

# STEWARDSHIP LAND: Net Conservation Benefit Assessments in Land Exchanges

Report from the New Zealand Conservation Authority

March 2018

## 1. INTRODUCTION

- 1.1 In January 2016, the Authority provided a report on 'net conservation benefit and land exchanges' to the Minister of Conservation. The report was provided in response to the Hon. Maggie Barry's letter of 2 April 2015 to the Authority. In that letter the Minister requested the Authority's views on the Parliamentary Commissioner for the Environment's recommendation to the Minister<sup>1</sup> that the Authority provide "guidance on the principles and processes that should be used when making decisions on net conservation benefit" in the context of land exchanges under section 16A of the Conservation Act.
- 1.2 The Minister's letter noted that the PCE's report highlighted a number of matters under the heading of 'net conservation benefit'. They included:
- (a) How to consistently assess the values of land to be exchanged, to facilitate evaluation of the net conservation value of proposals;
  - (b) Whether this calculation should address the benefits to conservation, rather than to the public conservation estate managed by the Department of Conservation; and
  - (c) Whether there should be public consultation on significant land exchanges.
- 1.3 The Authority provided comment and recommendations on these issues. In addition, the Authority believed that these questions gave rise to several broader issues and that 'net conservation gain' for exchanges under section 16A should be considered as part of a suite of relevant issues in relation to concessions, exchanges, disposals and conservation land classifications generally. For that reason, the Authority also provided a number of recommendations on these wider issues for the Minister's consideration.
- 1.4 In July 2017, the Supreme Court issued its decision in *Hawkes Bay Regional Investment Company Limited v Royal Forest and Bird Conservation Society of New Zealand Limited* (the *Ruataniwha* case). This decision has implications for the Authority's 2016 report and recommendations. Therefore, the Authority has reconsidered its earlier report, and now provides this updated report in light of the Supreme Court's decision.

## 2. SUMMARY

### **The Supreme Court's decision in *Ruataniwha***

- 2.1 The effect of the Supreme Court's decision is that the Minister of Conservation (or your delegate), in making a determination on an application for the exchange of stewardship land under section 16A of the Conservation Act, must take into account all of the policies 6(a)-(d)

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<sup>1</sup> Parliamentary Commissioner for the Environment, 2013. Investigating the Future of Conservation: The case of stewardship land.

of the Conservation General Policy. Because of the operation of these policies, the implication of the decision is that stewardship land is not eligible for exchange unless it has "no, or very low, conservation values". It might also be the case that the Court's decision means that the exchange of land which presently has no or little conservation value, but which has the 'potential' for conservation, including recreation value, to be created, will also be unable to proceed. This may potentially 'catch' almost all those exchanges of land which are continuing to take place.

### **Conservation General Policy 2005**

- 2.2 The Conservation General Policy was approved in May 2005. Policy 6 deals with 'Changes to Public Conservation Lands'. Policy 6(a) deals with land acquisitions and exchanges. Policy 6(b) deals with reclassifications of conservation land. Policies 6(c) and 6(d) deal with disposals of conservation land. Policy 6(c) provides that land may only be disposed where it has "no, or very low, conservation values". It is this policy which the Supreme Court said also applies to exchanges which are otherwise dealt with by Policy 6(a).
- 2.3 It is the Authority's opinion that it was not the intention of either the then Authority or of the then Minister that Policy 6(c) was to apply to exchanges under s16A of the Conservation Act. To date, when the Director-General has approved exchanges, the Department has seen those exchanges are resulting in improved conservation outcomes. The present interpretation of the Conservation General Policy means that improved conservation outcomes cannot be achieved.
- 2.4 In the Authority's view, it is significant that the effect of the Court's decision on land exchanges arises from the interplay of the Policies in section 6, rather than the wording of the Conservation Act itself.
- 2.5 For the reasons we set out below, the Authority considers that there remains good policy and operational reasons for retaining your discretion to approve exchanges of land where there may be existing or potential conservation values which are greater than nil or 'very low'.
- 2.6 For that reason, the Authority recommends that the Director-General prepares a proposed amendment to the Conservation General Policy in accordance with section 17B(4) of the Conservation Act.
- 2.7 This report also sets out below those matters or criteria which the Authority considers should be included in any such review to guide applicants for exchanges and to ensure that exchanges are seen to be undertaken in a strategic and transparent manner.

### **Assessment criteria for exchanges under section 16A**

- 2.8 In terms of exchanges under section 16A of the Conservation Act 1987, we recommend a set of matters for assessment based on the Nature Heritage Fund criteria for funding. We consider that these matters provide a sound basis for assessing the appropriateness of a proposed exchange. Our recommendations, set out in Part 3 of this report, are supported by the full explanation provided in Appendix A.
- 2.9 We consider that our recommended assessment matters should be included in a revised Policy 6 of the Conservation General Policy to provide a more detailed and transparent basis upon which to make an assessment.

- 2.10 In general terms, we consider that you (or your delegate) should first consider whether a 'like for like or similar' (in terms of conservation values) exchange is possible. These types of exchanges are more easily assessed because equivalent (or similar) values can more readily be compared. The Authority considers that flexibility to achieve optimal conservation outcomes is important. We therefore are of the view that exchanges should not be restricted to 'like for like' values. In some situations, an exchange of stewardship land with other land with different conservation values will result in a superior conservation outcome. However, particular caution needs to be exercised in such a situation because 'comparing apples and oranges' is inherently difficult and the assessment is particularly vulnerable to differences of expert opinion. In such situations the 'net conservation benefit' would need to be demonstrated before you authorise an exchange. It is in such situations that our recommended assessment matters will provide you with the basis upon which to make a transparent and principled decision.
- 2.11 Therefore, in assessing a proposed exchange there are two general considerations:
- (a) Is a 'like for like or similar' exchange (of conservation values) possible?; and
  - (b) Even if 'like for like or similar' exchange is possible, is there a preferable outcome?
- 2.12 The Authority considers it important that you retain a discretion to not accept an exchange proposal, even if it meets the requirements of section 16A. In other words, even if a proposal meets the recommended assessment criteria (and therefore the s16A test) you should not be bound to authorise the exchange. Ultimately, while a decision to allow or decline an exchange should be evidence-based from expert advice, it remains a discretionary, rather than a 'technical' decision.
- 2.13 The Conservation Act does not need to be amended for the Conservation General Policy to include these assessment matters.

#### **Public notification of applications for exchanges**

- 2.14 We recommend that some, but not all applications for exchanges, be publicly notified. The Crown Minerals Act 1991 regime provides an appropriate precedent for deciding which applications for exchanges under section 16A should be publicly notified. We have provided specific criteria for your consideration. We believe that legislative amendment of the Conservation Act is necessary to implement this recommendation.

#### **Is the Conservation Act test for exchanges appropriate?**

- 2.15 We recommend that the test in section 16A be amended so as to better provide for optimal conservation outcomes. Currently, the test in section 16A appears only to relate to conservation values within public conservation land. It is unclear, for example, whether or not the land to be exchanged already has adequate legal or practical protection. To illustrate, an area of private land that is subject to a QEII covenant could be the subject of an exchange with stewardship land. While such an exchange may enhance the overall values of public conservation land locally, the test should also consider whether there are gains to the conservation values of New Zealand as a whole. On the contrary, the land in question might receive less management as public conservation land than when it is privately owned.
- 2.16 We have not provided any suggested wording for an amended section 16A. Any such amendment should be contemplated in the context of the wider policy issues about stewardship land generally, which we discuss below.

- 2.17 We consider that our recommended guidelines should apply to section 16A as it is currently worded but would need minor amendment if section 16A is amended in the future.

#### **Other recommended changes to the exchange regime**

- 2.18 At present there is no obligation on the Department to process an application for an exchange. We recommend that this be changed so that, consistent with an application for an access arrangement under the Crown Minerals Act and a concession under the Conservation Act, the Department is required to process an application if one is made. This is likely to require a minor legislative amendment.
- 2.19 The Authority considers that applicants for exchanges should be required to pay the Department's reasonable costs in processing an application for an exchange. This would make it consistent with applications for concessions (and possibly access arrangements).
- 2.20 In terms of effectiveness and efficiency of processes generally, the Authority recommends that you also instigate a legislative amendment which would enable the integration of concession/exchange processes with any relevant resource consent processes under the Resource Management Act. We understand that there have been some discussions on this matter between various business interests, MBIE and MfE. We consider this will require a separate amendment to the Conservation Act and the RMA.,

#### **Reclassification of stewardship land – strategic considerations**

- 2.21 It is the Authority's view that stewardship land is not 'less protected' than other categories of conservation land or necessarily 'open for business'. The only difference is that stewardship land may be exchanged under s16A, while other categories of conservation land cannot be exchanged.
- 2.22 There are, broadly, two categories of stewardship land. A large proportion of land administered by the Department was allocated to DOC when it was formed in 1987 and are managed as stewardship land. They were former State forest and Crown land areas considered to be more appropriately managed for their conservation values by DOC. The intention was that DOC would act as a steward of these areas until their destiny was determined. Secondly, some stewardship land has been specifically acquired for addition to national parks or conservation parks or has resulted from tenure review. It makes sense to reclassify this land for the express purpose for which it was acquired, as soon as practicable. The Authority has some views it wishes to discuss with the Department on how that process can be undertaken most effectively. However, we do not support a major effort being expended by the Department generally on a reclassification of all stewardship land.
- 2.23 We have formed this view also because of the implications of reclassification of stewardship land on the ability to achieve net conservation gain. Rather than being a 'disability', the option of exchanging land provides flexibility to achieve improved conservation outcomes. Under the Conservation Act it is only possible to exchange stewardship land, and not any other category of conservation land. If there is no stewardship land, no exchanges will be possible.
- 2.24 This outcome would be significant because the only way activities could then be authorised on conservation land is by a concession (or an access arrangement in the case of mining activities). We understand that departmental advice is that the 'net conservation benefit' concept is not applicable to concessions (even though it is applied in mining related activities), and that only activities with 'truly minor' effects can be approved by a concession,

irrespective of what off-footprint mitigation, environmental compensation, or biodiversity offset is offered.

- 2.25 On the basis of this advice, we consider the test for concessions is unduly limited. As we have noted, we consider that flexibility is important with any regimen. While the Crown Minerals Act has the flexibility to consider net gain options for mining activities<sup>2</sup>, the Conservation Act does not have that flexibility for all other activities. We do not see any reason for this distinction. In our view, there are two options to provide that flexibility for activities other than mining related activities:
- (a) Enable land exchanges of all categories of conservation land, not just stewardship land (but possibly excepting those classifications which are currently listed in Schedule 4 to the Crown Minerals Act); or
  - (b) Amend section 17U of the Conservation Act to allow for the consideration of net conservation gain as a possible outcome (through the use of off-footprint mitigation and enhancement, and mechanics such as the use of environmental compensation and biodiversity offsetting).
- 2.26 The Authority believes that both options should be considered.
- 2.27 In terms of allowing exchanges for other classes of protected land, section 15 of the Reserves Act 1977 already provides that the Minister of Conservation may exchange part of a reserve for any other land. This means that exchanges can be made for part of all types of reserves including scenic reserves, nature reserves and recreation reserves.
- 2.28 We see no compelling reason why the power to authorise exchanges for reserve lands should not be extended to other categories of conservation land – in particular conservation parks. This would mean, for example, that boundary adjustments to conservation parks could be considered as an exchange, rather than, like the Ruataniwha dam proposal, requiring a revocation of the 'specially protected' status to become stewardship land, so it can then be the subject of an exchange. Given that, in many instances, the boundaries of conservation parks have arisen for historical reasons rather than a specific assessment of conservation values, the Authority considers that enabling you to authorise exchanges, at least for these sorts of boundary adjustments, would be beneficial.
- 2.29 As set out in Appendix C to this report, there are a range of reserve and conservation land statuses under both the Conservation Act and the Reserves Act. In our view, these classifications contain overlaps and inconsistencies. At some point the 'fitness for purpose' of the various land classification in both the Conservation Act and the Reserves Act could usefully be revisited.

### **Concessions process**

- 2.30 The above discussion raises issues about the appropriateness of the Conservation Act test (section 17U) for concession applications. As we have noted, we consider that flexibility to achieve conservation gains is required from any regime. We are advised there is no flexibility to achieve net conservation gain outcomes with the current concessions regime. We recommend that you consider applying one of the access arrangement assessment criteria under the Crown Minerals Act, specifically s61(2)(e), to concessions under the Conservation

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<sup>2</sup> See in particular <http://www.doc.govt.nz/publications/conservation/nz-threat-classification-system/nz-threat-classification-system-manual-2008/>

Act to allow for net conservation gain to be achieved. This will require amendment to (at least) section 17U of the Conservation Act.

- 2.31 It might be argued that minerals activities should be treated differently because minerals are fixed in location. While that is true, the Conservation Act (section 17U(4)) already provides that an applicant for a concession must demonstrate that any structure or facility cannot reasonably be undertaken outside the conservation area concerned. This requirement should be retained. We nonetheless recommend that section 17U be amended to enable the flexibility to achieve net conservation gain in any particular situation.
- 2.32 If you decide to pursue such an amendment, the Department's 'biodiversity offsets guidelines' will need to be revised. These guidelines were developed in the context that offsets were seen to be unavailable under the Conservation Act. We are also aware of considerable disquiet from business about the consultation process used to develop the guidelines and their practical usefulness.

#### **Revocations and disposals of conservation land**

- 2.33 We also recommend that consideration be given to including in the Conservation General Policy, revised and clearer criteria for revocations, both generally and to enable exchanges.

#### **National Parks**

- 2.34 In this letter, we have not specifically sought to apply our thinking on net conservation gain to national parks. National parks have a special status and separate consideration needs to be given as to whether exchanges might be possible for land in national parks.

### **3. THE SUPREME COURT'S DECISION IN THE RUATANIWHA WATER STORAGE CASE**

- 3.1 The Supreme Court's decision relates to the judicial review of the decision of the Director-General to revoke the conservation park status of 22 hectares of the Ruahine Forest Park which would have enabled the Ruataniwha Water Storage Scheme.
- 3.2 The Conservation Act provides that stewardship land may be exchanged under section 16A or disposed of under section 26.
- 3.3 The Supreme Court found that the Director-General was required to take into account the Conservation General Policy and the Hawke's Bay Conservation Management Strategy. The Supreme Court also decided that that policies 6(a)-(d) of the Conservation General Policy overlap and found that the exchange of land entails the disposal of land under the Conservation Act. The Director-General had failed to take into account the policies relating to disposal when considering the revocation and land exchange.

The effect of the decision of the Supreme Court is that the Minister of Conservation (or your delegate), in making a determination on an application for the exchange of stewardship land under section 16A of the Conservation Act, must take into account all of the policies 6(a)-(d) of the Conservation General Policy. Because of the operation of these policies, the implication of the decision is that stewardship land is not eligible for exchange unless it has "no, or very low, conservation values".

#### **4. CONSERVATION GENERAL POLICY 2005**

- 4.1 The Conservation General Policy was approved by the Hon Chris Carter in May 2005 (with a minor amendment being approved in 2007). Policy 6 deals with 'Changes to Public Conservation Lands'. Policy 6(a) deals with land acquisitions and exchanges. Policy 6(b) deals with reclassifications of conservation land. Policies 6(c) and 6(d) deal with disposals of conservation land. Policy 6(c) provides that land may only be disposed where it has "no, or very low, conservation values". It is this policy which the Supreme Court said also applies to exchanges which are otherwise dealt with by Policy 6(a).
- 4.2 The Authority has considered the background to the development of the policies in section 6 of the Conservation General Policy (the Authority having the statutory role of advising the Minister on the Policy). Having considered that background, it is the Authority's opinion that it was not the intention of either the then Authority or of the then Minister that Policy 6(c) was to apply to exchanges under s16A of the Conservation Act. For the decade prior to the Supreme Court's decision, the Policies in section 6 were never applied or interpreted in that manner. The Authority has therefore concluded that the Supreme Court's decision is inconsistent with the intention of the drafters of the Conservation General Policy.
- 4.3 In the Authority's view, it is significant that the effect of the Court's decision on land exchanges arises from the interplay of the Policies in section 6 and does not arise by virtue of the Court's interpretation or application of the Conservation Act itself.
- 4.4 For the reasons we set out below, the Authority considers that there remains good policy and operational reasons for retaining your discretion to approve exchanges of land where there may be existing or potential conservation values which are greater than nil or 'very low'.
- 4.5 For that reason, the Authority recommends that the Director-General prepares a proposed amendment to the Conservation General Policy in accordance with section 17B(4) of the Conservation Act.
- 4.6 This report also sets out below those matters or criteria which the Authority considers should be included in any such review to guide applicants for exchanges and to ensure that exchanges are seen to be undertaken in a strategic and transparent manner.

#### **5. GUIDELINES FOR SECTION 16A EXCHANGES TO ENABLE NET CONSERVATION BENEFIT**

- 5.1 Our recommendations relate to two issues:
- (a) Should a particular proposed exchange be a public process?
  - (b) What guidelines are useful to assist you (and the applicant) in determining whether the legal test for an exchange in section 16A of the Conservation Act is met?

##### **Public notification of applications for exchanges**

- 5.2 The Authority recommends that some applications for exchanges of stewardship land should be notified. We believe that similar policy considerations apply to this issue as apply to the public notification of some access arrangements under the Crown Minerals Act.<sup>3</sup>

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<sup>3</sup> See Cabinet Proposal 'Public Notification of applications for access to public conservation land to undertake "significant" mining activities' 30 August 2012.

- 5.3 We recommend that the decision about notification follow the approach set out in the Crown Minerals Act where applications for access arrangements for 'significant mining activities' are publicly notified<sup>4</sup>, even though other access arrangement applications are not. This will require legislative amendment
- 5.4 In terms of determining whether or not an application should be notified, we believe the consideration should be restricted to the values of the stewardship land involved, not the values of the other land to be exchanged. We recommend that when an application is made, you (or your delegate) should determine whether or not the proposed exchange is a 'significant exchange proposal' and, in determining that, should have regard to:
- (a) The conservation values of the stewardship land concerned, including:
    - (i) *What threat classification the land has;*<sup>5</sup>
    - (ii) *Whether the land contains any 'priority ecosystem units' under the NHMS;*
    - (iii) *Whether the land contains a significant population of any threatened species;*<sup>6</sup>  
*and*
    - (iv) *Any recreational values and historic heritage values recognised in a relevant conservation management strategy or management plan.*
  - (b) Whether the proposed exchange involves a boundary adjustment to a single stewardship area;
  - (c) The effects of the removal of the area proposed to be exchanged on the conservation values of the stewardship land concerned as a whole;
  - (d) The opinion of the relevant Conservation Board regarding the desirability of notifying;
  - (e) Any issues of particular relevance to iwi; and
  - (f) Any other matters the Minister considers relevant to achieving the purpose of the Conservation Act.
- 5.5 If the Minister determines the proposed exchange is a 'significant exchange' proposal, the application should be publicly notified and processed like a concession under section 49 of the Conservation Act 1987.
- 5.6 Exchanges involving boundary adjustments (criteria (b)) are likely to be of less significance. That is because many exchanges are minor exchanges, usually with a landowner of land adjoining neighbouring stewardship land. These may be prompted by the need for a more

<sup>4</sup> Section 61C.

<sup>5</sup> The Landcare Research 2007 Threatened Environment Classifications:

Threatened Environment Classification	Classification description
Acutely Threatened	Less than 10% indigenous vegetation cover remaining
Chronically Threatened	10–20% indigenous vegetation cover remaining
At Risk	20–30% indigenous vegetation cover remaining
Critically Underprotected	More than 30% indigenous vegetation cover remaining but less than 10% legally protected
Underprotected	More than 30% indigenous vegetation cover remaining and more than 20% legally protected
Less Reduced and Better Protected	More than 30% indigenous vegetation cover remaining and 10–20% legally protected

<sup>6</sup> According to national classification lists



appropriate boundary fence line, or to improve the value of both properties (the neighbouring landowner receiving areas of pasture land and the Department receiving remnant natural areas), or by the need to achieve other objectives such as improving access to a protected area or resolving access issues for a private land-locked property. Boundary adjustment exchanges are less likely to require public notification, although the significance of conservation values in question should remain the notification test for those exchanges.

### **Guidelines for assessing the appropriateness of a proposed exchange**

- 5.7 In determining the appropriateness of an exchange, you (or your delegate) are required to apply section 16A of the Conservation Act:

"The Minister shall not authorise any such exchange unless the Minister is satisfied, after consultation with the local Conservation Board, that the exchange will enhance the conservation values of land managed by the Department and promote the purposes of the Conservation Act".

- 5.8 In our view, the shorthand term 'net conservation benefit', while not used in this section, adequately describes the outcomes sought. However, the 'net benefit' is only in terms of public conservation land, not conservation values generally. The recommendations reflect the existing legal test. We comment in section 6 below on whether an amendment to section 16A is warranted.

- 5.9 Currently, an exchange must also be consistent with Policy 6 of the Conservation General Policy 2005 which provides:

#### **6 Changes to Public Conservation Lands**

6 (a) Land acquisition or exchange (including boundary changes) may be undertaken to manage, for conservation purposes, natural resources or historical and cultural heritage; or for the benefit and enjoyment of the public, including public access, where the land has international, national or regional significance; or where land acquisition or exchange will either:

- improve representativeness of public conservation land; or
- improve the natural functioning or integrity of places; or
- improve the amenity or utility of places; or
- prevent significant loss of natural resources or historical and cultural heritage; or
- improve the natural linkages between places; or
- secure practical walking access to public conservation lands and waters, rivers, lakes or the coast; or
- achieve any other purpose allowed for under the relevant Acts.

- 5.10 We consider that these criteria remain valid and should be included in any amendments to Policy 6. The Authority recommends that the changes make it clear that for the purposes of the Policy an exchange is not to be considered a disposal of land, and that different criteria apply for disposals and exchanges.

- 5.11 In determining whether section 16A is met, we propose that you (or your delegate) have regard to the following criteria in addition to those which are currently set out in Policy 6(a) (which should apply to both 'significant exchange proposals' and other exchange proposals) insofar as they are relevant. We have based our recommendations on the assessment

criteria of the Nature Heritage Fund and have adopted and added to these where appropriate. Appendix A sets out our recommended guidelines in full.

**(a) General considerations**

- 5.12 The Authority considers it important that you retain a discretion to not accept an exchange proposal that meets the requirements of section 16A. In other words, even if a proposal otherwise meets the recommended assessment criteria for a revised Policy 6 (and therefore s16A), you should not be bound to authorise the exchange.
- 5.13 On the other hand, there should be no presumption against approving an exchange where more than minor, or even significant, conservation values are involved. That is, exchanges are not restricted to where the stewardship land has no or low conservation values. The relevant legal test is whether conservation values of land managed by the Department are enhanced overall.
- 5.14 It is expected that the first consideration for land to be exchanged for stewardship land would be that it has similar conservation values to that stewardship land in terms of:
- (a) Vegetation types;
  - (b) Threatened species;
  - (c) Recreation values; and
  - (d) Historic values.
- 5.15 This is a 'like for like or similar' approach. That is, the first consideration for an exchange should be, in general, to understand whether a 'beech forest for a beech forest', a 'tui for a tui', or a 'historic mining site for another historic mining site' approach is possible.
- 5.16 We have deliberately made the 'test' here reasonably general by including the words 'or similar'. That is because we understand that a rigid 'like for like' test can be almost impossible to meet, even in principle, and can be the subject of considerable disagreement between experts. If a 'like for like or similar' approach is possible, the Authority considers that it should be adopted, unless there is a demonstrably better outcome available.
- 5.17 Despite a 'like for like or similar approach' being the default, exchanges of land where the conservation values are different may also be considered appropriate where a demonstrably superior conservation outcome is possible. However, particular caution needs to be exercised in such situations because 'comparing apples and oranges' is inherently difficult and the assessment is particularly vulnerable to differences of expert opinion. In such situations the 'net conservation benefit' is likely to need to be demonstrable before you authorise an exchange. It is particularly in such situations that we believe our recommended assessment matters will provide you with the basis upon which to make a transparent and principled decision.
- 5.18 In our view, it is also important to have regard, not only to the existing conservation values, but also to the 'potential' for either enhancement of, or reduction in, those conservation values over time. For example, an area of lowland river terrace currently in pasture might be enhanced by additional management, while another area might have a future deterioration of conservation values if management is reduced in the future.

- 5.19 However, we consider that it is too subjective and uncertain to try to 'value' a future state of land that requires action/investment to realise. If the stewardship land is of limited conservation value today, but could be made better with additional management, that leads to the conclusion that the Department has chosen not to invest management in that land but has put in effort elsewhere. At the extreme, all stewardship land which is anything other than pristine must fall into the category of 'being able to be improved' with enough resources. If too wide an approach is taken, the logical conclusion is that all stewardship land should be assessed as if it were 'pristine'. That is clearly not a practical approach.
- 5.20 In the Authority's view the practical way to address this 'potential' is to consider the conservation values as they are 'likely' to exist in the foreseeable future. This is consistent with the question of whether 'unimplemented resource consents' are considered to be part of the environment under the Resource Management Act. Assessing what are the likely future conservation values of the land concerned will require a subjective assessment based on the available evidence before you at the time the exchange is considered, having regard to the management priorities set out in the relevant Conservation Management Strategy.
- 5.21 It is also necessary to consider the effects of the removal of an area of stewardship land on the conservation values and management of the surrounding public conservation land. For example, an enclave of private land which was previously stewardship land may reduce the ability to manage pests on the remaining conservation land (e.g. if the landowner does not wish to have traps on their land), or might create new weed and pest problems. On the other hand, however, the private landowner may have better resources than the Department to manage the land in question. Again, the consideration should relate to what is 'likely' to occur in the future on the land once it is no longer stewardship land. In our view, it appears possible to include in an agreement for the exchange provisions relating to the continued use of the former stewardship land (such as control of pests and weeds).
- 5.22 An important consideration in any exchange proposal is the implications of that exchange for how the relevant areas of land are to be managed in the future. Conservation values are not necessarily enhanced simply by adding more public conservation land. In the Authority's view, adding land to public conservation land is not prudent if that land cannot be properly managed within the Department's existing resources. This goes to the question of whether it is reasonable in the circumstances to impose conditions on the exchange which provide for, or at least assist with, that ongoing management.

**(b) Stewardship land to be exchanged**

- 5.23 We recommend that when assessing the conservation values of the stewardship land concerned the following matters should be considered:
- (a) The conservation values of the stewardship land concerned, including:
- (i) *What threat classification the land has<sup>7</sup>;*
  - (ii) *Whether the land contains any 'priority ecosystem units' under the NHMS;*
  - (iii) *Whether the land contains any threatened species;*
  - (iv) *Any recreational values and historic heritage values recognised in a relevant conservation management strategy or management plan;*

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<sup>7</sup> The Landcare 2007 classification

- (b) Whether the proposed exchange involves a boundary adjustment to a single stewardship area;
- (c) The effects of the removal of the area proposed to be exchanged on the conservation values of the stewardship land concerned as a whole;
- (d) Any issue of particular relevance to iwi; and
- (e) Whether in meeting the purpose of the Conservation Act, an agreement with the applicant is required to provide for the ongoing management of stewardship land to be exchanged.

Note: The conservation values of the land under (a) include the likely conservation values in the foreseeable future, having regard to both likely management changes and climate change.

**(c) *Other land to be exchanged for stewardship land***

5.24 We recommend that when considering the values of the land to be exchanged for stewardship land, the following matters be considered:

- (a) The conservation values of the stewardship land concerned, including:
  - (i) *What threat classification the land has<sup>8</sup>;*
  - (ii) *Whether the land contains any 'priority ecosystem units' under the NHMS;*
  - (iii) *Whether the land contains any threatened species<sup>9</sup>;*
- (b) Any recreational values and historic heritage values recognised in a relevant conservation management strategy or management plan;
- (c) Whether the proposed exchange involves a boundary adjustment to a single stewardship area;
- (d) The effects of the removal of the area proposed to be exchanged on the conservation values of the stewardship land concerned as a whole; and
- (e) Any issue of particular relevance to iwi.
- (f) Representativeness: The extent to which the area proposed to be exchanged is representative of the full range of vegetation variety that was originally present in the natural landscape.
- (g) Sustainability: The extent to which the area proposed for exchange is likely to continue to be viable and evolve in a natural way in the long term.
- (h) Integrity: The extent to which the area proposed for exchange contributes to and maintains the original integrity of the landscape.
- (i) Amenity/utility: The extent to which the area proposed for exchange would contribute to the physical and spiritual welfare of the local people as well as ecosystem services.

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<sup>8</sup> The Landcare Research 2007 classification.

<sup>9</sup> According to national classification lists.

- (j) National priorities: Whether the land proposed for exchange contains any national priority ecosystems and habitats most in need of protection.
- (k) Whether in meeting the purpose of the Conservation Act, an agreement with the applicant is required in relation to the ongoing management over the land once it becomes stewardship land. This will enable the Minister to impose conditions on the exchange about contributions towards ongoing management (like the conditions attached to the land swap for Ruataniwha).

5.25 Under the section 16A test, it does not appear to be relevant to consider the degree to which the land to be transferred into public conservation land is already 'protected' or 'under threat'. For example, the land proposed for an exchange may be protected by district or regional plan provisions, or by covenant. Equally, the values may be at risk from impacts that would not be managed by inclusion in the protected area network (e.g. drainage of land adjacent to a wetland).

5.26 Section 16A is not about 'net conservation gain' overall. Rather, it is about enhancing the conservation values of land managed by the Department. Any 'threat' or otherwise to the land to be exchanged therefore seems irrelevant to the section 16A test. In most cases even land that is adequately protected or facing no threat, if, added to public conservation land would mean that the conservation values of land managed by the Department would be enhanced – simply because there are additional conservation values to be managed. The question in s16A is whether the conservation values overall of the land the Department manages would be enhanced (i.e., better off) if the proposed exchange goes ahead.

5.27 We have noted in paragraph 3.6 that boundary adjustments are likely to be less significant than exchanges involving separate parcels of land. Where a boundary adjustment is being considered, the 'net conservation benefit' approach would generally be applied simply by considering the net effect on the affected protected area, rather than on the land managed by the Department overall. Here, the relevant issues might be restricted to:

- (a) Is this the best way to achieve the intended outcome (e.g. to resolve the boundary issues)?; and
- (b) Is there a net benefit from the change for the value and management of the protected area?

#### **Application to the Reserves Act 1977**

5.28 As we discuss below, section 15 of the Reserves Act allows for exchanges of reserve land. The Authority considers the recommended assessment matters should also apply to exchanges under the Reserves Act.

### **6. IS THE CURRENT SECTION 16A TEST STILL APPROPRIATE?**

6.1 We recommend that the test in section 16A be amended so as to better provide for overall net conservation benefit. Currently, the test in section 16A appears to only relate to conservation values within public conservation land. It does not appear to enable regard to be had to whether the land to be exchanged already has adequate protection and/or management. For example, an area of private land that is subject to a QEII covenant could be the subject of an exchange with stewardship land. While such an exchange may meet the test of enhancing the overall values of public conservation land, the test does not recognise that in this situation there is unlikely to be any addition to the conservation values of New

Zealand as a whole. On the contrary, the land in question might receive less management as public conservation land than when it is privately owned.

- 6.2 The Authority is also unclear on the meaning of the second limb of the section 16A test: "...and promote the purposes of the Conservation Act". This clause seems unnecessary because it appears to us that if the first limb of the test is met ('net conservation gain') that will necessarily mean that the purposes of the Conservation Act are also met.
- 6.3 We have not provided any suggested wording for an amended section 16A. We consider that any such amendment should be considered in the context of the wider policy issues about stewardship land generally, which we discuss below, and the previously referred to High Court decision.
- 6.4 We consider that our recommended changes to Policy 6 apply to section 16A as it is currently worded but may require at least minor amendment if section 16A is amended in the future.

## **7. OTHER RECOMMENDATIONS RELATING TO PROCESSING OF EXCHANGE APPLICATIONS**

- 7.1 At present there is no obligation on the Department to process an application for an exchange. We recommend that this be changed so that, consistent with an application for an access arrangement under the Crown Minerals Act and a concession under the Conservation Act, the Department is required to process an application if one is made. This is likely to require a minor legislative amendment.
- 7.2 The Authority considers that applicants for exchanges should be required to pay the Department's reasonable costs in processing an application for an exchange. This would make it consistent with applications for concessions (and possibly access arrangements).
- 7.3 In terms of effectiveness and efficiency of processes generally, the Authority recommends that you also instigate a legislative amendment which would enable the integration of concession/exchange processes with any relevant resource consent processes under the Resource Management Act. We understand that there have been some discussions on this matter between various business interests, MBIE and MfE. We consider this will require a separate amendment to the Conservation Act and the RMA.

## **8. STEWARDSHIP LAND – HOW PROTECTED IS IT?**

### **The categories of land held for conservation purposes**

- 8.1 The Parliamentary Commissioner for the Environment was of the view that "the vagueness of the purpose for holding stewardship land must make it easier to gain concessions for commercial activities on this category of conservation land. Indeed, it is certainly perceived to be so". The Commissioner also considers that "putting a parcel of stewardship land into another category gives it greater protection under the law", both because the purpose of all other categories of conservation land are stronger and importantly there is no legal ability to undertake an exchange of other classes of conservation land. Appendix B to this report summarises the PCE's conclusions about stewardship land.
- 8.2 In the Authority's view, there are two primary questions which arise from the PCE's reports:

- (a) Is it correct that stewardship land is 'less protected' than other categories of conservation land?
- (b) Is it correct that it is easier to gain concessions on stewardship land than other conservation land?

**(a) Level of protection of stewardship land**

- 8.3 We have set out in Appendix C to this report a table showing most of the various classes of conservation and reserve land (other than national parks). The table shows that many of the purposes are overlapping or similar.
- 8.4 In light of these various purposes, it is the Authority's view in general terms that stewardship land has no less protection than conservation parks, ecological areas, watercourse areas, amenity areas, wildlife management areas and scenic reserves. Indeed, we think it is possible to argue that it has greater protection than some of these categories because while the natural resources are to be protected in all of the categories, the purposes of some of these other categories include recreation and public enjoyment. Recreation and public enjoyment purposes are absent from the purpose of stewardship land. We believe it can also be argued that there is no substantive difference between any of the classes of land that look to 'protect' natural resources. The major difference between stewardship land and other conservation land (other than reserves) is that exchanges are available for stewardship land and most categories of reserve, but not for other conservation land. At the end of the day, the Authority considers that it is the conservation values in question that should be important for all of these classes, not the classification itself.
- 8.5 We therefore consider that it is not correct to say that stewardship land is 'less protected' than other categories. The consequence of that is to raise the question of the importance or necessity of reclassifying stewardship land to any one of these categories if the purpose is to achieve a 'higher level of protection'.

**(b) Ease of obtaining approvals on stewardship land**

- 8.6 The PCE's report states that it is easier to gain concessions on stewardship land and it is perceived to be so. The Authority is satisfied that this is not true in law, but there remain concerns that the perception may be reflected in practice in some cases.
- 8.7 Section 17U(3) of the Conservation Act states that the Minister cannot grant a concession "if the proposed activity is contrary to the purpose for which the land concerned is held".
- 8.8 The Authority understands the Department advises that section 17U(3) means:
- (a) The natural resources to be protected are those contained within the footprint of a proposed activity. Unless those effects are "truly minor" the resources cannot be protected (because they will necessarily be removed by a proposal such as a track, road, building, or irrigation storage lake or whatever); and
  - (b) An offset or mitigation (no matter how useful or how much it results in a net gain in conservation values) cannot be considered if the mitigation/offset occurs outside that footprint.
- 8.9 Under this interpretation, the loss of a single tree cannot be mitigated if that tree is within the footprint of the activity proposed. It is not possible to plant another (or even ten) trees

elsewhere to mitigate the loss of that tree because mitigation 'off footprint' cannot be considered. The Authority understands that this means that virtually no activity which involves a substantive footprint resulting in a loss of any natural resources (which are very widely defined) in a stewardship area can be granted a concession. Exceptions may be for recreation type activities which involve very little or no footprint, so that the effect on natural resources is "truly minor".

- 8.10 We understand that this interpretation was the primary reason why the Hawke's Bay Regional Investment Company opted not to pursue a concession but instead requested a revocation of conservation park status over the relevant area of the Ruahine Forest Park and subsequent land exchange under section 16A.
- 8.11 Thus, even if it is perceived to be easier to obtain a concession on stewardship land compared with other land, the practical effect of the test in section 17U(3) is that it is no easier than concession activities on other land.
- 8.12 Without exception, major development proposals on stewardship land are subject to rigorous assessment of actual conservation values and effects by applicants – they have to be for concession applications to be complete.
- 8.13 For these reasons, the Authority is of the view that perceptions around the 'ease of consenting' of activities on stewardship land should not be the driver for reclassification of stewardship land to other categories.

## **9. IMPLICATIONS OF RECLASSIFYING STEWARDSHIP LAND UNDER EXISTING LEGISLATION**

- 9.1 The Authority considers that land exchange has the potential to facilitate overall conservation gain currently unavailable through the concessions regime. Land exchange is not available for other categories of conservation land, irrespective of the conservation values of either the conservation land or the land to be exchanged.
- 9.2 If all stewardship land were reclassified, then:
- (a) If a strict view were taken of the Department's interpretation of section 17U(3), almost no concessions would be able to be granted;
  - (b) There is no opportunity to achieve net gains because offsets and compensation are not able to be considered by the Minister on a concession application; and
  - (c) No exchanges under section 16A would be possible other than for parts of reserves held under the Reserves Act.
- 9.3 The Authority is of the view that a properly informed policy decision needs to be made on the future of stewardship land and the implications of reclassifications generally on the ability to achieve net conservation gain. Otherwise, the particular classification that an area of land has, drives the outcome rather than conservation values. We do not consider it to be the preferred outcome that almost no activities on conservation land can be approved irrespective of the values concerned or the opportunities for net conservation benefit.
- 9.4 Rather than the Department having gone through an exercise of choosing parcels of land to manage as stewardship land, most of this land 'turned up' as stewardship land by virtue of being State forest or Crown land prior to the Conservation Act coming into force (section 62).



The implication is that for any particular piece of deemed stewardship land the conservation values which are present cannot be assumed.

- 9.5 Those decisions cannot be made without investing the resources into investigation, reclassification and disposal processes. As the Office of the Auditor General's recent report states:

#### Information on the origin of properties

5.14 The Department does not actively gather information on the origin of the properties that it inherited from former organisations. When the Department was formed in 1987, most of the land that came under its administration was derived from reserves, national parks, and other Crown land allocated from former organisations such as the Department of Lands and Survey and New Zealand Forest Service. The Department has a standard operating procedure that identifies external sources of data that can be used to determine the origin of this land.

5.15 In processing applications to exchange, dispose of, or change the classification of land it manages, the Department must gather information about how the land came under its administration. This information will affect whether the land can be exchanged, disposed of, or have its classification changed, and the uses to which the land may be put.

5.16 In the strategic planning documents we looked at, the extent to which the Department intends to engage in these activities was not clear. In our view, if the Department plans to engage in land transactions or review classification status, it should proactively document when properties were acquired and how they were acquired. Given the number of individual properties managed by the Department, we appreciate it would be a significant undertaking to identify when and how all the land it manages was acquired. However, we recommend the Department consider the usefulness of gathering this information.

#### Recommendation 6

We recommend that the Department of Conservation consider the usefulness of gathering information on the origin of all the individual properties it manages.

- 9.6 The Authority is of the view that while this information would be useful, we do not see it as a priority. Based on our view that, in general terms, stewardship land is not 'less protected' than other categories of conservation land or necessarily 'open for business', we consider that the reclassification of stewardship land to other categories should not be prioritised over other work of the Department. However, some stewardship land was specifically acquired for addition to national parks or conservation parks or has resulted from tenure review. It makes sense to reclassify this land for the express purpose for which it was acquired, as soon as practicable. The Authority has some views it wishes to discuss with the Department on how that process can be undertaken most effectively. However, we do not support a major effort being expended by the Department generally on a reclassification of stewardship land.

## 10. THE CONCESSIONS REGIME

10.1 As we have noted, the concessions regime has no flexibility to achieve net conservation benefit.

10.2 This situation with concessions can be contrasted with the position of a mining activity under the Crown Minerals Act 1991 where an access arrangement under the Crown Minerals is required for a mining activity on conservation land rather than a concession. In this situation, an access arrangement is 'easier' to obtain because the Minister is entitled by the legislation to have regard to wider considerations. Section 61(2) of the Crown Minerals Act states:

In considering whether to agree to an access arrangement... the Minister ... shall have regard to—

- (a) the objectives of any Act under which the land is administered; and
- (b) any purpose for which the land is held by the Crown; and
- (c) any policy statement or management plan of the Crown in relation to the land; and
- (d) the safeguards against any potential adverse effects of carrying out the proposed programme of work; and
- (da) the direct net economic and other benefits of the proposed activity in relation to which the access arrangement is sought; and
- (db) if section 61C (3) applies, the recommendation of the Director-General of Conservation and summary referred to in that subsection; and
- (e) such other matters as the appropriate Minister considers, or the Minister and the appropriate Minister, as the case may be, consider relevant.

10.3 For present purposes, the important clause is clause (e) which enables the Minister to consider whether or not 'net conservation' can be obtained and allows for consideration of environmental compensation or biodiversity offsetting. Interestingly, the Crown Minerals Act does not require any net gain to be within the conservation area in question, or on public conservation land generally – the net gain (if one is required) could be achieved on private land.

10.4 Importantly, under the Crown Minerals Act, you 'must have regard to' the purpose of stewardship land in considering a minerals-related activity, whereas under the Conservation Act you 'shall not' grant a concession for any other activity if it is contrary to the purpose for which stewardship land is held.

10.5 This raises the question why mining activities are treated differently to all other activities in terms of how 'difficult' in legal terms it is to get an approval within a stewardship area. In terms of maximising net conservation benefit/outcome the Authority considers that the legal test in the Crown Minerals Act is to be preferred over the legal test in the Conservation Act.

10.6 The Authority considers that the above discussion raises issues about the appropriateness of the Conservation Act test (section 17U) for concession applications. As we have noted, we consider that flexibility to achieve conservation gains is required from any regime. We are

advised there is no flexibility to achieve net conservation gain outcomes with the current concessions regime. We recommend that you consider applying the access arrangement assessment criteria under the Crown Minerals Act to concessions under the Conservation Act to allow for net conservation gain to be achieved. This will require amendment to (at least) section 17U of the Conservation Act.

- 10.7 It might be argued that minerals activities should be treated differently because minerals are fixed in location. While that is true, the Conservation Act (section 17U(4)) already provides that an applicant for a concession must demonstrate that any structure or facility cannot reasonably be undertaken outside the conservation area concerned. This requirement should be retained. We nonetheless recommend that section 17U be amended to enable the flexibility to achieve net conservation gain in any particular situation.
- 10.8 If you decide to pursue such an amendment, the Department's 'biodiversity offsets guidelines' will need to be revised. These guidelines were developed on the interpretation that offsets are unavailable under the Conservation Act. We are also aware of considerable disquiet from business about the consultation process of developing the guidelines and their practical usefulness.

## **11. REVOCATIONS AND DISPOSAL OF CONSERVATION LAND**

- 11.1 We also recommend that consideration be given to establishing criteria in the Conservation General Policy for revoking special conservation status, both generally and specifically in order to enable an exchange of the newly classified stewardship land.

## **APPENDIX A – RECOMMENDED GUIDELINES FOR LAND EXCHANGES UNDER SECTION 16A CONSERVATION ACT**

### **General Considerations**

1. It is expected that the first consideration for land to be exchanged for stewardship land would be that it has the same or similar conservation values to the stewardship land in terms of:
  - (a) Vegetation types;
  - (b) Threatened species;
  - (c) Recreation values; and
  - (d) Historic values.
2. At the initial stage of assessing a proposed exchange, there are therefore two general considerations:
  - (a) Is a 'like for like or similar' exchange (of the conservation values listed in paragraph 1) possible?; and
  - (b) Even if 'like for like or similar' exchange is possible, is there a preferable outcome by exchanging land with different conservation values?
3. Exchanges are not restricted to 'like for like' values. In some situations, an exchange of stewardship land with other land with different conservation values will result in a superior conservation outcome. However, particular caution needs to be exercised in such a situation because 'comparing apples and oranges' is inherently considerably more difficult. In such situations the 'net conservation benefit' is likely to need to be quite demonstrable before an exchange should be authorised. It is particularly important in such situations that these assessment matters provide the basis upon which to make a transparent and principled decision.
4. The Minister retains a discretion to not accept an exchange proposal, even if it meets the requirements of section 16A. In other words, even if a proposal meets the recommended assessment criteria (and therefore the s16A test) the Minister is not bound to authorise the exchange.
5. An important overall consideration is whether any conditions should be imposed on the exchange to provide for the ongoing management of either or both of the areas which are the subject of the exchange. Any such conditions will need to be reasonable in the overall circumstances of the specific exchange proposal.

### **The stewardship land to be exchanged**

5. When considering the values of the land to be exchanged for stewardship land, the following matters should be considered:
  - (a) The conservation values of the stewardship land concerned, including:

- (i) *What threat classification the land has<sup>10</sup>;*
- (ii) *Whether the land contains any 'priority ecosystem units' under the NHMS*
- (iii) *Whether the land contains any threatened species<sup>11</sup>;*
- (b) Any recreational values and historic heritage values recognised in a relevant conservation management strategy or management plan;
- (c) Whether the proposed exchange involves a boundary adjustment to a single stewardship area;
- (d) The effects of the removal of the area proposed to be exchanged on the conservation values of the stewardship land concerned as a whole;
- (e) Any issue of particular relevance in relevance to iwi; and
- (f) Whether any conditions should be imposed in relation to the ongoing management for conservation purposes of the land concerned.

Note: The conservation values of the land under (a) include the likely conservation values in the foreseeable future, having regard to both likely management changes and climate change.

#### **Other land to be exchanged for stewardship land**

6. When considering the values of the land to be exchanged for stewardship land, the following matters should be considered:
- (a) The conservation values of the stewardship land concerned, including:
    - (i) *What threat classification the land has<sup>12</sup>;*
    - (ii) *Whether the land contains any 'priority ecosystem units' under the NHMS;*
    - (iii) *Whether the land contains any threatened species<sup>13</sup>;*
  - (b) Any recreational values and historic heritage values recognised in a relevant conservation management strategy or management plan;
    - (i) *Whether the proposed exchange involves a boundary adjustment to a single stewardship area;*
  - (c) The effects of the removal of the area proposed to be exchanged on the conservation values of the stewardship land concerned as a whole; and
  - (d) Any issue of particular relevance in relevance to iwi.

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<sup>10</sup> The Landcare 2007 classification

<sup>11</sup> According to national classification lists.

<sup>12</sup> The Landcare 2007 classification.

<sup>13</sup> According to national classification lists.

- (e) Representativeness: The extent to which the area proposed to be exchanged is representative of the full range of vegetation variety that was originally present in the natural landscape, including:
- (i) *both commonplace and rare indigenous species, habitats, and communities;*
  - (ii) *the ecological processes that link them; and*
  - (iii) *the extent to which the ecosystems are already protected in the proportion they were originally present in the ecological district.*
- (f) Sustainability: The extent to which the area proposed for exchange is likely to continue to be viable and evolve in a natural way in the long term, including the extent to which the area is:
- (i) *protected by its size and shape;*
  - (ii) *buffered from the effects of adjoining land uses or activities;*
  - (iii) *linked to or dependent on other protected areas (either physically or by ecological processes) for its continued viability;*
  - (iv) *expected to maintain its ecological integrity through major natural disturbance events;*
  - (v) *vulnerable to the depredations of introduced species;*
  - (vi) *able to be managed to protect its ecological values; and*
  - (vii) *expected to contribute to sustaining existing protected areas, through additional scale, buffering, linkages or restoration.*
- (g) Integrity: The extent to which the area proposed for exchange contributes to and maintains the original integrity of the landscape, including the extent to which it:
- (i) *protects the original character;*
  - (ii) *protects the original context;*
  - (iii) *protects the range of processes that link the ecosystems present;*
  - (iv) *maintains the natural nutrient cycles, energy flows, and hydrological regimes;*
  - (v) *maintains the functional coherence of the original and remaining natural landscape values;*
  - (vi) *protects an uninterrupted ecological sequence; and*
  - (vii) *eliminates unprotected enclaves in an otherwise protected landscape.*
- (h) Amenity/utility: The extent to which the area proposed for exchange would contribute to the physical and spiritual welfare of the local people as well as ecosystem services, including its contribution to:

- (i) *carbon sequestering;*
  - (ii) *protecting aesthetic coherence and pleasantness;*
  - (iii) *conserving soil;*
  - (iv) *maintaining water quality and yield;*
  - (v) *providing for recreation or tourism; and*
  - (vi) *providing for physical, social, and spiritual renewal.*
- (i) National priorities for protection of private land: Whether the land proposed for exchange contains any national priority ecosystems and habitats most in need of protection as follows<sup>14</sup>:
- (i) *National Priority 1: To protect indigenous vegetation associated with land environments, (defined by Land Environments of New Zealand at Level IV), that have 20% or less remaining in indigenous cover.*
  - (ii) *National Priority 2: To protect indigenous vegetation associated with sand dunes and wetlands; ecosystem types that have become uncommon due to human activity.*
  - (iii) *National Priority 3: To protect indigenous vegetation associated with 'originally rare' terrestrial ecosystem types not already covered by priorities 1 and 2.*
  - (iv) *National Priority 4: To protect habitats of Acutely Threatened and Chronically Threatened indigenous species.<sup>15</sup>*
- (j) Whether any conditions should be imposed in relation to the ongoing management for conservation purposes of the land concerned.

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<sup>14</sup> Ministry for the Environment 2007

<sup>15</sup> Applicable threat classifications from the latest system (Townsend et al. 2008) are Threatened and At Risk. See <http://www.doc.govt.nz/publications/conservation/nz-threat-classification-system/nz-threat-classification-system-manual-2008/>

## APPENDIX B – SUMMARY OF PCE REPORTS

The 2013 PCE report on stewardship land states:

But unlike other categories of conservation land, stewardship land is not held for specific purposes. For instance, the specific purpose for which conservation parks are held is the enjoyment of recreation. However, stewardship land is only held for the generic purpose of protecting natural and historic resources.

This vagueness about the purpose for holding stewardship land must make it easier to gain concessions for commercial activities on this category of conservation land. Indeed, it is certainly perceived to be so. (Page 33)

Putting a parcel of stewardship land into another category gives it greater protection under the law for two reasons.

First, as discussed in Section 4.2, all conservation land categories other than stewardship land are held for explicit and specific purposes. Stewardship land is simply held for the vague purpose of protecting natural and historic resources, meaning that it is easier to get permission for commercial activities.

Second, the protection of stewardship land is much less 'permanent' than the protection of other categories of conservation land. This is because, as discussed in section 4.3, it is only stewardship land that can be sold or swapped. For other conservation categories to be taken out of the conservation estate they must first be reclassified as stewardship land, which requires public consultation.

The intended programme of systematic assessment of stewardship land and reclassification or disposal of stewardship land has not taken place. (Page 37)

The relatively weak legal protection of stewardship land quite naturally signals to the private sector that this part of the conservation estate is 'open for business'. Yet both the Conservation Act and departmental policy provide little direction or guidance for considering applications for proposed commercial uses of stewardship land. The law states only that its 'natural and historic resources' are to be protected but gives no indication why. (Page 57)

Net conservation benefit is a relatively new but promising concept in conservation. But 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. (Page 58).

Using a legal provision designed for small non-controversial land swaps for taking large and valuable tracts of land in and out of the conservation estate is not good practice and will continue to attract controversy.

The PCE's 2015 Update Report states:

Compared with other categories of conservation land, the legal protection of stewardship land is weak. There are two reasons for this.



First, areas of stewardship land can be swapped for areas of private land, subject only to the vague proviso that the land swap will "enhance the conservation values" of the conservation estate. The Commissioner's report described two controversial land swaps that illustrate the inadequacy of this law and policy.

Second, stewardship land is only to be managed so that its "natural and historic resources are protected", whereas other categories of conservation land have more specific management criteria. (Section 1)

The land swap provision in the Conservation Act was intended to provide a simple way for the Department of Conservation to adjust boundaries and rationalise small areas of conservation land. However, it has been used to swap large areas of land with significant conservation value, creating controversy. But all have the same legal status – the weakest protection of all categories of conservation land. The envisaged systematic assessment of conservation value and reclassification or sale of the many areas of stewardship land has never been done. (Section 3)

Many different areas of land remain within the 'statutory holding pen' known as stewardship land. Collectively, they cover a third of the conservation estate, that is, about 10% of the entire country. Some areas will have high conservation value and some will have low conservation value; others will be in between. But all have the same legal status – the weakest protection of all categories of conservation land. The envisaged systematic assessment of conservation value and reclassification or sale of the many areas of stewardship land has never been done.

The Commissioner has not investigated the merits of the proposed revocation or land swap. She has not taken a view on the proposal, or on any other land swaps that the Department may have considered since the original report was published. However, she is very concerned that such decisions are being made under law and policy that remains inadequate. [footnote - The law and policy for revoking 'special protection' classes of conservation land share a number of similarities to the law and policy governing land swaps. In particular, the legal test lacks criteria to guide the decision-maker, the Conservation General Policy provides little additional guidance, and the conservation value of the river cannot be considered where the riverbed is administered by Land Information NZ rather than the Department of Conservation. However, a revocation does require public consultation, whereas a land swap only requires that the local Conservation Board be consulted].

Decisions that should deliver a net conservation benefit are not limited to swaps of stewardship land. The conservation estate is a Crown asset and as such, when it is used by the private sector, the Crown should seek a return on its use. Thus, when a mining company seeks agreement for access to conservation land or a company seeks a concession for a commercial activity, it makes sense for such decisions to be made on the basis of obtaining a net conservation benefit. (section 4)

**APPENDIX C – OVERVIEW OF PURPOSE OF CONSERVATION LAND CLASS**

<b>Classification of land</b>	<b>Purpose for which the land is held</b>
Stewardship land (section 25)	So that its natural and historic resources are protected.
Conservation park (section 19)	(a) that its natural and historic resources are protected; and  (b) subject to paragraph (a) to facilitate public recreation and enjoyment.
Wilderness area (section 20)	So that its indigenous natural resources shall be preserved.
Ecological area (section 21)	So managed as to protect the value for which it is held.
Sanctuary area (section 22)	To preserve in their natural state the indigenous plants and animals in it, and for scientific and other similar purposes.
Watercourse area (section 23)	So as to protect the wild, scenic, and other natural characteristics that it has when considered with the river, lake, or stream, concerned
Amenity area (section 23A)	(a) that its indigenous natural resources and its historic resources are protected; and  (b) subject to paragraph (a) to contribute to and facilitate peoples' appreciation of its indigenous natural resources and its historic resources; and  c) subject to paragraphs (a) and (b) to foster the recreational attributes of the area.
Wildlife management area (section 23B)	(a) that its wildlife and wildlife habitat values... are protected; and  (b) that its indigenous natural resources and its historic resources are protected.
Scenic reserve under the Reserves Act (section 19 RA)	Except where the Minister determines, the indigenous flora and fauna...and natural environment and beauty shall as far as possible be preserved.

<p>Nature reserve under the Reserves Act (section 20RA)</p>	<p>It should be preserved as far as possible in its natural state:</p> <p>(a) except where the Minister otherwise determines the indigenous flora and fauna and natural environment shall as far as possible be preserved.</p>
<p>Scientific reserve under the Reserves Act (section 21RA)</p>	<p>Except where the Minister otherwise determines, the indigenous flora and fauna shall as far as possible be preserved.</p>