SUBMISSION

STRATERRA™
NATURAL RESOURCES OF NEW ZEALAND

Submission to LOCAL GOVERNMENT AND ENVIRONMENT SELECT COMMITTEE on

"RESOURCE LEGISLATION AMENDMENT BILL" (FEBRUARY 2016)

INTRODUCTION

1. Straterra[1] welcomes the opportunity to submit on the Resource Legislation Amendment Bill. As always, we do so in the interests of achieving benefits for the minerals sector, and for the New Zealand economy as a whole. The submission deadline of 14 March 2016 is noted.

2. Straterra has focused its submission on proposed amendments to the Resource Management Act 1991, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, and the Conservation Act 1987. We divide the submission into three parts to address each piece of legislation separately.

3. Straterra submits from the point of view that New Zealand needs to consider its attractiveness for investment as a key policy criterion when amending resource management legislation.

4. In preparing this submission, Straterra has consulted with, in particular: Bathurst Resources, Chatham Rock Phosphate, Minerals West Coast, Nautilus Minerals, OceanaGold, Trans-Tasman Resources, as well as Anderson Lloyd, Greenwood Roche, MERMAN Ltd, Russell McVeagh, and Simpson Grierson.

5. Straterra wishes to appear in person on its submission before the Local Government and Environment Select Committee.

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[1] Straterra represents NZ minerals production, exploration, research, services, and support http://www.straterra.co.nz/About+Straterra

RMA 1991 reform

STRATERRA'S POSITION

Context for Straterra's submission

1. Two main aspects of the proposed RMA reforms in the Resource Legislation Amendment Bill have attracted interest and concern from the New Zealand minerals and mining industry:

    - Stronger national direction for regional policy statements, and regional, unitary and district plans;
    - A new collaborative planning process for RMA planning.

2. Straterra supports stronger national direction. We recommend more clarity on the scope of, and strengthening the process for developing national planning templates.

3. Straterra considers that the proposed collaborative process is unworkable, because the design detail contains multiple flaws, and because the current Schedule 1 process is an appropriate process.

Straterra's policy approach

4. The approach Straterra takes to the RMA reform is to:

    - define the problems as Straterra sees them;
    - identify proposals in the Bill that could help address problems, with modifications as necessary;
    - identify the proposals that are counter-productive or unworkable and should be deleted; and
    - identify and address gaps in the Bill.

Straterra's problem definition

5. The NZ minerals and mining industry's concerns with the RMA system are principally the following:

Regional policy statement and planning processes

- Poor understanding of minerals exploration and mining by councils and the public, which can lead to inappropriate treatment of our sector in RPSs and plans;

- Councils, the Department of Conservation and others are seeking to prohibit all development in areas where matter of national importance apply (sensitive areas, section 6);

- DOC and others are seeking the mandatory use of biodiversity offsets, drawing on guidance it wrote that it knows businesses (the end-users) consider to be unworkable;

- Arbitrary favouring of some land-uses over others, e.g., an idea that farming is always the best use of rural land, with no regard to economic efficiency or the facts;

- Regulatory duplication in relation to heritage, hazardous substances, conservation legislation, and climate change;

- Inadequate economic evaluations under section 32;
- The challenge of managing enhanced statutory participation by Maori whose influence affects the broader community, however, with no direct accountability to that community;

RMA consenting processes

- Minerals exploration drilling should be classified everywhere as a permitted or controlled activity, subject to a standard set of conditions;
- Mining proposals should be considered everywhere on a case-by-case basis (as opposed to exclusions via zoning);
- The high cost of Board of Inquiry consenting processes;
- The quality of BOI processes is affected by the nine-month timeframe, with no opportunity for an iteration of issues;
- The ability of vexatious and frivolous submitters to appeal decisions as many as four times to progressively higher courts (in some cases, dependent on leave to appeal being granted); and
- Lack of integration with conservation and heritage legislation.

Applying the workable proposals

Recognising and providing for minerals exploration and mining

6. Clause 34 of the Bill on joint development of an NPS and an NES could:
   - recognise and provide for minerals exploration and mining in the context of section 7 (b) and (g) on "natural and physical resources"; and
   - provide the mechanism for developing an "environmental compensation" policy and technical framework, with biodiversity offsets as one option within that framework.
7. The length of time and expense that the NPS process entails is an issue, however, does provide appropriate checks and balances; it is a robust process.

Improving RMA policy statements and plans

8. The national planning template (***clause 37***) could offer a consistent look and feel to RMA plans and policy statements, and address matters of national importance, and economic efficiency in land-use allocation.
9. Miners should be able to apply for resource consents in sensitive areas, knowing that the bar to achieve sustainable management will be very high. Mining should always be provided for on farmland. That is because the land owner must provide consent to access, and will only do so if it is economically rational. After mining the land can be returned to farming.
10. That said, the proposed process for developing the NPT provides the Minister with an alarming degree of discretion. For example, an NPT could be developed with no public hearing process, or rights of appeal. That is a concern.

11. A more rigorous process is needed given the potential impact of NPT or NPTs on the RMA system. An analogy of the Schedule 1 process would be one option, the current process for developing a national policy statement, another.

12. The NPT should provide model provisions, rather than mandatory direction, for councils to adopt, following an appropriate process. That is to avoid the possibility of a blunt instrument. For example, small councils would be unlikely to develop an e-plan of the sort being developed by Dunedin City or Auckland, and, therefore, would be seriously challenged if required to do so.

13. The streamlined process (***clause 52***) is the mechanism for a council to give effect to an NPT. The time frame for doing so is tight, and the process could suffer from lack of adequate consultation. Given the import of the NPT, a Schedule 1 process would be more appropriate (as discussed in connection with the collaborative planning process, below).

Iwi participation

14. The proposals for iwi participation agreements (***clause 38***) codify emerging practice to acknowledge rights under Article 2 of the Treaty of Waitangi.

15. The IPAs could be strengthened by requiring Maori to work to further the purpose of the RMA, and where part of a decision-making body, to work within committee. (This would enable Maori to advocate separately and unequivocally for their own interests, as submitters.)

More work needed

Hazardous substances

16. ***Clause 11*** proposes the removal from regional councils' functions of their responsibilities to do with hazardous substances. That is supported because these are regulated under the Hazardous Substances and New Organisms Act 1996, and regulatory duplication should be avoided.

17. There is, however, no corresponding direction on what to do with rules and the like applying to hazardous substances in regional policy statements and plans. Would the issue be addressed via the national planning template?

Boards of Inquiry

18. Strengthened criteria for making appointments to BOIs are supported (***clauses 72-73*****),** to improve the quality of these decision-making bodies.

19. In enacting this proposal the Government will need to manage a perception among some sectors of society of abuse of Ministerial power, and the potential for political interference in decision-making.

20. The cost of BOI processes is an issue for project applicants.

21. A further problem is the nine-month timeframe for BOI processes, and the single run through the evidence on merit. This poses risks for applicants. For that reason, many mining companies prefer the two-stage process, for resource consents, to provide for an iteration to address stakeholder concerns.

22. A solution could be to extend the process to 12 months, with a 1-2 month break in the middle to allow applicants to modify their applications in response to stakeholder concerns.

Regulations to prohibit or permit specified rules

23. Straterra recommends tightening the scope for regulations via Order in Council to prohibit or permit specified rules (***clause 105***); to avoid unintended outcomes.

24. A useful area of application would be to include rules to prevent unnecessary regulatory duplication (heritage, climate change, hazardous substances, conservation).

25. Another would be a rule to require that all development proposals in sensitive areas should be assessed on their merits, and in the context of the values in the land.

Delete as unworkable or undesirable

Development capacity

26. ***Clause 12*** providing for territorial authorities to provide for development capacity for residential and business land is open to misuse, raising questions as to the necessity of this provision. If the problem relates to housing in Auckland, that could be resolved separately for Auckland.

Collaborative planning process

27. Straterra considers that the proposed collaborative planning process (***clause 52***, and ***Part 4*** of ***Schedule 1*** of the Bill) is experimental, complex, contains numerous flaws, and is, therefore, undesirable and unworkable. It is acknowledged that the collaborative planning process is not mandatory; it is an option for councils to freely consider.

28. We consider it will be difficult to create an effective collaborative group (except in limited circumstances); it is not clear what consensus means; some affected members of the community will have no say; and the process is resource hungry, among other difficulties.

29. We ask: why, or in what circumstances would “collaboration” deliver a better result than the current Schedule 1 process?

30. Explorers and miners want to submit on a document prepared by professionals, have the opportunity for iteration, and have ideas and evidence presented by all open to challenge by others, in a clear process. We want an independent panel to make a decision, based on the work of council officers, and on submissions, a decision that is open to challenge in a court, with provision for mediation of disputed matters.

31. The above is a robust process, in which local government shows leadership, in which the facts and evidence are tested. We have that process now, the Schedule 1 process. In our experience, this is generally an effective and fair process.

32. In situations where collaboration is desirable, there is nothing to stop councils developing a collaborative process. In fact, that is already occurring around the country.

"Environmental offsets"

33. ***Clause 62***, which provides for voluntary environmental offsets, is unworkable because a national-level policy framework is lacking for environmental compensation, including offsets (covered under ***clause 34*** above).

Stop-work provision

34. ***Clause 81*** providing for the EPA or a BOI to stop working on an application if the applicant has failed to pay costs would prevent an applicant disputing those costs, and the provision could be used cynically to hold up a consenting process.

What's missing

Section 32

35. Despite previous amendments to section 32, councils continue to produce sub-standard economic evaluations of the costs and benefits of their proposed plans and policy statements. The problem for councils is chiefly that they are unsure what to do to meet their legal obligations under section 32. As a result, councils do the best they can, and that is often less than adequate.

36. The minerals and mining industry has, at times, had to commission studies or experts to challenge statements made in section 32 reports, for example, the proposed Canterbury Air Regional Plan.

37. We see no easy fix to the problem, and suggest a new policy process to rewrite section 32 from scratch, with early engagement with stakeholders.

Regulatory complexity

38. The present reform is a missed opportunity to address a major shortcoming in New Zealand's resource management system, that of regulatory complexity.

39. On public conservation land, mining proponents face gaining environment and heritage approvals under as many as six pieces of legislation: RMA, Conservation Act 1987, Crown Minerals Act 1991, Wildlife Act 1953, Animal Welfare Act 1999, and the Heritage NZ Pouhere Taonga Act 2014.

40. This is onerous to the applicant with no benefit for New Zealand. Elsewhere in this Bill, we have proposed a review of the Conservation Act.

41. In the oceans, mining proponents applying for marine consents under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 may also need to consider the Marine Mammals Protection Act 1978, the Wildlife Act, and instruments under the Fisheries Act 1996.

42. A council wishing to quarry shingle from a river bed for nearby flood protection works may need an access arrangement from Land Information NZ, an access arrangement and a concession from DOC (e.g., if there is a marginal strip), and resource consents. This is onerous for a two or three-day operation. In such a situation, councils will normally source aggregate from elsewhere at an elevated cost to ratepayers.

43. At issue is that New Zealand has passed a series of laws over time with little or no integration between them. The result, inevitably, is a "legislative labyrinth" that benefits no one.

44. Following are policy approaches the Government could adopt:

- In the Conservation Act, define mining, including shingle extraction from riverbeds, in such a way as to remove the need for concessions for ancillary activities (e.g., road access, waste rock management);
- Align processes for access arrangements to Crown land with resource consents;
- Absorb the Wildlife Act and the Marine Mammals Protection Act into the Conservation Act, as superseded;
- Amend the RMA and the Heritage NZ Pouhere Taonga Act to provide for councils to identify areas of heritage, as currently, and to have the management of that heritage regulated under the Heritage NZ Pouhere Taonga Act.

RECOMMENDATIONS

45. Straterra recommends the Local Government and Environment Select Committee to:

a) Note Straterra's support for **clause 11 (3)** proposing deletion of all reference in regional councils' functions to hazardous substances, and agree to specify a mechanism for removing all reference to hazardous substances in all regional policy statements and plans;

b) Agree to delete **clause 12** proposing new section 31 (1) (aa), in which territorial authorities can provide for development capacity for residential and business land as unnecessary, and open to misuse;

c) Agree to adopt **clause 34** proposing new section 55A providing for the joint development of an NPS and an NES, as logical, with application for minerals exploration and mining, and development of policy on environmental compensation, including biodiversity offsets;

d) Note Straterra's concern over lack of clarity on the scope of the national planning template (**clause 37**), and the process to be followed to develop the NPT;

e) In relation to Rec. (d), note Straterra's view that it would be helpful to have a consistent look and feel to RMA plans and policy statements nationwide, where practicable;

f) Agree to frame the development of the NPT in terms of model provisions, for councils to consider, as opposed to mandatory provisions;

g) In relation to Rec. (f), agree that the NPT could provide national direction or consistency on, e.g., air quality management; matters of national importance, and the nature of minerals exploration and mining;

h) Agree to strengthen the process for developing the NPT, e.g., by using the Schedule 1 planning process, or the national policy statement process;

i) Note Straterra's general support for **clause 38** covering iwi participation agreements;

j) In relation to Rec. (i), agree to make it explicit that statutory advice provided by Maori must be done to further the purpose of the RMA, and where Maori form part of a decision-making body, that they work in committee with other decision-makers, to separate Maori as the Treaty partner from Maori advocating for their own interests;

k) Note Straterra's concern as to workability of the collaborative process (**clause 52**, and **Part 4** of **Schedule 1** of the Bill) and note Straterra's support for the existing Schedule 1 process;

l) Agree to replace the streamlined planning process (**clause 52**), with the Schedule 1 process or the national policy statement process, as robust and inclusive;

m) Agree to delete **clause 62**, proposing an amendment to section 104 to provide for voluntary environmental offsets, because the policy framework for offsets is deficient (refer to Rec. (c));

n) Agree to adopt **clause 72** providing for Ministerial appoint of Boards of Inquiry subject to the criteria provided;

o) In relation to Rec. (n), note Straterra's concern as to the cost of BOI processes;

p) Agree to extend the timeframe for BOI processes to 12 months with a break in the middle of 1-2 months to allow time for applicants to address stakeholder concerns;

q) Note Straterra's support for appointments to BOIs to be made on merit (**clause 73**);

r) Agree to delete **clause 81** providing for the EPA or a BOI to stop working in relation to an application if the applicant has failed to pay costs owing to the EPA within a specified time period, because this would prevent an applicant disputing costs, and because this provision could be used cynically to hold up a consenting process;

s) Note Straterra's support for **clause 91**, replacing section 268 and introducing new section 268A, as providing clarity around "alternative dispute resolution" during Environment Court hearings;

t) Note Straterra's support for **clause 93**, providing for new evidence to be presented to the Environment Court at the appeal stage, subject to conditions, as providing clarification;

u) Note Straterra's concern over lack of clarity over the intent of **clause 105**, providing for regulations via Order in Council to prohibit or permit specified rules;

v) Notwithstanding Rec. (u), agree that new sections 360D and 360E could remove unnecessary regulatory duplication, in particular, in relation to heritage, climate change, hazardous substances, and conservation matters, and could provide for case-by-case consideration of economic development proposals in areas where matters of national importance apply; and

w) On the basis of the foregoing, agree to restrict the scope of **clause 105** to address Straterra's concerns.

DISCUSSION OF SPECIFIC CLAUSES

Clause 11 Section 30 amended (Functions of regional councils under this Act)

47. **Section 30 (1) (d) (v)** is to be amended to remove all reference to hazardous substances. That is supported, to avoid unnecessary regulatory duplication with the Hazardous Substances and New Organisms Act 1996.

48. Unresolved is what would happen with provisions in RPSs and plans concerning hazardous substances. What is the mechanism to remove them? Perhaps, the national planning template could address this issue, as could the special regulatory power under clause 105 of the Bill.

Clause 12 Section 31 amended (Functions of territorial authorities under this Act)

49. New **section 31 (1) (aa)** provides for territorial authorities to provide for development capacity for residential and business land to meet long-term expectations in districts.

50. This provision adds no value to the RMA system, because councils already have this ability in the context of planning processes, with appropriate checks and balances, and a strengthened provision could be open to misuse.

51. Therefore, we recommend the deletion of this clause, as unnecessary and creating the risk of harmful planning decisions. If the purpose of this clause is to address housing issues in Auckland, it would be better to tackle this issue through the Auckland Unitary Plan.

Clause 34 New section 55A inserted (Combined process for national policy statement and national environmental standard)

52. New **section 55A** provides for the joint development of an NPS and an NES.

53. The question of what should be covered in NPSs and NESs has been the subject of previous debate. The proposal could address this issue by assigning higher-level material to an NPS, and the detail, including rules where appropriate, into an accompanying NES.

54. Without knowing what the Government intends, we support this proposal, in principle. It could be used for developing national direction on: minerals exploration (permitted or controlled activity) and mining (discretionary activity, considered case by case); and for environmental compensation, including biodiversity offsets as an option.

Clause 37 New sections 58B to 58J and cross-heading inserted

55. This part of the Bill concerns the national planning template. New **section 58B** specifies that the NPT would provide for, among other things, matters that the Minister considers "nationally significant" or requiring "national consistency".

56. New **section 58C** provides for the NPT to contain objectives, policies, rules and methods, for incorporation into plans and policy statements. It can also incorporate material by reference.

57. New **section 58D** provides for the Minister to establish a process for developing an NPT, and the matters to have regard to are the same as those for an NPS.

58. New **section 58H** requires local bodies to adopt the NPT into the RPS and plans.

59. New **section 58I** requires the first national planning template to be prepared within two years of the Bill being enacted.

60. The national planning template concept could usefully provide national direction on such matters as: air quality; development in areas of national importance, e.g., outstanding natural landscapes, riparian margins and wetlands, heritage, and significant biodiversity; and, failing an NPS or NES on minerals, to provide for the particular issues to do with minerals (e.g., location specific, temporary use of land, site rehabilitation and post-closure management, highest value land-use, small footprint).

61. As a general observation, this mechanism looks to be better suited to objectives and policies for inclusion in RMA policy statements and plans, than rules and methods, however that would depend on the nature of the issue being addressed.

62. The process to develop the national planning template entails wide discretion by the Minister, and, therefore, uncertainty. If a Board of Inquiry process is envisaged, there would be significant cost and time attached. That is a concern, however, this would be a robust process.

63. On technical matters, where the science is well-founded, the Minister could opt for an efficient and effective Order-in-Council process.

64. Provisions in the NPT should be model provisions – rather than mandatory direction - to provide some flexibility for local government in addressing issues specific to their region or district.

65. The NPT could provide a consistent look and feel to RMA plans, where practicable. (For example, not all councils would be able to afford to develop e-plans.)

Clause 38 New subpart 2 of Part 5 and new subpart 3 heading in Part 5 inserted

66. This part of the Bill concerns iwi participation agreements.

67. New **section 58K** states the purpose of IPAs: "*an opportunity for local authorities and iwi authorities to discuss, agree, and record ways in which tangata whenua may, through iwi authorities, participate in the preparation, change, or review of a policy statement or plan*".

68. New **section 58L** provides for local authorities to invite local iwi to enter into IPAs.

69. New **section 58M** describes the content of IPAs, in particular, "*how an iwi authority party may participate in the preparation or change of a policy statement or plan*", "*how the parties will give effect to the requirements of any provision of any iwi participation legislation*", and "*whether any other arrangement agreed between the local authority and any 1 or more iwi authority parties that provides a role for those iwi authority parties in the preparation or change of a policy statement or plan should be maintained or, if applicable, modified or cancelled*".

70. Much of this subject matter is already part of council processes, in much of New Zealand. This is, therefore, a way of legislating for existing practices.

71. We recommend making it explicit that statutory advice provided by Maori must be done to further the purpose of the RMA, and that where Maori form part of a decision-making body, that they

work in committee with other decision-makers. That is to manage the issue of Maori having an influence (as the Treaty partner) in decisions that affect the broader community, however, without being accountable to that broader community, and to separate out the broader kaitiakitanga responsibility from the legitimate right of Maori to also advocate for their own interests.

Clause 52 New subparts 4 and 5 of Part 5 and new subpart 6 heading in Part 5 inserted

72. New **section 80A** links to new **Part 4 of Schedule 1**, which describes the collaborative planning process.

73. New **section 80B** provides for a streamlined planning process, e.g., to expedite the adoption of national planning templates into plans (refer also to Part 5 of Schedule 1).

74. New **section 80C** requires a local authority to seek Ministerial permission to enter into a collaborative planning process.

75. The streamlined process looks to be a necessary adjunct to the national planning template provisions, and is supported with reservations. It would be more robust and inclusive to follow a Schedule 1 or national policy statement process, given the likely import of the NPT.

76. The collaborative process concept, as detailed in Part 4 of Schedule 1 of the Bill, raises a number of questions:

- The criteria for the council's decision on whether or not to follow a collaborative process should include "any other relevant factor";
- Who is eligible to join a collaborative group (CG), and how is its make-up determined?
- How will the CG be resourced (time and money)?
- If a member of a CG becomes dissatisfied with the collaborative process, what avenue is provided to record that dissatisfaction, other than to not join a consensus?
- What is the definition of consensus?
- Collaborative processes are open to manipulation by individuals, and there are no safeguards provided to address that risk;
- Once the collaborative process has begun, there is no ability for a council to divert from the process to a Schedule 1 process, if the process breaks down;
- Appeal rights are limited, and that makes sense to respect the collaborative process; however, carries the risk of less than optimal planning outcomes; and
- If consensus provisions are developed by a CG, and if upheld through the process, submitters who disagree with that consensus will have no say, except an appeal right on a point of law.

77. All things considered, the collaborative planning process, as designed, is experimental - it is unknown whether or not it is workable. There are a lot of moving parts to the design.

78. The obvious suggestion of broadening appeal rights as a safeguard to ensuring good planning outcomes carries the difficulty that, if enacted, it would undermine the concept of collaboration, as the Land And Water Forum has previously argued.

79. We offer the view that the existing Schedule 1 process is a robust and effective and fair process:

    - Qualified people write a proposed plan; that is what they are employed to do by a council;
    - The public may submit on the plan, and view the submissions of others;
    - Participating parties may submit on others' submissions;
    - Council officers write or commission reports in response to submissions;
    - The above provides the basis for hearings, in which submitters may present further evidence or advocacy, to a panel of decision-makers;
    - That decision can be appealed on substance to the Environment Court, with provision for mediation on matters in dispute; and
    - An appeal right on points of law is available, to the High Court.

    To stray from this path, in which evidence is presented and tested, and to attempt a collaborative process, is arguably a leadership failure on the part of local government. Straterra considers this point to be a strong incentive against a council choosing to go down a collaboration path (except in limited circumstances where collaboration would make sense).

Clause 62 Section 104 amended (Consideration of applications)

80. **Section 104** to have added to it: "*After section 104 (1) (a), insert: (ab) any measure proposed by the applicant for the purpose of ensuring positive effects on the environment to offset any adverse effects on the environment that will or may result from allowing the activity*".

81. The proposed provision is too vague to be of any use. Does the term "offset" imply the meeting of a measurable standard of "no net loss"? If so, this is a fraught area.

82. As well, the provision could create an expectation on companies to offer voluntary offsets as part of applying for resource consents, in which case these offsets would not be voluntary any longer.

83. At issue is that there is no workable national-level policy framework for biodiversity offsets, or any other kind of environmental "offset" in the RMA context.

84. The Department of Conservation good practice guidance on biodiversity offsets is unworkable; legal practitioners are advising their clients to stay away from offsets. It is, therefore, unfortunate that DOC is advocating for the compulsory use of biodiversity offsets in RMA planning processes, despite being aware of concerns from end-users.

85. A national-level policy framework for biodiversity offsets would need to be developed before the question of voluntary offsets can be considered. The national planning template would be one avenue, the NPS on biodiversity, another; a specific NPS/NES covering environmental compensation, including biodiversity offsets as one option in the toolkit is still another.

86. We, therefore, recommend the deletion of this clause, as introducing unnecessary confusion, and as premature.

Clause 72 Section 149J amended (Minister to appoint board of inquiry)

87. **Section 149J** has added to it in new **(3A)** and **(3B)** the Ministerial power to appoint a Board of Inquiry. The Minister may invite the EPA to nominate candidates to a BOI, may appoint an EPA Board member to the BOI, and may set the terms of reference for the BOI. This proposal looks to be a carry-through from the EEZ Act (marine consent process).

88. The Environmental Protection Authority Briefing to Incoming Ministers ahead of the 2014 election drew attention to the need to align decision-making processes, for the EPA's effectiveness and efficiency.

89. We question whether it is necessary to provide for the appointment of an EPA Board member. Surely, appointments should be made on merit, taking into consideration the criteria specified under clause 73, below. (To be clear, that could include an EPA Board member, but not because they are an EPA board member.)

Clause 73 Section 149K amended (How members appointed)

90. **Section 149K (4)** is replaced with text specifying that the Minister will consider the need for members of a BOI to have "*knowledge, skill, and experience relating to this Act; the matter or type of matter that the board will be considering; and the local community; and the exercise of control over the manner of examining and cross-examining witnesses; and legal expertise; and technical expertise in relation to the matter or type of matter that the board will be considering*".

91. The proposal is supported. It is important that members of BOIs have the necessary capability to do their job, in each specific case.

92. The opportunity could be taken to make a procedural improvement to BOI processes, to lengthen the time frame to 12 months, from the current nine months, and provide for a "break" in proceedings, of one or two months, to allow for an applicant to consider and address concerns raised during the hearing process. This would provide an opportunity for iteration, as provided for under the current two-stage council-led and Environment Court processes.

93. The cost of BOI processes has been raised as an issue, however, may be outweighed by amendments to achieve an improved process.

Clause 74 New section 149KA inserted (EPA may make administrative decisions)

94. New **section 149KA** provides for the EPA to make administrative and ancillary decisions, or allow the BOI to make those decisions, and for the EPA to seek to minimise costs and avoid unnecessary delay when making such decisions.

95. This is supported, as logical, however a question is raised. Who will decide whether or not the EPA is minimising costs and avoiding unnecessary delay, and on what criteria?

Clause 81 New sections 149ZF and 149ZG inserted

96. New **section 149ZG** provides for the EPA or the BOI to stop working in relation to an application if the applicant has failed to pay costs owing to the EPA Within a specified time period. Once payment has been made – leaving aside the question of resolving any disputes over costs – work would resume.

97. This proposal is unworkable for at least two reasons:

- It effectively removes the ability for applicants to contest costs passed onto it by the EPA, which is a violation of natural justice, and is an abuse of the legal system;
- The provision could be used cynically by applicants or appellants as a way of holding up a process, either to buy time, or to frustrate proceedings.

98. Under sections 357B and 358 of the RMA, an applicant may dispute costs passed to it by regulators. It would be reasonable for the EPA or the BOI to stop working in the event of a dispute over costs, until that dispute is resolved.

99. We recommend the deletion of clause 81, because it is counterproductive

Clause 91 Section 268 replaced (Alternative dispute resolution)

100. The net effect of replaced **Section 268** and new **section 268A** is to provide more specificity around "alternative dispute resolution", e.g., mediation, before or during an Environment Court hearing, with participation considered mandatory, except under limited circumstances.

101. This proposal is supported, as providing clarity.

Clause 93 New section 277A inserted (Powers of Environment Court in relation to evidence heard on appeal by way of rehearing)

102. New **section 277A** provides for new evidence to be presented to the Environment Court in the context of an appeal, subject to conditions, if that evidence was unable to be presented at an earlier stage.

103. This provision tightens up the current wording of the Act. If a party wishes to introduce new evidence, they will have to be able to explain the circumstances in support of that application. It is a double-edged sword: it could benefit the applicant or not.

Clause 105 New sections 360D and 360E inserted

104. New **section 360D** provides for regulations that can prohibit or permit specified rules. The Governor-General by Order in Council can prevent a council from introducing a particular type of rule, among many other possibilities, or do the opposite, introduce rules that permit a particular land-use.

105. This provision could be useful to prevent rules being introduced in RMA plans in relation to heritage, climate change, or hazardous substances, as prime examples, to avoid duplication with other legislation.

106. A rule could be introduced to provide for minerals exploration drilling everywhere in New Zealand, subject to standard conditions, either as a controlled or a permitted activity (regulated, for example, under an NES), or to require that economic development proposals in areas where matters of national importance apply are to be assessed on their merits, acknowledging that there would be a high bar on obtaining resource consents, in consideration of the values in the land.

107. We recommend the scope of this provision to be tightly confined to avoid unintended outcomes.

Clause 120 New section 41D inserted (Striking out submissions)

108. New **section 41D** takes in provisions from the EEZ Act to provide for decision-makers to strike out frivolous or vexatious submissions, or submissions that make no relevant case, or if it would be an abuse of the hearing process to accept the submission.

109. In practice, it is very difficult to strike out a submission. So, this is arguably an empty gesture, although, probably, a necessary one.

EEZ Act 2012 reform

EXECUTIVE SUMMARY

Policy statements

1. The key aspect of the EEZ Act reform proposals is policy statements to support decision-making. That is strongly supported as consistent with Straterra's previous advocacy on the EEZ Act regime, in light of the marine consent processes for Trans-Tasman Resources, and Chatham Rock Phosphate.

2. In determining a process for developing policy statements, the Minister has broad discretion. Where matters to be addressed are technical in nature, and based on well-founded science, an Order-in-Council process would be appropriate. Examples include: uncertainty, risk, the need for caution, adaptive management, other marine management regimes, and applying the decision-making criteria in section 59 of the principal Act.

Boards of Inquiry

3. The proposals concerning Boards of Inquiry are broadly supported as strengthening the qualifications and skill levels of members of the decision-making body on marine consents. While there is a perception to be managed of political interference when appointing BOIs, Straterra is not aware of any such concerns under the RMA.

Other matters

4. The provision for mediation on areas of dispute during marine consent hearings is supported, and we recommend tighter wording to increase its usefulness.

5. Applications for marine discharge consents and marine dumping consents should include the avenue of adaptive management, where appropriate. It looks like a drafting error has been made in the Bill. The question of human health is noted in this connection, and should be defined in the Act.

6. On the provision for owners of offshore installations to prepare a decommissioning plan, note that many decades may elapse before decommissioning occurs, requiring careful drafting of this provision for reasonable regulation in this area.

7. The provision to reduce one layer of appeal rights is supported as logical and consistent with current practice under the RMA.

8. The EPA or a BOI should not be able to stop work if costs are not paid, otherwise, it would not be possible for a marine consent application to dispute costs passed onto it form the EPA. As well, the provisions could be used cynically to frustrate or hold up a process.

9. Process or procedural amendments for the EPA should be aimed at promoting the administration of process, rather than the provision of expert advice. Arguably, the EPA is set up to do the former, and not the latter.

RECOMMENDATIONS

10. Straterra recommends the Local Government and Environment Select Committee to:

a) Note Straterra's support for **clause 184** providing a definition of "marine consent authority" to separate out the decision-making body on a marine consent application (Board of Inquiry) from the EPA (as process managers);

b) Note Straterra's support for the introduction of policy statements (**clause 188**) to support decision-making, e.g., on uncertainty, risk, adaptive management, other marine management regimes, and principles and criteria for making decisions;

c) In relation to Rec. (b), agree to limit the Minister's discretion as to the process for developing policy statements, by specifying an Order-in-Council process for matters of a technical nature, where they are based on well-founded science;

d) Agree to clarify the intent of proposed new section 42 (**clause 188**), to avoid duplication with new sections 55 and 57 (to do with BOIs), e.g., that this provision is intended as an application completeness check to be carried out by the EPA;

e) Agree to clarify the intent of new section 45 (**clause 188**) relating to more than one marine consent application for a project, e.g., to include an application for a marine discharge consent;

f) Note Straterra's support for decision-makers on marine consent applications to be elevated to a BOI (**clause 188**, new section 53), with appointments made on merit;

g) In relation to Rec. (f), note Straterra's support for including an EPA Board member on a BOI as an option and not a requirement, to ensure BOIs are staffed with people with appropriate skills, and to limit the chair position to a sitting or retired judge, as having essential competencies;

h) In relation to Rec. (f), agree to add to the phrase "*relevant technical expertise*", the words "*in direct relation to the activity*", for completeness and accuracy;

i) Note Straterra's support for mediation or meetings to resolve disputes during the marine consent process (**clause 188**, new section 58), and agree to strengthen the wording from "*may request*" mediation to "*may direct*", to strongly encourage mediation where this would be useful;

j) In relation to Rec. (i), agree to consider providing for interim decision-making during a marine consent hearing to provide a fair opportunity to the applicant to modify its approach in response to concerns raised;

k) Note Straterra's concern over new section 59 (2A) (**clause 190**), which refers to "*the effects on human health of the discharge of harmful substances if consent is granted*", and agree to consider the inclusion of a definition of "human health";

l) Agree to delete **clause 192** in relation to adaptive management because there is no reason to exclude the application of adaptive management to applications for marine discharge consents and marine dumping consents;

m) Note Straterra's concern over the workability of **clause 217** on decommissioning plans for offshore installations;

n) Note Straterra's support for **clause 224** providing for leave to be sought to appeal a High Court decision to either the Supreme Court or the Court of Appeal but not both, as logical and reflecting current practice in the BOI regime under the RMA;

o) Agree to delete **clause 229** providing for the EPA or a BOI to suspend work in relation to an application if costs invoiced to an applicant are not paid in a timely fashion, as unreasonably preventing an applicant from disputing costs; and

p) Agree to amend **Schedule 8** of the Bill, proposing a new Schedule 3, providing for the EPA to commission reports and provide advice, to focus more on process administration, and less on the EPA as an expert body, for clarity and workability of marine consent processes.

DISCUSSION OF SPECIFIC CLAUSES

Clause 184 Section 4 amended (Interpretation)

11. New **section 4 (3)** provides a definition of "marine consent authority". This separates the decision-making body on a marine consent application from the EPA. That is supported.

Clause 188 Sections 35 to 58 and cross-headings replaced

Policy statements

12. New **section 37A** provides for purpose and scope to policy statements, to support decision-making (section 37A (1)), with reference to "actual or potential effects" of development (section 37A (3) (a)).

13. New **section 37B (b)** provides for the Minister to "establish a process" for public participation in developing a policy statement.

14. New **section 37C** provides for matters that the Minister "must consider", encompassing those provided in section 37A.

15. Policy statements could address, and provide statutory guidance on matters such as: uncertainty, risk, adaptive management, other marine management regimes, and principles and criteria for making decisions. Straterra has previously provided extensive advice to the Government on these topics in light of recent adverse decisions on seabed mining proposals. The concept is, therefore, strongly supported.

16. At issue is the process that would be established for developing policy statements, given that the Minister has very broad discretion.

17. Where the matters to be addressed via a policy statement are technical in nature, and based on well-founded science, there is no need for a public consultation process of the sort undertaken when developing RMA national policy statements. An Order-in-Council process would be appropriate in such cases, and would be efficient.

Content of marine consent applications

18. New **section 38** describes in very general terms what a marine consent application must contain.

19. New **section 39** lists matters required to be considered when preparing an impact assessment.

20. New **section 41** provides 20 working days for the EPA to determine if the application is complete.

21. New **section 42** provides for the EPA, if it wishes, to commission an independent review of the impact assessment. There is no indication as to whether such a review may contain recommendations.

22. New **section 43** provides an applicant 5 working days to provide further information, in respect of completing an incomplete application.

23. We have a concern with new **section 42** because it looks to be a duplication of new **sections 55** and **57**, concerning the powers and functions of Boards of Inquiry. Perhaps, **section 42** is intended as a completeness check to be carried out by the EPA, before the marine consent application goes to a hearing. If so, this should be clarified.

24. New **section 45** sets out how the EPA can deal with more than one marine consent application relating to the same project. We are unsure as to the purpose of this new provision? Does this include applications for marine discharge or dumping consents? If not, why not?

Boards of Inquiry

25. New **section 53** requires the Minister to appoint a Board of Inquiry as the decision-maker for a marine consent application. The Minister may set ToRs, as he/she sees fit. Three to five "suitable persons" must be appointed. The Minister may invite the EPA to nominate candidates, and may appoint one EPA Board member onto the BOI.

26. The Minister must consider the following skills to be included: the Act, the proposed activity, tikanga Maori, legal expertise, and "relevant technical expertise". The Minister must appoint a Chair, and that person may be a current, former or retired Environment Court judge, or a retired High Court judge.

27. This proposal looks to align the BOI process under the RMA with the EEZ Act (noting that a key concern with the BOI model on land for nationally-significant projects is cost).

28. A key positive of the proposal is to have an EPA Board member on the BOI as an option, as opposed to the current mandatory requirement. That is important to ensure that BOIs are staffed with people with the appropriate skills.

29. The limitation of the chair position to a sitting or retired judge is important. Such persons have: experience in understanding evidence and dealing with evidence; dealing with risk from a legal perspective; separating opinion from fact; dealing with issues where these are in dispute, and

where there is common agreement among experts; running and managing cross-examination; and exercising the right to make a broader inquiry into issues. These are essential competencies for a BOI chair to have.

30. As to the concern that is sometimes raised of political interference in the appointment of BOIs, we are unaware of any such concern being raised on land.

31. We recommend adding to the phrase "*relevant technical expertise*", the words "*in direct relation to the activity*", for completeness and accuracy.

Further information, review of information

32. New **section 55** provides for a BOI to request further information from the applicant.

33. New **section 57** provides for a "marine consent authority", which could be a BOI or the EPA, depending on the point in the process, to commission an independent review of the impact assessment, seek other advice or a report on the application or the proposed activity.

34. We assume that these proposals are to clarify the existing information gathering provisions.

Mediation

35. New **section 58** provides for mediation or meetings to resolve disputes among the parties in relation to a marine consent application.

36. We had asked in earlier advocacy for decision-makers to have the power to make interim decisions, to provide a fair opportunity for applicants to modify their applications during the hearings process, in response to concerns raised by others. This proposal looks to fit broadly into that category, and resembles that already provided for under the RMA.

37. It is important that this provision is not mandatory, and for it to be without prejudice, for this mechanism to be of use to the marine consent process.

38. Nonetheless, we recommend a strengthening of wording is recommended from "*may request*" mediation to "*may direct*", to strongly encourage mediation where this would be useful for resolving disputes in the context of a hearing.

39. A party would still be able to refuse to participate in mediation, and this is the practice currently followed under the RMA. Decision-makers would then weigh such a course of action when making a decision. In other words, if the BOI directs a party to take part in mediation, that party will have a strong incentive to participate.

40. That leaves the issue of interim decision-making to provide a fair opportunity to the applicant during a hearing to modify its approach in response to concerns raised, in this case, by decision-makers. Within the grouping of **sections 54 – 58**, a provision is needed to provide for that to occur.

Clause 190 Section 59 amended (Environmental Protection Authority's consideration of application)

41. New **section 59 (2A)** requires the EPA in relation to a "marine discharge consent" / "marine dumping consent" to take into account a number of matters, including "*the effects on human health of the discharge of harmful substances if consent is granted*".

42. At issue is what is meant by "human health". We recommend the inclusion of a definition of human health to clarify the meaning of this term.

Clause 192 Section 61 amended (Information principles)

43. The replacement of **section 61 (4)** of the principal Act excludes the application of adaptive management to applications for marine discharge consents and marine dumping consents.

44. It looks like a drafting error has been made. Certainly, if a vessel is dumped, there is no ability for adaptive management. But that circumstance does not apply to all covered by this provision, e.g., ongoing operations involving dumping or discharges, e.g., dumping of dredge spoil, and sediment plumes. In such cases, adaptive management would be a relevant management approach, and should be included.

45. We, therefore, recommend the deletion of this provision.

Clause 217 New subpart 4 of new Part 3A inserted

46. New **section 100A** provides for the EPA to require owners of offshore installations to prepare a decommissioning plan. An anchored vessel, where the anchors are fixed, would be an offshore installation.

47. This may not be an issue for seabed mining, except in the case of mineral ore processing vessels stationed at sea. The concern is that there are practical difficulties with requiring action on this topic upfront when decommissioning could occur many years later.

Clause 224 New subpart 1B of Part 4 inserted

48. New **section 113I** provides for any party to a High Court appeal to seek leave to apply to the Supreme Court for a further appeal. That court may grant or deny the request, or remit it to the Court of Appeal. In that event, no appeal to the Supreme Court can be made.

49. Supported, as logical and reflecting current practice under the BOI regime under the RMA.

Clause 229 New section 147A inserted (Process may be suspended if costs outstanding)

50. New **section 147A** provides for the EPA to suspend work in relation to an application if costs invoiced to an applicant are not paid within 20 working days. The EPA can also direct a BOI to suspend work. Both must resume their duties if the costs are subsequently paid. An affected applicant can lodge an objection in relation to costs, however, that does not affect the rights of the EPA and the BOI to stop work.

51. As discussed under the RMA reform part of this submission, the proposal is fraught because it would effectively prevent an applicant from disputing costs passed to it by the EPA. In the case of a marine consent application, large sums of money can be involved, millions of dollars. It is unreasonable for the regulator to escape scrutiny when passing on costs to the applicant.

52. We recommend the deletion of this provision.

Schedule 8 New Schedules 2 and 3 of Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 inserted

53. The new **Schedule 3** covers process and procedure for hearings, previously incorporated into the main body of the Act, as we understand it. When supporting a BOI, there are a number of things the EPA can do, such as "*prepare or commission a report on the key issues relating to the application and the activity*" (section 1 (2) (a)). The EPA can provide "technical advice" (section 3 (a)).

54. This schedule looks to empower the EPA to intervene in the running of a marine consent process, which ought to be the province of the BOI.

55. In our view the EPA is set up to be a process administrator, and it carries out this role very well.

56. On the other hand, the EPA is not as well set up to be an expert body, in our view. This is an unnecessary attribute for the EPA to hold, because of the expense of holding permanent in-house subject matter expertise.

Conservation Act 1987 reform

EXECUTIVE SUMMARY

1. For some time Straterra has advocated for a review of the Conservation Act 1987, on the basis that it is outdated.

2. The Act needs to address the fact that 4500 businesses operate on public conservation land, as well as 110 mines and quarries, and should provide explicit and positive recognition when regulating these businesses.

3. With the advent of the statutory land management planning system in 1990, land classifications have become largely obsolete, especially since the introduction of General Policies in 2005.

4. Changes to the structure of the Department of Conservation warrant changes to the New Zealand Conservation Authority and the conservation boards, established in 1990.

5. The Wildlife Act 1953, Wild Animal Control Act 1977, and the Marine Mammals Protection Act 1978 were superseded by the Conservation Act when passed in 1987. These pieces of legislation should be absorbed into the Conservation Act.

6. Specifically, Straterra proposes to:

- Amend the definition of "conservation" to recognise and provide for the 4500 businesses operating under concession on public conservation land, as well as 110 mines and quarries, including shingle extraction operations;

- Insert definitions of "minerals" and "mining activity", to provide an exemption for all aspects of activities in relation to Crown-owned minerals from the concessions regime, because relevant matters are already addressed via access arrangements under the Crown Minerals Act 1991;

- Remove statutory land classifications that have been rendered obsolete by the statutory land management planning system - stewardship area, amenity area, wilderness area, wildlife management area, watercourse area, conservation park, ecological area;

- Amend DOC's functions to provide positively for businesses operating on conservation land;

- Amend DOC's functions to clarify the meaning of advocating for conservation generally, as being subject to applicable legislation, e.g., the purpose of the RMA;

- Amend the functions of the NZCA and conservation boards to focus on an advisory role, and to remove an approval or auditing role for conservation management strategies and the like;

- Absorb the Wildlife Act 1953, Wild Animal Control Act 1977, and the Marine Mammals Protection Act 1978 into the Conservation Act, as superseded;

- Broaden the provision for land exchanges to all conservation areas (except for "sanctuary areas", national parks, and reserves under the Reserves Act 1977);

- Ditto for land disposals; and
- Abolish conservation management plans, as unnecessary.

RECOMMENDATIONS

7. Straterra recommends the Local Government and Environment Select Committee to:

Definitions

a) Agree to amend the definition of conservation (**section 2**) to recognise and provide appropriately for economic activities on public conservation land (as per the proposed amendments set out in para. 11);

b) Agree to include in **section 2** definitions of minerals and mining activity, and provided in para. 11;

c) Agree to remove land classifications from **section 2** that have been rendered obsolete by the statutory land management planning system introduced in 1990, and with General Policies in 2005 (para. 11);

Functions of the Department, the NZCA and of conservation boards

d) Agree to amend the Department's functions (**section 6 (b)**) to clarify that its conservation advocacy function must be conducted to further the purpose of applicable legislation (para. 12);

e) Agree to amend the Department's functions (**section 6 (e**) to recognise and provide for economic activities on conservation land, as proposed in para. 12;

f) Agree to amend the functions of the New Zealand Conservation Authority (**section 6B**) to one of advice on the development of statutory land management planning documents, and not approval, to enable the Department to meets is accountability requirements to government (paras. 13-18);

g) In relation to Rec. (f), agree to apply the same rationale to amending the functions of the conservation boards (**section 6M**), (para. 19);

Miscellaneous

h) Agree to absorb the Wildlife Act 1953, Wild Animal Control Act 1977, and the Marine Mammals Protection Act 1978 into the Conservation Act, to rationalise conservation legislation that has been superseded by the Conservation Act;

i) Agree to amend **section 8** on conservation areas for consistency with other proposed amendments (para. 20);

j) Agree to broaden the scope of land exchanges under **section 16A** to include all conservation land, except national parks (para. 21);

Statutory land management planning

k) Agree to delete reference to conservation management plans (CMPs) in **section 17A** (para. 22);

l) Agree to amend **section 17C** to remove references to legislation to be replaced or absorbed into the Act (para. 23);

m) Agree to amend **section 17D** to remove references to legislation to be replaced or absorbed into the Act, and remove reference to CMPs, for consistency (paras. 24-25);

n) Agree to repeal **section 17E**, on the basis that CMPs are unnecessary (para. 26);

o) Agree to amend the procedure for amending conservation management strategies (**section 17F**) to provide for an advisory function for conservation boards and the NZCA, and not an approval function (para. 27);

p) Agree to repeal **section 17G**, to remove reference to conservation management plans (para. 28);

q) Agree to amend **section 17H** to remove references to conservation management plans, and in relation to conservation management strategies remove unnecessary consultation with conservation boards and the NZCA (para. 29);

r) Agree to amend **section 17I** to remove references to conservation management plans, and in relation to conservation management strategies, to remove unnecessary consultation with conservation boards and the NZCA (para. 30);

Concessions regime

s) Agree to amend **section 17O** to place the regulation of commercial or business activities on public conservation land into a positive construct, as proposed in paras. 31-34;

t) Note that definitions for minerals activities to be included in **section 2** would exempt exploration and mining proposals from the concessions regime, and thereby eliminate regulatory duplication with access arrangements under the Crown Minerals Act 1991;

Land classifications

u) Agree to amend **sections 18** and **18AA** to remove unnecessary land classifications (paras. 35-37);

v) Agree to repeal **sections 19-21, 23, 23A, 23B** and **25** as unnecessary and superseded by the statutory land management planning system (paras. 38-40, 42-45);

w) Agree to retain **section 22** on sanctuary areas (para. 41); and

x) Agree to extend the scope of the Land disposal provisions in **section 26** to any conservation area (except national parks) (para. 46).

DISCUSSION OF SPECIFIC SECTIONS OF THE CONSERVATION ACT 1987

Introduction

8. Part 4 of the Bill proposes minor changes to the Part 3B of the Conservation Act 1987 (the concessions regime).

9. We take the opportunity to propose a thorough review of this Act, on the basis that it is outdated, and fails to recognise and provide adequately for the round 4500 businesses operating under concessions on public conservation land, and the round 110 mines and quarries on that land, including shingle extraction from riverbeds.

10. That there are a large number of businesses operating on public conservation land is not surprising; it comprises around one-third of New Zealand's land area. It is unlikely that this situation was envisaged when the Act was written and taken through the Parliamentary process in late 1986 and early 1987.

Section 2 Interpretation

11. A number of definitions require amendment, deletion or insertion to:

- Recognise and provide for the 4500 businesses operating under concession on public conservation land, as well as 110 mines and quarries, including shingle extraction operations;
- Remove land classifications that have been rendered obsolete by the statutory land management planning system;

Conservation *m*eans the preservation, ~~and~~ protection and management of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, ~~and~~ safeguarding the options of future generations, and recognizing and providing for appropriate development

Minerals has the same meaning as in section 2 of the Crown Minerals Act 1991

Mining activity has the same meaning as **exploration**, **mining, mining operations** and **prospecting** in section 2 of the Crown Minerals Act 1991, and, to avoid doubt, includes all ancillary infrastructure and operations related to the activity, such as access roads, helicopter movements, management of waste rock, tailings dams and waste empoundments, rock and mineral processing facilities, administration buildings, parking for vehicles, and the like

~~***Stewardship area*** means a conservation area that is not —~~

- ~~(a)a marginal strip; or~~
- ~~(b)a watercourse area; or~~
- ~~(c)land held under this Act for 1 or more of the purposes described in ; or~~
- ~~(d)land in respect of which an interest is held under this Act for 1 or more of the purposes described in~~

~~***Watercourse area*** means land for the time being declared to be such an area under section 23~~

~~(2) In this Act, unless the context otherwise requires, ***conservation park***, ***ecological area***, ***sanctuary area***, or***wilderness area***, mean an area held for ecological, park, sanctuary, or wilderness purposes under section 18AA(1)or 18(1).~~

Section 6 Functions of Department

12. The Department's functions require amendment to recognise and provide adequately for the many businesses operating on public conservation lands and waters, which cover around one-third of New Zealand's land area, and to clarify the meaning of advocating for conservation:

> The functions of the Department are to administer this Act and the enactments specified in Schedule 1, and, subject to this Act and those enactments and to the directions (if any) of the Minister,—
>
> - (a)to manage for conservation purposes, all land, and all other natural and historic resources, for the time being held under this Act, and all other land and natural and historic resources whose owner agrees with the Minister that they should be managed by the Department:
> - (ab)to preserve so far as is practicable all indigenous freshwater fisheries, and protect recreational freshwater fisheries and freshwater fish habitats:
> - (b)to advocate the conservation of natural and historic resources generally, subject to the purpose of applicable legislation:
> - (c)to promote the benefits to present and future generations of—
>   - (i)the conservation of natural and historic resources generally and the natural and historic resources of New Zealand in particular; and
>   - (ii)the conservation of the natural and historic resources of New Zealand's sub-antarctic islands and, consistently with all relevant international agreements, of the Ross Dependency and Antarctica generally; and
>   - (iii)international co-operation on matters relating to conservation:
> - (d)to prepare, provide, disseminate, promote, and publicise educational and promotional material relating to conservation:
> - (e)to the extent that the use of any natural or historic resource for recreation or tourism is not inconsistent with its conservation, to foster the use of natural and historic resources for recreation, ~~and to~~ allow their use for tourism, and to recognise and provide for appropriate development:
> - (f)to advise the Minister on matters relating to any of those functions or to conservation generally:
> - (g)every other function conferred on it by any other enactment.

Section 6B Functions of Authority

13. With the passage of time the structure of the Department has changed, and, therefore, the relationship between the Department and the New Zealand Conservation Authority has changed. The Act needs amendment to recognise this reality.

14. A particular problem is the role of the NZCA in approving statutory land management planning documents. That responsibility places a burden on the NZCA, extends the timeframes for planning processes, and – crucially – adversely affects the Department's ability to meet its state sector accountability requirements (Public Finance Act 1989, e.g., sections 38-43, amended in 2013 and 2014). To be blunt, it is not possible for the Department to guarantee delivery on its Statement of Intent if it has no ability to approve objectives and policies for conservation land management. The Department is placed in an invidious or an impossible position.

15. In any event, the Department has developed the in-house capability to run statutory land management processes, as would be expected with the passage of time since the relevant amendments to the Act were made in 1990.

16. That being the case, it may be more appropriate for the NZCA to retain its advisory role, and have a role in planning-related public hearings, however, not an approval role, or an auditing or review role. On the last, if there were a particular imperative for review, the Office of the Parliamentary Commissioner for the Environment could fulfil that role, as has occurred in recent years (at its initiative) on specific aspects of conservation management.

17. Straterra proposes the absorption of the Wildlife Act 1953, Wild Animal Control Act 1977, and the Marine Mammals Protection Act 1978 into the Conservation Act, to rationalise conservation legislation that has been superseded by the Conservation Act, and by subsequent amendments to that Act, in particular, the 1990 amendments, establishing the NZCA, conservation boards and the statutory land management planning system.

18. We are also proposing the removal of provisions classifying land other than under the Reserves Act 1977 or the National Parks Act 1980, as anachronistic and superseded by the 1990 amendments to the Conservation Act.

(1)The functions of the Authority shall be—

- (a)to advise the Minister on statements of general policy prepared under ~~the Wildlife Act 1953,~~ the Marine Reserves Act 1971, the Reserves Act 1977, ~~the Wild Animal Control Act 1977, the Marine Mammals Protection Act 1978,~~ and this Act:

- (b)to advise the Minister on ~~approve~~ conservation management strategies ~~and conservation management plans~~, and on the review and amendment of ~~such strategies and plans~~, as required under ~~the Wildlife Act 1953,~~ the Marine Reserves Act 1971, the Reserves Act 1977, ~~the Wild Animal Control Act 1977, the Marine Mammals Protection Act 1978~~, the National Parks Act 1980, and this Act:

- ~~(c)to review and report to the Minister or the Director-General on the effectiveness of the Department's administration of general policies prepared under the Wildlife Act 1953,~~

~~the Marine Reserves Act 1971, theReserves Act 1977, the Wild Animal Control Act 1977, the Marine Mammals Protection Act 1978, and this Act:~~

- (d)to investigate any nature conservation or other conservation matters the Authority considers are of national importance, and to advise the Minister or the Director-General, as appropriate, on such matters:

- ~~(e)to consider and make proposals for the change of status or classification of areas of national and international importance:~~

- (f)[Repealed]

- (g)to encourage and participate in educational and publicity activities for the purposes of bringing about a better understanding of nature conservation in New Zealand:

- (h)to advise the Minister and the Director-General annually on priorities for the expenditure of money:

- (i)to liaise with the New Zealand Fish and Game Council:

- (j)to exercise such powers and functions as may be delegated to it by the Minister under this Act or any other Act.

(2)The Authority shall have such other functions as are conferred on it by or under this Act or any other Act.

Section 6M Functions of Boards

19. Similar issues apply here, as above:

(1)The functions of each Board shall be—

- (a)to advise on ~~recommend the approval by the Conservation Authority of~~ conservation management strategies, and the review and amendment of such strategies, under the relevant enactments:

- ~~(b)to approve conservation management plans, and the review and amendment of such plans, under the relevant enactments:~~

- (c)to advise the Conservation Authority and the Director-General on the implementation of conservation management strategies ~~and conservation management plans~~ for areas within the jurisdiction of the Board:

  - ~~(d)~~to advise the Conservation Authority or the Director-General on ~~—~~

  - ~~(i)on any proposed change of status or classification of any area of national or international importance; and~~

  - ~~(ii)on~~ any ~~other~~ conservation matter relating to any area within the jurisdiction of the Board:

- (e)[Repealed]

- (f)to liaise with any Fish and Game Council on matters within the jurisdiction of the Board:

- (g)to exercise such powers and functions as may be delegated to it by the Minister under this Act or any other Act.

(2)Every Board shall have such other functions as are conferred on it by or under this Act or any other Act.

Section 8 Conservation area may become reserve, national park, etc

20. Amendment to this section is necessary to be consistent with our proposal to remove provisions classifying land other than under the Reserves Act 1977 or the National Parks Act 1980, as anachronistic and superseded by the 1990 amendments to the Conservation Act.

(1)Nothing in this Act shall prevent any conservation area's becoming a reserve, sanctuary, refuge, or national park under any enactment other than this Act administered by the Department.

(1A)The Minister may from time to time, by notice in the *Gazette*, declare any conservation area to be a reserve under the Reserves Act 1977 and to have a classification under that Act, or to be included in any existing reserve under that Act, and may in like manner amend or revoke any such notice; and every such declaration shall have effect as a reservation under that Act for the purposes specified in the notice.

(1B)Subsection (1A) is subject to subsection (4).

(2)Upon becoming a reserve, sanctuary, refuge, or national park, a conservation area shall cease to be a conservation area, notwithstanding that there has been no compliance with section 16 or section 26.

(3)Upon the revocation of any notice given under subsection (1A), the land to which that notice related shall become a conservation area and have the same status as it had immediately before the commencement of that notice.

(4)The Minister must not act under subsection (1A) to declare a conservation area—

- (a)to be a nature reserve or a scientific reserve under the Reserves Act 1977; or
- (b)to be included in an existing nature reserve or scientific reserve under that Act.

Section 16A Exchanges of conservation ~~stewardship~~ areas

21. The amendments proposed are for consistency with proposals to repeal various land classifications, including stewardship areas, as anachronistic and superseded. We understand the NZCA is preparing advice to the Minister and draft guidance for land exchanges under section 16A. The scope could be extended beyond stewardship areas.

(1)Subject to subsections (2) and (3), the Minister may, by notice in the *Gazette*, authorise the exchange of any conservation ~~stewardship~~ area or any part of any ~~stewardship~~ conservation area for any other land.

(2)The Minister shall not authorise any such exchange unless the Minister is satisfied, after consultation with the local Conservation Board, that the exchange will enhance the conservation values of land managed by the Department and promote the purposes of this Act.

(3)All land acquired by the Crown under this section shall be held for such conservation purposes as the Minister may specify in respect of that land by notice in the *Gazette*.

(4)The Minister may authorise the payment or receipt by the Crown of money by way of equality of exchange in any case under this section; and all money so received shall be paid into the Department of Conservation Grants and Gifts Trust Account, and shall be applied, without further appropriation than this section, for the acquisition of land under this Act or the Reserves Act 1977 or the National Parks Act 1980.

(5)The Minister or the Director-General may, on behalf of the Crown, do all such things as may be necessary to effect any exchange authorised under this section.

(6)Upon the transfer of any conservation~~stewardship~~ area or any part of any conservation~~stewardship~~ area under this section, that land shall cease to be subject to this Act.

(7)Nothing in section 26 or section 49 shall apply to the exchange of land under this section.

(7A)Nothing in section 40 of the Public Works Act 1981 applies to the exchange of land under this section.

(8)District Land Registrars are hereby authorised and directed to make such entries in registers and do all such other things as may be necessary to give effect to exchanges authorised under this section.

Section 17A Conservation areas to be managed by Department

22. The insertion of this section in 1990 (and Part 3A of the Act generally) has rendered obsolete the need to have land classifications, e.g., stewardship area. That is particularly the case with the introduction of General Policies for conservation, and for national parks, in 2005 (provided for under section 17B). Section 17A is reproduced below for ease of reference, with amended text to remove reference to conservation management plans:

Subject to this Act, the Department shall administer and manage all conservation areas and natural and historic resources in accordance with—

- (a)statements of general policy approved under section 17B or section 17C; and
- (b)conservation management strategies, ~~conservation management plans,~~ and freshwater fisheries management plans.

Section 17C General policy under more than 1 Act

23. Amendments are proposed for consistency with our proposal to absorb some conservation legislation into the Conservation Act:

(1)The Director-General may from time to time prepare and recommend for approval by the Minister a general statement of policy for any area or areas of land or water, or for any natural or historic resources, managed by the Department for the purposes of the ~~Wildlife Act 1953,~~ the Marine Reserves Act 1971, the Reserves Act 1977, ~~the~~Wild Animal Control Act 1977, ~~the~~ Marine Mammals Protection Act 1978, or this Act, or any of them.

(2)Where any part of any such statement of policy is subject to any of the Acts referred to in subsection (1), it may be approved only in accordance with the relevant approval procedures set out in that Act; and the relevant provisions of that Act shall apply accordingly.

Section 17D Conservation management strategies

24. Amendments are proposed for consistency with advocacy on absorbing some conservation legislation into the Conservation Act, and with other proposals.

25. The concept of conservation management plans has become redundant. We understand that the Department no longer prepares CMPs, as unnecessary in the context of conservation management strategies, and General Policies.

(1)The purpose of a conservation management strategy is to implement general policies and establish objectives for the integrated management of natural and historic resources, including any species, managed by the Department under ~~the Wildlife Act 1953~~, the Marine Reserves Act 1971, the Reserves Act 1977, ~~the Wild Animal Control Act 1977, the Marine Mammals Protection Act 1978~~, the National Parks Act 1980 Hauraki Gulf Marine Park Act 2000, or this Act, or any of them, and for recreation, tourism, development, and other conservation purposes.

(2)Within 5 years after the commencement of this section, such conservation management strategies as may be necessary to establish such objectives for all areas managed by the Department shall be prepared by the Director-General, in consultation with ~~for approval by~~ the Conservation Authority in accordance with section 17F.

(3)Subject to this Act, the Director-General shall determine the boundaries of a conservation management strategy.

(4)Nothing in any conservation management strategy shall—

- (a)derogate from any provision in this Act or any other Act; or
- (b)derogate from any general policy approved under any of the Acts referred to in subsection (1); or
- (c)affect any agreement or arrangement entered into under this Act or any other Act between the Minister and any land owner other than the Crown or between the Director-General and any such land owner.

~~(5)A conservation management strategy may require the preparation of a conservation management plan under any Act specified in Schedule 1 other than the National Parks Act 1980.~~

~~(6)Any conservation management plan approved in respect of any conservation park or under the National Parks Act 1980 may be approved as a conservation management strategy by the Conservation Authority in accordance with paragraphs (m) to (p) of section 17F, as if it were a draft conservation management strategy.~~

(7)A conservation management strategy shall identify and describe all protected areas managed by the Department within the boundaries of the strategy.

(8)When preparing a conservation management strategy, the Director-General shall have regard to any relevant concessions and access arrangements under the Crown Minerals Act 1991 for the

time being in force and to existing management plans under this Act or any Act specified in Schedule 1.

Section 17E Conservation management plans

26. We propose the repeal of section 17E, on the basis that conservation management plans are unnecessary, as discussed above.

Section 17F Procedure for preparation and approval of conservation management strategies

27. As discussed above.

The following provisions shall apply to the preparation and approval of draft conservation management strategies:

- (a)every draft shall be prepared by the Director-General in consultation with the Conservation Boards affected by it and such other persons or organisations, as the Director-General considers practicable and appropriate, and then notified in accordance with section 49(1) and to the appropriate regional councils and territorial authorities within the meaning of the Local Government Act 2002 and to the appropriate iwi authorities, and that provision shall apply as if the notice were required to be given by the Minister:
- (b)every notice under paragraph (a) shall—
    - (i)state that the draft strategy is available for inspection at the places and times specified in the notice; and
    - (ii)call upon persons or organisations interested to lodge with the Director-General submissions on the draft before the date specified in that behalf in the notice, being a date not less than 40 working days after the date of the publication of the notice:
- (c)any person or organisation may make written submissions to the Director-General on the draft at the place and before the date specified in that behalf in the notice:
- (d)the Director-General may, after consultation with the Conservation Boards affected, obtain public opinion of the draft by any other means from any person or organisation:
- (e)from the date of public notification of a draft until public opinion of it has been made known to the Director-General, the draft shall be made available by the Director-General for public inspection during normal office hours, in such places and quantities as are likely to encourage public participation in the development of the proposal:
- (f)the Director-General shall give every person or organisation who or which, in making any submissions on the draft, asked to be heard in support of his or her or its submissions a reasonable opportunity of appearing before a meeting of representatives of the Director-General and the Conservation Boards affected:
- (g)representatives of the Director-General and the Conservation Boards affected may hear submissions from any other person or organisations consulted on the draft:
- (h)the Director-General shall prepare a summary of the submissions received on the draft and public opinion made known about it:

- (i)after considering such submissions and public opinion, the Director-General shall revise the draft and shall, subject to paragraph (j), send to the Conservation Boards affected the revised draft and the summary prepared under paragraph (h):
- (j)the Director-General shall comply with paragraph (i) before—
    - (i)the expiration of 8 months after the date of publication of the notice given under paragraph (a); or
    - (ii)such later date as may be fixed in that behalf by the Minister:
    - ~~o~~ (k)on receipt of the draft and the summary, the Conservation Boards affected shall consider those documents and then provide advice to the ~~—~~
    - ~~o (i)may request the~~ Director-General ~~to revise the draft; and~~
    - ~~(ii)shall send the draft to the Authority for approval, together with a written statement of any matters of content on which the Director-General and the Boards are unable to agree and a copy of the summary prepared under paragraph (h)~~:
- ~~(l)the Conservation Boards affected shall send the draft received under paragraph (i) to the Conservation Authority before—~~
    - ~~(i)the expiration of 6 months after the date of its referral to the Boards by the Director-General; or~~
    - ~~(ii)such later date as may be fixed in that behalf by the Minister:~~
- (m)the Conservation Authority shall consider the draft and all other information furnished with it and may consult such persons and organisations as it considers appropriate, including the Director-General and the Conservation Boards affected, and provide advice to the Director-General:
- ~~(n)after such consideration, the Conservation Authority shall make such amendments as it considers necessary and send the draft and the other relevant information to the Minister:~~
- (o)the Director-General shall send the draft to the Minister who shall consider the draft and send it back to the Director-General~~Conservation Authority~~ with any written recommendations the Minister considers appropriate:
- (p)after having regard to any recommendations expressed in writing by the Minister, the Director-General~~Conservation Authority~~ shall either—
    - (i)approve the draft; or
    - (ii)send back to the Minister for further consideration the draft and any new information the Director-General ~~Authority~~ wishes the Minister to consider, before the Director-General~~Authority~~ approves the draft.

Section 17G Procedure for preparation and approval of conservation management plans

28. As per earlier advocacy, above, we week the repeal of section 17G, as unnecessary.

Section 17H Reviews of conservation management strategies and conservation management plans

29. Amendment to this provision is required for consistency with proposals made above:

(1)The Director-General, after consultation with the Conservation Boards affected, may at any time initiate a review of any conservation management strategy or conservation management plan, or any part of any such strategy or plan.

(2)Every review of a conservation management strategy under this section shall be carried out and approved in accordance with the provisions of section 17F, which shall apply with any necessary modifications.

~~(3)Every review of a conservation management plan under this section shall be carried out and approved in accordance with the provisions of section 17G, which shall apply with any necessary modifications.~~

(4)The following provisions shall also apply in relation to reviews under this section:

- (a)any conservation management strategy ~~or conservation management plan~~ may be reviewed in whole or in part:
- (b)a conservation management strategy ~~or conservation management plan~~ shall be reviewed as a whole by the Director-General not later than 10 years after the date of its approval:
- (c)in the case of a conservation management strategy, the Minister may~~, after consultation with the Authority,~~ extend that period of review:
- ~~(d)in the case of a conservation management plan, the Minister may, after consultation with the Conservation Boards affected, extend that period of review.~~

(5)When reviewing any part of a conservation management strategy, the Director-General must take into account the matters set out in any planning documents lodged with the Director-General under section 90 of the Marine and Coastal Area (Takutai Moana) Act 2011 that are relevant to the strategy.

Section 17I Amendments to conservation management strategies and conservation management plans

30. As above:

(1)The Director-General, after consultation with the Conservation Boards affected, may at any time initiate the amendment of any conservation management strategy ~~or conservation management plan~~, or any part of any such strategy ~~or plan~~.

(1A)The Director-General may amend a conservation management strategy so that the information in the strategy required by section 17D(7) (identifying and describing protected areas) remains accurate. Subsections (1), (2), and (4)(a) do not apply to the Director-General's ability to amend a conservation management strategy under this subsection. However, the Director-General must promptly notify the Conservation Boards affected of every amendment made under this subsection.

(2)Except as provided in subsection (4), every amendment of a conservation management strategy under this section shall be carried out in accordance with the provisions of section 17F, which shall apply with any necessary modifications.

~~(3)Except as provided in subsection (4), every amendment of a conservation management plan shall be carried out in accordance with the provisions of section 17G, which shall apply with any necessary modifications.~~

~~(4)Where the proposed amendment is of such a nature that the Director-General and the Conservation Boards affected consider that it will not materially affect the objectives or policies expressed in the strategy or plan or the public interest in the area concerned, then—~~

- ~~(a)in the case of a conservation management strategy, the Director-General shall send the proposal to the Conservation Boards affected and it shall be dealt with under paragraphs (k) to (p) of section 17F; and~~
- ~~(b)in the case of a conservation management plan, the Director-General shall send the proposal to the Conservation Boards affected and it shall be dealt with under subsections (2) and (3) of section 17G.~~

(5)When amending any part of a conservation management strategy, the Director-General must take into account the matters set out in any planning documents lodged with the Director-General under section 90 of the Marine and Coastal Area (Takutai Moana) Act 2011 that are relevant to the strategy.

Section 17O Application

31. This section is the beginning of Part 3B of the Act (the concessions regime).

32. The amendment proposed below places commercial or business activities on public conservation land into a positive construct, instead of the current negative construct.

33. We propose to exempt from the concessions regime all aspects of minerals prospecting, exploration and mining activities that are regulated under the access provisions of the Crown Minerals Act 1991. This is to avoid unnecessary regulatory duplication between the Conservation Act and the CMA. This is achieved by introducing into section 2 of the Conservation Act an appropriate definition of “mining activity”.

34. Note also:

- For most or all of these activities, compliance will be required under the RMA 1991;
- Straterra’s proposal to absorb the Wildlife Act 1953 into the Conservation Act, so that wildlife permits could be incorporated into access arrangements; and
- Heritage matters are now regulated under the Heritage New Zealand Pouhere Taonga Act 2014, in particular, authorities for disturbing or modifying heritage.

(1)This Part applies to every conservation area.

(2)Except as provided in subsection (3) or subsection (4), any~~no~~ activity to~~shall~~ be carried out in a conservation area will require ~~unless~~ authorisation~~ed~~ by a concession.

(3)A concession is not required in respect of—

- (a)any mining activity authorised under the Crown Minerals Act 1991 (including the transitional provisions of that Act); or
- (b)any activity that is otherwise authorised by or under this Act or any Act specified in Schedule 1; or
- (c)any action or event necessary for the purposes of saving or protecting life or health, or preventing serious damage to property or avoiding an actual or likely adverse effect on the environment; or
- (d)any activity that is carried out by the Minister or Director-General in the exercise of his or her functions, duties, or powers under this Act or any other Act.

(4)An individual or organised group undertaking any recreational activity, whether for the benefit of the individual or members (individually or collectively) of the group, does not require a concession if the individual or group is undertaking the activity without any specific gain or reward for that activity, whether pecuniary or otherwise.

(5)A group of the kind to which subsection (4) applies may impose on its members a reasonable charge in order to recover the reasonable expenses in organising the recreational activity.

(6)Subsection (3)(b) shall not apply to any sports fishing guide or game hunting guide who conducts any activity in a conservation area.

(7)This Part is subject to Part 2 of the Forests (West Coast Accord) Act 2000, in relation to land that is a conservation area as a result of a declaration under section 8(1) of that Act.

Section 18AA Governor-General may confer additional protection or preservation requirements

35. This section is the beginning of Part 4 of the Act, most or all of which has been rendered obsolete by the introduction of the statutory land management provisions (Part 3A) in 1990.

36. None of the land classifications covered in Part 4 are necessary because all relevant matters are addressed under General Policies and CMSs. The possible exception is that of a "sanctuary area", where special preservation status may be warranted in limited circumstances, e.g., to protect the mainland population of takahe.

(1)The Governor-General may, by Order in Council made on the recommendation of the Minister, declare any conservation area—

- (a)to be held for the purpose of a ~~wilderness area, a~~ sanctuary area~~, or both~~; and
- (b)to have the official geographic name stated in the order.

(2)Before making a recommendation under subsection (1), the Minister must—

- (a)refer the proposed name to the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa for review under subpart 3 of Part 2 of the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008; and

- (b)give public notice of the intention to recommend the making of the order that includes the proposed name for the area.

(3)Section 49 applies, with the necessary modifications, to a notice given under subsection (2)(b).

(4)A conservation area declared to be held for the purpose of a ~~wilderness area, a~~ sanctuary area, ~~or both,~~ under this section must be managed in a manner that is consistent with that purpose ~~or those purposes (as the case may be)~~.

(5)The Governor-General may, by Order in Council made on the recommendation of the Minister, vary or revoke the purpose, or all or any of the purposes, for which any conservation area held under subsection (1) is held, and the land is to be held accordingly as provided in the order.

(6)Before making a recommendation under subsection (5), the Minister must give public notice of the intention to recommend the making of the order, and section 49 applies with the necessary modifications.

Section 18 Minister may confer additional specific protection or preservation requirements

37. As above.

(1)Subject to subsections (2) to (4), the Minister may, by notice in the *Gazette* describing the land concerned, declare any land or interest in land, held under this Act for conservation purposes to be held for the purpose of a sanctuary area, ~~conservation park, an ecological area, for any other specified purpose or purposes, or for 2 or more of those purposes~~; and, subject to this Act, it shall thereafter so be held.

(2)The Minister shall give public notice of intention to give a notice under subsection (1); and section 49 shall apply accordingly.

(3)The public notice referred to in subsection (2) must specify the proposed name for the proposed park or area.

(3A)After considering any submissions received in response to the public notice given under subsection (2), the Minister must refer the proposed name to the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa for review under section 27(3) of the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008; and the provisions of sections 28 to 31 of that Act apply.

(3B)The area for which a name is specified and determined under subsections (3) and (3A) must be known by its official geographic name.

~~(4)Where any land or interest is declared to be held for the purpose of an ecological area under subsection (1), the notice concerned shall specify the particular scientific value for which it is held.~~

(5)Every area held under this Act for 1 or more of the purposes described in subsection (1) shall be managed in a manner consistent with the purpose or purposes concerned.

~~(6)Nothing in sections 19 to 24 limits the generality of subsection (5).~~

(7)Subject to subsection (8), the Minister may, by notice in the *Gazette*, vary or revoke the purpose, or all or any of the purposes, for which any land or interest held under subsection (1) is held; and it shall thereafter be held accordingly.

(8)Before varying or revoking any purpose under subsection (7), the Minister shall give public notice of intention to do so; and section 49 shall apply accordingly.

Section 19 Conservation parks

38. Repeal, as unnecessary and superseded.

Section 20 Wilderness areas

39. Repeal, as unnecessary and superseded. Note that CMSs provide for integrated land management and that can include areas managed as if they were "wilderness areas", at places.

Section 21 Ecological areas

40. Repeal, as unnecessary and superseded, as above.

Section 22 Sanctuary areas

41. Retain, on the basis of the foregoing discussion.

Every sanctuary area shall be managed to preserve in their natural state the indigenous plants and animals in it, and for scientific and other similar purposes.

Section 23 Watercourse areas

42. Repeal, as unnecessary and superseded, as above.

Section 23A Amenity areas

43. Repeal, as unnecessary and superseded, as above.

Section 23B Wildlife management areas

44. Repeal, as unnecessary and superseded, as above.

Section 25 Management of stewardship areas

45. Repeal, as unnecessary and superseded, as above.

Section 26 Disposal of conservation~~stewardship~~ areas

46. Land disposal provisions should apply more generally than for a limited class of land. At issue is the values in the land, not what the land is called, and the statutory land management planning framework provides for that consideration.

(1)Subject to subsections (2) and (3), the Minister may dispose of any conservation~~stewardship~~ area that is not foreshore or any interest in any conservation~~stewardship~~ area that is not foreshore.

(2)The Minister shall not dispose of any land or any interest in any land adjacent to—

- ~~(a)any conservation area that is not a stewardship area; or~~
- ~~(b)land administered by the Department under some enactment other than this Act,—~~

~~unless satisfied that its retention and continued management as a stewardship area would not materially enhance the conservation or recreational values of the adjacent conservation area or land or, in the case of any marginal strip, of the adjacent water, or public access to it.~~

(3)The Minister shall not dispose of any land or any interest in land without first giving notice of intention to do so; and section 49 shall apply accordingly.

(4)Upon being disposed of under this section, the land or interest in land shall cease to be held for conservation purposes.

(5)As soon as is practicable after disposing of any land or interest in land, the Minister shall publish in the *Gazette* a notice—

- (a)describing the area concerned; and
- (b)specifying the interest and the revenue (or, where the interest was disposed of by way of exchange or part exchange, the consideration) received for it.

(6)Any disposal under this section may be effected by transfer under the Land Transfer Act 1952.

(7)A District Land Registrar shall accept any such transfer as conclusive evidence that the land or interest concerned is no longer required for conservation purposes.

(8)Nothing in this section shall affect any application for or grant of any concession under Part 3B over a conservation~~stewardship~~ area or an interest in a conservation~~stewardship~~ area.