

Office of the Minister of Conservation

Cabinet Business Committee

## Improving the process for reclassification of conservation portfolio stewardship land

### Proposal

- 1 This paper seeks agreement in principle from Cabinet that the Conservation Act be amended to improve the process of reclassifying conservation portfolio stewardship land. My recommendations also include the establishment of two national expert panels to advise me on classifications for stewardship land, undertaking their assessments on a regional basis. Amended legislation would enable my decisions to be binding. The first regions to be addressed by the national panels will be the Western South Island and Northern South Island. I will report back to Cabinet by <sup>S9(2)(f)(iv)</sup> with detailed analysis concerning proposed amendments to the Conservation Act.

### Relation to government priorities

- 2 This work supports the:
  - 2.1 **manifesto commitment** to protect, preserve and restore our natural heritage and biodiversity, and promote the recovery of threatened species;
  - 2.2 **co-operation agreement** commitment to work with the Green Party to achieve the outcomes of Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020 – particularly the strategic priority: “Tūāpapa – Getting the system right.”, and Goal 1.3 “Current natural resource legislation has been reviewed to ensure it is effective and comprehensive...and ensures ongoing biodiversity protection...”.

### Executive Summary

- 3 Stewardship land is approximately 30 percent of the land administered by the Department of Conservation (DOC), totalling approximately 2,500,000 hectares nationally. Stewardship land is an area of land that is a conservation area, but is not foreshore or does not hold a specific protection.
- 4 A significant portion of current stewardship land came by transfer of land from other Crown agencies when DOC was established in 1987. The then Labour government made an undertaking to reclassify stewardship land on transfer of the land parcels from other Crown agencies. However, very limited progress has been made in DOC’s 34 year existence.

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- 5 The systematic reclassification of many areas of stewardship land has not occurred because of the statutory requirements to undertake reclassification, including:
- 5.1 the volume of information required to ascertain the ecological, cultural, historic, economic, recreational and landscape values inherent in the land;
  - 5.2 the large area of stewardship land needing to be reclassified;
  - 5.3 complex surveying requirements and associated high costs; and
  - 5.4 inefficient consultation arrangements with whānau, hapū, iwi and communities.
- 6 This has led to uncertainty about the status of stewardship land and public controversy about if or when it is appropriate to allow economic activity or development on it, or conversely, to protect it. 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.
- 7 This paper requests that Cabinet agree in principle that the Conservation Act 1987 (the Act) be amended to improve the process of reclassifying conservation portfolio stewardship land and that I report back to Cabinet with detailed analysis on this by <sup>S9(2)(f)(iv)</sup> [REDACTED]. The guiding principle of an improved stewardship land reclassification process will be to undertake genuine technical assessments of conservation values. Key desired outcomes are that amended legislation will ensure that land with a high conservation value is identified and managed appropriately within shortened timeframes, and if appropriate, that land with low or no conservation value is made available for other uses.
- 8 My recommendations include that Cabinet agree to the establishment of two national expert panels to advise me on classifications for stewardship land, undertaking their assessments on a regional basis. The first regions to be addressed will be the Western South Island and Northern South Island. Amendments to the Act would include that, subject to my approval, recommendations of the panel will be binding.
- 9 I will publicly announce the decisions made in this paper, including the establishment and membership of the expert panels.
- 10 In November 2017, the previous Government announced in the Speech from the Throne that there would be “no new mines on conservation land” (NNMCL). <sup>S9(2)(f)(iv)</sup> [REDACTED]
- 11 <sup>S9(2)(f)(iv)</sup> [REDACTED] In the interim, I will ask the expert

panels to prioritise the assessment for reclassification of any stewardship lands where applications are sought for mining access arrangements. These mining applications will be placed on hold until the panel makes a recommendation for the land, which decision makers on the application will take into account. Applicants will be subject to additional charges to cover the panel costs associated with this approach.

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S9(2)(f)(iv)

### Context

- 13 A significant portion of current stewardship land came by transfer of land from other Crown agencies when DOC was established in 1987. Land can also come into the conservation portfolio through acquisition, such as Nature Heritage Fund purchases, or by gift. 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 pattern until reclassification occurs.
- 14 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. Approximately 35 percent of the public conservation land in Te 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 (Appendix 1 refers).
- 15 Most stewardship land is poorly defined in terms of its boundaries and unique characteristics. Stewardship land is managed within the context of the Act, 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.
- 16 Stewardship land is protected as public conservation land. However, in contrast to other land classifications under the act (National Parks, Conservation Parks, or Reserves) stewardship land does allow for additional permissible activities. 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 held for conservation purposes generally, so there is no specific purpose for an application to be considered against.
- 17 Stewardship land can be disposed of, or exchanged, provided that it meets certain criteria, for example the Conservation General Policy (policy 6(c)), where the land being considered holds "no or very low conservation values".

- 18 Public conservation land is subject to Treaty of Waitangi settlement negotiations. Through these negotiations cultural values of stewardship land can be identified and protected through Treaty settlement legislation. These protection measures can result in stewardship land being vested as part of cultural redress to post settlement governance entities. Any conservation values subject to cultural redress can be identified and appropriately protected through the process of reclassifying stewardship land.

### **Reclassifying stewardship land – the current approach**

- 19 Reclassifying stewardship land ensures land is given the most appropriate land status for its management and protection, in accordance with the values identified.
- 20 The current process of reclassifying stewardship land involves working in partnership with tangata whenua: iwi, hapū and whānau; conservation boards, the New Zealand Conservation Authority and key stakeholders where appropriate to identify the most appropriate classification. This is followed by notifying the public of the intention to classify, resulting in submissions both for and against (as well as possible public hearings), prior to a final decision being made. A survey may then be required in order to formalise the decision.
- 21 All the ecological, cultural, historic, economic (in certain instances), landscape, recreational values and proposed management and use of the land by the public are considered before a decision is reached. Stewardship land may then be reclassified as another conservation category of land. If the land has been identified as surplus to requirements it can be disposed<sup>1</sup> of. Any such disposal of land must be carried out in accordance with statutory processes set out in legislation administered by DOC and Land Information New Zealand (LINZ).
- 22 When undertaking a reclassification process there may be more than one Act forming part of the process. For instance, the land has to be declared to be held for a purpose under the Act. It may also be subject to specific legislative provisions or statutory requirements relating to the Reserves Act or National Parks Act, depending on the intended classification.
- 23 Most stewardship land has not yet been reclassified due to the scale and complexity of the task. Since 2013, the Department of Conservation has reclassified over 53,600 hectares of stewardship land,<sup>2</sup> over 40,000 hectares of which was part of the 2019 Mokihinui addition to Kahurangi National Park. This is a negligible amount in comparison to the 2,500,000 hectares of stewardship land that remains.
- 24 This has led to uncertainty about its status and public controversy about if or when it is appropriate to allow economic activity, cultural activity or development on it, or conversely, to protect it. My goal is to implement

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<sup>1</sup> Sold on the open market and available for the public to buy.

<sup>2</sup> This number is only land that has been reclassified and remained public conservation land. Land that has been disposed of under the Act, or gifted through Treaty Settlement, is not included, but is likely to be a smaller area in total than land that has been reclassified.

outcomes of the stewardship land reclassification processes with speed and simplicity. This will help to ensure that land with a high conservation value is identified and managed appropriately within shortened timeframes. It will also free up land with low or no conservation value for other uses.

### **DOC's current reclassification work**

- 25 The Labour Government undertook to reclassify stewardship land when DOC was established in 1987. This however was not prioritised in DOC's work programme until the early 2000s. Between 2013 and 2015, DOC worked with Conservation Boards to identify a total of some 138 priority sites nationwide to be considered for classification. Reclassification work is progressing with respect to the Kawarau/Remarkables. This initiative is in its early stages of reclassification. Non-statutory community consultation and engagement with tangata whenua: iwi, hapū and whānau is underway.
- 26 The Parliamentary Commissioner for the Environment (PCE) in her report 'Investigating the Future of Conservation: the case for Stewardship land' found that the Act and departmental policy provide little direction or guidance for considering applications for proposed commercial uses of stewardship land. The law also allows areas of stewardship land to be swapped for areas of private land, subject to the vague proviso that it will "enhance the conservation values" of the conservation estate.<sup>3</sup>
- 27 The report said that not all stewardship land has high conservation value, and some will have none at all. There are areas of land within the conservation estate that have significant conservation value yet remain with the low legal protection status of stewardship land. The report recommended that DOC identify areas of stewardship land that are of significant conservation value and reclassify them in accordance with that value.<sup>4</sup>
- 28 The report also said that there is a place for some flexibility in the management and exchange of stewardship land. A central guiding principle that should underpin any exchange mechanism is the principle of net conservation benefit. The report noted that 'there is work to be done to develop the concept into better law and policy before the public can have confidence that major land swaps can mean a good deal for conservation.'<sup>5</sup>

### **The current reclassification process is not working well**

- 29 In 2015, the New Zealand Conservation Authority asked DOC to progress classifications more quickly. This is likely to have been because of limited progress since release of the PCE report. In response, DOC developed a five-year plan to deal with the identified priority sites. This prioritised the Mokihinui addition (approximately 64,600 hectares) to Kahurangi National Park, the St

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<sup>3</sup> *Investigating the Future of Conservation: The case of stewardship land*, Parliamentary Commissioner for the Environment, 2013, page 57

<sup>4</sup> *Investigating the Future of Conservation: The case of stewardship land*, Parliamentary Commissioner for the Environment, 2013, page 59

<sup>5</sup> *Investigating the Future of Conservation: The case of stewardship land*, Parliamentary Commissioner for the Environment, 2013, page 58

James area, lands added to Paparoa National Park and extensive areas of the stewardship land within Te Wāhipounamu - South West New Zealand World Heritage Area.

- 30 The five-year timeframe in accordance with the plan has proven to be unrealistic. This is because the existing statutory process of reclassification has been slowed down by:
- 30.1 the work not being a priority relative to other DOC work programmes;
  - 30.2 the volume of information required to ascertain the ecological, cultural, historic, economic, recreational and landscape values inherent in the land;
  - 30.3 the large area of stewardship land needing to be reclassified;
  - 30.4 complex surveying requirements and associated high costs; and
  - 30.5 the need for proper involvement of tangata whenua: iwi, hapū and whānau and local communities and engaging multiple times depending on the process requirements of the different Acts.
- 31 In addition, if an area was to be declared surplus to requirements, DOC needed to demonstrate that the land has “no or very low conservation value” in accordance with the Conservation General Policy. The Supreme Court held in the 2017 *Ruataniwha* case that land may not be disposed of unless the land has “no, or very low, conservation values.”<sup>6</sup> This can prohibit DOC being able to dispose of certain areas that hold some conservation value. A clearer definition of what “very low conservation value” means is required.

### **Statutory options to improve reclassification**

- 32 The guiding principle of an improved stewardship land reclassification process will be to undertake genuine technical assessments of conservation values.
- 33 In January 2021 the Hon Kiritapu Allan, Minister of Conservation, submitted a conservation portfolio legislative bid for the 2021 legislative programme titled ‘*Conservation Stewardship Area Reclassification Amendment Bill*’. The proposed bill would amend the Conservation Act 1987 and related legislation to enable a streamlined process for reclassifying and disposing of public conservation land that is currently held as a stewardship area. This could likely be primarily achieved by:
- 33.1 Enabling expert national panels to make recommendations to the Minister of Conservation. This would ensure that a reclassification process can be undertaken without any vested interests in the stewardship lands subject to the reclassification process;
  - 33.2 Removal of expensive surveying requirements – e.g. not requiring a survey in instances where the classification is not changing the current

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<sup>6</sup> SC 106/2016 [2017] NZSC 106, para 58.

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shape and/or boundary of the land parcel, or requiring lower survey requirements where the area being surveyed is to be split into parts.

- 34 The bill would create a clear process for the Minister of Conservation to consider recommendations of the expert panels and make binding decisions to reclassify and dispose of stewardship land as required.
- 35 To progress the proposed bill, I recommend that Cabinet approve that DOC undertake a more in-depth analysis of options for improving the reclassification process for stewardship land. Following this, final policy approvals would be sought from Cabinet in <sup>S9(2)(f)(iv)</sup> [redacted]. Other key dates concerning the bill's progression are:

[redacted] S9(2)(f)(iv) [redacted]

[redacted] S9(2)(f)(iv) [redacted]

[redacted] S9(2)(f)(iv) [redacted]

S9(2)(f)(iv) [redacted]

S9(2)(f)(iv)

40

S9(2)(f)(iv)

**Progression of non-statutory initiatives to improve the reclassification process**

41 I am keen to ensure that DOC continues with its current reclassification work programme while options for improving legislation are considered. In 2018 a panel process was designed at the request of the previous Minister of Conservation 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 stewardship land. These recommendations would then be publicly notified before being sent to the Minister for agreement. DOC was asked to put this work on hold by the previous Minister of Conservation while matters were still being addressed around the no new mines policy under the previous government.

42 I intend to use a similar concept to drive the review of all stewardship land. Legislative considerations concerning the establishment of the panels will be addressed within the context of the proposed Conservation Stewardship Area Reclassification Amendment Bill, and for me to be able to accept and give effect to recommendations as noted in paragraph 34. The panels will still be provided with information required for reclassification as outlined in paragraph 30. However, I expect the panels will apply their expertise and judgment to progress through their assessments in a more focussed and efficient manner including by considering areas of stewardship land on a larger scale than previously undertaken by DOC alone. The panel's work will also provide an opportunity for DOC to ascertain any other barriers to fast-track the reclassification process, including human resource constraints.

*Appointment of new reclassification panels*

43 I seek Cabinet agreement to establish two independent national reclassification panels in April 2021. Panel One will commence with assessing the Northern South Island region and Panel Two will commence with assessing the Western South Island region. I propose also the the Minister of Conservation can direct the panels to focus on new geographic areas for assessment, after they have completed their respective tasks.

44 The panels will 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

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recommendations for the future land classifications of stewardship land, according to criteria in line with the provisions of relevant conservation legislation. Further guidance on the role of the panels can be found in the Terms of Reference at Appendix 2.

- 45 Proposed legislative amendments to the Act will enable the Minister of Conservation to make recommendations of the expert panels binding.

S9(2)(f)(iv)

Draft terms of reference for the panels are attached in Appendix 2.

*Membership*

- 46 I intend to appoint eight members to Panel One, initially focussed on the Northern South Island and seven members to Panel Two, initially focussed on the Western South Island. The panels will be established for a period of up to two years, to be reviewed thereafter. Their work programme will expand to consider other regions within that timeframe. Panel One will have two co-chairs when it undertakes its assessment of the Northern South Island. This is because one of the co-chairs, Mr Christopher Finlayson, has been acting for Te Rūnanga o Ngāi Tahu in his capacity as a barrister. Consequently, he considers that he would have a conflict of interest to chair Panel One when it is addressing stewardship land in the Northern South Island, within the Te Rūnanga o Ngāi Tahu rohe. Given this, the other co-chair, Mr Philip Woollaston, will chair the panel whenever it is addressing land within the Te Rūnanga o Ngāi Tahu rohe.

- 47 Biographies for each panel member are attached in Appendix 3.

Panel One (initially focussed on the Northern South Island)

- 48 Members of Panel One are as follows:

<b>Name</b>	<b>Position</b>
Hon Christopher Finlayson (Co-Chair)	Barrister and former Member of Parliament
Philip Woollaston (Co-Chair)	Former mayor of Nelson, Associate Minister for the Environment and Minister of Conservation in the 4th Labour government
William (Willie) Shaw	Principal Ecologist and a Director of Wildland Consultants Ltd
Nicki Douglas	Environmental expert
Laura	Licensed Cadastral Surveyor and Planning Consultant

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Geoff Canham	Principal Parks and Recreation Specialist, Accredited Parks and Recreation Professional, and a Certified Parks Professional International
Mary O’Keefe	Consultant archaeologist, Heritage Solutions
Hon Mita Ririnui	Mātauranga Māori representative

Panel Two (initially focussed on the Western South Island)

49 Members of Panel Two are as follows:

<b>Name</b>	<b>Position</b>
Dr Jan Wright, (Chair)	Former Parliamentary Commissioner for the Environment (March 2007 to October 2017)
Dr William (Bill) Lee	Research associate at Manaaki Whenua – Landcare Research
Dr Les Molloy	Soil scientist and natural heritage consultant
Jo Breese	Trustee of Zealandia, a member of The Nature Conservancy Advisory Board Aotearoa New Zealand and a Crown appointee to the inaugural Te Urewera Board
Katharine Watson	Archaeologist consultant
Philip Blakely	Landscape architect
Dr Marama Muru- Lanning	Mātauranga Māori representative

*Representativeness of appointments*

50 I am satisfied that reasonable effort has been made for the appointments to provide for an appropriate gender, age, ethnicity and geographical balance on the panels. Of members proposed across the two panels to date, seven are women and eight are men.

*Remuneration*

51 S9(2)(a) 

*Appointment process and consultation*

52 I intend to regulate panel procedures in accordance with my authority to do so under s56 of the Conservation Act. DOC advised me on suitable membership for the panels, and I undertook ministerial consultation on appointees. Selection was based in part on relevant expertise, professional networks and availability.

*Conflicts of interest*

53 Mr Christopher Finlayson's conflict of interest is noted in paragraph 46. No other conflicts of interest have been identified. Panel members will be required to declare any conflicts of interest at the start of each meeting. Appropriate steps to manage any conflict of interest will be taken at the direction of the chair.

**Relationship between reclassification of stewardship land and "no new mines on conservation land" policy**

54 In November 2017, the previous Government announced in the Speech from the Throne that there would be "no new mines on conservation land" (NNMCL).<sup>S9(2)(f)(iv)</sup>

55 Throughout the preliminary development of the NNMCL policy there was significant public commentary that stewardship land should be open for mining. This feedback was very regionalised in nature. The location and potential mineral wealth of some stewardship land, much of it on the West Coast, means there is a high degree of mining interest in the land.

56 <sup>S9(2)(f)(iv)</sup>

57 The proposed new reclassification panels could also assist in decision making for mining applications on stewardship land while the reclassification process is underway. I will ask the panels to prioritise the assessment for reclassification on any lands where applications are sought for access arrangements on stewardship land. This is regardless of where these applications may be located. Applications will be placed on hold until the prioritised work occurs.

58 DOC will support the panels with information that relates to the prioritised sites in relation to mining applications. This includes the consideration of values and the purpose for which the land is held. The applicants will be subject to additional charges to cover the panel costs associated with this approach. These had not been determined at the time of writing.

59 This approach will enable an independent analysis of values to be provided into the decision making process for the mining activity. If any immediate legislative change is required to implement this, it will form part of the proposed Conservation Stewardship Area Reclassification Amendment Bill referred to above.

60 S9(2)(f)(iv) [Redacted]

**Treaty implications**

61 Public conservation land is subject to Treaty of Waitangi settlement negotiations. Through these negotiations cultural values of stewardship land can be identified and protected through Treaty settlement legislation. These protection measures can result in stewardship land being vested as part of cultural redress to post settlement governance entities. Any conservation values subject to cultural redress can be identified and appropriately protected through the process of reclassifying stewardship land.

**Financial Implications**

62 Reclassification of stewardship land would continue to be met within departmental baselines. Costs in relation to this have not yet been determined. S9(2)(f)(iv) [Redacted]

**Legislative Implications**

63 Subject to approval from Cabinet, progression of the proposed Conservation Stewardship Area Reclassification Amendment Bill would be required as outlined in paragraphs 32-35.

**Impact Analysis - Regulatory Impact Statement**

64 A Regulatory Impact Statement will be prepared to accompany more detailed analysis pending Cabinet approval to proceed with this initiative.

**Population Implications**

65 S9(2)(f)(iv) [Redacted]

## Human Rights

- 66 Streamlining the process for reclassification of stewardship land is not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

## Consultation

- 67 The following departments were consulted during the preparation of this paper: Department of Internal Affairs (DIA); Department of Prime Minister and Cabinet (DPMC); Land Information New Zealand (LINZ); Ministry for Business Innovation and Employment (MBIE); Ministry of Culture and Heritage (MCH); Ministry for the Environment (MfE); Ministry for Primary Industries (MPI); Te Arawhiti, Te Puni Kōkiri; and the Treasury.

- 68 S9(2)(f)(iv) 

- 69 Engagement and consultation will occur with tangata whenua: iwi, hapū and whanau and targeted stakeholders pending Cabinet approval of recommendations in this paper. DOC will also work closely with other agencies, particularly where legislation is administered by them.

- 70 S9(2)(g)(i) 

## Communications

- 71 Subject to the approval of Cabinet, I intend to publicly announce the Government's intention to progress the development of legislation to streamline the process for reclassification of stewardship land, as well as the formation of the reclassification panels and the process for reviewing new mining applications on stewardship land while the reclassification process is

underway. Timing for this announcement will be done in coordination between my Office and the Prime Minister's Office.

### **Proactive Release**

- 72 I intend to proactively release this Cabinet paper in part, with appropriate redactions under the Official Information Act 1982, as required, within 30 business days of decisions being confirmed by Cabinet, subject to a Ministerial announcement having been made.

### **Recommendations**

The Acting Minister of Conservation recommends that the Committee

- 1 agree in-principle that the Conservation Act be amended to improve the process of reclassifying conservation portfolio stewardship land;
- 2 note that the guiding principle of an improved stewardship land reclassification process will be to undertake genuine technical assessments of conservation values;
- 3 agree that two independent expert national panels are established in April 2021 to make recommendations to the Minister of Conservation on the reclassification of stewardship land, with their work beginning in the Northern South Island and Western South Island regions;
- 4 agree that the Minister of Conservation can direct the expert panels to focus on new geographic areas for assessment once they have completed reclassification of stewardship land in the Northern South Island and Western South Island regions;
- 5 agree to the draft Terms of Reference for the expert panels at Appendix 2;
- 6 note that the Minister of Conservation intends to appoint Hon Christopher Finlayson and Hon Philip Woollaston as co-chairs of Panel One, initially focussed on the Northern South Island region, and that other members of the panel will be Mr William Shaw, Ms Nicky Douglas, Ms Laura Coll McLaughlin, Mr Geoff Canham, Ms Mary O'Keefe and Hon Mita Ririnui;
- 7 note that the Minister of Conservation intends to appoint Dr Jan Wright as the Chair of Panel Two, initially focussed on the Western South Island region, and that other members of the panel will be Dr William (Bill) Lee, Dr Les Molloy, Ms Jo Breese, Ms Katharine Watson, Mr Philip Blakely, and Dr Marama Muru-Lanning;
- 8 note that the Minister of Conservation intends to appoint Panel One and Panel Two for a period of up to two years, to be reviewed thereafter, with their work programme likely to expand to consider other regions within that timeframe;

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- 9 note that the expert panels may assist in decision making in relation to mining applications on stewardship land by prioritising reclassification recommendations for land where a mining access arrangement application is received - at a yet to be determined additional cost to the applicant;
- 10 note that proposed amendments to the Conservation Act will include that the Minister of Conservation can make binding decisions based on the recommendations of expert panels;
- 11 invite the Minister of Conservation to report back to Cabinet by <sup>S9(2)(f)(iv)</sup> with detailed analysis concerning amendments to the Conservation Act and related legislation to improve the process of reclassifying conservation portfolio stewardship land;
- 12 <sup>S9(2)(f)(iv)</sup>
- 13 note that the Minister of Conservation will publicly announce the decisions made in this paper, including the establishment of the two independent expert national panels.

Authorised for lodgement

Hon Dr Ayesha Verrall

Acting Minister of Conservation