

Submissions due for Draft Conservation Management Strategies

Draft Conservation Management Strategies (CMS) have recently been released for submission in Canterbury, Otago and Southland Murihiku¹.

Submissions are due on all three draft strategies by 4.30pm, Friday 13th September 2013.

The strategies are important because they impact on the granting of concessions for public conservation land². Concessions might be granted for a range of activities such as filming, guided walks, helicopter landings, accommodation and tourism attractions.

If the relevant CMS "*provides for the issue of a concession*" then a concession can only be granted if it is consistent with the CMS. However, if the CMS is silent on an activity then a concession can be granted subject to the normal Conservation Act criteria.

Alternatively the Minister of Conservation could initiate a review of the CMS, paid for by the applicant, to address the activity that a concession is sought for. Each concession issued is conditional on the applicant acting in accordance with the relevant CMS.

The CMS review process can be frustrating because it is not as transparent as it could be. As the strategies govern concession applications, it is important that applicants are not put off by the wording of a CMS, which is often general and aspirational. There are policies relating to structures, vehicles, mining and fire management that may be relevant. The strategies also provide more detailed provisions for specified "places", and it is important that these do not exclude an activity. Ideally, you should seek to have your anticipated activity specifically provided for, and we recommend a close analysis of the relevant draft CMS and subsequent submission.

Introduction to Conservation Management Strategies

The Conservation Act 1987 requires the Department of Conservation (DOC) to prepare management strategies "*as may be necessary*" to "*establish objectives for the integrated management of natural and historic resources... managed by [DOC]... and for recreation, tourism, and other conservation purposes.*"³

Conservation management strategies generally exist for each conservancy⁴. They all have their own Conservation Board which is involved in the drafting process. There is currently a national process of reviewing most of the conservation management strategies⁵⁶.

The review process requires, after stakeholder consultation and consideration of existing relevant concessions, a draft CMS to be publicly notified for submissions. Anyone can submit and will be given an opportunity to be heard⁷. The decision on the final CMS involves DOC, the local Conservation Board, the national Conservation Authority and the Minister.

The process of drafting and reviewing a CMS is different to an RMA plan development, which is heavily prescribed with appeal rights to the Environment Court. The Conservation Act is not prescriptive, timeframes are loose and there is no right of appeal.

¹ The following conservancies have already completed hearings for their CMS: Northland, Auckland and Waikato. The following conservancies have not yet called for submissions on their draft CMS: East Coast Bay of Plenty, Tongariro, Whanaganui, Taranaki, Wellington, Hawke's Bay, Nelson and Marlborough. The Chatham Islands CMS is also under review and submissions have not yet been called for.

² section 17W

³ section 17D(1) and (2)

⁴ Note that some conservancies have more than one CMS, i.e. there are specific strategies for: Stewart Island / Rakiura; Chatham Islands and Wanganui.

⁵ Note that the West Coast conservancy has already completed its review and has an operative CMS that runs till 2020. The Stewart Island / Rakiura CMS was also recently reviewed.

⁶ section 17H(4)(b) requires a full review every 10 years

⁷ section 17F(f)

The draft Conservation Management Strategies

All the draft CMSs provide 50-year visions. While a CMS only has a life span of 10 years it plays a critical role in influencing decision makers when considering whether to allow activities on conservation land.

There are essentially three parts to the draft CMS.

The first is an overall general vision with aspirational 'objectives' for the area. Part two addresses defined 'places' and establishes policies relevant to the specific 'place'. Some of these policies contain specific controls. Part three contains policies that apply to the entire conservancy area governed by the CMS, unless a part two 'place' policy is in conflict – in which case the part two policy prevails.

All of the strategies provide some level of control for a wide range of activities. For example, vehicle use, access of animals, private accommodation, marine mammal viewing, commercial eeling, hunting, grazing, mining, sand and shingle extraction, filming, collection of material, wild animal controls, fire management, sporting events, ski fields, gemstone fossicking and fixed anchors for climbing.

They also provide controls for and list historic places, endangered plant and animal species. Below are some examples of policies that define controls on a specific activity from the three draft strategies that are currently being consulted on.

Otago CMS

The draft Otago CMS reiterates its encouragement for recreation and a wide range of people enjoying conservation lands (see for instance the objectives at page 29).

Beyond the generic positive statements, there are some specific restrictions that mean users of conservation lands should review the CMS to analyse any impact on their operation.

For 'Remarkables-Hector' within the 'Western Lakes and Mountains Place', new structures are controlled at 2.3.17 with: *"Should not allow new permanent utilities, structures or facilities (both recreational and commercial) in the Upper Wye valley to protect the unmodified and high natural character of this valley."*

For 'Central Otago Drylands Place', controls on sporting events are found at 2.6.8 with: *"Up to four competitive sporting events will be permitted on the Otago Central Rail Trail in any year provided that public access and use is maintained and excluding the three weeks beginning 26 December and public holiday weekends."* This 'place' also provides for investigation for reclassification of reserves at 2.6.14 with: *"Investigate and implement a conservation land classification for the reserves at Macraes Flat that better reflects the natural values of the area."*

For all areas there is a policy against new structures at 3.1.10 with: *"Should generally not grant authorisations for new permanent structures for recreation and tourism, other than those provided for in Part Two – Places."*

For all areas, policies 3.9.1 and 3.9.2 aim to curtail private accommodation with: *"Should not allow new private accommodation and related facilities, including encampments, on public conservation lands and waters,"* and *"should phase out all existing private accommodation on public conservation land that is not otherwise covered by section 50 of the National Parks Act 1980 or specifically allowed or provided for in legislation by either: a) phasing in public use of the buildings(s) (refer Policy 3.9.4(a)); or b), removing the building(s) at the end of the phase-out period (refer Policy 3.9.4(b)), unless retained by the Department for public use."*

Southland CMS

The Southland CMS area generally shares its boundary with the Southland Regional Council. It includes conservation land from Big Bay on the West Coast to the Sub-Antarctic Islands but does not include Stewart Island. This is a large area and covers an enormous range of activities from tourist expeditions in the Sub-Antarctic Islands to mountain biking in Fiordland National Park.

Anyone with an interest in these places should take a more thorough look at the CMS to determine how it affects them or their business. Below are some examples of some specific policies:

For 'Western High Country', which includes land that a potential monorail could run over, some structures are allowed at 2.3.11 with: *"May grant authorisations for structural development within the Western High Country Mata-puke Koikoi Place in accordance with the following criteria: a) there is no alternative site off public conservation lands and waters for the structure or facility; ... d) adverse effects on the following values are avoided: i) the natural, historic and cultural landscape; ii) the remote and backcountry recreational experiences of this Place; and iii) the indigenous ecosystems, species and their habitats."*

For all areas, policy 3.6.1 aims to control aircraft with: *"Should only grant concessions for aircraft landings and take-offs on public conservation lands and waters where the activity is in accordance with:*

- a) *The zones in Map 4, which identify where aircraft can land or take-off;*
- b) *The descriptions of the zones in Appendix 13;*
- c) *The outcome and policies for the Place in which the activity is proposed to occur; and*
- d) *Policies 3.6.2-3.6.9 below."*

Canterbury CMS

The Canterbury CMS applies to all public conservation land, waters and resources in Canterbury, which is bounded between the Southern Alps/Ka Tiritiri o Te Moana and the Pacific Ocean. The key issues identified for Canterbury include:

- Realising the potential for indigenous biodiversity protection, landscape appreciation, ecosystem services and compatible public use of the high country and foothills;
- Halting the degradation of freshwater ecosystems;
- Valuing the coastal environment, both land and marine, and establishing adequate protective measures;
- Recognising the essential need for coordinated community approaches to conservation and environmental sustainability.

There are a wide range of objectives and policies that apply to and restrict activities in defined places under the headings National Parks, Braided Rivers, Banks Peninsula, Coastal Land and Marine, Southern Conservation Parks, Northern High-Country, High-Country Basins, Foothill Forests and Christchurch City.

The CMS recognises that opportunities exist for more commercial businesses that assist in the conservation of natural, historic and cultural values, and enable more people to participate in recreation (including within National Parks).

There is recognition for additional guiding (walking, skiing, cycling and vehicles) and sporting event opportunities for recently acquired land in the Southern Conservation and Northern High Country areas; commercial accommodation and concessions for walking in Banks Peninsula; concessionaire use in conjunction with historic building conservation at St James and Hakatere historic buildings, and ski fields.

An important theme of the CMS is to maintain and strengthen relationships with Ngāi Tahu whānui to enhance conservation and recognise mana.

Submission Process

The draft Conservation Management Strategies are large documents that include controls on activities that could be relevant to your operations. The examples above illustrate that many of the policies will restrict DOC's discretion to grant concessions. We are able to assist with reviewing the CMS to identify problematic policies that you should submit on. Our team has extensive experience in preparing submissions to DOC and appearing at its hearings, as well as advocacy to both the national New Zealand Conservation Authority and Minister.