Committee Secretariat
Environment Committee
Wellington.

22 February 2021.

Kia ora Sir / Madam,

Crown Pastoral Land Reform Bill

Federated Mountain Clubs was formed in 1931 and advocates for outdoor recreation and preservation of the natural environment that we recreate within on behalf of 22,000 members in 100 clubs. We support full public ownership and control of mountainous lands with high conservation values.

We wish to be heard by the Committee.

This submission addresses a number of significant issues separately before addressing sections of the Bill.

Preface

FMC has been closely involved with individual tenure reviews and with wider aspects of the process for more than three decades. We are therefore pleased to have the chance to take part in korero relating to Crown pastoral land reform, which we believe is needed.

It would not do for us to begin this submission, however, without expressing the thought that the interruption of Covid-19 and the resulting truncated period available for the Bill's writing may have left certain aspects of the issues it touches needing further consideration. Those aspects are encapsulated in our submission points below and need no articulation here.

Thankyou again for the opportunity to submit.

Issues - general

Inherent values

This Bill's promulgation is the result of long-standing widespread concern about governance, management, processes, and outcomes relating to inherent values of Crown pastoral leases. FMC supports its proposed outcome of *maintaining or enhancing inherent values*. However, It is essential that those values are defined carefully.

FMC supports a definition that includes ecological, landscape, cultural, heritage, and scientific values. Those values' maintenance or enhancement in the Crown pastoral lease context behoves human activity to have a minimal footprint.

Given this, and that on-nature's-terms recreation has an accordingly light footprint, and is an important element of the public values of pastoral leasehold land, we are at a loss to understand how recreation values could have been omitted from the Bill's definition of inherent values.

Recreational values should be included in the definition of inherent values. This matter is addressed in further detail below.

Tenure review

FMC has actively participated in the tenure review process since its inception. Attached to this submission is a 2003 FMC publication titled *Freedom of the Hills: Unlocking High Country Recreation*, FMC's vision for pastoral lease lands at that time. Much of its content is relevant today. In particular, there is much Crown pastoral leasehold land that is unsuited to pastoral farming or which has high inherent values and for which conservation management would be appropriate; additionally, recreation is often blocked by lack of access to and through areas under lease. The latter issue is intensifying with population growth and lease ownership changes which have seen increasing barriers to recreational access.

The 2003 FMC publication asked for the formation of six specific parks on the Pisa Range, the Remarkables, St James, Oteake, Kaikoura Ranges and in the Upper Rangitata. The St James land was purchased with funds from the Nature Heritage Fund. Tenure review delivered land with high conservation and recreation values to the following:

> **Hakatere Conservation Park (now around 60,000 hectares), formed in 2007 (behind Methven, including Mt Somers and Arrowsmith ranges).**
>
> **Hāwea Conservation Park (105,000 hectares), formed in 2008 (around Hunter Valley).**
>
> **Oteake Conservation Park (now around 67,000 hectares), formed in 2008 (Hawkdun and St Marys ranges).**
>
> **Ka Whata Tu O Rakihouia Conservation Park, formed in 2008 (Inland and Seaward Kaikoura ranges).**
>
> **Te Kahui Kaupeka Conservation Park, formed in 2009 (Two Thumb Range between Tekapo and the Rangitata River).**

Eighteen years since publication of *Freedom of the Hills: Unlocking High Country Recreation*, FMC continues to participate in individual tenure review processes and initiates and takes part in discussion on the process more broadly.

Future provision for review of tenure

FMC submitted on *Enduring stewardship of Crown pastoral land* in 2019. We attach that submission here - FMC Submission on Enduring stewardship of Crown pastoral land – FMC - and as an appended pdf and request that it be read along with this submission. In it, we propose that Crown pastoral land be managed for the present and future purposes of maintenance and improvement of ecological and landscape integrity.

To summarise the submission's points on tenure review, the process has strongly supported enhancement of inherent values - an outcome of the Bill - through its capacity to redesignate pastoral lease land as public conservation land. It is the freeholding side of tenure review that has enabled environmental degradation and financial profiteering which has caused widespread legitimate concern.

By stopping tenure review's upsides as part of a greater action to deal with its downsides, the Bill would at least 'throw out the baby with the bathwater'.

Further, where pastoral lease land has high inherent values, to shut off an existing route to its protection and retain grazing pressure and exclusion of the public would, in its ongoing suppression of inherent values, be in certain perverse tension with the Bill's outcome of *maintaining or enhancing inherent values*.

FMC's 2019 submission recommended that ability to redesignate pastoral lease land as public conservation land remain, and that the negative aspects of freeholding be addressed by any combination of a range of means; these should enable and embed the purpose of maintenance and improvement of the land's ecological and landscape integrity. The new process would have the following features:

* It would be optional for the Commissioner and lessees.
* It would be 'owned' by the Commissioner and not outsourced to contractors.
* It would be time-limited. Three years is our suggestion (we welcome discussion on this).
* The Department of Conservation would have a mandated expert assessment and advisory role.
* The Walking Access Commission and regional Fish and Game Councils would have mandated expert assessment and advisory roles with respect to public access.
* Partial and whole lease surrender to enable restoration of the land concerned to full Crown ownership and control as public conservation land for conservation and recreation purposes would be welcomed (partial and whole lease surrender are available under the Land Act's s145, *Surrender of lease or licence*).
* The Nature Heritage Fund would have a statutory mandate and appropriate resourcing to make partial and whole lease purchases for transition to full Crown ownership and control as public conservation land.
* Post-review designation and management of public conservation land created would be planned for.
* The potential for post-review subdivision and intensification where land may be freeholded would be dealt with upfront through, as appropriate, robust covenants and/or other mechanisms such as private district plan changes, and/or payment to the Crown for subdivision/onsale value where loss of natural values is historic and unremediable (an appropriate valuation system that determines the likely future values - including monetary value - of relevant land would be a worthy addition).
* 'Slow covenants' would be available: to allow gradual reduction in pasturage on leases and eventual transition to full Crown ownership and control as public conservation land over periods agreed case-by-case; and to spread the financial load.
* Grazing concessions would be used more widely over periods agreed case-by-case to allow lessees to complete land purpose transitions, and to spread the financial load.
* The Walking Access Commission and Fish and Game councils would have statutory mandates to advise on creation of recreation access under the Land Act's s60 (*Creation of easements*) where land remains in leases or under slow covenants.
* Full public consultation including face-to-face hearings panels, potentially including independent experts.

FMC stands by recommendations regarding tenure review made in response to *Enduring stewardship of Crown pastoral land*.

This matter is addressed further, with recommendations, on page 7.

Need for mechanism enabling non-pastoral land removal from leases - a gap in existing and proposed provisions

Regardless of the above section of this submission, there is a clear need for a statutory mechanism to allow land in Crown pastoral leases that is unsuitable for pastoral use - most likely Class VIII and much Class VII land - to be removed from the leases, in addition to existing similar provisions (Land Act 1948 s117 relating to resumptions and s145 relating to surrenders), and to be redesignated as public conservation land.

The provision should be able to be used at any time, and the Director General of Conservation should be named as a party to be consulted.

The need for such provision is illustrated by the case of the Mt Olympus lease. A 4,933.57 hectare portion of the 5,058.57 hectare property was retired for 99 years in 1965; it is Class VIII and severely eroded Class VII land. The lessee was financially compensated and a retirement fence was built. Surrender of the retired land has been proposed repeatedly by the Crown agency responsible for Land, with no conclusion. The land is contiguous with Craigieburn Forest Park and with the Castle Hill Conservation Area, and its re-designation as public conservation land would be highly beneficial to the area's ecological, landscape, and recreational values. It is clearly unsuitable for pastoral use yet remains in a pastoral lease, without the appropriate management that public conservation land redesignation would offer, and it is off-limits to the New Zealand public.

Mt Olympus is no isolated case. Such land needs to be readily removable from the leases to enable expert conservation and recreation management, and for the New Zealand public to have access to the land. This will be in accord with the Bill's outcome of *maintaining or enhancing inherent values*.

Recommendation:

- ***Statutory provision should be made to allow land in Crown pastoral leases that is unsuitable for pastoral use to be removed from leases. It should include the Director General of Conservation as a party for consultation.***

Broad regulatory issues

The Bill provides for mechanisms to vary land use, grafting concepts from the Resource Management Act 1991 (permitted, discretionary and prohibited activities) and a concession regime for commercial recreation activities that appears modelled on conservation legislation.

FMC questions how appropriate these models are for regulation of Crown pastoral lease land, given that the RMA regulates activity on land owned by others and the Conservation Act 1987's concessions regime provides for use of publicly owned land whilst protecting conservation values and the public's right to freely access the land.

In the case of Crown pastoral lease land, while the underlying ownership is public there is no right of access, which is solely by agreement of the lessee.

The proposed regime would allow lessees to essentially privatise the value brought by changes to Land legislation to enable commercial recreation.

Recommendation:

- **In considering the Bill and amendments to it, the committee should work to avoid the 'privatisation' described above from occurring and the land becoming locked up. The risk we have identified is an aspect of the issue of privatising and wealth transfer that FMC understands the Bill was intended to address.**

Specific clauses

Clause 6 – amends s2 of the Crown Pastoral Land Act 1998

Recreation on nature's terms is an important element of the underlying public values of pastoral leasehold land, and a significant part of Aotearoa's heritage. Whether through ongoing provision for review of tenure of pastoral leases (which would provide for recreation), provision of a mechanism for removal of land unsuitable for pastoral use from the leases (and potential redesignation as public conservation land, which provides for

recreation), specific provision for creation of easements for public recreational access (see page 9), or simply in recognition that the leases are indeed leases of public land and much less akin to freehold than has sometimes been claimed, recreation values must be included.

The current CPLA s2 definition is: ***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.*

It is proposed that this be replaced with: ***inherent value****, in relation to any land,— (a) means a value that arises from an ecological, a landscape, a cultural, a heritage, or a scientific attribute or characteristic of a natural resource that— (i) is in or forms part of the land or exists by virtue of the conformation of the land; or (ii) relates to a historic place on or forming part of the land; but (b) does not include any value that relates to or is associated with farming activity.*

This proposed loss of reference to recreation in the definition of inherent value would be a significant and unnecessary blow to the New Zealand public. Indeed, as the Bill stands, recreational value to the general public would be eliminated while proposed recreation permit provisions would effectively put potential recreation value in the hands of lessees.

Recreational values need to be included in the definition of inherent values.

Recommendation:

- ***Recreational values should be included in the list in proposed amended s2(a).***

Clause 8 – new Part 1 of the Crown Pastoral Land Act

New s4 - Outcomes for decision-makers

As currently worded in the Bill new *Outcomes for decision-makers* begins this way:

(1) All persons performing or exercising functions, duties, or powers in relation to pastoral land under this Act or the Land Act 1948 must seek to achieve the following:

The imperative verb *seek* is too weak to give the public confidence that the desired outcomes would be achieved; it would allow lessees to treat the outcomes as largely optional. Addition of the modal verb *must* does little to strengthen it. The looseness of the proposed wording is highly unusual for a lease arrangement. To ensure the words following the imperative will be strenuously acted on by lessees, the imperative must, itself, be strenuous. More work is needed on this matter.

Further, as the proposed definition of inherent value does not include recreational attributes, those exercising functions, duties and powers under the Act would no longer have impact on decision-making relating to recreation, and recreation would not be seen as having any positive value in the implementation of either the Crown Pastoral Land Act or the Land Act. This would be a retrograde step. Note the reference to recreation permits in (2) relates only to commercial recreation (permits are only needed by the lessee to undertake commercial activity involving recreation).

In contrast, the current tenure review objectives provide for *the securing of public access to and enjoyment of reviewable land* (s24(c)(i) of the Crown Pastoral Land Act).

Recommendations:

- **Imperative verbs that will give the public confidence that the stated outcomes will be achieved should be used, as per the above discussion.**

- **Wording such as *the securing of public access to and enjoyment of land with inherent value* (similar to that of the current CPLA s24) should be included in the objectives in proposed s4.**

New s6 - Classification of pastoral activities on pastoral land

Proposed new s6 also has the role of defining what activities may be undertaken on pastoral land by the lessee. Proposed new s13 provides decision-making criteria for deciding recreation permits under s66A of the Land Act. These s66A permits are for recreation where there is *commercial undertaking* involved.

The Bill should address potential for the lessee to allow access for non-commercial recreation, such as people crossing the land for recreational use of adjoining public land, going for a walk, cross country skiing, horse-trekking, bouldering, accessing a river for fishing and so on (currently, lessees can allow access for non-commercial recreation, and often do when asked). As the Bill stands, it is unclear if proposed new s6 would (unintentionally) mean that as a lease is for pastoral purposes, the lessee may not be able to permit others to have access for non-commercial recreation. We would submit that non-commercial recreational activity is part of normal pastoral activity now and is part of the run-holder being part of the community.

The Bill should be clear that lessees can allow access for non-commercial recreation where this does not involve activities listed as being discretionary activities (such as felling trees, tracking and earthworks).

Recommendation:

- **That non-commercial recreation (not involving activity listed in new Schedule 1AB as discretionary or prohibited activities) be clearly identified as being permitted. This could be done by amending s6 or by including non-commercial recreation in the list of permitted activities in Schedule 1AB.**

New s22D - Strategic intentions document

FMC requests two amendments to this section.

In proposed (2), the strategic intentions document should also outline how the Commissioner is to improve public access to rivers, lakes and public land adjoining pastoral lease land regardless of whether statutory provision is to be made for review of tenure of pastoral leases. Even if statutory provision for review of tenure of leases is made, inclusion of strategic intentions relating to recreational access will improve what is otherwise a relatively ad hoc - if welcome - way of developing public access.

In (4) the *may* must be changed to *must*: public consultation on the strategic intentions document is the right thing to do. The document is intended to inform how the Commissioner will protect the Crown and the public interest in managing Crown pastoral land. With the current wording it is possible for the Commissioner to consult with iwi and lessee interests only.

Recommendation:

- ***Changes to proposed s22D should be made as per above.***

New s22E - Reporting requirements

FMC strongly supports this section of the Bill. Transparency is critical to proper administration of the legislation.

Recommendation:

- **This section should be enacted as worded.**

Clause 9 – Repeal of Part 2

As discussed on pages 2-3, ending the positive outcomes of tenure review along with its negatives, in order to eliminate those negatives, is not the only option with respect to Part 2. Such a move would bring significant downsides including enabling activity that does not support the Bill's outcome of *maintaining or enhancing inherent values*. For example, certain palatable plant species would face severe degradation, if not local extinctions. We iterate relevant points made above and make the following recommendation.

Recommendation:

- ***The Bill should be amended to provide for redesignation of Crown pastoral lease land as public conservation land, and for the negative aspects of freeholding as experienced in the tenure review process to be addressed by a range of nuanced means which should enable and embed the purpose of maintenance and improvement of the land's ecological and landscape integrity.***

Clause 10 – amendment to s83.

This amendment is seen as necessary only because the new definition of inherent value makes no reference to recreation. It is critical that recreational values are included in s83(b) objectives and FMC's favoured route for this would be to include them in the definition of inherent values.

Recommendation:

- ***Recreational values should be included in this section through their inclusion in the definition of inherent values. Failing that, FMC supports the proposed amendment of s83.***

Clause 11 – amendment to s84

This amendment will be improved if inherent values include recreation - a significant public good - as discussed earlier in this submission.

Recommendation:

- ***Recreational values should be included in inherent values.***

Clause 12 – amendment to s86

As recreation - a significant public good - is not presently proposed for inclusion as an inherent value, it is not countenanced by the Bill's s86(8). This will ideally be rectified by including recreation as an inherent value; failing this, specific reference to access and recreation as values is needed in proposed 86(8).

Recommendation:

- ***Recreational values should be included in inherent values. Failing that, FMC recommends recreational values be referred to as values by proposed s86(8) as per above.***

Clause 13 - new s87A inserted

This requires the Minister responsible for the CPLA to approve preliminary or substantive proposals for tenure changes before the Commissioner can issue them where these involve changing land designation or freeholding.

We support this as increasing public accountability over the disposal of Crown assets.

Recommendation:

- ***Proposed new s87A should be enacted unmodified.***

Clause 14 - new Part 4A inserted

Administrative provisions should be consistent with broad public expectations. We believe that in most respects, the Bill delivers that consistency, including by making explicit that forfeiture (LA s146) would be a potential outcome of contractual breach.

However, we urge reconsideration of the proposed $50,000 upper limit for damages, given that potential for harm to public values on pastoral leases, caused by breaches, has no such upper limit. Potential to impose a greater fine would allow a District Court to act appropriately for the circumstances of any breach. Potential fines should be consistent with those provided by conservation and resource management legislation.

Recommendation:

- ***The upper limit for damages should be higher, as per the above discussion.***

Clause 19 - Land Act s24 amended

It is appropriate that the Commissioner supports the Walking Access Commission in its work relating to Crown pastoral land. Therefore FMC supports adding proposed s24(1)(ia).

We suggest additionally that support for Fish and Game councils' work relating to public access be provided for in proposed s24(1)(ia).

FMC also supports the addition of proposed s24(2A) as the impact of RMA plans that do not adequately control land use when land ceases to be Crown-owned has been significant, especially with respect to subdivision near lakes.

The proposed amendment s24(5) needs to refer to recreational values through those values being added to inherent values.

Recommendation:

- ***Proposed insertions s24(1)(ia) and s24(2A) should be made.***
- ***Support for Fish and Game councils' public access work should be provided for in proposed s24(1)(ia).***
- ***Proposed insertion s24(5) should refer to recreation values inasmuch as those values are included in inherent values.***

Clause 20 - Land Act s60 amended

At present, many leases make no provision for access; where there are no alternative means of accessing areas beyond those leases, lessees have effective 'capture' of the areas' recreational values. The proposed new s60(5) therefore needs to specifically include access for recreation to lands beyond the lease as a consideration.

Additionally, the section should provide that, where an easement for non-recreational purposes is sought, ability to enable coexistent suitable public access to adjoining areas of public land should be a consideration for the Commissioner.

Proposed new s60(6) should also require the Commissioner to consult the Walking Access Commission and Fish and Game councils on easements, and to enable the Commission and councils to identify needs for these and to initiate relevant discussion with the Commissioner.

Recommendation:

- **S60 proposed amendments should be further changed to enable public recreational access and to empower the Walking Access Commission and Fish and Game councils as per the above discussion.**

Clause 21 - Land Act s66A amended

Recreation permits relating to Crown pastoral lease land are for commercial recreation. They are issued to the lessee or to people with the approval of the lessee only. They concern facilities and activities such as lodges, hunting safaris, and skiing.

Critical relevant issues, especially involving safari hunting or guided tours, are that operations often have impacts on, and gain advantage from, adjoining public land (lack of alternative access to that neighbouring land can turn it into a source of animals/habitat for commercial safari operations and/or give greater solitude than is possible within the confines of the permit area); such relatively exclusive access to public land dis-incentivises lessee provision of public access to these public areas.

FMC believes that inherent values must include recreation, as we have discussed above. If the definition of inherent values is not expanded to include recreation, then proposed new s66A(9) needs provision of public access to adjoining public land in addition to its provision for reducing adverse effects on the *inherent values*.

Proposed new s66A(11) should also require the Commissioner to consult with the Walking Access Commission and Fish and Game councils.

Recommendations:

- ***Inherent values should include recreation. If that is not achieved, then proposed new s66A(9) should include provision for public access to adjoining public land.***

- ***Proposed new s66A(11) should require the Commissioner to consult with the Walking Access Commission and Fish and Game councils.***

Schedule 2 - New Schedule 1AB

This proposed new schedule categorises permitted, discretionary and prohibited pastoral activities. Currently the Bill mentions only commercial - not non-commercial - recreation on pastoral lease land, through the criteria for approving commercial recreation in s13. As noted in discussion on Clause 8, proposed new s6 above could be problematic for existing non-commercial recreation allowed by the lessee. We seek amendment here.

Recommendation:

- ***That non-commercial recreation (not involving activity that is listed in proposed new Schedule 1AB as discretionary or prohibited activities) be clearly identified as being permitted. This could be done by amending proposed new s6 or by including non-commercial recreation in the list of permitted activities in proposed new Schedule 1AB.***

Ka mihi,

Jan Finlayson, president;

Owen Cox, executive member.