Summary of submissions

Consultation on enduring stewardship of Crown pastoral land

Land Information New Zealand
June 2019
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Executive summary

On 17 February the Government released a discussion document ‘Enduring stewardship of Crown pastoral land’ consulting on proposals to improve the management of Crown pastoral land. These proposals cover potential changes to the legislation governing Crown pastoral land; the Crown Pastoral Land Act 1998 (CPLA) and possibly consequential amendments to the Land Act 1948. Consultation closed on 12 April.

This document provides LINZ’s summary of the feedback provided in the 3248 submissions on the discussion document. It does not provide any analysis of submissions, or recommendations in response to them. Analysis and recommendations will be provided through policy advice to the Minister for Land Information, Eugenie Sage, who will report back on the results of the consultation process and provide any subsequent policy recommendations to Cabinet.

Background

On 14 February 2019 the Government announced it would be ending tenure review. This is the process by which Crown pastoral land can be sold to a leaseholder and areas with high ecological or other values can be transferred to the conservation estate. Ending tenure review means the Crown will likely remain the long-term owner of 1.2 million hectares of Crown pastoral land. As such the Government wants to ensure that the Crown’s administration of this land is guided by clear outcomes, and is transparent and accountable. The Government also wants to build enduring relationships with leaseholders, who manage the land and whose livelihoods are tightly linked to its wellbeing. The discussion document proposed a number of changes to support more effective management of Crown pastoral land over the long-term.

Key findings

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

<table>
<thead>
<tr>
<th>List of proposals</th>
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<td><strong>Proposal 1:</strong> Include a new set of outcomes for Crown pastoral land within the CPLA</td>
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<td><strong>Proposal 7:</strong> Require the Commissioner to regularly report against a monitoring framework</td>
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A more detailed breakdown of how submitters responded to proposals is found in each relevant section of this document, along with a summary of the related themes and issues raised within submissions.

**Section 1 - Overarching themes**

Across the proposals there are a number of overarching themes that are raised in submissions. These include the importance of Crown pastoral land to leaseholders, iwi and the public; the importance of the Crown and leaseholders working together to achieve shared objectives; the ideal role of the Commissioner of Crown Lands (the Commissioner); impact of proposals on the pastoral lease contract and property rights; and the role of the public in the management of the estate.

**Section 2 - Articulating outcomes for Crown pastoral land**

Most submitters agree that setting clear outcomes for Crown pastoral land would be beneficial, especially as a way to improve the quality and consistency of decision making and to set the direction for collaborative land management projects. However, many submitters raise issues with the current draft outcomes. For example, with the terms and definitions currently used, who the outcomes should apply to, the need for the outcomes to be in the legislation and whether there should be a hierarchy that places environmental values above pastoral farming.
**Section 3 - Ensuring decision making is accountable and transparent**

There is broad support for improving the transparency and accountability of LINZ and the Commissioner, and for the related proposal that the Commissioner develop a regular Statement of Performance Expectations. However, submissions raise issues such as whether the proposal limits the Commissioner’s independence, whether the Minister or the Commissioner should approve the statement and whether public consultation should be a requirement.

A number of submitters view that the proposals do not go far enough towards ensuring transparency and accountability, emphasising that the public should have a greater role in the system. Submitters recommend a number of alternative mechanisms for improving transparency and accountability, such as public notification of discretionary consent applications, publicly releasing decision reports and expanding the functions of the Commissioner or Minister.

**Section 4 - Decision making and discretionary consents**

Support for the proposal that decision making give effect to the outcomes is mixed, with some submitters viewing it as a bare minimum to ensure effective decision making and others viewing it as undermining the pastoral lease contract and impacting on property rights. A significant amount of feedback also focuses on whether a Commissioner is the most appropriate decision maker and how the public could have more input.

Submissions show that there is limited support for updating the fees and charges framework. Submitters raise a number of potential issues with introducing new fees such as increasing cost pressures on leaseholders which could impact on how they manage the land.

**Section 5 - Monitoring and information**

The proposal to require the Commissioner to regularly report against a monitoring framework received the strongest support out of the package of proposals. It is seen as critical that the Crown improve the information it holds about the outcomes of Crown pastoral land. Submitters agree that reporting should be publically accessible to ensure the accountability of officials.

**Section 6 - Managing the implications of ending tenure review**

A number of submissions recommend alternative mechanisms for protecting areas of Crown pastoral land with high inherent values and facilitating public access. These include whole or partial lease purchases, covenants, incentive frameworks and through partnership with leaseholders.

Submitters also provided feedback on the transitional arrangements and the impacts of ending tenure review on leaseholders. Many of these submit that the decision to end tenure review did not adequately account for the social impacts on leaseholders and their families; or for the broader economic impacts.

**Section 7 - Other themes**

Some submitters disagree that there is a case for change. They view that the problem definition within the discussion document did not reflect the reality of what is occurring across Crown pastoral land. However, other submitters, including ecologists and academics, provide information to demonstrate how tenure review and the regulatory regime for Crown pastoral land have contributed to losses of unique ecological values in the high country over time and that this should be better reflected in the proposals.
A large group of submitters raised concerns with dairy conversions in the Mackenzie Basin and the impact that the current transitional arrangements for ending tenure review could have on land use by enabling more pastoral land to become freehold.
The consultation process

Consultation on the discussion document ‘Enduring stewardship of Crown pastoral land’ was open from 17 February to 12 April. Submitters were encouraged to provide feedback on the proposals within the discussion document through LINZ’s online form, email, or written submissions via post.

The consultation process was publicised in a number of ways including a Ministerial press release, information on LINZ’s website, and direct emails to leaseholders, iwi, advocacy groups, councils and industry groups.

LINZ, supported by DOC, also held a number of consultation meetings during this time. The Minister for Land Information, Eugenie Sage, presented at each of the three meetings and answered questions from attendees. LINZ officials then facilitated a discussion on the proposals.

There was a good turn out at all three meetings.

- Tuesday 26 March 2019, in Omarama with over 115 leaseholders (and their representatives) from around 70 leases.
- Thursday 28 March 2018, in Christchurch with over 40 broader stakeholders from around 30 organisations representing recreation, environmental and tourism groups, service providers and councils.
- Thursday 28 March 2018, in Christchurch with around 65 leaseholders (and their representatives) from around 40 leases.

A summary of the consultation meetings is available on LINZ’s website.2

Overview of submitters

During the consultation LINZ received 3248 submissions, these include:

- 32 organisation submissions, including from iwi, councils, industry groups, environment and recreation advocacy groups and statutory bodies.
- 477 individual submissions.
- 2739 form submissions.3

Organisation submissions

The table below lists the submissions that were provided on behalf of organisations.

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3 This included 104 overseas submissions.
### List of organisation submissions

*These submissions can be found on LINZ’s website*

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<thead>
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<th>Organisation Submission</th>
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<td>Ashburton District Council</td>
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<tr>
<td>New Zealand Law Society</td>
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<td>Environment and Conservation Organisations of New Zealand</td>
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<td>Latham Ag Consulting Ltd</td>
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<td>Mackenzie Country Trust</td>
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### The High Country Accord

The High Country Accord\(^4\) is a trust established in 2003 for the purposes of promoting and protecting the rights of holders of pastoral leases under the CPLA and the Land Act 1948, “*with a view to ensuring the future economic, environmental and social sustainability of the South Island High Country*”.

During the consultation process the High Country Accord has been active in informing leaseholders and their affiliates of the proposals within the discussion document and coordinating responses.

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\(^4\) Submission reference 2771
Almost 100 individual submitters from the pastoral lease community have endorsed the submission by the High Country Accord.

**Form submissions**

During the consultation LINZ received 2739 form submissions. These are individual submissions that provide a recommended response to the consultation, usually through a form on an organisation’s website. These submissions can also contain additional feedback.

LINZ received 2486 individual submissions using the form provided by Forest & Bird.\(^5\) 881 of these submissions provided further feedback to the recommended response. The remainder of the form submissions came from individuals using a form submission provided by Greenpeace New Zealand.\(^6\)

**Individual submissions**

LINZ received 477 submissions from individuals that were not on behalf of an organisation. These submitters include members of the public, academics and ecologists. A significant number of these submissions also expressed support for organization submissions, such as those from the High Country Accord, Forest & Bird and Greenpeace New Zealand.

**How the overall figures are presented for each proposal**

Figures are provided for each of the seven proposals in order to show how submitters responded. These are provided in the below format.

First, it shows the total number of submissions received and their response to the proposal. It then breaks down the total into four different categories. These are:

- form submissions
- organisation submissions (see the above table for a complete list)
- individual submissions
- pastoral lease community submissions.

For the purpose of this summary the term ‘pastoral lease community’ refers to individual submitters that are leaseholders and their...

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\(^5\) Submission reference 2743

\(^6\) Submission reference 2740 – Greenpeace encouraged individuals making submissions using its suggested responses to provide unique submissions. As such, many of these submissions are not recorded as form submissions.
families, employees, or affiliates. It also includes two organisation submitters, the High Country Accord and Federated Farmers High Country, as representative groups.
What we heard

1. Overarching themes

1. Submissions show a number of themes that cut across proposals and relate to the direction of the overall package of changes. For example, improving public input is raised in relation to the discretionary consents process, monitoring, and guidance and standards. These overarching themes are listed below.

The importance of Crown pastoral land

2. Submitters provided feedback on the qualities and features of Crown pastoral land that they value the most. These range from the unique environmental values present across the estate to the benefits that pastoral farming provides to the economy, communities and the environment.

- **Crown pastoral land is home to unique and important environmental values** - the flora and fauna of the land, both indigenous and in some cases introduced; the open space and natural landscapes; the natural landforms; ecosystem services; and unique ecosystems.

- **Crown pastoral land is important to iwi** - Ngāi Tahu value the mountain landscapes and the part they play in creation stories and Māori belief systems; its importance for mahinga kai opportunities; its ecological values – especially indigenous species that are taonga to Ngāi Tahu; and the presence of historical routes traditionally travelled by their iwi.

- **Crown pastoral land contains important historic and cultural heritage values** - the sites of historic occupation and past inhabitants’ relationship to the land, both before and after European settlement; sites of significance to iwi; and the role that pastoral farming plays in the heritage of the high country which many view as a key part of the cultural identity of New Zealand.

- **Crown pastoral land and pastoral farming benefits communities, the economy and the environment** - the benefits that pastoral farming currently and historically provide, especially through contributing to high quality export products; the role that pastoral farming plays in establishing New Zealand’s international reputation and ‘pure’ brand; and in sustaining the iconic high country environment.

- **Secure property rights that support stewardship of leaseholders** - the property rights provided by the pastoral lease and the security it provides leaseholders to invest in the improvement and protection of the leased land.

- **Crown pastoral land contains significant outdoor recreational values** - the recreational opportunities that Crown pastoral land can provide for hiking, fishing and hunting.

*What submitters value about this land is outlined throughout this document and covered in more detail in Section 2 Articulating outcomes for Crown pastoral land.*

The importance of relationships

3. Overall, submissions show that there is a desire across leaseholders, advocacy groups, council and iwi for stronger relationships to support the effective management of the high country and especially Crown pastoral land. There is an emphasis on utilising the expertise of leaseholders as longstanding custodians, government agencies to provide information and technical advice, and iwi to convey the desires and aspirations of mana whenua for the land.
4. Many submitters from the pastoral lease community want to build a better relationship with LINZ, for example through LINZ having field officers who regularly visit properties and understand current farming activities and how leaseholders are managing any resulting environmental impacts.

5. Some submitters raise that it is more appropriate to pursue collaborative approaches to achieving better outcomes for Crown pastoral land as opposed to regulating for their achievement. They also note that an over reliance on rules can cause relationships to deteriorate.

6. Others acknowledge the importance of building relationships, but emphasise that these are not a ‘cure-all’ as there are systemic flaws within the current system that need to be addressed.

Feedback on building relationships to achieve shared outcomes is outlined in Section 3 Ensuring decision making is accountable and transparent; Section 5 Monitoring and information; and Section 6 Managing the implications of ending tenure review.

The role of the Commissioner

7. Consultation has shown the importance that some submitters, especially leaseholders, place on the role of the Commissioner and its independence from Government direction - this is seen to depoliticise the administration of Crown pastoral land and provide long term certainty to leaseholders when planning for the future.

8. Other submitters view that the role of the Commissioner as inherently flawed as it pairs discretion with a lack of transparency – this is viewed as having historically contributed to poor outcomes and decision making.

Feedback on the role of the Commissioner is outlined in Section 3 Ensuring decision making is accountable and transparent; and Section 4 Decision making and discretionary consents.

Property rights and the pastoral lease contract

9. Submitters from the pastoral lease community would like to see the contractual relationship between the Crown and leaseholders better reflected, and any changes grounded in the property rights afforded by the lease, such as the exclusive right to pasturage of the land and to exclusive occupation and quiet enjoyment. These submitters would also like to see a stronger description of the history and nature of Crown pastoral leases in order to correct misconceptions about the division of property rights between the Crown and leaseholders.

10. Other submitters want the Crown to do more to protect the rights it has reserved in Crown pastoral land and reflect the significant public interest in how the estate is administered.

11. There were also submitters that question whether the pastoral lease, which is intended to provide primarily for pastoral farming and limited other uses, is still fit for purpose in light of the changing context of the high country.

Feedback on property rights is outlined throughout this document and covered in more detail in Section 2 Articulating outcomes for Crown pastoral land.

Iwi involvement

12. Across the proposals there was an acknowledgement that the system can better reflect the role of iwi as Treaty partner. The majority of crown pastoral land sits within the takiwa of Te Rūnanga o Ngāi Tahu, who submit that:
Any approach to management of pastoral lease lands must demonstrate an understanding of the historical and contemporary values mana whenua have in the landscape. Ngāi Tahu has a rich history of spiritual and practical connection with the high country. The significance of mountain landscapes in Māori creation stories and belief systems are well known, and the high country was important for the seasonal mahinga kai opportunities available. The alps and passes were important for traditional navigation, and pathways from coast to coast and end to end of the takiwā were frequently travelled by our scattered yet strongly interconnected iwi.\(^7\)

13. Many submitters do not view that the current proposals adequately reflect the Crown’s obligations to iwi.

*Feedback on iwi involvement in the system is outlined throughout this document.*

**Alignment with other regulatory systems**

14. In relation to most proposals, submitters provided feedback on how to reduce duplication between regulatory systems and/or increase alignment, especially with the Resource Management Act 1991 (RMA). Some submitters view that the RMA is the more appropriate avenue for achieving the objectives of the proposals, especially in relation to the discretionary consenting process.

15. However, other groups submit that there will always be some duplication between the regimes because of the Crown’s ownership interest in the land and that the Government should be cautious when seeking to increase alignment because the two regimes (RMA and CPLA) serve different statutory purposes.

*Feedback on alignment is outlined in Section 3 Ensuring decision making is accountable and transparent; and Section 4 Decision making and discretionary consents.*

**Capability and capacity of government agencies**

16. Capability and capacity is seen as critical to the successful administration of Crown pastoral land. Submitters question whether there is enough expertise, capacity and resourcing within LINZ (and in some cases within DOC) to deliver the proposals. Submissions show that irrespective of legislative change LINZ should be building its capability to effectively administer the Crown pastoral land estate.

*Feedback on capability is outlined throughout this document.*

**Public involvement**

17. Submissions have shown that there is a strong public interest in how this land is managed. A significant amount of feedback centres on the appropriate role for the public in the administration of Crown pastoral land. Both at the system level, such as through input into monitoring and reporting processes, and guidance and standards setting, and at the individual decision level, such as through introducing a public notification for discretionary consents.

*Feedback on public involvement is outlined in Section 3 Ensuring decision making is accountable and transparent; Section 4 Decision making and discretionary consents; and Section 6 Managing the implications of ending tenure review.*

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\(^7\) Submission reference 2758
2. Articulating outcomes for Crown pastoral land

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

18. Section 2 (pages 23 through 28) of the discussion document presented a set of high level outcomes for Crown pastoral land and invited feedback on them. The proposed outcomes are:

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.

19. Submitters were asked:

**Question 2:** Do you agree with the proposed outcomes? Please provide reasons for your view.

You may also wish to consider:

- Do the proposed outcomes capture all the things the Crown should focus on? What’s missing?
- Do you agree with the use of “natural capital” rather than “ecological sustainability” in the proposed outcomes?
- How should the Crown fulfil its obligations under the Treaty of Waitangi in respect to Crown pastoral land? How do you think Treaty of Waitangi principles should be applied to decision making?
- What are the qualities and features of Crown pastoral land that you value the most?

2.2 How submitters responded

20. There is mixed support for the proposed outcomes for Crown pastoral land.

21. Most submitters agree that articulating clear outcomes for Crown pastoral land would be beneficial, however, most raise issues with how they are currently presented. There is clear divergence on a number of key issues, such as whether the outcomes should be included in legislation, what terms should be used and how they should be defined, who the outcomes should apply to, and the whether there should be a hierarchy that places natural capital and culture and heritage values above pastoral farming.
The terms within the outcome statement need to be clear and well defined

22. Submitters highlight the importance that the terms used in the outcomes do not create uncertainty for future decision making, as any ambiguity will likely lead to disputes surrounding decisions and how outcomes should be measured. This was emphasised across all submitter groups.

23. For example the High Country Accord states that the outcomes should be “clear and unambiguous (so that officials and lessees (and Courts) have no difficulty in giving effect to their intended meaning)”.

24. Further to this, submitters note the benefits that a clear outcomes statement could have for practical decision making – for example one individual submitter states that:

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8 Submission reference 2771
If Lessee’s had clear outcomes to apply their discretionary consents towards, we would be more aware of the criteria we would need to achieve to seek approval.  

25. Submitters also raise that clear outcomes will be necessary for an effective monitoring framework.

26. The terms ‘natural capital’ and ‘cultural and heritage values’ were the most commonly raised. These are discussed below.

**Natural capital**

27. Submitters almost unanimously oppose the term ‘natural capital’ in the outcomes statement.

28. Submitters from the pastoral lease community generally see the term as too ambiguous, with a number of submissions stating that “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.” The High Country Accord submit that the term is not yet developed enough for it to be measurable to inform decision making in a practical way and that it is inconsistent to use natural capital without the other three capitals outlined in the Treasury’s Living Standards Framework.

29. Other submitters, especially environmental groups, consider that the term is too human-centric and does not give enough weight to the inherent values of nature. For example the Canterbury-Aoraki Conservation Board submits that “it restricts consideration to the value of nature to humans and takes no account of the intrinsic or other values of natural systems.”

30. Submitters also raise concerns that the term rationalises trade-offs between values as it is grounded in the concept of ‘weak sustainability’. Ecologists Harding, Head and Walker submit that this concept will rationalise environmental degradation, for example, by making undesirable trade-offs acceptable to decision makers such as where “natural capital is maintained if, for example, indigenous vegetation is transformed into an energy resource (e.g. biofuel).”

31. Submitters provide a number of alternatives to natural capital.

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**Natural heritage**

This alternative was recommended in two submissions. Ecologists Harding, Head and Walker define the term in their submission as:

*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, such as:

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9 Submission reference 2908
10 Submission reference 2771
11 Submission reference 2771
12 Submission reference 2761
13 ‘Weak sustainability’ is the idea that ‘natural capital’ can be substituted for other forms of capital. While ‘strong sustainability’ is the view that capitals are not interchangeable.
14 Submission reference 2816
15 Submission references 2748 and 2816
- ecosystem services other than those arising inherently from natural heritage
- recreation
- minerals, energy and tourism resources
- cultural and pastoral heritage.\(^\text{16}\)

### Ecological and landscape integrity

Federated Mountain Clubs recommend the use of this term, and submit that the central outcome for Crown pastoral land should be to maintain and improve ecological and landscape integrity which:

> when allowed to flourish normally, sustain various aspects of farming as well as larger-scale water provision and regulation, strength in biodiversity, climate regulation, recreation and tourism opportunities, amenity, and other interconnected values. Their positive influence on general environmental, human, and social health extends well beyond property boundaries and the high country itself.\(^\text{17}\)

### Resource Base

A submitter\(^\text{18}\) from the pastoral lease community suggests that the term resource base would be more appropriate because it could be tailored to the context of each pastoral lease by mapping the values that exist across the lease and the threats/risks to those values. The submission explains the concept as:

> It [natural capital] 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.... 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.

32. Other suggestions are to use current terms within the CPLA such as ‘inherent values’ or ‘ecological sustainability’ and to better define them; or to use terms such as ‘natural values’, ‘environmental values’ or ‘ecological values’.

33. Those who agreed with the use of the term ‘natural capital’ view that it supports an all of government approach by utilising the Treasury’s Living Standards Framework and that it is broad enough to capture a wide range of environmental values.

34. Some submitters raise that a variety of different terms could be used that ultimately mean the same thing.

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\(^\text{16}\) Submission reference 2816
\(^\text{17}\) Submission reference 2747
\(^\text{18}\) Submission reference 2859
Cultural and heritage values

35. The majority of feedback on the definition of cultural and heritage values was from submitters from the pastoral lease community. Multiple submitters view that it should be made explicit that the history, tradition and way of life of pastoral farming is included in the ‘heritage values’ of the outcomes. They also view that how the outcomes are currently framed does not acknowledge the relationship of leaseholders to Crown pastoral land.

36. Numerous submissions detail the relationship of leaseholders and their families to the land – often covering multiple generations. It was emphasized that “the emotional attachment families have towards the land and improvements made after many years of stewardship and investment must be recognised and valued”\(^\text{19}\); and that “we are intrinsically linked with this land through decades of stewardship and a deep ingrained passion to take care of it”\(^\text{20}\).

37. One submitter, Heritage New Zealand Pouhere Taonga,\(^\text{21}\) recommend that the term ‘cultural and heritage values’ should be replaced by “historical and cultural heritage values” – which should then be “identified protected and conserved...” The outcomes should also explicitly cover the actions that the Crown will take to preserve these values and give explicit recognition to the relationship of Māori with the land, water, sites of significance, wāhi tapu and wāhi tūpuna.

What considerations should be included in the outcomes?

38. A considerable amount of feedback focuses on what considerations should be included in the outcomes. Both regarding whether additional considerations should be included, such as recreation, and whether other considerations, such as a fair financial return, should be removed.

Access

39. The most commonly raised omission from the outcomes is access for public enjoyment and recreation. There are a number of reasons submitters provide to support its inclusion.

40. Various submissions emphasise that access for public recreation is strongly linked to building peoples’ appreciation for the environment. For example, Recreation Aotearoa\(^\text{22}\) submit that improving access for outdoor recreation supports and builds conservation and environmental awareness and appreciation of natural heritage. Improved access is viewed by multiple submitters as contributing to long term conservation.

41. Submitters also point out the critical role that promoting access has in supporting tourism in the high country. Tourism Industry Aotearoa\(^\text{23}\) outline the benefits of tourism in their submission:

> Public, practical access is a crucial component of outdoor recreation opportunities – both independently undertaken and those supported by commercial operators. Improving and ensuring public access to places with recreational value should be a clear and specific outcome of the enduring management of pastoral land.

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\(^{19}\) Submission reference 2887  
\(^{20}\) Submission reference 2874  
\(^{21}\) Submission reference 2764  
\(^{22}\) Submission reference 2746  
\(^{23}\) Submission reference 2751
42. The submission from Walking Access Commission\(^{24}\) emphasises that free, practical, public access is a crucial component of recreation opportunities which “contributes to regional economies, community and social wellbeing, and understanding of conservation and biodiversity outcomes.”

43. Some of these submitters view that access should be on the same level as the other outcomes while others view that it should be subordinate to outcomes such as environmental values.

44. Submitters representing recreational hunters emphasise that access should be an outcome and additionally that when that access is provided it should come with public vehicle access as well as allowing for firearms to be carried for a valid recreational purpose.

*Submitters from the pastoral lease community raise a number of issues and concerns with access in general, such as health and safety issues; risks to farming operations; and liability. These are outlined in detail in Section 6 Managing the implications of ending tenure review.*

**Fair financial return**

45. The majority of submitters from the pastoral lease community are against the inclusion of the wording ‘enable the Crown to obtain a fair financial return’ in the outcomes. Submitters view this as inconsistent with the current rent setting mechanism and as undermining future partnership between the Crown and leaseholders.

46. A number of these submitters view that when considering what constitutes a ‘fair financial return’ to the Crown, aspects need to be measured beyond direct rental revenue. Any measurement should:

> 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.\(^{25}\)

47. The inclusion of the terminology is viewed by some as “objectionable and threatening”\(^{26}\) in the sense that it would make a joint stewardship approach less achievable and that it was seen as foreshadowing future legislative changes to how rents are set and rental increases.\(^{27}\) Submitters raise that the legislation governing Crown pastoral lease rents was last updated in 2012 with the support of the High Country Accord and most leaseholders. Most submitters from the pastoral lease community who comment on the ‘fair financial return’ aspect of the outcomes view this system favourably and that it is working well.

*More feedback on the impact of increased costs on leaseholders is outlined in Section 4 Decision making and discretionary consents.*

**The ongoing viability of pastoral farming**

48. Some submitters from the pastoral lease community suggest that an additional outcome is needed that commits to providing for pastoral farming. For example, by including wording that commits to enabling leaseholders to “continue sustainably farming the lease within generally accepted best farm practices.”\(^{28}\)
Biodiversity and valued introduced species

49. The New Zealand Fish and Game Council’s submission\(^{29}\) raises that limiting consideration of biodiversity in the outcomes to indigenous flora and fauna is too narrow. Important aspects of biodiversity on Crown pastoral land are introduced species, both for farming or for recreation. The outcomes, therefore, should also include “valued introduced species... namely sports fish and game birds”.

Other considerations

50. Other specific considerations that submitters view should be included in the outcomes are:
   - climate change
   - catchment water yield
   - soil conservation
   - scientific values
   - open space values
   - controlling exotic and invasive species
   - freshwater quality.

Should the hierarchy within the outcomes prioritise the environment over pastoral farming?

51. There was a strong divergence of views on the hierarchy within the proposed outcomes. Submitters from the pastoral lease community consider that it directly impacts on their existing property rights. Other submitters, especially environmental groups, strongly agree in principle with the outcomes prioritising the environment over pastoral farming.

The hierarchy and property rights

52. Most submitters from the pastoral lease community view that the hierarchy within the proposed outcomes, which places natural capital, and culture and heritage values above pastoral activity, impacts on leaseholders’ property rights. For example, an individual submits that as the leases provide the holder the exclusive right of pasturage over the land “the proposed outcomes substantially alter the nature and terms of the lease by making pasturage a secondary consideration to conservation values”\(^{30}\).

53. The High Country Accord\(^{31}\) explains how, in their view, this would practically impact leaseholders.

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

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

\(^{29}\) Submission reference 2765

\(^{30}\) Submission reference 2878

\(^{31}\) Submission reference 2771
considerably wider adverse economic implications for the businesses processing and selling our products.

Feedback on this issue is further outlined in Section 4 Decision making and discretionary consents.

54. A number of submitters from the pastoral lease community also raise that the original intention of the Land Act 1948 was to provide security of tenure to leaseholders so that they would invest in and improve the land. Security of tenure and property rights are seen as a major driver in improving environmental outcomes from 1948 to today. Should this security be eroded then this will impact the ability of leaseholders to steward the land.

55. In light of this the High Country Accord’s submission acknowledges that there is an opportunity to create a set of outcomes through dialogue that work for both leaseholders and the Crown, but strongly disagrees with the proposed outcomes in the discussion document. They submit that any outcomes statement should be “consistent with the existing private property rights already alienated by the Crown under the lease instrument”.

56. Submitters also raise that should property rights be appropriated by any changes then proportionate compensation should be paid.

The value of a hierarchy

57. Many submitters, especially environmental groups, view that the hierarchy is essential to the outcomes statement where maintaining the environmental values of Crown pastoral land should be a bottom-line. Ecologists Harding, Head and Walker submit that this approach is essential because:

- Activities and uses which destroy, modify and degrade ecological values further are inappropriate. 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.

58. Some of these submitters also view that the current terminology within the outcomes compromises the hierarchy, which will limit its effectiveness. This is especially the case regarding the use of the term ‘natural capital’. For example, Forest & Bird and Environmental Defence Society in their joint submission state:

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

59. Many submitters emphasise that the hierarchy needs to be clearer in a finalised outcomes statement.

What obligations should the outcomes create?

60. Submissions show that there is strong interest in what obligations the outcomes create, especially on LINZ and the Commissioner when fulfilling their functions.

Maintain and enhance

61. A number of submitters raise concerns with the wording of the objective to ‘maintain and enhance’ natural capital and cultural and heritage values.

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32 Submission reference 2771
33 Submission reference 2816
34 Submission reference 2743
62. Some submitters, especially environmental groups, see the proposed wording as encouraging decision making that adopts an ‘averaging approach’ – accepting losses in some areas for potential future gains in others. Some submitters recommend that the outcomes include wording that addresses this and mandates the identification of inherent values across the leases, for example where values are “identified, secured and safeguarded.”\(^{35}\)

Submitters concerns with offsetting and an ‘averaging approach’ is outlined in more detail in Section 4 Decision making and discretionary consents.

63. Conversely, some submitters from the pastoral lease community see the wording as impacting the future viability of pastoral farming and undermining existing permitted use. For example, one individual\(^{36}\) views that:

> Requiring the enhancement of natural capital is a substantial departure from the underlying terms of the lease and is contrary to comments in the document under 4.3 of ‘...not result in an overall reduction of the natural capital of the land.’ This infers some existing use rights and current consents may be wound back under the proposed changes – this creates a lot of uncertainty for lessees. It also implies that lessees may not be allowed to maintain existing permitted improvements which would greatly impinge on their ability to generate a living of the land.

64. Some submitters also question whether the objective is to maintain the current state or to restore the landscape to a previous state; this is linked to the importance of having a baseline from when the outcomes can be measured.

Support economic resilience and foster the sustainability of communities

65. Several submissions raise that it is unclear just who the phrase ‘support economic resilience’ is intended to apply to. Whether this is directed at the leaseholder, or more generally has a bearing on the outcome.

66. A submitter representing the film industry\(^ {37} \) expresses strong support for this phrasing, and notes the role that the film industry can play in supporting these communities through purchasing goods, services and job creation.

Achieving the outcomes in practice

67. A number of ecologists and academics\(^ {38} \) raise that history has shown that decisions contrary to the legislation do occur. This is produced by “discretion without accountability”\(^ {39} \) and without significant structural change that delivers greater accountability and increased public involvement, history will repeat itself.

This theme is discussed further in Section 3 Ensuring decision making is accountable and transparent; and Section 4 Decision making and discretionary consents.

68. Two councils, Environment Canterbury\(^ {40} \) and Ashburton District Council\(^ {41} \), provided submissions that express support for the outcomes, but they note that they are most interested in how LINZ and the Commissioner will work with local government to achieve those outcomes.

\(^{35}\) Submission reference 2743

\(^{36}\) Submission reference 2878

\(^{37}\) Submission reference 2759

\(^{38}\) Submission references 2811, 2815 and 2816

\(^{39}\) Submission reference 2815

\(^{40}\) Submission reference 2767
How should Te Tiriti be reflected in the outcomes?

69. Many submitters acknowledge that the Crown has obligations under Te Tiriti that should be reflected in its management of Crown pastoral land. However, a significant number of submitters view that the proposed wording does not go far enough and that the Crown’s management should ‘give effect’ to the principles of Te Tiriti as opposed to ‘take into account.’

This is further discussed in Section 4 Decision making and discretionary consents.

Alternative outcomes statements

70. Four submissions suggest alternative outcomes statements.

The High Country Accord

‘The Crown will:

- safeguard for present and future generations the natural landscapes, indigenous biodiversity and heritage values of Crown pastoral land whilst recognising the contractual rights of pastoral lessees and the principles of the Treaty of Waitangi;

- promote the enhancement of indigenous biodiversity in Crown Pastoral land through the sharing of responsibility for the stewardship of Crown pastoral land with lessees’

Forest & Bird and Environmental Defence Society

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

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

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

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

41 Submission reference 2756
42 Submission reference 2771
43 Submission reference 2743
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, such as:
- ecosystem services other than those arising inherently from natural heritage
- 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.

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 Tiriti-based Land Ethic, which has 5 clear standards and publicly-oriented goals (mauri, integrity, stability, beauty, and access) built into it.

The Crown will manage pastoral lease lands in a way that protects and balances indigenous biodiversity, water quantity and quality, mahinga kai values, cultural values, significant natural landscapes, heritage values, high country farming values and communities, in a mountains to the sea context.

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44 Submission reference 2816
45 Submission reference 2815
46 Submission reference 2768
3. Ensuring decision making is accountable and transparent

3.1 Proposal: Require that the Commissioner develop a regular Statement of Performance Expectations, approved by the Minister for Land Information

71. Section 3.1 (pages 29 through 31) of the discussion document asked for views on a proposed Statement of Performance Expectations and for other ways by which accountability within the system could be improved.

72. Submitters were asked:

**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? Please provide reasons for your view.

You may also wish to consider:

- What other mechanisms could be used to improve accountability?

3.2 How submitters responded

73. There is broad support across all groups of submitters for a Statement of Performance Expectations (the Statement) in principle to help build public confidence that the Commissioner and LINZ are performing their functions effectively. However, submitters raise a number of issues with the current proposal, with some recommending alterations, or alternative ways to improve accountability and transparency.

74. Submitters from the pastoral lease community view the Statement as a useful tool to ensure transparency and accountability. The High Country Accord suggest that the Statement “should promote a better public understanding of the respective interests and roles of the Crown, the Commissioner and lessees in pastoral leased land”.47

75. A number of these submitters note that it would be useful for shedding light on how efficient LINZ is operationally, such as when processing discretionary consents or rehearings48. Submitters also raise that the Crown’s management of neighbouring Crown owned land, such as public conservation land, should be held to a similar set of performance expectations.

76. A number of issues with the proposal are raised:

- Regularly developing a statement is seen as too broad and there should be a set timeframe for when the Statement should be reviewed.

- It is questioned whether there is a need for greater transparency and accountability in the current system; especially as the Commissioner is already required to report to the Minister by legislation.49

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47 Submission reference 2771

48 The current appeal process is outlined in section 17 of the Land Act and allows for applicants to request a rehearing of a decision by the Commissioner if they think “that justice requires it, and on the rehearing may reverse, alter, modify, or confirm the previous decision or determination in the same case.”

49 Section 24AA (2) of the Land Act reads: “The Commissioner must report directly to the Minister on the exercise and performance of the Commissioner’s statutory powers and functions.”
• It is viewed that a lack of transparency in the current system is not the result of the legislation but is primarily because of how LINZ and the Commissioner are implementing the system. Therefore, accountability and transparency can be improved through non legislative means such as LINZ building its capability and proactively taking operational steps to improve transparency.

• The Statement is viewed by some submitters as an unnecessary additional layer of bureaucracy.

77. Some submitters strongly disagree with this proposal on the basis that it will not result in improved transparency and decision making as it does not go far enough and still retains the core components of the current system.

**Figure 3: How submitters responded to Proposal 2 - Require that the Commissioner develop a regular Statement of Performance Expectations, approved by the Minister for Land Information**

Who should approve the Statement?

78. The independence of the Commissioner is highly valued by submitters from the pastoral lease community. The process for developing the Statement, as proposed in the discussion document, is seen to risk undermining this independence.
79. For example, one individual submits:

[I have] no problem with a statement of Performance Expectations if it assists accountability, efficiency and transparency but don’t think it should be approved by the Minister. This implies the Commissioner would be influenced by the Government’s direction of the day. If the [Government] of the day doesn’t approve the Commissioner would be obliged to alter the expectations until the minister does approve. The Commissioner needs to remain independent of the [Government] to reduce the continual interference with Pastoral Leases we have today.”

80. It was emphasised that “enduring performance needs to be transparent, sustainable and non corruptible by political bias”51. Many submitters from the pastoral lease community view that the Statement should not be approved by a Minister, but prepared in consultation with the Minister and approved by the Commissioner. This position was also put forward by the High Country Accord.

81. Other submitters consider that Ministerial approval is important as it will ensure that relevant Government policy is adequately accounted for by LINZ and the Commissioner, and that there is a way for the Government’s expectations for the system to be visible to the public. Regarding the Statement, Federated Mountain Clubs submits that:

FMC understands that the Commissioner is independent. However, her/his activities and delegated activities must be consistent with relevant statutes’ spirit, intent, and letter. It is reasonable to expect that the Commissioner report fully and regularly to the Minister... 52

The Statement and iwi

82. Te Rūnanga o Ngāi Tahu53 submit that in order to give effect to the principles of the Treaty iwi should be engaged in the Statement’s creation so that the needs, values and aspirations of iwi as mana whenua can be reflected.

Who should be consulted on the development of the statement?

83. Submitters from the pastoral lease community view that public consultation should not be mandatory but at the discretion of the Commissioner. Some also add that the Statement should be primarily set in consultation between the Commissioner and leaseholders as the two parties under the pastoral lease contract.

84. Many submitters, especially environmental and recreation groups, view public involvement in creating the Statement as desirable, if not a necessity. A number recommend that specific groups with responsibilities for land management in the high country should be consulted, such as Fish and Game Councils and DOC.

What should the Statement include?

85. Some submissions make recommendations for what a Statement should include and how it should be presented, noting the importance that any performance expectations are measurable so that it is clear

50 Submission reference 2908
51 Submission reference 2857
52 Submission reference 2747
53 Submission reference 2758
to the public if they are, or are not, being met. Submitters recommend that the statement should address system wide outcomes, as well as outcomes on individual leases; it should be publicly available; easy to understand; and it should also cover things beyond what is currently covered in the outcomes such as how public access is being enhanced across Crown pastoral land.

3.3 Other mechanisms or ways to improve accountability and transparency

86. In various submissions accountability is closely linked with how transparent and open to public scrutiny the system is. A number of submitters view that the proposals within the discussion document do not go far enough in this regard. For example, ecologists Harding, Head and Walker state that a critical problem with the proposals is that they:

   *fail to provide for meaningful and influential public participation in decision making on Crown pastoral land, and preserve the discretion of unelected officials without providing any real accountability to the public for their decisions.*

87. This is supported by academic Ann Brower:

   *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.*

88. Many submitters from the pastoral lease community view that the current system has enough accountability and that any improvements can be achieved through collaboration and non-regulatory options as opposed to regulation. They also emphasise that there are broader ways that the public can be meaningfully involved other than in individual discretionary consent decisions – such as in setting standards and guidelines for decision making.

89. Some of these submitters also raise that accountability should extend to how the Crown is managing the rest of its land in the high country; especially when that management has cross-boundary impacts on leasehold or freehold land. Examples submitters raise include the management of wilding pines on public conservation land and the management of river beds.

90. The mechanisms that submitters recommend in order to improve accountability and transparency are outlined below.

**Introduce public notification and an appeal process independent to the Commissioner**

91. This approach is raised by multiple submitters and is similar to the system under the RMA.

92. It is suggested that this could be open to leaseholders and submitters on applications. This envisages that a system for public notification of significant discretionary consent applications is introduced. Some submitters recommend that the Environment Court is the appropriate forum for this process, except for in the case of solely contractual matters.

93. Though public notification and an appeal process independent to the Commissioner were not proposed in the discussion document, some submitters from the pastoral lease community explicitly commented on it. For example, one such submitter raises that there are other ways to achieve public confidence in decision making, stating that:

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54 Submission reference 2816
55 Submission reference 2815
With appropriate guidance and standards, there is no need to even contemplate publicly notifying consents, as the public could have confidence in LINZ process. The existing Act provides for the right of a rehearing to the lessee which should be maintained. Given appropriate guidance and standards, I see no advantage in affording other stakeholders a right of appeal – their views would have been captured in the expert advice that LINZ and DOC receive.56

Public notification is discussed further in Section 4 Decision making and discretionary consents.

Mandate the Commissioner to advocate for the outcomes

94. This was suggested by Environmental Defence Society and Forest & Bird in their joint submission57 to respond to what they view is a gap in the Commissioner’s functions. The groups explain that:

The CCL does not have any functions relating to protection of the vast areas of Crown pastoral land under his or her control. Neither does she or he have any function of advocating for an outcome for Crown pastoral land in other statutory processes.

95. They suggest that the functions of the Commissioner as set out in the Land Act could be amended so that the Commissioner is mandated to engage in other regulatory systems to advocate for the outcomes of Crown pastoral land. The groups submit that such an approach would also lead to LINZ being required to engage staff with appropriate expertise and gather adequate technical information about the estate to ensure it is fulfilling this advocacy role.

Introduce Ministerial call in powers

96. One suggestion to improve accountability is to introduce Ministerial call in powers on all matters that can be approved by the Commissioner, such as discretionary consent applications.

97. Under the RMA the Minister for the Environment has the power to ‘call in’ a matter that relates to a proposal of national significance which can then be referred to either a board of inquiry or the Environment Court for decision.58 A similar system could be introduced under the CPLA.

A publicly released decision report

98. A number of submitters suggest that LINZ and the Commissioner should release a decision report. This could outline how the Commissioner assessed applications for discretionary consents against the outcomes and any additional criteria for decision making in the new CPLA. Environmental Defence Society and Forest & Bird raise in their joint submission that:

unless the Commissioner is required to give reasons for individual decisions, the lack of transparency and accountability will remain. Reasons for decisions made by the CCL are not usually provided under the current regime. This means people cannot see what information has been considered, how it has been taken into account or disregarded, and how the Commissioner has interpreted key terms.59

56 Submission reference 2878
57 Submission reference 2743
58 Submission reference 2815
59 Submission reference 2743
Industry standards

99. Submitters from the pastoral lease community comment that high country farmers are already responding to environmental concerns of the public, and that transparency is a big part of this. One submitter raises that industry standards are an important way for the public to have confidence in the farming practices of leaseholders; submitting that:

   many (if not all) of the Crown pastoral leaseholders are already signatories to commercial agreements to uphold various environmental, animal welfare and similar standards which are pre-conditions to them being able to sell their produce... In effect, these commercial agreements mean that such farmers are already locked into safeguarding numerous values of common, public interest by virtue of their commercial ties to what are probably accurately referred to as "conscious consumers". The resulting, financial incentivisation is probably likely to be far more effective than overlaying yet further regulatory burden, especially if it is duplicative in any sense, in the same way that any carrot is usually likely to produce far better outcomes overall than through alternative use of a stick.60

100. The New Zealand Merino Company Limited,61 outlines in its submission how it works with suppliers to ensure that its products are high quality, ethically produced and environmentally conscious. The company submits that its brand:

   provides accreditation to growers and assurance to the market in terms of environmental, animal welfare, social responsibility and production practices that underpin how the wool has been grown. Transparency around these requirements are now being demanded by brand partners and consumers in the market.

Further mechanisms

101. Submitters also suggest:

   • **An effective monitoring programme** - both of compliance and of system performance. Further feedback on monitoring is outlined in Section 5 Monitoring and information.

   • **A national policy statement under the RMA that decision makers under both the CPLA and RMA could have regard to.** Feedback on alignment is outlined in Section 4 Decision making and discretionary consents.

   • **A statement of intent or long term plan that sets out the Crown’s goals and management strategy for the estate.**

   • **A panel for making decisions.** Feedback on the decision maker is outlined in Section 4 Decision making and discretionary consents.

   • **Annual reporting.**

   • **A more efficient rehearing process.**

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60 Submission reference 2885
61 Submission reference 2769
• **Abolishing the Commissioner.** Feedback on the decision maker is outlined in **Section 4 Decision making and discretionary consents.**
• **An oversight committee external to LINZ.**
• **Requiring the Commissioner to give effect to relevant Government policy.**
• **Updating enforcement mechanisms.** Feedback on enforcement is outlined in **Section 5 Monitoring and information.**
3.4 Proposal: Explicitly provide for the Commissioner to release guidance and standards to assist officials and leaseholders to understand and comply with the legislative requirements

102. Section 3.2 (pages 31 through 33) of the discussion document asked for feedback on how to improve transparency within the system and how the Crown can ensure the system is as understandable as possible so leaseholders and officials can easily comply with legislative requirements.

103. Submitters were asked:

**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? Please provide reasons for your view.

You may also wish to consider:

- What other things do leaseholders, iwi, and stakeholders most need to have clarity about in order to better understand the Commissioner’s decision making?
- How should standards be used to help increase transparency? How should guidance be used?
- What other mechanisms could be used to improve transparency?

3.5 How submitters responded

104. There was limited support for this proposal. Submitters generally agree that more guidance would be beneficial, especially in light of the perceived lack of transparency in the decision-making process and how historically it has not been clear how values are weighed in decision making. However, many view that this issue can largely be addressed operationally.

105. Many submitters raise that guidance should be set after engagement with iwi and consultation with agencies, leaseholders and the public. Guidance should also contribute to alignment between agencies with land management responsibilities, for instance across central and local government and relevant statutory bodies.

106. Submitters from the pastoral lease community say guidance would be especially valuable in relation to the discretionary consents process which is seen as opaque. Submitters also note that the effectiveness of any guidance would be highly dependent on how well it was communicated to leaseholders.

107. Many of these submitters emphasise that guidance (or delegated legislation in general) should not be used as a way to change property rights. Similarly, they do not see a need for this to be provided for in legislation if the intent of the guidance is to provide clarity around decision making and regulatory process. The High Country Accord note in its submission that:

    *in our view the Commissioner does not require empowering legislation, and any such legislation may give rise to legal issues about the status of the guidance and standards. Hence there is a risk of increased dispute.*

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108. Some submitters recommend that non-binding guidance has limited uses and that there should be provision for the development of binding policies to ‘give substance’ to statutory requirements. For example, Forest & Bird and Environmental Defence Society in their joint submission state that:

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62 Submission reference 2771
In our experience, non-binding guidance is of little assistance in hard cases, and can even contribute to misunderstandings of what the law requires. In contrast, we support a requirement for binding policy to be developed to give substance to the statutory requirements for stewardship of Crown pastoral land...\textsuperscript{63}

109. These submitters also state that any guidance, standards or policies should be set following public consultation.

110. Some submitters, including academics and ecologists, express concerns that releasing additional guidance will not be enough unless the overarching system of decision making is changed.

**Figure 4:** How submitters responded to Proposal 3 - Explicitly provide for the Commissioner to release guidance and standards to assist officials and leaseholders to understand and comply with the legislative requirements

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\textsuperscript{63} Submission reference 2743
The potential benefits of improved guidance and standards

111. Submitters raise a number of potential benefits from the Commissioner releasing clear guidance and standards. A lot of these submissions focus on how it could improve the discretionary consents process. Submitters would like to see more guidance surrounding how decisions are made on discretionary consent applications. Such as how the Commissioner determines the relative weighting/desirability of making a lease easier to farm against protecting inherent values. They would also like further guidance on what information the Commissioner relies on to assess the ecological, landscape and farming values of the land.

112. Some submitters from the pastoral lease community view that effective guidelines could increase predictability in the discretionary consents and rehearing process - predictability is viewed as important because many of the consenting decisions materially impact the livelihoods and investment of leaseholders and so having a fair expectation of the result could save leaseholders both time and resources.

113. One recommendation is that the Commissioner should release best practice guidance on what good management looks like, especially in relation to pest and weed control. One submitter from the pastoral lease community recommends that “a generic Good Management Practices Guideline for Crown Land be drafted in conjunction with leaseholders, and incorporating the desired outcomes for Crown pastoral land should be considered”.

114. Heritage New Zealand Pouhere Taonga raises that guidance could be a useful way to convey obligations under other acts and specifically that it could assist leaseholders to negotiate the discretionary consent and archaeological authority processes should cultural and heritage values be impacted by activity on Crown pastoral land.

115. Improved guidance is also seen by one submitter as a useful way to improve the capability of officials working within the system.

The limitations of guidance and standards

116. There is a strong theme raised by submitters from the pastoral lease community that guidance should account for the broad variations between individual leases, as a one size fits all approach is not appropriate. Some submitters go further and view the varied contexts of leases as rendering guidelines impractical and possibly unworkable. One individual submits in relation to issuing standards that: “Each lease is different. So it is impossible to take a blanket approach. So understanding one decision on one lease does not imply the same decision on the next lease”.

117. Concerns are also raised that poorly designed standards and guidelines could increase the regulatory burden on farmers and compromise effective management of the land.

Releasing an Iwi Management Plan

118. Multiple submitters raise that iwi should be engaged in the development of guidance and standards. Te Rūnanga o Ngāi Tahu in its submission, comments that “Te Rūnanga expects that it would be engaged

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64 Submission reference 2887
65 Submission reference 2764
66 Submission reference 2917
67 Submission reference 2758
as a Treaty partner in the creation and implementation of such guidance, standards or polices.” Te Rūnanga emphasises that it wants to build relationships with leaseholders and that guidance, standards or policies should include the Crown’s expectations to meet and/or how leaseholders and applicants propose to meet iwi and mana whenua priorities.

119. Te Rūnanga also recommends the creation of an Iwi Management Plan for Crown pastoral land. This could provide relevant guidance to leaseholders on managing the land and applying for discretionary consents, and be used by the Commissioner when making decisions.

### 3.6 Farm plans

120. The discussion document raised the use of farm plans\(^68\) in the Crown pastoral land context and their possible benefits. Most submitters who comment on farm plans view them as potentially a useful tool for a number of reasons, especially if they become a requirement under other regulation.

121. Submitters from the pastoral lease community view farm plans as a way to improve alignment across regulatory systems, improve relationships between the Commissioner and leaseholders, and improve environmental outcomes. For instance, the High Country Accord submits that:

> The development of individual farm plans which align the processes under the RMA (a regulatory process) and the CPLA (a fundamentally contractual process) has the potential to substantially advance the Crown’s objectives for better environmental outcomes and at the same time provide a basis for a far better relationship between lessor and lessee.\(^69\)

122. Some submitters see farm plans as a useful way for the leaseholder to make clear how they intend to meet the requirements of the CPLA and Land Act. They are also seen as a way to establish an agreed baseline of inherent values across the lease.

123. However, some submitters oppose, or cautiously endorse the use of farm plans, raising issues with transparency and the availability of expertise to inform their development.

124. Submitters that disagree with the use of farm plans raise say they are primarily a procedural change and that changes to decision making and introducing clear outcomes will have far more impact. For instance, ecologists Harding, Head and Walker state in their submission that “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”.\(^70\)

What could farm plans include?

125. Submitters suggest that farm plans could include:

- an agreed baseline of values across the lease
- how the leaseholder intends to meet their statutory obligations under the CPLA and contribute to the outcomes
- consideration of archaeological and heritage sites

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\(^68\) The term farm plans, in this case, is used in a generic sense to encompass a number of variations to the concept such as Farm Environment Plans, All of Station Plans, Farm Management Plans, and Sustainable Environment Plans.

\(^69\) Submission reference 2771

\(^70\) Submission reference 2816
• consideration of cross boundary land management issues (such as landscape scale management of game animals recommended by the Game Animal Council\(^{71}\))
• how public access and recreation objectives are being considered
• how the leaseholder will meet iwi needs and aspirations in the management of the land.

**Reducing duplication between regulatory systems such as the CPLA and RMA**

126. A core benefit of farm plans is seen to be in reducing duplication between regulatory systems and increase alignment. Submitters note that a lot of the information that LINZ and the Commissioner would require when making decisions is already contained in existing Farm Environment Plans required by some councils.

127. Ballance Agri-Nutrients, in its submission, raises that any farm plans in the CPLA context should make use of existing developments:

> If this type of planning tool is to be applied in the context of pastoral leases what is needed is to ensure that these tools are fit for purpose and not overly bureaucratic and tailored for the outcomes being sought. There are existing templates that industry organisations have and Regional Councils support that can be considered in any design. The key point being if not focused these can be costly and ineffectual tools.\(^{72}\)

_Further feedback on regulatory alignment and duplication is outlined in Section 4 Decision making and discretionary consents._

**Streamlining the discretionary consents process**

128. Some submitters see potential for farm plans to play a role in the discretionary consent process. The High Country Accord submits that “farm plans which agree the inherent values of a property, along with priorities for biodiversity, landscape and other values, and which then align farm management practices and plans have considerable potential to eliminate multiple consent processes”\(^{73}\).

** Developing relationships between the Commissioner, frontline staff and leaseholders**

129. Farm plans are seen by some submitters as an avenue to build LINZ’s on the ground understanding of leases and to help develop relationships with leaseholders in order to facilitate a more collaborative approach to the land’s management.

130. One submitter from the pastoral lease community raises the benefits of a collaborative approach to achieving shared outcomes based on past experience:

> a person from Lands and Survey would visit once a year and agree alongside the Leasee a plan for the year and what consents might be required. This collaborative approach would be a possible way forward. A ‘Farm Plan’ created in conjunction with LINZ could work. This would require Lessee’s to undertake the research necessary and the planning required to create a longer term vision for the

\(^{71}\) Submission reference 2755  
\(^{72}\) Submission reference 2753  
\(^{73}\) Submission reference 2771
Pastoral Lease keeping in mind the agreed upon outcomes overarching the management of Pastoral Leases. Further feedback on building relationships is outlined in Section 5 Monitoring and information; and Section 6 Managing the implications of ending tenure review.

The transparency of farm plans

131. An issue raised by some submitters with farm plans is that they have historically been closed to the public and do not provide an avenue for broader interested parties to have a say in the land’s management. Many environmental groups submit that all farm plans should at least be publicly available, if not be open to public input before they are finalised.

132. Submitters from the pastoral lease community disagree that they should be public as they contain private or commercially sensitive information.

Capacity among experts to develop farm plans

133. A number of submitters raise concerns as to whether there is enough capacity within ecological experts to inform the development of farm plans across the Crown pastoral land estate. For example, ecologists Harding, Head and Walker submit that “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.”

The costs of developing farm plans

134. Many submitters view that it is unclear who should be funding the development of farm plans in the Crown pastoral land context. Depending on their scope it could be a potentially expensive exercise that results in a split of public-private benefits. As such, some submitters from the pastoral lease community recommend that the crown should share in the cost of their development.

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74 Submission reference 2908
75 Submission reference 2816
4. Decision making and discretionary consents

4.1 Proposal: Require the Commissioner to give effect to a set of outcomes in any discretionary consent decisions

135. Section 4 (pages 34 through 41) of the discussion document asked for views on how to ensure decision making best supports the achievement of the outcomes, and what other tools could be used.

136. Submitters were asked:

**Question 5:** Do you agree that the Commissioner should be required to give effect to the proposed outcomes in any discretionary consent decisions? Please provide reasons for your view.

You may also wish to consider:

- Do you think that the proposed approach ensures that decision making will support the proposed outcomes for Crown pastoral land?
- What are your views on the use of offsetting by the Commissioner under the discretionary consents process?
- What other mechanisms could be used to ensure decision making supports the proposed outcomes?
- What specific matters should be considered when deciding whether to approve an application?

4.2 How submitters responded

137. Support for this proposal is mixed. Submitters from the pastoral lease community strongly oppose this proposal which they view as effectively rewriting their lease contract and, by extension, impacting on leaseholders’ property rights. Other submitters, especially environmental groups, are supportive of it in principle. There is broad agreement that ultimately support for this proposal depends on the quality and content of the final outcomes statement.

*Feedback on the outcomes statement is outlined in Section 2 Articulating outcomes for Crown pastoral land.*

138. This proposal is seen to limit the discretion and flexibility that the Commissioner is able to exercise when making decisions. Submissions vary on whether this is a good thing. Some submitters argue that the discretion afforded by the current decision making criteria in section 18 of the CPLA 76 is necessary to reflect the diversity of situations that occur across pastoral leases. Some submitters view that such an approach will be detrimental. For example, the New Zealand Deerstalkers Association 77 comments that overly prescriptive rules could hinder the achievement of the outcomes.

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76 Section 18 of the CPLA requires that "the Commissioner must take into account—

(a) the desirability of protecting the inherent values of the land concerned (other than attributes and characteristics of a recreational value only), and in particular the inherent values of indigenous plants and animals, and natural ecosystems and landscapes; and

(b) the desirability of making it easier to use the land concerned for farming purposes."

77 Submission reference 2750
Figure 5: How submitters responded to Proposal 4 - Require the Commissioner to give effect to a set of outcomes in any discretionary consent decisions

139. However, many submitters strongly support the proposal on the basis that the existing decision making framework provides too much discretion and, when paired with a perceived lack of transparency, enables decision makers to give less value to certain criteria, or in some cases ignore them completely. For example the Mackenzie Country Trust submit that:

*as a result [of this discretion], some of the past decisions could be described as barely even considering the criteria and at worst disregarding them. This needs to change significantly, if this process is going to have any credibility in the future and ensure that the remaining “inherent values” are not degraded or lost.*

140. Some submitters in favour of this proposal caveat it by noting how the discretionary consents process is not responsible for all of the activity that occurs on Crown pastoral land and that improving this process is not a ‘cure all’. For example the New Zealand Conservation Authority states:

*It is not sufficient for identified SIVs to be simply not available for development should discretionary consents be sought for these areas. These values may be degraded by existing pastoral farming*

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78 Submission reference 2745
compliant with the provisions of the Pastoral Lease. As outlined in the discussion document there needs to be an active protection programme that seeks to protect those inherent values. Indigenous biodiversity and tangata whenua, cultural values and recreational access should be legally protected.\footnote{Submission reference 2762}

Feedback on other tools for protecting inherent values is outlined in Section 6 Managing the implications of ending tenure review.

141. Some submitters are concerned the proposal will allow for an ‘overall approach’ to achieving outcomes. Ecologists Harding, Head and Walker comment:

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.\footnote{Submission reference 2816}

142. To demonstrate this point they provide case studies of discretionary consents which can be found in the appendices of their submission.

Additional criteria and measuring outcomes in decision making

143. Submitters suggest a number of criteria that should be taken into account in addition to the proposed outcomes, such as:

- the cumulative effects of decisions across all Crown pastoral land
- recovery periods\footnote{Sir Alan Mark, submission reference 2811, submits that recovery periods should be taken into account when granting consents and that his 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...”}
- down-stream impacts, such as in cases where they affect conservation or private land
- climate change.

144. In addition, submitters note that, in the absence of an established baseline, determining whether a decision gives effect to the outcomes would be difficult. This could require an assessment of values across entire leases in order to understand cumulative impacts across the estate.

Giving effect to the principles of the Treaty in discretionary consent decisions

145. Many submitters raise that there is a lack of opportunity within the current discretionary consents system for iwi to be engaged and have their cultural values and aspirations as mana whenua recognised. Te Rūnanga o Ngāi Tahu submit:

Under current legislation, iwi do not have to be consulted nor engaged in the process of determining discretionary consents. Any ‘discretionary consent’ is solely determined by the Commissioner with no requirement that any decision made must give effect to any clear priority. Whilst the Commissioner
must take into account the matters set out in section 18 of the CPLA, there is no requirement for the Commissioner to consider the views or priorities of mana whenua. This does not reflect the principles of the Treaty.  

146. Te Rūnanga o Ngāi Tahu then submit a number of ways decision making could be improved so that it gives effect to the principles of the Treaty:

a) Including a provision in the amended Act (or new Act) that requires same to be interpreted and administered to give effect to the Treaty principles, as outlined above;

b) Including an outcome that the Crown must manage the land in accordance with the Treaty principles, as outlined above, and requiring the Commissioner to give effect to the outcomes in any decisions on discretionary consents, as currently proposed by LINZ; and

c) Engaging iwi with the creation of the Statement of the Performance and including the needs, aspirations and values of iwi within the Statement of Performance.

147. Many submitters, especially environmental and recreation groups, express strong support for improving how the role of iwi is reflected in the system.

148. Submitters from the pastoral lease community also acknowledge the role that iwi ought to play where their interests are affected, however, they view that this can be achieved within the status quo. The High Country Accord submits that:

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

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

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

Offsetting

149. There is broad agreement that offsetting is not appropriate in the Crown pastoral land context. However, the rationale behind why this is the case varies.

150. One view is that offsetting unfairly favours farmers who do not have a good track record of environmental stewardship. It would also act as a disincentive to farmers undertaking voluntary environmental projects. This was the view of many submitters from the pastoral lease community. The High Country Accord also raises the objection that “the requiring of offsets for consents is an example of the Crown appropriating back to itself rights which it has previously alienated – namely the right to pastoral farming of the demised land”.

151. Another view is that offsetting allows for the degradation of inherent values now, in exchange for possible future gains. This is viewed by many submitters, especially by ecologists and environmental groups, as unacceptable in the case of Crown pastoral land as no further loss should be allowed.

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82 Submission reference 2758
83 Submission reference 2771
84 Submission reference 2771
152. In their joint submission, Environmental Defence Society and Forest & Bird\(^85\) add that current guidance on offsetting is not clear and that there is a risk that it will be used to rationalise consents that should never have been granted in the first place.

153. While there is broad opposition to offsetting some submitters weren’t opposed to its limited use, noting that decision makers need a variety of tools to achieve good outcomes.

**Scaled decision making**

154. There is broad support among submitters from the pastoral lease community for scaled decision making. For example, activities with minor, contained impacts should face less scrutiny, especially in the case of weed and pest control which are requirements under the legislation and lease. Submitters also note that in these cases best practice guidelines should be provided, complemented by regular monitoring.

155. Some submitters view that the Commissioner should be provided with the discretion to assess which activities are minor and which are major and may require greater scrutiny. One submitter explains:

> The Commissioner requires a degree of flexibility and discretion around consent decision making according to the scale and magnitude of the impacts of the proposed activity – this is the compromise required for an efficient and effective consenting system while still substantially giving effective to the proposed outcomes. [This] would target resource to actions/applications with the most potential impact.\(^86\)

156. Other submitters view that there should be a scaled approach to weed and pest control. For example one individual submits that:

> [for] a Pastoral Lease property that resides in a gorse and broom free area; the spraying of gorse and broom should not be given as much scrutiny as many other discretionary consents. To do so would be ludicrous and with many serious implications, most of which will be assumed to be carried by the Lessee.\(^87\)

157. Regional Film Offices of New Zealand and Film Otago Southland\(^88\) suggest there should be an alternative pathway for “short-term one-off film activity with no ground disturbance - this should be at the discretion of the leaseholder”. It submits that requiring consent for such an activity is an unnecessary layer of bureaucracy considering the benefit to regional communities and the low impact nature of short-term filming activity.

158. Others view that more oversight is needed for certain applications, for example for applications over land that adjoins national parks.\(^89\) Mackenzie Country Trust\(^90\) suggests that significant consents should be referred to a panel with appropriate representation, noting that this approach would be less time consuming then public consultation.

\(^{85}\) Submission reference 2743
\(^{86}\) Submission reference 2878
\(^{87}\) Submission reference 2910
\(^{88}\) Submission reference 2759
\(^{89}\) Submission reference 2762
\(^{90}\) Submission reference 2745
The decision maker

159. A significant amount of feedback focuses on the role of the Commissioner with some submitters valuing the current role within decision making and others strongly opposed to it. This opposition is closely linked to the discretion that the current statutory decision making framework provides. Many submitters raise whether another decision maker would be more appropriate for discretionary consents and in some cases the broader administration of Crown pastoral land.

160. The most common recommendation is for a panel or board to replace the Commissioner in decision making. This would be similar to the previous Land Settlement Board. It was raised that a board could have representative appointees and be supported by regional committees with local knowledge to improve the quality and transparency of decision making.

161. The New Zealand Conservation Authority expands on this in its submission:

*The Authority is aware that under the previous Land Act that preceded the Crown Pastoral Lands Act, the Land Settlement Board had broad representation including recreation, Maori and conservation interests. Moreover, at a regional level there were Land Settlement Committees (LSC) also with such broad representation. The LSCs were able to scrutinise and make comment on discretionary consents sought for pastoral leases. That more open process has considerable merit compared to the existing process where these decisions have been matters conducted in ‘secrecy’ between the CCL/LINZ and the lessee.*

162. Further submissions range from replacing the Commissioner in all statutory decisions, to the Commissioner escalating significant decisions to the board. In some submissions it was proposed that the board should be external to LINZ.

163. Submitters from the pastoral lease community who raise the option of a board emphasise that they would only support it if it ensured non-partisan decision making with appropriate representation and appointment processes.

164. Another recommended alternative is to have the Environment Court as the ultimate decision maker. Ecologists Harding, Head and Walker recommend that agency officials should be removed from decision making roles and that they should instead be providing expert advice to an external decision maker. This new system would see:

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).*

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

Feedback on potential changes to the role of the Commissioner are further outlined in Section 3 Ensuring decision making is accountable and transparent.

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91 The Commissioner for Crown Lands now fulfils the functions of the previous Land Settlement Board

92 Submission reference 2762

93 Submission reference 2816
Distinguishing between existing use and future development

165. Submitters from the pastoral lease community emphasise that any changes to the discretionary consents regime should only apply to new development and new uses. Submitters view that existing development and use that was made in accordance with consents under the current regime should be protected on the basis that it represents a significant investment on the part of leaseholders, and removing these consents would impact the viability of the farming operation and leaseholders’ property rights. For example, one individual comments:

*Proposals 4, 5 and 6 need to reflect the difference between new and existing farming activities. We do not want our investments in improvements on the land to deteriorate because existing use consents are not being approved or are delayed through additional steps and cost in the approval process. These consents need to reflect the long-term nature of pastoral farming.*

166. And another that:

*This potential outcome [reversing previous consents] 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.*

167. Submitters such as environmental groups also distinguish between existing use and further development – with some recommending that activities such as dairy conversion and livestock intensification above current levels be prohibited. However, it is also raised that current stocking rates and associated pastoral activity may not be appropriate for some areas of Crown pastoral land. For example, Environmental Defence Society and Forest & Bird in their joint submission recommend that “When Crown pastoral leases are renewed, the lease terms (eg stocking limits) should be reviewed to ensure that they are consistent with the new legislation.”

Alignment and duplication between the CPLA and RMA

168. Multiple submitters provide feedback on how the discretionary consents process can be improved so that it aligns more with the RMA and avoids duplicating processes. This includes recommendations such as providing common guidance on how leaseholders should apply for related consents under the systems, releasing a high country policy statement under the RMA that both systems can take into account, introducing an advocacy role for the Commissioner (see Section 3), using farm plans (see Section 3), and central and local government working more closely together. For example, Federated Farmers High Country in its submission states:

*Any duplication between CPLA and RMA functions should be addressed to ensure a more efficient and effective joint approach between agencies is taken... In our view, central and local government agencies need to work together smarter. There are already inadequate resources in this area, and it makes sense to get better outcomes from united or shared approaches, rather than patch protection and duplication.*
169. Some submitters go further than this and view that it is not just an issue of aligning the systems but of reducing duplication. The New Zealand Law Society submits that:

   It is not clear why a dual regulatory regime for consents under both the CPLA and RMA is needed in relation to Crown pastoral land. The RMA applies to all land use regardless of how it is owned, and the discussion document does not explain why the effects of the use of Crown pastoral land cannot be managed under the RMA alone... Providing direction through the appropriate mechanisms in the RMA, rather than establishing a new consent process for pastoral lessees, might ensure that the objectives in managing Crown pastoral land are achieved without unnecessary duplication or inconsistency with the existing RMA regime. The conclusion might be that activities can be managed under the RMA without the need to amend the CPLA.  

170. However, other submitters view that the discretionary consents process serves a different purpose; that is, for the Crown to steward its ownership interest in the land on behalf of the public and mana whenua. This is seen as closely linked to the need for the public and mana whenua to be involved in its management. For example, ecologists Harding, Head and Walker submit that:

   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.

This view is supported by a significant amount of individual submitters. This is summarised in more detail in Section 7 Other themes. Feedback on public involvement in the system is further outlined later in this section and in Section 3 Ensuring decision making is accountable and transparent.

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98 Submission reference 2763
99 Submission reference 2816
4.3 Proposal: Require the Commissioner to obtain expert advice and consult as necessary on discretionary consent decisions

171. Section 4 (pages 34 through 41) of the discussion document also asked for feedback on how to ensure that decisions are made with the best possible advice and information.

172. Submitters were asked:

**Question 6:** Do you agree that the Commissioner should be required to obtain expert advice and consult on discretionary consent decisions? Please provide reasons for your view.

You may also wish to consider:

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

- 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.

4.4 How submitters responded

173. There is mixed support for this proposal. Submissions demonstrate the importance that decisions are made with the best possible advice and information, though they raise issues about who should pay, who should provide the advice and how to ensure the quality of the advice.

174. There was strong support among environmental and recreation groups who acknowledge in their submissions that having the right expertise and advice is critical for good decision making to achieve the proposed outcomes. For example, in its submission Greenpeace NZ states that the Commissioner needs independent expert advice as they “[d]o not and cannot be expected to have the level of locally specific terrestrial, aquatic and geological knowledge required to make sound decisions on discretionary consents in the high country”.\(^{100}\) This is supported by a number of submitters who emphasise that LINZ needs to build its capability in this space, to both interpret and gather technical advice on the potential impacts of consents. DOC was also seen as playing an important part in this.

175. Submitters from the pastoral lease community comment that there are a number of issues with the proposal as it stands. A key concern is that the discussion document did not explain why legislative change is needed to achieve the proposal and what further advice is required beyond the status quo - where currently ecological advice is provided through DOC or through service providers.

176. These submitters view a blanket requirement to obtain advice as needlessly cumbersome. There is general agreement that independent expert advice should only be sought in cases where LINZ or DOC do not possess the required expertise. Submitters from the pastoral lease community emphasise that expert advice should only be sought in relation to new development and not in the case of farming related consents. For example, one individual submits situations where they view expert advice would be appropriate.

    *This will be dependant on what the consent is for. If it is for a major consent (eg: an irrigation development) the Commissioner may require advice from a suitably qualified expert.”* It should not

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\(^{100}\) Submission reference 2740
be required if “the request is maintenance of an already granted consent, minor works or within the expectations of normal farming practices in these environments.”

Figure 6: How submitters responded to Proposal 5 - Require the Commissioner to obtain expert advice and consult as necessary on discretionary consent decisions

177. Some individuals submit that an overreliance on expert advice may lead to the expertise of leaseholders being discounted. For example, one submitter comments:

*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.*

178. There is also a strong concern expressed that this proposal will lead to unnecessary costs being imposed upon applicants. These submitters view that should expert advice be sought then it should be provided by unbiased, suitably qualified experts with local knowledge. They also add that certain classes of advice should not be relied on to the exclusion of others.

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101 Submission reference 2908
102 Submission reference 2859
179. One suggestion is that it should be up to the applicant to commission expert advice and then the Commissioner, LINZ or DOC could commission their own independent advice if they disagree with the advice provided. However, most of these submitters view that the Crown should bear the cost of providing expert advice. One submitter views there is a risk that this approach could see each party “arming themselves with experts”.

180. Some submitters suggest that the proposal should be to require ‘expert scientific advice’ as opposed to ‘expert advice’ as this may help to decrease its subjectivity.

The role of DOC in the discretionary consents system

181. Many submitters, especially environmental groups, want DOC to play a more central role in the discretionary consents system to ensure the effective management of the estate. For example, the Otago Conservation Board submit that LINZ need to be better informed of the scale of values in areas when granting discretionary consents over them and that DOC is a critical source of information on biodiversity and high country values.

182. Submitters also comment that the focus should shift to DOC’s technical experts as opposed to the department in general. This is because some submitters think that that the quality and consistency of DOC’s advice on discretionary consent applications has historically varied and that advice on inherent values was seen too often to be provided by relationship managers as opposed to the department’s technical experts. Submitters also provide instances of LINZ and the Commissioner granting consents contrary to DOC’s advice.

183. In response to this one recommendation from the Environmental Defence Society and Forest & Bird is to “require that decisions do not provide for actions on Crown pastoral land that are contrary to recommendations by DOC experts’ technical advice (from qualified and experienced ecologists, landscape architects, and so on)”.

184. Submitters from the pastoral lease community also raise concerns with the role of DOC in the process and its ability to provide balanced ecological advice.

Other bodies that should be consulted on discretionary consent applications

185. Submitters recommend that a number of different parties should also be consulted, depending on the values in question and the scale of any impact. These include:

- Fish and Game Councils - The New Zealand Fish and Game Council submits that relevant Fish and Game Councils should be consulted in any decisions “that have any relation to Fish and Game’s statutory interests, both in terms of habitat protection and recreational access for holders of sports fishing or gamebird hunting license holders.”

103 Submission reference 2878
104 Submission reference 2924
105 Submission reference 2757
106 See the appendices of submission reference 2816 by ecologists Harding, Head and Walker
107 Submission reference 2743
108 Submission reference 2765
• Heritage New Zealand Pouhere Taonga – where historical and cultural heritage values are affected. The New Zealand Archaeological Association further submits that HNZPT should first be consulted as to whether a survey is needed on a lease to identify heritage values and that in some cases assessments by qualified archaeologists may be required.

• Walking Access Commission – where applications are relevant to issues of public access.

• relevant local councils – to ensure that agencies are in alignment before issuing consents under the RMA and CPLA.

• a representative board or expert panel such as the High Country Advisory Group – this is outlined further below.

An expert panel to provide advice

186. Some submitters raise that there may be a role for a statutory board that provides advice and oversight of decision making. In their joint submission Forest & Bird and Environmental Defence Society recommend a mechanism similar to the role of conservation boards in advising DOC and suggest that the High Country Advisory Group could be included in legislation and serve this purpose. This would have framework for appointing nominees and provide specific groups with opportunities to put forward nominees to ensure appropriate representation and oversight.

187. The High Country Advisory Group is viewed positively by most of the submitters who provided comment on it.

Public involvement in the discretionary consent system

188. There is a divergence of views as to what the role of the public should be in the discretionary consent system. Submitters from the pastoral lease community view that public involvement in specific decisions is inappropriate considering the lease contract, while other submitters view that public notification of significant consent applications is a core aspect of ensuring the system is transparent and decision making is accountable.

189. Many individual submitters and the majority of environmental and recreation groups view that transparency and public notification of significant consents is one of the most important parts of ensuring effective decision. This is because it allows decision makers to be held to account by increasing the public’s understanding of, and information on, decisions. It is viewed as especially important that the public has a say in significant changes in land use in order to make use of their knowledge and represent their views. For example, Federated Mountain Clubs in their submission raise that:

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109 Submission reference 2764
110 Submission reference 2744
111 Submission reference 2742
112 Submission references 2767 and 2756
113 The High Country Advisory Group was established in 2018 to provide advice and insights to the Commissioner of Crown Lands and LINZ to enable greater transparency and communication in the management of Crown land in the South Island High Country. The group also look for collaborative projects, identify examples of good practice and recommend activities to support work programmes. It is made up of representatives from sectors such as the environment, farming, industry, iwi and government.
114 Submission reference 2743
Given the public interest in the ongoing and improving health of the land in Crown pastoral leases, and due to the wealth of relevant knowledge within the community, a notification system should be introduced.\textsuperscript{115}

190. Environmental Defence Society and Forest & Bird\textsuperscript{116} in their joint submission recommend that by default all applications should be notified except:

- where the discretionary consent:
  - is for the same activity as was carried out in the past six months
  - has no downstream impacts (i.e. the only impacts are upon the area over which the consent is being applied for)

- is for an activity that does not adversely affect significant inherent or ecosystem service values.

191. A similar approach is suggested by other submitters with some recommending that all applications should be notified, and further that individual decisions should be able to be appealed by members of the public. Ecologists Harding, Head and Walker submit that this combination of a lack of transparency and accountability has resulted in the degradation of environmental values over this:  

\textit{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 heritage. They have not been required to adhere to clear legislated direction or been subject to the full light of public scrutiny.}\textsuperscript{117}

Feedback on appealing decisions is further outlined in Section 3 Ensuring decision making is accountable and transparent.

192. Some submissions raise that an adequate level of public consultation is already provided for under the RMA. For example one individual submits that “any activity that would trigger the RMA at a local council level for consent would be the only time the wider public and NGOs should have a say–the same as for any other enterprise.”\textsuperscript{118}

193. Similarly the High Country Accord submit that:

\textit{“Consent applications should not be the subject of public consultation. Introducing an element of public consultation fundamentally ignores the contractual (as opposed to regulatory) relationship between the Crown and lessee. If public consultation is appropriate, then that will be a consequence of the proposed activity triggering the application of the existing rules of a District or Regional Plan. If not so triggered, then the matter is of insufficient significance to incur the costs and delay of a further process, which is, in effect, superfluous.”}\textsuperscript{119}

194. This view is reinforced in a significant number of submissions from the pastoral lease community. There is a distinction drawn by some of these submitters between public consultation on farming related applications and applications for other activities such as for recreation permits. Some submitters also

\textsuperscript{115} Submission reference 2747  
\textsuperscript{116} Submission reference 2743  
\textsuperscript{117} Submission reference 2816  
\textsuperscript{118} Submission reference 2899  
\textsuperscript{119} Submission reference 2771
raise that if there is public consultation then the information gathered should be subject to review and cost recovery should be considered from submitters on the notified application.

195. Some submitters disagree that public notification will lead to increased regulatory duplications because of the different purposes of the CPLA and RMA. For example Forest & Bird and Environmental Defence Society in their joint submission state that:

We strongly disagree with the notion that public notification duplicates existing processes under the RMA, because the statutory objects differ and the Commissioner is considering different considerations to those that apply under the RMA. At present, there are activities that the Commissioner has authorised that the RMA consent authority may not grant resource consent for (for example on Simons Pass Station). As the RMA consenting process becomes more robust, there will be a sharper focus on how to determine effects on landscape and indigenous biodiversity values. It is important that any reform to the RMA consent process is reflected in the discretionary consenting process to ensure alignment.\(^\text{120}\)

\(^{120}\) Submission reference 2743
4.5 Proposal: Update the fees and charges framework

196. Section 4 (pages 34 through 41) of the discussion document asked whether the CPLA should be changed to allow for fees to be charged for all discretionary consents.

197. Submitters were asked:

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

You may also wish to consider:

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

4.6 How submitters responded

198. Submissions show that there is limited support for updating the fees and charges framework. Submitters raise a number of potential issues with introducing new fees such as increasing cost pressures on leaseholders which could impact how they manage the land.

199. Submitters from the pastoral lease community raise a number of instances where they view that the charging of fees would be inappropriate, drawing a clear distinction between farm-related consents and consents for other uses such as recreation permits for tourism activities. They also raise that cost recovery may lead to unreasonable fees in light of the current inefficiencies in the administration of the discretionary consents process. The High Country Accord submits that:

*Farm consents should not be the subject of a separate fee regime. These are not provided for by the lease contract, and the imposition of such an arrangement is effectively a variation of the agreed rent setting mechanism... There are numerous examples of excessive delay (in many reported cases of more than a year), which implies high levels of avoidable cost, which lessees would object to shouldering.*

200. It was also seen as particularly unreasonable if fees were to be introduced for activities that are legislative requirements such as for weed and pest control.

201. A number of specific issues were raised by these submitters should a system for fees be introduced:

- charging fees would not improve outcomes across Crown pastoral land
- it would be problematic to charge leaseholders a fee to apply to undertake activities such as weed and pest control or other required activities under the legislation
- fees should not be charged for farm-related consents, as this was not provided for within the terms of the lease
- introducing fees on a cost recovery basis could impose significant costs on leaseholders to maintain their current farm operations
- fees could reduce the viability of pastoral farming and reduce non-fixed-cost spending such as on weed and pest control, new fencing and environmental projects or compliance

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121 Submission reference 2771
• fees could incentivise non-compliance - especially in the case of minor, low-impact activities that require consent. Heritage New Zealand Pouhere Taonga submit that “Currently Heritage New Zealand Pouhere Taonga does not charge for archaeological authority applications. A key driver for this is to ensure compliance with the Act without the consideration of fees as a deterrent.”

202. Other submitters either support the proposal or did not comment on it. Those that support it endorse the principle that the benefiter should pay for the cost of the application but emphasise that the fee should be fair and reasonable.

Figure 7: How submitters responded to Proposal 6 - Update the fees and charges framework

122 Submission reference 2764
5. Monitoring and information

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

204. Section 5 (pages 42 through 43) of the discussion document asked for feedback on what information is needed about Crown pastoral land to ensure it is effectively managed.

205. Submitters were asked:

**Question 8:** Do you agree that the Commissioner should be required to regularly report against a monitoring framework? Please provide reasons for your view.

You may also wish to consider:

- What other mechanisms could be used to ensure the outcomes of the Crown pastoral land regulatory system are better understood?
- What information do you think is most valuable to understand system performance?

5.2 How submitters responded

206. There is general support for improving the information that the Crown holds about the outcomes of Crown pastoral land. Some submitters support the proposal in principle but note that ultimately the framework needs to be more fleshed out. Submitters across all groups agree that reporting against the framework should be public and that this is important for ensuring the accountability of officials.

207. Some submitters argue that enhanced monitoring can be achieved under the current legislative framework, provided LINZ has enough capacity and capability. However, other submitters view that establishing a monitoring system in legislation is important – stating that the former Department of Lands and Survey previously discontinued its high country monitoring programme as it did not consider it to be a statutory responsibility.

208. Submitters also express concerns that LINZ does not have the capability and capacity to gather sufficient information and recommend that DOC should have responsibility for the monitoring of Crown pastoral land.

209. Many submitters emphasise that information should be collected in a way that minimises duplication across government. For example, Environment Canterbury submit that the information gathered should be consistent with other agencies with land use management responsibilities:

> A consistent and aligned data set will be imperative. At present, all five agencies involved in the Mackenzie Basin Agency Alignment Project are collaborating to produce a shared digital set of maps with overlays displaying land use, tenure, landscape and ecological values.\(^{123}\)

210. Further to this various submitters raise that LINZ could be doing more to collate existing information on the leases. They also recommend that the level of monitoring should be determined by the inherent values and risks associated with areas of the land.

211. Some submitters recommend that effective monitoring should a precursor to any changes to the decision making process. This is linked back to the decision to end tenure review, which many submit

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\(^{123}\) Submission reference 2767
was made without complete information on environmental and economic outcomes. Effective monitoring could demonstrate whether there were indeed problems with ecological degradation on Crown pastoral land.

*Feedback on the decision to end tenure review is outlined further in Section 6 Managing the implications of ending tenure review.*

**Iwi**

212. As previously outlined many submitters support an approach to administering the estate which reflects the role of iwi as Treaty partner – this applies to the monitoring framework as well. Te Rūnanga o Ngāi Tahu submit that “any monitoring framework must include how the needs and aspirations of iwi are met. Iwi must be engaged in the design, development and updating of any monitoring framework.”

*Figure 8: How submitters responded to Proposal 7 - Require the Commissioner to regularly report against a monitoring framework*

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124 Submission reference 2758
What should be measured?

213. Submitters suggest a number of different aspects of the land that should be monitored, both at the estate level and individual lease level, to indicate what outcomes are being delivered. These include:

- natural values - potential indicators of these values include water quality, erosion, flora and fauna quality and extent assessments and soil nutrient levels
- farming practices - including stock numbers and farming techniques
- landscape and open space values
- water quality
- changes in land use
- public access arrangements - or potential areas suitable and desirable for public access
- sites of cultural significance
- archaeological and heritage sites
- pest and weed management practices.

214. It is also important to multiple submitters from the pastoral lease community that any reporting should give an indication of leaseholders’ investment and protection of the land, such as through weed and pest control; soil and land improvement; job opportunities created and the economic benefits of pastoral farming to New Zealand.

215. Submitters recommend a number of ways to measure this, including using existing data, permanent photo-points, aerial imagery, transects and on the ground inspections.

Establishing a baseline

216. Submissions show that a baseline against which trends can be measured is important if there is to be meaningful reporting against the outcomes. Some submitters state that setting a baseline is complicated by the fact that the high country is already a modified environment from a predominantly woody environment before human habitation. A question raised by many submitters is at what point should this baseline be set.

The costs

217. Various submitters view that the proposals around monitoring do not appear to adequately account for the increased costs of monitoring.

218. Some submitters from the pastoral lease community raise that compliance monitoring is a consequential function of the lease contract and point out that further system performance monitoring could increase the costs of administering the system. They comment that the Crown needs to consider whether it is willing to incur this cost. Some view that since environmental reporting is largely a public good, the cost of this should not wholly fall on leaseholders.

219. Other submitters recommend that the costs of monitoring should fall on the consent holder. However, this is usually in relation to compliance monitoring.
Working together to understand the values of the land

220. Submitters from the pastoral lease community note that monitoring arrangements will likely require LINZ staff to access the land more regularly and request that this access be clearly communicated to and arranged with leaseholders, rather than imposed on them. Multiple submitters suggest that more effective monitoring could be an avenue for LINZ to build relationships with leaseholders and increase its organisational capability and understanding of the land.

221. Some submitters also recommend that the Crown should commit to a similar monitoring framework for conservation land in the high country - especially in the case of former Crown pastoral land. This is viewed as a part of being a good neighbour to collaboratively steward the high country.

Compliance and enforcement

222. Multiple submitters view that there has been a lack of enforcement by LINZ in the past and emphasise that enforcement and remediation action is needed where breaches are found. Submissions recommend a number of additional enforcement mechanisms, including:

- attaching a statutory requirement to monitor conditions to consents and ensure that statutory obligations under the lease are being met
- providing in legislation that a Farm Environment Plan, or a similar tool, can be required if there is evidence of breaches of obligations under the lease contract
- a system of fines or penalties for small and moderate breaches of lease conditions
- providing in legislation for a system of enforcement orders, such as that under the RMA.

223. Currently, breaches can be referred to the District Court under the legislation. However, some submit that the Environment Court is the more appropriate forum for this, except in purely contractual matters.

224. Submitters from the pastoral lease community note that too much focus on regulation and enforcement would undermine a partnering approach between the Crown and leaseholders.

An external oversight body

225. Some submitters recommend that there be an external oversight body, responsible to parliament, to ensure that LINZ is adequately monitoring outcomes across the estate and responding to any breaches.
6. Managing the implications of ending tenure review

6.1 Other tools and public access

227. Section 1 (pages 19 through 22) of the discussion document requested the public’s feedback on the implications of tenure review, such as what tools might be needed to protect vulnerable areas of Crown pastoral land and how to facilitate public access.

228. Submitters were asked:

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

You may also wish to consider:

- How should areas of Crown pastoral land with inherent values worthy of protection be secured once tenure review is ended?
- How should public access to Crown pastoral land be secured once tenure review is ended?
- Are there any other mechanisms that could be used to protect inherent values or secure access on Crown pastoral land?
- Are there any other implications of ending tenure review that the Government should consider?

6.2 How submitters responded

229. Many submitters see it as extremely important to ensure that ecological values are sustained and protected and that future generations can experience Crown pastoral land. These submitters view that mechanisms to safeguard areas for protection and for facilitating public access should be thoroughly explored in the light of tenure review being ended.

230. However, some submitters emphasise that tenure review was but one tool of many to achieve these objectives and that many, if not the majority, of conservation successes in the high country had been achieved outside of tenure review.

231. Submitters from the pastoral lease community view that no further mechanisms are required to protect areas of Crown pastoral land with high inherent values. They submit that the lease contract provides an effective way for the Crown and leaseholders to negotiate on a voluntary basis additional protections for these values or access to or over the land.

232. These submitters further point out that three factors already provide adequate protections for inherent values.

- The restrictions and obligations that already exist within the pastoral lease limit what the holder can do on the land and how farming activities should be carried out.
- The RMA through district and regional plans, and national policy statements, noting that there are many developments in this space.
- There is the ability to negotiate voluntary agreements with leaseholders to achieve shared objectives.
Identifying areas of Crown pastoral land that are worthy of protection

233. Many submitters raise that there should be a collaborative programme to identify areas of Crown pastoral land that need protection beyond that provided by the pastoral lease. For example, Heritage New Zealand Pouhere Taonga recommends:

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

234. The High Country Accord submits that tenure review highlights some of the issues with identifying these areas, stating that:

\[ \text{[A process of assessment of inherent values across all leases] is a substantial task, and one which should not be under-estimated. Many tenure reviews highlighted the intensely subjective assessment of inherent values and especially those which met the threshold of ‘significance worthy of protection’. This followed a lengthy (and presumably costly for DoC and LINZ) property specific values assessment which were often characterised by errors of detail and inappropriate generalisation. Many tenure reviews were consequently bogged down by disagreements between the parties, resulting in delay, frustration and further cost.}\]

An effective monitoring programme is seen by submitters as an essential part of prioritising where these tools should be used, along with the potential use of farm plans. Feedback on these topics is outlined in Section 3 Ensuring decision making is accountable and transparent; and Section 5 Monitoring and information.

6.3 Facilitating public access

235. Many submitters, especially environmental and recreation groups submit that increasing public access plays a major role in promoting tourism, enhancing the public’s appreciation of nature and in promoting long term conservation. As such these groups view that the Government’s objectives for Crown pastoral land should include enhancing public access and that it should be a part of the proposed outcomes.

\[ \text{Feedback on including recreation and access in the outcomes is outlined in Section 2 Articulating outcomes for Crown pastoral land. This also covers the benefits of public access as raised by submissions.} \]

236. Submitters from the pastoral lease community raise serious concerns with how the topic of public access is presented in the discussion document. These concerns are outlined below and relate largely to the practicalities of facilitating access in the high country context and the rights provided by the pastoral lease.

Public access and the property rights of the pastoral lease

237. Submitters from the pastoral lease community emphasise that the leases grant the holder the right to exclusive possession and quiet enjoyment - that is to decide who enters upon the land – and that this

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125 Submission reference 2764
126 Submission reference 2771
was confirmed by the High Court in 2009.\textsuperscript{127} The wording within the discussion document was viewed as implying that this was not in fact the case and contributing to the view that the public should have ‘as of right’ access to Crown pastoral land.

**Public access should be negotiated on a voluntary basis**

238. In light of these property rights, these submitters emphasise that public access should only be negotiated voluntarily with leaseholders on a case by case basis.

239. Some submitters raise that they are already party to formal access arrangements across their lease that had been voluntarily negotiated. For example one submitter comments that:

\textit{We already have a DOC access track though our property and are not [opposed] to further access being granted. However, it needs to be consensual and fair to both parties. It is terrifying to think that the Crown could grant access without consultation with the Leaseholder.\textsuperscript{128}}

240. Access does not always have to be through formal mechanisms such as easements or unregistered access agreements either. A number of submitters note that on an informal basis they already allow members of the public to access the lease provided they first seek permission. For example one individual submits:

\textit{People ring us and if it doesn’t interfere with our farming, we grant permission. We get thousands of permission calls each year and also provide an invaluable information service informing them of the river/weather conditions and keeping people spread out. Would be a lot more mishaps up these valleys without this local ‘intel’ being provided.\textsuperscript{129}}

241. Many submitters from the pastoral lease community note that the Land Act provides the ability for the Crown to grant easements across Crown pastoral land without the leaseholder’s consent and then pay compensation after the fact for the appropriated property rights. The use of this mechanism to secure public access was seen as highly detrimental to the relationship between the Crown and leaseholders, and contrary to the contractual relationship.

242. Submissions raise that this relationship is important for promoting and maintaining access. For example, some submitters state that they own adjoining freehold land across which they are already providing informal access. The Crown imposing access over leasehold land would undermine the Crown’s ability to negotiate access over this freehold land and jeopardise existing access.

**Leaseholders need to be able to restrict public access when it is too risky or costly to provide it**

243. Due to the unique context of the high country it is important to submitters from the pastoral lease community that they retain the ability to restrict access should it be unsafe or unmanageable to provide it. For example on submitter commented that:

\textit{We strongly believe that the public should be allowed to experience the beauty of the New Zealand High Country however in doing so, there is considerable pressures and stresses put on the}

\textsuperscript{127} Decision in the High Court dated 12 May 2009 between the New Zealand Fish and Game Council (Plaintiff); and Her Majesty’s Attorney General in respect of Commissioner of Crown Lands (First Defendant) and High Country Accord Trust (Second Defendant).
\textsuperscript{128} Submission reference 2922
\textsuperscript{129} Submission reference 2903
Leaseholder and staff. Health and Safety plays a huge role in this, as with any business this is at the forefront of our business. Public Access should remain a revocable privilege by the Lessee. Farming operations, natural disasters, weather and unsafe roads/tracks are all taken into consideration before the decision is made to restrict public access.130

There are a number of risks and costs to leaseholders associated with public access

244. Many of these submitters comment that the discussion surrounding public access across Crown pastoral leases needs to account for the significant risks and costs that access can impose upon leaseholders.

245. Submitters comment that there is a significant health and safety risk to people entering across Crown pastoral land, because of farming operations. Leaseholders do not have the resources to monitor access or respond to emergencies should a member of the public find themselves in trouble. To highlight the serious nature of access across this land multiple submitters raised a recent incident which resulted in two fatalities involving persons who had not been authorised to access the land. A number of submitters raise that legal liability is also a concern surrounding public access.

246. Some also submit that increased public access can pose risks to biosecurity, stock and property. Some also comment that the intended purpose of the access has a bearing on the level of risk that it poses. For example, access for the purpose of tramping may carry fewer risks than access for the purpose of hunting. A number of recreation and hunting groups submit that public access needs to allow for vehicle entry and the carrying of firearms and accompanying dogs.

6.4 Alternative mechanisms to tenure review

247. Submitters provide a number of alternative mechanisms to protect vulnerable inherent values and facilitating access across Crown pastoral land. These are outlined later in this section.

248. Many submitters view that there is a need for coordinated programmes for the use of these mechanisms, with suitable avenues for public input, iwi involvement and the necessary funding to support this. Submissions recommend a number of principles for their use:

- They should be appropriately funded and supported by adequate expertise.
- They should be used on a voluntary basis through negotiation with individual leaseholders (this was a generally held view though was not unanimous). It is important to submitters from the pastoral lease community that protective mechanisms and those for access are negotiated on a voluntary basis.
- Iwi should be closely involved in the process, especially if an RFR is considered or land is being disposed of by the Crown. Te Rūnanga o Ngāi Tahu131 supports the use of protection mechanisms on Crown pastoral land and that iwi should be engaged on their creation and use.
- There should be adequate avenues for public input, especially where public funds are being used.
- The use and application of these tools should be monitored to ensure they are being used appropriately and complied with (in the case of legal agreements).

130 Submission reference 2910
131 Submission reference 2758
Whole or partial lease purchases

249. The most commonly recommended alternative is whole or partial lease purchases, both to protect vulnerable inherent values but also to enhance public access. The majority of submitters who recommended this approach view that purchases should be carried out by the Nature Heritage Fund and the purchased lease should then become public conservation land. Areas of the previously leased land that is already developed could first be offered to the relevant iwi and then on-sold through a public auction to fund future purchases.

250. It is acknowledged that this would be costly to the Crown without the ability to offset costs. For example, Environmental Defence Society and Forest & Bird in their joint submission\(^\text{132}\) suggest that the Nature Heritage fund is resourced to $200 million targeted at highly valued leasehold land.

251. Purchases could also be made jointly with private philanthropic parties.

252. For detailed examples of what submitters suggest a system for whole or partial lease purchases could look like, refer to:

- Environmental Defence Society and Forest & Bird’s joint submission.\(^\text{133}\)
- Academic, Ann Brower’s submission.\(^\text{134}\)
- Ecologists, Harding, Head and Walker’s submission.\(^\text{135}\)

A National Revolving Land Fund

253. In its submission the Queen Elizabeth II Trust\(^\text{136}\) suggests that a National Revolving Land Fund could be established, noting that this mechanism has been implemented in other countries. The fund would purchase land, register covenants over areas needing protection so as to protect Crown, public and iwi interest, and then on-sell the land.

Covenants or similar legal agreements to retire areas of land from grazing and/or implement environmental management strategies

254. Many submitters recommend that covenants or similar legal agreements should be used to provide further protections to areas of Crown pastoral land. The Queen Elizabeth II Trust\(^\text{137}\) raises that covenants protect almost 57,500 hectares of Crown pastoral land and that 18 covenants providing for the protection of open space values have been established with 10 more progressing. These covenants are supported by shared management arrangements to ensure regular monitoring, fence maintenance, and pest and weed management are carried out. The Trust seeks to have an ongoing role in the protection of Crown pastoral land and supports the creation of a set of engagement principles to help facilitate the covenancing process.

255. A variety of legal agreements are recommended by submitters. Such as:

\(^{132}\) Submission reference 2743
\(^{133}\) Submission reference 2743
\(^{134}\) Submission reference 2815
\(^{135}\) Submission reference 2816
\(^{136}\) Submission reference 2760
\(^{137}\) Submission reference 2760
• Joint Management Agreements
• Open Space Covenants
• Landscape Covenants such as the Mahu Whenua covenants.

256. These agreements could restrict grazing over certain parts of the leased land or institute management plans that aim to improve environmental outcomes. Part of this voluntary agreement may include payments to offset the loss in production resulting from forgoing the use of productive land and the added cost of maintaining it – one submitter refers to this as ‘stewardship payments’. Another submitter references a past Government policy where “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.”

257. However, a number of submitters strongly oppose the use of covenants predominantly because of the way they have historically been implemented. For example ecologists Harding, Head and Walker comment:

“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.”

**Incentive frameworks for protecting areas of land or providing public access**

258. A number of submitters recommended incentive schemes to promote the protection of important values and the provision of public access. This could also take the form of a rental rebate scheme.

259. One submitter references a model in the European Union 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.*

260. In relation to facilitating access the Walking Access Commission submits that LINZ should:

*investigate providing incentives to pastoral lease holders to encourage them to provide public access. This could be through mechanisms such as rent relief or agreement for commercial access. The Commission and LINZ could use such incentives when lessees seek consents for other land uses. Incentives could be financial and may include other measures, such as opportunities to develop outdoor recreation businesses that support public access.*

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138 Submission reference 2918
139 Submission reference 2811
140 Submission reference 2816
141 Submission reference 2818
142 Submission reference 2742
Create Reserves or establish a Dryland Protection Area

261. Various submitters call for the establishment of protection areas such as a Mackenzie Drylands Heritage Area, a Remarkables National Park or an Otago Tussock/Dryland Conservation Park. This would be complemented by the strategic purchase of whole or partial leases.

262. Two submitters\textsuperscript{143} also comment that there are already mechanisms for the Government to declare land as reserves and that this could be applied to areas of pastoral land with desirable values and suitable access arrangements provided for. Compensation for any lost productivity would likely be warranted in this situation.

Access easements and a public access review arrangement

263. Many submitters note that there needs to be a formal process for the public to express their views on which areas of Crown pastoral land are desirable to access and that this should inform the Commissioner’s efforts to negotiate access with leaseholders - possibly in partnership with DOC and/or the Walking Access Commission.

264. Environmental Defence Society and Forest & Bird in their joint submission suggest a framework that utilises section 60 of the Land Act and is open to the public.\textsuperscript{144}

Put in place a right of first refusal (RFR) to the Crown

265. Two submitters\textsuperscript{145} recommend that there should be a right of first refusal to the Crown whenever a lease is transferred. Effectively this means that prior to a lease being sold the Crown would be offered the lease at its market value.

Closer partnership with leaseholders and ad hoc/lease specific agreements

266. Submitters across all groups express support for practical on the ground active protection programmes through liaison with leaseholders on things such as weed and pest control and wild animals.

267. A number of submitters comment that leaseholders, as longstanding custodians, have proven themselves to be the best agents for protecting areas of Crown pastoral land with high inherent values. The most effective tool is for the Crown to work closer with leaseholders in stewarding this land. In response to the question of what other mechanisms there are to protect inherent values on Crown pastoral land one submitter comments:

\textit{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.}

\textit{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.}

\textsuperscript{143} Submission references 2815 and 2816
\textsuperscript{144} Submission reference 2743
\textsuperscript{145} Submission references 2743 and 2816
technology and applicable methods of management to their own particular environments (all the pastoral leases are different and have varying resource bases). 146

268. Another submitter emphasises that:

although the relationship between the Crown and Leaseholder are fundamentally contractual, as a leaseholder we are already aware and have the desire to protect the natural value of the landscape both in the course of our work on the land as well as to protect the iconic cultural heritage of the High Country landscape. 147

269. One submitter from the pastoral lease community provides an example of a Conservation Agreement, that they have agreed with DOC in relation to the conservation values present on their lease. The submitter states that it was likely unique within Crown pastoral leases “is an example of what can be achieved within present regulation, to the benefit of all parties.” 148

Protection through the discretionary consents process

270. Submitters acknowledge that the importance of the discretionary consent process is heightened with the ending of tenure review as it is now the primary mechanism for land use change of Crown pastoral land. They raise that when considering discretionary consents the Commissioner has the opportunity to ensure that inherent values worthy of protection are excluded from development or protected. In addition to the discretionary consent process being an avenue to prevent development it is also seen as potentially a way to encourage activities that promote the health of inherent values. The process should be conducted in a way that encourages these kinds of activities.

An alternative form of tenure review

271. A number of submitters suggest alternative forms of tenure review where leaseholders could gain greater rights to some of the land in exchange for returning some areas to full Crown ownership. For example, Federated Mountain Clubs in its submission recommends that tenure review should be replaced by ‘Land Purpose Review’. 149

272. Other submitters view that there will need to be a replacement to tenure review in the future but that it should be dealt with separately to the current proposals.

Unformed legal roads, marginal strips and qualifying water bodies

273. A number of submitters recommend that in order to improve access across the estate that the beds of qualifying lakes and rivers should be transferred to DOC; that marginal strips be created along qualifying water bodies; and that adequate information be provided to the public so they can utilise these.

274. Submitters also recommend that the Crown make use of unformed legal roads. For example, the Walking Access Commission submits that the:

146 Submission reference 2859
147 Submission reference 2925
148 Submission reference 2905
149 Submission reference 2747
Commissioner of Crown Lands and LINZ work with Territorial Local Authorities to rationalise public access associated with unformed legal roads. The existence of unformed legal roads is a clear intent to provide access. Many Crown pastoral leases contain Unformed Legal Roads that do not provide practical or sensible public access.\(^{150}\)

**Clarify leaseholders’ right to exclusive occupation**

275. In order to improve public access some submitters suggest that the Crown revisit the 2009 decision that ruled that leaseholders had the right to exclusive occupation of the leased land.

**6.5 Implications of ending tenure review**

276. Prior to releasing the discussion document the Government agreed to end tenure review and to transitional arrangements to deal with the existing leases currently in the process. The transitional arrangements are that, upon the enactment of legislation to end tenure review, all reviews will cease except where a substantive proposal has been accepted by the leaseholder, which will proceed through to implementation in recognition of the fact that those leaseholders have a contractual agreement with the Crown.

277. Submitters were asked if there are any other implications from ending tenure review that the Government should consider. They also provided feedback on the transitional arrangements for ending tenure review which were seen as closely linked to the impacts ending tenure review will have.

278. Submitters from the pastoral lease community generally commented that every leaseholder currently in the process should be given the option to go forward with their review in good faith. This is in recognition of the time and resources they have put into the process and the expectation they have to reach a conclusion.

279. The majority view was presented by the High Country Accord, which submits that:

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

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

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

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

> It will also mean that the Crown will not derive the benefits that have presumably motivated the decision to publish the Preliminary Proposal.\(^{152}\)

280. Many submitters view the impacts of ending tenure review on leaseholders as being downplayed in the discussion document. For example, one submitter states that:

\(^{150}\) Submission reference 2742

\(^{151}\) Submission reference 2771
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.\textsuperscript{152}

281. This statement is echoed by a number of submitters from the pastoral lease community. For example one submitter adds that the “human capital element of the high country and in particular mental health issues”\textsuperscript{153} have not been sufficiently taken into account and should be considered going forward. These submitters also comment on the lost opportunities for the Crown to negotiate outcomes in the public interest, to secure improved access and add land to the conservation estate.

282. However, some submitters view that the transitional arrangements are too generous. A common view among these submitters is that only reviews with accepted substantive proposals should be completed. For example Greenpeace New Zealand recommends all existing reviews cease except ones with signed agreements as any more will result in “further environmental degradation or erosion of public wealth”.\textsuperscript{154} One submission recommends that “any further tenure review agreements should be subject to independent review to ensure that they are consistent with the definition of enduring stewardship”.\textsuperscript{155}

283. Forest & Bird and Environmental Defence Society, in their joint submission, view that during this transitional period LINZ and the Commissioner should change how they analyse submissions when a proposal is advertised for public input.\textsuperscript{156} The groups state that “many of the values being assessed are subjective, and the public perspective as expressed through submissions can help shed light on the degree of significance that might be accorded by the public to landscape and inherent values”.\textsuperscript{157}

284. Ending tenure review is seen by recreational groups as impacting opportunities for hunting and recreation across the high country. The Deerstalkers Association New Zealand\textsuperscript{158} recommend that all reviews (where there is still scope) should relook at the access arrangements to ensure that they are delivering appropriate outcomes for recreationalists. The New Zealand Game Animal Council\textsuperscript{159} notes that as less land will be become public conservation land and be opened up to the public for hunting, this heightens the importance that the future management regime for Crown pastoral land seeks to promote access.

\textsuperscript{152} Submission reference 2860
\textsuperscript{153} Submission reference 2859
\textsuperscript{154} Submission reference 2740
\textsuperscript{155} Submission reference 2816
\textsuperscript{156} Submission reference 2743
\textsuperscript{157} Submission reference 2750
\textsuperscript{158} Submission reference 2755
7. Other themes

7.1 The problem definition and case for change

285. A number of submitters, especially from the pastoral lease community, disagree that there is a case for change and view that the problem definition within the discussion document does not faithfully reflect the reality of what is occurring across Crown pastoral land. Other submitters view that the situation is more severe than is presented in the discussion document and that this should be reflected in the proposals.

286. Multiple submitters contest the statement within the discussion document that “pastoral farming in the wider high country is becoming more intensive. For instance, the stocking rate on high country farms has increased by approximately 30 per cent over the past 10 years.” In response to this an individual submits that this figure does not account for a decline in average effective land area available to pastoral farmers and the relatively moderate 13% rise in stock units in the same period; stating that:

> With respect, the above data and calculations do not appear to support the proposition that “pastoral farming in the wider high country is becoming more intensive” to any extent which is either unreasonable or out of step with the cost pressures faced by such High Country farmers.  

287. Some submissions also raise that the proposals are driven by public opinion and that this does not acknowledge the work that leaseholders are already undertaking to improve outcomes on the land. One individual comments that “it would be easier to accept the need for change for all leaseholders if there was evidence for the need to change (not just vague and not fully informed public concern)” and another asks “where is there loss of inherent values on Pastoral Leases? It is easy to say there is loss but I note a dearth of supportive data.”

288. It is also recommended that the Crown should improve the information it holds about the outcomes across Crown pastoral land, and the broader high country, before making any legislative changes.

289. Other submitters, including ecologists and academics, provide information to demonstrate significant losses of unique ecological values across the estate and how there is a strong need for change. For example, in appendix 3 of ecologists, Harding, Head and Walker’s submission they provide case studies of discretionary consents that resulted in a loss of ecological values. These case studies span the Crown pastoral lease estate. In light of this they submit that: “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” and “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

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160 See page 13 of the Discussion Document Enduring stewardship of Crown pastoral land
161 Submission reference 2885
162 Submission reference 2900
163 Submission reference 2901
164 Submission reference 2771
165 Submission reference 2816
accountability to these stakeholders for outcomes”; the proposals within the discussion document are not viewed as going far enough to deliver this. Submitters also provide evidence of intensification specific to the Mackenzie Basin.166

290. Finally, some submitters comment that restrictions in response to the perceived failings of tenure review are being imposed on leaseholders who have not completed the process. One individual comments:

stop attacking Pastoral Lessees not in Tenure Review on the basis of perceived losses due to what has happened under Tenure Review. Those outside the process are not accountable for the changes evident in the High Country following Tenure Review.167

7.2 The Mackenzie Basin and dairy farming

291. A large group of submitters raise serious concerns with dairy conversions in the Mackenzie Basin – especially regarding Crown pastoral land that is currently in the tenure review process or former Crown pastoral land that is now freehold. Many outline their past experience of the area and the land use changes that have occurred over the past decades which they see changing the landscape of the Mackenzie Basin.

292. They support the Government’s decision to end tenure review but view that the proposed transitional arrangements do not go far enough and recommend that all reviews in the process be ended immediately in order to prevent any further dairy conversions.

293. In general these submitters disagree with any expansion of dairy farming in the high country context. One submitter raises that:

It is distressing to see marginal farmland being turned into green pasture by massive use of irrigation, no doubt even more fertiliser and supplementary feedstock. Industrial dairy farming destroys not only natural resources, but also the amenity character of the landscape. While it may be to the marginal benefit to the land owner or leaseholders directly, it creates further dependency on imported, non renewable (phosphate), or ecologically not sustainable ingredients (palm kernel expeller, nitrogen fertiliser, fuels for transport).168

294. Some of these submitters note their preference for extensive pastoral farming on this land:

Dryland pastoral [farming] is an effective way to manage the land and retain its beauty. It does not require high water usage and large inputs of agrichemicals and does not produce high effluent output. Therefore it is the least damaging to the environment - a way to safeguard both the land and the water of this area which is a national treasure.169

295. As such many of these submitters recommend that dairy conversions and livestock intensification should be a prohibited activity on Crown pastoral land. They submit that increased livestock numbers deteriorate waterways, contribute to climate change through greenhouse gas emissions, and contradict New Zealand’s ‘clean green’ reputation.

296. These submissions also raise that the Government has a strong responsibility to future generations and to the public to manage Crown pastoral land in the best interest of New Zealanders. Submissions link

166 Submission reference 2815
167 Submission reference 2901
168 Submission reference 3052
169 Submission reference 3050
this to the ownership interest of the Crown in the land with Crown pastoral lease land often being characterised as public land.