

# Otago CMS Partial Review 2020

## Responses to form submissions

### Introduction

Of the 1749 submissions received on the notified draft Otago Conservation Management Strategy (CMS) partial review, 1669 of these were form submissions.

Four forms were used:

- **Form 1** - supported the Department of Conservation (DOC) enabling bike tracks but was concerned the proposed approach was not justified or necessary.
- **Form 2** – raised the same issues as Form 1 with specific support for the Maungatika Track proposal in the Hāwea Conservation Area.
- **Form 3** – raised the same issues as Form 2 with additional support for the Kidds Bush Track in the Hāwea Conservation Area.
- **Form 4** – supported DOC enabling bike tracks but sought the process be no more onerous than developing a walking track; and raised concerns around biking being excluded from, or constrained in, various areas.

This document provides responses to these form submissions, in two parts:

- Part One – Forms 1, 2 and 3
- Part Two – Form 4

### Part One – Forms 1, 2 and 3

#### Submission point 1.1 – Addition of tracks to tables in Part Two of the CMS

| Submission summary  | Decision sought  |
|---|--|
| <p>Adding tracks to Tables in Part Two is not an approval process. Policy 3.3 covers the approval process and requires detailed analysis of each track to be undertaken. We should not pass judgement on any of them at this stage.</p> <p>Consider cycle and walking tracks have same footprint. Walking tracks on pcl&amp;w are considered acceptable by public subject to the tests of Policy 3.3.</p> <p>This process is not about picking winners, but simply enabling future discussions.</p> <p>There is no ability to develop more than 10-15 tracks over the life of the document. DOC will not need to fund building and maintenance – community funding available.</p> | <p>Inferred:</p> <p>Include all proposed tracks to enable analysis in future under Policy 3.3.5.</p> |

#### Response

Accept in part.

This point is correct. The Tables in Part Two are not an approval process by themselves. They identify areas of public conservation lands and waters (pcl&w) where biking currently occurs or may be

contemplated in the future. The latter can then be assessed against the criteria in Policy 3.3.5 (now 3.3.6), regardless of who is proposing the development.

However, there may still be circumstances where a new track should not be developed. In this case, the area it is in may not be identified in the Tables or specific limitations are identified.

If an area is not identified in the Tables any proposed tracks in that area will be subject to Policy 3.3.4 (now 3.3.5).

### Submission point 1.2 – Amendments to Policy 3.3.4 (now 3.3.5)

| Submission summary  | Decision sought  |
|---|--|
| Oppose amendments to Policy 3.3.4. Policy sets higher bar/ environmental tests for cycle tracks than for an equivalent walking track or ‘authorised utility’ under Policy 3.2.3. The amendments have not been justified in terms of the CGP and there is no evidence the current policy is not fit for purpose. Additionally, the proposed wording is inconsistent with other conservation management strategies. | Inferred:<br>Delete all proposed amendments to Policy 3.3.4. |

### Response

Reject.

Policy 3.3.4 (now 3.3.5) identifies the required high-level processes and considerations if the Tables in Part Two do not identify areas of pcl&w where biking currently occurs or may be contemplated in the future. The policy is consistent with the Conservation Act 1987 (CA87), Conservation General Policy 2005 (CGP), and best practice, and does not establish environmental tests / standards for tracks.

The CGP is prescriptive as to how statutory planning documents provide for vehicle use. DOC’s position is amending policies to identify additional areas where bikes may be used, or new tracks developed, alters the intent of the policies and is not within the scope of exceptions provided for in the CA87 or CGP.

In addition, there is significant public interest in biking track proposals, with members of the public raising both potential positive and negative effects. The only way for these to be weighted and considered in a transparent manner is for a public consultation process to be used.

The CGP does not apply the same requirements for the development of walking tracks.

The intent of Policy 3.2.3 is to provide for motorised vehicle access to authorised utilities in accordance with Policy 9.5(b) of the CGP. Where utilities are defined in the current Otago Conservation Management Strategy 2016 (current CMS) Glossary as:

*Includes but not limited to these facilities based over or under the ground: structures and infrastructure for telecommunications; energy generation and transmission and distribution; sewerage; water supply and flood control; oil and gas; roads and airstrips; hydrological and weather stations (based on Conservation General Policy 2005).*

Policy 3.2.3 does not provide the primary assessment criteria for utilities, including ancillary structures and uses. These are set out in Section 3.10 of the current CMS and Section 11.3 of the CGP and contain a wide range of criteria relating to environmental and other impacts.

The amendments have not been deleted.

See also Part 2, submission point 4.

**Submission point 1.3 – Statutory review process**

| Submission summary   | Decision sought   |
|--|---|
| Support removal of “should follow the statutory review process...” from Policy 3.3.4. This clause, added to the current CMS in 2015-16, is both un-necessary and not justified in terms of CGP. Legal opinions obtained by the cycling community demonstrate that the reason for the current CMS review is because of this clause. | Amend Policy 3.3.4 by deleting reference to the statutory review process. |

**Response**

Reject.

CGP Policy 13(g) provides further guidance for implementing section 171(4) CA87 (non-notified amendments) and states:

*Public consultation will be sought on a proposed amendment to a conservation management strategy or plan, except where this would not materially affect the objectives or policies expressed in the strategy or plan or the public interest in the area concerned, including where the proposed amendment either:*

- i. corrects a factual error; or*
- ii. updates information on protected areas managed by the Department; or*
- iii. changes the names or classification of places following reclassification in accordance with the relevant legislation; or*
- iv. reflects changes in legislation; or*
- v. provides clarification of an objective or policy; or*
- vi. deletes reference to a conservation management plan that has been revoked.*

The CA87 and CGP only enable statutory planning documents to be amended without public consultation in very limited circumstances. The following tests are unlikely to be met for new bike tracks in areas not identified by Policy 3.3.1:

- The objectives or policies are not materially affected; or
- The public interest in the area concerned is not materially affected.

No ‘exception’ for reviews in full or in part is provided for under the CA87.

The process set out in Policy 3.3.4 (now 3.3.5) is consistent with the CA87 and CGP.

Removal of the phrase in its entirety from Policy 3.3.4 (now 3.3.5) would not alter the need for an amendment or review process, as this is still required under the CA87 and CGP. Including the phrase adds clarity and transparency to the CMS.

## Submission point 1.4 – Approve fully funded and designed bike tracks using Section 53(2)(i) CA87 and Policy 3.2.3 of the current CMS

| Submission summary  | Decision sought   |
|---|---|
| <p>Support DOC using Section 53(2)(i) of the Conservation Act 1987 and Policy 3.2.3 to approve fully funded cycle trails as per road and carpark construction at Bennett’s Bluff on the Glenorchy Road.</p> <p>Bennetts Bluff was permitted, as a road, carpark and visitor access tracks for motorised vehicles are <b>‘authorised utilities’</b> in the current CMS.</p> <p>Approach can bypass public scrutiny &amp; consultation under Section 53(2)(i) of the Conservation Act 1987.</p> | <p>DOC should apply their powers consistently and approve the national cycle trails already fully funded and awaiting construction.</p> |

### Response

Reject.

Section 53(2)(i) CA87 is a general power (to enter agreements etc.) held by the Director-General to enable DOC to perform its functions. This general power is subject to the requirement in section 17A CA87 that DOC shall administer all conservation areas in accordance with statements of general policy and conservation management strategies. This means when entering agreements for any conservation area the Director-General must act in accordance with the CGP and conservation management strategy for that area. Similarly, when the Minister is considering whether to grant a concession in respect of any area, the Minister shall not grant a concession if it is inconsistent with the conservation management strategy provisions for that area (section 17W(1) CA87).

Section 53(2)(i) CA87 cannot be used to circumvent specific biking / bike track policies.

Policy 3.2.3 provides for “*motorised vehicles on public conservation land and waters for the construction, operation and/or maintenance of authorised utilities*”. Bike tracks are not utilities, which are defined in the current CMS Glossary as:

*Includes but not limited to these facilities based over or under the ground: structures and infrastructure for telecommunications; energy generation and transmission and distribution; sewerage; water supply and flood control; oil and gas; roads and airstrips; hydrological and weather stations (based on Conservation General Policy 2005).*

In addition, bikes are not motorised vehicles. Therefore, this policy cannot be used to approve fully funded tracks.

### **Specific tracks**

Forms 2 and 3 submitted on two specific tracks within Te Papanui, Oteake and Hāwea Conservation Parks Place, as follows:

#### **Maungatika Track, Hāwea Conservation Park**

| Submission summary  | Decision sought  |
|---|--|
| <p>Support Maungatika Track. The track will create a world class multi day single track with environmental standards meeting or exceeding those set by the Paparoa Great Walk. The track will provide access for walking and mtbing and improve access for hunting and ski touring. The track will be fully funded by private partners.</p> | <p>Inferred: Support inclusion of Maungatika Track in Table 2.2.</p> |

### **Response**

Accept.

Hāwea Conservation Area has been included, with no limitations, to allow for the investigation into the Maungatika Track's feasibility to be undertaken. Proposed tracks will be subject to the criteria outlined in the 3.3 Policies.

### **Kidd's Bush Loop Track, Hāwea Conservation Area**

| <b>Submission summary</b>  | <b>Decision sought</b>  |
|--|---|
| Support the Kidd's Bush Loop Track. Hāwea Conservation Area can support more trails (walking or biking). Agree that this should be discussed subject to the tests in Policy 3.3. | Inferred: Support inclusion of Kidd's Bush Loop Track in Table 2.2. |

### **Response**

Accept.

Hāwea Conservation Area has been included, with no limitations, so Kidd's Bush Loop Track is able to be considered for a bike track. Proposed tracks will be subject to the criteria outlined in the 3.3 Policies.

## **Part Two – Form 4**

### **Introductory submission points (not covered by specific submission points below)**

| <b>Submission summary</b>   | <b>Decision sought</b>   |
|---|--|
| <p>(pages 1- 3) CMS needs to enable biking to capture aspirations of community and foster passion for natural environment and desire to protect and care for it as stewards, or kaitiakitanga. CMS should not be used to lock riders out of natural environment.</p> <p>Enabling bike access will lead to many direct conservation outcomes.</p> <p>Requests community aspirations are heard and reflected in CMS consistent with DOC's Destination Management Framework (DMF). These aspirations are set out in "Vision Beyond 2050". Many align with DOC's vision, outcomes and targets, and the DMF. Enable community access to pcl&amp;w for cycle tracks wherever possible.</p> <p>Nationally align process around development of cycle trails and everything possible is done to "simplify and speed up planning" as per DMF.</p> | <p>Inferred:</p> <p>Make CMS as enabling as possible for cycling, using a nationally aligned process which simplifies and speeds up approvals.</p> |

### **Response**

Accept in part.

The CMS is as enabling as possible under the current approach to managing new bike tracks on pcl&w under the CGP.

The CGP provides a nationally consistent and unified approach for implementing conservation legislation. Conservation management strategies and plans are required to be consistent with the CGP and as a result all post-2014 documents reflect a common approach.

DOC will be preparing guidelines for assessing new bike tracks, which can be applied nationally and consistently. DOC is also looking at developing a new nationally aligned approach, which will be consistently applied to other conservation management strategies. Further supporting information about biking on pcl&w will be put on DOC’s website.

DOC’s documents and systems, such as our Vision and DMF, are not statutory. They provide direction for how different matters are addressed in statutory planning documents like conservation management strategies.

## 1. Tracks added

| Submission summary  | Decision sought                               |
|---|---|
| Support the addition of all tracks added to CMS. Inclusion of all these trails aligns with DOC’s purpose. Will allow people to engage with our natural environment and become stewards of our land. | Inferred: Retain all tracks added to the CMS. |

### Response

Accept in part.

Individual tracks are no longer listed in the Tables, which now identify the relevant pcl&w areas only. This is to avoid confusion where a specific track may have more than one name. No areas (with existing or proposed tracks) have been deleted.

## 2. Tracks removed

| Submission summary  | Decision sought                                   |
|---|---|
| Oppose the removal of any tracks from the CMS. Inclusion of all these trails aligns with purpose of DOC and will allow people to engage with our natural environment and become stewards of our land. | Inferred: Retain any tracks removed from the CMS. |

### Response

Accept.

The CMS partial review enables biking on more tracks than currently provided for under the current CMS.

Several changes have been made to the Tables in Part Two – Places to achieve this, including identifying relevant pcl&w areas, rather than individual tracks. Some areas now appear under separate or different entries. For example, a separate entry is now included for Moke Lake Recreation Reserve rather than it being incorrectly identified as ‘Lake Dispute Scenic Reserve’.

The changes were intended to add clarity to the CMS. No existing bike tracks have been removed.

### 3. Defining individual tracks

| Submission summary  | Decision sought  |
|---|--|
| <p>(pages 1 and 4) Oppose concept to define specific tracks and then close the document off. Areas should be approved for cycling and mountain bike tracks to be built, as they align with the community aspirations for the area, and the individual tracks can then be assessed and constructed over time outside of the CMS.</p> <p>Oppose listing of individual tracks so they may be constructed without having to go through process to alter CMS. Do not believe defining individual tracks is the intention of a conservation management strategy and believe this CMS is being misused in this manner.</p> | <p>Remove all references to specific tracks (except already existing tracks potentially) and approve pcl areas for cycle trails.</p> |

#### **Response**

Accept.

Individual tracks are no longer listed in the Tables, which now identify the relevant pcl&w areas only. This is to avoid confusion where a specific track may have more than one name.

### 4. Treat biking tracks the same as walking tracks

| Submission summary  | Decision sought   |
|---|---|
| <p>(pages 2, 3 and 4) Oppose any amendments which make it more onerous to create a cycling or mountain biking trail than a walking track. Amendments have not been sought by cycling community or justified by failure of current policy or any change to CGP. No evidence the current policy is not fit for purpose. Proposed wording is inconsistent with other conservation management strategies.</p> | <p>Ensure barriers to creating cycling trails are removed and process is simplified, in line with DOC's own statements and DMF.</p> |

#### **Response**

Reject.

The CMS must be consistent with CGP 9.5, which requires certain criteria to be addressed when considering biking tracks (and other public access using vehicles and other forms of transport). This same requirement does not apply to walking tracks.

The approach in the current CMS proved inflexible, hence this partial review being undertaken with a more enabling approach for biking on pcl&w in the Otago region. This is likely to form the basis of a new nationally aligned approach, which will be consistently applied to other conservation management strategies. Reverting to the current CMS policies would not achieve the more enabling and flexible approach the submitters are seeking.

DOC's statements and the Destination Management Framework are not statutory documents like CGP and conservation management strategies, which must be implemented when administering pcl&w.

See also Part 1, submission point 1.2.

## 5. Statutory review process

| Submission summary  | Decision sought   |
|---|---|
| <p>(pages 1, 3 and 5) Do not require a statutory review of the CMS. Support removal of “should follow the statutory review process”.</p> <p>This requirement does not serve the purpose of the CMS, or the community or DOC’s vision/outcomes.</p> <p>This clause, added to the current CMS in 2015-16, is both unnecessary and not justified in terms of CGP. Legal opinions obtained by the cycling community demonstrate the reason for the current CMS review is because of this clause. It’s wasting valuable time and resources, an unacceptable approach, not aligned with DOC’s own statements, nor enabling cycling.</p> | <p>Remove any requirement for a statutory review process to make alterations to the CMS and enable additional trails.</p> |

### **Response**

Reject.

Refer Part 1, submission point 1.3.

## 6. Specific areas of pcl&w/tracks

Submission points made on specific areas of pcl&w/tracks are in Table 1 below.



**Table 1: Specific areas/tracks referred to in form submission 4**

| Area/track                     | Submission summary   | Decision sought  | Response  |
|--------------------------------|--|--|---|
| Moke Lake Loop Track           | Oppose removal of peninsula section of Moke Lake Loop Track. This is likely to create a safety hazard by forcing cyclists to return on the trail rather than completing the loop, increasing the chance of collisions.   | Remove exclusion for peninsula section of track.   | Reject.<br><br>Moke Lake Loop Track is not suitable for shared use due to Health and Safety risks. It remains excluded.   |
| Devils Creek Conservation Area | Oppose exclusion of tracks in “Remnant beech forest”. Unnecessary and undermines DOC’s approach to developing stewardship, which is created by allowing access not preventing it. Could be replaced by a more positive and outcome driven sentence.  | Delete exclusion for beech forest and replace with a sentence such as “Should ensure beech forest is respected”.   | Accept.<br><br>The restrictions have been removed and any proposals will be assessed using the 3.3 Policies to address any risk to fragile /remnant ecosystems.   |
| Mt Crichton Scenic Reserve     | (1) Oppose wording “must avoid beech forest damage”. Could be used to unnecessarily inhibit track development that has intentions of developing stewardship, which is created by allowing access not preventing it. Could be replaced by a more positive and outcome driven sentence.<br><br>(2) Oppose specific listing of tracks which may inhibit future tracks. Also, Phoenix is not a climb and is in Wilson Bay Rec Reserve. | (1) Remove the words “must avoid beech forest” and replace with a sentence such as “Should ensure beech forest is respected” or “should be developed in a way which aligns with desired outcomes”; or remove altogether.<br><br>(2) Either: remove specific references to tracks; or change wording to “current and future proposed tracks”. | (1) Accept in Part<br><br>The restrictions have been removed and any proposals will be assessed using the 3.3 Policies. However, Mt Crichton Loop Track has been excluded as biking is not permitted on this track. Signage is in place, and DOC’s website has information about this.<br><br>(2) Accept.<br><br>Individual tracks are no longer listed in the Tables, which now identify the relevant pcl&w areas only. This is to avoid confusion where a specific track may have more than one name. |

| Area/track   | Submission summary  | Decision sought  | Response  |
|--|---|--|---|
| Mt Crichton Scenic Reserve, Rastus Burn Recreation Reserve and Remarkables Conservation Area | <p>Oppose exclusion of “must avoid ridgelines” and “must avoid ridgelines and prominent landscape features”. Could be used to unnecessarily inhibit track development that has intentions of developing stewardship, which is created by allowing access not preventing it. Should replace with more positive and outcome driven sentence.</p> <p>Exclusion for “prominent landscape” is open to too much interpretation. Specific issues can be addressed through detailed planning with mitigation measures put in place.</p> | Replace the words “must avoid ridgelines” with “should be developed on ridgelines in a respectful manner”, or “should be developed in a way which aligns with desired outcomes” ,or delete entire exclusion. | <p>Accept in part.</p> <p>The restrictions in these areas have been removed and any proposals will be assessed using the 3.3 Policies. However, Mt Crichton Loop Track has been excluded as biking is not permitted on this track. Signage is in place, and DOC’s website has information about this.</p> |
| Ben Lomond Scenic Reserve  | Oppose (no need to list specific trails). There are existing trails which are missing from the list such as Fernhill Loop trail and Salmon Run. Leave opportunity open for future trail applications.   | Remove listing of specific trails.   | <p>Accept.</p> <p>The table identifies the reserve, but specific tracks have been removed.</p>  |
| Lower Shotover   | Oppose removal.   | Reinstate Lower Shotover to list with no specific restriction.   | <p>Accept.</p> <p>Lower Shotover has not been deleted. It is listed under its proper name Conservation Area - Lower Shotover, with no restrictions.</p>   |
| McChesneys Conservation Area   | Oppose specific listing of proposed track.  | <p>Either:</p> <p>(1) Remove reference to “several tracks (proposed track)”; or</p> <p>(2) Change wording to “current and future proposed tracks”.</p>   | <p>Accept.</p> <p>The table identifies the area, but specific tracks have been removed.</p>   |
| Marginal Strip – Arrow River   | Oppose limitations. This area is not particularly sensitive to trails and more trails will help improve access for weed and predator control.   | <p>Either:</p> <p>(1) Remove specific references to tracks; or</p>   | <p>Accept in part.</p> <p>The table now identifies all marginal strips generally and specific tracks</p>  |

| Area/track                               | Submission summary  | Decision sought  | Response  |
|--|---|--|---|
|  |   | (2) Change wording to “current and future proposed tracks”.  | /areas have been removed (with one exception).  |
| Marginal Strip – Bush Creek              | Oppose limitations. This area is not particularly sensitive to trails and more trails will help improve access for weed and predator control. | Either:<br>(1) Remove specific references to tracks; or<br>(2) Change wording to “current and future proposed tracks”. | Accept in part.<br><br>The table now identifies all marginal strips generally and specific tracks /areas have been removed (with one exception).  |
| Wilson Bay Recreation Reserve            | Oppose limitations. This area is a recreation reserve and abuts scenic reserves with no limitations.  | Either:<br>(1) Remove specific references to tracks; or<br>(2) Change wording to “current and future proposed tracks”. | Accept.<br><br>The table identifies the reserve, but specific tracks have been removed.   |
| Link to Mavora Lakes from the Greenstone | Oppose exclusion of this link. It forms an important connection between places and any concerns can be worked through in planning process.    | List Link to Mavora Lakes from the Greenstone in tables.   | Accept in part<br><br>Mavora Lakes (and part of the Ngāi Tahu Leaseback Area) are in Southland and not included in this partial review. However, after careful consideration Conservation Area Greenstone has been added to Table 2.3, so a bike track can be considered. Any proposal will need to be investigated subject to the section 3.3 Policies in the Southland and Otago conservation management strategies, including early engagement with Ngāi Tahu as required by the Ngāi Tahu Claims Settlement Act 1998. |

| Area/track                       | Submission summary   | Decision sought                                  | Response   |
|----------------------------------|--|--|--|
| North Motatapu Conservation Area | Oppose the exclusion of this area. There is the potential to construct a world class alpine trail in this area linking Treble Cone to Macetown. Opportunities for accessible alpine trails are very limited in NZ. | List North Motatapu Conservation Area in tables. | Accept.<br>After careful consideration North Motatapu Conservation Area has been added to Table 2.3, so a bike track can be considered. Any proposal will need to be investigated and subject to the section 3.3 Policies. |

## 7. Terminology

| Submission summary  | Decision sought   |
|---|---|
| <p>There seems to be a number of different references to ‘mountain biking’, ‘cycling’, ‘electric power-assisted pedal cycle’ and so on. Want to ensure there is no confusion around any form of cycling approval. It is unclear if there is any intention in the CMS to discriminate between cycling and mountain biking for effectively the same activity.</p> | <p>That cycling and mountain biking are both treated equally.</p> <p>Insert reference that cycling, and mountain biking are interchangeable terms for the purpose of the CMS.</p> |

### Response

Accept.

The CMS has been revised to collectively refer to all non-motorised bicycles, mountain bikes and e-bikes as non-motorised bikes, and accordingly uses the term biking. Consequently, revisions have been made to:

- (i) All relevant policies and Tables in Part Two
- (ii) All relevant footnotes
- (iii) The title of section 3.3
- (iv) The text and policies in section 3.3
- (v) Relevant definitions in the Glossary.

## 8. Impacts of bike tracks

| Submission summary  | Decision sought  |
|---|--|
| <p>CMS makes references throughout to potential or perceived negative impacts of cycle trails based on opinion rather than evidence. CMS does not give due consideration to positive impacts, despite these being discussed in other DOC literature. These include helping grow a sense of place, and desire to protect and care for natural environment. Can also support conservation outcomes through trapping, planting, weed control, education.</p> | <p>Amend CMS to provide balanced view of impacts including positive impacts and remove opinion or hearsay.</p> |

### Response

Accept in part.

The CMS generally adopts an enabling approach towards bike tracks, including recognising the positive effects of biking and providing for further tracks to be developed subject to criteria in Policy 3.3.5 (now 3.3.6).

These criteria are consistent with the:

- CA87 – notably the definition of conservation, DOC’s functions, the purposes of conservation management strategies; and

- CGP – particularly the direction provided in relation to people’s benefit and enjoyment (Section 9).

Policy 3.3.5 (now 3.3.6) has been revised by removing the words “or concerns” from criterion a), and subsequently from Policy 3.3.6 (now 3.3.7).

People or groups developing proposals can identify the impacts of their proposals (both positive and negative) so that balanced consideration can be given in the decision-making process.

## 9. E-bikes

| Submission summary   | Decision sought  |
|--|--|
| Strongly support addition of e-bikes to Policy 3.3 and treating them the same as a regular bike. E-bikes enable positive benefits such as people of lower ability and fitness levels to seek enjoyment and recreate in nature. They allow younger and older generations to connect by recreating together where otherwise differences in fitness levels may have precluded this. | Retain provisions in Policy 3.3 for e-bikes with no further limitations over and above a regular bike. |

### **Response**

Accept in part.

Although minor changes have been made to the CMS due to other submissions, no further limitations have been applied to e-bikes.

The CMS provides for e-bikes in the same ways as other forms of (non-motorised) biking. Decisions on whether to develop a new track, or trial use on or repurpose an existing track, may require conditions to be imposed. But these will be assessed on a case-by-case basis to manage effects and protect values and won’t just be based on the type of bike used.