

Strategic priorities for initiating engagement in advocacy processes under the Resource Management Act 1991 and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

Context

One of DOC's functions is to advocate for the *conservation*¹ of natural and historic resources (both on and off land or waters managed by DOC). This occurs mainly under the Resource Management Act 1991 (RMA) and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZA).

Through this advocacy, DOC can assist RMA/EEZA decision-makers to *protect* New Zealand's natural resources - threatened species and ecosystems, significant natural areas, natural character and outstanding natural features and landscapes, both on and off public conservation land and waters (PCL) - from the adverse *effects* of subdivision, use and development. This can also help DOC to achieve its Vision - that New Zealand is the greatest living space on Earth.

DOC has identified Strategic Priorities for when it should initiate engagement in RMA/EEZA processes - they are deliberately high level, representing areas of important focus for DOC. They are the first step in a process that takes DOC through a door into the arena of engagement. Once engagement has been initiated, there are many other doors through which DOC could proceed from that point. Engagement could range from a phone call regarding proposed resource consent conditions which resolves issues, taking part in a collaborative process or, presenting expert evidence or legal submissions to Council Commissioners or the Environment Court, with many and varied steps in between.

Which path DOC takes, when, and to what extent it engages, will depend on many factors e.g. DOC/Minister of Conservation (MOC) priorities, impacts, resourcing, benefits of engagement, risks involved, expertise of other parties involved and what outcomes may be sought from engaging. These later decisions are covered in separate guidance. This

¹ NB italicised words are defined in Appendix A - Defined terms.

strategy covers when DOC should initiate engagement in RMA/EEZA processes (and by implication, when it is not a priority to engage – see below).

Purpose

To provide high-level direction for DOC staff when deciding whether to initiate engagement in statutory advocacy processes under the RMA and EEZA.

Priority conservation values

The following are Priority Conservation Values in the marine, freshwater and terrestrial environments:

- a. Indigenous taxa² classified as Threatened, At Risk, or Data Deficient³
- b. Significant indigenous vegetation or significant habitats of indigenous fauna⁴
- c. Naturally uncommon, rare or threatened ecosystems
- d. The representativeness of the full range of indigenous habitats and ecosystems
- e. Important ecological processes, connectivity and buffering, including between terrestrial, freshwater and/or marine ecosystems⁵
- f. Significant geological or geothermal features or landforms⁶
- g. High, very high or outstanding natural character of the *EEZ*, the coastal environment, and lakes and rivers and their margins
- h. Outstanding natural features and landscapes
- i. All *wetland* environments
- j. Any natural resource of international, national or regional significance, including sites or species subject to international conservation related treaties⁷
- k. Natural resources which are the subject of Ministerial or Departmental priorities⁸.

² Named biological classification units assigned to individuals or sets of species (e.g. species, subspecies, genus, order, variety).

³ Using the criteria in *New Zealand Threat Classification System Manual* (Townsend et al, 2008) (or any official update or revision); and including any threatened species as defined in s4 of the EEZA, or s 2(1) of the Biosecurity Act 1993.

⁴ As identified using the criteria in *Department of Conservation Guidelines for assessing significant ecological values* M. Davis, NJ Head, SC Myers and SH Moore.

⁵ For example, clearance that divides a continuous indigenous vegetation sequence into two or more fragments; Connectivity of freshwater with adjacent flood zones is severed.

⁶ These features are identified in Conservation Management Strategies, based on the criteria used by the NZ Geological Society.

⁷ For example, wetlands covered by the Ramsar Convention (Ramsar Wetlands), World Heritage Areas covered by World Heritage Convention, species covered by the Convention on Migratory Species.

⁸ For example, the New Zealand Biodiversity Strategy 2000 and Implementation Plan (2016-2020); DOC's Intermediate Outcomes and/or Stretch Goals; The Statement of National Priorities for protecting threatened biodiversity on private land (2007)

Things that are generally not identified as priorities for DOC to engage in include where there are:⁹

- a. effects on Priority Conservation Values (outside the coastal environment¹⁰) that are minor or less than minor, or there would only be beneficial effects of an activity on Priority Conservation Values;
- b. adverse effects on historic heritage, or recreation and public access;¹¹
- c. adverse effects on indigenous species that are not Threatened, At Risk or Data Deficient (irrespective of whether those species are protected species);
- d. adverse effects on indigenous vegetation or habitats of indigenous fauna that are not significant;
- e. adverse effects on landscape, landforms and geological or geothermal features that are not outstanding;
- f. adverse effects on natural character in the EEZ, the coastal environment, lakes and rivers and their margins, that is not high or outstanding;
- g. adverse effects on amenity values,
- h. adverse effects on sports fish and fisheries (these are managed by Fish and Game).
- i. The majority of resource consent applications will not be Strategic Priorities for DOC to engage in. Over 95% of applications are processed by Councils on a non-notified basis¹². Accordingly, only a small proportion of applications are publicly notified or limited notified to DOC. The Priority Conservation Values are the trigger for DOC to become involved, however once that decision has been made the content of the DOC submission will not be restricted to those values.

Strategic priorities

The four Strategic Priorities set out below are based on DOC's statutory advocacy and land manager roles,¹³ the advocacy policies in Conservation General Policy 2005, and include responsibilities and/or priorities of DOC and the MOC. The first two Strategic Priorities relate to important conservation values (both on and off PCL) across the marine, freshwater, and terrestrial *environments* that DOC has identified as a priority for protection (Priority Conservation Values). The third and fourth Strategic Priorities relate specifically to DOC management of PCL and implementation of the NZCPS.

⁹ Unless covered by a Strategic Priority.

¹⁰ There are certain instances where adverse effects should be completely avoided in the coastal environment, see Guidance notes.

¹¹ Unless triggered by one of the Strategic Priorities.

¹² Figure from MFE, for 2015 – 2016 year.

¹³ Conservation Act 1987, ss6(b) and 53(3)(d). New Zealand Fish and Game Council also has a function to advocate for the management of sports fish and game habitats, Conservation Act 1987, s26C(1)(g).

Strategic Priority 1 – Priority conservation values and planning processes

- DOC *should* initiate engagement in planning processes¹⁴ under RMA or EEZA to *protect* any of the Priority Conservation Values.

Strategic Priority 2 – Priority conservation values and resource consent applications

- DOC should initiate engagement in *consent applications* under RMA and EEZA where they may result in more than minor adverse effects¹⁵ (including cumulative effects) on any of the Priority Conservation Values.

Strategic Priority 3 – DOC management

- DOC should initiate engagement in advocacy in RMA and EEZA processes where:
 - proposed provisions in Planning Documents have the potential to create inefficiencies or impose unnecessary obligations on DOC as a land manager (including as an applicant for resource consents to undertake DOC activities)
 - proposed provisions in Planning Documents or proposed activities are inconsistent with a DOC Management Planning Document.

Strategic Priority 4 – NZ Coastal Policy Statement

- Engagement will assist in implementing the New Zealand Coastal Policy Statement 2010 (NZCPS)
- DOC has a role in supporting the Minister of Conservation to implement the NZCPS
- DOC has a role advocating for NZCPS conservation values

¹⁴ Note this includes Water Conservation Orders.

¹⁵ But note in the Coastal Marine Area there are certain instances where adverse effects should be avoided, see Guidance notes.

Guidance notes for decision makers

What the Strategic Priorities mean in practice

Priority Conservation Values

It may not always be clear whether the values of a natural resource affected by a proposal fit within the Priority Conservation Values set out above. Where this is the case, DOC should carry out an initial assessment using the appropriate assessment tool¹⁶. In particular, activities impacting all wetlands will be investigated prior to a decision on engagement being made. If it remains unclear¹⁷, DOC should initiate engagement in the process until a more thorough assessment can confirm that Priority Conservation Values are/are not affected.

Strategic Priority 1 – Planning Processes

DOC should always engage in Planning Processes where proposed provisions in Planning Documents (or the absence of provisions) may impact on Priority Conservation Values. This includes where provisions are proposed to protect Priority Conservation Values. As provisions can change, DOC should also engage to support proposed protective provisions.¹⁸

Further submissions may need to be lodged, particularly when other parties' submissions relate to Priority Conservation Values, or issues relevant to Strategic Priority 3 or 4.

Government Policy and guidance on the use and implementation of Biodiversity Offsetting is in place and where appropriate DOC should engage to support implementation through the planning process.

Strategic Priority 2 – Resource Consent Applications

DOC should always engage in resource consent applications where the potential effects of an activity on Priority Conservation Values may be more than minor. This is so even if additional approvals from the Minister may be required where on PCL. It is important technical advice is obtained when considering the level of effects. Under the NZCPS, there is a requirement that adverse effects of activities on some specific values in the coastal environment need to be completely avoided. It is also important that cumulative effects are considered i.e. the effect of a proposed activity on Priority Conservation

¹⁶ Refer to the DOC Intranet under RMA, Assessment Tools.

¹⁷ Or there are no suitable assessment tools

¹⁸ For example, consistent, appropriately worded provisions regarding biodiversity offsetting in relation to impacts of activities on Priority Conservation Values.

Values should be considered in the context of the effects of any other existing or consented activities on those Values.

A decision not to engage should be made with caution, given an application may be inaccurate or incomplete and/or it may not be clear that a Priority Conservation Value is involved, or the effects, including cumulative effects, may not have been fully identified. If uncertainty exists, it is important that technical (including planning) advice is obtained before deciding whether or not to engage in any consent process.

Section 95E approval

Where DOC is asked to provide approval to a consent application as an affected party under s 95E RMA, approval should only be provided where the DOC is satisfied that the adverse effects, including cumulative adverse effects, on Priority Conservation Values will be minor, or less than minor.

Even though a council may determine DOC is an affected party under s95E RMA, it is important DOC independently assesses whether there will be any impact on Priority Conservation Values before deciding whether to engage or not. When making an assessment under s95E, exercise caution to ensure effects (including potential adverse effects and cumulative effects) on all Priority Conservation Values (both on and off-PCL), are identified.

Where a proposed activity requiring resource consent occurs on PCL or waters, DOC should encourage applicants to obtain necessary approvals from the Minister prior to seeking any resource consent.

Strategic Priority 3 – DOC Management

DOC should engage in plan processes where proposed provisions, or their absence, have the potential to impact on DOC's role as a land manager, for example in unnecessarily requiring resource consents for DOC activities.

DOC should also engage where proposed plan provisions, or resource consents would be inconsistent with a CMS, CMP, or NPMP.

Strategic Priority 4 – NZ Coastal Policy Statement

Under the NZCPS, there is a requirement that adverse effects of activities on some specific values in the coastal environment need to be completely avoided¹⁹.

DOC should engage with Councils to advise them how to implement the NZCPS. Some written guidance is currently available for Councils and this will be reviewed as appropriate.

DOC should initiate engagement in planning processes and resource consent applications to advocate for conservation values within the NZCPS and where necessary provide clarity to Councils on conservation issues within the coastal environment.

Keep in mind

The Priority Conservation Values and Strategic Priorities have been developed for the purpose of assisting staff and delegated decision makers determine which plan processes or consent applications to engage in. They are not intended to define the scope of submissions that may be lodged by DOC. When preparing submissions, specialist technical and planning advice should be sought, including legal advice.

DOC needs to keep accurate records of the RMA and EEZA matters in which it engages, including the outcomes, and records of those which in which DOC chooses not to engage (including s95E approvals which DOC issues). These records should be regularly reviewed to ensure that this Strategy and the priorities identified therein are being reflected in DOC's RMA and EEZA engagement.

DOC shall monitor implementation of the *'Guidance on Good Practice Biodiversity Offsetting in New Zealand'* guidance document to ensure it is achieving consistent biodiversity offsetting outcomes via RMA processes. Other ways this can be achieved are through the shared service centre hub model.

Working with others

DOC will give effect to the principles of the Treaty of Waitangi and specific Treaty settlement provisions and protocols when undertaking advocacy in RMA or EEZA proceedings, including working together with iwi and hapu to prepare and present submissions and evidence where common interests align and are relevant. To achieve this DOC shall check RMA provisions in Treaty settlement legislation, provide

¹⁹ Including policies 5(1)(c) (Land or waters held or managed under other Acts), 11a (Indigenous biological diversity), 13(1)(a) (Preservation of Natural Character), 15a (Natural features and natural landscapes) 23(1)(d) (Discharge of contaminants) of NZCPS.

information/advice to iwi and hapu in addition to actively engaging with them on RMA processes where appropriate.

Where matters of relevance to RMA or EEZA processes are not identified as a Strategic Priority but are directly relevant to other Crown agencies or stakeholders (for example, Heritage New Zealand Pouhere Taonga), DOC should encourage those agencies or stakeholders to take the lead in advocacy processes but may provide support where considered appropriate.

DOC should proactively identify and engage in opportunities for the development of national direction instruments to achieve nationally consistent planning approaches to the protection of identified Priority Conservation Values. Examples include national policy statements, national environmental standards, template planning provisions or national planning standards relating to biodiversity or biodiversity offsets.

DOC will engage with appropriate Government Ministries and Departments over RMA matters through mechanisms such as providing regular updates on RMA matters DOC has engaged in.

Approved

Lou Sanson
Director-General of Conservation

Date

Appendix A – Defined Terms

Conservation *(from Conservation Act 1987 section 2)*

The preservation and protection 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.

Consent Applications

Includes:

- (a) applications for resource consents under the RMA
- (b) applications for marine consents under the EEZA
- (c) applications for changes to consent conditions under the RMA and EEZA
- (d) notification of review of consent conditions under RMA/EEZA
- (e) notices of requirement for designations and alterations to designations under the RMA

Departmental Management Planning Document

A document prepared under Part 3A of the Conservation Act, Part 5 of the National Parks Act 1980, or part 3 of the Reserves Act 1977.

Effect *(from Resource Management Act 1991 section 2)*

unless the context otherwise requires, the term **effect** includes—

- (a) any positive or adverse effect; and
- (b) any temporary or permanent effect; and
- (c) any past, present, or future effect; and
- (d) any cumulative effect which arises over time or in combination with other effects—
regardless of the scale, intensity, duration, or frequency of the effect, and also includes—
- (e) any potential effect of high probability; and
- (f) any potential effect of low probability which has a high potential impact,

Environment *(from Resource Management Act 1991 section 2)*

Includes:

- (a) ecosystems and their constituent parts, including people and communities;
and
- (b) all natural and physical resources; and
- (c) amenity values; and
- (d) the social, economic, aesthetic and cultural conditions that affect those matters.

EEZ (*from Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 section 4*)

Means the exclusive economic zone and the continental shelf

Natural resources (*from Conservation Act 1987 section 2*)

Plants and animals of all kinds, and the air, water, and soil in or on which any plant or animal lives or may live, and landscape and landform, and geological features, and systems of interacting living organisms, and their environment, and includes an interest in a natural resource.

Planning Processes means the statutory process under which a Planning Document is prepared, varied or amended, including any appeals.

Planning Documents includes national policy statements or standards, proposed regional policy statements, regional and district plans, water conservation orders, and changes and variations to operative and proposed policy statements, plans or water conservation orders.

Protect (*from Conservation Act 1987 section 2*)

In relation to a resource, means its maintenance, so far as is practicable, in its current state: but includes its restoration to some former state; and its augmentation, enhancement, or expansion.

Should (*from Conservation General Policy 1(d)ii*)

Policies that carry with them a strong expectation of outcome without diminishing the constitutional role of the Minister and other decision-makers, state that a particular action or actions ‘should’ be undertaken.

Wetland (*from Resource Management Act 1991 section 2*)

Includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions

