

## Lower Selwyn Huts, Canterbury

### Assyst R191454

**Advice prepared by:** Sarah Smylie, Management Planner, 27 August 2020

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#### **Purpose**

1. To provide management planning advice to support the Mahaanui Operations Team in their communication with the Lower Selwyn Huts Association about licence renewals.

#### **Conclusions and recommendations**

2. The Conservation General Policy (CGP) sets out an expectation of existing private accommodation being phased out and removed unless retained for public use. Conservation management strategies cannot be inconsistent with the CGP.
3. While Policy 10(h) of the CGP sets out the expectation that phase-outs should occur in accordance with conditions and timeframes set out in any concessions or conservation management strategy or plan, the CGP does not state that these documents will or should include conditions or timeframes.
4. Policies in the Canterbury (Waitaha) Conservation Management Strategy (CMS) state that the CMS does not apply to the area covered by the Te Waihora Joint Management Plan 2005 (JMP).
5. The JMP appears to recognise the huts as recreational facilities although the specific provisions that apply to them are found in Section 7.2 of Part 3 ('other activities'). The policies and methods set out conditions to apply during the anticipated 10-year term of the JMP and the JMP is essentially silent as to the long-term management direction to be applied.
6. This means that any decisions on future concession applications will primarily need to be guided by the CGP and in particular Policies 10(b)-(i) although the JMP sets out values, outcomes and policies and methods to avoid or mitigate adverse effects which are considerations under CGP Policy 10(e).
7. If monitoring undertaken by the Department is identifying adverse effects on conservation values (and in particular those identified in the JMP), then DOC should be establishing firm timelines for phasing out private use of the Lower Selwyn huts.
8. Given that the JMP was developed to implement the Ngāi Tahu Claims Settlement Act 1998 and was jointly approved by Ngāi Tahu, the timelines would need to be developed jointly with Ngāi Tahu following consultation with hut owners.
9. Owing to the work needed to be undertaken above, it is not considered that this assessment should be shared externally.

#### **Context**

10. The Lower Selwyn Huts Settlement was established in the late 1880's.
11. Part of the settlement (58 huts) is located on public conservation land (pcl).
12. The lease/ licence holders are currently being offered their last right of renewals for the 2019-2024 period and have raised questions around the anticipated outcomes for these huts in the

long term. Conversations have particularly focussed on the CMS and the implementation of the provisions requiring private accommodation to be phased out.

13. The Mahaanui Operations Team are seeking to understand whether the Lower Selwyn Huts Association were involved in the development of the CMS. They have also requested planning information that can be shared with the Association.

### **Relevant statutory documents**

14. The statutory planning documents considered in relation to the proposal include:

- Conservation General Policy 2005 <https://www.doc.govt.nz/about-us/our-policies-and-plans/conservation-general-policy/conservation-general-policy-full-content/>
- Canterbury (Waitaha) Conservation Management Strategy 2016 <https://www.doc.govt.nz/about-us/our-policies-and-plans/statutory-plans/statutory-plan-publications/conservation-management-strategies/canterbury/>
- Te Waihora Joint Management Plan 2005 <https://www.doc.govt.nz/about-us/our-policies-and-plans/statutory-plans/statutory-plan-publications/conservation-management-plans/te-waihora-joint-management-plan/>

### **Assessment**

#### **Conservation General Policy**

15. The CGP guides the preparation of management planning documents. Conservation management strategies and conservation management plans cannot be inconsistent with the CGP (Policy 1(h)).
16. Section 10 of the CGP sets out the requirements for allowing accommodation and related facilities on p.c.l. Policies 10(b)-(i) are relevant to existing private accommodation.
17. Policy 10(h) specifically sets out the expectation that all existing private accommodation, including encampments be phased out and removed, unless it is retained and managed by the Department of Conservation (DOC) for public use.<sup>1</sup>
18. While Policy 10(h) sets out the expectation that phase-outs should occur in accordance with conditions and timeframes set out in any concessions or conservation management strategy or plan, the CGP does not state that these documents will or should include conditions or timeframes.<sup>2</sup>
19. I note that Policy 10(h) identifies that phase-outs can be provided for in concessions. I understand that the concessions expire without any further rights of renewal in 2025. Legal advice should be sought to clarify whether that fact that the concessions expire can be considered to provide this.
20. Monitoring by the Department and concessionaires (consistent with CGP Policy 10(f)) of the effects of the huts will be critical in terms of informing future decisions on how to phase-out private use of the huts to meet CGP expectations. If monitoring is identifying adverse effects on conservation values, then DOC should be establishing firm timelines for phasing out private use of the Lower Selwyn huts.

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<sup>1</sup> I note that while Policy 10(h) is drafted as a 'will' policy, Management Planners have been advised that it should be applied as a strong 'should' policy so as not to fetter the Ministers' discretion

<sup>2</sup> Elsewhere in the CGP, policies provide clear direction as to the contents of conservation management strategies or plans. See for example, Policies 4.1(a) & b, 4.2(a) and 9.1(b).

21. Other policies in Section 10, set out matters that need to be considered when assessing applications. These include but are not limited to outcomes planned for places, adverse effects, and ground rentals.

### Canterbury (Waitaha) Conservation Management Strategy

22. General interpretation Policy 5 (p 12) of the CMS provides for the policies in Part Two of the CMS to prevail over policies and outcomes in Parts One and Three.
23. Policy 2.9.16 (p. 129) in the Coastal Land and Marine/ Ki Tai Place in Part Two states:

*“With Ngāi Tahu, manage the Te Waihora Joint Management Plan Area in accordance with its conservation management plan.”*

24. This approach is also articulated in descriptive text in Table 16 of Section 3.11 – Private accommodation (p. 124) and related facilities which reads:

LOCATION	NUMBER	AUTHORISED	EXCEPTION APPLIES	RIGHT OF RENEWAL	NOTES
Lower Selwyn Huts Conservation Area	58	Yes – expire 2019	Yes	Yes – till 2024	Authorised by specific leases since the settlement was established in the 1920s, and now in accordance with the Te Waihora Joint Management Plan 2005.

25. Policy 2.9.16 and Table 16 create a very strong expectation of DOC conforming with the provisions in the Management Plan as long as that plan continues to have effect (refer Policy 8, p. 12).
26. As the Management Plan has not been amended, reviewed, withdrawn or revoked, I consider that the provisions of the Management Plan provide the primary guidance in terms of establishing the long-term outcomes for the Lower Selwyn Huts, provided that they are not inconsistent with the CGP.
27. And while the policies in Section 3.11 of the CMS generally sets expectation of private accommodation being phased out, they do not apply to the Lower Selwyn Huts.

### Te Waihora Joint Management Plan

28. The JMP appears to have become operative in late 2005<sup>3</sup> following the adoption of the GCP in May 2005. It was jointly prepared with Ngāi Tahu and gives effect to the Ngāi Tahu Claims Settlement Act 1998
29. The JMP recognises the huts as recreational facilities (refer to Part 2, Sections 6.1.2 and 6.1.3) which *“provide bases for people mainly involved in fishing and gamebird shooting”* (p. 82) and Section 7.2.2 (Part 2, p. 86) which again emphasises recreational use. However, it is understood that current use is wider than this and involves permanent occupation in some instances.
30. While the JMP does not contain outcomes at Place as such, objectives in Section 8 (which are restated in Part 3) appear to most closely equate to outcomes<sup>4</sup>.

<sup>3</sup> The exact date is not stated in the Management Plan although it was published on 10 December 2005

<sup>4</sup> The descriptive text on p. 88 states that the objectives are *“statements of a future situation that is sought through the management of the Joint Management Plan Area and through advocacy ...”*. This appears to share

31. The objectives are wide-ranging but emphasise:
- Ngāi Tahu's role as kaitiaki – their cultural values and associations with Te Waihora including it as a source of mahinga kai
  - The protection of landforms, landscapes, wildlife habitat, biodiversity and historic resources
  - The need to improve the mauri of Te Waihora and the natural balance required to safeguard the life-supporting capacity of the water and associated ecosystems
  - Provision for recreational use and enjoyment where there are no likely adverse effects on mahinga kai, other cultural values, or conservation values
  - The need to ensure that recreation and other activities are compatible with objectives and policies in the plan
32. Policies and methods in Part 3 of the JMP contains very few provisions specific to the Lower Selwyn Huts. Those that are included are found in Section 7.2 ('Other activities'), p. 153. They state.
- "7.2.2 The Minister should not permit any buildings for exclusive private use on lands administered by the Department, except as provided for at the Lower Selwyn Huts.*
- 7.2.3 To ensure that allowing the Lower Selwyn Huts settlement to remain on site does not constrict or restrain Te Waihora lake levels or management for mahinga kai, conservation and other purposes within the JMP Area."*
33. Method 7.2b (p. 154) also provides further direction on management of the huts. It states:
- "Manage the Lower Selwyn Huts in accordance with the objectives and policies of this Plan"*.
34. In my view these policies and method are simply setting out conditions to apply to the Lower Selwyn Huts during the anticipated 10-year term of the JWP and that the JMP is essentially silent as to the long-term management direction to be applied.
35. This means that any decisions on future concession applications will need to be guided by the CGP in Section 10 and in particular Policy 10(h).

#### Other

36. The Draft CMS was notified on 26 June 2013. In addition to public notices, emails were sent to Canterbury-based interested parties and concessionaires advising of the availability of the draft for public submission.
37. The Lower Selwyn Hutowners (c/- **9(2)(a)**) were on the Canterbury CMS contact list to receive a hard copy of the draft plan ([DOCDM-1191482](#)) and concessionaires were identified on [DOCDM-1207676](#). Further investigations would be required to identify the exact nature of correspondence sent.

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similarities with the definition of outcomes in the CGP which is "A goal or end result of a conservation action or series of actions" and more recent definitions included in conservation management strategies (see p. 11 Canterbury CMS).

38. It is noted that the provisions identified in paragraphs 17 and 18 were contained in the Draft CMS in their current form (Refer Policy 2.4.15 and Table 13 in Draft CMS). Thus, concessionaires would have had no expectation of any intent to change the management regime for the huts.
39. Following the close of submissions a common issues report was prepared on private accommodation to assist the Conservation Board and NZCA in decision-making (see [DOCDM-1509367](#)). It would appear from Attachment 1 to that report (p. 186), that no submission were received directly related to the Lower Selwyn Huts.

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