[IN-CONFIDENCE]

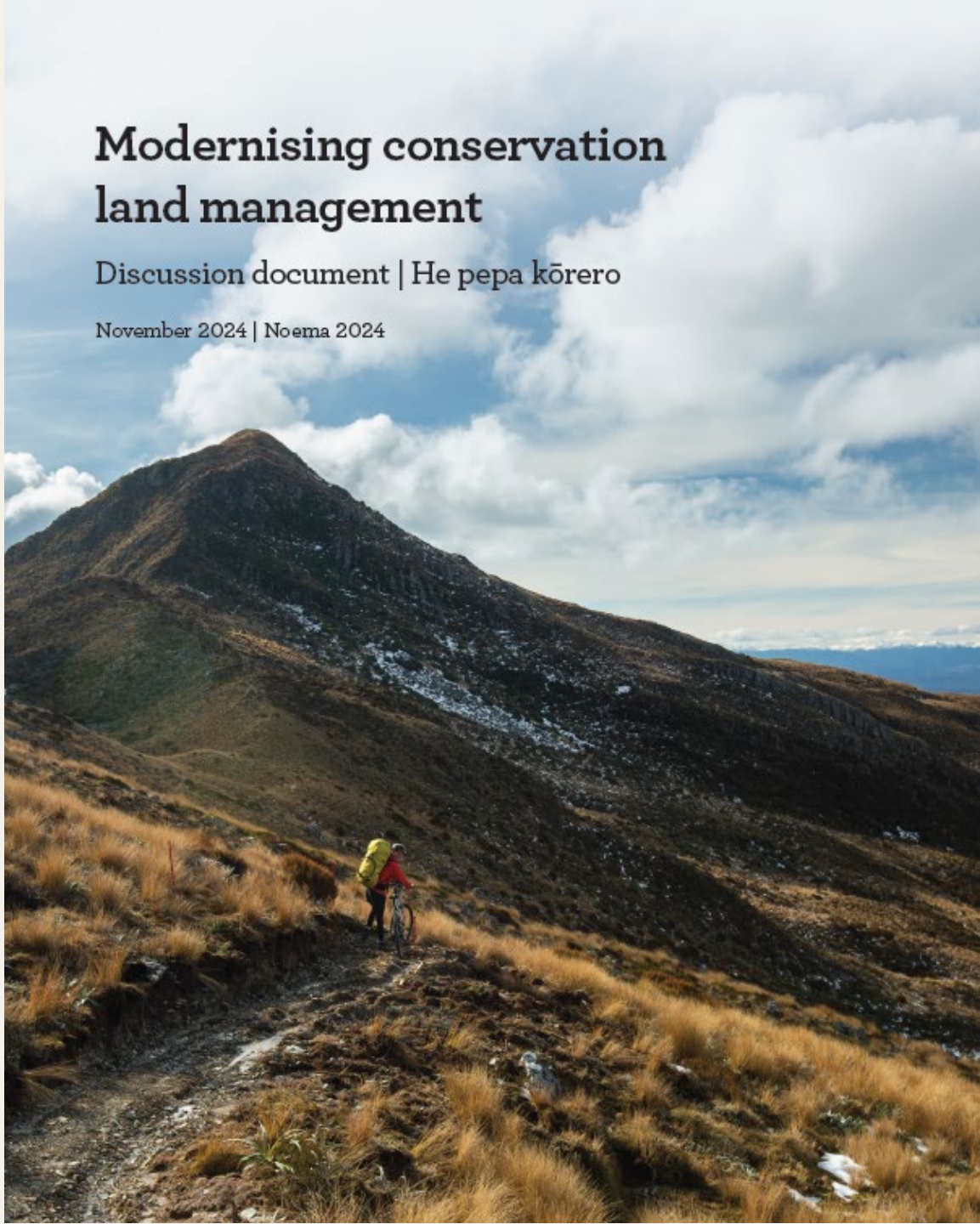
# Deep dive on land exchanges and disposals

**Conservation Amendment Bill**

9 April 2025

Department of Conservation
*Te Papa Atawhai*

Te Kāwanatanga o Aotearoa
New Zealand Government



# Agenda

- Recap of proposals + initial views from submissions
- Land exchanges – net conservation benefit, ineligible land, processes
- Disposal options

# Recap of proposals

**Enabling more flexibility for exchanges and disposals where it makes sense for conservation**

- allow eligible areas to be exchanged or disposed of directly without having to revoke their status and reclassify them as stewardship land first, where a net conservation benefit exists
- restrict disposals to situations where land is surplus to conservation needs
- remove the threshold that only land of no or low conservation value can be exchanged, noting the most precious land is off limits
- enable the potential for continued protection for land that is given up, where appropriate, through instruments such as covenants
- enable exchanges in a wider range of circumstances by changing the Conservation Act 1987 requirement to protect specific conservation values in an exchange in favour of a requirement that a transaction would result in an overall net conservation benefit.

# Initial views from submissions

**Treaty partners – range of views including:**

- Some support as long as it respects cultural values, Treaty obligations, and achieves conservation benefit.
- Concerns about the loss of lands with significance to iwi and hapū - some felt increased flexibility should only be to return lands to iwi and hapū or that iwi and hapū should have veto power.
- Concern about risk of undermining Treaty settlements and co-governance arrangements that are meant to protect iwi/hapū connections with land.
- Robust consultation with iwi and hapū required.

**Stakeholders including concessionaires:**

- Opposition from members of the public and conservation groups
- Concern about selling off PCL and losing important conservation values in response to budget, lobbying and commercial pressures
- Some support for the proposal enabling DOC to focus resources on most high-value work
- Some only support if net conservation benefit applied and/or other values are considered (e.g. tourism use, cultural value, recreational importance)
- Concern about lack of clarity around net conservation benefit, surplus to conservation needs, and safeguards for conservation and other values
- Need for robust public consultation – PCL is held for the public
- NZCA has changed it's previous view that land exchanges should be available for net conservation benefit – does not support proposals

# Land exchanges

# When could conservation land be exchanged?

- Many submitters were opposed to enabling land exchanges beyond the status quo. Concerns about losing important conservation values.
- We think the case for enabling greater flexibility remains, albeit with appropriate safeguards for conservation.
- Land exchanges should only be possible where there is a net conservation benefit - ensures conservation gain (not just avoiding loss) and, over time, the conservation value of the land held by DOC increases.
- Frees up land for others to have while also achieving conservation gain.
- Depending on the types of exchanges, this could result in a reduction of total land managed by DOC e.g. if a large area of a common ecosystem managed by DOC is exchanged for a smaller are of a much rarer ecosystem. However, reducing the size of land managed by DOC is not the core objective.

# Ineligible lands

- We recommend excluding the following categories of land to:
  - safeguard key areas of known high conservation value and
  - provide certainty to the public and those with an interest in the land
  - create efficiencies – these categories do not need assessment

**Recommended excluded categories**

| Category | Description | Rationale for exclusion |
|---|---|---|
| All categories excluded from fast-track | Categories with the strictest protections and/or are of the most public and international importance | Important enough for conservation to be excluded from Crown Minerals Act and Fast-track Approvals Act therefore of highest conservation value. |
| Ecological areas (44 covering ~130,000 ha) | An area of land protected primarily for its scientific, particularly ecological, value. May allow some recreational use. | Are of similar value to scientific reserves which are excluded above. Were not excluded from fast-track due to mining potential which is not relevant for these policy settings. |
| World Heritage Areas (3 - South west NZ, Tongariro NP & Subantarctic islands) | Internationally recognised sites with “outstanding universal value” and natural and cultural importance. | The World Heritage Committee makes the decision on boundary adjustments - there are different processes for minor vs significant adjustments. Significant adjustments are a full WH nomination process including being the tentative list for a year before submission and a multi year decision cycle. |

# Ineligible lands

- We also recommend adding further exclusions:
    - Sites of international or national significance - ensuring special sites that don't necessarily fit in the excluded categories are ineligible for exchange (e.g. Tāne Mahuta in the Waipoua Forest)
    - Land subject to a future Treaty settlement
    - Land subject to a concessions – existing encumbrances would need to be removed before exchange or disposal is possible (unless the concessionaire is seeking the exchange)
    - Where permission of reserve administering body has not been given
- Relevant provisions in Treaty settlements (e.g. RFRs) and gift-back obligations would be honoured and exchange only possible if those holding that right agree to it (like fast-track).

# Considerations and constraints on land exchanges

- Exchange could include money to be used on improvements to get the land offered to net conservation benefit BUT that the ratio of cash to land must be considered.
- Net conservation benefit would assess:
    - Conservation values of land
    - Whether benefits (including those expected from the improvements the applicant provides money for) are achievable within a reasonable period of time after the transaction.
- We are considering further work on criteria for net conservation benefit including the possibility of an expert advisory group.
- Minister retains full discretion not to exchange land regardless of whether there is net conservation benefit.
- No consideration of economic factors – this was not consulted on and is inconsistent with the purpose of the Act – but there may be economic co-benefits.

# Process for land exchange

- Increase transparency, accountability and informed decision-making by requiring public notification (scaled to the significance of the proposal but minimum 20 workings days).
- Feedback on proposal sought from relevant Māori groups prior to public notification (no timeframes)
- Feedback from Māori groups would be captured in a Māori rights and interests report that must be considered by the Minister when making an exchange decision.

# Iwi/hapū veto/preference

- Many Treaty partners submitted that iwi and hapū should get veto or preference for land being exchanged but this has significant challenges and implications for Treaty settlement processes:
  - Effectively constitutes settlement outside of settlement processes as would require making a judgement about the connection of an iwi group to the whenua (including over and above other iwi groups), justifying a land purchase from the Crown.
  - Undermines existing RFR redress and potentially future settlements (i.e. this would create a new standard and would no longer be available as cultural or economic redress).
- However, if you wish to explore whether there are feasible options we can look into it further and discuss with other relevant agencies (e.g. Te Tari Whakatau).

# Disposals

# When could eligible conservation land be disposed of?

- You consulted on enabling disposals where land is surplus to conservation needs. Submitters were very concerned with how ‘surplus to conservation needs' would be defined
- Further policy work has shown that we cannot define ‘surplus to conservation needs’ in a meaningful way and the policy rationale for disposals needs clarification. Possible drivers we wish to test with you:
  - Other parties want the land - iwi/hapū or another party. Could be for conservation use or productive uses.
  - Disposing of land where the costs and/or liabilities outweigh the value in holding it long-term

# Potential drivers for disposal

| | Description | Assessment |
|---|---|---|
| **Other parties want the land** | Disposals driven by desire of others to have the land whether that be iwi/hapū, philanthropists, or developers. | Raises significant questions about the purpose of PCL and in what circumstances conservation land is held for the public. Was not consulted on. **Not recommended.** s9(2)(f)(iv) [redacted] |
| **Cost/liability reasons** | Where costs and liabilities far outweigh conservation benefit, and resources better spent on other conservation activities. | Often involves heritage buildings on PCL or contaminated sites. Costs and liabilities would transfer with title so unlikely to be significant demand to purchase the land. **Recommended.** |

For all options level of demand is uncertain:

- Requests from iwi/hapū already exist so there is demand but ability to pay will vary.
- Fast-track already creates a pathway for significant development opportunities.

# Options for disposal

We recommend the following option:

| Description | Assessment |
|---|---|
| On the advice of the DG, Minister of Conservation has the discretion to dispose of conservation land where the costs/liabilities outweigh the conservation value of the land with the following constraints:<br>- Same excluded land categories as exchanges<br>- Must not dispose where there are rare or distinctive species or ecosystems<br>- Must consider a range of other factors in the decision<br>- Must engage with iwi<br>- Must publicly consult | This option provides significant discretion to dispose of land and will not go far enough for many submitters to safeguard conservation land. However it does:<br>- create transparency and provide for input from the public and iwi<br>- exclude the categories of highest value conservation land<br>- prevent disposals where rare or distinctive species or ecosystems exist<br>- require the Minister to understand and put thought into whether to dispose given the value it provides for conservation (beyond rarity and distinctiveness) |

**Potential considerations include:**

- How it contributes to maintaining indigenous biodiversity
- Cultural significance
- How representative the ecosystem is in PCL
- How it contributes to natural linkages and functioning of places
- Provision of public access

Option for a 30-50 year Government asset strategy that provides a strategic approach to land management and can inform decisions on what land is appropriate for holding long-term.

# Appendix A: Land categories excluded from fast track

- National parks
- National reserves
- Nature reserves
- Scientific reserves
- Wilderness areas
- Sanctuary areas
- Wildlife sanctuaries
- Ramsar wetlands
- Otahu Ecological Area
- Parakawai Geological Area
- All conservation land as at 1 October 1991 on some of the islands in the Mercury Islands group
- Kaikōura Island Scenic Reserve in Auckland City
- Rakitu Island Scenic Reserve