The High Country Accord Trust

Response to the Crown’s Discussion Document: Action for healthy waterways – A discussion document on national direction for our essential freshwater

31 October 2019
## Contact information

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## Submission type

- [ ] Individual
- [x] NGO
- [ ] Local government
- [ ] Business / Industry
- [ ] Central government
- [ ] Iwi
- [ ] Other (please specify)

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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.

Summary of position

We acknowledge the aspirations of the Crown and respect the concept of te Mana o te Wai.

Nevertheless, the Discussion Document raises issues of fundamental importance to pastoral lessees. If the signaled proposals are implemented, they will have major financial and practical management implications for their properties, but without any compelling evidence of likely material environmental gains.

The circumstances of the South Island High Country draw out the fundamentally flawed premise of the Discussion Document and its associated draft National Policy Statement, draft National Environmental Standards, and draft Stock Exclusion Regulations. All have been drafted on the basis that the issues of freshwater quality can be best addressed generically and that a single approach across New Zealand will be successful.

The Accord does not believe this will be the case.

At a high level, the Accord is concerned that the inflexibility of the proposed generic approach will result in a failure to take account of the distinct characteristics of each catchment, sub-catchment and property. The consequence will be sub-optimal financial and environmental outcomes for New Zealand as a whole, and individual lessees and their communities.

At a more detailed level, there are proposals which are either impractical or unaffordable.

Some specific proposals (notably the stock exclusion proposals) cut across the contractual commitments of the Crown under the pastoral lease instrument, or otherwise fail to take account of the contractual arrangements in place for stock numbers under the lease. Others do not take account of the scale of the typical pastoral lease, the high number of ‘rivers’, and the diversity of stream beds, stream banks, soil types, topography, and natural and recreational values.

The Accord therefore advocates for a more flexible and catchment specific approach which allows Regional Councils to address water quality issues within the broad policy framework of the draft NPS (with the exceptions of Policies 6 & 8 which are considered by the Accord to be too prescriptive).

The Accord believes that initiatives for water quality which originate at a catchment or sub-catchment level; involve a multi-property approach; and which take into account broader issues of biodiversity, and weed and pest control, will achieve far more effectively than the approach presently envisaged.

1 Clause 4.1 of the High Country Accord Trust Deed dated 23 November 2003
This is particularly so for High Country pastoral leases, and the Accord would welcome the opportunity to work with officials and Ministers to achieve workable and effective outcomes.

Below we set out our submissions on specific aspects of the proposals, but first set out the legal and physical characteristics of the pastoral lease which are relevant to, and provide the context for, this submission.

**The pastoral lease – legal and physical attributes**

The pastoral lease was devised by the Land Act 1948 to be a tool for the sustainable environmental management of the South Island High Country. It contemplates the shared stewardship of the land, recognising that the Crown was unable to achieve environmental and ecological outcomes on its own.

Since 1948 pastoral lessees have, as a rule, been steadily improving the quality and protection of the environmental values of the High Country. This includes the values associated with both land and water.

Pastoral lessees have been the ‘delivery agent’ for addressing the Crown’s concerns for the environment. This has occurred without tangible support from the Crown. There are numerous examples of lessees’ extensive covenanting in favour of QEII Trust, voluntary grazing management practices, wetland enhancement, and predator control programs; all designed to enhance our indigenous biodiversity and take account of water quality issues.

**Legally:** The pastoral lease instrument:

- Confers on lessees the exclusive right to pasturage over the entire area of the leased land. The leased land typically encompasses many stream beds and margins (sometimes – but not always - overlaid marginal strips in the case of qualifying water bodies). The Crown’s proposal for the exclusion of stock from large parts of the leased land accordingly has legal implications for the Crown, which appear to have been overlooked.

- Contains contractual limits as to the type and numbers of stock which may be carried within the leased area. These limits may be altered by application to the Commissioner of Crown Lands.

- Requires activities involving anything other than the minor disturbance of soils to be approved by the Commissioner of Crown Lands.

**Generally lightly stocked:** The combination of the stock limits and the nature of the leased land normally results in very light stocking practices at a farm scale compared to properties outside the pastoral lease estate. Most are likely to have farm scale base carrying capacities of less than 14 stock units per hectare, but many would have paddocks periodically stocked at greater than 18 stock units per hectare which are critical to the farm’s overall economic viability (although such paddocks may not have base carrying capacities at that level).

**Stock mix:** Most pastoral lease properties run a predominance of sheep in combination with a smaller number of cattle. Deer also feature across the pastoral lease estate. Pastoral leases therefore do not fit the assumed ‘model’ farm of the Stock Exclusion Regulations and will need to take account of the proposed cattle framework.

**Geographic characteristics:** Pastoral leases are usually relatively remote. Many properties are located in catchment headwaters. These headwaters have numerous feeder streams of
more than 1 meter width which will therefore qualify as ‘rivers’. Many will also have numerous wetlands which will be caught by the proposed regulations.

Many of these waterways and most of these wetlands will therefore be affected by the Stock Exclusion Regulations.

**Limited infrastructure:** Pastoral leases typically have poor road access and limited available infrastructure. Electricity networks typically end at the homestead; internet is often poor; stockwater is typically provided by streams.

Against this context we can now make comment on the some of the specific proposals.

**The Stock Exclusion Regulations**

In our view the proposed Stock Exclusion Regulations take no account of the practical reality of farming in the South Island High Country:

- Most lessees, whilst carrying a predominance of sheep will still be caught by the Stock Exclusion Regulations because they also run cattle across much of the same land as the sheep, and it is impractical to adopt another management system.

- The general requirement that beef cattle not be permitted to cross water courses:

  *except by a dedicated culverted or bridged cross point (unless that crossing is no more than twice per month).*

  is utterly impractical.

- The numerous streams present on most pastoral leases, and the absence of reticulated trough water, necessitate the ongoing access to streams by cattle as well as sheep for stock water.

- Generally pastoral leases are likely to be classified as non-low-slope land and having a farm scale base carrying capacity of less than 14su/ha. Nevertheless, the mixed class of stock will almost certainly mean that many will be caught by either the wetlands, paddock scale assessment of 18su/ha, irrigated land and (possibly) fodder crops/break feeding tests such that the Stock Exclusion Regulations will apply.

- Virtual fencing in the High Country is simply impractical with current technology and lack of electricity network infrastructure.

- The consequence of the proposed regulations will be that potentially significant areas of pastoral lease land will require physical permanent fencing of extensive river margins and wetlands.

- There is, however, no generally applicable evidence that current stock carrying practices on pastoral leases in the South Island High Country are resulting in measurably adverse water quality outcomes which would be mitigated by fencing.

- In many cases the alluvial nature of the soils in High Country valleys means that riparian setbacks will have little measurable impact on levels of N leaching into the immediately adjacent waterway.
• In many cases the gravel nature of the stream beds and banks in the High Country are such that stock do little damage to beds, banks and bankside vegetation.

• On the other hand, the adverse consequences of regulated stock crossings and fencing rivers and wetlands in this environment are many:
  
  o A material, and in some cases unaffordable, fencing cost estimated to be not less than $15,000 per kilometer (it is not inconceivable that there are pastoral leases which would have more than 100 kilometers of required fencing);
  
  o The cost will be exacerbated by the High Country often being the subject of adverse weather events which result in fence losses on a regular basis;
  
  o Material areas of productive land will be removed from production for little measurable environmental gain;
  
  o Once fenced these areas will not be managed and the weed control from light grazing will cease. The cost of weed management will quickly become prohibitive;
  
  o The creation of large areas of land within the riparian exclusion zones will allow a proliferation of pest plants such as pines, willows, gorse, broom, buddleia and blackberry and more vigorous non-pest species (such as some exotic grasses).
  
  o A photo of a fenced exclusion zone is included at the end of this submission showing clearly the infestation of willow and other species inside the exclusion zone. This photo demonstrates clearly that exclusion zones will certainly not result in the same appearance as the carefully manicured banks of the Avon in Hagley Park;
  
  o These overgrown riparian exclusion zones also tend to provide excellent habitat for rodents due to seeding by uncontrolled species. In turn this supports mustelid populations which at various times will turn their attention to indigenous species. In the South Island High Country various stream bed birds will be particularly at risk;
  
  o Once fenced and the riparian zone has been overgrown, there will be a consequential exclusion of considerable areas of land from any effective recreational use (freshwater anglers in particular);
  
  o Unresearched and unintended consequences for the fauna and flora of many aquatic stream and wetland environments are likely. While shade may be perceived by some as desirable, in many environments this may not have been the natural state of the riparian zone and lead to changes in the aquatic environment;
  
  o Fence lines in the High Country already impact the visual values of the High Country. Requiring more fence lines will exacerbate this visual impact;
  
  o In and around wetlands and many High Country streams the effect of fences will be the creation of visually dissonant green ribbons of exotic weed species in environments typified by wide open spaces dominated by indigenous species;
  
  o Over time there is a high likelihood that the application of these rules will come to be regretted in much the same way that well-meant public plantings of
conifers in areas of the McKenzie Country are now recognised to have been seriously misconceived.

The Accord accordingly submits there is a need for a general re-think about how the stock management regulations can be tailored to the South Island High Country. Specifically:

- The general rules for stock crossings should not apply to any pastoral lease and will likely be impractical for many other hill and high country properties;

- In the category:
  
  _Land where any cattle or deer are feeding on fodder crops, or break feeding, or where pasture is being irrigated, or has been irrigated in the previous 12 months._

  The word ‘Land’ should be replaced by “paddock’. This will mitigate the present uncertainty of what is meant by ‘Land’.

- There needs to be a general exception from the stock exclusion requirements for rivers and wetlands where the Regional Authority is reasonably satisfied that the farm management practice is not having a materially adverse impact on water quality or stream environment; or that the benefits of implementing the stock exclusion regulations are outweighed by the adverse impacts. This may be at the application of a landholder or implemented by Regional Councils on a more general and principled basis having regard to specific freshwater management units;

- Any slope based measurement for assessing ‘low slope’ land must not be more than 5 degrees.

**Intensification proposals**

**Clause 30 of the proposed National Environmental Standards** proposes limits on intensive winter grazing.

Many pastoral lessees make limited (relative to area), but economically important, use of intensive winter grazing.

The slope trigger threshold for permitted activity should be set not lower than 15 degrees.

The area trigger threshold for permitted activity should be set not less than 10% of the total land area.

The regulation does not need to stipulate a one month period for re-sowing. Farmers will naturally re-sow at the optimal time having regard to climatic and soil conditions.

**Clause 34 of the proposed National Environmental Standards** proposes limits on irrigation, and specifically that any irrigation of more than 10 hectares is a discretionary activity, requiring certain standards to be met.

Irrigation has been increasingly used in the High Country as a defensive farm management strategy within the Crown’s stipulated stock limits in the leases to allow flexibility to maintain stock during drought and dry periods and avoid forced sales of stock (e.g. lambs at less than optimal weights) to lowland farmers for fattening.
Irrigation on pastoral leases is not therefore necessarily correlated to general intensification or correlated to dairy or dairy support activities. It also probably results in a degree of amelioration of lowland stocking rates.

The ability to irrigate and retain lambs to maximise value has supported financial resilience and the ability to reinvest funds in other desirable on-farm discretionary initiatives – notably weed and pest control. That will continue to be the case as the Crown also seeks an increase from pastoral lessees in activities which are positive for indigenous biodiversity.

Officials therefore need to understand that irrigation of High Country land enables other desirable activities, and the imposition of the proposed limits will likely have downstream impacts.

Officials also need to understand that modern irrigation systems with electronically monitored soil moisture control can reduce nutrient losses. Where that irrigation replaces older forms of irrigation (such as border dyke methods) there can be net reductions in nutrient losses. There will be many instances where such new technology will enable irrigation of a greater area of land for the same or lesser amount of water, than under an older system. Thus enabling higher productivity with lower nutrient losses.

The investment required for adoption of new technology dictates, however, a greater area of land. The proposed new rules will discourage such investment.

In the context of the High Country:

- The Accord does not object in principle to the requirement for a Freshwater Farm Plan, as the Accord is generally supportive of such plans. Nevertheless, there will need to be a greater lead in time to take account of the likelihood that farmers will not be able to access the necessary expertise – simply because it does not exist. See below for further comment.

- The Accord strongly submits that the requirement to prove the complete absence of any increase in N, P, sediment or pathogen levels is misconceived.

- Individual farms with a low historical development will be unfairly penalised at the expense of neighbours who have historically adopted more intensive farm management practices.

- This disproportionately affects High Country farmers and probably many iwi groups too.

- The proposed approach takes no account of ‘effects’. There should be provision for a more flexible approach where the effects are demonstrated to be immaterial having regard to the wider catchment and/or sub-catchment conditions, and land-use changes within the relevant area (e.g. a conversion of an adjoining pastoral property to forestry or an offsetting indigenous forest programme).

- While most farms will have the data to calculate N and P leaching by reference to the Overseer Model, they will not have the ability to calculate historical sediment and ecoli levels in order to demonstrate the impact of an irrigation proposal.

**Freshwater plans**

As noted above, the Accord accepts that over time Farm Environment Plans will become a feature of farm management.
The Accord favours an approach which sees Plans evolve within a wider catchment or sub-catchment context which take account of neighbouring plans. It reflects thinking that a ‘bottom up’ approach of collaboration will work better than the Government’s ‘top down’ approach.

Mandating the requirement for Farm Plans within five years ignores the practical constraints on people.

There simply will not be sufficient trained ‘approved environment planners’ or ‘approved auditors’ to achieve this aspiration.

**Overseer generally**

The Accord has reservations with the adoption of ‘Overseer’ as a regulatory tool throughout New Zealand.

If the Overseer model is to be adopted, then it needs to be shifted from the private sector to the public sector; operated on an independent basis with a sound governance model; properly funded; and opened for both scrutiny and improvements.

Overseer is currently a relatively blunt tool for environmental management. It has many data gaps – reflecting in some cases the absence of sound research, and in others difficulties of incorporating completed research into the model to better reflect environmental impacts.

As a publicly owned and operated model Overseer will be capable of much speedier enhancement, and its increased reliability as a predictive tool will assist New Zealand to adapt its primary sector management practices to best environmental outcomes.

**Releasing submissions**

You may publish this submission with the Accord’s name on it.

Please remove personal details from responses to Official Information Act requests other than name, emails, and submitter type information at the beginning of this submission.
Riparian Exclusion Zone showing infestation by willow and other exotic species