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Submission to Department of Conservation on Stewardship land in Aotearoa New Zealand Options to streamline processes for reclassification and disposal

From the New Zealand Walking Access Commission Ara Hiko Aotearoa

Introduction

The New Zealand Walking Access Commission Ara Hiko Aotearoa (the Commission) is the Crown agent responsible for providing leadership on outdoor access issues.

Our role is to advise on and advocate for free, certain, enduring, and practical access to the outdoors.

We administer a national strategy on outdoor access, including tracks and trails. We map outdoor access, provide information to the public, oversee a code of responsible conduct in the outdoors, help resolve access issues and negotiate new access.

Our governing piece of legislation is the *Walking Access Act 2008*.

Summary of key submission points

We:

- Support a more efficient process for reclassification.
- Acknowledge that legislation will need to be reviewed to provide for a more efficient process.

However, we expect that:

- Legislation will not be weakened as it relates to conservation values and purposes, now and for future generations.
- The review process will provide absolute protection of public access and recreational enjoyment to and through the land, including natural linkages and enduring practical access to public conservation lands and waters, rivers, lakes or the coast.
- Departmental staff will provide comment on the public access values of every parcel of stewardship land they assess. In the case of any future proposal to dispose of the land, this comment to the panel will be available in the public consultation phase.
- The criteria provided by the Department to the panels will include public access. As with any proposed stopping of legal roads, the public interest in access and links across the countryside

now and in the future, no matter how small or remote, must outweigh any case for disposal and permanent loss of that interest and opportunity.

- Assessment of public access by the Department and panels will consider future needs, for example, where current public access including tracks and trails may be lost where they may be over privately owned land, where rivers or coastlines may erode, where slips could occur, where new recreational activities seek access, and so on.

The Commission offers its expertise on public access to the Department, the panels, and the Minister of Conservation.

Principles

In compiling our submission, we considered the following:

- the importance of public conservation land classified as stewardship land for access to the outdoors. This access can connect to or through that parcel of land. It can be formed, marked or informal routes. It can include more random access for recreational activities such as hunting or fishing,
- the Commission's role as the government agency responsible for advocacy on public outdoor access,
- our work with groups and individuals with outdoor access interests and aspirations,
- the changing and evolving uses for outdoor spaces and how people recreate, and
- climate change impacts on access, including increasing coastal inundation, erosion, slips and so on.

Our submission

1. In respect to the above considerations and concerning the current legislative framework requiring public access to and across stewardship land, we offer the following comments.

Conservation Act 1987

Section 2, Interpretation

“**conservation** means the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and *recreational enjoyment by the public, and safeguarding the options of future generations*”

(Italics added for emphasis.)

The Commission notes that conservation and recreational values of adjacent conservation land parcels — and access to them — are essential to the consideration of disposal of stewardship areas.

Section 6, Functions of Department

The functions of the Department are to administer the Act to manage for conservation purposes all land held under the Act, to promote the benefits to present and future generations of the conservation of natural and historic resources, and to foster the use of natural and historic resources for recreation among other things.

The Commission notes the reference to conservation purposes, recreation, and the consideration of the needs of future generations and links that to our purpose under the Walking Access Act 2008. That purpose is to provide the New Zealand public with free, certain, practical, and enduring access to the outdoors. This includes access around the coast and lakes, along rivers, and to public resources, usually public conservation land, so that the public can enjoy the outdoors.

Section 26, Disposal of stewardship areas

“The Minister shall not dispose of any land or any interest in any land adjacent to —

(a) any conservation area that is not a stewardship area; or

(b) land administered by the Department under some enactment other than this Act, —

unless satisfied that its retention and continued management as a stewardship area would not materially enhance the conservation or recreational values of the adjacent conservation area or land or, in the case of any marginal strip, of the adjacent water, or public access to it.”

The Commission notes that public access to other conservation areas may be an important function of any parcel of stewardship land. Such values cannot be overstated and must not be undermined or lost.

In summary, the Conservation Act requires the protection of public access for access through or within stewardship land, now and for future generations, including circumstances where there is no current public access but where it may be required in future.

The Commission expects that any improvement in the efficiency of the review of stewardship land process will not diminish protection of enduring public access.

Conservation General Policy

Section 6, Changes to Public Conservation Lands

6 (c) “Land disposal may be considered where the legislation to which it is subject allows for disposal and the land has no, or very low, conservation values.”

6 (d) “Subject to policy 6 (c), land disposal should not be undertaken where the land in question either: i. has international, national, or regional significance; or ii. is important for the survival of any threatened indigenous species; or iii. represents a habitat or ecosystem that is under-represented in public

conservation lands or has the potential to be restored to improve the representation of habitats or ecosystems that are under-represented in public conservation lands; or iv. improves the natural functioning or integrity of places; or v. *improves the amenity or utility of places*; or vi. *improves the natural linkages between places*; or vii. *secures practical walking access to public conservation lands and waters, rivers, lakes or the coast.*”

(Italics added for emphasis.)

The Commission notes that the Conservation General Policy clearly states that land disposal should not happen where the land improves amenity or natural linkages or secures public access.

2. Further comments on the review process

The Commission notes that the Terms of Reference for national panels means that those panels can only consider recommendations for disposals where no, or low conservation values are present. Panels are also required to consider a ‘landscape’ approach to the reclassification work and all conservation values, including cultural, historic, landscape and recreational values.

In her introduction to the Discussion Document, Minister Allan explains that “Public conservation land allows New Zealanders to connect with nature” and that she aims to “simplify the reclassification process so that land with conservation value is identified and managed appropriately, to ensure it is protected for its natural and cultural heritage and safeguarded for future generations to enjoy. Land with very low or no conservation value can then be made available for other uses where appropriate.”

The Commission expects that any improvement in the efficiency of the review of stewardship land process will not diminish the protection of enduring public access.

The Commission contends that:

- public access needs to be an integral component when considering conservation values,
- conservation values could therefore be high if there are any public access needs, whether those needs are now or in the future and including those yet to be unidentified,
- enduring public access needs to be safeguarded for future generations to enjoy, and
- such public access needs may be determined more readily through a landscape approach.

The Commission acknowledges that, in some cases, public access may be important and valued, but other conservation values may be low or non-existent. Alternative approaches to the protection of enduring access may be appropriate, such as creating public access easements before disposal.

The Commission acknowledges the expertise of individual members of the “national panels of experts”. However, those experts cannot be experts in every aspect of conservation purposes and values, and there is a risk of inadequate analysis of public access. The Commission offers its expertise regarding public access during the review process to minimise the risk that recommendations are made to dispose

of stewardship land where public access opportunities fail to be identified by either Departmental staff or members of the panel.

The Commission notes that access arrangements for mining are excluded from the Discussion Document but are mentioned in the Terms of Reference for national panels. Other than the stated intention of the Government to strengthen protection for public conservation land (“No new mines on conservation land signalled”, 8 November 2017), the approach to be taken through the reclassification process is unclear, even murky concerning existing or new applications for access arrangements received before the reclassification process is complete.

To safeguard enduring public access, it is critical that we prioritise current and future recreation and access needs when considering any new access arrangement or recommendation for disposal based on mining aspirations.

Again, as with public roads and the public rights to pass and repass, public conservation land enshrines public access, access into and across land managed by the Department of Conservation for the public. We must maintain the public interest, and any consideration of new mines or disposal for mining must consider and protect enduring public access and avoid breaking up contiguous areas of public conservation land and ecosystems.

3. In relation to the questions posed in the Discussion Document, we offer the following comments.

Objectives

“Through this review, we are seeking to meet the following objectives.

- enabling a more efficient process for reclassifying stewardship land
- delivering clarity for everyone on the status of the land, the appropriate level of protection/use and the reclassification process
- ensuring DOC meets its wider obligations under conservation legislation and the Conservation General Policy (such as section 4 of the Conservation Act 1987)
- ensuring conservation values are adequately protected
- enabling the national panels to carry out their work efficiently and effectively, to make recommendations to the Minister of Conservation.”

Q1 Do you agree with the objectives listed above?

- Yes, we agree that a more efficient process for reclassification is required. However, such efficiencies must not be at the expense of due and proper — and expert — consideration of public access.
- Yes, we support the objective that the Department meets its wider obligations under conservation legislation and the Conservation General Policy, as we have noted above with a more specific reference to public access.

- Yes, we support the objective that conservation values are adequately protected. We wish to emphasise the importance of public access as a critical component of those conservation values.

Q2 Should other objectives be included in this review?

- Yes, other objectives should include:
 - Taking a landscape, ecosystem and recreation big picture view, not a piecemeal, one parcel at a time, approach.
 - Public consultation on any recommendations for disposal of stewardship land.

Q3 Do you agree with the description of the problem?

- Yes, we agree with the description of the problem and the need to review legislation to improve the efficiency of the reclassification of stewardship land.

Reform Options

Options for legislative public notification, submission and hearing requirements:
1.1 Shorten the period that the panels must allow for public submissions to 20 working days.
1.2 Allow the ability to decline a hearing where holding the hearing would cause substantial delay to the process or cause substantial burden on the resources of the panel
1.3 Retain the status quo

Q6/7 Identify your preferred option. / Is 20 working days adequate to prepare a written submission?

- The Commission accepts that a shorter period for public submissions will improve the efficiency of the reclassification process but seeks an adjustment to note that 20 working days would be a minimum, as noted in the discussion document. A longer period will be essential for large amounts or complex areas of stewardship land and/or strong public interest. There would also need to be a commitment to ensure that all parties interested in submitting through such a process have sufficient notice of the submission period.
- The Commission encourages the Department and the national panels to agree and publish a timeframe for decisions following public notification.

Q8 What role or function do you consider hearings currently play?

- Hearings enable submitters to emphasise and or expand upon written submissions. Further, they allow submitters to respond to written submissions made by other parties. It is a valued and valuable component of advocacy in Aotearoa New Zealand.

Options for enabling the national panels to carry out the public notification and submission/hearing process

2.1 Amend the Conservation Act to enable the national panels to carry out the public notification and submission process.

2.2 Retain the status quo (DOC carrying out the public notification and submissions process).

Q10 Identify your preferred option.

- We support national panels to carry out the public notification and submission/hearing process, assuming that they will be adequately resourced to do so, will include adequate — and acknowledged — wide-ranging recreation expertise, and will adhere to suitable and published timeframes for all decisions.

Options for directing the proceeds of stewardship land sales to DOC

5.1 Amend the Conservation Act to allow the Minister of Conservation to direct the proceeds of sale of stewardship land to DOC for further reclassification or management activities.

5.2 Retain the status quo (continue to direct proceeds to the Crown trust account).

Q19 Identify your preferred option.

- We support the amendment of the Conservation Act to allow the Minister of Conservation to direct the proceeds of the sale of stewardship land to the Department for further reclassification or management activities.

Options clarifying the status of concessions on reclassified stewardship land

6.1 Continue to find solutions on a cases-by-case basis. Concessions continue regardless unless parties agree otherwise. This may include concession terms finishing before land can be reclassified or disposed of (status quo).

6.2 Amend the legislation to clarify that existing concessions on stewardship land can continue under agreed terms regardless of reclassification

Q22-25 Identify your preferred option. / If concession inconsistent ... / Are there other risks ... / Are there other options ...

- We propose an alternative option that allows for compromise and certainty where both parties cannot agree as follows:

'6.3 Should concessions be in place where stewardship land is reclassified, where the remaining term on the concession is greater than three years, and where agreed terms are no longer appropriate under the new classification, the concession holder will have up to three years to negotiate alternative conditions. If such conditions cannot be agreed in that time, the

concession shall either be cancelled or transferred to another location or comparable activity without cost.'

For example, an existing concession may allow some form of tourist or recreation activity that may not be appropriate after reclassification as a reserve or national park. Such activity may provide the only means of practical access. It would be neither appropriate to allow it to continue following reclassification nor cancel it without a reasonable notice period to allow alternatives to be sought and approved.

As noted above, our priority in our submission is free, certain, enduring, and practical access to the outdoors. We believe the Commission's expertise in this area can enable a more efficient, risk-free, and successful reclassification process. We are ready to support both the Department and the national panels to achieve this.

A handwritten signature in black ink, appearing to read 'Ric Cullinane', with a stylized flourish at the end.

Ric Cullinane

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