

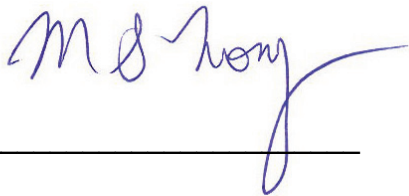
## D-G Approval Cover

File Ref:	DOCDM ref: <b>2607237</b>	Date: 25/9/15	Deadline: <b>5/10/15</b>
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**Approval sought from:** Director General  
(circle one)

**Subject: DECISIONS (DECLARATION, REVOCATION, EXCHANGE & SPECIAL PROTECTION)  
IN RESPECT OF PART OF RUAHINE FOREST PARK**

From: Marie Long, Director, Planning, Permissions and Land



(Signed) \_\_\_\_\_



Endorsed: Mike Slater, DD-G Operations (Signed) \_\_\_\_\_

**Comment:**

Your agreement is sought to a number of decisions relating to a proposal by Hawkes Bay Regional Investment Company Ltd that an area of private land be exchanged for land held as part of the Ruahine Forest Park. This Departmental Submission is accompanied by a number of documents which I recommend you read in conjunction with this Submission. These documents are attached.

**Recommendation that you:**

Read and consider the attached Submission and accompanying documents, and record "yes" in respect of the various items where I have indicated that you should "note", "agree", "authorise", "give notice" and "accept" as set out on pages 7 to 9 of this Submission.

**Legislation (if applicable)**

1. Public process pursuant to s 49 of the Conservation Act 1987;
2. Proposal pursuant to ss 61(9) and 7(1) of the Conservation Act 1987 to declare land to be held for conservation purposes;
3. Proposal pursuant to s 18(7) of the Conservation Act 1987 to revoke the conservation park purpose of part of the Ruahine Forest Park;
4. Proposal under s 16A of the Conservation Act 1987 to authorise an exchange of private land for land held as part of the Ruahine Forest Park;
5. Proposal pursuant to s 16A(3) of the Conservation Act 1987 to specify the private land acquired by exchange to be held for conservation park purposes.

**DOC Policy/Guidelines** (if applicable):

This Submission has been prepared in accordance with the relevant Standard Operating Procedure.

**Consultation:**

Corporate Services:	NA
Science & Policy:	Yes
Kaupapa Kahui Atawhai:	Yes
Strategy & Innovation:	Yes
Operations Group:	Yes
Partnerships	Yes

NGO/other community:	Yes
Wellington Conservation Board	Yes
Relevant Iwi and Hapu	Yes

Comments:

The Wellington Conservation Board supports the proposal.

The relevant Iwi and Hapu have mixed opinions on the proposal.

A number of persons and organisations have objected to, and a number have supported, the proposal through the public process undertaken in accordance with s 49 of the Conservation Act 1987.

**Advice from Legal section:**

This document has been prepared with input from Legal Services and Crown Law Office.

Signed: \_\_\_\_\_  
Jonty Somers, Chief Legal Adviser

Date:



**Departmental Submission**

Date:	25 September 2015	File ref:	Operations	DOC	2604525
		PAL-06-23-01-01			

**To: Minister of Conservation's delegate - the Director-General of Conservation (pursuant to delegations from the Minister dated 29 August 2013 and 13 February 2015)**

<b>Subject:</b>	<b>DECISIONS (DECLARATION, REVOCATION, EXCHANGE &amp; SPECIAL PROTECTION) IN RESPECT OF PART OF RUAHINE FOREST PARK</b>
<b>Action Sought:</b>	Agreement to proposed actions
<b>Deadline:</b>	Before 5 October 2015

<b>Paper Type:</b> (Cabinet, Statutory or Other)	Statutory	<b>Dept's Priority:</b> (Very High, High, Normal or Low)	Very High
<b>Risk Assessment:</b> (e.g. possible negative reactions/consequences)	Adverse reaction from Hawke's Bay Regional Investment Company as applicant for land exchange should you decline, or from objectors if you agree	<b>Level of Risk:</b> (High, Medium or Low)	High

<b>Contacts for telephone discussion (if required)</b>				
	Name	Position	Telephone	
1	Marie Long	Director, Planning, Permissions & Land	027 225 5521 (wk)	027 225 5521 (ah)
2	Shona Bradley	Legal Services Manager	04 471 3022 (wk)	027 249 2386 (ah)

3	Guy Kerrison	Manager-National Coordination team	04 494 1470 (wk)	027 447 8662 (ah)
4	David Bishop	National Advisor (SLM)	04 471 3275 (wk)	

## Executive Summary

- 1.1 Hawke's Bay Regional Investment Company Limited (HBRIC) has proposed the exchange of approximately 146 hectares of private land (the Smedley land) located within Smedley Station, for two parts of Ruahine Forest Park (RFP) totalling approximately 22 hectares (the RFP land) located on the edge of the Makaroro River and Dutch Creek, as shown on the attached plan. The exchange is for the purpose of the Ruataniwha Water Storage Scheme (RWSS) which involves placement of a dam over the Makaroro River, and a reservoir of which, when filled, would inundate the RFP land (refer paragraph 3.1).
- 1.2 The RFP land is comprised of two distinct parcels – a 8 ha parcel located next to the Makaroro River, and a 14 ha parcel which includes part of Dutch Creek. The two parcels of RFP land are separated by approximately 600 m of pine forest. In terms of each parcel:
  - (a) The Makaroro parcel is located on an alluvial plain, which is rare in the landscape. It contains 3.3 ha of an Acutely Threatened land environment. The vegetation comprises about 1.6 ha of black beech forest, 1.9 ha of broadleaf forest, and 3 ha of secondary shrub/treeland. The area has been heavily logged and used for firewood when a mill was operating on the opposite bank.
  - (b) The Dutch Creek parcel comprises about 9 ha of black beech forest and 5 ha of broadleaf small-leaved monocot scrub/treeland which appears to have been clearfelled and burnt during logging operations. The black beech forest has had the emergent podocarps logged, and are no longer part of the canopy. However, the black beech forest has an intact understorey. There is also a small oxbow wetland which could be considered significant.
- 1.3 The 146 ha Smedley land that has been offered in exchange comprises 122 ha of indigenous vegetation interspersed with 24 ha of pasture. There is 33 ha of black beech forest, including one patch of 4.4 ha that is in similar condition to that of the Dutch Creek parcel, other than that it has some emergent podocarps present. Although the Smedley Exchange Block has been logged, it has retained scattered emergent podocarps throughout the black beech forest. The rest of the vegetation comprises broadleaf and small-leaved scrub and treeland, and includes naturally occurring dry west-facing slopes dominated by small-leaved broadleaf scrub. There are also two significant wetlands present. The underlying geology of Smedley Exchange Block is different from the rest of the Ruahine ranges (Wakarara Range), and covers an altitudinal range of over 300 metres.
- 1.4 RFP land is currently held as deemed conservation park. An exchange of deemed conservation park for other land involves a number of statutory steps. These are: first, declaring the deemed conservation park to be held for conservation purposes pursuant to s 7(1) of the Conservation Act (the Act); secondly, revoking the conservation park status that is the product of that declaration on the basis of a proposed exchange; and thirdly authorising an exchange. You should also note that the revocation of conservation park status provides for public notice, objections, submissions and an opportunity for the public to be heard which would not otherwise apply to an exchange of stewardship area for private land.
- 1.5 On 11 December 2014, the Minister's delegate decided that if the RFP land was to be declared to be held for conservation purposes, this would be via s7(1) of the Act. This would then mean that revoking the status of the RFP land would be required to follow a public process. The Minister's delegate also formed the

intention to revoke the conservation park status. That decision was conditional on the proposed exchange meeting the s 16A(2) test.

- 1.6 In accordance with s 18(8) of the Act the intention to revoke was publicly notified on 13 December 2014 under s 49 and a hearing was subsequently held at the request of various objectors and submitters.
- 1.7 Following the hearing the Department carried out a more detailed comparative analysis of the conservation values present on the RFP land and the Smedley land. Its report concludes that exchanging the RFP land for the Smedley land will enhance the conservation values of land held by the Department and promote the purposes of the Act.
- 1.8 The Director-General's delegate (the DG's delegate) who convened the hearing and listened to the objectors and submitters has provided a report to you which summarises all the objections and comments received and makes a number of recommendations. A copy of the report is attached. As well as making recommendations to you, he has also noted his conclusion that the proposed exchange would meet the statutory tests in s 16A of the Act, namely that it would enhance the conservation values of land managed by the Department, and would promote the purposes of the Act.
- 1.9 The recommendations of the DG's delegate relate to the extent to which objections and comments received as part of the public process under s 49 of the Act should be allowed or accepted; and also to the revocation proposal itself. In making a recommendation that you agree to revoke the status of the RFP, the Director-General's delegate first notes that you would need to make a declaration under s 7(1) of the Act and, secondly, considers that there is sufficient basis to authorise the proposed exchange (which underpins the decision to revoke).
- 1.10 Following your visit to the site on 28 August 2015 and identification of a number of management matters in respect the Smedley land, I wrote to HBRIC seeking clarification of these matters. The issues related to the proposed design of the boundaries, wilding pine control, and work that had earlier been proposed through the Board of Inquiry process on Whio habitat enhancement.
- 1.11 HBRIC has since responded to advise that it would be receptive to including within the Smedley land an additional 30ha area sitting broadly between the original northern and southern sides of the original 146ha Smedley land offered (including Donovan Gully which contains wetland habitat), and contribute to a wilding pine eradication programme over the Smedley land. It also advised it is agreeable to assist the Department in managing potential habitat of Whio in the Upper Makaroro catchment, comprising contributions to the initial set up of the predator control work and annual monitoring and trapping contributions for the duration of the RWSS consents period.
- 1.12 Should you decide to declare the RFP land to be held for conservation purposes, the identified parcels of the RFP land will need to be defined by survey, and your decision will be perfected (given effect to) by notice published in the *Gazette*.
- 1.13 Should you carry out the previous step it is open to you (as recommended by the DG's delegate) to agree to revoke the purpose of the RFP land on the basis that you wish to progress the proposed exchange of the RFP land for the Smedley land. Subject to notice in the *Gazette* giving effect to the revocation you would be able to authorise the proposed land exchange on the basis you are satisfied that it meets the test under s 16A of the Act and it is desirable that the Smedley land be acquired by exchange. You could also agree, in accordance with s 16(3) of the

Act, to hold the Smedley land for the purposes of a conservation park. Both of these decisions would also need to be given effect to by Gazette notice.

1.14 You hold the necessary delegations to make all relevant decisions.

**It is recommended that you:**

<b>Ref:</b>	<b>Action:</b>	<b>Delegate's decision</b>
<b>(a)</b>	<b>Note</b> that HBRIC has proposed an exchange of the 22ha RFP land for 146 ha of the Smedley land	( yes / no)
<b>(b)</b>	<b>Note</b> that the RFP land is currently held as deemed conservation park	( yes / no)
<b>(c)</b>	<b>Note</b> that an exchange of deemed conservation park involves a number of statutory steps: namely, first, a declaration under s 7(1) of the Act that the land is held for conservation purposes; secondly, a decision to revoke the conservation status of the land (being the product of the declaration); and, thirdly, a decision authorising the exchange;	( yes / no )
<b>(d)</b>	<b>Note</b> that you may not authorise the exchange of the RFP land for the Smedley land unless you are satisfied that the exchange would enhance the conservation values of land held by the Department and promote the purposes of the Act;	( yes / no)
<b>(d)</b>	<b>Note</b> that a previous delegate of the Minister: (i) formed a view that the proposed land exchange should be progressed; (ii) decided that the process for declaring the RFP land to be held for conservation purposes would be under s 7(1) of the Act which would remove a public process; and (iii) formed an intention to revoke the conservation park status of the RFP land subject to the Smedley land meeting the exchange test in s 16A(2) of the Conservation Act;	( yes / no)
<b>(e)</b>	<b>Note</b> that the intention to revoke was publicly notified and that a number of persons and organisations appeared before the DG's delegate in support of their objections and submissions;	( yes / no)
<b>(f)</b>	<b>Note</b> that subsequent to the hearing of the revocation proposal, the Department has carried out a comprehensive comparative analysis of the conservation values present in the RFP land and the Smedley land which analysis confirms that the exchange of the RFP land for the Smedley land will enhance the conservation values of land held by the Department and promote the purposes of the Act;	( yes / no)
<b>(g)</b>	<b>Note</b> that the Director-General's delegate in respect of the revocation proposal has, in his attached Report, concluded that the proposed exchange would enhance the conservation values of land held by the Department and promote the purposes of the Act and recommended: a) the extent to which you should allow or accept objections and comments received as part of the public process; and b) you should revoke the	( yes / no)

	status of the RFP land on the basis of the proposed exchange;	
(h)	<b>Note</b> that the local Conservation Board has been consulted, and it supports the proposed exchange and recommends that its view that the land exchange should proceed regardless of the RWSS and that adequate funding should be provided to secure the conservation values of the Smedley land parcel following exchange be taken into account;	( yes / no )
(i)	<b>Note</b> that: (a) HBRIC is receptive to including within the Smedley land an additional 30ha area sitting broadly between the original northern and southern sides of the original 146ha Smedley land offered (including Donovan Gully); (b) HBRIC has offered to assist the Department in managing the future habitat of who in the Upper Makaroro catchment; (c) HBRIC has offered to assist with wildling pine eradication over the Smedley land;	( yes / no )  ( yes / no )  ( yes / no )
(j)	<b>Note</b> that, should you agree to authorise the exchange, the Department considers fencing is necessary if there is to be grazing on the residual area of Smedley Station adjoining the Smedley land, and that this should be a condition of the exchange if approved;	( yes / no )
(k)	<b>Agree</b> that the proposed exchange would enhance the conservation values of land managed by the Department and promote the purposes of the Act;	( yes / no )
(l)	<b>Note</b> that, should you agree to accept HBRIC's offers in (i) above, this would further add to the enhancement of conservation values of land managed by the Department, and would further promote the purposes of the Act	( yes / no )
(m)	<b>Note</b> that if you declare the RFP land to be held for conservation purposes under s 7(1) of the Act it will be necessary to survey that land before giving notice of the declaration in the Gazette;	( yes / no )
(n)	<b>Agree to declare</b> the RFP land to be held for conservation purposes under s 7(1) of the Act (which has the effect of deeming it to be held for the purposes of a conservation park by s 18(1);	( yes / no )
(o)	<b>Agree</b> , subject to a Gazette notice giving effect to the s 7(1) declaration, to revoke the purpose of the RFP land as a conservation park (being the product of the declaration) on the basis that you wish to progress the proposed exchange of the RFP land for the Smedley land;	( yes / no )
(p)	<b>Subject to a Gazette notice giving effect to the revocation:</b> (a) <b>Authorise</b> the proposed land exchange under s 16A of the Act on the basis that you are satisfied that the proposed exchange meets the test under s 16A and it is desirable that the Smedley land be acquired by exchange; (b) <b>Agree</b> in accordance with s 16A(3) of the Act to hold the Smedley land for the purpose of a conservation park;	( yes / no )



	(c) <b>Give</b> notice of these two steps by Gazette notice after Gazettal of the earlier decisions above;	
<b>(q)</b>	<p><b>Agree</b> to:</p> <p>(a) <b>Require</b> HBRIC to include the additional 30ha of land including Donovan Gully in the Smedley Land, as a condition of your revocation and exchange decisions;</p> <p>(b) <b>Accept</b> HBRIC's offer to assist with the management of Whio;</p> <p>(c) <b>Accept</b> HBRIC's offer to assist with a wilding pine eradication programme over the Smedley land.</p>	<p>( yes / no )</p> <p>( yes / no )</p> <p>( yes / no )</p>
<b>(r)</b>	<b>Agree</b> to require HBRIC to fence the boundaries of the Smedley land (whether that include the additional 30ha referred to in (p) above or not) if there is to be grazing on the residual area of Smedley Station adjoining the Smedley land, and that this should be a condition of the exchange.	( yes / no )

\_\_\_\_\_  
Marie Long  
Director Planning Permission & Land

\_\_\_\_\_  
Lou Sanson  
Director-General of Conservation  
(pursuant to delegations from the  
Minister of Conservation dated 29  
August 2013 and 13 February 2015)

Date:  
25 / 09 / 2015

Date:  
\_\_\_ / \_\_\_ / \_\_\_

## 1. Purpose

Consideration of an application for a land exchange which involves part of Ruahine Forest Park, for private land in the vicinity owned by the Public Trust.

## 2. Location and Status of Land

- 2.1 The RFP land is held under s 61 of the Act. The 8 ha outlier Makaroro River parcel is located just above the Makaroro River on its true left bank, while the other 14ha Dutch Creek parcel comprises a fringe edge part of the Park primarily alongside Dutch Creek and on its true right bank. Dutch Creek is a tributary of the Makaroro River.

Legal description	Status
<u>Makaroro River parcel</u> Pt Ngamoko Maori Block, Blk IX Wakarara Survey District, NZ <i>Gazette</i> 1976 p 69-71	Crown land Deemed conservation park, Section 61 Conservation Act 1987
<u>Dutch Creek parcel</u> Pt Ngamoko Maori Block, Blk IX Wakarara SD, and Pt Otaranga Block, Blks V & VI Wakarara SD, NZ <i>Gazette</i> 1976 p 69-71	

- 2.2 The freehold Smedley land is located at the southern end of the Wakarara Range, near Wakarara and is legally described as:

Legal description	Status
Pt Sec 3 Blk X Wakarara Survey District, CFR 164412 (Hawkes Bay Land District)	Freehold, held by the Public Trust

The RFP land is shown as the two pink areas on the plan entitled "Ruahine Forest Park Land Revocation and Exchange" attached as Plan DOC-2340917 to this submission. The Smedley land is comprised of the dark green areas with broken yellow line on the plan.

## 3. Background

### Ruataniwha Water Storage scheme

- 3.1 HBRIC is proposing to implement the RWSS. This involves placement of a concrete faced rock filled dam (83 metres high) over the Makaroro River to store approximately 90 million cubic metres of water through harvesting winter and other high flows, with the aim of providing water for irrigation purposes over 25,000 hectares of arable land. In addition water flows through the Tukituki River will be managed to ensure consistently higher flows through the summer season. The reservoir will inundate an area behind the dam up to 469 metres above sea level, creating a reservoir extending 4 kilometres behind the dam crest.
- 3.2 The dam as envisaged will create a reservoir which will inundate the RFP land (DOC), the braided riverbed of the Makaroro River (LINZ), areas of land on the true right of the Makaroro River (private), parts of Smedley Station (private), and parts of Crown Forest/Licensed areas of Gwavas Forest (LINZ/Pan Pac Forests

Limited).The location of the proposed dam and the extent of the proposed reservoir are indicated by the dark blue line on the attached plan referred to above.

### **The exchange proposal**

- 3.3 HBRIC wrote to the Department on 26 August 2014 seeking a land exchange pursuant to section 16A of the Conservation Act 1987 in respect of the RWSS. It included advice that its concession easement application (to inundate public conservation land) which already was lodged would remain on hold. The ‘on hold’ matter relates to advice from the Department to HBRIC that there were legal obstacles in the way of progressing a concession easement application to inundate public conservation land.
- 3.4 HBRIC proposed to exchange the Smedley land located in several closely located parcels within Smedley Station, for the RFP land, being in two parcels located on the edge of the Makaroro River and Dutch Creek.
- 3.5 HBRIC noted the status under which the RFP land was held (s 61 of the Act) and recommended that the land be declared to be held for conservation purposes under s 7(1A) of the Act. This would enable consideration of a subsequent exchange.
- 3.6 HBRIC supplied substantive documentation in support of its request, particularly to address the statutory test of “enhancing the conservation values of land managed by the Department and promote the purposes of the Act”. The major ecology report compiled in conjunction with the RWSS-the ‘Terrestrial Ecology Study-Assessment of Ecological Effects’, of May 2013 provides a full compilation of ecological values of the RWSS.
- 3.7 Further reports and plans were compiled for the land exchange on the basis of a relative conservation values assessment and comprise:
- Smedley Exchange Block Ecological Survey Report
  - Department of Conservation Managed Land-Description of Ecological Effects
  - A plan which identifies the Conservation Park revocation land and the Smedley Exchange land.

## **4. Legislation and a description of the statutory provisions**

- 4.1 The relevant statutory provisions relating to HBRIC’s exchange proposal are as follows:

<b>Section/Act</b>	<b>Provision</b>
S. 61(2) Conservation Act 1987	Any land that was a forest park shall until it is declared to be held for conservation purposes, be deemed to be a conservation park.
S. 7(1) Conservation Act 1987	Declare deemed conservation park to be held for conservation purposes.
S. 61(3) Conservation Act 1987	Any land to which s. 61(2) applies, when declared to be held for conservation purposes under s 7(1) is deemed to have been declared to be held for the purpose of a conservation park by a notice in the <i>Gazette</i> under s 18(1).
S. 61(9) Conservation	Until the land held as deemed conservation park is

Act 1987	declared to be held for conservation purposes under s 7(1), neither it nor an interest in it shall be disposed of.
S. 18(7) Conservation Act 1987	Revoke the purpose of any specially protected area held under this section.
S. 18(8) Conservation Act 1987	Before revoking any purpose for which the land is held, public notice of the intention to do so shall be made, with section 49 of the Act applying accordingly.
S. 49 Conservation Act 1987	Public notice, objections, submissions and opportunity to be heard.
S. 16A(1) Conservation Act 1987	The Minister may authorise the exchange of any part of stewardship land for any other land.
S. 16A(2) Conservation Act 1987	The Minister shall not authorise any exchange unless 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 Act.
S. 16A (3) Conservation Act 1987	All land acquired under this section shall be held for such conservation purpose as the Minister may specify

- 4.2 The Ruahine Forest Park is held pursuant to s 61 of the Act (i.e. deemed conservation park).
- 4.3 The exchange of a deemed conservation park for other land involves a number of statutory steps, namely:
- (a) First, a declaration under s 7(1) of the Act that the deemed conservation park land is held for conservation purposes. This has the effect of deeming the conservation park land to have been declared to be a conservation park under s 18 of the Act. This decision is perfected (given effect to) by publication of notice of the decision in the *Gazette*;
  - (b) Secondly, revocation of the conservation park status to effect a change in status of the land from conservation park to stewardship area. The intention to revoke the conservation park status of the land must be publicly notified. The revocation decision is perfected by publication of notice of the decision in the *Gazette*;
  - (c) Thirdly, a decision to authorise the exchange which decision is perfected by publication of notice of the decision in the *Gazette*.
- 4.4 Section 16A(2) requires the Minister (or her delegate) to be satisfied, after consultation with the Conservation Board “that the exchange will enhance the conservation values of land administered by the Department and promote the purposes of the Conservation Act”.
- 4.5 Neither the s 7(1) declaration nor the s 16A exchange decision can be notified in the *Gazette* until surveys of the RFP land and the Smedley land have been carried out.
- 4.6 In terms of the classification of the land being acquired under an exchange referred to above, s16A(3) provides that the land acquired by the Crown will be held for such conservation purpose as the Minister specifies in the *Gazette* notice authorising the exchange. This means that, if it is considered that the land to be acquired through exchange has values worthy of special protection, this can be achieved at the same time the land is authorised for exchange. For example, if at

the point you make your decision on the proposed exchange you considered the Smedley land worthy of addition to the Ruahine Forest Park as “conservation park”, you could decide and give effect to this as part of the land exchange gazettal process. In that case it would be declared to be held for conservation park purposes.

#### **Departmental consideration and Intention to revoke**

- 4.7 The Department’s Terrestrial Ecosystems Unit reviewed the Company’s proposal letter and reports to determine whether there would be an enhancement of conservation values by the proposed exchange. A number of matters were considered to be out of scope by the assessment unit; namely: infrastructure management issues (i.e. roads), freshwater issues, the impacts of the reservoir on the ‘to be inundated’ forest park land, mitigation measures proposed through the RMA, and recreation or historic values. Also, it made no assessment of the merits of the exchange; focusing purely on the values of the land exchange from an ecological point of view. Other technical staff were also consulted. The report (DOCDM-1551574) commented on the landscape context, habitat values, threatened species, and gave an overall assessment, which concluded the proposed exchange does reflect an enhancement of conservation values, from an ecological point of view.
- 4.8 The Department’s Terrestrial Ecosystems Unit report and other statutory process information were collated into a submission (DOCDM-1530150) which then enabled the Minister’s delegate at the time (the acting DDG Conservation Partnerships) to:
- form an intention to revoke the status of the RFP land conditional on a land exchange being approved;
  - decide the processing route to be utilised (s 7 (1)); and
  - decide to give public notice of the intention to revoke conservation park status.

### **5. Section 49 process**

- 5.1 The intention to revoke the RFP status, which was made conditional on the proposed exchange meeting the s 16A(2) test, was publicly notified on 13 December 2014 under s 49 of the Act. A number of persons and organisations objected in writing against the proposal or made written submissions on it. A public hearing was subsequently held in Hastings at the request of some of these parties including 5 objectors who spoke in support of their objections.
- 5.2 The Director-General’s delegate’s report includes a summary of the comments received, and responses to those comments which have been prepared with input from the Department’s Science team. The responses describe further assessment which has been undertaken to address the comments received.
- 5.3 The DG’s delegate has, in accordance with the requirements of s 49 of the Act provided you with:
- (a) A summary of the objections and comments received;
  - (b) A recommendation as to the extent to which to which the objections should be allowed and the comments accepted; and
  - (c) A recommendation to revoke the purpose for which the RFP land is held.

He also considers that the proposed exchange meets the s 16A(2) test and alerts you to the need to declare the RFP land to be held for conservation purposes pursuant to s 7(1) of the Act if you decide to proceed with the revocation and the proposed exchange.

- 5.4 The report of the DG's delegate is attached. You are required by s 49(2)(e) of the Act to consider his recommendations and the content of the summary of objections and submissions before deciding whether or not to proceed with the proposal. The following contains a brief (and broad) overview of the key objections and the response of the DG's delegate to them but is no substitute for the report itself.
- 5.5 Objectors raised a number of legal and substantive issues on the proposal. These are discussed below.
- 5.6 You will note that the DG' delegate formed the view that the Department's November 2014 report which assessed HBRIC's report on the proposal was not sufficiently robust. He tasked the Department to undertake a more comprehensive evaluation of all relevant documents relating to the conservation values on the RFP land and the Smedley land including a comparative analysis of the values present on the two areas; and to report its findings together with its view as to whether the test in s16A would be met. This information was then made available to those who had been present at the hearing, including HBRIC, to provide them with an opportunity to comment. The resulting Science Report, which was circulated to submitters and objectors, and the company for comment, is discussed later in this Submission.

#### **Whether revocation of conservation park status is lawful under the Act**

- 5.7 Certain objectors (notably Forest & Bird) consider that the proposal to revoke the status of the RFP land is unlawful as it is being proposed for an improper purpose and there is no proper basis for revoking the status of the RFP land. In essence their argument is that revocation of the conservation park status of land in order for it to become stewardship land and thus be able to be disposed of by exchange is not a good and proper purpose and is contrary to the Act's objective.
- 5.8 The DG's delegate considers that the proposal to revoke is lawful. It is to enable an exchange to be progressed which will enhance the conservation values of land managed by the Department and promote the purposes of the Act. The revocation procedure provides for public input through objections, submissions and public hearing to address any concerns about lack of public engagement. The revocation (and exchange) is a good and proper conservation purpose. Accordingly, he recommends that this objection not be allowed.

#### **Whether land exchanges are an improper use of public conservation land**

- 5.9 Another key objection is that the land exchange proposal is itself unlawful because it is an improper use of s 16A. It argues that exchanges under s 16A are limited to boundary adjustments and rationalisation of conservation areas. There is, however, nothing in the Act that limits the application of s 16A to these matters.

#### **Whether the land exchange would meet the test in s 16A**

- 5.10 It was also submitted that the proposed exchange does not meet the s 16A test. The Science report obtained as supplementary information by the DG's delegate contains a comparative analysis of the conservation values of the RFP land and

the Smedley land. In addition, further assessment of values by members of the Department's Science Team taking into account matters raised in comments by objectors on the Science Report confirm the conclusions in that report. This further assessment is discussed in the next section of this Submission. Those conclusions are that there will be an enhancement to the land managed by the Department if the exchange proceeds, and that it will promote the purposes of the Act (the issue of the proposed exchange is dealt with in greater detail in Section 9 below). Accordingly, the DG's delegate recommends that these objections not be allowed.

### **Consideration of current values or future values?**

- 5.11 The Department agreed by letter of 2 December 2014 that, should the land exchange proceed, it would accept the application of Project A and Project C of the IMOA to the Smedley land (which would then be held by the Department). Projects A and C are as follows:

Project A Ruataniwha Reservoir Restoration Buffer and Catchment Enhancement Zone Project - comprises a reservoir restoration buffer and catchment enhancement zone, comprising replanting and natural regeneration within the buffer, with targeted enhancement and restoration of remaining habitats on private land within catchments upstream of the dam structure. This coincides with part of the western boundary of the Smedley land.

Project C Ruataniwha Threatened Species Habitat Enhancement Project - is a targeted assistance programme to foster research, advocacy, and habitat protection/enhancement for bats and their habitats throughout Hawke's Bay; predator management programme to enhance the biodiversity values of indigenous forest and riverine areas around the reservoir and downstream of the dam structure, inclusive of targeting wader bird habitats down to SH 50; and a trap and transfer programme focusing on native fish. A yet to be determined part of the budget for the habitat protection and predator management components of this project will be applied to the Ruahine Forest Park.

- 5.12 Although HBRIC has undertaken as part of the proposed exchange to provide pest control and enhancement planting on the Smedley land (See paragraph 6.12 below) it considers that the assessment of conservation values of the RFP land and the Smedley land should be undertaken on a "current values" basis. As such, on HBRIC's approach, the effects of the proposed pest control and enhancement plantings would not be factored in as positive effects on the values of the Smedley land, and any potential adverse effects of the reservoir on the Smedley land (such as the cutting off of passage for migratory native fish in the streams running through the block from the Makaroro River) would also not be taken into account.
- 5.13 Some of the objectors to the revocation proposal argue that if the future enhancements to the Smedley land (post-exchange) are able to be taken into account, it would be inconsistent not also to take into account the future adverse effects of the RWSS on the values of the RFP land.
- 5.14 The Department considers that it is appropriate to take future values into account in assessing values, including the effects of the proposed reservoir on the Smedley land, the removal of grazing which will occur if the land is acquired by the Department under the proposed exchange, and the pest and plant management activities proposed by HBRIC. This is different from the approach advocated for by HBRIC. Nevertheless, it is acknowledged that determining possible outcomes in

the long term is difficult because of the uncertainty associated with the content and success of the pest and plant management measures proposed. Some detail of these measures is discussed below.

- 5.15 In order to address the issues raised by objectors regarding the relevance of future effects, members of the Department's Science Team have carried out a further assessment of the significance of the three parcels of land, setting out the three relevant components (terrestrial, wetlands and streams) separately and their assessment for each, as well as all three together (i.e. overall). Significance has also been re-assessed for each individual element and overall, under a "with dam" and "without dam" scenario. Whichever perspective is taken on future values, the members of the Department's Science team involved in this process have concluded that the Smedley land scores more highly in terms of significance than the RFP land, and the conservation values of land managed by the Department would be enhanced by the exchange.
- 5.16 With the removal of grazing that would occur as a result of the exchange, the existing vegetation would respond; however there would also be opportunities for limited light well planting of future canopy species, translocation of mistletoe to host trees, and monitoring of fauna (long tailed bat, fernbird, gecko etc.) within the Smedley land. This would form part of the Project A Reservoir Buffer and Catchment Enhancement Zone project which is required under the "Integrated Offset and Mitigation Approach" ("IMOA") which forms part of the conditions of HBRIC's resource consents for the RWSS<sup>1</sup> (refer paragraph 7.30) These activities would encourage public participation in ongoing management of the Smedley land.

### **Whether the land proposed revocation/exchange is contrary to the Conservation General Policy**

#### The Conservation General Policy

- 5.17 There is also an objection that the revocation/exchange proposal is contrary to the Conservation General Policy (CGP) (especially policies 6(b) to (d) which deal with the review of land classification) and the Hawkes Bay Conservation Management Strategy (CMS) (which provides for the Department to review the status of areas under its management and alter them if necessary, resulting in exchanges of land with low conservation value). As noted by the DG's delegate, the relevant policy in the CGP is policy 6(a). This provides as follows:

"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:

- i. improve representativeness of public conservation land; or
- ii. improve the natural functioning or integrity of places; or
- iii. improve the amenity or utility of places; or
- iv. prevent significant loss of natural resources or historical and cultural heritage; or
- v. improve the natural linkages between places; or

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<sup>1</sup> See Appendix 7 of the IMOA document - Schedule 6 to the resource consent conditions approved by the Board of Inquiry in June 2014.



- vi. secure practical walking access to public conservation lands and waters, rivers, lakes or the coast; or
- vii. achieve any other purpose allowed for under the relevant Acts.”

5.18 Achievement of these items in the current proposal is described as follows:

<b>Criteria to be achieved by the exchange</b>	<b>How (refer page in DOC Science report, or other advice)</b>
Improve representativeness of public conservation land	The addition of Smedley land will incorporate landform, geology and vegetation associations not found in the RFP land (page 25)
Improve the natural functioning or integrity of places	The diversity of habitats in the Smedley land by size and altitudinal range with its linkages to Gwavas Conservation Area will lead to an improvement of natural functioning between these 2 places (pages 26-27)
Improve the amenity or utility of places	Acquiring the Smedley land will enhance the adjoining Gwavas Conservation Area by improving recreational access to a more diverse range of habitat (e.g. linkages to Donovan’s wetland and forest associations-podocarp forest). (page 27).
Prevent significant loss of natural resources or historical and cultural heritage	Protecting beech podocarp forest will be enhanced through the addition of the Smedley block (page 25)
Improve the natural linkages between places	The Smedley land being a southern unprotected outlier of the Gwavas range, will provide a natural linkage to more montane associations on Gwavas CA (page 25).
Secure practical walking access to public conservation lands and waters, rivers, lakes or the coast	N/A
Achieve any other purpose allowed for under the relevant Acts	The Smedley land will achieve the purposes of the Wildlife Act by providing of habitat suitable for a wide range of mobile and less than mobile indigenous fauna species (pages 24-25).

Conservation Management Strategy (CMS) for Hawke’s Bay Conservancy (1994 - 2004)

5.19 Objectors to the revocation proposal submitted that revoking the status of the land or exchanging it would be inconsistent with the CMS. Despite its age, the CMS is still current since a replacement CMS for a larger region has yet to be developed.

- 5.20 Section 3.7 Land Administration (page 150) notes a sole objective to achieve the most appropriate statutory and administrative framework for the protection of natural or historic values on lands managed by the Department.  
The Implementation provision (Item ii) in the CMS (p 151) for exchanges notes:

“The Department will review the status of areas under its management and proceed to appropriately alter them if necessary. This may result in a change of status to give greater protection to natural or historic values, or it may result in disposals or exchanges of land which have low natural or historic value”.

- 5.12 This provision deals with the Department’s own review of the status of areas under its management and any decisions it needs to make as a consequence of rationalising its holdings. However in the current circumstances, HBRIC has applied to exchange land parcels, rather than the Department initiating its own review of its landholdings. The Department’s view is that the proposed exchange is consistent with the CMS.
- 5.13 The DG’s delegate recommends that objections based on these planning instruments not be allowed.

#### **Commissioning of Departmental Science Report**

- 5.14 Following the hearing on the revocation proposal, the Hearing Convenor requested the Department to undertake a more comprehensive gathering of information and evaluation of all relevant conservation values, with a comparative analysis of the two sets of values, to be compiled into a report (the **Science report-DOC-2224859**).
- 5.15 The Science report comprises 55 pages of technical advice with plans, photographs and tabled information. The authors’ conclusions are set out in the Executive Summary and the conclusions at the end of the main body of the report. These are set out in full in the report from the Hearing Convenor (ref paragraph 20, page 6).
- 5.16 In summary the report notes (page 3):

“The Ruahine Forest Park revocation land comprises two distinct parcels, the 8 ha Makaroro River parcel and the 14 ha Dutch Creek parcel that are separated by approximately 600 m of pine forest. The Makaroro River parcel is located on an alluvial plain next to the Makaroro River. Such alluvial plains are rare in the landscape. Three point three (3.3) ha of an Acutely Threatened land environment occurs on this site. Approximately 92 ha of this habitat occurs on public conservation land elsewhere in the district. The vegetation comprises about 1.6 ha of black beech forest, 1.9 ha of broadleaf forest, and 3 ha of secondary shrub/treeland. The area has been heavily logged and used for firewood when a mill was operating on the opposite bank, and a Forest Service house used to be on the site. Woody weeds, including shade-tolerant Darwin’s barberry, will impact on the succession of this block. No emergent podocarps remain, but there are some podocarps present. This parcel is therefore in a poor condition.

The Dutch Creek parcel comprises about 9 ha of black beech forest and 5 ha of broadleaf small-leaved monocot scrub/treeland. This secondary successional scrub was probably clearfelled and burnt during logging operations. The black beech forest has had the emergent podocarps logged,

and they are no longer part of the canopy. However, the black beech forest has an intact understorey. There is also a small oxbow wetland which could be considered significant. This parcel is similar to the surrounding Ruahine Forest Park, other than that further up Dutch Creek it hasn't been logged.

The 146 ha Smedley Exchange Block that has been offered in exchange comprises 122 ha of indigenous vegetation interspersed with 24 ha of pasture. There is 33 ha of black beech forest, including one patch of 4.4 ha that is in similar condition to that of the Dutch Creek parcel, other than that it has some emergent podocarps present. Although the Smedley Exchange Block has been logged, it has retained scattered emergent podocarps throughout the black beech forest. The rest of the vegetation comprises broadleaf and small-leaved scrub and treeland, and includes naturally occurring dry west-facing slopes dominated by small-leaved broadleaf scrub. There are also two significant wetlands present.

The underlying geology of Smedley Exchange Block is different from the rest of the Ruahine ranges (Wakarara Range), it covers an altitudinal range of over 300 m, and complements the Gwavas Conservation Area, which does not include black beech forest with emergent podocarps down to the altitudes represented by the Smedley Exchange Block.”

- 5.17 The authors' conclusions and reasons are recorded in the Executive Summary as follows:

“We have considered the relevant information that's available as part of the Ruataniwha Water Storage System RMA application process and as part of the land exchange hearings process. We have also assessed other pertinent literature, and undertaken two site assessments of the Ruahine Forest Park revocation land and the Smedley Exchange Block.

Based on this information and our own site assessments we conclude that, from an ecological and biological point of view, exchanging the 146 ha Smedley Exchange Block for the 22 ha Ruahine Forest Park Revocation Land would enhance the conservation values of land managed by the Department...”

- 5.18 The Science report also contained additional comments about the design of the boundaries, and suggested a refinement to include more of an area which had been excluded from the Smedley land which is part of an area known as Donovan Gully. This is the area within the horseshoe-shaped area broadly sitting between the northern and southern sides of the 146ha Smedley land, and which has been excluded from the Smedley land. This area is located in the vicinity of the stream slightly to the west of words “Donovan Gully” on the plan attached to this report.

- 5.19 The authors of the report noted that:

“We believe that this enhancement would be further improved by redesigning the boundaries of Smedley Exchange Block to include some areas of pasture and Donovan Gully. A more coherent design would reduce the length of the boundary and associated edge effects and fencing costs, and consolidate some of the wetland systems that would be split under the current design. Nonetheless, there is still an enhancement of conservation values under the current design.”

- 5.20 I note that the assessment of conservation values which the DG's delegate has relied on to prepare his attached report, has assumed that the area of the

Smedley land would be as originally proposed by the Company. However, if you wish to accept HBRIC's offer of adding the above mentioned 30ha of land to the Smedley land, you should note that this would further add to the enhancement of conservation values which the members of the Department's Science team have concluded would result from the exchange.

#### Your Site Visit

- 5.21 On 28 August 2015 you visited the area and viewed part of the RFP land and Smedley exchange land. As a result of that visit you asked the Department to investigate boundary rationalisation of the Smedley exchange land, wilding pine removal on the Smedley exchange land and adjacent land and Whio habitat enhancement in the upper Makaroro River. These matters were taken up with HBRIC by letter dated 9 September 2015. The Company responded by letter dated 16 September 2015 and a meeting between representatives of HBRIC and the Department to discuss the matters took place on 18 September 2015. The company provided written confirmation of its offer regarding boundary rationalisation, wilding pine eradication on the Smedley land, and Whio habitat enhancement funding on 21 September 2015. The details of the offer are outlined in later sections of this report. It was made clear to the Company that these matters were only relevant should you agree to a land exchange. The correspondence is attached to this Submission.

#### **Other conservation values held by the RFP land and Smedley land**

- 5.22 Other relevant information on conservation values not addressed in the Department's Science report and documented for each of the RFP land and the Smedley land, considered by the Department's technical staff, is as follows:

#### Recreation

- 5.23 **The RFP land** - Recreation and historic resources were out of scope for the Science report, but were investigated separately by the Department. Public access from Wakarara Road South to the RFP land is across private land from the road end to the crown riverbed in the location of the old sawmill site, while access from Wakarara Road North is through Gwavas Forest, being a Crown forest license area. According to the Department, neither site (Makaroro or Dutch Creek) in the RFP land is used for outdoor recreation. There are no easements for public access apart from those in the Crown forest license areas, which links the Makaroro riverbed to a forestry track, thence either to the forest park via the Makaroro Road at Craigs Flat, or Ellis Road where Yeoman's track commences.
- 5.24 Hunters primarily use the rivers as their main hunting route. The IMOA required under the resource consent conditions for the RWSS project includes measures to create public walking tracks through private land (with agreement of those owners) where the reservoir will impede public access from existing road end places.
- 5.25 **The Smedley land** - access for recreation is currently by permission of the farm managers of Smedley Station who act for the Public Trust as owner. However public pedestrian access to Gwavas Conservation Area is currently not available through the Crown forest licensed land, since the one registered public access easement only links the Makaroro riverbed to Ruahine Forest Park for Yeoman's Track and Craigs Flat Hut. Any specific access easement through Smedley Station will need to be negotiated subsequent to the exchange.
- 5.26 Vehicle access is permitted in the Crown forest licensed land except at times of high fire risk or where ground conditions or work practices require temporary closures.

### Archaeology /Cultural-Heritage Values

- 5.26 **The Smedley land and RFP land** - there are no NZAA recorded sites within either site; the closest NZAA record is Ellis (Murderer's) Hut [U21/13] lying 7 km to the north of the RFP land.
- 5.27 In the RFP land, the Makaroro parcel was used for firewood extraction and extensively cutover to support the Gardner and Yeoman sawmill sited in the Makaroro riverbed, which extracted podocarps from adjoining state forest land from 1922 for 30 years. A forestry building (base for operations) was sited there. The Dutch Creek parcel was logged for podocarps prior to the 1920's and stumps have disappeared. No physical evidence of this logging history remains.

### **Summary**

- 5.28 In conclusion you need to be satisfied that the test for an exchange of land has been made out under s 16A of the Act. The information provided by HBRIC together with the Science report prepared by the Department reach the view that the Smedley land will enhance the conservation values of land managed by the Department and promote the purposes of the Act. If you approve the revocation of the purpose of the RFP land on the basis that you are satisfied that the Smedley land meets the test in s 16A you should, subject to gazettal of your revocation decision under s 18(7) of the Act, proceed formerly to authorise the exchange and give effect to that authorisation by Gazette notice.

## **6. Other matters**

### Other management planning instruments

- 6.1 Apart from the CGP and CMS mentioned above, consideration also needs to be given to the Ruahine Forest Park Conservation Management Plan (the plan).
- 6.2 This plan was compiled in 1991 and approved by the Rangitikei/Hawke's Bay Conservation Board on 11<sup>th</sup> February 1992. It has not been reviewed in the intervening years.
- 6.3 The plan provides for management of Ruahine Forest Park and reflects the Board's and community's commitment to protection and enhancement of the significant natural values of the area for present and future generations, and to facilitate appropriate recreational use and enjoyment.
- 6.4 In respect of park boundaries the Plan notes that it will endeavour to also achieve Crown land inclusion into the Park, along with other desirable additions. It notes exchanges of land is a possible means of protecting important natural areas adjacent to the park.
- 6.5 The Department's view is that there is nothing in the plan that is relevant to the matters you are required to consider.

### Marginal strips

- 6.6 In the circumstances it is unlikely that any marginal strips will be acquired.

### Equality of exchange

- 6.7 Section 16A(4) provides that the Minister may authorise the payment or receipt by the Crown of money by way of equality of exchange. The equality of exchange relates to the land values of the respective parcels of land proposed for exchange. The Department agrees with HBRIC that there is no equality of exchange issue to address. This means that there is nil monetary land value to be paid by either party.

### Fencing

- 6.8 Should the exchange proceed, fencing of the Smedley land is not envisaged, since the balance of the land not acquired through the land exchange from the Public Trust would sit alongside the formed reservoir, but be owned by HBRIC. However, HBRIC has advised that it has not yet decided whether this land is to be grazed, or used for honey production, or retired (or a combination of these). There are also some outstanding boundary issues to be finalised, such as around the Donovan Gully wetland, where HBRIC has now agreed to include the Donovan Gully and surrounding area of approximately 30 hectares into the Smedley land, with further work to be undertaken to determine final and pragmatic boundaries on the ground, all of which would require definition through legal survey. The Department considers fencing to be necessary if there is to be grazing on the adjoining Smedley Station and that this should be a condition of the exchange if approved.

### Survey costs

- 6.9 Survey costs to define the exchange parcels comprising RFP land and Smedley land are a matter for HBRIC to cover. They would be a condition of exchange if approved.

### Wildling pines

- 6.10 Should the land exchange proceed, HBRIC intends to eradicate the wildling pines within the Smedley land which the authors of the Department's Science Report (which is discussed earlier in this Submission) as well as yourself observed on your site visit. The targeted work envisages an annual contribution of \$20,000 over Year One and Year Two of this programme which involves helicopter spraying of established wildling pines; thence from Year Three an ongoing programme of monitoring and maintenance utilising a combination of aerial and on-ground techniques as necessary. It is envisaged this maintenance programme starting at a level of \$5,000 per annum, will continue but be reduced down to zero once there is evidence that wildling pines have been eradicated from the Smedley exchange land.
- 6.11 If you approve the proposed exchange you should advise HBRIC that you accept its offer to fund wildling pine eradication on the Smedley land.

### Whio (blue duck) habitat enhancement project

- 6.12 Should the exchange be approved, HBRIC has offered to contribute to Whio surveys and potential habitat protection in the upper Makaroro River. Whio habitat enhancement work originally formed part of Project C in the IMOA referred to above. However, during the course of the Board of Inquiry hearing, funding priority was moved away from Whio habitat to other species habitat that was assessed by HBRIC's ecology team as being directly affected by the RWSS project. There was some confusion with this however, as HBRIC's letter of 26 August 2014 setting out

its exchange proposal referred to and attached a version of the IMOA which included performance targets and budget provision for Whio surveys and habitat protection and enhancement work. I therefore sought clarification from HBRIC about the extent to which it was envisaging contributing to Whio habitat work, should the exchange be approved.

- 6.13 HBRIC has confirmed that it is willing to fund Whio habitat enhancement work. The programme now offered by HBRIC envisages setting up a predator free environment in the upper Makaroro River, into which Whio may migrate and settle from other catchments in the Ruahine Range. An initial contribution of \$25,000 for set up costs of the Whio habitat predator control is envisaged in Year One, then following in Year Two an annual programme starting at \$11,000 for ongoing monitoring and trapping, for the duration of the RWSS consents period.
- 6.14 If you approve the proposed exchange you should advise HBRIC that you accept its offer to contribute to the Whio surveys and habitat protection.

#### Other approvals

- 6.15 On 17 August 2015, you (in your role as Director-General) granted HBRIC a dispensation under the Freshwater Fisheries Regulation 1983, from a requirement to provide for fish passage in respect of the built structures associated with the RWSS. The decision requires a range of mitigation measures to be undertaken such as a trap and transfer regime of native freshwater fish coupled to the comprehensive integrated mitigation and offset approach (resource consent requirement) that includes enhancing fish habitats through riparian planting. Fish screening measures will prevent fish from entering intake structures.

### **7. Declaration the land is held for conservation purposes**

- 7.1 The RFP land was formerly Crown land; then in 1881 it was reserved. In 1885 the New Zealand State Forests Act provided for setting apart forest land (including forest reserves) in NZ to be administered by a Commissioner of Forests. Legislative changes altered administration of forest land that ultimately led to the Forests Act 1949. The state forest land was then set apart as a state forest park to be known as Ruahine State Forest Park (NZG 1976, p 69-71).
- 7.2 Ruahine State Forest Park was allocated to DOC in 1987 by Items 1 and 1A on SO 9356, and is held pursuant to s 61 of the Act (i.e. deemed conservation park).
- 7.3 Section 61(9) of the Act requires that land held in a deemed conservation park status and which is proposed for subsequent actions (such as classification, revocation, exchange, or disposal) must first be declared to be held for conservation purposes. This is achieved by a declaration under s 7(1) of the Act, and publication of that decision in the *Gazette*.
- 7.4 Due to the operation of s 61(3), a declaration under s 7(1) of the Act results in the formerly deemed conservation park then being deemed to have been declared to be held for the purposes of a conservation park (as if) by a *Gazette* notice under s 18(1) of the Act. As the declaration action is a technical transaction which does not alter the protected status of the land, consultation with other parties is not required.
- 7.5 As the RFP land is not defined sufficiently for gazettal purposes, any Notice compiled before survey would not be able to be published in the *Gazette*. In other words, it is necessary to undertake a legal survey to define the land and have the

surveys approved by LINZ before any Gazette Notices are sent to be published in the *Gazette*.

- 7.6 It is recommended that you agree to declare the RFP land to be held for conservation purposes, for which decision a draft *Gazette* Notice is appended, noting the land is subject to being defined by legal survey.
- 7.7 Legal survey will be commissioned in order that the declaration decision is able to be published in the *Gazette*.

## **8. Decision to revoke**

- 8.1 Section 18(7) of the Act provides that the Minister may revoke all or any of the purpose for which any land held under s 18(1) is held. That decision clearly requires the land in question to be held for a purpose under s 18(1) and, in the case of deemed conservation land, would require a declaration under s 7(1) to alter the status of land from deemed conservation park under s 61 to conservation park under s 18(1). Provided you are satisfied that the purpose of the RFP land should be revoked to enable the exchange to be progressed, you may agree to revoke the purpose of the RFP land subject to gazettal of the declaration under s 7(1).

## **9. Section 16A Consultation with Conservation Boards**

- 9.1 Section 16A of the Act restricts the ability of the Minister (and you as her delegate) to authorise an exchange only where 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 Act.
- 9.2 During the period for submissions, the Department arranged consultation with Iwi groups claiming mana whenua status in the area of Ruahine Conservation Park, specifically Ngati Kahungunu Iwi Incorporated, and its two Taiwhenua (Tamatea, Heretaunga) which represent territorially located Hapu in Central Hawke's Bay. One hapu based at Makaroro was also sent consultation material. (For outcomes of these consultations, refer Section 11 of this submission).
- 9.3 Also during this period the Department arranged consultation with the Wellington Conservation Board, which is required to be consulted under s16A(2) on whether the exchange will enhance the conservation values of land managed by the Department and promote the purposes of the Act.
- 9.4 Since the Smedley land lies in the area covered by the East Coast Hawke's Bay Conservation Board, and the RFP land lies in the area administered by the Wellington Conservation Board, ECHB board members were invited to attend the meeting of the Wellington Conservation Board when it considered and made a resolution on the proposed land exchange, at its 27-28 February 2015 meeting.
- 9.5 The Wellington Conservation Board on 27 February 2015 considered the request from the Department (DOCDM-1540167), and then on the following day visited the site. A resolution made on this second day states:

The Board supports the proposed land exchange, in accordance with section 16A of the Conservation Act, of the land parcels described in the table which was attached to the Memo consulting the Board on the proposed land



exchange. (Note: the table is a comparison of biodiversity values between the RFP land and the Smedley land).

9.6 The Board also recommended the Minister takes cognisance of its view that:

- the proposed land exchange should take place on the basis of relative conservation values regardless of whether or not the RWSS proceeds, and
- adequate funding be provided to secure the conservation values of the Smedley Station land parcel following its acquisition by the Department.

## **10. Section 16A(3) – special protection of the Smedley land**

10.1 Section 16A(3) of the Act provides that all land acquired by the Crown under section 16A shall be held for such conservation purposes as the Minister may specify in respect of that land by notice in the Gazette.

10.2 The reference to “such conservation purposes” means that the Minister is not limited to specifying the land as stewardship area but could, in recognition of the conservation and or historic values present on the land, decide to declare it for one or more of the purposes set out in section 18 of the Act. This means it would acquire special protection for whatever purpose best suited the values to be protected and which the Minister specified by way of Gazette notice.

10.3 In the case of the Smedley land there is sufficient information before you to enable you to conclude that it would be appropriate to classify the land for the purpose of a conservation park and to add it to the Ruahine Forest Park.

## **11. Section 4 Conservation Act 1987 – requirement to give effect to the Principles of the Treaty of Waitangi**

### Cultural Perspective

11.1 Section 4 of the Act requires you to give effect to the Principles of the Treaty of Waitangi in making your decisions.

11.2 To following are relevant in giving effect to the Principles of the Treaty of Waitangi:

- Partnership-mutual good faith and reasonableness
- Informed decision making
- Active protection
- Redress and reconciliation

A full explanation of these provisions is noted in **Appendix One**.

11.3 In addition, both Treaty partners need to act respectfully towards the other. While you need to understand the Iwi view and the reasons for it, Iwi should also be forthcoming with their view and their reasons for it. The Department needs to provide information to Iwi about the legislation and policy parameters in which DOC must work within. Likewise, you must be open to and consider the views of Iwi.

11.4 The migration of Ngati Kahungunu people from Mahia south to Hawkes Bay and beyond began around 1550, which led to a tribal boundary being established along the old Ngaruroro River with Kahungunu to the north and Maori resident to the south. Ngai te Upokoiri arrived to vie for control but with muskets and warfare,

tribal groups largely abandoned Hawkes Bay going into exile in Mahia and Patea. Hapu started returning in the late 1830's, however Crown purchases in the 1850's led to a major schism between residents and Kahungunu ki Heretaunga/Te Upokoiri.

- 11.5 In the early 1800's the territory was remote and bush clad and evidence suggests it was occupied by Maori only on a seasonal basis; however hapu Ngai te Upokoiri were said to have maintained fortified sites and kainga along the foothills of the Ruahines. A pa belonging to this hapu is said to lie 6 km SE of the proposed dam crest.
- 11.6 Cultural values relate to the concept of holistic ecological health of the land, water, sea and all living things in general that are inextricably inter-connected with the well being of mana whenua. These values are conceptualised through their origins in Te Ao Maori and are understood according to whakapapa (genealogical descent) which connect Maori beliefs and values towards, and about the natural environment. While there has been alienation of traditional lands and waterways, Maori have not relinquished their kaitiaki role to sustainably manage and to protect taonga: natural resources, biodiversity, fauna and flora, ecosystems and sites of special importance.
- 11.7 The RFP land and Smedley land lie within the rohe of Ngati Kahungunu Iwi (NKI) under whose 'umbrella' lie subsidiary Taiwhenua groups and Hapu. A letter seeking its advice on the land exchange was sent; however NKI directed on the information to its subsidiary groups - Te Taiwhenua o Tamatea and Te Taiwhenua o Heretaunga and Hapu group Ngai te Upokoiri.
- 11.8 Consultation was extended to include those Hapu on the western Mokai-Patea side of the Ruahine Range; then subsequently to include all Hapu that have an cultural association with Ruataniwha. Follow up by DOC was undertaken to ensure all groups had received the letter, and when a response was to be expected.
- 11.9 Te Taiwhenua o Tamatea, in whose area lies the proposed reservoir, the revocation land and the Smedley land, shares a common boundary with Te Taiwhenua o Heretaunga which lies 9.6 km north of the proposed reservoir. The Tamatea chief executive Dr Roger Maaka advised that the Taiwhenua held all the information it needed to advise DOC on the proposals. He noted 'it had no objection to the proposed land swap', and that no marae or individual of Tamatea has raised any concerns regarding the land swap.
- 11.10 Te Taiwhenua o Heretaunga and hapu Ngai te Upokoiri through its Kaihautu-Marei Apatu - provided a letter detailing its claims to mana whenua status, representation issues, and the revocation site being at the southern end of the Makaroro Range, which site is noted as being outside the Heretaunga Taiwhenua boundary. Apatu notes that on a like-for-like basis, the land exchange areas are not comparable. For its claimants, the hapu and Te Taiwhenua o Heretaunga wish to retain the lands they originally held, rather than be swapped for anything else.  
  
In addition he noted an Office of Treaty Settlements report which confirms from the traditional and historical research work, that Ngai Te Upokoiri is mana whenua of the Nga Whakarara area.
- 11.11 The fifty-four Hapu under both of Tamatea and Heretaunga were subsequently invited to advise DOC on their whakapapa link to the Makaroro River locality and to advise on Maori cultural values of the exchange land parcels and associated waterways. Eliciting responses from Hapu was directed over the course of 18 days

with repeated follow up to ensure the groups were given the opportunity to engage in this process.

11.12 A site visit conducted by DOC was undertaken on 25 July for those Hapu who wanted to attend. Five representatives took up this opportunity.

11.13 Comment was received from five representatives of 14 Hapu of **Heretaunga** and is contained in the attachments to this report. This is summarised as follows.

#### **Ngai Te Upokoiri**

Is opposed to the land exchange due to the impact it will have on cultural values of the mana whenua in fulfilling its Kaitiaki role. It notes tipuna trails (part of its mauri) will be lost or submerged. Takes issue with impacts on threatened species, notes land is already part of Park and should remain protected. Seeks a closer relationship with DOC in managing public conservation land containing cultural values.

The following Hapu:

**Ngāti Hawea; Ngāti Hori, Ngāti Hinemoa; Ngāti Te Rangioianake; Ngati Manawakawa, Ngati Tapuhara; Ngāti Kurukuru; Ngāti Hikatoa; Ngāti Urakiterangi; Ngāti Whakaiti; Ngāti Oatua; Ngāti Hikatoa; Ngāti Tamatera**

- held similar views, many of which relate more to the RWSS proposal, and are collectively summarised as follows

- On principle opposes the RWSS.
- Mauri of the place informs Maori-from the mountains to the sea-maintaining the mauri is an essential part of defining kaitiaki status.
- Small shifts in the mauri can cause interrelated shifts of adjoining related components. Water is the lifeblood of Papatuanuku.
- The proposal will have a major impact on cultural values of mana whenua and does not support it.
- Requests ongoing involvement to ensure hapu/marae are involved to mitigate spiritual elements of what is being proposed. Marae/hapu values should remain as kaitiaki to ensure mauri of whenua (place) and ecology is enhanced. Advises its people are available to advise on matters of significance regarding its whenua and waterways.
- The values associated with the exchange land which are pertinent to Hapu are wahi tapu, wai-awa, mauri wai, and manawhenua.

11.14 Comment was received from four representatives of 13 Hapu of **Tamatea** and is also contained in the attachments to this report. The following is a summary of the collective responses received from these Hapu:

**Te Whatuiāpiti; Ngāi Te Whatuiāpiti; Toroiwaho; Te Hauapu; Ngāti Kikirioterangi; Toroiwaho; Rangikahutia; Rangitotohu; Ngāi Tahu ki Kahungunu; Rangitane; Pouwharekura; Ngāti Kere; Ngati Pihere**

- Espouse a generalised set of values for the river and its surrounding land which then is a symbol of mana amongst respective Iwi. Their relationship with it through tikanga stems from their strong genealogical links through ancestors, with continuing usage practises, it being the connection to their heartland.
- Is supportive of proposal particularly if Ruataniwha Dam brings prosperity to future generations. Exchange brings about significant conservation values and is a good deal. Still hold ahi kaa and manawhenua to the land.
- The land exchange site is well known as a precious corridor through which its tipuna travelled between the mountains and the lowlands, noting the river was a well stocked food resource for eel.

- Should the land exchange proceed, seeks their active kaitiakitanga status to continue to be recognized.

11.15 In summary, Hapu have a strong Kaitiakitanga role derived through whakapapa as mana whenua in managing the natural resources of the land and waterways within it. Of the Taiwhenua, Tamatea is supportive of the land exchange; whilst Heretaunga is opposed and prefers the status quo to be maintained.

11.16 The Right of First Refusal (RFR) in respect of Heretaunga-Tamatea being negotiated by the mandated group He Toa Takitini for Ngati Kahungunu Iwi Authority has made no claim in its proposed Deed of Settlement to any public conservation land for RFR purposes. Only properties owned by the Department of Corrections are listed in the RFR for this signed DOS.

## **12. Overall summary on the proposed exchange and the statutory tests in s 16A of the Act**

12.1 The Department and the Director-General's delegate consider that the proposed exchange would enhance the conservation values of land managed by the Department and promote the purposes of the Act. I support that view.

12.2 The Wellington Conservation Board supports the land exchange.

12.3 Taiwhenua groups in Tamatea and Heretaunga hold different views on the proposal (Tamatea is in support of the proposed land exchange. While Heretaunga opposes it primarily due to the loss it will entail of public conservation land which originally formed part of the Ruataniwha Block).

12.4 29 Hapu of Heretaunga and 26 Hapu of Tamatea have been consulted. The views of the 27 Hapu representatives which responded are summarised in sections 11.21 & 11.22 above, but can be broadly described as either being strongly supportive or opposed seeking the status quo; and reaffirm their manawhenua status and kaitiaki role to guide the Department on the management of natural resources.

## **13. Consultation (general)**

13.1 No further consultation is needed for the processes or decisions discussed in this submission.

## **14. Applicant's Comments on this Submission**

13.1 The applicant has not been invited to comment on this report. It has however been provided with a copy of the Department's Science report, all submissions and objections, and any documentation arising from the hearing, and has commented and responded to these.

## **15. Attachments**

15.1 I recommend that you read the following documents which are included as Attachments to this submission:

- HBRIC's letter of 26 August 2014 proposing the exchange;

- F&B's and Te Taiao Hawkes Bay Environment Forum's written objections to the revocation/exchange proposals;
- HBRIC's reply presented at the hearing on the revocation/exchange proposal;
- Two reports from Kessels Ecology prepared for HBRIC in support of the exchange proposal;
- the Summary of Submissions and recommendation on revocation report by the DG's delegate, Mr Kemper;
- the Department's Science Report;
- the objectors', submitters' and HBRIC's comments on the Department's Science Report;
- the resolution of the Wellington Conservation Board;
- The summary of correspondence and advice received from Iwi and Hapu groups.
- Plans of the parcels involved in the proposed exchange;
- Correspondence between HBRIC and DOC subsequent to the land exchange regarding boundary rationalisations of the Smedley land, the wildling pine work, and a who habitat protection programme in the upper Makaroro river.

15.2 I have also attached for your reference a full set of the objections and submissions on the revocation/exchange proposal, in the event you wish to refer to them when you consider Mr Kemper's report.

## **16. Authority**

- 16.1 Section 7(1) of the Act is the authority for declaring land (i.e. s 61(2) deemed conservation park land) to be held for conservation purposes by Gazette notice;
- 16.2 Section 61(3) of the Act deems land declared for to be held for conservation purposes to be deemed to have been declared to be held for the purpose of a conservation park by Gazette Notice under s 18(1);
- 16.3 Section 61(9) of the Act provides that until the land held as deemed conservation park is declared to be held for conservation purposes under s 7(1), neither it nor an interest in it can be disposed of;
- 16.4 Section 18(7) of the Act provides for the revocation of a specially protected area by Gazette notice;
- 16.5 Section 18(8) of the Act provides that before revocation, the Minister must give public notice of the intention to do so;
- 16.6 Section 16A(2) of the Act provides the authority to authorise the exchange of a conservation area by Gazette notice. If the exchange is to be authorised then as mentioned in section 7 above the land would first need to be declared to be held for conservation purposes under s 7(1) of the Act. In order to authorise the proposed exchange you must be satisfied, after consultation with the local Conservation Board, that the exchange would meet the test in s 16A, namely that it would enhance the conservation values of land managed by the Department and will promote the purposes of the Act. If you decide that the test is met, then you are able to authorise the exchange proposal provided the RFP land has first become stewardship land and you have revoked the conservation park status in accordance with the other statutory steps described in this briefing and subject to the necessary Gazette notices giving effect to each decision;

16.7 Section 16A(3) provides that all land acquired by the Crown under this section is to be held for such purposes as the Minister may specify in respect of that land. If you decide to authorise the exchange, you are able to declare the Smedley land to be held for Conservation park purposes as part of the declaration process.

**ENDS**

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## Appendix-Draft Gazette Notices

### Declaring Land to be Held for Conservation Purposes

Under the Conservation Act 1987 the Minister of Conservation and also being the Minister responsible for the land in the Schedule, acting through her delegate the Director-General of Conservation declares that the land described in the Schedule is held for conservation purposes.

#### ***Hawkes Bay Land District – Central Hawkes Bay Schedule***

<b>Area ha</b>	<b>Description</b>
22 approx	Pt Ngamoko Maori Block, Blk IX Wakarara Survey District, and Pt Otaranga Block, Blks V & VI Wakarara Survey District, NZ <i>Gazette</i> 1976 p 69-71, as shown pink coloured on attached plan entitled "Ruahine Forest Park Land Revocation and Exchange". (land subject to being defined by cadastral survey)

## Revocation of Specially Protected Area

Under the Conservation Act 1987, the Minister of Conservation through her delegate revokes the declaration as Conservation Park over the land described in the Schedule.

### ***Hawkes Bay Land District – Central Hawkes Bay District Schedule***

<b>Area ha</b>	<b>Description</b>
22 approx	Pt Ngamoko Maori Block, Blk IX Wakarara Survey District, and Pt Otaranga Block, Blks V & VI Wakarara Survey District, NZ <i>Gazette</i> 1976 p 69-71, as shown pink coloured on attached plan entitled "Ruahine Forest Park Land Revocation and Exchange". (land subject to being defined by cadastral survey)

Dated at Wellington this      day of      2015

\_\_\_\_\_  
LOUIS VERNON SANSON, Director-General of Conservation  
(DOC PAL-06-23-01-01)



## Authorisation of the Exchange of Part of a Conservation Area for Other Land

Under the Conservation Act 1987, the Director-General of the Department of Conservation, authorises the exchange of what was formerly part of Ruahine Conservation Park, now held for conservation purposes described in the First Schedule, for the land described in the Second Schedule, and further specifies that the land in the Second Schedule be held for the purposes of a Conservation Park and be amalgamated with Ruahine Conservation Park.

The exchange is subject to special conditions, these being that the Hawke's Bay Regional Investment Company's Integrated Mitigation and Offset Approach- Project A (which includes Project C) as set out in Appendix Seven of the Proposed IMO A document, dated May 2013- is to be carried out as prescribed, unless the terms and conditions of its application are altered by agreement with the Director-General of Conservation.

In addition, survey costs to define the exchange land parcels, and fencing where required to prevent domestic stock entry to the Smedley Exchange land, is at the full cost of the Hawke's Bay Regional Investment Company.

### *Hawke's Bay Land District—Central Hawke's Bay District and Hastings District* **First Schedule**

Area ha	Description
22 approx	Pt Ngamoko Maori Block, Blk IX Wakarara Survey District, and Pt Otaraunga Block, Blks V & VI Wakarara Survey District, NZ <i>Gazette</i> 1976 p 69-71, as shown pink coloured on attached plan entitled "Ruahine Forest Park Land Revocation and Exchange". (land subject to being defined by cadastral survey)

### **Second Schedule**

Area ha	Description
176 approx	Pt Sec 3 Blk X Wakarara Survey District, CFR 164412 (land subject to being defined by cadastral survey)

Dated at Wellington this      day of                      2015

\_\_\_\_\_  
LOUIS VERNON SANSON, Director-General of Conservation  
(DOC PAL-06-23-01-01)

## Appendix One

### Section 4 Conservation Act- Treaty of Waitangi principles

**a. Partnership - mutual good faith and reasonableness**

The Crown and Māori must act towards each other reasonably and in good faith. These mutual duties of reasonableness and good faith describe the nature of the relationship between the Crown and Māori. They are the core of what has been described as the Treaty partnership. This principle is about how the Crown should behave to Māori and Māori to the Crown.

**b. Informed decision-making**

Both the Crown and Māori need to be well informed of the other's interests and views. When exercising the right to govern, Crown decision makers need to be fully informed. For Māori, full information needs to be provided in order to contribute to the decision-making process. This is connected closely to the principles of good faith and active protection. Consultation is a means to achieve informed decision-making.

**c. Active protection**

The Crown must actively protect Māori interests retained under the Treaty as part of the promises made in the Treaty for the right to govern. This includes the promise to protect tino rangatiratanga and taonga. Active protection requires informed decision-making and judgement as to what is reasonable in the circumstances.

**d. Redress and reconciliation**

The Treaty relationship should include processes to address differences of view between the Crown and Māori. The Crown must preserve capacity to provide redress for proven grievances from not upholding the promises made in the Treaty. Māori and the Crown should demonstrate reconciliation as grievances are addressed.

**MSU reference 15 - C - \_\_\_\_\_**  
 (MSU use only)

**Submission Approval and Certification Sheet**

Title of Submission: <b>DECLARATION OF PART OF RUAHINE FOREST PARK AND FURTHER DECISIONS - LAND EXCHANGE PROPOSAL FOR PART OF RUAHINE FOREST PARK</b>	Date shown on submission: ___/08/2015
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<b>Check for these things</b> (If any answer is 'No', the paper must be reworked before submission).	
• Does this comply with the ministerial submission template?	Yes / <del>No</del>
• The submission has been printed single sided.	Yes / No
• Is it clear what you are asking the Minister to do?	Yes / <del>No</del>
• Is your information accurate and free of acronyms, jargon, errors in grammar, typing and spelling?	Yes / <del>No</del>
• Have any significant risks relating to this matter been identified?	Yes / <del>No</del> <del>None present</del>
• Have any legal implications been identified?	Yes / <del>No</del> <del>None present</del>
• Are there financial and/or appropriation issues in relation to this paper? <i>If Yes, sign off by DDG Business Services or CFO is required below</i>	Yes/No
• Does this submission link into your business plan?	Yes / <del>No</del>
• Is it the right length? <i>Can you justify its length if it is more than 5 pages?</i>	Yes / <del>No</del>
• If your submission includes a Cabinet paper, have you followed all the requirements in <i>Chapter 4</i> of the Cabinet Office <i>CabGuide</i> ?	<del>Yes</del> / <del>No</del> Not applicable
• Does this submission have three file copies attached?	Yes / No

I accept accountability for the content of the attached submission or briefing and certify that it complies with the requirements of the checklist above.

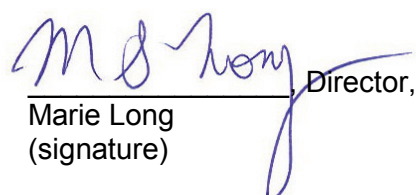
Operations Implementation \_\_\_/\_\_\_/\_\_\_  
 Mike Slater



Operations Group

25 September 2015

I recommend this submission be approved



Marie Long  
 (signature)

Director, Planning Permissions & Land

25 September 2015

(date signed)