Update Report

Investigating the future of conservation:

The case of stewardship land

April 2015



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In August 2013, the Parliamentary Commissioner for the Environment released a report titled *Investigating the future of conservation: The case of stewardship land*. This report examined the origin of stewardship land, its current status, and the policies and regulations that guide its management.

'Stewardship land' is a category of public land that was established in 1987 with the creation of the Department of Conservation (DOC). As part of a reorganisation of Crown land, the Government transferred responsibility for large areas of land which were not seen to be commercially valuable to the new department. The Department was to act as steward of the land until its conservation value was assessed and its destiny determined.

Today about one third of the conservation estate is categorised as 'stewardship land'. Nearly three decades after the creation of the Department of Conservation, the great majority of stewardship land has not been assessed and either reclassified into other categories of conservation land or sold. It remains in what has been described as a "statutory holding pen".1

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

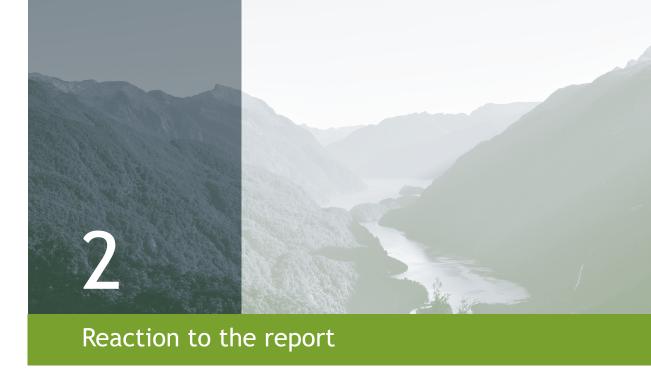
First, areas of stewardship land can be swapped for areas of private land, subject only to the vague proviso that the land swap will "enhance the conservation values" of the conservation estate. The Commissioner's report described two controversial land swaps that illustrate the inadequacy of this law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

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

The relatively weak legal protection of stewardship land quite naturally signals to the private sector that it is 'open for business'.

However, some areas of stewardship land are of high conservation value. For instance, over a quarter of the land identified by the Department of Conservation as having high biodiversity value is stewardship land. There is an urgent need to identify such high value areas and reclassify them to improve their legal protection.

At the end of the report, the Commissioner made two recommendations to the Minister of Conservation – one on improving land swap decisions and the other on identifying and reclassifying high value stewardship land.



The report was widely welcomed across the political spectrum and by various groups with an interest in conservation, although not by all.

Following its release, the Commissioner presented the report to Parliament's Local Government and Environment Committee. The Committee reported to Parliament: "We appreciate the work carried out by the commissioner and endorse the recommendations of this report." ²

The Minister of Conservation, Hon Dr Nick Smith, said the report "highlighted a number of issues relating to stewardship land and made helpful suggestions on how these issues can be addressed" ³

The New Zealand Conservation Authority, an independent advisory body to the Minister and the Department of Conservation, welcomed and supported the report. The Chair, Dr Kay Booth, expressed hope that the report would "generate action by the Department to secure appropriate protection for stewardship land".⁴

Regional advisory boards were similarly welcoming. The Canterbury Aoraki Conservation Board offered their "whole hearted support" to the Commissioner's "simple, sensible, and uncontroversial" recommendations.⁵ The Chair of the Otago Conservation Board said he hoped the public would urge the Department to prioritise sorting out high value stewardship land: "It needs to be locked into department forward planning. This is a really good opportunity."⁶

The Maori Party expressed concern that the conservation estate can be "commercialised by stealth". Co-leaders Te Ururoa Flavell and Tariana Turia urged the Government "to take this opportunity to ensure that iwi have an input into how stewardship land and other categories of conservation land are utilised."⁷

The Green Party's conservation spokesperson Eugenie Sage said the report "highlights that incredibly precious conservation land, classed as stewardship land, isn't getting the protection it deserves", and that the Government is "missing an opportunity to expand existing national parks and establish several new ones".8

The mining industry's advocacy body Straterra was unconvinced. "Reclassifying stewardship land is unnecessary because the land is already protected for conservation", said CEO Chris Baker. "The introduction of statutory land management planning (in 1990), and the general policy for conservation (in 2005), has removed any need for reclassifying stewardship land because the conservation focus is on the values present, not what the land is called".9

In contrast, farming industry advocacy group Federated Farmers was supportive. In a 2014 newspaper column, Board member Katie Milne and policy adviser Bob Douglas wrote "it is high time we progressed some of the 1987 intentions that have been ignored, particularly in relation to those areas of stewardship land that have little or no conservation value. The result is that instead of concentrating on areas worthy of protection, DOC is using some of its sorely stretched resources administering 'land covered in rank pasture grasses with very few natural or historic values'". They hoped for "a common sense solution that would benefit both conservation and production". ¹⁰

Conservation groups also welcomed the report. Forest & Bird's Advocacy Manager Kevin Hackwell said that "The PCE's recommendations are long overdue. There are a host of other examples of how community groups and businesses would have saved huge amounts of money and time if those stewardship lands with high natural values had been given the appropriate protection." 11

The Federated Mountain Clubs (FMC) Acting President Peter Wilson said that "There is no question that the Minister of Conservation and the incoming Director-General of Conservation will have to work carefully through Dr Wright's recommendations". ¹² In June 2014, FMC launched a campaign to protect New Zealand's "Forgotten Lands", identifying eight areas of stewardship land in need of better protection. President Robin McNeil said New Zealanders expected these "magnificent mountains, forests and coastal areas to be safe", so "politicians need to listen." ¹³

In a 2014 book, *New Zealand's Wilderness Heritage*, Les Molloy wrote that large areas of stewardship land needed to be added to national or conservation parks, but "it remains to be seen how urgently DOC addresses this long-standing anomaly." ¹⁴



Responses to the Commissioner's recommendations

The Commissioner made two recommendations regarding stewardship land to the Minister of Conservation.

Recommendation 1: Swapping stewardship land

The Minister of Conservation:

- a) seeks advice from the New Zealand Conservation Authority to provide guidance on the principles and processes that should be used when making decisions on net conservation benefit; and, in the meantime,
- b) takes direct responsibility for any decision to swap stewardship land that has significant conservation value.

The land swap provision in the Conservation Act was intended to provide a simple way for the Department of Conservation to adjust boundaries and rationalise small areas of conservation land. However, it has been used to swap large areas of land with significant conservation value, creating controversy. Much better guidance is needed on both the principles and processes governing land swaps and other decisions that rely on an assessment of 'net conservation benefit'.

Hon Dr Nick Smith, the Minister of Conservation at the time the Commissioner's report was released, responded to the first part of this recommendation in April 2014 by asking the Department to develop guidance on applying the concept of net conservation benefit for discussion with the NZ Conservation Authority. He would then "consider how it should be applied either through a change to the legislation or General Policy (or both)".15

Following the 2014 General Election, the conservation portfolio was reassigned to Hon Maggie Barry. In March 2015, she stated her intent "to write to the NZ Conservation Authority in the near future seeking its advice on the issues involved in making decisions on net conservation benefit".¹⁶

The NZ Conservation Authority indicated that it was very willing to advise the Minister on issues associated with stewardship land. 17 However, it has taken until now – a year and a half on – for the Authority to be asked for advice.

In response to the second part of the recommendation, Hon Dr Nick Smith assured the Commissioner that he would "take direct responsibility for any decision to swap stewardship land that has significant conservation values." ¹⁸ Indeed, he has taken direct responsibility for decisions in similar situations, notably when he granted an access arrangement for a mine on Denniston Plateau and when he declined a concession for the construction of a monorail in Fiordland.

The current Minister of Conservation assured the Commissioner in March 2015 that she will take direct responsibility for decisions involving swaps of stewardship land, "where there are 'sensitive conservation values' or political, social or economic or Treaty of Waitangi implications of such a scale or of such national interest as to warrant it." ¹⁹

Recommendation 2: Reclassifying high value stewardship land

The Minister of Conservation instruct the Department of Conservation to identify areas of stewardship land that are clearly of significant conservation value, and reclassify them in accordance with that value.

Because its legal protection is relatively weak, it is often assumed that the conservation value of stewardship land is low. That is not the case. Some areas of stewardship land will have high conservation value and should be reclassified accordingly; other areas will have little or no conservation value and should be considered for exchange or disposal.

Shortly after the release of the Commissioner's report, the Government announced a proposal for a new conservation park on Great Barrier Island in Auckland's Hauraki Gulf, to be created predominantly from stewardship land.²⁰ The creation of the Aotea Conservation Park was confirmed by the Minister, Hon Dr Nick Smith, in July 2014.²¹

In his April 2014 letter to the Commissioner, Hon Dr Nick Smith wrote: "I have asked the Department of Conservation to provide me a report by the end of June on priorities for reclassifying stewardship land with significant conservation value... Once these priorities have been confirmed, a timetable for reclassifying these areas can be prepared." ²² This advice was provided to the Minister in October 2014. ²³

In July 2014, the Associate Minister of Conservation, Hon Nicky Wagner, wrote to Conservation Boards seeking their views on priorities for reclassification of stewardship land.²⁴

During the consultation on new Conservation Management Strategies for Canterbury, Otago and Southland Murihiku conservancies, members of the public responded to the Commissioner's report by proposing priorities for reclassification to the Department.²⁵

In its briefing to the incoming Minister of Conservation, Hon Maggie Barry, in October 2014, the Department listed three areas of stewardship land as "good candidates for review and reclassification", and the criteria used to select them. ²⁶ These three are in the St James-Poplars area in North Canterbury, the Mokihinui area in the Buller District, and the Te Wāhipounamu South West New Zealand World Heritage Area. ²⁷

The Department of Conservation advised that "two of these candidate areas could be reviewed and reclassified over the next 18 to 30 months. The longer timeframe refers to the very large World Heritage Area package." ²⁸

In her March 2015 letter to the Commissioner, Hon Maggie Barry stated her intent to seek the views of the NZ Conservation Authority and relevant iwi on these three areas of stewardship land. The Minister added that she hoped to announce "some further review and classification processes during the year". She also noted that the Department has identified 15 areas of land purchased by the Nature Heritage Fund that are priorities for review and reclassification.



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

It was heartening to see the swift response to the report with the proposal and confirmation of Aotea Conservation Park on Great Barrier Island. This illustrates that review and reclassification of stewardship land need not be a long drawn-out process.

Hopefully, review and reclassification of the St James-Poplars area and the Mokihinui area will now also be done reasonably quickly. Dealing with the vast Te Wāhipounamu South West New Zealand World Heritage Area that contains over 20% of all stewardship land will understandably take longer.

It is also encouraging that 15 areas of land purchased by the Nature Heritage Fund have been prioritised for review and reclassification. Areas of land purchased by the Nature Heritage Fund for addition to the conservation estate have been purchased because they have high conservation value; leaving them as stewardship land has not given them the legal protection they deserve.

The beginnings of a longer-term strategy for review of stewardship land are becoming evident now that priorities for potential reclassification have been identified. However, greater transparency is needed. Key elements of the strategy, such as the criteria being used and the timeframe envisaged, are not readily accessible on the Department's website.

Not all stewardship land will be worthy of reclassification to a higher level of legal protection. Where this is obvious, the process for its sale should be made as simple as possible.

The proposal from Federated Farmers to simplify land swaps has merit and is in line with the original purposes of allowing boundary adjustments and rationalising small areas of conservation land. The assessment of such opportunities should be part of the review strategy.

It is pleasing that the Minister of Conservation has followed her predecessor in committing to taking personal responsibility for significant land swaps. Similarly, she has also undertaken to seek the advice of the New Zealand Conservation Authority on improving the principles and processes that should be used when decisions are made applying the concept of net conservation benefit.

However, it is disappointing that this advice has only now been sought. Until sound principles and processes have been adopted, the public cannot be confident that significant swaps of stewardship land will deliver real benefit for conservation.

In the 2013 report, two particularly controversial land swap proposals were described. As this update report was being written, a third land swap proposal is attracting controversy and, regardless of the decision that is made, may be appealed to the High Court. This is the proposal for a land swap to enable the construction of the proposed Ruataniwha Dam in Hawke's Bay.

In this case the area of conservation land to be swapped is not currently stewardship land – it is part of Ruahine Forest Park. Under the Conservation Act, only stewardship land can be swapped, so the proposal requires two decisions to proceed. First the Park status for the area concerned would need to be revoked so the land becomes stewardship land. Then the stewardship land would be need to be swapped for other land.

The Commissioner has not investigated the merits of the proposed revocation or land swap. She has not taken a view on the proposal, or on any other land swaps that the Department may have considered since the original report was published. However, she is very concerned that such decisions are being made under law and policy that remains inadequate.²⁹

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

The positive response to the report from Ministers and the Department's first steps to implement the recommendations are encouraging. To build on this the Department needs to 'pick up the pace' on its review of stewardship land. Further, the review strategy, including criteria and timelines, should be made clear and accessible to the public by putting it on the Department's website.

Notes

- 1 Woollaston P. 2011. Origins of the legislation and policy relating to minerals in conservation areas. *Policy Quarterly*, 7 (1), p4.
- 2 Report of the Local Government and Environment Committee. October 2013. Report from the Parliamentary Commissioner for the Environment, Investigating the future of conservation: The case of stewardship land.
- 3 Hon Dr Nick Smith, letter to the Parliamentary Commissioner for the Environment. 9 April 2014.
- 4 *NZCA welcomes PCE report on stewardship land.* NZCA media release. 21 August 2013. http://www.doc.govt.nz/about-doc/statutory-and-advisory-bodies/nz-conservation-authority/media-releases/nzca-welcomes-pce-report-on-stewardship-land/
- David Round, Canterbury Aoraki Conservation Board, letter to the Parliamentary Commissioner for the Environment, 17 October 2013; Confirmed minutes of a meeting of the Canterbury Aoraki Conservation Board held on 20th September 2013. http://www.doc.govt.nz/Documents/gettinginvolved/nz-conservation-authority-and-boards/conservation-boards-by-region/ canterbury-aoraki/Minutes/canterbury-aoraki-conservation-board-minutessept-2013.pdf
- 6 *Call to fully protect valued land*. Otago Daily Times. 24 August 2013. http://www.odt.co.nz/news/dunedin/270178/call-fully-protect-valued-land
- 7 *Call for iwi to be fully involved on stewardship lands*. Maori Party Press Release. 21 August 2013. http://www.scoop.co.nz/stories/PA1308/S00352/call-for-iwi-to-be-fully-involved-on-stewardship-lands.htm
- 8 Government missing opportunity to expand national parks. Green Party Press Release. 21 August 2013. https://home.greens.org.nz/press-releases/government-missing-opportunity-expand-national-parks
- 9 Focus should be on conservation, not reclassifying land. Straterra Media Release. 21 August 2013. http://www.scoop.co.nz/stories/BU1308/S00789/ focus-should-be-on-conservation-not-reclassifying-land.htm
- 10 One possible solution, suggested by Federated Farmers, is to make it a simple process for landowners who have sites on their properties that are thought worthy of protection, to exchange these areas for DOC land that has little or no conservation value. Federated Farmers added that they were in the early stages of consulting with stakeholders on the viability of this proposal. *Time to move on*. The Northern Advocate. 15 November 2014. http://www.nzherald.co.nz/northern-advocate/rural/news/article.cfm?c_ id=1503445&objectid=11353738
- 11 PCE's call for certainty over DOC land overdue. Forest & Bird Press Release.
 21 August 2013. http://www.forestandbird.org.nz/what-we-do/publications/media-release/pce%E2%80%99s-call-certainty-over-doc-land-overdue. See also No Mans' Land. Forest and Bird magazine. 7 November 2013. http://www.forestandbird.org.nz/what-we-do/publications/forest-bird-magazine-article/no-mans-land

- 12 Mountain Clubs Parliamentary Commissioner Recommendations. Federated Mountain Clubs Press Release. 21 August 2013. http://www.scoop.co.nz/stories/PO1308/S00279/mountain-clubs-parliamentary-commissioner-recommendations.htm
- 13 Trampers call for "Forgotten Lands" to be protected. Federated Mountain Clubs press release. 15 June 2014. http://www.scoop.co.nz/stories/PO1406/S00199/trampers-call-for-forgotten-lands-to-be-protected.htm The eight areas include four in the North Island and four in the South Island: Coromandel Peninsula, Whareorino, Rangataua Forest, Waitotara Forest, Mokihinui Valley, St James Conservation Area, The Remarkables, Te Wāhipounamu World Heritage Area. See http://www.fmc.org.nz/4gotn/
- 14 New Zealand's Wildnerness Heritage: An interview with author Les Molloy, Federated Mountain Club's Bulletin, March 2015, p32, (in this quote he was referring to St James Station and Te Wāhipounamu South West World Heritage area).
- 15 Hon Dr Nick Smith, letter to the Parliamentary Commissioner for the Environment. 9 April 2014.
- 16 Hon Maggie Barry, letter to the Parliamentary Commissioner for the Environment. 9 March 2015. The issues that the Minister intends to seek advice on include:
- how to consistently assess the values of the land to be swapped;
- whether the calculation of a net conservation benefit should be restricted to the gains and losses within the conservation estate managed by DOC, or whether it should include all conservation gains and losses;
- whether the public should be consulted on significant land swaps.
- 17 NZCA welcomes PCE report on stewardship land. DOC media release. 21 August 2014. http://www.doc.govt.nz/about-doc/statutory-and-advisory-bodies/nz-conservation-authority/media-releases/nzca-welcomes-pce-report-on-stewardship-land/
- 18 Hon Dr Nick Smith, letter to the Parliamentary Commissioner for the Environment. 9 April 2014.
- 19 Hon Maggie Barry, letter to the Parliamentary Commissioner for the Environment. 9 March 2015
- 20 Hon Nick Smith, New Conservation Park and pest-free sanctuary proposed in Hauraki Gulf, 8 September 2013. http://www.beehive.govt.nz/release/new-conservation-park-and-pest-free-sanctuary-proposed-hauraki-gulf
- 21 New Aotea Park Approved. National Party media release. 20 July 2014. https://www.national.org.nz/news/news/media-releases/detail/2014/07/20/new-aotea-conservation-park-approved
- 22 Hon Dr Nick Smith, letter to the Parliamentary Commissioner for the Environment. 9 April 2014.
- 23 DOC, pers comm, April 2015.
- 24 DOC, pers comm, March 2015

- 25 Department of Conservation. November 2014. Common Issues report -Discussion of issues raised by submitters that were common across the Draft Canterbury, Otago and Southland Murihiku Conservation Management Strategies 2013, pp. 192-195. http://www.doc.govt.nz/Documents/getting-involved/consultations/cms/south-island-cms-combined-common-issues-report. pdf
- 26 Hon Maggie Barry, letter to the Parliamentary Commissioner for the Environment. 9 March 2015. The criteria used are as follows:
- Conservation Management Strategy and National Park Management Plans, significant previous proposals and some other authoritative sources.
- Nature Heritage Fund purchases identified as priorities by the Fund.
- Significant conservation values based on analysis of the Department's priority setting systems for management of natural heritage and recreation.
- The desirability of avoiding complicating Treaty negotiations and recent settlements. This effectively rules out immediate action in the north Island.
- Avoiding conflict with other Crown interests, such as mineral potential and tenure review.
- Economies of scale, e.g., geographic packages to streamline consultation, large land parcels to reduce the number of statutory actions required.
- 27 Briefing to the incoming Minister of Conservation. October 2014. Department of Conservation. p 11. http://www.doc.govt.nz/Documents/about-doc/role/publications/bim-2014/briefing-to-incoming-minister-2014.pdf
- 28 Hon Maggie Barry, letter to the Parliamentary Commissioner for the Environment. 9 March 2015
- 29 The law and policy for revoking 'special protection' classes of conservation land shares a number of similarities to the law and policy governing land swaps. In particular, the legal test lacks criteria to guide the decision-maker, the Conservation General Policy provides little additional guidance, and the conservation value of the river cannot be considered where the riverbed is administered by Land Information NZ rather than the Department of Conservation. However, a revocation does require public consultation, whereas a landswap only requires that the local Conservation Board be consulted.