that were listed as Threatened and Declining across three recent assessments.

Methods

We compiled a list of all plant species in Southland, Otago and Canterbury that had been listed as Threatened (Nationally Critical, Nationally Endangered, or Nationally Vulnerable) or as Declining in at least one of the 2008, 2012, and 2016 NZ Threat Classification System assessments.

We then restricted the list to the 147 plant species that we were confident occurred on the high country pastoral leases. The numbers of plants in each category in each year were then plotted.
Appendix 3. Selected examples of CPLA consents that have resulted in the loss of ecological values

Here we summarise some examples of CPLA consents that have resulted in the loss of ecological values. The list is intended to be illustrative and not comprehensive. We have limited our examples to those that

- had well documented ecological values
- were the highest priorities for protection in accordance with the National Priorities for the Protection of Indigenous Biodiversity on Private Land36 and
- at least one of us is personally familiar with.

A. BACKGROUND

The granting of CPLA discretionary consents resulting in the loss of ecological values has been commonplace over the last 2 decades. These consents are likely one of the foremost mechanisms facilitating ongoing losses of indigenous biodiversity in the South Island of New Zealand. In our experience, this is because

a) DOC’s role in providing advice to LINZ on the ecological values present is often inadequate, because
   a. inspections are typically undertaken by local staff who are neither trained ecologists nor have the requisite experience to undertake assessments.
   b. assessments of landscape values are almost never obtained and effects ignored
   c. local DOC office managers have delegated authority (decision makers) over the advice provided to LINZ, and often have personal relationships with local farmers that they wish to maintain; and these office managers can and do edit the technical advice.

b) On occasions when DOC provides proper expert ecological advice on values present and affected by CPLA applications, LINZ prefers the advice of their service providers. Service providers are typically farm development advisors and are not qualified to provide ecological advice.

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36 Protecting our places: Introducing the national priorities for protecting rare and threatened biodiversity on private land. Available at https://www.biodiversity.govt.nz/land/guidance/

The four national priorities are:

**National Priority 1**
To protect indigenous vegetation associated with land environments, (defined by Land Environments of New Zealand at Level IV), that have 20 percent or less remaining in indigenous cover.

**National Priority 2**
To protect indigenous vegetation associated with sand dunes and wetlands; ecosystem types that have become uncommon due to human activity.

**National Priority 3**
To protect indigenous vegetation associated with 'originally rare' terrestrial ecosystem types not already covered by priorities 1 and 2.

**National Priority 4**
To protect habitats of acutely and chronically threatened indigenous species.
B. EXAMPLES

1. Otamatapaio Station (Photo 1): CPLA application granted by LINZ to clear native shrublands and cultivate. Values lost included native shrublands in a threatened land environment, originally rare and threatened saline ecosystems and ephemeral wetlands (both ranked 1. Critically Endangered), several threatened plant species including *Myosotis brevis* (Nationally Endangered), *Ceratocephala pungens* (Nationally Critical), *Myosurus minimus* subsp *novae-zealandiae* (Nationally Vulnerable). Local DOC staff advised LINZ that there were no inherent values present.

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2. Simons Pass (Photo 2): CPLA consents granted that resulted in the loss of nationally significant ecological values associated with intact sequences of originally rare dry moraine and glacial outwash ecosystems (both ranked 1. Critically Endangered) that were considered to be the best remaining examples of their type in New Zealand. Ephemeral wetlands (also originally rare ecosystems ranked 1. Critically Endangered) embedded within the moraine were National Priority 2. DOC’s advice to LINZ was to decline based on high values present and being conscious of the concurrent Tenure Review process underway. LINZ initially supported DOC advice but the lessee appealed to the Commissioner of Crown Lands (CCL) and in a closed hearing the decision to decline was overturned by the CCL.

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3. Omahau Hill (Photos 3, 4): CPLA applications approved to cultivate and clear native vegetation on areas identified through Tenure Review survey as highest priority for protection. Described as comprising excellent examples of diverse indigenous vegetation, originally rare dry moraine and glacial outwash ecosystems (both ranked 1. Critically Endangered) and wetland complexes (also 1. Critically Endangered) that occur across intact sequences. These sequences supported numerous threatened species, including possibly the national stronghold for the plant *Chaerophyllum colensoi var delicatula* (ranked 1. Nationally Critical). Part of the area approved for development was also a Recommended Area for Protection (RAP) identified from the Mackenzie Protected Natural Areas Programme.

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37 Threat rankings for the affected naturally rare ecosystems are in accordance with Holdaway et al. 2012 (see References in main body of submission)

38 Espie et al. (1984) (see References in main body of submission)
4. **Sawdon Station (Photo 5):** CPLA permission granted to cultivate? originally rare dry moraine and glacial outwash ecosystems (both ranked 1. Critically Endangered) and ephemeral wetlands in kettleholes (also 1. Critically Endangered) that supported numerous threatened species.

CPLA consent also granted to plant exotic lupins across large areas of dry moraine and kettlehole ecosystems, including nationally significant fluvio-glacial dunelands (an originally rare ecosystem, ranked 1. Critically Endangered) adjoining the braided Edwards River (the Edwards River is also an originally rare ecosystem ranked 2. Endangered, and also a Recommended Area for Protection in the PNAP survey, and a Site of Natural Significance SONS S3 in the District Plan). The Edwards River supported population strongholds for numerous threatened plants, invertebrates, and lizards including a very important population of scree skinks (Nationally Vulnerable) in the Edwards River margins. Despite DOC advising LINZ of the very high values present, the risk and expense lupins pose, the consent was approved subject conditions that included preventing flowering and stopping spread into the Edwards River. The proliferation of flowering lupins through the Edwards River on Sawdon Station suggest these conditions were not adhered to by the lessee.

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5. **Arrowsmith Station (Photo 6):** CPLA applications approved for clearance of shrublands and tall tussock grasslands on originally rare dry moraine and ephemeral wetland ecosystems (ranked 1. Critically Endangered), ecosystems that are directly connected to Lake Heron. This area is also an Outstanding Natural Landscape. Local DOC staff advised LINZ to approve.

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6. **Mt Oakden (Photos 7-10):** LINZ approval granted for clearance of old growth shrublands on threatened and poorly protected alluvial fans and originally rare dry moraines (ranked 1. Critically Endangered) that have a direct hydrological connection to Lake Coleridge. The cleared land overlapped in a National Priority 1 threatened land environment; Category 1 - <10% indigenous cover remaining; Cieraad et al. 2015). The site was part of an Outstanding Natural Landscape and clearance occurred in parts of a Recommended Area for Protection (Shanks et al. 1990). The clearances breached district plan rules for clearance of indigenous vegetation. DOC’s advice to LINZ permitted clearance.

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7. **Mt Algidus (Photo 11-12)**: LINZ approval given to clear indigenous vegetation (shrublands and diverse short tussock grasslands) on alluvial terraces of the Wilberforce and Rakaia Rivers (in a National Priority 1 threatened land environment; Category 1 - <10% indigenous cover remaining). The alluvial fans that are directly connected to regionally significant wetland complexes (known as Hydrowaters, part of which is a reserve). DOC’s advice to LINZ permitted clearance.

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8. **Glenthorne Station (Photo 13)**: LINZ approval given to clear indigenous vegetation on recent floodplains of the braided Harper and Avoca rivers (ranked 2. Endangered) which supported numerous threatened species. DOC’s advice to LINZ permitted clearance.

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9. **Mt White (Photo 14)**: LINZ approval granted to clear numerous areas of extremely high ecological values on alluvial and glacial landforms that support highly natural indigenous vegetation. Originally rare, threatened and poorly protected ecosystems affected include diverse tussock grasslands, shrublands and wetlands on dry moraines (ranked 1. Critically Endangered), glacial outwash terraces (ranked 1. Critically Endangered), and alluvial terraces (in a National Priority 1 threatened land environment; Category 1 - <10% indigenous cover remaining). Numerous threatened species present include *Helichrysum dimorphum* (Nationally Endangered), *Olearia lineata* (Nationally Vulnerable), *Carmichaelia kirkii* (Nationally Vulnerable), *Carmichaelia uniflora* (Nationally Vulnerable), among many others. The site was within an Outstanding Natural Landscape. Local DOC staff advised LINZ to approve clearance. Subsequent Tenure Review survey identified multiple values and recommended all the areas for protection.

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11. **Inverary Station (Photo 15):** LINZ approval to clear scrub across much of the property, including on National Priority 1 threatened land environments, including an RAP that supported a population of the highly threatened endemic Canterbury pink broom (*Carmichaelia torulosa*) (Nationally Critical). Although the lessee identified many of the values present in the application provided to DOC and LINZ, DOC incorrectly advised LINZ there were no values present.

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12. **Balmoral Station (Tekapo) (Photos 16-17):** LINZ consents granted to intensively develop (cultivate and irrigate) and plant conifer plantations on some of the best examples of highly natural originally rare moraine and glacial outwash ecosystems (ranked 1. Critically Endangered) in the Mackenzie Ecological Region that also supported numerous ephemeral wetlands (also ranked 1. Critically Endangered) and several threatened plant species.

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13. **Lake Taylor Station and Lakes Station (Photo 18-19):** LINZ approval given clear large areas of shrublands and second growth forest on steep unstable slopes into sub-alpine altitudes. Local DOC staff advised LINZ to approve.

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14. **Glynn Wye Station:** LINZ approval granted for clearance of old growth shrublands on poorly protected alluvial fans and originally rare dry moraines (ranked 1. Critically Endangered). DOC’s advice to LINZ identified numerous values present and recommended declining for those areas. LINZ ignored DOCs advice, preferring that of the Service Provider, and gave approval to clear extensive areas of significant indigenous vegetation that was in breach of District Plan rules.

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16. Glenrock Station (Photo 20): LINZ approval granted for clearance of diverse tussock grasslands on poorly protected alluvial fans, originally rare fluvio-glacial outwash (Critically Endangered) and ephemeral wetlands (Critically Endangered) that comprised RAP 16 – Redcliffe Saddle identified in the Mathias and Mt Hutt Ecological Districts Protected Natural Areas Programme Survey (Arand et al. 1990). The area was also recommended for protection from tenure review survey. Supported threatened dwarf broom and regionally rare red tussock and bog pine plant communities. DOC’s advice to LINZ recommended declining for those areas. LINZ initially supported DOC advice but the lessee appealed to the Commissioner of Crown Lands (CCL) and in a closed hearing the decision to decline was overturned by the CCL.

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Photo 1. Otamatapaio Station: clearance of native shrublands on a National Priority 1 threatened land environment (Category 1 - <10% indigenous cover remaining; Cieraad et al. 2015), with originally rare and threatened saline ecosystems and ephemeral wetlands (National Priorities 2 & 3), and several threatened plant species (National Priority 4).
**Photo 2.** Simons Pass: extensive loss of a unique complete sequence of National Priority 3 glacial moraines (with embedded ephemeral wetlands; National Priority 2), and outwash ecosystems of different geological ages that are all ‘originally rare’ terrestrial ecosystem types which are), along with populations of several nationally threatened species of plants, invertebrates, and nationally important breeding habitat for Nationally Vulnerable banded dotterels (National Priority 4).
**Photo 3.** Omahau Hill: continuing clearance of diverse indigenous vegetation on National Priority 2 & 3 moraine and wetland complexes that supported many threatened species (National Priority 4). There has also been herbicide spraying of indigenous shrublands on adjacent hillslopes.
Photo 4. Omahau Hill: development of fluvioglacial outwash terraces and alluvial fans (originally rare National Priority 3) that supported many threatened species (National Priority 4)
Photo 5. Sawdon Station: development of critically endangered dry moraine (National Priority 3) and ephemeral kettlehole wetlands (National Priority 2) that supported many threatened species (National Priority 4).
**Photo 6.** Arrowsmith Station: CPLA approval granted to cultivate dry moraine and wetland complexes (National Priorities 2 & 3), part of an Outstanding Natural Landscape, with numerous threatened species (National Priority 4). Photo below is prior to clearance occurring which has now occurred.
Photo 7. Mt Oakden: widespread clearance of mature shrublands and tussock grasslands on alluvial fans that form important are part of a sensitive lake catchment, in an Outstanding Natural Landscape.
Photo 8. Mt Oakden: widespread clearance of mature shrublands and tussock grasslands on alluvial fans, terraces, dry moraines (an originally rare ecosystem ranked 1. Critically Endangered) and hillslopes, in an Outstanding Natural Landscape.
Photo 9. Mt Oakden: clearance of mature shrublands and tussock grasslands on alluvial terraces.
Photo 11. Mt Algidus: cultivated alluvial terraces of the Wilberforce and Rakaia Rivers on a National Priority 1 threatened land environment (Category 1 - <10% indigenous cover remaining; Cieraad et al. 2015).
**Photo 12.** Mt Algidus: development of floodplains directly connected to regionally significant wetland complexes (Hydrowaters)
Photo 14. Mt White: Some of Mt White’s nationally significant ecological values and Outstanding Natural Landscape, including alluvial terraces and dry moraines (National Priority 3, ranked 1. Critically Endangered) that support numerous threatened species, for which CPLA consent for clearance was granted.
Figure 1: Maps showing (a) the threatened environment classification for Mt White; and (b) some of the CPLA discretionary consents that were issued to develop nationally significant ecological values.
Figure 1 (cont.): (c), (d) other CPLA discretionary consents that were issued to develop nationally significant ecological values on Mt White.
Photo 15. Inverary Station: CPLA consent application map on the left with identified significant values shown within shaded areas. Right: DOC response to LINZ stating that no sensitive conservation values are present.
Photo 16: Balmoral Station (Tekapo), development and pine plantations on glacial outwash terraces and dry moraines (National Priority 3, ranked 1. Critically Endangered) that supported numerous threatened species.
Photo 17. Balmoral Station: pine plantations on dry glacial moraines (National Priority 3, ranked 1. Critically Endangered) that supported numerous threatened species.
**Photo 18.** Lake Taylor Station: extensive clearance second growth hardwood forest and shrublands on steep unstable slopes in sensitive lake catchments (grey colour in image on the right is standing dead native woody cover).
Photo 19. Lakes Station: extensive clearance second growth hardwood forest and shrubland on steep unstable slopes in sensitive lake catchments.
**Photo 20.** Glenrock Station: RAP 16 – Redcliffe Saddle, development of alluvial fans and glacial outwash in the upper montane/subalpine altitudes that supported multiple values.
Appendix 4. Two case studies in Crown pastoral land management that is not ecologically sustainable

Case study 1: Balmoral Station (Tekapo)

The following is an extract from the report of Walker & Lee (2010), which compiled and summarised changes in natural heritage that were documented in a number of reports about the pastoral lease prepared since the 1970s.

“Background documents for our assessment and remote sensing databases provide evidence of considerable habitat depletion, degradation, intentional modification and (in places) complete removal of indigenous ecosystems and species on Balmoral in recent decades. For example:

- The extent, stature and dominance of (tall) red and short tussock grasses have evidently declined markedly since the mid-1970s. Molloy et al. (1976) recommended reservation of the southern slopes of the Old Man Range as a ‘good example of humid Mackenzie tussock grassland of historical and scientific value’, and the area was subsequently identified as an RAP (Tekapo RAP 11; Espie 1984) of red tussock, fescue, matagouri and speargrass. Walls (2001, p. 2) commented, ‘Until recent years there was far more red tussock grasslands in the wetland and gentle hill country, but much of it has evidently disappeared rather rapidly…’, and ‘is now reduced to scattered remnants’ (p. 3). The short tussock grassland derived from tall (red) tussock was ‘depauperate’ and ‘rather sparse’ and he noted ‘bare ground is exposed in many places’. He suggested that recent grassland degradation on Balmoral was probably a ‘complex result of sheep grazing, rabbits, over-sowing, topdressing and hawkweed invasion’. The general degradation is confirmed by a DOC note filed subsequent to the Mackenzie District Plan SONS identification process in the late 1990s. The note states: ‘considerable management effort would be required to bring the vegetation of the entire site back to the standard for which it was probably first identified…’ by Molloy and others in the 1970s.

- Although depletion of indigenous grasslands is best documented on the Old Man Range, the QEII covenant proposal states that pastoral management has been similar across the whole lease. Therefore we expect ecological depletion to have occurred elsewhere on the lease too. Consistent with this expectation, the 2007 SPOT satellite image and mosaicked aerial orthophotographs from 2002 to 2007 show a pattern of widespread vegetation depletion, with several bare-soil areas, severe constriction of denser red tussock to moist gully and seep enclaves, and nutrient transfer to fenceline stock camps in the western moraine areas. These patterns contrast with more evenly distributed and dense vegetation, less bare soil and an absence of stock camps on the neighbouring military reserve and Braemar Pastoral Lease.

- Indigenous vegetation communities in the north-west corner of Balmoral had been fenced to exclude stock for an unknown period before 2001. Walls noted that these communities remained ‘in better condition than elsewhere on the lease land’ when he inspected the property.

- Walls (2001) described unsustainable grazing on remaining rare native brooms in this area (including dwarf broom Carmichaelia vexillata and coral broom C. crassicaule classified Category 4 Declining), noting ‘the brooms would improve considerably in health if sheep and rabbits were fewer in number’.

- Previously good short tussock grassland around the boulderfield at the head of the Old Man Range wetland has been replaced by exotic pasture (Walls 2001).
Alongside the highway south of State Highway 8, rough pasture containing fescue tussock, various native shrubs and golden speargrass appears to have recently been cultivated. This was one of the last areas of native grassland on outwash surfaces on Balmoral south of State Highway 8.

Also south of State Highway 8, the Balmoral and Mt John outwash surfaces covered in degraded short tussock grassland have been further modified by extensive conifer tree planting trials.

The Balmoral moraine in the west of the property has been partly planted in exotic conifers, replacing the former indigenous grassland communities and providing a new, ongoing source of wilding conifer invasion. The QEII covenant proposal notes an intention to use oversowing and topdressing and grazing to help control these wildings. These practices will further degrade the indigenous component of the grassland and shrubland communities, and is also unlikely to effectively suppress establishment across the entire seed shadow created by the new conifers. Remote sensing images show exotic conifers are also extensive on the Golf Course moraine south of State Highway 8, where they pose a risk of spreading elsewhere in the Basin.

In the upper Forks Stream valley, a wetland has been partly developed into a deer paddock (DOC 2002a).

In the Swan Lagoon, Walls (2001) notes that while the wetland was currently used by sheep, ‘at present the indigenous vegetation is degraded by stock use, particularly cattle. With protective management it is likely to improve considerably in quality’. Grazing and trampling by cattle in particular rapidly destroy the indigenous turfs that hold the biodiversity of these ephemeral wetlands (see Appendix 2). This wetland has also had its outlet deepened, which would have altered the hydrology and disturbed the zonation of the indigenous turf vegetation.

The QEII covenant proposal notes that in recent decades at least one of two tarns (or ‘lagoons’) on the southern slopes of the Old Man Range has had its hydrology and hence vegetation zonation altered by the raising of its outlet by more than half a metre (Sections 16 ‘Physical description’ notes both are altered, while the ‘Wildlife’ paragraph says just one ‘lagoon’ has had its upper water level altered). The QEII covenant proposal claims this is ‘beneficial to hydrology’, perhaps because it is useful for holding more water for stock. However, resulting shoreline erosion is also noted. Our expectation is that this farming modification would have removed species-rich zoned turf shoreline vegetation typical of Mackenzie Basin ephemeral wetlands (a naturally rare ecosystem; Williams et al. 2007).

Case study 2: Black Forest and Stony Creek pastoral leases

The following extract is from the vegetation report (Davis 2007) for the DOC Conservation Resources report for Black Forest-Stony Creek, prepared by Markus Davis (April 2007)39.

‘There are large tracts of land on this property that are severely degraded. These lands support very few SIV’s, and as a consequence they have not been promoted for conservation and retention by the Crown. While such lands are not restricted to Area 3 (Big Range and Little Range), they are widespread there and extend into the alpine bioclimatic zone. Their ground surface is typically dominated by exposed soil and/or rocks, mouse-ear hawkweed and other exotic plants. In such a dry environment, the likelihood of productive uses being ecologically sustainable in these areas is poor. Related issues include the loss of top soil, soil nutrient depletion, reduced water yield and the spread

39 Mr Davis surveyed the property for spring annual plants on 25-28 September 2006, and the main vegetation survey was undertaken on Feb 12-18, 2007.
of broom from Stony River into the Waitaki River system. The question arises as to what should happen to areas which have little prospect of being managed in an ecologically sustainable manner? In my view, freeholding such lands is contrary to Objective (a) and the purposes of the CPLA. The issue is not confined to this property, as there are other pastoral leases in the Mackenzie and elsewhere which contain similarly degraded areas.”

REFERENCES


Appendix 5. Offsetting, covenants and farm plans

1. Offsetting
   a. Biodiversity offsets

Biodiversity offsets are based on the concept of trading biodiversity values to enable conservation and development while achieving ‘no net loss’ or a ‘net gain’ in biodiversity. Offsetting generally promotes development, but fails biodiversity (Maron et al. 2012; Moreno-Mateus et al. 2015 and many other references). The ecological and administrative problems that must be overcome if offsetting is to secure and safeguard natural heritage are well understood (Salzman & Ruhl 2000; Walker et al. 2009) but have remained intractable.

For offsets to be effective, the resource being traded (biodiversity) needs to be easily measured or quantified, as well as substituted. Natural heritage values, such as species, are hard to measure, difficult to re-establish, and impossible to replace ‘like for like’. Measuring, re-establishing or replacing plant communities, habitats, and ecosystems (including the processes which make them function) is even more difficult. Replacement of biodiversity values is impossible, impractical, extremely difficult and/or costly for all but a few young or disturbance-dependent ecosystem types comprising highly mobile, common, generalist species, and species that are short lived, with high fecundity and rapid recruitment into the adult population.

The concept of offsetting has been increasingly promoted as an administrative tool for resource management, and is a convenient option for resource managers who wish to allow development. However, offsetting is well known to be highly prone to administrative failure. Monitoring of outcomes to ensure that offset is adequate and enduring requires ongoing expenditure and political commitment to compliance and enforcement, which is usually lacking. Administrative failure in offsetting typically involves: offsetting being relied on to authorise developments that should not have been permitted in the first place; weakening of ecological requirements to measure and replace like with like (weak exchange restrictions); and absent or inadequate compliance monitoring and enforcement (weak oversight and review). A combination of ecological and administrative compromises means that internationally (where there has been considerably more experience than in NZ), the ecological remediation promised by most ‘offsets’ fails to materialise.

In New Zealand, remediation and mitigation as conditions of consent typically does not materialise in practice (although this varies among sectors), and relevant agencies often fail to ensure compliance, monitoring, and enforcement of New Zealand’s environmental law (Brown et al. 2013; Brown 2017; Brower et al. 2018).

The track record of LINZ monitoring existing discretionary consents is poor. It is unlikely that LINZ (even if reformed) would be able to adequately monitor and enforce the conditions of an inherently complex and little-tested biodiversity offset programme. Furthermore, such a system would add considerable complexity and therefore cost to other parties, especially non-vested interests, to check and monitor the consent conditions.

Development activities for which discretionary consent is likely to be sought on high country pastoral leases will, in almost all cases, result in unmitigated loss of natural heritage values. There is little undeveloped land on pastoral leases which has no indigenous biodiversity value, and much which has very high indigenous biodiversity value. Land use change will remove those values.

Continuation of some existing land uses through renewal of discretionary consents will, in many cases, lead to incremental or rapid loss of natural heritage values, and eventually total loss. There is
no way to offset the loss of those values, especially in the high country which by its nature (altitude, climate, and topography) makes re-establishment of natural systems inherently difficult.

In sum, there is nothing to be gained from dressing the discretionary consent application process up as a ‘biodiversity offset’ programme. It will not achieve the outcomes promoted, impose unrealistic expectations and costs on monitoring agencies, and isolate the consenting process from public influence.

b. Securing ‘overall’ improved outcomes

We oppose, in the strongest terms, the proposal (Cabinet Paper paragraph 73, Discussion Document page 33) that decision makers should retain the flexibility to mitigate the negative impacts of a proposed activity and secure overall improved outcomes. Any ‘overall’ approach to protection of natural heritage in the high country would essentially be an offsetting approach without any measurement, exchange restrictions, or oversight at all. Such an approach would maximise the discretion without accountability (‘flexibility’) that now characterises management of Crown high country pastoral land, and has resulted in major loss of natural heritage.

We consider the proposal to be unprincipled and inappropriate, in that it removes any certainty that any significant value in the high country will be protected: such values would not need to be protected if, simply in the opinion of the decision maker, the outcomes are improved ‘overall’. As we have stated in this submission, inherent ecological and landscape values of Crown pastoral land are already so reduced or so unique that any further development will result in significant and permanent net loss.

2. Covenants

Covenants are generally an ineffective form of protection in the high country, despite the atypical and well-promoted example of the Mahu Whenua covenant established by a wealthy foreign owner. We consider covenants to be an inappropriate mechanism for the protection of natural heritage values on pastoral lease land for the following reasons:

- A pastoral lessee has no rights to natural heritage values except to the extent that the lessee’s pasturage rights affect those values.
- There is already a mechanism for addressing the effects of those pasturage rights on natural heritage values, through a change in stocking limits (numbers or extent of grazing).
- Compliance with covenant conditions requires regular monitoring.
- Effective enforcement is constrained by the difficulty proving breaches (to the necessary legal standard) and limited resources for identifying and prosecuting breaches.

3. Farm Plans

Farm Plans may be appropriate to manage nutrient budgets, farming practices and new technology, but they are not an appropriate mechanism to achieve protection of natural heritage values on pastoral lease lands

- preparation of a farm plan that would adequately assess and provide protection for natural heritage values would be a costly and time-consuming undertaking on most properties
• there is extremely limited ecological capacity, in that there are few ecologists with sufficient survey experience and understanding of high country ecological context available to prepare Farm Plans

• it is difficult for dispersed non-vested public interests to contribute to and challenge Farm Plans because of the transactions costs and limited resources.

REFERENCES


Appendix 6. Questions

Red text below provides a summary responses to the questions below, and directs the reader to appropriate sections of our submission.

SECTION 1: MANAGING THE IMPLICATIONS OF ENDING TENURE REVIEW

1.1. Protecting inherent values after tenure review has ended

1.2. Enhancing access if tenure review is removed

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

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

See our Section G. PROTECTION OF INHERENT VALUES/NATURAL HERITAGE ON CROWN PASTORAL LAND

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

See our Section G. PROTECTION OF INHERENT VALUES/NATURAL HERITAGE ON CROWN PASTORAL LAND

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

**Yes.**

1. We consider that any further tenure review agreements should be subject to independent review to ensure that they are consistent with the definition of enduring stewardship. All preliminary proposals to date are likely to have been inconsistent with securing and safeguarding natural heritage in perpetuity.

2. Until the new legislation, the Crown must have first right of refusal on any lease sales. That is, the option to purchase the lease must be offered to the Crown before any other buyer (See Section G. PROTECTION OF INHERENT VALUES/NATURAL HERITAGE ON CROWN PASTORAL LAND).

3. We are also very concerned about the potential for a ‘gold rush’ on discretionary consents. This is discussed in Section E Notify and consult on any discretionary consent applications.

SECTION 2: ARTICULATING OUTCOMES FOR STEWARDSHIP OF CROWN PASTORAL LAND

2.1 Proposed outcomes for Crown pastoral land

2.2 The Crown as a shared steward of Crown pastoral land

2.3 A regulatory system that supports these outcomes

**Question 2:**

2a. Do you agree with the proposed outcomes?

**No.**

See our Section C. PURPOSE OF A NEW REGULATORY SYSTEM
2b. Do the proposed outcomes capture all the things the Crown should focus on? What’s missing?

No. See our Section C. PURPOSE OF A NEW REGULATORY SYSTEM, which rewrites the purpose and outcome.

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

No. See our Section C. PURPOSE OF A NEW REGULATORY SYSTEM, which uses the words natural heritage instead.

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?

Iwi should be involved in decision-making through the RMA process, and the Courts required to give effect to the Treaty (and not just take it into account).

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

Natural heritage

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 roles of mana whenua and the wider public need to be meaningful and influential.

We suggest:

- public hearing and environment court processes for all discretionary consents (see E. ACCOUNTABILITY – SPECIFIC SUGGESTIONS, Make the Environment Court the ultimate decision on discretionary consents)
- as an interim measure, all discretionary consent assessments need to be peer reviewed and made available publicly (see E. ACCOUNTABILITY – SPECIFIC SUGGESTIONS, Make the Environment Court the ultimate decision on discretionary consents)
- the new regulatory system should not use mechanisms that allow officials to circumvent or relax safeguards while avoiding public scrutiny, in particular offsetting, farm plans, covenants. (See Section E... Do not use mechanisms that allow officials to circumvent or relax safeguards for natural heritage)
- the legislation should contain a statutory obligation and process for LINZ to receive, and take into account, technical advice and advocacy for conservation of natural heritage from the Department of Conservation (DOC), Councils, mana whenua and the wider public, on:
  - purchases of lessee’s interest for conservation (and on-selling by the Crown of land without natural heritage values, if relevant) (see Box 2 in Section G)
  - compliance and enforcement of lease conditions
  - natural heritage outcomes of pastoral lease management (see ENDURING STEWARDSHIP ON REMAINING PASTORAL LEASES point E).
SECTION 3: ENSURING DECISION MAKING IS ACCOUNTABLE AND TRANSPARENT

3.1 Enhancing accountability

3.2 Enhancing transparency

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?

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

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

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

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

In Sections D. ACCOUNTABILITY – GENERAL and E. ACCOUNTABILITY – SPECIFIC SUGGESTIONS we say why the Cabinet Paper and Discussion Document proposals to increase ‘accountability’ and ‘transparency’ are completely inadequate, and make several specific suggestions for redress.

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?

No. In Sections D. ACCOUNTABILITY – GENERAL and E. ACCOUNTABILITY – SPECIFIC SUGGESTIONS we explain why, and make several specific suggestions for redress (including disestablishing the office of CCL).

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

No. In Sections D. ACCOUNTABILITY – GENERAL and E. ACCOUNTABILITY – SPECIFIC SUGGESTIONS we explain why, and make several specific suggestions for redress.

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?

They need an unambiguous purpose (see our suggestion at Section C) and access to the court to challenge unlawful decisions (Make the Environment Court the ultimate decision on discretionary consents in Section E. ACCOUNTABILITY – SPECIFIC SUGGESTIONS). Specifically:

1. Public notification of discretionary consents could be undertaken by LINZ, or delegated to the appropriate district council or councils. The notifying agency would notify any consent application under the RMA in parallel, process submissions, and arrange public hearings with independent Environment Court commissioners.
2. Appeals on hearing decisions would go to the Environment Court, as they do already with RMA consents. The Court would need to ensure that the purpose of the LA and CPLA, as well as the RMA, were considered and adhered to in decisions.

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

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

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

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

In Sections D. ACCOUNTABILITY – GENERAL and E. ACCOUNTABILITY – SPECIFIC SUGGESTIONS we say why the Cabinet Paper and Discussion Document proposals to increase ‘accountability’ and ‘transparency’ are completely inadequate, and make several specific suggestions for redress.

SECTION 4: MAKING DECISIONS THAT GIVE EFFECT TO THE OUTCOMES

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

Question 5:

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

This should go without saying. (Note again that we have proposed a different, unambiguous outcome in our Section C. PURPOSE OF A NEW REGULATORY SYSTEM).

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

Definitely not.

We submit that two ingredients are essential (neither is proposed in the Discussion Document):

a. unambiguous purpose and outcomes set out in legislation direct precedence to safeguarding and sustaining natural heritage in all decisions;

b. decision-making authority is vested in the Environment Court, and mana whenua and public participation and appeals are enabled through a full public notification process consistent with the RMA.

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

Public notification and recourse to the Environment Court. We spell this out in Section E. ACCOUNTABILITY – SPECIFIC SUGGESTIONS.

5d. What specific matters should be considered when deciding whether to approve an application?
Enduring stewardship means securing and safeguarding natural heritage in perpetuity. Natural heritage means natural landscapes and indigenous biodiversity, including but not limited to natural landforms, indigenous ecosystems, communities, vegetation, and species, the habitats of indigenous flora and fauna, and the natural physical and ecological processes that sustain these.

Natural heritage excludes instrumental and use values, such as ecosystem services other than those arising inherently from natural heritage, recreation, minerals, energy and tourism resources, and/or cultural and pastoral heritage.

Activities and uses that conflict with enduring stewardship do not achieve the purpose of the legislation, and are therefore not appropriate.

Very little, if any, additional Crown pastoral land could now be developed without significant and permanent loss of ecological values. Therefore the need to maintain all of the remaining ecological values on Crown pastoral land is a bottom line for enduring stewardship.

The high country’s ecological values cannot be exchanged, replaced, or restored once lost, and their loss cannot be mitigated.

Activities and uses which destroy, modify and degrade ecological values further are inappropriate, and need to be avoided.

Question 6:

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

No. We think that the office of the CCL should be abolished and there should be public notification of all discretionary consents, and appeal to the Environment Court available to all parties (see Section E. ACCOUNTABILITY – SPECIFIC SUGGESTIONS).

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

In all but a very few narrow instances, there should be public hearings to which all parties can bring expert information (see Section E. ACCOUNTABILITY – SPECIFIC SUGGESTIONS).

6c. Do you think the Commissioner, an independent statutory officer, is the most appropriate decision maker for matters regarding Crown pastoral land?

Absolutely not, and the CCL has seriously failed the Crown and the NZ public.

Is there a better decision making model? Please provide the reasons for your view.

Yes, public notification and appeal, and integration with the RMA process. See Section E. ACCOUNTABILITY – SPECIFIC SUGGESTIONS.

Question 7:

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

Yes, and should there be any other costs to the Crown and public of those activities, including loss of inherent values and opportunities for future generations, they should also be charged for those.

Discretionary consent applications should be able to be appealed to the Environment Court, and costs to agencies and submitters associated with applications, including appeals, should be able to be sought from the applicant by submitters.
7b. How might charging application fees for all classes of discretionary consents impact on applicants? Please provide the reasons for your view.

Discretionary consent applications that are inconsistent with the purpose of the legislation (enduring stewardship) would be few.

SECTION 5: IMPROVING SYSTEM INFORMATION, PERFORMANCE AND MONITORING

5.1 Current monitoring arrangements
5.2 Improving monitoring arrangements

Question 8:

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

We consider that the CCL role within LINZ should be abolished, and that LINZ should report to an independent Parliamentary Commissioner for Crown Land, who is answerable to Parliament.

See Section H ENDURING STEWARDSHIP ON REMAINING PASTORAL LEASES.

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

Section H ENDURING STEWARDSHIP ON REMAINING PASTORAL LEASES sets out the components and mechanisms needed.

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

Section H ENDURING STEWARDSHIP ON REMAINING PASTORAL LEASES sets out some of the required components of monitoring.

SECTION 6: PRELIMINARY ANALYSIS OF PROPOSALS

Question 9:

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

No.

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

Yes, there are many, which are contained in the main body of our submission.

We found that many of these questions pre-judged an answer (not least the enduring role of the CCL!) and had non-intuitive order. This compromised their usefulness for reasoned critique and logical solutions.
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. I ask for the following recommended changes be considered by all parties:

(a) Establish a Drylands Heritage Area to protect the unique ecosystems in the Mackenzie area and fulfil our international obligations to biodiversity.

(b) Prohibit all future Overseas Investment in Crown Pastoral Land by amending the Overseas Investment Act. This would ensure that the price of Crown Pastoral Land is not allowed to be inflated by overseas values, so that it is kept within the ability of New Zealanders to purchase and farm these areas, and the cost of future Crown purchase of Crown Pastoral Land for conservation purposes does not become prohibitive. It is not even clear that all Crown Pastoral Lands are economic units in an Investment sense.

(c) Establish and resource a fund such as the Nature Heritage Fund to purchase any Crown Pastoral Land that has national or regional value for conservation purposes.

(d) Establish a public program to identify where the public and DOC need public access easements across Crown Pastoral Land, and give effect to these under Sec 60 of the Land Act 1948 as a national priority.
(e) Amend the Land Act 1948 to exclude from Crown Pastoral Land at the discretion of the Minister, significant areas that are not grazed, or cannot be grazed as the land cover is:

- Permanent Snow and Ice
- Landslides and Gravel or Rock
- River
- Lake or Pond
- Wetlands (Herbaceous Freshwater Vegetation)
- Scrub/Shrublands
- Indigenous forest

These areas amount to 22% of CPL (An area of about 4 times the size of Aoraki/Mt Cook National Park) and should be administered for conservation purposes by DOC. See Table 1 below.

<table>
<thead>
<tr>
<th>Landcover Database 4_1 Class</th>
<th>Area (hectares)</th>
<th>Percentage of total CPL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tall Tussock Grassland</td>
<td>625,932</td>
<td>45%</td>
</tr>
<tr>
<td>Low Producing Grassland</td>
<td>288,232</td>
<td>20%</td>
</tr>
<tr>
<td>Gravel or Rock</td>
<td>117,024</td>
<td>8%</td>
</tr>
<tr>
<td>High Producing Exotic Grassland</td>
<td>68,141</td>
<td>5%</td>
</tr>
<tr>
<td>Depleted Grassland</td>
<td>64,734</td>
<td>5%</td>
</tr>
<tr>
<td>Indigenous Forest</td>
<td>52,289</td>
<td>4%</td>
</tr>
<tr>
<td>Manuka and/or Kanuka</td>
<td>49,955</td>
<td>4%</td>
</tr>
<tr>
<td>Sub Alpine Shrubland</td>
<td>35,378</td>
<td>3%</td>
</tr>
<tr>
<td>Matagouri or Grey Scrub</td>
<td>26,985</td>
<td>2%</td>
</tr>
<tr>
<td>Alpine Grass/Herbfield</td>
<td>23,832</td>
<td>2%</td>
</tr>
<tr>
<td>Fernland</td>
<td>14,314</td>
<td>1%</td>
</tr>
<tr>
<td>Herbaceous Freshwater Vegetation</td>
<td>9918</td>
<td>1%</td>
</tr>
<tr>
<td>Mixed Exotic Shrubland</td>
<td>9,341</td>
<td>1%</td>
</tr>
<tr>
<td>Broadleaved Indigenous Hardwoods</td>
<td>6,163</td>
<td>0%</td>
</tr>
<tr>
<td>Gorse and/or Broom</td>
<td>3,905</td>
<td>0%</td>
</tr>
<tr>
<td>Exotic Forest</td>
<td>3,773</td>
<td>0%</td>
</tr>
<tr>
<td>Landslide</td>
<td>2,311</td>
<td>0%</td>
</tr>
<tr>
<td>Permanent Snow and Ice</td>
<td>1,220</td>
<td>0%</td>
</tr>
<tr>
<td>Deciduous Hardwoods</td>
<td>1,101</td>
<td>0%</td>
</tr>
<tr>
<td>River</td>
<td>756</td>
<td>0%</td>
</tr>
<tr>
<td>Lake or Pond</td>
<td>566</td>
<td>0%</td>
</tr>
<tr>
<td>Short-rotation Cropland</td>
<td>429</td>
<td>0%</td>
</tr>
<tr>
<td>Forest - Harvested</td>
<td>43</td>
<td>0%</td>
</tr>
<tr>
<td>Flaxland</td>
<td>40</td>
<td>0%</td>
</tr>
<tr>
<td>Surface Mine or Dump</td>
<td>27</td>
<td>0%</td>
</tr>
<tr>
<td>Built-up Area (settlement)</td>
<td>18</td>
<td>0%</td>
</tr>
<tr>
<td>Herbaceous Saline Vegetation</td>
<td>8</td>
<td>0%</td>
</tr>
</tbody>
</table>
Table 1 LCDB4_1 Classes on Crown Pastoral Land

<table>
<thead>
<tr>
<th>Class</th>
<th>Count</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transport Infrastructure</td>
<td>3</td>
<td>0%</td>
</tr>
<tr>
<td>Sand or Gravel</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Orchard, Vineyard or Other Perennial Crop</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Null</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1,406,457</td>
<td></td>
</tr>
</tbody>
</table>

Table 1 LCDB4_1 Classes on Crown Pastoral Land

Green = Indigenous Cover (See https://newzealandecology.org/system/files/articles/CIERAAD%20SC%20SUPP.pdf)

Red = Unable to be grazed

(f) Legislate to remove Riversdale Flats from Crown Pastoral Land, comprising almost 1,000 ha. of land which was set aside by legislation in 1901 for inclusion in a National Park but not incorporated into Arthur’s Park National Park when it was created in 1929, instead being grazed and leased as Crown Pastoral Land.

(g) Change administration of these Crown Pastoral Lands from LINZ to DOC. According to the LCDB4_1 analysis Table 1 above, 75% of CPL (An area of about 10 times the size of Aoraki/Mt Cook National Park) is considered to be Indigenous Cover and under the NZ Biodiversity Strategy. The primary management objective for these lands should therefore be protecting and enhancing the indigenous ecosystems. LINZ do not have ecological advisers that can support such management decisions. Even if LINZ employed ecologists it could mean that they would ignore them, and they would only duplicate the government ecological expertise at DOC and will result in differing and conflicting views on how best to manage the ecosystems, resulting in increased government costs to resolve the inevitable disagreements.
Consultation title: Enduring stewardship of Crown pastoral land

Submitter: 

Credentials

I completed a PhD in Environmental Management from Lincoln University: Cutting up the high country: the social construction of tenure review and ecological sustainability in 2011. The thesis looked at the implementation of Section 24(a)(i) of the Crown Pastoral Land Act 1998, i.e. that tenure review was to “promote the management of reviewable land in a way that is ecologically sustainable”\(^1\). This exercise involved many visits and interviews with all stakeholders in the tenure review process. Previous to doing my PhD I was involved in writing tenure review submissions as part of Upper Clutha Forest and Bird and as part of that have participated in a many lease inspections. I have lived in and owned property in the Cromwell area of Central Otago for 30 plus years and have enjoyed wandering and tramping in the surrounding and more distant hills that are or have been pastoral leases.

Comment on structure of the Discussion Document

The submitter found the structure and numbering system used confusing.

Comments on introduction

Use of term wasteland to indicate degradation\(^2\): In the context of the Crown pastoral leases, wasteland was a term used to denote land that was not alienated and unimproved in its largely natural state and therefore available for allocation as leases or sale by the Crown.\(^3\) Wasteland in the context of the South Island high country was not a descriptive noun denoting degraded environments.

The submitter agrees about the lack of records regarding impacts and the cumulative effects of decisions and that the LINZ tenure review operation was a process focussed on ticking boxes with no incorporation of required and ecologically sustainable outcomes. The submitter also agrees that there was no related vision for overall outcome of tenure review and on-going pastoral lease management apart from that of establishing conservation areas. LINZ in fact considered that once

\(^1\) [https://researcharchive.lincoln.ac.nz/handle/10182/4134/McFarlane.phD.pdf](https://researcharchive.lincoln.ac.nz/handle/10182/4134/McFarlane.phD.pdf)

\(^2\) P 9 of the Discussion Document

\(^3\) The submitter acknowledges that this idea is problematic in these times.
the tenure review was finalised their mandate to influence any aspect of those lands was non-existent.

**Proposal 1:** Include a new set of outcomes for Crown pastoral lands within the CPLA [ie legislative amendment and goals] (Section 2)

*Include the following outcomes within the CPLA:*

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

*To achieve this, Crown pastoral land will be managed to maintain and enhance natural capital, and cultural and heritage values; and; subject to this provide for pastoral and appropriate non-pastoral activities that support economic resilience and foster the sustainability of communities; and enable the Crown to obtain a fair financial return*

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

**Comment on proposed outcomes**

**Benchmarks:** What are the ecological standards against which these outcomes are to be measured? This needs to be made explicit – is it maintenance of the current status, restoration to a particular goal, or?

**Climate change:** given the predicted increase in droughts on the East Coast of the South Island and the predicted increase in extreme weather events the submitter would like to see the concept of the ‘precautionary approach’ to be included in the wording of these outcomes – that the proposed outcomes are dependent on taking a ‘precautionary approach’ to alleviate the effects of climate change.

**Natural capital vs ecologically sustainability:** Natural capital is one of the component parts that determine the function and processes of ecosystem services. Either use the wording ‘ecosystem services’ or preferably use the concept of ecological sustainability and ecologically sustainable management.

Jeanette Fitzsimons proposed the following amendment to (c) of CPLA long title:

*To provide for the administration and ecological sustainability of the Crown Pastoral Land … I believe that if we insert the words “and ecological sustainability” it will make it clear in the title what the Act is about and that those pastoral lands that remain in leasehold tenure will be managed in a more ecologically sustainable way under this legislation than they have been previously.* Hansard 1998, p9384-5

Jeanette Fitzsimons clarified to the submitter:

*Changing the wording to “ecologically sustainable” was my proposal and I succeeded in getting others to accept it - with some difficulty I might say. I have no idea what was going on in their heads, but my motivation was to make it clear that what we were trying to sustain was ecology. Others were talking about sustaining the economic yield from the land and there is little enough in the Act to support ecology. I certainly intended it to include indigenous*

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4 Thesis p47
biodiversity as well as other aspects of ecology. We were all concerned about soil and water values as well (Email 11/10/2005).5

In 2003 a policy change revision of tenure review objects incorporated ecologically sustainable management to “the management of the Crown’s high country land”.6

Section 1: Managing the implications of ending tenure review

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

The Crown pastoral leases are largely marginal lands for primary production in terms of rainfall, slope, fertility, topsoil and altitude. While in New Zealand most primary production is based exclusively on introduced plant species, the high country is unusual in that it remains semi-natural with varying degrees of indigenous biodiversity remaining.

Previously the high country was framed as in decline, but this construction has largely gone quiet. This shift in framing is possibly due to the increase in productivity of the runs from technological means; aerial topdressing and oversowing, fencing to enable more controlled grazing, and the removal of scrub mechanically and chemically; and the biological control of rabbits. The technological methods being used intensify farming productivity are responsible for the decrease in indigenous species. This is well documented in the academic literature.7 There is evidence that especially in marginal lands, indigenous species increase the resilience of the ecology to extremes of temperature and drought as they have evolved to cope with these conditions. Climate change is predicted to increase the ecological vulnerability of this bioregion by increasing the frequency of droughts and by increasing the frequency of extreme weather events. Measures being taken globally, to reduce the use of fossil fuels based on the alarming scientific predictions regarding climate change, and the possibility of reduced availability in the relatively near future, will make ‘technological farming’ obsolete. By avoiding dependence on technological farming systems these lands will be more resilient in the face of these predicted events and changes. This would require that indigenous biodiversity was encouraged.

The basis of ecosystem services and natural capital incorporates the idea that co-evolved and indigenous species more productive than converted ecosystems. To retain and even restore the indigenous biodiversity of the remaining pastoral leases in order to meet sound environmental goals, e.g., ecologically sustainable land management, would require a rethink of the economics of farming a pastoral lease. If extensive and low impact pastoralism was the on-going landuse, then it is likely that runholders would find it difficult to be economically viable. The Rabbit and Land Management Plan notes that the participating pastoral leases in Otago had a “net deficit in 7 out of the last 8 years” and in Canterbury “net deficits in 4 out of 8 years and on average these deficits have far exceeded surpluses”8. While it is noted that the rentals are not part of this review, it may

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5 Thesis p47
6 Thesis p50
7 Thesis p78-80
8 Thesis p106
be that the Crown has to forgo a financial return to have these lands meet with sound environmental goals.

The European Union provides a possible model with agri-environmental schemes where land owners are supported financially so that they can farm at an intensity that does not damage inherent values. In the case of the high country this would recognise that the remaining indigenous biodiversity on these pastoral leases are effectively a common pool resource. Given the predominant runholder portrayal of themselves as ‘stewards of the high country’, and providing that this portrayal is genuine, this stewardship ethic could provide a common ground to enable this approach. The use of the word ‘stewardship’ is however loaded. The rhetoric of stewardship is associated with the ‘wise use’ movement in the USA where its use provided those operating on Federal multiple-use lands, ranchers and foresters leverage against conservation interests campaigning to stop ranching and forestry extraction. A difference between the European Union properties is the ownership: the pastoral leases being leasehold, albeit with ownership of improvements and perpetually renewable leases resting with the leaseholder, whereas it is assumed the EU properties are privately owned. This ownership sharing should facilitate land management changes as the Crown has partial ownership. The runholders construction of their ownership as ‘virtual freehold’ has weakened the Crown’s perception of its authority to advocate for the Crown’s interest in these lands.

It would appear that to manage these lands to retain and restore their inherent values could well end up costing the government money. One of the justifications behind initiating tenure review was the cost to the Government was greater than rents received in the order of $2.4M to 950,000. The submitter considers this would be money well spent.

Currently LINZ and the Commissioner of Crown Lands are responsible for administering the Crown Pastoral leases. Historically, as a previous iteration, the Department of Lands and Survey, the administering body had scientific and practical capacity to oversee these leases. LINZ is essentially an office and has no such capacity and contracts out any science or ‘on-the-ground’ work. The Department of Conservation has overall responsibility for Molesworth Farm Park which is managed for both production and the protection of biodiversity with the latter being the priority. In addition, while much reduced, DOC retains in-house scientific expertise. It would appear that DOC is currently better placed to administer the Crown Pastoral leases than LINZ. Since its establishment DOC has been funded to a lesser amount than its predecessors. Analysis indicates that in its first year of operation this was 35% less than the previously responsible agency. In order to do this job effectively the lead agency would need to be adequately resourced.

While QE2 Trust covenants are an adequate tool to protect indigenous biodiversity values on privately owned land, the submitter is less convinced of their efficacy as instruments to protect biodiversity on Crown pastoral leases. The employment of these covenants has been very much about retaining and enhancing control of the pastoral lease by the runholders.

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9 Thesis p259
10 Thesis p256
12 Thesis p229
Section 2: Articulating outcomes for stewardship of Crown pastoral land

Question 2: Do you agree with the proposed outcomes?

Use of ‘natural capital’, one of the concepts associated with wider area of ecosystem services, as framework to engage with the pastoral lease environmental management requires scrutiny. Why is Treasury a credible source for environmental concepts? In this case ‘whole of government’ obligations should not over-ride clear thinking. The concept in effect commodifies the high country pastoral lease ecosystems which is the point of ideas around ecosystem services and natural capital. While agreeing with the idea that environmental degradation should be visible within the economic structure it is the submitter’s opinion that this would be better to be based on ecological principles, not economic ones. The framework of ecosystem services and natural capital is based on human use of ecosystems and is not an environmental bottom line approach. In my opinion there are better options. Given the state of Earth in general and New Zealand’s environment in particular I would advocate for the use of ecologically sustainable management as incorporated in Part 2 of the CPLA as the conceptual framework for the administration of the pastoral leases. Section 2 of the CPLA 1998 does not interpret ecologically sustainable management, but there are published papers that provide guidance on this. This is an environmental bottom line approach that would better serve the bioregion of the South Island high country. In my thesis I looked into the main concepts around sustainability. In some way most give precedence to humanity. It is time this changed.

What do I value most? Tawny tussocks, tussocks that from a distance look like fur covering the high country, great for snoozing in after a hard walk uphill, gnarly scrub, cryptic plants and insects, small lakes and tarns, clear water seeps and streams encased in moss and cushion plants, tors and rocks covered with lichen, the sense of space unencumbered by intense agricultural development, fresh resinous air, the underlying form of the land showing ... I could go on.

Section 3: Ensuring decision making is accountable and transparent

Question 3: Do you agree that the Commissioner should be required to develop a regular Statement of Performance Expectations, approved by the Minister for Land Information?

If a Statement of Performance Expectations could hold the Commissioner and LINZ to a well-designed set of performance indicators and outcome goals then it would be worthwhile. If this measure is in anyway an internal ‘Yes Minister’ type manipulation of public service efforts then there is no point. I am unsure who would have scrutiny of the SPE. The previous Commissioner and LINZ during the period of my PhD research were obstructive and particularly opaque to my research efforts.

In order to prevent the fudging of good ideas and management goals it would be advisable to incorporate a body such as that that oversees the management of Molesworth with a representative from relevant stakeholder groups. Incorporating a steering committee of stakeholders is not

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13 Thesis p72
14 Thesis chapter 4
without its problems. Leadership is crucial to a collaborative approach so that interests are balanced and consensual decision making practised based on the appropriate science. The Mackenzie Agreement language, e.g., ‘active management’, is an oft used construction of the runholders that incorporates the idea that high country lands need on-going farming management to remain healthy. The employment of this term in the Agreement could indicate that the runholders are predominant. Indeed development has continued apace in the Mackenzie Basin despite this agreement and the wide range of 22 stakeholder signatures in its foreword.

As already covered this submitter considers DOC would be a preferable lead agency for tenure review. In the past the accusations of capture of Lands and Survey officers and more recently LINZ officials and even to some extent of DOC positions in favour of leaseholder interests have been reasonably made. Given DOC’s mandate of conservation for our country’s indigenous biodiversity, in theory their hearts and minds are contained within the appropriate sets of legislation and ethos? Again I do not see that LINZ is the correct government department to oversee this. How can a farming operation be supervised from an office? How can ‘service providers’ be protected from runholder ‘capture’? During the time period of the submitters PhD research it was clear that there was no direct scrutiny of ‘service providers’ apart from checking they had followed the administrative process. Unless the hearts and minds of the responsible agency personnel are incorporated into the appropriate body then it will be difficult to obtain ecologically healthy outcomes.

A search of the Stuff website of Simons Pass pastoral lease provides a case study of all that is wrong with the current administration of the Crown’s pastoral leases. While currently this lessee has had his development stopped by RMA processes, it is astounding that this level of ecological conversion can take place under the auspices of the LINZ administered discretionary consent process. Some transparent accountability for Crown pastoral lease administration is well overdue. It would be encouraging to see a move away from a process, tick box approach to pastoral lease management to one based on outcomes agreed by all stakeholders.

The Government is mooting the idea of farm plans as a window into the CCL’s decision making process and expectations of on-going pastoral land management, e.g., farm plans. Very few farm plans employed in New Zealand are actually or adequately audited with the plans being private to the farmers and discretionary in what is incorporated. If this was remain the case then farm plans would incur a layer of impotent bureaucracy.

Proposal 3 seems very much business as usual with additional oversight and transparency. In the submitters opinion there is a need for a land management paradigm shift tipping the balance from favouring primary production to that of an environmental bottom line approach like ecologically sustainable management which incorporates the requirement of retaining indigenous biodiversity values as a means of ensuring ecological resilience in production lands.

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15 Thesis p122-123
16 Thesis p234
17 Thesis pp108-110
**Question 4:** 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?

This measure is insufficient. As discussed in the previous section the submitter considers a body similar to that of the Molesworth Steering committee to be appropriate to oversight of the Crown Pastoral lease administration. This would initiate greater transparency through the incorporation of other groups in the process. The possibility for continued subverting of good measures and intentions remains if the changes are restricted to legislative amendment and the release of additional guidelines and standards.

**Section 4: making decisions that give effect to the outcomes**

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

If to ‘give effect to’ means that the Commissioner and thus LINZ and service providers must make any specified outcomes happen then yes, otherwise what is the point of having specified outcomes.

If the specified outcomes decision is that to retain the particular ecological character of the South Island high country pastoral leases, i.e., that of extensive semi-natural landscapes with a mix of indigenous and exotic biota then the ideas of mitigation, offsetting and restoration are problematic.

- Mitigation is not an appropriate land management model if the end result is the intensification of the farming activity. This concept in effect offers a consolation prize to indigenous biodiversity and semi-natural landscapes. It is doubtful that the RMA ensured the protection of our environments by mitigating effects? To lose an ecosystem through compensating by mitigating or restoring another would suggest that the compensatory ecosystem is of a lesser integrity. Restoration of ecosystems is an uncertain tool as well. It would appear that it is more effective to protect what remains than take a gamble on restoring another area.
- Offsetting – the same criticisms apply as for mitigation. Both areas should be protected. Who is to decide which area is to be sacrificed and which one to be helped? Past experience shows that those areas most likely to be sacrificed for ecological conversion are those of most value for primary production. It is precisely in these more productive areas that the most endangered ecologies and species are found.\(^\text{18}\)
- Restoration remains uncertain in its outcomes. This is a land management tool to employ in addition to protecting what remains, not as a compensation for increased production in other areas.

DOC remains a participant in discretionary consents process. My PhD research found that DOC employed a double standard in defining ecologically sustainable management. Ecological sustainability incorporated the protection of indigenous biodiversity in conservation lands, but on

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\(^{18}\) The work of Dr Susan Walker, Landcare Research, applies.
freeholded lands the definition of what constituted ecologically sustainable management was ‘species neutral’. This finding would indicate that their current advocacy for indigenous biodiversity is minimal at best on land where ecological integrity is compromised as on the mixed value mid-altitude lands.

Covenants, both DOC and QE2, have been considered unreliable in protecting the values they aspire to protect. A greater level of transparency and the articulation of specific goals reflected in the associated documentation and monitoring would assist in reassuring interested parties. The Commissioner stopped any scientific monitoring of the Crown pastoral lands on the basis that there was no statutory requirement for them to fund monitoring or research. This is confirmed in the discussion document (p35).

The avoidance of the speculated potential for increasing direct conflict if indigenous biodiversity part of the discretionary consents process can have no place in the rationale for not incorporating its protection. The Crown after all has a substantial ownership component in these lands and I would argue that the Crown in fact owns the indigenous biodiversity. Any removal of indigenous biodiversity therefore is a loss of the Crown’s assets in addition to arguably diminishing the ecological resilience of these lands. This would suggest that any discretionary consent that includes the removal of indigenous biodiversity is a transfer of property from the Crown to the lessee. Normally the transfer of property has a financial cost therefore the lessee should financially compensate the Crown for the removal of indigenous biodiversity.

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

The Government is proposing that:

– The Commissioner must obtain expert advice as necessary to ensure decisions are made with an adequate evidence base
– In addition to the Director-General of Conservation, the Commissioner may consult with any other party.

Add the word ‘scientific’, i.e., The Commissioner must obtain ‘expert scientific advice’. However despite the idea that science results in objective knowledge, science is not immune from manipulation by partisan interests. Whose expert will give the advice? This is where the careful articulation of desired outcomes is crucial. Science can serve the interests of primary production and it can serve the interests of conservation. This phenomenon is termed ‘duelling sciences’.

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

The neoliberal restructuring of the Department of Lands and Survey has stripped LINZ and the CCL of the capacity and the resources to adequately carry out this task. As already mentioned, the administration of the Crown’s pastoral leases cannot be carried out effectively from an office. Either

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19 Thesis section 12.5.1, pp267-268
20 Thesis p246
21 Thesis section 12.7.3, pp281-284
rebuild the scientific and practical base of LINZ as per the Department of Lands and Survey or reallocate this role to the Department of Conservation. They have the experience to do this, e.g., Molesworth, St James. This would require substantial resourcing to do the work properly.

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

See previous section.

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**Section 5: Improving system information, performance and monitoring**

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

As a first step each remaining pastoral lease should have a current Conservation Resources Report. This would at least identify, albeit on a limited basis, the values that remain on each lease. This would form the baseline of the monitoring framework. In addition, best practice would indicate that water quality should be monitored at the top and bottom of each property. Given past refusal of some runholders to play by the rules, e.g., Lakes Station removal of matagouri, a reasonable level of pastoral lease inspection and report back is essential. The remoteness of leases and the difficulty of public access can provide cover for unconsented farming activity.

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**Section 6: Preliminary analysis of proposals**

**Question 9:** Do you have any feedback on the preliminary analysis in the table below?

The setting of sound goals for the future management of the Crown’s pastoral leases would inform this. Is the priority ecological health or economic viability of runs? If the removal of indigenous biodiversity integral to production and the basis of discretionary consent applications then this is an either/or situation, not a win/win situation. The Crown in collaboration with balanced stakeholder input needs to make this decision before proceeding with any of the other proposals in this document.

Support proposal 4 alternative option: To prevent the decision maker from making any decision that contradict a new set of outcomes. On the ground administration of Crown pastoral leases has been particularly flexible and permissive to date. The key runholder focus is livelihood, not ecological sustainability or protecting biodiversity values. Since Lands and Survey was disbanded, minimal inspection and no monitoring has been the norm. Agency capture by those with the most potential to change the ecology of the remaining pastoral leases is a fish hook to be avoided. Looking around the hills at Bannockburn where this is submission is being typed the writer can see herbicide application to scrub (including briar), increased use of irrigation, mechanical clearance of ‘scrub’, and increased fencing on the land freeholded as a result of tenure review. Would those remaining with pastoral lease tenure aspire to carry out same measures? If Simons Pass is an example of what can
be done under pastoral lease tenure then there is a clear case for more stringent oversight of the LINZ, CCL and service provider administration and management.

Cost is a red herring in considering the future administration and oversight of these lands: it costs what it costs to administer these lands proactively and effectively to protect their function and process. Cost saving is an unlikely outcome of retaining the remaining pastoral leases in full Crown ownership and control.

Thank you for the opportunity to submit on this discussion document.
Submission 2827

Q1

1a. What are your views on how significant natural values should be protected once tenure review is ended?
The RMA District and regional and regional plans SNA and landscape designations are all protective mechanisms. We don't need more.
1b. Are there any other mechanisms that could be used to protect significant natural values on Crown pastoral land? They can be protected through negotiated covenants such as the QE2 trust.
1c. Do you have any views on the proposed transitional arrangements for ending tenure review?
Lessees already in tenure review must have the opportunity to continue through to a conclusion. The crown has an obligation to honor and continue with lessees that have been accepted into the process. The crown must continue to reach a practical and timely conclusion.

Q2

2a. Do you agree with the proposed outcomes? No
Please comment
The crown is proposing to change the contract of the pastoral lease away from farming and pastoralism to that of the maintenance and enhancement of natural capital to cultural and heritage values. This is fundamentally altering the lessee's contract with the crown.
2b. Do the proposed outcomes capture all the things the Crown should focus on? What’s missing?
the crown should focus on land it has in the conservation estate and let an independent commissioner of crown lands (with guidelines under the present acts) administer the pastoral lease with the help of field officers who have a sound farming and conservation/training. the use of private and DoC staff is flawed.
2c. Do you agree with the use of “natural capital” rather than “ecological sustainability” in the proposed outcomes? No
Please comment The use of natural capital is undefined could mean anything.
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?
Iwi should be consulted in setting the guidelines for the commissioner under the present acts.
2e. What are the qualities and features of Crown pastoral land that you value the most?
One of the reasons that much of the unique flora and fauna in New Zealand exists is because of the limited public access. Many areas of the conservation estate are protected because of controlled access through pastoral leases. Its a simple matter of controlling stocking rates for livestock and people.
2f. What does enduring stewardship mean to you?
Pastoral leases are a contract between the leesee and leasor. the involvement of other organisations must be through the lessees and at the leese discretion

Q3

3a. Do you agree that the Commissioner should be required to develop a regular Statement of Performance Expectations, approved by the Minister for Land Information? No
Please comment
It is very important for the commissioner to remain independant. We believe that having DoC and crown lands under one minister has greatly disadvantaged lessees. It has put much more emphasis on conservation to the detriment of pastoralism and farming.
3b. Do you agree that this proposal will help improve accountability for decision making in the Crown pastoral land regulatory system? Yes
Please comment any guidelines should be flexible enough to meet the needs of individual leases.
3c. What other mechanisms could be used to improve accountability?
Farm plans are becoming more common. One standard farm plan to cover LINZ regional and district councils would save duplication.
3d. Which mechanisms do you think would be most effective in improving accountability?
LINZ field officers with the knowledge of individual leases we believe is the best way to improve accountability for both the leesee and the crown.
3e. Do you think there are any problems with the proposed change?
The leesees have a comprehensive lease contract with the crown. That gives leaseholders various rights that many individuals and groups would like to see removed. We believe that this is encroaching on individual property rights and all New Zealanders should take note.

Q4
4a. Do you agree that the CPLA should be amended so that it explicitly provides for the Commissioner to release additional guidance and standards to support officials and leaseholders to understand and comply with legislative requirements? No
Please comment
Guidance and standards must be flexible enough to take into account the vast difference in individual leases. We don't think there is a legislative requirement.
4b. Do you agree that this proposal will help improve the transparency of decision making in the Crown pastoral land regulatory system? Unsure. Transparency is important between the lessor. Other parties should only have information at arms length.
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?
Leaseholders often have their lives work invested in these properties so they do need clarity in the decision making process. The terms of the lease are quite clear.
4d. How should standards be used to help increase transparency? How should guidance be used?
Again these pastoral leases which the crown through previous government has encouraged to develop into farms. It is still very important that the commissioner has discretion in making trade offs between natural values and to make it easier and more profitable to farm.
4e. What other mechanisms could be used to improve transparency?
we favour different scales for decision making according to the scale and magnitude of the impacts of the proposed activities. Normal farming activities should not trigger public input and should not incur any cost.
4f. Which mechanisms do you think would be most effective in improving transparency?
4g. Do you think there are any problems with the proposed change?
We think the proposed change undermine the leaseholders rights under the present law. The changes may erode the value of the leases and have consequences with bank mortgages and bank lending.
Q5

5a. Do you agree that the Commissioner should be required to give effect to the proposed outcomes in any discretionary consent decisions? No
Please comment
For major land use changes such as dairying forestry viticulture and water storage yes. For every day consents to do with farming and pastoralism no.
5b. Do you think that the proposed approach ensures that decision making will support the proposed outcomes for Crown pastoral land?
Pastoral leases are businesses often small family businesses having to widely consult with expert advise being required for the likes of tracking minor land clearance and cultivation is a nonsense. It should be able to be handled in house by LINZ.
5c. What other mechanisms could be used to ensure decision making supports the proposed outcomes? Farm plans as mentioned previously
5d. What specific matters should be considered when deciding whether to approve an application?
Because of previous and ongoing investment leases must be able to maintain and develop their leases to produce an economic return.

Q6

6a. Do you agree that the Commissioner should be required to obtain expert advice and consult on discretionary consent decisions? No
Please comment
The commissioner should not have to seek expert advice beyond LINZ resources as LINZ should have that technical expertise in house for pastoral and farming type consents
6b. In what situations do you think the Commissioner should seek information from experts or the public on the impacts of proposed activities?
Only major changes in land use should trigger the commissioner to seek expert opinion.
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. Yes

Q7

7a. Do you agree that the CPLA should be changed to allow for fees to be charged for all discretionary consents? No
Please comment
7b. How might charging application fees for all classes of discretionary consents impact on applicants? Please provide the reasons for your view.
Bureaucratic costs are spiraling beyond normal inflation levels. Government and councils must review their cost structure. It is a huge unnecessary cost on businesses.

Q8

8a. Do you agree that the Commissioner should be required to regularly report against a monitoring framework? Yes
Please comment
8b. What other mechanisms could be used to ensure the outcomes of the Crown pastoral land regulatory system are better understood?
Clear information about the rights of lessees from LINZ would go a long way to correct the public's perceptions of pastoral leases. The public has been misinformed by the media and other self interest organisations on the rights of lessees and pastoral leases.

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

Q9

9a. Do you have any feedback on the preliminary analysis in section 6?
It appears the crown is trying to claw back many of the rights it has forfeited to the lessees.

9b. Are there any other comments you’d like to include in this submission?
As lessees we have had a very good working relationship with LINZ in the past but recently we have noticed that all dealings have become slow and laborious. We hope this is only temporary and are looking forward to once again working in partnership.
Q1A: How should areas of Crown land with inherent values worthy of protection be secured once tenure review is ended?

It would seem unnecessary to draft legislation to protect those inherent values that would operate in parallel to the Resource Management Act. The Resource Management Act is blind as to ownership when it comes to land and its inherent amenity values. To install a regime where a leasehold property adjoining a freehold property operates under different rules is an unnecessary regulatory burden on the leaseholder. Legislating to amend what was a contract between the Crown and them with the current lease would be a breach of natural justice. It seems to us that given that approximately half of the Crown properties have gone through the tenure review process, to now apply different rules between leasehold and freehold land which operate under the same national environmental standards and the district plans is inherently unfair.

Q1B: How should public access to Crown pastoral land be secured once tenure review is ended?

Unfortunately public access into remote and dangerous parts of the New Zealand countryside has proved to be a problem for landowners, emergency services and the New Zealand health system. The risks of the safety of people undertaking access into areas where there are working farming operations increases the potential for harm. The Crown need look no further than the recent slips on the public accessway on the East Coast of New Zealand, as well as the more recent deaths of two people as a result of the unauthorised access to a high country property (without landowner consent) to see that risk. The landowners are not equipped to monitor access, respond to emergency events and then face potential liability as a result of natural hazards not being known to the public. This mitigates against public access other than a case by case negotiated basis.

Q1C: Are there any other mechanisms that could be used to protect significant natural values or secure public access on Crown pastoral land?

Clearly the use of QEII Covenants and potentially Conservation Covenants which provide mutually agreed outcomes to the benefit of the wider New Zealand public are preferable. Willing parties to such arrangements provide better oversight and better outcomes rather than solutions imposed upon one party such as a leaseholder.

Q1D: Are there any other implications on ending tenure review that the Government should consider?

We believe ending tenure review is a step backwards in terms of policy. A negotiated agreement between landlord and tenant is by far the best outcome. The proposed change is simply a case of the Crown imposing its political desires on leaseholders. The reality is that Government come and go leaving potential for constant policy changes by various administrations. Farming does not operate well in such an environment. Nor does it augur well for long term planning.

Q2A Do you agree with the proposed outcomes?

The proposed outcomes make reference to the Crown deriving a “fair financial return”. This term is such a broad statement without precision and on the face of it undervalues the inherent benefit of the lessee’s stewardship. The proposed values revolve around the concept of stewardship, which implies an active management rather than a passive or intermittent management of properties.
which exhibit these inherent values that the Crown seeks to protect. The Crown through its agencies is not resourced adequately to manage its own estate and therefore is unlikely to be in a position to actively manage additional responsibilities, we would suggest. The concept of fair financial return ignores the unpaid return the Crown receives for the lessee being on the spot and managing the land on a day to day basis. Clearly this provides a better outcome than intermittent inspections undertaken by the Crown and its agencies, sometimes taking place years apart.

In a more general sense, we tend to have seen the Crown Commissioner’s regime as one that works effectively. We have always found the process one to be robust and effective from a legal perspective. Consents for the wide variety of activities that leaseholders seem to pursue needs an independent arbiter between the landlord and the tenant and we think that is the role that the Commissioner of Crown Lands fulfils. To politicise the Commissioner’s role in terms of “inherent values” (which will change no doubt with changes in Government policy) undermines the original contract between landlord and tenant. In our view, the purpose of the 33 year perpetually renewable leases was to give both parties certainty around the use and management of the land. We think the current process is an attempt to deal with a situation (the tenure review process for leasehold land that adjoined particularly attractive tourist areas has been dealt with) is a case of “the horse has bolted”. It is only dairying that is driving this change in our view. It appears that a review of the whole system is an attempt to deal with isolated incidents, which offend the current Government rather than treat leaseholders generally in an even handed way.
Q1

1a. What are your views on how significant natural values should be protected once tenure review is ended?
The existing legislation has protections for inherent values. There are a number of regional and national organisations monitoring, protecting and actioning these protections.

The lease (Dunstan Burn Station) is an active participant working with and collaborating on inherent values with the Department of Conservation and Otago Regional Council.

We presently work with Heritage New Zealand.

In protecting our heritage we have additional collaborations with Te papa museum, University of Otago, University of Canterbury, Flinders University of South Australia, University of Queensland, University of New South Wales, New York University, Duke University in North Carolina.

And there are many others.

1b. Are there any other mechanisms that could be used to protect significant natural values on Crown pastoral land?
No. Dunstan Burn Station already has significant efforts alone and collaboratively actioning protections.

1c. Do you have any views on the proposed transitional arrangements for ending tenure review?
Yes. I don't agree with ending tenure review at this time. However, any transitional changes placed upon leaseholders must protect the legal rights that leaseholders have in legislation and guard the existing contractual obligations with the crown, for which we as leaseholders have worked actively and invested heavily over many years.

Q2

2a. Do you agree with the proposed outcomes? No
Please comment
The proposed outcomes subject the leaseholder to ‘the maintenance and enhancement of natural capital, and cultural and heritage values’.
These are terms not relevant to our existing legal obligations to the Crown, nor the obligations of the Crown to the leaseholder.
They change the obligations in a manner unsubscribed nor agreed in existing legislation, and for which leaseholders have committed years of work and investment.

In terms of the outcomes that the Crown achieve a "fair financial return" this represents another change to those obligations in legislation. This does not represents the investments of the leaseholder or representing a "fair rent" to the leasehold for years of work and investments made.

2b. Do the proposed outcomes capture all the things the Crown should focus on? What’s missing?
No they do not.

Many details are missing.
There appears to me no presence of accountability today on the crown in respect to damages caused on freehold land (and leasehold) from a lack of management of weeds and pests. We see this is river beds. Which crown organisation would be responsible for weed and pest controls? Does that organisation presently have performance measures on their effectiveness in respect of weed & pest control? How do the regional authorities presently effect accountability of that crown organisation to effective stewardship of weed and pest control, as well as damages to effected parties? How will these activities be funded?

2c. Do you agree with the use of “natural capital” rather than ”ecological sustainability” in the proposed outcomes? No

Please comment
The use of the term "natural capital" is misleading and fundamentally changes the contractual obligations of the leaseholder to the crown. As leaseholders our work and investments have been made in the context of "ecological sustainability" as defined in legislation.

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?
I am comfortable with the Crown addressing the Treaty of Waitangi, and this is a subject of national consideration and national obligation.

2e. What are the qualities and features of Crown pastoral land that you value the most?
Our leases allow us to farm, care for and protect the land we have contracted under legislation. This is distinctly different from areas of NZ that remain largely unprotected and are subject to heavy intrusion of weed and pests particularly in River Beds.

We value the iconic nature of the land to New Zealand and New Zealanders, and it's economy.

2f. What does enduring stewardship mean to you?
Those obligations of the leaseholder are already set out in existing legislation.

Q3

3a. Do you agree that the Commissioner should be required to develop a regular Statement of Performance Expectations, approved by the Minister for Land Information? Yes

Please comment
It appears key that the commissioner remains an independent officer in this reporting function.

3b. Do you agree that this proposal will help improve accountability for decision making in the Crown pastoral land regulatory system? No

Please comment
As I understand it, the proposal in its present form would impact stakeholders by removing the legal obligations of the crown to the leaseholder, and in doing so removes that accountability to those legal obligations.

3c. What other mechanisms could be used to improve accountability? We would not propose changes to the accountability.

3d. Which mechanisms do you think would be most effective in improving accountability? We do not believe changes in accountability in their present proposed form is required or beneficial.

3e. Do you think there are any problems with the proposed change?
Yes.
The proposed changes are not at this time well defined for consideration. They are difficult to consider and should be developed with alignment to the CPLA and RMA.

Q4

4a. Do you agree that the CPLA should be amended so that it explicitly provides for the Commissioner to release additional guidance and standards to support officials and leaseholders to understand and comply with legislative requirements? Yes
Please comment
Yes. The CPLA could be improved but should not change the essential legal obligations of the crown to the lease or visa versa.

4b. Do you agree that this proposal will help improve the transparency of decision making in the Crown pastoral land regulatory system?
I don’t believe that transparency in it’s present proposed form assists efficient or effective management of the pastoral lands.

4c. What other things do leaseholders, iwi, and stakeholders most need to have clarity about in order to better understand the Commissioner’s decision making?

4d. How should standards be used to help increase transparency? How should guidance be used?
Guidance should consider the regional differences between pastoral lease lands, and the differences in needs of each pastoral lease.

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

4f. Which mechanisms do you think would be most effective in improving transparency?
A key issue in developing transparency is direct and inclusive consultation with leaseholders in the definition of transparency needs. Transparency should have alignment with the CPLA and the RMA.

4g. Do you think there are any problems with the proposed change?
Yes. It remain still unclear how these proposed changes will be implemented and the final outcomes affecting stakeholder. This is an untenable decision point without sufficient information. Further development of the specifics of the proposal are necessary before consideration of adopting any changes.

Q5

5a. Do you agree that the Commissioner should be required to give effect to the proposed outcomes in any discretionary consent decisions? No
Please comment It remains unclear of what outcomes are agreed.

5b. Do you think that the proposed approach ensures that decision making will support the proposed outcomes for Crown pastoral land?
The crown is required to meet its legal obligations to proposed discretionary outcomes. This is a fundamental starting point.

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

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

Q6
6a. Do you agree that the Commissioner should be required to obtain expert advice and consult on discretionary consent decisions? Unsure
Please comment
In some instances this may be necessary where advice is not available from within LINZ and it's present counterpart contributors.

However this must be rare in occasion and should not be a general approach.

Where the crown does not have that expertise, it should not be a forbearance on the application in terms of time delays or significant costs, where the lease intends to farm the land in a manner as is the right of the leasee.

It would seem an extreme action if public consultation is sought, and unlikely.

6b. In what situations do you think the Commissioner should seek information from experts or the public on the impacts of proposed activities?
It would seem unlikely for the crown to be required to seek public consultation on the sort of actions being sort under discretionary applications.

The crown should consult the district and regional parties, for example the Otago Regional Council.

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 crown position was established for this purpose and is the appropriate officer.

Q7

7a. Do you agree that the CPLA should be changed to allow for fees to be charged for all discretionary consents? No
Please comment
I agree to charges when the application is in alignment with the agreed framework of applications contained within the CPLA.

Charges related to the consideration of new definitions, new outcomes or new measures are not agreed under the legal obligations between the crown and the leasee.

7b. How might charging application fees for all classes of discretionary consents impact on applicants? Please provide the reasons for your view.
The pastoral land could be negatively impacted by the affordability of the application process and should not be changed without consideration of the stewardship role the leasee presently has and those benefits to the pastoral lands.

Q8

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

Q9

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

More time is needed, better definition of proposals, and further consultation is required.
9b. Are there any other comments you’d like to include in this submission?
Q1

1a. What are your views on how significant natural values should be protected once tenure review is ended?
Current mechanisms for protection are adequate if LINZ has retained the expertise within its organisation. DOC as stewards of conservation values, field staff from Linz and Leaseholders as on ground stewards all need to be consulted. Unfortunatley all come at this from different background hence the need for a controlling expert such as the Commissioner of crown Lands.

1b. Are there any other mechanisms that could be used to protect significant natural values on Crown pastoral land?
There are many and varied mechanisms, however all affected parties view the extent of protection required to different extents, therefore the ultimate decision must be evenly weighted. Significant natural values need weighted as to their importance and therefore become subjective rather than objective depending on the background mindset of those making the assessment.

1c. Do you have any views on the proposed transitional arrangements for ending tenure review?
The willing buyer willing seller concept at the base of Tenure Review and the leaseholders right to peace and enjoyment of the lease should be recognised, moving the goal post continually in favour of the emotional views of the political party of the day is fraught with danger. Those that are currently accepted into the process should be allowed to continue to negotiate under the rules at which they entered. The Process has been in my two decades of involvement influenced by politics and respective political parties, which has been inflamed by incorrect understanding through the media. It is naive to suggest that Tenure review has been the catalyst for development in the Mackenzie basin, development of pastoral leases was forced by economics -ie Muldoon think big, Douglas economic reform, The lack of protein in the world system, The clarke era where a greater return and more access was sort.
As an administrator of a Pastoral lease in the Tenure process I would like to believe that some finality to negotiations could be reached, a process that was entered into in good faith from a misguided view it would seem that the rules would be adhered to from both parties.

Q2

2a. Do you agree with the proposed outcomes?
Please comment

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

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

There is a need for balance. The term natural capital to me means to use something to one’s advantage and should be harnessed with ecological sustainability

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? No comment

2e. What are the qualities and features of Crown pastoral land that you value the most?
The ability to sustainably contribute to the countries economic wellbeing via pastoral improvement which entails protection of soils, water quality, community health and general well being and being aligned with ecological protection

Q2f. What does enduring stewardship mean to you?
Definition = person or persons protecting the asset. In the case of crown pastoral lease land the leasholder. The crown relinquished its rights to stewardship under the CPL act

Q3

3a. Do you agree that the Commissioner should be required to develop a regular Statement of Performance Expectations, approved by the Minister for Land Information? Unsure Please comment
Performance expectations as approved by the Minister of land information are subject to political views of the day and therefore can change markedly by the political party in power at the time. You must remember that Ministers are appointed by cabinet and in some instances through our MMP system come from a minority background. Responsibility for enduring performance needs to be transparent, sustainable and non corruptable by political bias.
3b. Do you agree that this proposal will help improve accountability for decision making in the Crown pastoral land regulatory system? No Please comment
Collaborative management confuses and delays decisions without an unbiased judge or final decision maker. The CCI has job to be unbiased and take all aspects into account when making a decision. If the framework is clear and decisive, without vague wording then a decision should be able to be reached.
3c. What other mechanisms could be used to improve accountability?
Accountability is again a vague term to whom is accountability sort are we talking the general populous of this country, because if you are then we have higher expectations than are achievable
3d. Which mechanisms do you think would be most effective in improving accountability?
3e. Do you think there are any problems with the proposed change?

Q4

4a. Do you agree that the CPLA should be amended so that it explicitly provides for the Commissioner to release additional guidance and standards to support officials and leaseholders to understand and comply with legislative requirements? Yes Please comment
There are currently mechanisms in place that should adequately support the understanding you seek
4b. Do you agree that this proposal will help improve the transparency of decision making in the Crown pastoral land regulatory system?
4c. What other things do leaseholders, iwi, and stakeholders most need to have clarity about in order to better understand the Commissioner’s decision making?
4d. How should standards be used to help increase transparency? How should guidance be used?
4e. What other mechanisms could be used to improve transparency?
4f. Which mechanisms do you think would be most effective in improving transparency?
4g. Do you think there are any problems with the proposed change?
This is creating another layer of beauracracy and will slow the process to a crawl, which in turn will create undercover activity, negating any benefits sort.

**Q5**

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

Please comment

It is very unclear over time what the proposed outcomes for CPL are. Initially these lands were undesirable habitats, uneconomic from a farming prospective and were intended to be leased at marginal rates to allow economic growth while protecting the environment by way of the consent process attached to the lease. After personal financial contributions a sustainable approach to the ecological values of the said leases, allowances given to land acquisitions from think big power development, and associated problems created by that for water quality we now find the finger pointed at pastoral farming as causing the county’s problems, when in most cases these have been created by actions of former political decisions all based on this country’s economic wellbeing.

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

Do not complicate the system, It has been stated that more expert advise is required - who better to give advice than the leaseholder from a farming angle, DOC from an ecological angle what more is required, and who is going to pay. Remember leaseholder time, knowledge, and delivery for consents has a value as well as some so called expert.

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

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

The magnitude of the impact on the environment. A lenancy for basic pastoral farming consents, oversowing topdressing fencing things that have a lesser effect from a farming prospective should be graded at a lower impact level, where forest establishment should be graded as higher impact. The continuation of consent process needs to be biased to farming or these properties need to be purchased in entirety by the crown and returned to the DOC estate.

**Q6**

6a. Do you agree that the Commissioner should be required to obtain expert advice and consult on discretionary consent decisions? No

Please comment

The consent process requires advise now. How much so called expert advise can you give, see comments on last question.

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

6c. Do you think the Commissioner, an independent statutory officer, is the most appropriate decision maker for matters regarding Crown pastoral land? Is there a better decision making model? Please provide the reasons for your view.
Q7

7a. Do you agree that the CPLA should be changed to allow for fees to be charged for all discretionary consents? No
Please comment
User pays is an anomaly. The leaseholder currently gives advice from a pastoral perspective, DOC staff give a view from an ecological angle, iwi consult, linz employ consultants that are supposed to have knowledge, how much more do you require and who is going to pay. The leaseholder pays freely of his knowledge but all other require remuneration in addition. The leaseholder pays a lease part of which is intended to cover administration costs.

7b. How might charging application fees for all classes of discretionary consents impact on applicants? Please provide the reasons for your view.
Should fees be charged for lower grade consents as attached to pastoral farming, you may find applicants not bothering and doing things that are harmful. In some instances a fine in retrospect is the lesser of the two evils. Application inspection and timeliness of approval are critical to all leaseholders.

Q8

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

Q9

9a. Do you have any feedback on the preliminary analysis in section 6?
9b. Are there any other comments you’d like to include in this submission?
Q1

1a. What are your views on how significant natural values should be protected once tenure review is ended?
Agreement between Crown's agent and lessee, and likewise for public access although with the possible aid of the Walking Access Commission
1b. Are there any other mechanisms that could be used to protect significant natural values on Crown pastoral land? QE II National Trust covenant would be my first choice
1c. Do you have any views on the proposed transitional arrangements for ending tenure review?

Q2

2a. Do you agree with the proposed outcomes? Unsure
Please comment
2b. Do the proposed outcomes capture all the things the Crown should focus on? What’s missing? Trust and encouragement for the lessees and resident managers
2c. Do you agree with the use of “natural capital” rather than ”ecological sustainability” in the proposed outcomes? Unsure
Please comment A rose by any other name...
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?
Guidelines and a line of communication for information sharing, possibly even joint projects
2e. What are the qualities and features of Crown pastoral land that you value the most? The cultural significance of high country farming for all NZers. Other qualities and features are site specific.
2f. What does enduring stewardship mean to you?

Q3

3a. Do you agree that the Commissioner should be required to develop a regular Statement of Performance Expectations, approved by the Minister for Land Information? No
Please comment
A commissioner with good field staff should only need to report if problems arise
3b. Do you agree that this proposal will help improve accountability for decision making in the Crown pastoral land regulatory system? No
Please comment Unlikely that bureaucracy will solve any issues of accountability
3c. What other mechanisms could be used to improve accountability?
Regular liaison with High Country Federated Farmers, High Country Accord and scientists with relevant skills should carry more weight than anti farmer campaigns
3d. Which mechanisms do you think would be most effective in improving accountability?
3e. Do you think there are any problems with the proposed change? Writing rules does not necessarily solve problems

Q4
4a. Do you agree that the CPLA should be amended so that it explicitly provides for the Commissioner to release additional guidance and standards to support officials and leaseholders to understand and comply with legislative requirements? No

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

4c. What other things do leaseholders, iwi, and stakeholders most need to have clarity about in order to better understand the Commissioner’s decision making? Field officers reports on developing science and other relevant information

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

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

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

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

Q5

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

5b. Do you think that the proposed approach ensures that decision making will support the proposed outcomes for Crown pastoral land? Offsetting could be a useful tool

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

5d. What specific matters should be considered when deciding whether to approve an application? Common sense and timeliness
Q6

6a. Do you agree that the Commissioner should be required to obtain expert advice and consult on discretionary consent decisions? No
Please comment
The commissioner should be qualified to understand practical land management and recognise when experts need to be consulted.
6b. In what situations do you think the Commissioner should seek information from experts or the public on the impacts of proposed activities? Where s/he and their staff lack knowledge, mostly new science
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. If the commissioner has the right abilities for the job then yes.

Q7

7a. Do you agree that the CPLA should be changed to allow for fees to be charged for all discretionary consents? No
Please comment See below
7b. How might charging application fees for all classes of discretionary consents impact on applicants? Please provide the reasons for your view.
Those that are normal farming practices should not. Similarly low-impact, short term activities (e.g. filming). Since this only involves the "quiet enjoyment" the lessee should be able to make this decision anyway.

Q8

8a. Do you agree that the Commissioner should be required to regularly report against a monitoring framework? No
Please comment As with question 3, reporting should only be necessary if problems have arisen
8b. What other mechanisms could be used to ensure the outcomes of the Crown pastoral land regulatory system are better understood?
8c. What information do you think is most valuable to understand system performance?
I'm not qualified to judge. System performance is obvious in farming and weed and pest control

Q9

9a. Do you have any feedback on the preliminary analysis in section 6? Transparency and fairness are good, but what about timeliness?
9b. Are there any other comments you’d like to include in this submission?
LINZ should trust land managers more to keep up with the Government's intentions and work with them as best we can.
Our first comment would that if this is a consultation process then, this option should have been first on the list. We as holders of a lease under the Land Act 1948 given the proposals outlined in the document are surely the most affected parties within the proposal. They are a lease of pasturage to which we have long standing rights and in our case over 60 years of family investment.

Q1

1a. What are your views on how significant natural values should be protected once tenure review is ended? The provisions of the lease and regional and district plans under the Resource Management Act already provide protection of inherent values and no further legislative response is required.

The Lease contract provides the leaseholder with the right to farm the entire leased area. To the extent that the Crown wishes to protect particular inherent values (e.g. restrict grazing any area of the lease) this will require a negotiated agreement between the Crown and lessee on a case by case basis.

Because the relationship between the Crown and lessee is fundamentally contractual, no legislative change is required.

Possible use of QEII Covenants on special areas worthy of protection, that being land of no pastoral worth. In reality many of these are protected by the existing statutes.

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

Use the knowledge of the many long standing custodians of each lease being the lessees as a number of these properties have been successfully managed by families since prior to 1948. They are generally in better condition to when they were taken up. As it is most good farmers aim to leave land in a better condition to when they found it for future generations.

"Listen to the people of the land, they have been on it for much longer than some perceived experts have been alive, they have witnessed many changes in pastoral land management overtime, technology and applicable methods of management to their own particular environments ( all the pastoral leases are different and have varying resource bases).

Therefore work with each property to cover of a plan that means the needs of all parties from a farming, conservation and other stakeholders perspective a, while remembering the very reason why the pastoral leases came about. Just managing these lands for conservation attributes and public needs will not manage the lands in an appropriate way to see it into the future.

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

We consider if people have entered into Tenure Review in good faith under the current system and that if suitable progress that meet current objectives and have benefits to the
lessee, conservation estate and public should at least be consulted with to see there current views of where they are at in the process. They should have the choice to withdraw and carry on in the proposed frame work of pastoral land management or continue to negotiate an outcome within the current provisions of the CPLA 1998/ hybrid of it, as it would appear some of these are in a process with proposals that would mirror some of the outcomes proposed from the proposes changes.

We think you need to be very vary if the human capital element of the high country and in particular mental health issues.

Q2

2a. Do you agree with the proposed outcomes? Unsure
Please comment
We consider that there are some outcomes in the proposal that could be worked with however, we consider that this cannot be a definitive answer as it is unclear exactly how management of the lands will occur. If the system does not inhibit our property rights under our lease or inhibit us to be able to farm in the manner in which have been currently then we would be able to comment with more certainty. Our main concern is that we need to be able to be able to FARM the country as a pastoral unit, using tools available to use. It concerns us that the discretionary action process for such things as burning could may well be meddled with and declined without scientific or valid reason from decision mangers. If we are to pay application fees as proposed we would need some clear indication that if our applications are made with independent advice to back out proposals that they would not unfairly be dismissed and that a suitable, timely and cost effective process was in place if such applications were turned down with our right to be heard.

2b. Do the proposed outcomes capture all the things the Crown should focus on? What’s missing?
They do not capture all the crown should be focusing on.

There needs to be more focus on the very resource for managing the land that is on the people already on the land rather than what the public want. It appears very focused on public outcomes.

The lessees are a large part of this equation given our rights of the lease.

There should be more focus given to the regeneration ( ie heriacium management) of the lands rather than the conservation of the land, as this provides benefit to all parties. There are trials in place regarding this on this particular property that are showing excellent results. Anyone is welcome to view these at anytime.

2c. Do you agree with the use of “natural capital” rather than ”ecological sustainability” in the proposed outcomes? No
Please comment
It like ecological sustainability could be drawn to have many meanings. The definition that is achieved will have to be more than these two words or these two phases, to enable better outcomes for all parties within the high country.

The lease portfolio is diverse and each different property will have different objectives for management resulting from its own RESOURCE BASE, given their unique characteristics. Could resource base be a better term? Then a set of parameters such as a risk category be
applied to each property, ie grade them in term of potential threats, risks, development options etc. A good start could be the base information in the Landcare Research mapping of the leasehold estate used for base rentals.

High Country Sustainability in the context of each lease, this including such things as the human capital and their sustainability, along with the communities in which these properties exist. This also needs to take into account the management history of the properties, such as where they have come from ie rabbit infested in 1947 when our grandfather/father took up the lease, the same reference could be made to management of hieracium, this can be successfully managed with the right inputs and appropriate grazing/stock/stocking rates.

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? There are no known problems with the present position.

2e. What are the qualities and features of Crown pastoral land that you value the most? Pastoral leases 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. The ‘Pure’ brand and the reputation for authentic and safe primary products is 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.

The Crown should not undermine these benefits by eroding the contractual rights of leaseholders.

The right to quiet enjoyment with the associated rights such as recreation permits to share this with others.

The ability to say see the top of the hill that is where the station ends and say see that point i.e. the basin.

The history that our own families have created on these properties. i.e. when granddad came in 1947 there was one fence between the hill and the flats

Seeing what the family have achieved on the property over the last 70 years, which has seen the development of the property to be a sustainable unit balanced with good freehold land that has been developed in keeping with contour and its natural resource base, this resulting in pristine highland snow tussock and good tussock cover in the more developed lower country that has only been developed in a way to enable more food to be grown for grazing of stock.

Our own recent initiatives to manage the hill country is now showing great gains, our trail work is worth sharing, if anyone wanted to come and have a look, it could provide monitoring as a base line has been set.

2f. What does enduring stewardship mean to you?
The primary contractual relationship between lessee and lessor must remain the foundation of the way in which the Crown and lessees work with each other.

To the extent that individual properties establish relationships with other organisations within their communities, 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.

Good points.

Enduring stewardship is already documented in the rights of the lease being the 33 year team with renewal clause in perpetuity.

Enduring stewardship needs to be long term, and not focused on the government of the government of the day’s agenda.

Q3

3a. Do you agree that the Commissioner should be required to develop a regular Statement of Performance Expectations, approved by the Minister for Land Information? Yes

Please comment

Yes, provided the Commissioner remains substantially independent of political direction. The Commissioner should not be required to consult publicly on the Statement.

This need so be the framework set between the lessees and the operation arm of LINZ setting down desired outcomes. This should be reviewed at a set time frame (regular is to broad).

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

Please comment

How is this actually going to be put in place. How will the experts making the decisions be trained, what High Country knowledge will they have. People in such decision making positions need to have a good general understanding of the pastoral land portfolio (including the differing areas where they are located, ecology, biology, botany and environmental management, there may need to be a mix if these experts within the process.

Is the management of the leases going to be from a service provider base or is it going to be internally within LINZ, these are all questions that we need certainty over in order to answer such a question.

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

A fast and efficient rehearing process if a request for DA is declined i.e within X days. Decision makers should have visited the property within a certain time period of the discretionary action application. ie these could be land inspections who visit at an agreed time period ie 2-5 yearly for good husbandry and cover off any required DA consents at the time. Farm management plans agreed for 10 years.

3d. Which mechanisms do you think would be most effective in improving accountability? 10 year farm management plans

3e. Do you think there are any problems with the proposed change?
Submission 2859

It's unclear from a certainty of farm management at this stage. Therefore further consultation would be recommended prior to any operation procedures being put in place.

Q4

4a. Do you agree that the CPLA should be amended so that it explicitly provides for the Commissioner to release additional guidance and standards to support officials and leaseholders to understand and comply with legislative requirements? Yes

Please comment
Yes – efficient (and hence cost effective) processes are enhanced by clear guidance. Developing such guidance requires care to ensure that sufficient flexibility remains to take account of the enormous 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 as it would provide clearer guidance. As long as the points in 4A above are considered when developing such amendments.

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?
More detailed reasons for why a decision has been granted/declined.
This would provide transparency in the case of a rehearing or in the case of any official information.

Where is the information coming from for the management of the high country pastoral lands to enable lessees and stakeholders to have confidence in the decisions.

Clear and definitive mapping.

4d. How should standards be used to help increase transparency? How should guidance be used?
This will evolve and develop once the actual outcomes of this submission process are known.

Decision makers should be able to refer to a clear standard that has variations of guidance given the different resource bases of each property. Maybe the portfolio needs divided into risk categories, areas of varying management such things as land development ie how public, weed and pest management. This could be derived from regular property inspection information that could be entered by field staff into an online portal in relation to good husbandry matters and also if the land has more capability than that that has already been developed with ongoing provision. History of development and prior approvals really need to be considered here.

4e. What other mechanisms could be used to improve transparency?
If a property (not necessary outs as it is essentially developed) has a development planned then that should be applied for in one application ticking what discretionary actions they think are required, this should be ground checked by LINZ staff, and a recommendation made if something missed, the decision should be released as one letter not in 6 decisions then this would be more easily monitored for the development of each area.

4f. Which mechanisms do you think would be most effective in improving transparency?
An online portals
More LINZ decision maker presence on the ground, to form relationships, so they know our objectives and management styles.
Clear concise and uniform maps and decision letters.
4g. Do you think there are any problems with the proposed change?
Many uncertainties, you haven't really told us what the changes are or why we need change.

Q5

5a. Do you agree that the Commissioner should be required to give effect to the proposed outcomes in any discretionary consent decisions?
Please comment
Ultimately that depends upon what outcomes are agreed.

Can’t have blanket approaches proposals are different and will have different desired outcomes therefore each has to be considered on a case by case basis. If this approach is considered appropriate.

5b. Do you think that the proposed approach ensures that decision making will support the proposed outcomes for Crown pastoral land? It is unclear and depends what outcomes are agreed.
5c. What other mechanisms could be used to ensure decision making supports the proposed outcomes?

There needs to be an alignment of processes under the RMA and the CPLA. Agreeing farm plans with the Commissioner may provide a mechanism for such alignment.

There needs to be more dovetailing in this regard and if the consent triggers RMA and application hasn’t considered it then maybe they need pushed back for further consultation with the likes of council.

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

Agree framework on length of consent implementation, for various activities. This may need to be staged i.e. burning 5 years, soil disturbance for fencing 10 years etc Farm management plans agreed to in advance and all required discretionary actions applied for and dealt with upfront every 5-10 years.

Shortland Station have a recent example of a burning consent being turned down, that we considered would undermine the contract. We would be happy to discuss the situation with a member of the accord as a case study and someone is most welcome to visit. We have treated other blocks the same way in recent years with good desired farming outcomes that we were disappointed the current environment had no support.

5d. What specific matters should be considered when deciding whether to approve an application?
All the objectives of the Land Act 1948 and Crown Pastoral Land Act 1998 need to be taken into account. In particular the fact that the properties were let for pasturage, they are not conservation leases and at times lately we have questioned this in relation to the decision making process. The decisions need to be balanced and understandable when they are released. If the decision maker is unsure of the objectives of the application they should be able to ask, they should also be able to consult the applicant and ask questions ie were you
aware of such and such, and would you be happy if we were to seek further advise/decline that area and approve the rest.

**Q6**

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

Please comment

In some circumstances there may be a need for the Commissioner to seek expert advice beyond the resources immediately available within LINZ. Indeed to make a reasonable decision (as he is bound to do), the Commissioner will need to consider whether such advice is necessary. Most consent applications, however, are not ones which require special expert analysis. Requiring such analysis and advice is simply likely to cause delay and expense. It may also hinder a culture of compliance and joint stewardship and partnership.

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

Consent applications should not be the subject of public consultation. If public consultation is needed then that will be triggered by the application of the 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.

Might be good for crown to outsource scientific information away from DOC old science on the likes of burning.

Where are the experts going to come from? What defines and expert.

Many farm management consultants would focus on more intensive development as there appears a lack of experts in higher country farming systems.

The actual lessees may by the best experts. Listen to the people of the land, they have been their longer than many so called experts have been in their jobs and have witnessed many changes to pastoral land management over time.”

It needs to be ensured that these properties remain viable and economic therefore need to enable lessees to carry on with existing systems with the tools available within unnecessary consultation/experts and regulation in relation to general farming as we know it.

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

Why should the public need to be consulted on an application for a discretionary action on a property under a pastoral lease that we have the right to quite enjoyment of and therefore the right to trespass people without permission.

We own the improvements and some requests ie OSTD, Burning) are to improve the land within these already developed areas ie between our fences in longer country where stock have improved the country over time.

We consider that experts outside of the Department of Conversation should be consulted for such things as burning if the advise stream from DoC does not appear to meet the objectives
of the act and the lessees application or where the decisions makers can see that the advice could lead to an unclear decision being made.

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. Yes as long as the word INDEPENDENT is ADHERED TO!!!!!!!!!!!

**Q7**

7a. Do you agree that the CPLA should be changed to allow for fees to be charged for all discretionary consents? Unsure
Please comment
A reasonable charge for processing discretionary consent applications is unobjectionable in principle.

The issue is one of reasonableness and efficiency. Presently LINZ is highly inefficient in dealing with consent applications. There are numerous examples of excessive delay, 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 as a consequence of their design, the consequential costs 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

10 year farm plans, all signed off at same time. One response for each action. Ie for a block requiring varied discretionary actions.

If a fee is to be charge of a greater nature to say that of a resource consent with council, them applications should not be un reasonably turned down, as this is an investment in our believe as the lessees that we are proposing the best outcome for the particular parts of our property.

If the commissioner wants independent expert advice in order to make a decision, then the crown should bear the cost.

7b. How might charging application fees for all classes of discretionary consents impact on applicants? Please provide the reasons for your view.
Needs to be certainty that applications will all be considered reasonably if fees are to be charged. If not this to could add to rehearing challenges and unnecessary official information requests.

**Q8**

8a. Do you agree that the Commissioner should be required to regularly report against a monitoring framework?
Please comment Consider this already answered.
It the Act not the framework?
8b. What other mechanisms could be used to ensure the outcomes of the Crown pastoral land regulatory system are better understood?
Regular on farm visits from appropriately trained professional/experts in high country management in conjunction with leases for on farm monitoring.

Funding for trails especially around regeneration and appropriate management of hericiaum (we have trails here), other places may need such a baseline.)

8c. What information do you think is most valuable to understand system performance?
This will only be achieved with a simple monitoring systems where information is easily obtainable.

Q9

9a. Do you have any feedback on the preliminary analysis in section 6?
Consider this has been answered through out the submission process.

9b. Are there any other comments you’d like to include in this submission?
Focus on partnering with lessees for weed and pest management.

Clarity around the framework for when if any consent is required for control of broom, gorse and wilding pines, this has been unclear in the current framework of management and if no affecting native bush then it surely is part of the requirement to control weeds under the good husbandry provisions of the lease.

Ensure that inter generational transfer (succession) of properties to the next generation in terms of stock exemptions are able to occur without to much interference especially if inspections indicate current stocking regimes are not harming the land.
Q1

1a. What are your views on how significant natural values should be protected once tenure review is ended?
Lease provisions and regional/district plans already provide protection of inherent values and no further legislative response is required.

To the extent that the Crown wishes to protect additional or specific inherent values then it needs to negotiate with the specific run holders on a case by case basis which result in amendment to the current contractual arrangements. The relationship between the parties is contract based so no legislative change is required.

1b. Are there any other mechanisms that could be used to protect significant natural values on Crown pastoral land?
The Land Act allows easements to be created however this would need to be preceded by the parties negotiating and agreeing a variation to the lease contract to enable this to occur.

1c. Do you have any views on the proposed transitional arrangements for ending tenure review?
Yes. The Crown has not considered matters holistically.

No consideration has been given in terms of considering the impact that ending tenure review will have on lessees, their businesses and families, the land, and the wider community.

As a result of ending tenure review, potential better outcomes for the land (from a conservative and ecological point) may well be foregone.

The Crown will also need to be more active as a land owner in the magement of weeds and pest animals. To date lessees have tended to assume this responsibility for the Crown which is an absentee landowner.

Q2

2a. Do you agree with the proposed outcomes? No
Please comment
The proposed outcomes contradict the contract terms of the pastoral lease and any changes would result in a unilateral amendment the lease contract which is illegal. The proposed subservience of pastoral farming to conservation values is fundamentally at odds with the agreement within the lease.

Substituting the term 'Ecological Sustainability' with ‘natural capital’ creates even more vagueness which will be to the growing detriment to the lessee over time.

‘Fair financial return’ has already been established by the Courts in the Minaret case and any legislative changes would amount to a constitutional breach of law.

2b. Do the proposed outcomes capture all the things the Crown should focus on? What’s missing?
Submission 2860

The Crown has not considered the personal and social impact on the lessees and the community in ending tenure review and has solely focused on ecological aspirations ignoring over 100 years of significant work and effort employed by generations of lessees to achieve what now exists.

The Crown has not stated what it will do as an active guardian and landowner going forth.

2c. Do you agree with the use of “natural capital” rather than “ecological sustainability” in the proposed outcomes? No

Please comment
It is even more vague than "ecological sustainability" which in some cases can be defined.

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?

Status quo seems fine at present. The RMA provides for Iwi input into decision making in regional and local processes.

2e. What are the qualities and features of Crown pastoral land that you value the most?
The high country is iconic New Zealand, part of the pure green NZ image. This image has been created by the hard work of generations of lessees and should be protected and respected not denigrated.

2f. What does enduring stewardship mean to you?
Enduring stewardship means the lasting guardianship of the property; the role of which is fulfilled by the lessee who has vested interest in protecting the land.

The Crown is an absentee landlord / landowner which is largely unable to fulfil that role. Its lack of stewardship on surrendered land illustrates its inability to fulfil this function.

Q3

3a. Do you agree that the Commissioner should be required to develop a regular Statement of Performance Expectations, approved by the Minister for Land Information? Yes

Please comment
Provided that the expectations do not conflict with the contractual rights of lessees and provided that the Statement is not subject to political manoeuvring.

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

Please comment Depends whether the expectations are measureable.

3c. What other mechanisms could be used to improve accountability?
3d. Which mechanisms do you think would be most effective in improving accountability?
3e. Do you think there are any problems with the proposed change?
If the statements do not allow sufficient flexibility, the rules could stymie positive development in the high country which could afford lessees to generate better outcomes for themselves and the land. The statements need to be forward thinking.

Q4

4a. Do you agree that the CPLA should be amended so that it explicitly provides for the Commissioner to release additional guidance and standards to support officials and leaseholders to understand and comply with legislative requirements? Unsure

Please comment
depends what contractual terms are agreed, any guidance needs to have as its first proposition the lessee's contractual right to the quiet enjoyment of the land.

4b. Do you agree that this proposal will help improve the transparency of decision making in the Crown pastoral land regulatory system?
Yes but depending on the level of detail this will impact negatively on the ability of the parties to make good decisions because they will be compromised to comply with such guidelines.

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?
Not sure. Most environmental matters are already well documented and controlled through regional council involvement. Ultimately the Crown should allow them to control matters as they apply to all farmers not just lessees.

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

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

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

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

Q5

5a. Do you agree that the Commissioner should be required to give effect to the proposed outcomes in any discretionary consent decisions? No
Please comment
The contract between the Crown and Lessee is paramount. The Crown leased the land to the lessee to improve / farm the land to make a financial return. The ability of the farmer to undertake activities to achieve this must rank ahead of other values. The principle of "good husbandry" applies as a check to this right.

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

5c. What other mechanisms could be used to ensure decision making supports the proposed outcomes?
The principles of "good husbandry" should be applied to decision making.

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

Q6

6a. Do you agree that the Commissioner should be required to obtain expert advice and consult on discretionary consent decisions? No
Please comment
No - only as circumstances require. The Commissioner should have the expertise available to fulfil its role as Lessor.

6b. In what situations do you think the Commissioner should seek information from experts or the public on the impacts of proposed activities?
Where there is no precedent for the activity and the Commissioner is unsure if the activity is 'ecological sustainable'

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 RMA processes through the regional councils are robust and well understood and could easily be seconded to deal with more difficult decision making.

Q7

7a. Do you agree that the CPLA should be changed to allow for fees to be charged for all discretionary consents? Yes
   Please comment
   Provided the charges are for reasonable processing costs associated with consents and not other matters.
7b. How might charging application fees for all classes of discretionary consents impact on applicants? Please provide the reasons for your view. If the fees are reasonable and transparent there should be no issues.

Q8

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

Q9

9a. Do you have any feedback on the preliminary analysis in section 6?
   Ecological sustainability is a better measure than natural capital.
   Fair financial return is not a measure that should apply as the primary relationship is governed by contract.
9b. Are there any other comments you’d like to include in this submission?
Q1

1a. What are your views on how significant natural values should be protected once tenure review is ended?
SNA's are protected under the RMA and District Plans which covers Pastoral Leases as well. Any further protection from pasturage if required should be negotiated between Lessor and Lessee
1b. Are there any other mechanisms that could be used to protect significant natural values on Crown pastoral land? Possibly agreed QE 2 covenants
1c. Do you have any views on the proposed transitional arrangements for ending tenure review? That present discretionary consents remain

Q2

2a. Do you agree with the proposed outcomes? No
Please comment
Changing legislation to promote conservation and "natural capital" over pasturage breaks the legal agreement between Lessor and Lessee. Diminishing or eliminating right to pasturage clearly compromises present stewardship and the hands-on day to day management of pastoral leases. NB that presently land management and associated costs are borne by the lessee, not the taxpayer
2b. Do the proposed outcomes capture all the things the Crown should focus on? What’s missing?
There is no acknowledgement of the economic and social disruption that might occur to families and communities that have endured and stewarded these lands, often for generations
2c. Do you agree with the use of “natural capital” rather than ”ecological sustainability” in the proposed outcomes? No
Please comment
There needs to be a clear definition of what "natural capital" means to answer this question
2d. How do you think the Crown should fulfil its obligations under the Treaty of Waitangi in respect to Crown pastoral land? How do you think Treaty of Waitangi principles should be applied to decision making?
2e. What are the qualities and features of Crown pastoral land that you value the most?
In our case the property balance created by a combination of Freehold and Pastoral lease enhances the sustainability and ecological improvement of both titles
2f. What does enduring stewardship mean to you? ongoing inter-generational day to day sound stewardship of the WHOLE property

Q3

3a. Do you agree that the Commissioner should be required to develop a regular Statement of Performance Expectations, approved by the Minister for Land Information? Yes
Please comment
Subject to the "statement of performance expectations" being developed with consultation and input from affected parties
3b. Do you agree that this proposal will help improve accountability for decision making in the Crown pastoral land regulatory system? Yes
Please comment subject to the above
3c. What other mechanisms could be used to improve accountability?
Farm plans that are put together conjointly and are not too bureaucratic to monitor
3d. Which mechanisms do you think would be most effective in improving accountability?
3e. Do you think there are any problems with the proposed change?

Q4

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

Q5

5a. Do you agree that the Commissioner should be required to give effect to the proposed outcomes in any discretionary consent decisions? Unsure
Please comment What is meant by "give effect"?
5b. Do you think that the proposed approach ensures that decision making will support the proposed outcomes for Crown pastoral land?
Subject to RMA and District plans discretionary consents should be between the affected parties ie. lessor and lessee. There should be no necessity to consult unaffected 3rd parties.
5c. What other mechanisms could be used to ensure decision making supports the proposed outcomes?
5d. What specific matters should be considered when deciding whether to approve an application?

Q6

6a. Do you agree that the Commissioner should be required to obtain expert advice and consult on discretionary consent decisions? Unsure
Please comment
Possibly in exceptional circumstances. Anything that adds costs, beurocracy and delays to consents is inefficient
6b. In what situations do you think the Commissioner should seek information from experts or the public on the impacts of proposed activities? Cannot see any reasons other than activities outside pasturage.
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. Yes and he must remain independent.

Q7

7a. Do you agree that the CPLA should be changed to allow for fees to be charged for all discretionary consents? No
Please comment
The land management and weed and pest costs associated with Pastoral leases is borne by the Lessee already so adding extra fees (for normal consents) is unfair. NB a consent is required in some circumstances for weed control even though the Lease agreement stipulates that the Lessee has to control them.
7b. How might charging application fees for all classes of discretionary consents impact on applicants? Please provide the reasons for your view.
Creates the risk of non compliance and less willing engagement in future management partnerships with Linz.

Q8

8a. Do you agree that the Commissioner should be required to regularly report against a monitoring framework? Unsure
Please comment Depends on the frame work and how it is developed
8b. What other mechanisms could be used to ensure the outcomes of the Crown pastoral land regulatory system are better understood? Conjointly develop farm plans that are developed and managed efficiently.
8c. What information do you think is most valuable to understand system performance?

Q9

9a. Do you have any feedback on the preliminary analysis in section 6?
9b. Are there any other comments you’d like to include in this submission?
There has to be acknowledgement and recognition of the generally good stewardship that families intergenerationally have put in to nurturing and enhancing these natural landscapes under pastoral leases with no required taxpayer input. Comparisons can be made with other Crown land under DOC or Linz ownership where efficient and ongoing land management is very questionable.
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>Richard and Sara Fisher</th>
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Submission type*

☑ Individual

☐ NGO

☐ Local government

☐ Business / Industry

☐ Central government

☐ Iwi

☐ Other (please specify) Crown Pastoral Leaseholder

Add your details

* 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?

The provisions of the lease and regional and district plans under the Resource Management Act already provide protection of inherent values and no further legislative response is required.

The Lease contract provides the leaseholder with the right to farm the entire leased area. To the extent that the Crown wishes to protect any particular inherent values, (e.g. restrict grazing any area of the lease) this will require a negotiated agreement between the Crown and lessee on a case by case basis.

Because the relationship between the Crown and lessee is fundamentally contractual, no legislative change is required. The Act already provides.

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

No. There are sufficient mechanisms already provided for by legislation, and the nature of the relationship between Crown and lessee (i.e. contractual) allows the flexibility for agreed outcomes to achieved.

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

All current properties entered in Tenure Review should, in good faith and the due process of the current Act, be allowed to proceed and continue to conclusion without impediment.

Question 2:

2a. Do you agree with the proposed outcomes?

☐ Yes  ☒ No  ☐ Unsure

Please comment

No. The proposed outcomes (see page 23 of the Discussion Document)
fundamentally change the contract of the pastoral lease. This contract allows for the farming of the pastoral leased land in terms of the lease. The proposed outcomes make farming of the leased land an activity which is subject to ‘the maintenance and enhancement of natural capital, and cultural and heritage values’. The proposed subservience of pastoral farming to conservation values is fundamentally at odds with the agreement within the lease.

In addition, the use of the term ‘natural capital’ in place of ‘ecological sustainability’ substitutes one term which has definitional challenges with new terms with even greater definitional challenges.

Finally, the reference to the Crown deriving a ‘fair financial return’ is legally misconceived. The Land Act 1948 made provision for lessees to pay a ‘fair rent’. At law this concept means a fair rent to the lessee – not the lessor. The recognition of this legal principle is now codified with greater certainty in the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012.

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 revenue, and also needs to take account of the costs of weed and pest control, (not forgetting the stewardship and maintenance of “Natural Capital”) 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 grazed, and the overall economic benefits delivered to New Zealand by the pastoral lease sector.

Subject to understanding how it proposes to do so in practice, the proposal for the Crown’s management of pastoral land to take account of the principles of the Treaty of Waitangi is accepted. The Minister of the Crown and the consultation document seem to have forgotten; or are abrogating their responsibility to administer the CPLA on behalf of the Crown. The Govt, body corporates, taxpayers; “nay” the nation, are due a cost to Lessees stewardship, especially as the nation rides on the back of the very portrayed culture and “Natural Capital” of this land. CP Lessees have become the custodians and enduring maintainers of this alienated land for which we pay rent. Lessees receive no recognition, discount or credit of this (contractual obligation?). The State benefits at the cost of our labors.

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 steward of the land.

Any indication the Crown has a considered plan is devoid, let alone any mapping of outcomes.
2c. Do you agree with the use of “natural capital” rather than “ecological sustainability” in the proposed outcomes?

☐ Yes  ☒ No  ☐ Unsure

Please comment

“Natural Capital” and “ecological sustainability” are conundrums for any definition under constitutional law. They are also terms precluding any dynamics of nature, occupation or time and cannot be quantified by any means at any point in time; let alone by a Govt!
You are about to bastardise an Act of Parliament with an emotive term undefined in law.

The Crown has insufficiently detailed its proposals for its contribution as a steward of the land.

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?

There are no known problems with the present position.
What precipitates the question?
An answer looking for a question. The Act provides.
The Crown is the principal party to the Act or lease document.
The Treaty of Waitangi partners and the lessees are parties and signatories to their specific negotiated documents; period.

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

Pastoral leases 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. The ‘Pure’ brand and the reputation for authentic and safe primary products is 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.

The Crown should not undermine these benefits by eroding the contractual rights of leaseholders.

Every New Zealander clips the ticket and we pay the bills.

The Minister of the Crown and the consultation document seem to have forgotten; or are abrogating their responsibility to administer the CPLA on behalf of the Crown. The Govt, body corporates, taxpayers; “nay” the nation, are due a cost to
Lessees stewardship, especially as the nation rides on the back of the very portrayed culture and “Natural Capital” of this land. CP Lessees have become the custodians and enduring maintainers of this alienated land for which we pay rent.

Lessees receive no recognition, discount or credit of this (contractual obligation?). The State benefits at the cost of our labors. The Lessees are the Crown's “Natural Capital” and must be recognized and compensated for such. Any cost recovery as suggested, is open to encourage a bloated, inefficient, immoral self-serving administration of little value to anybody but themselves.

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 contractual relationship between lessee and lessor must remain the foundation of the way in which the Crown and lessees work with each other.

To the extent that individual properties establish relationships with other organisations within their communities, 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.

Honest delivery of the Act, articles, agreements, relationships with transparency and INTEGRITY.

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

Yes: Provided the Commissioner remains substantially independent of political direction. The Commissioner 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)

Accountability to whom?? The Minister or the Crown. The Commissioner must have absolute discretion free from political persuasion or agenda.

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

None; the Crown already has the ability to appoint an independent Commissioner.

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

The current Act already provides.

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

Probable political influence and /or interference.

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

Yes – efficient (and hence cost effective) processes are enhanced by clear guidance. Developing such guidance requires care to ensure that sufficient flexibility remains to take account of the enormous 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.

The Commissioner must remain independent and unencumbered by ministerial direction in such, to maintain integrity in delivery, flexibility and the diversity of circumstances as noted above. Negating any political bias.
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

No; it will precipitate bias

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?

None. The Commissioner by expectation of his position, will demonstrate integrity in his report to the minister.

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

Already provided for in the Act.

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

None

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

The current system provides.

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

Yes

Question 5:

5a. Do you agree that the Commissioner should be required to give effect to the proposed outcomes in any discretionary consent decisions?
5b. Do you think that the proposed approach ensures that decision making will support the proposed outcomes for Crown pastoral land?

Ultimately that depends upon what outcomes are agreed. If you want outcomes able to be influenced by political bias; then, Yes. Another indicator of bad governance.

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

There needs to be an alignment of processes under the RMA and the CPLA. Agreeing farm plans with the Commissioner may provide a mechanism for such alignment.

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

The question arises. Who should be responsible for the setting of an Environmental Plan or a Nutrient Plan on Crown land or CPLA land with any Regulatory Authority or body? The Crown or the Lessee? If the Crown, would it become a condition of the lease to comply? If not: Penalties? Has the Crown shown a will or obligation to ascribe to its own mechanisms? Hence the conundrum of questions 2C and 5A.

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

All of the above.
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

In some circumstances there may be a need for the Commissioner to seek expert advice beyond the resources immediately available within LINZ. Indeed, to make a reasonable decision (as he is bound to do), the Commissioner will need to consider whether such advice is necessary. Most consent applications, however, are not ones which require special expert analysis. Requiring such analysis and advice is simply likely to cause delay and expense. It may also hinder a culture of compliance and joint stewardship and partnership.

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

Consent applications should not be the subject of public consultation. If public consultation is needed, then that will be triggered by the application of the 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.

Compulsion is not good for expediency, cost effectiveness nor efficiency. The Commissioner, as a mark of his independence, should be able to determine the need for such, when and if required. What else would he do?

Certainly, the Commissioner should not be beholden to DoC consultancy alone. This aberrational Department has demonstrably shown it is not fit for purpose, nor cognisant of the expertise and proven science of this world. Our own tenure review process has won out undeniably on every point proven by pure science, historical monitoring and reaction to such data DoC was oblivious of; unarguably uneducated.

As an administration it has become almost exclusively, blinkered in fundamentalism and a culture of political bias at management level. Essentially a corruption of its title.

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

As he sees fit.

He’s meant to be independent!
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.

Yes. The position has always had the precedent of independence and therefore requires moral integrity to qualify decisions.

NO. Any other model is suggestive and open to political bias.
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

No!
A reasonable charge for processing discretionary consent applications is unobjectionable in principle.

The issue is one of reasonableness and efficiency. Presently LINZ is highly inefficient in dealing with consent applications. There are numerous examples of excessive delay, 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, a consequence of their design, the consequential costs 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.

The Minister of the Crown and the consultation document seem to have forgotten; or are abrogating their responsibility to administer the CPLA on behalf of the Crown. The Govt, body corporates, taxpayers; “nay” the nation, are due a cost to Lessees stewardship, especially as the nation rides on the back of the very portrayed culture and “Natural Capital” of this land. CP Lessees have become the custodians and enduring maintainers of this alienated land for which we pay rent.

Lessees receive no recognition, discount or credit of this (contractual obligation?). The State benefits at the cost of our labors. A minimal filing fee may encourage compliance. Any cost recovery is open to encourage a bloated, inefficient, immoral self-serving administration of little value to anybody but themselves.

7b. How might charging application fees for all classes of discretionary consents impact on applicants? Please provide the reasons for your view.
It becomes penal and poses a problem of non-compliance and inefficiency for lesser projects. It also sends a message that does not recognise the good husbandry and enduring stewardship the lessee has through occupation and constant overwatch. It will erode and perpetuate a lack of faith demeaning goodwill and responsibility that currently exists toward the Crown.

Question 8:

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

☐ Yes  ☐ No  ☒ Unsure

Please comment

*Depends on the parameters of the monitoring. The Act already provides for lease inspection and reporting. However, any further regulatory framework will compromise and encumber the efficiencies, cost and logistics of the current system.*

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

*None.*

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

*The current lease inspection system under the Act provides for adequate and efficient reporting. The Crown has been in forfeiture of CP Lease inspections for many years.*

Question 9:

9a. Do you have any feedback on the preliminary analysis in section 6?
The Commissioner should remain independent and free from any political bias or subservience to any Minister.

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

My synopsis of this proposed legislation is such that: The Crown having assumed full Crown ownership of the lands acquired through Tenure Review, has realized the full weight and responsibility, cost and stewardship of these lands; has failed visibly and logistically, and now wishes a legislative vehicle to divest itself of these responsibilities thus imposing a penal cost on leaseholders and any other Permitted Grantees of rights on the remaining Crown Pastoral Leases to fund its political agenda. Pure Injustice and malevolence.

I earnestly entreat and demand to speak to this submission at a location convenient to me.
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
My submission is that I have read and understood the submission by the High Country Accord and fully support and endorse their submission.

I am a Trustee of the Mt Earnslaw Trust, which is the lessee of the Earnslaw pastoral lease (No. Po47).

The only other personal comment is: My family has held the Earnslaw lease since May 1947, and we have always felt that the Land Act 1948 provided a genuine partnership between the lessee and Crown, and we want this relationship to be strengthened, with LINZ employing competent, practical Field Officers to engage with lessees and achieve desired outcomes for both parties: environmental, economic and social.

I am happy for LINZ to attach my name to my submission.

Thank you.

Yours sincerely
**Q1**

1a. What are your views on how significant natural values should be protected once tenure review is ended? They are already protected under the provisions of the lease and RMA's
1b. Are there any other mechanisms that could be used to protect significant natural values on Crown pastoral land?
Pastoral graziers have traditionally protected these values for decades using good farming practices. These values would not still be here if they didn't so Lessees should be encouraged, permitted and enabled to continue their practices on leasehold land.
1c. Do you have any views on the proposed transitional arrangements for ending tenure review? I don't think tenure review should be ended

**Q2**

2a. Do you agree with the proposed outcomes? No
Please comment
There would be changes imposed on the contract of the pastoral lease. Grazing leasehold land will become difficult if the emphasis is on conservation which isn't what pastoral lease land is there for. Conservation land is for conservation, Pastoral lease land is there for pastoral farming. The government needs to concentrate their conservation efforts on the land which has already been set aside for conservation, plenty of which could use some attention, and leave the pastoral leases to continue farming and taking care of the land as they have been
2b. Do the proposed outcomes capture all the things the Crown should focus on? What’s missing?
How is the crown planning their role in enduring stewardship of the land? Other than policing what LINZ and lessee's are doing and collecting more revenue? Any plans to manage the parts of leases which consents will be denied over and thus rendered ungrazable and profitless to the leesee? For example if we are denied consent to spray an area of grazing land and it then becomes ungrazable, who is to pay for the management of weeds (such as old mans beard)and pests (such as pigs) in that area?
2c. Do you agree with the use of “natural capital” rather than ”ecological sustainability” in the proposed outcomes? No
Please comment
2d. How do you think the Crown should fulfil its obligations under the Treaty of Waitangi in respect to Crown pastoral land? How do you think Treaty of Waitangi principles should be applied to decision making?
2e. What are the qualities and features of Crown pastoral land that you value the most?
I value, as a lessee, my right to quiet enjoyment which I share with extended family, friends and the general public should they be interested in using the land and improvements which we look after. My ancestry is strong in the high country and I feel it is vitally important to pass the knowledge and respect for the land onto future generations. Farming in the high country relies on a sort of respect and sense of responsibility for the land which only comes with years of living amongst it and experiencing it every day for many years.
2f. What does enduring stewardship mean to you?
What I'm already doing...looking after the land and farming alongside the natural values

**Q3**
3a. Do you agree that the Commissioner should be required to develop a regular Statement of Performance Expectations, approved by the Minister for Land Information? Yes
Please comment Yes but the commissioner must remain independent of political direction
3b. Do you agree that this proposal will help improve accountability for decision making in the Crown pastoral land regulatory system? Unsure
Please comment
3c. What other mechanisms could be used to improve accountability?
3d. Which mechanisms do you think would be most effective in improving accountability?
3e. Do you think there are any problems with the proposed change? Many.

Q4

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

Q5

5a. Do you agree that the Commissioner should be required to give effect to the proposed outcomes in any discretionary consent decisions? Unsure
Please comment Depending on the outcomes I guess
5b. Do you think that the proposed approach ensures that decision making will support the proposed outcomes for Crown pastoral land?
5c. What other mechanisms could be used to ensure decision making supports the proposed outcomes?
5d. What specific matters should be considered when deciding whether to approve an application?
How the decision will impact on the lessee's ability to continue farming the lease as he/she has been. will the decision help or hinder them in their business?

Q6

6a. Do you agree that the Commissioner should be required to obtain expert advice and consult on discretionary consent decisions? Yes
Please comment Expert advice yes but not public consultation
6b. In what situations do you think the Commissioner should seek information from experts or the public on the impacts of proposed activities? Where the activities are going to cause a major impact on the environment.

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 but provided he/she remains neutral in their decisions

Q7

7a. Do you agree that the CPLA should be changed to allow for fees to be charged for all discretionary consents? No
Please comment
No, consents which enable the continuation of farming as it is or those consents which are required as part of the lease contract should not attract a fee
Possibly in other consent situations, yes
7b. How might charging application fees for all classes of discretionary consents impact on applicants? Please provide the reasons for your view.

Q8

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

Q9

9a. Do you have any feedback on the preliminary analysis in section 6?
9b. Are there any other comments you’d like to include in this submission?
The best custodians of the land are those who make a living from the land. It would be wise to bare in mind that the natural values that are in the high country now are there alongside and amongst the farming practices taking place in the high country.
The provisions of the lease and regional and district plans under the Resource Management Act already provide protection of inherent values and no further legislative response is required.

The Lease contract provides the leaseholder with the right to farm the entire leased area. To the extent that the Crown wishes to protect particular inherent values (e.g. restrict grazing any area of the lease) this will require a negotiated agreement between the Crown and lessee on a case by case basis.

Because the relationship between the Crown and lessee is fundamentally contractual, no legislative change is required.

The Lease contract provides the leaseholder with the right to exclusive possession and quiet enjoyment of the alienated land. 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.

There are sufficient mechanisms already provided for by legislation, and the nature of the relationship between Crown and lessee (i.e. contractual) allows the flexibility for agreed outcomes to be achieved.

The impact on lessees, their businesses and families, the land, and the wider community – these impacts have not been considered. In many cases the ending of tenure review will mean that opportunities for other land uses which would have no adverse conservation or ecological outcomes will not be realised.

The Crown will also need to assume a greater responsibility as a good neighbour and partner in the management of threats from pest animals and weeds.

The proposed outcomes (see page 23 of the Discussion Document) fundamentally change the contract of the pastoral lease. This contract allows for the farming of the pastoral leased land in terms of the lease. The proposed outcomes make farming of the leased land an activity which is subject to ‘the maintenance and enhancement of natural capital, and cultural and heritage values’. The proposed subservience of pastoral farming to conservation values is fundamentally at odds with the agreement within the lease.

In addition, the use of the term ‘natural capital’ in place of ‘ecological sustainability’ substitutes one term which has definitional challenges with new terms with even greater definitional challenges.

Finally, the reference to the Crown deriving a ‘fair financial return’ is legally misconceived. The Land Act 1948 made provision for lessees to pay a ‘fair rent’. At law this concept means a fair rent to the lessee – not the lessor. The recognition of this legal principle is now codified with greater certainty in the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012.

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 revenue, and also needs to take account of the costs of weed and pest control directly assume 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 grazed, and the overall economic benefits delivered to New Zealand by the pastoral lease sector.

Subject to understanding how it proposes to do so in practice, the proposal for the Crown’s management of pastoral land to take account of the principles of the Treaty of Waitangi is accepted.

The Crown has insufficiently detailed its proposals for its contribution as a steward of the land.

There are no known problems with the present position.

Pastoral leases 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. The ‘Pure’ brand and the reputation for authentic and safe primary products is 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.

The Crown should not undermine these benefits by eroding the contractual rights of leaseholders.

The primary contractual relationship between lessee and lessor must remain the foundation of the way in which the Crown and lessees work with each other.

To the extent that individual properties establish relationships with other organisations within their communities, 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.

Yes, provided the Commissioner remains substantially independent of political direction. The Commissioner should not be required to consult publicly on the Statement.

Efficient (and hence cost effective) processes are enhanced by clear guidance. Developing such guidance requires care to ensure that sufficient flexibility remains to take account of the enormous 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.

Ultimately that depends upon what outcomes are agreed.

Offsetting and compensation will not always be an appropriate response to an application for a discretionary consent, but could fall within the Commissioner’s toolbox to consider and apply in suitable 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.

There needs to be an alignment of processes under the RMA and the CPLA. Agreeing farm plans with the Commissioner may provide a mechanism for such alignment.

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

In some circumstances there may be a need for the Commissioner to seek expert advice beyond the resources immediately available within LINZ. Indeed to make a reasonable decision (as he is bound to do), the Commissioner will need to consider whether such advice is necessary. Most consent applications, however, are not ones which require special expert analysis. Requiring such analysis and advice is simply likely to cause delay and expense. It may also hinder a culture of compliance and joint stewardship and partnership.

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

Consent applications should not be the subject of public consultation. If public consultation is needed then that will be triggered by the application of the 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.

A reasonable charge for processing discretionary consent applications is unobjectionable in principle.

The issue is one of reasonableness and efficiency. Presently LINZ is highly inefficient in dealing with consent applications. There are numerous examples of excessive delay, 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 as a consequence of their design, the consequential costs 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.

Regards
Joe Harrison
Submission 2867

Once again the political force wishes to impose upon the perfectly working CPL Tenancy A total disruption of their rights to exclusive possession ,pasturage and quiet enjoyment. The focus I note from this document and the Ministers comments is the Tenure review and subsequent conversion of some of the Mackenzie basin to diary (actually growing soil not having it blow away). Since there is now an end to this through District plans and of course the non consulted end to Tenure review , I can’t see that the rest of this document is anything other than grandstanding for political gain or will as the Minister puts it. It will no doubt be supported by a myriad of ecological organizations including Green Peace Who have untold resources for this (see Elizabeth Nixon's” Eco Terrorists” how a self confessed greenie had her eyes opened in America ).

How can 177 lessees get their message across without some will from within Government to keep this sensible and achievable with out great cost to the public or lease holders.

My father bought Silver Hill in 1950 and we have farmed with in regulations ever since hosting large numbers of hunters and family groups,walkers and horses motor bikers and soul searchers.

It is a moist eastern foot hill run where woody species grow very well so is a constant battle with gorse and broom from the Linz controlled TengawaiRiver and the constant march of wilding pines from the Doc. managed northwest boundary.

Add wallaby and deer and our weed and pest budget is eye watering,what more do you want from us?

Because of the very short time for consultation (my lawyer hasn't, started to read it yet ) at this busy time of year for lessees I have been unable to supply a complete submission but certainly support the sensible one on our behalf from the High Country Accord.

Let’s have some balance in this and some discretion ,in fact the Commissioner could do this.

Your humble lessee
Response on behalf of the Lakes Station leaseholder to the Discussion Document:

Enduring stewardship of Crown pastoral land

[1] This submission is made in response to the Discussion Document on behalf of Harper Pass Limited, the holder of the pastoral lease for the Lakes Station, Hawarden. It does not follow the format suggested but attempts to address the issues of particular interest to us from the Discussion Document, the information provided at the meetings at Omarama and Christchurch, and the material published on the LINZ website. In addition to this separate submission and to the answers given on the LINZ Form, The Lakes Station is a member of the High Country Accord and supports its submission.

[2] The policy papers released on 2 April, following the meetings of leaseholders are significant background and it is a pity they were not available before the meetings because they raise questions that might have been able to be put and answered. Important aspects of the thinking in the policy documents is not clear because of redactions (for example, BRF 18-283, para 13, BRF 18-258 para 4 and para 9, BRF 19-010 para 7 of recommendations and para 7, para 39 of the supporting paper) which seem to touch on property issues.

Existing respective property interests of lessor and lessee should not be affected

[3] At the Omarama meeting, the Minister said that the proposed legislative changes “will respect current property rights for quiet enjoyment and pastoral farming”, repeating the statement in the Discussion Paper. If that purpose is not achieved, the effect will be an expropriation of existing property interests. Our concerns relate to the effect of the proposals on the property interest of lessees of pastoral leases and the lack of clarity or explanation about apparent enlargement in the assumptions as to the lessor’s interest. They appear to have the effect of diminishing the lessee’s property interests and expanding the property interest of the Crown as lessor. If this is not the effect intended, it needs to be made clear. If there is lack of accord about what the respective property interests of lessor and lessee are,
that needs to be acknowledged and faced up to before the proposals progress. There are proper procedures available to determine existing rights.

[4] Under the existing framework for pastoral leases, inherent recreational values are excluded from consideration under s 18 (which applies to the creation of easements under s 60 of the Land Act 1948) and recreational permits under s 66A(2) of the Land Act 1948 require the leaseholder’s consent. These provisions must be maintained because their alteration affects the leasee’s property interest and rights to quiet enjoyment.

Tenure review repeal should be uncoupled from wider review of pastoral leases

[5] The statutory process of tenure review is one that it is open to the government to change without affecting property rights under the existing pastoral leases (although there may be separate questions about how those who have been engaged in the statutory tenure review process were treated). Since the Government has decided to end tenure review, it can be accepted that it is necessary to repeal the tenure review process promptly. That can readily be done through repeal of Part 2 of the Crown Pastoral Land Act 1998. There is no need to rush the significant review of pastoral leases.

[6] Because they impact on property interests, major changes to the pastoral lease regime need to be carefully considered, preferably on the basis of an exposure draft of legislation for consultation with Government before it determines the form of a Bill to be introduced. That is because the implications for the pastoral leases can only be understood if more developed. The pastoral lease review should be uncoupled from the tenure review repeal and more time should be provided to those affected to make submissions on the basis of more developed proposals than the indicative ideas contained in the Discussion Paper.

Protection of inherent values should be regulated by legislation of general application

[7] Protection of the high country, like protection of all outstanding features of the natural environment, is properly the object of legislation of general application, such
as the Resource Management Act. Such legislation should apply to all such land. It would include all the high country and not be limited to the diminished number of remaining pastoral leases. General legislation is equal in application (itself a protection against arbitrary outcomes in the exercise of discretion). It appropriately provides public rights of participation. And it is the appropriate regulatory framework for proper consideration of “cumulative impacts” (an issue raised in the policy papers released by LINZ) which cannot adequately or fairly be looked at in relation to the pastoral leases alone.

The lessor interest is insufficient basis for regulation to protect wider values

[8] Protection of this sort is not appropriately loaded into an expanded lessor interest of the Crown in pastoral leases. The largely residual lessor interest (which is comparable to the interests of lessors under other forms of perpetual lease) does not include the power to set up a new regulatory regime to introduce new outcomes and values (including effective management to prioritise and enhance social and cultural as well as natural values), replacing the existing balance between inherent values (other than recreational value) and farming purposes (contained in s 18(2) of the Crown Pastoral Land Act). That represents a significant shift (acknowledged in the briefing papers of officials) which might be justified in resource management regulation applicable to all land within a category identified by values requiring protection but which is not legitimately imposed by the lessor in exercise of its existing property rights. If these powers were inherent in the existing lessor interest, there would be no need for legislative conferral of the additional objectives and regulatory mechanisms proposed. They alter the property interests between lessor and lessee.

Existing requirements for Commissioner consent are mischaracterised as a regulatory system

[9] The consents obtained by lessees from the Commissioner for pastoral farming activities affecting or disturbing the soil under s 16 of the Crown Pastoral Land Act 1948 are characterised in the proposals as a “discretionary consent system” and, in the Cabinet Business Committee Paper of 29 January 2019 and in the Discussion Document, as a “regulatory system” which is treated as if comparable to that under
the Resource Management Act. This characterisation results in suggestions that application for consents to the Commissioner of Crown Lands by lessees are properly treated as similar to applications for easements or resource consents, justifying recovery of costs and public participation. The approach is misconceived in its application to the lessor’s control of pastoral farming and against the background of the lessee’s obligations under s 99 of the Land Act to “properly farm” the land. The cost to the lessor of acting in its own interests as lessor is not comparable to the cost recovery of a regulator.

At most, a legitimate new regulatory system (not affecting existing property rights) should be confined to new uses and new development

[10] If the consents required under the Resource Management Act and related Acts are inadequate (something that has not been substantiated), any additional formal consent system for pastoral leases should be confined to applications to use the land other than for pastoral farming (a use not within the lease without approval) and perhaps for new development of previously undeveloped land (in which the lessee can have no expectation of approval and in respect of which it may be appropriate for the lessor to adopt changing priorities in land use). Such new formal process for consents outside the scope of the lease or entailing new development might properly include public rights of participation if the Resource Management Act consent processes are not adequate or cannot be adapted.

[11] A formal consent system with rights of public participation is not however appropriate for activities which are part of an established pattern of pastoral farming on the lease. It is suggested that the lessor interest in supervising such activities, to protect its own interest as lessor, should continue to be the responsibility of an independent statutory officer who manages the Crown’s lessor interests under primary legislation.

Maintenance and continuation of existing consents should be acknowledged

[12] The published materials do not seem to deal explicitly with retention of the exemption provided by s16(3) of the Crown Pastoral Land Act 1948 which preserves the right to maintain or continue approved development. At least one of the policy
papers raises a question as to the scope to “reverse previous consents” (BRF 19-010). This potential outcome should be explicitly ruled out. Maintenance of development undertaken under past consents underpins the viability and approved stock carrying capacity of leases. Its continuation in any new legislation is necessary if the property interests of lessees are not to be adversely affected.

**Changes touching on rights of property should be made by primary legislation**

[13] Changes which may affect property interests should be undertaken through primary legislation, not delegated legislation or through Ministerial directive. That would not prevent policies which do not affect property interests being changed through delegated legislation or by directions given under statutory powers. Such methods of implementing policy shifts may be appropriate in relation to consents which are outside the rights of the lessee, such as for non-pastoral activities on the land or under and in relation to general legislation affecting all property (as is the case under the Resource Management Act). They are not however appropriate in relation to property interests which require certainty and where change risks expropriation.

Edwin Fletcher.
Hugh Fletcher.
Jim Greenslade.


11 April 2019.
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

Name*  Hugh Fletcher

Submission type*

☒ Individual – Pastoral Leaseholder

☐ NGO

☐ Local government

☐ Business / Industry

☐ Central government

☐ Iwi

☐ Other (please specify)
  Add your details

* 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?


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

Voluntary covenants as under the Queen Elizabeth II Trust.

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

The transitional arrangements seem unfair to those who have engaged in the tenure review process over many years in good faith.

Question 2:

2a. Do you agree with the proposed outcomes?

☐ Yes ☒ No ☐ Unsure

Please comment

See attached submission.

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

See attached submission.

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

☐ Yes ☒ No ☐ Unsure
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 must observe the principles of the Treaty in relation to the administration of the Crown’s interest as lessor.

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

The intrinsic and farming values of the land. See attached submission.

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 administration of the lessor interest retained by the Crown and the application of protective mechanisms under statutes of general application such as the Resource Management. See attached submission.

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

More detail is necessary of what is proposed. See attached submission.

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?

See attached submission.

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

39T

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

See attached submission.

**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

*Published standards could be useful for officials and leaseholders but need to be limited to the functions of the Commissioner under the lease and the independence of the Commissioner should be preserved. See attached submission.*

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
Submission 2868

Please comment

In principle published standards should assist although decisions necessarily will have to be specific to the proposal and property.

4c. What other things do leaseholders, iwi, and stakeholders most need to have clarity about in order to better understand the Commissioner’s decision making?

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

Better understanding of the existing interests under pastoral leases and the available protections for inherent values under legislation such as the Resource Management Act.

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

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

39T

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

39T

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

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

See attached submission.

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

The proposed outcomes need to be rethought. See attached submission.

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

See attached submission. Different processes may be appropriate for new development/uses and existing farming practices.
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

See attached submission. Expert advice and consultation may be appropriate for new development or use. It should not be required for consents within the scope of existing farming.

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

See attached submission. For new development and new uses.

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.

An independent statutory officer is a necessary assurance of impartiality for leaseholders which should be retained at least for routine farming consents, not entailing significant new development or non-pastoral farming uses. More thought should be given to reliance on the Resource Management consent processes for significant development and new uses.
Submission 2868

**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

See attached submission. Protection of the lessor interest in farming consents should be covered in rentals. Significant development or new uses which require assessment are different. The proposals for reforms should differentiate.

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

See attached submission.

**Question 8:**

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

☐ Yes  ☒ No  ☐ Unsure

Please comment

Reporting is an aspect of good government, and is supported. But reporting against a monitoring framework undermines the independence of the Commissioner. The proposal needs to be more developed.

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

See attached submission. The administration of the lessor interest is not appropriately described as a regulatory system.
8c. What information do you think is most valuable to understand system performance?

Publication of decisions and reasons.

Question 9:

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

See attached submission. The analysis is based on assumptions which are wrong.

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

See attached submission.
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
We believe that the decision to end tenure review has negative social effects that are being ignored by the government in favour of what it calls “natural capital”.

Overall we support the direction of the Government in the matter of seeking to resolve the outstanding issues of “stewardship” of New Zealand’s high country estate and in particular the issue around iconic landscape protection but would like to re-inforce the fact that the best way forward is a partnership approach between the current Statutory authorities as, unless there is a hidden agenda at work, our opinion remains that the long term sustainability of the high country and its contribution to the overall economic and social wellbeing of NZ is best served in partnering with stakeholders (by this we specifically mean the Lessor and Lessees)…..

There has been an effort by the Crown through this process to stress the limitations of the Pastoral Leases in regard to use. This we feel is unfortunate. Clearly the intent of the original lease document was to alienate the land. That use/s might have changed over the intervening years (and arguably couldn’t have been foreseen by our predecessors) should not necessarily require that any “change” necessarily falls outside the intent of the rights originally conveyed in the lease including the “right to quiet enjoyment”.

What was most salient for us in attending the recent meeting in Omarama with Minister Sage, LINZ and Conservation Department staff was the disconnect that has occurred in the relationship between the Crown and its tenants as LINZ over the last decade. It would appear that the LINZ have been under resourced and focussed entirely on the Tenure Review process to the detriment of maintaining the Lessor/Lessee relationship… (obviously at the outset is would have been assumed all leaseholders would have chosen to proceed through the process). In fact we have not seen a Crown representative in the last decade at Argyle Station.

While there are likely to be many reasons the remaining lessees have not progressed with Tenure Review it may well be that these tenants are those most wedded to the idea of long term stewardship of the land……this occupation should be seen as an asset in terms of the current proposals. The intrinsic benefits of custodianship of the land in a manner that provides a continuing economic platform for use/protection of these landscapes in conjunction with the likely downstream effects of change are surely worthy of more study before a final decision is made in respect to the current process drawing to a final conclusion.

There is much emphasis on “community” in respect of the outcomes being sought……this seems to be around access……the Commissioner would serve his tenants best by pointing out to the Crown that these land holdings are places of work. They differ in no great respect from any other work place environment.

With District Councils, Regional Environmental Councils, various Government Departments, NGO’s etc. all having a say in how “best” to produce what are clearly, at this stage at least, idealised outcomes, it is hard for us to understand how much weight is actually being given to the deliverers of these outcomes being the “owners” of these properties….

The phrase “hurry up and slow down” springs to mind. The cessation of Tenure Review serves to indicate the original outcomes sought have not been achieved……so now it is “let’s throw this out and try a new approach”……..surely a clearer set of objectives would allow a much better policy platform to be established that can best meet the needs, wants and desires of all those concerned (through a “real” discussion forum) so we do repeat the past mistakes.