Stewardship Land and DOC - the beginning

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Introduction

I have been asked to comment on the history of stewardship land (as defined in the Conservation Act, 1987[1] and held by the Department of Conservation) from my personal recollections as a minister of the Crown centrally involved in the reformation of environmental administration and the allocation of Crown owned land in the 1980s[2]. In the context of this request, particular reference was made to:

- the intent of the government in promoting the relevant legislation and the extent to which compromises were made in it;

- the criteria for selection of 'stewardship land' and for allocation of other land to SOEs;

- the extent to which the concept of net conservation benefit was involved in the allocation process.

In discussions your staff posed some further specific questions including:

- whether there was debate on a hierarchy of values, on what should or should not be allowed on conservation land and, in particular, regarding concessions on conservation land;

- whether trade-offs were made between competing values in the allocation process;

- the degree to which there was interaction between the Resource Management Law Reform (RMLR) exercise which led to the RMA and the conservation legislation.

Subsequently I was also asked to comment briefly on:

- 'the envisaged interaction and distinction in the Conservation Act between the roles of conservation, recreation, and tourism.'

Preliminary discussions also touched on the much broader question of what differences exist between the plan for DOC and the reality today. In this context specific reference was made to the 'off estate' roles of marine protection and biodiversity advocacy on private land and in freshwater as having possibly been overlooked. I have considered this question and while some differences between the intentions of government in the 1980s and the DOC of today will no doubt be evident in the following account, I believe that a detailed examination of it lies beyond the brief for this paper and the time and resources available for its production. Moreover, the relatively seamless evolution of 'the plan' through various processes from an opposition party's policy, through a government statement of intent, a number of consultation processes, enactment in Parliament and finally its implementation through government administrative actions,

makes it difficult to identify a particular snapshot which can be called 'the plan'. I will therefore leave open the general question of how much today's policies and administration differ from the hopes and intentions of the late 1980s. I will however comment later on some specific elements of 'the plan' which appear to have been abandoned or overlooked, in particular the systematic evaluation and classification of protected areas and the rationalisation of the protected areas legislation.

In preparing this paper I have reinforced my necessarily subjective, and no doubt imperfect, recollections by reference to historical documents including Hansard, my own and others' ministerial speeches and media statements, departmental advice and (where appropriate) cabinet committee papers. I am particularly grateful for the assistance of the staff of Archives NZ and the Office of the Parliamentary Commissioner for the Environment[3] in helping me to locate relevant material which was not in my personal possession.

Background

Until the mid-1980s the philosophy behind the management of Crown owned resources placed expertise above values and category above location. Logging pine trees and preserving kauri were both functions of the Forest Service because they were both about trees whereas draining swamps for farmland and preserving wetlands – both involving treeless land – were the responsibility of the department of Lands and Survey. Wildlife management involved a totally different class of organisms and was separated from both (despite the inconvenient truth that all fauna must occupy a habitat).

The rise of environmentalism in the 1960s and 70s brought a more holistic approach and with it an increasing focus on values and purpose rather than category and expertise. The pressure from green NGOs in the early 1980s to 'join up the green dots' in the land management departments was a logical political outcome of this change of approach from a sector-based to a multi-disciplinary one. Their stated aim was to empower conservation-minded public servants by creating a conservation agency with sufficient critical mass to withstand pressure from development interests within and outside government.

Although there were attempts to rationalise the legislation and administrative arrangements concerning Crown owned land and water management in the late 1970s and early 1980s they did not address this fundamental question but rather focussed on rationalisation within sectors, for example consolidation of the legislation governing rivers and an unsuccessful proposal to amalgamate the NZ Forest Service and the Department of Lands and Survey. It was not until the 1984 election and the subsequent reform of environmental administration and the Crown's land management agencies that government made the philosophical shift from management classification by type ('a tree is a tree, is a tree') to a value-based system which focuses on the purpose for which resources are held by the Crown (and indeed whether they need to be so held).

The Policy Intent

The NZ Labour Party environment policy for the 1984 election commenced with the following statement of principles:

Basic Principles:

1. *Labour recognises that the fundamental purpose of a sound environment policy is to ensure the management of the human use of the biosphere to yield the greatest sustainable benefit to present generations while maintaining [its] potential to meet the needs and aspirations of future generations.*

2. *Labour will therefore implement a strategy to integrate conservation and development so that:*
    a. *we move to a sustainable economic base by shifting from the use of non-renewable to renewable resources;*

    b. *these resources are used to achieve the ends of social justice;*

    c. *our trusteeship responsibilities for future generations are recognised; and*

    d. *our remaining endangered species and ecosystems and representative examples of our full range of plants, animals and landscapes are protected.*[4]

Three significant points emerge from this brief statement:

- The 4th Labour Government was elected with a mandate to fundamentally change the way government administered its environmental responsibilities;

- That mandate explicitly included the integration of conservation and development considerations into a unified decision-making process; and

- while not using the word ‘stewardship’ it contained an explicit promise to recognise ‘our trusteeship responsibilities’.

As might be expected the policy details – particularly under the ‘environment’, ‘forestry’ and ‘lands’ headings involved compromises; between the 'green' wing of the party and those who saw environmental protection as coming at an economic cost likely to exceed the benefits, and between the traditional Labour base of blue collar, trade unionised workers and younger university educated 'intellectuals'. There were inevitably compromises in the application of the policy also, particularly in relation to the allocation of land to conservation or to productive use, but these were fewer than I had expected. The growing strength of public sentiment for conservation and the realisation that the conservation estate was a valuable asset supporting an increasingly important tourism industry changed the political landscape during the 1980s.

Administrative Reform

Following this statement of principles the policy contained a number of specific planks, including the proposal for a Parliamentary Commissioner for the Environment and a Ministry for the Environment which would have two distinct functions, one of providing balanced advice to government and managing the resource allocation system of legislation and, in a separate wing, managing and advocating for the conservation estate[5].

In October 1984 an officials committee drawn from the Ministry of Works, the Department of Lands and Survey, The Environmental Council and the Commission for the Environment recommended against including a 'nature conservation wing' in the new ministry, arguing that this function should remain with the existing departments[6], at least in the short term.[7]

The Environment Forum of the 6th and 7th of March, 1985 emphatically rejected the view that responsibility for conservation should remain with the original departments but also rejected the proposal for a single ministry responsible for advisory and planning functions as well as conservation management and advocacy, even if separated into distinct 'wings'. The Forum clearly endorsed a three agency system with the Ministry for the Environment, the Parliamentary Commissioner for the Environment and a nature conservation department having clearly distinct responsibilities.[8]

The Minister for the Environment (Hon Russell Marshall) accepted this view and referred it to the Post-Forum Working Party of officials and representatives of environmental NGOs and industry groups, which recommended its implementation with production oriented elements of government being separated out into purely commercial entities[9]. On the 17th of June 1985 Cabinet approved the creation of the Ministry for the Environment and the office of Parliamentary Commissioner for the Environment, and called for two months of public consultation on the proposed conservation department[10]. The Ministers for the Environment and of State Services were instructed to report to Cabinet with their joint recommendation at the end of this period.

The decision to establish the Department of Conservation and its responsibilities were announced on the 16th of September 1985 following Cabinet approval[11]. The Conservation Bill giving effect to that decision was introduced to Parliament late the following year and had its second reading in March 1987.

The Concept of 'Stewardship'

The terms 'trusteeship', 'stewardship' and (later) 'kaitiakitanga' appear to have been used more or less interchangeably. During Labour's first year in office I referred in speeches to 'trusteeship' (the term used in the government's election policy) but as early as April '85 a paper by the Working Party on Environmental Administration included stewardship of land and water as one of the functions of the proposed 'Department of National Estate' in the following terms:

> *Stewardship*
> *To manage non-reserved Crown land and water resources in or close to their natural state, including those where resource use is permitted, to conserve their ecological value, and as appropriate recommend on their ultimate use.*[12]

By August 1985 I had adopted 'stewardship' as the appropriate term, for example in stating that 'proper stewardship' supports the integration of conservation and development by ensuring *that long-run benefits are not sacrificed in favour of short-term returns*.[13]

Multiple Use of Conservation Land

There is a clear inference in the quotation above that use of Conservation Land for both conservation and commercial purposes was contemplated (at least as far as stewardship land was concerned) in the reference to *Crown land and water resources ... including those where resource use is permitted*. This was in line with government thinking at the time and with the concept of 'integrating conservation and development' in the government's election policy. It was based on the expectation that conservation and other public values existed or might exist on productive land likely to be allocated to SOEs, demonstrably true in regard to public access to land of high recreational value, at least.

I expressed that view in a number of statements and speeches during the first term of the fourth Labour government[14]. However by mid 1986 it was becoming a matter of debate between the government and the Joint Campaign on Native Forests[15], leading to a spirited defence of the policy in a speech I gave to Forest and Bird (the 1986 Sanderson Memorial Address) and a subsequent exchange of letters with the Joint Campaign's director, Guy Salmon[16].

As late as June 1987 a similar position was adopted by the Technical Advisory Group of departmental officials and representatives of SOEs and NGOs charged by ministers with producing a set of criteria for dealing with problematic and disputed land allocations. In its report the TAG

> *noted that retention of land in Crown ownership could give the greatest certainty to the protection of conservation, recreation or cultural values, particularly in light of potential alienation…* but also stated that … *some disputes might best be solved not by simple reallocation but by application of various management options. The Group's understanding is that these would include ownership by either DOC or the Corporations combined with covenants, land management agreements of various forms (which could relate to both conservation and production values).*[17]

This view, particularly the idea that DOC could hold mixed-use land in stewardship to maximise the protection of its public, non-commercial values, was carried forward into the draft Conservation Bill in February 1987[18]. Although the idea was not new, it was seen by NGO leaders as too close to the old Forest Service 'mixed use' model which had allowed selective logging and exotic plantations in pristine forests such as

Whirinaki. DOC (whose ex-Forest Service employees were viewed with suspicion by environmentalists) was accused of planning to allow logging and exotic forestry in protected forests, in my view an unfair allegation,[19] and the government was accused of reneging on the promise to protect the North Island virgin indigenous forests. This gave rise to an outraged letter-writing campaign[20]. As environmental NGOs became more confident (with the 1987 election imminent) of securing a significantly larger protected estate than they had campaigned for up to 1984, the attitude against mixed use hardened. There is evidence that the new SOEs were also opposed to the sort of controls over commercial activity that mixed use was likely to involve, and so they too supported a clearer split between conservation and commercial activity. In the event, the opposition prevailed and the only 'mixed use' element (supported by covenants) which survived in practice relates to public recreational access.

Stewardship Land - what was the intention?

Despite the apparent suspicion on the part of some environmental NGOs that 'stewardship land' was code for 'mixed use forests' the purpose was always clear in my mind and also, I believe, in government policy. The application of the concept of stewardship to land in particular and the creation of a new Crown land category called *stewardship areas* flowed from the Cabinet decision of the 16th of September 1985 to establish the Department of Conservation and was signalled in the government announcement of the same day[21], which included among the functions of DOC, management of *unalienated rural crown lands not used mainly for agriculture or forestry*. The intention was clearly expressed by the Director-General of Lands, P.H.C. (Bing) Lucas, in a memo to the State Services Commission in December 1985[22] and stewardship areas were given statutory recognition in the Conservation Act 1987, essentially as the conservation land that remained outside the various specific categories of protected land[23]. The ability to classify land as stewardship area was an essential tool during the process of land allocation.

The logic was quite simple. There was land which officials agreed (and ministers accepted) was already used for productive purposes and was of little or no conservation value. It was allocated to the appropriate SOE. There was land which was already protected as reserve or had high conservation values which had been assessed and were already documented. It was allocated to DOC and (if not already done) gazetted with the appropriate category of reserve or specially protected area. Then there were large areas of land, considered to have significant conservation value but the values of which had not yet been analysed and documented with the scientific rigour necessary to support a reserve classification or other form of statutory protection. This category was allocated to DOC to be held in stewardship. The individual parcels became *stewardship areas* under the Conservation Act. However it was never intended that land thus designated would remain so permanently. The mechanism to classify stewardship areas into the appropriate category of protected conservation land is in section 18(1) of the Act[24]; the mechanism for disposing of it if it is found not worthy of protection is in section 26. There are also processes for protection under the National Parks Act, 1981 or the Reserves Act, 1977 where one of those is more appropriate.

The clear intention in creating stewardship areas was to protect them from development or extractive use until their conservation value could be established, the appropriate form of protection chosen and the necessary administrative action (usually a gazette notice) taken under whichever statute applied; unless of course the conservation values were found to be inadequate to justify protection, when the area would be disposed of pursuant to s26 of the Conservation Act. My recollection is that the main vehicle for evaluating stewardship areas was to be the Protected Natural Areas programme which was already in existence. My understanding at the time was that this process was expected to take place over a couple of decades.

The temporary nature of this stewardship was emphasised by Minister of Conservation Russell Marshall in January 1987, when he wrote of DOC's three tasks in relation to Crown lands and forests being:

To manage national parks and reserves in terms of the relevant Acts.

1. *To manage forest parks and protected forests.*
2. *To act as steward for all other Crown lands and forests until long term land use decisions are made in respect of them.*

in the same letter he went on to say that:

> *... the stewardship concept is that of an interim status to hold land in its existing state until such time as investigation and assessment show that [it] should either be protected (national park or reserve etc) or possibly allocated for a productive purpose.*[25]

The idea of DOC holding 'in stewardship' land where the conservation values were uncertain was not only consistent with the land allocation process and the proposal at that time to establish a Crown Estate Commission which would (*inter alia*) advise ministers on the appropriate status of unallocated land[26], it was also in accord with the stated intention of the government (as expressed by various Ministers of Conservation[27]) to introduce a Protected Areas Bill to rationalise and simplify the categories of protected land and the statutes governing them. As Michael Cullen said in the second reading debate on 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 department will have to consider that function. However, there is no rush; there is no time-limit on that process.*[28]

Allocation of Land:
the background

In the first term of the 4th Labour government there was an uneasy alliance between the economic 'dries' or 'Rogernomes' who wanted to get the government out of business (and the businesses out of government) and the 'green' wing of caucus who were keen to get business out of the indigenous estate and to protect it for its non-commercial values. They therefore shared an interest in the re-shaping of the government administrative machinery to separate production and conservation, with the consequent corporatisation of productive agencies.

However the temporary nature of the alliance was evident when it came to the division of Crown assets (land, forests, buildings, rivers, dams and other structures, machinery) and personnel between agencies. The dries wanted to maximise the value of the business assets to be corporatized (and potentially privatised), the green wing of the party to maximise the Crown estate to be protected.

The final result, involving the usual mixture of high principle and political pragmatism, was surprisingly successful. That it was welcomed (in private at least) by most environmental groups[29] and also accepted by business and the new SOEs suggests that the mix was about right, however the path to it was not easy.

the process

The first cut at dividing Crown lands and state forests between DOC and the SOEs was undertaken by officials, on the basis of policy decisions taken by Cabinet[30]. Although the majority of cases were straightforward (for example land protected under the Reserves Act or National Parks Act, and commercial farms or forests) the initial allocation, driven by cabinet-imposed deadlines, was undoubtedly quick and dirty. The results contained many errors and misallocations as well as some difficult cases where the arguments were more or less evenly divided. A majority of the mistaken or disputed allocations appeared to be in favour of the SOEs.

In May 1987, after a period during which submissions were received by both the government and the Parliamentary Commissioner for the Environment[31], Deputy Prime Minister Geoffrey Palmer (as chair of Cabinet Coordinating Committee on SOEs) announced a 'two stage process' to deal with contested allocations[32]. The first stage involved officials reviewing allocations identified in submissions, correcting errors and reversing allocations which had been made contrary to government decisions, while a Technical Advisory Group (TAG) of officials and NGO representatives[33] was tasked with producing a set of criteria for allocation of disputed areas.[34] In the second stage the draft criteria and a list of the areas remaining in dispute after this re-examination were published for a further round of submissions.

After errors and misallocations were corrected, the genuinely contested allocations of land with significant conservation or recreation values in addition to productive use or potential were estimated to be less than 5% of the total. Following ratification of the TAG criteria by government, officials from DOC, Landcorp and Forestcorp met

(convened by MfE) to apply them to individual cases, recommending the results (and referring those they could not agree on) to an ad hoc ministerial committee on land allocation[35].

the criteria

The success of the land allocation exercise is in part due to the excellent work of the Technical Advisory Group. An important factor in its success was that, despite all the competing interests being represented on the TAG, its commendably clear and succinct report[36] was reached by consensus. As well as the required set of criteria, the report contains recommendations for their implementation, in particular a *sequential "sieving" process of relevant information*[37] which required the criteria to be applied in four steps. The first step was jurisdictional; was the land in fact Crown owned? If so was it just misallocated or was it genuinely in dispute? The second step was to re-evaluate the basic information – did it really have 'mixed' values or should it have been allocated in the first round?

The third step, for land with genuinely mixed values required a more detailed examination of its characteristics so the criteria could be applied and a recommendation made. The final stage was to be *a check against relevant management issues … to indicate whether agreements, covenants or other options are desirable and practical*[38]. A brief discussion on covenants and their application was included as Attachment 2 to the report.

The criteria themselves (Attachment 3 of the report) are grouped under seven headings:

1. *Jurisdiction, Tenure and Status*
2. *Existing Policy (Including Current Use)*
3. *Cultural, Spiritual and Community*
4. *Environment and Visual Quality*
5. *Recreation and Amenity*
6. *Commercial*
7. *Management Issues*

It should be pointed out that there were no criteria for selection for 'stewardship land' in particular. Stewardship areas were not 'selected'. If application of the criteria led to an area land being allocated to DOC, it was either already in one of the pre-existing categories inherited by DOC or it needed to be held in stewardship until its values were assessed and a decision made pursuant to the Conservation Act. It was this remaining land which became stewardship areas under the Act. However the term 'remaining' should not be interpreted as 'left over' and therefore of less value than the rest – which recent evidence suggests is an interpretation being used in some quarters[39]. In fact, precisely because the exact conservation values of stewardship areas were unknown (though known to exist), stewardship areas were to be accorded the highest level of protection as the precautionary principle requires.

Was there a hierarchy of values?
Apart from the 'sieving' process involving criteria 1, 2 and 7, there is no explicit suggestion of a hierarchy among the criteria, indeed the report says *The criteria do not stand in isolation from one another: they need to be considered in conjunction. In a sense, all must be tagged with the proviso 'that they are not outweighed by other factors'*[40]. However elsewhere the report does favour retention in Crown ownership in cases where there was inadequate information to make a clear decision by applying the criteria[41]. To that extent conservation, or at least the avoidance of irreversible decisions which would compromise conservation values, was favoured over development.

What trade-offs were made between competing values in the allocation process?
Inevitably there were trade-offs, although the TAG managed to avoid obvious trade-offs between values in establishing the criteria. This had the effect of placing trade-offs where they rightly belong – in the political sphere. That does not mean that they were only made by elected politicians. The whole process, from policy development through to enactment of the legislation and the land allocations was intensely political in the best sense of the word, and involved the full range of NGO and sector lobbyists, departmental officials and SOE staff as well as ministers and other parliamentarians. It was accompanied by one of the widest and most public consultation exercises I have come across (exceeded only by the Resource Management Law Reform, which followed soon after). There was a certain amount of 'Monopoly' style trading in the land allocation itself, but the most significant trade-offs were in relation to the South Island indigenous forests and crown pastoral leases. Both of these categories had been removed from the core allocation process and ministers, having set the ground rules (slowly and painfully in the case of pastoral leases, more efficiently with regard to the forests) allowed the interested parties (DOC and NGOs on one hand, farming and commercial forestry interests with the SOEs on the other) to negotiate.

Crown pastoral leases
The hardest problem to solve, and one in which trade-offs are still occurring 25 years later, involved the Crown pastoral leases. In its original decision of November 1985 the government attempted a judgement of Solomon, allocating land subject to Crown leases to Landcorp (together with all farmland held by the department of Lands and Survey) while directing officials to report on how '*preservation values'* within them should be protected *while maintaining the management independence of the Corporation*.[42] Not surprisingly officials were unable to agree on how this could be achieved, Landcorp apparently refusing to accept more than a five year continuation of the Land Settlement Board policies for protection of conservation values and public access rights.

In July 1986 a draft paper for Cabinet Policy Committee proposed:
- that the Crown lease land be vested in DOC with Landcorp administering the leases on an agency basis;
- an accelerated process of reclassification of leasehold land;
- the sale of farmland to lessees (or Landcorp); and
- the retirement of land of high conservation land as appropriate.[43]

Cabinet rejected that proposal, confirming the earlier allocation decisions on the 28th of July, but allowing DOC three months to re-negotiate specific allocations and noting that unresolved disputes may need to be dealt with after that time.[44] However two months later (after considerable public and internal debate) a more considered decision on pastoral leases was reached, with Deputy PM Geoffrey Palmer and the ministers of Lands and Conservation jointly announcing that *The government has now resolved the difficult issues concerning … crown pastoral leases and licences. We are satisfied that an appropriate balance has been struck between commercial use of land and ecological considerations.* [45] The land was to remain in Crown ownership with the Land Settlement Board policies continuing in force and an accelerated reclassification programme leading to freeholding or retirement from lease as appropriate.

To what extent was the concept of net conservation benefit involved in the allocation process?

I do not recall explicit discussion during the land allocations of 'net conservation benefit' (NCB) or any explicit methodology or criteria for applying it in that process. However, extending a definition later offered by DOC (in the paper below) that NCB

> *is a test to be applied to proposals to modify protected areas. Modification could only take place if the impacts were compensated for in such a way that the overall quality of the protected natural and historical estate was improved.*

to include the alienation of protected land, then the concept obviously pervaded the whole exercise.

The fundamental purpose behind the government's policy, the reform of the government machinery and the division of assets was predicated on a national net conservation benefit (and a productive benefit as well) resulting from the separation. The allocations themselves, involving a degree of horse-trading (for example in the re-classification and parallel free-holding and retirement of crown lease areas), required a win-win result to achieve buy-in from all parties. This meant there had to be a net conservation benefit, even though some areas of low but not insignificant conservation value were alienated from public ownership.

Net conservation benefit was explicitly raised in a later paper in the context of mining concessions in protected areas[46]. Although written specifically to address the contentious issue of mining on conservation land, it has a useful discussion of the pros and cons of an NCB approach to concessions on conservation land in general. Although this paper proposed that further work be done to advance the policy, I do not recall further papers on it during my term in office, though I believe some elements of the policies it foreshadowed can be seen in recent DOC actions regarding mining and hydro-electric generation proposals on conservation land.

Was there debate on what should or should not be allowed on conservation land and, in particular, regarding concessions on conservation land?

Until the allocations were settled, debate on what constituted 'conservation' and 'protection' took second place (with the exception of the odd flare-up over 'mixed-use' as a policy). It seemed to be generally accepted that 'conservation' generally implied little or no commercial activity. The question of commercial tourist activities was there, but it was not pressing. With a few exceptions New Zealand did not have a history of high-impact, highly commercialised tourist activities in the conservation estate up until then and it remained in the background until the late 1980s.

However with the land allocation questions largely settled by the end of 1988, DOC's attention (and that of others) turned more to 'what should be allowed'. In 1989/90 I received papers on wild animal recovery[47], wilderness areas[48] and the draft policy on concessions and tourism operations discussed below. The approach of the 1990 election and pressure of other policy initiatives and legislation (including the RMLR and the reorganisation of local government) meant that these policy initiatives and the issues they raised were not finally resolved during my term of office. None-the-less, I believe that there are still lessons to be learnt from the public reaction to proposals for 'mixed use' of protected land in the 1980s.

Concessions on stewardship land

In the context of a discussion of concessions generally, I am puzzled by a comment in the PCE report *Hydroelectricity or wild rivers?* which states that *developments can occur on stewardship land without going through the concessions process.*[49] It was certainly not the intention in creating the category of stewardship land that it was to be more available for commercial, industrial or extractive activities than other conservation land. On the contrary, the intention was to give it a high degree of protection for the period it took to fully assess its conservation values and determine the appropriate category for it.

While accepting that I am not qualified to give legal advice, it does seem to me that this legislative intent is reflected in Part 3B) of the Conservation Act which sets out the requirements for granting concessions and appears to draw no distinction between stewardship areas and other conservation areas, *stewardship area* being defined in the Act as:

> *a conservation area that is not—*
> *(a) a marginal strip; or*
> *(b) a watercourse area; or*
> *(c) land held under this Act for 1 or more of the purposes described in section 18(1); or*
> *(d) land in respect of which an interest is held under this Act for 1 or more of the purposes described in section 18(1).*

Section 17O which governs the application of Part 3B states unequivocally that:

> *(1) This Part applies to every conservation area.*
> *(2) Except as provided in subsection (3) or subsection (4), no activity shall be carried out in a conservation area unless authorised by a concession.*

The one significant exemption in s17O (3) relates to mining activity authorized under the Crown Minerals Act 1991, however s61 of that Act restricts the Minister of Conservation's power to grant access without distinguishing between stewardship and other conservation land and moreover requires her or him to have regard to (*inter alia*):

> *(a) the objectives of any Act under which the land is administered; and*
> *(b) any purpose for which the land is held by the Crown; and*
> *(c) any policy statement or management plan of the Crown in relation to the land;*

The Act therefore makes in general no distinction between stewardship areas and other conservation areas in regard to concessions, so the requirements of sections 17Q to 17ZJ, including s17T (4) and (5)[50] (or s61 of the Crown Minerals Act where appropriate) apply equally to both. It may be that the 'concessions process' referred to is an administrative process which goes beyond the requirements of the Act but such a distinction between stewardship areas and other conservation areas in the process for granting concessions would seem to be sailing close to the statutory wind. [51]

What distinctions were drawn and interactions envisaged between the roles of conservation, recreation, and tourism in framing the Conservation Act 1987?
The primary purpose of the Act, as stated in its long title is *to promote the conservation of New Zealand's natural and historic resources.* 'Conservation' is defined in the Act as

> *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*[52]

Those provisions are unchanged since the passage of the Act in 1987, though some earlier drafts attempted more complicated definitions of conservation. I recall there being considerable debate over the inclusion (and indeed the meaning) of 'intrinsic values'. Perhaps reflecting the debate over meaning, the Act does not define the term, though the Resource Management Act 1991 does, reflecting strong submissions from environmental NGOs during its drafting and passage. The equal value given in the Conservation Act definition of 'conservation' to *intrinsic values* and *recreational enjoyment* seems to me to reflect the realpolitik of the time; the conservation movement comprised two powerful groups, the 'pure' conservation ngos including Forest & Bird, NFAC, etc and recreational groups such as FMC. There was, of course, considerable cross-over in membership and views but their emphasis (and at times their agendas) differed. The government view at the time was that more inclusive the definition the better.

The arguments mounted for conservation by NGOs certainly included reference to the economic benefit from tourism, though I suspect that this was more pragmatic than from a desire to see a proliferation of tourist facilities and concessions in the conservation estate. The Act is not silent on tourism, but gives it a secondary role to conservation in prescribing among the functions of DOC:

> *to the extent that the use of any natural or historic resource for recreation or tourism is not inconsistent with its conservation, to foster the use of natural and historic resources for recreation, and to allow their use for tourism.* [53]

There is an interesting distinction here between *fostering* recreation while *allowing* tourism which I believe also resulted from public and NGO submissions, but this section clearly makes both subordinate to 'conservation' thus apparently finessing the apparent equality of *intrinsic values* and *recreational enjoyment* in the section 2 definition. I do not recall any particular debate over this point, though I am sure there was some.

The statutory position of tourism and recreation in relation to the conservation estate was reinforced in 1990 with the passage of the Conservation Law Reform Bill[54] which established the Conservation Authority. It requires the Minister, in appointing members to the Authority, to have *regard to the interests of conservation, natural earth and marine sciences, and recreation* and to appoint two members *after consultation with the Minister of Tourism* as well as one each on the recommendation of Forest & Bird and FMC[55].

The statutory prescription is necessarily 'broad brush' in nature. The policies to give effect to it were outlined in DOC's draft policy on recreation and tourism concessions in protected areas[56] which I released in June 1990, though by this time the necessary cycle of consultation and policy determination could not be completed before the 1990 election campaign. I have not studied the current government policy on concessions on conservation land, and am not aware of ultimate fate of the 1990 draft policy. It is obvious, however, that today DOC operates in a more commercially driven outdoor recreation/tourism environment than existed 22 years ago.

The appendix to the April 1989 paper on net conservation benefit (cited above) also discusses possible approaches to establishing criteria for assessing development proposals on protected land[57].

To what extent was there interaction between the Resource Management Law Reform (RMLR) exercise which led to the RMA and the conservation legislation?
In one sense the interaction was considerable. Both originated in the 1984 Labour Party election policy, they owed their existence to a common, over-arching philosophy which underpinned that policy and many of the same political actors (elected and otherwise) were involved. However they occurred in sequence, not simultaneously. It became obvious quite early that the resources of government (and of the ministers, officials and MPs involved) would not cope with both reforms running at once. This resulted in a decision early in the drafting of the Environment Bill to defer review of the planning and

resource use statutes until a later stage – a decision greeted with dismay by some environmentalists who saw a hidden agenda to shelve that review. One awkward result was that the reform of the conservation legislation and administration took place in the context of the old resource statutes, but the pressure to deal with the reform of the conservation estate (and protection of virgin indigenous forests in particular) meant that this element could not be delayed. One benefit which resulted from this staging of the reforms, was that the fledgling Ministry for the Environment, instead of being swamped with its own massive legislative reform, was able to play an important role in the land allocations as a neutral arbiter of the process.

Riverbeds in conservation areas

One issue, possibly lying outside my brief, but which arose in discussion of it, is the legal status of the beds of rivers flowing through conservation land. It seems that LINZ (presumably as the only remaining heir of the original department of Lands and Survey) retains the administration of many such riverbeds, when logic would suggest that it should lie with DOC. I am at a loss to explain this 'artifact of history' as the PCE report *Hydroelectricity or wild rivers*[58] calls it. I am certain it was not contemplated by ministers involved in the land allocation process and I can find no departmental advice on the subject in my papers, though I have found a brief comment in the TAG report that the *status of … riverbeds is not clear*[59] in relation to jurisdiction. No explanation was offered as to how or why it is unclear. On the other hand the Cabinet decision of 16th September 1985 stated that DOC would be responsible for *protected inland waters* in addition to *wild and scenic rivers* and *some aspects of foreshores and coastal waters* apparently with no reservation as to the beds of rivers or other protected inland waters[60].

It may be that officials have at some point misinterpreted the clearly stated intention of Cabinet to retain the beds of significant lakes and rivers in Crown ownership as being a decision to have them permanently administered by the Department of Lands (later DOSLI, then LINZ), which department certainly had a role during the transitional period when it held unallocated Crown land on a temporary basis. This decision not to allocate the beds of significant lakes and rivers to the SOEs (which would have been effectively akin to alienation) is referred to in many places, from cabinet committee minutes[61] and government statements[62] to newspaper articles[63]. However nothing in the record implies an intention to preclude DOC from being the administering department or the Minister of Conservation the relevant Minister of the Crown. Indeed the references to allocation (where appropriate) to DOC suggest that the intention behind the cabinet decision was precisely the opposite.

There may also be some confusion regarding the two terms 'riverbed' and 'beds of rivers'. While the latter suggests land that is (generally) under flowing water in a river, the former often includes large areas of (generally) dry land in the flood-plains of braided rivers. The Interagency Working Group applying the TAG criteria to disputed allocations mentioned a further complication in one of the few official references to riverbeds[64] when it noted that *older maps frequently showed the physical location of rivers incorrectly, and that areas appearing as riverbed are now consolidated land*. Presumably this also implied that some areas mapped as dry land had become the beds of active rivers.

It is also probable that there were riverbeds which DOC did not seek to have allocated to it. An internal DOC memo[65] following the decision to allocate (where appropriate) non-core assets of the NZ Electricity Department to DOC, sought identification of NZED land having:

1. *predominant conservation values that warrant the land being allocated to DOC*
2. *significant conservation values that warrant a covenant on the title*
3. *some conservation value but not requiring specific protection or allocation*

but carried the caveat that:

> *It is emphasized that the TAG criteria should be applied … . This is not to be a land grab, most land carries with it a liability for weed/fire/animal control and often significant recreational management expense, eg Waitaki Basin.*

However it not conceivable that DOC would have declined allocation of those riverbeds that were within areas of land allocated to it, whether as conservation areas or stewardship areas.

Conclusion

The intention of government in promoting the Conservation Act 1987 in its original form was to promote and enable the better conservation of New Zealand's natural estate by:

- bringing the disparate parts of the public service involved in that task into one department;
- establishing the Department of Conservation as that department; and
- putting the land and resources involved under its control.

This was (as promised in the 1984 election policy) to ensure that:

- *our trusteeship responsibilities for future generations are recognised; and*
- *our remaining endangered species and ecosystems and representative examples of our full range of plants, animals and landscapes are protected.*[66]

A great deal of the detail was added to the legislation in the Conservation Law Reform Act, 1990, which created the quango structure to support DOC in this task, reformed the fish and game legislation, legislated for marginal strips etc. There have been several other amendments, notable amongst them the Conservation Amendment Act, 1996 which introduced a new part governing the granting of concessions (commercial or otherwise)[67] and another on the control of dogs in land under DOC's control.

Inevitably compromises were made in developing and passing the legislation – that is the nature of political decision-making. Perhaps the most significant was abandoning in practice the (admittedly idealistic, and probably risky) idea of 'mixed use' with DOC responsible for protecting public access and conservation values on land where the SOEs conducted commercial forestry or farming operations. Less compromise than I expected was needed to get a settlement (in principle) of the pastoral lease issue. Although Cabinet twice resolved that land subject to pastoral leases and licenses was 'alienated' (in effect private land) and should go to Landcorp with little if any protection of the public interest in it, the eventual solution of Crown ownership and accelerated

reclassification was workable, even if the process has taken longer (and caused more argument) than desirable.

What has not been achieved, despite the passage of two and a half decades, is the promised Protected Areas Bill to simplify and rationalise the categories of protected land and the legislation governing them. It would seem that successive governments have found themselves comfortable with the existing mélange of categories and legislation, or at least that there have been higher priorities for action[68].

Of greater concern to me than that, is that few (if any) allocations seem to have been made of stewardship land to an appropriate category of protection under section 18 (1) of the Act and, whether for budgetary or other reasons, the analysis required to support such decisions apparently ground to a halt some time ago. While the Protected Natural Areas Programme (PNAP) has continued since 1990 it appears to be at a reduced rate and the data not to be applied to the classification of stewardship land. A 2001 paper[69] refers to problems arising from *the piecemeal approach to and poor funding of the PNAP*, and quotes a review within DOC in 2000 as stating that at the *current rate of progress [and] funding the Department will not be able … to provide national coverage.* A 2004 report commissioned by DOC[70] shows that in the two decades to 2003 only 38% of New Zealand's 268 ecological districts had been surveyed in the PNAP programme and there is (or was at that time) no centralized data base, the information being held by conservancy offices throughout the country[71]. The clear intention in creating stewardship areas was that, within a reasonable period, they would be reclassified and given the appropriate level of protection. That has not happened.

To the extent that I can see significant differences between today's administrative landscape and 'the plan' they include:

- the failure to rationalise the categories of protected area and associated legislation;
- the failure to assess and classify stewardship areas; and
- the financial stranglehold which has seen a steady diminution of the government's role as a generator, guardian and public disseminator of scientific knowledge and other information about New Zealand's indigenous estate.

A visit to DOC's (admittedly attractive) website in search of hard information can lead to the impression of straying onto that of a commercial tourist operator by mistake. It is not the place to go to for a compilation of hard data on New Zealand's conservation estate. The inability of DOC to disseminate such information seems to be symptomatic of a lack of capacity to keep the data up to date and the erosion of the information base itself. That state of affairs is greatly to be regretted.

Three areas which I believe need to be addressed with some urgency are:

- redefining the status of riverbeds within conservation areas (including stewardship areas) to ensure consistency of administration and management with the surrounding land;

- The compilation of a central and publicly available database of conservation land (including the specially protected areas) with reference to status under the Conservation Act or other relevant legislation;

- The assessment (if not urgently, at least in a planned and systematic manner with a defined timetable) of remaining stewardship areas and their allocation to a specific conservation purpose or disposal as appropriate.

I would also like to see a greater emphasis on (and funding of) DOC's scientific role in relation to the conservation estate.

* * * * *

FOOTNOTE (27th Sept 2012)
Since I submitted this report the Crown Minerals (Permitting and Crown Land) Bill has had its first reading in Parliament. At first blush it seems that this Bill (if passed in its present form) will make changes to the way applications for mining concessions on conservation land are considered, by:

- changing the power of the Minister of Conservation to grant or withhold access to conservation land to a power held jointly by the Ministers of Energy and Conservation;

- requiring the Minister of Conservation to have regard to the economic benefits of granting access to conservation land for a mining concession as well as the effect on conservation values;

- changing the purpose of the Crown Minerals Act (to which the Minister of Conservation must have regard in considering mining concessions) to one of promoting mineral activities; and

- replacing the power of the Minister of Conservation to proclaim land to be a wilderness area or sanctuary area by an Order in Council process.

Given the nature of cabinet government and the effect of past judicial decisions on the matters that the Minister of Conservation must consider, it may be claimed that these provisions do not make sweeping changes but are little more than a reflection of present realities. However I believe that they represent a diminution of the role of the Minister of Conservation, a tilting of the tables against the protection of conservation values, and that they will further dilute the role and effectiveness of DOC as the government's conservation manager. If they become law I would probably revise my comments on concessions on stewardship land above.

- NOTES:

The principal sources of documents cited are:

- my ministerial papers archived with Archives NZ , series 22992 accessions W2746, W2974, W3081, W3274, W3491 and W3687 (noted as *PW archive*)
- papers (mainly speeches and media releases) in my possession (*PW personal papers*)
- papers archived by the Office of the PCE (*PCE archive*)

Other references are (hopefully) self-evident.

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[1] Sometimes referred to as 'the Act' hereafter.

[2] Secretary of NZLP Policy Council, 1982-4
Undersecretary for the Environment, 1984-7
Associate Minister for the Environment 1987-8
Minister of Conservation, 1989-90
Chair, Ministerial Committee on Land Allocation (1987/8)
Member, Ministerial Committee on Environmental Administration

[3] In particular to Shaun Killerby, whose detailed knowledge of, and research into, the office's archives has been invaluable.

[4] New Zealand Labour Party, June 1984, *Environment Policy*.

[5] In checking my recollection of this policy I have not managed to find a complete copy. The bound copies I have seen are incomplete due to the piecemeal release of policy sheets in the 1984 snap election campaign. My recollection of the role and nature of the proposed ministry is supported by secondary sources including:

- an article in the NZ Herald (26 November, 1984) which refers to '*A Labour Party election pledge to set up a nature conservancy division in the proposed ministry for the environment'* and to Michael Cullen 'spelling out' its functions as Labour's environment spokesman (PW archive)
- my speech of 12 September 1984 to the Canterbury Branch of Forest and Bird (PW personal papers)
- Russell Marshal's undated letter of 1985 to Noel Scott MP on the subject (PW archive).

[6] Department of Lands and Survey, NZ Forest Service and the Wildlife Service of the Internal Affairs Department

[7] *Proposed Ministry for the Environment, Report by Environment Task Group*, October 1984 (PW archive) A related State Services Commission paper to R Marshall, 4 Oct '84 is in PW archive, W2974, box 4.

[8] A report of the Forum could be sourced if more detail is needed.

[9] There seems to have been considerable debate within the Working Party about how clear the separation of conservation and commercial use should be. In an undated *Discussion Paper for Working Party on Environment Administration from Sian Elias, Ann Graeme, Bob Priest and Guy Salmon* the authors found it necessary to argue strongly against a Lands and Survey Department suggestion that Landcorp be a division within what is now DOC. (PW archive)

[10] The proposed department enjoyed a number of names before establishment as the Department of Conservation, 'Department of the National Estate', 'Department of Resource Management and Conservation' and 'Ministry of Natural Resources' being among those used at different times by the Working Party on Environmental Administration.

[11] The announcement following the Cabinet decision of 16 September, 1985 stated that DOC would be responsible for:

- *national parks*
- *reserves and protected natural areas*
- *protected indigenous forests*
- *protected inland waters*
- *wild and scenic rivers*
- *wildlife*
- *historic places*
- *forest parks and other multiple use State forestry areas not used for wood production*
- *unalienated rural crown lands not used mainly for agriculture or forestry*
- *some aspects of foreshores and coastal waters*

and would be a *clearly defined advocate for conservation.*

ministerial press statement, 16 September 1987 (PW archive)

[12] Working Party on Environmental Administration paper (SSC 20/2/0/38/91) (PW archive)

[13] Woollaston, P., speech to the *NZ Ecological Society* annual conference, 20/8/1985 (PW personal papers)

[14] For example in the Sanderson Memorial Address, 1986 (PW personal papers)

[15] A consortium of ECO (Environment and Conservation Organisations of New Zealand), FMC, Forest and Bird, and Native Forests Action Council, with Guy Salmon as Director.

[16] Salmon, G., Woollaston, P. correspondence (PW personal papers)

[17] *Report of the Technical Advisory Group on Land Allocation Criteria*, 12 June 1987, p 8

[18] Clauses 27 (Covenants) and 29 (Management Agreements) allowed for the type of arrangement suggested by the TAG and quoted above. They remain (with some elaboration) in the Act today. Clause 28, which as introduced to Parliament allowed the acquisition and disposal of resources other than an interest in land, also remains but with the added proviso that a public notification process is required.

[19] Issue 27 of *Bush Telegraph*, a campaign newsletter of the Joint Campaign on Native Forests claimed *Labour's promise to protect the forests has been "re-defined"* and interpreted the clause 28 power of the Minister to dispose of natural resources not required for conservation purposes as being designed to allow 'selection logging' to resume in protected forests, alleging that there was *constant lobbying of DOC staff to be allowed to promote logging on "their" lands*.

[20] My standard reply to the campaign letters included this statement:
The 'stewardship' lands or areas as they are termed in the Bill ... would be subject to the management planning provisions and disposal would be subject to public notice. The stewardship concept is that of an interim status to hold land in its existing state until ... investigation and assessment show that [it] should either be protected (national park or reserve etc) or possibly allocated for a production purpose.
Woollaston P, standard letter dated 17 Feb 1987, (PW archive)

[21] Marshall, R. and Rodger, S. *Press Statement, Ministers for the Environment and State Services*, 16 September, 1985 (PW archive)

[22] A fuller quotation from his memo is:

> *The government press release of 16 September makes it clear that the Department of Conservation would manage national parks, reserves and protected natural areas, protected indigenous forests, inland waters protected inland waters, wild and scenic rivers, historic places, forest parks and other multiple use State forestry areas not used for wood production and unalienated Crown lands not used mainly for agriculture or forestry.*
>
> *There is a high degree of specificity in the destiny of much land. Where the destiny is not clear, it has always been my understanding (and I believe that of the interested public) that that land would go to the Department of Conservation for management as "stewardship" or "conservation" land pending a decision on its allocation.*

Lucas, PHC, *Draft paper: Quangos and Crown Estate Commission,* 4 Dec. 1985, a memo to the Environmental Secretariat of the State Services Commission (PW archive).

[23] The prescription for stewardship land in sections 25 and 26 of the Conservation Act and the definition in s2 have remained relatively unchanged since the Bill was drafted, though the process for disposal of such land (including the requirement for public consultation) has been spelt out more clearly.

[24] References to "the Act" are to the Conservation Act, 1987.

[25] Marshall, R. (Minister of Conservation) in a letter to Fran Stevens, chair of NFAC, Auckland branch (PW archive). The same paragraph appears in the many letters I wrote in response to the letter writing campaign promoted by the Joint Campaign on Native Forests in February 1987.

[26] Later abandoned in favour of a process involving public consultation and the receipt of submissions, with decisions being made by a committee of ministers, which I chaired. Although the CEC proposal was for a permanent body, it was unclear how much it would be needed in the long term. To the extent that it was, the Conservation Authority could be considered to fill the gap.

[27] Including Helen Clark, Fran Wilde and myself. See, for example, *Parliamentary Debates* (Hansard), 7 Oct and 10 Nov 1987 and 14 Sept 1989.

[28] *Parliamentary Debates* (Hansard), 24 March 1987; second reading debate on the Conservation Bill 1986. Dr Cullen's intended meaning was no doubt that the process of assessment would take some years to undertake properly. None of us foresaw that it would be strangled at birth!

[29] In late 1988 Forest & Bird praised the *fairness of the process established through 1987 to 1988 … to review the carve-up of New Zealand's Crown lands.*
Royal Forest and Bird Protection Society of NZ, news release 25 Nov. 1988 (PW archive)

[30] These were summarized in the TAG report as being that:

a) *Land used for wood production should be vested in Forest Corp.*
b) *Land used principally for commercial farming, most land held on permanent lease and certain urban commercial and industrial properties should be vested in Landcorp.*
c) *Land with significant conservation or recreation values would remain in Crown ownership and be administered by the Department of Conservation.*
d) *Molesworth Station and the Crown Pastoral Leases and licences would remain in Crown ownership with the Department of Lands with DOC and Landcorp each having responsibility for aspects of their management.*

[31] A concise summary of the development of this process and the significant part played by the Parliamentary Commissioner for the Environment at the time is contained in a letter dated 26 June 1987 from Helen Hughes to Professor Kevin O'Connor and also in a one-page outline of the process dated 26 May 1987 annotated (I think in HH's hand) with notes of 'decisions in PW's office'. (Both in PCE archive, ref LU 1/5)

[32] Palmer, G.W.R. *Press Statement*, 28 May 1987 (PW archive)

[33] The TAG comprised representatives of: MfE (convenor), PCE, DSIR, MAF, MOF, DOC, Landcorp, Forestcorp, Public Lands Coalition, Federated Farmers and Maori interests.

[34] *Report of the Technical Advisory Group on Land Allocation Criteria,* 12 June 1987 (PCE archive). As far as I am aware no changes were made to the draft criteria following submissions.

[35] The MCLA commenced its work following the August 1987 general election. The membership was by then myself (as chair – I was at that time both Associate Minister for the Environment and Minister Assisting the Deputy Prime Minister), Fran Wilde (Associate Minister of Conservation) and David Butcher (Associate Minister of Lands and Forests).

[36] *Report of the Technical Advisory Group on Land Allocation Criteria*, (TAG report) *op cit.*

[37] *ibid*, p 9

[38] *ibid,* p 10

[39] See for example a Meridian Energy executive quoted in Parliamentary Commissioner for the Environment, May 2012, *Hydroelectricity or wild rivers? Climate change versus natural heritage* at p63.

[40] TAG report*, op cit,* p 9

[41] *ibid,* p10. The recommended home for such areas was the residual Department of Lands

[42] Cabinet Policy Committee (minute P(85) M45 part 7 of 26 November 1985) quoted in *Pastoral Leasehold and Pastoral Licence Land* , a draft paper for Cabinet Policy Committee, July 1986 (PCE archive). A key argument was the extent to which the Crown lease land was 'alienated', the conventional view being that as the leases were renewable the land had already been alienated. However under the leases the Crown reserved almost all rights other than grazing. A campaign to protect and retain this public interest in the land involved major NGOs under the banner of the Crown Lands Coalition.

[43] *Pastoral Leasehold and Pastoral Licence Land* , a draft paper for Cabinet Policy Committee, under cover note from Hunn D.K. dated 3 July 1986 (PCE archive). The paper was produced by David Butcher and myself (as Under-Secretaries in the relevant portfolios) at the request of the Ministerial Committee on Environmental Administration.

[44] Cabinet minute CM 86/27/45 a copy of which is in the PCE archive

[45] Palmer, G.W.R., Wetere K and Marshall R, *Press Statement* , 24 September 1986 (PW archive)

[46] DOC , *Net Conservation Benefit* (ministerial briefing paper ref 4446G5), 17 April 1989. (PW archive, series 2292 ref W3687 box 7)

[47] Challies, C. N., *Status and Future Management of the Wild Animal Recovery Industry,* Forest Research Institute, April 1999. The report was commissioned by DOC in 1988. Its recommendations are aimed at maintaining the viability of the animal recovery industry as a conservation tool, rather than generating revenue. (PW archive, series 2292 ref W3687 box 5)

[48] A three page ministerial briefing from DOC (ref MSUWP/716) following correspondence on the subject from the NPRA . It referred to earlier correspondence between Helen Clark (as Minister of Conservation) and DOC on the subject. (PW archive, series 2292 ref W3687 box 5).

[49] Parliamentary Commissioner for the Environment, May 2012 *Hydroelectricity or wild rivers? Climate change versus natural heritage* p70.

[50] Section 17T (4) and (5) of the Conservation Act state that:

> *(4) Before granting a lease, or a licence with a term (including all renewals) exceeding 10 years, in respect of a conservation area, the Minister must give public notice of the intention to do so.*
>
> *(5) Before granting a licence with a term (including all renewals) not exceeding 10 years, or a permit or easement, in respect of a conservation area, the Minister may give public notice of the intention to do so if, having regard to the effects of the licence, permit, or easement, he or she considers it appropriate to give the notice.*

[51] One other category that might be argued to escape the net of s17O, is land that was State Forest or Crown land and was allocated to DOC, but has not been declared to be held for conservation purposes under s7 (1) of the Act. However under the transitional provisions this land is deemed to be held for conservation purposes (that is to be a conservation area) under s62 (1) and must be managed as a stewardship area. I do not believe that S62 (2), which reads: *Nothing in subsection (1) restricts or prevents the granting under this Act of a concession over any land* absolves the minister from the procedural requirements relating to concessions. The same sentence appears for every category held under the transitional provisions, even the most highly protected. In any event, I would be very surprised if any land still remains in such a 'rump' - hopefully none does.

[52] *Conservation Act 1987,* s 2.

[53] *ibid*, s6 (e)

[54] The *Conservation Law Reform Act 1990* was stage two of the conservation legislation and incorporated into the Conservation Act sections establishing the Conservation Authority and related quangos as well as those dealing with management planning, marginal strips, fish and game councils, freshwater fisheries, marine reserves, marine mammals, wildlife and wilderness areas, and other matters. The planned stage three, a rationalisation of protected area legislation, did not take place.

[55] *Conservation Act 1987*, s 6D.

[56] Department of Conservation *Draft Policy*, *Concessions for Recreation/Tourism Business Operations in Protected Areas,* June 1990, (PW archive, series 2292 ref W3687 box 5).

[57] DOC, *Net Conservation Benefit, op cit* (Appendix)

[58] *op cit*, p 71

[59] TAG report *op cit,* p15

[60] Marshall, R and Rodger S, *Press Statement, Ministers for the Environment and State Services*, *op cit*, referring to the cabinet decision (CM 85/34/13) of 16 September, 1985. (PW archive)

[61] See for example minutes of the Ministerial Committee on Land Allocation of 23 March 1988 (MCLA (88) M6) which:

- defined Electricorp's core assets as *those assets reasonably required for Electricorp to operate its business having regard to its commercial objective as set out in its statement of corporate intent;*
- Decided *that non "core" land assets with predominantly conservation values be transferred to the department of Conservation at no cost*; and that
- *land not transferred to Electricorp or allocated to DOC will be held by Department of Lands pending disposal or other allocation* (my emphasis). (PCE archive).

[62] For example my press statement of March 29 1988 stating that Electricorp *would receive only the land necessary for it to carry on its business* and that this *included such things as dams, penstocks and staff housing* while *"non core" land with mainly conservation values would be transferred to DOC … This included lake and river beds.* and my letter to Helen Hughes of 6 April 1988 on the subject. (both in PCE archive.)

[63] An article in the Otago Daily Times (date-stamped 29 May 1987) quotes D. Chalmers, chairman of Landcorp as saying:

> *The government, at this stage, had decided to exclude from transfer to any State-owned enterprise, the beds of lakes that were more than eight hectares in surface area and the beds of rivers and streams more than three metres in average width.*
>
> (PCE archive)

[64] Interagency Working Group on Land Allocations, *Land allocations to Department of Conservation. Landcorp and Forestry Corp. Review of disputed allocations Recommendations and draft explanatory notes* September 1987, para 4.3. (PCE archive)

[65] DOC memo to all Regional Managers headed *Electricorp land allocation review* dated 2 May 1988 (PCE archive, ref LU 1/5)

[66] NZLP *Environment Policy*, June 1984 *op cit*

[67] Presumably the result of a policy consideration process which began with the draft policy referred to above. I have not compared the legislation with the original policy proposal.

[68] A discussion document was released in 1988 and over 300 submissions received but by January 1989 when I succeeded Helen Clark as Minister of Conservation progress was slow. I was hopeful of introducing a Bill in late 1989 or 1990 but was unable to secure a place in a crowded legislative programme.

[69] Bellingham, P. *Evaluating Methods for the Protected Natural Areas Programme* , 2001

[70] Wildlife Consultants Ltd, *A review of the use and management of Protected Natural Area Programme (PNAP) survey reports,* 2004.

[71] A parallel situation seems to exist in relation to information on those specially protected areas that do exist under the Conservation Act (conservation parks, ecological areas, sanctuary areas and wilderness areas). In 2010 my request for a list of gazetted ecological areas drew the response that no centralised list existed and that it would take some research to compile one. I did get the information a day or two later, but my suggestion it be listed on DOC's website fell on deaf ears.