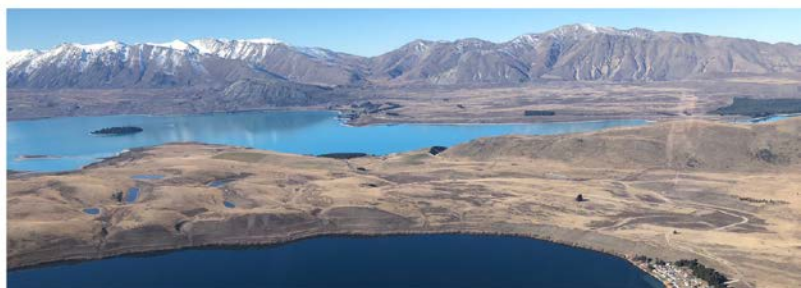


# Discussion Document

## Enduring stewardship of Crown pastoral land

Land Information New Zealand

February 2019



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## Foreword

The South Island high country is one of New Zealand's most iconic landscapes and a taonga for many New Zealanders.

The Crown owns approximately 1.2 million hectares of Crown pastoral land, most of which is located within the high country and leased for pastoral farming. The decisions the Crown makes about this land have a direct impact upon environmental, cultural and economic outcomes in the high country.



Pastoral farming in the high country is an important part of New Zealand's cultural heritage and generates both environmental and economic benefits. Pastoral leaseholders have an important ongoing role in helping steward Crown pastoral land.

There have been a number of changes in New Zealand's environmental, economic and social context that affect how Crown pastoral land should be managed. We have an improved understanding of ecological and landscape values in the high country, but there are also increased pressures on the land from changes in farming practices and greater diversity of commercial activities.

I am aware of increasing public concern that there has not been enough focus on preserving the ecological, biodiversity and landscape values of Crown pastoral land, especially in relation to land moving out of pastoral leases to full private ownership through tenure review.

The Government has a responsibility to respond to these changes and concerns. I want to ensure that Crown pastoral land is managed in a way that preserves and enhances its significant natural and social capital for future generations. The ongoing health of Crown pastoral land also underpins New Zealand's economic success – for instance, tourism relies on the beauty and health of our natural environment and our primary industries rely on the ecosystem services that biodiversity supports.

For this reason, the Government has decided to end the tenure review process for Crown pastoral land. This will require the Crown to take on a stronger enduring stewardship role for Crown pastoral land, working closely with leaseholders, iwi and stakeholders to manage this land in the best interests of all New Zealanders, now and into the future.

We also need to strengthen the regulatory system that governs the management of this land. That includes clarifying the outcomes we want for Crown pastoral land, and ensuring the system fully supports achievement of those outcomes. This discussion document sets out a number of proposed changes to the Crown pastoral land regulatory system to support better decision-making about, and management of, Crown pastoral land.

Leaseholders, iwi and the wider public all have a strong interest in the management of Crown pastoral leases and I want to understand your views on the proposals in this document and welcome your feedback.

Nāku noa, nā

Hon. Eugenie Sage

Minister for Land Information

# Executive summary

## Purpose

This discussion document sets out a number of proposed changes to the Crown Pastoral Land Act 1998 (CPLA) and the Land Act 1948 (Land Act) to ensure that the Crown can take an enduring stewardship role in relation to Crown pastoral land and manage it in the best interests of all New Zealanders.

It follows a Government decision to end the tenure review process, which has seen significant amounts of Crown pastoral land moving out of pastoral leases to become freehold land.

Broadly, the Government is seeking your feedback on:

- some of the implications of ending tenure review
- the outcomes the Crown is seeking for Crown pastoral land
- what changes should be made to the Crown pastoral land regulatory system to achieve those outcomes.

You can make a submission up until 5pm, Friday 12 April 2019.

Details of the submission process can be found in Section 7.

After this consultation, submissions will be used to inform advice to the Government to support decision making, which will lead to the introduction of a Bill to Parliament to change the law. The public will have a second opportunity to comment on proposals when the Bill is considered by a Parliamentary Select Committee.



## Crown pastoral land

The Crown owns approximately 1.2 million hectares of Crown pastoral land, mostly in the iconic South Island high country and comprising almost five per cent of New Zealand's total land area. Much of this land is leased by the Crown for pastoral farming. The decisions the Crown makes about pastoral leases have a direct impact upon environmental, cultural and economic outcomes in the high country.



## Changes are needed to the management of Crown pastoral land

Many of the decisions made by the Crown on the management of Crown pastoral leases are made under the CPLA. However, there have been significant environmental, economic and social changes in the high country since the CPLA was introduced. These changes include greater recognition of how land use impacts on indigenous biodiversity and landscape values, changes in farming practices, and more diverse commercial activities.

In addition, the CPLA was enacted with the intention that the Crown would eventually exit from its role as lessor of Crown pastoral land, with the land either being bought by leaseholders or being returned to full Crown control (mainly by becoming public conservation land) through a process known as tenure review. This was based on a belief that changing the tenure of the land would result in better environmental, social and economic outcomes. However, 20 years on, over half of this land remains under Crown pastoral lease and it is likely the Crown will remain a long-term landowner of Crown pastoral land.

The Crown now needs to clarify what it wants to achieve in relation to Crown pastoral land in this changed context, to ensure that this land is managed in a way that maintains and enhances its significant natural and social capital for present and future generations. It's also necessary to ensure that the Crown pastoral land regulatory system enables this to happen.

## Ending tenure review

The tenure review process has not resulted in the Crown exiting its role as a lessor of Crown pastoral land, as was intended when the CPLA was enacted. Over 20 years later, approximately 1.2 million hectares of the Crown pastoral estate remains and tenure reviews are becoming less frequent. The process is slow and costly to both leaseholders and the Crown.

More critically, while tenure review has enabled the creation of new conservation parks, it has also resulted in over 350,000 hectares of former Crown pastoral land becoming freehold land. This has allowed intensified activity on that land and added to public concern about the loss of biodiversity and landscape values in the high country. In effect, the tenure review process has reduced the environmental protection for land that has been freeholded.

The Government has therefore decided to end tenure review to ensure the Crown can protect the natural, social and cultural values of the land by retaining ownership of Crown pastoral land, while providing for continued pastoral and appropriate non-pastoral activities that maintain and enhance the natural capital in Crown pastoral land.<sup>1</sup>

Inherent values worthy of protection exist on many leases – especially ecological values. Ending tenure review will remove the primary mechanism for adding Crown pastoral land with these values to New Zealand's public conservation estate. The Government wants to seek views on alternative options for protecting these values on Crown pastoral land, once tenure review is ended.

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<sup>1</sup> This will affect reviews undertaken under Part 2 and Part 3 of the CPLA 1998.

## The proposed changes

With tenure review ending, and the remaining Crown pastoral land continuing to be managed under the Crown pastoral land regulatory system, it will be critical that this system supports effective management.

The Government wants to clarify what this management looks like, working closely with Crown pastoral leaseholders, iwi and other interested parties to steward the land in a way that maintains and enhances its significant natural, social and cultural values for present and future generations.

The Government also wants to ensure that the Crown pastoral land regulatory system enables this to happen.

The Government is therefore seeking feedback on the following proposals.

- Proposal 1: Include a new set of outcomes for Crown pastoral land within the CPLA (see **Section 2** of this document).
- Proposal 2: Require that the Commissioner of Crown Lands (the Commissioner) develop a regular Statement of Performance Expectations, approved by the Minister for Land Information (see **Section 3** of this document).
- Proposal 3: Explicitly provide for the Commissioner to publicly release guidance and standards to assist officials and leaseholders to understand and comply with the legislative requirements (see **Section 3** of this document).
- Proposal 4: Require the Commissioner to give effect to the outcomes in any discretionary consent decisions (see **Section 4** of this document).
- Proposal 5: Require the Commissioner to obtain expert advice and consult as necessary on discretionary consent applications (see **Section 4** of this document).
- Proposal 6: Update the fees and charges framework (see **Section 4** of this document).
- Proposal 7: Require the Commissioner to regularly report against a monitoring framework (See **Section 5** of this document).

**Section 6** provides a preliminary assessment by LINZ of the implications of each of these proposals, including an assessment of a number of alternatives. We welcome your feedback on this table to assist with further analysis of the impacts of these proposals.

Figure 1 below summarises the proposed changes.

**Figure 1: Proposed changes to the Crown pastoral land regulatory system**



The Government is not currently proposing any changes to how rents for Crown pastoral leases are calculated, and the rental regime is out of scope of this document.

A full summary of the proposed changes to the Crown pastoral land regulatory system and the alternative options considered is set out in Section 6.

The Government is seeking your feedback on these proposed changes.



# Introduction

The Government is seeking your views on proposed changes to the way Crown pastoral land is managed.

## The South Island high country

The South Island high country (high country) is one of New Zealand's most iconic landscapes and a taonga for many New Zealanders. Characterised by expansive tussock grasslands, beech forests, snow-topped mountain ranges and braided rivers, the high country is a place of rich heritage and cultural values. It is home to a mosaic of habitats and ecosystems that support rare indigenous wildlife and vegetation. It also supports communities through economic activities such as pastoral farming and tourism.

Pastoral farming is a significant part of the high country's cultural heritage. Many leaseholders have a strong connection to the land, with some families having farmed the land for generations. Farmers have an important role in managing and protecting the land, for instance by combating invasive weeds and pests. In addition, farming activities on Crown pastoral land make an important contribution to New Zealand's economy, support regional economies and communities, and help provide jobs to local people.

Māori have a deep connection to, and history in, the high country. Throughout the high country there are sites with significant cultural values, such as waterways, traditional food gathering sites and access ways. This land contains maunga, awa, roto, mahinga kai, wāhi tapu and wāhi taonga sites, and taonga species important to Māori. As such, unimpeded access to these sites is important to Māori. Māori also have an important kaitiaki role in relation to high country public conservation land.

## The Crown's role in the high country

The Crown's role in the high country dates back to the 1800s when it first purchased land in the high country from Māori.<sup>2</sup> The Crown began leasing this Crown pastoral land to farmers in the 1850s.

Crown pastoral land has a long history of poor environmental outcomes. In the early 1900s it was described as wasteland with the spread of rabbits reaching "plague proportions", widespread soil erosion, and exotic vegetation crowding out indigenous tussock lands.<sup>3</sup>

The Land Act 1948 (Land Act) was introduced to promote better stewardship of the land by providing leaseholders with security of tenure, giving them the incentive to take a longer-term approach to managing the land, including protecting the natural capital on which pastoral farming relies - specifically through the management of soil erosion and quality.

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<sup>2</sup> These purchases were not without controversy - Ngāi Tahu chiefs raised issues immediately about the methods used in purchasing their lands, including that land they wished to keep was included in the purchases.

<sup>3</sup> McIntyre R (2007) *Historic heritage of the high-country pastoralism: South Island up to 1948* Wellington: Science and Technology Publishing, Department of Conservation.



## Natural capital

Natural capital can be thought of as the aspects of our environment that sustain society's present wellbeing and improve intergenerational wellbeing. This includes land, soil, water, biodiversity, minerals, energy resources, and ecosystem services (the benefits that humans gain from the natural environment and from properly-functioning ecosystems).

Natural capital is one of the four capitals in the Treasury's Living Standards Framework, alongside human, social and financial/physical capitals. The four capitals are interdependent and together support the wellbeing of New Zealanders. Environmental degradation may impact on multiple capitals. For example, threats to biodiversity have the potential to reduce social and physical capital as well as natural capital.

More information about the Living Standards Framework can be found on the Treasury's website.<sup>4</sup>

The Crown Pastoral Land Act (CPLA) was enacted in 1998 and introduced the process of tenure review, which provides an opportunity for some leased land to be purchased by the leaseholder as freehold land, and some to be restored to full Crown ownership (primarily as public conservation land). At the time, this was seen as the best way to free up land suitable for broader economic use while providing greater protection for particularly important or valuable land.

More information about the Crown's historic role in the high country can be found in Appendix 2.

Central and local government have a number of roles in the management of the high country.

The two main managers of Crown land in the high country are:

- the Department of Conservation (DOC) which manages public conservation land

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<sup>4</sup> See <https://treasury.govt.nz/information-and-services/nz-economy/living-standards>.

- Land Information New Zealand (LINZ), which manages Crown pastoral land and other Crown-owned land under delegation from the Commissioner, such as the beds of many lakes and rivers.

The changes proposed in this discussion document only relate to Crown pastoral land.

## Crown pastoral land

The Crown owns approximately 1.2 million hectares of Crown pastoral land, mostly in the South Island high country, comprising almost 5 per cent of New Zealand's total land area. The Crown leases much of this land for pastoral farming. Its decisions about these leases have a direct impact on environmental, cultural and economic outcomes in the high country.

Crown pastoral leases are perpetually renewable, with 33-year terms, which means that the leaseholder enjoys exclusive possession of the land indefinitely. The leases provide a right to pasturage over the land and a right to quiet enjoyment. Leaseholders own any improvements to the land, such as buildings and fencing, and also those that are part of the land, such as enhancements made to soil quality.

Only a limited range of activities are permitted on Crown pastoral land. The leaseholder can only use the land for pastoral farming (i.e. the grazing of stock, such as sheep, cattle, deer) and cannot disturb the soil without consent from the Commissioner of Crown Lands (the Commissioner). Similarly they must obtain consent to burn vegetation or increase the number of stock they can have on the land.

The Commissioner can grant easements<sup>5</sup> over pastoral land, and recreation permits for certain non-pastoral commercial activities, such as tourism, hunting, skifields or filming - these are separate legal rights to the pastoral lease. Leaseholders also have to keep the land free from wild animals, rabbits, and other vermin, and comply with the Biosecurity Act 1993

There are currently 171 Crown pastoral leases. The majority are located across Canterbury and Otago with the remainder located across Marlborough, Southland and Westland. The majority of these are within the *takiwā* (tribal territory) of Ngāi Tahu with the remainder within that of Te Tau Ihu (the top of the South Island) iwi. A map of all the current pastoral leases can be found in Appendix 1.<sup>6</sup>

## How Crown pastoral land is regulated

The Crown pastoral land regulatory system is created by two pieces of legislation: the **Crown Pastoral Land Act 1998** and the **Land Act 1948**.

This regulatory system can be divided into four areas:

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<sup>5</sup> An easement is a right agreed between a landowner and another party to use a property for a particular purpose, and can be registered against the property's title. There are additional considerations to the granting of easements over Crown pastoral land within the CPLA.

<sup>6</sup> In addition to pastoral leases, the Crown administers a limited number of special leases over pastoral land. These are a separate form of tenure to Crown pastoral leases, but also enable pastoral farming or other uses. Special leases are also subject to the CPLA and Land Act and will be affected by the following proposals. Another form of tenure was the pastoral occupation licence, which was for a limited term. These licences have now all expired.

- **Tenure review:** Tenure review is a voluntary process that provides for land with significant inherent values<sup>7</sup> or that is required by the Crown for some other purpose to be removed from a lease and returned to full Crown ownership (mainly as public conservation land); and for the remainder of the land to be freehold and sold to pastoral leaseholders. There are detailed procedural requirements for tenure review within the CPLA.
- **Discretionary consents:** The discretionary consents process enables leaseholders to seek permission from the Commissioner to undertake activities on the land beyond those permitted under the terms of their lease, such as cultivation, clearing vegetation, top dressing, tracking, or burning. This process also enables leaseholders, and other applicants, to apply for recreation permits or easements – for instance to allow them to run tourism ventures.
- **The rental regime:** The rental regime sets out how the Crown calculates rents on Crown pastoral land.
- **Statutory land administration:** This relates to how leases can be renewed, transferred or subleased, as well as the statutory obligations on leaseholders as set out in the Land Act.<sup>8</sup>

**The Commissioner of Crown Lands** is a key part of the Crown pastoral land regulatory system. The Commissioner is an independent statutory officer who effectively acts as the landlord to leaseholders on behalf of the Crown. The Commissioner's duties include administering the leases, conducting the tenure review process, and administering the discretionary consents system. The Commissioner is bound by the Land Act and CPLA. The Commissioner also has a range of other land management responsibilities beyond the scope of this discussion document.

### **The Commissioner of Crown Lands as an independent statutory officer**

The Commissioner of Crown Lands plays an essential role in safeguarding the Crown's interests in relation to Crown pastoral land as well as upholding New Zealanders' property rights.

The Commissioner exercises rights of ownership and has statutory responsibility for Crown land held under the Land Act 1948. In relation to Crown pastoral land this includes:

- being the landlord for Crown pastoral land and other Crown land
- approving activities on Crown land
- overseeing the tenure review process.

The Commissioner is an independent statutory officer, and the integrity of the current Crown pastoral land system is heavily reliant on the Commissioner being able to exercise their decision making powers within the legislative framework and without undue

<sup>7</sup> Section 2 CPLA 1998: Significant inherent value, in relation to any land, means inherent value of such importance, nature, quality, or rarity that the land deserves the protection of management under the Reserves Act 1977 or the Conservation Act 1987.

<sup>8</sup> For example under section 99 of the Land Act, leaseholders are required to "farm the land diligently and in a husbandlike manner according to the rules of good husbandry, and will not in any way commit waste".

influence – while ensuring that they have fully considered all the impacts of their decision making. This is particularly critical as many of the decisions made by the Commissioner impact on individual property rights and can have commercial implications – as well as having significant environmental impacts.

Other regulation applying to Crown pastoral land includes the following.

- **The Resource Management Act 1991 (RMA)** - this applies to Crown pastoral land, just as it does to any other land. Under the RMA, activities involving the use of land, and the taking or discharge of water or discharges of contaminants to soil, water or air, as well as management of soil erosion, are managed through a combination of provisions in district and regional council plans (and resource consents issued under those plans). Sometimes consent for an activity may be required from both the Commissioner as landowner and from councils under the RMA.
- **The Biosecurity Act 1993** – this is administered by the Ministry for Primary Industries (MPI) and provides the legal framework for MPI and others to help keep harmful organisms out of New Zealand. The Act provides for long-term pest management on all land including Crown pastoral land, through national and regional level plans. It also gives MPI and other agencies a wide range of powers to deal with harmful organisms to stop their establishment and spread.

In addition to the above regulations, the Crown has both a number of specific obligations to iwi as the result of Treaty settlements and general obligations arising from the Treaty partner relationship. For example the Ngāi Tahu Claims Settlement Act 1998 includes many statutory acknowledgements, which provide for deeds of recognition that recognise the particular cultural, spiritual, historical and traditional association of Ngāi Tahu with statutory areas as set out in the act. These areas often cover Crown-owned lakebeds and riverbeds, and can be contiguous with Crown pastoral land.

## The changing context for Crown pastoral land

The environmental, economic and social context for Crown pastoral land management has changed since the Land Act and CPLA were enacted.

- There is greater recognition of the loss of dryland ecosystems and the importance of areas that remain. The focus on conserving the soil and managing pests (as was the case when the Land Act was enacted in 1948) has shifted to broader concerns about preserving New Zealand's indigenous biodiversity through the protection of areas and species, including their habitats, from pressures that threaten them. Drylands that might previously have been seen having low natural value are now more widely recognised as ecologically important.
- There is greater recognition that decisions about land use cannot be considered in isolation and must take account of interdependencies within a landscape and ecosystem. Decisions made in relation to individual leases or individual activities can have a cumulative impact that needs to be reflected in decision making.
- The economics of pastoral farming have changed. As a result, 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.<sup>9</sup>

- Farming in the wider high country is diversifying, with an increase in dairy farming and in viticulture and horticulture on private freehold land.
- Economic activity in the high country is also diversifying. The significant recent increase in international visitor numbers has seen the development of tourism activities such as farmstays, canyoning, fishing, hiking, heli-skiing, and mountain biking. At the same time, New Zealand's international tourism offering is heavily dependent on the quality of our natural environment.
- A wide range of stakeholders, recreational users, and environmental groups, and iwi as Treaty partners have increasingly sought to have their interests in Crown pastoral land recognised and to have a greater say in how it is used and managed.

## The result of this change

There has been increasing public concern about a loss of indigenous biodiversity and changes in some high country landscapes from more intensive land uses.

There are many examples of environmental degradation and the associated erosion of natural capital in specific places throughout the high country.



### A changing context: The Mackenzie Basin

The Mackenzie Basin is characterised by open landscapes, rolling tussock grasslands, hill and mountain backdrops, large braided rivers and unique biodiversity. The Basin contains rare glacially-derived, dryland ecosystems that are not found anywhere else in the world. These ecosystems provide habitat for dozens of threatened and at-risk species, many of which are found only in the Basin. Te Manahuna - the Mackenzie region - also holds special significance to Ngāi Tahu, and frames Aoraki.

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<sup>9</sup> Beef + Lamb New Zealand. Sheep and Beef Farm Survey - Performance Indicators Per Farm Analysis: Class 1 S.I. High Country - New Zealand. In Beef + Lamb New Zealand Economic Service. Retrieved from <https://beeflambnz.com/data-tools/sheep-beef-farm-survey>.

The Basin has seen significant changes in land use, often resulting in the loss of ecological and natural landscape values. It is estimated that, between 2009 and July 2016, 34,000 hectares of the Mackenzie Basin were changed from indigenous cover to exotic cover.<sup>10</sup> During this time the viability of the populations of a long list of indigenous plant and animal species have declined with many species found in the Basin now on the brink of extinction or classified as under threat. These include the robust grasshopper, which is endemic to the Mackenzie Basin, and the kakī/black stilt, of which there are estimated to be only 132 wild adults remaining in New Zealand.

These changes in land use have coincided with changing ownership patterns due to tenure review, emerging irrigation technologies and shifts in farm economics. Those that manage and regulate land use in the Mackenzie Basin, whether under the RMA or the CPLA, face a complex task of reconciling tensions between land use intensification and the protection of ecological and landscape values.

The management of the remaining Crown pastoral land in this area is an important part of ensuring successful environmental and community outcomes for the Mackenzie Basin.

It is also likely that the Crown's management of Crown pastoral land has contributed to this erosion of natural capital over time by enabling more intensive land use.

Tenure review has been associated with land use intensification in the high country, primarily because it has resulted in the transfer of around half the land into private freehold ownership. This freeholded land has then often been used for more intensive farming - sometimes with higher stocking rates and irrigation to support the growth of exotic pasture.

In addition, decisions on applications for discretionary consents - for example through the approval of vegetation clearance - have contributed to changes in the type and intensity of land use.

Even actions to try and manage the impact of pests have had some adverse impacts on indigenous mahinga kai resources of value to Ngāi Tahu. For example, attempts to eradicate rabbits have impacted significantly on weka in the high country.

However, it is difficult to assess the degree to which the Crown pastoral regulatory system has contributed to poor environmental outcomes, because the system does not collect data on the impacts or the cumulative effect of decisions. This lack of understanding of system-wide impacts was highlighted in a recent review of the regulatory system carried out by LINZ.

## **Review of the Crown pastoral land regulatory system**

Last year, LINZ undertook a review of the Crown pastoral land regulatory system, which assessed the system's performance and made recommendations on improving it. As part of this process, LINZ engaged with Ngāi Tahu as Treaty partners and a range of stakeholders including leaseholders and their representatives, environment groups, and other government agencies.

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<sup>10</sup> Exotic cover can include exotic grasses or invasive species such as wilding pines. Source: <https://www.environmentcourt.govt.nz/assets/Documents/Decisions/2017-NZEnvC-053-Federated-Farmers-of-NZ-v-Mackenzie-District-Council.pdf>

The review found that many of those who provided their views did not believe the system was delivering ecological sustainability, and that aspects of the system were assisting land use change and intensification in a negative way.

The review concluded that the system focuses too strongly on operational considerations and transactions, without a clear sense of what outcomes it should be achieving. The impacts of decisions are not being monitored, and information is not being collected on system performance. In addition, decisions are not required to consider the outcomes of previous decisions, the cumulative impact of multiple decisions, or effects on other areas of the high country.

The review recommended that government more clearly articulate the outcomes it wants to achieve and to make changes to ensure the Crown pastoral land regulatory system can work to support those outcomes.

A number of other improvements were recommended, including collecting better information, improving monitoring, improving processes, and looking at how the Crown pastoral land regulatory system relates to the resource management, conservation, and overseas investment systems.

The published regulatory review can be found on the LINZ website.<sup>11</sup>

## **Current and planned improvements to the system**

LINZ and the Commissioner are already working to address some of the issues identified through the regulatory system review – including improvements to the processing of discretionary consent applications, compliance monitoring for high-risk activities, and taking a more active role in pest and weed control in the high country.

LINZ is also making improvements to the system through collaboration among government agencies, and between agencies and leaseholders. In particular, collaboration in the Mackenzie Basin between agencies with regulatory oversight (LINZ, DOC, Environment Canterbury, Mackenzie District Council and Waitaki District Council) is helping ensure that decisions about consents and land use are being made in a joined-up way that recognises ecological and landscape values alongside pastoral stewardship.

Work is also under way to enable stakeholders to have a greater say in the management of Crown pastoral land. The High Country Advisory Group was recently established to provide advice and insights to the Commissioner and LINZ to enable greater transparency and communication in the management of Crown land in the high country. The Advisory Group will also look for collaborative projects, identify examples of good practice and recommend activities to support work programmes.

While these “within system” changes are important, they will not address the fact that the legislation governing the system does not clearly set out the Crown’s desired outcomes for Crown pastoral land, nor address concerns about the loss of natural and landscape values resulting from the current tenure review and discretionary consents processes.

## **Ending tenure review**

Tenure reviews are conducted by the Commissioner and LINZ manages the process on the Commissioner’s behalf (as set out in Appendix 3).

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<sup>11</sup> <https://www.linz.govt.nz/news/2019-02/managing-our-regulatory-systems>

Tenure review has generated some positive environmental outcomes. In particular, tenure review is one of the main ways in which land is added to the conservation estate. As at December 2018, approximately 666,000 hectares of land has been through tenure review. Of that, approximately 313,000 hectares of land was retained by the Crown with the majority becoming public conservation land. The remainder has been freeholded and purchased by the leaseholder. In some cases, a portion of this freeholded land is subject to protective covenants.

Tenure review has contributed to the formation of a number of high country parks and improved public access and recreation in the South Island high country.

However, tenure review has also resulted in approximately 353,000 hectares of former Crown pastoral land becoming freehold land. This has allowed intensified activity on that land and added to public concern about the loss of biodiversity and landscape values in the high country.<sup>12</sup>

In addition:

- tenure review has not resulted in the Crown exiting its role as a lessor of Crown pastoral land, as was intended when the CPLA was enacted. Over 20 years later, approximately 1.2 million hectares of the Crown pastoral estate remains and tenure reviews are becoming less frequent
- tenure review is slow, with an average review taking upwards of four years and some taking 10 to 20 years. Tenure review is a multi-staged process that involves identifying all inherent values on the land and then consulting on possible outcomes before proposals are put to the leaseholder. There can be high levels of uncertainty for leaseholders, if the tenure review process is especially complicated. Engaging in a lengthy process has implications for leaseholders' livelihoods.
- stakeholders have consistently raised issues with tenure review, in particular that decisions do not adequately take account of environmental values or New Zealanders' desire to access the high country and that the Crown should receive a significantly higher return from leaseholders for land being freeholded.

The Government has therefore made the decision to end tenure review to:

- increase the Crown's ability to protect the natural and cultural values of the land by retaining Crown pastoral land in Crown ownership, while providing for pastoral and appropriate non-pastoral activities that maintain and enhance the natural capital in Crown pastoral land.
- send a clear message that the Crown is committed to the ongoing ownership and enduring stewardship of Crown pastoral land.

Ending tenure review will result in savings for the Crown (specifically LINZ) as it will no longer administer the tenure review process (bearing in mind that there will be some costs associated with transitional arrangements). It would also mean leaseholders do not expend considerable time and resources in tenure reviews that do not proceed through to completion, as happens in some cases. Ending tenure review reflects the Government's support for the continuation of extensive pastoral farming, which the pastoral lease system provides for.

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<sup>12</sup> For instance, in 2018, the *The Mackenzie Basin: Opportunities for Alignment* review report identified stakeholder concerns that tenure review could be compromising conservation and biodiversity values.

## **Managing the existing pipeline of tenure review applications**

As at 11 December 2018, there were 34 leases in tenure review. Of these, eight leaseholders have accepted a substantive proposal by the Crown. Once accepted by a leaseholder, a substantive proposal is a binding contract and creates an obligation on the Commissioner to implement a tenure review.

It usually takes 12 to 18 months following acceptance of a substantive proposal to implement a tenure review, while surveying and fencing is completed and the freehold title is issued. With tenure review ending, there will be some leaseholders who have accepted substantive proposals from the Crown who will not have completed the implementation process before new legislation is enacted.

The Government has decided that where a substantive proposal has been accepted by the leaseholder prior to the legislation being passed, it proceed through to implementation. This recognises the contractual agreement those leaseholders have with the Crown.

More broadly, until any legislative change is enacted, the Commissioner and officials are legally required to continue to apply the current legislation in relation to tenure review. During this time the Commissioner will prioritise their efforts, to reflect the resources available to administer the process.

## **Other implications of tenure review**

There will be a number of implications relating to ending tenure review that the Government is keen to get broader feedback on. These are set out in Section 1 below.

## **The purpose of this document**

The end of tenure review will mean that the remaining Crown pastoral land will continue to be managed under the Crown pastoral land regulatory system. It is therefore critical that the issues identified by the regulatory review are addressed.

This discussion document sets out proposed additional changes to the Crown pastoral land regulatory system to help address the identified issues and ensure Crown pastoral land is managed in the best interests of all New Zealanders. It also seeks your feedback on some aspects of the implementation of ending tenure review.

The Government is not currently proposing any changes to how rents for Crown pastoral leases are calculated, and the rental regime is out of scope of this document.

Broadly, the Government is seeking your feedback on:

- the outcomes the Government is seeking for Crown pastoral land
- what changes need to be made to the Crown pastoral land regulatory system to achieve those outcomes.

You can make a submission up until 5pm, Friday 12 April 2019.

Comments and information gathered through submissions will inform advice to the Government on potential changes to CPLA and Land Act. If the Government decides to proceed with legislation, there will be a further opportunity for public comment when a Parliamentary Select Committee considers a Bill.



# Section 1: Managing the implications of ending tenure review

The Government is seeking your views on how best to manage some of the implications of ending tenure review.

## 1.1 Protecting inherent values after tenure review is ended

Inherent values worthy of protection exist on many leases. Inherent values, as defined within the CPLA, include cultural, ecological, historical and recreational characteristics of the land. Tenure review has provided a tool to protect these values – particularly ecological values – by adding areas of Crown pastoral land to New Zealand's conservation estate. Ending tenure review will remove the primary mechanism by which land is currently added to the conservation estate.

It is expected that the other changes proposed in this document (sections 2-5) will improve the protection of inherent values on Crown pastoral land through a more effective regulatory system. However, there is likely to be some land with particularly important inherent values that needs additional protection to ensure these values are not eroded.

With tenure review removed, there will still be two ways to provide this extra protection.

- Protective mechanisms like covenants to protect inherent values or easements to secure access
- Purchasing the leaseholder's interest in the land so that it can be protected within the conservation estate

### Protective mechanisms on Crown pastoral land

Mechanisms such as covenants are generally used to help protect biodiversity on private land. They can also be applied to Crown pastoral land with the agreement of the leaseholder.

Currently, during the process of tenure review, the Commissioner can propose a number of different covenants with the leaseholder to help protect freeholded land.<sup>13</sup> The Commissioner can also propose easements during the process to help secure access – see below.

The protection offered by a covenant depends on the conditions that are put in the covenant. Possible conditions include fencing off the area from stock, preventing harvesting/clearing of indigenous species, and prohibiting planting exotic species. For example, the Queen Elizabeth II (QEII) National Trust Act 1997 provides for covenants that can be used to protect native biodiversity values (currently prioritising wetlands,

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<sup>13</sup> As part of tenure review, the Commissioner can propose plans that designate the following protective mechanisms over land: an easement under section 12 of the Reserves Act 1977, an easement under section 7(2) of the Conservation Act 1987, an easement under sections 26-29 of the Walking Access Act 2008 (for access, not necessarily protection), a covenant under section 22 of the Queen Elizabeth the Second National Trust Act 1977, a covenant under Section 77 of the Reserves Act 1977, a covenant under section 27 of the Conservation Act 1987, a covenant under section 39 of the Heritage New Zealand Pouhere Taonga Act 2014, a sustainable management covenant under section 97 of the Crown Pastoral Land Act 1998.

sand dune systems, and indigenous lowland ecosystems<sup>14</sup>), as well as historical and archaeological sites or areas with high scenic and recreational values.<sup>15</sup>

Covenants can only be used with the agreement of the leaseholder and the Commissioner. They are also subject to funding, and the agreement of the covenanting body (for instance, QEII National Trust and Heritage New Zealand Pouhere Taonga).<sup>16</sup>

### **Purchasing Crown pastoral land**

Alternative tools currently in the Land Act 1948 can be used to purchase parts of pastoral leases (or whole leases) from leaseholders. Once purchased, the land can be added to the public conservation estate to be protected by DOC.

These purchases would be dependent on the willing agreement of the leaseholder and anyone else with a registered interest in the land, and also require the necessary funding. For example, a leaseholder may effectively 'sell' part of a pastoral lease under section 145 of the Land Act 1948 to the Commissioner of Crown lands.<sup>17</sup> Payment would be worked out on a case-by-case basis, but unlike tenure review (where the cost to the Crown is currently offset by selling part of the land to the leaseholder) any purchases would require significant public funding.



### **QEII National Trust covenant on Crown pastoral land**

A QEII covenant has been used to create the 'Mahu Whenua' conservation initiative over four Crown pastoral lease properties in Central Otago: Motatapu Station, Mount Soho Station, Glencoe Station and Coronet Peak Station. This land covers an area of 55,522 hectares, of which 92 per cent is covenanted.

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<sup>14</sup> <https://qeii-national-trust.org.nz/protecting-your-land/>

<sup>15</sup> <https://qeii-national-trust.org.nz/protecting-your-land/frequently-asked-questions/#1516068923097-ad4a5849-1369>

<sup>16</sup> All the covenants or easements that can be negotiated in tenure review and applied to freehold land can also be used on Crown pastoral land if needed. The only exception is the sustainable management covenant under section 97 of the CPLA. Sustainable management covenants are not needed on Crown pastoral land because they are designed to replicate some of the protective mechanisms of Crown pastoral land on freehold land after tenure review.

<sup>17</sup> Technically this is the leaseholder surrendering part or the whole of the lease

The QEII covenant is part of efforts to protect the land and restore biodiversity by:

- retiring stock from land
- tree planting and vegetation establishment with over 2.2 million trees or seed balls planted from 2005-2015 over 500 hectares
- pest and predator control and eradication with over 6000 goats, 5000 possums, as well as deer, rabbits and hares destroyed
- weed control and eradication, primarily of various species of wilding pines
- reintroduction of birdlife such as weka, blue duck, mohu (bush canary), kereru, kaka, saddleback, takahe, and kiwi in cooperation with DOC and Ngāi Tahu
- the development of 23 public walking trails and three huts as part of the Te Araroa Trail.<sup>18</sup>

### **Purchasing Crown pastoral land to add to the conservation estate**

The Crown purchased the St James pastoral lease outright in 2008, through the Nature Heritage Fund (serviced by DOC). This land, comprising 79,300 hectares of land was designated as 'stewardship land' to be managed by the Department of Conservation, known as the St James Conservation Area. Additional Crown land including riverbeds has also been added to the Conservation Area.

This land contains indigenous vegetation such as red, mountain, and silver beech forest, mānuka/kānuka and matagouri scrublands and alpine tussocks – a total of 430 indigenous species of flora and 30 native bird species.<sup>19</sup>

The conservation area has a publicly accessible walkway with eight DOC huts, and a cycle trail with three DOC huts.<sup>20</sup>

Four other leases have also been purchased outright by the Crown: Birchwood (2004, NHF); Michael Peak (2007, LINZ/NHF); Hakatere (2007, NHF); and Twinburn (2008, LINZ).

## **1.2 Enhancing access if tenure review is removed**

Leaseholders of Crown pastoral land have exclusive possession of the land within their lease, providing them with the ability to deny public access (like any private landowner), and to trespass persons who cross their land without permission.

One of the objectives of tenure review is to secure public access<sup>21</sup> so people can enjoy the unique land or can travel across the land into more remote areas for hunting, fishing or recreation.

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<sup>18</sup> See "Investment in Covenanted land Conservation" A report prepared for the Queen Elizabeth II National Trust, February 2017, by Frank Scrimgeour, Vijay Kumar and Glenn Weenink, The University of Waikato Institute for Business Research.

<sup>19</sup> <https://www.doc.govt.nz/parks-and-recreation/places-to-go/canterbury/places/st-james-conservation-area/>

<sup>20</sup> <https://www.doc.govt.nz/parks-and-recreation/places-to-go/canterbury/places/st-james-conservation-area/things-to-do/tracks/st-james-walkway/> and <https://www.doc.govt.nz/parks-and-recreation/places-to-go/canterbury/places/st-james-conservation-area/things-to-do/tracks/st-james-cycle-trail/>

<sup>21</sup> Section 24(c)(i) CPLA 1998

Without tenure review, access across Crown pastoral land can still be secured on a case-by-case basis. Access can take the form of negotiated agreements or legal instruments such as an easement under section 60 of the Land Act.

### **Securing public access across Crown pastoral land**

The Commissioner has recently granted access easements across Crown pastoral land to Central Otago District Council and Waitaki District Council. The easements secure enduring public access and enable the construction and operation of public walking and cycling trails in the Otago and Canterbury regions.

An easement application is considered in accordance with section 18 of the CPLA, taking account of both the benefits to farming and protection of inherent values, and can be imposed by the Commissioner. The leaseholder is notified of the application, but do not have to consent to the easement. The Commissioner can consult with any other affected parties before making a decision and the leaseholder can seek a rehearing of that decision.

The leaseholder is entitled to compensation for any reduction in the value of their lease through the granting of any easement and this payment is often independently negotiated with the applicant.

### **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?

## Section 2: Articulating outcomes for stewardship of Crown pastoral land

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

### 2.1 Proposed outcomes for Crown pastoral land

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

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

The text box below articulates a proposed set of high-level outcomes which could be introduced into the CPLA through amending legislation considered by Parliament. These outcomes set out how the Crown would recognise and consider the environmental, cultural and economic values of Crown pastoral land.

It is proposed that these high-level outcomes (amended after public consultation) would be translated into specific requirements, which would provide more detailed expectations of what the Crown pastoral land regulatory system should deliver. This would then guide the Crown's decision making (including decisions the Commissioner makes around discretionary consents), along with how the Crown would share the stewardship of this land with key stakeholders, particularly leaseholders and with iwi as Treaty partners.



#### **Enduring stewardship of Crown pastoral land**

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

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



- provide for pastoral and appropriate non-pastoral activities that support economic resilience and foster the sustainability of communities
- enable the Crown to obtain a fair financial return.<sup>22</sup>

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

## Ecological sustainability

The proposed outcomes do not include a specific reference to "ecological sustainability", a concept that is currently included but not defined within the CPLA in relation to tenure review.<sup>23</sup> This lack of definition has led to many different views on how the term should be interpreted and how it should be applied within tenure review.

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

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

## The Crown's responsibilities under the Treaty of Waitangi

The Government is intending that all decision making under the proposed outcomes should take into account the principles of the Treaty of Waitangi. This presents an opportunity for the Crown to strengthen its relationship with iwi as Treaty partners, and ensure it is bringing a better understanding of the aspirations and priorities of iwi in decision-making processes.

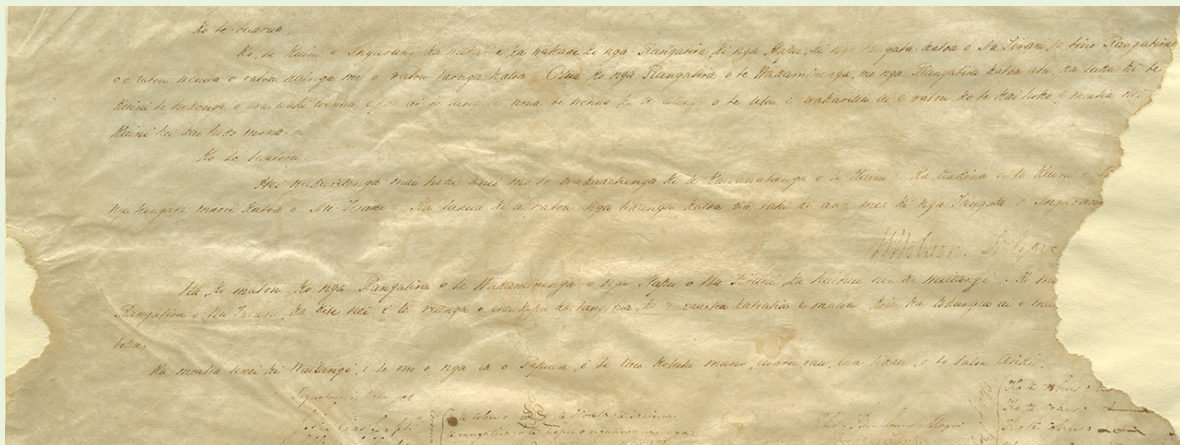
How this would be done would depend on the type of decision, and how it is likely to impact on the cultural values of the land, or on iwi rights and interests. For example, where a site of cultural significance is impacted on by a proposed activity, then decision making would apply Treaty principles relating to protection and recognition of cultural values as applicable.

The Government is keen to hear your views on how Treaty of Waitangi principles should be reflected in decision making.

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<sup>22</sup> This includes both the rent paid by leaseholders as well as ensuring that the Crown's costs in regulating Crown pastoral land are covered. However, as previously noted, the government is not currently proposing any changes to how rents for Crown pastoral leases are calculated.

<sup>23</sup> For instance the first objective of the tenure review process is to promote the management of reviewable land in a way that is ecologically sustainable, Section 24 CPLA 1998.



## Ngāi Tahu and the Treaty of Waitangi

Ngāi Tahu signed te Tiriti o Waitangi at Akaroa, Ruapuke Island, and Ōtākou in the winter of 1840. Land sales then began, including the Kemp's Deed land sale (1848), which encompasses much of the high country in Canterbury and Otago east of the main divide, and the Murihiku sale (1860), which added areas of high country in the south. There were unresolved disputes over whether these land purchases extended from the coast to the first range of hills (as Ngāi Tahu chiefs asserted) or inland to the Southern Alps (as the Crown claimed).

The Waitangi Tribunal clearly set out in the Ngāi Tahu claim that Māori gave sovereignty to the Crown in exchange for protection of rangatiratanga. The Tribunal stated:

*"This concept is fundamental to the compact or accord embodied in the treaty. Inherent in it is the notion of reciprocity – the exchange of the right to govern for the right of Maori to retain their full tribal authority and control over their lands and all other valued possessions."*

The Ngāi Tahu Claims Settlement Act 1998 records the Crown's apology to Ngāi Tahu, for its repeated breaches of the principles of te Tiriti o Waitangi in its dealings with Ngāi Tahu.

LINZ currently engages with iwi in some aspects of its management of Crown pastoral land - for example, by conducting site inspections with relevant iwi and obtaining a Cultural Values report during the tenure review process.

## 2.2 The Crown as a shared steward of Crown pastoral land

Achieving the proposed outcomes will require the Crown to make a long-term commitment to stewardship of this land. This is particularly important because of the Government's decision to end tenure review, meaning the Crown will remain a long-term landowner and lessor of this land.

### Building shared stewardship of Crown pastoral land

Stewardship of this land is a shared responsibility - the Crown cannot achieve its desired outcomes for this land on its own.

**Leaseholders** farm and live on the land, and therefore have a strong connection to it. Some leaseholders' families have lived on the land for multiple generations. Their investment and involvement in local communities provides jobs, economic benefits and contributes strongly to community resilience and social cohesion. They also help to maintain the natural capital of Crown pastoral land. For example, leaseholders spend on average \$40,000 a year on weed and pest control, collectively amounting to millions of dollars annually on biosecurity activities.<sup>24</sup>

**The Commissioner**, on behalf of the Crown is the lessor and regulator. The decisions it makes in both these roles can have a critical impact on outcomes for Crown pastoral land.

**Iwi** have a significant relationship with the land – in particular Ngāi Tahu, given that the majority of Crown pastoral land sits inside the takiwā of the iwi. This relationship is demonstrated through membership on Conservation Boards, partnering with DOC in the development of Conservation Management Strategies and participating in groups that help manage threatened species such as kakī/black stilt.



### Ngāi Tahu and Crown pastoral lands

The majority of Crown pastoral land sits inside the takiwā (tribal territory) of Ngāi Tahu. Ngāi Tahu Whānui is the collective of the individuals who descend from the primary hapū of Waitaha, Ngāti Mamoe, and Ngāi Tahu, namely Kāti Kurī, Kāti Irakehu, Kāti Huirapa, Ngāi Tuahuriri, and Kai Te Ruahikihiki. Crown pastoral land contains and sits amongst mountain tops and valleys, waterways, lakes, trails, nohoanga (dwelling places), mahinga kai resources and taonga (valued places) of great importance to Ngāi Tahu. The landscape is marked by Ngāi Tahu traditions, history, identity, mana (authority) and rangatiratanga (sovereignty).

Customary linkages of Ngāi Tahu to, and rights over, this land can be traced back to the discovery and naming of the land by Rakaihautu, who landed his waka Uruao at Whakatū (Nelson Banks) and explored the interior of Te Wai Pounamu (the South Island) south to Te Ara a Kewa (Foveaux Strait) before turning east and finally settling on Banks Peninsula - while his people the Waitaha, Rapuwai and Kāti Hawea spread in numbers across the island. Later, Ngāti Mamoe crossed Raukawa Moana (Cook Strait), and set about displacing or merging with the resident Waitaha iwi. Ngāi Tahu followed and, over

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<sup>24</sup> Beef + Lamb New Zealand. Sheep and Beef Farm Survey - Performance Indicators Per Farm Analysis: Class 1 S.I. High Country - New Zealand. In Beef + Lamb New Zealand Economic Service. Retrieved from <https://beeflambnz.com/data-tools/sheep-beef-farm-survey>.

time, their influence and authority spread south along the eastern side of the island over several generations, absorbing and dominating the Waitaha and creating a durable peace alliance with the Ngāti Mamoe.

The Waitaha iwi were first to establish networks of mahinga kai - places for the seasonal hunting and gathering of food resources - across Te Wai Pounamu. Preservation of food from these mahinga kai resources sustained successive iwi over long winters and times of scarcity, with successive iwi maintaining these practices. A component of the Ngāi Tahu Waitangi Tribunal Claim was the significant loss of mahinga kai over time, extending back, for example, to the introduction of animal pests and subsequent poisoning programmes which had the collateral effect of removing weka from much of the high country. These mahinga kai traditions and rights were specifically recognised in Ngāi Tahu's treaty settlement, for example with provision for 72 nohoanga<sup>25</sup> (temporary camp sites) for the gathering of food.

Ngāi Tahu are kaitiaki (steward) of their takiwā, based on the principle of “ki uta ki tai” or “mountains to the sea” – the integrated management of all the iwi's resources. Some specific ways that the iwi exercises this role in relation to Crown pastoral land and the broader high country include through:

- iwi resource plans relating to high country in the Canterbury, Otago and Southland regions that express the principles of kaitiakitanga, whakapapa (ancestry) and ki uta ki tai
- dedicated membership on Conservation Boards and the New Zealand Conservation Authority
- partnership with DOC through regional Conservation Management Strategies
- membership of groups involved in the management of threatened species that are taonga to the iwi
- Statutory Acknowledgements over various lakes, rivers, areas and several mountains, and relevant to RMA processes.

**Broader stakeholders** such as community organisations, environmental groups, philanthropic organisations, and members of the public also play an important part in promoting good outcomes for this land by working with leaseholders, the Crown and iwi.

There are many examples of leaseholders, government agencies, iwi and broader stakeholders actively collaborating and working towards achieving biosecurity and conservation goals. Examples include:

- Te Manahuna Aoraki (including the NEXT Foundation, Ngāi Tahu, DOC, councils, and landholders), which is a collaborative approach to co-design conservation, and pest and weed control projects on a landscape scale. Following the rebuild of DOC's Twizel kakī aviary, partners in this project have now begun scoping of a new collaborative landscape scale project in the Te Manahuna (upper Mackenzie Basin) Aoraki area
- the Mackenzie Country Trust, which aims to protect the iconic Mackenzie biodiversity and landscapes in collaboration with local landholders

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<sup>25</sup> Nohoanga entitlements are created and granted for the purpose of permitting members of Ngāi Tahu Whānui to occupy temporarily land close to waterways on a non-commercial basis, so as to have access to waterways for lawful fishing and gathering of other natural resources.

- a number of pest control and biosecurity initiatives, such as the Wakatipu Wilding Conifer Control Group, the Waimakariri Ecological and Landscape Restoration Alliance (WELRA), and the Mackenzie Basin Wilding Trees Charitable Trust.

## 2.3 A regulatory system that supports these outcomes

The remainder of this document outlines a number of additional proposed changes to the current regulatory system so it supports the shared stewardship of this land and delivers on the Crown's desired outcomes.

These proposals focus on ensuring the regulatory system will more effectively deliver on the desired outcomes, increasing the transparency and accountability of decision making, and collecting better information on the impacts of these decisions over time that can be used to inform future decisions.

They also recognise leaseholders' existing property rights. This includes leaseholders' rights to pasturage over, and to quiet enjoyment of, the land as well as ownership of any improvements to the land, such as the buildings, fencing and enhancements to soil quality.

The following sections (3 to 5) each cover a different aspect of the Crown pastoral land regulatory system, along with the proposed changes to the system.

### 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?



## Section 3: Ensuring decision making is accountable and transparent

The Government is proposing changes to increase the accountability and transparency of decision making on Crown pastoral land.

### 3.1 Enhancing accountability

For all interested parties to have confidence that the outcomes of the Crown pastoral land regulatory system are being achieved, it is important that there is an effective way to assess whether the Commissioner's decisions are consistent with those outcomes, and for the Commissioner to be held accountable for those decisions.

However, the regulatory review carried out by LINZ found that, under the current arrangements, stakeholders do not see the Commissioner as accountable.

Currently, the Commissioner must report to the Minister for Land Information on the broad exercise and performance of the Commissioner's statutory powers and functions.<sup>26</sup> In addition, information on leases, licenses and other statutory actions under the Land Act are included in LINZ's annual reporting to Parliament. There are no further requirements around this reporting.

The Minister has no effective way of signaling the Government's priorities as an input to the Commissioner's management of Crown pastoral land, even though the Commissioner is accountable to the Minister.

#### **Proposal 2: Require that the Commissioner develop a regular Statement of Performance Expectations, approved by the Minister for Land Information**

The Government is proposing to improve accountability in the system by amending the CPLA to require that the Commissioner develop a statement of performance expectations, to be approved by the Minister for Land Information, and released publicly. This statement would be updated regularly. As part of this process, there could be public consultation.

The statement would set out priorities for addressing issues on Crown pastoral land; how the Commissioner proposes to exercise their statutory responsibilities, including how this would help achieve the proposed outcomes; and how the Commissioner will reflect current government policies and priorities in the management of the land (to the extent that this is consistent with the legislation). This statement would then provide a base against which the regulatory system's performance can be measured and be informed by the best available information on natural capital, and cultural and heritage values on the land.

Requiring that the statement be approved by the Minister would ensure that the function of the regulatory system adequately reflects the Government's expectations. If stakeholders were involved in developing the statement, it would also provide an opportunity to reflect stakeholder perspectives in the way the Commissioner should discharge their responsibilities.

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<sup>26</sup> Section 24AA (2) Land Act 1948

This proposed option would also preserve the independence of the Commissioner in making individual decisions and fulfilling their statutory functions. This independence is important as it reflects the unique landowner-tenant relationship between the Crown and leaseholders, and that decisions have commercial and other implications for applicants as well as impacting on environmental outcomes. This would also help to provide certainty for leaseholders and the public, as decisions would be made in line with a publicly available statement.

### **Other options considered**

LINZ has considered alternative ways to ensure that a statement of performance expectations can have the most impact. For example, a system as set out in the Crown Entities Act 2004 (CEA) could be used. This would see the Commissioner regularly develop and publicly release a statement of performance expectations in consultation with the Minister for Land Information. However, the statement would be finalised by the Commissioner instead of the Minister. If necessary, the Minister would then be able to direct changes to the statement via a formal process – but the Minister would generally have less ability to influence the statement compared to the proposed change.

Another alternative is for the Commissioner to develop and release the statement independently of the Minister. This would still provide a benchmark against which the regulatory system's performance could be measured. However, it would be less likely to reflect the Government's priorities and stakeholder views.



### **Accountability mechanisms for Crown entities**

Crown entities are enabled by statute and are part of the State sector. They are established where Parliament has decided that a function is most appropriately carried out at "arm's length" from Ministers. As such, there are some similarities between Crown entities and the Commissioner, a statutory position created and bound by legislation.

The Crown Entities Act 2004 contains a number of mechanisms by which Ministers can oversee and manage the Crown's interests in these entities. This includes by participating in setting the strategic direction and annual expectations of Crown entities; reviewing their performance and results; managing risks on behalf of the Crown; and answering to Parliament for the entity's performance.

Mechanisms that Ministers participate in for ensuring accountability, transparency and responsiveness include:

- a Statement of Intent which sets the medium-term strategic direction of the entity
- a Statement of Performance Expectations
- regular reporting, with Ministers being able to request additional information at any time.

In addition, some Crown entities can be directed to have regard to, or give effect to government policy (independent Crown entities are generally independent of government policy).

### 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 Enhancing transparency

As well as clear accountability, it is important that leaseholders and other interested parties clearly understand the rationale behind the decisions that are made – even if they do not always agree with them.

The Commissioner's decision making should therefore be as transparent as possible, while preserving the privacy of individual leaseholders.

LINZ's regulatory review found that stakeholders see the decision making process on Crown pastoral land as opaque. There is also not widespread agreement that the system is fair.

The functions and duties of the Commissioner, as set out in the CPLA and Land Act, do not currently provide any mechanism for the Commissioner to explain how decisions are made. While the Commissioner currently publishes standards and guidelines, these are focused on providing information to help LINZ staff carry out their functions and do not have statutory authority behind them.

The Government wants to ensure that leaseholders and applicants under the discretionary consents system are given as much certainty as possible on the Commissioner's decision making process – including how the Commissioner will go about making decisions, what information or evidence will be considered as part of the decision making process (including the land's natural capital, and cultural and heritage values), and what expectations the Commissioner has of leaseholders, for instance, by developing farm plans.

The Government also wants to increase the transparency of the system so the rationale for decisions is clearly understood by broader stakeholders such as industry groups, environmental groups, and councils.



### **The role of farm plans**

Farm plans could be a useful way to enable the long-term stewardship of Crown pastoral land, providing an accessible framework by which leaseholders can consider:

- how cross-boundary issues are managed (such as catchment or landscape scale environmental issues)
- how cumulative impacts are managed (how multiple consents and activities interact)
- how they could possibly contribute to the outcomes of maintaining and enhancing the natural capital of Crown pastoral land through their farming practices
- how to take advantages of advances in farming practices, knowledge, and technology (for examples, advances that reduce methane emission or that increase productivity per stock unit).

There are multiple expectations and requirements placed upon farmers from regulators at the national and regional level, as well as from markets and consumers both locally and internationally. Farm plans can be a tool for farmers to show how they intend to meet these expectations and requirements. Outcomes and actions can be integrated and aligned by farm management planning. This can help to increase alignment between the CPLA and RMA process; however, this would be limited to conveying information to decision makers and would not limit statutory authority under those acts.

The Commissioner could work with other agencies and regulators, such as the Ministry for Primary Industries and councils, to ensure a consistent approach to farm plans for use on Crown pastoral land.

LINZ is currently working with local authorities such as Environment Canterbury, which has established a Farm Portal to store farm plans and nutrient management information, including Overseer nutrient budgets. LINZ is exploring whether this system would assist in the management of Crown pastoral land.

There is further work to be done on how farm plans might be used by the Commissioner to support the management of this land.

### **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.**

The Government is proposing to amend the CPLA so that it explicitly provides for the Commissioner to release additional guidance to support officials and leaseholders to understand and comply with legislative requirements. This guidance would be set after a public consultation process.

This could include the Commissioner developing standards, guidance or policies on:

- how the criteria, principles, and outcomes within the CPLA are applied by the Commissioner to decision making under the discretionary consents system
- what information must be provided to the Commissioner by applicants to support an application
- how specific values will be identified, and considered (for example, through engagement with the relevant iwi to identify cultural sites they value and how they should be considered in decision making)
- what further information the Commissioner will gather (through expert advice and from other sources) in order to make a decision
- clarifying the statutory obligations of leaseholders, such as the requirement to farm the land diligently and according to the rules of good husbandry<sup>27</sup>
- further detail surrounding the process by which a decision can be appealed<sup>28</sup>
- how approvals are to be monitored by LINZ staff
- any reporting requirements, such as the maximum stock numbers on a lease for a certain period of time.

This proposal is expected to increase the transparency and certainty of the regulatory regime by providing leaseholders and stakeholders with more clarity about the process and criteria for decision making.

#### **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?

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<sup>27</sup> Section 99 Land Act 1948

<sup>28</sup> Section 17 Land Act 1948



## Section 4: Making decisions that give effect to the outcomes

The Government is seeking feedback on proposed changes to the discretionary consents process.

### 4.1 The discretionary consents process

The Commissioner can decide to approve a use of the land that either disturbs the soil, or is for limited non-pastoral uses.<sup>29</sup> These decisions are commonly referred to as discretionary consents.

Under the legislation, leaseholders have the exclusive right to pasturage over the land. However, they have no right to the soil. This means that, to undertake any activities that disturb the soil such as planting trees, top dressing, sowing seed and forming tracks, they must first seek the approval of the Commissioner through the discretionary consents process. Similarly, the leaseholder must obtain approval to change the limit on the number of stock they can have on the land, to cut down trees, or to burn vegetation.

The discretionary consents process is also used when someone wishes to obtain an easement over the land or use the land for a commercial activity that is related to recreation,<sup>30</sup> such as to operate ski fields, mountain bike parks, undertake filming or allow helicopter landings. The applicant – not necessarily the farmer holding the lease – must first obtain the consent of the leaseholder and then apply for an easement or recreation permit from the Commissioner. These activities are intended to complement rather than significantly alter the underlying use of the land for pastoral farming. The process prevents activities such as viticulture or horticulture taking place on pastoral land.

### 4.2 Issues with the discretionary consents process

Discretionary consents can have a substantial impact upon land use, environmental outcomes and economic outcomes. Given this, there are a number of issues with the current discretionary consents process.

- There is no requirement for decisions about discretionary consents to give effect to any clear outcomes.

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<sup>29</sup> These activities are contained in both the CPLA and the Land Act. The criteria for decision making are found in section 18 CPLA and applies to pastoral land only regarding:

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

<sup>30</sup> A recreation permit can be granted for any commercial undertaking involving the use of the land for any recreational, tourist, accommodation, safari, or other purpose that, in the opinion of the Board (Commissioner), may be properly undertaken on that land (Section 66A Land Act 1948).

- The decision process for discretionary consents is perceived by some stakeholders to focus on the viability of farming activity rather than looking at broader environmental impacts.
- There is no requirement to look at the cumulative impacts of discretionary consent approvals.
- Discretionary consents are sometimes associated with increased pressure on the land. Often applicants seek approval for activities like vegetation clearance as a precursor to more intensive pastoral land use or as way to introduce new economic activity to the land, for example the construction of a helipad to bring in tourists.
- There have been concerns about how the advice that is provided on an application - particularly advice on ecological and landscape values - has been analysed and taken into account when decisions are made.
- There is no requirement for iwi or other interested parties, other than the Director-General of Conservation, to be engaged in the process.
- There is no statutory requirement for monitoring of the impacts of discretionary consent approvals. LINZ does not undertake ecosystem or other environmental monitoring and so lacks a comprehensive view of outcomes across the Crown pastoral land estate.



### Decision making on discretionary consents under the current system

Under the current regulatory system, when considering whether to grant consent to certain activities on Crown pastoral land, the Commissioner must first consult with the Director-General of Conservation who can provide input to inform a decision. The Commissioner must then take into account those matters set out in section 18 of the CPLA:

- a. the desirability of protecting the inherent values<sup>31</sup> of the land concerned (other than attributes and characteristics of a recreational value only), and in particular

<sup>31</sup> As defined within the CPLA 1998 an Inherent value, in relation to any land, means a value arising from—

(a) a cultural, ecological, historical, recreational, or scientific attribute or characteristic of a natural resource in, on, forming part of, or existing by virtue of the conformation of, the land; or

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.

Currently the Commissioner has a broad degree of discretion and flexibility regarding discretionary consents. This is because the Commissioner is required to “take into account” the above criteria as opposed to ensuring decisions are consistent with explicit outcomes. Under the CPLA, both criteria are to be considered, which leads to issues when the two considerations are in direct conflict. This requires the Commissioner to exercise judgment such as by considering how adverse impacts on inherent values might be mitigated when making trade-offs between the two criteria.

### 4.3 Ensuring decisions on discretionary consents reflect proposed outcomes

#### **Proposal 4: Require the Commissioner to give effect to a set of outcomes in any discretionary consent decisions**

The Government is proposing that the Commissioner be required to give effect to the outcomes set out above in any decisions about discretionary consents.<sup>32</sup>

This would introduce an explicit hierarchy for decision making, which prioritises natural capital, and heritage and cultural values. Prioritising natural capital will ensure that it is given sufficient consideration, and reduce the potential for future environmental degradation on Crown pastoral land. Similarly prioritising heritage and cultural values recognises both the current and historic relationship of communities to this land and that of iwi as mana whenua.

At the same time, it would enable leaseholders to continue to make economic use of their land by providing for pastoral farming and appropriate non-pastoral activities that can be applied for under the discretionary consents process – where those activities do not result in an overall reduction of the natural capital in the land. This could include undertaking actions to mitigate the impacts of a proposed activity (see below for more details on this). In the long term, this would help to preserve the viability of pastoral farming which is dependent upon the health of the environment in order to be sustainable. It may also result in some activities such as extensive clearance of indigenous vegetation not being approved.

This proposed change would provide more certainty to applicants as it clarifies how the Commissioner will make decisions, removing the current ambiguity where the Commissioner decides how to weight farming and environmental considerations.

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(b) a cultural, historical, recreational, or scientific attribute or characteristic of a historic place on or forming part of the land.

<sup>32</sup> The proposed changes as they stand would not broaden the scope of the current permissible uses of this land – pastoral farming - or the uses that could potentially be permitted by the Commissioner under the discretionary consent process.

## Mitigation, offsetting and restoration

### *Mitigation, avoidance and remediation*

Under the proposed change, the Commissioner would retain the flexibility to make a consent conditional upon mitigation, avoidance, and/or remediation activities. For example, where a wetland would be at risk if consent to increase a stock limit were granted, then a condition of the consent might be that the wetland is adequately protected by fencing off the area.

### *Offsetting*

Where significant adverse residual effects are still likely to be present after appropriate mitigation, avoidance and remediation measures have been applied, the Commissioner may also be able to consider a specific offset, with the goal of either ensuring there is no net loss within a class of values or a net gain. Any such decisions that approve an offset would need to follow good practice for offsetting such as the Government's *Guidance on Good Practice Biodiversity Offsetting*<sup>33</sup> and any relevant government priorities relating to biodiversity.

There are however, a number of risks associated with offsetting.

- That it could be used as a primary measure when it should only be a last resort after mitigation, avoidance and remediation measures.
- That the offset will not be equivalent to the loss in values caused by the approved activity. This can obscure negative net impacts. For example an offset that is far removed from the impacted area might lead to habitat fragmentation.
- That positive actions, such as the ongoing application of restoration techniques, are not followed through with (whether through noncompliance or a restoration technique proving ineffective). This can be mitigated through regular monitoring of the offset.

In some situations, offsetting will not be appropriate because of the irreplaceability or vulnerability of the value affected.

### *Restoration*

While the proposed outcomes focus on maintaining and enhancing natural capital, these proposed changes to the discretionary consents regime could enable the restoration of some ecosystems over time, while still allowing pastoral farming activity to go ahead, through the Commissioner's ability to impose conditions on discretionary consents decisions.

This would complement existing efforts by the Crown, leaseholders and broader stakeholders (including neighbouring landowners) to engage in collaborative projects to restore the natural capital of Crown pastoral land. Government agencies such as DOC are already exploring ways in which landscape scale collaborative projects can be encouraged and implemented – such as the Te Manahuna Aoraki project.

However, this proposed change would be likely to make the discretionary consents process more costly for the Crown to administer (due to the increased diligence required

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<sup>33</sup> Source: <https://www.doc.govt.nz/globalassets/documents/our-work/biodiversity-offsets/the-guidance.pdf>



to ensure that outcomes are being met) and, to the extent that these costs are recovered from leaseholders (see Section 5.3), would result in increased costs to leaseholders when applying for consents.

There is also a risk that leaseholders will not apply for activities that are viewed as marginal (though would still be acceptable under the new regime) – however, this can be mitigated by providing effective guidance on how decisions are made and the associated process.

Changing the way decisions on discretionary consents are made may also incentivise some non-compliance, although this can be mitigated through better monitoring.

This proposed change may also increase current issues of alignment between the Crown Pastoral Land Act and the Resource Management Act (RMA).



### **Crown pastoral land and the RMA**

Currently under the CPLA<sup>34</sup> a person applying for consent from the Commissioner for an activity still requires relevant permissions under the RMA before undertaking the proposed activity.

LINZ's regulatory review found that the governing legislation for Crown pastoral land does not align well with the RMA. There are ways in which the regimes could work better together. For example, at the process level, this could be achieved through tools such as farm plans (as previously discussed in Section 3.2), and by improved agency alignment across central and local government such as the Mackenzie Basin agency alignment work (as outlined in Section 1.5).

Implementation of any proposed changes to the discretionary consents process would need to take into account the need for alignment with RMA processes.

### **Other options**

LINZ has considered a number of alternative options to help ensure decision making supports the Government's proposed outcomes. These range along a scale according to

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<sup>34</sup> Section 17 CPLA 1998



the amount of discretion the Commissioner has in decision making. These options include:

- retaining the current level of discretion while incorporating the new outcomes to guide decision making
- preventing any decisions from contradicting a new set of outcomes (for example, an activity could not decrease natural capital or heritage and cultural values in any way)
- different scales for decision making according to the scale and magnitude of the impacts of the proposed activity.

These options would either unreasonably prevent activities on the land, (potentially impacting on returns from pastoral farming), or they would give the Commissioner too much discretion (which would mean decision making would be less likely to achieve the proposed outcomes).

### 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?

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

The Government is proposing that:

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

In order for the Commissioner to make robust decisions on whether to grant an approval for a discretionary consent, it is crucial that they obtain the best possible information about the impacts of that proposed activity. Similarly, it is important that advice is gathered from a broad range of sources with the right expertise. Currently, the Commissioner is only required to consult with the Director-General of Conservation to obtain their views on an application for a discretionary consent. Further advice is sought

at the discretion of the Commissioner and LINZ. There is no further requirement for the Commissioner to consult with any other party, or to seek expert advice.

This includes the Commissioner seeking expert advice on the values associated with the affected land, how the proposed activity will impact on those values, and any mitigation, avoidance or offsetting measures that might be appropriate if the approval were to be granted. For instance, expert advice could be sought on how the forming of a track might affect indigenous biodiversity, sites of cultural significance or farming values.

Where a cultural value of importance to iwi is impacted on by an application, the Commissioner will be required to engage with the relevant iwi to ensure that their interests are understood and appropriately reflected in any decision. This would also require engaging with iwi more broadly to ensure the Commissioner has a sound understanding of the cultural and historic values associated with the land.

The Commissioner may also need to gather information on the broader impacts of an activity— for instance, where a third party is seeking a recreation permit or easement over a lease, or a stock exemption that may result in increased nutrient runoff.

The extent to which the Commissioner seeks expert advice or consults with other parties would depend on the complexity of the issue and the likely significance of the impact. For a particularly significant decision with broad impacts, there would be an expectation that the Commissioner would undertake some form of public engagement in order to fully understand those impacts.

This proposal could potentially increase the cost and complexity of some decisions.

### **Other options considered**

Another option is to include detailed requirements for engagement and obtaining expert advice within the legislation. However, such an approach could limit the ability of the system to respond to any changes in technology, information, and evidence-gathering techniques.

Alternatively, the Commissioner could require that applications be publicly notified if they are judged by the Commissioner to likely have significant, broad impacts – submissions would then be considered by the Commissioner. However, this may not always be appropriate given the small scale and impact of many consents that are dealt with on a day-to-day basis (such as allowing one-day filming events as recreation permits). There will also be factors, such as the landlord-tenant relationship, that need to be considered. Such a requirement may also lead to extra duplication with existing public notification processes under the RMA.

### **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.

## Proposal 6: Update the fees and charges framework

There is a substantial cost to the Crown of administering the discretionary consents regime (such as processing applications and making decisions on them), but there is no ability to charge fees to recover these costs for the consideration of some classes of discretionary consents under the CPLA. This means the Crown is funding the costs of processing the applications from other sources, and in effect subsidising those who will ultimately benefit from the approval of discretionary consents.

Applications for discretionary consents under the Land Act (easements and recreation permits) already have an associated cost recovery fee.

**Figure 2: Fee schedule for discretionary consents**

Class of discretionary consent	Is there a fee?
The creation of easements (Land Act)	Yes
Recreation permits (Land Act)	Yes
Felling timber (Land Act)	No
Burning of vegetation (CPLA)	No
Activities affecting or disturbing the soil (CPLA) <ul style="list-style-type: none"><li>• clear or fell any bush or scrub on the land:</li><li>• crop, cultivate, drain, or plough any part of the land:</li><li>• top-dress any part of the land:</li><li>• sow any part of the land with seed:</li><li>• plant any tree or trees on the land:</li><li>• form any path, road, or track on the land:</li><li>• undertake any other activity affecting, or involving or causing disturbance to, the soil.</li></ul>	No
Granting, varying, or revoking an exemption from any stock limitation (CPLA)	No

The Government is therefore proposing changes to the CPLA to allow for fees to be charged for the Commissioner to consider all classes of discretionary consents, including stock exemptions and those activities listed in sections 15 and 16 of the CPLA.

It is common practice for government to recover the costs of administering approval activities, such as under the RMA or Overseas Investment Act 2005. This is in line with the principle of “benefiter pays”, where costs are recovered from those that benefit from activities that are being applied for.

Under a new regime, fees would be set after a consultation process with those affected by the changes, such as leaseholders and other applicants under the discretionary consents system. The overall process for setting fees would follow best practice for the setting of fees and charges as outlined in guidelines prepared by the Office of the Auditor General<sup>35</sup> and the Treasury.

## 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.

<sup>35</sup> See <https://www.oag.govt.nz/2008/charging-fees>

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.

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

The Government is proposing that the legislation require the Commissioner to regularly update and release a monitoring framework as well as a regular report of monitoring and compliance activities.

### 5.1 Current monitoring arrangements

LINZ does monitor and inspect all pastoral lease properties on a regular basis, although in some cases inspections are as much as five years apart. This monitoring focuses on whether the conditions of approvals are being complied with and whether the leaseholder is meeting their obligations under the lease. LINZ does not undertake ecosystem or other environmental monitoring and so lacks a comprehensive view of outcomes across the Crown pastoral land estate.

A key recommendation from LINZ's review of the Crown pastoral land regulatory system was to improve information, monitoring and transparency so that LINZ and stakeholders have better information to understand and improve system performance.

Currently, the legislation governing Crown pastoral land does not set any expectations for monitoring what happens after decisions are made – both in terms of compliance with the conditions of an approval (in the case of the discretionary consents process) or the environmental, cultural or economic impacts of the decision (in the case of both tenure review and discretionary consents). This makes it difficult to understand whether the system is meeting the outcomes government wants to achieve in relation to the Crown pastoral land estate.

### 5.2 Improving monitoring arrangements

To get better decision making, it will be important to ensure the Commissioner has access to information on the impacts of prior decisions on Crown pastoral land, especially when assessing the cumulative impacts of activities.

As noted earlier, LINZ is currently looking at how it can more appropriately monitor high-risk discretionary activities, as well as providing clearer guidance to those who inspect the leases. Further, the Commissioner is preparing a monitoring framework. These improvements need to be built upon and continue into the future.

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

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

- regularly update and release a monitoring framework
- release regular reporting against that framework.

This approach would require a more active role in monitoring the state of Crown pastoral land and the natural capital stocks it contains, and make monitoring the impacts of decisions compulsory. This should increase transparency, and help give the Commissioner better information to make future decisions (while preserving the privacy of leaseholders and applicants).

Over time, better information about the impacts of particular activities would help make the Commissioner's decision making more robust and consistent, increasing certainty for applicants and stakeholders. Such an approach would also provide enough flexibility in the system for the Commissioner to update what is monitored as circumstances change.

In addition, this could provide leaseholders with better management information in order to inform day-to-day management on pastoral land and increase visibility as to how that contributes to outcomes across the Crown pastoral land estate.

However, in order to be effective, this option would need to be sufficiently resourced to deliver enhanced monitoring activities and to collect the information needed to support this monitoring.

### **Other options considered**

Another option would be to include specific requirements for monitoring within the legislation. However, the Government is not proposing this as it would not be flexible enough to respond to changes in context.

### **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?



## Section 6: Preliminary analysis of proposals

Provided in the following table is LINZ's preliminary analysis of the proposals contained in Sections 2 to 5.<sup>36</sup> Feedback is welcomed in order to understand your views, better assess the impacts of the proposed changes and further develop them.

The proposed changes, and the other possible options covered in the discussion document, have been assessed against a number of criteria.

- *Effectiveness*: Does the option ensure that the system supports the Crown's stewardship role and delivers on the desired outcomes?
- *Certainty/Transparency*: Does the option provide certainty for leaseholders and others? Are decisions made in a way that is straightforward, understandable and fair?
- *Flexibility/durability*: Does the option ensure that the system can respond to changing contexts, lessening the need for further regulatory change over time?
- *Efficient*: Does the option minimise compliance and administrative/operational costs? Does it maximise economic efficiency and opportunities?

### Assessing effectiveness

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

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

### Assessing impacts

The impact of each of the proposed changes has been considered in relation to the Crown and leaseholders, as well as iwi, broader stakeholders and the public.

### Question 9:

Do you have any feedback on the preliminary analysis in the table below?

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<sup>36</sup> Note that we have not included an analysis of the impacts of including new outcomes in the CPLA (Proposal 1) this is largely covered by our analysis of the impacts of requiring the Commissioner to give effect to these outcomes in all decisions about discretionary consents (Proposal 5).

Area	<b>Enhancing accountability</b>		<b>Enhancing transparency</b>	<b>Addressing issues with discretionary consents – decision making</b>			
	Issue: No formal way for communicating the Government's expectations regarding the Crown's management of Crown pastoral land, or for holding the Commissioner accountable for the delivery of his/her functions.		Issue: A lack of clarity about how decisions are made.	Issue: Decision making is process focused and there are no outcomes that the system is working towards. Decisions are therefore not made in a way that considers cumulative or broader impacts.			
Proposed change	<b>Proposal 2:</b> Require the Commissioner to regularly develop and publicly release a statement of performance expectations, to be approved by the Minister for Land Information.	<b>Alternative option:</b> Require that the Commissioner regularly develop and publicly release a statement of performance expectations in consultation with the Minister for Land Information.	<b>Proposal 3:</b> Explicitly provide for the Commissioner to release guidance and standards to assist officials and leaseholders to understand and comply with the legislative requirements.	<b>Proposal 4:</b> Require the Commissioner to give effect to a set of outcomes in all decisions about discretionary consents.	<b>Alternative option:</b> Incorporate a new set of outcomes into the Act that determine the scope of advice the Commissioner must receive, including a clear hierarchy (similar to status quo).	<b>Alternative option:</b> Prevent decision maker from making any decisions that contradict a new set of outcomes (i.e. cannot decrease natural capital, heritage and cultural values in any way).	<b>Alternative option:</b> Allow Commissioner to take a different approach to decision making depending on the scale and magnitude of the discretionary consent.

<b>Assessed against status quo (including planned non-regulatory operational improvements)</b>							
Effectiveness	Would increase the effectiveness of the regulatory regime by introducing more accountability to the regulatory system and increasing the likelihood that it delivers improved outcomes.	As prior, but to a lesser degree as the Minister would have less ability to influence the statement.	Would improve the effective implementation of the regime by being clear about how it will work in practice.	Would significantly increase the effectiveness of the regulatory regime by requiring the Commissioner to give effect to a set of outcomes - which would help to ensure that discretionary consents are only approved if they support these outcomes. However, this may make some pastoral farming less viable if activities are more restricted.	Would have minimal impact in increasing the effectiveness of the regulatory regime due to the fact that decisions are not required to give effect to the desired outcomes.	Would increase the effectiveness of the regulatory regime in one way by ensuring that discretionary consents are only approved if they deliver the desired outcomes. However, it would also make it more difficult to allow for pastoral farming and other activities.	Would have minimal impact in increasing the effectiveness of the regulatory regime.
Certainty	Would increase the certainty of the regulatory regime by clarifying how the Commissioner is expected to make decisions in the context of the outcomes. However, given that the statement of performance expectations would be reviewed regularly with a level of Ministerial involvement, there may be some reduction in long-term certainty for leaseholders if expectations change.	As prior.	Would increase the certainty of the regulatory regime by providing stakeholders with clarity about the process and criteria for decision making, enhancing transparency and certainty.	Would increase the certainty of the regulatory regime over time by removing the ambiguity of how the Commissioner weighs up environmental and economic considerations - although it may lessen certainty in the short term as it will introduce a new framework for making decisions	Would deliver the same level of certainty in decision making due to the broad discretion that the Commissioner retains.	Would increase the certainty of the regulatory regime as there would be limited scope for the Commissioner to exercise discretion.	Would reduce certainty of the regulatory regime due to increased discretion in the Commissioner's approach to decision making.
Flexibility/durability	Would significantly enhance the flexibility and durability of the regulatory regime as increased Ministerial involvement at the strategic level would help ensure a diversity of views are reflected and taken into account, enhancing the system's durability over time.	As prior, but to a lesser degree.	Unlikely to impact on the flexibility and durability of the regulatory regime.	Would not significantly affect the flexibility or durability of the regulatory regime. By taking a broader view, the Commissioner may have the ability to exercise more flexibility. However, their ability to exercise discretion may be reduced in particular cases.	Would deliver the same level of flexibility in decision making due to the broad discretion that the Commissioner retains.	Would significantly reduce the flexibility and durability of the regulatory regime because of the rigid decision making process.	Would give the Commissioner flexibility to decide on an appropriate approach to decision making after taking into account the relevant contextual factors.
Efficiency	Would slightly increase costs to the Crown as there would be an increased cost to the Crown in producing and measuring the performance of the regulatory system against the statement.	As prior.	Would slightly increase costs to the Crown due to the increased work involved in developing, issuing and consulting on guidance.	May increase costs to the Crown and to leaseholders, due to the increased complexity of the process, and may impact on the profitability of pastoral farming in those cases where a proposed activity is incompatible with the outcomes.	May involve marginal extra cost to the Crown and leaseholders (ie to obtain a broader evidence base to inform decisions).	Would likely reduce the Crown's administrative costs (less applications over time) However, leaseholders would be less able to sustain commercial activities on the land.	Might decrease costs to the Crown and leaseholders over time, as effort and resources would be concentrated on those actions with most potential impact.

Area	Addressing issues with discretionary consents – expert advice and engagement			Addressing issues with discretionary consents - Fees and charges	Improving system information, monitoring and performance	
	Issue: The quality of advice that decisions are based upon has not been consistent – there is currently no requirement that expert advice be sought. This has led to a perception that decisions are made without a full understanding of impacts.			Issue: There is no ability to charge fees under the CPLA, unlike under the Land Act, which creates inconsistencies.	Issue: The system does not have adequate information – both to inform future decisions about cumulative impacts and to give an overview of its performance.	
Proposed change	Proposal 5: Require the Commissioner to engage with affected parties and obtain expert advice as necessary to ensure there is adequate evidence on which to base decisions.	Alternative option: Include detailed requirements for engagement and obtaining expert advice within the legislation.	Alternative option: Require that applications be publicly notified if they are expected to have significant, broad impacts – submissions would then be considered by the Commissioner.	Proposal 6: Change the CPLA to allow fees to be charged for the Commissioner to consider all discretionary consents (including stock exemptions and activities listed in 15 & 16 of the CPLA).	Proposal 8: Require that the Commissioner regularly update and release a monitoring framework and regularly report against that framework (this would cover both compliance monitoring and system performance monitoring).	Alternative option: Set specific expectations for monitoring in the legislation.

Assessed against status quo (including planned non-regulatory operational improvements)

Effectiveness	Would increase the effectiveness of the regulatory regime by helping ensure that decisions are made with adequate evidence. However, potential conflict and complexity may act as a deterrent to applicants.	As prior.	As prior. Could also lead to a better understanding of the impacts of an application and consistency with the desired outcomes. However, it is not clear that this option would result in better quality information being provided to the Commissioner.	This contributes to the Crown ensuring it receives a fair financial return.	Would increase the effectiveness of the regulatory regime by providing the Commissioner and others better information about system performance as well as providing leaseholders with better management information.	As prior.
Certainty	Might reduce certainty in the short term because of the increased number of inputs to the Commissioner's decision making, but certainty should increase in the longer-term through the building up of a more robust evidence base.	Might provide increased certainty to applicants if all decisions are made in the same way, and based on the same requirements for advice/engagement.	Might reduce the certainty that applicants have in the process due to a much wider range of inputs.	Makes the regime more consistent as discretionary consents under the Land Act (easements and recreation permits) already have an associated fee.	Could help to increase the certainty of the regulatory regime as, over time, better information about the impacts of particular actions would help make the Commissioner's decision making more robust and consistent.	As prior.
Flexibility/durability	Might improve the flexibility and durability of the regulatory regime by better reflecting diverse stakeholders' views.	Would provide very little flexibility for the Commissioner to use his or her judgement about the type and scale of engagement/advice needed in relation to a particular decision. There would be limited room for the system to respond quickly to any changes in technology, information, and evidence gathering techniques.	Would limit the Commissioner's ability to use his or her judgement in relation to some applications.	Would help to make the discretionary consents regime more durable by ensuring the Crown can recover its costs	Would not impact on the flexibility and durability of the regulatory regime as it provides a reasonable degree of flexibility around what is monitored and how.	Lacks flexibility around what is monitored and how – this would make it more difficult to respond to different priorities/new information.
Efficiency	Might increase costs to the Crown and leaseholders if the application process becomes more complex as a result of the change, and especially if this approach leads to "double ups" with processes under the RMA.	As prior. Might also introduce inefficiencies if the Commissioner is less able to tailor the amount of effort involved in evidence gathering/engagement to the likely scale of impact.	Would significantly increase the costs involved in some decisions to both the Crown and leaseholders. In some cases, it may make the cost of an application greater than any expected benefits of the proposed activity.	For the Crown, would offset some of the costs of the discretionary consents approvals process. Leaseholders would be required to pay fees for some applications when they currently don't have to pay now.	Would significantly increase costs to the Crown through the delivery of an improved monitoring function. There may also be costs to leaseholders if they are required to provide more information as a result of an improved monitoring regime.	As prior.

## Section 7: Consultation process

The Government welcomes your feedback on this consultation document. The questions asked within this document and summarised in this section are a guide only, and all comments are welcome. You do not have to answer all the questions.

To ensure others clearly understand your point of view, you should explain the reasons for your views and provide supporting evidence where appropriate.

You can make a submission in three ways:

- Use our online submission tool, available at <https://www.linz.govt.nz/cplc>

**This is our preferred way to receive submissions.**

- Download a copy of the submission form to complete and return to us. This is available at <https://www.linz.govt.nz/cplc>. If you do not have access to a computer, we can post a copy of the submission form to you.
- Write your own submission.

If you are posting your submission, send it to:

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

Include:

- the title of the consultation (Enduring stewardship of Crown pastoral land)
- your name or the name of your organisation
- your postal address
- your telephone number
- your email address.

If you are emailing your submission, send it to [CPLC@linz.govt.nz](mailto:CPLC@linz.govt.nz) as a:

- PDF or Microsoft Word document (2003 or later version).

**Submissions close at 5pm, Friday 12 April 2019**

### Contact for queries

Please direct any queries to:

Email: [CPLC@linz.govt.nz](mailto:CPLC@linz.govt.nz)

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

## Consultation questions

### 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?

### 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?

### 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?



**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?

**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?

**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.

**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 for your view.

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.

**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?

**Question 9:**

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

## **Publication of submissions, the Official Information Act and the Privacy Act**

Land Information New Zealand (LINZ) is required to carry out its functions with transparency. Part of LINZ's purpose in collecting submissions is so that we can share the points of view that we receive. LINZ may publish some of the submissions and information that you provide to LINZ, or it may provide that information to other parties.

### **Confidentiality**

If you are providing us with information which you wish to remain confidential please notify us of this. In particular, identify which part(s) of your submission you consider should remain confidential, and explain the reason(s) for that.

Please note that LINZ is bound by the Official Information Act 1982. That Act will apply to any information that you provide to LINZ and we may be required to release the information that you provide notwithstanding your notification and identification of confidentiality.

## Personal Information

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

When you make your submission, you consent to your personal information being published, unless you tell us otherwise. If you do not want your personal information published, please tell us when you make your submission.

## Disclaimer

The opinions and proposals contained in this document are currently under consideration; no final decision has been made in relation to the opinions and proposals and they do not reflect any decided or approved government policy.

LINZ does not accept any responsibility or liability whatsoever whether in contract, tort (including negligence), equity or otherwise for any action taken as a result of reading, or reliance placed on LINZ because of having read any part, or all, of the information in this consultation document; or for any error, inadequacy, deficiency, flaw in, or omission from, this consultation document.

# Glossary

**Awa** – river/stream.

**Commissioner of Crown Lands** - an independent officer appointed under the State Sector Act 1988 with statutory duties to administer Crown Land (including special leases and Crown Pastoral leases) in accordance with the Land Act and CPLA.

**Covenant** - a promise relating to the use of land achieved by registering a legal obligation against the title to the affected land. A covenant is an enforceable obligation by someone to do, or not to do something in respect of that land.

**CPLA** - the Crown Pastoral Land Act 1998, which formalised the process of tenure review and set out requirements for discretionary consents for Crown pastoral leases in legislation. The CPLA also sets out the rental regime for Crown pastoral leases.

**The Crown** - Her Majesty the Queen acting through ministers and departments of state.

**Crown pastoral land** – land owned by the Crown and mainly leased for pastoral farming.

**Crown pastoral lease** – a form of tenure, perpetually renewable for 33-year terms, which enables the pastoral farming of Crown pastoral land.

**Crown pastoral land regulatory system** - created by the CPLA and the Land Act and consisting of four areas: tenure review, discretionary consents, rental regime and statutory land administration.

**Discretionary consents** - a process that enables leaseholders to seek permission from the Commissioner to undertake activities on the land where the prior consent of the Commissioner is required by the CPLA or Land Act. These include activities beyond those permitted under the terms of their lease, such as cultivation, clearing scrub or bush, top dressing, forming tracks, or burning. This process also enables leaseholders, or anyone else, to apply for recreation permits or easements – for instance to allow them to run tourism ventures.

**Dryland ecosystems** - ecosystems characterised by a lack of water, including cultivated lands, scrub and shrublands, and grasslands.

**Easement** - a right agreed between a landowner and another party to use a property for a particular purpose. For Crown pastoral leases, this can include pipelines, transmission lines and rights-of-way.

**Farm plan** - a mechanism for identifying and documenting actions and timeframes to achieve desired outcomes on a farm, which can range from purely financial and production objectives to a wide range of environmental outcomes.

**Freehold** – land ownership where the land is owned in perpetuity and the owner can use it for any purpose, in accordance with laws and regulations.

**Inherent value** – as defined within the CPLA, a value arising from a particular cultural, ecological, historical, recreational characteristic of the land or a place on the land.

**Iwi** – tribe.

**Kaitiakitanga** – the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship.

**Ki uta ki tai** - “Mountains to the sea”, Ngāi Tahu’s integrated management of all its resources.

**Land Act** – the Land Act 1948, which established the current system of Crown pastoral leases, gave leaseholders more security through perpetually-renewable 33 year leases, gave the leaseholder ownership of any improvements on the land, and imposed new conditions to protect the soil.

**Mahinga kai** - places for the seasonal hunting and gathering of food resources.

**Mana** – authority.

**Maunga** – mountain.

**Minister** – the Minister for Land Information, who also exercises the statutory powers of the Minister of Lands under the Land Act.

**Natural capital** - those aspects of our environment that sustain society's present wellbeing and improve intergenerational wellbeing. This includes land, soil, water, biodiversity, minerals, energy resources, and ecosystem services (the benefits that humans gain from the natural environment and from properly-functioning ecosystems).

**Nohoanga** - dwelling places.

**Offsetting** – measurable conservation outcomes resulting from actions designed to compensate for significant residual adverse biodiversity impacts arising from project development after appropriate prevention and mitigation measures have been taken. The goal of biodiversity offsets is to achieve *no net loss* and *preferably a net gain* of biodiversity on the ground.

**Pastoral farming** - the grazing of stock, such as sheep, cattle, deer and goats.

**Pastoral occupation licence** – a limited-term licence that enabled tenure (these licences have now all expired).

**Public conservation lands and waters** - Lands and water areas administered by the Department of Conservation, including the natural and historic resources of those areas.

**Rental regime** - sets out how the Crown calculates rents on Crown pastoral leases.

**Roto** – lake.

**Rangatiratanga** – sovereignty.

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

**Statutory land administration** - relates to how leases can be renewed, transferred or subleased, as well as the statutory obligations on leaseholders as set out in the Land Act.

**Stock exemption** – exemptions granted under the discretionary consents process to allow leaseholders to carry numbers (and classes) of stock that differ from the stock limit that is specified in the lease.

**Stocking limit** - the number of livestock allowed to be run on the land as set out within the terms of the lease.

**Substantive proposal** – a proposal made by the Commissioner to a leaseholder as part of tenure review on what land would be freeholded and what land would be returned to the Crown. This follows consultation and a process where public and iwi submissions are considered. Once accepted by the leaseholder it forms a binding contract to implement a tenure review.



**Takiwā** – place or territory used by or associated with an iwi, hapū or whānau.

**Tangata whenua** – iwi or hapū that has customary authority in a place.

**Taonga** - valued resources or prized possessions, both material and non-material. This is a broad concept that includes tangible and intangible aspects of natural and historic resources of significance to Māori, including wāhi tapu and intellectual property.

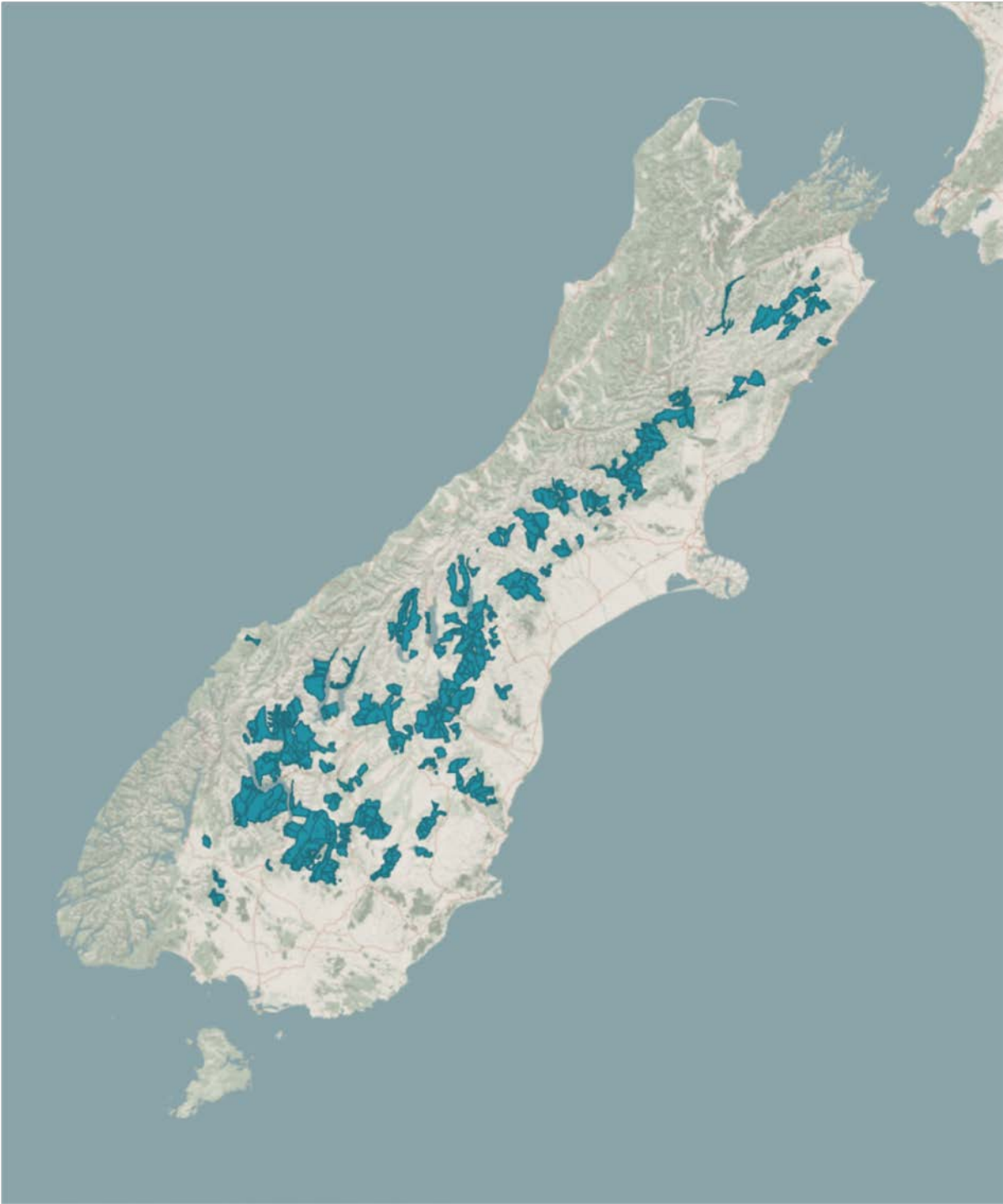
**Tenure review** - a voluntary process that ends a Crown pastoral lease and provides for land with significant inherent values or that is required by the Crown for some other purpose to be returned to full Crown ownership (mainly as public conservation land); and for the remainder of the land to be freeholded and sold to pastoral leaseholders.

**Wāhi tapu** – place sacred to Māori in a traditional, spiritual, religious, ritual or mythological sense.

**Wāhi taonga** – a valued place.

**Whakapapa** – ancestry.

# Appendix 1: Map of Crown pastoral leases



## Appendix 2: A brief history of Crown pastoral land

The Crown's role in the high country dates back to the 1800s, with its initial purchases of land in the high country from Māori. These purchases were not without controversy - Ngāi Tahu chiefs complained immediately about the methods used in purchasing their lands, including that land they wished to keep was included in the purchases.

The Crown began leasing high country land to farmers in the 1850s and, over time, passed most of its rights and obligations on to leaseholders – on the basis that the land was not considered viable for non-pastoral uses and farming the land was the best way to manage it.

The Land Act was brought in to address environmental concerns, particularly in relation to soil degradation - resulting from farmers not taking a long-term approach to land management because their leases were short-term and insecure.

The Act converted the original leases into the current system of Crown pastoral leases to encourage better land management. The new system gave leaseholders more security through perpetually-renewable 33-year leases, and gave the leaseholder ownership of any improvements on the land. The Act also imposed new conditions to protect the soil.

Over time, some leaseholders were able to obtain freehold rights from the Crown to some of the land covered by their lease, with the balance being transferred into the conservation estate. However, the Land Act did not provide any guidance about how decisions should be made, or what processes needed to be followed.

In 1998, the CPLA was brought in to standardise this process, known as “tenure review”. By this time, the Crown wanted to exit its lessor (landlord) role, because the cost of administering Crown pastoral leases was greater than the rental revenue it received and it was felt that environmental outcomes achieved through the Land Act (as well as through the Resource Management Act) had improved since the 1940s. The Crown expected that all leases would eventually go through the tenure review process, and all Crown pastoral land would either become public conservation land or transfer into private ownership.

Since 1998, approximately 313,000 hectares of land has been returned to Crown ownership through tenure review and approximately 353,000 hectares have been transferred into private ownership. At least 60,000 hectares of that freeholded land is subject to conservation or other covenants. That means that half of land that has gone through tenure review has either been returned to the Crown or has some form of mechanism in place to protect it. The Crown has also purchased five leases, adding an additional 125,792 hectares to the conservation estate.

Currently, 34 pastoral leases out of a total of 171 leases are in the process of tenure review, with eight of these having agreements that are currently being implemented. No new leases have entered tenure review since late 2016.

## Appendix 3: The tenure review process

Part 2 of the Crown Pastoral Land Act 1998 sets out requirements for tenure review.<sup>37</sup> The Commissioner and LINZ have operationalised the process as set out below.

<b>Stage 1:</b> Information gathering	At the outset of the tenure review it is important for LINZ to obtain all relevant information associated with the land being reviewed.
<b>Stage 2:</b> Preliminary proposal	<p>Information and views are sought from the leaseholder, DOC and Fish &amp; Game. DOC evaluates the leasehold land and writes a report outlining conservation values ("significant inherent values") on the land.</p> <p>All feedback and other information is used to produce a preliminary proposal for the land. This proposal will generally divide the land into freehold and conservation sections and show public access routes. These proposed sections are called 'designations'.</p>
<b>Stage 3:</b> Public submissions	Once the preliminary proposal has been put to the leaseholder by the Commissioner it is advertised for public submissions in local newspapers and on LINZ's website. The local iwi authority is also consulted at this time. The Commissioner considers all of the public and iwi submissions and how they might affect the preliminary proposal for the reviewable land. The Commissioner will advise the Minister of Conservation on the extent to which these submissions are accepted. Copies of all public submissions and the Commissioner's analysis are posted on our website. We then consult with DOC to develop a substantive proposal incorporating any changes resulting from submissions. Any changes to the preliminary proposal are worked through with the leaseholder.
<b>Stage 4:</b> Substantive proposal	Agreement is then sought from the Minister of Conservation to any special conditions or concessions attached to the land granted under the Conservation Act 1987 or Reserves Act 1977. Approval is sought from the Minister for Land Information to fund the substantive proposal and then approval from the Commissioner to put the substantive proposal to the leaseholder. If LINZ gets these approvals, the substantive proposal will be sent to the leaseholder. The leaseholder then decides whether to accept the substantive proposal.
<b>Stage 5:</b> Implementation	Once the leaseholder has accepted the substantive proposal LINZ then registers a notice on every leasehold or other title to which the substantive proposal relates in Landonline – LINZ's digital title and survey plan system. That notice will show the area of freehold land to be owned by the leaseholder and the area that will be restored to the Crown. Once any required survey work has been completed, legal requirements met and payments have been made, a freehold title is issued to the leaseholder.

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<sup>37</sup> Part 3 (sections 83-94) extends the tenure review system to land held under an unrenovable occupation licence and to unused Crown land.

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