

27 February 2025

Modernising Conservation Land Management

Department of Conservation

By email: landlegislation@doc.govt.nz

Tēnā koe

Conservation land management reform

1. The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback to the Department of Conservation (**DOC**) on proposals for changes to conservation land management.
2. The Law Society's feedback has been prepared with the assistance of the Law Society's Environmental Law Committee.¹
3. In the Law Society's view, aspects of the proposals have potential to positively contribute to addressing issues that reviews of conservation land management have identified.² This is welcome. This submission also identifies several concerns with:
 - 3.1. The proposed concentration of Ministerial decision-making powers and removal of checks and balances. This arises from proposals to reduce the present role of the New Zealand Conservation Authority (**NZCA**) in conservation management planning and instead provide for Ministerial approval of the National Conservation Policy Statement (**NCPS**) and area plans.
 - 3.2. Engagement processes for making, reviewing and updating the National Conservation Policy Statement and area plans. Explicit, non-discretionary timeframes are recommended, to ensure clarity for all parties to the process and that engagement processes are robust.
 - 3.3. Aspects of the proposed scope and content of area plans, including:
 - a. the proposal for plan content to focus on concessions (which regulate economic activity on public conservation land);
 - b. inability to set conditions on activities through area plans; and

¹ For more information on the Law Society's sections and committees, please visit our website: www.lawsociety.org.nz/branches-sections-and-groups/.

² Streamlining conservation management planning and changes to processes for granting concessions have been recommended at different times by the Parliamentary Commissioner for the Environment and the Environmental Defence Society: see, for example, Deidre Koolen-Bourke, Raewyn Peart, Billy van Uitregt and Claire Dowsett *Restoring Nature: Reform of the conservation management system* (Environmental Defence Society, 2024) from 149 (**Restoring Nature**); Parliamentary Commissioner for the Environment *Not 100% — but four steps closer to sustainable tourism* (February 2021) at 79.

- c. allowing planning documents to exempt, prohibit or permit categories of concessions in advance.

3.4. Proposals for streamlining concessions, including:

- a. recommended considerations for concession decision-making;
- b. public notification; and
- c. providing for or requiring standard conditions.

3.5. The scope of the proposed provision for amenities areas, which, as proposed, is exclusively visitor-services focused.

3.6. The intention to review legal criteria for land disposal and exchange. Clear legal criteria will be needed. The proposals do not provide this clarity.

General comment

4. The potential of these proposals to contribute to addressing longstanding concerns about the effectiveness and suitability of conservation land management processes is noted. However, the Law Society is concerned that the proposals also mark a shift towards concentrating Ministerial power and undermining systemic checks and balances on executive decision-making, in ways not fully acknowledged in the discussion material. When considered together with other current reforms, these are part of a wider and concerning pattern.³ This arises particularly in the proposals affecting NZCA functions, and concentration of Ministerial roles both in:

- a. making plans; and
- b. granting concessions governed by those plans.

5. Both issues are discussed further below.

6. The Law Society acknowledges the discussion materials are pitched overall at a high level. However, they give less exploration of the issues and attention to analysis of these issues, which are systemically significant in terms of the balance of executive power, than perhaps might be expected. The level of detail that has yet to be fleshed out, and which is needed to better understand the implications of the proposals, makes it challenging to accurately understand their likely legal and practical impact, assess gaps and make full comment on their workability.

7. These overarching concerns are reflected in the remainder of the Law Society's comments.

Proposed process for making statutory planning documents (NCPS and area plans)

Weakening the role of the NZCA and concentrating Ministerial powers

8. The NZCA is a statutory body established under the Conservation Act 1987.⁴ Its membership of 13 includes members appointed in consultation with the Ministers of Māori Affairs, Tourism and Local Government, members nominated by non-government conservation and wilderness groups, an iwi representative appointed by Te Rūnanga o Ngāi Tahu,⁵ and a

³ See, particularly, feedback by the Law Society in regard to the since-enacted Fast-Track Approvals Bill 2024: [Fast-track-Approvals-Bill.pdf](#) (18 April 2024). While the scope for concern about aggregation of Ministerial powers in the present context is less extreme, it remains significant.

⁴ Conservation Act 1987, s 6A.

⁵ Conservation Act 1987, s 6D(ca), inserted by the Ngāi Tahu Claims Settlement Act 1998.

further four persons appointed following public notice.⁶ The NZCA has been noted as one of the “key institutions” and “a central pillar” of the conservation system,⁷ with a mandate stronger than even that of DOC to advocate for and protect Aotearoa New Zealand’s indigenous flora and fauna.⁸ It is closely engaged in setting the framework within which political discretion is exercised in respect of public conservation lands, by way of national park policy statements and other management planning documents. NZCA functions relevant to the present proposals include:

- 8.1. Under the National Parks Act 1980, NZCA approves statements of general policy for national parks,⁹ and national park management plans (including amendments and reviews).¹⁰
- 8.2. Under the Conservation Act, NZCA advises the Minister of Conservation on the Conservation General Policy (**CGP**).¹¹ The Minister is responsible for approving the statement. The CGP is initiated and drafted by DOC. However, the draft is prepared from early stages in consultation with NZCA.
- 8.3. NZCA approves conservation management strategies and conservation management plans.¹²
9. The proposed changes would remove important checks and balances that the present role of the NZCA provides — particularly for national parks — and lessen NZCA expert advisory involvement in the following ways:
 - 9.1. Conservation management strategies and the General Policy for National Parks, both presently approved by NZCA, will be abandoned.¹³
 - 9.2. The CGP and General Policy for National Parks are to be replaced with a single national conservation statement: the NCPS (as above). Under the NCPS, management planning for national parks (and the way NZCA participates in the planning) would thus be treated alike with that for other conservation lands.
 - 9.3. It is proposed that the Minister will approve the NCPS (as presently occurs for the CGP).
 - 9.4. In addition (and by contrast to the present CGP process), the proposal suggests no longer involving NZCA at the initial drafting stage. The NZCA would continue to have input into conservation management planning, but would be consulted later in the process. At section 5.3, the proposal suggests that NZCA, New Zealand Fish & Game Councils, conservation boards and iwi are “notified”¹⁴ at the same stage at which the Director-General gives public notice of the draft NCPS, and invited to provide their comments, saying further that the “[t]iming and nature of engagement will vary”. This will have the effect of shifting the point of NZCA input and, as such, the degree of

⁶ Conservation Act 1987, s 6D.

⁷ Restoring Nature at 33, and see further 112: “The NZCA is a core planning entity within the conservation management planning system, a provider of policy and nature conservation advice, an oversight agency and an independent conservation advocate.”

⁸ Restoring Nature at 13 and 117; however, this report also notes that, compared to the former Nature Conservation Council (which functioned more like an environmental ombudsman), NZCA has significantly weakened functions: at 112.

⁹ National Parks Act 1980, s 18(a).

¹⁰ National Parks Act 1980, s 18(b).

¹¹ Conservation Act 1987, s 6B(1)(a).

¹² Conservation Act 1987, s 6B(1)(b).

¹³ See processes set out in the Appendix to the discussion material.

¹⁴ At 33, Figure 2.

influence that it wields. At this late point in the process, it will be more challenging to substantively engage.

- 9.5. For area plans (equivalent to the strategies and plans presently approved by the NZCA): according to the proposed process, after stages of drafting, public engagement and revision, the Director-General would provide a revised draft and summary of submissions to NZCA and affected conservation boards.¹⁵ NZCA may choose to provide feedback and the Minister approves the plan. According to the proposal, national park plans would be one kind of area plan (“NPMPs could be the default plan for each respective national park”).¹⁶ This leaves unclear (but seems to suggest) that NPMPs — as, now, an area plan — would be done according to this process: not by the NZCA.
- 9.6. In addition, the proposal suggests at section 8.1 removing the NZCA role of recommending to the Minister the establishment of amenities areas in national parks (a pre-requisite for their establishment) in favour of, again, simply enabling Ministerial decision-making.
10. There may be good grounds for modifying the present processes, given doubts that have at times been raised about their appropriateness and workability.¹⁷ However, in the Law Society’s view, the systemic significance of these proposed shifts, and risks they could pose for the ability to deliver on statutory outcomes for conservation, are not well signalled or fully discussed in the consultation document.
11. First, as a practical point, the independent expert input of the separate statutory authorities, NZCA and New Zealand Fish & Game Councils, helps to ensure that conservation planning documents are aligned with conservation purposes and generally help to create a coherent draft. In the preparation of the NCPS, to postpone this significant input to the point of a finished draft seems, at the very least, inefficient — and as such inconsistent with the stated objectives of the discussion document. It assumes these knowledgeable bodies will not be identifying major issues; if they were to do so, it may in turn undermine the efficacy and quality of the public consultation. It more likely tends to foreclose raising concerns of a kind that are challenging to feed in at the post-draft consultation stage (in other words, any more than minor or technical issues). In the Law Society’s view, undermining the potential for robust input from these statutory advisory bodies risks undermining the statutory conservation purposes that the processes are intended to achieve.
12. As a matter of legal and constitutional principle, the larger concern is, as earlier mentioned, weakening the independent authority of the NZCA that has served as a restraint and independent check on executive powers. According to the proposals, the Minister of Conservation is to be the key decision-maker in making and reviewing statutory planning documents. This risks a potentially excessive concentration of power. The concern is compounded when plan-making is considered in combination with concession decision-making. The Minister is responsible for decision-making on concession applications. They must decline any concession application that is contrary to the Act or purposes for which the land is held¹⁸ or inconsistent with a conservation management strategy or management plan.¹⁹ This means that the Minister would become both ultimate decision-maker and setter of the new NCPS and area plan framework that governs their executive decisions. The

¹⁵ At 34, Figure 3.

¹⁶ At 28.

¹⁷ Restoring Nature at 117, also citing Department of Conservation *Conservation Boards Review: Report of the Conservation Boards Review Panel* (Wellington, 2013).

¹⁸ Conservation Act 1987, s 17U(3).

¹⁹ Conservation Act 1987, s 17W(1).

proposal to concentrate plan-making power in the Minister enables the Minister to determine the scope of constraints on their own concession decision-making. Albeit still restrained by empowering legislation, this reposes significant, unchecked power in the Minister. It contrasts with the safeguard which presently exists, of a “tension between the need to adhere to planning documents, which have gone through an extensive public process, and the exercise of Ministerial discretion”.²⁰

The balance struck in seeking to streamline engagement processes

13. A second broad category of concerns lies in the proposals to enable more discretion in engagement processes. In the Law Society’s view, the proposals, which aim to support flexibility, are too vague. Specific timeframes and engagement requirements are recommended.
 - 13.1. At section 5.3.4, the proposal outlines that the NCPS would not prescribe any specific form of engagement, and engagement would be tailored to the nature and scale of review. There is no proposed guidance for how many days should be provided for submitters to comment on a draft or revisions to the NCPS, whereas the current CGP and General Policy National Parks set this out. Naturally, it is efficient to offer less time and engagement for small procedural amendments. However, a scenario in which the Director-General simply has discretion to decide on the amount of consultation without any restrictions leaves the Director-General with excessive power and potentially raises issues of natural justice and procedural unfairness.
 - 13.2. At sections 5.3.4 (public consultation on both NCPS and area plans) and 5.3.5 (engaging with iwi), it is indicated that engagement is not required where an issue has already been consulted on. This potentially creates issues around lack of clarity and accountability and — especially if it has been some time since that consultation took place — changing circumstances that may legitimately lead those previously consulted to now hold a different view.
 - 13.3. These two issues raise, in turn, further concerns about how the proposed processes give effect to te Tiriti o Waitangi. The discussion paper appears to point to engagement requirements that, while explained as intended to be clearer, are potentially also weaker. The discussion at section 4.2 of the proposal of the importance of stating “clear expectations of when and how the government must engage iwi” provides some assurance and, in the Law Society’s view, would be a necessity; however, concerns remain in a context where section 4 of the Conservation Act, requiring the Department of Conservation to “give effect to” Treaty principles, is among statutory provisions that are under review.²¹

²⁰ Deidre Koolen-Bourke and Raewyn Peart *Conserving Nature: Conservation Reform Issues Paper* (Environmental Defence Society, 2021) at 105 (**Conserving Nature**) and see further 94–96.

²¹ Laura Walters “Govt to change or remove Treaty of Waitangi provisions in 28 laws” (Newsroom, 14 October 2024); see further [Scope of Treaty of Waitangi Clause Review](#).

Requiring plans to focus on rules, boundaries and guidance for concessions

14. Section 5.1.3 of the proposal states that the NCPS and area plans “would focus on setting rules, boundaries and guidance for concessions”. As noted, this would be narrower than the current functions of statutory planning documents.²²
15. To adequately understand the proposed regulatory scheme and be confident in its consistency with the governing legislation (the National Parks Act, Conservation Act and others), the Law Society considers that more information would be needed about how other matters presently contained in planning documents would be managed if omitted from the NCPS and area plans. An analysis of the consistency of the proposed approach with requirements of the relevant Acts would be welcome. In the Law Society’s view, this issue engages those identified in Q4 of the proposal, which asks whether, in addition to or alongside the proposals, any measures are needed to ensure conservation outcomes, and whether the proposals allow the Government to strike the right balance between achieving conservation outcomes and other outcomes. On its face, it seems doubtful that an entire focus on concession granting and administration in the statutory documents, as seems to be suggested, would be sufficient to achieve consistency with the statutory purposes.

Other aspects of area plans

16. Two further elements in the proposals to simplify or streamline area plans are potentially concerning and, as a minimum, require further detail:
 - a. inability to set conditions on activities; and
 - b. allowing planning documents to exempt, prohibit or permit categories of concessions in advance.
17. We note that both of these may be areas simply requiring further information to clarify the intention or detail of the proposals.
18. At section 5.1.2, the proposal suggests that area plans may, where needed, set a limit on the volume of an activity that can occur in an area, but would not be able to impose conditions on activities. This leaves unclear what is intended regarding providing for uses of public conservation land that a local authority would normally be uncomfortable with but could sometimes accept with conditions. If the only available options are to regulate the volume of an activity or make it entirely prohibited, this could have the effect of ruling out this further class of activities and seems perversely inflexible in ways that could run counter to the intentions to develop a more enabling framework.
19. At section 5.2 [Q6a], the proposal sets out three ways being considered to take a class approach to concessions through the NCPS and area plans: allowing planning documents to *exempt, prohibit or permit* categories of concessions in advance. Outside of those categories, a further group of concessions would presumably still be approached case by case and/or through the competitive allocation mechanisms that are also discussed. As an example, highlighting that there is a need for (and presumably it is intended to have) a category separate to the class approach, all activities permitted in advance “need to be consistent with the purposes for which the land is held”. Competing iwi rights and claims to the land are an example of a category of concessions which may not fall under the “purpose for which the land is held”. The document at 5.2 addresses the need to consider “local factors (such as iwi

rights and interests)”; however, it does not actually offer mechanisms to address these issues if a class approach was implemented. As with a number of other parts of the document addressing iwi rights, this is an area where more information is needed to fully understand the proposal.

Streamlining concession decision-making and contractual management

Recommended considerations for concession decision-making

20. The proposal seeks feedback [Q9d] on considerations when assessing whether an applicant may not have the financial means to execute a concession. The Law Society notes the importance of including, in this consideration, the means to carry out any decommissioning or remediation requirements.
21. The Law Society draws attention to the following further matters, not raised in the proposal, which would be desirable to consider as part of a package of any reforms relating to concessions:
 - 21.1. There is no reference in the Act to considering an applicant’s previous compliance history. Consideration of an individual’s or company’s prior environmental track record would enable greater vetting of applicants, which is important, for example, for high impact and high-risk activities such as mining.²³ The Law Society considers that this would be an appropriate change.
 - 21.2. Provision to decline concessions for lack of compliance with General Policies has been identified as a statutory gap in the planning hierarchy. The Law Society recommends this issue is corrected for the new NCPS.
 - 21.3. At section 7.1.3, the inclusion of a ‘recognising Treaty rights and interests’ criterion is proposed where concessions are to be competitively allocated. This is explained as, in part, a response to the Supreme Court’s ruling in *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* (in which the Supreme Court said that in some circumstances, giving effect to the Treaty principle of active protection requires decision-makers to consider extending a degree of preference to iwi as well as looking at the potential economic benefit).²⁴ The scope of the discussion here seems to indicate this is confined to where concessions are to be competitively allocated, which seems unduly limited. Any such policy in the Law Society’s view will need to be more broadly applicable to the consideration of concessions, in order to give effect to the Supreme Court’s decision. We also query why, if the intention is to require a decision-maker to determine whether ‘active protection’ is necessary when certain concession opportunities arise to give effect to Treaty rights and interests, that would not simply be what is written into the legislation.

Public notification

22. At section 6.4 [Q12a], the proposal asks whether DOC should publicly notify applications for leases or licenses for more than 10 years, to enable public submissions on the applications, only where it intends to grant an application. In the Law Society’s view, this is undesirable. Allowing for submissions only after DOC has made a preliminary decision could go against principles of natural justice and procedural fairness and risk predetermination. While this would allow submitters to make submissions that are more tailored towards DOC’s preliminary view, it also might discourage and disadvantage those who want to submit on an

²³ Conserving Nature at 98.

²⁴ See also 4.4.1.

opposite point of view if they think DOC has already reached a decision. The Law Society does not support this proposal.

Providing for standard conditions

23. Section 7.2 [Q15a] of the proposal states that the government needs to “make sure the right terms and conditions are in place” for every concession. It also invites views on whether the proposed NCPS could contain or give guidance on standardising terms and conditions. Since it will be more difficult to ensure terms and conditions are tailored to each concession if they are also standardised, presumably what might be intended (or workable) is a mix of some standard conditions and others individually tailored to considering the concession-specific context. The Law Society recommends careful thought is given to this approach and emphasises that it will need to enable a nuanced approach.

Amenities areas

24. At section 8 the proposal discusses “unlocking amenities areas” to enhance tourism. It refers to “inconsistent and rigid” regulatory settings that make it hard to “leverage amenities areas as a tool to support recreation and better economic outcomes”.

25. The discussion presented in the proposal appears to unduly confine the scope of proposed provision for amenities areas to purposes that are visitor-services focused. The Law Society recommends considering whether, from a different worldview, the regulatory settings should equally enable amenities for, for example, tikanga Māori purposes, or (as appears elsewhere in the document) to “promote general awareness of tikanga and mātauranga Māori”.

Land exchanges and disposals

26. At section 9, the proposal advocates for more flexibility in respect of both land exchanges and disposals. The Law Society notes the importance, given the value of public conservation land and the desirability of legal clarity, of ensuring that there are clear criteria and thresholds for considerations of exchanges or disposals.

Next steps

27. We hope this feedback is useful. Please feel free to get in touch with me via the Law Society’s Senior Law Reform & Advocacy Advisor, Claire Browning (<mailto:claire.browning@lawsociety.org.nz>) if you have any questions or wish to discuss this feedback further.

Nāku noa, nā



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