Department of Conservation
Te Papa Atawbai

Briefing: Draft Cabinet paper seeking policy approvals – Modernising conservation land management

To	Minister of Conservation	**Date submitted**	24 April 2025
Action sought	Provide feedback on draft Cabinet paper	**Priority**	Very High
Reference	25-B-0164	**DocCM**	DOC-10248293
Security Level	In Confidence		

Risk Assessment	High Timeframes for the Conservation Amendment Bill are tight, and delays to Cabinet policy approvals will compromise being able to introduce legislation this year.	**Timeframe**	29 April 2025 Ministerial consultation on draft Cabinet paper is due to start on 1 May 2025.
Attachments	Attachment A: Draft Cabinet paper Attachment B: Maps of current planning boundaries		

Contacts	
Name and position	**Phone**
Ruth Isaac, Deputy Director-General, Policy and Regulatory Services	s9(2)(a)

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Executive summary – Whakarāpopoto ā kaiwhakahaere

1. This briefing provides you with a draft Cabinet paper seeking policy approvals to modernise conservation land management, following public consultation from November 2024 to February 2025.
2. Timeframes for this work are tight. Ministerial consultation (with simultaneous agency consultation) on the draft Cabinet paper is due to begin on 1 May 2025. To enable this, we need your feedback on the draft Cabinet paper by 29 April 2025 if any changes are required.

We recommend that you … (Ngā tohutohu)

		Decision
a)	**Approve** the attached draft Cabinet paper for ministerial consultation, with any changes as required.	Yes / No
b)	**Note** ministerial and agency consultation on the draft Cabinet paper is due to begin on 1 May 2025, to enable lodging on 15 May 2025.	

s9(2)(a)

Date: 24 / 04 / 2025

Ruth Isaac
Deputy Director-General, Policy and Regulatory Services

Date: / /

Hon Tama Potaka
Minister of Conservation

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Purpose – Te aronga

1. This briefing provides a draft Cabinet paper for your feedback. The Cabinet paper seeks policy approvals to changes to modernise conservation land management, following public consultation from November 2024 to February 2025.

Background and context – Te horopaki

2. On 10 April 2025, you received advice seeking your decisions on changes to land management in the conservation system following public consultation [25-B-0140 refers]. Officials discussed this advice with you on 15, 23 and 24 April 2025, and you have conveyed your decisions on policy changes to seek Cabinet approval for.

3. You also received advice on 23 April 2025 about the approach to clarifying how to give effect to Treaty principles as part of these changes [25-B-0170 refers].

Draft Cabinet paper

4. We have prepared the attached draft Cabinet paper reflecting your decisions in the last two weeks. This is still a work in progress, and we will continue to update it over the coming week to ensure it accurately reflects your decisions.

5. You are aiming to meet the following timeframes for Cabinet policy approvals:

1 – 9 May 2025	Ministerial and agency consultation on draft Cabinet paper, with draft regulatory impact statements.
15 May 2025	Lodge Cabinet paper by 10 am.
21 May 2025	Paper discussed at Cabinet Economic Committee (ECO).
26 May 2025	ECO decisions confirmed at Cabinet.
June 2025	Drafting instructions issued to PCO.

6. We need any feedback on the draft Cabinet paper by Tuesday, 29 April 2025, so we can provide a clean and complete version in time for ministerial consultation to begin on Thursday, 1 May 2025. Otherwise, the draft can be circulated on time, with improvements still able to be incorporated during the consultation period.

Approach to Cabinet paper

7. Given the large number of changes in your reform package, the body of the Cabinet focuses on key features of the proposed model, with details (e.g. the recommendations we have been working through with you in the last two weeks) set out in an appendix instead.

8. The body of the Cabinet paper also focuses on:
   - Issues where you have requested options for Cabinet to choose between,
   - Issues we think Cabinet will want to pay particular attention to,
   - Matters on which we propose reporting back to Cabinet later this year, and
   - Implementation.

9. The Cabinet paper seeks delegated authority for you to make detailed decisions that may arise during drafting, except for those matters that will be addressed in

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a report-back (e.g. approach to Treaty settlements, content of the first National Conservation Policy Statement [NCPS]).

Options for Cabinet and proposed report-backs

Management planning

Role of iwi in area plan drafting

10. The draft Cabinet paper contains two options for the role of iwi in area plan development and amendment: a consultation role, or a co-drafting role.

11. Our continued and strong advice is that legislation provides a consultation role for iwi, except where settlement redress already provides for co-drafting. In our view, this is essential for efficient area plan processes. There will be area plans with large numbers of iwi involved, and trying to draft area plan changes together with iwi will not be workable. While iwi may choose to arrange themselves into a representative group or structure to facilitate drafting, this is not guaranteed. The 12-month timeframe for area plan changes also may not be sufficient to allow for co-drafting.

Approvals

12. In line with your agreement, the Cabinet paper also reflects our advice that the Minister of Conservation approve changes to the NCPS and area plans. There are no alternative options presented. Ministerial approval of changes to the NCPS and area plans best aligns accountability and statutory functions. Otherwise, the Minister will need to continue making decisions on concession applications for which other parties set rules and limits. The status quo is not desirable for an effective and modern system: the Minister (and DOC) should not be responsible for implementing plans whose content is approved by others or accountable for concession decisions for use of Crown land which are limited in scope by other entities.

Review periods

13. You asked that the NCPS be reviewed every ten years, and area plans no later than 25 years. We have not reflected this in the draft Cabinet paper, because review periods are not compatible with the new approach towards the NCPS and area plans: that they are live documents that are amended as and when needed, rather than requiring full-blown, first principles reviews at set intervals. The term 'review' implies more fulsome changes, and we worry it will drive (continued) poor practice. We will amend this if requested.

Levy on concessionaires for system costs

14. The draft Cabinet paper proposes levying concessionaires to fund contributions to Treaty partners for engagement on concessions, and to Iwi for their role in area plan processes. This is similar to what is done in the resource management system and the fast-track process, and contribution amounts would be specified in secondary legislation.

Competitive allocation

15. The draft Cabinet paper recommends clearly allowing competitive allocation where it makes sense, with options for concessions involving significant private investment:

    - Either making them contestable by default (whether on an open basis or with preference for iwi),

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- Or ruling out competitive allocation if the incumbent wants to continue operating and their performance has been satisfactory (preferred).

16. For long-term leases with significant private investment at stake, we recommend ruling out competitive allocation. This would provide longer-term certainty needed for concessionaires to invest in their asset base. This is not an automatic right of renewal: a concessionaire would need to prove they can meet statutory tests to obtain a new concession (including accepting any new commercial terms the Crown may require), and their past performance would be assessed. The Minister could still decline any concession.

17. If an incumbent can satisfy the above conditions, we do not consider it reasonable to run a contestable process that could require them to effectively sell their business if a 'better' operator is identified. The nature of these opportunities generally mean only one operator can hold the concession, and their business cannot be easily separated from the concession opportunity. There are also practical and legal challenges involved where an incumbent wishes to stay on and the business is a going concern.

Standard approach to commercial terms

18. We have included a number of changes in the detailed decisions (Appendix 1 of the Cabinet paper) to support smoother and easier transitions at the end of a concession term or when businesses change hands. s9(2)(g)(i) [redacted]

19. s9(2)(f)(iv) [redacted]

Disposals

<u>Test for disposals</u>

20. The draft Cabinet paper contains your preferred test for disposal: that disposals require a recommendation from the Director-General, with a range of mandatory considerations.

21. We continue to advise the test for disposal should be:

- The Director-General recommends it;
- Any conservation values present are well represented in other protected areas in the region and the values on the land concerned, and not considered essential for indigenous biodiversity and conversation; and
- There are no rare or distinctive species or ecosystems.

22. Your preferred test for disposals would move the second and third bullet points into a list of mandatory considerations instead. This means, for example, land could be disposed even if there were rare/distinctive species or representative ecosystems present. We consider that owning public conservation land for the purposes set out in the previous paragraph is critical to the effective execution of DOC's functions and purpose.

23. Outside of owning land, we have few levers to protect rare and distinctive species and ecosystems—essentially, input into resource management consents and Wildlife Act approvals. Neither of these support dedicated species recovery

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and protection activities. We are not saying that only DOC has the skills and capabilities to engage in species protection—we work with and fund others for such efforts on and off PCL—but it is a core responsibility for DOC and a key rationale for Crown ownership of conservation land. Land with these characteristics is, in our view, high value conservation land regardless of its classification.

First option for Treaty partners on disposals

24. The draft Cabinet paper includes an option to explore the feasibility of Iwi and Hapū having a 'first option' on disposals beyond rights of first refusal provided in Treaty settlements. This could empower Māori economic interests, rangatiratanga and kaitiakitanga over whenua and taonga, but in the time available we have not been able to assess whether this option is feasible. Overlapping claims will be an issue, as well as valuation of land.

25. We have had a preliminary conversation with Te Tari Whakatau on this, who indicated they and Te Puni Kōkiri would be interested in being involved in further work on this, depending on Cabinet decisions.

Approach to clarifying section 4

26. The draft Cabinet paper sets out the specific measures you are proposing to clarify section 4 of the Conservation Act 1987. It also conveys your clear view that section 4 should not be amended or removed.

27. The exact interaction of any new specific measures with section 4 will need to be carefully considered during drafting, as this could affect the relative levels of certainty and clarity that can be provided.

28. We discussed this issue last month with the Legislation Design and Advisory Committee (LDAC). LDAC works with agencies to help address issues relating to legislative architecture, and other public and constitutional law issues, prior to introduction of legislation. LDAC advised:

> *An illustrative example of where inconsistency between purpose and Treaty clauses and the operative provisions of an Act has led to significant uncertainty (and potentially unintended outcomes) is the recognition of customary marine title under section 58 of the Marine and Coastal Area (Takutai Moana) Act 2011. Both the Court of Appeal and the Supreme Court have grappled with the apparent inconsistency between the plain words of section 58 and the Act's purpose (section 4) and Treaty provisions (section 7).*

29. We need to seek further legal advice during drafting to understand the potential interactions between section 4 and any new specific measures. We have therefore proposed you report back to Cabinet on drafting options. The Cabinet paper focusses on the core policy decisions to be able to issue drafting instructions.

Treaty settlements

30. Decisions on this Cabinet paper will not override any Treaty settlements. This allows you to 'hold space' while we engage with post-settlement governance entities over the coming months on how to provide material equivalence for redress related to your proposals.

31. We have proposed a report-back to Cabinet following engagement with post-settlement governance entities covering:

- How to provide material equivalence for relevant Treaty settlement commitments, and

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- Arrangements needed to uphold rights under the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

National Conservation Policy Statement

32. You asked to include information about the process for the first NCPS in the draft Cabinet paper. We propose:

    - You seek agreement from key Ministers (Economic Growth, RMA Reform, Tourism and Hospitality, and Resources) on proposed NCPS content for targeted engagement.
    - Targeted engagement on proposed NCPS content with Iwi and key stakeholders including a selection of major concessionaires, Federated Farmers, the NZCA and the Environmental Defence Society.
    - Reporting back to Cabinet in August/September 2025 following targeted engagement to get Cabinet agreement to policy for the NCPS.
    - PCO would then draft the NCPS from September 2025 onwards.

33. We will test this timeframe with PCO in the coming week to ensure that allows them sufficient time to draft the NCPS.

Next steps – Ngā tāwhaitanga

34. Timelines are tight and depend on your prompt feedback so we can finalise the draft Cabinet paper for ministerial and agency consultation to start in a week's time on Thursday, 1 May 2025.

ENDS

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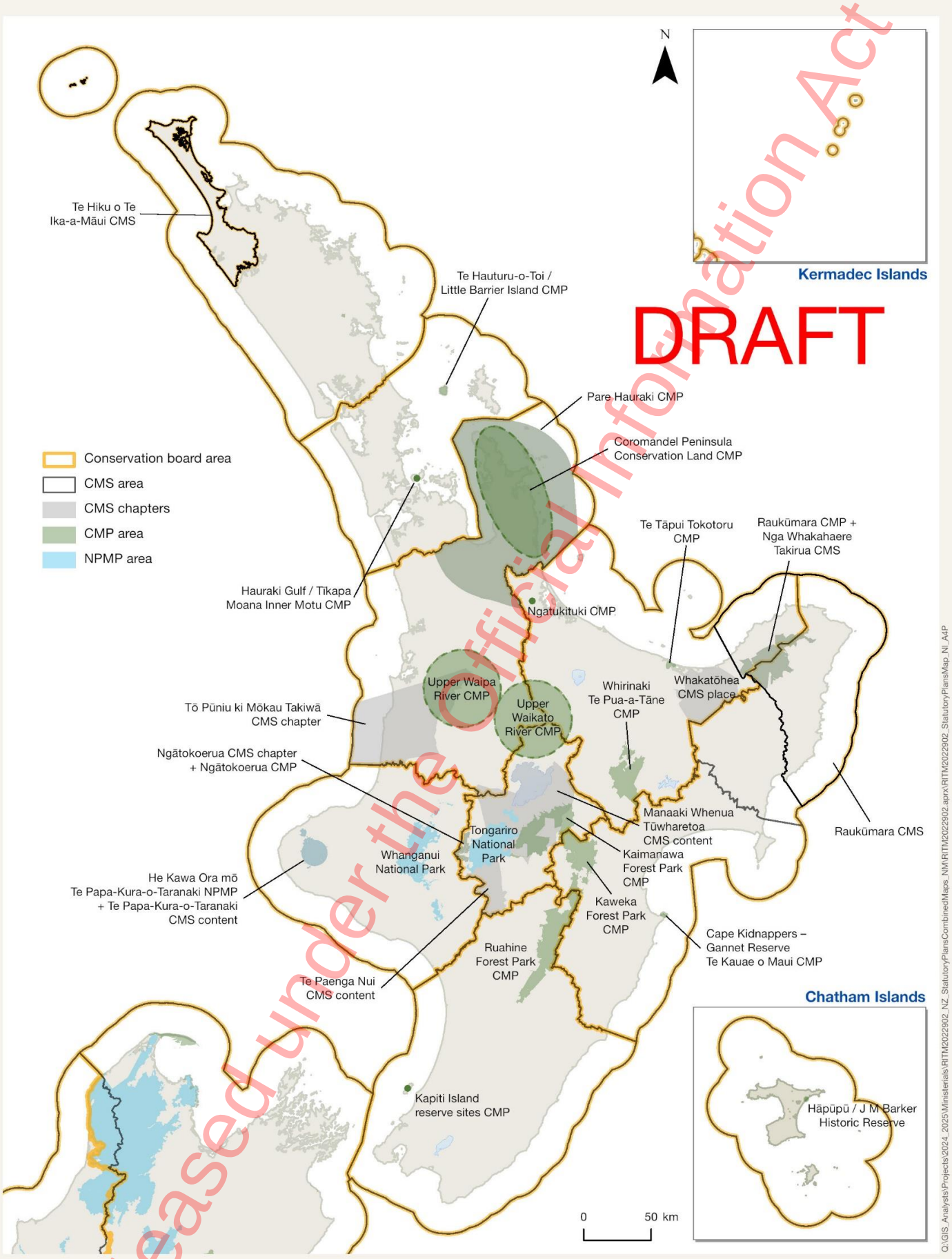

Statutory Planning North Island

Department of Conservation
Te Papa Atawhai

Te Kāwanatanga o Aotearoa
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Statutory Planning
South Island

Department of Conservation
Te Papa Atawhai

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