

Western South Island Stewardship  
Land Reclassification:  
Hearing Guidance

# Contents

1	PURPOSE OF THIS DOCUMENT	2
1.1	Purpose	2
2	PURPOSE OF HEARING	2
2.1	Purpose of the hearing	2
2.2	Hearing open to the Public	2
2.3	Communicating with the DG's delegate and Hearing Panel	2
3	HEARING PROCESS AND TIMEFRAMES	3
3.1	Hearing process	3
3.2	Hearing timeframes	3
3.3	Statutory requirements	3
4	HEARING ROLES	3
4.1	All Hearing Panel members	3
4.2	DG's delegate	4
4.3	The Chair	4
4.4	Advisory Members	6
4.5	DOC administrative support	6
4.6	Technical support	6
4.7	Media support	7
5	SUBMITTERS	7
5.1	Submitters	7
6	HEARING PROTOCOLS AND STEPS	8
6.1	Hearing protocols	8

## Glossary

*Hearing Panel* means: The Director-General's delegate, the Chair, the Advisory Members

*Advisory Members* means: Francois Tumahai, Neil Clifton, Katharine Watson, Paul Madgwick

**Document approved under section 49(3) Conservation Act 1987 by**

Arna Litchfield, Strategic Operations Manager

Signed:



Date: 7 September 2022

# 1 PURPOSE OF THIS DOCUMENT

## 1.1 Purpose

The Purpose of this document is to prescribe the process, under section 49 of the Conservation Act 1987, for a public hearing regarding stewardship land reclassification. The Director-General of Conservation's delegate ("DG's delegate") has determined under section 49(3) Conservation Act 1987 ('the Act') that the following is the procedure for the hearing.

# 2 PURPOSE OF HEARING

## 2.1 Purpose of the hearing

The purpose of the hearing is to provide persons who have lodged objections or submissions (from here referred to as "submissions") and requested to be heard, a reasonable opportunity to appear before the DG's delegate in support of their submissions, in accordance with section 49(2)(c) of the Act.

The hearing processes will inform the DG's delegate in making her recommendations on the submissions to the Minister under section 49(2)(d) of the Act.

The submitter may speak in support of their written submission, including clarifying any points they have raised. Submitters may present information (which may include information presented on their behalf by subject matter experts or any other person) to support their submission. Submitters may not raise any issues that are not relevant to their written submission and the subject matter of the hearing.

The hearing is not an opportunity for a submitter or any member of the public present to debate or negotiate issues with the Hearing Panel.

## 2.2 Hearing open to the Public

The hearing will be open to the public, including media, unless issues become apparent and need to be managed. The DG's delegate will make decisions on any request to exclude the public or media from any part of the hearing.

This hearing is complex in nature due to the scale and size of the stewardship land area and the extent of the reclassification proposals. This hearing will involve multiple submitters and it is likely media will be in attendance.

## 2.3 Communicating with the DG's delegate and Hearing Panel

Where any submitter wishes to communicate with the DG's delegate about the hearing, that communication should be by email to [stewardshiplandreclassification@doc.govt.nz](mailto:stewardshiplandreclassification@doc.govt.nz)

## 3 HEARING PROCESS AND TIMEFRAMES

### 3.1 Hearing process

The key steps in the public hearing process include:

- Notify the proposed revised land reclassifications
- Receive and process the submissions
- Prepare summary of submissions report
- Provide a copy of all submissions to the DG's delegate
- Provide a hearings pack to the Hearing Panel that includes the draft summary of submissions, the submissions of the submitters wishing to be heard, a Q&A and any other relevant information.
- Convene hearings sessions (in person and/or virtual sessions).
- DG's delegate prepares section 49 report for the Minister of Conservation (MOC) (making recommendations on all submissions, whether "heard" at the hearing or not), with reasons, and attaching a summary of submissions.

### 3.2 Hearing timeframes

The hearing will commence approximately two weeks following the close of the public notification period (23 August). The hearing is likely to occur over eight working days, in person on the West Coast and online based in Christchurch. The hearing is expected to commence on Monday 12 September, with in-person sessions held that week and further online sessions on Monday 19 September to Wednesday 21 September.

### 3.3 Statutory requirements

The exact process for a hearing is not set out in legislation. However, section 49(2)(c) of the Act allows, where a submitter indicates the desire to appear in support of their submission, a reasonable opportunity to appear before the Director-General. A delegate of the Director-General will be appointed and will be exercising the Director-General's statutory role of hearing submitters in accordance with the Conservation Act.

Following the close of the hearing, the Director-General is required to send the MOC a "section 49 report" - a summary of all the submissions (whether the submitter appeared at the hearing or not) and recommendations as to the extent to which the submissions should be allowed or accepted.

## 4 HEARING ROLES

### 4.1 All Hearing Panel members

All Hearing Panel members (the Director-General's delegate, the Chair, the Advisory Members) are required to:

- **Prepare for the hearing** by:
  - Understanding the Stewardship Land Reclassification Project.

- Understanding the process for a hearing in accordance with section 49(2) of the Act.
  - Understanding the DG’s statutory role and acknowledging that role cannot be shared with other Hearing Panel members.
  - Reading the relevant conservation values and recommendation reports.
  - Reading and considering all the relevant submissions and supporting information.
  - Reading the relevant sections of the summary of submissions report.
  - Having a good understanding of tikanga Māori.
  - Being familiar with the legislation that applies to the reclassification of stewardship land.
  - Reviewing the Q&A.
- **Attend the hearing and:**
    - Observe the principles of natural justice.
    - Suspend judgement of the submitter.
    - Conduct themselves with empathy and impartiality.
    - Make all parties relax and feel valued.
    - Explore issues until they are well understood.
    - Not display their own knowledge or expertise as they want to draw this out of the submitter at the hearing.
    - Listen to the submitters’ oral evidence.
    - Comply with hearing protocol, including conflicts of interest protocol (Attached as **Appendix 1**: ‘Conflict of interest protocol for Hearing Panel’ and ‘Conflict of interest declaration for Stewardship Land Reclassification Hearing Panel’).

## 4.2 DG’s delegate

The DG’s delegate is responsible for:

- **The hearing itself** by:
  - determining the procedure at the hearing, including;
    - determining what is a reasonable opportunity of appearing for each submitter,
    - deciding whether the public can attend the hearing,
    - deciding whether media can record the hearing,
    - deciding how conflicts of interest will be managed,
  - providing the “section 49” report for the MOC (making recommendations on oral and written submissions, with reasons, and attaching the DG’s summary of submissions report)

## 4.3 The Chair

The Chair is responsible for:

- **Preparing for the hearing** by:

- Confirming who will be present (names and roles of the participants) and in what order they have been scheduled to speak.
- Preparing introductory, welcoming and closing comments.
- **Facilitating the hearing** and ensuring the procedures decided by the DG's delegate are followed to ensure that all submitters requesting to be heard get a reasonable opportunity to appear and be heard at the hearing. The main aspects of the Chair's role at the hearing include:
  - Introducing the hearing and welcoming participants.
  - Introducing the Hearing Panel, and explaining their respective roles
  - Providing information about the hearing process and explaining how the hearing will inform the subsequent steps of the reclassification process.
  - Ensuring an accurate record is maintained of the hearing. This includes who spoke at the hearing and the questions asked and how they were answered and keeping a register of any additional material presented at the hearing.
  - Maintaining a conflict of interest register, ensuring compliance by the Hearing Panel with the conflicts of interest protocol, and recording steps taken to manage conflicts in accordance with decisions by the DG's delegate.
- **Facilitating inquisitorial and clarification questions** being put to submitters by the DG's delegate and the Advisory Members and recording responses.

The DG's delegate and Advisory Members' questions may seek to:

- Test conflicting or lack of evidence with the submitter's evidence.
- Give the submitter an opportunity to fill any gaps in their evidence.
- Clarify jargon or misunderstood terms used by the submitter.
- Test the credibility (or otherwise) of any person.
- Clarify key issues "for the benefit of the DG delegate and Advisory Members' understanding" where the presentation has been incoherent or limited.
- Obtain local knowledge from the submitter that is pertinent.
- **Maintaining the hearing protocols and timing** by:
  - Confirming whether the Hearing Panel have pre-read submissions, in order to avoid the submitter or any person needing to read out material the panel is already familiar with.
  - Asking the submitters or any person to shorten or clarify their statement and presentation if they become repetitive or long winded.
  - Asking the submitters to limit their presentation to material that is relevant to their submission
  - Ensuring that submitters stay within their allocated time slot (subject to giving submitters a reasonable opportunity to be heard as decided by the DG's delegate).
  - Ensuring that the submitter is respectful.
  - Maintaining order in the hearing venue.
  - Establishing times for taking breaks and starting and finishing times each day.

- **Closing the hearing**

#### 4.4 Advisory Members

The Advisory Members' role is:

- **Supporting the DG delegate during the hearing** by:
  - Providing advice when required.
  - Asking clarification questions of the submitter via the Chair.

#### 4.5 DOC administrative support

- Support provided prior to the hearing:
  - Convening a meeting of the DG's delegate with Hearing Panel members prior to the hearing to discuss the submissions/submitters appearing, format of the hearing and possible questions they may wish to ask the submitters at the hearing.
  - Booking rooms and setting up the equipment in the room e.g. Wifi, Teams, etc.
  - Setting hearing timetable, liaising with submitters and sending out any online meeting appointments.
  - Ensure all participants in the hearing are available and have the material they need.
  - Setting up any resources, such as maps (online and/or hard copy) or photos that can be put on the venue walls, to illustrate the proposal graphically to help the submitters with their presentation.
- Support the running of the hearing by:
  - Taking notes during the hearing (GHD).
  - Recording the hearing (audio recording and in writing).
  - Managing the technology.
  - Managing any changes to the submitters timetable.
  - Provide appropriate interaction and communication with the submitters.
  - Communication and media support for communicating with the media in controversial hearings.
  - Capturing and cataloguing any additional documentary information presented by submitters.

#### 4.6 Technical support

The DG's delegate may require or request technical support (e.g. statutory land management, management planning, etc) before, during or after the hearing. This can include:

- Support and advice before the hearing
- Being present at the hearing to support and answer questions when there are complex points being presented, or the submitters have legal representation, or when key submitters are presenting.

- GHD (a resource management consultancy) has been contracted to support the process.

## 4.7 Media support

It is highly likely that media will attend the hearing. The media may request to audio record or film all or part of the hearing. This request needs to be made to the DG's delegate who needs to decide if this can happen, in consultation with the Chair and advisory panel members. Generally, media would be allowed to record or film at a hearing as it is open to the public. Media should, however, not be intrusive in their recording (either audio or film) as submitters should be kept at ease.

Media support may be required before, during or after the hearing. Media support can include:

- Media advice and management
- Dealing with media queries

All enquiries from the media are to be passed to DOC to respond.

# 5 SUBMITTERS

## 5.1 Submitters

A hearing is about the submitters and the presentation of their evidence at the hearing. The hearing is occurring because submitters have requested to appear in support of their submissions.

At the hearing a submitter can have:

- An advocate or a lawyer to represent them. A lawyer representing a submitter may present submissions on the law and elaborate on points made in the written submission.
- People to present evidence relevant to their submission.

At the hearing the submitter, their advocate, lawyer and others may:

- Cover matters raised in their written submission including clarification or information relevant to the submission.
- Read directly from their submission.
- Read or present a hearing statement that expands and clarify points, issues and information in their submission.
- Expand on and clarify points of their written submission.
- Present written and visual information (written legal submissions, photographs, maps, drawings etc.).
- Generally, speak in support of their position.



## 6 HEARING PROTOCOLS AND STEPS

### 6.1 Hearing protocols

Hearings are informal but will be run according to the protocols in this document. These include:

- Hearings are held in public (unless protection of the submitter or sensitive information or safety precautions are required).
- The recognition and respect of tikanga Māori.
- Evidence not being given under oath.
- No party undertaking cross-examination.
- The opportunity for the submitter to present their submission.
- Submitters being able to expand on and clarify points in their written submission.
- The Hearing Panel being able to ask (through the Chair) the submitter questions to clarify points in their submission or presentation.
- No submitter has a right of reply to anything said by any other submitter

#### ***Step One: The Chair introduces the hearing***

The Chair begins the hearing by:

- Welcoming all the participants. This could include incorporating pōwhiri, whakatau and mihimihi.
- Introducing people at the hearing- Hearing Panel, staff, submitters, etc.
- Providing a context of the hearing process and explanation of the role of the hearing.
- Setting out how the hearing will be conducted.
  - Timetable of submitter appearances and breaks.
  - Protocols for running a hearing.
  - Submitters' role in the hearing.

#### ***Step Two: Description of the stewardship land reclassification project***

A brief description of the stewardship reclassification project at the start will provide everyone attending the hearing with shared context. This can be done by the Hearing Chair, with appropriate support from the DG's delegate and Advisory Members.

#### ***Step Three: The submitters make their presentations***

Submitters have important local and technical knowledge of the site(s) and environment.

#### ***Step Four: The Chair and panel to ask clarification questions***

It is the role of the Chair to facilitate the Hearing Panel asking clarification questions of the submitter.

The Chair can ask the submitter or any person to shorten their statement and presentation time if they become repetitive and long winded or seek to raise issues that are not relevant to the subject matter of the hearing.

***Step Five: The Chair closes the hearing***

At the close of the hearing the Chair:

- Thanks the submitters for their attendance. This includes acknowledging the time and effort in preparing their submissions and giving oral evidence.

# Conflict of Interest Protocol for Hearing Panel

What is a conflict of interest?

A conflict of interest can arise where two different interests overlap. There may be a conflict of interest where a Hearing Panel Member's duties or responsibilities to the Director-General could be affected by some other interest or duty that the Hearing Panel Member may have.

A conflict could arise where a Hearing Panel Member has an interest in or duty to a submitter appearing before the panel, or an interest in a proposed reclassification for a particular parcel of land.

The conflict that could arise from the other interest or duty:

- could lead to actual, potential or perceived prejudice against or bias towards a person, issue or proposal;
- could lead to an actual, potential or perceived benefit to the individual or their relations or friends, which could invalidate any recommendation or decision made or influenced by the person with the conflict;
- could result in a consideration of irrelevant matters in a legal decision.

Examples of 'other interests' that could lead to a potential conflict (this is not an exhaustive list);

- holding another job or public office;
- having been or being an employee, advisor, director, or partner of another organisation or business and possessing confidential information about the same matters (note that having had a close connection on its own may be sufficient for a conflict to be perceived);
- pursuing a business opportunity; being a member of or having a close association with a club, society, or association or other group that may have a connection with or interest in a proposed reclassification;
- being involved in or closely associated with a relevant project, whether as part of an organised group or as an individual;
- having a professional or legal obligation to someone else (such as being a trustee);
- owning a beneficial interest in a trust, or being a trustee of a trust that has an interest in a proposed reclassification;
- owning or occupying a piece of land affected by a proposed reclassification;
- owning shares or some other investment or asset affected by a proposed reclassification;
- having received a gift, hospitality, or other benefit from someone in connection with your work as a Hearing Panel Member ;
- owing a debt to someone who has an interest in a proposed reclassification;
- holding or expressing strong political or personal views that may indicate prejudice or predetermination for or against a person or issue;

- being a relative or close friend of someone who has one of the above interests (or who could otherwise be personally affected by a classification decision or recommendation);

## Declaring conflicts

All Hearing Panel members are to declare any potential conflicts of interest. Potential conflict of interests may relate to submissions or individual submitters, or specific parcels of stewardship land.

If a Hearing Panel Member is unsure whether a conflict exists, they are to discuss the situation with the Hearing Panel Chair.

Opportunities to declare potential conflicts:

1. Prior to hearings, all Hearing Panel Members including the Hearing Panel Chair are asked to declare any potential conflicts of interest using the conflict of interest declaration form
2. At the start of each day of hearings, Hearing Panel Members will be asked if they have any further potential conflicts of interest to declare
3. Hearing Panel Members may raise that they may have a potential conflict of interest at any time

## Managing conflicts

The Hearing Panel Chair will lead the discussion about how to manage identified conflicts.

The Director-General's delegate will make the decision about how identified conflicts will be managed. Conflict of interest declaration forms must be signed by the Director-General's delegate.

Where a conflict of interest is identified by the Hearing Panel Chair, the Director-General's delegate will make lead the discussion about how to manage identified conflicts as well as making the decision about how identified conflicts will be managed.

The Director-General's delegate is bound by the Department's Conflict of Interest and Standard of Conduct policies. Where a conflict of interest is identified by the Director-General's delegate, it will be managed in accordance with these policies.

Actions to manage identified conflicts may include (but not limited to):

- Hearing Panel Member continues as a full hearing panel member, with the conflict declared
- Hearing Panel Member listens to submitter, but does not ask questions about or contribute to discussions on issues relating to the conflict
- Hearing Panel Member is recused from hearing the submission, and all discussions relating to the submission

Actions to manage conflict will be recorded as part of the declaration of the conflict.

Any actions taken to manage the conflict will be in place through the entirety of the hearing process, including the preparation of the hearing report.

#### Recording conflicts

All potential conflicts of interest will be recorded as a declaration of the conflict on the conflict of interest declaration form. Any actions taken to manage the conflict will be recorded as part of the declaration.

#### Reporting conflicts

All declared conflicts and actions taken to manage the conflict will be published on the Department of Conservation website prior to the submitter presenting at the hearing. If this is not practicable, information about the identified conflict and how it will be managed will be shared at the hearing.



## Conflict of interest declaration for Stewardship Land Reclassification Hearing Panel

Stewardship Land Reclassification: West Coast hearings

Hearing Panel Member:

Date:

CONFLICT OF INTEREST DECLARATION	
I declare to the best of my knowledge that I do <u>not</u> have:	<p><i>Place x in the column if you <u>do not</u> have an interest or connection.</i></p> <p><i>Leave the column blank if you <u>do</u> have an interest or connection.</i></p>
<ul style="list-style-type: none"> <li>any financial interest in or with a parcel of land proposed for reclassification (this can be in terms of shareholdings, financial arrangements etc).</li> </ul>	
<ul style="list-style-type: none"> <li>any interest in or duty to a submitter appearing before the Hearing Panel.</li> </ul>	
<ul style="list-style-type: none"> <li>any relatives or friends with a financial interest in or with a submitter appearing before the Hearing Panel (this can be in terms of shareholdings, financial arrangements etc) .</li> </ul>	
<ul style="list-style-type: none"> <li>a managerial or governance relationship with a submitter appearing before the Hearing Panel, such as a seat on the Board.</li> </ul>	
<ul style="list-style-type: none"> <li>an interest as a trustee of a trust that holds shares in a company that is the applicant or as a trustee of a trust where the other trustees or the beneficiaries are applicants.</li> </ul>	
<ul style="list-style-type: none"> <li>any other relationship or interest that may impact on my impartiality.</li> </ul>	

<p><b>I declare to the best of my knowledge that I:</b></p>	<p><i>Place x in the column if you are <u>not</u> an employee or own property etc.</i></p> <p><i>Leave the column blank if you are an employee or do own property etc.</i></p>
<ul style="list-style-type: none"> <li>• am <b>not</b> an employee, advisor, director, or partner of another organisation or business and possessing confidential information about a proposed reclassification (note that having had a close connection on its own may be sufficient for a conflict to be perceived).</li> </ul>	
<ul style="list-style-type: none"> <li>• have <b>not</b> been pursuing a business opportunity; being a member of or having a close association with a club, society, or association or other group that may have a connection with or interest in a proposed reclassification.</li> </ul>	
<ul style="list-style-type: none"> <li>• Do <b>not</b> hold another job or public office that may have a connection with or interest in a proposed reclassification.</li> </ul>	
<ul style="list-style-type: none"> <li>• do <b>not</b> own or occupy a piece of land related to a proposed reclassification .</li> </ul>	
<ul style="list-style-type: none"> <li>• have <b>not</b> received a gift, hospitality, or other benefit from someone in connection with your work as a Hearing Panel member.</li> </ul>	
<ul style="list-style-type: none"> <li>• do <b>not</b> hold or express strong political or personal views that may indicate prejudice or predetermination for or against a person or issue.</li> </ul>	
<ul style="list-style-type: none"> <li>• do <b>not</b> owe a debt to someone who has an interest in a proposed reclassification.</li> </ul>	
<ul style="list-style-type: none"> <li>• do <b>not</b> have a beneficial interest in a trust, related to an application or contract or being a trustee of that trust that has an interest in a proposed reclassification;</li> </ul>	
<ul style="list-style-type: none"> <li>• do <b>not</b> a professional or legal obligation to someone else (such as being a trustee);</li> </ul>	
<ul style="list-style-type: none"> <li>• have <b>not</b> been involved in or closely associated with a relevant project, whether as part of an organised group or as an individual;</li> </ul>	
<ul style="list-style-type: none"> <li>• do <b>not</b> a relative or close friend of someone who has one of the above interests (or who could otherwise be personally affected by a classification decision);</li> </ul>	

If there are no blanks above, please sign this form and provide to the Hearing Panel Chair.

If there are blanks, please provide more detail in the space below. Please include specific submitter(s) and /or proposed reclassifications (described by land parcel) comments relate to.

- I undertake to make any further declarations detailing any actual potential or perceived conflict, which may arise during my involvement with this hearing.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

#### **DIRECTOR GENERAL'S DELEGATE REVIEW**

I have reviewed this Conflict of Interest declaration and (delete one of the following):

- decline to allow the Hearing Panel Member to participate in the hearing
- accept that there is a risk of an actual potential or perceived conflict of interest that can be managed as follows:

Signature: \_\_\_\_\_



Name: \_\_\_\_\_

Date: \_\_\_\_\_