



Memo: Relevant Considerations to Stewardship Land Reclassification

To	Minister of Conservation	Date submitted	29 May 2025
Reference	25-B-0224	DocCM	DOC-10336889
Security Level	In Confidence		
From	Peter Galvin		
Subject	Relevant considerations to decision-making regarding the reclassification of stewardship land.		
Attachments	[REDACTED]		

Purpose – Te aronga

1. Advice in response to queries around recording Ministerial decisions for Western South Island stewardship land and other matters.

Background and context – Te horopaki

2. As described in Briefing 25-B-0146 the reclassification of stewardship land in the Western South Island, Te Tai Poutini, is in its final stages.
3. Your role is to decide whether to approve, or decline, each of the 576 reclassification proposals that were notified.
4. To inform your decisions you have sought further advice from the Department on:
 - i. The basis for recommending you provide justifications for your decisions, and whether this is a statutory requirement.
 - ii. [REDACTED]
5. You have also requested further information to inform your thinking on prioritisation between candidate national park additions. DOC will provide this advice separately.

Summary Responses

- i. The requirement to provide justifications for your decisions is not an explicit statutory requirement, although relevant factors to consider are set out in the scheme of conservation legislation. Our recommendation to record your reasons is based on case law, 9(2)(h) [REDACTED] and is intended to protect your decisions from successful legal challenge.

- ii. [REDACTED]

Providing relevant justifications supports legally robust decisions

6. Your decisions must be based on considerations that are consistent with the purpose and scheme of conservation legislation. The overarching purpose of the Conservation Act is “to promote the conservation of New Zealand’s natural and historic resources”.
7. Relevant matters include the natural and historic resources present as defined in the Conservation Act, the reclassification principles set out in the Conservation General Policy 6(b), and section 4 Conservation Act considerations. Basing reclassification decisions on considerations outside the scope of this statutory scheme could provide grounds for legal challenge.
8. DOC has advised that the consideration of potential non-conservation-related uses for the land, and related economic implications, are not relevant decision-making factors when reviewing the classification of public conservation land¹.
9. Exceptions include:
 - i. Where economic matters are raised by iwi, whose rights and interests are broad under section 4 and may include consideration of Māori economic interests that are tethered to customary interests.
 - iii. At the next stage, where national park proposals are considered by the New Zealand Conservation Authority (NZCA), which – through a formal investigation – can assess the likely social, recreational, cultural and economic implications for tangata whenua and local and regional communities, as well as the nation generally, through a formal investigation.
10. To support robust decisions, DOC has provided a summary of submissions report with associated recommendations in line with section 49 of the Conservation Act, considering only the relevant matters set out above. The Conservation Act suggests your decisions should also be informed by input from Treaty partners (in line with section 4), and input from the NZCA and relevant Conservation Boards that have statutory roles to advise on land reclassification.
11. Conservation legislation is silent about how your decisions should be recorded.
12. DOC recommends that you record the key matters your decisions turn on in the decision table provided [Attachment B to 25-B-0146]. Providing relevant justifications will ensure your decision-making is transparent and legally robust, particularly where contrary to the DOC section 49 recommendations or where decisions are of heightened interest.
13. Although DOC recommends that you consider all the relevant information provided, you are not constrained by this input, including DOC’s section 49 recommendations.

9(2)(h)

¹ As described at [p.352]. *Buller Electricity Ltd v Attorney-General* [1995] 3 NZLR 344. Also relevant is the Ruataniwha Supreme Court case, *Hawke’s Bay Regional Investment Company Ltd v Royal Forest and Bird Protection Society* [2017] NZSC 106 at [111].

9(2)(h)

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Risk assessment – Aronga tūraru

20. Your decisions should be based on considerations that are consistent with the purpose and scheme of the Conservation Act 1987. Basing reclassification decisions on considerations outside the scope of the Act (e.g. economic interests other than those of relevant Treaty partners) would be ultra vires, and could provide grounds for legal challenge.

Next steps – Ngā tāwhaitanga

21. DOC is preparing a response to your request for more information to support prioritisation of candidate national park additions.
22. DOC officials are finalising a draft Cabinet paper, outlining your intention to make decisions regarding the reclassification of stewardship land in the Western South Island.

ENDS

9(2)(h)

