

## In Confidence

Office of the Minister of Conservation

Cabinet Environment Committee

## Public consultation on options to streamline the reclassification of conservation portfolio stewardship land

### Proposal

- 1 This paper seeks agreement to initiate public consultation on options for streamlining the process for reclassification and disposal of Conservation portfolio stewardship land (stewardship land).

### Relation to government priorities

- 2 Assessing and reclassifying stewardship land will ensure that public conservation land is appropriately managed to protect and restore conservation values. Streamlining this process will support efforts to rapidly progress reclassification work at scale. This supports the:
  - 2.1 **Manifesto commitment** to protect, preserve and restore our natural heritage and biodiversity, and promote the recovery of threatened species;
  - 2.2 **Co-operation agreement** to work with the Green Party to achieve the outcomes of *Te Mana o te Taiao - Aotearoa New Zealand Biodiversity Strategy*. In particular, the strategic priority, "Tūāpapa – Getting the system right" and goal 1.3, "Current natural resource legislation has been reviewed to ensure it is effective and comprehensive...and ensures ongoing biodiversity protection...".

### Executive Summary

- 3 In April 2021 Cabinet agreed in principle that the Conservation Act 1987 (the Conservation Act) be amended to improve the process of reclassifying conservation portfolio stewardship land, and that two national expert panels be established to make recommendations to me on revised classifications for stewardship land [CBC-21-MIN-0045 refers].
- 4 This paper seeks approval to initiate public consultation and release a public discussion document outlining possible legislative changes to streamline the process for reclassifying stewardship land. The issues and options to be canvassed through consultation focus on removing inefficiencies in the current process that delay or prevent stewardship land from being reclassified in the desired timeframes.
- 5 I will report back to Cabinet with recommended amendments to the Conservation Act following public consultation.

## Background

- 6 On 19 April 2021, Cabinet agreed to a two-fold approach to improve the process of reclassifying conservation portfolio stewardship land. Firstly, Cabinet agreed that two expert national panels be established to make recommendations to me on revised classifications for stewardship land. Secondly, Cabinet agreed in principle that the Conservation Act be amended to improve the process for reclassification [CBC-21-MIN-0045 refers].
- 7 This paper reports back with options for legislative change to improve the process for reclassifying stewardship land. I am seeking Cabinet approval to canvass these options through public consultation and the release of a public discussion document. s9(2)(f)(iv)
- 8 Systematic reclassification of stewardship land has not occurred primarily because of the scale of the work involved and the complexity of statutory requirements. The two-fold approach to improve the process of reclassifying stewardship land aims to overcome a number of these issues in order to reclassify the approximately three thousand parcels of land that remain unassessed, totalling two and a half million hectares. This equates to approximately 9% of Aotearoa New Zealand's total land area.
- 9 A significant proportion of stewardship land was transferred to the Department of Conservation (DOC) when the Conservation Act was passed. Most is in the South Island, with approximately one million hectares on the West Coast. There are smaller parcels in the North Island, primarily in Waikato, Taranaki and in the Central North Island. A range of activities can occur on stewardship land including grazing, beekeeping, and mining.
- 10 The expertise of the national panels will provide the drive and focus needed to progress large scale reclassification. Legislative amendments will support this by enabling the work of the national panels and streamlining the process for reclassification. Progressing large-scale reclassification of stewardship land will achieve:
- 10.1 certainty that land with high conservation values is identified and managed appropriately, in line with DOC's responsibility for the protection and restoration of these values;
  - 10.2 more efficient use of resources by ensuring land with very low or no conservation values is made available for other uses where appropriate; and
  - 10.3 clarity for tangata whenua<sup>1</sup>, stakeholders and the public on the status of the land and the appropriate level of economic use, cultural activity

<sup>1</sup> Public conservation land can be subject to historical Treaty of Waitangi claims. When this land is included as redress in Treaty settlements, its conservation values are protected through settlement legislation or conservation covenants.

and protection.

- 11 In May 2021, Ngāi Tahu raised concerns regarding the appointment of the national panels and later lodged judicial review proceedings. The Crown agreed that the national panels would not be convened while DOC and Ngāi Tahu sought a resolution outside of the courts. Negotiations are ongoing and legal proceedings have been adjourned until the 5 November 2021 to allow time for these negotiations to be concluded. This has impacted timeframes and process for the national panels. s 9(2)(f)(iv)

### Public consultation will focus on six policy areas

- 12 I seek Cabinet approval to initiate public consultation and release a public discussion document to support legislative changes to streamline the process for reclassifying stewardship land. The proposed discussion document is attached at **Appendix 1** (subject to minor edits and design changes). The discussion document asks for feedback on six policy areas:
- 12.1 Improving consistency of public notification and submission processes.
  - 12.2 Enabling the national panels to carry out the public notification and submission process.
  - 12.3 Clarifying responsibilities for making recommendations to reclassify stewardship land as national park.
  - 12.4 Removing the statutory step to declare all stewardship land to be held for conservation purposes before it can be reclassified or disposed of.
  - 12.5 Enabling the Minister of Conservation to direct proceeds from the sale of stewardship land to DOC.
  - 12.6 Clarifying the status of concessions on reclassified stewardship land.
- 13 The discussion document provides options under each of these areas (including maintaining the status quo) and asks for public input on the best option to address them. The policy areas and options are outlined below, and a land classification process/schematic of reform options is attached at **Appendix 2**.

### Improving consistency of public notification and submission processes

- 14 Under the Conservation Act, public notification and submission/hearing requirements can lead to an unnecessarily lengthy reclassification process. The Conservation Act requires the Minister of Conservation to publicly notify their intent before stewardship land can be reclassified to certain classifications or be disposed of. After public notification at least forty working days (two months) must be provided for written submission. Any person or organisation can request a hearing to support their submission. The national panels will be engaging with tangata whenua before public notification when

the conservation values of the land are being assessed. In addition to the status quo, I propose to canvass two options to improve the public notification and submissions/hearing process.

- 15 Option 1: Shorten the minimum timeframe for public submission to 20 working days. Given the scale of stewardship land reclassification, the current time requirements may be inefficient and potentially prohibitive by adding unnecessary length to the process in many cases. Shortening the minimum time for submission balances streamlining the process with ensuring the public have adequate time to input into decisions. Electronic communication allows submitters to provide feedback within a much shorter timeframe. Any new period specified in legislation would be a minimum requirement. Where there is strong public interest, the expectation would be that a longer period would be provided. However, reducing the time allowed for submissions may impact the ability for the public to engage in the process. Given the range of activities that occur on stewardship land there will be individuals and organisations from a range of communities, including rural communities, who may be interested in any proposed reclassification.
- 16 Option 2: Allow the ability to decline a hearing. Large numbers of hearings can lengthen the submissions process and put pressure on resource requirements. There is currently no ability to decline a hearing in circumstances where the costs of holding it outweigh the benefits. However, hearings are a key part of facilitating engagement and allowing individuals to present their evidence in a way that is most appropriate to them.

**Enabling the national panels to carry out the public notification and submission process.**

- 17 Under the Conservation Act, the Minister of Conservation (or DOC under delegation) is required to carry out the above public notification and submission process in most cases of proposed stewardship land reclassification/disposal. These powers cannot be delegated to the national panels. In addition to the status quo, I propose to canvass an option to enable the national panels to carry out the public notification and submission process.
- 18 Option 1: Amend the Conservation Act to allow delegation of these powers to national panels. Enabling the national panels to carry out the public notification/submissions process will be more efficient and improve the quality of their recommendations by allowing them to engage with the evidence of submitters first-hand. It will also make clear to the public that the panels are independent of government and will be making impartial recommendations.

**Clarifying responsibilities for making recommendations to reclassify stewardship land to national park**

- 19 New national parks and variations to existing national parks require a recommendation of the New Zealand Conservation Authority (NZCA) to the Minister of Conservation. The NZCA is required to consult with the appropriate conservation board, tangata whenua within whose rohe the land is located, any local territorial authority, and any local Fish and Game council.

The quality of the NZCA's recommendations reflect their substantial experience in this area.

- 20 However, this approach may not align with the role of the national panels to assess the values of stewardship land and make recommendations to me on appropriate classification. Process and timeframes may be influenced by the availability and resource of the NZCA, and any delay or disagreements on recommendations for national parks would be outside of the national panels' control. I propose to enable the national panels to make recommendations for national parks to me, after consultation with the NZCA, tangata whenua, and other relevant bodies.
- 21 Proposal: Amend legislation to enable the national panels to make recommendations for national parks to the Minister of Conservation after consulting with the NZCA, tangata whenua and others. This would provide a consistent and efficient approach across all reclassification recommendations for stewardship land, and ensure decisions reflect the non-partisan membership of the national panels. This would be a significant departure from the current role of the NZCA.

**Removing the statutory step to declare all stewardship land to be held for conservation purposes before it can be reclassified or disposed of**

- 22 Stewardship land includes land which has been **deemed** to be held for conservation purposes (section 62), and land which has been **declared** to be held for conservation purposes (section 7). Section 62 refers to land which was allocated to DOC when the department was first formed. Under the Conservation Act, stewardship land cannot be reclassified or disposed of until it is **declared** to be held for conservation purposes under section 7 of the Conservation Act.
- 23 This is an arbitrary step that adds time, complexity, and resource requirements for no clear benefit, and would be cumbersome for large scale stewardship land reclassification. In addition to the status quo, there is an option to remove the statutory step to declare all stewardship land to be held for conservation purposes before it can be disposed of.
- 24 Option 1: Amend legislation to declare all stewardship land to be held for conservation purposes. There is minimal risk in this approach, and it would not impact outcomes or stakeholders. The only protection that could be seen to have been removed is that it allows disposal of stewardship land. However, the Conservation Act and the Conservation General Policy set strict parameters around disposal.

**Enabling the Minister of Conservation to direct the proceeds of sale of stewardship land to the Department of Conservation**

- 25 Due to the size and location of stewardship land parcels, processes such as assessing the values of land and carrying out surveys is expensive. The cost of selling stewardship land (including often substantial surveying costs) can be prohibitive. These factors have contributed to the slow rate of stewardship



land reclassification and disposal. This situation is in part because the proceeds from the sale of stewardship land go to the Crown Trust account, rather than towards the costs of reclassification.

- 26 Section 82 of the Reserves Act 1977 allows the Minister of Conservation to direct an amount equal to the proceeds of sale of a reserve to DOC so it can be used in managing, administering, maintaining, protecting, improving, and developing reserves. In addition to the status quo, I propose to canvass a similar option to enable a similar process to that in the Reserves Act.
- 27 Option 1: Amend the Conservation Act to direct the proceeds of sale of stewardship land to DOC for the further reclassification or management of any remaining stewardship land parcels. This would remove a significant deterrent to disposing of stewardship land when appropriate.
- 28 This option would have fiscal implications for the wider Crown. However, officials consider only a small percentage of stewardship land is likely to meet the threshold for disposal and sale. As the recommendations of the national panels are yet to be developed, the precise scale of the cost is not known. There is also the option to retain the status quo.

#### **Clarifying the status of concessions on reclassified stewardship land**

- 29 There are a significant number of concessions granted on stewardship land for a range of activities, for example grazing and beekeeping.<sup>2</sup> Reclassifying stewardship land may result in situations where existing concessions are inconsistent with protections under a new classification, or stewardship land with an existing concession is recommended for disposal. As it is not possible to pre-empt the recommendations of the national panels, it is hard to predict the scale of this issue.
- 30 Concession holders have entered a contractual arrangement with DOC in good faith and invested resources on this basis. In the past DOC has been able to deal with these situations on a case-by-case basis by finding ways for the contractual agreement to be honoured. In some cases, this has meant that the official reclassification does not happen until the concession runs out.
- 31 However, concessions can be granted for long periods of time (10+ years) so there may be situations where DOC cannot reclassify or dispose of land for a considerable time. If the concession has a right of renewal, then this timeframe could be even further extended (30+ years). Allowing activities inconsistent with the appropriate level of protection to continue for prolonged periods of time may have implications for the land's conservation values. In addition to the status quo, I propose to canvass two options to clarify how these instances are dealt with.

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<sup>2</sup> These options are limited to consideration of concessions granted under the Conservation Act 1987. Access arrangements for minerals activities on public conservation lands are managed under the Crown Minerals Act 1991 (CMA) and changes are out of scope of this work. Access arrangements will continue to be managed in line with current legislative requirements.

32 Option 1: Amend the legislation to clarify existing concessions on stewardship land can continue under agreed terms regardless of reclassification. This would maintain the status quo and provide certainty to all interested parties, and transparency about decision-making. The option would also reduce the risk of decisions being challenged.

33 s9(2)(g)(i)



34 Neither option would preclude DOC from employing a more flexible approach where possible. For instance, a concessionaire may be able to adjust their activity to suit a new classification, or the new owner of land to be disposed of may be willing for the activity to continue.

**Out of scope issues**

35 s9(2)(f)(iv)



36 s9(2)(f)(iv)



**Next steps**

37 Subject to Cabinet approval of this paper, I will instruct DOC to commence public consultation and release the attached public discussion document. I propose a four-month consultation period with appropriately tailored approaches for three separate groups;

- 37.1 Tangata whenua – regional hui at place / virtual hui as required. More intensive consultation will be held in areas where the largest concentrations of stewardship land are located.
- 37.2 Key stakeholders – face to face/ virtual meetings and direct email communication.
- 37.3 The wider public – an online portal to provide written feedback on the public discussion document.
- 38 Following analysis of the feedback received during consultation, I propose to report back to Cabinet with recommended amendments to the Conservation Act.

### Financial Implications

- 39 There are no immediate financial implications as a result of this paper. There may be financial implications resulting from amendments to the Conservation Act. In particular, enabling the Minister of Conservation to direct the proceeds of sale of stewardship land to DOC (set out at paragraph 25). Other proposals would likely achieve efficiencies where streamlining processes reduces resource requirements. Detailed analysis and costing of proposed legislative amendments will be included when policy approvals are sought.

### Legislative Implications

- 40 There are no direct legislative implications resulting from the proposals in this paper. I will report back to Cabinet with proposed amendments to the Conservation Act following public consultation.

- 41 s9(2)(f)(iv)
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### Impact Analysis

#### *Regulatory Impact Assessment*

- 42 The public discussion document substitutes for a Regulatory Impact Assessment. The Department of Conservation Regulatory Impact Assessment Panel have reviewed the Discussion Document and confirmed that the discussion document can substitute for an interim Regulatory Impact Statement. It will lead to effective consultation and support the eventual development of a quality Regulatory Impact Statement.

#### *Climate Implications of Policy Assessment*

- 43 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.



## Population Implications

- 44 There are no immediate population implications from this paper. The proposed options for legislative changes to streamline the process for reclassification of stewardship land are unlikely to have notable impacts on any group.

## Human Rights

- 45 The proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

## Consultation

- 46 The Ministry for the Environment, Te Arawhiti, the Ministry for Primary Industries, the Department of Internal Affairs, the Ministry of Culture and Heritage, the Ministry for Business, Innovation and Employment, Te Puni Kōkiri, and Land Information New Zealand were consulted on this Cabinet paper. The Department of the Prime Minister and Cabinet has been informed.

## Communications

- 47 I propose to instruct DOC to publish the public discussion document on their website. I will publicly announce its release and publicise the key information via a press release. DOC will also publicise its release on its social media platforms and other key communications channels. DOC will directly communicate with tangata whenua and with key stakeholders informing them of consultation and requesting their participation.

## Proactive Release

- 48 I intend to proactively release this Cabinet paper within 30 days of Cabinet making a final decision.

## Recommendations

The Minister of Conservation recommends that the Committee:

- 1 **note** that in April 2021 Cabinet agreed in principle that the Conservation Act 1987 be amended to improve the process of reclassifying conservation portfolio stewardship land and invited the Minister of Conservation to report back to Cabinet on proposed amendments [CBC-21-MIN-0045 refers];
- 2 **note** that a Conservation (Stewardship Land Reclassification) Amendment Bill is expected to be introduced in mid-2022, with legislation passed in late-2022.
- 3 **note** that the Minister of Conservation intends to initiate public consultation and release a public discussion document to support legislative changes to streamline the process for reclassifying and disposing of stewardship land, covering the following policy areas:

- 3.1 Improving consistency of the public notification and submission processes.
  - 3.2 Enabling the national panels to carry out the public notification and submission process.
  - 3.3 Clarifying responsibilities for making recommendations to reclassify stewardship land to national park
  - 3.4 Removing the statutory step to declare all stewardship land to be held for conservation purposes before it can be reclassified or disposed of.
  - 3.5 Enabling the Minister of Conservation to direct the proceeds of sale of stewardship land to DOC.
  - 3.6 Clarifying the status of concessions on reclassified stewardship land
- 4 **approve** public consultation and the release of the public discussion document (subject to minor edits and design changes) to support streamlining the legislative process for reclassifying and disposing of stewardship land;
- 5 **note** that the Minister of Conservation will report back to Cabinet with recommended amendments to legislation following public consultation;
- 6 **note** that in April 2021 Cabinet agreed to establish two independent expert national panels to make recommendations to the Minister of Conservation on the reclassification of stewardship land [CBC-21-MIN-0045 refers]. The work of the national panels has been paused while DOC and Ngāi Tahu seek to resolve Ngāi Tahu concerns regarding the appointment of the national panels;
- 7 **s 9(2)(f)(iv)**

Authorised for lodgement  
Hon Kiritapu Allan  
Minister of Conservation

**Appendices**

**Appendix 1: Draft discussion document – Improving the process for the reclassification of stewardship land**

**Appendix 2: Land classification process and schematic of reform options**

Released by the Minister of Conservation

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