SUBMISSION ON ENDURING STEWARDSHIP OF CROWN PASTORAL LAND

SUBMITTER DETAILS

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INTRODUCTION

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

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

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

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

5 Overall, our vision for Crown pastoral lease land is that it is effectively managed in a way that ensures:

a. Its natural landscapes and features and indigenous biodiversity are safeguarded and (where compatible) recreational values, public access opportunities and pastoral farming are provided for.

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

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

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

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

REAL CHANGE IS NEEDED

7 The Mackenzie Basin has been confirmed by the Environment Court to be an outstanding natural landscape and an area of significant indigenous vegetation and significant habitat of indigenous fauna.[1] Its protection is a matter of national importance. Its landscape and ecological features are glacial in origin, with many plants and animal taxa having a stronghold in the Basin – some are endemic to it – and many have co-existed with some form of human land use for centuries. However, as a result of recent land use change (predominantly to intensive farming but also some urban expansion) landscape and ecological values are rapidly being lost *under our watch*. Between 1990 and 2017 approximately 68,000 ha of indigenous vegetation was lost (22.5% of the Basin floor) – more than two thirds of that since 2014.[2]

8 Outcomes in other parts of the country have also suffered significant biodiversity loss as a result of intensification. Recent reports indicate that the trends in declining water and stream quality are a cause for concern at a number of Crown pastoral land sites, particularly in terms of nitrogen.[3] This declining water quality in these previously pristine lakes and streams raises serious concerns to the biodiversity within the waterbodies. Significant areas of tussock and shrublands have been sprayed under discretionary consents in the headwaters of the Pomahaka River, and cattle grazing have degraded upland cushion bogs both of which have resulted in loss of significant inherent values as well as impacting on the water quality of the Pomahaka River in South Otago.

[1] *High Country Rosehip Orchards Ltd & Ors v Mackenzie District Council* [2011] NZEnvC 387 at [484].
[2] Susan Walker evidence to Environment Court for Plan Change 13 hearing.
[3] Sullivan, Robertson, Clucas, Cook & Lange: Arawai Kākāriki Wetland Restoration Programme: Ō Tū Wharekai Outcomes Report 2007-2011.

9 Recreation permits are being used for large scale skifield development with significant impacts on inherent values including landscapes. Glencoe Pastoral lease in Central Otago has a comprehensive recreation permit which enables the use and development of part of the pastoral lease for skifield development including heli-skiing, tracked vehicle operations, ski lifts, formation of trails and other terrain modification. The consenting process means the Crown has little control over these operations other than through a Restoration Protocol and the provisions within the permit.

10 Those changes have been allowed to occur through a combination of discretionary consent decisions and tenure review. Despite the priority given to environmental protection in s 24 CPLA, tenure review has not resulted in the protection of significant inherent values, and has tended to follow a pattern of protecting land with ecosystems that are less in need of protection, while freeholding land that is most threatened and least protected.[4]

11 A series of public policy failures has caused these issues. Tenure review decisions are not achieving the objects of the CPLA[5] and the possibility of establishing a Drylands Heritage Area is rapidly being compromised. Public input on tenure review is inappropriately "filtered", meaning that the most critical points relating to issues like cumulative loss across landscapes and the potential for intensified land use on freeholded land are disallowed. The system is process-focussed and *viewed as being biased towards the desires of farmers*.[6] The use of external service providers exacerbates that issue. The Commissioner has no accountability for his or her decisions. The advice that the Commissioner receives from DOC is critical, yet both the quality and currency of DOC's assessments, as well as how that is synthesised into overall DOC advice, has been poor. Environmental protection is not required to be prioritised when considering discretionary actions (including recreation permits), and appropriate technical input is seldom sought or provided.[7] Many discretionary consents have been granted that have (or will) result in the loss of significant inherent values, some contrary to technical advice from DOC. There is poor communication between LINZ and local authorities meaning opportunities are missed to ensure necessary resource consents under regional or district plans are sought and obtained before vegetation clearance occurs. Recreation permits are granted for safari hunting for deer, thar, and chamois and there are some instances where these may be impacting on the lessee's willingness to undertake wild animal control and may also influence LINZ's lack of enforcement for wild animal control. For example, we are aware that Mt Nicholas Station has had a history of not controlling thar and has previously denied access for DOC control. LINZ does not appear to ensure that lessees are undertaking wild animal control, especially thar, as thar numbers on pastoral lease lands are unknown, and thar have strayed into the exclusion zones.

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

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[4] Brower AL. and Page J. (2017) *Freeing the land beyond the shadow of the law: Twenty years of the Crown Pastoral Land Act.* New Zealand University Law Review 27(4A): 975-994 at 985.

[5] Highlighted by the Mackenzie Review.

[6] Review of Crown pastoral land regulatory system, page 27.

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

SECTION 1: MANAGING THE IMPLICATIONS OF ENDING TENURE REVIEW

13 In this part of our submission we address:

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

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

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

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

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

14 The *Enduring Stewardship* Cabinet paper refers to advice from LINZ and DOC to the Commissioner on administering the tenure review process in advance of legislative change, which recommends that in light of existing constraints on time and resources, the Commissioner may wish to prioritise tenure reviews that are more likely to achieve an outcome that promotes the policy and objects of the CPLA, including promoting ecologically sustainable management, further advanced through the process, and more likely to be completed within a reasonable timeline.[8]

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

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

[8] Cabinet Paper at [45].

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

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

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

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

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

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

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

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

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

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

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

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

[9] Compensation is available for easements and rights of way but not for other forms of access.

23 The Mackenzie Drylands Heritage Area concept originated in DOC Canterbury in 2004 with the ambition to recognise nationally significant values that are poorly protected and highly threatened.[10] The Mackenzie Drylands Heritage Area intends to provide for landscape protection of significant inherent values, and recognise the importance of protecting ecological connectivity.

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

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

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

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

The implications of Government policy around expanding forestry in New Zealand.

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

[10] Nicholas Head *Ecological context for the Mackenzie Basin* DOC-3013271 dated 20 April 2017.
[11] Forest & Bird have some reservations over current lack of certainty of the form of protection and processes for selecting areas to protect but supports the concept of a protected area in the Mackenzie Basin.

in the past. We would also like to know that LINZ is engaging with Te Uru Rakau to ensure that there is joined-up Government policy in this area.

SECTION 2: ARTICULATING OUTCOMES FOR STEWARDSHIP OF CROWN PASTORAL LAND

2.1 Proposed outcomes for Crown pastoral land

The existing legislation

28 At present, there is no express statement of outcomes for Crown pastoral lease land where it is being used for pastoral purposes. The leaseholder has obligations to farm the land diligently and in a "husbandlike" manner according to the rules of good husbandry, not to commit waste, to keep the land free from wild animals, rabbits, and other vermin, and generally comply with the provisions of the Biosecurity Act 1993, and to properly clean all creeks, drains, ditches, and watercourses and keep them open and clear from weeds.[12] There is no definition of good husbandry but indicators were developed for LINZ in 2008 and applied in some pastoral lease inspections, and there is some judicial authority that good husbandry means that:[13]

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

29 "Waste" means an act or omission which causes a lasting alteration to the nature of the land in question to the prejudice of the person who has the remainder or reversion of the land.[14]

30 Combined with the restrictions in the CPLA on non-pastoral uses of the land, the implied outcome for Crown pastoral land is that it is put to pastoral use,[15] managed holistically by integrating natural features, and managed in a way that the nature of the land is not detrimentally altered (in particular by controlling pests and weeds). In principle, that approach is appropriate but the framework's lack of an overall express outcome, dated language and lack of definitions or criteria mean that it is open to (mis)interpretation.

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

a. When deciding whether to grant a discretionary consent for burning vegetation or activities affecting the soil (e.g. cultivation),[16] an easement[17] or a recreation permit for a commercial undertaking involving the use of the land for a recreational, tourist, accommodation, safari, or other similar purpose, and when considering whether to grant, vary, or revoke an exemption from any stock limitation, the Commissioner must take into account:

    i. the desirability of protecting the inherent values of the land concerned (other than attributes and characteristics of a recreational value only), and in particular the

[12] Section 99, Land Act 1948.
[13] *Froggatt v Gollan* (High Court, Hamilton, CP194/90, 26 November 1990, Anderson J).
[14] Hinde Macmorland and Sim *Land Law in New Zealand:* Wellington Lexis Nexis 2004.
[15] Pastoral use in this context means low density, low impact grazing with the primary intention being to manage the land in accordance with the tenets of good husbandry.
[16] Sections 15-16 CPLA.
[17] Section 60 Land Act 1948.

inherent values of indigenous plants and animals, and natural ecosystems and landscapes; and

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

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

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

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

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

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

Inherent values

36 The CPLA defines inherent values as:

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

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

The concept of ecological sustainability

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

39 The CPLA presently incorporates "the promotion of the management of reviewable land in a way that is ecologically sustainable" as an object of tenure review. It is not a concept that currently applies to pastoral land use, discretionary consents or recreation permits.

40 "Ecologically sustainable" is not defined in the CPLA. Previous advice to Ministers has interpreted it as relating to indigenous, exotic and mixed indigenous/exotic ecosystems, and equated it to productive capacity (in relation to exotic ecosystems). The advice was that ecological sustainability is achieved by freeholding land which has been converted to exotic pasture (making it easier for the farmer to maintain the life supporting capacity of the pasture system), including where fertiliser input will be used to maintain productive capacity.[18]

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

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

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

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

45 If the concept of ecological sustainability is to be retained, it should be defined. The Societies propose a definition below based on advice from Manaaki Whenua Landcare Research.

[18] Department of Conservation General Manager Operations Southern *Advice to Minister of Conservation and Minister for Land Information": Ecological Sustainability" under the Crown Pastoral Land Act 1998* 4 August 2008.

Natural capital and environmental bottom lines

46 In setting an overall outcome that "the natural landscapes, indigenous biodiversity and cultural and heritage value of Crown pastoral land are secured and safeguarded for present and future generations", the intention appears to be to prioritise the environmental values of Crown pastoral land in decision-making. However, the proposed framework does not achieve this, and rather than safeguarding ecological and landscape values of Crown pastoral land is likely to allow ongoing loss. This is largely due to the definition of natural capital. The definition of natural capital is useful to define part of why nature is valuable, but is focusses on human-centric rather than eco-centric elements. A definition that is based on what the environment can do for people, and which incorporates consideration of people's needs, will perpetuate the existing lack of prioritisation of the natural environment. The definition currently includes elements which are in conflict in providing for society's wellbeing (such as biodiversity and energy resources). The CPLA outcomes should prioritise intrinsic values of the natural environment, including ecosystem services,[19] and set environmental bottom lines to protect them. Outcomes should not conflict.

47 In this context, "environmental bottom lines" should mean that existing landscape, natural character and biodiversity inherent values on Crown pastoral land are *identified*[20] and that *no further loss* of those values is allowed to occur. Given the extent of loss that has already occurred, bottom lines have already been exceeded for many ecosystems, and a bottom line of no further loss is the least that should be applied. Ideally attempts should also be made to restore exotic pasture to native ecosystems where practicable.

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

49 Clarity of outcomes is essential to ensure decision-making is principled and not subject to inappropriate Government intervention. An example of the latter is the Government Minute *Crown Pastoral Land: 2009 and Beyond*[21] which set an "end outcome" for Crown pastoral land (and tenure review) that *Crown pastoral land is put to the best use of New Zealand*, which was stipulated to mean *that Crown pastoral land is put to the best use for economic, environmental and cultural purposes*. A paper supporting the Minute mandates an approach that is inconsistent with the CPLA, particularly in relation to tenure review, because it states that *Whether the lessee of the Crown is the most appropriate party to protect [significant inherent] values should be considered on a case by case basis, rather than an objective stating a clear preference* (c.f. s 24 CPLA). The Minute has been taken into account in tenure review decisions, despite being clearly inconsistent with the principles of the CPLA. This has arguably led to unlawful decisions being made in the past.

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

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

Recreational and scientific values and attributes

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

Enhanced public access

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

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

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

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

Recommendation

56 The Societies recommend:

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

[22] Discussed below at [112] – [113].

[23] *The New Zealand Fish & Game Council v Her Majesty's Attorney-General in Respect of Commissioner of Crown Lands* HC CIV-2008-485-2020 [12 May 2009].

b. That the proposed outcomes are amended as set out below in order to refer to and prioritise inherent values, incorporate recreational and scientific values and provide for an outcome of enhanced opportunities for public experience:

> 1. The Crown will ensure that the natural capital values of Crown pastoral land are maintained and enhanced.
>
> 2. To achieve this, Crown pastoral land will be managed to ensure that natural landscape, natural character, ecological and scientific inherent values and ecosystem services of Crown pastoral land are identified, secured and safeguarded for present and future generations, including by ensuring that there is no further loss of those inherent values or ecosystem services, ~~maintain and enhance natural capital, and cultural and heritage values~~; and subject to this, to:
>
> - Maintain and improve cultural, historic, and recreational inherent values.
> - Provide for pastoral and appropriate non-pastoral activities that support economic resilience and foster the sustainability of communities
> - Provide enhanced opportunities for the public to experience Crown pastoral land in a manner that is compatible with pastoral and approved non-pastoral activities
> - Enable the Crown to obtain a fair financial return.
>
> 3. The Crown's management of this land will ~~take into account~~ give effect to the principles of the Treaty of Waitangi.

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

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

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

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

2.2 The Crown as a shared steward of Crown pastoral land

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

58 We also support enhanced opportunities for broader stakeholders to have input into Crown pastoral land management. This is discussed further below at [99].

SECTION 3: ENSURING DECISION MAKING IS ACCOUNTABLE AND TRANSPARENT

CCL functions

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

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

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

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

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

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

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

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

3.1 Enhancing accountability

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

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

b. As with many other aspects of the proposed changes, it will also require sufficient baseline information about the state of Crown pastoral land, pressures and trends to enable a meaningful analysis of issues and effectiveness of proposed management actions. This would be analogous to a comprehensive Conservation Resources Report and would likely require enhanced powers of inspection.[24]

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

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

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

b. Independent advice to the Commissioner.

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

<u>Updated mechanisms to enable public enforcement action and provide for meaningful enforcement remedies.</u>

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

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

[24] Discussed at [115] below.
[25] *Attorney-General (Commissioner of Crown Lands) v Little Bo Peep Sheep Co Ltd* [2010] NZAR 756.

parts of the land.[26] We could not locate any other examples. Yet it is quite clear that many leaseholders are not complying with the requirements of their lease, either because the issue has become difficult to manage (for example, wilding conifers) or because they choose not to. There are numerous examples of lessees developing beyond the area specified in their discretionary consent. For example, at Mount Prospect land was cleared that exceeded the area specified in the discretionary consent – including in a riparian area. Similarly, at Mount White, freeholded land surrounded by pastoral lease/reserve land was sprayed and oversown. The effects of this spraying clearly encroached onto the leasehold land. In both these examples the leaseholder's actions were seemingly without repercussions.

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

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

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

<u>Independent advice, and oversight of decision-making by the Environment Court</u>

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

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

[26] *Feary v Commissioner of Crown Lands* [2001] 1 NZLR 704.

Federated Mountain Clubs to nominate appointees, similar to the framework for appointment of the New Zealand Conservation Authority.[27]

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

3.2 Enhancing transparency

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

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

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

77 Standards, guidance or policy may assist in increasing the transparency of decision-making generically, but unless the Commissioner is required to give reasons for individual decisions, the lack of transparency and accountability will remain. Reasons for decisions made by the CCL are not usually provided under the current regime. This mean people cannot see what information has been considered, how it has been taken into account or disregarded, and how the Commissioner has interpreted key terms.[28]

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

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

[27] Section 6D Conservation Act 1987.

[28] In addition, in the tenure review public submission process submissions that do not raise new information are disallowed (unless they support the proposal) yet the submitter has no way of knowing what information has already been considered or discussed with the leaseholder. That approach should not be perpetuated in any public consultation processes provided for under the new regime.

to demonstrate how regulatory limits and targets will be met over time. They could similarly be used to demonstrate how a pastoral leaseholder will meet the objects of the CPLA, Land Act, and their lease requirement (for example, pest and weed management obligations). If they are required anyway for another purpose, then having them also address Crown pastoral land-related would be useful, and they are strongly supported by EDS

80 However Forest & Bird has reservations about their use:

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

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

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

SECTION 4: MAKING DECISIONS THAT GIVE EFFECT TO THE OUTCOMES

Lease renewal

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

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

<u>Provisions governing discretionary actions</u>

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

83 In addition to a new statement of outcomes, the provisions governing discretionary actions require amendment to require the Commissioner to give effect to the new outcomes. As discussed above, this will require that the outcomes themselves do not conflict, as it is not possible to give effect to internally conflicting outcomes. Relative priorities must be clearly stated. We consider this is a deficiency in the current objects, because "natural capital" contains internally conflicting concepts, such that "prioritising natural capital" does not necessarily result in the inherent values that are

part of natural capital (landscape, indigenous biodiversity, natural character) being prioritised over the ecosystem services from natural resources that are also part of natural capital.

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

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

b. the effects of climate change;

are taken into account.

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

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

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

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

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

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

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

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

[29] *Ngati Kahungunu Iwi Inc v Hawke's Bay Regional Council* [2015] *NZEnvC 50; Wellington Fish & Game Council v Manawatu Wanganui Regional Council* [2017] NZEnvC 37.

d. The Government's *Guidance on Good Practice Biodiversity Offsetting* does not provide sufficient clarity about when impacts are unacceptable. In particular, while it recognises the principle of "limits to offsetting" it provides very little guidance about when limits will apply.

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

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

Technical advice

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

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

[30] We acknowledge that Fish & Game also has a role in providing technical advice regarding its statutory responsibilities, and any legislative embedding of DOC's role should also apply to Fish & Game.
[31] Response by DOC to OIA request by EDS (OIA17-E-0516, docCM-3233946).
[32] Page 28.

a. Embed a role for DOC experts' technical advice (whether from staff or independent contractors), rather than recommendations from "the Department".

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

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

94 A further practical issue is that LINZ has the right to inspect Crown land[33] but DOC does not have "as of right" access – it must be approved by the Commissioner. This access should be provided for, not only in relation to an application for a discretionary action but also for DOC to gather baseline information and monitor the status of significant inherent values.

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

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

97 We disagree that providing detailed requirements for engagement and obtaining expert advice would limit the ability of the system to respond to changes in technology, information and evidence-gathering techniques.[34] Appropriately qualified and experienced technical experts will provide information that is appropriate in terms of those considerations. The specificity needed is as to the qualifications and experience of the experts, and how their advice is used in decision-making.

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

Public input

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

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

a. the discretionary consent

[33] Section 26 Land Act.
[34] Discussion paper, page 40.

i. is for the same activity (or an activity of the same character, intensity and scale) as has been carried out on the area of the lease in the last 6 months; or[35]

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

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

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

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

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

Structural change

104 The Regulatory Review found that LINZ is "process focussed and conservative" and that "with an operational focus on pastoral farming, LINZ is viewed by others as being biased towards the desires of farmers".[36] This analysis shows that structural changes are required, in addition to clear environmental objectives in the CPLA, to address this. History also proves this true: the objects of tenure review are inherently pro-environmental protection, yet decisions have repeatedly been made in purported accord with those objects which flagrantly fail to achieve that protection (eg The Wolds).

105 There are problems with external service providers.[37] The Regulatory Review found that the service delivery model has resulted in LINZ having a stronger link to farming and economics than ecology. Unless that changes the structural bias towards enabling farming at the expense of environmental outcomes, and the public's lack of faith in the Government's stewardship of Crown pastoral land, is unlikely to be addressed. There needs to be a strong internal cultural shift within LINZ to reflect the new approach. External land management consultants are unlikely to have an ongoing role, given their primary role was in relation to tenure review. Our preference is that they are not used at all,

[35] This recommendation should be checked with ecologists to ensure that it does not risk ongoing incremental loss of modified native habitat, e.g. overowing and topdressing mixed native/exotic grassland.
[36] Page 27.
[37] see Regulatory Review, p 28 of Cabinet Business Committee paper.

and that instead LINZ ensures that it has sufficient staff with appropriate expertise to carry out the work currently being done by external service providers.

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

Crown pastoral land and the RMA and conservation legislation

107 The Discussion Document mentions alignment with the RMA. Caution should be taken in attempting to align two statutory schemes which exist for different reasons.[38] We are unable to comment on specific alignment options because the Discussion Document does not provide specifics. Concepts such as bundling consent requirements under both Acts would require careful consideration given the separate decision-makers and statutory schemes. Where Farm Environment Plans are required under the RMA, the inclusion of an additional section dealing with CLPA requirements would have the benefit of having all requirements and actions to meet those requirements in one document, which may be useful for the farmer, but this is unlikely to materially increase alignment with the RMA.

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

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

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

A new process for enhancing public access

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

[38] *Royal Forest and Bird Society of New Zealand v Waitaki District Council* [2012] NZHC 2096.

112 There is no system in s 60 of the Land Act to enable proposals for public access to be put to the Commissioner or considered in a manner that takes into account the views of the public and the leaseholder. We recommend that s 60 is amended to create a process whereby:

a. Any person may make an application to the Commissioner for public or private[39] access to be enhanced by the creation of a new easement on Crown pastoral land.

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

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

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

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

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

Section 5: Improving system information, performance and monitoring

114 LINZ does not currently undertake ecosystem or other environmental monitoring and so lacks a comprehensive view of outcomes across the Crown pastoral land estate.[40] The Societies see this as a major shortcoming in the ability to effectively manage Crown pastoral land. We strongly support the recommendation from the Regulatory Review that monitoring is improved.

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

[39] An example where private access might appropriately be provided is Mt White, where there is a freehold land parcel that is landlocked by the pastoral lease.
[40] Discussion document, page 42.

Conclusion

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

SUBMISSION ENDS