



Submission on the proposed National Conservation Policy Statement

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To the Department of Conservation

Submitter details

This submission is from the Parliamentary Commissioner for the Environment, Simon Upton.

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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

- I am supportive of the general direction of travel of these reforms. However, given the likely changes to the Conservation Amendment Bill, this draft National Conservation Policy Statement is simply not ready to be implemented. Too many gaps and uncertainties remain. Further work and consultation will be needed.
- For the reforms to work, the information base to support conservation management planning reform must be improved. In the meantime, interim measures could be taken with appropriate precaution where the information is available or can be sought to support them.
- The proposal to remove limits on commercial activity from statutory planning documents and instead rely on bylaws and regulations leaves it unclear how protective or enabling the system will be, given the limitations of this approach.
- The proposed list of pre-approved activities and conditions needs further work to ensure they are consistent with conservation values and that effects are managed appropriately.

Introduction

It is challenging to separate feedback on the proposed National Conservation Policy Statement (NCPS) from the changes that have been recommended to the Conservation Amendment Bill, which is currently being considered by the Environment Committee. I have made a submission on the Bill, which includes recommended changes to the framework for the NCPS, and the Bill has generated significant public interest. It is reasonable to expect the Committee may recommend amendments to the Bill as a result.

The Government has signalled that the Bill is not intended to be passed before this year's election. As such, any urgency in the deadline to have the NCPS prepared in time for enactment is unnecessary. I highlight this because, as things stand, the Minister is not required to follow the processes set out in Schedule 2 of the Bill to prepare the first NCPS. I understand the motivation behind this is for the NCPS to take effect at the same time the Bill is enacted.

Formal consultation on a comprehensive NCPS, prepared in accordance with the statutory process, is a more robust approach. It would also resolve the issue that many references in the proposed NCPS, in definitions or examples, rely on the Resource Management Act (RMA). Legislation to replace that Act has been reported back to the House from select committee and will likely replace the RMA well before the Conservation Amendment Bill comes into force. This consultation document has been useful for informing submissions on that Bill. However, for the reasons I will set out below, I do not believe it is at a stage where this can be relied on as the final round of consultation. There are too many moving parts, leading to uncertainty in how protective, or not, the new conservation planning system will be.

What is not in the NCPS?

Before addressing what is included in the NCPS, I must discuss what is not. The NCPS will replace the current Conservation General Policy (CGP) and General Policy for National Parks, but there are elements of both that have not made it into the consultation document. There may be good reasons not to carry over some of these policies, but these could have done with further elaboration where they constitute a substantive policy change.

Land exchanges and disposals

Currently, the process for land exchanges and disposals is governed by criteria set out in policies 6(c) and (d) of the CGP that the Minister must apply. The land must have no, or very low, conservation value and meet several other tests to be eligible.

As well as establishing more detailed processes for exchanges and disposals, the Conservation Amendment Bill inserted a permissive version of the criteria in the CGP into primary legislation. That proposal has, for the moment, been withdrawn. However, the NCPS was drafted on the premise that the Bill would be passed and, as a result, it excludes any decision-making criteria. If the Government proceeds on this basis, there would be very limited criteria to guide exchanges and disposals.¹

It would be best to develop the NCPS in accordance with the standard process set out in the Conservation Amendment Bill once enacted. This would allow the necessary time for the Department to consider refinements to the current criteria and the best way to implement them. Placing the criteria on the face of the statute together with timeframes and consultation requirements is a potentially positive step. However, its benefits cannot be properly realised until the Department is able to provide much better information about the conservation values that are at stake.

¹ All stewardship land would be eligible for disposal, not just that with no or very low conservation value, according to s 26 of the Conservation Act. Land may be reclassified by the Minister as stewardship land to enable its disposal if it meets the reclassification criteria in the CGP, which is being carried over into the NCPS. Section 16A of the Conservation Act only requires land exchanges to enhance the conservation values of land managed by the Department (not conservation overall) and promote the purposes of the Act.

Advocacy and promotion

Policy 7 of the CGP provides guidance for the Department on the ways in which it should work cooperatively with others and undertake statutory advocacy to protect conservation values both on and off the conservation estate. Other policies also allow for advocacy and cooperative work for access to PCL,² as an objective in conservation management plans and strategies,³ for protections for migratory species,⁴ and the conservation of the Ross Dependency and Antarctica.⁵ Without these policies, the Department is left with an open-ended function to advocate for the conservation of natural and historic resources without any particular guidance on how it is to do so. All mention of cooperation appears to have been removed. The word appears 16 times in the current policy and not once in the NCPS – a significant shift in the way the Department is expected to interact with conservation stakeholders. Rather than promoting closer partnerships with people interested in conservation, this NCPS holds them at arm's length. There may be reasons for this change, but if so, they should be clearly stated. As it stands, this appears to be a missed opportunity for community participation and excludes an important information base, given the wealth of knowledge, expertise and other resources that reside in local communities.

Natural hazards

There are no provisions regarding natural hazards in the Conservation Act and these provisions are not being added by the Conservation Amendment Bill. The guidance in policy 8 of the Conservation General Policy is therefore essential for managing natural hazards through risk management plans and ensuring access restrictions can be authorised in the case of imminent danger to people and property that cannot be reasonably avoided by other means. This will be particularly important for Visitor Amenities Areas, given the increased number of people and assets exposed to potential risks. As an example, Milford Sound is heavily exposed to tsunami and landslide risk from Alpine Fault seismic events. With minimal response times and significant visitor presence (which may increase if the area is proposed for a Visitor Amenities Area designation in the future), who will manage the risk and who will be liable for the decisions made, if this is not made clear in national policy direction?

Recommendations

- Use the standard process set out in Schedule 2 of the Conservation Amendment Bill to develop the NCPS, once enacted, allowing for further consultation given the potential for changes to the Bill that would flow through to the NCPS.
- Include the current policies for land exchange, disposal and natural hazards in the NCPS as part of that development process and continue to work on updating these policies for future consultation.

Information requirements for area planning

Modernising the conservation system will require more than an amended statute and a new policy statement. Updating plans and regulations would still take years, even if all the relevant environmental information was available and all land (including stewardship land) was classified according to a system that laid out clear purposes for which any land is held. Neither of these conditions is true now, nor is there any budgetary provision for addressing them. The Government has recognised this necessity in respect of resource management law reform where a \$41 million investment in the digital underpinnings of the new planning system is accompanied by \$61 million over four years allocated to environmental data. It must do so here as well.

² DOC, 2005. Conservation General Policy, policy 9.1(h).

³ As above, policy 13(a)(v).

⁴ As above, policy 14(d).

⁵ As above, policy 14(g).

Planning for development and conservation activities, as with other kinds of resource management, relies on understanding the environment in which those activities take place. Unfortunately, underlying environmental data is often missing when it comes to biodiversity on conservation land.

The consultation document proposes the NCPS would require area plans to “include a summary of known indigenous species, habitats, ecosystems, landscapes, landforms, and geological features and describe where these exist within conservation land and marine areas administered by the Department.” Policy 6 addresses the fact that this information is currently incomplete and imperfect:

Where area plans are required to include information, the requirement applies to the extent that the information is reasonably available at the time of the area plan amendment process.

This is effectively an invitation to proceed with plans regardless of the quality of the information that may be needed to inform them. It bakes-in bad planning, putting form before function. At-risk and threatened species and ecosystems may slip through the cracks for lack of data in the planning process. Ecosystems could continue to quietly degrade due to browsing pressure, changing climate effects or increased human-driven development. Stewardship land may be earmarked for disposal for no other reason than the fact that information that would otherwise justify its appropriate classification is lacking.

I discussed the issue of planning information and land classification in my submission on the Conservation Amendment Bill. That text bears repeating here.

The shortcomings of the current land classification system illustrate the information challenges that DOC faces. The current system of statutory land classifications was created in the 1980s at the time of the Department’s establishment. The classifications were never intended to be set in stone and were certainly not designed to bear the regulatory weight the current reforms would place on them. It was intended that the Protected Natural Areas review would follow the initial reforms to rationalise the classification system and resolve the status of stewardship land. This exercise was suspended after only 95 of the 268 ecological districts had been assessed. Nearly 40 years later there are still large areas held in stewardship which were always intended to be given a proper category based on their conservation value. It was understood at the time that much stewardship land would be given greater, rather than lesser, protection – but to do that depended on knowing what biodiversity values were there in the first place.⁶

This Bill proposes using existing land classifications to “zone” public conservation land and determine where different activities can take place, as prescribed by the NCPS. These existing land classifications are not fit for this purpose. Deciding to build a streamlined decision-making system on a completely inadequate information basis is, from a conservation point of view, irresponsible. In this vein, it is equally irresponsible to abandon further reclassification of stewardship land. Pausing this process would only be reasonable if the classifications themselves were being addressed by this reform – but they are not. The policies for land reclassification are being carried over almost in their entirety, a reflection of the fact that this is an issue of political will rather than policy settings. A clearer understanding of the conservation value of all lands currently held in stewardship would be one of the most enabling measures for both economic development and conservation outcomes.

⁶ Woollaston, P., 2012. Stewardship Land and DOC – the beginning. Commissioned by the Parliamentary Commissioner for the Environment.

Before these reforms proceed, environmental information akin to that being gathered to support the planning process under the new Planning Bill and Natural Environment Bill needs to feed into an overhaul of the land classification system. This process needs dedicated funding to enable DOC to complete long-awaited surveys of the biodiversity on its own estate. The Government has acknowledged the need to invest in the information base that will underpin its proposed planning system. No such acknowledgment has been made about public lands, but this is just as important. Indeed, I would argue that this is a fundamental responsibility of the Crown.

In the meantime, some interim measures may be necessary to ensure planning can proceed where appropriate and in places that good information does exist. This could take the form of a transitional pilot to allow for some increased activity, thereby generating revenue to fund other information gaps. This would be in line with a precautionary approach. Precaution will be of particular importance for pre-approved activities, which must be consistent with the purposes for which the relevant conservation land is held while avoiding, remedying or mitigating any adverse effects. The information needed to determine whether these conditions are fulfilled should be a priority for improvement.

Recommendations

- Improve the environmental information base for conservation by:
 - rationalising the system of statutory land classifications through investment in biodiversity surveys
 - funding the continuation of the reclassification process for stewardship land, setting a target date for this to be achieved by.

Working with the reality of an information deficit and budgetary constraints could be done in two complementary ways:

- Testing a pilot transitional arrangement in areas where there is good information and low risk to allow for increased activity (and therefore concession revenues) to fund the filling of other information gaps.
- Taking a precautionary approach in places where plans result in activities or decisions being made. For pre-approved activities, this could include disapplying them in areas where the information required for area plans is of only limited quality or availability.

Future generations of area plans could be improved by:

- requiring area plans to summarise the information that is not available that would otherwise have contributed to area plans.

Concessions framework

Concessions are the focus of the NCPS. While the existing Conservation General Policy and General Policy for National Parks provide direction to the Department on how to fulfil its various functions, the bulk of the NCPS content concerns concessions: when they're needed, the kinds of activities that should be planned for and how they should be assessed. The Conservation Amendment Bill proposes to establish three new activity categories to reduce the assessment workload on DOC and applicants. Exempt activities would no longer require a concession. Pre-approved activities require the applicant to pay a fee and agree to standardised conditions. Other activities will be mapped in area plans to show their suitability for standardised pre-assessment.

This is a sensible structure for efficient concessions processing. The proposed exempt activities are all reasonably circumscribed. Where it risks falling over is in some of the combinations of activities and places for pre-approval and standardised conditions.

Limits on commercial activities

The Bill proposes that the NCPS may “specify content or types of content that must be, may be, or *must not be* included in [...] area plans”.⁷ The NCPS consultation indicates that limits on commercial activities are one type of content that is not being contemplated – “area plans would not include policies on limits or conditions on concessionaires, except in visitor amenities areas or where otherwise provided for in Treaty settlement legislation.”⁸

As I have highlighted in earlier submissions on proposed changes to conservation law, this would be a major step away from existing practice. Activity limits are often included in the suite of place-based plans used in the current system. Examples include the Westland Tai Poutini National Park Management Plan, which sets 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.

There are certainly situations where limits do not make sense as a management tool – for example, where free public access can swamp any commercial activity. More generally though, limits serve several important functions. They:

- ensure the cumulative effects of commercial activities do not begin to degrade conservation values
- provide a concrete measure against which nearby communities and recreational users can assess their tolerance for the loss of wildness and natural quiet that often accompanies commercial activities
- allow the Department – on behalf of all New Zealanders – to capture a fair share of the economic rents associated with the right to do business on public conservation land (and water) when coupled with auctions or other competitive processes.

I am unconvinced that the mechanisms proposed in the NCPS consultation – booking systems, regulations and bylaws – adequately serve these same functions. This is especially the case for commercial activities conducted in pristine areas, like jet boating and helicopter flights.

Booking systems represent one way to *allocate* a given amount of activity. If they are to be used to address cumulative effects, the amount of activity that is acceptable needs to be specified in advance. A booking system cannot dictate whether a new track or hut is created, or old huts upgraded to increase capacity, for example.

Regulations and bylaws could – in theory at least – be used to establish limits on commercial activity. However (in the current system at least), the creation of regulations and bylaws is at the discretion of the Minister and therefore does not easily allow for community participation. Regulations and bylaws are also cumbersome ways to manage demand compared with limits and price-based tools.

Furthermore, to the extent they are intended to restrict activity *after* pressures have emerged, regulations and bylaws create two other issues.

Firstly, this sort of adaptive management will require much stronger informational feedback between commercial activity, the effects it is having and the management approaches the Department adopts. If cumulative effects are to be managed in this way, the Department needs good information about pressures as they emerge. It is good to see cost recovery provisions for monitoring contained in the NCPS consultation document. It will be important that the Department makes full use of them.

⁷ Conservation Amendment Bill, cl 15 (new s 13D(3)(b)(i)).

⁸ DOC, 2026. National Conservation Policy Statement, p.6.

<https://www.doc.govt.nz/globalassets/documents/getting-involved/consultations/2026/ncps/ncps-consultation-document.pdf>

Secondly, they may limit the Department's ability to use tender or auction processes effectively. This reflects the fact that the amount any prospective concessionaire will be prepared to pay to operate on public conservation land depends in part on how exclusive that opportunity is. If a concessionaire believes the ability to undertake a particular activity in a particular place is essentially unlimited, it seems doubtful it would be prepared to pay much for that right.

There are environmental limits on what a place can bear before the natural resources that support the economic activity are degraded. As with old-fashioned command and control mechanisms, bylaws and regulations are not the only ways to deal with allocative pressures in particular places. Competitive tenders provide a much more transparent mechanism through which New Zealanders (through DOC) extract a fair share of the rents associated with limited access.

Recommendation

- Ensure limits are still available as a mechanism within area plans for managing activity levels and supporting competitive allocation mechanisms.

Pre-approved activities

Based on the NCPS consultation, the intention seems to be to give a large number of activities pre-approved status across a wide range of conservation land classifications. As an example, it is proposed that commercial mountain biking, commercial boat transport and small-scale commercial events will enjoy pre-approved status on almost all types of conservation land, including national parks. There are a large number of common activities that have not yet been included in these categories, including aircraft landings and cruise ship activities.

It is unclear if decisions about which activities are to be pre-approved have been subject to the tests mentioned above, that they are consistent with conservation values and that effects can be managed appropriately. It seems doubtful they have. Consider, for example, commercial boat transport in national parks. Once this sort of activity reaches a certain scale or intensity, it seems very likely that there will be cumulative effects, not least in terms of the sense of wildness and natural quiet that many people expect in places like national parks. There is already a real question as to whether these sorts of effects are consistent with the purposes for which national parks are held and managed in the first place.⁹ But assuming that they are, allowing them to intensify without limits being spelt out in advance will ensure they come into conflict with conservation values.

I acknowledge that the standardised terms and conditions attached to pre-approved activities will help to limit such effects. But many could also benefit from further development to ensure they are practicable and will protect conservation values.

One example is the proposed requirement that certain activities are only pre-approved in areas where they are "not prohibited by bylaws or regulations". This would apply to commercial mountain biking, commercial horse trekking, and drone use, among other things. While such exclusions make sense in theory, my understanding is that very few prohibitive bylaws and regulations currently exist. As such, it is impossible to know what is being signed up to in regard to where commercial activity will be able to take place in the new system.

Another example relates to the practicalities of horse trekking, which make it unlikely that guides will be able to fulfil conditions regarding manure spread. This is important for weed management and may be a sign that horse trekking is unsuitable for the broad-brush treatment of pre-assessed suitability. There must also be some degree of flexibility in area plans and concessions processing to set more granular, site-specific conditions. These will

⁹ Among other things, the National Parks Act states that " ... having regard to the general purposes specified in subsection (1), national parks shall be so administered and maintained under the provisions of this Act that ... (e) subject to the provisions of this Act and to the imposition of such conditions and restrictions as may be necessary for the preservation of the native plants and animals or for the welfare in general of the parks, the public shall have freedom of entry and access to the parks, so that they may receive in full measure the inspiration, enjoyment, recreation, and other benefits that may be derived from mountains, forests, sounds, seacoasts, lakes, rivers, and other natural features."

be necessary where the spread of pests and unwanted organisms is a stronger possibility or poses more serious risks for biodiversity.

Recommendation

- Provide an explanation for how each exempt, pre-approved and pre-assessed activity is consistent with the conservation purposes for which the land it is approved for is held.

Conclusion

Structurally, the shift to area planning and more efficient concessions processes is a reasonable one. However, this consultation is taking place while many components of the future NCPS remain unfinished. For example, promised changes to the Conservation Amendment Bill mean that the criteria governing land exchanges and disposals are in limbo; the list of activities that are to be classified as pre-approved or pre-assessed has not been completed; and the regulations and bylaws needed to manage cumulative effects in sensitive locations require a lot of work.

Given this uncertainty, I recommend that the Department completes its policy work so that once the Conservation Amendment Bill is enacted, it can commence a proper round of consultation under the new NCPS. Conservation reform is important, but it is not urgent. The Government should take the time needed to ensure that the implications of its system changes are fully elaborated. That would enable the new system to commence to the extent that good information is available to support key choices. However, where that information is lacking, caution will be needed.

The reform could be a rare opportunity to do conservation better, but for that to happen, the Government needs to sort out the detail of its reform and commit to investing in the sort of information needed to support it.

Kind regards

A handwritten signature in black ink, consisting of a stylized 'S' followed by a vertical line and a horizontal stroke at the top.

Rt Hon Simon Upton
Parliamentary Commissioner for the Environment
Te Kaitiaki Taiao a Te Whare Pāremata