Forest & Bird

TE REO O TE TAIAO | *Giving Nature a Voice*

RESPONSE TO CONSULTATION ‘MODERNISING CONSERVATION LAND MANAGEMENT’ FROM THE ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED

To Department of Conservation Te Papa Atawhai

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Date 28 February 2025

Introduction

1. The Royal Forest and Bird Protection Society Incorporated (Forest & Bird) has been Aotearoa New Zealand's independent voice for nature since 1923. Forest & Bird's constitutional purpose is:

    > To take all reasonable steps within the power of the Society for the preservation and protection of the indigenous flora and fauna and the natural features of New Zealand.

2. Forest & Bird was one of the conservation organisations instrumental in the introduction of the Conservation Act 1987 (CA 1987). It is a staunch defender of CA 1987 requirements to preserve and protect the natural and historic resources found on conservation land for the purpose of maintaining their intrinsic values. Forest & Bird has over 100,000 members and supporters who are passionate about protecting and restoring nature on conservation land across the motu. Many of our projects are located on Department of Conservation (DOC) land, and we often collaborate with DOC to achieve the objectives of both organisations.

3. New Zealand is a biodiversity hotspot. Plants and animals here evolved in isolation for millions of years, creating an astonishing number and diversity of endemic species including flightless birds and giant snails, found nowhere else on earth. Unfortunately, New Zealand has one of the worst extinction rates in the world on the planet, with many more plants and animals threatened with extinction than anywhere else.

4. New Zealand has the dubious distinction of having the highest proportion of threatened species in the world.[1] Of our terrestrial species that have been assessed, 76% of native freshwater fish, 25% of native freshwater invertebrates, 33% of native freshwater plants, 46% of vascular plants, 74% of terrestrial birds, 66% of native birds, and 94% of reptiles are either threatened or at risk of being threatened with extinction, as well as our bat species (two threatened, two at risk, one is unknown). In our marine environment, the largest in the OECD, where we have more species of breeding seabird than any country, 90% of those seabirds, and a quarter of our marine mammal species are threatened or at risk of extinction.[2]

5. When it comes to the unique ecosystems found here in Aotearoa, of the 71 ecosystems identified as rare, 45 are threatened with collapse, including 16 ecosystems in inland alpine areas. Strong protection and preservation of our conservation land is essential to avoid further irreversible losses.

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[1] Bradshaw CJA, Giam X, Sodhi NS (2010) Evaluating the Relative Environmental Impact of Countries. PLoS ONE 5(5): e10440. https://doi.org/10.1371/journal.pone.0010440.

[2] MfE & StatsNZ. (2022). New Zealand's Environmental Reporting Series: Environment Aotearoa 2022. Publication number: ME 1634

6. Due to the highly threatened status of our native species and ecosystems, New Zealand has a national and a global responsibility, through our international agreements (Convention on Biological Diversity and the Kunming-Montreal Global Biodiversity Framework), to ensure that these are protected through appropriate legislative and policy instruments. Nationally, this is set out in the Aotearoa New Zealand Biodiversity Strategy – Te Mana o te Taiao (ANZBS), administered by DOC, which sets the strategic direction for protecting our biodiversity through our various statutory tools for the next thirty years.

7. The ANZBS recognises that its goals can only be achieved by working in collaborative, adaptive and responsive ways. If the overarching policy framework for conservation land management does not enable DOC to apply these principles to the conservation land DOC itself administers, then our ability to achieve the goals of the ANZBS will be severely impeded.

8. Research shows that more than any other country, New Zealanders' concept of national identity is heavily tied to our connection to the land and to nature.[3] This is despite us having a highly urbanised community (around 87% of us live in cities in towns). This research described that New Zealanders consider our connection to nature as 'spiritual, almost soulful'.[4] For Māori, the connection with nature is one of whakapapa, to describe one's identity by the mountains, rivers, lakes and oceans that determine who you are.

9. As well as specially protected areas, areas of the conservation estate with high conservation values include very substantial areas of stewardship land (around 30% of conservation areas are currently held in stewardship). Forest & Bird is especially concerned about the mischaracterization of stewardship land as "just scrubby land",[5] and about the proposals to make it easier for the Government to exchange or dispose of stewardship land without first assessing its conservation values and appropriately classifying it.

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[3] https://www.doc.govt.nz/globalassets/documents/conservation/biodiversity/anzbs-2020.pdf
[4] Clifton, J. 2010: Choice, bro. The Listener, 3 July 2010
[5] Nicola Willis (Minister of Economic Growth), RNZ, 28 January 2025

Response to consultation questions

Section 3 - Issues

1. Do you agree with the issues?

"The planning system is too complicated"

1.1 Forest & Bird recognises the need to review and update planning instruments at appropriate intervals. As part of this process there must certainly be scope to consider whether the overall structure of the planning framework and the process for changing planning documents could be made simpler and more user-friendly.

1.2 Complexity in conservation land management planning documents arises from the need to factor in a broad range of considerations, including those relating to the natural environment (including ecology, landscape and natural character), people's recreational uses of conservation areas (for walking, hunting, mountain-biking etc), cultural interests and uses, and commercial interests and uses.

1.3 Nonetheless, Forest & Bird acknowledges that the existing conservation planning framework is relatively complicated and could be simplified. The proposed solutions of consolidating national conservation policy into a single document and avoiding overlapping policy documents at a local level are both supported.

1.4 However, the proposed changes are not limited to those types of positive measures. Forest & Bird is very concerned that these issues are being used to justify increasing Ministerial decision-making powers, side-lining the NZCA, removing public participation, and restricting the scope of conservation policy to managing concessions. As discussed further below, Forest & Bird does not agree that those aspects of the current system create complication, overlap or delays.

"Concession decisions take too long"

1.5 It is unclear from the discussion document *why* processing concession applications is "an increasingly lengthy and burdensome process", especially given that the relevant policies have been unchanged for many years. In Forest & Bird's experience, concession delays and costs come from operational issues rather than problems with the law and policy applicable to concession processing.

1.6 If there are specific problems causing delays in the system, inconsistent outcomes, or unnecessary restrictions, then these problems will need to be individually addressed for the system to improve.

1.7 If the true objective of this review is to allow more commercial activity on conservation land, Forest & Bird records that it has significant concerns with that overall direction, in particular if those commercial activities are incompatible with preservation and protection of conservation values. Forest & Bird's primary concern is that a simpler, or more permissive, concessions regime should not be achieved at the expense of good conservation outcomes.

“The Government could get better performance and outcomes from concessions”

1.8 Forest & Bird agrees with this proposition, and with the issues presented in this section of the discussion document. There is certainly potential for achieving better conservation outcomes by:

- improving processes for competitive allocation of concessions
- better management of commercial and contractual aspects of concessions
- expanding the use of conditions included in concession agreements
- improving compliance monitoring and enforcement
- shorter term concessions

“The Government has limited flexibility to manage land”

1.9 More detail is needed to explain why DOC considers regulatory settings for amenities areas to be inconsistent. Under the Conservation Act 1987 (CA 1987), there is a requirement for an amenity area to be managed so that “indigenous natural resources and its historical resources are protected” (CA 1987, s 23A). Under the National Parks Act 1980 (NPA 1980), amenities areas must be recommended by the NZCA, and development must be in accordance with the Act and the management plan (NPA 1980, s 15)

1.10 The regulatory settings require that the preservation and protection of intrinsic values and indigenous biodiversity are prioritised. This is appropriate in the context of conservation land. While there must be potential for improving the ability of amenities areas to support recreation and better economic outcomes, this should not be achieved at the expense of conservation values.

1.11 The separate issue of exchange and disposal of conservation land requires far more careful and detailed analysis than has been provided in the discussion document. This very significant issue is discussed in more detail below.

2. Have any issues been missed?

2.1 Key issues that have been missed include:

- Achieving better biodiversity outcomes for conservation areas
- Improving DOC’s advocacy for natural and historic resources outside conservation areas (that being one of its functions)
- Ensuring appropriate policy guidance for all of DOC’s operational activities (i.e. not just limited to concessions)
- The interpretation of “net conservation benefit”, a term that does not appear in the governing legislation
- The risks to conservation values that would be associated with introducing a “net conservation benefit” test for land exchange that applies to specially protected conservation land.

- The need for review of the conservation values of stewardship land, and its reallocation based on those values to either a special protection category or disposal, to be completed.

3. Do you have any examples or data that demonstrate your view on the issues?

3.1 New Zealand is facing dual climate and biodiversity crises. In these circumstances, it is essential that the primary focus of managing the conservation estate continues to be ensuring good conservation outcomes as far as possible.

3.2 The Government's own environmental reporting emphasises that our native plants, animals and ecosystems are under severe threat,[6] and notes the potential benefits when Māori concepts and science are used together to inform our responses.[7] It would be a missed opportunity if the current process fails to address these issues and results instead in a narrow conservation policy that just focuses on managing concessions and making it easier for the Government to dispose of conservation land.

3.3 In terms of the key issues that have been missed:

- The fact that DOC's operational activities extend beyond managing concessions, and need to be supported by appropriate high-level policy, is obvious from the functions of the Department as set out in s 6 of the CA 1987.
- Problems with the definition of "net conservation benefit" were discussed in the PCE report "Investigating the future of conservation: The case of stewardship land".[8] These problems were also acknowledged by the Supreme Court in the *Ruataniwha* case.[9]
- The need for proper assessment and categorisation of stewardship land was explained in the same PCE report, while the *Ruataniwha* case emphasised that the legislative scheme of the CA 1987 requires land exchange and disposal decisions to be based on the conservation values of the subject land.[10] Recent mis-statements by Government Ministers about the conservation values of stewardship land demonstrate the importance of completing this exercise.[11]

4. As you read the proposals in this document:

a. Do you think any measures are needed to ensure conservation outcomes, whether in addition to or alongside the proposals?

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[6] Environment Aotearoa 2019

[7] Environment Aotearoa 2022

[8] Parliamentary Commissioner for the Environment, August 2013 (PCE Report 2013)

[9] *Hawke's Bay Regional Investment Company Limited v Royal Forest and Bird Protection Society of New Zealand Incorporated* [2017] NZSC 106 (*Ruataniwha* case), e.g. at [149]

[10] *Ruataniwha* case, at [117]

[11] See Environmental Defence Society "Stewardship Land – A Note for the Prime Minister" (February 2025) for a concise summary of the conservation values of stewardship land, available at https://eds.org.nz/wp-content/uploads/2025/02/EDS-Stewardship-Document_DRAFTv1.pdf

4.1 To ensure good conservation outcomes, it is vitally important that economic and administrative concerns relating to concessions are addressed in a way that is consistent with core conservation principles and objectives.

4.2 Forest & Bird would like to see all parts of the conservation system directed towards the ultimate goal of protecting and preserving nature in conservation areas – both legal protection and physical protection from pests, browsers and weeds. That objective is barely visible in the proposals.

b. Do the proposals allow the Government to strike the right balance between achieving conservation outcomes and other outcomes?

4.3 No. There is little focus in the proposals on achieving conservation outcomes.

4.4 In particular, transferring policy-making functions to the Minister raises significant risks that short-term commercial objectives will be prioritised, which would not achieve that balance.

4.5 The discussion document states that the "NCPS and area plans would focus on setting rules, boundaries and guidance for concessions", and acknowledges that this "would be narrower than the current functions of statutory planning documents".[12] This narrow focus would mean that the NCPS and area plans would provide inadequate guidance for DOC in terms of fulfilling its wider statutory functions.

Section 4 – Working with Iwi (and Hapū)[13]

x.1 Forest & Bird will leave it to iwi and hapū to comment on the issues in Section 4 but is concerned at the lack of detail around implementing (or not) the recommendations of the Options Development Group (ODG). When the ODG report was released, the Director-General of Conservation publicly stated that: "Although the ODG has given us an informed view of where we should be headed, we absolutely want to ensure there is every opportunity for all New Zealanders to have input into this process before any decisions are taken".[14]

x.2 The discussion document states that the ODG's recommendations "… will be able to be considered when redrafting the general policies into one proposed national conservation policy statement".[15] However, it is unclear from the discussion document whether there will be any further opportunity for meaningful public engagement before the proposed NCPS is issued by the Minister. If the notified NCPS does not address the ODG recommendations, then relying on members of the public to raise these recommendations may not be consistent with enabling all New Zealanders to have a say. Further consultation would be

[12] Discussion document, at [5.1.3]
[13] No specific questions were asked in the discussion document on Section 4, the points below have therefore been numbered x.1 et seq.
[14] Inside Government "Report forecasts changes to DOC Treaty implementation", 8 April 2022
[15] Discussion document, at [4.3]

needed if the Minister intends to revise the notified version to address any of the recommendations. The ODG report itself is no longer publicly available on the DOC website.

x.3 The implication that formal agreements other than Treaty settlements may only be honoured *"…*where they are consistent with any new legislative arrangements" is also concerning.[16]

Section 5 – Streamlining the conservation management system

5. Simplifying the management structure

a. Do you agree with the issues and how they have been presented?

5.1 As stated above, there is clearly a need to review and update planning instruments at appropriate intervals, and an efficient and effective process for doing this benefits all of us. However, Forest & Bird does not agree that delays in updating planning documents (such as the Fiordland NPMP referred to in the introduction to Section 5) should be presented as a reason to limit public participation or independent decision-making, as those are simply not the cause of delays and expense that have been experienced.

5.2 Examples that have been provided in the discussion document overstate or wrongly explain difficulties that have been encountered in practice. For example, it is suggested that it was not possible for DOC to make certain changes to aircraft provisions in the Westland NPMP without a full review of the West Coast CMS. However, a full review of the CMS would not have been required, because s 17H of the CA 1987 expressly provides for limited review of any part of a CMS. Rather, the issue was with DOC's attempt to make changes to the Westland NPMP which derogated from the CMS. It is clear from the CA that it could not do so. The delay was due to DOC's error, not any shortcoming in the legislation.

5.3 A system whereby a NCPS is both initiated and approved by the Minister of Conservation may result in faster policymaking. However, such a system is likely to result in conservation policies that fail to adequately address important issues, and that lack public support and legitimacy. It seems likely that this would result in more controversial decisions and more challenges, ultimately causing increased delays and costs for all parties involved.

5.4 Forest & Bird considers that beginning with clear principles and effective mana whenua and public engagement, and ending with an independent decision-maker approving policies, is the most appropriate response to the complexity of managing the conservation estate. This approach is more likely to result in conservation policy that is both principled and evidence based, and that will stand the test of time. The Government's focus should be on ensuring better decision-making, not just faster decision-making, and important checks and balances should not be presented simply as an impediment to efficiency.

b. Do you agree with the proposed changes to simplify the management planning framework?

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[16] Discussion document, at [4.1.3]

5.5 Forest & Bird would not be opposed to a single National Conservation Policy Statement (NCPS) in principle. However:

- It would be important to ensure that a NCPS implements the various legislative provisions that it must cover, such as s 4(2) of the NPA 1980, and that these are not undermined or compromised because the NCPS is overly generalised.
- Simplifying the management planning framework should not be achieved by focusing only on concessions and ignoring or side-lining matters that are relevant to other important statutory functions.
- Maintaining a principled and evidence-based approach is vitally important, and entirely achievable within a simplified planning framework.
- Similarly, maintaining effective public participation requirements is entirely achievable within a simplified planning framework.
- Independent decision making is a key part of ensuring that conservation policies are fit for purpose, consistent, effective and enduring.
- Regular Ministerial changes to policies, driven by politics rather than evidence, will not help DOC to fulfil its functions and will undermine confidence in the conservation system.

5.6 Forest & Bird would also not be opposed to the proposal for a single layer of area plans in principle. However:

- It will be important that each National Park has its own area-based plan, to give effect to the NPA 1980.
- The same considerations about public participation and independent decision making will also apply to area plans.

c. How could this proposal be improved?

5.7 The proposal could be improved by addressing the points raised above, specifically in relation to general principles, public participation, and independent decision making.

5.8 It would also be helpful to have more specific detail about the real problems that DOC has encountered with the existing planning documents, which would help us to understand the challenges DOC is facing and to suggest potential solutions to these challenges.

6. Enabling class approaches to concessions

a. Do you agree with the proposal to introduce classes of exempt activities, prohibited activities and permitting activities in advance through the National Conservation Policy Statement and area plans?

6.1 Forest & Bird agrees in principle with the proposal to introduce classes of activities for concessions, subject to appropriate management of cumulative effects and ensuring that good conservation outcomes are maintained.

6.2 There should be public consultation on which activities are allocated to which classes, and provision for these allocations to be periodically reviewed.

b. How could this proposal be improved?

6.3 The discussion document only states that activities permitted in advance "would generally be low-risk activities".[17] This proposal could be improved by providing more detail about the kinds of activities that would be included, and the criteria against which these classes of activities would be assessed. As set out above, public consultation and periodic review of classifications will be important to ensure that the proposals are workable and that unintended consequences are avoided.

6.4 Provision should be made for exempt activities to only be exempt where they comply with specified standards (as is the case for RMA permitted activities, recreational fishing, etc).

c. What types of activities are best suited to taking a class approach, and which activities would a class approach not be appropriate for?

6.5 In broad terms, Forest & Bird agrees that activities having negligible (less than minor) adverse effects will generally be more suited to a class approach. DOC would need to retain decision-making functions in relation to activities having minor or more than minor adverse effects, to ensure that conservation values are not undermined and that cumulative adverse effects are avoided.

6.6 If some activities are to be exempted subject to compliance with standards, it will be important for classification to also take into account how those standards will be conveyed to those undertaking activities, and how compliance will be monitored and enforced.

7. Proposed process for making statutory planning documents

a. Do you agree with the proposed processes for making, reviewing and updating the National Conservation Policy Statement?

7.1 Forest & Bird supports provision for regular and timely policy reviews. Forest & Bird supports the D-G preparing the first draft in consultation with the NZCA and Fish and Game, but does not support the ability to exclude NZCA from this (i.e. it does not support an "and/or" approach to consulting NZCA and/or Fish & Game). Forest & Bird also considers that the important role of mana whenua as co-authors (which is the status quo for the most effective policy-making processes) has been written out of the process.

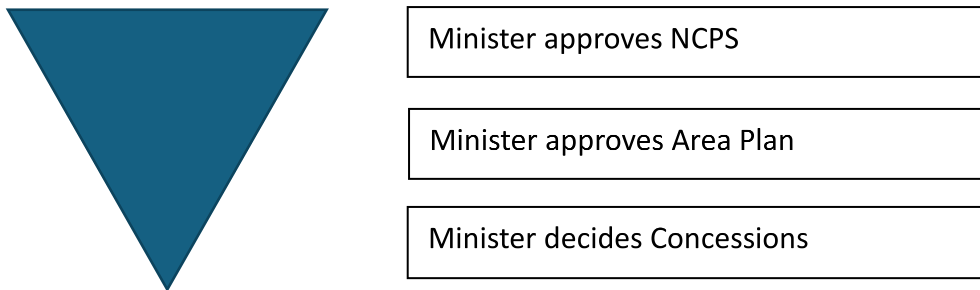
7.2 Other changes proposed in the discussion document (removal of NZCA as approver of GPNP) risk politicising the policymaking process, which is not appropriate in the context of conservation policy. As discussed above, effective conservation policy needs to be based on appropriate principles and evidence.

7.3 Apart from minor or technical changes, the nature of public participation needs to be guaranteed in legislation. Forest & Bird considers that the statement in the discussion document that the "timing and nature of the engagement will vary" is unsatisfactory. Public consultation is not a reason for delays and inefficiencies. A reasonable period for public submissions (e.g. 40 days) followed by a hearing is appropriate.

[17] Discussion document, at [5.2]

b. Do you agree with the proposed processes for making, reviewing and updating area plans?

7.4 These proposals include clearer provision for public participation than the NCPS proposal, which Forest & Bird supports for the reasons given above. However the role of DOC's Treaty Partners is similarly marginalised, and the existing role of Conservation Boards is removed. This entrenches the Minister as decision-maker for NCPSs, area plans, and concessions, which is not supported because it concentrates decision-making powers in the hands of one person over all three levels of the system that determine what (and how) commercial activities on conservation areas can happen. This is the exact approach that was so abhorrent to the public that it was quickly removed from the Fast Track Bill.



7.5 Such concentration of power in the hands of one person creates a risk that conservation policy will be driven by politics and personalities. The removal of checks and balances would likely lead to much more pronounced swings in policy and decision making – creating instability and poor outcomes for a conservation estate which by its very nature calls for long-term stewardship. There have been five Ministers of Conservation in the last four years, each with vastly different priorities. The proposed approach, combined with easier mechanisms for changing NCPSs and Area Plans, will not create stable policy or achieve lasting environmental outcomes.

7.6 Appropriate definition of areas and boundaries will also be important for successful area plans.

c. How do you think these processes could be improved?

7.7 These processes could be improved by:

- Ensuring independent decision-making by maintaining and enhancing the policymaking role of the NZCA
- Not limiting the NCPS to managing decision-making on concessions
- Setting statutory timeframes for review of the NCPS
- Ensuring that the public, including conservation organisations, can engage meaningfully on the content of the NCPS

Independent decision making

7.8 The discussion document states that the role of the NZCA in approving the General Policy for National Parks "does not ensure consistent government policy settings or the application of government policy to the management of national parks".[18] This statement conflates two separate issues: consistent conservation policy, and current Government policy.

7.9 Consistent conservation policy settings can be achieved under a single NCPS while also providing a policymaking function for the NZCA. Good conservation policy, and especially national park policy, requires consistency and independence and should not be subjected to sporadic and unpredictable changes due to changes in central Government policy.

7.10 If the NZCA and conservation boards are to have a role in the development and review of area plans, this necessarily implies that their expertise will also be relevant to those aspects of the NCPS that will provide the high-level policy direction for the development of area-plans.

Scope and content of the NCPS

7.11 Decision-making on concessions needs to be guided by good conservation policy. The NZCA and conservation boards have the expertise needed to develop good conservation policy. The argument, presented in the discussion document,[19] that it is more appropriate for the Minister to be the decision-maker on the NCPS and area plans, because the NZCA and conservation boards do not have a role in making decisions on concessions, is therefore fundamentally flawed. This proposition is also flawed because it assumes that the proposal for NCPSs and area plans to only cover concession guidance proceeds. If NCPSs and area plans are addressed to all aspects of DOC's functions (which they should be), this also supports maintaining the role of NZCA and conservation boards as policy approvers.

7.12 Limiting the policy guidance of the NCPS and area plans to decision-making on concessions will leave substantial gaps in the conservation policy framework. Currently, the Conservation General Policy must implement the CA 1987,[20] together with several other Acts.[21] There are therefore a wide variety of operational and decision-making functions, beyond managing concessions, that must be guided by the NCPS as the proposed replacement for the Conservation General Policy. For example, how DOC prioritises its own operations on conservation land (such as predator control), different standards of recreational facilities (e.g. front country and back country tracks), how DOC engages with mana whenua and facilitates the exercise of kaitiakitanga, and how DOC advocates for natural and historic values outside the conservation estate.

7.13 Further, approval of a concession is subject to the requirements in ss 17U(2) and (3) and 17(W)(1), which specify that concessions may not be granted if they are inconsistent with the purpose for which the land is held or with a CMS. Decisions on concessions must be

[18] Discussion document, at [5.3.3]
[19] Discussion document, at [5.3.3]
[20] CA 1987, s17B
[21] CA 1987, s17C; Wildlife Act 1953, Marine Reserves Act 1971, Reserves Act 1977, Wild Animal Control Act 1977, Marine Mammals Protection Act 1978.

subject to principles and objectives of conservation management that address the importance of areas and how they should be protected, and these general principles would need to be set out in the NCPS and then applied in the area plans. Setting policies and rules that are specific to activities for which concessions may be sought in the absence of appropriate conservation objectives and principles is likely to result in policies that are biased towards enabling activities and which have insufficient regard to the objective of protecting natural and historic resources.

Statutory timeframes

7.14 The NCPS should not be subject to sporadic and unpredictable Ministerial changes. This would not be conducive to effective and efficient conservation management. Providing statutory timeframes for review will result in a more consistent and predictable regulatory and policy environment for all stakeholders.

Public participation

7.15 The NCPS will be a crucial national policy document, and it is not appropriate that the public consultation requirements should be left unspecified. By excluding conservation groups from policy development, while engaging with iwi and hapū, the proposals are likely to be seen as promoting differentiated treatment. Conservation outcomes are of concern to all New Zealanders, and all New Zealanders should be able to engage meaningfully in the development of the proposed NCPS.

8. Giving effect to Treaty principles when making statutory planning documents

a. Do you think the proposals are appropriate to give effect to the principles of Te Tiriti o Waitangi / the Treaty of Waitangi?

b. What else should the Government consider to uphold existing Treaty settlement redress

8.1 While it is primarily for iwi and hapū to respond to these questions, Forest & Bird considers some aspects of the proposals will undermine DOC's efforts to be a good Treaty partner. For example, iwi are to be "consulted" or "engaged with" on policy documents rather than having the opportunity to co-write them. Also, narrowing the scope of these documents to be just 'concession rule-books' will remove content that is important to mana whenua, such as identification of important cultural resources. Lastly, Forest & Bird does note that there is very little detail in the discussion document on which an assessment of compliance with Treaty principles could be based.

<u>Section 6 – Speeding up concession processing</u>

9. Improving the triage of applications

a. Do you agree with the issues in concessions processing and how they are presented?

9.1 Forest & Bird agrees that, if the number of concessions applications each year is growing, the appropriate response would be to increase DOC's capacity for processing applications. It would be expected that the associated costs of increasing capacity could be recovered from the increased number of applicants. Forest & Bird also agrees that there are likely to be opportunities for administrative improvements to speed up the processing of applications, which would be a matter for internal review at DOC.

9.2 Forest & Bird acknowledges that DOC is finding it difficult to administer the concessions process in a timely and efficient way and would support legislative measures that are designed to help DOC, provided these do not undermine or compromise good conservation outcomes.

b. Do you agree with how the Government proposes to improve triaging of concession applications?

9.3 Forest & Bird supports the proposed additional two grounds for declining applications at an early stage (i.e. lack of financial means and previous non-compliance).

9.4 Clarifying the process for competitive allocation of concessions would also be a sensible step. However, the proposal that the Minister could be allowed to return an application within 20 working days in favour of running a competitive allocation process remains unduly reactive, rather than proactive. The issue of competitive allocation is discussed in more detail below.

c. How can this proposal be improved?

9.5 As stated above, and discussed in more detail below, the proposal for competitive allocation of concessions could be improved by adopting a more proactive approach. Clear policies around "no go" areas of the conservation estate would also avoid applicants wasting their money and time preparing applications that will not be approved.

d. What should DOC consider when assessing whether an applicant may not have the financial means to execute a concession?

9.6 Forest & Bird does not have any comments on this question.

10. Clarifying Treaty partner engagement requirements

How can the Government best enable Treaty partner views on concession applications (e.g. whether Iwi are engaged on all or some applications)?

10.1 This question needs to be addressed by Treaty partners but see comments on 8.b. above.

11. Creating statutory time frames for some steps

Do you agree that additional statutory time frames should be introduced, including for applicants (to provide further information) and Treaty partners?

11.1 Forest & Bird has no objection in principle to statutory time frames. However, information requirements are likely to be very diverse and specific to applications. Applicants for complex concessions may need more than 10 days to respond to reasonable requests from DOC for additional information. The discussion document refers to a "longer time frame specified",[22] but it is not clear how or by whom these timeframes would be specified. It would probably be sensible to provide a general discretion for DOC to reasonably extend timeframes as occurs in similar contexts such as the RMA.

12. Amending when public notification must happen

a. Would it be more beneficial if DOC notified only eligible applications where the intention is to grant a concession?

12.1 Leases and licences of more than 10 years represent substantial encumbrances on the conservation estate, therefore justifying public notification of applications. Forest & Bird understood notification of an intention to grant only as the status quo approach, so has no objection to this.

b. Do you think any other changes to public notification should be considered?

12.2 Not for concessions, but applications for land exchanges should be publicly notified, particularly if any expansion of land exchange powers proceeds.

13. Clarifying the reconsideration process

a. Do you agree with setting time frames and limits on reconsiderations?

13.1 Yes, if this would assist DOC in administering the concessions process.

b. How can this proposal be improved?

13.2 If s 17ZJ of the CA 1987 is being abused by applicants, then it would be appropriate to address this problem. Forest & Bird agrees that it certainly would be appropriate to limit the ability of applicants to ask for reconsideration of decisions.

Section 7 – Driving better performance and outcomes from concessions

14. Enabling competitive allocation of concession opportunities

a. Do you agree with the issues and how they have been presented?

14.1 The issues relating to competitive allocation have not been presented in sufficient detail. More information and analysis would be needed to understand the risks and opportunities presented by competitive allocation processes. However, if the fundamental goal is to

[22] Discussion document, at [6.3]

achieve better conservation and economic outcomes without jeopardising conservation values, that goal is supported.

b. Do you agree with the proposed criteria to guide when concession opportunities are competitively allocated?

14.2 The proposed criteria for when to competitively allocate are reasonable, but they lack any reference to conservation outcomes. An additional criterion could be that:

> "Opportunities exist for achieving better conservation outcomes through a competitive allocation process".

14.3 DOC should also be able to apply these criteria proactively to concession opportunities, rather than always waiting for an application to trigger the process. Proactively identifying and publicising opportunities could help DOC to direct competitive processes towards achieving better conservation outcomes, in addition to raising funds for DOC.

14.4 No detail has been provided in the discussion document on timelines or processes once a decision has been made to run a competitive allocation process. These details will be key to ensuring that competitive allocation is effective.

c. How can the proposed criteria be improved for when an opportunity should be competitively allocated?

14.5 As stated above, the criteria should include the potential for competitive allocation to achieve better conservation outcomes.

d. Are there any situations in which competitive allocation should not occur, even if the criteria are satisfied?

14.6 If, for some reason, competitive allocation would be likely to result in worse conservation outcomes, the process should not be used. An example might be where an incumbent is providing conservation services as part of their concession, which may no longer be provided if a competitive tender is used (particularly if there is no conservation outcome consideration included in the allocation criteria).

e. Do you agree with the proposed criteria to guide how concession opportunities are allocated?

14.7 The "Returns to conservation" criterion needs to be divided into at least two separate criteria. "In-kind" returns to conservation, such as pest control, and contribution to research, should be considered separately from "Financial returns to the Crown".

14.8 The ultimate criterion for competitive allocation should be achieving good conservation outcomes. If an application will not achieve good conservation outcomes, then it should not be chosen, even in circumstances where other criteria (e.g. employment opportunities, and financial returns) would be met.

14.9 Apart from these two points, the proposed criteria are reasonable.

f. How can the proposed criteria be improved for how allocation decisions should be made?

14.10 This question has already been answered above.

g. What are your views on a ensuring a fair valuation of assets when transferring a concession?

14.11 Forest & Bird agrees that fair valuation of assets is important to ensure public confidence in the system.

h. How can the interests of existing operators and potential new operators both be fairly met in exclusive commercial opportunities?

14.12 By ensuring fair valuation of assets.

15. Modernising contractual management of concessions

a. Do you agree that the proposed National Conservation Policy Statement could guide things like standardised terms and conditions, term lengths, and regulated concession fees?

15.1 Yes.

b. What are your views on setting standard terms and conditions for concessions?

15.2 Standard terms and conditions are already used for concessions in practice so there seems little change. Terms would need to include break clauses to enable termination in circumstances where concessions are causing adverse environmental effects.

c. What circumstances and activities might justify longer or shorter term lengths?

15.3 Applying the precautionary principle, shorter term lengths would be justified in circumstances where activities will occur in sensitive environments and there is a risk of unanticipated adverse effects.

d. What are your views on setting activity fees based on a fair return to the Crown rather than market value?

15.4 Forest & Bird would potentially support this approach, subject to a more detailed explanation of what is meant by a "fair return" in this context.

e. What are your views on setting standardised, regulated fees?

15.5 Forest & Bird agrees that standardised fees may be appropriate for certain classes of concession. For comparable activities (such as guiding, for example) it would be appropriate to set standardised fees rather than requiring DOC to negotiate separately with every applicant.

f. What are you views on changing the frequency of activity fee reviews?

15.6 Removing or amending the current requirement for three-yearly reviews may be appropriate in some cases, for example where the activity fee is set as a percentage of revenue.

Section 8 – Unlocking amenities areas to protect nature and enhance tourism

16. Do you agree with the issues relating to amenities areas and how they have been presented?

16.1 The issues that have been presented in the discussion document relate to amenities areas in national parks, rather than to amenity areas contained in Schedule 4 of the CA 1987. If there are issues relating to Schedule 4 amenities areas, then these will need to be explained and addressed separately.

16.2 Section 15 of the NPA 1980 provides for areas to be set apart as amenities areas, on the recommendation of the NZCA and in accordance with the management plan. Within amenities areas, "the development and operation of recreational and public amenities and related services appropriate for the public use and enjoyment of the park may be authorised in accordance with this Act and the management plan".[23] Section 15(3) specifically states that the principles applicable to national parks (including those set out in s 4 of the Act) will "… apply only so far as they are compatible with the development and operation of such amenities and services".

16.3 Contrary to the discussion document,[24] it is therefore not necessary to amend legislation to enable DOC to address the issues identified in the discussion document. Section 15 enables any shortcomings in existing management plans to be addressed as part of a review process. This could include development of an "amenities area tool" as part of general policy, as well as a "more modern spatial planning approach". It is unclear from the discussion document what amending legislation to "better integrate the concept into the planning system" would mean.

16.4 The key issue in the discussion document therefore appears to be the proposal to:

> "…enable the Minister to establish an amenities area in a national park without requiring the recommendation of the NZCA as part of a more strategic approach to regulating and managing concessions."

16.5 All the desirable planning outcomes referred to in the discussion (e.g. tackling congestion, improving visitor services, more detailed spatial planning, support for sustainable economic activity, protection of wider conservation areas etc.) are already enabled by legislation, and can be achieved through existing policy review processes.

16.6 Forest & Bird does not support the removal of the statutory role of the NZCA and seeks further explanation of what enabling the Minister to take "a more strategic approach to

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[23] NPA 1980, s 15(2)
[24] Discussion document, at [8.1]

regulating and managing concessions" is intended to mean in this context (i.e. how is this intended to be different to the planning outcomes that are already enabled by existing legislation?).

17. Do you agree with the proposal to create a single amenities area tool?

171. Forest & Bird does not see any problem with a "single amenities area tool" in principle, provided this tool is capable of appropriately addressing conservation needs and outcomes at place, recognising that amenities areas will need to be carefully tailored to their specific location. It would be entirely possible to create such a tool under existing legislation.

18. How can this proposal be improved?

18.1 This proposal could be improved by:

- Acknowledging what is already possible under existing legislation.
- Clearly explaining what changes to legislation are being proposed, and what these changes are intended to achieve.
- Explaining what is meant by "a more strategic approach to regulating and managing concessions", assuming this does not refer to outcomes that are already possible under existing legislation.
- Explaining what integrating the concept of amenities areas into the planning system would mean.
- Ensuring that amenities areas are located outside national parks where practicable and that adverse effects on the rest of the national park are minimised.
- Retaining the statutory role of the NZCA.

19. What should the main tests be to determine if an amenities area is appropriate?

19.1 The existing tests, set out in policy 6(o) of the General Policy for National Parks, are appropriate.

19.2 The points to consider set out in the discussion document at [8.1] also provide a general description of circumstances in which amenities areas may be appropriate (they essentially describe the purpose of amenities areas, i.e. to concentrate and control development within a spatially defined area).

19.3 However, the concept of "reasonably contained impacts" is a novel one and would not be appropriate in the context of national parks or conservation land more generally. The existing requirement to "minimise adverse effects" on the rest of a national park is a well-established planning concept that is easier to understand and more appropriate in the context of conservation land.

Section 9 – Enabling more flexibility for land exchanges and disposals

20. Land exchanges

a. Do you agree with the issues and how they have been presented?

20.1 The only issue that is identified in this section of the discussion document is whether the Government should have greater flexibility for conservation land exchanges and disposals, beyond the scope of the Fast-track Approvals Act 2024. Forest & Bird strongly disagrees with how this issue has been presented in the discussion document. The discussion document does not provide any adequate explanation of the different categories of conservation land and associated legal protections, nor does it provide any adequate explanation of the Court of Appeal and Supreme Court analysis of the CA 1987 in the *Ruataniwha* case. The discussion document also fails to differentiate adequately between the separate issues that arise under the CA 1987 and the Conservation General Policy (CGP).

20.2 There may be some scope for relaxing the policy settings under the CGP to enable easier exchange of stewardship land in limited circumstances (this is discussed further below). However, Forest & Bird considers that the Court of Appeal and Supreme Court were entirely correct to find that the legal status of specially protected areas of conservation land cannot be revoked unless the conservation values of the subject land no longer justify that protection. This is not just a result of s 16 of the CA 1987, which expressly prohibits the disposal of conservation areas, it also flows from the statutory definition of "conservation" and the general purpose of the CA 1987 as explained in the *Ruataniwha* case.

b. Do you agree with the proposal to enable more flexibility for exchanges where it makes sense for conservation?

20.3 This section of the discussion document begins with the proposal that: "Land exchange settings could be adjusted to support other government priorities…". Forest & Bird does not agree with this proposal. Land that is held by the Crown under the CA 1987 needs to be managed for conservation purposes, not to support other government priorities. Exchange and/or disposal of conservation land must be justifiable on conservation grounds. If this important principle is not maintained, incremental and irreversible loss of conservation values will be the inevitable outcome.

20.4 For the reasons stated above, Forest & Bird is strongly opposed to enabling the exchange of specially protected conservation land, unless the conservation values of the subject land no longer justify that protection. Whether an exchange of stewardship land would "make sense for conservation" raises many complex and difficult issues.

20.5 The discussion document relies heavily on the concept of "net conservation benefit" in this context, but (as discussed in more detail below) this concept has not been adequately defined and has some highly problematic aspects. The s 16A test for stewardship land exchange was originally only intended to enable boundary adjustments to rationalise

conservation areas,[25] and caution must therefore be exercised when seeking to extend its application beyond its originally intended function.

c. How could this proposal be improved?

20.6 The proposal could be improved by:

- Limiting the exchange of conservation land to stewardship land (the status quo position)
- Ensuring that stewardship land is properly assessed and classified under the CA 1987 before being considered for exchange
- Ensuring that the concept of "net conservation benefit" is adequately defined and fit for purpose
- Ensuring there is public consultation on land swaps where there is likely to be a public interest

d. What should be included in the criteria for a net conservation benefit test for exchanges of public conservation land?

20.7 The discussion document presents three criteria which would need to be included. Other appropriate criteria were suggested in Appendix A to the 2018 NZCA report on stewardship land, and these should also be included.[26]

20.8 In addition to these criteria, there are at least three other key issues with the concept of net conservation benefit which would need to be addressed:

- There needs to be clear guidance on how to evaluate losses that may result from an exchange – for example, in the *Ruataniwha* case, the exchange would have resulted in the total loss of conservation values on inundated land (the land transferred out of the conservation estate), yet this loss was not accounted for as part of the s 16A assessment.
- The concept needs to be defined in a way that enables existing conservation protections (for example, QEII covenants and SNAs) outside the conservation estate to be considered and given proper weight in the assessment of net benefit. In other words, if an area is already protected by other mechanisms, there will be less value to the conservation estate from changing that existing protection for protection under the CA.
- The concept also needs to be defined in a way that enables potential losses on land that is not administered by DOC to be considered (for example, the conservation values of the river itself in the Mōkihinui case).[27]

e. Are there criteria that should not be considered in a net conservation benefit test for disposal of public conservation land?

20.9 It is assumed that this question is intended to refer to exchange, rather than to other types of disposals. Forest & Bird considers that financial benefits or contributions to the Crown

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[25] PCE Report 2013, at pp 22, 35 – 36 (non-controversial land swaps), and 41 – 50.
[26] New Zealand Conservation Authority "Stewardship Land: Net Conservation Benefit Assessments in Land Exchanges" March 2018, Appendix A.
[27] See PCE Report 2013, at 49.

should not be considered as part of a net conservation benefit test for exchange of conservation land.

f. Should a net conservation benefit test for exchanges of public conservation land include meeting Iwi aspirations (for example, returning sites of significance to Iwi)?

20.10 Forest & Bird acknowledges the value of meeting iwi aspirations, and of returning sites of significance to iwi. However, it is important for a "net conservation benefit" test to remain focused on conservation values.

21. Land disposals

a. Do you agree with the issues and how they have been presented?

21.1 The discussion document does not consistently distinguish between exchange and other disposals of land. The Supreme Court in the *Ruataniwha* case concluded that an exchange necessarily entails a disposal. However, exchange is not the only form of disposal. The discussion document expresses a desire to distinguish between direct disposals and disposals by way of land exchange (observing that it was apparently not the intention of the NZCA that disposal provisions in the CGP would also apply to exchanges under s16A of the CGA 1987). It is unhelpful, therefore, that the discussion document fails to consistently maintain this distinction.

21.2 For example, the discussion document states that the Government is proposing to:

> "… allow eligible areas to be exchanged or disposed of directly without having to revoke their status and reclassify them as stewardship land first, where a net conservation benefit exists"

21.2 This statement (a) seems to suggest that the concept of "net conservation benefit" can also be applied to direct disposals of land and (b) appears to be a proposal to enable the direct disposal of specially protected conservation land where the Minister considers that the land is "surplus to conservation needs". These changes would represent an extraordinary departure from the status quo under the CA 1987, yet no specific explanation or justification has been provided in the discussion document.

b. How could this proposal be improved?

21.3 This proposal could be improved by:

- Restricting land disposal to stewardship land that has been formally assessed and determined to have low or no conservation values,
- Categorically excluding specially protected conservation areas from land exchange and disposal powers
- Clearly distinguishing between direct disposal and disposal by way of land exchange and then specifying the appropriate test for each type of transaction.

c. Do you agree with the proposal to enable more flexibility for disposals where it makes sense for conservation?

21.4 The nature of this proposal is not clear at all from the discussion document. As stated above, Forest & Bird considers that land disposal should be restricted to stewardship land that has been formally assessed and found to have low or no conservation values. Specially protected conservation land should not be exchanged or disposed of because this is contrary to the concept of special protection. This approach would make sense for conservation, as well as being consistent with the overall scheme and purpose of the CA 1987.

d. When should the Crown have the ability to dispose of public conservation land and for what reason(s)?

21.5 This question has already been answered above.

e. What should be included in the criteria for a net conservation benefit test for disposals of public conservation land?

21.6 The Government / DOC would need to begin by explaining how the net conservation benefit test could be applied to direct disposals of land. Once stewardship land has been assessed, and if found to have low or no conservation value, this land can be made available for direct disposal or disposal by way of exchange. In the case of a direct disposal, the three primary considerations would be to ensure that:

- the Crown receives fair market value for the land
- the proceeds of sale are reinvested in the conservation estate
- the land is not required to be retained by the Crown for Treaty settlement purposes

f. Are there criteria that should not be considered in a net conservation benefit test for disposal of public conservation land?

21.7 As above, Forest & Bird is not in a position to have a view on whether it would be appropriate to attempt to apply a net conservation benefit test to direct disposals of conservation land. The discussion document fails to provide any explanation of what this might involve, or what the benefits of such an approach could be.

g. Should a net conservation benefit test for exchanges of public conservation land include meeting Iwi aspirations (for example, returning sites of significance to Iwi)?

21.8 This question has already been asked and answered above.