



Feedback on the proposed National Conservation Policy Statement

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To Department of Conservation

Submitter details

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Parliamentary Commissioner for the Environment

The Parliamentary Commissioner for the Environment was established under the Environment Act 1986. As an independent Officer of Parliament, the Commissioner has broad powers to investigate environmental concerns and is wholly independent of the government of the day. The current Parliamentary Commissioner for the Environment is Simon Upton.

Key points

- Many of the proposals contained in this consultation are concerned with streamlining the conservation planning system and the process used to grant concessions. I broadly support many of those changes **provided that they do not infringe upon** the hierarchy embedded in the Conservation Act 1987: that recreation and tourism are to be accommodated only to the extent that they are not inconsistent with the conservation purposes for which the land is held.
- It is important that the primary focus of any proposed National Conservation Policy Statement (NCPS), and the area plans underneath it, should be managing biodiversity. This priority is not clear from the consultation document, which seems primarily focused on how to manage concessions rather than conservation activities.
- The proposed changes include a major focus on standardising the contents of place-specific plans (termed area plans in the future system). While this may well help to reduce uncertainty and streamline concession decisions, it also comes with significant data requirements. I have particular concerns with the “land classification” attribute that I understand is intended to act as a proxy for conservation value. In my view, existing statutory land classifications are nowhere near accurate or specific enough to serve this purpose. Stewardship land is an obvious example. It is a holding classification, pending proper assessment on conservation values.
- Ultimately, it is envisaged that the “zones” in which commercial activity can – and cannot – occur will be set out in the National Conservation Policy Statement (NCPS).

Given that the NCPS is the main focus of this consultation, it is disappointing that the Department has not offered any preliminary thinking on this.

- The proposed changes also extend to the process for developing conservation planning documents (the NCPS and area plans). In particular, it is envisaged that the Conservation Authority and conservation boards will play a reduced role in the future planning system, with plans instead approved by the Minister of Conservation. It is unclear why it is necessary to remove the layer of independence these institutions offer. If the Government's objective is to streamline the planning process, there is a good argument that rationalising the number of plans and standardising their contents would suffice.
- I do not support the proposal to remove limits from area plans. At present, these serve at least two functions. Firstly, they ensure community expectations about acceptable levels of noise and congestion at 'their' local park or reserve are not exceeded. Secondly, they establish the scarcity of supply that is necessary for the successful operation of competitive concession allocation (tenders for example). It seems doubtful if any of the alternative limit-setting tools proposed in the consultation (bylaws for example) could serve both these purposes.

Introduction

The feedback I provide in response to this consultation is predicated on the assumption that the general scheme of the Conservation Act, and the protections that are extended by statute to categories of conservation land, will not be disturbed by the matters proposed for a National Conservation Policy Statement (NCPS). While the Act is without an expressly stated purpose, the definition of conservation provides a clear understanding of the purpose Parliament intended in 1987.

That definition has remained unchanged for the 38 years the Act has been on the statute books. However, a recent Government press release associated with the announced consultation proposals, suggests a change to conservation goals may be imminent. Entitled "*Unleashing growth on conservation land*", it includes references to "saying yes to more jobs, more growth, and higher wages" and "unleash[ing] a fresh wave of concessions".¹

Conservation has never been about economic growth or facilitating development interests. Rather, in the words of section 6(e), tourism and recreational interests are to be accommodated when they are "not inconsistent with" the conservation of the resources for which the department is the custodian. One of the reasons conservation land is held *for conservation purposes* is that we recognise the uniqueness of our isolated and deeply endemic ecology and do not consider that it is something that can be exchanged for 'growth'. As the last large islands settled on the planet, we are the custodians of some of the last remnants of not just a pre-modern but a pre-human world. The global significance of these lands is precious and not something to be traded for short run consumption.

As Hon Russell Marshall – the then Minister of Conservation – put it during the Conservation Bill's second reading:

"[The government] did not look for a Department of Conservation concerned with balancing the needs of development and preservation. That is the role of the

¹ See *Unleashing growth on conservation land*. www.beehive.govt.nz

Ministry for the Environment within the new administration structure. The essential role for the department is to advocate long-term conservation of resources and to manage the resources entrusted to its care accordingly.”

The definition of conservation, and the functions of the department, were drafted deliberately. If it is the intention to revisit those founding principles, and this consultation on concessions is simply preliminary to making such a change, then the proposals should be withdrawn and consultation recommenced with any more far-reaching agenda clearly explained. It is not possible to provide a view on making concessions easier to manage without assurance that the principles of the Conservation Act will remain intact.

Provided the framing of the Act is not in question, I can in principle support changes that are confined to giving effect to the existence of an NCPS, to achieve more efficient conservation planning and a simplified concessions approval process. I set out comment in respect of those matters below and offer suggestions for aspects that merit further consideration or improvement.

Changes to conservation planning

A key aspect of this consultation is the proposal to consolidate the suite of conservation planning documents that are required under the National Parks Act 1980 and Conservation Act 1987. At the national level, this will mean replacing the General Policy for National Parks and Conservation General Policy with a single policy – the National Conservation Policy Statement (NCPS). At the regional level, it will mean replacing conservation management strategies, conservation management plans and national park management plans into a single layer of policies called area plans.

As discussed in my submission on the Government’s earlier *Modernising Conservation Land Management* discussion document, I broadly support these changes. As discussed below though, I am less convinced about the proposals to alter the content of these plans and the process for developing them.

Focus of the NCPS and area plans

As noted above, the primary purpose of the Conservation Act (and the other Acts that the current Conservation General Policy helps implement) is the conservation and management of New Zealand’s biodiversity. One would therefore expect that the primary focus of any proposed NCPS and the subsidiary area plans will also be the management of biodiversity.

Whether or not that will be the case is not clear from the consultation document. The section on NCPS proposals (starting on page 4 of the consultation document) jumps straight into the content of area plans without any discussion or indication of what the content or focus of the NCPS itself will be. In terms of the content of the area plans, there is only brief mention of how values and objectives will be described in plans. Then, almost all the subsequent examples and discussion focus on concessions and concession management. One is left with the impression that the proposed NCPS and area plans are less about conservation and biodiversity management, and more about enabling and managing economic activity on conservation land.

If the moves to streamline conservation planning documents go ahead, it is important that the primary focus of the NCPS and subsidiary area plans is conservation, specifically the management of biodiversity. Managing concessions is a secondary focus.

The content of area plans

The consultation document proposes that the content of area plans will be standardised in the future conservation system. This will be done via the NCPS, which will direct area plans to identify and describe the following values:

- Indigenous species, habitats, ecosystems, landscapes, landforms and geological features
- Historic and cultural heritage in protected areas, including those on the New Zealand Heritage List/Rārangī Kōrero
- The significance of protected areas (terrestrial and marine) and taonga to tangata whenua
- The types of recreational and tourism experiences in that place.

The consultation document also proposes standardising how these values are described from plan to plan. In short, area plans will spatially classify public conservation land and water into “places” based on two attributes: “land classification” and “visitor zone”.

The land classification attribute will be based on the (statutory) classifications under which public conservation land is already held (e.g. national park, conservation park, stewardship area, nature reserve, etc). It appears to be intended as a measure of the conservation or ecological value of the land in question. The visitor zone attribute is based on a classification, which includes a range of zones: front country, back country, wilderness, etc.² It appears to be intended to describe the level of infrastructure, crowding and noise that is acceptable in different places.

The main purpose of these changes is to streamline the process for granting concessions. The idea is that standardised zoning of conservation land will allow the NCPS to provide much greater certainty about where particular types of commercial activity can, and cannot, be carried out in the conservation estate. There are clear parallels with New Zealand’s resource management system reform and the more widespread use of permitted activity standards.

I see two issues with the proposed approach.

The first relates to the use of statutory land classifications to standardise where certain types of commercial activity can take place. Presumably, the underlying logic is that, all else being equal, commercial activity should be excluded from areas with higher conservation or ecological value. That makes sense. My concern is that the existing classifications are simply not accurate or specific enough to justify their use in this context.

As I pointed out in my earlier submission on these changes, the conservation classifications we observe today are not the product of some comprehensive historic assessment. Rather, they reflect decisions made by different people, at different points in time, often with idiosyncratic factors in mind. There is no better example of this than areas classified as stewardship land. It was developed as a holding classification, pending proper assessment on conservation values. The term ‘stewardship land’ encompasses some land with high biodiversity and conservation values worthy of national park or nature reserve status. Other parts of it have lower conservation value and could be suitable for a much wider range of activities. It is simply too

² This is not a new concept. Many of these categories originate from the Recreational Opportunity Spectrum (ROS) developed in the United States in the early 1980s, and adopted by DOC in the 1990s (see [Joyce and Sutton, 2009](#)).

broad a classification to be useful for conservation management prioritisation without significant additional work.

Existing conservation land classifications need a comprehensive review and update if they are to be used for the proposed regulatory purposes. In order to protect our biodiversity, the country urgently needs to understand which ecosystems are endangered and where they are. The same goes for endangered species; for example, our understanding of endangered invertebrates is very poor. At present, the Department does not have the information to undertake this task. Gathering it would require a significant investment and should be the priority for any new revenue generated from conservation land. There would be clear value in extending such an exercise to the entire country as the information will be vital for spatial planning under the Government's proposed resource management reforms.

Realistically, this process of information gathering will take time and the Government, like many before it, will want to continue implementing its goals rather than waiting for better information.³ Crucially, if important information about conservation values is discovered during this process or unforeseen effects occur, there must be the facility to reclassify areas and an ability to amend or revoke affected concessions.

The second issue relates to how the existing statutory decision-making framework for concessions will be incorporated into the new system – particularly for activities that are not pre-approved or exempt.⁵ At present, section 17U of the Conservation Act specifies a range of matters that the Minister must consider when granting a concession. Some of these matters are highly stringent, for example, the requirement that a concession shall not be granted if “the proposed activity is contrary to the provisions of this Act or the purposes for which the land concerned is held.” My assumption, and preference, is that the considerations set out in section 17U will transfer across in their entirety. Any proposal to water them down would require significant consultation and caution.

The process for developing the NCPS and area plans

The consultation document also proposes changing how national and area-specific conservation planning documents will be developed. In particular, both the NCPS and area plans will be approved by the Minister of Conservation in the future system. That is a significant departure from the current approach where (with the exception of the Conservation General Policy) statutory conservation planning documents are approved by either the New Zealand Conservation Authority or Conservation Boards.

The consultation paper is silent on the rationale for these changes. However, the earlier *Modernising Conservation Land Management* discussion document had this to say:

- “At present, the Minister approves the Conservation General Policy, while the NZCA approves the General Policy for National Parks. This does not ensure consistent government policy settings or the application of government policy to the management of national parks.”

³ The need to properly classify public conservation land is not a new idea. It was seen as necessary even when many of the existing classifications came into existence with the passing of the Conservation Act. In the late 1980s, successive Ministers of Conservation intended to introduce a Protected Areas Bill to do exactly that (Woollaston, 2013). As Michael Cullen said during the second reading of the Conservation Bill, “It makes sense for the department to study the present range of reserved and protected land classifications to determine how they can be rationalised into a single hierarchical structure of protection.”

- “The NZCA or relevant conservation boards currently approve changes to management plans and strategies. This arrangement fetters ministerial decision making.”
- “With the functions and roles of statutory planning documents more oriented towards guiding regulatory decision making and concessions, and the need for a coherent set of regulatory rules across the framework, it is more appropriate for the Minister to be the decision-maker. This is because the NZCA and conservation boards do not have roles in making regulatory and concession decisions.”

I am not convinced that these issues justify the wide-ranging changes proposed. No convincing case is made for giving the Minister additional powers. Indeed, there are good reasons why independent institutions, such as the Conservation Authority and Conservation Boards (and the entities that preceded them), were entrusted with deciding how public conservation land and water is managed.

One is to ensure that short-term political considerations do not cloud decisions about land that was set aside just as much for future generations as those that live today.

Another is to ensure that decisions about how particular parks and reserves are managed are made by those who are closest to them. This idea would have been self-evident for much of the 20th century. When a new national park or reserve was established, it naturally fell to parks and reserves boards to manage them.⁶ When the Department of Conservation was established in 1987, considerable effort went into retaining that local representation. As Hon Ken Shirley said during the second reading of the Conservation Law Reform Bill in 1990, “all the decisions cannot be made in Wellington, and it is completely inappropriate that they should be. It is appropriate for communities to have control over their own areas while interfacing with the Department of Conservation.”

Neither am I convinced that it is necessary to alter the plan-making process to achieve the objectives set out in the consultation document – streamlining concessions management in particular. I would have thought the proposals to reduce the number of conservation planning documents, standardise their contents, and introduce pre-approved and exempt activities would go a long way towards achieving that.

If Parliament does decide to reduce the role of the NZCA and conservation boards in approving area plans, it should consider introducing alternative safeguards into the process. For example, the process envisaged in the discussion document published by the Department last year allows for NZCA and conservation boards to provide written feedback to the Minister on revised draft plans. It would be simple enough in that context to require the Minister to give reasons for departing from that feedback when approving the final plan.

Pre-approving concessions for certain activities

As discussed in my previous submission, I generally support the proposal to introduce a “class approach” to processing concessions. Specifying the activities that are pre-approved (or exempted from needing a concession altogether) should allow the Department to spend less time processing high-volume, low-impact applications and focus on those that are most significant.

Of course, much depends on the specific activities that are given pre-approved (or exempt) status. The consultation document helpfully proposes four criteria to help with this:

- the activity is not contrary to the provisions of the relevant Act(s) and the purpose for which the land is held; and
- the activity does not require an interest in land; and
- the adverse effects of the activity (including cumulative effects) on the values and objectives of the relevant land classification can be adequately managed; and
- the effects of the activity on other users are consistent with expectations, given the visitor zone.

The first three of these criteria seem reasonable enough. But the fourth immediately raises questions about which visitor zones the department has in mind. It may well make sense (for example) to pre-approve motorised boat transport, drone use or mountain bike tours in front country zones, but not back country or remote zones. The consultation document is silent on this matter however, noting that further policy work is required to determine if pre-approved or exempt activities should apply at all visitor zones or just some.

If pre-approved status for certain activities was restricted to certain zones, much would then depend on the spatial extent of those zones. In the current conservation planning system, these sorts of decisions (i.e. where congestion and noise are – and are not – acceptable) are made through an iterative bottom-up process involving local communities, iwi, Conservation Boards and the Department of Conservation. In the proposed future system, there will be more emphasis on centralised decision making. There is a very real risk that the views of local communities and regular users will be overlooked in the process.

For at least some activities, pre-approving concessions also raises a question as to how the Department could plausibly respond if congestion and noise became excessive – even at front country sites.

Pre-approving activities such as motorised boat transport create exactly this sort of prospect in places like Abel Tasman National Park. Because the supply of concessions to undertake this activity would be essentially unlimited, it is unclear what the Department could do if demand for them continued to grow. There are lessons to be learned here from New Zealand's resource management system. First, cumulative effects matter. Second, 'clawing back' rights once they have been assigned is very difficult.

There would be merit in the Department exploring potential 'safety valves' prior to the next round of consultation later this year. This could include an ability to temporarily stop granting new pre-approved concessions in situations where commercial activity had become excessive. Another option could be to limit the number of 'pre-approved' concessions available for an area. Allowing the activities that are pre-approved to vary from area plan to area plan would also help.

Reduced use of limits more generally

One issue that the consultation document is clear on is that area plans “will not set specific rules for concessions (e.g. limits and conditions)”.

For limits in particular, this is a major change from the current system. The Westland Tai Poutini National Park Management Plan includes a daily limit of 85 aircraft landings on the lower parts of both Fox and Franz Josef glaciers, for example. Similarly, the Abel Tasman Foreshore Scenic Reserve Management Plan establishes a daily limit of 2,929 visitor movements entering the reserve on water taxis.

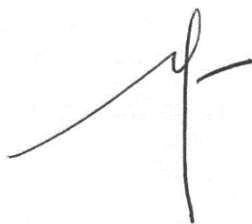
In general, limits such as these have been established to ensure that commercial activity does not begin to erode the special character of popular parts of the conservation estate or the visitor experience of others. Limits are also useful to ensure that commercial activity does not begin to impact on species or ecosystems.

The consultation document recognises that place specific rules may be required in some instances and proposes three alternative ways of imposing them: bylaws, congestion management tools (e.g. booking systems) and conditions on individual concession agreements. In my view, all three are unsatisfactory for the simple reason that they would be established centrally, which will likely underplay locally specific conservation values and risks, and will likely take inadequate account of the views of individuals who live nearby or frequently visit the area in question. This relates to my earlier point about the risks of reducing the influence of Conservation Boards in conservation planning.

Furthermore, it is worth pointing out that prohibiting the inclusion of activity limits in area plans will undermine the public revenues that can be generated by allocating more concessions competitively. In most cases, what a potential operator is prepared to tender to gain the right to operate in the conservation estate will depend significantly on the supply of comparable opportunities. If that supply is potentially unlimited (i.e. there are no limits specified in a policy or plan), the amount that an operator will be prepared to bid will likely be considerably lower. Given the urgent need to generate more revenue to cope with a desired influx of visitors **and** protect our biodiversity, it makes no sense to tie the Department’s hands in his way.

Conclusion

There are merits in both simplifying and increasing standardisation of the conservation planning system. But it is important that conservation and management of biodiversity remains at the heart of the system. It is also important to maintain sufficient flexibility for plans to reflect local circumstances, have adequate provision for input from both local and independent expertise, and safety valves for situations where ‘standardisation’ starts to lead to unintended negative conservation outcomes.



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