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SUBMISSION

From: Royal Forest and Bird Protection Society of New Zealand Inc
Royal Forest and Bird Protection Society of New Zealand (Hastings/Havelock North branch)
Royal Forest and Bird Protection Society of New Zealand (Central Hawke's Bay branch)

Date: 3 March 2015

Re: RUAHINE FOREST PARK – REVOCATION OF SPECIALLY PROTECTED STATUS AND LAND EXCHANGE

Summary of submission

1. The proposal to revoke the conservation park status of part of the Ruahine Forest Park ("Conservation Land") in order that it may be disposed of by exchange is unlawful, as:
 - a. it is being proposed for an improper purpose; and
 - b. there is no proper basis for revoking the conservation park status of the Conservation Land.
2. The proposed revocation is contrary to the Conservation General Policy and the Hawke's Bay Conservation Management Strategy.
3. The proposed land exchange is unlawful. Disposal by exchange of 22 ha of high value conservation land goes beyond the proper scope of the section 16A power.
4. The proposed land exchange will not enhance the conservation values of land managed by the Department or promote the purposes of the Conservation Act. The Department's assessment that the proposed exchange reflects an enhancement of conservation values cannot be relied upon. It is perfunctory, inaccurate, based mainly on information provided by Hawke's Bay Regional Investment Company Limited, and inappropriately disregards certain values of the conservation Land on the basis that "DOC chose not to raise this issue in its submission on the dam proposal [the resource consent application]"¹
5. Forest & Bird wishes to speak to this submission at a hearing.

Revocation of specially protected status

Proposal is unlawful

6. 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 Conservation Act's objective. The proposed exercise of the Minister's discretion to revoke conservation park status in a manner contrary to the statutory objective is unlawful.

¹ File Note *Subject: Assyst Request (R56997): Proposed land exchange at Ruataniwha Dam* dated 21 November 2014.

7. As former forest park, the Conservation Land is “deemed” conservation park.² Upon being declared to be held for conservation purposes³, the Land becomes conservation park.⁴ Conservation parks are to be managed firstly so that their natural and historic resources are protected, and secondly to facilitate public recreation and enjoyment (subject to the protection purpose).⁵ It is required to be managed in a manner consistent with those purposes.⁶
8. The Conservation Act 1987 expressly limits the manner in which different categories of conservation land may be used for commercial purposes or disposed of. No conservation area or interest in a conservation area may be disposed of except in accordance with the Conservation Act.⁷ Stewardship land may be disposed of, or exchanged, or a concession may be granted in relation to it.⁸
9. The Act does not contain a provision providing for the disposal or exchange of conservation parks. The ability to dispose of stewardship land by exchange for private land was added to the Act in 1990⁹. The Conservation Law Reform Bill 1989 originally provided for all categories of conservation land to be disposed of by land exchange.¹⁰ This was deliberately changed at the select committee stage to limit land exchanges to stewardship land (and, separately, marginal strips). This shows a clear statutory intention for the power to exchange conservation land to be limited to stewardship land.
10. For conservation parks, commercial access is only available if the statutory tests for granting a concession¹¹ are satisfied. The statutory tests for a concession are not satisfied in this case. When the applicant applied for a concession to inundate the Conservation Land on 26 June 2013, the Department’s draft report on the application determined that the statutory tests for granting a concession were not satisfied, and the application should be declined under section 17T(2) of the Act, because:
 - a. The effects of flooding the Conservation Land cannot be avoided, remedied or mitigated in any way;¹²
 - b. The area could no longer be managed to protect the natural resources of the Park, and due to the permanent damage to the Conservation Land, granting the concession was deemed to be inconsistent with the purpose for which the land is held;¹³

² Section 61(2) Conservation Act 1987.

³ Under section 7(1), as provided for in section 61(2).

⁴ Section 61(3) provides that when deemed conservation park land is declared to be held for conservation purposes under section 7(1), it is deemed to have been declared to be held for the purpose of a conservation park under section 18(1).

⁵ Section 19.

⁶ Section 18(5)

⁷ Section 16.

⁸ Sections 26, 16A, and Part 3B respectively.

⁹ Conservation Law Reform Act 1990, section 11.

¹⁰ Clause 11.

¹¹ Under Part 3B.

¹² Section 17U(2)

¹³ Section 17U(3)

- c. While this is a small portion of land, particularly in comparison to the total area of the Park, the values of the Conservation Land are such that the application is inconsistent with the terms of the Conservation Act 1987 and the relevant Conservation Management Strategy.¹⁴
11. On that basis, the concession application ought to have been declined by 22 July 2013.¹⁵ On 22 July 2013 the Concession Application was put on hold at the Applicant's request. Its "on hold" status has been extended several times, most recently being extended (on 19 February 2015) to 25 August 2015.¹⁶
12. Section 18(7) provides that the Minister may vary or revoke the purpose for which specially protected land is held. The provision does not set out any statutory test or relevant considerations. This does not mean that specially protected status may be revoked for any reason. The provision must be used in a manner consistent with the objective of the Conservation Act.¹⁷
13. The High Court has held that the objective of the Conservation Act is "to ensure that land which has been reserved for conservation purposes should be so reserved unless there is a good and proper basis for uplifting the protection which has been placed upon the land."¹⁸ This objective is found in:
- a. The long title of the Act and the Department's functions as set out in section 6.
 - b. Section 7(1) which provides that where land is declared for conservation purposes, it shall, subject to the Act, be thereafter so held.
 - c. Section 18(5), which provides that every area held under the Act for one or more of the purposes described in subsection (1) (which includes conservation park purposes) shall be managed in a manner consistent with that purpose, and that nothing in sections 19 to 24 limits the generality of section 18(5). The Act does not distinguish between "deemed" conservation park, and declared conservation park.¹⁹
 - d. Section 19, which requires every conservation park to be managed firstly so that its natural and historic resources are protected, and secondly to facilitate public recreation and enjoyment. Protection, in relation to a resource, means maintenance, so far as is practicable, in its current state; but includes: (a) its restoration to some former state; and (b) its augmentation, enhancement, or expansion.

¹⁴ From Draft Officers Report on Hawke's Bay Regional Investment Company Limited Application to Inundate Public Conservation Land dated 15 July 2013

¹⁵ Section 17T(2)

¹⁶ Letter David Bishop to Forest & Bird dated 24 February 2015.

¹⁷ *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 at 1030; *Buller Electricity Limited v Attorney-General* [1995] 3 NZLR 344, page 11-12.

¹⁸ *Buller Electricity Limited v Attorney-General* [1995] 3 NZLR 344, page 13.

¹⁹ Section 61(3) provides that when a deemed conservation park is declared to be held for conservation purposes under section 7(1), it is deemed to have been declared to be held for the purpose of a conservation park under section 18(1).

- e. Provisions which provide for commercial access to conservation park land by way of a concession where the statutory requirements for a concession are satisfied (such requirements not being satisfied in this case).
14. The Department's intention to use this land for a land exchange does not amount to a good and proper basis for uplifting the protection which has been placed upon the land. That is apparent from the clear statutory intention to limit land exchanges to stewardship land. Revocation for that purpose is contrary to the Conservation Act's objective.
15. As discussed in the Draft Officers Report the Conservation Land retains its high conservation values. It triggers all four of the "National Priorities for Protecting Rare and Threatened Biodiversity on Private Land" and there is no doubt that it is nationally significant indigenous vegetation and habitat. Those values are consistent with retaining the Conservation Land's conservation park status. There is no good and proper basis for uplifting the protection which has been placed upon the land.
16. The exercise of a discretion in a manner contrary to the statutory objective is unlawful.
17. The proposal is also an improper use of the stewardship land classification. The Minister's introductory statement to the Conservation Bill in December 1986 indicated an intent that stewardship land status would be used for "land for which no end use has been decided". The stewardship land provisions should not be used to enable the Minister to deal more freely with land which, as deemed conservation park, has been determined by Parliament to be held for the purpose of a conservation park.
18. Advice on this proposal by Department officials to the Minister of Conservation²⁰ states that:
- Conservation parks are held and managed for the protection of natural and historic resources and to facilitate recreational use. **It will be necessary to decide that the area to be revoked does not need to be retained as part of the park for those purposes.** Those are the particular values conservation parks are intended to protect. In this instance there is no special emphasis on identified ecological values as there would be if the area was an ecological area but any special conservation values present on the area will also need to be taken into account.*
19. This "test" (*that the area to be revoked does not need to be retained as part of the park for those purposes*) is correct insofar as the Department needs to be satisfied before forming an intention to revoke its status that the land does not need to be retained, in terms of the objective of the Conservation Act and the values of the land.
20. However, to the extent that this paragraph suggests that the land's status can be revoked if it is not required "as part of the park" (presumably with reference to the impact of the loss of this area on the rest of the conservation park), this is incorrect. The proper question is whether there is a good and proper basis for uplifting the protection which has been placed upon the land under consideration (in this case, by the operation of section 61(2) and (3)).
21. In any event, the Department does not appear to have applied that test. Documents provided in response to Forest & Bird's Official Information Act request do not demonstrate any consideration of whether the Land's status can properly be revoked, or any assessment

²⁰ Submission initiated by the Department, dated 21 November 2014, Ref PAL-06-23-01-01

of the land's values for the purposes of that assessment. The Department has focussed entirely on whether the proposed land exchange meets the section 16A exchange requirements. The Submission to Minister of Conservation states that "*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*". The Department's approach appears to be that if section 16A is satisfied, this is a sufficient basis to revoke specially protected status.

22. This approach treats section 16A as if it applied to conservation park land, which it deliberately does not. The decision as to whether to revoke the conservation park status of the Conservation Land should be taken separately from the decision whether it should be exchanged as stewardship land (if its conservation park status is properly revoked for a lawful reason). Conflating the relevant considerations of the two decisions in order to provide a basis for the revocation is unlawful.

Conservation General Policy and Hawke's Bay Conservation Management Strategy

23. The Department is required to administer and manage all conservation areas and natural and historic resources in accordance with the Conservation General Policy and any relevant conservation management strategies.²¹

24. The proposal is contrary to the Conservation General Policy and the Hawke's Bay Conservation Management Strategy. The Conservation General Policy sets out when it is considered appropriate to review the classification of land:

6 (b) Subject to statutory requirements, the classification of any public conservation lands may be reviewed from time to time to ensure that the classification of such lands continues to either:

i. give appropriate protection and preservation for their natural resources, and/or historical and cultural heritage; or

ii. give appropriate protection and preservation for their educational, scientific, community, or other special features, for the benefit of the public; or

iii. enable integrated conservation management identified in conservation management strategies or plans; or

iv. provide for access and enjoyment by the public where that is in accordance with the purposes for which the land is held; or

v. reflect the values of public conservation lands that are present; or

vi. enable specified places to achieve conservation outcomes in the future.

The proposal does not fall within any of those triggers for classification review.

25. The Conservation General Policy also states that 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 (Policy 6(c)) but that land disposal should not be undertaken where the land in question has international, national or regional significance; or is important for the survival of any threatened indigenous species (Policy 6(d)). The Department's advice confirms that the Land meets those criteria, and so land disposals "should not be undertaken".

²¹ Section 17A

26. The Hawke's Bay Conservation Management Strategy states in relation to Land Administration (Section 3.7) that:

(ii) 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 lands which have low natural or historic value.

The Land does not have low natural value. The proposal to revoke the status of a high natural value area is not consistent with the Hawke's Bay CMS.

Land Exchange

27. The land exchange proposal is unlawful.

Improper use of land exchange provision

28. Section 16A was not intended to provide a mechanism for disposal of significant areas of the conservation estate with high conservation values. It "enables boundary adjustments to be made and is a useful tool to enable a speedy rationalisation of a conservation area".²² Reflecting its purpose, the land exchange provision is simple and non-specific. There is a requirement to consult the local Conservation Board, but not the public. The Minister only needs to be satisfied that a land swap will "enhance the conservation values of land managed by the Department" and promote the purposes of the Act. Use of section 16A to enable the disposal by exchange of 22 ha of high value conservation park (following revocation of that status) is to use it for an improper purpose.

29. The limited scope of section 16A is obvious when section 16A is compared to section 26 (disposal of stewardship areas) which requires public consultation, and includes considerations in relation to the effect of the disposal on adjacent conservation areas or land. The High Court has held that section 26 may only be used where there is a good and proper basis for uplifting the protection which has been placed upon the land (*Buller Electricity Limited v Attorney-General* [1995] 3 NZLR 344).

Exchange does not enhance the conservation values of land managed by the Department and promote the purposes of the Act.

30. The Department's assessment²³ that the proposed exchange reflects an enhancement of conservation values cannot be relied upon. It is perfunctory, inaccurate, based mainly on information provided by Hawke's Bay Regional Investment Company Limited, and inappropriately disregards certain values of the conservation Land on the basis that "DOC chose not to raise this issue in its submission on the dam proposal [the resource consent application]".

31. The assessment File Note states that freshwater issues have not been considered. It is not clear why the Department has not assessed the freshwater ecological values of the two

²² Conservation Law Reform Bill: Report to the Planning and Development Select Committee by Officials of the Department of Conservation, 27 October 1989, p. 46

²³ File Note *Subject: Assyst Request (R56997): Proposed land exchange at Ruataniwha Dam* dated 21 November 2014.

sites. Evidence before the Board of Inquiry²⁴ indicates that threatened fish species have habitat within the Conservation Land proposed for exchange.

32. When discussing matters critical to the assessment of the exchange, the assessment File Note frequently uses equivocal terms such as:

- a. "there is likely to be similar habitat to that which is being inundated".
- b. "it will be duplicated within the Park".
- c. [The land] "is probably not actively managed".
- d. "Most of this appears to be incorporated in the Smedley Exchange Block"
- e. "I assume the significance criteria would have been met for most of [the conservation land]"
- f. "There will be similar habitats to that which will be lost".

33. This approach is based on assumption and surmise, and is an inadequate approach to a technical assessment that is intended to form the basis of a statutory decision. The Department should have properly determined the facts that are then relied on to draw the conclusion that the proposed exchange will enhance conservation values.

34. The assessment File Note does not consider the extent to which each area of land contains threatened land environments. This is highly unusual, as in our experience this is a matter which the Department invariably considers. The four National Priorities for Protecting Rare and Threatened Biodiversity on Private Land (MfE and DOC, 2007) are widely used as national assessment criteria for ecological values. The first National Priority is protection of Threatened Land Environments of New Zealand. Acutely threatened land environments are those land environments of which nationally less than 10% remains in indigenous cover. Chronically threatened land environments are those where nationally less than 20% remains in indigenous cover. An assessment of the land exchange in terms of the Threatened Land Environments and National Priorities does not support the exchange:

- a. 99.1% of the 22 ha conservation Land comprises acutely threatened (16.6%) and chronically threatened (82.5%) land environments.
- b. In contrast, of the remaining indigenous vegetation on the Smedley land, 29.95ha falls within the chronically threatened land environments, and none is within the acutely threatened land environments category. Most of the Smedley land that is in indigenous vegetation (about 161 ha) is on "less reduced and better protected" land environments. Protection of those land environments is not a National Priority.

35. The second National Priority is protection of wetlands. The presence of an oxbow wetland on the true right of Dutch Creek triggers Priority 2 for the conservation Land. The oxbow wetland habitat type does not appear to be represented elsewhere in the Ruahine Forest

²⁴ From Dr Young of Cawthron, called by Hawke's Bay Regional Investment Company Ltd. All evidence before the Board of Inquiry is available at <http://www.epa.govt.nz/Resource-management/Tukituki/evidence/Pages/Evidence.aspx>

Park.²⁵ This is contrary to the Technical Advisor's view that "there is likely to be similar habitat to that which is being inundated in the main block of the Park... it will be duplicated within the Park". The oxbow wetland contains diverse indigenous species, is hydrologically intact and is well-connected to surrounding indigenous vegetation, habitats, and the riparian margins of Dutch Creek. In contrast, the wetland within the Smedley block is has been classed as a seepage (*A treeland with podocarps (e.g. kahikatea and rimu), lacebark, manuka, cabbage tree linked to a seep zone with remnant sedges, fern species, blackberry, pasture grasses and herbs*)²⁶ and is highly degraded.

36. The Conservation Land includes a small area of braided river, which triggers the third National Priority for Protection (Naturally Rare Ecosystems).
37. The fourth National Priority is protection of habitats of threatened and declining species. The Conservation Land supports North Island long tail bat (including maternity roosts), North Island fernbird, NZ falcon and red mistletoe (not all of these are identified in the Technical Advisor's File Note). The Smedley land is not known to support any threatened or at risk species. The potential for the Smedley land to support threatened species in future is highly uncertain.
38. If the Department "chose not to raise"²⁷ the issue of the dam's impacts on long-tail bats in its submission on the Ruataniwha Dam resource consent application, that is entirely irrelevant to its present assessment of the values of the two sites. It is concerning that a supposed technical assessment by an ecologist would consider policy issues such as whether the Department had raised a matter in a separate context. This suggests a lack of independence by the author of the assessment.
39. The importance of the Conservation Land as long tail bat roosting and foraging habitat is a highly relevant aspect of its value that ought to be considered. The Smedley Block is not known to be bat habitat. The Conservation Land has been undervalued due to its value as bat habitat having been disregarded.
40. The assessment of the values of the Smedley land explicitly disregards the impacts that the Ruataniwha Dam and reservoir will have on those values (the "Current values" assessment)²⁸. The reservoir, if constructed, will abut the Smedley land, causing edge effects on the vegetation and habitat. Clearance of 0.39 ha of ecologically significant black beech will be required (on a chronically threatened land environment) to replace the lost forestry road access. Any freshwater fishery values will be impacted by the loss of fish passage past the Ruataniwha Dam downstream of the Smedley land.
41. The question under section 16A(2) is whether the exchange will enhance the conservation values of land managed by the Department and promote the purposes of this Act. The

²⁵ Mr Kessels' Evidence in Chief to the Board of Inquiry considering application for resource consents for the Ruataniwha Water Storage Scheme included the statement that: "**Apart from the small area of oxbow wetland**, these habitat types appear to be well represented elsewhere in the Park..." (paragraph 7.11)

²⁶ Terrestrial Ecology Report, Kessells and Associates.

²⁷ File Note *Subject: Assyst Request (R56997): Proposed land exchange at Ruataniwha Dam* dated 21 November 2014.

²⁸ The Kessels' report at 3.3.3, states that '*On a 'current values' basis however, it is the present situation that applies (without the dam) in assessing relative conservation values lost and gained through any exchange of land*'. The Department's FILE NOTE takes the same approach.

actual values of the land that will be received in exchange, rather than the theoretical values of the Smedley land without the Ruataniwha Dam, should be assessed. Clearly if the dam would inundate the entirety of the Smedley land, the Department could not ignore that impact and assess the Smedley land on a "Current values" basis. It follows that the inevitable or reasonably foreseeable effects of the Ruataniwha Dam on the Smedley land must be taken into account in assessing its values.

42. There is also an inconsistency in an approach which discounts foreseeable future adverse effects on the Smedley land, but takes into account the potential for enhancement of values, for example by removing grazing.²⁹
43. For all of the above reasons, the Department's assessment that the proposed exchange enhances conservation values cannot be relied upon.
44. In addition, if the Smedley land were considered to be a desirable addition to the conservation estate, it would have been identified as a Recommended Area for Protection. PNAP surveys have identified RAPs in the area (Smedley Bluffs, Mangaoho 1 & 2) but did not identify the Smedley land as a RAP.
45. The proposed land exchange will not enhance the conservation values of land managed by the Department, or promote the purposes of the Act.

²⁹ For example, Kessels' report at 3.6: *Aside from 4.4 ha and some tributary escarpments, most of the indigenous vegetation remnants are grazed. This offers opportunities for enhancement of values.*

Submission on the proposed revocation and the conservation land - Smedley land exchange

Te Taiao Environment Forum

Dr Amelia McQueen

March 2015

Introduction

This submission is made on behalf of the Te Taiao Environment Forum. We are opposed to the revocation of conservation park status and the land exchange proposed by Department of Conservation due to the fact that

- it is unlawful;
- there is no justification for the revocation of conservation park status;
- when assessing conservation gains, the Department of Conservation has neglected to adequately recognise the 'Like for like' principle;
- has wrongly used 'Current values' for assessment; and
- has heavily relied on the dam applicant's reports and surveys which could be deemed as a conflict of interest.

Te Taiao Environment Forum's concerns are discussed in detail below.

Land exchange unlawful

The Department of Conservation /Smedley land exchange can be deemed unlawful. The details of this will be covered in Forest and Bird own submission.

No justification for the revocation of conservation park status

The conservation park land which has been proposed for revocation clearly holds values that justify conservation park status so there is no proper reason to revoke that status. These values are:

- Comprises of Acutely Threatened and Chronically Threatened land environments
- Threatened species (e.g. NZ falcon, long tailed bat, North Island fernbird, red mistletoe, indigenous fish species) have habitats within the conservation park land
- Contains significant lowland indigenous biodiversity
- Contains important wetlands and shrubland habitat types
- Part of the broader conservation park

'Like for like' principle

Land exchanges must be done using the like for like principle, i.e. significant vegetation/landforms that are permanently removed must be replaced with the same type vegetation/landforms. The like for like principle has not been used properly when assessing the exchange of conservation values.

For example:

- The alluvial landform/vegetation types within the Doc exchange area are to be swapped with dissimilar hill country landforms/vegetation. These comments are reflected in Dr Kelvin

Lloyds comments made to the BOI - "Mr Kessels endorses the 'Smedley Exchange Block' as an important component of a vegetation enhancement and protection area⁹⁶ (Paragraphs 8.34-8.36 of the evidence of Mr Kessels). This block does not conform with the criteria I have listed above, as it comprises hill country without significant riparian vegetation or recent alluvial terraces, has no gravel riverbed, a limited amount of forest, and lacks kowhai-dominant forest and terrace wetlands. It is a primarily a pasture- and-scrub covered block of a type that is relatively common in the landscape and not likely to have much area on Acutely Threatened or Chronically Threatened land environments."

- Wetlands on the conservation land and in the Smedley Block are not equivalent. The wetland areas covered in the land swap differ significantly in nutrient status and hydrology and vegetation types. Seepages on the Smedley block have a high level of degradation and eutrophic conditions as indicated by cattle pugging and exotic grasses evident in photo provided in Kessels *et al.* SEB survey, Figure 7, pg 10. The oxbow wetland on conservation land contains indigenous wetland plants, is hydrologically intact and is well-connected to surrounding indigenous vegetation, habitats, and the riparian margins of Dutch Creek (photo provided, Kessels *et al.* TER, pg 35). The oxbow wetland within the Doc exchange area has a greater diversity of habitats and indigenous plants. The wetland within the Smedley block is has been classed as a seepage (*A treeland with podocarps (e.g. kahikatea and rimu), lacebark, manuka, cabbage tree linked to a seep zone with remnant sedges, fern species, blackberry, pasture grasses and herbs*). The wetland within the Doc exchange has been classed as an oxbow wetland (including diverse indigenous vegetation; *slender spike sedge, Carex and Juncus species, kiokio and swamp kiokio, toetoe, astelia, mountain flax, Hydrocotyle, Sphagnum moss, Coprosma species, cabbage tree, manuka and koromiko, wheki-ponga kahikatea, wineberry, broadleaf, kowhai, lancewood, lacebark, black matipo, snowberry, mingimingi, matai and horopito*)
- The Smedley block is degraded and grazed land, connected to other pasture and remnant forest, whereas the conservation land is not grazed and in particular within Dutch Creek is continuous with other indigenous vegetation and habitats and forms an important connection to the Ruahine Conservation Park
- The diversity of indigenous flora within the conservation area proposed for exchange area is likely to be far greater than that of Smedley block. This is especially the case for riparian and associated stream/bluff vegetation types particularly within Dutch Creek, which have been over looked in assessments of vegetation types. These vegetation types form an important riparian ecosystem on an important stream and river, and provide good food sources for indigenous birds and invertebrates. Riparian vegetation is limited to small streams within the Smedley block, that are not associated with major streams and rivers, and lack the functions of the riparian habitats on the conservation land.
- The Doc exchange block comprises of Acutely Threatened (16.6%) and Chronically Threatened (82.5%) land environments. The 22ha within the Doc exchange block forms a continuous block of threatened land environments which is a national priority for the protection of indigenous biodiversity. The Smedley exchange block has no Acutely Threatened land environments and 29.95ha of Chronically Threatened land environments. The 29.95ha of Chronically Threatened Environment is patchy and dispersed through 234.25 ha of less reduced/better protected

environment. Furthermore not all of the 29.95ha of the Chronically Threatened land environments would be protected (i.e. exchanged) within the 146ha DOC has proposed for the land swap. The exchange of Acutely Threatened for Chronically Threatened land environments is a fundamental problem with the proposed exchange, as it results in net loss of important lowland indigenous biodiversity that is exchanged for a larger area of less important hill country indigenous biodiversity. This is trading down, not trading up.

- The vegetation/habitat types recorded in the assessment have not been verified and may not be reliable. For example, no specific riparian vegetation types have been listed for the conservation area proposed to be exchanged. This results in a misleading assessment of equivalence between the conservation land and the Smedley Block.
- The TER survey indicates that threatened species (e.g. NZ falcon, long tailed bat, North Island fernbird, red mistletoe, indigenous fish species [refer to Young et al. for fishes]) have habitats within the conservation land proposed for exchange. In contrast, There are no recorded red mistletoe plants within the Smedley Exchange block and no recent, specific recordings of NZ falcon or North Island fernbird, even though calls for fernbirds were elicited during Smedley Block bird surveys, and all bird sightings were recorded (SEB survey).
- The exchange of a maternal long-tailed bat roost close to the river on the conservation land, for uncertain bat mitigation proposals on the Smedley Block, is not equivalent as it exchanges certain loss of an important habitat for indigenous fauna for very uncertain gain.
- The assessment of conservation gains for threatened species relies on the Applicant's experts, and is unbalanced. The assessment should acknowledge Dr Kelvin Lloyd discussion where use of bat roosting boxes can be unsuccessful (EPA hearing , Transcripts of Proceedings -6 Dec 2013 pg 1696) and the successful transplanting of mistletoe highly variable (Dr Kelvin Lloyd EPA evidence, Pg 46, Pt 151.)
- The area of wetland within the Doc exchange is larger than the 0.29ha stated due to the fact that the desktop mapping technique used by Kessels Ecology does not identify small wetlands. Refer to comments of Dr Kelvin Lloyd (EPA, Statement of Evidence, point 97) below:

'The reservoir site includes swamp wetlands, seepages on cliffs and riverbanks, and what Mr Kessels defines as 'seepzones', which are probably also seepages, in toeslope habitats. The TER mapping defined 5.11 ha of wetland vegetation on terraces and in 'seepzones', but the mapping units do not cover seepages on cliffs, which are a prominent feature of the part of the project area that I visited, for example in the lower part of Dutch Creek. I appreciate that these seepages would be difficult to map, due to their presence on steep topography, but they are a distinctive indigenous wetland type in the proposed reservoir site and would qualify under National Priority 2. I note that the TER maps only a single swamp wetland³⁸. I observed indigenous swamp vegetation on a terrace on conservation land on the north bank of the Makaroro River [Doc exchange land] within the proposed reservoir, but this vegetation has not been mapped, possibly because it is difficult to distinguish from surrounding vegetation in aerial imagery. None-the-less, it is apparent that there will be more than 5.11 ha of indigenous wetlands affected by the proposed reservoir.'

- The conservation gain of small-leaved shrubland is not valid. The small-leaved shrubland recognized within the Smedley block refers broadly to 'kanuka/manuka/coprosma species and varying amounts of pasture'. Small-leaved shrubland based on major vegetation types (e.g. kanuka/manuka/coprosma species) also exist within the Doc exchange land and are referred to as 'Broadleaf-small leaved-tussock scrubland', 'Broadleaf-small leaved -monocot scrub/treeland', 'kanuka/manuka treeland' types within TER and Doc Submission documents. Therefore there is a greater diversity of small-leaved shrubland types on the conservation land, and the suggested additional gain of a small-leaved shrubland type (indigenous shrublands) will not occur as the same shrubland type is found within the Doc exchange area. Furthermore the diversity of small-leaved shrubs described within the Doc exchange site indicates that this vegetation type is in significantly better condition than that within the Smedley exchange block. Therefore the exchange would result in a significant loss of an important shrubland habitat type if the revocation and exchange were to occur.
- Threatened species for Smedley Exchange block are based on desktop data and extrapolation from the TER report rather than formal recording within the Smedley exchange block. Lighter emphasis of what threatened species should be used when considering Conservation gains.
- Exclusion of recordings - Fernbirds (more than 1 bird) and pair of NZ falcons and frequent long-tailed bat activity were recorded within the Dutch Creek tributary (refer to TER) and will be frequenting the Doc Exchange land. Therefore Doc land exchange should be recognized as important habitat of these Acutely and Chronically Threatened species.
- Basing the exchange on simple factors such as the area of indigenous vegetation, and the overall land area (both of which are larger in the Smedley Block) is misleading, as it fails to address the significant differences in ecological values between the two areas, as described above.

Current values

The use of 'current values' when assessing conservation gains is not valid as the dam will have detrimental effects to the Smedley exchange block and any management of the exchange block to fulfill conservation gains (e.g. restoration of vegetation, weed and pest control and translocation or colonisation of threatened species) relies heavily on the 'biodiversity offset package' presented by the dam applicants.

Land exchange assessment has been made on the bases of 'current value approach to conservation values' i.e. as if no dam was built. The question arises as to whether the exchange would occur if a dam was not built. Certainly the resources via the dam applicant's 'Biodiversity offset package' to restore the Smedley exchange block would not be available. The 'current value approach' is nonsensical. Any assessment should take into account the effects of the dam on the exchange block. For example; The edge effects of the dam on Smedley block (this has not been assessed), the clearing of 0.39 ha of black beech (which is deemed ecologically significant) on a chronically threatened environment for forestry road access and, the loss of fish passage for threatened fish species, and habitat and food for birds, lizard, insects.

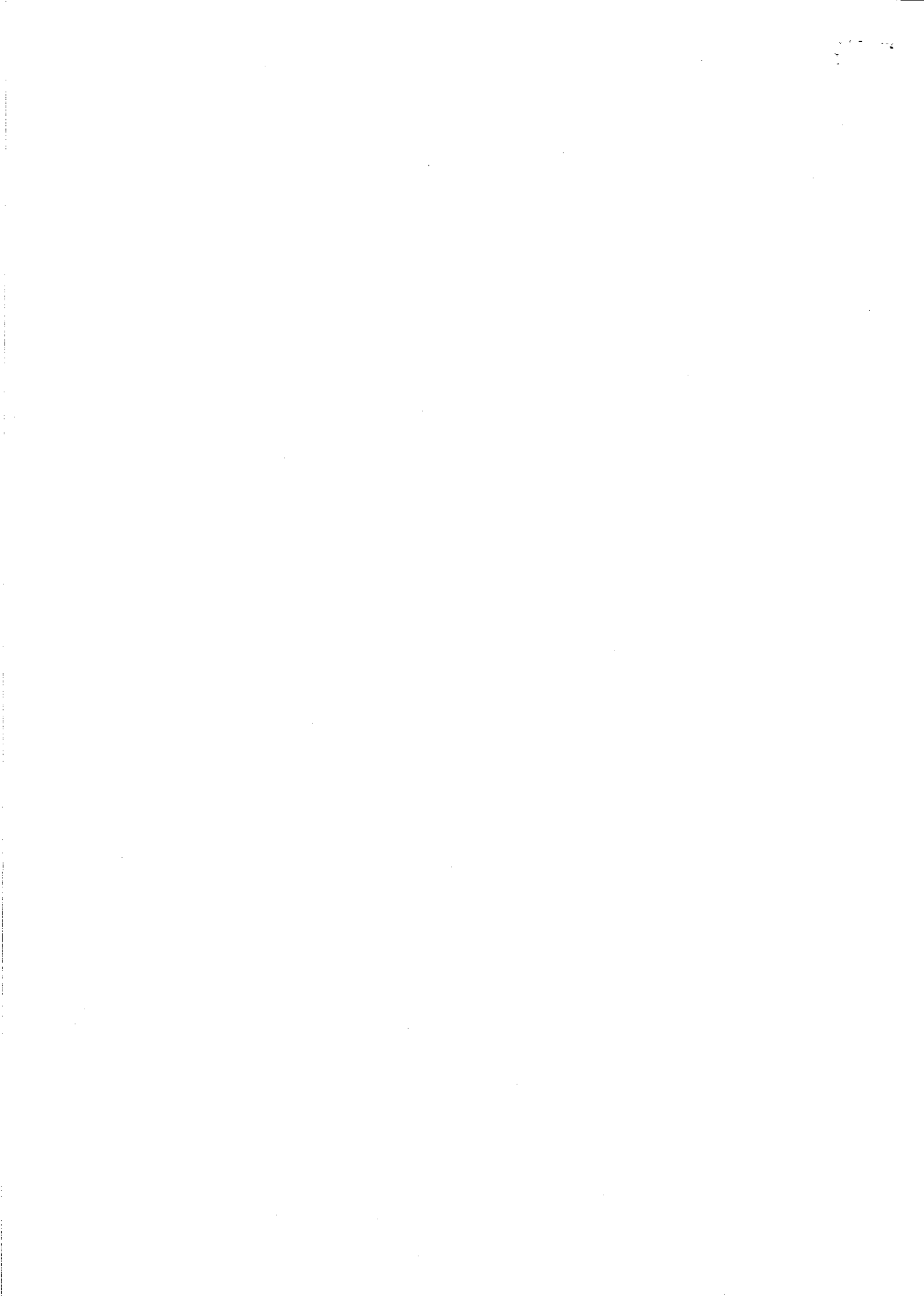
Conflict of interest/ limits to reporting

- The Doc Science and Capability team's, La Cock report shows that there has been a heavy reliance on the Applicant's expert surveys and reports (i.e. Kessels *et al.* reports). Independence from Applicant's experts is required. While time and money may be an issue, there is a need for Doc to consider assessments which are clearly independent of the dam applicants and that are reviewed by suitably-experienced independent ecologists.
- The Doc Science and Capability team (La Cock report) suggests that no comment can be made on the maternity bat roost as Doc did not make any comment within the BOI submission. DOC has a statutory duty to consider all values of the conservation land regardless of what it submitted in the BOI process. Therefore it is appropriate that Doc assesses and makes comment on the loss of a significant maternal bat roost.

Conclusion

The justification for the proposed land exchange is based on factually incorrect information and takes a partisan, unbalanced view, that relies on simple exchange factors (primarily a larger area of land) that do not adequately account for indigenous biodiversity losses and gains. Under the proposed exchange, indigenous biodiversity bears all the risks, with certain loss traded against uncertain gains. The loss of lowland riparian vegetation and habitats on Acutely Threatened land environments cannot be addressed by gains of hill country vegetation and habitats on land environments of less importance. The proposed exchange would simply add to the ongoing loss of important lowland biodiversity.

It is not appropriate to rely on advice from experts retained by the Applicant. This conflict of interest must be addressed by engaging independent experts or balancing the views of the Applicant's experts against those of other experts represented at the EPA hearing.



David Bishop

From: ruahineparkconsultation@doc.govt.nz
Sent: Monday, 19 January 2015 1:52 p.m.
To: David Bishop
Subject: Ruahine Conservation Park consultation

Name: Kathryn Bayliss
Organisation:
Phone: 068589900
Email: kall4-ecofriend@yahooxtra.co.nz
Address: 116 Maharakeke Road
R D 1
Waipukurau
4281

Comments/status: I object to the change of Status of 22 ha of the Ruahine Conservation Park.

I am against The Department of Conservation revoking part of the Ruahine Conservation Park. I think DOC should keep its 22 ha of Ruahine Conservation Park and DOC should buy the 146 hectares of private land "Smedley Exchange Block" and include it as part of the Ruahine Conservation Park. The 146 hectares of private land "Smedley Exchange Block" should be protected long term.

If the DOC changes the status of 22 ha of the Ruahine Conservation Park and it is given to the Hawke's Bay Regional Investment Company in exchange for 146 hectares of private land and the Ruahine Water Storage Scheme is built, not only DOC's 22 hectares of precious and ecologically significant indigenous vegetation and habitat utilised by threatened and At Risk Species be lost and the fauna who inhabit this disturbed or killed, but overall the total area affected by flooding, the dam structure and spoil disposal is approximately 450.18 ha.

A total of 185.18 ha of ecologically significant indigenous vegetation and habitats would be flooded by the proposed reservoir, or covered over by associated infrastructure including the dam structure, new access tracks and soil disposal sites. This comprises of:

- 80.71 ha of mature and secondary indigenous forest including a number of trees which would be in excess of 300 years old and one At-Risk plant species the red mistletoe.
- Loss of significant terrestrial indigenous vegetation. This is the area of ecologically significant indigenous vegetation covered by the dam and reservoir footprint, which is calculated to be 106.10 ha
- Edge effects. The assumed detectable edge effects area which would be adversely affected is 10 ha
- Braided river habitat. The area of braided river habitat (gravel river bed) lost under the reservoir and dam footprint is calculated to be 73.97 ha
- Wetland habitat. The area of ecologically significant wetland and seep zone habitat which would be lost is estimated to be 5.11 ha
- Loss of habitat for Threatened and At Risk Species. Loss of significant habitat for seven At Risk and Threatened terrestrial fauna and flora species would result as a consequence of the dam and reservoir, equating to 185.18 ha
- A total of 38 bird species (11 endemic) were identified at the proposed reservoir locality during formal field surveys. Of all individual birds formally observed 55% were native and 45% introduced. Threatened or At Risk species comprise 2.5% of all observations, including one pair of nesting and Nationally Vulnerable New Zealand bush falcon, and one adult banded dotterel with a chick. Nationally 'At Risk' species detected were pied stilt, New Zealand pipit, black shag and North Island fernbird.
- Loss of habitat for some indigenous aquatic species that are unlikely to find the reservoir habitat suitable for them
- Loss of trout spawning habitat in the areas occupied by the dam and reservoir
- Loss of fish passage beyond the proposed dam to the upper bounds of the Makaroro River and Dutch Creek
- Changes to the flow regime of the Makaroro and Waipawa Rivers; in particular, upstream of Caldwell Road with a consequent adverse effect on the invertebrate population and trout spawning in those reach.
- Loss of the established walking track from the end of Wakarara Road, across the Makaroro River, to the DOC tracks extending throughout the Ruahine Forest Park.

For this reason alone the RWSS should not be built as no amount of mitigation, remediation or offset can truly replace the natural environment and the Indigenous Biodiversity that would be lost or disturbed. This can be avoided not changing the status of 22 ha of the Ruahine Conservation Park and giving it to the Hawke's Bay Regional Investment Company in exchange for 146 hectares of private land.

Changing the status of 22 ha of the Ruahine Conservation Park and exchanging it so a Dam can be built causing 450.18 ha of damage to the indigenous and natural environment is inconsistent with the proposed National Policy on Indigenous Biodiversity and The Draft Hawke's Bay Biodiversity Strategy and The New Zealand Biodiversity Strategy. This was confirmed by the Board of Inquiry's Tukituki Catchment Proposal Volume 1, final Report and Decision, Volume 1, page 366 [1231]:

"Considered in isolation the RWSS would not meet s 6 (c) and it would be inconsistent with the proposed National Policy on Indigenous Biodiversity."

There are other options and alternative methods for farmers and growers to farm sustainably so as not to degrade the environment. There are many other factors that influence their prosperity besides lack of water.

There are better ways to protect and improve both the rivers and natural environments. People must learn to live sustainably and not exploit our resources to their utmost limits.

Ecologically significant indigenous vegetation and habitat utilised by threatened and At Risk Species should not be sacrificed to allow for Dams to be built.

No amount of mitigation and remediation could make up for this abhorrent proposed, planned destruction that will take place if the RWSS is built.

It will be a terrible catastrophe to cause such destruction of our precious natural environment.

If farmers want irrigation water they could build their own water storage, on their own land..

NIWA are now predicting more heavy rainfall in the decades ahead for Hawke's Bay so there could be opportunities for farmers and growers to capture that rain.

My views are that the Draft Hawke's Bay Biodiversity Strategy and the New Zealand Biodiversity Strategy are good and hopefully the aims can be achieved.

Throughout reading of the documents foremost in my mind is the building of the Ruataniwha Water Storage Scheme, (DAM) on the Makaroro River and the destruction of our precious natural environment this will cause.

The most imminent threat to the Biodiversity of HB is the building of the Ruataniwha Water Storage Scheme, (DAM) on the Makaroro River.

If this can't be acknowledged and the dam is built and destruction of our precious natural environment happens, then there is no hope for the biodiversity of HB, the Hawke's Bay Biodiversity Strategy, and the New Zealand Biodiversity Strategy.

It would also put the Department of Conservation in a very bad light. Many people would think it's not doing what it should. Conservation means preservation, protection, or restoration of the natural environment and of wildlife!

Commentexchange: i am against The Department of Conservation revoking part of the Ruahine Conservation Park and exchanging it for 146 hectares of private land ("Smedley Exchange Block") I think DOC should keep its 22 ha of Ruahine Conservation Park and DOC should buy the 146 hectares of private land ("Smedley Exchange Block") and include it as part of the Ruahine Conservation Park.

The 146 hectares of private land "Smedley Exchange Block" should be protected long term.

All the remaining indigenous fauna and flora and natural rivers in New Zealand and Hawke's Bay are precious and should be protected and cared for.

It is not a fair exchange because if DOC changes the status of 22 ha of the Ruahine Conservation Park and it is given to the Hawke's Bay Regional Investment Company in exchange for 146 hectares of private land, and the Ruahine Water Storage Scheme is built, not only DOC's 22 hectares of precious and ecologically significant indigenous vegetation and habitat utilised by threatened and At Risk Species be lost and the fauna who inhabit this disturbed or killed, but overall the total area affected by flooding, the dam structure and spoil disposal is approximately 450.18 ha. This would be a great loss for all the world. No amount of mitigation, remediation or offset can truly replace the natural environment and the Indigenous Biodiversity that would be lost or disturbed.

Personal details removed: No

Hearing: Maybe

email submission: Yes

David Bishop

From: ruahineparkconsultation@doc.govt.nz
Sent: Sunday, 1 March 2015 8:19 p.m.
To: David Bishop
Subject: Ruahine Conservation Park consultation

Name: Owen Cox
Organisation: Federated Mountain Clubs of NZ
Phone: 04 385 9516
Email: fmcsecty@gmail.com
Address: PO Box 1604
Wellington 6140

Commentsstatus: The current proposal is deficient and we do not support it on the current terms.

The Forest Park has a status that encourages recreation. Currently the Makaroro River bed provides two critical access points to the Forest Park. There are very legal access routes into the northern Ruahines.

The land covered by the proposal is alongside the river bed. One of the access points is across the river, through one of the revocation blocks and onto the track to Parks Peak and the the Yeoman Track. The other access route is up the publically owned river bed. This gives access from the Makaroro River to huts and tracks in the main body of the Park. These routes are used extensively by individuals and clubs from throughout the North Island.

The evaluation of the proposal completely ignores the impact on recreation. Any revocation of status needs to consider the implications for recreation, especially given the threat to access to the Park from mthe dam flooding the riverbed including this conservation land. The land should be taken from the Park until such time as satisfactory access arrangements have been arrived at. If this proposal goes without DoC will have given up any bargaining strength it has to secure reasonable access to the Park.

We would remind you that included in the functions (ie purposes) in s6 of the Conservation Act is that DoC is 'to foster the use of natural and historic resources for recreation'. Ignoring this function as the papers relating to the revocation and land swap do now is not acceptable.

The issue of access has been raised at the Board of Inquiry into the proposed dam under the RMA. However, this decision is yet to be implemented and no access provision has been laid out on the ground.

Commentsexchange: Our objection to the proposed exchange at this time is as outlined above. Under Section 16(2) of the Conservation Act before an exchange can be made it must be established that any exchange'will enhance the conservation values of land managed by the Department and promote the purposes of this Act.' Note the use of 'and' in the legislation – it involves both Conservation and the other purposes of the Act.

Any exchange should wait until it is clear that secure and practical legal access from the formed public road to the boundary of the main Forest Park is obtained at:

- the point the Makaroro River leaves the main park block
- the Yeomans and Park Peak tracks.

If necessary any exchange should be modified to facilitate the provision of these access points.

Recreational use in the Park is serverely hampered by a past failure to develop enduring access arrangements. The opportunity to develop an enduring arrangement should not be missed here.

Personaldetailsremoved: No
Hearing: Maybe
emailsubmission: Yes



Attention: Geoff Ennor

402 HINERUA RD,
R. D. 1, ONGAONGA,
CHB 4278
26 February 2015

Dept of Conservation,
P.O. Box 10420,
WELLINGTON, 6143

Koa Ora,

Re: Change of Status for a Specific Part of the Ruahine Conservation Park

I would like to make a submission in respect of the above:

I object to the proposed Change of Status for the 22 hectares of the Ruahine Conservation Park in question on the following grounds:

- (a) the proposed Change of Status is not legal
- (b) it would set a bad precedent for other conservation land
- and (c) the Dept of Conservation should be doing its job in protecting areas like this 22 hectares RATHER than being complicit in its vandalism.

I would also like to be heard in support of this submission

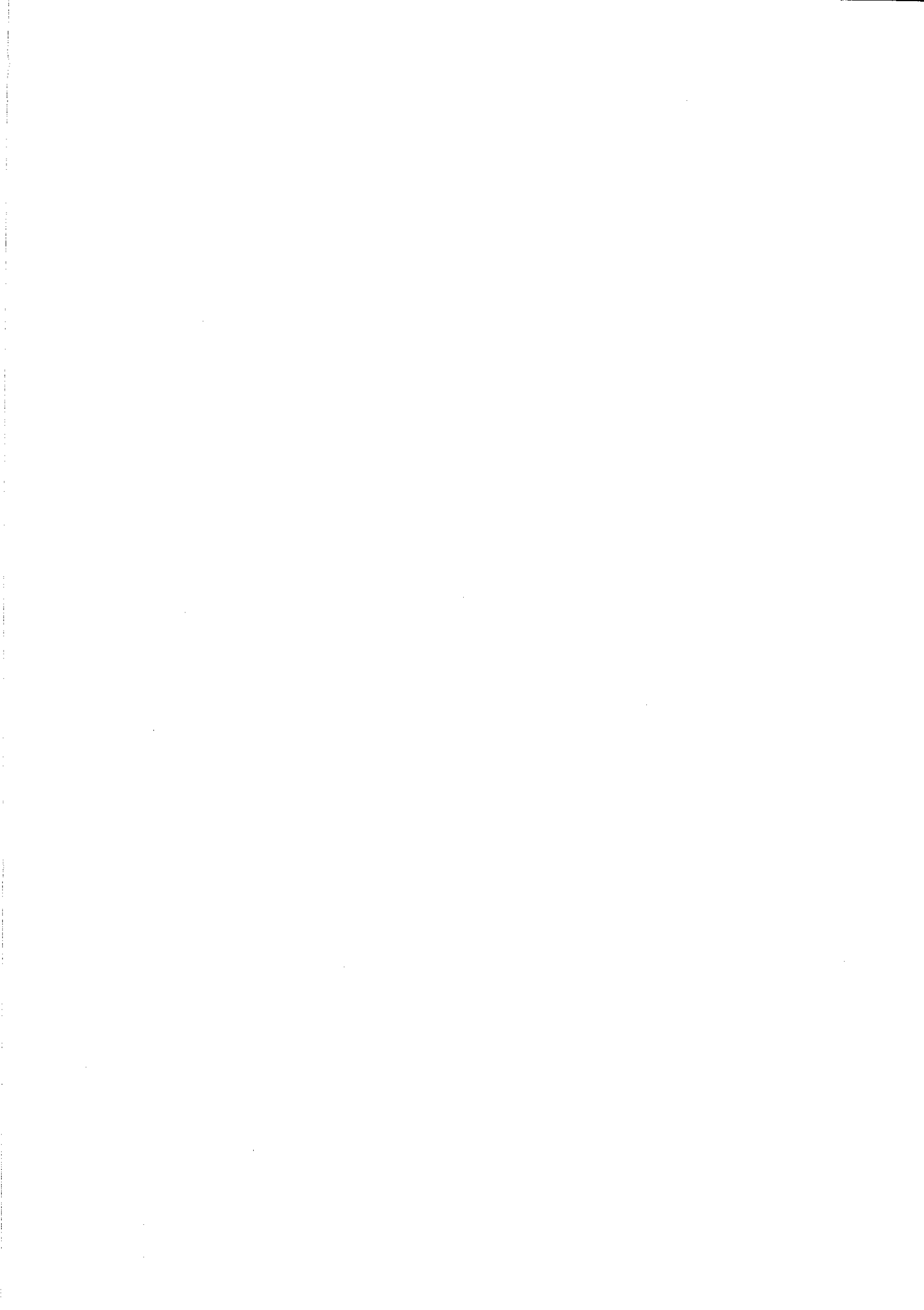
Yours sincerely,

Geoff Ennor

(G. F. ENNOR)

P.S. I would support the Dept of Conservation taking over the 146 hectares of the Smedley Block.

It and a number of other areas of native bush within the RWSS reservoir footprint would make valuable additions to the Ruahine Conservation Park.



David Bishop

From: ruahineparkconsultation@doc.govt.nz
Sent: Thursday, 26 February 2015 9:51 a.m.
To: David Bishop
Subject: Ruahine Conservation Park consultation

Name: sharleen baird

Organisation:

Phone: 06 858 6587

Email: sharleenb@xtra.co.nz

Address: 341 racecourse rd RD2 waipukurau 4282

Commentsstatus: I believe it's illegal (or should be) This is not Stewardship land - its been deemed Conservation Park through a proper process and can't just be changed by DOc or any Govt because they favour a current commercial proposition.

I challenge DOC science and capability team's view that this enhances conservation values of the land - it does the complete opposite. It revokes it.

Trading land of higher value for lesser value makes a mockery of the extensive research and legal processes undergone to achieve these designations throughout NZ/Aotearoa

Commentsexchange: Conservation Park Status land should never be exchanged for Stewardship status land - it sets a dangerous precedent vulnerable to all commercial interests wanting to exploit conservation areas.

At present, we have both blocks .The Smedley block is already under Stewardship status so if we lose the 22h. conservation status land and gain the Smedley block, we have effectively lost 22h of land of conservation value.

Obviously , if this farce persists, a public consultation process should be mandatory not just ministerial decision - again, a dangerous precedent.

Personaldetailsremoved: No

Hearing: Yes

emailsubmission: Yes

