Regulatory Impact Statement: Targeted amendments to concessions processes

Coversheet

Purpose of Document	
Decision sought:	*Analysis produced for the purpose of informing final Cabinet decisions on policy*
Advising agencies:	*Department of Conservation*
Proposing Ministers:	*Minister of Conservation*
Date finalised:	*11/11/2022*

Problem Definition

There is an opportunity to make targeted amendments to the Conservation Act 1987 to enable more proactive, transparent, and efficient concessions management without removing the Department of Conservation's (DOC) statutory ability to protect conservation values or limiting DOC's ability to give effect to the principles of the Treaty of Waitangi.

Enabling more proactive, transparent, and efficient concessions management can be achieved by addressing four specific policy problems. The four problems are:

- The broad scope of activities requiring individual concession applications
- Ambiguity in the initiation of competitive allocation processes
- Inefficiency in competitive allocation processes
- Open-ended reconsideration request timeframes

Executive Summary

Concessions regulate third-party use of public conservation land and waters

A concession is an authorisation from the Minister of Conservation to undertake an activity on public conservation lands and waters (PCL&W). A broad range of activities require a concession, with common concession activities including tourism operations, telecommunications infrastructure, collecting samples for research, and collecting plant material for propagation or bioprospecting. All aircraft take offs and landings also require a concession.

Concessions authorise activities that contribute to conservation and New Zealanders' wellbeing. Research activities are crucial in addressing the current climate and biodiversity crises. Concessionaires also play a key role in facilitating the safe and responsible enjoyment of Aotearoa New Zealand's natural environment.

There is an opportunity to improve efficiency and clarity of rules through targeted amendments to the Conservation Act 1987

Processing applications under the current statutory framework can be slow and costly. This has contributed to a growing backlog of work and impedes prompt decision making, which results in delayed or missed access to concession opportunities.

The current reactive system also provides little clarity upfront to applicants (and the wider public) on what activities may be authorised, and under what conditions. This lack of clarity is also apparent in concession allocation processes.

There is an opportunity to make targeted amendments to the Conservation Act 1987 to enable more proactive and efficient concessions management without removing the DOC's statutory ability to protect conservation values or limiting DOC's ability to give effect to the principles of the Treaty of Waitangi.

Enabling more proactive, transparent, and efficient concessions management can be achieved by addressing four specific policy problems. The four problems are:

- The broad scope of activities requiring individual concession applications
- Ambiguity in the initiation of competitive allocation processes
- Inefficiency in competitive allocation processes
- Open-ended reconsideration request timeframes

DOC has identified and analysed options for addressing these issues. These are summarised in the tables below.

Engagement and submissions process

The Minister of Conservation released the Conservation Management and Processes discussion document in early May 2022. The discussion document provided a description of the status quo and proposed changes to the Conservation Act 1987 relating to concessions management. The submissions period closed on 30 June 2022. A total of 124 written submissions were received.

DOC engaged with tangata whenua between early May and early July. This included 17 hui with whānau, hapū, iwi, and Post-Settlement Governance Entities (PSGEs). Most hui were held online. DOC also hosted 15 hui with a range of environmental, recreation, Crown-research, and university stakeholders, and fisheries, farming, and tourism industry stakeholders as well. A meeting with the New Zealand Conservation Authority (NZCA), and hui with eight conservation boards were also held. In total, more than 250 individuals attended these hui.

Summary of legislative proposals

<table>
<tr><th colspan="2">Problem A: Addressing the broad scope of activities requiring individual concession applications</th></tr>
<tr><td colspan="2">Preferred options:

• Provide the Minister of Conservation with the power to make regulations authorising activities (removing the need for an individual concession)
• Enable pre-approved concessions (to be administered through an online portal).

These options are not mutually exclusive. DOC's preferred option is to enable both because the use of each is better suited to different circumstances.</td></tr>
<tr><td>Costs: Costs of upfront engagement and technical advice, and the establishment and maintenance of both tools.</td><td>Benefits: Reductions in staff processing time and time spend by mana whenua informing concessions decisions.

Monetised benefits: $4.3m-9.6m (across 6 years)

A range has been used as the potential scope of use for the new tools will be informed through partnerships with</td></tr>
</table>

Monetised costs: $1.8m-$3.4m (across 6 years) *Based on combining implementation of both options together.*	*mana whenua at place, environmental assessments, and wider public consultation.* Non-monetised benefits: Improved clarity of rules making processes more user friendly. Possible compliance benefits.
Risks: Tangata whenua highlighted the risk of standardisation encouraging a pan-Māori approach to concessions management. Environmental interest groups also raised similar concerns regarding the protection of conservation values. These risks were considered during initial policy analysis and the options acknowledge that a one size fits all approach is inappropriate. This was the basis for discounting the option of exempting activities from concessions in the Conservation Act 1987 itself. These risks can be mitigated by partnering with tangata whenua to identify which concession management tools are appropriate in their rohe/takiwā and taking a place-based approach to implementation.	
Other options considered: Status quo	
Treaty partner, stakeholder, and the general public's views: In submissions and during hui tangata whenua raised concerns with pan-Māori approaches (see above). Environmental interest groups also raised concerns that standardisation would lead to less robust impact analysis and monitoring. 47 out of 55 submissions that expressed a preference for or against one or more of the options supported the use of general authorisations (Option 1). 45 out of 51 submissions also supported enabling the use of pre-approved concessions (Option 2).	

Problem B: Addressing ambiguity in the initiation of competitive allocation processes		
Preferred Option: Provide the Minister of Conservation with the ability to return a concession application in favour of initiating a competitive allocation process, subject to: a) a statutory timeframe of 40 working days for returning the application, and b) a statutory timeframe of 60 working days for the Minister to initiate a competitive process		
Costs: Economic costs have not been monetised due to poor evidence certainty.	Benefits: Most benefits are indirect as they relate to the outcomes from competitive allocations the option would enable. Economic benefits have not been monetised due to poor evidence certainty.	Other considerations: Low confidence based on limited use of competitive allocation for economically significant concessions to date, and limited knowledge of wider interest in future concession opportunities.
Other options considered: • Provide the ability to return in favour of initiating a competitive allocation process (without a statutory timeframe) • Retain status quo.		

Treaty partner, stakeholder, and the general public's views: 36 out of 41 submissions that commented on this matter supported enabling DOC to return an application in favour of initiating a competitive allocation process. The majority of this group (27 out of 36) preferred the inclusion of a timeframe within which the tender process must be initiated. 5 submissions expressed concerns with the proposal to better enable competitive allocation and supported the retention of the status quo. Most of the concerns were related to implementation and operational guidance. These related to when an application might be returned, how DOC would run the subsequent allocation process, and how a degree of preference for tangata whenua would be considered. Some iwi expressed concerns with a timeframe limiting their ability to inform a decision to return an application. Concessionaires were generally supportive of a statutory timeframe.

Problem C: Addressing inefficiency in competitive allocation processes		
Preferred Option: Enable direct allocation following a tender		
Costs: Low confidence.	Benefits: Greater clarity and public visibility of tendered concessions opportunities (DOC has evidence that successful applicants sometimes seek variations on tendered concession contract, but frequency is variable).	Other considerations: Risk that more efficient processes might encourage more applicants per tender, and increasing workload (however there is minimal evidence to support this a barrier to entry).
Other options considered: Retain status quo		
Treaty partner, stakeholder, and the general public's views: Among those that expressed a direct feeling toward one or more of the options, 38 out of 42 preferred enabling direct allocation while 4 supported the status quo. The concerns raised by those who preferred the status quo believed that option 1 would add complexity to the process, and that the status quo is fine.		

Problem D: Addressing open-ended reconsideration request timeframes		
Preferred Option: Require reconsideration requests to be submitted within 40 working days		
Costs: Risk of creating pressure on applicants to evaluate reconsideration requests within the timeframe. However, the impact is low given the length of the timeframe.	Benefits: Increased clarity for users. Strongly meets the objective of regulatory stewardship, though is applicable to a small percentage of concessions decisions (around 5 per year).	Other considerations: Very minimal implementation costs and improved conditions for DOC workflow planning.
Other options considered: Retain status quo		

Treaty partner, stakeholder, and the general public's views: 39 out of 42 submissions that expressed a direct preference for one of the options preferred requiring reconsideration requests within 40 working days. A few submitters who supported option 1 also suggested that the timeframe could be extended.

Implementation and monitoring of proposed changes

DOC's dedicated Permissions teams within the Planning, Permissions and Land Unit will be responsible for the implementation most of the changes to process for considering if concession activities can be authorised, and how opportunities are allocated.

Implementation of options to address Problem A (the broad scope of activities requiring individual concession applications) will require a process of engagement and upfront analysis. Following that, regulations will need to be developed to enable general authorisations. DOC will develop guidance for staff making decisions related to the powers proposed in response to Problem B and D, along with wider guidance on the use and design of competitive allocation process.

Monitoring and evaluation of each change will also be undertaken by DOC.

Limitations and Constraints on Analysis

Constraints and limitations from timeframes and scope

The key constraints and limitations on analysis are prior decisions by Cabinet, which have set a direction of agreement in principle to:

- legislative amendments to relieve pressure on the concessions system (i.e. non regulatory options such as operational improvements or resourcing have not been considered in the scope of analysis); and
- options that can be implemented in the near-term, while a wider programme of work to address systemic problems within the conservation management planning system is underway.

Cabinet agreement to targeted improvements to conservation planning processes and initiating review of the Wildlife Act 1953

In September 2021, Cabinet agreed to the previous Minister of Conservation's proposal to initiate a phased approach to reforming conservation legislation (CAB-21-MIN-0402 refers).

The previous Minister of Conservation outlined three major drivers for change:

- Current conservation legislation does not adequately provide for the management of current or emerging large-scale pressures (e.g., climate change, pests and predators, land use changes, fragmentation of habitats and landscapes) on ecosystems and species.
- The Māori–Crown partnership in conservation needs to be reset in a way that recognises contemporary partnership approaches and considers the post-settlement environment.
- Current conservation legislation does not reflect the role of conservation in society and the economy or adequately support wellbeing objectives.

However, as there is already a significant programme of reform work underway across government (including resource management reform and reform of marine protected areas

legislation), Cabinet agreed to defer a decision on comprehensive conservation legislation reform to a future government. Cabinet noted that there are other opportunities such as to deliver direct, incremental improvements to address government priorities.

In the interim, Cabinet agreed to progress:

- amendments to conservation management planning and concessions legislation; and
- preliminary work to establish a foundation for future comprehensive conservation legislation reform, including by initiating a review of the Wildlife Act 1953.

Advice to Cabinet noted that while amendments to conservation management planning and concessions legislation cannot resolve fundamental system challenges, they would make processes more effective and agile within the current legislative framework. It was also noted that these changes will be delivered within a much shorter timeframe than comprehensive reform can be achieved.

Implications for the problem definition

The direction to focus on legislative proposals means that the problem definition is focused on legislative impediments that contribute to slow and resource-intensive planning and permissions processes. The discussion document clarified that resolving the legislative impediments identified would remove some roadblocks to more efficient and clear permissions processes.

However, removing legislative barriers will not in and of itself resolve the backlog problem entirely. Instead, these options will support ongoing operational work and the concurrent partial review of the Conservation General Policy (CGP) and General Policy for National Parks (GPNP) to drive improved performance in the concessions system.

The direction to focus on near term improvements, means that systemic issues within conservation legislation will not be addressed. Addressing fundamental issues will require a level of analysis and engagement that cannot be achieved within the timeframes allowed for this work.

Implications for options considered in scope of analysis

The direction to focus on legislative change means that non-regulatory changes to address the problem, such as resourcing, information management, and engagement processes, are not considered in the scope of analysis. However, as noted above, the proposals are intended to support ongoing operational improvements to the concessions system. Non-regulatory features of the system were considered in the analysis and proposed implementation of the options.

The direction to focus on near-term improvements means that only options that would remove pressure on the concessions system in the near term have been considered in the scope of analysis.

For example, the proposals do not consider changes to decision-making or approval roles for concessions and planning processes. This is because there are more fundamental issues and questions about the roles of the Minister of Conservation, NZCA, conservation boards, and tangata whenua in decision making on PCL&W, that require a level of analysis and engagement that cannot be achieved within the timeframes allowed for this work. The drivers of these problems are systemic and complex, requiring extensive analysis within the context of the wider conservation system. Addressing these issues can be more

appropriately achieved through the partial reviews of the CGP and GPNP (the partial reviews) and through longer-term work on reforming the conservation system.

The proposals do not include changes to amend the relationship between concessions and conservation management strategies and plans.

Amending the statutory considerations DOC (on behalf of the Minister of Conservation) must make when deciding if an activity can be authorised is also out of scope. Options should not amend which activities can or cannot be authorised through a concession.

Specifically, this review has not sought to address any slowing down of the processing of applications under the Wildlife Act 1953 related to the effect of the PauaMAC5 Supreme Court decision.[1] A separate review of the Wildlife Act 1953 has been initiated, which is a more appropriate avenue for addressing issues related to what interactions with wildlife are able to be authorised.

Options that would prescribe in legislation how DOC engages with tangata whenua in concessions management are also beyond the scope. The directed timeframes do not allow for the significant engagement required. How DOC gives effect to the principles of the Treaty of Waitangi will continue to be directed by operational policy and Treaty settlement redress. DOC is currently developing a regulatory strategy which will provide further direction in the near-term, as will the ongoing partial reviews of the general policies.

Options should not amend or limit DOC's ability to act on obligations set out in cultural redress from Treaty settlements.

Limitations on impact analysis from concurrent related workstreams

In August 2019, the then Minister of Conservation and the NZCA directed DOC to undertake partial reviews of the Conservation General Policy and General Policy for National Parks to better reflect Treaty responsibilities under section 4 of the Conservation Act 1987. The aim of this work is to ensure Treaty responsibilities are both visible and easy to understand within the general policies.

The partial reviews are a key part of the first phase of comprehensive law reform and indicate the required direction of travel to guide both long-term reform and nearer-term work on the review of the Wildlife Act 1953.

DOC is also undertaking a concurrent programme of work to improve our regulatory stewardship, including developing a regulatory strategy. The strategy will set strategic regulatory priorities and guide operational regulatory policy that will address these gaps and support improvements in regulatory practice and assurance. This includes DOC's regulatory capabilities (skills, technology, decision-making authority and standard operating procedures).

As the partial reviews of the general polices and development of a regulatory strategy are still underway, there are limitations on impact analysis as it is unclear how the status quo might develop. The operational context through which options will be implemented is subject to change.

Constraints and limitations from timeframes on engagement

[1] *Shark Experience Limited v PauaMAC5 Incorporated* [2019] NZSC 111.

Time constraints for passing legislation within desired timeframes meant that only eight weeks were available for engagement. There is also a significant amount of public engagement on wider Government policy change underway currently.

These two factors have put pressure on individual and organisational resource capacity to engage with the Conservation Management and Processes Bill proposals. The technical character of the proposals potentially further limited people's ability to engage due to the level of understanding of complex legislative processes required.

Some feedback may have been limited by a lack of time to engage with the detailed discussion document and the proposals, especially for those with limited previous experience in concessions processes.

Data and information limitations

There are limitations in the information used to inform the use and scale of general authorisations and pre-approved concessions. Impact analysis could have been improved through detailed engagement with mana whenua on which specific activities, locations, and conditions may be appropriate for general authorisations and pre-approved concessions. Similarly, location specific environmental assessments would have better informed the scale of use and possible implications. Such detail was not achievable within timeframe constraints.

There are also limitations on the data available for assessing proposed changes to tender allocation processes. Data is limited due to the limited use of competitive allocation for economically significant concessions to date, and limited knowledge of wider interest in future concession opportunities.

Across concessions processes, there are significant gaps in the quantitative data held about engagement with tangata whenua. The time tangata whenua put into working with DOC on concessions processes has not been consistently recorded to date.

Responsible Manager(s) (completed by relevant manager)
Kayla Kingdon-Bebb *Director, Policy* *Department of Conservation*  *11/11/2022*

Quality Assurance (completed by QA panel)	
Reviewing Agency:	Department of Conservation
Panel Assessment & Comment:	The Department of Conservation's Regulatory Impact Assessment Panel has reviewed the Regulatory Impact Statement on targeted amendments to concessions processes. The Panel considers that the Regulatory Impact Statement partially meets the Quality Assurance criteria. The requirements were not fully met because of the limited scope of the proposal. However, the constraints and limitations have been well described, and the Regulatory Impact Statement provides a robust analysis of the options that are within the limited scope.

Introduction: Context and the policy problems

Structure of this regulatory impact statement

This regulatory impact statement is structured around four discrete policy problems to address which are contributing to an overarching policy opportunity – that amendments to statutory processes can enable more efficient and transparent concessions processes.

The objectives and criteria are used to identify and assess whether changes do enable improved concessions processing.

Each policy problem is covered from problem definition to implementation before moving onto the next policy problem.

Policy problem	Section of this RIS
The broad scope of activities requiring individual concession applications	p. 18-38
Ambiguity in the initiation of competitive allocation processes	p. 39-52
Inefficiency in competitive allocation processes	p. 53-58
Open-ended reconsideration request timeframes	p. 59-63

What is the context behind the policy problems?

What are concessions?

A concession is an authorisation from the Minister of Conservation to undertake an activity on public conservation lands and waters (PCL&W). A broad range of activities require a concession,[2] with common concession activities including tourism operations, telecommunications infrastructure, collecting samples for research, and collecting plant material for propagation or bioprospecting. All aircraft take offs and landings also require a concession.

Concessions, of which permits are a sub-set, authorise activities that contribute to conservation and New Zealanders' wellbeing. Research activities are crucial in addressing the current climate and biodiversity crises. Concessionaires also play a key role in facilitating the safe and responsible enjoyment of Aotearoa New Zealand's natural environment.

Key regulatory objectives of the concessions system

The concessions system is responsible for regulating the use of PCL&W. Below we have identified four key functions of the concessions system in managing people's use of PCL&W.

- **Delivering effective land management** – First and foremost, the concessions system is responsible for ensuring that any activities maintain the values of public

[2] Section 17O of the Conservation Act 1987 requires all activities on PCL&W to be authorised by DOC in the form of a concession, with the following exemptions: i) any mining activity authorised under the Crown Minerals Act 1991; ii) any activity that is otherwise authorised by or under the Conservation Act or any Act in Schedule 1; iii) any action or event necessary to protect people, prevent serious damage to property or avoid adverse effects on the environment; iv) any activity carried out by the Minister or Director-General in exercising their duties; and v) any recreational activity undertaken without gain or reward for that activity.

conservation land. It enables DOC to control which activities can occur, assess any adverse effects, and apply any conditions necessary for the activity to take place.

- **Providing well-governed access opportunities** – Appropriate private use and development of public conservation land needs an enabling mechanism. A clearly regulated environment gives legitimacy to that use, provides a reasonable level of certainty, and clarifies responsibilities.
- **Securing public benefit from private use and development** – A royalty is paid when the use of PCL&W results in commercial gain. DOC generally refers to these royalties as activity fees. Securing a fair return to the public for the use of a public asset is the basis for charging activity fees.
- **Clarifying public and private entitlements and responsibilities** – A concession agreement clarifies entitlements and responsibilities for both parties in situations where both DOC and the concessionaire have interests and duties relating to the activity.

Part 3B of Conservation Act 1987 outlines the Minister of Conservation's powers to grant concessions and the statutory process

Part 3B (sections 17O–17ZJ) of the Conservation Act 1987 sets out the statutory framework for the concessions system, including the:

- Minister's decision-making, condition-setting and fee-collection powers,
- process for considering an application,
- factors that must be considered in determining if a concession can be granted, and
- Minister's responsibilities to monitor and enforce concession agreements.

DOC officials consider and decide on concession applications under delegated authority from the Minister of Conservation.

Appendix 1 provides further information on the concessions system including:

- A brief introduction relationship between concessions and the management planning framework
- An overview of the types of concessions

Appendix 2 provides a diagram summarising the process for considering a concession application.

Giving effect to the principles of the Treaty of Waitangi in concessions processes

Section 4 of the Conservation Act 1987 requires DOC to give effect to the principles of the Treaty of Waitangi when implementing any of its legislative responsibilities. This includes DOC's statutory role in processing and managing concessions. All principles of the Treaty apply, but the principles of partnership, informed decision making, and active protection are most frequently relevant to concessions management.

The Conservation Act 1987 does not prescribe any process or specific requirements for giving effect to Treaty principles in concessions management. The operational approach will differ depending on the Treaty partners, the locations in question, and the nature of the activity. Some Treaty settlement Acts also have bespoke requirements and processes outlining how DOC and the relevant iwi or hapū will manage concessions.

What is the status of the delivery of the regulatory system?

Improvement required regarding processing times and clarity in concessions decisions

Researchers, businesses, and other concessionaires have all raised concerns with the timeframes for concessions decisions in recent years. Lengthy decision timeframes are a concern as it creates uncertainty for applicants and in some cases, delays conservation research or an activity important to the local community. Long decision timeframes also create uncertainty for members of the public interested in notified concession applications.

These concerns recently manifested in a review of DOC's permit protocols and procedures by the Environment Select Committee. This was prompted by concerns raised to them by the scientific research community who were frustrated by delays in processing and a lack of clarity in the permitting process. The Environment Select Committee released their briefing in March 2022.[3]

There is a persistent backlog in applications awaiting a decision. The number of applications pending a decision has sat between 400 and 700 over the last 3 years.[4] When that figure reached close to 700 in December 2021, more than 400 applications had been in the system for 2 months or more.

The main determining factors in the length of a concession application are the scale of the activity and the complexity of the application. This is reflected in Table 1, with leases and licences having the highest average number of days taken to reach a decision.

Table 1: Average number of days between application received and decision (2018-2021)

Concession type	Number of applications	Average number of days to decision
Research or collection permit[5]	479	158
Non-research or collection permit	4199	59
Lease or licence	547	265
Easement	211	173
All concessions	**4957**	**93**

Despite lengthy processing times generally being the result of detailed analysis and engagement, some ambiguity remains regarding the finality of a decision. While there are statutory timeframes in other parts of Part 3B, there is no legislated timeframe dictating when an applicant must request a reconsideration of the decision. This ambiguity has created issues for DOC workflow management and extends the overall time before a decision can be considered final.

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[3] www.parliament.nz/resource/en-NZ/SCR_120000/3aeaf79072fe8ad291c1d72a8bd240bab24ecf86

[4] The figures provided here are averages that have been rounded for simplicity. The specific number fluctuates over time.

[5] This figure does not include authorisation applications for activities regulated by the Wildlife Act 1953, Marine Mammal Protection Act 1978, or Marine Reserves Act 1971.

Improvement required regarding how DOC gives effect to the principles of the Treaty of Waitangi in concessions management

The *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* (Ngāi Tai ki Tāmaki) case highlighted shortcomings in DOC's approach to giving effect to the principles of the Treaty of Waitangi, as required by section 4 of the Conservation Act 1987.[6]

In Ngāi Tai ki Tāmaki, the Supreme Court stated that:

> *"in applying s 4 to a decision relating to a concession application, DOC must, so far as is possible, apply the relevant statutory and other legal considerations in a manner that gives effect to the relevant principles of the Treaty"*[7]

The case was specifically about a concession decision but provided a strong directive to DOC to improve how it gives effect to the principles of the Treaty of Waitangi more broadly.

The March 2022 Options Development Group report highlighted the importance of the active protection principle in conservation "particularly when DOC is granting concessions, and the need to take the interests (including economic interests) of tangata whenua into account".[8]

Reflections on how DOC gives effect to section 4 in concessions processes were a common theme in engagement with whānau, hapū, and iwi on the draft proposals. Many shared concerns around how hapū and iwi are engaged in concession decisions.

Some whānau, hapū, and iwi are overwhelmed by the volume of emails they receive relating to concessions in their rohe, while others expressed concern that they were not being asked to contribute to the process. There is also unease relating to whether or not the right people are currently being involved at the right stage of the concession process. People also shared their concern about how DOC applies section 4 while engaging with hapū and iwi who have not yet settled.

Improvement required regarding 'first-come, first served' allocation processes

Concerns have also been raised around the ability of the concessions system to effectively and appropriately allocate concession opportunities. Both the Parliamentary Commissioner for the Environment and the Environmental Defence Society described the status quo as taking a 'first-come, first-served' approach in recent reports on conservation management.[9]

This has limited the use of competitive allocation tools and their potential to enhance conservation outcomes and outcomes for tangata whenua. The Waitangi Tribunal report *Ko*

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[6] *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122, [2019] 1 NZLR 368

[7] *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122, [2019] 1 NZLR 368 – paragraph

[8] *Partial reviews of the Conservation General Policy and General Policy for National Parks regarding Te Tiriti o Waitangi / the Treaty of Waitangi*, Options Development Group, March 2022 (https://www.doc.govt.nz/globalassets/documents/our-work/options-development-group/options-development-group-report-march-2022.pdf) – the Options Development group statement was directed by reflections on Ngāi Tai ki Tāmaki, *Ko Aotearoa Tēnei*, and the Whales case (refer *Ngāi Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553).

[9] The February 2021 PCE report *Not 100% – but four steps closer to sustainable tourism* (www.pce.parliament.nz/publications/not-100-but-four-steps-closer-to-sustainable-tourism) and the August 2021 EDS report *Conserving Nature: Conservation Reform Issues Paper*

Aotearoa Tēnei raised issues with DOC's ability to consider Te Ao Māori, mātauranga Māori, or taonga Māori in concession allocation processes.[10]

We are Aotearoa, the Tourism Futures Taskforce interim report from December 2020, also highlighted issues with the allocation mechanisms available.[11] The report highlighted that the current system only enables DOC to tender an expression of interest, not the concession itself. This requires an additional step that adds time and complexity to the process.

How is the status quo expected to develop?

Without changes to the delivery of concessions processes, the shortcomings described above are expected to continue or worsen in the coming years. Namely, concessions management will not sufficiently give effect to the principles of the Treaty of Waitangi, the backlog in concessions applications would be expected to remain (or grow further), and ambiguity will continue to encourage a 'first-come, first-served' approach to concession allocation.

Concurrent non-legislative work programmes to address concessions management issues

DOC began a process to review its regulatory stewardship role in mid-2020 to assess its performance against Government expectations. For concessions, the review is timely in the context of the last 5 years as concerns with the performance of the system have intensified. Those concerns include DOC's ability to give effect to the principles of the Treaty of Waitangi as highlighted in the 2018 Supreme Court decision in Ngāi Tai ki Tāmaki.[12]

The review identified that improvements were required in the areas of regulatory culture, strategy, systems, and accountabilities. DOC is undertaking a programme of work to improve our regulatory stewardship, including developing a regulatory strategy. The strategy will set strategic regulatory priorities and guide operational regulatory policy that will address these gaps and support improvements in regulatory practice and assurance.

Other areas that will be considered in the strategy development include greater transparency of regulatory processes for regulated parties and tangata whenua when providing input into the regulatory system. The programme of improvement will consider the regulatory capabilities (skills, technology, decision-making authority, and standard operating procedures) needed across the system as a whole so that DOC can discharge its regulatory duties in a more efficient and effective manner.

DOC is also currently partially reviewing the CGP and GPNP, with the aim of addressing barriers to achieving a thriving Treaty partnership. The Options Development Group was established to assist DOC in the partial reviews of the CGP and GPNP and delivered their report in March 2022.

Partial reviews of the CGP and GPNP will help to address some of the concerns with the status quo in how DOC reflects its Treaty responsibilities in concessions processes. The

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[10] Waitangi Tribunal, *Ko Aotearoa Tēnei* (Wai 262, 2011), pp. 141-142. (https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68356054/KoAotearoaTeneiTT1W.pdf)

[11] *The Tourism Futures Taskforce interim report – We are Aotearoa*, Tourism Futures Taskforce, December 2020 (https://www.mbie.govt.nz/assets/the-tourism-futures-taskforce-interim-report-december-2020.pdf)

[12] *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122, [2019] 1 NZLR 368

partial reviews will update the statutory guidance used by decision-makers, enabling more robust and timely concessions decisions that give effect to Treaty principles.

These changes are necessary to better enable DOC to give effect to section 4 of the Conservation Act 1987 in concessions processes. Ensuring concessions processes are better informed by Treaty partner input would improve timeframes for some applications and bring clarity to applicants.

The actions described above will help to mitigate further growth in the backlog and pressure on the system. Proposals to enable more targeted reviews of conservation management strategies and plans are also being progressed alongside this review of concessions processes. Such changes would enable efficiency though more up to date guidance for concessions management.

Improved engagement in concession processes, building staff engagement and better incorporation of Treaty principles into decision making are likely to be more resource intensive than the status quo. This will amplify the need to address other existing inefficiencies and ambiguities in the concessions system.

Overall, these changes are unlikely to remedy the backlog in full or bring clarity to allocation processes as statutory barriers inhibit improvements to processes.

What is the policy problem or opportunity?

Elements of current concessions processes are unwieldy for DOC, applicants and tangata whenua, frequently resulting in unnecessary costs, delays, and ambiguities. The current statutory tools are restricting the ability to deliver processes consistent with good regulatory practice.

Four specific legislative impediments that contribute to inefficiencies and/or ambiguities in the status quo have been identified. This review is an opportunity to address these. The four specific policy problems are:

- The broad scope of activities requiring individual concession applications
- Ambiguity in the initiation of competitive allocation processes
- Inefficiency in competitive allocation processes
- Open-ended reconsideration request timeframes

The objectives sought in relation to each policy problem, the criteria for assessing options, and the scope of potential options are the same for each specific policy problem. The remainder of this regulatory impact statement is separated into an individual section regarding each problem.

Policy problem	Section of this RIS
Problem A: Addressing the broad scope of activities requiring individual concession applications	p. 18-38
Problem B: Addressing ambiguity in the initiation of competitive allocation processes	p. 39-52
Problem C: Addressing inefficiency in competitive allocation processes	p. 53-58
Problem D: Addressing open-ended reconsideration request timeframes	p. 59-63

Summary of public engagement on the Conservation Management and Processes discussion document

The Conservation Management and Processes discussion document was the primary means of seeking tangata whenua, stakeholder, and public input. The discussion document was hosted on DOC's website and accompanied by short accessible summaries, an overview video, and instructions on making a submission.

DOC also conducted eight weeks of engagement between May and July 2022 to encourage tangata whenua and stakeholder feedback. To make the best use of people's time, engagement hui were held in conjunction with early engagement on DOC's review of the Wildlife Act 1953. In addition to hui organised specifically to discuss these proposals and the Wildlife Act, support materials were provided to DOC staff to facilitate engagement on the proposals during regular meetings between tangata whenua and regional DOC staff.

Most engagement hui were held online, with some being held in-person or with a mixture of DOC staff online and in-person. A regional approach was taken for engagement with tangata whenua. Whānau, hapū, iwi, and PSGE groups were invited to a collective hui in most DOC operations regions. In some cases, individual hui were held with hapū, iwi, and PSGE. Hui with stakeholders grouped organisations by sector.

A total of 124 written submissions were received and a total of 41 hui were held. 17 were held with hui with whānau, hapū, iwi, and PSGEs. 15 hui were held with a range of stakeholders from the environmental, tourism, recreation, Crown-research, university research, fisheries, and farming sectors. 8 hui with conservation boards, and 1 with the NZCA, were also held. In total, more than 250 individuals attended these hui.

Table 1 below presents how many submissions were received from different groups of submitters. Note that the tables throughout this document are based on feedback from submissions rather than hui. The totals include where hui participants requested a point or the notes to be considered as an oral submission.

Table 1: Number of submissions, by submitter group	
Total	**124**
Council	8
ENGO	3
Individual	29
NGO	7
Non-Research Concessionaires	21
Other Stakeholders	28
Research Concessionaires	5
Statutory Bodies	8
Tangata Whenua	15

Objectives and criteria related to the policy problem

What objectives are sought in relation to the policy problem?

The following are the objectives sought through options for legislative amendments to concessions processes.

- ***Cost and time effectiveness***
  To reduce the time and costs required of those involved in processing concessions; this includes tangata whenua (iwi, hapū and whānau), stakeholders, researchers, businesses, local councils, the public and DOC
- ***Regulatory stewardship***
  To enable transparency and consistency in decision making, and making rules clear for users
- ***Principles of the Treaty of Waitangi***
  To enable DOC to give effect to the principles of the Treaty of Waitangi, as required by section 4 of the Conservation Act 1987, in concessions processes
- ***Conservation values***
  To ensure processes enhance outcomes to protect conservation values.
  The Conservation Act defines conservation as "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**".**

What criteria will be used to compare options to the status quo?

Options for change will be evaluated against the status quo using the following criteria. The criteria have been formed as measurement of the objectives identified in the previous section. This is to ensure the criteria provide an assessment of how well changes give effect to the purposes of the review.

Efficiency (objective: time and cost effectiveness)

Assessment of each option's ability to reduce the cost and time effectiveness of the relevant concessions processes. Relevant groups that incur time and/or financial costs include DOC, concession applicants, tangata whenua (iwi, hapū and whānau), and wider public interest groups with an interest in concessions management.

Clarity and transparency (objective: regulatory stewardship)

Assessment of each option's ability to 1) enable clearer rules for reference by concession applicants and the wider public, and/or 2) improve transparency and consistency in decision-making.

Robustness (objective: conservation values)

Assessment of each option's ability to enable robust processes for collecting and assessing information relevant to the possible effects of a concession activity on conservation values. This criterion measures the extent to which authorisation and allocation decisions are well-informed by scientific advice, mātauranga Māori, and expression of public interests.

Treaty of Waitangi (objective: principles of the Treaty of Waitangi)

Assessment of each option's ability to enable DOC to give effect to the principles of the Treaty of Waitangi in concessions process, as required by section 4 of the Conservation Act 1987. All principles of the Treaty apply, but the principles of partnership, informed decision making, and active protection are most frequently relevant to concessions management.

Relationship between the objectives and related criteria

Improving the cost and time effectiveness of concessions processes and enabling sound regulatory stewardship are the key objectives sought in relation to addressing the policy problem. They are key measures in the functionality of system processes.

Protecting conservation values and giving effect to the principles of the Treaty of Waitangi are the foundational statutory responsibilities of the concessions system. They relate to the regulatory purpose of the system and its outcomes.

Options that would make concessions processes more effective and efficient should not limit DOC's ability to give effect to the principles of the Treaty of Waitangi or the robustness of the process to protect conservation values. Options that enhance DOC's ability to give effect to the principles of the Treaty of Waitangi and/or the protection of conservation values will be preferred, but these key objectives of the regulatory system cannot be traded-off for efficiency gains.

There may also be tension between cost and time effectiveness and sound regulatory stewardship. In those cases, transparency and consistency are not to be traded-off to achieve efficiency gains.

Public feedback on the objectives

30 submissions received on the discussion document expressed either clear support or non-support for the objectives. 29 of those expressed support for the objectives, 1 expressed that they did not support.

During the hui, tangata whenua regularly asserted the importance that efficiency and making things easier should not limit DOC's ability to give effect to the principles of the Treaty of Waitangi. This principle is clearly stated above and directs the analysis that follows.

Similarly, some hui participants and three submissions raised that conservation values and outcomes should not be trumped by the other objectives. Three submissions raised that recreation values should also be expressed in the objectives. This analysis includes recreation opportunities as part of conservation values as defined in the Conservation Act. The discussion document did not define conservation values which may have resulted in a narrower interpretation.

Problem A: Addressing the broad scope of activities requiring individual concession applications

Section A-1: Diagnosing the policy problem

Status quo

The statutory process set out in Part 3B of the Conservation Act 1987 for determining whether a concession can or should be granted for an activity is a reactive framework. It is based on an applicant proposing an activity, DOC evaluating that proposal, and DOC deciding on whether the activity is authorised or not. DOC may impose conditions on the authorisation to mitigate any adverse effects from the proposed activity.

This reactive framework means DOC is always in the position of assessing whether the activity defined by the applicant can be authorised. This means that assessments must be done on a case-by-case basis, as each application is somewhat unique.

Taking a case-by-case approach and treating each concession individually is also a statutory requirement. Section 17U of the Act states 'the Minister shall have regard to' a number of matters in considering a concession application. While DOC may have regard to those considerations in advance, the decision-maker must actively consider each application, regardless of its similarity to previous applications.

The assessment of activities prior to authorisation ensures that that there are no adverse effects that cannot be mitigated, that the activity complies with the conservation management planning documents, and that the authorisation gives effect to the principles of the Treaty of Waitangi.

The current assessment process is resource intensive and largely internal to DOC. The lack of standardisation means that limited information is available to applicants on what activities can be authorised within the statutory framework. It can require numerous conversations with an applicant to redefine an application to something acceptable within the regulatory boundaries.

The Stage 1 Cost Recovery Impact Statement in Appendix 1 provides further detail on the resources spent managing such activities, along with some illustrative examples.

What is the policy problem or opportunity/case for change?

The reactive process is not conducive to previous engagement with tangata whenua and effects assessments informing future concessions decisions or a wider public understanding of the types of activities that can be authorised.

There is an opportunity to manage some activities more efficiently by taking a proactive approach to assessing impacts of some activities and authorising what is acceptable without requiring an application. This opportunity exists in the management of activities that are commonly applied for and present a low risk of cumulative impacts.

Proactive management of common activities would alleviate pressure on the concessions processing system and would allow resources and effort to be spent on managing more complex issues. It is also an opportunity to improve public knowledge by encouraging DOC to define some acceptable activities in advance.

Section A-2: Deciding upon an option to address the policy problem

What options are being considered?

Options to address the issue that activities require individual concessions, even when these activities are commonplace and have no or minimal adverse effects that can be appropriately managed	
Option 1	Provide the Minister of Conservation with the ability to make regulations that generally authorise specific activities, removing the need for a concession
Option 2	Amend the Conservation Act 1987 to clarify that activities can be pre-approved in advance of, or without, an application being received
Option 3	Retain the status quo

Option 1: Provide the Minister of Conservation with the ability to make regulations that generally authorise specific activities, removing the need for a concession

This option would provide the Minister of Conservation with a new power to create regulations that authorise an activity without the need for a concession.

Regulations could be prescriptive in authorising the activity only for specific locations. Authorisation could also be conditional on the time of day or seasons. Other conditions may be prescribed to ensure that the activity does not risk having adverse effects on the environment, recreation activities or the interests of tangata whenua. For example, news media organisations may film without a permit so long as filming only takes place on formed public tracks and car parking areas.

The Minister's use of this power would be subject to criteria to ensure that any activity authorised in this way is in line with the environmental protections, the Treaty principles and other parameters required in the concession's regime. The criteria would be based on the existing tests in Part 3B that are used to assess if an activity can be authorised. These criteria would be included in the legislation to ensure authorisation through regulation is limited to circumstances where it is appropriate.

Criteria for authorising activities through regulations

The following criteria on a new regulation-making power would ensure that authorisations through regulation are consistent with the parameters of the statutory framework for considering which activities are authorised through a concession:

- **Authorisation does not provide any corresponding rights over the land**
  The intent here is to limit general authorisations to activities currently authorised by permits because permits provide a non-exclusive right to undertake an activity with no corresponding rights over the land. These activities are more temporary and transient uses that do not limit the rights of others to undertake recreational (or other commercial) activities. This criterion would mean that regulations could not authorise the installation of infrastructure or other activities requiring an easement, licence, or lease.

- **The nature of the activity is not contrary to the purposes for which the land is held**
  As with current concession decisions, the authorisation should ensure that the activity is not contrary to the purposes for which the land is held.

- **There are low or no effects on conservation values from the activity**
  This criterion is necessary to ensure that an activity is not authorised if it might have unacceptable adverse effects. It reflects that the Minister shall have regard to the nature and effects of the activity, and any measures to mitigate those effects, when considering a concession application.[13] This criterion would also require the Minister to consider possible cumulative effects of the activity, as general authorisation would not provide the ability to set limits around numbers. Possible adverse effects could be mitigated through conditions on the activity (e.g., time of day or year).

- **The nature of the activity and management of any potential effects is consistent with the principles of the Treaty of Waitangi**
  DOC's responsibility to give effect to the principles of the Treaty of Waitangi would apply to the process for creating regulations to authorise activities, in the same manner as it applies to current concessions decision-making processes. Section 4 of the Conservation Act 1987 applies to all elements of decisions made under the Act or any other conservation legislation listed in the Act. However, including a criterion to this effect would provide clarity.

- **It is reasonable to forgo the collection of any royalties, fees, or rents from the activity**
  Section 17X of the Conservation Act provides DOC with the ability to waive the collection of any rents or royalties if the activity contributes to the management of the lands, there are other non-commercial public benefits from the activity, the cost of collecting rents outweigh what might be collected, or any other circumstances of the concession justify such waiver or reduction. This criterion ensures that DOC would only forgo cost-recovery fees and royalties where appropriate.

Implications of Treaty settlement requirements on the use of general authorisations

There are specific requirements in some Treaty settlement legislation regarding concessions decision making and management. Option 1 is intentionally non-prescriptive regarding the process for making regulations so that bespoke settlement requirements can be incorporated. Regulations would need to exclude relevant areas if the process for establishing general authorisation cannot accommodate Treaty settlement requirements.

Implications of Takutai Moana legislation on the use of general authorisations

The Marine and Coastal Area (Takutai Moana) Act 2011 provides for conservation permission rights where customary marine title (CMT) exists. A determination of CMT allows the CMT group to give or decline permission for the Minister of Conservation or Director-General of DOC (as relevant) to consider concession applications for activities wholly or partially within the relevant CMT area. As with Treaty settlement requirements, specific areas would need to be excluded from the regulations if obligations towards CMT groups cannot be incorporated into the regulation-making process.

Option 2: Amend the Conservation Act 1987 to clarify that activities can be pre-approved in advance of, or without, an application being received

This option seeks to amend the Conservation Act 1987 to explicitly allow DOC to pre-approve concessions where the possible effects of an activity are well understood and have been assessed in advance.

This option would see DOC defining the allowed activity and detailing any necessary conditions to the prospective concessionaire. The assessment of the activity would be undertaken by

[13] See sections 17U(1)(a) to 17U(1)(c) of the Conservation Act 1987.

DOC before the concession is made available, rather than the activity being assessed after an application is made.

Unlike an activity authorised through a general authorisation (Option 1), users would continue to require a concession. DOC would continue to collect user information on the activity and any concession-related fees.

The person seeking to undertake the activity would need to agree to the terms and conditions set out in the standard concession document or would need to apply for a non-standard concession if they wanted to operate outside those terms and conditions.

All the relevant regulatory requirements for permits under Part 3B would still apply. DOC would assess impacts and determine adherence to conservation management planning documents in advance, and these requirements would need to be satisfied before a concession could be made available on demand. DOC would proactively define the activity and set any conditions necessary for sound management of the activity.

DOC would need to ensure that Treaty principles had been given effect to in assessing the activity and offering standardised concessions. In some cases, it might be appropriate to give effect to the Treaty through specific conditions (eg filming must not take place on stated wāhi tapu (sacred sites)).

The range of concessions that would be available for pre-approval would be at DOC's discretion, following engagement with iwi, hapū and whānau. DOC would retain the ability to remove a concession opportunity from the pre-approved list if required. An activity could be removed quickly if undesirable impacts on conservation values were observed, or concerns were raised by tangata whenua.

Standardised concessions could be made available through different avenues depending on what is best for users and most cost effective. This could include concessions being available on an online platform, applicants completing ready-made forms and emailing them through to DOC, or standard concession agreements being available at local DOC offices.

Option 3: Retain the status quo

Under the status quo, any activities not exempted by section 17O of the Conservation Act 1987 would continue to require a concession application to be made and that application to be assessed under Part 3B.

Prospective users would continue to submit applications and follow the process in which DOC assesses individual applications. It would not be possible for DOC to make concessions decisions in advance of an application being received.

The intensity of resourcing from DOC is expected to increase from concurrent work programmes, especially those related to improving Treaty partnership, as DOC seeks to improve the extent to which concessions decisions are informed by Treaty partner information on values and assessment of the impacts of a proposed activity on those values.

The regulatory strategy, improved guidance, and better working relationships with Treaty partners will create efficiencies and will bring more clarity for applicants. However, the overall impact is that more resources and time will be required to process concession applications, including relatively standard permit type activities.

Discounted options

The following options were considered but have been discounted. They are described below for completeness.

Discounted option: Expanding the list of activities exempt from concessions in section 17O

The exemptions listed in section 17O allow for activities to be undertaken without needing a concession. These activities are either managed through a separate statutory framework (eg mining authorisations through the Crown Minerals Act) or do not require any authorisation at all (e.g. measures necessary to save someone's life).

DOC has ruled out adding specific activities to the list of exemptions in section 17O because the mechanism is too blunt. It is likely that exemptions will need to specify which locations are or are not included to protect conservation values and give effect to Treaty principles.

- Such exemptions would not be appropriate for primary legislation as they would be too detailed and prescriptive.
- Having the authorisation set in legislation creates a risk of the tool being too rigid if the authorisation needs to be revoked or amended in the future.
- This approach would not enable DOC to manage other activities in this way without further changes to the Act, should the mechanism prove to be effective.

Furthermore, undertaking robust consultation on which activities should be added to section 17O is not feasible within the directed timeframe for the Conservation Management and Processes Bill.

Discounted option: Provide conservation management planning documents with the ability to authorise activities

Providing conservation management planning documents with the ability to authorise activities was considered in the initial analysis. This option would have the same intent as Option 1 but would authorise activities through a different mechanism.

Establishing general authorisations in this way would be incorporated into the existing processes for reviewing conservation management planning documents. The authorisation of activities could be incorporated into a full review of the document or could be the subject of a partial review specifically looking at creating general authorisations for the area. Similarly, authorisations could be removed during a full document review or through a targeted partial review. Authorisations would need to be subject to similar criteria as outlined for Option 1 above.

This option has been discounted as it would change the decision-maker from the Minister of Conservation to the NZCA and conservation boards, as they approve statutory planning documents. Any review or changes to the role of the NZCA or conservation boards in conservation management processes is beyond the scope of this review. The NZCA and conservation boards currently have no decision-making role on authorisations. Their role is to provide advice in the form of statutory guidance.

Additionally, this option would risk putting additional resourcing pressure on an already strained management planning system. That system pressure could also see any implementation of general authorisations side lined by more pressing issues.

One submission suggested that planning documents were the most appropriate place to identify which activities could be managed through advanced authorisation. This feedback was noted but the option has been discounted for the reasons above.

Multi-Criteria Analysis: How do the options compare to the status quo/counterfactual?

Summary table

Criteria	Option 1: Authorising activities through regulations	Option 2: Enable pre-approved concessions	Option 3: Retain the status quo
Efficiency	++	++	0
Robustness	+	+	0
Clarity and transparency	+	+	0
Treaty of Waitangi	+	+	0

Key for qualitative judgements:

++	much better than doing nothing/the status quo
+	better than doing nothing/the status quo
0	about the same as doing nothing/the status quo
-	worse than doing nothing/the status quo
- -	much worse than doing nothing/the status quo

Feedback from Public Consultation: General Authorisations

In total 55 submitters indicated their preferred option, with majority in favour of option 1. 47 submitters expressed support for option 1, while 8 did not. Notably all research and non-research concessionaires supported this change while two environmental non-government organisations preferred the status quo.

Generally, those in support of option 1 are happy for the Minister of Conservation to have the ability to make regulations that generally authorise specific activities, so long as the activities are known to have no or minimal environmental impacts. Many agree that the current concession framework can be unnecessarily cumbersome, restrictive, and expensive for both DOC and users, and there are some that believe there should be a process installed for public input into which activities become generally authorised. Those who preferred the status quo recommend that the criteria for general authorisations presented in the discussion document should be strengthened.

Three tangata whenua groups expressed support for the change option so long as robust engagement with tangata whenua does take place, and that generally authorised activities are agreed upon on a place-based basis. The tangata whenua submitter opposed to the change option noted that they would only support the option if it was compliant with section 4 and provided a mechanism for customary practices including the access to and use of cultural materials.

The following table presents data collected during consultation of those who either support option 1 or the status quo.

Table 3: Support for general authorisations (Option 1), by group		
Group	**Support change**	**Retain status quo**
Councils	5	0
ENGO	0	2
Individual	4	3
NGO	4	1
Non-Research Concessionaire	10	0
Other Stakeholder	11	0
Research Concessionaire	5	0
Statutory Body	5	1
Tangata Whenua	3	1
Total	**47**	**8**

Feedback from Public Consultation: Pre-approved Concessions

In total 51 submitters indicated their preferred option, with majority in favour of option 1. 45 submitters expressed support for option 1 while 6 did not. More than 90% research, and non-research concessionaires supported this change while two environmental non-government organisations preferred the status quo.

Those who support pre-approved concessions have mentioned that it seems like an efficient solution to the problem identified but have also noted that mitigations should be put in place on a case-by-case basis. Many highlighted that this option should only be applicable to activities where there are no adverse impacts on the environment, and that they should be applicable to activities that provide benefits for the environment. Those who prefer the status quo believe that this approach is premature and creates a risk of cumulative effects that will be difficult to reverse.

Three tangata whenua groups expressed support for option 2 so long as consultation with tangata whenua takes place and that there is thought to mitigate the potential disruption of cultural activities such as rāhui and other cultural rituals. The tangata whenua submitter that preferred the status quo expressed that they would only support option 2 if it was compliant with section 4 and provided a mechanism for customary practices including the access to and use of cultural materials.

The following table presents data collected during consultation of those who either support option 2 or the status quo.

Table 4: Support for pre-approved concessions (Option 2), by group		
Group	**Support change**	**Retain status quo**
Councils	4	0
ENGO	0	2
Individual	5	1
NGO	4	0
Non-Research Concessionaire	11	1
Other Stakeholder	11	1
Research Concessionaire	3	0
Statutory Body	4	0
Tangata Whenua	3	1

Total	**45**	**6**

Option 1: Provide the Minister of Conservation with the ability to make regulations that generally authorise specific activities, removing the need for a concession

Efficiency (++)

Where applicable, this option removes the time and costs of seeking authorisation for individual users almost entirely. The only time taken will be users informing themselves where an activity can be undertaken without a concession. There would no longer be processing fees associated with the activity.

Assessment of the activity and engagement occurring up front would save tangata whenua and DOC time related to managing the applicable concession activities. The process would be most effective if the process was run for multiple activities at once.

For DOC, there would be an initial upfront cost to engage on and establish regulations. There would also be ongoing costs for monitoring and updating regulations over time. However, Option 1 would lead to cost savings over time.

This is partially because DOC's operational policy is to forgo cost recovery of processing fees for many of the research activities the regulations could include. The other element is that taking a regulations approach has the benefit of economies of scale.

The rationale for forgoing cost recovery is outlined in the Stage 1 Cost Recovery Impact Statement in Appendix 1.

It is necessary to trade-off some possible efficiency gains to ensure that regulations can take a place-based approach and exclude areas and specific locations if required.

Treaty settlement requirements and Takutai Moana legislation will likely require some areas being excluded for the use of general authorisations. Analysis of these requirements suggests the potential use of general authorisations would not be limited in most areas. Whether the activity assessment and use of regulation to authorise it can give effect to the principles of the Treaty of Waitangi is a separate matter.

Most settlement redress relating to concessions is procedural and could be built into the process for creating regulations, if supported by the post settlement governance entity. A map depicting the overlap of current applications for customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011 and relevant conservation areas is provided in Appendix 4. It shows that the scope of potential exclusions would not limit the use of general authorisations in most areas.

Robustness (+)

The criteria and process for general authorisations limits their scope and ensures that all relevant considerations under the status quo are required. Furthermore, it is possible that this option enhances conservation values by better enabling research and other activities beneficial to conservation.

Criteria in the regulation-making power require the activity have low or no adverse effects and for the nature of the activity not to be contrary to the purposes for which the land is held. This includes assessing that the risk of cumulative effects from the activity being authorised is also low. This wording has been strengthened from the proposal to reflect concerns raised in hui and through submissions.

Four submissions suggested widening the scope of activities that could be generally authorised to include some activities that provide some corresponding rights over the land. The installation of monitoring infrastructure and river management are examples of the suggestions. Such rights would require a concession to ensure they are appropriately managed and including them in the scope of Option 1 would limit its robustness. Therefore, the scope of the option was not widened.

This option also improves the incorporation of wider public interests into decision making compared with the status quo. The status quo does not require public notification of applications for the activities in scope for general authorisations, based on the criteria. Therefore, there is an increased opportunity for input through the need for engagement during the regulation making process.

Some submissions raised concern that the originally proposed criteria were not wide enough, and that the general public and recreational users should have the ability to raise concerns with pre-approved activities (Option 1 and 2). As with the status quo, such impacts are within the scope of impact assessment (e.g., disruptions to natural quiet). Further, Option 1 may improve the incorporation of recreational interests and wider interests into decision making by requiring public consultation during formulation of the regulations.

One submission raised concerns with general authorisations limiting public access and recreational use. The criterion limiting the scope to authorisations with no corresponding rights over the land mitigates this concern. Simply, any concession activity that provides exclusivity or limits access for others is out of scope.

Consistency and clarity of rules will also encourage activities to take place where any impact of the activity is known and actively managed. Clarity of rules has the potential to improve compliance, however this is anecdotal and quantitative data on this matter are limited.

There is a risk that general authorisations are inflexible to react immediately if context changes or cumulative effects impacting on conservation values arise. If necessary, regulations could be amended to no longer authorise that activity or location, but such a change would take time. This risk is mitigated to a degree by the requirement to consider possible cumulative effects with formulating regulations.

Clarity and transparency (+)

Option 1 would provide users with clearer information on the locations and circumstances where their desired activity is acceptable. The development of a publicly available rule book would be an improvement on the status quo. However, the potential to improve clarity and consistency might be limited by the need to ensure regulations take a location specific approach. The degree to which regulations would be location specific is currently unknown and would depend on future engagement on the regulations.

The discussion document sought feedback on whether it would be appropriate for general authorisation regulations to limit authorisation to specific locations and/or specific groups and organisations.

Five submissions explicitly supported regulations taking a location specific approach, with one submission acknowledging that some specificity was inevitable but encouraged the locations being as broad as possible. Support for authorisations through regulation being location specific was also brought up during engagement hui with tangata whenua. It was raised that what was acceptable to mana whenua in one place may not be acceptable in another and there were concerns with standardisation occurring too broadly.

This feedback has informed Option 1 enabling the use of place specific regulations. The desire for authorisations to be as effective as possible is noted for implementation if the option is progressed.

Three submissions supported the possibility of authorisations applying to specific groups. All three expressed that group specific authorisations should be limited to people formally affiliated with a research institution, or in the case of one submission, an environmental management focussed entity. Similar sentiment was expressed in stakeholder meetings with Crown research entities and universities.

Two submissions did not support the use of person or organisation specific authorisations. One expressed that such authorisations would be equivalent to permits and would be better

handled that way. This feedback has informed Option 1 not enabling authorisations for specific people or organisations. Although the approach could enable some efficiency gains, the regulatory boundaries are clearer if authorisations through regulations apply to anyone.

Treaty of Waitangi (+)

Creates an opportunity to better inform the regulation of these activities through providing a higher-level platform for discussion than individual (often small-scale) applications. Often engagement is minimal on such applications (see status quo).

However, regulations are less responsive than individual decisions to concerns raised by tangata whenua with a particular activity in a particular location. An Order in Council process would be required if the authorisation provided by regulation was deemed to be inappropriate.

There would be a clear statutory requirement (through section 4 of the Conservation Act 1987) to give effect to the principles of the Treaty of Waitangi through the process of creating a general authorisation. Concerns with an activity being authorised could be addressed through the regulation either by including conditions on the authorisation or excluding specific places from the authorisation. Alternatively, it may be determined that authorising the activity through regulation is inappropriate.

The creation of regulations would also create a clear forum for discussing the management of these activities at the level of setting boundaries and rules for each activity overall. Under the status quo, there is a lack of a clear process for engaging broadly across all activities. Individual applications for some types of activities can be lower priority for tangata whenua and DOC during engagement, where the focus is on more significant concession applications, or other matters entirely. This risks decisions on authorisations through concessions not being fully informed.

There is a risk that regulations will have less flexibility than individual applications. Although tangata whenua may support an activity being authorised when establishing the general authorisation, they may seek to withdraw that support and request that the activity returns to applications being assessed on a case-by-case basis. The most effective way to mitigate this risk would be through robust engagement when developing the regulations and by drafting the regulations accordingly.

Regulations could be updated though a subsequent Order in Council, but the activity would continue to be authorised in the meantime. This would be costly if done repeatedly and regulations would likely lose support as an effective management tool if they had to be frequently updated by the Executive Council.

Option 2: Amend the Conservation Act 1987 to clarify that activities can be pre-approved in advance of, or without, an application being received

Efficiency (++)

Option 2 would reduce the time people need to spend engaging with DOC over concessions for low-impact activities, and the time it takes DOC staff to processes an application. Concessions would be provided to people up front and it would be easier to seek out readily available opportunities for the activity. This option would remove processing times for users almost entirely and may also reduce processing fees through economies of scale.

Where an online permitting system is enabled, the amount of time would reduce to a few minutes for an applicant and zero for DOC. Other forms of standardisation (e.g. a downloadable form that is then emailed to DOC staff) would also reduce processing time but some staff transaction costs would remain.

Although additional time and resources would be required up front to establish defined activities and conditions, efficiency may improve overall. This would reduce pressure on DOC's resources once the necessary engagement and advance assessment have taken

place. This could also improve the efficiency of more complex concessions application processes as resource savings can be reprioritised.

A comprehensive schedule of pre-approved activities and locations would take time to establish. Once established the schedule would enable the time and cost of processing many applications to be brought down simultaneously. Over time, resources could be redirected to maintaining and improving pre-assessments as pressure on processing resources is alleviated.

These costs and benefits are detailed further in the marginal benefits and costs analysis on page 31.

Robustness (+)

Option 2 continues to require consideration of all the matters DOC must have regard to when considering if a concession activity is acceptable. It is a procedural change so that DOC no longer requires an application to prompt those considerations and assessments. Furthermore, it is possible that this option enhances conservation values by better enabling research and other activities beneficial to conservation.

Consistency and clarity of rules will also encourage activities to take place where any impact of the activity is known and actively managed. Clarity of rules has the potential to improve compliance, however this is anecdotal and quantitative data on this phenomenon is limited.

Unlike Option 1, this option does not actively enhance the incorporation of public input into authorisation decisions. However, it is not a regression on the status quo as the requirements to consider possible impacts when assessing the activities remains the same.

Clarity and transparency (+)

Aligns with good regulatory practice as it would make the locations and necessary conditions clearer for users.

The merit of person or organisation specific authorisations improving efficiency was discussed at hui with both tangata whenua and research stakeholders. Incorporating authentication of credentials into an online-based pre-approvals system (Option 2) was also discussed in that context with feedback that it would be easier to operationalise and manage.

Option 2 would enable the efficiency benefits cited by the supportive submissions while also addressing the concerns that specific authorisations would be equivalent to permits and should be handled that way.

Treaty of Waitangi (+)

As with option 1, this is an opportunity to improve mana whenua involvement in informing what activities are acceptable and under what conditions. Pre-approved concessions would require giving effect to Treaty principles before being approved.

Concerns with an activity could be addressed through the terms and conditions of the pre-approved concession agreement. In cases where the concern was location specific, this option is flexible to exclude authorising those locations.

In some cases, pre-approvals may not be compatible with DOC's obligations under some Treaty settlement obligations or te Takutai Moana legislation. In these cases, the option provides the necessary flexibility to exclude pre-approvals from being used in relation to the relevant areas.

Flexibility in withdrawing pre-approved concessions ensures that DOC can carry out its section 4 responsibilities by removing activities or locations from the list of available concessions if concerns are raised by tangata whenua.

Option 3: Retain the legislative status quo

Efficiency (0)

This option would not bring new efficiencies and inaction risks the backlog growing further.

DOC would continue to repeat the assessment process for each individual application. This also places pressure on tangata whenua as engagement on applications is repetitively sought. Operational improvements to engagement and information management could make the process less cumbersome, but processing times and costs would still be required.

Current costs remain in place for applicants and there is no opportunity for economies of scale to reduce processing fees. Users continue to be required to search through multiple CMSs and CMPs for some indication of whether the activity can take place, adding time to the application process.

Current time and costs will continue to be borne by concession applicants, DOC, and tangata whenua in managing those concession activities that could be standardised.

Robustness (0)

Continued cumbersome process could discourage some users from undertaking activities beneficial to conservation (i.e. conservation research). This will be problematic if timelines for processing applications continue to lengthen.

There is also an increased risk of people undertaking activities without the correct authorisation. There is a risk that long processing times are leading to higher levels of non-compliance (e.g., users flying their drones without a permit). This is based on anecdotal evidence only. A hui participant pointed out that simple processes won't necessarily improve compliance.

Clarity and transparency (0)

The current state is not user friendly and lacks clarity over the regulatory boundaries of acceptable activities. The publicly available rulebook on what is and is not acceptable is limited to guidance only. In most cases, users only know where, and under what conditions, an activity can take place after they make an application.

Treaty of Waitangi (0)

Enables DOC to continue to give effect to Treaty principles when considering individual applications.

Engagement to inform decision making occurs on a case-by-case basis. There is currently minimal oversight and input from tangata whenua on many small-scale activities. This is due to the resource pressures on tangata whenua and DOC, with relationships and engagement often focused on more significant matters that are higher priority for tangata whenua. There is a risk that decisions on such authorisations are not fully informed by tangata whenua input.

Conclusions

Both option 1 and option 2 are an improvement on the status quo.

General authorisations (Option 1) have a greater potential to achieve efficiencies in the management of low or no impact activities, but the scope of potential activities is more limited. Pre-approvals (Option 2) could be used to achieve efficiency and clarity across a wider range.

Our conclusion is that the best option for addressing the problem is enabling both powers to make regulations (Option 1) and use pre-approved concessions (Option 2). The merits of each option are dependent on the activity and place. The two tools aren't mutually exclusive.

Adding both to the tool kit would be a greater improvement on the status quo than only adding one.

There are risks to robustness and giving effect to Treaty principles in authorising activities through general authorisations. Mitigating these risks is the intent behind limiting the scope of general authorisations. Pre-approved concessions offer an alternative option, especially in fringe cases, to still bring efficiencies and clarity.

How general authorisations and pre-approvals differed or could work together was a common theme during engagement hui. Both options would require engagement upfront, and it became clear through our hui that engaging on the use of both at the same time would be most efficient.

80% of submissions that expressed a preference for or against one of more of the options supported the use of general authorisations (Option 1). 80% also supported enabling the use of pre-approved concessions (Option 2).

What are the marginal costs and benefits of the option?

The marginal costs and benefits for the preferred option of enabling both Option 1 and Option 2 have been amalgamated. This is based on the relationship between the two options and how they would be implemented. Following upfront engagement and technical assessments, a location specific concession activity would fall into one of three categories: standardisation through general authorisations (Option 1), standardisation through pre-approvals (Option 2), or standardisation is not appropriate.

Costs and benefits have been calculated for 6 years. This is based on two 3-year cycles for monitoring and assessment of impacts. (See implementation section for more details).

Summary table

Affected groups	Comment	Impact.	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
DOC	Costs of establishing and maintaining both tools (6-years)	$1.4m-$2.7m	Low-Medium
Concession applicants	DOC cost recovery on processing for pre-approved concessions (6-years)	$0.4m-$0.7m	Low
Total monetised costs		**$1.8m-$3.4m**	Low
Tangata whenua costs	Time costs of tangata whenua providing information on values and impact assessment (6-years)	13,300-20,000 hours (*Note an FTE is 2,080 hours per year)*	Low
Non-monetised costs	*Stakeholders and the wider public engaging in processes*	*Low*	*Medium*
Additional benefits of the preferred option compared to taking no action			
DOC	Staff processing time saved (6-years)	$2.9m-$6.1m	Low-Medium
Concession applicants	Savings on processing fees and time saved in preparing applications (6-years)	$1.4m-$3.5m	Low-Medium
Total monetised benefits		**$4.3m-$9.6m**	Low
Tangata whenua benefits	Time savings of tangata whenua not being requested to provide information on values and impact assessment of individual applications (6-years)	9,800-45,200 hours (*Note an FTE is 2,080 hours per year)*	Low
Non-monetised benefits	*Improved clarity of rules making processes more user friendly. Possible compliance benefits*	*Medium*	*High for clarity of rules. Low for possible compliance benefits.*

Explanatory note: Apportioning costs and benefits to general authorisations vs. pre-approvals

The costs and benefits above have been combined. The costs and benefits would vary if only one option was enabled.

The benefits of pre-approvals only would be estimated as the same as Option 1 and 2 together, but with higher costs. Only enabling pre-approved concessions (Option 2) would require the full costs estimated above plus some additional costs. The upfront engagement and assessment would still be necessary, as would the development of the online platform. The additional costs would relate to the need to develop and administer a larger online platform to cater for a broader range of concessions (estimated at an additional $200k-$1m over the 6-years).

Only enabling general authorisations (Option 1) would have lower costs, but also lower benefits. **Costs for general authorisations only estimated at $0.5m-$0.8m, requiring 8,000-12,000 hours of time from tangata whenua across the 6 years**. This is based on 60% of relevant costs for Option 1 and 2. The potential scope is likely less than 60% but the process cannot be downscaled to the same extent (e.g., overlap in statutory document analysis, engagement costs). **Benefits for general authorisations only are estimated at $0.9m-$2.9m, saving tangata whenua 5,700-19,100 hours of time across the 6 years.** This is based on 20% (low) to 30% (high) of the benefits for pre-approved concessions. This is based on the removing the activities that have already been identified from the potential scope of general authorisations as they would require concessions (e.g., drones, guiding).

Detailed breakdown and assumptions

Overarching assumptions		
• A 6-year period has been used to calculate costs and benefits. This is based on two 3-year cycles of upfront nationwide engagement and technical assessments. See implementation and monitoring sections for more details. • The Treasury's spot discount rates (at 30 June 2022) have been applied to ongoing costs and benefits for years two through six.[14]		
6-year additional costs of the option ($1.8m-$3.4m) – Low evidence certainty)		
DOC (Monetised costs $1.4m-$2.7m – Low-Medium evidence certainty)		
Cost	**Value**	**Comment and assumptions**
Upfront engagement and technical assessments (Year 1 and Year 4)	$590k-$860k	Costs relate to staff time of 4-6 FTE each year in Year 1 and Year 4. Plus 0.75-1.5 FTE total across policy, communications, and legal support in each of those years. Estimated by DOC (low-medium evidence certainty based on previous experience with establishing DOC's conforming tracks model. Conforming tracks did not include significant upfront engagement)

[14] https://www.treasury.govt.nz/information-and-services/state-sector-leadership/guidance/reporting-financial/discount-rates/discount-rates-and-cpi-assumptions-accounting-valuation-purposes

Maintenance and monitoring costs (Years 2, 3, 5, 6)	$240k-$450k	Costs related to 1-2 FTE of staff time per year for 3 years. Maintenance includes ongoing engagement, information management, collecting monitoring data. Compliance with general authorisations and pre-approvals (source data for monitoring) built into the current concessions monitoring programme. Estimated by DOC (medium evidence certainty based on previous experience with establishing DOC's conforming tracks model and monitoring programmes)
Developing an online permitting system (external vendor costs)	$400k-$600k	Costs relate to upfront capital investment required. Estimated by DOC (low-medium evidence certainty based on previous experience developing hunting permit system and booking system for recreational facilities)
Implementing and maintaining online system (DOC staff) (6-years)	$0.55m-$1.4m	Costs relate to designing and testing products at year 1 and year 4. Also includes system testing and updates in years 2, 3, 5, 6. Estimated by DOC (low-medium evidence certainty based on previous experience developing hunting permit system and booking system for recreational facilities)
Applicants		
Cost	**Value**	**Comment and assumptions**
Cost of processing fees for pre-approved concessions	$350k-$750k	Costs relate to the total amount estimated to be collected through processing fees on pre-approved concessions. Assumes that DOC will cost recover 30-35% of costs through pre-approved concessions (30-35% is the cost recovery level of the current system – see Appendix 3). This number is low in part due to costs associated to activities that DOC waives fees for (e.g., research). This analysis assumes no change in DOC's fee waiver policies.

Tangata whenua (13,000-20,000 hours – low evidence certainty)		
Cost	**Value**	**Comment and assumptions**
Time costs of tangata whenua providing information on values and impact assessment (6-years)	13,300-20,000 hours	Costs relate to the time taken by tangata whenua in informing general authorisations regulations and which activities could be pre-approved. Assumes the upfront process is revisited at Year 4. Estimated by DOC (Low evidence certainty. Primarily based on a recent working group looking at remuneration for the procurement of services in permissions processes)

6-year additional benefits of the option ($4.3-$9.6m – Low-medium evidence certainty)		
DOC (Monetised benefits $2.9m-$6.1m – Medium evidence certainty)		
Benefit	**Value**	**Comment and assumptions**
DOC processing staff time (6-years)	$2.9-$6.1m	Based on DOC modelled costs of processing applications for each general activity group in 2019/20 and 2020/21 years. (See below) Assumes that DOC secures 65-70% of the monetised benefits compared with the status quo (as 30-35% would be cost recovered based on current cost recovery levels)
Estimated percentage range of possible standardisation through general authorisation or pre-approval, by activity: Aircraft [incl. drones] (10-40%), Filming and Photography (30-80%), Guiding (30-60%), Vehicle (10-20%), Research and collection (30-60%). These ranges are based on quantitative and qualitative inputs. The quantitative input was based on the number of permit applications for the activity, particularly the number of 'one-off' permits (i.e. concession is for an activity to occur once, not multiple occasions overtime). Leases, easements and licenses are out of scope for this option. Using these figures as a guide, DOC's Policy team and National Permissions Advisors then estimated an upper and lower bound for possible standardisation of each activity.		
Applicants ($1.4m-$3.5m – low evidence certainty)		
Benefit	**Value**	**Comment and assumptions**

Time saved in no longer preparing applications	$130k-$260k	Based on an estimated average of 2 hours per application, 30%-60% of applications being streamlined, and the average professional salary in NZ at June 2021.[15]
Savings in cost-recovered processing fee through efficiency gains	$1.3m-$3.3m	Based on the level of processing fees that would be charged under the status quo (assumes the current cost recovery share of 30-35% across the permissions system). Does not include any costs related to tangata whenua input or any cost recovery on the online permitting system. Low evidence certainty based on the scope of pre-approved concessions having yet to be determined.
Tangata whenua (9,800-45,200 hours – low to evidence certainty)		
Benefit	**Value**	**Comment and assumptions**
Time savings of tangata whenua not being requested to provide information on values and impact assessment of individual applications (6-years)	9,800-45,200 hours	Benefits relate to the time saved by tangata whenua inputting into general authorisations and pre-approvals when compared with the time spent providing information and impact assessments for individual concession applications. Assumes the upfront process is revisited at Year 4. Estimated by DOC (Low evidence certainty. Primarily based on a recent working group looking at remuneration for the procurement services in permissions processes)
Informed by recent working group led by DOC's Planning, Permissions and Land Unit with external Māori leaders. This assumes an improved status quo regarding tangata whenua involvement in informing concessions processes and decisions. The same range for potential standardisation in DOC processing time was then applied to the amount of estimated time for tangata whenua under an improved status quo. (Low evidence certainty based on possible activity range and work to improve Treaty partnership in concessions management being on going).		

[15] https://www.stats.govt.nz/information-releases/labour-market-statistics-income-june-2021-quarter

Section A-3: Delivering an option

How will the new arrangements be implemented?

The process for assessing activities and engaging on management approaches would be combined for general authorisations and pre-approved concessions

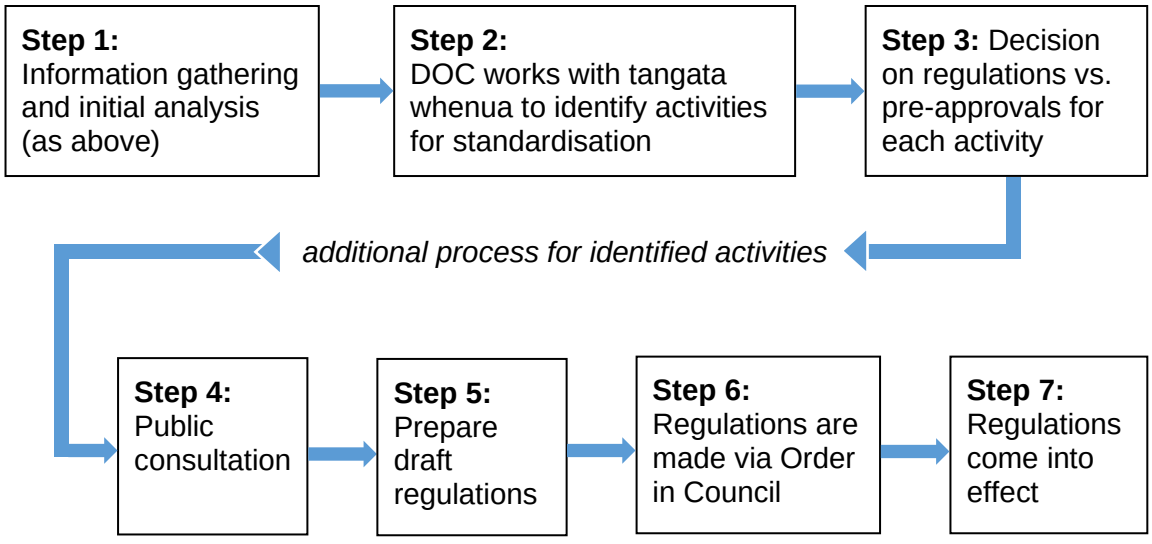
DOC has dedicated Permissions teams within the Planning, Permissions and Land unit who are responsible for processing most concession applications and recommending whether the activity is authorised or not. In some cases, local Operations teams process applications and make recommendations on the outcome of applications.

DOC would begin by gathering information and providing a scope of activities for consideration. This would be intentionally broad as subsequent advice and engagement will refine it.

That information and scope would inform the subsequent process with tangata whenua. This process would review existing knowledge and gather new technical advice. DOC's Permissions staff and technical advice teams would then work with Treaty partners to categorise location specific concession categories into either; a) standardisation through general authorisations (Option 1), b) standardisation through pre-approvals (Option 2), or c) standardisation is not appropriate.

The form of the process would likely differ across each rohe and DOC region. The option would be available for whānau, hapū and iwi to rule out the use of these tools in their rohe. The status quo would remain in such cases.

DOC would then make decisions on pre-approved concessions based on all relevant considerations the Minister shall have regard to. There will be additional process steps to create regulations for general authorisations.



The timeframes for this process (including creating regulations) have not been set. The regulation making process and its timing would be subject to decisions by the Minister of Conservation. DOC has not yet undertaken comprehensive analysis of which specific activities should be included in the scope.

DOC also has specific Treaty settlement obligations related to concessions processes. In these cases, bespoke processes on top of the prescribed process will be required. This process was designed with flexibly to incorporate bespoke settlement arrangements in mind.

Ensuring consistency between general authorisations and statutory planning documents

Part 3B requires that the concession and its granting are consistent with the relevant conservation management plans and strategies. Concessions decisions taking direction from the relevant planning documents is an important feature of the conservation management hierarchy. Inconsistency between regulations, as secondary legislation, and planning documents should be avoided. Regulations could incorporate conditions on an activity or be area specific if required to ensure consistency with a plan.

One of the following actions should be taking to avoid inconsistency between what regulations authorise and the guidance in the relevant planning document(s) on what can be authorised. If an inconsistency is identified, then either:

- a review of the strategy or plan should be undertaken to allow for the authorisation of that activity, prior to regulations coming into effect, or
- the regulations should not authorise the activity in that area.

Reviewing statutory planning documents would increase implementation costs and extend timeframes. It is likely that the option of excluding the area from the regulations would be favoured in most circumstances.

The extent to which current planning documents strictly prohibit the authorisation of the types of activities regulations could seek to authorise is limited. Current planning documents tend to prohibit or limit activities with readily identified effects on conservation values. Therefore, the risk of such inconsistencies limiting the efficacy of this option is low.

Communicating changes and online permitting

DOC will communicate the changes and implications to existing concessionaires, prospective applicants and others who interact with the concessions system, including tangata whenua, the NZCA, conservation boards, government agencies, territorial authorities, community groups and stakeholders.

Implementation of pre-approved concessions may vary depending on the nature of the activity and the number expected applications.

An online permitting system will yield the greatest efficiency gains over time when there is a sufficient volume of applications to make investing in developing and maintaining the system worthwhile. It is likely that there will be some activities which are appropriate for pre-approval (e.g., the analysis has been done and necessary conditions drafted), but applications are expected to be irregular.

In cases where the volume of applications is expected to be low, DOC can revert to pre-made application forms and concession agreements available through email or local offices. This method may also be used in place of an online portal as an interim measure while a system is built, or as an alternative if capital investment in an online system is not resourced.

The timeframes associated with building an online permitting system are not yet determined. However, the core functionality of the online permitting system could likely be built during the analysis and engagement stages of the process.

The ability of tangata whenua to resource the process is a possible limitation for implementation

One of the limitations of the current concessions process is that it does not allow for whānau, hapū and iwi to be remunerated for the time and effort that they contribute to considering concessions. This topic was raised by whānau, hapū and iwi and it became a common theme throughout the engagement period.

Many people feel that tangata whenua should be compensated for the expert advice that is provided to the deliberation of a concession. Given the limitations of whānau, hapū and iwi

resource capacity, remuneration has been highlighted by submitters and hui attendees as a tool to improve their ability to engage with concession processes.

Risk of implementation slowing the processing of applications in the short term

The development of general authorisations and pre-approved concessions will require DOC resources to be diverted from the processing of individual concessions. This is based on the requirement that any changes are resourced within current resourcing levels.

Based on the estimated DOC staff resourcing required as a share of the total processing capacity currently available, processing times for applications could be expected to increase 10-15% across the board (though resource prioritisation may mean certain types of applications are impacted more or less).

How will the new arrangements be monitored, evaluated, and reviewed?

Successful outcomes for this project would be a reduction in the backlog of concession applications and faster processing times. Monitoring would seek to measure:

- the number of activities that are authorised by regulation
- the number of activities that are pre-approved
- the uptake of pre-approved concessions
- whether there is a corresponding decrease in applications for ‘standard’ concessions
- average/median processing times for standardised vs. non-standardised concession activities (especially where the same activity is standardised in some areas but not in others)
- the comparative level of cost-recovery, both for processing costs per activity and the concessions system overall
- user satisfaction (best measured at the year 4 review)

Many of these measures are already monitored regularly by DOC and evaluated as part of internal system improvement work. Further developments to DOC’s Permissions Database will help to improve the quality and accessibility of this data. Improvement of the database is currently underway.

If legislative changes to enable general authorisations (Option 1) or pre-approved concessions (Option 2) are enacted, monitoring of potential environmental and cultural impacts would be built into current monitoring programmes. It would also be possible for DOC to undertake bespoke monitoring in response to concerns around the impacts of a generally authorised or pre-approved activity.

DOC could then respond if an impact evaluation suggested that the general authorisation or pre-approved concession was problematic (eg unforeseen or cumulative effects became apparent). DOC could respond immediately for pre-approved concessions by removing the activity (or location) from the list of available pre-approved concessions and revert to assessing applications individually (as occurs under the status quo). For general authorisations, the regulations could be amended or revoked.

Problem B: Addressing ambiguity in the initiation of competitive allocation processes

Section B-1: Diagnosing the policy problem

Status quo

Competitive allocation processes (e.g., tendering) are an effective mechanism for determining the best use of PCL&W or awarding a concession opportunity to the most appropriate party when there are numerous interested parties. Competitive allocation processes such as tendering are also effective in determining the market rate for a concession opportunity where conditions are already set.[16]

Section 17ZG(2)(a) of the Conservation Act 1987 allows DOC (under delegated authority from the Minister of Conservation) to tender the right to make an application, invite applications, or carry out other actions that may encourage specific applications. This mechanism is often utilised for concession opportunities where there are limits on the opportunity (i.e. carrying capacity) or where multiple parties have expressed an interest in the opportunity.

In some cases, DOC may tender the right to apply for an already defined opportunity (including any environmental or social conditions that will be attached to the concession). The purpose of the competitive process in these cases is to determine the most appropriate concessionaire. Tendering guiding opportunities where a limit has been set out in the National Park Management Plan is an example of this. Competitive allocations are often the most accurate way of determining the market rate, especially for unique opportunities where there is no directly comparable market off public conservation lands and waters.

In other cases, the opportunity may be less clearly defined. DOC may run an expression of interest process to better understand the possible uses for an area and their effects. DOC can then consider the possible acceptable uses for the area and invite applicants to apply for a concession. This approach is especially relevant when use of the area might limit other uses or public activities.

Although the Conservation Act provides for competitive allocation, DOC's use of competitive allocation for concession opportunities has been limited to date. Most concessions are allocated on a 'first-come, first-served' basis where the first application is considered and tested against the statutory requirements of Part 3B. Allocation has often defaulted to this position due to ambiguity surrounding DOC's ability to return an application if a competitive allocation process has not already been initiated under 17ZG(2)(a) when the application is received.

17R(2) of the Conservation Act states that a person must not directly apply for a concession if a process has been initiated under 17ZG(2)(a). Applicants must submit to the competitive process and have their application considered against the wider pool of applications. 17R(2) was inserted into the Conservation Act in 2010.

The ambiguity stems from the Act being silent on DOC's ability to return an application (i.e. not consider the application) if a competitive allocation process has not already been initiated, but a competitive process would be most appropriate for concessions management.

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[16] See Conservation Act 1987, section 17Y.

Both the Parliamentary Commissioner for the Environment (PCE) and the Environmental Defence Society (EDS) highlighted this in recent reports.[17] The PCE has noted that the historic reliance on allocating concessions on a first-come, first-served basis has led to challenges and fairness concerns in deciding which operators should be awarded concessions where only limited opportunities are available, and in appropriately pricing opportunities and the rents DOC should charge for them.

Section B-2: Deciding upon an option to address the policy problem

What is the policy problem or opportunity?

The ambiguity surrounding DOC's ability to return an application if a competitive allocation process has not already been initiated has encouraged concessions being allocated on a 'first-come, first-served' basis.

This discourages concession opportunities being allocated through an open competitive process and limits the pool of potential concessionaires. It has also limited DOC's ability to consider interest from tangata whenua in the concession opportunity and accommodate an opportunity to apply.

There is a risk that applicants might seek to take advantage of the 'first-come, first-served' approach encouraged by the current ambiguity. This risk is compounded by the Conservation Act not restricting when an application can be made for an opportunity covered by a current concession. For example, it is unclear whether DOC can return an application for an activity covered by a concession not due to expire for 3 years. That early applicant could be either a new concessionaire, or an incumbent seeking to maintain their position beyond their current concession term.

Providing DOC with the clear ability to return applications in order to initiate a competitive process is an opportunity to enable more transparent allocation of concession opportunities and allow DOC to consider a broader pool of potential proposals and concessionaires.

What options are being considered?

Options to address the issue that it is unclear whether a concession application can be returned if tendering the opportunity would be more appropriate	
Note: These options are mutually exclusive. It would not be appropriate or effective to amend legislation to enact both Option 1 and Option 2.	
Option 1	Amend the Conservation Act 1987 to provide the Minister of Conservation with the ability to return a concession application in favour of initiating a competitive allocation process

[17] The February 2021 PCE report *Not 100% – but four steps closer to sustainable tourism* (www.pce.parliament.nz/publications/not-100-but-four-steps-closer-to-sustainable-tourism) and the August 2021 EDS report *Conserving Nature: Conservation Reform Issues Paper* (https://eds.org.nz/resources/documents/reports/conserving-nature-conservation-reform-issues-paper/) both note the opportunities presented by tendering and its low utilisation at present.

Options to address the issue that it is unclear whether a concession application can be returned if tendering the opportunity would be more appropriate	
Note: These options are mutually exclusive. It would not be appropriate or effective to amend legislation to enact both Option 1 and Option 2.	
Option 2	Amend the Conservation Act 1987 to provide the Minister of Conservation with the ability to return a concession application in favour of initiating a competitive allocation process, subject to: a) a statutory timeframe of 40 working days for returning the application, and b) a statutory timeframe of 60 working days for the Minister to initiate a competitive process
Option 3	Retain the status quo

Option 1: Amend the Conservation Act 1987 to provide the Minister of Conservation with the ability to return a concession application in favour of initiating a competitive allocation process

This option would allow DOC to return a concession application if multiple parties have informally expressed an interest in the opportunity, there is likely to be wider interest in the opportunity, or the applicant is not the current concession holder and DOC wishes to provide the incumbent with an opportunity to apply as well.

The ability to return an application could be effective in circumstances where DOC has received an application and wishes to consider other potential uses of the opportunity and assess them against the applicant's proposal. DOC may already be aware that multiple parties would be interested in the opportunity (such as an incumbent), or it may become apparent through initial analysis of the application that a competitive process would be more appropriate.

The use of the word 'return' instead of 'decline' is deliberate, as the application would not be considered and no decision on the acceptability of the activity would be made. There would be no right to appeal or a request the reconsideration of a decision to return an application as the initial applicant would be encouraged to pursue the opportunity through the competitive process.

DOC would determine what type of competitive process is to be initiated, in line with Section 17ZG(2)(a). The type of process will var, as discussed above. For example, a tender process might be initiated where the activity is well understood, but a broader expression of interest process would be more suitable if DOC seeks to consider alternative uses.

Option 2: Amend the Conservation Act 1987 to provide the Minister of Conservation with the ability to return a concession application in favour of initiating a competitive allocation process, subject to statutory timeframes

This option is largely the same as Option 1 in that it enables the Minister to return an application in favour initiating a competitive allocation process. The key difference is the addition of:

a) a statutory timeframe of 40 working days for the Minister to return the application, and
b) a statutory timeframe of 60 working days for the Minister to initiate a competitive process following the returning of an application.

If the application is not returned within 40 working days, then DOC will be required to process the application. If a competitive process is not initiated within that time, the application would be processed as if it had not been returned.

Determining the timeframe for initiating a competitive process

The discussion document sought feedback on whether the ability to return an application should include a statutory timeframe within which DOC must initiate a competitive process, and what an appropriate timeframe would be. Submissions that supported the timeframe option suggested timeframes ranging from one to three months would be appropriate, with two months and three months being favoured equally as the most preferred options.

Between the options of two and three months, three months (or 60 working days) would allow more time to engage with tangata whenua and arrange a competitive process, whilst still being reasonable in the eyes of stakeholders. Therefore, this option includes a statutory timeframe of 60 working days. The use of working days over months ensures consistency with other timeframes in the Act.

Determining the timeframe for returning an application

The time between DOC receiving and returning an application was identified as a likely source of ambiguity for applicants in submissions and engagement hui. Those that supported a timeframe for initiating the competitive process highlighted the need for clarity in timeframes and DOC's history of stalling on applications. Therefore, this option also includes a statutory timeframe of 40 working days for the Minister to return the application.

Two submissions suggested a timeframe for the Minister to return an application. One suggested 20, the other 40 working days. It was also raised at a hui with tourism stakeholders that timeframes should be similar to other statutory timeframes in the conservation legislation.

By way of comparison, the decision is more complex than decisions to return an application that is obviously inconsistent with the Act which have a statutory timeframe of 20 working days. Notified concession applications must also be publicly notified for a minimum of 40 working days so it is a timeframe many applicants will already be familiar with in other application processes.

Option 3: Retain the status quo

Under the status quo, DOC would continue to manage the ambiguity described above and rely on developing legal advice. The 'first-come, first-served' status quo described by the Parliamentary Commissioner for the Environment and others would likely continue.

The regulatory strategy under development and future operational guidance are likely to encourage greater use of competitive allocation and see DOC increase the number of competitive processes it initiates. More proactive initiation would avoid this issue on specific concession opportunities.

However, there are limits to the extent that being proactive can address the issue as initiating competitive process for all concessions opportunities would be inefficient and overly resource intensive. Therefore, instances where applications are received prior to the initiation of a competitive allocation process (or prompt the desire to use competitive allocation) will continue to arise.

There is also a risk that greater awareness of this ambiguity may increase the frequency of incumbents and other prospective concessionaires submit applications early to take advantage of the ambiguity. It is difficult to quantity this risk as would-be concessionaires are unlikely to declare this intent publicly.

Multi-Criteria Analysis: How do the options compare to the status quo/counterfactual?

Criteria	Option 1: Ability to return applications	Option 2: Ability to return (w/ timeframe)	Option 3: Retain the status quo
Efficiency	+	++	0
Robustness	++	++	0
Clarity and transparency	+	++	0
Treaty of Waitangi	++	+	0

Key for qualitative judgements:

++	much better than doing nothing/the status quo
+	better than doing nothing/the status quo
0	about the same as doing nothing/the status quo
-	worse than doing nothing/the status quo
- -	much worse than doing nothing/the status quo

Feedback from public consultation

In total 41 submitters indicated their preferred option, with the majority in favour of Option 2. Of those who engaged with these options, nine preferred option 1, 27 preferred Option 2, and 5 wanted to see the status quo retained (option 3). Notably all research concessionaires, ENGOs, statutory bodies, and 62.5% of non-research concessionaires supported Option 2.

The following table presents data collected during consultation of those who either support option 1, option 2, or the status quo.

Table 5: Support for enabling returning applications in order to tender, by group

Group	Support change (no timeframe)	Support change (with timeframe)	Retain status quo
Councils	0	1	0
ENGO	0	1	0
Individual	1	3	0
NGO	1	2	2
Non-Research Concessionaire	0	5	3
Other Stakeholder	4	6	0
Research Concessionaire	0	2	0
Statutory Body	0	5	0
Tangata Whenua	3	2	0
Total	**9**	**27**	**5**

The feedback received in submissions and at hui demonstrates that further operational guidance is required regarding the use of competitive allocation tools for concessions. Such questions are equally relevant to cases where DOC has initiated a competitive allocation

under 17ZG(2)(a) in the status quo. However, the change will enable greater use of competitive allocation and therefore increase the demand for DOC to address the questions through operational guidance.

Option 1: Amend the Conservation Act 1987 to provide the Minister of Conservation with the ability to return a concession application in favour of initiating a competitive allocation process

Efficiency (+)

Option 1 would improve efficiency where DOC is able to act with certainty in returning an application compared with the status quo. This would be more efficient as DOC would not need to consider whether an application can be retuned or seek legal advice. Staff time would be dedicated to determining if an application should be return in favour of the competitive process. This option would also reduce potential legal fees for incumbents and other potential applicants where they wish to challenge a 'first-in, first-served' allocation.

There would be some increase in resourcing required for DOC staff to consider if an application should be returned, and for engagement with tangata whenua.

Enabling competitive allocation may increase overall processing costs and timeframes for those applications that are returned in favour of competitive allocation. The additional costs and time relate to:

- Initial applicant – The concession decision and allocation process is longer due to the inclusion of the competitive process
- Initial applicant – Additional costs associated with amending initial application to competitive process
- Other applicants – Additional costs in preparing competitive processes
- DOC and tangata whenua - input into the design of the competitive allocation process

The potential for these to outweigh the time and cost benefits of change is relatively low. This is because of when competitive allocation processes are likely to used, and the likely frequency of use.

Competitive allocation processes are effective where there are limits or where applicants are seeking exclusivity. This is a small share of overall concession applications and therefore the processing time and resourcing for most concession applications would remain unchanged.

Furthermore, the costs and time associated with the competitive process will be high only for those where the activity and relevant considerations are already complex. There will be significant overlap in the considerations made when processing a single complex application and those made when assessing applications in a competitive process. In some cases, the competitive allocation may even speed things up (e.g., a preferred alternative has already included mitigation actions in their application).

On balance, this option would be more efficient than the status quo.

Robustness (++)

This analysis applies equally to Option 1 and Option 2 when compared with the status quo.

These options enable DOC to identify applicants who best support the purposes of the concessions system by running a competitive allocation process. They enable more robust assessment of possible conservation outcomes than when the status quo encourages a 'first-in, first-served' approach.

An expression of interest process opens the opportunity to a wider group of people, better accommodates innovative ideas and identifies the most appropriate commercial use of public spaces – environmentally, socially, and economically.

The Parliamentary Commissioner for the Environment's report outlined the benefits of competitive allocation.[18] These benefits to conservation values include the ability to incorporate regulatory conditions, foster improved environmental outcomes, and secure a fair return for commercial activity.

These options do not prescribe how a competitive allocation will be run, or how the above elements might be incorporated. The potential conservation outcomes will depend on the circumstances of the case. The robustness of these option comes from the ability to consider multiple applications when compared with the status quo.

Clarity and transparency (+)

Provides decision-makers and applicants with clarity on DOC's ability to return an application received in advance of a competitive allocation process being initiated without having that decision subject to legal challenge.

Treaty of Waitangi (++)

This option better enables DOC to carry out its section 4 responsibilities when regulating access to economic opportunities. It would create more opportunities for tangata whenua to express an interest in, and apply for, concession opportunities, which would provide DOC with more effective mechanisms to consider active protection of tangata whenua interests when allocating concessions.[19]

This option would provide tangata whenua with greater access to economic opportunities by addressing the 'first-in, first-served' process, which favours incumbents and existing operators. This was supported by tangata whenua in hui and through submissions.

Changes would not prescribe the method for competitive allocating, the role of tangata whenua in informing those processes or situations where a degree of preference should be afforded to tangata whenua applicants. These are matters for statutory guidance and operational policy (see the implementation section on p. 51 for more detail).

The status quo represents a limit on DOC's ability to give effect to the principles of the Treaty of Waitangi, particularly the principle of active protection. This option supports the active protection of Māori interests compared to the status quo but is not the only reason an application might be returned. Wider interest in a concession opportunity is a strong rationale for returning an application to initiate a competitive process, regardless of whether the interested parties are tangata whenua or not.

A competitive allocation process is also better suited to incorporating regulatory conditions necessary to give effect to the principles of the Treaty of Waitangi. Competitive allocation can encourage applicants to go over and above minimum requirements specified by Part 3B. As with environmental outcomes, there is a difference between what concessionaires can do and what concession conditions dictate they must do within the regulatory boundaries. The status quo is reactive and is based on engagement on an application informing those conditions that must be adhered to, not what could be delivered.

Option 2: Amend the Conservation Act 1987 to provide the Minister of Conservation with the ability to return a concession application with 40 working days in favour of

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[18] *Not 100% – but four steps closer to sustainable tourism,* Parliamentary Commissioners for the Environment, February 2021 (pp. 79-88)

[19] In 2018, the Supreme Court's judgement in *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122 heightened public interest in DOC's concession allocation processes, particularly in terms of considering a degree of preference for tangata whenua when allocating concessions. At present, DOC considers its section 4 responsibilities on a case-by-case basis.

initiating a competitive allocation process, and include a timeframe within which the tender process must be initiated

Efficiency (++)

Compared with the status quo, Option 2 has the same efficiency benefits and possible downsides as Option 1. However, Option 2 is more efficient than Option 1.

This option prompts greater efficiency by removing the risk of elongated timeframes. Although Option 1 addresses the ambiguity of whether an application can be returned, DOC may still elongate the consideration of whether an application should be returned.

The majority of submissions supporting Option 2 highlighted that a timeframe for initiating a tender process should be included given DOC's poor performance on timeliness is a relevant issue.

Option 2 removes the risk that DOC extends the concessions process timeframes by neither returning the application nor actively progressing it. It also removes similar risks associated with DOC elongating the design process of the competitive allocation process after the application is returned.

Robustness (++)

Same as robustness assessment of Option 1.

Clarity and transparency (++)

As with Option 1, Option 2 provides decision-makers and applicants with clarity on DOC's ability to return an application received in advance of a competitive allocation process being initiated without having that decision subject to legal challenge.

In addition, this option is clearer for applicants than Option 1 because applicants will know:

a) that if an application is going to be returned and trigger a competitive process, that return will happen within 40 working days, and
b) that a competitive allocation process will be initiated within 60 working days if their application is returned.

Submissions from concessionaires, and one tangata whenua submission, supported Option 2 on the basis that it is fairer, more transparent and gives certainty to applicants.

Treaty of Waitangi (+)

Same as Option 1 in that it enables more informed decision making and a mechanism to consider iwi preference when compared to the status quo.

Option 2 is slightly less effective at giving effect to the principles of the Treaty of Waitangi. There may be circumstances where an application heightens awareness and interest in a concession opportunity. In these cases, there is a risk that the 40 working day timeframe could limit the ability of tangata whenua to consider their interests and communicate those to DOC.

Option 3: Retain the status quo

Efficiency (0)

Even if concurrent workstreams promote more proactive initiation of competitive processes, ambiguity around DOC's ability to return applications will continue to delay the processing of some applications for activities that may be suitable for competitive allocation.

The frequency of the issue arising, and the timeframes to address it, may even increase if applicants increase efforts to be first and benefit from the 'first-in, first-served' issue. This would increase the number of applications facing this ambiguity. Costs to DOC, the

applicant, and other interested parties may then increase if legal advice is sought relating to this ambiguity, or legal action is taken in response to DOC's decisions.

Robustness (0)

Limiting opportunities to tender does not promote conservation values in the management of concessions as a wider range of potential concessionaires are not considered. Those that are not considered may have more innovative or ecologically beneficial proposals.

Clarity and transparency (0)

Retains the current ambiguity around the ability to return applications creating problems for decision-makers within DOC. This ambiguity creates a risk of applicants submitting applications earlier in order to ensure they are the first applicant. Concerns around such practices have arisen through previous enquires into concessions due to expire many years in advance. In turn, this lack of clarity would exacerbate the robustness, efficiency, and Treaty of Waitangi concerns described.

One submitter who preferred the retention of the status quo highlighted that the discussion document did not outline what would trigger an application being returned or what an appeals process might be.

Treaty of Waitangi (0)

Creates ambiguity around DOC's ability to return an application for an opportunity that tangata whenua have an interest in. DOC cannot consider that interest without returning the application that has been received, so this ambiguity does not enable DOC to give effect to Treaty principles by running a tender process.

Conclusions

Option 2 is the preferred option when measured against the objectives. Option 1 and 2 would both result in concession allocation processes that are more robust and better give effect to the principles of the Treaty of Waitangi when compared with the status quo. They do this by addressing the current ambiguity encouraging concession allocation processes to be run instead of a 'first-come, first-served' approach.

Option 2 is preferred over Option 1 as it provides greater clarity and transparency and removes the efficiency risk of DOC elongating timeframes. However, this position required assessing the risk that the statutory timeframe might limit DOC's ability to give effect to the principles of the Treaty of Waitangi.

The risk that the statutory timeframe might limit informed decision making and active protection has been assessed as low. This is based on length of the timeframes and the nature of the information required for DOC to either return an application or initiate a competitive allocation process:

- Timeframe for returning an application – DOC would need to determine if there were interests possibly requiring active protection. How active protection is giving effect to in the allocation itself is a matter for the latter process.
- Timeframe for – The broad range of potential options available under 17ZG(2(a)) means that 60 working days should not practically limit the means through which DOC could give effect to the Treaty of Waitangi in process design.

What are the marginal costs and benefits of the preferred option?

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
DOC	Additional costs to communicate changes and establish operational guidance for when applications should be returned. Impact certainty based on limited knowledge of wider interest in future concession opportunities.	Medium	Low
First concession applicant	Additional costs for adjusting initial application to submit application into the competitive allocation process if initial application is returned Impact certainty based on limited previous use of competitive allocation for concessions. *Note: these costs only apply where the mechanism is invoked, which will probably remain the minority of applications*	Medium	Low
Other prospective concessionaires	Additional costs in preparing applications to submit to competitive allocation processes Impact certainty based on limited previous use of competitive allocation for concessions. *Note: these costs only apply where the mechanism is invoked, which will probably remain the minority of applications*	Medium	N/A
Tangata whenua	Additional costs of time taken to consider interests and communicate with DOC Impact certainty based on limited knowledge of how tangata whenua would seek to operationalise and the scale of potential interest. *Note: these costs only apply where the mechanism is invoked, which will probably remain the minority of applications*	Low	Low
Total monetised costs	Economic costs have not been monetised due to poor evidence certainty.	N/A	Low

Non-monetised costs	Low confidence based on limited use of competitive allocation for economically significant concessions to date, and limited knowledge of wider interest in future concession opportunities.	Medium	Low
Additional benefits of the preferred option compared to taking no action			
DOC	Reduced ambiguity improves confidence in decisions to initiate competitive processes. Enables DOC to act on direction from Ngāi Tai ki Tāmaki related to relating to a degree of preference in a transparent way. Impact certainty based on limited previous use of competitive allocation for economically significant concessions.	High	Low
First concession applicant	Statutory timeframe provides more clarity and certainty in the application process. Impact certainty based on feedback received during industry stakeholder hui.	Medium	Medium
Other prospective concessionaires	Improved access to economic opportunities. Improved transparency in processes. Impact certainty based on limited knowledge of wider interest in future concession opportunities. *Note: these benefits only apply where the mechanism is invoked, which will probably remain the minority of applications*.	High	Low
Tangata whenua	Improved access to economic opportunities. Improved ability to inform allocation processes and promote applications that acknowledge and enhance Te Ao Māori, mātauranga Māori and kaitiakitanga. Low confidence based on limited use of competitive allocation for concessions to date, and limited knowledge of wider interest in future concession opportunities. *Note: these benefits only apply where the mechanism is invoked, which will probably remain the minority of applications*.	High	Low
Total monetised benefits	Economic benefits have not been monetised due to poor evidence	N/A	Low

	certainty. Most benefits are indirect as they relate to the outcomes from competitive allocations the option would enable.		
Non-monetised benefits	Low confidence based on limited use of competitive allocation for economically significant concessions to date, and limited knowledge of wider interest in future concession opportunities.	High	Low

Section B-3: Delivering an option

How will the new arrangements be implemented?

DOC will communicate the change clearly enabling the return of applications to existing concessionaires, prospective applicants and others who interact with the concessions system, including tangata whenua, the NZCA, conservation boards, government agencies, territorial authorities, community groups and stakeholders.

The primary means of contacting concessionaires would be DOC's regular concessionaire newsletter *Business on the Green.* Changes would also be communicated on the DOC website on pages related to concession applications, and on application forms.

DOC will work with Treaty partners to establish processes to inform whether an application should be returned to enable the allocation process to give effect to Treaty principles, principally partnership, informed decision making and/or active protection. Due to competitive allocation remaining a feature of the current system, it is likely this work will take place following the partial reviews of general policies and related reviews of operational policy irrespective of changes to legislation.

DOC has dedicated Permissions teams within the Planning, Permissions and Land unit who are responsible for processing concession applications. This team will be responsible for the initial assessment of applications and deciding if an application is returned in favour of initiating a competitive process. DOC will develop operational guidelines to support Permissions staff assessing whether an application should be returned in order to initiate a competitive process.

Some concessionaires and industry bodies expressed wider concerns through their submissions related to the use of competitive allocation processes and how DOC would decide who is allocated the concession. Operational guidance should also seek to address wider questions related to competitive allocation processes once they have been initiated. Such concerns include the treatment and protection of existing assets and intellectual property, as well as any weighting given to previous operations and performance, tangata whenua interests, and/or conservation outcomes above statutory bottom lines.

Some of these concerns were covered in an agreement between DOC, Tourism Industry Aotearoa (TIA), and what was at the time the Ministry of Tourism (TMT) signed in August 2008 which lapsed in 2018. The agreement specifically raised compensation for assets of unsuccessful incumbents and the weightings to be used in contested allocation situations. The DOC/TIA/TMT agreement will provide a useful starting point but will require further analysis and engagement, especially in response to the Ngāi Tai ki Tāmaki. decision.

In the interim, competitive allocations will continue to be initiated and run on a case-by-case basis. Moving forward, the diversity of nature, cultural values, and economic interests means that guidance will need to accommodate bespoke approaches to concession allocations processes as well.

How will the new arrangements be monitored, evaluated, and reviewed?

Operational guidance will be developed as part of initial implementation but should be reviewed regularly given the diversity of concession opportunities and contexts where competitive allocation processes could apply.

Guidance on when an application should be returned and how competitive processes should be designed will be reviewed and updated when cases demonstrate the guidance is

insufficient or unsuitable. In addition, the overall guidance will undergo a scheduled annual review for the first 3 years once the guidance is written.

The Permissions Database will be used to collect information on the frequency of applications being returned in order to run a competitive allocation process. Information will also be collected on the time required to reach a decision to return an application, and the time taken to initiate a competitive allocation after an application has been returned.

Operational policy and delivery should ensure adherence to the statutory timeframes is achieved. A legislative amendment would be required to adjust the timeframes if an evaluation finds them to be either impractically short or overly lengthy.

Problem C: Addressing inefficiency in competitive allocation processes

Section C-1: Diagnosing the policy problem

Status quo

Section 17ZG(2)(a) of the Conservation Act 1987 allows for the Minister of Conservation to invite applications or tender the right to apply for a concession opportunity. Under DOC's current operational process, a concession opportunity is identified and then advertised. Interested parties then submit applications, which are assessed against the tender criteria. The preferred candidate is then invited to apply for a concession.

The Conservation Act does not allow for the successful tender candidate to be granted a concession immediately, instead requiring the successful candidate to apply for a concession. A concession can only be granted if the statutory provisions of Part 3B of the Act are met.

What is the policy problem or opportunity?

There is an opportunity to make the process faster and more user friendly by allowing DOC to grant a concession contract directly for tendered activities that already meet the statutory tests in Part 3B of the Conservation Act.

In some cases, DOC engages with tangata whenua and assesses whether an activity meets the necessary statutory tests before the opportunity is tendered. This often happens when the activity has previously been permitted in the location or is one that regularly occurs on PCL&W. DOC is then able to describe the locations for the activity and specific conditions in the terms of the tender.

When an application is required following a tender, the applicant must prepare more paperwork and DOC staff must duplicate work already completed when the activity was described for tender. This adds costs and time to the process.

Section C-2: Deciding upon an option to address the policy problem

What options are being considered?

Options to address the issue that the tender process does not allow a successful tender candidate to be offered a concession outright	
Option 1	Amend the Conservation Act 1987 to allow the Minister of Conservation to offer a successful tender candidate a concession directly, but only if the statutory provisions of Part 3B have been met
Option 2	Retain the status quo

Option 1: Allow the Minister of Conservation to offer a successful tender candidate a concession directly, but only if the statutory provisions of Part 3B have been met

Option 1 would enable DOC to provide a successful tender candidate with a concession document for signing directly after they have been selected. This would remove the need for them to make a subsequent concession application.

It would be necessary to limit this power to circumstances where the activity was fully assessed and authorised before the tender process was initiated. The 17ZG(2) of the Conservation Act enables a broad range of competitive allocation mechanisms. It would not be appropriate to enable direct authorisation and allocation of a concession following all types of processes. This is because under more broad approaches to encouraging a wide pool of applications–such as a broad expression of interest–the potential impacts of the activity have not been properly considered.

The activity being authorised would have to match what was described in the tender. DOC would need to consider any effects on conservation values, ensure the activity is consistent with planning documents and engage with tangata whenua before initiating the tender process. The terms and conditions of the concession contract being tendered would need to reflect that assessment and authorisation.

This option would not prevent DOC from running concession allocation processes that do not clearly define the concession opportunity, but direction allocation would not be available following such processes.

Option 2: Retain the legislative status quo

Under a continuation of the status quo, DOC would invite the party (or parties) successful through an expression of interest process to apply for a concession. This amounts to doubling up on processing in cases where the activity has already been considered against the statutory tests.

The status quo is certainly appropriate in circumstances where the concession opportunity is not adequately defined during the tender process, or it becomes apparent that more conditions are required. In those cases, assessment and engagement on specific applications should continue to be required.

Relationship between the options

Option 1 (enabling direct allocation) and Option 2 (status quo) are mutually exclusive in that Option 1 enables a new power in the legislation not available under the status quo.

However, the power would not be applicable in all cases and so direct allocation powers would not always be used. DOC would continue to allocate concessions using the same process as under the status quo when the concession opportunity is not adequately defined to allow for direct allocation.

Multi-Criteria Analysis: How do the options compare to the status quo/counterfactual?

Criteria	Option 1: Enable direct allocation following a tender	Option 2: Retain the status quo
Efficiency	+	0
Clarity and transparency	+	0

Key for qualitative judgements:

++	much better than doing nothing/the status quo
+	better than doing nothing/the status quo
0	about the same as doing nothing/the status quo
-	worse than doing nothing/the status quo

- -	much worse than doing nothing/the status quo

Feedback from Public Consultation

In total 42 submitters indicated their preferred option, with majority in favour of option 1. Of those who engaged with these options, 38 preferred option 1, and four wanted to see the status quo retained (option 2). Notably all Councils, ENGOs, Individuals, NGOs, other stakeholders, research concessionaires, and tangata whenua supported option 1.

Those who support option 1 agree that the successful tenderer should be offered the concession rather than have to repeat the process. Many submitters acknowledge that this proposal seems logical, removes an unnecessary step for a successful candidate, and reduces the administrative burden on DOC and applicants. A few submitters also expressed that this proposal must ensure that statutory provisions of Part 3B have been met. Also, a tangata whenua submitter highlighted that proper robust engagement with tangata whenua is paramount.

One submitter wants the status quo retained and believes that a performance-based focus will mean that DOC staff will complete current process requirements efficiently and effectively. Another submitter believes that option 1 will add a layer of complexity, this was supported by one more submitter who noted that the requirements of stage 1 in the tendering process and stage 2 in the concession application should be clarified instead to avoid duplication and reduce the administrative burden.

The following table presents data collected during consultation of those who either support option 1, option 2, or the status quo.

Table 6: Support for enabling direct allocation following a tender, by group

Group	Support change	Retain status quo
Councils	1	0
ENGO	2	0
Individual	6	0
NGO	5	0
Non-Research Concessionaire	4	2
Other Stakeholder	10	0
Research Concessionaire	2	0
Statutory Body	5	1
Tangata Whenua	3	1
Total	**38**	**4**

Option 1: Allow the Minister of Conservation to offer a successful tender candidate a concession directly, but only if the statutory provisions of Part 3B have been met

Efficiency (+)

Option 1 enables efficiency by encouraging all information gathering and assessment to take place in one process. It would reduce the amount of DOC staff time required by removing a second assessment phase. This reduction in DOC staff time then saves applicants money as the process is cost recoverable.

The evaluation of + (rather than ++) is based on the potential efficiency gains being somewhat limited. Time will be saved by removing the need for some back and forth

between DOC and applicants. However, it is information gathering and assessment of the activity that account for most of the processing time, not communication with applicants.

Clarity and transparency (+)

Under Option 1, the specific locations and conditions around an activity must be clearly defined in the tender documentation to allow for direct allocation. The administrative efficiencies enabled by Option 1 would encourage DOC to adopt this approach more frequently when appropriate. Therefore, Option 1 encourages more detailed descriptions of what activities can take place and under what conditions.

Option 2: Retain the legislative status quo

Efficiency (0)

Continues the administrative burden on the resources of DOC and applicants for preparing and assessing applications.

Clarity and transparency (0)

Option 2 does not encourage increased clarity upfront on what activities would be authorised through a tendered concession opportunity and under what conditions.

Criteria not considered

The criteria of “Treaty of Waitangi” and “robustness” and have not been included here as preliminary analysis considered there to be no discernible difference between these options when measured against these criteria.

Option 1 does not amend or limit DOC’s ability to give effect to the principles of the Treaty of Waitangi when compared with the status quo (option 2). The assessment and decision to authorise the activity prior to the tender process would both need to give effect to the principles of the Treaty of Waitangi.

Similarly, Option 1 does not amend of limit the degree to which conservation values are considered in the process. This is because Option 1 would only enable the direct allocation of a concession when the activity has been assessed and authorised prior to the tender.

Conclusions

Option 1 is preferred over the status quo because of the potential efficiency gains and that it would encourage DOC to provide more detail around tendered activities and any relevant terms and conditions.

It would reduce the administrative burden on DOC and reduces costs for applicants without removing the statutory provisions ensuring that any authorised activity is consistent with Part 3B of the Conservation Act 1987. This benefit would be welcome, even if the potential time and cost savings are relatively minor compared to overall processing costs.

What are the marginal costs and benefits of the option?

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			

DOC	Processing costs –more efficient processes might encourage more applicants per tender, increasing workload (minimal evidence to support this a barrier to entry).	$0.001m p.a.	*Low*
Concession applicants	No additional costs	$0	*High*
Total monetised costs	Low confidence	$0.001m p.a.	*Low*
Non-monetised costs	N/A	*N/A*	*N/A*
Additional benefits of the preferred option compared to taking no action			
Concession applicants	Processing costs - Estimate based on frequency of tender processes and staff experience. (Evidence certainty is low as DOC does not record the specific staff activities targeted here as a sub-set of total processing time)	$0.009 p.a.	*Low*
DOC	Same as above. Some overheads won't be cost recovered, so some potential $ savings for DOC (assumed 10% of total)	$0.001m p.a.	*Low*
Total monetised benefits	See above	$0.01m p.a.	*Low*
Non-monetised benefits	Greater clarity and public visibility of tendered concessions opportunities	*Low*	*Medium*

Section C-3: Delivering an option

How will the new arrangements be implemented?

Considering the use of direct allocation would be built into the process for initiating a competitive allocation process. DOC processing staff would assess if it was appropriate to directly tender a concession contact because the activity can be well defined. If so, the activity would be assessed in line with current statutory requirements and any necessary terms and conditions would be included in the contract to be tendered.

The communication materials initiating any competitive allocation process would outline whether it is for a directly allocated concession contract (preferred option) or is an expression of interest process (as per status quo).

How will the new arrangements be monitored, evaluated, and reviewed?

DOC will monitor the share of tendered opportunities that are directly allocated successfully and identify cases where features of the opportunity were not sufficiently defined to allow for

the direct allocation. Guidance will be updated incrementally to inform what elements are required to allow a concession agreement being put to tender to meet the statutory requires under Part 3B to enable greater use of direct allocation over time.

Problem D: Addressing open-ended reconsideration request timeframes

Section D-1: Diagnosing the policy problem

Status quo

Section 17ZJ of the Conservation Act 1987 allows an applicant to seek a reconsideration of the decision made on their concession application. The Conservation Act does not provide a statutory timeframe in which a reconsideration may be sought.

What is the policy problem or opportunity?

In 2020/21, fewer than 10 reconsideration requests were received, all within 6 months of the initial decision being made on the original application. However, DOC received a reconsideration request relating to a concession application being declined for a proposed Waitaha hydro scheme. The application was declined in August 2019, with the reconsideration request being submitted in May 2022.

While reconsideration requests are uncommon, the Conservation Act does not provide a statutory timeframe in which a reconsideration may be sought, allowing applicants to submit a reconsideration request months or years after the initial decision on a concession application has been made. Other legislation, such as the Resource Management Act 1991, provides statutory timeframes in which decisions can be appealed.

Section D-2: Deciding upon an option to address the policy problem

What options are being considered?

Addressing open-ended reconsideration request timeframes	
Option 1	Amend section 17ZJ of the Conservation Act 1987 to provide a statutory timeframe of 40 working days for an applicant to seek a reconsideration of the decision on their concession application
Option 2	Retain the status quo

The rationale for a 40 working day timeframe for Option 1

In regard to the timeframe, the discussion document proposed 15 working days for an application to seek a reconsideration. This was based on the appeal periods on resource consent applications under the Resource Management Act 1991.

Although there was overall support for the proposal, a number of submitters expressed that a longer timeframe would be more appropriate. The suggested alternative timeframes ranged from 20 to 40 working days. One submitter who preferred the status quo did not agree that 15 days is appropriate and suggested that reconsideration timeframes should be based on the complexity of the application.

Considering submitter feedback, and discussing possible implications with DOC Permissions staff, the timeframe for Option 1 has been extended to 40 working days.

Multi-Criteria Analysis: How do the options compare to the status quo/counterfactual?

Criteria	Option 1: Requiring reconsideration requests within 20-working days	Option 2: Retain the status quo
Efficiency	+	0
Clarity and transparency	++	0

Key for qualitative judgements:

++	much better than doing nothing/the status quo
+	better than doing nothing/the status quo
0	about the same as doing nothing/the status quo
-	worse than doing nothing/the status quo
- -	much worse than doing nothing/the status quo

Feedback from Public Consultation

In total 41 submitters indicated a preferred option, with majority in favour of Option 1. 39 preferred Option 1, and two wanted to see the status quo retained (option 2). Notably all Councils, ENGOs, Individuals, NGOs, other stakeholders, research concessionaires, statutory bodies, and tangata whenua supported Option 1.

The following table presents data collected during consultation of those who either support Option 1, or the status quo.

Table 7: Support for installing a timeframe for reconsideration requests, by group

Group	Support change	Retain status quo
Councils	3	0
ENGO	1	0
Individual	5	0
NGO	3	1
Non-Research Concessionaire	8	1
Other Stakeholder	10	0
Research Concessionaire	2	0
Statutory Body	3	0
Tangata Whenua	4	0
Total	**39**	**2**

Option 1: Amend section 17ZJ of the Conservation Act 1987 to provide a statutory timeframe of 20 working days for an applicant to seek a reconsideration of the decision on their concession application

Efficiency (+)

The statutory timeframe in Option 1 would be more time effective in terms of reaching the conclusion of an application process. That conclusiveness would benefit the workflow

planning of DOC staff, particularly in terms of decisions on complex concession applications which are more likely to be challenged.

There is a risk that applicants could face resource pressures evaluating whether they will request a reconsideration request within the 40 working day timeframe.

Clarity and transparency (+)

Provides statutory clarity for users (specifically applicants) about the timeframe in which a reconsideration may be submitted.

Those that supported option 1 highlighted that it is important to give timeframes for reconsiderations because it gives certainty to concession holders and provides a fairer process for all. Most submitters expressed that the proposal seemed logical, appropriate, and that it serves the intention of the legislation review.

Option 2: Retain the legislative status quo

Efficiency (0)

The inconclusive nature of the status quo creates a risk of a complex reconsideration request overloading processing staff if they have been reassigned to other concessions work. This elongates timeframes for the reconsideration or the other concession decisions. This risk is low given the number of reconsideration requests in recent years (2 in 2020, 4 in 2021, and 6 in the half year until 30 June 2022).

Clarity and transparency (0)

The status quo causes statutory uncertainty for users (specifically applicants) on when a reconsideration should or can be submitted. The status quo is inconsistent with other legislation with statutory timeframes to seek an appeal or reconsideration, such as the Resource Management Act 1991.

Criteria not considered

The criteria of “Treaty of Waitangi” and “robustness” and have not been included here as preliminary analysis considered there to be no discernible difference between these options when measured against these criteria.

It is up to the applicant to decide whether to request a reconsideration and this change is limited to a timeframe around that decision. The process and considerations under that reconsideration would be unchanged.

Conclusions

Option 1 is the preferred option as it provides statutory certainty for users about the timeframes for reconsideration requests and better facilitates workflow management for DOC staff compared to the status quo (Option 2). 96% of submissions that express a direct preference for one of the options preferred Option 1.

What are the marginal costs and benefits of the option?

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
DOC	*Very minimal implementation costs (simply updating existing material used to communicate decisions and reconsideration requests).*	$0	*High*
Concession applicants	*No additional costs imposed by timeframe.*	$0	*High*
Total monetised costs		$0	*High*
Non-monetised costs	*Risk of creating pressure on applicants to evaluate reconsideration requests within the timeframe. The impact is low however given the length of the timeframe.* *(Evidence certainty is high as the proposed timeframe is in line with those in similar regulatory frameworks (e.g., RMA)*	*Low*	*High*
Additional benefits of the preferred option compared to taking no action			
DOC	*None*	$0	*High*
Concessions applicants	*None*	$0	*High*
Total monetised benefits		$0	*High*
Non-monetised benefits	• Increased clarity for users. Strongly meets the objective of regulatory stewardship, though is applicable to a small % of concessions decisions (around 5 per year). • Improved conditions for DOC workflow planning.	*Medium*	*High*

Section D-3: Delivering an option

How will the new arrangements be implemented?

Implementation will require DOC updating materials to ensure that concession applicants are informed of the timeframe.

Concession applicants are given written notice when a decision is made on their application. The change would apply to both accepted and declined applications as an applicant may wish to request a reconsideration of the conditions imposed on a successful application.

How will the new arrangements be monitored, evaluated, and reviewed?

DOC will continue to collect data on the number of reconsideration requests received and how many days the request is received following the application being informed of a decision. A review could be prompted if concession applicants raise concerns with the timeframe in future.

Appendix 1: Further information on the concessions system

Relationship with management planning and the conservation management framework

Conservation management strategies and plans guide what concession activities should and should not be authorised. Specifically, a concession shall not be granted unless the activity and its granting are consistent with the strategy or plan. The concessions-specific provisions in Part 3B of the Conservation Act 1987, are used to determine if an activity is granted when no strategy or plan is in place, or the relevant documents do not contain provisions relevant to the activity.

Accordance with the relevant conservation management strategies and plans is also a condition in all concession documents. It is a statutory requirement that the concessionaire must act in accordance with the relevant documents regardless of whether the strategy or plan came into effect before, on, or after the date on which the concession became effective. Therefore, concessionaires may be required to adjust their activities if a plan is amended to include provisions relevant to their activities.

Types of concessions

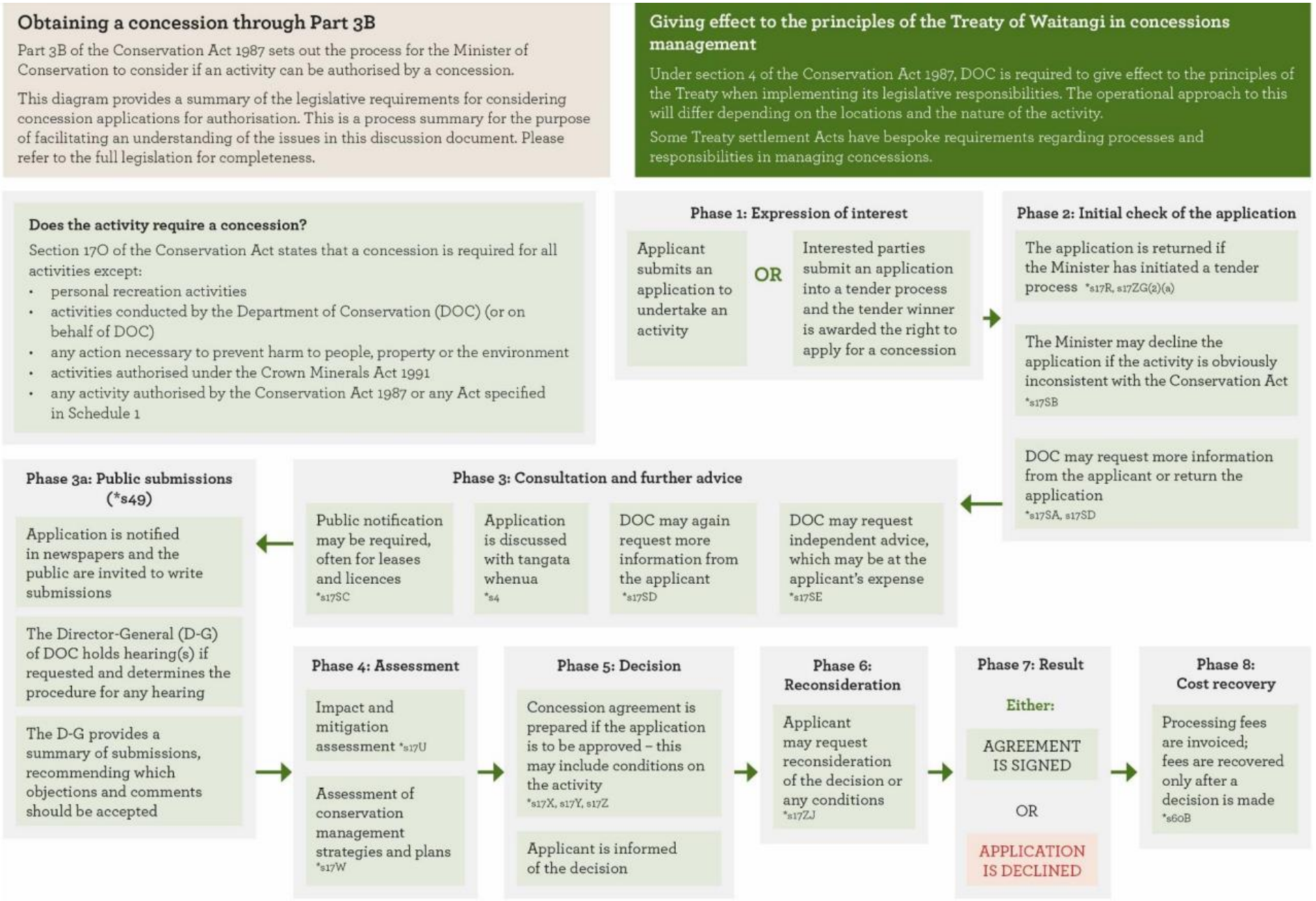
Concessionaires (those granted a concession) are provided with a concession document from DOC that sets out the authorised activities, including where they can occur, the frequency with which they can occur, and who can undertake the activity. The concession document will also contain any operating conditions to be complied with when undertaking the activity.

There are four types of concessions provided by DOC. Each type is responsible for authorising a different type of use.

Type	Purpose	Term	Examples
Permit	Gives the right to undertake an activity with no corresponding rights over the land	Can be granted for up to 10 years	Guiding, filming, aircraft landings, research activities
Easement	Provides for a right of way access to property or for public work purposes	Can be granted for up to 30 years and in 'exceptional circumstances' for up to 60 years	Access activities only
License	Gives the right to undertake an activity and a non-exclusive interest in the land	Can be granted for up to 30 years and in 'exceptional circumstances' for up to 60 years	Grazing, beekeeping, telecommunications infrastructure
Lease	Gives an interest in land, giving exclusive possession and allowing the lessee to carry out an activity on that land	Can be granted for up to 30 years and in 'exceptional circumstances' for up to 60 years	Accommodation facilities, boat sheds, storage facilities

Source: Koolen-Bourke, D.; Peart, R. 2021: Conserving Nature: Conservation Reform Issues Paper. Environmental Defence Society, Auckland. 162 p.

Appendix 2: Summary of the statutory process for obtaining a concession through Part 3B



Appendix 3: Stage 1 Cost Recovery Impact Statement (CRIS) – General Authorisations

The discussion document that this CRIS accompanies includes a proposal to have specific activities exempt from requiring individual concessions to operate on public conservation lands and waters (PCL&W) in prescribed areas. The proposal is outlined in the discussion document above under Problem A (p. 18).

The proposal would remove the status quo in which those seeking to undertake activities on PCL&W must apply for, and obtain, a concession from the Department of Conservation (DOC). DOC would no longer recover application processing costs, or associated activity fees, for those specific activities that are exempt from requiring a concession.

The analysis below outlines the cost recovery implications of this proposal and is based on the Treasury's requirements for initial assessment of cost recovery implications from regulatory change.

Status quo

Current activities and why they are undertaken

- Many activities on PCL&W require a concession unless the activity is exempt under Part 3B of the Conservation Act 1987.[20]
- Under Part 3B of the Conservation Act, DOC is responsible for accepting and processing concession applications. Applications may only be approved if the application is consistent with the statutory tests of Part 3B.
- DOC incurs costs when processing a concession application, as DOC resources are required to undertake a statutory assessment of the application. Section 60B of the Conservation Act allows the Minister of Conservation to recover the costs of processing an application. However, DOC is not **required** to recover costs and has an operational policy outlining when processing fees may be waived, either fully or partially.[21]
- Section 17Y of the Conservation Act also allows the Minister of Conservation to charge rent, fees or royalties for a concession activity ('activity fees'). Like processing fees, DOC is not **required** to charge activity fees and has an operational policy outlining when activity fees may be waived, either fully or partially.
- Typically, DOC will charge processing fees and activity fees when an activity has a commercial element and/or private benefit to the concessionaire (eg a commercial guiding concession or commercial transport concession). DOC does not typically charge processing fees and activity fees for activities that do not have a commercial or private benefit (eg research applications to collect plant samples from PCL&W).
- Although DOC has the power to recover costs, it does not currently fully recover **all** processing costs. This may be because DOC makes an operational decision that waiving processing fees for certain activities would result in better conservation

[20] Section 17O of the Conservation Act 1987 lists which activities are exempt from requiring a concession.

[21] DOC's operational policy allows for processing fees to be waived if the activity does not have a commercial benefit and/or the activity contributes to the protection and preservation of conservation including natural, historic and cultural resources. However, discretion for waiving fees is advised and will be applied on a case-by-case basis. DOC may also waive fees in full, or partially.

outcomes[3] or because it is unable to fully capture all costs (staff and time) involved in the processing of an application, resulting in lower processing fees being charged.[22]

What policy outcomes does the status quo achieve?

- The concessions process:
  - allows DOC to manage and protect PCL&W and their associated values by regulating the activities that occur on PCL&W; activities may only be approved if they are consistent with the protection of conservation values
  - allows DOC to manage public use of PCL&W and provide opportunities and access to PCL&W as long as these activities do not impede the protection of PCL&W and their associated values.
- The cost recovery model for processing fees ensures that the private individuals, businesses or organisations who primarily benefit from the concession cover the costs of regulating that activity. If the costs are not recovered from the beneficiary of an activity, they are covered by the public through DOC's baseline funding.

The proposed change

What is the rationale for government intervention?

- There is an opportunity to remove the need for specific activities to require a concession within certain areas. Such activities would also have a consistent set of rules for operating/undertaking the activity on PCL&W. Removing the need for a concession could reduce costs for applicants (although this tool would see increased costs for DOC for some activities, so a balance would need to be sought when assessing if an activity was suitable for a general authorisation). The proposed mechanism is to authorise activities through regulations under the Conservation Act.
- The key benefits of this approach are:
  - **increased time and cost efficiencies for users** – applicants would not be required to prepare and provide an application, and DOC would not need to process the application, thus removing the requirement for applicants to pay processing costs and, if required, activity fees
  - **consistent decision making –** processing individual applications can result in inconsistent decision making, whereas assessing activities and authorising them through regulations would result in greater consistency of what is authorised, including consistent operating conditions for users
  - **improved concessions process –** removing the requirement that specific activities need a concession would free up limited DOC resources to process other, more complex applications
  - **increased compliance –** information on where an activity can be carried out is more accessible and immediately available, encouraging users away from restricted areas.
- Across the concessions system, DOC currently recovers around $3 million of the estimated $9.6 million total costs for processing concessions, equating to a total cost recovery of around 30–35% each year.
  - $2.4 million of the total costs relate to staff time and other costs that cannot be directly related to third-party applicants. This includes things such as training and

[22] In 2021, DOC completed 140+ research and collection applications, less than 10% of which had processing fees recovered (because they met the criteria to have processing fees waived). Using a conservative estimate of the average processing costs per application, DOC would have accumulated around $280,000–$300,000 in processing fees had the fees not been waived.

upskilling staff, system improvement work, and responding to official information requests.

- Approximately $800,000 of the shortfall relates to fees waived or reduced through operational policy. While legally cost recoverable, fees are not charged for public interest reasons.
- The remaining gap of around $3.4 million relates to activities where DOC endeavours to achieve a reasonable degree of cost recovery but does not achieve full cost recovery due to current practice. For example, sometimes an application triggers analysis of broader implications should an application be approved. In these cases, DOC may only recover the portion of costs of the wider analysis that specifically apply to that individual application.

- DOC also has a responsibility to recover royalties, fees and rents from commercial activities. The criteria proposed for limiting the scope of general authorisations through regulation would limit the cases where royalties are forgone. The discussion document suggests that a commercial activity should only be generally authorised if there is a public interest in waiving royalties and rents, or the cost of collecting would outweigh the royalties and rents collected.

What are the relevant policy decisions that have been made?

- The New Zealand Government has indicated the need for targeted legislative amendments to provide near-term efficiencies for applicants. The proposal to enable general authorisations through regulations would save time and costs for applicants.
- This CRIS accompanies the above regulatory impact statement. No policy decisions have been made on these options.

What is the statutory authority to charge (ie the Act that gives the power to recover costs)?

- Section 60B of the Conservation Act provides the Minister of Conservation with the power to recover the costs of processing concession applications.
- The proposed mechanism would see DOC forgo the ability to recover application processing costs for specific activities because these activities would no longer require a concession application.
- The proposed options would not remove or impede DOC's ability to recover processing costs for activities that still require a concession under the Conservation Act.

Is this a new or amended fee?

- The proposed mechanism represents the removal of a fee. It would remove concession application fees for specific activities that have been authorised through regulations.

Rationale

Why is it appropriate to forgo cost recovery for the activity (ie why should it be funded by the Crown rather than third-party funded)?

- The proposed criteria for general authorisations detailed in the discussion document seek to ensure that any activity with a strong commercial element (where third-party funding is desirable) is not eligible for general authorisation. Therefore, general authorisations would focus on activities where fees are actively waived or reduced through operational policy, or where difficulties administering the activity mean that costs cannot be effectively recovered.
- As noted above, DOC may continue to collect royalties, fees and rents. DOC may at times waive such fees, or charge below a market rate, if the activity is for conservation management or public good reasons. The intention of the proposed criteria is that activities with commercial benefit are not exempt from requiring a concession unless

there is a strong rationale for a general authorisation and a policy rationale to forgo any royalties, fees and rents.

What is the nature of output from the activity (ie the private/public/club good or service; see section 3.2 of The Treasury guidelines)?

- A concession authorises the holder to derive benefit from the use of PCL&W. It is an authorisation from DOC on behalf of the public for the individual, business or organisation to undertake their desired activity. The concession received from DOC is a private good in that it is rival and excludable – it authorises only the concession holder.
- Some activities have public good benefits. Research and collection activities related to the conservation of native flora and fauna is a good example of this.
- The proposed mechanism to remove the need for a concession retains the public benefits of regulating the activity while removing the private good element because the authorisation would no longer be rival and excludable. The authorisation moves from being a private good to a public good in the form of system-level rules.
- The requirement for a concession has public benefits as it ensures that the activity is managed and conservation areas are protected. Therefore, there are public benefits to improving access to getting the correct authorisation and reducing the associated costs.
- For this reason, we consider that general authorisations should be limited to activities where the land management benefits of treating the authorisation as a public good suitably outweigh any private commercial benefits that could be obtained through requiring a permit. This would apply to DOC forgoing the ability to both recover administrative costs and collect any royalties, fees or rents.

Is full or partial cost recovery being proposed and what is the rationale for the proposal?

- This question is not applicable to this case as the proposal would see DOC forgo the ability to recover costs from activities authorised through regulation, for the reasons detailed above.

What type of charge is being proposed (eg fee, levy, hourly charge) and what is the rationale for the proposal?

- There is no proposal to change DOC's legislative ability to recover costs. DOC would continue to seek to recover costs for concession applications where appropriate.
- The proposals would see some activities no longer requiring a concession as they would be authorised through regulation. The rationale is that these activities are largely non-rival and/or are often non-excludable due to compliance constraints.
- The rationale for forgoing cost recovery powers by regulating these activities in either of the proposed ways is to clarify rules, improve compliance and save DOC resources over time.

Who will pay the cost recovery charges? Include data on the number and size of businesses, individuals, etc if possible

- If activities are authorised through regulation, no application will be received and processed by DOC. This would mean that DOC would not accumulate processing fees (and therefore not need to recover these fees). Under the status quo, DOC would be able to accept applications and recover the processing fees directly from the application (unless a fee waiver is applied).
- DOC would need to assess which activities would be authorised for exclusion from the standard concession application process. DOC (not concession applicants) would then be responsible for paying the costs of this assessment work. There is a risk that further

costs would be borne by DOC if the regulation needs to be adjusted or reversed in the future.

High-level cost recovery model

The purpose of this section is to demonstrate the potential cost implications of DOC defining and assessing activities for general authorisation, rather than recovering the costs of processing individual applications.

DOC cannot currently confirm what the costs of selecting and assessing activities that could be exempt from requiring a concession are because it has not designed the criteria for this work (or created a subsequent work plan, including staff time and resources).

Despite this, DOC would seek to ensure the cost of this assessment work does not accumulate costs greater than the status quo *in the long term*. To ensure this work is cost efficient, a potential assessment criterion could include seeking to assess activities:

- that are frequently processed / make up the bulk of applications received (eg recreational drone applications[23] – the ability to exempt activities that are frequently received by DOC would be more cost effective than seeking to exempt activities that are uncommon and do not significantly add to the permissions system workload
- where processing fees are not currently cost recovered or are waived (eg research applications to collect plant material) – if DOC is not recovering these costs, the short-term cost of assessing these activities for exemption could outweigh the long-term costs of not needing to process these applications and *not* recover the processing costs
- that are deemed to have little to no adverse impact and would require minimal operating conditions – such assessment would incorporate views of tangata whenua, the public and technical specialists on what a 'low-risk' activity is (eg this could include the collection of harakeke/flax for personal use).

DOC would need to assess the suitability of any selected activities against the statutory provisions of Part 3B of the Conservation Act. This would require:

- assessing if the activity is consistent with the purpose for which the land is held
- assessing if the activity is consistent with the purpose of the Conservation Act
- assessing if the activity is consistent with the relevant statutory plans (including the relevant conservation management strategies, conservation management plans and national park management plans)
- assessing if the effects of the activity can be understood, and if there are any methods to avoid, remedy or mitigate these effects
- consulting with iwi, hapū and whānau at place.

On consideration of the above criteria to (a) identify activities for assessment and (b) assess those activities, DOC could reduce the costs of this work by assessing:

- activities together (eg by combining consultation with Treaty partners on multiple activities at the same time, rather than running individual rounds of consultation on individual activities at different times)

[23] In 2021, 25% of the 1500+ applications processed were for one-off permits covering recreational drone use, events and filming/photography. These activities could be suitable for assessing if they can be exempt from requiring a concession.

- applications on a regional rather than national scale, reducing the number of statutory plans to assess and the number of Treaty partners to engage with.

The following illustrative example is provided to highlight the above.

- DOC processes 'research and collection' applications under Part 3B of the Conservation Act and currently has over 200 active research and collection concessions.[24] Of these 200 concessions, around 25% authorise the study and/or collection of invertebrates. Given the public benefit of conservation research, processing fee costs are waived (as per DOC's internal fees policy[25]).
- Typically, these applications require multiple DOC resources to assess them.[26]
- If processing fees for these applications were recovered, the average application processing cost would be around $1,500–$2,000 + GST. However, processing costs can be significantly higher for applications seeking to undertake the activity across multiple locations. For instance, in 2021, several large-scale research and collection applications would have accumulated processing fees of $4,000–$5,000 + GST (had these fees not been waived).
- Conservatively, based on an average of 10–12 invertebrate research and collection applications being received annually,[9] it can be estimated that the total accumulated processing costs of these applications was around $15,000–$25,000 + GST per annum.[27]
- If DOC used the provisional model discussed above to (a) identify activities for assessment and (b) assess those activities, the costs of this assessment work could be around $30,000–$35,000.[28] Therefore, if invertebrate research and collection activities were exempted from requiring a concession, DOC would save costs in the long term. For example, over a 5-year period, the initial assessment work of $30,000–$35,000 to exempt this activity would be more cost effective than DOC processing these applications over the 5-year period and losing an estimated $75,000–$100,000 in processing fees.

[24] Research and Collection applications are not defined by the Conservation Act 1987 but rather are an internal application classification created by DOC. Typically, these can be summarised as applications that seek to observe and interact with resources on PCL&W. Common examples include applications to collect plants or plant material, non-protected invertebrates, as well as soil, air and water. However, this list is not exhaustive.

[25] There was cost recovery for less than 10% of the 145 research and collection applications processed in 2021.

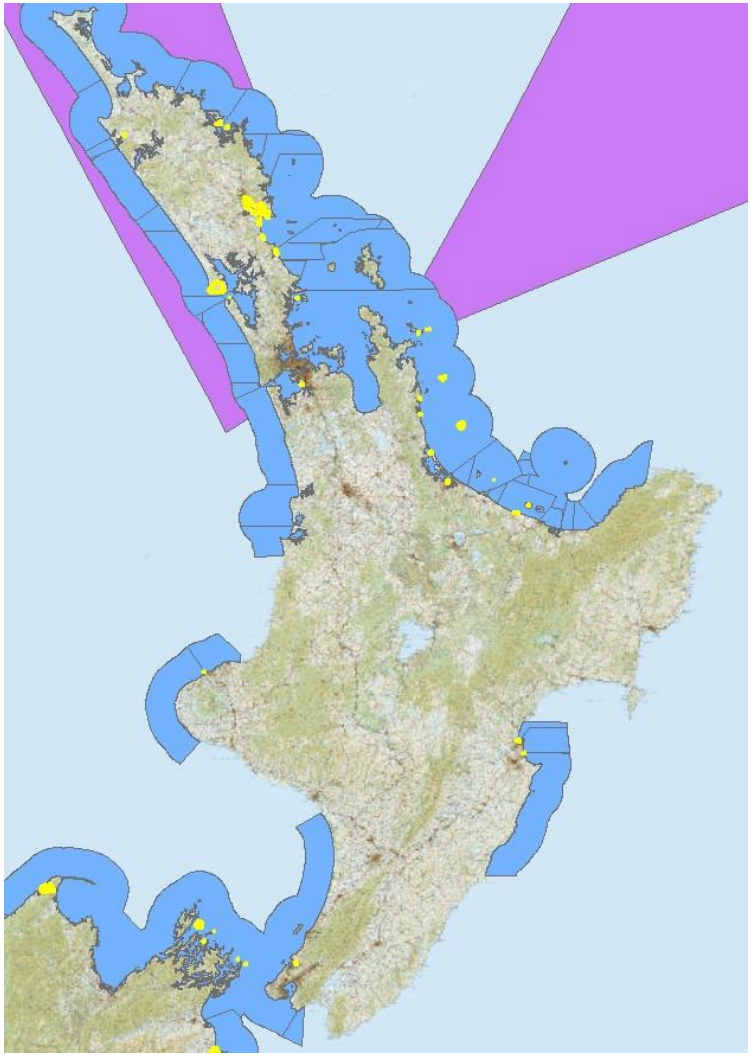
[26] The standard resources assigned to these applications are a Permissions Advisor, Community Ranger, Operations Manager and Technical Specialist.

[27] This is based on a conservative estimate of applications received from 2018 to 2021.

[28] This is a conservative estimate of staff time and resources to assess the suitability of exempting these activities. Costs may be higher due to a range of internal and external factors (such as consultation with tangata whenua and the public). Similar work to assess activities in advance, such as guiding on conforming tracks, costs around $40,000.

Appendix 4: Mapping areas relevant to the Marine and Coastal Area (Takutai Moana) Act 2011

These maps demonstrate the areas of coast covered by customary marine title claims[29] and areas of relevant public conservation land[30]



[29] The CMT area shown on the map includes areas covered by recognitions of CMTs and applications for recognitions of CMTs

[30] The Marine and Coastal Area (Takutai Moana) Act 2011 does not apply in most public conservation areas (e.g., national parks)