Department of Conservation
Te Papa Atawhai

Briefing: Further advice on test for disposal of conservation land

To	Minister of Conservation	**Date submitted**	28 April 2025
Action sought	Agree test for disposal of conservation land	**Priority**	High
Reference	25-B-0183	**DocCM**	DOC-10277786
Security level	In Confidence	**Timeframe**	9 May 2025 Cabinet paper is due to be lodged on 15 May 2025.
Risk assessment	Medium Making it easier to dispose of high value conservation land will be controversial.		
Attachments	No attachments		

Contacts	
Name and position	**Phone**
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Purpose – Te aronga

1. This briefing provides further advice on a new test for disposals of conservation land to include in the Conservation Amendment Bill. You intend to seek Cabinet policy approvals for the Bill in May 2025.

Background and context – Te horopaki

2. On 24 April 2025, we provided your office with a draft Cabinet paper to seek policy approvals relating to conservation land management (25-B-0164 refers). One of the topics in the draft Cabinet paper is when disposal of conservation land can take place.

3. At present, the way the courts have interpreted conservation legislation, the Conservation General Policy and planning documents mean that, other than reserves and some marginal strips, conservation land can only be disposed of (e.g. sold) if it is of 'no or low' conservation value. In practice, this has proven to be a very high bar,

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effectively preventing disposals (and exchanges) of conservation land in a number of situations that have arisen in recent years.

DOC's recommended test and process for disposals

4. We consider disposals should be enabled in a greater range of circumstances than at present, but with appropriate checks and balances. We therefore recommended the Minister of Conservation be allowed to dispose of conservation land in the following circumstances:

Test i.e. when can the Minister decide whether to dispose of conservation land	a. If the Director-General, having had regard to certain criteria, has recommended disposal to the Minister (see second row in this table), and b. Any conservation values present are well represented in other protected areas in the region and the values on the land concerned are not considered essential for indigenous biodiversity and conservation,[1] and c. There are no rare or distinctive species or ecosystems, and d. It is not an excluded land classification (see third row of this table).
Criteria for limb (a) of test	In relation to limb (a) of the test above, the following criteria must be considered before recommending/agreeing disposal: • Ecosystem services (where assessment is reasonably available). • Cultural significance of the land. • How the land contributes to natural linkages and functioning of places. • Provision of public access. • Recreational value of the land. • Financial implications for the Crown of the disposal.
Excluded land classifications for limb (d) of test	In relation to limb (d) of the test above, the following land classifications are excluded from disposal: • All land types excluded from exchange under the Fast-track Approvals Act 2024.[2] • Ecological areas. • World Heritage Areas. • Land of national and international significance (to be determined by the Minister).

5. Rights of first refusal provided in Treaty settlement redress would be upheld: this means iwi/hapū may need to be offered land being disposed first, in line with the notice and waiver provisions in settlements. We also recommended iwi be consulted ahead

[1] We would continue to refine this limb of the test during drafting to ensure it is not so narrow that it is interpreted the same as the 'no or low' test at present.

[2] National parks, nature reserves, scientific reserves, wilderness areas under the Reserves Act 1977, wilderness areas or sanctuary areas under the Conservation Act 1987, wildlife sanctuaries, Ramsar wetlands, several named individual sites in Schedule 4 of the Crown Minerals Act 1991, and national reserves.

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of public notification, with at least 20 working days to provide any views, in addition to any notification requirements that exist in settlements.

Minister's decisions

6. On 24 April 2025, you decided limbs (b) and (c) in the proposed test for disposal should instead be mandatory considerations (i.e. moved to the criteria row in the table above). The draft Cabinet paper we provided to your office last week (25-B-0164 refers) reflects this. The draft Cabinet paper also contains an option to provide a 'first option' for iwi on disposals that is broader than rights of first refusal in settlements.

Recommended test for disposals

7. Our advice is that (b) and (c) should continue to be part of the test for disposals, rather than mandatory considerations. We believe this will allow for disposals in a greater range of situations than at present, which DOC supports, while recognising when long-term hold as part of the conservation estate is essential.

8. Conservation land status is one of the most effective mechanisms for achieving biodiversity outcomes over the long term, and is far stronger than mechanisms such as covenants. Even where protection and management activities aren't being actively undertaken, ownership ensures that relevant values are held in perpetuity as the land isn't being developed or adversely affected.

9. An example of this is the protection of the Maryburn outwash plains in Mackenzie Basin. Because the land is protected as conservation land, a significant range of threatened species are protected without DOC needing to undertake additional actions beyond public ownership. Any development or similar activities require individual approval through concessions that assess the impact on relevant species and ecosystems.

10. Outside of owning land, we have few levers to protect rare and distinctive species and ecosystems other than input into resource management consents and deciding Wildlife Act approvals. Neither of these support dedicated species recovery and protection activities. We are not saying that DOC alone 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 function and 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.

11. Preventing disposal of land that contains rare and distinctive species and ecosystems, or that is essential for indigenous biodiversity conservation is about long-term risk management. Disposing of conservation land means removing all statutory obligations on the landowner to manage land for conservation purposes.

12. Conservation covenants can be used to some extent to protect conservation values. There remains, however a degree of risk and inability to guarantee conservation outcomes. We note, for illustration, that conservation covenants can be removed through Fast Track. The Crown generally also has no control over land use and ownership changes following disposal. Our view is that Crown ownership and associated statutory safeguards are reasonable for the most precious land in terms of biodiversity values.

13. The tests and criteria we propose would still enable a range of areas to be disposed of. Examples of areas that could meet the proposed test include the following, which would not satisfy the 'no or low' test at present:
    - Beech forest areas in the Lewis Pass area, that are well represented in the surrounding areas.
    - Hill country tussock/grasslands on the east coast of the South Island.

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- Patches of Podocarp forests on the west coast of the South Island.

14. There are alternatives to disposal that would broaden opportunities for third parties to manage the land with the most precious biodiversity values, such as an expanded vesting framework. We are providing you further advice on vesting later this year, and can consider greater enablement of third-party management of such conservation land through vesting if you are interested in pursuing this.

Risk assessment

15. Limbs (b) and (c) are essential for protecting threatened biodiversity and species. Although covenants or other protection mechanisms may provide some degree of protection, they cannot guarantee protection to the same extent as public ownership. Public feedback was strongly opposed to enabling more disposals of conservation land and indicates that checks and balances are important. Protecting high value conservation land would provide some reassurance that appropriate checks and balances are in place given any change from the status quo is likely to be controversial.

Next steps – Ngā tāwhaitanga

16. We will incorporate any feedback or decisions in the next version of the draft Cabinet paper we provide to your office. Ministerial consultation is due to begin this Thursday, on 1 May 2025. The Cabinet paper is due to be lodged by 15 May 2025.

We recommend that you … (Ngā tohutohu)

		Decision
a)	Agree that conservation land can only be disposed of if: • any conservation values are well represented in other protected areas in the region, and the values on the land concerned are not considered essential for indigenous biodiversity and conservation; and • there are no rare or distinctive species or ecosystems present.	Yes / No Yes / No
b)	Note your decisions will be reflected in the next version of the draft Cabinet paper seeking policy approvals to modernise conservation land management that is provided to your office.	

s9(2)(a) Date: 28/04/2025

Penny Nelson
Director-General

Date: / /

Hon Tama Potaka
Minister of Conservation

ENDS

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