# Submission on Modernising Conservation Land Management

26 February 2025

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**Introduction**

1. This is a submission by the Environmental Defence Society (EDS) on the Department of Conservation's (DOC) Modernising Conservation Land Management Document.[1]

2. EDS is an apolitical, not-for-profit organisation dedicated to achieving improved outcomes for New Zealand's environment. It is active as a legal watch-dog, policy think tank, and conference organiser.

3. EDS has an extensive history advocating for positive conservation outcomes, enhanced visitor management and sustainable tourism. It has produced a number of reports in this area, including:

    a. In 2020, EDS published a *Tourism and Landscape Protection* report which investigated how tourism was currently managed, its environmental impacts, and opportunities for the tourism industry to positively contribute to landscape protection.

    b. In 2021, EDS's *Caring for the Landscapes of Aotearoa New Zealand* report built on a range of case studies, a review of international and national best practice, and a legal review to propose a raft of reforms to provide more robust landscape protection.[2]

    c. In 2021, EDS's *Conserving Nature* report undertook a detailed examination of the regulatory framework in place for the conservation system, identifying key issues and problems.[3] The report won the RMLA publication of the year award for its contribution to enhanced understanding of conservation issues.

[1] https://www.doc.govt.nz/globalassets/documents/getting-involved/consultations/2024/modernising-conservation-management/modernising-conservation-land-management-discussion-document.pdf
[2] Peart R et al (2021) *Caring for Landscapes of Aotearoa New Zealand: synthesis report*, Environmental Defence Society, Auckland
[3] Koolen-Bourke D and R Peart (2021) *Conserving Nature: conservation reform issues paper*, Environmental Defence Society, Auckland

d. In 2023, EDS released an *Independent Review of the Conservation Management Planning System.* The review was commissioned by DOC. It focused on identifying reasons for inertia in the planning system and developing proposals to address them.[4]

e. In 2024, EDS brought these recommendations on the conservation system together in *Restoring Nature: Reform of the conservation management system.*[5] The report draws on the insights garnered from over 100 interviews with people regularly engaging in the conservation system; expert ecological and economic advice; advice from Māori advisors; and a review of case-law and international best practice. It sets out a comprehensive package of recommendations for a new, modernised, streamlined and fit-for-purpose conservation system.

4. EDS's work on the conservation system highlights the need for reform. The systems and settings are dated, the planning system stuck and decisions highly contested. The almost 4,000 indigenous species now threatened, or at risk of extinction, need better if they are to survive the looming challenges and pressures ahead. These pressures come not just from climate change, but tourism, development, land use change and urban expansion.

5. The key findings and recommendations from our work demonstrate the need to:

a. Set clearer purposes and priorities in the conservation system to support planning and decision-making and to align key stakeholders;

b. Incorporate Māori values and aspirations into the statutory and policy frameworks, and make clear provision for the role of mana whenua;

c. Refocus the conservation system at place, strengthen the role of Conservation Boards and create greater alignment with the resource management (RM) system so the systems connect more effectively;

d. Adopt a strong evidence-based approach and strengthen the expert advisory and oversight mechanisms in place, including the role of the New Zealand Conservation Authority (NZCA);

e. Streamline the management planning system, including enabling more strategic allocation of concessions;

f. Investigate new funding models to address the significant conservation funding gap and link the conservation management planning system to DOC's business planning system; and

g. Integrate climate change considerations into all decision-making and provide statutory recognition for DOC's Climate Change Adaptation Action Plan.

6. It is essential to get the settings right. Public conservation land (PCL) constitutes one third of the country – some 8.6 million hectares. Within it are some of the most iconic landscapes and

[4] Koolen-Bourke et al (2023) *Independent Review of the Conservation Management Planning System*, Environmental Defence Society, Auckland

[5] Koolen-Bourke et al (2024) *Restoring Nature: Reform of the conservation management system*, Environmental Defence Society, Auckland

heritage sites, and most of the remaining intact ecosystems, native forests (75%)[6] and wilderness areas. These lands are home to the most imperilled indigenous plants and animals.

7. PCL contains some of the few places where 'natural quiet' and 'dark skies' can still be experienced. For mana whenua, native ecosystems constitute the environment in which mātauranga Māori evolved. The protection of PCL is critical to enduring cultural connections and traditional practices.

**Structure of submission**

8. This submission is structured as follows:

   a. Introduction
   b. Executive summary
   c. Core issues in the planning system
   d. Streamlining the conservation planning system
   e. Speeding up concession processing
   f. Driving better performance and outcomes from concessions
   g. Unlocking amenities areas to protect nature and tourism
   h. Enabling more flexibility for land exchanges and disposals

**Executive summary**

9. EDS supports the need to modernise and streamline the conservation management planning system. However, the proposals in the Discussion Document need substantial improvements.

10. EDS's overriding concern is, that in attempting to deliver a complex mix of conservation, recreational and economic outcomes, a strong conservation-focused lens has been lost.

11. It is essential that sufficient checks and balances are put in place to address the risks associated with streamlining the management system and providing increased flexibility through relaxing current restrictions. In EDS's view, many of the proposals need reframing and more detailed direction and criteria put in place to guide their operation.

12. One of the most critical system supports needed is a clearer set of purposes and priorities to guide land management and decision-making. A clear purpose hierarchy (distinct from DOC's functions) which incorporates the rights and interests of iwi and hapū, and also binds the Minister, would provide valuable system oversight and clarity.

13. A number of other important issues have been missed from the Discussion Document, including climate change considerations, which need to be integrated throughout.

*Streamlining the conservation management system (section 5)*

14. EDS supports consolidation of the General Policies into a single National Conservation Policy Statement (NCPS) that incorporates policies for national parks, adopts a class approach to concessions, (including standard terms and conditions) and provides a template for Area Plans. We additionally recommend:

[6] New Zealand Institute of Economic Research, 2024, *The value of public conservation land: an ecosystem services assessment,* NZIER report to the Department of Conservation, Wellington, 14

a. Setting policy direction for other land classifications, including marine reserves;
b. Providing statutory recognition of DOC's Climate Change Adaptation Plan and policy direction in the NCPS to support its implementation; and
c. Providing statutory direction for decision-makers to have "particular regard" to planning documents prepared by iwi authorities, or for this direction to be incorporated into the NCPS.

15. EDS supports moving to a single layer of Area Plans. However, the proposal lacks detail around what the new Area Plans will look like, both in terms of their scale and how directive their content will be. It is important that Area Plans connect closely with Conservation Board and DOC operational boundaries. It is also important that a more complex patchwork of plans is not created. EDS supports what would be the simplest approach:

    a. Retain existing Conservation Management Strategies (CMS) as default Area Plans. Where feasible, adjust plan (and Conservation Board) boundaries to better align them with regional councils, to gain efficiencies from better connection to the RM system.
    b. Incorporate National Park Management Plans (NPMP) within Area Plans, as a distinct component, so they effectively operate as a plan in that area.

16. EDS opposes proposed restrictions on the ability of Area Plans to set limits on the volume of activities or to place additional conditions on concessions. Flexibility needs to be retained to adjust concessions to reflect the local context, values and vision.

17. To facilitate implementation, we recommend that Area Plans are supported by Operational Plans that link to DOC's business and work plans. These would detail annual expenditure and set monitoring and reporting requirements to inform plan reviews.

18. EDS supports the adoption of a class approach to activities. However, the ability to permit activities in advance is a tool rather than a class, and its inclusion is confusing. A clearer approach would be to mirror the RM system by removing the existing array of "may", "should" and "will" directions in policy and planning documents, and identifying activities as "permitted", "controlled", "restricted", "discretionary" or "prohibited".

19. Under this regime, activities permitted in advance would become subsumed within the "controlled activities" class, retaining a presumption of approval, but with conditions able to be set (either through national standards or plans). Grounds for decline should also be set. EDS considers this would provide a more nuanced and aligned approach.

20. Permitting activities in advance carries significant risks, as it heavily relies on compliance with the conditions set. Activities should not be included in this category unless there is surety that they can be effectively monitored for compliance.

21. EDS opposes long-term concessions being included in the exempt class.

    *Policy and planning processes*

22. EDS supports streamlining the process for developing national policy, including final Ministerial approval. However, we oppose removal of the NZCA's role in developing the draft policy and providing feedback on the revised draft ahead of its final approval. The NZCA provides an important system oversight and quality assurance role that needs to be retained.

23. EDS supports the proposal to streamline the process for developing Area Plans. However, shifting plan approval from the NZCA to the Minister would remove an important system check. If this adjustment is made EDS recommends that a right of appeal to the High Court be provided to address the oversight gap created. This could be limited to an appeal on questions of law.

24. Step 5 (at 5.3.2 of the Discussion Document) condenses too many important components. We recommend inserting a separate step to enable iwi, the NZCA and Conservation Boards to provide feedback on the revised plan before it is sent to the Minister. This will enable critical final adjustments to be made before Ministerial review and ensure a more integrated plan.

*Speeding up concession processing (section 6)*

25. EDS supports the proposal to triage concessions (at 6.1 of the Discussion Document), providing the Minister with an ability to decline non-complying applications, and limiting applicants to one right to apply for reconsideration.

26. EDS also supports measures to reduce the volume of notified concessions for Treaty partners. However, setting a strict statutory timeframe of 20 days risks undermining engagement. EDS recommends clearer provision is made for iwi and hapū to apply for an extension, or to request further information or support from DOC. Application fees should incorporate a contribution towards the costs of Treaty partner engagement and related cultural impact assessments, in the same way applicants contribute towards Environmental Impact Assessments.

27. It is also important that Conservation Boards continue to provide advice on concessions.

28. EDS opposes any additional relaxation of the public notice requirements for concessions including for longer term concessions.

*Driving better performance and outcomes from concessions (section 7)*

29. EDS supports enabling strategic allocation of concessions. However, the current proposal and criteria do not sufficiently prioritise conservation. EDS recommends the following adjustments:

    a. No conservation-focused criteria have been proposed to help determine if a strategic allocation is appropriate. In addition to the 4 criteria (at 7.1.2 of the Discussion Document), provision should be added to enable DOC to utilise the tool to help 're-set' activities and concessions in an area to deliver better conservation outcomes.
    b. The criteria proposed to allocate concessions (at 7.1.3 of the Discussion Document) are not fit-for-purpose and provide insufficient clarity and direction. An overarching criteria of "performance for nature conservation", that is accorded priority weighting, is needed to ensure applications that support and contribute to this are given clear preference. Additional criteria should be set as secondary considerations.
    c. Treaty rights and interests constitute a separate and distinct consideration and need to be disentangled from other criteria, and attributed additional weight, subject to overriding conservation objectives. This is in line with case law and direction of the courts.

30. EDS supports a shift to time-limited options for commercial activities and development of a compensation regime to support this. We also support fee standardisation in line with a "fair return to the Crown" and relaxation of fee reviews where percentage-based fees apply. However,

we recommend provision is made for DOC to adjust fees or initiate a fee review if necessary, in response to new or unforeseen circumstances.

31. EDS also supports standardising concession conditions within the NCPS. These should operate as a minimum standard and not restrict negotiation or adjustments to impose higher standards.

32. EDS opposes adjusting the "exceptional circumstances" test (under secton 17Z of the Conservation Act), by providing additional criteria within national policy direction, as that would broaden its use and enable concessions of more than 30 years to be granted more easily.

*Unlocking Amenities Areas to Protect Nature and Tourism (section 8)*

33. Significant adjustments need to be made to the proposal for a new amenities tool to ensure it does not produce poor conservation outcomes. The purpose of the tool, and clear criteria to guide its use, must be provided. These should be conservation focused.

34. Amenities areas should not be granted where an alternative, non PCL site, is available.

35. No provision is made for a public notice or consultation. EDS opposes providing the Minister with the power to establish amenities areas without an open and transparent process.

36. To improve and support the proposal for a new amenities tool EDS recommends:

    a. Providing a statutory definition of tourism to distinguish it from recreation;
    b. Instituting a requirement for monitoring and reporting of tourism impacts to inform management and planning, and the deployment of amenity areas;
    c. That DOC take the lead in developing destination plans for iconic sites and that there be a requirement for these to be taken into account in Area Plans;
    d. Setting clear direction in relation to tourism in the NCPS. This should promote sustainable and regenerative tourism and mandate that Area Plans set clear limits and targets to ensure tourism does not cumulatively degrade conservation values; and
    e. Institute a clear priorities hierarchy (as discussed above), with tourism set as a third-tier consideration, after nature conservation, then cultural use and recreation.

*Enabling more flexibility for land exchange and disposal (section 9)*

37. The changes proposed to land disposal and exchange are not fit-for-purpose. EDS is opposed to broadening the scope of existing land disposal and exchange mechanisms outside of stewardship land, and to the removal of the "no or very low conservation value" eligibility criteria.

<u>Land Exchange</u>

38. If changes to existing land exchange mechanisms are progressed, different criteria need to be applied to stewardship land as opposed to other PCL.

39. In relation to *stewardship land*, a distinction could be made between exchanges to enable minor or technical adjustments and more substantive proposals. This could be achieved by:

    a. Enabling minor 'like-for-like' adjustments, where the adverse effects on overall conservation values are low, and a net conservation gain would be secured (and removing the requirement of no or very low conservation value); *and*

b. Only enabling substantive land exchanges (where land has more than very low conservation value) if they would deliver a *significant* overall "nature conservation" gain. Clear criteria would need to be set and a robust public notice and consultation process put in place.

40. In relation to *non-stewardship PCL land*, at a minimum, exchange should be limited to:

a. Land that is of low or very low conservation value;
b. Exchanges that are 'like-for-like'; and
c. Situations where there is a *significant* net conservation benefit.

Net conservation benefit

41. There is significant detail lacking over how the proposed net conservation benefit assessment would operate. EDS considers the following matters to be critical:

a. The assessment of net conservation benefit must not incorporate money provided as part of an exchange, off-setting and mitigation measures, promises of work or other contributions.
b. The net gain must be to conservation values broadly, not only to PCL.
c. The criteria set under Policy 6(a) of the Conservation General Policy should apply and additional criteria set to incorporate climate change considerations, prevention of extinction and protection for taonga species.
d. Greater weighting should be given to benefits to "nature conservation" (over recreational or amenity value, for example).
e. Clear exclusions need to be set, incorporating the criteria listed in Policy 6(d)(i)-(iii) of the Conservation General Policy. Policies 6(d)(iv)-(vii) should also be taken into account.
f. The rights and interests of mana whenua need clarification. Sites of high cultural significance should be excluded and relevant iwi and hapū provided with a Right of First Refusal before any land is exchanged or disposed of permanently.

Land Disposal

42. EDS strongly opposes enabling disposal of PCL where it is "is surplus to conservation needs". We also oppose use of a net conservation benefit test in relation to land disposals.

43. If land disposal is broadened beyond stewardship land, robust checks and balances are essential. EDS considers the following components to be critical:

a. Retention of the "no or very low" eligibility criteria for disposal.
b. Extension of the scope of s26 of the Conservation Act to ensure impacts on the conservation values of all adjacent land (not just PCL) are considered.
c. Land disposal applications to be initiated only by DOC, formulated in consultation with Treaty partners and the relevant Conservation Board, and undertaken within a formalised 'Land Disposal Programme' that sets clear priorities and criteria for disposals and adopts a long-term strategic approach.
d. A public notice and formal consultation process for all disposals.
e. Provision for relevant iwi and hapū to have a First Right of Refusal and clear criteria for determining when a First Right of Refusal should be provided.
f. Climate change considerations are taken into consideration.

*Concluding comments*

44. The proposals in the Discussion Document seek to address a number issues in the conservation management planning system. EDS agrees that the framework needs to be streamlined and that DOC needs more tools to strategically manage PCL. However, unless clear overarching priorities and sufficient checks and balances are in place, the risk is that broader recreational and commercial objectives, and other competing political pressures, overshadow conservation imperatives.

45. The Discussion Document has not sufficiently identified the risks and potential tensions associated with the proposals. As a result the proposals have not grappled with them and significant but crucial detail is missing. Consequently, while more efficient on paper, the proposals could deliver unintended, even perverse outcomes for conservation.

46. We urge DOC to broadly reconsider, and reframe the proposals, through a strengthened nature conservation and risk management (including climate change), rather than efficiency focused, lens.

**Core issues in the planning system (Section 3 Discussion Document)**

*Do you agree with the issues (Q1)*

47. The Discussion Document identifies four issues in the planning system and Question 1 seeks feedback on whether we agree. The issues are:

    a. The planning system is too complicated
    b. Concession decisions take too long
    c. The concessions system is underperforming and not delivering the outcomes it could; and
    d. The Government has limited flexibility to manage land.

48. With respect to Issue 1, EDS agrees the planning system is too complicated and needs to be streamlined. Plan updates can take years, planning processes frequently stall, and plans are highly contested. Many plans are well past their date for review. There is also high variability between planning documents and overlapping, inconsistent and sometimes contradictory directions and standards.[7]

49. Issues 2 and 3 relate to the operation of the concessions system. EDS agrees the 'first come, first served' approach is preventing more strategic allocation of concessions. It favours incumbents, obstructs new entrants (with potentially more innovative and sustainable operating models), and can operate as a barrier to iwi and hapū accessing opportunities in their rohe. Concessionaries are also not paying a fair rate for their access to PCL.

50. However, it is important to be clear on what kinds of "outcomes" are being sought from the concessions system. The focus of the Discussion Document is much broader than seeking improved outcomes for conservation, and problematically extends to recreational, tourism and economic outcomes (at 3.3).

51. It is important to clarify that improving conservation outcomes needs to be the foremost concern. The current direction under section 6 of the Conservation Act makes this clear where it

[7] Koolen-Bourke et al (2023) *Independent Review of the Conservation Management Planning System*, Environmental Defence Society, Auckland, 73 - 76

directs DOC to manage land "for conservation purposes", to "foster" recreational use, and only "allow" tourism to the extent it is not inconsistent with those conservation priorities.

52. In respect to Issue 4, EDS disagrees that land exchange and disposal settings are too restrictive. PCL is, first and foremost, land that is held in public trust for conservation purposes. It is therefore appropriate that PCL (and the indigenous biodiversity it contains) remains highly protected, with the threshold for land disposal and exchange remaining high, and subject to rigorous public consultation processes. There are substantial risks associated with making PCL exchange or disposal 'flexible'.

*Do the proposals strike the right balance between conservation and other outcomes? (Q4.b)*

53. EDS considers the framing of the Discussion Document, and the proposals it contains, to be inappropriate. In the context of 'conservation reforms' the objective should not be to strike a 'balance'. There are high risks associated with forcing conservation priorities to compete and be balanced with other concerns. This approach needs to be significantly adjusted.

54. The proposals set out in the Discussion Document are designed to deliver across multiple arena. The stated objective is not simply to improve conservation management and secure conservation gains, but to also grow the tourism industry, support tourism services and "enhance tourism" more broadly;[8] achieve better economic outcomes and support of regional economies; enable more commercial opportunities, incentivise investment' and "take advantage of evolving economic activities".[9] These objectives are uncomfortable bedfellows and contrary to the ethos underpinning the conservation system.

55. Parliamentary hansard highlights that the objective of legislators, when crafting the Conservation Act, was to "separate" and "unscramble" "conservation and commercial ethics".[10] DOC was "not" to be "concerned with balancing the needs of development and preservation", but was to manage the land as an "advocate [for] long-term conservation". The aim was to avoid the historical pattern, where political pressures had driven 'think big' developments on PCL: to avoid continual "thinking big, followed by losing big".[11] That concern is as relevant today as it was in the 1990s, and even more so, given the likely pressures ahead for our imperiled biodiversity as climate change impacts worsen.

56. Parliamentary debates on the Conservation Bill reveal that Government *spent more time refining this Act than any other Bill* at that time, with the aim of ensuring proper prominence was given to preserving the nation's collective natural heritage. Legislators sought "absolute clarity of function" through "the separation of the Government's conservation and development objectives".[12]

57. The aim of the Conservation Act was to provide ongoing certainty of protection for the country's unique natural heritage and resources, to ensure they would be held "in trust for future generations", by insulating them from "economic and political" changes "that constantly brings pressure on the House" and which had too often meant "the odds were stacked against conservation."[13]

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[8] See for example, Section 8 of the Discussion Document, "Unlocking amenities areas to protect nature and enhance tourism".
[9] Discussion Document at 5, 19 and 28
[10] Simon Upton, 11 December 1986, Conservation Bill (Introduction) *New Zealand Parliamentary Debates*, 476: 6140
[11] Russell Marshall, 24 March 1987, Conservation Bill (Second reading) *New Zealand Parliamentary Debates*, 479:7978
[12] Russell Marshall, 24 March 1987, Conservation Bill (Second reading) *New Zealand Parliamentary Debates*, 479:7976
[13] Russell Marshall, 24 March 1987, Conservation Bill (Second reading) *New Zealand Parliamentary Debates*, 479:7976

58. As a result, tourism was not included within the definition of "conservation". While it is to be "allowed" under section 6(e), it is not something to be fostered in the same way as recreation, and it is only to be permitted to the extent it is consistent with conservation purposes.

59. The careful removal of consideration of economic and commercial interests is reflected throughout the Conservation Act. For example, the Act gives Fish and Game the function of managing the fish and game resource to maintain and improve it, but prohibits the agency from engaging in any activity that has commercial gain as its predominant purpose.[14] These are essentially conflict of interest protections built into the statutory management regime.

60. The approach adopted in the Discussion Document risks undermining this very carefully proscribed approach within the conservation system and the core purposes and priorities it sets.

*Have any issues been missed? (Q2)*

61. As noted earlier, EDS's work on conservation reform (in particular our Independent Review of the Conservation Management Planning System) identified a number of issues contributing to the poor functionality of the existing framework. Many of these are not addressed by the current proposals. The five additional issues identified below are important to address and where possible should be incorporated into the reform package.

*Issue 1: Climate change considerations are not integrated throughout the conservation system*

62. Climate change considerations are not incorporated into conservation legislation or policy, and remain unintegrated in the planning and concessions system. Climate change is also not referenced in the Discussion Document, including in any of the proposals, or their associated criteria. This is a significant omission.

63. Climate change is already making conservation management more costly and complex. DOC's 2019 national risk assessment report identified 331 DOC assets, 119 "recreation functional locations", 62 "destinations", 260 ecosystem management units and 99 species management units in high risk or potential inundation zones.[15]

64. DOC needs better tools, and a clear statutory and policy mandate, to take climate change considerations into account. The management planning system needs to support climate change mitigation and adaptation. Decision-makers need to consider matters such as carbon emissions, restoration potential and enhanced carbon sequestration, the resilience of indigenous biodiversity, the need for increased habitat and connectivity, and the risks associated with extreme weather events including asset protection and human health and safety concerns.

65. Climate change considerations need to be incorporated throughout the proposals in the Discussion Document. In addition EDS recommends:

    a. Providing statutory recognition for DOC's Climate Change Adaptation Action Plan (Climate Adaptation Plan) and incorporating direction within the new NCPS to ensure it is implemented throghout the planning system and influences consession decisions.

[14] See section s2Q(1)(b) and s26R(2)

[15] Tait A, 2019, 'Risk-exposure assessment of Department of Conservation coastal locations to flooding from the sea: A national risk assessment of DOC assets, archaeological sites, recreational functional locations, and ecosystem and species management units vulnerable to coastal inundation and sea-level rise', *Science for Conservation*, 332

b. Providing DOC with the ability to review or cancel concessions to ensure compliance with, and implementation of, the Climate Adaptation Plan.

c. Setting national policy direction on climate change in the General Policies or NCPS.

*Issue 2: Lack of clear purpose and priorities*

66. Many of the problems in the conservation system can be linked to the lack of a clear purpose and priorities in the conservation system. The direction that currently exists under section 6 is insufficiently clear and only applies to DOC. This incentivises extended negotiation, exacerbates stakeholder conflict, enables broad Ministerial discretion and elevates legal risk for DOC.[16] Key aspects (eg tourism) remain undefined and other vital matters, such as Treaty partner rights and interests, are not clearly provided for.

67. EDS's Independent review of the Conservation Management Planning system identified that a clear purpose hierarchy is critical to addressing inertia and delays.[17] EDS recommends adoption of a priority hierarchy as follows:

a. Protection and enhancement of ecological integrity, indigenous biodiversity and the well-being of te taiao as the foremost priority (Tier 1).

b. Connection and relationship to te Taiao, incorporating non-commercial, low impact recreational use and the traditional relationship of mana whenua and their customary practices, as Tier 2 priorities.

c. Economic considerations, including the socio-economic well-being of regions and local communitites, as a Tier 3 priority.

68. By their nature, piecemeal and ad hoc changes to legislation tend to increase rather than reduce legislative complexity. A clear purposes hierarchy would help to ensure changes made to modernise the system are well integrated and coherence is maintained. It would operate both as a system check and efficiency measure, providing a bright line standard to help reduce conflict and delays.

*Issue 3: Lack of statutory recognition and provision for mana whenua*

69. The lack of provision for, or incorporation of, Māori values and aspirations within the conservation system contributes to its continued failure to deliver for mana whenua. Despite the requirement that the Act be administered to give effect to the principles of the Treaty of Waitangi (section 4), there are few mechanisms to support implementation or compliance. Although section 4 of the Discussion Document touches on working with iwi, the issue of Treaty compliance, and Māori rights and interests more broadly, is not squarely addressed. This is an area where would detail would be valuable.

70. EDS supports the much clearer role for Treaty partners provided in the new policy and planning processes proposed in the Discussion Document (at 5.3).

[16] Koolen-Bourke et al (2023) *Independent Review of the Conservation Management Planning System*, Environmental Defence Society, Auckland, 68 - 69

[17] Koolen-Bourke et al (2024) *Restoring Nature: Reform of the conservation management system*, Environmental Defence Society, Auckland, 27

71. The existing direction in the General Policies on compliance with the principles of the Treaty is outdated. We recommend urgent review and updating of Treaty-related direction in the General Policies (or the new NCPS) to ensure compliance with section 4.

*Issue 4: Lack of system alignment and connectivity to place*

72. A key finding from our research was that the planning system has become overly centralised, and lacks connectivity to place, and to people at place (including local communities and tangata whenua). This has significantly reduced the effectiveness and functionality of the planning system.[18]

73. Planning documents are inherently place-based. To be effective they need to be informed by knowledge and understanding of the values and pressures that exist at place and be responsive to changes on the ground. They also need to be informed by local needs and aspirations if they are to secure the necessary local buy-in to be implemented, and to support compliance.

74. Specific problems that need to be addressed include:

    a. National data and information systems are not well configured to support and inform regional and place-based planning and reporting.[19]
    b. The role of Conservation Boards is not sufficiently prioritised or supported in the planning system. This means the system fails to capture and utillise the value they bring: their local knowledge, expertise and connection to local communities.[20]
    c. DOC's operational offices are not aligned to the boundaries of the planning system, or Conservation Boards, to support plan implementation.[21]
    d. The boundaries of the conservation planning system are not aligned with regional councils to enable the conservation and RM regimes to speak to and inform each other.[22]

75. To ensure the planning system can operate effectively, these misalignments need to be addressed.

*Issue 5: Lack of resource and capacity*

76. Many of the problems in the conservation management planning system stem from a lack of resource and capacity. Funding needs to be specifically earmarked for the planning system, including to resource plan implementation, monitoring and compliance costs.

77. EDS's Independent Review of the Conservation Management System found that the system fails to secure the necessary budget because it is disconnected from DOC business planning. This disconnect needs to be remedied to ensure funding for the ongoing management and maintenance of the conservation planning system is in place.

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[18] Koolen-Bourke et al (2023) *Independent Review of the conservation management planning system*, Environmental Defence Society, Auckland, 32 - 33, 72
[19] Koolen-Bourke et al (2023) *Independent Review of the conservation management planning system*, Environmental Defence Society, Auckland, 93, 121
[20] Koolen-Bourke et al (2023) *Independent Review of the conservation management planning system*, Environmental Defence Society, Auckland, 90 - 92
[21] Koolen-Bourke et al (2023) *Independent Review of the conservation management planning system*, Environmental Defence Society, Auckland, 121-123
[22] Koolen-Bourke et al (2023) *Independent Review of the conservation management planning system*, Environmental Defence Society, Auckland, 121

**Streamlining the conservation planning system (Section 5 Discussion Document)**

78. EDS agrees that steps to streamline the conservation management planning system are necessary and is pleased to see these being progressed. However, some adjustments to the proposals are necessary to provide quality assurance. EDS also has a number of additional recommendations that would enhance the proposals and capture increased efficiencies.

*Proposal for a single NCPS*

79. The Discussion Document (at 5.1.1) proposes moving to a single NCPS instead of the two current instruments. EDS agrees this would provide a much clearer and more simplified approach.

80. It is envisioned that the NCPS would set national policy for different types of conservation land and incorporate policy direction for national parks. This makes sense. It would enable more detailed policies and standards to be developed for other important classifications to support implementation of their statutory purposes and ensure a nationally consistent approach. This approach should not be limited to PCL however, and should include other protected areas such as marine reserves and marine mammal sanctuaries.

81. EDS also supports the proposal to provide direction in the NCPS to guide the consideration of concessions, including providing more specific criteria for some types of concessions. The General Policies already provide direction on a range of activities including use of accommodation and other facilities, grazing and farming, and commercial filming and photography. EDS sees no problem, in principle, with including standard terms and conditions, that relate to concessions.

82. EDS also supports providing a template for Area Plans with the new NCPS.

83. As indicated above, EDS also recommends providing statutory recognition of the Climate Adaptation Plan, and setting policy direction in the new NCPS to support its implementation. This would help ensure its implementation through Area Plans and influence on consenting decisions.

84. Finally, it is important to note that the General Policies have never been reviewed (and only very limited amendments have been made). This means development of a new NCPS is likely to involve substantial changes, with significant implications for the entire conservation management system. EDS cautions against undertaking this task at pace: it is essential that such a broad update is not rushed and is well considered. We urge the Minister not to progress the new NCPS alongside the statutory changes associated with the Discussion Document, but to undertake a separate and full consultation process.

*Enabling a class approach to concessions*

85. The Discussion Document proposes adopting a class approach to concessions and making provision for:

    a. Exempt activities: that do not need a concession because they have minimal impact and the risk of cumulative impacts is low.
    b. Activities permitted in advance: that can be automatically approved because an effects assessment has been undertaken and conditions set and standardised in advance.
    c. Prohibited activities: that will not be approved because they are inconsistent with the purposes for which land is held.

86. EDS supports the proposals in relation to both exempt and prohibited activities. These are relatively straight forward and would provide much more clarity. There would be value in aligning the terminology with the RM system and renaming them “permitted” and “prohibited”.

87. Long term concessions should not be classified as “permitted” to ensure public notice and consultation is retained. These impose a significant restriction on the use of PCL and the risk of cumulative impacts is increased.

88. The proposal for a class of “activities permitted in advance” is more complex, as it is more a tool than a class. It is designed to enable concessions to be automatically granted, where the activity is considered “low-risk”, and there is a high degree of certainty that standard conditions are able to effectively manage these. This category is higher risk, since it is heavily reliant on compliance. It is important that a high bar is set to ensure monitoring and enforcement is robust.

89. EDS opposes classing activities as “activities permitted in advance” unless compliance monitoring can be assured.

90. Consideration should be given to applying a class approach more broadly, along the lines of the RM system. For example, it would be valuable to enable the planning system to identify activities as “discretionary” , “restricted” or “controlled”. This would enable more detailed direction to be crafted for the plethora of activities that exist between those exempt due no to low impacts and those prohibited for their high impacts.

91. Activities permitted in advance could then be subsumed within the “controlled activities” class: retaining a presumption of approval, with conditions able to be set either through national standards or plans. Grounds for decline and departure from approval should also be set if this approach is adopted.

92. This approach would also help avoid current less clear “may”, “should” and “must” directions in General Policies and planning documents. Permissions staff we spoke to as part of our independent review, told us the use of such vague terms incentivised stakeholders to ‘give it a go’ and to apply pressure to get their applications approved.[23]

*Proposal for Area Plans and a single layer of plans*

93. EDS supports a shift to a single layer of Area Plans. Having all relevant place-based direction in a single plan would make standards and site-based limits much easier to identify. This would also simplify plan review. At present it is difficult to get the sequencing of plans right. Time lags between the CMSs and plans lower in the planning hierarchy (eg NPMPs) also leaves contradictory direction in place. Many Conservation Management Plans have already been amalgamated into CMSs and this has been relatively uncontroversial.

94. The Discussion Document is unclear about the scale at which Area Plans would be set, but states that a system of regional Area Plans is not envisioned. The boundaries for both regional councils and CMSs adopt a broadly ‘regional’ approach and there would be significant value from better alignment between the RM and conservation systems. A regional approach for Area Plans should therefore not be discounted.

[23] Koolen-Bourke et al (2023) *Independent Review of the conservation management planning system*, Environmental Defence Society, Auckland, 78

95. The simplest way to transition to a single layer of Area Plans would be to deem all existing CMS to be Area Plans. This has the added efficiency that the boundaries of CMS are already aligned with Conservation Boards.

96. Departure from a regional approach risks creating a far more complex patchwork of plans which would be far more difficult to administer and coordinate. It could complicate the work of Conservation Boards, make it even more difficult for the conservation and RM systems to talk to each other, and make plan implementation harder.

97. EDS's Independent Review of the Conservation Management System highlighted that existing boundary and alignment problems already complicate management.[24] Amongst our recommendations for reform were the need to:

    a. Configure monitoring and data collection systems to deliver information at a regional (not just national) level to help inform plan review and implementation.

    b. Align DOC operational offices to the boundaries of CMS (and Conservation Boards) to connect DOC work plans and operations to the planning system, including monitoring and reporting on implementation.

    c. Investigate what nuanced boundary adjustments could be made to align the boundaries of the conservation management planning system, Conservation Boards, DOC offices and the RM system. This would enable greater coordination and integration, reduce the complexity of the planning system and achieve additional efficiencies.

98. None of these efficiencies would be possible if the planning system comprised an even larger number of unaligned Area Plans. All of the existing alignment and implementation related problems would be exacerbated.

99. EDS recommends retention of the regionally based planning system. Existing NPMP could be retained in their entireity within the relevant Area Plan, so they continue to be operative, and provide bespoke management direction for these important areas.

100. At present there are insufficient supports in place to help implement plan policies and direction. The planning system struggles to secure budget allocations and drive management priorities at place. Better monitoring and reporting systems are also needed to support adaptive management and inform plan update and revision.

101. To support implementation and a more responsive planning system EDS also recommends that each Area Plan is supported by an Operational Plan. The Operational Plan should connect each Area Plan to DOC's work plan, inform DOC's business planning, detail annual operational expenditure, and monitor and report on progress.

*Proposed changes to the roles and functions of Area Plans*

102. The Discussion Document proposes that Area Plans would set local conservation outcomes with which concessions will need to be consistent. They would also implement a class approach to concessions.

[24] Koolen-Bourke et al (2023) *Independent Review of the Conservation Management Planning System*, Environmental Defence Society, Auckland, 5, 121 - 122

103. The proposal prohibits Area Plans from imposing conditions on activities "unless they are conditions on classes or exempt activities, activities permitted in advance or within amenities areas". Further, while it allows reasonable limits on the volume of activity to be set for these, this is only to the extent that this is "needed, to protect against harmful cumulative effects on important environmental or recreational outcomes". It would also require Area Plans to provide for review and update of limits.

104. These proposals would significantly limit the ability of Area Plans to influence concessions, and the conditions in place for them. It would prevent Area Plans from adopting a more precautionary approach, such as through putting restrictions in place before impacts (so harm) results, or setting limits for purposes other than protecting against cumulative effects (eg protecting the natural character of an area). It is important to ensure Area Plans still provide strong direction in relation to concessions, and are able to set additional standards and conditions, to ensure adjustments can be made in response to local contexts and values.

105. EDS is concerned that an overly centralised approach is being adopted to concessions, to secure efficiencies, at the cost of losing connectivity to place. Weakening of the role of plans in this area also weakens the role of Conservation Boards.

106. EDS opposes restrictions that limit the ability of Area Plans to set limits on the volume of activity, create additional process requirements, or impose additional conditions on concessions, to ensure they can take account of the particular conservation values at place.

*Proposed process for making statutory planning documents: NCPS*

107. EDS supports streamlining the process for developing and revising the NCPS, but does not support the proposal in its current form.

108. The proposal (at 5.3.1 of the Discussion Document) would remove the role of the NZCA in working with the Director-General to produce the first draft for consultation. It also removes the NZCA's role in reviewing the revised policy before it is sent to the Minister for approval. It is unclear why these changes have been made. EDS opposes the removal of the NZCA's role in both these areas.

109. The NZCA plays an important expert advisory and oversight role in the conservation system. Significant value and efficiencies are likely to be lost by removing the role of the NZCA in the drafting and revision process.

110. The role of the NZCA, under section 6B of the Conservation Act, includes advising the Minister on policy and reporting on its effectiveness; considering and making proposals to changes in land classifications; and investigating matters of national importance. As a result, the NZCA is a holder of significant and expert knowledge on a plethora of conservation issues.

111. The NZCA also operates as a mechanism for Conservation Boards to escalate concerns. This means they can be abreast of a wide range of public interest concerns that DOC and the Minister might not fully appreciate. They also often investigate specific issues in depth.

112. As part of our recommendations to reform the conservation system, EDS advocated *strengthening* the NZCA's oversight role, including providing it with:

    a. The ability to operate as a Commission of Inquiry (with consent of the Minister).

b. The power to require government agencies to provide it with such assistance and information as necessary to perform its functions.
c. The power to inquire and report on the impacts of development, public works and mining, and make recommendations to the Minister.[25]

113. Our recommendations were made in order to increase transparency within the system, and strengthen evidence-based decision-making, alongside striving for greater efficiencies. These important aspects of the conservation system should not be downgraded in the service of efficiencies that are likely to be nominal.

114. Removal of the role of the NZCA in developing national policy would also have implications for Ngāi Tahu, whose representation on the NZCA was secured through Treaty settlement, and on the understanding it would provide participation in policy development.

*Proposed process for making statutory planning documents: Area Plans*

115. The proposal in relation to Area Plans is more robust. EDS is pleased to note that the Director-General will continue to draft plans in consultation with the relevant Conservation Board. There will be also be clear direction for iwi to be a formal part of this process. Early engagement with mana whenua and the local Conservation Board is important for generating a robust first draft. This will also assist to highlight matters of critical concern and importance to iwi. Inclusion of the Conservation Board similarly ensures additional local expertise is brought to the table.

116. EDS also supports provision of iwi with options for how the consultation process should be run, including in the hearings process.

117. EDS supports the proposal for a new process for Area Plans subject to adjustments being made to Step 5 of the process which condenses too many important functions.

118. Step 5 (at 5.3.2) envisions a revised draft being sent to the NZCA, affected iwi and the Conservation Board concurrently with it being sent to the Minister. This would result in the Minister being bombarded with an array of additional advice at the end of the process that DOC has not had time to consider. Some of that advice may be highly technical in nature.

119. EDS recommends that Step 5 be split into two separate phases to enable DOC an opportunity to make final revisions in response to any feedback from iwi, the NZCA and Conservation Board. This would also ensure the document is as comprehensive and polished as possible before going to the Minister.

120. EDS supports the requirement for the Minister to provide reasons if electing to return the Area Plan requesting further revisions. This would provide valuable transparency.

121. Removal of the NZCA role of approving CMS is likely to be controversial. We agree with the analysis in the Discussion Document, that the role of the NZCA is not one of decision-making. We engaged widely on this matter when undertaking our review of the conservation management planning system. The feedback we received was that the approval role of the NZCA was an uneasy fit, when it had no other involvement in the process of developing or revising the CMS.[26]

[25] Koolen-Bourke et al (2024) *Restoring Nature: Reform of the conservation management system*, Environmental Defence Society, Auckland, 120
[26] Koolen-Bourke et al (2023) *Independent Review of the conservation management planning system*, Environmental Defence Society, Auckland, 84, 111, 117

122. Conversely, shifting to Ministerial approval of CMS will remove an important check on decision making in the conservation system. Absent any appeals process (to the Environment Court or similar) under the Conservation Act, this would leave judicial review as the only check on Ministerial power.

123. If this important oversight role of the NZCA is removed, EDS recommends that a right of appeal to the High Court be provided. This could be limited to an appeal on questions of law.[27]

*Giving effect to te Tiriti principles – and Māori rights and interests*

124. At present there is scant institutional support or mechanisms to ensure Māori rights and interests are represented and robustly incorporated into policy at the national level. A recommendation of the Waitangi Tribunal was that a national Kura Taiao Council be established as a central support mechanism for iwi and hapū engaging in the conservation system, and as a source of expert advice and system oversight entity.[28]

125. Further consideration should be given to what institutional innovations would further support iwi and hapū engagement and input.

**Speeding up concession processing (Section 6 Discussion Document)**

*Improving triaging of applications*

126. EDS supports the proposed changes to triaging concessions at 6.1 in the Discussion Document. This is to set clear timeframes for the initial triage, provide the Minister with an ability to return an incomplete allocation, and enable an application to be declined where it is obviously inconsistent with the Act. These are relatively straight forward changes.

127. EDS also supports providing the Minister with a power to decline applications at an early stage where the applicant has previously demonstrated non-compliance with concessions.

*Clarifying Treaty partner engagement and time frames*

128. The proposals in relation to Treaty partner engagement and statutory timeframes is a far more complex issue. We agree that the volume of applications makes their review and consideration an overwhelming task for Treaty partners. Conservation Boards are often in a similar situation and they have often developed trigger lists to help inform DOC of the types of concessions they want to be notified about (or not). The Discussion Document suggests a similar approach for Treaty partners. This could be valuable, so long as the approach is able to be individually crafted with iwi and hapū, rather than being set in the NCPS.

129. EDS also recommends amending the Conservation Act to require planning processes to have particular regard to planning documents prepared by iwi authorities. This would enable iwi and hapū to provide additional guidance that would valuably inform DOC's approach.

[27] An example where intermediary option was adopted is section 158 of the Local Government (Auckland Transitional Provisions) Act 2010

[28] Waitangi Tribunal, 2011, *WAI262: Ko Aotearoa tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity*, Waitangi Tribunal, Wellington, 372

130. EDS has concerns over the proposal for a statutory timeframe of 20 working days for Treaty partner response to concession applications. This risks undermining the ability of under-resourced and lower capacity iwi and hapū to respond.

131. EDS supports providing the Minister with a power to allow a longer time-frame for more complex applications. We additionally recommend providing a clear mechanism to enable iwi and hapū to apply for an extension or to request further information and support from DOC.

132. At present, applicants include an Environmental Impact Assessment (EIA) with their application and are expected to cover the costs of this. Similarly, where an application is likely to have an impact on Treaty partner rights and interests, applicants should contribute to the costs of related cultural impact assessments and engagement. These funds could in turn be utilised by DOC to provide a higher level of support to iwi and hapū, including funding support on applications. This is an area that needs more fulsome discussion with Treaty partners.

*Public notification and reconsideration rights of applicants*

133. EDS does not support the proposal (at 6.4) to "reduce public notification requirements for some types of longer-term licences, or longer terms that mean public processes are run less frequently for concessions where the proposal is for ongoing similar use (such as grazing licences)."

134. Under the current proposal, concessions that are no or very low impact and have no risk of cumulative effects, will already be capable of approval without public notification through either the exempt or permitted in advance categories. If an activity or use is not captured within these, it is an indication that the impacts are more than minimal, and the management of impacts more complex. This makes public notice and broader consultation critical.

135. Similarly, just because a proposal is for an ongoing use, this does not reduce the need for public processes. The example cited in the proposal, of grazing licences, is a case in point. Grazing livestock on PCL is one of the most controversial and contested uses. Lifting public notice requirements would take away an important check and balance that helps ensure that controversial existing activities are revisited and conditions scrutinised.

136. A case in point was the roll-over of a historic grazing concession in Haast Valley, despite a repeated history of cattle straying into Mount Aspiring National Park, and the site not able to be effectively fenced to prevent this.[29]

137. Extending the terms on concessions would also undermine the flexibility of the conservation system and the ability to strategically reallocate concessions. It would lock in current inefficiencies and potentially embed inappropriate activities.

138. For these reasons, EDS is opposed to any further relaxation of public notice requirements for concessions, or a shift to concessions being granted for longer terms.

139. The Discussion Document does not discuss the role of Conservation Boards in relation to concessions. However, it is important that Boards continue to provide advice on concessions.

140. EDS supports the proposal that applicants can only apply for reconsideration once. Repeated rounds of reconsideration are costly and time consuming for DOC. They enable applicants to repeatedly

[29] See discussion in Koolen-Bourke D and R Peart (2021) *Conserving Nature: conservation reform issues paper*, Environmental Defence Society, Auckland, 94 - 95

contest matters that have ostensibly been resolved, using this as a lever to increase pressure on decision-makers to grant consent.

**Driving better performance and outcomes from concessions (Section 7 Discussion Document)**

141. EDS agrees that the current first-come, first-served basis for dealing with concessions is a poor management approach and that better allocative mechanisms are needed.

142. We support enabling strategic allocation. However, adjustments need to be made to the proposal to ensure conservation outcomes are sufficiently prioritised.

143. The framing of the Discussion Document is focused on leveraging "competitive tension" in response to demand for limited tourism opportunities and other economic uses of PCL. Although more ability to allocate opportunities would help foster innovation and financial returns, the overarching focus needs to be more securely set on ensuring strategic (rather than "competitive") allocation and delivery for conservation.

144. The proposal (at 7.1.2 of the Discussion Document) identifies 4 criteria for determining when competitive allocation should occur:

    a. Where supply is limited (eg a management plan sets limits).
    b. Where the concession is for exclusive use (eg use of strategic infrastructure).
    c. Where a market is likely to exist.
    d. Subject to an overarching determination that the costs of competitive allocation do not exceed the benefits.

145. EDS supports allocation in these situations. However, an overtly conservation focused criteria needs to be provided to enable the Minister to initiate allocation to improve conservation outcomes. This sort of catch-all category is important to enable allocation:

    a. Where the existing matrix of concessions is causing adverse impacts on conservation values and a 're-set' of the area to a more appropriate and strategic mix of concessions is necessary;
    b. To better support the conservation outcomes and objectives set at place (within an Area Plan, for example) and align concessions with the vision for an area;
    c. To better implement national policy direction (for example, to support a strategic shift to a more sustainable regenerative tourism model, or towards a higher-value lower-impact model);[30] and
    d. To support climate change adaptation and mitigation.

146. This would enable concession allocation to be used to help respond to pressures at place, and to transition problem sites to more sustainable and complementary uses.

147. It is also important that a preliminary assessment is undertaken ahead of any allocative process, to determine whether the allocation is likely to impact the rights and interests of iwi and hapū, and whether preferential allocation to them is warranted. The need to give effect to Treaty principles may sometimes make competitive allocation inappropriate.

[30] A regenerative approach to tourism is also more aligned with the values and aspirations of iwi and hapū. Matunga H, Matunga H and S Urlich, 2020, 'From exploitative to regenerative tourism', *NZ Journal Indigenous Scholarship*, 9(3), 295

*Criteria for allocation*

148. The criteria proposed to allocate concessions (at 7.1.3 of the Discussion Document) are not fit for purpose. The types of considerations included under each criteria are too internally diverse and conflicting, and not all criteria are of equal importance. More direction and clarity is required.

149. For example, the "returns to conservation" criteria encompasses contributions to conservation but also financial return to the Crown. These are very different metrics that should not be conflated. There may be instances where these conflict, such as when the option that would deliver the highest financial return is associated with lesser benefits to conservation outcomes. Internal tensions within each criteria should be avoided, as this will reduce transparency and make the assessment much more complex.

150. EDS recommends setting an overarching criteria of "contribution to nature conservation". This could cluster factors such as in-kind returns, the degree to which the application meets the vision and outcomes for place, its environmental sustainability, and capability of meeting environmental and cultural conditions. An associated high score in relation to this 'bucket' of factors would help to immediately identify high performance applications and applicants.

151. Other criteria, such as "offerings to visitors", financial returns to the Crown, and benefits to the local area should be secondary considerations: that are subject to the overarching concern of delivering enhanced benefits for conservation.

152. This approach would align and support direction under the Conservation Act to manage land for conservation purposes, and to foster recreation and allow tourism, but only where compatible with those conservation objectives. Setting a clear, statutory based, priorities hierarchy (as recommended above) would further support and help guide concession allocation.

153. A second concern is that "recognising Treaty rights and interests" is set as just one criteria amongst many to be considered. The case law in this area, including both the *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* and the *Ngai Tahu Māori Trust Board v Director-General of Conservation* case before it, makes it clear that section 4 of the Conservation Act may require iwi and hapū to be given a degree of preference in the allocation of concessions.

154. Overall, this means the rights and interests of Treaty partners must be treated as a separate and distinct consideration. They remain subject to the overarching conservation purposes and objectives set, but all other aspects being equal, they must carry greater weight than the myriad of other factors that might be taken into account.

*Valuation of assets and existing* operators

155. EDS supports a shift to time-limited options for commercial activities as is standard internationally. Setting clear rules in this area will provide certainty and help manage expectations.

156. We also support development of a compensation mechanism to facilitate a transition to more appropriate uses and activities on PCL. This will be critical to help DOC employ a more adaptive management approach, including supporting climate change mitigation and adaptation.

*Contractual management of concessions*

157. EDS supports standardising concession terms and conditions within the NCPS. This would enable them to operate as a clear minimum standard, and prevent them being adjusted down, while still providing the flexibility to set additional terms and conditions as needed on a case-by-case basis. We also support introducing conditions to measure concession performance, and mechanisms that enable DOC to respond where performance standards are not met.

158. At present, concessions for a term of more than 30 years can only be granted in exceptional circumstances (section 37Z Conservation Act). The proposal (at 7.2.2) is to set additional criteria, within national policy, to guide the application of the exceptional circumstances test. These criteria would effectively broaden the operation of the test, enabling the effects of activities and whether they can be managed to be taken into account, along with aspects such as whether there is enough time to ensure a fair return on capital improvements.

159. The legal test that has been adopted by the courts is that exceptional circumstances need not be unique, but must be things that are "well outside the normal circumstances".[31] DOC's guidance to permissions staff gives, as an example, the extension of a grazing permit in an area where grazing is necessary to help reduce fire risk in summer months.[32] The additional criteria proposed do not meet this test but contemplate what are likely to be relatively common activities. This means their effect would be to fundamentally broaden the test.

160. Adoption of additional criteria could also influence how the term "exceptional circumstances" is interpretated and applied in other contexts. For example, many CMSs and NPMPs allow departure from policy direction in "exceptional circumstances". Conversely, even if the criteria are contained to this area, the result would be that the same term has different meaning and application in different parts of the conservation system causing confusion.

161. There are a number of cases where DOC has granted a concession in contravention of the rules and standards set in the conservation system. The most common justifications for doing so were that the impacts were deemed to be minor or in consideration of the impacts on concessionaries. Examples include "significant derogation" from the Paparoa NPMP to enable helicopter flights[33] and approval of landings in Fiordland national park in contravention of the NPMP. This was due to concerns about the impact of limits on concessionaires and there being no evidence of significant adverse effects.[34] In addition, in 2014, reliance was placed on the "exceptional circumstances" exemption in the Mt Aspiring NPMP to renew a Routeburn Track concession against the clear limit set under the plan. In that case, DOC argued that the adverse effects could be avoided, remedied or mitigated, were minor and could be monitored. The Ombudsmen found that this decision was unreasonable, that there was "no credible basis on which to conclude that the circumstances were so unusual or out of the ordinary to be exceptional" and that it overlooked the need to provide as much certainty as possible.[35]

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[31] *Ye v Minister of Immigration* [2009] NZSC 76 at [34]
[32] https://www.doc.govt.nz/Documents/about-doc/news/issues/guidance-statutory-planning-documents.pdf
[33] *Royal Forest and Bird Protection Society of NZ Inc v NZCA* [2021] NZHC 1194
[34] https://www.ombudsman.parliament.nz/sites/default/files/2022-01/Investigation%20into%20aircraft%20landing%20limits%20trial%20on%20Ngapunatoru%20Plateau.pdf
[35] Ombudsmen Office, Investigation of DOC renewal of Routeburn Track concession, 2014 at [51] and [57] https://www.ombudsman.parliament.nz/sites/default/files/2022-02/Investigation%20of%20DOC%20renewal%20of%20Routeburn%20Track%20concession.pdf

162. These examples highlight the clear tension between the criteria proposed and how an "exceptional circumstances" provision is intended to operate. Our work in this area highlights that significant pressure is already placed on permission staff to grant exemptions on the basis of exceptional circumstances. The proposed amendment would only exacerbate this problem. It would also craft a highly unusual "exceptional circumstances" provision, that departs from common understanding of the term, and how it has been defined in the courts.

163. EDS supports retention of the exceptional circumstances direction without adjustment, keeping it aligned with the way the courts have defined and applied the term.

164. Extended contracts over PCL should be avoided in recognition that it is held in common as public land. Very long-term contractual arrangements come very close to providing a form of private property right that is inappropriate. Use of extended terms also reduces the ability to manage PCL in a strategic and responsive way. Such flexibility is increasingly important in light of worsening climate change impacts.

165. EDS does support the proposal (at 7.2.3) to set fees according to a "fair return to the Crown" rather than "market value". We also support amending fee reviews, where percentage-based fees already exist, and self-adjust with inflation. However, EDS recommends provision for an exception to this approach, so DOC can depart from the default position in response to unforeseen contingencies.

166. EDS also supports the standardisation of fees (at 7.2.4) to improve transparency and consistency and reduce the need for contractual negotiations and extensive valuations. However, this should operate as the default, or minimum expectation. Provision should be made to enable DOC to set additional fees where an application is particularly complex, varies from the standard form of applications in some significant way, or the scope or scale of the proposal makes this necessary (eg requires more investment by DOC to process and manage).

167. These changes would help future proof the system, by ensuring DOC and the Minister are not overly constrained, and sufficient flexibility remains to enable adjustments to be made if necessary.

**Unlocking amenities areas to protect nature and tourism (Section 8 Discussion Document)**

168. EDS agrees that DOC needs better visitor management tools to protect conservation areas. Finer controls on development, and a modern spatial planning approach, is needed to support this. Amenity areas are an important component of such an approach.

169. However, EDS does not support the proposal for a new amenities tool in its current form. Significant adjustments are necessary to ensure it does not result in poor conservation outcomes.

170. An overarching concern is that the proposal seeks to utilise amenities areas to better-support development and "a growing tourism industry", enabling "more visitor services" and to "enable and encourage regional economic growth". These objectives are inappropriate in the context of a conservation system, would create a myriad of internal tensions within the system, and compromise conservation outcomes.

171. The proposal for a new amenities tool requires substantial reframing. Any amenities tool needs to protect conservation values, and control tourism and its impacts, rather than facilitate tourism or regional economic growth.

172. Designation and expansion of amenity areas is highly controversial since they remove protection at these sites. Amenities area proposals have often been inappropriately driven by tourism, with conservation purposes not sufficiently front of mind.

**Development of amenities areas to support tourism growth is highly controversial and contested**
When a new draft NPMP for Westland Tai Poutini National Park was released in 2018, it proposed the creation of a new 460 ha amenity area, to enable future development. This included a gondola up the side of Franz Joseph Glacier. The proposal was highly contentious.[36] Forest and Bird, and more than 700 others, submitted on their opposition to the proposal, which would have seen a large area of native species habitat removed from the national park.[37] Promotion of tourism-related developments in both the Westland Tai Poutini and Aoraki Mount Cook draft NPMP drew significant opposition, to the extent that both plans remain stalled today.[38]

Similarly contentious were proposals to develop the Ōpārara Arches. They included upgrading the road, new tracks, installation of a jetty, a new suspension bridge and flush toilets. This was aimed at marketing the area as an iconic attraction to increase visitor numbers. A light show and giant moa installation were also originally proposed. Opponents argued the site was already at full capacity, the plan was inconsistent with the Conservation Act, National Parks Act and Kahurangi NPMP, and that it put an internationally significant geological landscape and area supporting many rare and threatened species at high risk.[39] The Minister of Conservation eventually intervened, ordering a pause, and the project was revised to adopt a lower impact approach.[40]

More recently, the Southland Conservation Board raised strong objections to the establishment of the Piopiotahi Special Amenities Area in Milford Sound, which would have seen the area excluded from the Fiordland National Park Plan. The Board considered that removal of the area from the park, for the benefit of commercial interests, created a dangerous precedent. It also took management in the wrong direction and away from a focus on sustainable tourism.[41]

173. The vast majority of national parks do not currently have an amenity area. Establishing such areas in iconic national parks is likely to be of particularly high public interest and concern. Checks and balances are needed to ensure the use of amenities areas do not transform these destinations into mini theme parks, as has been a concern with previous proposals (discussed above).

174. At present, the Minister requires a recommendation from the NZCA to progress amenities areas in national parks, and this operates as an additional check and balance. This requirement should only be lifted, if very clear direction is provided, to constrain and direct the development of amenities areas.

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[36] NZCA Meeting minutes 26-27 February 2018 [DOC-5431337]
[37] Lynley Hargreaves, 2019, 'Park plans problems', *Forest & Bird,* 71: 36
[38] See Williams D, 2019, 'Withdraw 'flawed' plans, DOC urged', *Newsroom* (3 February 2019) and Snoyink N, 2019, 'Why do National park plans favour development over protection?' *Stuff* media (22 January 2019)
[39] See debate over the plan in: Williams David, 2020, 'Save fragile site, Minister urged', *Newsroom* (26 May 2020)
[40] Bywater Thoman, 2021, 'Ōpārara Basin redevelopment plan bridge too far for DOC' *New Zealand Herald* (6 December 2021)
[41] The Board has written to the Minister (2 September 2024) objecting to the proposal and raised their concerns with the NZCA: NZCA meeting minutes 18 October 2024

175. Amenities area should not be granted where an alternative, non PCL site, is available. EDS recommends setting a requirement to consider alternative sites and/or to demonstrate that the proposed facilities and infrastructure cannot be placed outside of PCL.

176. EDS sees value in developing a single amenities tool, so long as its purpose and use is for conservation purposes, and associated rules are carefully prescribed and focused on achieving *better outcomes for conservation*. Criteria for employing amenities areas should focus on:

    a. Addressing adverse visitor impacts at congested sites
    b. Enabling increased protection of conservation values in the surrounding area
    c. Helping to distribute, contain and mitigate visitor impacts
    d. Encouraging and supporting more sustainable modes of tourism.

177. We agree that consideration of whether the impacts of the amenities areas can be reasonably contained is critical. Consideration should also be given to ensuring their footprint is constrained to ensure conservation values are as minimally affected as possible.

178. The tool should not be used to drive further tourism growth or achieve regional development goals. It is not the purpose of the conservation system to promote such outcomes. As noted earlier, those purposes conflict with current statutory provisions, and undermine the overarching approach and purposes of the conservation system.

179. EDS opposes providing the Minister with the power to establish amenities areas, as of right, without an open and transparent process. A robust public notification and submissions process is critical when decisions to designate amenities areas are made. It is also important that Treaty partners, the relevant Conservation Board and the NZCA are consulted when proposals are developed.

180. To improve the proposal for a new amenities tool EDS also recommends:

    a. Providing a statutory definition for tourism to distinguish it from recreation eg “tourism means any commercial activities associated with visitors to conservation areas”.

    b. Instituting a requirement for monitoring and reporting of tourism impacts, to inform management and planning, and the deployment of amenity areas.

    c. DOC being charged with developing destination plans, for iconic destinations and sites that are under high visitor pressure, to ensure they are targeted at addressing conservation (and not tourism or regional development) priorities. A statutory link should be provided so the plans are required to be taken into account in the conservation planning system.

    d. Updating the General Policies (or new NCPS) to provide national policy guidance on managing the interface between tourism and conservation. This should promote tourism that contributes to conservation outcomes and provides net conservation benefits. It should require Area Plans to set clear limits and targets to ensure tourism does not cumulatively degrade conservation values.

**Enabling more flexibility for land exchanges and disposals (Section 9 Discussion Document)**

181. The changes proposed to PCL land disposal and exchange are not fit for purpose. EDS considers the risks associated with them to be unacceptably high. We are strongly opposed to broadening

the scope of existing land disposal and exchange mechanisms outside of stewardship land, and removal of the "no or very low conservation value" eligibility criteria for PCL.

182. In the context of the dual biodiversity and climate change crises the need to retain and secure robust protection of PCL has never been more important. Now is not the time to loosen these protections.

183. The Discussion Document (at 9.1) proposes adjusting land exchange and disposal settings to enable greater flexibility to support other government objectives while providing a net conservation benefit and safeguarding vulnerable biodiversity. It characterises the approach adopted by the Supreme Court in the *Ruataniwha* case, where only conservation land with "no or very low" conservation values can be exchanged or disposed of, and the settings under the Conservation Act that only permit disposal of stewardship areas, as "very limiting".

184. EDS agrees the current approach is restrictive. It sets a high level of protection over land that has conservation value. This is appropriate. Land in the conservation system (apart from stewardship land) has been assessed and identified as containing indigenous biodiversity, native forests and ecosystems, or unique and nationally important resources and landscapes such that they warrant formal designation and *permanent protection*. Much stewardship land also has these values but has yet to be properly assessed. This is why a cautious approach is also required for this land category.

185. The statutory approach is intentionally conservative to give a high degree of assurance of protection. It also ensures any disposals or adjustments to this status, or purposes for which the land is held, are transparent and that the public is robustly consulted when any changes are made.

186. In setting out the rationale for flexibility, the Discussion Document refers to the need to enable the acquisition of higher value conservation land, the ability to dispose of land that is costly to maintain, and providing support for other government priorities.[42] These blur the lines between conservation benefits and other considerations, and imply that large tracts of PCL could be disposed of in the pursuit of objectives that have little connection with conservation.

187. The Discussion Document contains little discussion of the risks, which are likely to be significant. In addition, it does not propose any adjustments to public notice or consultation processes alongside the loosening of restrictions. This is a critical omission. Land exchange and disposal is likely to be one of the most important and controversial elements of the reforms if they are progressed. Robust public consultation mechanisms are essential.

188. EDS's more detailed position in relation to land exchange and disposal are set out below.

*Land exchange*

189. There are strong reasons underpinning the current settings and restrictions on land exchange and disposal.

190. Prior to the passage of the Conservation Act, land exchange and disposal was more broadly enabled. The current limitations marked an intentional and significant shift in approach. They were designed to prevent the ongoing land loss that had resulted under a more lenient

[42] Discussion Document at page 59

approach, due to political and economic demands to release land to support non-conservation priorities.

191. Parliamentary hansard records that the changes were made to ensure "New Zealand's protected areas are not up for barter. They are a treasure, a taonga that must be handed down unspoilt from one generation to another. They are irreplaceable and do not have a price".[43] They were intended to provide a clear public assurance that the conservation estate would be protected over the long-term.

192. The current land exchange provisions in the Conservation Act, for marginal strips and stewardship areas, were later added in 1990. They represent very carefully crafted and limited exceptions to that guarantee of ongoing protection.

193. In relation to marginal strips, the 1990 Bill originally provided the Minister with the power to dispose of marginal strips if they were no longer serving a conservation or access purpose. That provision proved so controversial that it was removed to allay concerns about the potential loss of these areas. Instead, the current very narrow exchange provision was provided.

194. This essentially enables the Minister to exchange an existing marginal strip for a new marginal strip that would "better achieve" the purposes of those areas as set out in the Act. This is a very specific tool, that enables replacement (like-for-like) of the marginal strip to ensure its ongoing *functionality*.[44]

195. This approach mirrors, to some extent, the land exchange provisions under Reserves Act. These provide that land acquired must be "subject to the same control and management and… for the same objects and purposes" as the land exchanged for it.[45] For recreational reserves, the exchange needs to deliver a recreational "net benefit".[46] Exchanges can only occur with the agreement of the administering body[47] and a public notification and objections process is required.[48]

196. When the changes for marginal strips were discussed in 1990, the House also considered whether a broader land exchange mechanism should be provided for all PCL under the Conservation Act, to enable exchanges for net conservation benefit. There was strong public opposition to the proposal, and DOC officials advised against it, so it did not progress.[49] This reinforced the strong sentiment, expressed when the Conservation Act was passed, that PCL needed to be strongly protected, and should not be up for barter.

197. In relation to stewardship land, the 1990 additions to the Conservation Act provided for exchange if it would "enhance the conservation values" of land managed by DOC and "promote the purposes of" the Act.[50] There was no requirement of like-for-like, net benefit or no or low conservation values.

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[43] Russell Marshal, 11 December 1986, Conservation Bill (Introduction) *New Zealand Parliamentary Debates*, 476: 6149

[44] See discussion: Peterson, 5 April 1990, Conservation Law Reform Bill and New Zealand Walkways Bill (Third readings), *New Zealand Parliamentary Debates*, 506 (no page ref provided)

[45] Section 15(6) Reserves Act 1977

[46] Section 15AA(5) Reserves Act 1977

[47] Section 15(1) Reserves Act 1977

[48] An exception exists where public consultation on the changes has already been undertaken and adjusted under RMA planning processes through the operative district plan.

[49] See discussion in *Royal Forest and Bird Protection Society v Minister of Conservation* [2016] NZHC 220 at [64]

[50] Section 16A(2) Conservation Act 1987

198. These provisions were relatively non-controversial at the time. In fact they were far less controversial than the much narrower exchange mechanism for marginal strips. This reflected an acknowledgement that areas of low conservation value were likely included in stewardship land and these might be disposed of, in any case, in due course.

199. More importantly, it was not expected that the land exchange mechanism would be utilised frequently or at scale. Officials' advice at the time is informative; they considered its main use would be to help them make beneficial boundary adjustments.[51]

200. A 2013 report by the Parliamentary Commissioner for the Environment on stewardship land, noted that small land swaps of stewardship area for larger areas of private land, to rationalise boundaries (in the way that was originally intended), were relatively uncontroversial. However, it highlighted that departures from that context, especially exchanges designed to enable commercial use, were highly controversial and contested. Some of the exchange decisions made, and drivers for exchanges, were also of questionable quality. An example was the Crystal Basin land exchange (see below).

**The Crystal Basin Land Exchange**

The Crystal Basin area was strategically purchased for $3.5 million, through the Government's Nature Heritage Fund, to improve connectivity between key protected areas. The intention was to classify the land as Conservation Park. This plan was derailed when DOC received a land swap proposal from Blackfish Limited, in 2010, seeking to acquire 196 ha of stewardship land (including Crystal Basin) in order to expand a ski area and build a waste disposal system to support the associated alpine village development.

The company planned to spend $250 million developing a 3500-bed alpine village and gondola ski-lift. Overall, it was hoped the project would create 1000 jobs and bring over $1 billion economic benefits to the region.[52] The company said it needed the Crystal Basin area to be freehold in order to secure finance for the development. In exchange for the valley, it offered 56 ha of coastal lowland forest and surrender of its lease over part of the Conservation Park.

Expert opinion was divided on the proposal. Crystal Basin was described a virtually pristine area of high ecological value. However, the coastal lowland forest was also considered to be high value. The complexity of attempting to compare the different conservation values resulted in diverse and conflicting expert opinion on the conservation benefits of the exchange. Most other parties were opposed.

- *The Conservation Board* considered that the exchange was inappropriate, set a dangerous precedent and encouraged opportunistic exchanges.[53]
- *The Nature Heritage Fund* reiterated the ongoing importance and strategic value of the area, which had driven the acquisition. It considered the exchange to be a breach of the Government's and DOC's commitment to protect the land.
- *Ngāi Tahu* argued that one set of values could not simply be swapped for another and any exchange should be restricted to like-for-like. If DOC had been disposing of the area through sale, rather than exchange, the iwi would have had first right of refusal under the Ngāi Tahu Claims

[51] Parliamentary Commissioner for the Environment, 2013, *Investigating the future of conservation: The case of stewardship land*, 22

[52] Williams D (10 February 2011) 'Board rejects Porters land-swap plan' *Stuff media* and David Williams (13 March 2022) 'Russians remain in Canterbury ski venture', *Newsroom*

[53] David Williams, (10 August 2010) 'DOC mulls ceding 200ha for field, Stuff News and for a more detailed account and case study the report of the Parliamentary Commissioner for the Environment, 2013, *Investigating the future of conservation: The case of stewardship land, 44*

Settlement Act 1998. Ngāi Tahu had not envisioned the land exchange mechanism would be used for this type of transaction or at such a scale.

- *Forest and Bird* questioned the appropriateness and legality of incorporating the relinquishment of a lease into the assessment of 'conservation benefit' and noted that the private land offered was under no conservation threat. This highlighted a fundamental flaw in the exchange mechanism which only requires an assessment of the enhancement to PCL and not other land.

The Minister of Conservation subsequently stopped the process that had been underway to classify Crystal Basin as a Conservation Park and the Director-General of Conservation approved the land exchange. Well over a decade later, the multi-million dollar tourism mecca (and employment and regional development benefits it promised) have yet to eventuate. At the same time an ecologically important area has been removed from the conservation estate.[54]

201. Such ostensibly poor decisions drove mounting concern that the 'soft' land exchange provisions for stewardship land, under the Conservation Act, incentivised commercial entities to target these areas for acquisition and development rather than to focus other more suitable land.

202. The Parliamentary Commissioner for the Environment considered that these were part of a broad group of settings that sent a signal "to the private sector that this part of the conservation estate is 'open for business'."[55] The 2013 report highlighted, as an example, Meridian Energy's application for an exchange of stewardship land to enable development of a hydro-electric dam on the Mōkihinui River. Despite declining the application, DOC spent more than $1.4 million appealing the resource consents that had been granted in association with the application.

203. This rules for stewardship land exchange were tightened, in 2017, after the Supreme Court in the *Ruataniwha case* found that land exchange necessarily included land disposal. This meant that policy 6(c) of the Conservation General Policy applied which required that land disposal could only be considered where the land has "no, or very low, conservation values". This was a positive development given that the land exchange mechanism was being used in a manner that was never originally contemplated.

204. It has been noted, in criticism of the *Ruataniwha* decision, that it was not Government's intention to restrict exchanges of stewardship land to areas that were of no or very low conservation value. However, it is more accurate to say that it was never intended that such land exchanges would be used as a mechanism to achieve economic outcomes, or to make substantive changes to PCL. They were designed to only enable relatively *minor adjustments* to boundaries to enhance PCL more broadly.

205. This is why no provision was made for public notice or consultation on exchanges.[56] The mechanism was not considered to materially affect the conservation estate or conservation values protected by it.

206. As well as enabling large, economically-driven exchanges of PCL, removal of the 'no or very low' conservation values bar on exchange poses another significant risk. Because low impact activities on PCL are already facilitated by concessions, the types of activities that drive land exchange are usually high impact ones. At the same time, the lack of public notice and consultation requirements incentivises its use as a lower scrutiny, 'less strings attached' pathway for

[54] David Williams, (10 August 2010) 'DOC mulls ceding 200ha for field', *Stuff News*
[55] Parliamentary Commissioner for the Environment, 2013, *Investigating the future of conservation: The case of stewardship land*, 57
[56] Russell Marshall, 11 December 1986, Conservation Bill (Introduction) *Parliamentary Debates*, 476: 6139

developers, in comparison to a concession application. DOC's advice in relation to the Fast Track Approvals Act 2024 recognised that "allowing developers to acquire PCL in exchange for land or financial compensation" would operate "as an alternative to them seeking a concession."[57]

207. EDS submits that the economic and political pressures Parliament sought to insulate PCL from, in 1987, are much stronger today. The pressures to release land are only set to grow. The response from industry to the relaxation of requirements for exchange under the Fast-Track Approvals Act 2024 (see below), highlight that the *Ruataniwha case* is currently not just operating as a restriction on flexibility, it is also relieving the strong pressure exerted on DOC to enable more commercial use and acquisition of PCL.

**Land Exchange under the Fast-Track Approvals Act**
Under the Fast-Track Approvals Act, the ability to exchange PCL is much wider than just stewardship land, and the 'no or very low' conservation value bar has been removed. In its place is the requirement that exchanges "will enhance the conservation values of land managed by" DOC[58] (reflecting the section 16(2) Conservation Act requirement on stewardship land exchanges).

This effectively takes the 'exchange test' back to the pre-Ruatanawhia decision situation, but with a widening of scope to broader categories of PCL. Despite this broader ambit, no public consultation process is provided for. The provisions reflect widespread calls from the commercial sector (particularly mining interests), during the select committee process, to relax the land exchange provisions under the Conservation Act and (in particular) remove the test set by the *Ruataniwha* case.[59]

This weakening of PCL protections has served to reactivate historical applications that had either been declined directly by DOC or following a determination by the courts. This includes the application to exchange of 22 hectares at Ruahine Forest Park for the purposes of an irrigation dam. Another example is the Winston Aggregates Belmont Quarry application, which is seeking to acquire 29 hectares of Dry Creek Recreation Reserve, in exchange for 31 hectares of privately owned land. The reserve land is to be used as an overburden disposal area where 3.5 million cubic meters of material will be deposited.[60] The proposal had previously been tabled with DOC on three separate occasions, with DOC determining it failed the criteria of having no to low conservation value.[61] Greater Wellington Regional Council (who control and manage the Reserve) also did not support the swap when previously approached.[62]

208. While it is argued that the *Ruataniwha* decision has undermined flexibility, it is also clear that it has protected against improper use of the land exchange mechanism.

[57] https://www.doc.govt.nz/globalassets/documents/about-doc/oia/2024/may/doc-fast-track-approvals-bill-proactive-release-package.pdf?utm_source=Lynley+Hargreaves&utm_campaign=cc9d5c085f-EMAIL_CAMPAIGN_2024_12_10_02_57&utm_medium=email&utm_term=0_-cc9d5c085f-340635917
[58] Schedule 6, clause 29(2) Fast Track Approvals Act 2024
[59] For example from submitters such as Straterra minerals, Minerals West Coast
[60] https://environment.govt.nz/assets/what-government-is-doing/Fast-track-listed/Belmont-Quarry-Development/308.05_ANON-URZ4-5FT1-N-Winstone-Aggregates-Belmont-Quarry-Development-Final-Rev-3-1_Redacted.pdf
[61] https://environment.govt.nz/assets/what-government-is-doing/Fast-track-listed/Belmont-Quarry-Development/308.08-Additional-DOC-Feedback-FTA308-Belmont-Quarry-Development-project_Redacted.pdf
[62] https://environment.govt.nz/assets/what-government-is-doing/Fast-track-listed/Belmont-Quarry-Development/308.08-Additional-DOC-Feedback-FTA308-Belmont-Quarry-Development-project_Redacted.pdf

*Adjustments recommended to the land exchange proposal (Q20(c))*

209. Taking the above factors into consideration, EDS strongly opposes the broadening of the land exchange mechanism outside the context of stewardship land. EDS also strongly opposes any relaxation of the requirement that only land of no or very low conservation value may be exchanged.

210. However, if changes to existing land exchange mechanisms are progressed, different criteria need to be applied to stewardship land as opposed to other PCL.

211. In relation to *stewardship land*, a distinction could be made between exchanges to enable minor or technical adjustments and more substantive proposals. This could be achieved by:

    a. Enabling minor 'like-for-like' adjustments, where the adverse effects on overall conservation values are low, and a net conservation gain would be secured (and removing the requirement of no or very low conservation value); *and*

    b. Only enabling substantive land exchanges (where land has more than very low conservation value) if they would deliver a *significant* overall "nature conservation" gain. This would ensure that the overall outcome for indigenous flora and fauna, ecosystems and landscapes would be given primacy.[63] If this is enabled, clear criteria need to be set and a robust public notice and consultation process put in place.

212. This would enable the land exchange mechanism for stewardship land to operate as originally intended (narrowly) but also allow a 'carve out' where significant nature conservation gains are secured. It would also ensure increased public scrutiny and accountability if the tool was deployed more broadly.

213. To avoid close calls and to ensure a clearer line is drawn, the requirement should be for more than to achieve a simple net conservation gain. This is also likely to be more open to legal challenge. Specifiying a "significant" (or similar) net conservation gain would ensure exchanges would only be progressed where a clear case could be made.

214. The exchange of non-stewardship PCL is a very different proposition. The lack of provision for exchange in this area reflects the much higher expectation of permanent protection. Any adjustments to broaden the use of land exchange represent a significant departure from the underlying ethos of the Conservation Act and the extremely high degree of security it was intended to provide.

215. Accordingly, EDS opposes extending land exchange to non-stewardship PCL.

216. If any adjustments are to be made broadening the scope of exchange, a similar approach should be adopted to that for marginal strips (which was the compromise reached when those areas were last discussed and consulted on in 1990).[64] EDS submits that, at a minimum, exchange should be limited to:

    a. Land that is of low or very low conservation value;

[63] Under section 2 of the Conservation Act "nature conservation" is defined as **"**the preservation and protection of the natural resources of New Zealand, having regard to their intrinsic values and having special regard to indigenous flora and fauna, natural ecosystems, and landscape"

[64] As part of the changes made to the Conservation Law Reform Act 1990

b. Exchanges that are 'like-for-like'; and
c. Situations where there is a *significant* net conservation benefit.

217. The like-for-like restriction is essential and is a well understood approach. DOC has previously noted that there are "risks to threatened and critical species, ecosystems and habitats if land is swapped or disposed of and equivalence cannot be provided."[65] Like-for-like exchanges avoid seeking to trade one set of values off against another where comparison of respective values is highly problematic.

218. Such a regime, as suggested above, would increase flexibility while at the same time providing assurance as to the continuing security of conservation values.

*A net conservation benefit test for exchanges (Q20(d)- (f))*

219. There is significant detail lacking over how the proposed net conservation benefit test would be assessed. EDS considers the following matters critical.

a. *The assessment should not incorporate money provided as part of an exchange, promises of work or other contributions, or any off-setting or mitigation measures (including relocation of indigenous species).*

These constitute short-term and/or only *potential* conservation benefits. Their value is uncertain and not comparable to tangible conservation assets and values. In addition, it needs to be recognised that mitigation and offsetting measures are intended to manage (not avoid) impacts and accommodate harm. Enabling these to be incorporated into assessments is likely to drive poor conservation outcomes. This is evident in relation to translocation. One DOC study of over 1,000 translocations found that success rates vary between 7 and 44%.[66]

While a range of conditions and requirements might be negotiated as part of an exchange, they should not factor into assessing the net conservation benefit.

b. *The net conservation benefit test should not be limited to considering the benefits to PCL only, it should consider conservation values more broadly.*

The test for exchanges under section 16A of the Conservation Act is currently limited to considering enhancements to "the conservation values of land managed by the Department". This is too narrow. As the Parliamentary Commissioner for the Environment noted in the report '*Hydroelectricity or wild rivers?*', if DOC is unable to take into account the conservation value of a river, especially if heavily impacted by the land exchange (as in the Mōkihinui case), DOC's assessment will invariably result in an underestimate of conservation values.[67]

As Forest and Bird noted in the Crystal Basin exchange, a net conservation benefit test confined to PCL land does not reflect overall conservation benefit, if the land being

[65] https://www.doc.govt.nz/globalassets/documents/about-doc/oia/2024/may/doc-fast-track-approvals-bill-proactive-release-package.pdf?utm_source=Lynley+Hargreaves&utm_campaign=cc9d5c085f-EMAIL_CAMPAIGN_2024_12_10_02_57&utm_medium=email&utm_term=0_-cc9d5c085f-340635917 at 70
[66] Department of Conservation, 2018, *Guidelines for conservation related translocations of New Zealand lizards*, DOC Lizard Technical Advisory Group, Department of Conservation, Wellington, 5
[67] Parliamentary Commissioner for the Environment, 2012, *Hyrdoelectricity or wild rivers: Climate change versus natural heritage*, 54

exchanged was already under protection and at no threat.[68] While a net gain might be secured for PCL, there may in fact be a net overall conservation loss.

A broadening of scope would also align with NZCA advice that section 16A(2) of the Conservation Act be updated so that the test considers "whether there are gains to the conservation values of New Zealand as a whole."[69]

This approach is necessary to enable DOC to discharge its function under section 6(a) to manage, not just conservation land for conservation purposes, but natural resources more broadly. This includes indigenous biodiversity and conservation values on private land, and in freshwater and the sea.

c. *The criteria set under Policy 6(a) of the Conservation General Policy should apply and additional criteria set to incorporate climate change considerations, prevention of extinction and protection for taonga species.*

In relation to climate change, land exchange should also consider the extent to which the acquisition or exchange would:

- Improve biodiversity and ecosystem resilience
- Enhance the ability of native species to adapt to climate change, including through providing increased habitat options
- Support climate change adaptation and mitigation, and provision of critical ecosystem services
- Contribute to carbon sequestration, for example through improving the quality and functioning of carbon sinks
- Provide a significant restoration opportunity.

Criteria focused on supporting indigenous biodiversity and preventing extinction should include consideration taonga species and protection of critical habitat.

d. *Greater weighting should be given to benefits to "nature conservation" (over amenity or recreational value, for example).*

This would enhance transparency and set clear guidance as to the overarching priorities where very different conservation benefits are being compared and assessed.

e. *Clear exclusions should be set.*

EDS supports the exclusions proposed in the Discussion Document for certain conservation land (eg national parks) and sites of national and international significance.

Policy 6(d) of Conservation General Policy lists a range of additional criteria that currently operate as discretionary ("should") restrictions on disposal. EDS considers (i) through (iii) should operate as firm exclusions.

[68] Letter from Forest and Bird to the D-G of Conservation, 16 August 2010. See discussion in: Parliamentary Commissioner for the Envirpmment, 2013, *Investigating the future of conservation: The case of stewardship land,* 45

[69] New Zealand Conservation Authority, 2018, *Stewardship land: Net Conservation Benefit Assessments in Land Exchanges,* 3

Policies 6(d)(iv)-(vii) are worded more broadly and would be too restrictive if adopted as exclusions in their current form. They should be retained as criteria to be taken into account when determining if an exchange should not be approved.

*f. The rights and interests of mana whenua need clarification.*

Sites of high cultural significance should be excluded. Where iwi and conservation objectives are aligned, additional weighting should be given to these as a matter of priority.

Consideration should be given to providing similar direction to that under the Reserves Act for administering bodies, so that exchanges require consultation and support of mana whenua before they may proceed.

Where a decision is made to dispose of land, whether through disposal or exchange, relevant iwi and hapū should be provided a Right of First Refusal in fulfilment of the Crown's te Tiriti obligations. This is regardless of whether this has been formally mandated under Treaty settlement, to ensure equitable recognition of rights and interests across iwi and hapū, and that unsettled parties are given this opportunity. However, we do appreciate this could be complex to implement in practice.

*Land Disposal*

220. At present only stewardship land can be disposed of, and only where it has no or very low conservation value. In addition, it cannot be disposed of *regardless of it conservation values*, where operating as a buffer to adjoining PCL and where retention and continued management would "materially enhance the conservation or recreation values of the adjacent conservation area or land" (section 26(2)).

221. The Discussion Document proposes extending the ability to dispose to other types of PCL and removing the 'no or very low' criteria. It proposes a new test for disposal that "land is surplus to conservation needs".

222. EDS strongly opposes enabling disposal of PCL where it is "is surplus to conservation needs". This criteria is far too vague and uncertain. It implies a form of necessity test which could too easily slide towards questioning whether an area is 'essential'. That could result in perverse outcomes, and provides far too broad a discretion.

223. We also strongly oppose use of a "Net Conservation Benefit" test in relation to land disposals. This would incentivise the monetisation and trade-off PCL, even where it contains important conservation values. Such monetisation invariably fails to capture the true value of conservation land. The risk is that much more tangible, long term conservation values will be sacrificed to support short term conservation objectives, that may or may not deliver on the investment.

224. In fact, two examples provided in the Discussion Document (at 9.1) of where more flexibility is needed are both cost-saving focused. The first discusses situations where "the costs and maintenance and/or compliance" are drawing resources away from better investments and the second is where DOC's "neighbour responsibilities" present a significant challenge.

225. In the context of a perpetually under-resourced Department, funding and capacity pressures could operate to drive the sale and disposition of a raft of PCL if the door is opened on this basis.

**DOC's perilous financial situation**
The cabinet papers released in association with the Discussion Document (and those for access charging) note that the conservation system is "stretched thin" financially, with DOC managing one third of Aotearoa New Zealand's land, and drawing just 0.44% of the Government's budget.[70] There is a backlog of around 70,000 hours maintenance, and $300 million in deferred capital expenditure, with management costs only increasing. Weather events alone are expected to increase costs pressures by $12 million annually. Funding restraints mean DOC can only fully maintain 70 percent of the visitor network as it stands.[71]

226. The Discussion Document also argues that some higher value land could be managed by others, such as iwi. EDS's concern here is that the options are framed as binary.

227. In our *Restoring Nature* report and *Independent review of the conservation management planning system*, EDS has argued for more provision to be made to support and empower mana whenua – and also local communities – to be actively engaged in the management and planning of highly valued areas.[72] This included mechanisms to support co-management and enable delegation of management responsibilities.

228. There is also no reason, for example, that Aotearoa New Zealand could not have an Indigenous Protected Areas regime like that in Australia, where the title to land is held (or transferred) and areas managed by mana whenua, and they remain connected to and supported by the broader conservation framework.[73]

229. Increased ability to dispose of land provides no guarantee of improved management, and it removes key accountability checks and balances, reduces transparency, and provides no ongoing assurance of protection or public accessibility. It is a very blunt and very final 'quick and dirty' solution to a much more complex problem.

230. Considered through a climate change lens, the retention of PCL becomes even more crucial. This is in order to maximise the adaptive capacity of indigenous species which may need to shift ranges and move into new areas. The profile and value of land with low conservation values today, is likely to change when viewed through a longer-term horizon.

231. There is also climate mitigation to consider. The 2023 IPCC synthesis report found that "conservation, improved management, and restoration of forests and other ecosystems offer the largest share of economic mitigation potential" (high confidence), is the most significant opportunity of a successful climate change response.[74] This requires targeting currently degraded PCL for restoration, rather than disposal, as an increasing priority.

232. One of the core functions of DOC under section 6(c) is to be a steward for future generations. They very definition of "conservation" incorporates "safeguarding the options of future generations". These are core aspects of the Conservation Act, akin to applying a 'mana mokopuna lens'. Just as many iwi and hapū are resistant to making decisions that lock-in and

[70] Cabinet paper *Growing Third-Party Revenue for Conservation,* Cabinet Committee minute [ECO-24-MIN-0152] and associated advice
[71] Cabinet paper *Growing Third-Party Revenue for Conservation,* Cabinet Committee minute [ECO-24-MIN-0152] and associated advice
[72] Koolen-Bourke et al (2024) *Restoring Nature: Reform of the conservation management system*, Environmental Defence Society, Auckland, 153-155
[73] See discussion in Lyver P, J Davies and R Allen, 2014, 'Settling Indigenous claims to protected areas: Weighing Māori aspirations against Australian experiences', *Conservation and Society*, 12(1), 89-106
[74] Intergovernmental Panel on Climate Change, *Climate Change 2023 Synthesis Report*, 106

restrict the self determination of future generations, as a nation it is important to adopt a similar approach. Solutions in this area must lie in crafting a more collaborative and place-based approach.

233. Taking these factors into consideration, EDS is opposed to broadening the eligibility of PCL available to disposal under the Conservation Act, outside of the current stewardship land provision. If non-stewardship land held under the Conservation Act is no longer fulfilling the purposes and functions of its designation, the more appropriate mechanism is to review and adjust its status under section 18(7) of the Conservation Act.

234. EDS is also opposed to removal of the requirement that only land of no or low conservation value may be disposed of (as per Conservation General Policy 6(c)).

*Adjustments recommended to the land exchange proposal (Q20(c))*

235. If land disposal is broadened beyond stewardship land, robust checks and balances are essential. EDS considers the following components to be critical:

a. Retention of the "no or very low" eligibility criteria for disposal. This reform would be a significant change and a bright line test is necessary.

b. Extending the scope of s26 of the Conservation Act to ensure impacts on the conservation values of all adjacent land (not just PCL) are considered. This is critical since existing PCL may also be providing material enhancement to the conservation values on adjacent private land.

c. Ensuring that land disposal applications are initiated by DOC, formulated in consultation with Treaty partners and the relevant Conservation Board, and operate within a formalised Land Disposal Programme that sets clear priorities and criteria for disposals and which adopts a long-term strategic approach.

   This would help ensure that a reactive, ad hoc and opportunistic approach is avoided. It would also operate as an additional conflict of interest check, helping to insulate against short term economic and political pressure that might incentivise sale of conservation land.

d. Public notice and formal public consultation process mandated.

e. Provision for relevant iwi or hapū to have a First Right of Refusal or clear criteria for determining when a First Right of Refusal should be provided. To prevent inequities between iwi and hapū, especially those that remain unsettled, the availability of a First Right of Refusal should not depend on existing Treaty Settlement arrangements. While compliance with existing settlement arrangements is important, Te Tiriti rights and obligations are broader.

f. Climate change considerations to be taken into account in all land disposal decisions. When EDS commissioned an independent ecologist to review the recommendations of the stewardship land panel on the West Coast it was apparent that climate change impacts had

not been adequately factored into their advice.[75] This is a critical omission that needs to be addressed.

**Conclusion**

236. The proposals in the Discussion Document seek to address a number of known defects in the conservation management planning system. EDS agrees that the framework needs to be streamlined and that DOC needs more tools to strategically manage PCL.

237. However, the scope and purposes of the reforms are much broader than improving conservation outcomes. They encompass delivering for a range of tourism and commercial outcomes. This creates a number of tensions and has diluted delivery for conservation.

238. Unless clear overarching priorities and sufficient checks and balances are in place, the risk is that broader recreational and commercial objectives, and other competing political pressures, overshadow conservation imperatives. The Discussion Document has not sufficiently identified the risks and potential tensions associated with the proposals. As a result the proposals have not grappled with them and significant but crucial detail is missing.

239. For example, climate change considerations have not been taken into account and incorporated throughout. There is no detail around how the new standard for disposal, that land is "surplus to conservation needs", would be assessed. No proposal for or discussion of public notice or consultation processes associated with broadening land exchange and disposal mechanisms, or the new amenities tool. The proposals also have significant implications for the role of the NZCA and Conservation Boards, and for the oversight and quality assurance functions they provide.

240. Consequently, while more efficient on paper, the proposals could deliver a range of unintended, even perverse outcomes for conservation. We urge DOC to reframe the reforms, through a strengthened nature conservation and risk management (including climate change), rather than efficiency focused, lens.

[75] EDS submission on the Reclassificaiton of stewardship land on the West Coast (22 August 2022), 14 https://eds.org.nz/wp-content/uploads/2022/08/220822-EDS-Submission-on-Reclassification-of-Stewardship-Land-on-the-West-Coast.pdf