The High Country Accord Trust

Response to the Crown's Discussion Document:

Te hau mārohi ki anamata | Transitioning to a low-emissions and climate-resilient future: Have your say and shape the emissions reduction plan. Wellington: Ministry for the Environment.

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Submission type

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This document

This document responds to the Ministry for the Environment's 2021 document: *Te hau mārohi ki anamata | Transitioning to a low-emissions and climate-resilient future: Have your say and shape the emissions reduction plan.*

The response is limited to addressing issues arising under the topics of agriculture and forestry.

Background to the Accord

The High Country Accord is a trust established in 2003 for the purposes of promoting and protecting the rights of holders of pastoral leases under the Crown Pastoral Land Act 1998 ('CPLA') and the Land Act 1948 ('LA'), *'with a view to ensuring the future economic, environmental and social sustainability of the South Island High Country.'*[1]

The Accord represents the interests of more than 150 pastoral lessees, who are collectively responsible for the stewardship of 1.2 million hectares of land in the South Island High Country, alienated by the Crown to them under the statutory pastoral lease instrument.

Summary of position

The pastoral lease estate represents about 17% of all South Island rural land.

The scale of the pastoral lease estate means it has enormous potential to contribute to New Zealand's ambitions for reduction in net carbon emissions - primarily through 'forest' removals – being a combination of active and more passive revegetation of pastoral land.

Much of that opportunity for permanent forest removals is through indigenous species, but there will also be circumstances for exotic plantation forest to play a role without compromising inherent values.

However, the legislation governing pastoral leases and the terms of the leases, do not presently provide the flexibility to realise that potential.

Changes should be made to the Crown Pastoral Land Act 1998 and Climate Change Response Act 2002 to facilitate participation by pastoral leases in the ETS (whether for indigenous or exotic/plantation or permanent forest) and thereby enhance forestry removals. This will generally also result in lower stock levels, and a consequential reduction in biogenic methane and nitrous oxide emissions.

The present Crown Pastoral Land Reform Bill should be paused and reconsidered with a view to recognising this potential.

Further, outside of the ETS there is considerable potential to enhance the net carbon footprint of pastoral leases (and hence contribute to New Zealand's overall targets) through a combination of:

- a better understanding of carbon sequestration by wetlands and re-generating indigenous trees, grasses, and shrubs (i.e., more research); and

[1] Clause 4.1 of the High Country Accord Trust Deed dated 23 November 2003

- the provision of incentives by the Crown as lessor for adoption of farm management practices to respond to that understanding.

Features of pastoral leases relevant to the issue

Pastoral leases have unique features which distinguish them from other farms:

- Pastoral leases were created as an instrument by which the Crown could continue to influence environmental outcomes in the South Island High Country. Those environmental outcomes did not, and do not presently, include climate change

- Pastoral leases grant the right of exclusive possession to the leaseholder for the express purpose of pastoral farming

- Activities other than pastoral farming require the consent of the Commissioner of Crown Lands

- The Commissioner must consent to tree planting activities, and must also consent to removal of trees – other than those planted with the consent of the Commissioner or purchased by the lessee

- The factors which the Commissioner must consider in respect of both tree planting and tree removal do not align easily with New Zealand's emission reduction targets

- Pastoral leases are located in diverse, challenging environments characterised by significant altitudinal ranges from valley floors at 200m to mountain tops at 2,000m. Each lease comprises a range of land classes with most having the potential to capture forestry removals.

- Many also include extensive areas of wetlands and indigenous grasslands, shrublands and forest. Substantial regeneration (with inherent carbon sequestration) is occurring naturally, but considerably more could be achieved through active management if there were incentives to do so.

Specific comments

The CPLA and the ETS

Pastoral leases were created by the Land Act 1948 but are now substantially subject to the Crown Pastoral Land Act 1998. The Crown Pastoral Land Reform Bill is presently before Parliament, having had its second reading but not its Committee stages.

The Crown has alienated to leaseholders the right of exclusive possession and perpetual rights of renewal and transfer. The permitted use under a pastoral lease is grazing via the right to pasturage. Other activities (including planting and harvesting of trees) requires the consent of the Commissioner.

The right of exclusive possession precludes the Crown itself from undertaking any activity on the lease.

A limited number of consents have been given in the past to leaseholders to undertake commercial forest activities, and we are aware of one leaseholder who has a forest which is registered within the ETS.

We understand that, whilst several enquiries have been made in recent years seeking an indication of whether the Commissioner would consent to commercial forests on pastoral leases, no clear answer has been provided by the Commissioner as to the Crown's position.

This may be due to the difficult relationship between the Climate Change Response Act and the Crown Pastoral Land Act.

The Accord has identified that the ETS legislation does not regard the leaseholder as a 'landowner'. There is also uncertainty as to whether the leaseholder is a 'leaseholder under a registered lease'. That leaves the forestry right as the mechanism by which pastoral leases might participate in the ETS.

While a forestry right could be the mechanism for participation in the ETS, there remains a convoluted Commissioner consent process.

That consent process starts with the proposition that the creation of a forestry right requires the consent of the Commissioner under section 89 of the Land Act as a *'disposal of an interest, or any part thereof, in the land'.*

Further, any consent to plant trees requires Commissioner consent as it involves soil disturbance. If the trees are intended to be a commercial crop, consent may also be required for the harvest operations. Consents will also be required for the creation of tracks and any other soil disturbance arising from the forestry activity.

The changes proposed to the CPLA under the current Reform Bill will set out a regime prescribing the factors to be considered. The primary issue is the impact on inherent values.

Just how the Commissioner will identify inherent values of each lease (or part of it) and then assess the impacts of the proposed activity is enormously uncertain. While the Commissioner **may** consider New Zealand's commitment to reduce greenhouse gases, this is limited by the requirement that this can only be to the extent that this is consistent with the statutory outcomes set out in the legislation. These outcomes are themselves amorphous and uncertain. They do not provide the Commissioner with clear guidance as to how he should consider the issue of greenhouse gases.

Furthermore, the Reform Bill expressly provides that 'offsetting' must not be considered by the Commissioner, and he must decline consent where he determines that the proposed activity has more than minor adverse effects and is not necessary to enable the lessee to exercise their rights and obligations under their lease.

It is obvious that this legislative framework has been devised without consideration of the enormous potential for the pastoral lease estate to contribute to the New Zealand's commitments to reduction of greenhouse gases via the ETS.

Further legislative reform is required. Given the Reform Bill is still before Parliament there is the opportunity to pause that Bill for further consideration of how it might be better drafted to facilitate forestry removals and emission reductions.

Pastoral lease and the inherent potential for carbon sequestration

The Accord continually emphasizes that the scale and geographic diversity of the pastoral lease estate and individual leases means that generic regulatory responses are usually inadequate. We promote the proposition that where the Crown is seeking better environmental outcomes a more granular and targeted approach is to be preferred.

In the case of carbon, however, several general propositions are valid.

The first is that, whilst forestry removals may not be actively pursued through the ETS (other than exceptionally), lessees are increasingly aware of the importance of understanding their overall carbon footprint and moving to confirm a carbon neutral/carbon positive position.

This is because the markets for merino fibre and high value meat products of the High Country are increasingly demanding insights into the carbon footprints of the supply chain. Over time the expectation of the high value consumer for carbon positive goods is likely to increase, and farmers will respond to that trend.

Secondly, pastoral lessees believe that many properties will already be net carbon positive once the carbon sequestration of regenerating beech forest, manuka, kanuka, matagouri, tussocks and other indigenous species are considered.

On properties of smaller scale this feature may not be so important. But across thousands of hectares (11 more than 20,000 hectares) it assumes significance.

If suitable mechanisms can be designed, the potential can be considerably enhanced.

Much of the High Country has a strong tendency to regenerate naturally to indigenous species if given the chance.

This is already occurring often by reason of the active management of land by limiting or removal of grazing. Sometimes this occurs by way of formal conservation covenants (e.g., Open Space covenants under the QEII Trust Act on Soho, Glencoe and Coronet). Much has occurred by way of DOC covenants on former pastoral leases which have been through tenure review.

In other cases, it has occurred by deliberate farm management practices but without formal protection, through lessees recognising that the value of targeted enhancement of indigenous biodiversity in particular parts of their farms.

In other cases, regeneration is occurring less formally. One instance we are aware of is a decision to cease a regular pattern of periodic clearance of regenerating manuka because DOC had indicated that this would pass to the Conservation estate on a tenure review. The Crown then withdrew from the tenure review, but by then regeneration had taken hold to an extent that the Commissioner then refused consent to clearance.

In addition, it is widely considered that wetlands in the High Country will also be functioning to permanently sequester significant amounts of carbon.

There are, however, problems:

- There is insufficient study and understanding of the extent to which wetlands and regenerating species in the High Country contribute to permanent carbon removals
- There is insufficient skilled scientific or consultancy resource to apply any understanding of such removals to reliable measurement at farm level
- Lessees generally have limited resources to identify the full extent of regeneration to facilitate that measurement
- The CPLA and the Reform Bill do not provide the mechanisms for incentivizing such management practices. If lessees are not able to monetize the carbon opportunity

through the ETS, but the Crown desires better carbon outcomes in the High Country then appropriate mechanisms need to be designed.

- It would be unfair to net carbon positive pastoral leaseholders to impose taxes and prices on gross emissions at the processor level. Such an approach provides a disincentive to adopt on-farm offsetting land management practices

Further research and policy work is required to address these issues and the Accord invites officials to work us to achieve positive practical outcomes.

Answers to specific questions

We briefly answer a number of the paper's specific questions below

Question	Answer
31	The consideration of options to reform the ETS should consider the role of the pastoral lease. The legislative barriers of the CPLA and ETS legislation to participation by lessees in the ETS has meant that considerable areas of land which may be suitable for permanent forestry removals (without compromising other indigenous biodiversity values and food production values) has not been considered
83	Research is required to achieve a better understanding of the overall net carbon position of the South Island High Country pastoral lease estate
84	Address the legislative holes in the CPLA and ETS which cause barriers to pastoral lessees taking up on-farm mitigation practices
85	As above- considerable research is required to better understand the position of pastoral leases
86	Officials and politicians first need to effectively engage at a farm level to understand the issues better. Designing policy without that firsthand insight is not good process. With good research and knowledge, the private sector is then best placed to inform international customers for our meat and fibre customers
87	Legislative change as described

Releasing submissions

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