

National principles for private accommodation¹ on public conservation land

The Conservation Act 1987:

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.

Conservation General Policy 10(g):

New accommodation and associated facilities, including encampments, on public conservation land and waters for exclusive private use should not be permitted.

Conservation General Policy 10(h):

Existing private accommodation and associated facilities, including encampments, on public conservation lands and waters will be phased out, except where specifically provided for or allowed in legislation, in accordance with the conditions and timeframes set out in any relevant concession or conservation management strategy or plan. They should be removed at the end of the phase-out period, unless retained by the Department for public use.

Conservation General Policy 1(d):

The words ‘will’, ‘should’ and ‘may’ have the following meanings:

- i. Policies where legislation provides no discretion for decision-making or a deliberate decision has been made by the Minister to direct decision-makers, state that a particular action or actions ‘will’ be undertaken.*
- ii. Policies that carry with them a strong expectation of outcome without diminishing the constitutional role of the Minister and other decision-makers, state that a particular action or actions ‘should’ be undertaken.*
- iii. Policies intended to allow flexibility in decision-making, state that a particular action or actions ‘may’ be undertaken.*

General Policy for National Parks has very similar policies, except the 2nd policy for existing private accommodation is a ‘should’ policy.

National principles

1. Legal requirements

- Any application for a concession for private accommodation will be publicly notified, because this is required for proposed exclusive use of public conservation land. This provides an opportunity for the Department to gather feedback on the application.

¹ Defined in Conservation General Policy as “Place to live or visit which is not available to the general public on an open basis”.



- Any applications for authorisations will be considered under Part3 B Conservation Act 1987. *This includes any private accommodation or associated facilities originally leased issued under the Land Act 1948, Reserves and Other Land Disposal Acts and reflects the Court of Appeal findings in the Otehei Bay Holdings Ltd v Fullers Bay of Islands Ltd [2011].*
- Relevant legislation, policies (including Conservation General Policies and any relevant statutory planning document) and Treaty settlement provisions will be considered in the assessment of any application.

Operational principles

Conservation General Policy does not allow any discretion regarding the phase-out of existing private accommodation on public conservation lands and waters – this must occur. However, we do have discretion to decide what is the best option for the future management of the building(s) e.g. removal, transfer to the Department, leased to concessionaire with conditions for making it available to the public.

- The CMS National Issues paper on private accommodation (doccm 930973) contains a national framework for consistency of approach through conservation management strategies and applies to all reviews of conservation management strategies. This paper is in Appendix A of this document. The public notification stage enables feedback on draft policies and milestones.
- Cultural historic significance may be considered in the assessment of any application, including significant of any buildings, the values of the people, and stories associated with the site itself. Independent advice, for example from Heritage New Zealand, on heritage significance may be sought.
- Application processing fees, including for public notification, and market rate activity and management fees should apply. Any costs of monitoring should also be charged to concession holders.
- Climate change:
 - Risks (eg flooding, slips, coastal erosion, inundation) should be included in the consideration of any concession application for private accommodation, including any implications for sewage disposal.
 - Applicants/concessionaires should not be offered alternative locations on public conservation land for relocation of private accommodation and associated facilities.
 - DOC should not carry out any site protection related to climate change risks.

- DOC is open to considering ways to enable availability of the building and facilities to the general public on an open basis, where appropriate, in line with Conservation General Policies Section 10.
- As part of the phase out nationally, any concession granted for private accommodation and/or associated facilities may include conditions about :
 - Removal of buildings/facilities and rehabilitation of the site;
 - Transition to public use;
 - Mechanisms to enable public use, including fair and reasonable pricing;
 - Climate change risks - no hard coastal structures such as sea walls etc should be allowed;
 - Private accommodation buildings or facilities damaged or destroyed by fire, natural hazards or disrepair should not be able to be replaced;
 - The building footprint cannot be enlarged; and/or
 - Contain a term that demonstrably reduces the time for private accommodation and associated facilities to remain at the site.
- DOC may consider disposal of land occupied by private accommodation where appropriate. The fact sheet of requirements for acquiring land from DOC is attached as Appendix B.
 - Relevant legal requirements and policies (including Conservation General Policies and any relevant statutory plans) will be considered in the assessment of any disposal process.
 - Relevant Treaty settlement requirements, such as Rights of First Refusal, will apply.
 - The costs of any allocation process (eg tender) should also be recovered from participants.
 - Sale price will be at market rate.

Approved by



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04/11/2022



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Date

Approved 31 May 2012

CMS national issues – private accommodation

There are three distinct categories of privately owned accommodation on public conservation land (pcl). Each requires a different policy approach:

A. Existing private baches/cribs/huts and encampments **not** available for use by the public. These may or may not have been authorised in the past. General policy directs that private accommodation should be phased out.

B. Huts and lodges owned and occupied by persons other than the Department and available for public use, although use may be restricted (for example club huts and lodges and huts owned by guided walking concessionaires).

C. On-site accommodation required as part of a concession related activity (e.g. caretaker's cottage, worker accommodation). This accommodation is exclusive to the owner/occupier, is not generally available for public use and is removed at the end of the concession term.

The primary focus of this paper is the first category – existing private accommodation which is not available for use by the public. It is this category which has proven the most contentious and where in the past there has been the greatest degree of inconsistency between CMSs. Appendix 1 provides an overview of the issues relating the private accommodation on public conservation land.

This paper provides policy guidance for planners drafting the CMS section on private accommodation and related facilities. It explores options for phasing out in more detail.

What are we trying to achieve?

Implementation of the private accommodation provisions of each CMS should result in the following outcomes:

1. A nationally consistent framework for management of private accommodation and related facilities on public conservation land that can be used in statutory planning documents across the country.
2. Identification of conditions and timeframes for the phase out of existing private accommodation on public conservation land.
3. Avoidance of any new private accommodation facilities being located on public conservation land.
4. Protection of conservation values from adverse effects associated with provision of accommodation facilities.
5. Decisions about concession applications for private accommodation on public conservation land are tested against a nationally consistent set of criteria.

The Management Framework

A. Exclusive private accommodation (baches, cribs, encampments)

A1. Policy guidance for planners – management approach

CMSs must implement General Policy (see relevant extracts in attachment A). In summary:

- New private accommodation and related facilities should not be permitted.
- All existing private accommodation on public conservation land (that is not otherwise covered by s50 National Parks Act²) is to be phased out, unless it is specifically allowed or provided for in legislation.
- Concessions, CMS or management plans should specify details of timeframes and conditions for phase out.
- At the end of the phase-out period private accommodation should be removed unless retained by the Department for public use.
- If private accommodation is to be authorised, a concession is required, and a ground rental should be charged.

In addition to the CGP requirements, CMS policy should also state:

- That exclusive private accommodation should not be sold or transferred
- That the building footprint should not be increased beyond that existing when the CMS was approved. [this will require measurements to be made and a record kept of the building footprint and location]
- That the style and character of the building remains largely unmodified [a photographic record should be made at the time of CMS approval]
- Phase out should occur if a building falls into such a state of disrepair that it needs work requiring a building consent under the Building Act 2004 (note, minor repair and maintenance using comparable materials does not require building consent under the Building Act).

The above CMS conditions should then be reflected in the conditions for the individual concessions for each bach.

It would also be good practice for every CMS to contain a schedule of all exclusive private accommodation in the conservancy, its location, legal description and the current term of the concession. Placing the schedule in the CMS ensures it remains a public register and should help ensure consistent policy application over the life of the CMS irrespective of staff or operational changes. The name of person authorised in the concession document as at x date (eg July 2011?) should also be recorded in the permissions database.

Phasing out of private accommodation is invariably contentious and can become highly political. There is often a history of the Department or its predecessors commencing the process then deferring it when faced with opposition. Various policy approaches have included imposing set timeframes, approvals only for the lifetime of the current owner/occupier, and conditions on concessions that DOC is given first right of refusal on any assignment or offer for sale, with purchase price based on building asset value only. It is strongly recommended that the CMS specify a date with exceptions to that for individual baches or groups of baches depending on past authorisations.

² The exception in s50 NPA relates to accommodation in a public sense. The only private accommodation it deals with is for staff quarters and since 1996 such accommodation could only be authorised by concession – s 50(1)(d) refers..



As one way to comply with CGP, provision can be made for public use of the facility. The accommodation is not then exclusively for private use. There are various approaches. Examples include a club or association structure to manage the bach(es) with opportunity for the public to join as members, or opportunity for periodic public use through rental, ballot or booking system, although this level of detail is not required to be set out in the CMS. However, as the West Coast Conservancy has noted there are significant practical difficulties implementing a policy approach that requires owners to make their private accommodation available to the public.

The principles in the *Rangitoto* case (see attachment B) could be used to inform the management approach taken in those conservancies affected by the Hauraki Gulf Marine Park and also reserves because of s44 Reserves Act.

Finally, one approach does not fit all. Before developing any CMS policy in respect of exclusive private accommodation the following questions must be asked for each individual bach and group of baches:

- Is the bach authorised? By whom, when, and for how long? What is the legal status of the authorisation? What is the status of the land?
- Have historic and cultural heritage values been assessed and considered?
- What is the nature of the relationship with the bach owner? Phase out is a sensitive issue, often requiring individual solutions. Discussions must be in good faith, underpinned by consistent and clear principles endorsed by all decision makers. Legal redress and compliance can be costly and slow. A negotiated agreement with clear, consistently applied policy is to be preferred.

Planners should gather background information on existing private accommodation on pcl in each Conservancy: find out about their authorisation history, whether any specific legislation applies to them, if any concessions provide for right of renewal etc.

A2. Required National Policy Guidance and Clarification

In drafting CMSs the following matters require guidance and direction if national consistency is to be achieved :

- Definition – Legal advice has clarified that ‘private accommodation’ in CGP 10(h) and GPNP 9(h) means ‘exclusive private accommodation’
- Definition - The CMS glossary should include a standard definition of what “private accommodation and related facilities, including encampments” means, to help avoid situations where people try to apply policies for these to other types of buildings/circumstances.
- Phase out - Clear guidance as to the expected timeframes (e.g. 20 years) or mechanisms (e.g. on the death of the current owner) for ‘phase out’, acknowledging that there will be individual exceptions due to past authorisations. Very clear and consistent policy guidance at national level supported by legal advice would be of considerable benefit to conservancies as they deal with the often emotive and difficult issue of phase out.
- Public use – the implementation issues identified by the West Coast Conservancy should be addressed nationally if other CMSs are to adopt this approach.
- Temporary shelters – any seasonal shelters that are used as overnight accommodation require a concession. Many district plans contain policies governing management of maimais.
- Change to the land status – In some instances the public conservation land occupied by exclusive private accommodation may have low conservation values. One policy approach could therefore be to revoke the land status and follow the correct land disposal procedure (e.g. implement right-of-first refusal mechanisms, then – if land is still available for disposal - offer the freehold land at valuation to the bach owner). Treaty settlement, district plan



provisions and other implications would need to be considered. Consideration should be given to the appropriateness of disposing of pcl in each specific circumstance, and whether district plan provisions provide for appropriate management of the land etc. However some national policy guidance in respect of this option could be useful. (CGP 6(c) and (d) apply).

- Extent of permissible renovation and alteration – CMS policy should be clear that the footprint of the building is not to be increased (this will require a record of the floor area of all baches on pcl at the time of the CMS review). National guidance would be useful in respect of the extent of permissible renovation and alteration to the building, particularly if such work is likely to increase the lifespan of the building or significantly alter its character or the extent to which it harmonises with the landscape. National guidance should clarify that private accommodation should not be replaced if damaged or destroyed by an event (e.g. fire or flooding – see Policy 36 below).
- OSH/public liability implications of making a building available for public use – concession conditions should include a standard clause stating that liability lies with the concessionaire and they must hold valid insurance policies covering themselves for this (ie general public liability insurance, statutory liability insurance to cover court costs/fines relating to OSH incidents etc).

A3 Pre-statutory engagement

- Bach owner associations (where they exist).
- Historic Places Trust.
- Territorial local government (city and district councils) - particularly where there is private accommodation on public land administered by those councils.
- Conservation Board – Responses from conservancies indicate there are a wide range of views amongst conservation board members and some boards have experienced difficulty gaining consensus on the preferred policy approach to exclusive private accommodation.

B. Huts and lodges owned and occupied by persons other than the department and available for public use.

B1 Policy guidance for planners – management approach

General Policy provides for the use of existing and future public accommodation on public conservation land (eg CGP 10(a)-(c)).

Provision of new opportunities for public accommodation is consistent with the Department’s vision and partnership approach. However, national policy direction would be useful as the extent to which CMSs should identify such opportunities and enable additional accommodation to be provided/managed on pcl by companies and individuals for profit. Such accommodation may either be in the form of new buildings or transferral of management responsibilities for existing huts to concessionaires for a specified term (eg for a network of backcountry huts DOC may otherwise be unable to afford to maintain in the current economic climate). Commercial accommodation managed by concessionaires, for use by paying public, could include facilities of a more luxurious standard than the typical backcountry standard provided by DOC (e.g. existing Hump Ridge track and hut network in Southland). Policy guidance is provided in the CMS national issues paper on setting limits.

C. On-site accommodation required as part of a concession/other use related activity

Current thinking

This form of private accommodation does not appear to be a significant issue.

The CMS guidance notes do not need to contain any more policy direction than that already provided in General Policy.

For inclusion in the CMS

Private Accommodation (CGP 10 and GPNP 9)

Policies

31. Should not authorise new private accommodation and related facilities, including encampments, on public conservation lands and waters.

32. Should phase out all existing private accommodation on public conservation land that is not otherwise covered by s50 National Parks Act³ or specifically allowed or provided for in legislation by either:

(a) phasing in public use of the building/s (refer Policy 34a); or

(b) removing the building/s at the end of the phase-out period (refer Policy 34b), unless retained by the Department for public use.

33. Should consult X Conservation Board and the concession applicant when assessing a concession application for private accommodation, in order to determine whether it should be granted and, if so, which of the two phase out methods (32a or 32b) is most appropriate for each individual circumstance.

34. If private accommodation is to be authorised in accordance with Policy 32, concession conditions should specify that:

(a) the building/s are to be made available, where appropriate, for use by the public - with specific details on how this requirement will be phased in over time stated in each individual concession (if option 32a is chosen); or

(b) the building/s are to be removed⁴ on the death of the person named on the authorisation at the time the CMS is publicly notified, or within twenty years of CMS approval, whichever occurs first (if option 32b is chosen); and

(c) the style and character of all buildings are to remain largely unmodified; and

(d) the floor area and footprint of all buildings is not to increase beyond that existing at the time of CMS approval; and

(e) all buildings must comply with all relevant local authority requirements; and

(f) transfer/assignment to another party should not be authorised [ie the building/s cannot be sold or transferred to anyone else] and

³ The exception in s50 NPA relates to accommodation in a public sense. The only private accommodation it deals with is for staff quarters.

⁴ Unless retained by the Department for public use/active management of historical and cultural heritage values.



(g) an indemnity be given by the concessionaire and that the concessionaire hold adequate insurance (e.g. general public liability insurance, statutory liability insurance) to cover this indemnity.

35. Should only grant the renewal⁵ of authorisations for private accommodation and related facilities, including encampments, on public conservation lands and waters to the existing authorisation holder⁶, if:

(a) the existing authorisation contains a right of renewal; and

(b) the right of renewal is exercised by the authorisation holder before the existing authority expires; and

(c) the person holding the authorisation has complied with all of the terms and conditions of the authorisation.; and

(d) any new authorisation is granted before the existing authorisation expires

36. Should not authorise replacement of private accommodation if:

(a) a building falls into such a state of disrepair that it needs work requiring a building consent under the Building Act 2004 (note, minor repair and maintenance using comparable materials does not require building consent under the Building Act), or

(b) buildings are destroyed or so damaged by an event (e.g. fire, flood etc) as to render them untenable..

37. Remove unauthorised buildings from xxxxx [public conservation land and/or waters], in accordance with xxxxx Management Plan, notwithstanding Policies 32 to 36. [*This is an optional policy for places such as Loch Katrine Reserve and can be reworded as required to fit local circumstances*].

38. Remove buildings not authorised in accordance with Policy 32 from public conservation lands and waters no later than one year after CMS approval.

Appendix X - Each CMS should contain a schedule of all exclusive private accommodation in the Conservancy, its location, legal description and the current term of the concession.

Glossary – Each CMS should include the following standard definitions of private accommodation and related facilities:

‘Private accommodation’ means a place to live or lodge which is not available to the general public on an open basis. (Conservation General Policy, 2005)

‘Public accommodation’ means a place to live or lodge in that is open to or shared by all people. (General Policy for National Parks, 2005)

‘Related facilities’ means any structure or piece of equipment that is used in conjunction or association with private accommodation. Examples include garages, outhouses, and outdoor showers.

‘Encampment’ means non-designated sites used for the purpose of shelter or camping on either:

⁵ Where the existing/previous concession does not contain a right of renewal and is due to (or has) expire(d) and the authorisation holder applies for a new concession, the application should be considered against the other policies in this section and the relevant General Policy.

⁶ It should not grant transfers/assignments to other parties.



(a) a permanent or semi-permanent basis by private individuals or groups; or

(b) for more than short-term use by individuals or groups. (Conservation General Policy, 2005)

Statutory Land Management Fact Sheet – Acquiring land from the Department of Conservation

DOC manages conservation areas and reserves in the public interest in accordance with the Conservation Act 1987, the Reserves Act 1977 and the principles of the Treaty of Waitangi. Any proposal to dispose of (sell) such land must be handled strictly in accordance with the relevant Act.

While it is possible for land administered by DOC to be sold, the process of land disposal by the Crown is more complex than the normal transfer of freehold title. The costs associated with the process can be a major factor in determining whether a disposal proceeds, especially in the case of small areas of land with low value, which are not adequately defined and have no title. In these cases, the disposal costs may make the proposal uneconomic.

A broad outline of the process is set out below:

- **Land Status Check.** A complete status check is undertaken by DOC to confirm land ownership, and to ensure that there are no encumbrances which might prevent the land from being sold.
- **Site Inspection.** DOC staff will inspect the land to ascertain whether or not there are any conservation values that warrant the retention of the land in Crown ownership. As a general rule, if land has more than 'very low' conservation values, it cannot be sold.
- **Preparation of case to revoke reservation.** If the site inspection report concludes that there is no reason for the Department to retain the land, a proposal for disposal can be considered with a revocation/disposal process is instigated, including;
 - **Public Notification.** and the recommendation to dispose of the land is approved, a proposal to revoke the protected status must be publicly notified in one or more newspapers, and submissions or objections invited. Any relevant third parties (eg: Iwi, administering bodies) will be specifically consulted.
 - **Submissions or objections** – these must be given full consideration in accordance with the legislation.
 - **Preparation of case to decision maker.** If there are no objections to the revocation, or objections received are not sustained, a case for revocation is prepared for consideration by the Minister of Conservation / delegated authority.
- **Right of First Refusal obligations.** Iwi will be given preliminary notice that the disposal is being considered, in accordance with the Right of First Refusal provisions under any relevant Treaty of Waitangi Settlement legislation.



- **Preferential Sale.** The location of the land affects whether or not a preferential sale can occur to you. A preferential sale can only occur if you are an adjoining owner and the land is either:
 - between land already held in fee simple and a road which forms or should form the way of approach to that fee simple land, or
 - without a convenient way of access, or
 - suitable for use only in conjunction with the adjoining land, or
 - unable to be disposed of to anybody else on account of the hardship that would cause the adjoining owner because of special circumstances.

If these criteria are not applicable then the land has to be offered on the **open market** as DOC must seek to obtain the best return for the Crown.

- **Survey.** The land may need to be defined by survey in order for title to be raised. **This is often a significant cost – you may wish to seek a quote before proceeding.**
- **Valuation:** Sale of the land by the DOC must be at market value. A valuation by a professional valuer will usually be necessary to determine what that market value is.
- **Gazette notice publication.** If the Minister’s decision is to revoke and sell the land, a notice revoking the reserve status is published in the New Zealand Gazette.
- **LINZ accredited supplier completes sale.** In the case of land designated as a reserve, once a notice is published in the New Zealand Gazette, the property is passed to a Land Information New Zealand accredited supplier to complete the sale because upon revocation of the reserve status the land becomes Crown Land administered by LINZ. The accredited supplier must ensure that all of the Crown’s legal obligations are met, prior to the land being sold. The work involved in meeting these obligations is considerable and the cost of engaging an accredited supplier can be significant. **Their costs could range from \$5,000 - 15,000 depending on the complexity of the sale.**

In the case of land designated as a conservation area, the process may (at DOC’s discretion) either be dealt with “in house” by DOC on a cost recovery basis, or by an accredited supplier.
- **Crown’s legal obligations.** The Crown’s legal obligations include (but are not limited to):
 - the Right of First Refusal available under any relevant Treaty of Waitangi Settlement legislation) and;
 - Any obligation to offer the land back to any former owner, and;
 - Notification of the proposed disposal to a number of Crown and local government agencies to see if they have an interest in the land (HPT & Housing NZ), and; ;
 - Any obligations under Section 54 of the Land Act 1948 which provides for the offering of surplus Crown Land to the public in general, unless there is a strong case for the land to be offered preferentially. Most sales of Crown Land must be via public competition.

There is a risk that any person who seeks to have the protected status of land removed, and the land sold to them, will not be successful for one reason or another.

The process is complex, and so should not be undertaken lightly. It also takes a considerable time from when the first step is undertaken to the point where any buyer gets title to the land.

There is a chance that the property subject to this process may never get to the open market because of public objections to the disposal being upheld or because it is utilised by another government agency.

Because of the complexity of the process, and the costs involved, it is generally not appropriate for the DOC to undertake the process if it is deemed uneconomic to do so. However, if the property meets the requirements for a preferential sale the process may be considered if an applicant is able to guarantee that they will meet the costs of disposal. We caution applicants to carefully consider the financial implications before proceeding with an application.

Each situation is quite different and needs to be considered on its merits by both the DOC and the person(s) interested in the land.

Any further questions on the disposal process should be directed to the Statutory Land Management Team, email: slm@doc.govt.nz