



11 April 2019

Crown Pastoral Land Consultation
Land Information New Zealand
Wellington

By email: CPLC@linz.govt.nz

Enduring stewardship of Crown pastoral land – consultation

Thank you for the opportunity to comment on the Crown pastoral land review discussion document, *Enduring stewardship of Crown pastoral land, February 2019* (discussion document).

1. Crown pastoral land management – proposed changes

- 1.1 The discussion document sets out proposals for changes to the management of Crown pastoral land, including the decision to end tenure review.
- 1.2 The main objective is to ensure stronger Crown protection of the ecological, biodiversity and landscape values of Crown pastoral land. The discussion document identifies that with the proposal to end tenure review, the Crown's stewardship role and the regulatory system for Crown pastoral land will need to be strengthened.¹ Feedback is sought on how best to manage the implications of ending tenure review and to ensure better decision-making.²
- 1.3 The New Zealand Law Society has no comment to make on government policy decisions in relation to Crown pastoral land management but has identified a concern that the proposals may result in unnecessary (and inefficient) regulatory duplication.

2. Regulatory duplication

- 2.1 It appears from the discussion document that it is proposed to have a dual regulatory regime for consents for Crown pastoral land, under the Crown Pastoral Land Act (CPLA) and the Resource Management Act (RMA). As discussed below, it is not clear to the Law Society that the potential for unnecessary duplication of and inconsistency with the existing RMA regime has been adequately explored.

3. The proposals

- 3.1 The proposed changes focus on ensuring the regulatory system will more effectively deliver on the desired outcomes and increase the transparency and accountability of decision-making:

¹ Discussion Document, foreword at p4.

² Note 1, at p22 (question 1).

- Proposal four would require the Commissioner to give effect to the outcomes in all decisions about discretionary consents under the CPLA. This would introduce an explicit hierarchy for decision-making, prioritising natural capital and heritage and cultural values.³
- Proposal five would 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.⁴

3.2 The discussion document acknowledges in passing that proposal four “may also increase current issues of alignment between the Crown Pastoral Land Act and the Resource Management Act,”⁵ since a person applying for a consent under the CPLA still requires relevant permissions under the RMA in order to undertake the proposed activity.⁶ The discussion document goes on to say only that –

“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.”

4. Justification for the dual regimes

4.1 It is not clear why a dual regulatory regime for consents under both the CPLA and RMA is needed in relation to Crown pastoral land. The RMA applies to all land use regardless of how it is owned, and the discussion document does not explain why the effects of the use of Crown pastoral land cannot be managed under the RMA alone.

4.2 If there are regulatory gaps that need to be addressed, it would have been helpful for the discussion document to have examined the mechanisms currently available in the RMA – such as a National Policy Statement for Hill Country Activities, for example – that might be used to provide a higher standard of environmental protection (if that is identified as a policy priority) both for Crown pastoral land and for hill country land in private ownership. Providing direction through the appropriate mechanisms in the RMA, rather than establishing a new consent process for pastoral lessees, might ensure that the objectives in managing Crown pastoral land are achieved without unnecessary duplication or inconsistency with the existing RMA regime. The conclusion might be that activities can be managed under the RMA without the need to amend the CPLA.

³ Ibid, at p36. For details, see the table at pp45-46.

⁴ Ibid, p46.

⁵ Ibid, p38.

⁶ Ibid. See Crown Pastoral Land Act 1998, s 17

We hope these brief comments are helpful, and if further discussion would assist please do not hesitate to contact the convenor of the Law Society's Environmental Law Committee, Bronwyn Carruthers, via Law Society Law Reform Advisor Lucette Kuhn (lucette.kuhn@lawsociety.org.nz).

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tiana Epati'. The signature is fluid and cursive, with a large initial 'T' and a distinct 'E'.

Tiana Epati
President