

Management Planning Advice

Lower Selwyn Huts, Canterbury

Assyst Request # R218311

Advice prepared by: Sarah Smylie, Management Planner, 10 August 2021

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Relevant documents: Previous advice provided August 2020 [DOC-6412826](#); [Conservation General Policy 2005](#); [Canterbury \(Waitaha\) Conservation Management Strategy 2016](#); [Te Waihora Joint Management Plan 2005](#);

Purpose

1. To provide additional management planning advice on decision making relating to the expiry of licences for the Lower Selwyn Huts.

Context

2. Statutory management planning advice was provided in August 2020.
3. This Assyst request is seeking further information/ clarity on matters raised in the advice and the implications of the recent decision on the High Court judgment concerning the Paparoa National Park Management Plan.
4. The Assyst request essentially posed three questions and these are captured and responded to below. The responses need to be read in conjunction with the August 2020 advice.

Questions and advice

Q1 – Does the High Court judgement concerning Paparoa National Park have any implications for decision-making on the Lower Selwyn Huts?

5. The judicial review was brought about by Forest and Bird (F&B) and the Federated Mountain Clubs (FMC) challenging DOC and the New Zealand Conservation Authority's decision to allow for recreational aircraft landings in Paparoa National Park. They maintained that the provisions in the National Park Management Plan (NPMP) derogated from the West Coast *Te Tai o Poutini* Conservation Management Strategy (West Coast CMS).
6. Their claim of derogation was based on the fact that the Conservation Act establishes a hierarchy of conservation planning documents. General Policy at the top. Conservation management strategies are next and conservation management plans and national park management plans are at the bottom of the hierarchy. Within this hierarchy, lower order documents cannot be inconsistent with higher order documents.
7. The High Court essentially found in favour of F&B and FMC's position and struck out (deleted) the recreational aircraft provisions in the PNPMP.
8. In the Paparoa case, the West Coast CMS contained statements to the effect that the Paparoa National Park was to be free of recreational aircraft activity whereas the PNPMP provided for recreational aircraft landings. The High Court judgment found that in taking this approach the PNPMP was inconsistent with and derogated from the CMS.

9. The situation with respect to the management of the Lower Selwyn Huts and relationship between the Te Waihora Joint Management Plan 2005 (JMP) and Canterbury (Waitaha) Conservation Management Strategy 2016 (Canterbury CMS) is quite different. This is because the Canterbury CMS:
- clearly states (in Policy 2.9.16) that the CMS does not apply to the area covered by the JMP
 - contains no provisions setting out a future management direction for the huts
 - Recognises the huts in Table 16, Section 3.11 and reinforces that they will be managed in accordance with the JMP.
10. The expectation then is that the JMP would set out how the use of the Selwyn Huts for private accommodation would be phased out consistent with Conservation General Policy (CGP). The fact that the JMP does not do this does not mean that the JMP is inconsistent with the CMS – it just means that it does not deliver on the expectations created by the CMS.
11. However, in terms of the Selwyn Huts, DOC is still required to give effect to the policies in Section 10 of the GCP thus, in terms of the phasing out of this activity, these policies need to be given precedence.
12. Decision-making should not apply the phase out methods, or timelines set out in the CMS as the CMS clearly states that the CMS does not apply to the management of the JMP area or the private accommodation contained therein.

Q2 – Does the fact that the huts were in place before the land became public conservation land have any bearing on the future?

13. While the CGP generally provides for the phasing out of private accommodation on public conservation lands and waters, this does not apply where the use was lawfully established before 1 April 1987. This exemption is provided for under Section 7(2) of the Conservation Amendment Act 1996 which states:

“7(2) Where any person lawfully occupied any conservation area at the commencement of this Act in accordance with any right lawfully granted on or before 1 April 1987 under any Act or any contract made on or before 1 April 1987 then, notwithstanding sections [17U](#) or [17W](#) of the principal Act, as inserted by subsection [\(1\)](#) of this section, the Minister may grant a concession to that occupant for the area lawfully occupied by the occupant, but the extent of the activities authorised by any such concession shall be no greater than was lawfully exercised by the occupant.”

14. Table 16 of the CMS addresses whether the exemption applied at the time the CMS was developed and appears to conclude that yes, an exemption did apply but only until 2024 when the right of renewal expires.
15. I have spoken to one of the Planners involved at checking this table at the time and I understand that the circumstances at each location were well researched however we have been unable to find the records of this. Given the potential interest in the future of the huts, it would be prudent for Statutory Land Management and/or Legal to assess and document this situation.

Q3 – If the CMS and JMP don't provide clear guidance, how do we make a robust decision?

16. From a planning perspective, a robust decision is going to be contingent on: a sound understanding of the current state of buildings, the nature of use and the effects of this use on natural resources, Ngai Tahu interests, historic and cultural heritage and on the benefits and enjoyment of the public.
17. As with all decisions made by DOC, any decision could be challenged through a judicial review. It would therefore be prudent to design a robust process and socialise and communicate this widely. Consideration should be given to co-designing the process with Ngai Tahu given their interest in Te Waihora and their co-governance role in approving the JMP.

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