

**Submission to Minister of Conservation:
Delegated to Deputy Director-General Partnerships**

Subject: Revocation of specially protected status to enable a land exchange decision, and associated actions

File: PAL-06-23-01-01
9 December 2014

1. Proposal

- 1.1 To form a view that a land exchange of part of Ruahine Conservation Park, for private land should be progressed; and, if so
- 1.2 To note that the land must be declared to be held for conservation purposes by *Gazette* notice, for which there are two processes by which this can be achieved;

EITHER

- 1.3 If you decide to use the section 7 (1) route for declaring land is held for conservation purposes, to form an intention to revoke part of the Ruahine conservation park status to facilitate (and be conditional on) the land exchange;
- 1.4 To give public notice of the intention to revoke conservation park status.

OR

- 1.5 If you decide to use the section 7(1A) route for declaring land to be held for conservation purposes to note that no public process is necessary.

2. Location

- 2.1 At Wakarara Road (south) roadend, at confluence of Dutch Creek and Makaroro River, in Central Hawke's Bay.

3. Background

- 3.1 The Hawke's Bay Regional Investment Company Limited, a Council Controlled Trading Organisation of the Hawke's Bay Regional Council, (the Company) has proposed an exchange of 146 hectares of private land containing regenerating native shrub lands, intact beech forest and some pasture, for approximately 22 hectares of Ruahine Conservation Park, which is required for the proposed Ruataniwha Water Storage Scheme [RWSS].
- 3.2 The area of conservation park that will become inundated by the waters contained behind the storage dam is classified deemed conservation park since it was part of the former State forest park that was allocated to the department in 1987. It is deemed to be held for these purposes in accordance with section 61(2) of the Conservation Act 1987.

- 3.3 In order for the conservation park land to be available to be exchanged, it must first be declared to be held for conservation purposes under section 7 (1) of the Conservation Act to free it from the deeming provision constraints of section 61(9) of the Conservation Act 1987. Once this occurs, section 61(3) provides the land is then deemed to have been held for the purpose of a conservation park by a notice in the Gazette under section 18(1). Revocation of the deemed conservation park status, which involves public notification, is then necessary to enable an exchange to be effected.
- 3.4 While land may be declared to be held for conservation purposes under either section 7(1) or section 7(1A) of the Act, the latter section was added to the Act to enable allocated land to be formally set apart by the Minister of Conservation without the need to involve any other Minister, as provided for in section 7(1).

If the section 7(1A) route is adopted it would result in the land becoming a stewardship area, rather than conservation park. This has two consequences; the first is that there is no requirement for public notification under section 7(1A); the second is that there would be no requirement to revoke the conservation park status. The affected land would immediately become a stewardship area with no specially protected status overlaying it.

Former Minister Hon Nick Smith responded in October 2013 to a Parliamentary Question regarding the decision on using conservation land for the dam project. He stated that any decision on a land exchange will not be made until the Board of Inquiry process dealing with the RMA matters is completed. Also, in an interview at the time he noted that the public should be involved in helping decide on a land exchange, particularly where it involves specially protected / conservation park land.

Despite enabling a simpler exchange process, use of section 7(1A) is not recommended because the area in question possesses high values; those values are recognised in its deemed conservation park status which is a special form of protective overlay; and there is a high level of public interest in changing the protected status of such land. It is therefore considered that public consultation is appropriate.

- 3.5 The 22 hectares of conservation park involves a fringe area (14 ha) of the Ruahine Forest conservation park where it lies alongside Dutch Creek and an outlier area (8 ha) sited between the Makaroro River and pine plantations owned by Pan Pac Forests Limited. The private land to be considered for the exchange is part of an outlier block of Smedley Station, a sheep and cattle training farm administered by the Public Trust.

The attached plans show a Land Revocation Site (22 ha) and a Land Exchange Site (146 ha).

- 3.6 The exchange areas have been assessed by DOC's Science and Capability team in order to address the statutory tests for a land exchange, in which section 16A, subsection 2, states that "the exchange will
- enhance the conservation values of land managed by the Department, and
 - promote the purposes of the Act".

4. Authority, Criteria, and Policy for Decision

- 4.1 Section 16A (1) Conservation Act 1987-provides that the Minister of Conservation may authorise the exchange of any stewardship area or any part of any stewardship area, for any other land;
- 4.2 Section 18 (7) of the Conservation Act 1987-provides that the Minister of Conservation may by notice in the Gazette,revoke the purposes, or all or any of the purposes, for which land is held under section 18(1) [i.e. conservation park] of the Act;
- 4.3 Section 7 (1) of the Conservation Act 1987-provides that the Minister, and the Minister responsible for an agency which has control of the land may jointly by notice in the *Gazette* declare the land is held for conservation purposes [i.e. this frees the land from the deeming provisions of s. 61 (9) of the Act but results in the land becoming a conservation park at law];
- 4.4 Section 7 (1A) of the Conservation Act 1987-notes that notwithstanding section 7 (1), in the case of any land or foreshore to which section 61 or section 62 of the Act apply, the Minister may by notice in the Gazette describing it, declare that the land or foreshore is held for conservation purposes..;
- 4.5 Section 18 (8) of the Conservation Act 1987-provides that before revoking any purpose, the Minister shall give public notice of the intention to do so, and section 49 of this Act shall apply accordingly;
- 4.6 Section 49 of the Conservation Act 1987-states that where any provision of the Act requires any thing to be publicly notified, the Minister shall publish a notice in some newspaper circulating in the area in which the subject-matter is located; and at least once in the four daily newspapers (Auckland, Wellington, Christchurch, Dunedin); or if satisfied that the thing is of local or regional interest only, may limit the publication to a newspaper circulating through the locality or region where the subject matter is located;
- 4.7 In accordance with a specific delegation of the Minister, which is to be confirmed by a written delegation from the Director-General of Conservation the power to form the intention to revoke conservation park status, and make the revocation decision is delegated to a deputy Director-General of Conservation.
- 4.8 The Intranet List of Delegations-Version 13 provides for the DDG position to also exercise decisions on authorising a land exchange under section 16A of the Act. In addition, these delegations provide for the declaration under section 7 (1) and the giving of public notice which is required for the intention to revoke any purpose under section 18 (7) of the Act.
- 4.9 This transaction has been undertaken in accordance with relevant SLM standard operating procedures.

5. Management Planning

- 5.1 The Hawke's Bay Conservancy Conservation Management Strategy (CMS) applies (expired in 2004) but is still operative until a new CMS is approved. This CMS provides for land exchanges to occur which give greater protection to natural values.

6. Explanation & Justification

- 6.1 **The first part of this proposal** is to form a view that a land exchange of part of Ruahine Conservation Park for private land is desirable on the basis that the land offered by way of exchange possesses better conservation values than the land held by the Department. There is no requirement to consult the public on land exchanges, although the local conservation board must be consulted.

For a land exchange under the Conservation Act, the SOP requires the following matters to be addressed:

- resource assessment
- suitability for conservation purposes
- equality of exchange
- payment of costs
- marginal strips

- 6.2 For the resource assessment, the Company commissioned Kessels Ecology to document the conservation values in the Land Revocation Site and the Land Exchange Site.

The Kessells report recorded terrestrial vegetation by general forest associations, and fauna recorded on each of the sites, which for the Land Exchange Site and the DOC Land Revocation Site is summarised as follows:

Size (ha)	Location	Terrestrial vegetation & fauna
22	Land Revocation Site: Dutch Creek (14 ha); & Makaroro River (8 ha)	Indigenous forest (12.47 ha) Black beech forest: 10.53 ha; broadleaf forest:1.94 ha) Indigenous shrub/treeland (8.19 ha) Podocarp/broadleaf: 0.34 ha; broadleaf/treeland:1.54 ha; black beech treeland: 0.58 ha; broadleaf monocot treeland:5.57 ha; manuka: 0.15 ha Wetland (0.29 ha) Exotics (0.86 ha) Eucalypt, willow, larch, and rank grass Braided riverbed (0.42 ha) Stable gravel bank: 0.11ha, riverbed:0.32 ha Fauna recordings: Fernbird (2x sightings of the same bird), Long tailed bat (many acoustic passes were recorded) At Risk species: Red mistletoe (one tree in inundation area)
146	Land Exchange Site: Headwaters of Donovan's Gully, and the northern part of Long Spur [most forest has been grazed beneath]	Indigenous forest (40.8 ha) Black beech forest outlier: 4.4 ha; black beech forest: 33.3 ha some areas with emergent podocarps; Podocarp/beechn-broadleaf: 3.1 ha, Indigenous Scrub (49.3 ha) Small leaved scrub 37.9 ha; broadleaf scrub 1.4 ha, Indigenous shrub/treeland (32.4 ha) black beech/small leaved treeland: 32.4 ha Wetland (0.5 ha) Bracken/Grassland (23 ha) Fauna recordings: Used prior records of NZ Falcon, Fernbird, Long tailed bat, forest gecko, tree weta, red mistletoe- all likely to be present. At Risk species: No surveys undertaken

On an area basis, this comparison shows a threefold to fivefold increase in terrestrial vegetation association types between the Land Revocation Site and the Land Exchange Site, with one additional association type (indigenous scrublands) not represented in the conservation park portion, which would be added to, by the land exchange. Fauna sightings are similar in each Site. Overall there is a seven fold increase in land area brought about by the exchange.

- 6.3 Suitability for conservation purposes: DOC has subsequently reviewed these reports by using in-house staff of its Science and Capability team.

Habitat

The implications of the proposed exchange are that 10.5 ha of black beech forest will be lost, and exchanged for 4.4 ha of the same forest on the Smedley block. However, black beech forest- some with emergent podocarps- is strongly represented in the Land Exchange Site (the Smedley Block), whereas this type is poorly represented in the DOC Land Revocation Site. There are similarities between other habitats involved in the exchange, some of which are not exactly the same.

The loss of the braided river bed cannot be replaced. However, there are several similar rivers nearby, and it is not seen as a loss of a unique habitat.

There are a similar number of habitats in each area. 131 ha of vegetation associations in the Smedley block was deemed to be ecologically significant in terms of Hawke's Bay Regional Policy Statement and the Central Hawke's Bay District Plan. Most of this appears to be incorporated in the Smedley Exchange Block. Similar figures for the DOC managed land report were not found, but it was assumed the significance criteria would have been met for most of it.

Threatened species

The two main threatened species observed in the DOC managed land were:

- red mistletoe (*Peraxilla tetrapetala*; (At Risk: Declining.); and
- long-tailed bat (*Chalinolobus tuberculata* (North Island-Threatened: Nationally Vulnerable).

The presence of red mistletoe was discussed with David Carlton (Conservation Services Manager, Napier office). He reported that it is plentiful in the district, and was of the view that the loss of the one plant seen was not a significant issue. He noted that there are plenty of host plants in the Land Exchange Site (the Smedley Block), so if it isn't discovered after a few years of the proposed possum management programme, there is always the option of inoculating some host plants at a later date.

Long-tailed bats occur throughout the district; however loss of a maternity roost at the Dutch Creek confluence with Makaroro River could affect that colony. Mitigation measures have been proposed which include creation of new roost sites and measures to prevent damage to the tall podocarps during the bat breeding season. The Smedley Exchange Block contains several large emergent podocarps, which may be suitable as bat roosts. If proposed surveys do reveal bat roost trees outside the proposed exchange area on Smedley Station, it is believed it would be appropriate to provide some sort of protection for these trees as well.

Suitability for conservation purpose assessment

The habitat and species values in the Land Revocation Site are marginally better than the values in the Land Exchange Site (the Smedley Block), but not all habitats are duplicated in the Smedley Block. River bed will be lost.

However, the similar forest habitat in the Smedley Block is 5.5 times the size of the area that will be inundated in Land Revocation Site (part of Ruahine conservation park), and there will be similar habitats to that which will be lost, found elsewhere in Ruahine conservation park.

The Smedley Block is also contiguous with Gwavas Conservation Area, whereas 8 ha of the 22 ha of Ruahine Forest Park is an outlier separated from the main block by a pine plantation. This close linking of the Smedley Exchange Block with the Gwavas Conservation Area, will improve overall management.

For these reasons the Science and Capability team reviewer considered that the proposed exchange **does reflect an enhancement of conservation values** from an ecological point of view.

- 6.4 Equality of exchange: the parties (DOC & the Company) have exchanged correspondence which seeks to confirm there is no inequality of exchange to be addressed. This means that there is nil monetary compensation on land value to be paid by either party.
- 6.5 Payment of costs: DOC is seeking to recover from the Company all the costs of its processes to seek consent of the Minister to the land exchange. The estimate of DOC's processing costs has been supplied to the Company, which it has agreed to meet. Fencing of the Smedley Block is not envisaged, since the balance of the land which will abut the formed lake will be owned by the Company. Survey costs to define the exchange parcels is a matter for further negotiation with the Company, since a sharing of survey costs could be considered dependent on the benefits to each party of the exchange.
- 6.6 Marginal strips: the title to the stewardship land being acquired by the Company will be subject to part 4A of the Conservation Act 1987. A lake over 8 ha is a qualifying waterway in terms of the Act in those situations where the normal bed of the lake is not subject to control by artificial means. However in this Site, the bed is subject to control by artificial means which will affect the location and width of any marginal strips. If the plan of the exchange area adopts the margin of the lakebed as the boundary there will be no area that will become marginal strip.
- 6.7 **The second part of the proposal** comprises two components: the first of declaring the land held for conservation purposes, and the second of forming an intention to revoke part of the Ruahine conservation park status, this for the purpose of facilitating and being conditional on the land exchange.
- 6.8 For the first component, the two processes are either by using section 7 (1) or section 7 (1A) of the Act. As noted in item 3.4, by using section 7(1A) it could be argued that it becomes a stewardship area, rather than conservation park, and therefore the revocation of the conservation park status so that an exchange could be considered, would not be necessary. Despite enabling a simpler exchange process, using section 7(1A) is not recommended because of concerns that it may be seen as a means of avoiding public consultation on the effective disposal by exchange of conservation park land.

Former Minister Hon Nick Smith was supportive of public consultation of the use of forest park land for a land exchange, and the current Minister the Honourable Maggie Barry supported public involvement in these processes.

Use of section 7 (1) is preferred for the reasons elaborated on in clause 3.4. Freeing the deeming provisions is afforded by section 61 of the Act, which then invokes conservation park status and revocation procedures, as noted in item 3.3.

- 6.9 The two parts of Ruahine conservation park to be revoked for the purposes of the land exchange, comprise the Makaroro River outlier (8 ha) and the Dutch

Creek parcel (14 ha) which total 22 hectares. Forming the intention to revoke this status is predicated on a decision that the land exchange should be progressed, since that is the only reason that revocation would proceed.

- 6.10 If you agree that section 7(1) is the preferred mechanism, **the third part of the proposal** is to decide whether for the public notice component, the subject-matter is of national interest, or of regional or local interest.
The RWSS project requires 22 ha of Conservation Park to be revoked and held for conservation purposes for the proposed land exchange purpose. The RWSS project did engender significant public interest from a national perspective, with its RMA processes elevated to the EPA for consideration and decision. Some of the EPA decisions have now been appealed to the High Court.

Conservation parks are not considered by the public to be held in the same league as National Parks however conservation parks do contribute to a network of sites where natural and historic resources are protected and subject to these purposes are managed to facilitate public recreation and enjoyment.

- 6.11 If, on the other hand you prefer to use s7(1A), the land becomes stewardship area and is automatically available for exchange without any requirement to publicly notify the exchange.

7. Cost implications

- 7.1 DOC policy under s.60A, s60B & s.60C Conservation Act is to recover fair and reasonable costs incurred by the Department in considering whether or not to grant any statutory consent, regardless of whether or not the decision is to approve or decline (see QD code: VC1011).
- 7.2 DOC has proposed to the Company that it meet the full amount of DOC's costs in processing the requested consents, which as estimated amounts to \$32,736 plus GST. The company is yet to confirm its acceptance of meeting DOC's costs.

8. Consultation

- 8.1 If you follow the section 7(1) route the public notification process for revocation of conservation park status should elucidate views of interest groups which have been involved in the RWSS to date but only views on the change of status will be relevant considerations for the purposes of the Conservation Act. The department will, however, also accept comments on the proposed exchange. The views of the Wellington Conservation Board will also be sought on the exchange, as provided for in section 16A (2) of the Act.
- 8.2 Specific interest groups (e.g. Fish & Game, Forest & Bird) will be advised of the public notification processes involved in this matter.

9. Treaty of Waitangi

- 9.1 Consultation with Iwi groups claiming tangata whenua status in the location of the Ruahine conservation park to be revoked, will take place in the period commencing from 13 December 2014, being the date of placement of the public notice.
- 9.2 In terms of the RWSS, the Company in 2009 arranged for cultural impact reports on 8 potential water storage dam sites; the third and last report focused on a storage dam in the Makaroro River. The company then in 2012 formed a Mana Whenua Working Party, which provided input to the Company's processes prior to the application for RMA consents.

10. Public Notice

- 10.1 As required-see attached Notice (Appendix 1).

11. Other enquiries

- 11.1 The Conservation Services Manager of the Napier Office has been involved with the RWSS since near inception. Conservation advice has been provided which is supportive of protection of natural and historic resources in areas subject to the RWSS.
- 11.2 No other enquiries are considered necessary.

12. Attachments

- 12.1 See attached maps which show:
- The Land Revocation Site
 - The Land Exchange Site.

13. Land and Status

- 13.1 The conservation park involved is legally described as Pt Ngamoko Maori Block, section 4 and Pt Sec 5; it was crown land, then set apart as state forest park, by NZ *Gazette* 1976 page 69- 71.
- 13.2 On commencement of the Conservation Act 1987, the forest park land was deemed to be a conservation park, pending it being declared to be held for conservation purposes by section 7 (1) of the Act, and further classified, or section 7(1A).

14. Conclusion

14.1 There is sufficient merit in the land exchange proceeding because of the conclusions reached by DOC's Science and Capability team that there would be an enhancement of conservation values if the exchange were to be effected. In addition, while the Land Exchange Site (the Smedley Block) has suffered from intermittent and extensive stock grazing, there is very high potential for restoration of a healthy and strong understory beneath the large areas of natural forest to be reserved by this exchange.

The seven fold increase in area brought about by the addition of the Smedley Block to be managed as public conservation land will promote the purposes of the Act, by the inclusion of a much larger area of land and it being more sustainable (due to edge effects and bulk) in the longer term.

14.2 If the land exchange is progressed the second part of the proposal relies on the deemed conservation status being confirmed by a declaration under section 7(1). Once that occurs revocation of part of the conservation park status will be necessary to give effect to the exchange proposal. The intention to revoke this status is recommended in this submission to be agreed. Involvement of the public in these processes is supported by the Minister.

The alternative route for declaring the land being held for conservation purposes under section 7(1A) of the Act is not recommended because of concerns that it may be seen as a means of avoiding public consultation on the effective disposal by exchange of conservation park land.

14.3 In respect of the public notice component of the revocation, the RWSS is a project which lies in the focus of a national interest issue. While revocation of part of a conservation park could be seen as of regional interest, due to the linkage of the DOC land to the RWSS, and the land exchange on which the RWSS is dependent, it is recommended that public notice should follow the national public notice provisions of the Conservation Act.

15. Comments

17.1 Prepared by: David Bishop



17.2 Peer reviewers: (Graeme Goodwin/Guy Kerrison)

On the basis of the facts we support the proposal!

17.3 Chief Legal Adviser: (Jonty Somers)

On the basis of the facts presented and the edits now made, I support the proposal.

16. Recommendation/Decision

It is recommended that you:

1	Agree to form a view that a land exchange of part of Ruahine Conservation Park for private land, should be progressed; and, if so	Approve/ Decline
2	EITHER Agree that the process route to declare the land is held for conservation purposes, is by section 7 (1) of the Act; OR Agree that the process route to declare the land is held for conservation purposes, is by section 7(1A) of the Act	Approve/ Decline Approve/ Decline
3	Note that if you follow the section 7(1) route then, subsequent to the public notice period and if it is agreed to continue with the land exchange, there will be a submission to the DDG Conservation Partnerships declaring the land is held for conservation purposes;	Noted Yes
4	Agree to form an intention to revoke part of the Ruahine conservation park status to facilitate (and be conditional on) the land exchange;	Approve/ Decline
5	Agree if you follow the section 7(1) route that public notification of the intention to revoke conservation park status for the RWSS purpose is a national issue;	Approve/ Decline
6	Agree if you follow the section (1) route to give public notice of the intention to revoke conservation park status, by placement of the attached Public Notice (Appendix 1).	Approve/ Decline

Approved by Geoff Ensor

Geoff Ensor
Deputy Director-General, Conservation Partnerships (acting)

Date 11.12.20 14

Appendix 1

Change of status of Conservation Park

Pursuant to Section 18 of the Conservation Act 1987 the Department of Conservation (DOC) advises that it is intended to revoke the conservation park status over 22 hectares of Ruahine Conservation Park land situated near the Wakarara Road (south) entrance to the park.

The land is then to be held for conservation purposes to enable a land exchange to be considered. The land exchange involves the 22 hectares of former park for 146 hectares approximately of native forest land and some grassland currently managed by Smedley Station and is to enable the former park area to be inundated as part of the Ruataniwha Water Storage Scheme.

The area of conservation park land to be revoked contains approximately 10.5 ha of black beech forest, 10 ha of native shrub land comprising small leaved broadleaves with some podocarps; with exotics-willow and larch-, a braided river channel, and a small wetland making up the balance.

The Smedley exchange land is sited adjacent to Gwavas Conservation Area and forms a natural addition of land for conservation purposes. It contains 41 ha of black beech forest some with emergent podocarps, 50 ha of small leaved shrub species, and a further 32 ha of black beech and small leaved tree/land species. Some 23 ha of bracken grassland is included in the exchange.

At each location, fauna species including long tailed bats are similarly found, while one red mistletoe has been found on beech within the park. Red mistletoe is commonly found throughout the park.

Any person or organisation wishing to make a written submission or objection in respect of this change of status is invited to send their submission or objection to DOC, which must be received at the address listed below, before 4 March 2015. Submissions or objections must be in relation to the change of status in accordance with the Conservation Act although the department may also receive comments on the exchange proposal.

Submitters must also state whether they wish to be heard in support of their submission. Submissions provided to the Department may be required to be released under the Official Information Act. If you are making a submission as an individual the department will consider removing your personal details if you so request in your submission.

Further information is available from DOC's website (<http://www.doc.govt.nz/getting-involved/consultations>) or at the following address.

Change of Status
Department of Conservation
P. O. Box 10420
WELLINGTON 6143

Geoff Ensor
Acting Deputy Director-General, Conservation Partnerships