



Briefing: Extension of appointments for Stewardship Land Reclassification National Panel members

To	Minister of Conservation	Date submitted	9 June 2023
Risk Assessment	Medium Extending the National Panel appointments will ensure the existing reclassification process for the West Coast and Northern South Island can continue as per stakeholder expectations, and the Agreement with Te Rūnanga o Ngāi Tahu. s9(2)(h) [REDACTED]	Priority	High
Reference	23-B-0177	DocCM	DOC-7325884
Security Level	In Confidence		

Action sought	Approval to start the Cabinet Appointment and Honours Committee process to extend the Stewardship Land National Panel appointments	Timeframe	21 June 2023
Attachments	Out of scope [REDACTED] Attachment B – Out of Scope [REDACTED] and Terms of Reference for National Panel Member May 2021		

Contacts	
Name and position	Cell phone
Karl Beckert, Director National Operations Support	9(2)(a) [REDACTED]
Nicole Kunzmann, Reclassification Manager	9(2)(a) [REDACTED]

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. As part of the Stewardship Land Reclassification Project, two independent advisory National Panels are operating in the West Coast and Northern part of the Te Rūnanga o Ngāi Tahu (Ngāi Tahu) takiwā. The appointments for the National Panel members expired on 1 June 2023.
2. You now have the opportunity to consider whether reappointment suits the direction you would like to take with the stewardship land work.
3. In the Ngāi Tahu takiwā, the National Panels are working alongside a Ngāi Tahu-appointed Mana Whenua Panel, following a process defined in the Agreement with Ngāi Tahu.
4. Work for both regions is incomplete, though the West Coast work is further advanced.
 - The Western South Island Panel has publicly notified their recommendations, but still has to consider information presented through the public process to inform their final recommendations to you.
 - 9(2)(f)(iv)
5. s9(2)(f)(iv)
- 6.
7. There are two options for the future delivery of the project:
 - Extend the National Panel appointments for 12 months to allow work to continue in areas already underway using the current model (option I).
 - 9(2)(f)(iv)
8. 9(2)(f)(iv)
9. By reappointing the National Panel members, you are not committing to a Panel process for any new areas to be reclassified. This decision can be made at a later date and would be supported by a further briefing.
10. 9(2)(f)(iv)
11. s9(2)(h)

We recommend that you ... (Ngā tohutohu)

		Decision
a)	Note the expiry of the appointment letters for the Stewardship Land Reclassification National Panels on 1 June 2023	
b)	Note that a decision not to extend the panel appointments could be judicially reviewed.	
c)	<p>Approve EITHER</p> <p>I. Initiate the Cabinet (APH) process to extend the Western South Island and Northern South Island National Panel member appointments for 12 months for work within the Ngāi Tahu takiwā. 9(2)(f)(iv) [redacted] (recommended).</p> <p>OR</p> <p>II. 9(2)(f)(iv) [redacted]</p>	<p><input checked="" type="checkbox"/> Yes No</p> <p>Yes / No</p>

9(2)(a) [redacted]
 Date: 11/05/2023

Marie Long
 DDG National Operations and Regulatory Services
 For Director-General of Conservation

9(2)(a) [redacted] 19 June 2023
 Date: / /

Hon Willow-Jean Prime
Minister of Conservation



Purpose – Te aronga

1. This briefing seeks your direction on the future delivery method of Stewardship Land reclassification, including whether to extend National Panel member appointments which expired on 1 June 2023.

Background and context – Te horopaki

2. In April 2021, Cabinet agreed to a programme of work to improve how we reclassify stewardship land [CBC-21-MIN-0045 refers]. Before this progress for reclassification had been slow due to the complexity of the work, volume of land involved (30% of DOC administered land is stewardship), and a lack of prioritisation.
3. The new approach to reclassification work included:
 - The appointment of National Panels to provide recommendations to you about reclassification of stewardship land; and
 - Legislative amendments to streamline processes for the reclassification and disposal of stewardship land, better enabling the work of the National Panels.
4. In April 2021 the Cabinet Business Committee (CBC) agreed that two National Panels be established with an initial focus on stewardship land in the Western and Northern South Island. The agreed reclassification project was not temporally confined, although CBC noted the Minister’s intent to appoint Panellists for an initial term of up to two years, to be reviewed thereafter [CBC-21-MIN-0045 refers]. Stewardship Land National Panel appointments expired on 1 June 2023.
5. Alongside the National Panels, a Ngāi Tahu appointed-Mana Whenua Panel was established to engage in the project across the Western and Northern South Island, as per the Agreement between the Minister of Conservation (then Minister Allan) and the Kaiwhakahaere of Ngāi Tahu, Lisa Tumahai. The Agreement expires on 28 October 2023; as per 10.4 of the Agreement, the parties must meet to discuss the continuation or termination of the Agreement three months prior to expiry (28 July 2023).
6. Further details on the history of stewardship land, the role of the National Panels, and how we are working with mana whenua are included at Attachment A.

Western South Island

7. Reclassification work for the Western South Island is well advanced, with the classification recommendations being publicly notified in May 2022, followed by public hearings in September 2022.
8. The next step is for the Panels to consider information presented through the public process to inform their final recommendations to you. 9(2)(f)(iv)

9(2)(f)(iv)

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Northern South Island (Te Tau Ihu rohe)

12. Discussions between the Department and the eight Te Tau Ihu iwi began in November 2021 and have been largely positive. Following your hui with Te Tau Ihu Iwi Chairs on 17 April we are continuing to discuss the best way to progress the reclassification project in their rohe. 9(2)(f)(iv)

13. 9(2)(f)(iv)

Interaction of Stewardship Land Reclassification and the No New Mines policy

14. Although separate workstreams, the 'Crown Minerals (Restricting Access for Mining on Conservation Land) Amendment Bill' (the Bill) affects how iwi, environmental NGOs and commercial operators view recommendations to reclassify stewardship land.
15. If the Bill proceeds, it will prevent access for most mining operations on approximately 70 percent of conservation land. Whilst stewardship land would not be included in the Bill, reclassified land will no longer be able to be considered for mining operations.
16. 9(2)(g)(i)
17. 9(2)(g)(i)
18. 9(2)(g)(i)
19. Your engagement with Ngāi Tahu on the No New Mines policy and the associated amendment Bill is detailed in Briefing 23-B-0060 No New Mines on Conservation Land – engagement with Ngāi Tahu.

Future delivery of the Stewardship Land Reclassification Project

20. Over the past two years the National Panels have completed elements of the project, but the complexity of the work means they have not yet delivered final recommendations to you for decision.
21. Stewardship Land National Panel appointments expired on 1 June 2023. As a section 56 advisory committee under the Conservation Act 1987, the power to extend these appointments rests with the Minister of Conservation. This decision should be based on your preferred future method of delivery for the project.
22. Panel appointments must also be noted by the Cabinet Appointments and Honours Committee (APH). The last available APH date available in the pre-election period is 2 August 2023. Any reappointments would be backdated to 1 June 2023.
23. The two options for future delivery of Stewardship Land Reclassification Project are:
- a) Continue to use the National Panels to reclassify stewardship land in areas currently underway; extend National Panel member appointments for 12 months (recommended).

9(2)(f)(iv)

Option one: Continue to use the National Panels to reclassify stewardship land in areas currently underway; extend National Panel member appointments for 12 months (recommended)

24. The National Panels have built up significant knowledge regarding the areas under assessment, informed by site visits, and in the case of the Western South Island Panel, public submissions and hearings. The National Panels have also developed strong working relationships with members of the Mana Whenua Panel.
25. Stakeholders have invested considerable time and resource contributing to this process and there is an expectation the National Panels will deliver final recommendations to you.
26. There is significant reputational and legal risk to stopping the National Panels' work prior to decisions being made, as the Western South Island reclassification is mid-way through a statutory process. A decision not to extend National Panel appointments would be reviewable. 9(2)(g)(i)
[Redacted]
27. The Agreement governing the project in the Ngāi Tahu takiwā includes several process-related references to the National Panels. If you choose not to extend the appointments of the National Panel, an amendment to the terms of the Agreement will be required, in consultation with Te Rūnanga o Ngāi Tahu.
28. This is the Department's preferred option for progressing the reclassification project in areas already under consideration, and we recommend that you extend National Panel membership for a further 12 months. This will allow:
 - The Western South Island National Panel to provide final recommendations to you after consideration of public submissions 9(2)(f)(iv)
[Redacted]
 - 9(2)(f)(iv)
[Redacted]
29. 9(2)(f)(iv)
[Redacted]

Timeframes

30. 9(2)(f)(iv)
[Redacted]
31. [Redacted]
32. [Redacted]
33. Further extensions beyond 1 June 2024 may be required if external issues causes further disruption to the timeframes.

The Process: extending National Panel member appointments

34. Although the Minister of Conservation holds the power to re-appoint Panel members under s.56 of the Conservation Act 1987, these appointments must also be noted by the Cabinet Appointments and Honours Committee (Cabinet Manual 5.12.I).
35. The Cabinet Manual advises governments to exercise restraint in making significant appointments in the pre-election period. However, the National Panels do not meet the test of a significant appointment, being advisory in nature and holding no strategic or decision-making powers.
36. The last available Cabinet Appointments and Honours Committee date available in the pre-election period is 2 August 2023. The renewal of National Panel appointments can be implemented retrospectively to cover the intervening period from 1 June 2023.
37. All National Panel members had indicated a desire to have their appointments extended, except for landscape architect Di Lucas of the Northern South Island National Panel. An opportunity exists for the landscape architect from the Western South Island Panel, Philip Blakely, to provide his expertise to both Panels to remove the need to appoint a new panel member. We will provide an update on this option following your decision.

9(2)(f)(iv)

9(2)(f)(iv)

Risk assessment – Aronga tūraru

- 50. There is significant legal, reputational, and relationship risk if decisions are not made to reclassify land through the Panel process, particularly in regard to Western South Island region where public notification has already occurred. The work is of considerable interest to a wide range of groups including iwi, environmental NGOs, and those with commercial interests such as mining groups, illustrated by the large-scale response to public notification.
- 51. Two environmental NGOs (Forest and Bird, and Environmental Defence Society) have already indicated that they will be judicially reviewing the process and decisions if they do not believe correct process was followed. Renewal of National Panel appointments will provide a consistent approach and certainty to the stakeholders involved.

52. 9(2)(f)(iv)

53. s9(2)(f)(iv)

Treaty principles (section 4) – Ngā mātaḥono Tiriti (section 4)

- 54. As rangatira and kaitiaki, whānau, hapū, and iwi have a strong interest in any decisions on the reclassification of stewardship land. The Ngāi Tahu-appointed Mana Whenua Panel was established to represent the interests of mana whenua in the reclassification of stewardship land on the West Coast and northern part of their takiwā.
- 55. DOC staff will speak with tangata whenua in other regions to understand how they wish to participate in the stewardship land reclassification process when it takes place within their rohe. s9(2)(f)(iv)

Financial implications – Te hiraunga pūtea

56. s9(2)(i) [REDACTED]

Next steps – Ngā tāwhaitanga

57. Once we have been advised of your preferred option, we will proceed with providing you with either:

a) A Cabinet paper for the Cabinet Appointments and Honours Committee setting out the preferred approach for extending the National Panel appointments

Or,

b) s9(2)(f)(iv) [REDACTED]

58. We will also inform the National Panel members of your decision.

ENDS

Out of scope

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Out of Scope

Terms of Reference and Procedures for the Independent Expert National Panels to provide recommendations on the reclassification of stewardship land

Context

1. Land comes into the public conservation portfolio through acquisition, such as Nature Heritage Fund purchases, or by gift. A significant portion of land came by transfer of land from other Crown agencies when DOC was established in 1987. Land acquired is held for a conservation purpose and managed as a stewardship area. The definition of a stewardship area is a conservation area that is not foreshore or does not hold a specific protection. This is essentially a holding status until reclassification occurs.
2. There are over 3,000 parcels of stewardship land of varying sizes across New Zealand. Stewardship land is approximately 30 percent of the land administered by DOC, totalling approximately 2,500,000 hectares nationally. The majority of New Zealand's stewardship land is in the South Island, and a large proportion of this is in the West Coast region (Tai Poutini). Approximately 35 percent of the public conservation land in Tai Poutini is stewardship land, totalling 1,000,000 hectares. There are smaller parcels of stewardship land in the North Island, primarily in Waikato, Taranaki and across the Central North Island. Attached as Appendix 1 is a map showing the stewardship areas within New Zealand.
3. Most stewardship land is poorly defined in terms of its boundaries and unique characteristics. Stewardship land does not have a value-related protection classification but is managed for conservation purposes. Any use of this land is managed within the context of the Conservation Act 1987, which requires protection of the site's natural and historic resources, for the purpose of maintaining its intrinsic values and safeguarding options for future generations. Stewardship land can also be disposed of or exchanged.
4. While stewardship land is fully protected as conservation land, it does however allow activities that might not be permitted on classified land such as National / Conservation Parks or Reserves. For example, a consideration in the process for approving a concession requires the activity to be consistent with the purpose for which the land is held. Stewardship land is only held for conservation purposes generally, so there is no specific purpose for an application to be considered against.
5. A 2013 report by the Parliamentary Commissioner for the Environment (PCE) identified that much stewardship land was of high conservation value. The report noted that this was not recognised publicly or widely in the state sector. Reclassifying stewardship land would ensure land is subject to the most appropriate land status and therefore be managed and protected in accordance with its values.
6. The process of reclassifying stewardship land usually involves: surveying the land; working in partnership with whānau, hapū and iwi, conservation boards, and

the New Zealand Conservation Authority where appropriate; and consulting the public (which may include submissions and public hearings). The ecological, cultural, historic, landscape and recreational values, and proposed management and use of the land by the public, must be considered before a decision can be reached on the revised land classification. If the land has been identified as surplus to requirements, it can be disposed of. Most stewardship land has not yet been reclassified due to the scale and complexity of this process.

7. The classification of any public conservation lands is part of DOC's statutory work; the choice of classification depends on the conservation purpose for which the area(s) is to be held and the objectives for the management of the area. As such, consideration is given to statutory requirements of the proposed classification such as the level of protection it provides for the conservation values present, the means of controlling or restricting use, as well as other matters.
8. Policy 6 of the Conservation General Policy (which includes potential changes to land classification or land disposal to adjust the level of legal protection) guides the department on how land may be reviewed. Review may be to ensure one of several outcomes. Review may be to give the appropriate protection and preservation of the land (for one of the purposes in the legislation) or to enable integrated conservation management identified in conservation management strategies or plans. Review may be to ensure access for enjoyment for the public or reflect the values of public conservation lands that are present or to enable specified places to achieve conservation outcomes in the future.

The Development of the Panel Process

9. In 2018 a panel process was designed to progress the reclassification of stewardship land on the West Coast. The panel would receive information about the values of the land and then make recommendations for the new land classification for each parcel of land. These recommendations would then be publicly notified before being sent to the Minister for agreement.
10. In 2021 the panel approach to support the stewardship land reclassification work has been further refined. The panels are to be non-partisan and comprised of technical experts with capability in ecology, earth sciences, landscape, recreation, heritage, and mātauranga Māori. The panels will provide technical assessments and recommendations for the future land classifications of stewardship land. The panels will sequentially consider each Department of Conservation operations region, at the discretion of the Minister of Conservation.
11. The panels are established under section 56(1) of the Conservation Act 1987. They are appointed by the Minister of Conservation and have an advisory role to the Minister of Conservation, the Director-General, and officers of the Department of Conservation. They hold no statutory decision-making powers.

Purpose of the Panels

12. The purpose of the panels are to consider all the stewardship land parcels within the subject region and to make recommendations to the Minister of Conservation,

and where required to the New Zealand Conservation Authority, on what the revised land classification should be according to the conservation and Māori cultural values identified.

Scope

What is in scope

13. All stewardship area(s) as defined in the Conservation Act. A stewardship area means a conservation area that is not:

- a marginal strip;
- a watercourse area;
- land held under the Conservation Act 1987 for one or more of the purposes described in section 18(1); or
- land in respect of which an interest is held under the Act for one or more of the purposes described in section 18(1).

What is out of scope

14. The following is out of scope:

- Any parcels of land subject to active consideration as part of historical Treaty of Waitangi settlement negotiations between the Crown and claimant groups; and
- Any proposals to assign a new name, alter an existing name or discontinue an existing name for any parcel or group of parcels of land that are being reclassified.

Roles

15. The panels have the following roles:

- a. Each panel will have a chairperson and will consist of people with the following expertise:
 - ecology
 - landscape
 - earth sciences
 - recreation
 - heritage
 - mātauranga Māori
- b. The panels will consider a set of statutory and regulatory criteria provided by the Department of Conservation to make assessments and recommendations detailing what is the appropriate revised land classification and the reasons for that revised classification.
- c. The panels will be required to think strategically and focus on achieving the project outcomes.
- d. The panels are to work with Department officials to prepare and deliver a strategy to deliver the project outcomes within the region.

- e. The panels can consider any classification under the Conservation Act, National Parks Act or Reserves Act for their recommendations. This includes Government Purpose Reserves for areas with significant cultural as well as conservation values. The group can also consider recommendations for disposals, noting these must meet the test for disposal set out in the Conservation General Policy that no, or very low, conservation values are present.
- f. The panels are required to consider the classification(s) of the adjoining land or land located within close proximity to the subject parcel of stewardship land to enable a 'landscape' approach to the reclassification work to be implemented.
- g. The panels are required to actively consider the Climate Change Commission report¹ when making recommendations on the future land status of the stewardship land.
- h. The panels are required to provide reports on work progress and identify risks and opportunities. The frequency and form of reporting is to be determined and agreed upon between the panel chairperson and Department officials.
- i. If requested by the Minister of Conservation or Department officials, the panels will review stewardship land parcels that are subject to or have been identified as potential mining locations and make revised land classification recommendations. This may require the panel to revise the order in which they are reviewing the stewardship land within their region. Mining related applications on stewardship land will incur fees on a cost recovery basis.

16. Department of Conservation officials have the following roles:

- a. Support for the panels will come from Department of Conservation staff and this will cover:
 - project management
 - logistics for meetings
 - technical information relevant for assessing the ecology, landscape, earth science, recreation, cultural mātauranga Māori values
 - providing detailed mapping of land areas.

Output

17. The panels will produce a set of recommended classifications or disposals for any stewardship land parcel located in the subject region. This will include clear conservation and cultural justifications for recommendations.

¹ <https://ccc-production-media.s3.ap-southeast-2.amazonaws.com/public/evidence/advice-report-DRAFT-1ST-FEB/ADVICE/CCC-ADVICE-TO-GOVT-31-JAN-2021-pdf.pdf>

18. Recommendations for National Park additions will be made to the New Zealand Conservation Authority.
19. Recommendations for any other classification or disposals will be made to the Minister of Conservation.

Term of appointment

20. Appointments to the panels will be for a term of up to two (2) years. The specific term of each appointment shall be specified in the notice of appointment for each member. A member takes office from the date stated in their notice of appointment.
21. Any panel members may at any time be removed from a panel by the Minister of Conservation for neglect of duty or misconduct.
22. Any member of a panel may at any time resign his or her membership in writing, addressed to the Minister of Conservation.
23. Should any member of a panel die, resign or be removed from a panel, the vacancy shall be filled in the manner in which the appointment was originally made, for the remainder of the term of the vacating member.

Meetings of the Panel

Time and place of meetings

24. The inaugural meeting of the panels shall be within six (6) weeks of the appointment of the panel and subsequent meetings shall be held at such times as the chairperson or panel decide.
25. The work is scheduled to take up to six months from the first meeting. The chairperson may request an extension of time from the Minister of Conservation in writing if the work is taking longer than expected.
26. The date and venue of the meetings are to be decided by the panel chairperson and members, in consultation with Department officials.

Number of meetings

27. The number of meetings is at the discretion of the panel chairperson and members, in consultation with Department officials. The number and frequency of meetings must ensure that the purpose of the panel is achieved.

Quorum

28. A quorum of the panels shall comprise at least four (4) members of the whole panel. No business shall be transacted unless a quorum is present.

Decisions

29. The panels will use consensus-based decision making, guided by the common goal, commitment to consensus, trust, and openness. If consensus is not reached, up to two options can be outlined for the decision-maker, with the chair noting their preferred recommendation. This should be avoided, and only be done in very exceptional circumstances.
30. Subject to these rules the panels may regulate its own practices.

Conflicts of interest

31. At the start of each meeting, panel members shall declare if they have any conflicts of interest in relation to any item on the meeting agenda and take appropriate steps at the direction of the Chairperson.

Attendance by representatives of the Director-General

32. The Director-General shall be represented at meetings of the panels by a Department official. Department officials are not voting members of the panels.

Administrative support

33. The Director-General shall provide administrative support to the panels including the preparation of agendas and the recording of minutes.

Fees and allowances

34. Fees and allowances payable to panel members will be in accordance with the State Services Commission guidelines for members of statutory bodies appointed by the Crown. Fees will be charged for mining applications on stewardship land as noted in paragraph 16 (i).

Amendments to Terms of Reference and Procedures

35. The Minister of Conservation reserves the right to amend these Terms of Reference and procedures at any time. The Minister will consult with the panels before making any amendments.

Approval

36. Pursuant to section 56(1) of the Conservation Act 1987, these Terms of Reference and Procedures for the Independent Expert National Panels to provide recommendations on the reclassification of stewardship land were approved by Hon Dr Ayesha Verrall, Acting Minister of Conservation, on 15 April 2021.

Appendix 1: Stewardship land areas

