

5 April 2024

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## CONCESSION APPLICATIONS IN RESPECT OF TUROA SKI AREA

Ko Tahuarangi te waka  
Ko Rangitukutuku te aho  
Ko Pikimairawea te mātau  
Ko Haha te Whenua te ika kei rō wai  
Mai te Kāhui Maunga ki Tangaroa  
Ko au te awa ko te awa ko au

### Introduction

1. Pure Tūroa Limited (**PTL**) seeks permission under section 49 of the National Parks Act 1980 (**NPA**) and Part 3B of the Conservation Act 1987 to operate the ski field on the Tūroa Ski Area, Mt Ruapehu. The ski field is located within the Tongariro National Park (**TNP**) which is also a World Heritage Area (**WHA**).
2. Maunga Ruapehu is sacred to all iwi and hapū of the region. The Tūroa ski field is located on the western slopes of Ruapehu, where Ngāti Rangī, Te Korowai o Wainuiārua, Ngāti Hāua, Patutokotoko, Ngāti Tūwharetoa, Te Pou Tupua, and Ngā Tāngata Tiaki o Whanganui have each expressed cultural interests and responsibilities.
3. The opportunity for PTL to operate the Tūroa ski field has arisen as a result of the liquidation and receivership of Ruapehu Alpine Lifts Limited (**RAL**). Before its liquidation and receivership, RAL had operated the Tūroa ski field for many years, its most recent concession having been granted in 2017 for a term of 60 years (inclusive of rights of renewal).
4. PTL and RAL entered into a conditional Sale and Purchase Agreement for PTL to purchase RAL's Tūroa ski field assets. This Agreement is conditional on PTL obtaining a concession to operate the ski field.
5. PTL wishes to operate the Tūroa ski field for the 2024 season. In order to do so effectively, PTL considers that it needs to know by early April 2024 whether it has appropriate permissions to operate or not. If the former, it needs a sufficient lead-in time to prepare for the 2024 season.

6. PTL seeks the following:
  - (a) A lease of the buildings and their footprints and 1 metre curtilage, together with a lease of the base plaza area;
  - (b) A licence to operate the remainder of the ski field area, including aircraft use and filming.
7. In both cases, PTL seeks 10-year terms.

### **Summary of Decision**

8. I have decided to grant PTL's application for a lease and licence for 10 years, subject to some modifications and conditions which are set out in the Concession Document in Attachment 1.
9. In short, I am satisfied that:
  - (a) There is adequate information in support of the application for concessions to operate the Tūroa ski field.
  - (b) Having regard to the factors in section 17U(1) (it is appropriate to grant a concession to PTL on the terms in the enclosed concession document).
  - (c) The applications are consistent with relevant planning documents (although this has necessitated declining the request to use aircraft for promotional filming).
  - (d) The granting of a concession is consistent with sections 4 and 49 of the NPA and consistent with the purposes for which the land is held.
  - (e) The proposed concession will provide the public with the benefit, recreational use and enjoyment of an area of TNP containing outstanding scenery and natural features. This also covers the use of aircraft (principally drones but also helicopters) for purposes of PTL's operations; and permits filming but excludes the use of aircraft for this purpose.
  - (f) A lease of the land on which the structures and facilities are located meets the requirements in section 17U(5) and (6) of the Conservation Act 1987.
  - (g) The granting of a concession is not inconsistent with the WHA status.
  - (h) My decision is consistent with the obligations of the Crown under relevant Treaty settlement legislation and Deeds of Settlement; and.
  - (i) My decision is consistent with the obligations in section 4 of the Conservation Act 1987 to give effect to the principles of the Treaty of Waitangi.
10. I set out my reasons in respect of the lease and licence more fully below.

## Information considered

11. The Conservation Act 1987 requires me to consider a list of matters set out in section 17U(1), namely:

- (a) the nature of the activity and the type of structure or facility (if any) proposed to be constructed:
- (b) The effects of the activity, structure, or facility:
- (c) Any measures that can reasonably and practicably be undertaken to avoid, remedy, or mitigate any adverse effects of the activity:
- (d) Any information received by the Minister under section 17S or section 17T:
- (e) Any relevant environmental impact assessment, including any audit or review:
- (f) Any relevant oral or written submissions received as a result of any relevant public notice issued under section 49; and:
- (g) any relevant information which may be withheld from any person in accordance with the Official Information Act 1982 or the Privacy Act 1993.

12. To assist me in having regard to the matters in section 17U(1), I have referred to the following documents in particular:

- (a) PTL's application for a lease and licence together with its 12 appendices, its applications for use of aircraft and, also, to carry out filming.
- (b) The Objections and Submissions Summary Report (being the report prepared under section 49 of the Conservation Act 1987 following the notification of PTL's application and public hearings on the application).
- (c) The Decision Report Document (**DSD**) and the Appendices to it.
- (d) The proposed concession document.
- (e) The proposed Deed of Surrender; and
- (f) Relevant statutory management planning documents including the General Policy for National Parks (**GNP**), the Tongariro/Taupo Conservation Management Plan (**CMS**) and the Tongariro National Park Management Plan (**TNPMP**).

13. I have also considered, in particular:

- (a) An overview of iwi and hapū engagement.
- (b) An overview of iwi/hapū consultation feedback.

14. I have also considered relevant legislation including:

- (a) NPA, principally sections 4, 15 and 49.
- (b) Conservation Act 1987, Part 3B and section 4.

(c) Te Awa Tupua (Whanganui River) Claims Settlement Act 2017.

(d) Ngāti Rangi Claims Settlement Act 2019; and

(e) Ngāti Tūwharetoa Claims Settlement Act 2018.

15. I observe that there are various outstanding Treaty settlement processes amongst iwi that have not yet concluded with final legislation including Te Korowai o Wainuiārua, Ngāti Hāua, and the Tongariro National Park claims. I also observe the concerns of Ngāti Patutokotoko in relation to the use of the name Tūroa in relation to the ski field and related activities.

16. The World Heritage Convention and the Operational Guidelines for the World Heritage Convention were also relevant given the WHA status.

### **Reasons for decision**

17. As prefaced above, there are six reasons which, in combination, have led me to grant the applications (although with some variations from what was sought which are reflected in the attached concession document).

18. I deal with each reason in turn.

### ***A. Factors considered under section 17U Conservation Act.***

#### *Section 17U(1)*

19. As required, I have considered the nature of the activity, the effects of the activity, the proposed mitigation measures (including make good obligations) and refer to the discussion of effects and mitigations in the DSD. I have also considered other information lodged in support of the application, and relevant oral and written submissions received as a result of the public notice issued under section 49 of the Act.

20. It is important not to lose sight of the fact that RAL (now in liquidation and receivership) has been operating the Tūroa Ski Area under long-term concessions from the Minister of Conservation.

21. PTL seeks to take over the operation of the Tūroa ski field. In essence, it is seeking a concession for the same activities authorised by the RAL concession. While it must satisfy me that it meets key parts of section 17U(1) as a new operator, it has utilised some of the information provided by RAL in support of its application. The reason for this is its wish for the application to be turned around in time for the 24/25 ski season. As a result, it relies on two 2014 reports prepared by RAL on the assessment of Landscape and Visual Effects, and a PWC Economic report; and a 2013 Ecological Assessment report.

22. I agree with the views expressed in the DSD that:

- (a) With respect to the first two reports, notwithstanding they are 10 years old, they still contain information relevant to PTL's application. DOC's advice (which I accept) is that only minor changes have been made to landscape and ecological matters in the intervening years and that the information contained in the reports is sufficient for me to consider; and
  - (b) The second report on economic matters is of limited relevancy to my decision except to the extent it may be relevant to the Crown's obligation under section 4.
23. PTL is not applying to instal new infrastructure in a pristine environment – the infrastructure already exists. A decision by me to decline would not result in the Tūroa Ski Area being preserved in its natural state. A decision to decline could result (at least in the short to medium term) in negative environmental consequences (for example if infrastructure is not maintained and falls into disrepair) and the loss of a significant recreational resource for the public. I am satisfied that PTL's application on its own merits warrants the grant of a concession. But the potential negative impacts of a decision to decline also support my decision.
24. During the public submission process, some submitters voiced concerns that the directors of PTL do not personally have experience running a ski field. It is not uncommon and certainly not fatal. In this case, they have each have significant experience in the business world. The important thing is that PTL employs people with requisite skills to carry out the day-to-day operations of the ski field.
25. PTL appears to have hired good people and in addition they have an external advisory board of well qualified people who will be able to provide advice when called on. As a result, I consider there is sufficient information included in the application to satisfy me of PTL's ability to operate the ski field.
26. I have also considered PTL's financial information as part of its ability to operate the ski field and am satisfied with it.
27. In sum, I am satisfied that there is sufficient information to grant a concession (section 17U(2)) and I have considered the mandatory factors in section 17U(1) and consider that it is appropriate to grant the concession.

Section 17U(3)

28. Section 17U(3) prevents me from granting an application for a concession if the proposed activity is contrary to the provisions of the NPA or the purposes for which a national park is held. It is clear from section 4(1) NPA that the focus is on preserving national parks for their intrinsic worth but also that national parks are for the benefit, use and enjoyment of the public.
29. In my view, PTL's applications are consistent with section 4 for two reasons. First, almost the entirety of the infrastructure required to operate the Turoa ski field is in an amenities area under section 15 NPA. Under section 15(3), the section 4 NPA principles apply only so far as

they are compatible with the development and operation of the amenities and services constructed/occurring within the amenities area.

30. Secondly, section 4 NPA highlights that, among other things, national parks are for the benefit, recreational use and enjoyment of the public and the Tūroa Ski Area provides for that opportunity in the sense that the public is free to roam over the ski field and enjoy the experience/scenery. In addition, having ski field infrastructure in place provides a significant recreational benefit for the public. More generally, the presence of lifts enhances the public's ability to access more of the national park.

#### Section 17U(4)

31. I do not consider this subsection to be engaged as the application relates to existing structures and facilities.

#### Section 17U(5) & (6)

32. I consider that a lease is appropriate for existing buildings and ski field infrastructure, but I do not see the need for the lease to extend over the curtilage around each building. This does not meet the test in section 17U(5)(b) as I do not consider the curtilage necessary for the purposes of safety or security around the structures; nor is it integral to enabling the activity to occur.
33. I am satisfied that Zone A of the base plaza (which includes the helicopter pad, diesel storage, and emergency and maintenance equipment) is a facility and meets the tests set out in section 17U(5) and 17U(6) and that it should be included in the lease.
34. I am not convinced that Zones B, C and D meet the statutory criteria for a lease, noting that there is a high threshold for a lease. The reasoning for these zones appears to be more about the occasional event/bad weather / public safety reasons. In my view the generic safety provisions in the concession seem fit for purpose.
35. I consider that using aircraft for promotional filming purposes is not required for management of the Ski Area and that to grant permission would be inconsistent with the TNPMP. Accordingly, I have not granted this component of PTL's application.

#### Section 17U(8)

36. Having regard to all the matters in section 17U, I do not consider section 17U(8) to be applicable.

### **B. Consistency of application with management planning instruments – section 17W Conservation Act**

37. There are various planning documents that are relevant to PTL's applications. As noted in the DSD, they are the GPNP, the CMS and the TNPMP.
38. As discussed in the DSD, I agree that the GPNP does not prevent the grant of concessions provided appropriate terms and conditions are imposed; and that the proposed activities are not inconsistent with the CMS which largely defers to the TNPMP.

39. The DSD notes that TNPMP lists a set of Treaty principles and related objectives. I understand that the intention was to develop a framework and protocols to give effect to these principles and objectives when undertaking management of TNP, but that they have not been developed to date. Key Treaty principles are active protection, partnership (including the duty of the Crown to make informed decisions) and redress, the duty to remedy past breaches of the Treaty and prevent further breaches. I will return to these and other principles when I discuss section 4 below.
40. As the DSD points out, many sections of the TNPMP are relevant to the applications, including a full chapter of Ski Area management and specific policies. I have already set out my views above in terms of the statutory tests in section 17U(5) and (6) and do not address this matter further.
41. I am satisfied that the grant of the concessions is consistent with relevant planning instruments.

### **C. Consistency with NPA**

42. Section 49(2) NPA provides that before granting a concession over a park, I must satisfy myself that a concession can be granted without permanently affecting the rights of the public in respect of the park and is not inconsistent with s 4 NPA.
43. The concession is for a term of 10 years and will not permanently affect the rights of the public. I refer to paragraphs 29 and 30 above which indicate that I am satisfied that the application (in the manner granted) is consistent with section 4 and 49 NPA.

### **D. World Heritage Area status**

44. As noted in the DSD, the Tūroa ski field sits within the World Heritage Area which recognises both the outstanding natural values of the TNP but also its outstanding cultural values. The World Heritage status requires TNP to be managed in a manner consistent with the articles against which the application for such status was approved and consistent with relevant statutes and management plan for TNP.
45. Both the Tūroa and the Whakapapa ski fields had been in existence long before the WHA status was granted (1990 for natural values and 1993 for cultural values). The DSD has noted that the initial evaluation of values for WHA status highlighted concerns about possible expansion of the ski fields, especially the possibility of moving higher and into more sensitive areas because of global warming.
46. It appears that a new management plan resolved the concerns of the committee both in terms of protecting the natural values but also enhancing cultural and spiritual values. The more recent management plan has continued the theme of protection and enhancement of core values.
47. While para 172 of the Operational Guidelines for the World Heritage Convention requires State Parties to inform the World Heritage Committee of major restorations or new

constructions that may affect the Outstanding Universal Value of TNP I do not consider that approving PTL's concession applications would trigger this reporting requirement. As I have noted earlier, PTL effectively seeks to take over the operation of an existing ski field in the sense of substituting for a previous owner. It follows that I am satisfied that the concession application is consistent with the World Heritage status.

#### ***E. Treaty Settlement Legislation obligations on the Crown***

48. Since the grant of a concession to RAL in 2017, Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (**Te Awa Tupua Act** or **Act**) and the Ngāti Rangī Claims Settlement Act 2019 (**NRCSA**) have come into force. Each imposes obligations on the Crown (although cultural redress for TNP is part of outstanding collective negotiations between the Crown and Iwi and Hapū of the region).

#### Te Awa Tupua Act

49. The purpose of this Act includes giving effect to the provisions of the deed of settlement that establish Te Pā Auroa nā Te Awa Tupua. As the DSD notes, the legal effect of Te Pā Auroa is that Te Awa Tupua framework is a relevant consideration in the exercise of all statutory functions, powers and duties in relation to the Whanganui River or to activities in its catchments that affect the Whanganui River.

50. The Tūroa Ski Area is within the Whanganui River catchment and a small number of tributaries of Te Awa Tupua flow through parts of the Ski Area. The Act vested the beds of these tributaries in Te Pou Tupua and then simultaneously restored their status as national park and the provisions of the NPA and Conservation Act continue to apply.

51. I am aware that Te Awa Tupua Act established Te Kōpuka, a strategy group consisting of not more than 17 members for Te Awa Tupua (section 29); and that the primary function of this strategy group, of which DOC is a member, is to develop and approve Te Heke Ngahuru (section 30). The purpose of Te Heke Ngahuru is to provide for the collaboration of persons with interests in the Whanganui River, in order to address and advance the health and well-being of Te Awa Tupua (section 35). A draft of Te Heke Ngahuru has been developed by Te Kōpuka and been through a public submissions process. Deliberations are occurring on the draft document, and it has yet to be amended and adopted.

52. I am informed that once Te Heke Ngahuru is operational, the legal effect of Te Heke Ngahuru is that persons exercising or performing functions, powers, or duties under the Conservation Act 1987 and the NPA must have particular regard to Te Heke Ngahuru, if the exercise or performance of that function, power, or duty relates to an activity within the Whanganui River catchment that affects the Whanganui River; and in a manner that is consistent with the purposes of the Act under which that power, function, or duty is exercised or performed; and if, and to the extent that, Te Heke Ngahuru relates to that function, power, or duty (section 37).

53. I am also aware that the Whanganui Iwi (Whanganui River) Deed of Settlement (Ruruku Whakatupua) includes obligations on DOC to enter into a relationship agreement with Te Pou Tupua on agreed terms concerning matters of mutual interest, including the application of the statutory process for considering and determining applications for concessions for a



lease, licence or easement in relation to land vested in Te Awa Tupua but is subject to the Conservation legislation (clause 3.38). The obligations further state that the Director-General will commence discussions with Te Pou Tupua for that purpose within 12 months after the commencement date. While I understand that initial conversations have begun and are on-going, the parties have not yet entered into a relationship agreement addressing matters of mutual interest.

54. I accept that, in considering whether to grant PTL's applications, I must recognise and provide for Te Awa Tupua status and Tupua Kawa to the extent that Te Awa Tupua status or Tupua Te Kawa relates to my decision. I acknowledge, in this regard, that the operation of the ski field has the potential to impact on waterways and intrinsic values present on the ski field and that management of those potential effects is required.
55. The standard and special conditions of the concession document impose obligations on PTL to address possible effects on Te Awa Tupua and Tupua Kawa such as limiting impacts on waterways. They also include the requirement for a cultural assessment (which will cover the identification of cultural effects and recommend how any effects be managed), a cultural monitoring plan, an ecological assessment, and an environmental plan. The fact that this work has not been able to be accomplished because of the timeframe within which PTL's application has been processed is not determinative and I am confident that the conditions imposed on PTL in the concession document will mean that this work will be carried out in a suitable manner. I note that PTL's application states that PTL will, like RAL, avoid areas of high ecological value including streams and their margins.
56. My view is that these conditions comply with the requirements of the Act and recognise and provide for Te Awa Tupua status and Tupua Kawa. Nevertheless, the importance of PTL complying with the obligations imposed by the concession that could impact on the waterways cannot be understated.

#### NRCSA

57. I am aware that the Ngāti Rangī Deed of Settlement includes a Conservation Partnership, Te Mana Paenga, which contain express provisions in relation to redress for the catchment of Te Waiū-o-Te-Ika / the Whangaehu River. Its catchment includes tributaries in the southwest quadrant around the Tūroa ski field and DOC recognises that the Tūroa Ski Area is within the catchment of Te Waiū-o-Te-Ika / Whangaehu.
58. The NRCSA provides statutory recognition and a framework approach to the management of Te Waiū-o-Te-Ika including a principles approach (**Te Mana Tupua**) and an intrinsic values approach (**Ngā Toka Tupua**) to the management of the awa.
59. I understand that the legal effect of Te Mana Tupua and Ngā Toka Topua is that, in exercising a power to grant a concession under the NPA, I must recognise and provide for Te Mana Tupua and Ngā Toka Topua if the concession relates to the Waiū-o-Te-Ika / Whangaehu River or an activity within Te Waiū-o-Te-Ika / Whangaehu River catchment, and to the extent that Te Mana Tupua and Ngā Toka Tupua relate to that power.

60. Te Mana Tupua and Nga Toka Tupua and the importance of the river and its values to iwi have been recognised and provided for through special conditions of the concession document. They impose obligations on PTL to carry out a range of conditions to address possible effects on Te Mana Tupua and Ngā Toka Topua. They also include the requirement for a cultural assessment (which will cover the identification of cultural effects and recommend how any effects be managed), a cultural monitoring plan, an ecological assessment and an environmental plan.
61. My view is that these conditions comply with the requirements of the NRCSA and recognise and provide for Te Mana Tupua and Nga Toka Tupua. I would reiterate my statement above that the importance of PTL complying with the obligations imposed by the concession cannot be understated.

**F. Section 4 of the Conservation Act 1987**

62. I recognise that in exercising powers under the NPA I am required to give effect to Treaty principles through section 4 of the Conservation Act 1987. In doing so, I am cognisant of a number of Court decisions on Treaty principles, including the Supreme Court's decision in *Ngai Tai ki Tamaki v Minster of Conservation*. I am also cognisant that cultural redress in respect of the TNP is subject to Treaty settlement negotiations with iwi/hapū.
63. Iwi/hapū have questioned the timeframe within which this application was processed, the impact on cultural and environmental values, the potential impact on any future TNP Treaty settlement, and whether DOC has provided sufficient information to them to enable them to understand and comment on the concession application. As I understand matters:
- (a) DOC has been engaging with iwi since prior to the watershed meeting back in June 2023;
  - (b) Engagement has been on top of the public submission process;
  - (c) It is clear that, in a number of areas, there have been few physical changes since RAL was granted its concession in 2017 and that a number of conditions imposed on RAL are being carried over to the PTL concession;
  - (d) This 'carry-over' approach was discussed at length with several of the iwi/hapū as well as PTL up to the concession application being made and steps taken to notify it;
  - (e) The timeframe within which PTL's application has been processed to the point of a decision is attributable to PTL's need to know as soon as possible whether it is to be granted concessions, so that it can immediately start preparing for the 2024 ski season if the answer is yes. Conversely, RAL (and its liquidators and receivers) need to know as soon as possible if RAL's concession will still be in place for the 2024 season. Either way, DOC needs to know who will be responsible for the Tūroa Ski Area for winter 2024;
  - (f) PTL's application is very much a 'lift and drop' from RAL's concession (although I recognise that the RAL application in 2017 did not have to contend with the two Treaty Settlement Acts I have referred to above);

- (g) It takes account of the significant public interest in having a functioning ski field in place in TNP that enables the public to derive the benefit, recreational use and enjoyment from it;
- (h) The application is for an existing activity using existing infrastructure and is consistent with existing RAL use (with the proposal to reduce one of the lifts);
- (i) The shortened term of 10 years sought by PTL is in recognition of ongoing discussions between the Crown and iwi/hapū on cultural redress in the context of still early collective Treaty settlement negotiations in relation to TNP and an awareness of and an uncertainty about how these might impact on the Turoa Ski Area and PTL's concession. Importantly, it does not lock up the ski field with a long-term concession. It is also a direct result of iwi engagement;
- (j) The inclusion of the Year 3 review in the Concession document is designed to check in on a range of matters and, in particular, to address cultural matters, with the preparation of a cultural monitoring plan and a cultural impact assessment, along with an ecological assessment and environment monitoring plan. These matters were discussed with Iwi/Hapū in the lead up to the application being lodged; and
- (k) As a result, there is greater specification of conditions relating to these matters with additional conditions having been imposed.

64. Given all of the above, I consider my decision to grant a concession to PTL gives effect to the principles of Te Tiriti o Waitangi / Treaty of Waitangi in terms of section 4 of the Conservation Act 1987. I do not consider that the principle of active protection, particularly as it relates to cultural values and effects on them requires me to decline the application.

65. The active protection principle falls under the overarching principle of partnership. Where possible, adverse effects on Māori spiritual or cultural values can be balanced with mitigating measures within the terms of the concession. I consider the conditions I have imposed requiring the undertaking of cultural impact assessments, cultural monitoring as well as environmental assessments and planning matters to be sufficient to discharge the duty of active protection in the circumstances of this matter.

66. In short, with a range of diverse views being put forward by Iwi/Hapū, my view is that a concession document that carries on existing activities, provides for a 10 year concession, and contains appropriate mitigating measures such as dealing with cultural values at Year 3 (following significant engagement with Iwi/Hapū) with an indicative commitment to reduce the infrastructure footprint on Maunga Ruapehu gives effect to the duty of active protection and the overarching principle of partnership in the circumstances.

67. I encourage PTL to engage in good faith discussions with Patutokotoko over the use of the "Tūroa" name. I also encourage PTL to engage in good faith discussions with Iwi to coordinate suitable relationships (similar to Te Pae Toka) particularly with Ngāti Rangī who have a number of marae immediately proximate to the maunga.

**Attachments**

68. I am attaching the Concession Document for signing and return.

**Reconsideration**

69. You should be aware that section 17ZJ of the Conservation Act enables you to seek a reconsideration of my decision in relation to the proposed concession if you apply for reconsideration before the concession document is executed.

**Deed of Surrender**

70. Once PTL signs and returns the concession document I will forward a Deed of Surrender to RAL for signing. The effect of this will bring to an end the concession under which RAL has operated. PTL's concession will not take effect until RAL has surrendered its concession.

Ngā mihi ki a koutou.

Ita ita mau tonu.



Hon Tama Potaka  
Minister of Conservation  
Minita mō Te Papa Atawhai