



Briefing: Stewardship Land Extension of Ngāi Tahu Agreement

To	Minister of Conservation	Date submitted	6 July 2023
Risk Assessment	Medium Failure to discuss the Agreement with the Ngāi Tahu Kaiwhakahaere before 28 July will breach contractual obligations.	Priority	High
Reference	23-B-0289	DocCM	DOC-7380865
Security Level	In Confidence		
Action sought	Agree to meet with the Ngāi Tahu Kaiwhakahaere to discuss the upcoming expiry of the Agreement.	Timeframe	Correspondence should be sent to the Ngāi Tahu Kaiwhakahaere before 14 th July 2023.
Attachments	Attachment A – Draft correspondence to Ngāi Tahu Kaiwhakahaere		
Contacts			
Nicole Kunzmann, Reclassification Manager			9(2)(a)
Jay Eden, Acting Director National Programmes (2)			9(2)(a)

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. As part of the Stewardship Land Reclassification Project, two independent advisory National Panels are operating in the Western South Island and Northern part of the takiwā of Te Rūnanga o Ngāi Tahu (Ngāi Tahu).
2. The National Panels work alongside a Ngāi Tahu-appointed Mana Whenua Panel, following a process defined in an Agreement with Ngāi Tahu. This Agreement is between the Minister of Conservation and the Ngāi Tahu Kaiwhakahaere. It was signed for a two-year term on 28 October 2021.
3. The Agreement is the current mechanism by which DOC and the National Panels work in partnership with Ngāi Tahu. If it lapses, DOC (and Ngāi Tahu) will need to develop an alternative approach which gives effect to Treaty principles.
4. The Agreement expires on 28 October 2023. It includes clause 10.4 where the parties agree to meet to consider the continuation or termination of the Agreement no later than three (3) calendar months before the end of the term (28 July 2023).
5. s9(2)(h) [REDACTED]
6. There is no requirement to reach consensus on the Agreement's future at this meeting and it may be that a series of meetings are ultimately required. However, if consensus is not reached before the expiry date, the Agreement will lapse. This will halt Panel reclassification work in the Western South Island and Northern part of the Ngāi Tahu takiwā.
7. We recommend that you write to the Kaiwhakahaere requesting an initial meeting on or before 28 July to discuss the continuation or termination of the Agreement, followed by a more fulsome online or in-person hui.
8. We recommend you seek extension of the Agreement until 1 June 2024 to align with the revised appointment term of the National Panels. This will allow us time to progress intersecting workstreams which have implications for the delivery of the reclassification project:
 - 9(2)(f)(iv) [REDACTED]
 - The proposed 'No New Mines' policy.
 - 9(2)(f)(iv) [REDACTED]

We recommend that you ... (Ngā tohutohu)

		Decision
a)	Note that the existing Stewardship Land Reclassification Agreement with Ngāi Tahu expires on 28 October 2023.	<input checked="" type="checkbox"/> Yes No
b)	Note that the Agreement includes a clause (10.4) for you to meet with the Kaiwhakahaere on or before 28 July 2023 to discuss its continuation or termination.	<input checked="" type="checkbox"/> Yes No
c)	Note that expiry of the Agreement will halt Panel reclassification work in the Western South Island and Northern Ngāi Tahu takiwā.	<input checked="" type="checkbox"/> Yes No
d)	Agree to write to the Kaiwhakahaere requesting an initial meeting on or before 28 July to discuss the continuation or termination of the Agreement, followed by a more fulsome online or in-person hui.	<input checked="" type="checkbox"/> Yes No
e)	Note that we recommend you seek extension of the Agreement until 1 June 2024 to align with the revised appointment term of the National Panels.	<input checked="" type="checkbox"/> Yes No

9(2)(a)

Date: 5 / 07 / 23

Ben Reddiex
Acting DDG National Operations and
Regulatory Services
For Director-General of Conservation

9(2)(a)

Date: 11 / 7 / 2023

Hon Willow-Jean Prime
Minister of Conservation

Purpose – Te aronga

1. This briefing seeks your agreement to meet with the Ngāi Tahu Kaiwhakahaere on or before 28 July to discuss the continuation or termination of the stewardship land Agreement with Ngāi Tahu. This is due to expire on 28 October 2023.

Background and context – Te horopaki

2. In April 2021, Cabinet Business Committee agreed to a programme of work to improve how we reclassify stewardship land [CBC-21-MIN-0045 refers], including:
 - The appointment of two National Panels to provide recommendations to the Minister of Conservation about how to reclassify stewardship land, beginning in the Western and Northern South Island (the reclassification project).
 - Legislative amendments to streamline processes for the reclassification and disposal of stewardship land, better enabling the work of the National Panels.

An agreement with Ngāi Tahu facilitates reclassification project in parts of their takiwā

3. Te Rūnanga o Ngāi Tahu (Ngāi Tahu) considered the Stewardship Land Reclassification Project as announced in May 2021 to be in breach of Section 4 of the Conservation Act 1987 (section 4). They filed judicial review proceedings in the High Court, along with Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio.
4. Former Minister of Conservation Hon. Kiritapu Allan met with Ngāi Tahu Kaiwhakahaere Lisa Tumahai to discuss how to resolve these concerns. They reached a subsequent agreement (the Agreement) which established a Ngāi Tahu-appointed Mana Whenua Panel to work alongside the National Panels in Western South Island and Northern Ngāi Tahu takiwā. Judicial review proceedings were discontinued.
5. The Agreement expires on 28 October 2023, and includes a clause requiring you to meet with the Kaiwhakahaere before 28 July 2023 to discuss its renewal:

“10.4 ... the Parties agree to meet to consider the continuation or termination of this Agreement no later than three (3) calendar months before the end of the Term”
6. The Agreement is a contractual document and was born out of the legal proceedings. It also supports DOC’s Treaty partnership with Ngāi Tahu, as required by section 4 of the Conservation Act 1987. Expiry of the Agreement will halt current Panel reclassification work. If the Agreement expires or is terminated, we will need to consider the development of a different arrangement with Ngāi Tahu to progress the reclassification project in their takiwā.
7. The Agreement only relates to reclassification work in the Western South Island and in the Northern Ngāi Tahu takiwā. Reclassification work elsewhere in the Ngāi Tahu takiwā would require fresh engagement with Te Rūnanga o Ngāi Tahu and the relevant rūnanga to design a process to deliver the reclassification work in their regions.

The reclassification project is well advanced in parts of the Ngāi Tahu takiwā

8. Over the past two years the National Panels and Mana Whenua Panel (the Panels) have completed elements of the project, but the complexity of the work means they have not yet delivered final recommendations to you for decision:
 - The Western South Island Panel has publicly notified their recommendations for the region. They still have to consider information presented through the public process to inform their final recommendations to you.

- 9(2)(f)(iv)

9(2)(f)(iv)

9. 9(2)(f)(iv)

We recommend you discuss the Agreement with the Kaiwhakahaere

- 10. You are contractually committed to meeting with the Kaiwhakahaere before 28 July 2023 to discuss the continuation or termination of the Agreement.
- 11. We recommend you send Attachment A to the Kaiwhakahaere, proposing an initial meeting to discuss the Agreement on or before 28 July 2023. Depending on your preference and availability, this could be in the form of a high-level phone discussion.
- 12. The initial July meeting provides an opportunity to hear the Kaiwhakahaere’s perspective on the reclassification project and the continuation or termination of the Agreement. It fulfils your contractual commitment of Agreement clause 10.4 to meet “no later than three (3) calendar months before the end of the Term”.
- 13. You are not obliged to reach consensus on the Agreement’s future at this initial meeting. Depending on the outcome of the proposed discussion, it could be followed by a more fulsome online or in-person hui.
- 14. Correspondence should be sent to the Kaiwhakahaere to inform her of your intention no later than 14 July 2023. This is two weeks prior to the 28 July date stipulated by clause 10.4 in the Agreement. This also ensures that you are providing sufficient time for consideration of the issue by the Kaiwhakahaere and meeting your obligations as a good Treaty partner.

We recommend the Agreement is extended until 1 June 2024

- 15. If consensus isn’t reached to extend the Agreement before 28 October 2023 it will lapse, halting Panel reclassification work. We recommend you seek the views of the Kaiwhakahaere with regard to extending the Agreement until 1 June 2024 to align with the revised appointment term of the National Panels [23-B-0177 refers].
- 16. The substance of the Agreement is closely linked to Panel-led reclassification, including several process-related references to the National Panels. Extending the Agreement until 1 June 2024 will represent a distinct point at which the Panel approach can be discontinued or extended if successful.
- 17. An extension until June 2024 will also allow us time to progress intersecting workstreams which have strategic implications for the delivery of the reclassification project.

Intersecting workstreams have implications for the reclassification project

9(2)(f)(iv)

[Redacted]

[Redacted]

- 20. 9(2)(f)(iv) [Redacted]
- [Redacted]
- [Redacted]

The 'No New Mines' policy s9(2)(g)(i) [Redacted]

- 23. Although separate workstreams, the 'Crown Minerals (Restricting Access for Mining on Conservation Land) Amendment Bill' (the Bill) affects how iwi, environmental NGOs and commercial operators view recommendations to reclassify stewardship land.
- 24. If the Bill proceeds, it will prevent access for most mining operations on approximately 70 percent of conservation land. While stewardship land would not be included in the Bill, most reclassified land will no longer be able to be considered for mining operations.

- 25. s9(2)(f)(iv) [Redacted]
- 26. [Redacted]
- 27. [Redacted]

- 9(2)(f)(iv) [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

- 31. 9(2)(f)(iv) [Redacted]

9(2)(f)(iv)

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

Risk assessment – Aronga tūraru

35. s9(2)(h) [Redacted]

36. 9(2)(f)(iv) [Redacted]

37. 9(2)(f)(iv) [Redacted]

38. s9(2)(g)(i) [Redacted]

The work is of considerable interest to a wide range of groups including iwi, environmental NGOs, and those with commercial interests such as mining groups, illustrated by the large-scale response to public notification. s9(2)(h)

[Redacted]

Treaty principles (section 4) – Ngā mātāpono Tiriti (section 4)

39. Treaty principles relevant to the Stewardship Land Reclassification Project include partnership (engaging with mana whenua on the proposed revised land classifications in good faith, fairly and reasonably), informed decision making (being informed of the values and interests of mana whenua associated with each stewardship area) and active protection (how to reconcile protection of identified values or interests with the wider statutory and non-statutory considerations).

40. As rangatira and kaitiaki, whānau, hapū, and iwi have a strong interest in any decisions on the reclassification of stewardship land. The Ngāi Tahu-appointed Mana Whenua Panel was established to represent the interests of mana whenua in the reclassification of stewardship land on the Western South Island and northern part of their takiwā.
41. DOC staff will speak with tangata whenua in other regions to understand how they wish to participate in the stewardship land reclassification process when it takes place within their rohe. s9(2)(f)(iv)

Consultation – Kōrero whakawhiti

42. Informal consultation has occurred with Francois Tumahai, Chair of the Mana Whenua Panel regarding the extension of the Agreement. Note that the meeting required under the Agreement will allow for consultation to occur.

Financial implications – Te hiraunga pūtea

43. s9(2)(g)(i)

[Redacted content]

Legal implications – Te hiraunga a ture

46. s9(2)(h)

[Redacted content]

Next steps – Ngā tāwhaitanga

47. If you agree to meet with the Kaiwhakahaere on or before 28 July, we will work with your office to send Attachment A to the Ngāi Tahu Kaiwhakahaere and schedule the proposed meeting.
48. We will prepare talking points to support you in this meeting, in addition to advice regarding any subsequent meetings.

ENDS

Attachment A - Draft correspondence to Ngāi Tahu Kaiwhakahaere

XX July 2023

Lisa Tumahai
Kaiwhakahaere
Te Rūnanga o Ngāi Tahu

s.9(2)(a)

Tēnā koe Lisa,

I would like to invite you to join me prior to 28 July to discuss the continuation or termination of the agreement 'Reclassification of Stewardship Land in the Ngāi Tahu takiwā'.

From October 2021, the Stewardship Land Reclassification Project has been underway in the Western South Island and Northern Ngāi Tahu takiwā. Working in partnership, the two National Panels and Ngāi Tahu Mana Whenua Panel have made considerable progress. I acknowledge that the complexity of the work means the Panels have not yet progressed reclassification recommendations to me for decision.

The process has been undertaken according to the terms of the agreement signed by you and the then Minister of Conservation Hon. Kiritapu Allan ('Agreement - Reclassification of Stewardship Land in the Ngāi Tahu takiwā'). As the Minister of Conservation, I now hold responsibility for this agreement on behalf of the Crown.

The agreement expires on 28 October 2023, and includes a clause for us to meet to consider the continuation or termination of the agreement no later than three calendar months before the end of the Term; i.e. prior to 28 July 2023.

I anticipate the proposed July meeting will be in the form of an initial phone or online discussion. This would be high-level, to share our perspectives on the reclassification project and whether to extend the agreement. Depending on the outcome of this initial discussion, we could then schedule a more fulsome online or in-person hui.

If you are available to meet in the proposed period, my Office will be in touch to arrange a specific date and time.

Ngā mihi nui

Hon Willow-Jean Prime
Minister of Conservation