Cabinet paper material

Proactive release

Hon Tama Potaka, Minister of Conservation

Title: *Modernising Conservation Land Management: Approval to Consult*

Title: *Exploring Charging for Access to Some Public Conservation Land: Approval to Consult*

Title: *Growing Third-Party Revenue for Conservation*

Title: *Conservation Priorities*

Date: 25 November 2024

These documents have been proactively released:

Cabinet paper – Modernising Conservation Land Management: Approval to Consult

Date: 28 October 2024

Author: Office of the Minister of Conservation

Cabinet Committee minute – ECO-24-MIN-0235

Date: 23 October 2024

Author: Cabinet Office

Cabinet paper – Exploring Charging for Access to Some Public Conservation Land: Approval to Consult

Date: 28 October 2024

Author: Office of the Minister of Conservation

Cabinet Committee minute – ECO-24-MIN-0236

Date: 23 October 2024

Author: Cabinet Office

Cabinet paper – Growing Third-Party Revenue for Conservation

Date: 12 August 2024

Author: Office of the Minister of Conservation

Cabinet Committee minute – ECO-24-MIN-0152

Date: 7 August 2024

Author: Cabinet Office

Cabinet paper – Conservation Priorities

Date: 12 August 2024

Author: Office of the Minister of Conservation

Cabinet Committee minute – ECO-24-MIN-0154

Date: 7 August 2024

Author: Cabinet Office

24-B-0128 Briefing: Conservation Amendment Bill

24-B-0264: Briefing: Conservation Amendment Bill – Timeline and scope)

24-B-0390: Proposals for Conservation Amendment Bill

24-B-0463: Briefing - Draft Cabinet Paper for Conservation Amendment Bill

Interim Regulatory Impact Statement - Modernising conservation land management

Interim Regulatory Impact Statement - Land exchanges and disposals

24-B-0186: Briefing - Opportunities to grow revenue from visitors

24-B-0246: Briefing - Further opportunities to grow third-party revenue

Material redacted

Some parts of this information release have been withheld as they are not appropriate for release. Where this is the case, the relevant sections of the Official Information Act 1982 (OIA) that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it. If requested under the OIA, these sections would be reconsidered for release at that time.

Cabinet paper *Modernising Conservation Land Management: Approval to Consult*, Cabinet committee minute [ECO-24-MIN-0235] and associated advice

In Confidence

Office of the Minister of Conservation

Cabinet Economic Policy Committee

Modernising Conservation Land Management: Approval to Consult

Proposal

1 This paper seeks agreement to release a discussion document on proposals to modernise conservation land management.

2 This is one of two papers seeking approval to consult on changes for a single Conservation Amendment Bill. The other paper relates to targeted access charges for some popular visitor areas on public conservation land (**PCL**).

Relation to Government priorities

3 These proposals will support rebuilding our economy by unlocking greater economic activity on public conservation land while protecting nature and our iconic landscapes. Making the concessions and associated planning systems cheaper, faster, and easier to engage with will also help deliver better public services.

4 Cabinet agreed to priorities for the conservation portfolio on 12 August 2024 [ECO-24-MIN-0154]. This paper progresses the priority of fixing concession processes.

Executive summary

5 A third of New Zealand's land mass is PCL and supports significant biodiversity, landscapes and heritage. It also enables a range of economic activity including tourism, energy infrastructure, skiing, grazing and mining. Consents for these activities are called concessions and operate under a cascade of plans, rules, and bodies similar to the Resource Management Act 1991 framework.

6 The planning system and concessions application process need to be modernised and streamlined to speed up concessions, remove unnecessary restrictions on activities, and provide certainty to applicants and decision-makers. More clarity is also needed on what is required to give effect to Te Tiriti o Waitangi / Treaty of Waitangi (**Treaty**) obligations.

7 Delays in concessions processing hinder economic activity and frustrate applicants. The regime is also legally ambiguous in many areas and subject to constant litigation, risk, delay and high legal costs for all parties. These proposals are aimed at addressing some of these issues, to support effective and efficient granting of concessions.

8 These proposals also simplify the planning framework and its processes, focusing plans on outcomes instead of out-of-date, disproportionate and prescriptive rules, and standardising some consenting through classes of exemptions, activities permitted in

advance and prohibited activities. Streamlining the conservation system's complex landscape of rules will make it faster and easier to process concession applications.

9 Concessions should be managed as an economic opportunity and property contract, not just an environmental consent. Conservation legislation lacks a clear framework for allocating concessions, and standard terms and conditions can be used to better effect. To fix this, I want to seek feedback on an economic framework that gets the best return from PCL and strikes the right balance between competition and certainty.

10 I also propose enabling more flexibility around the exchange and disposal of PCL where there is a net conservation benefit.

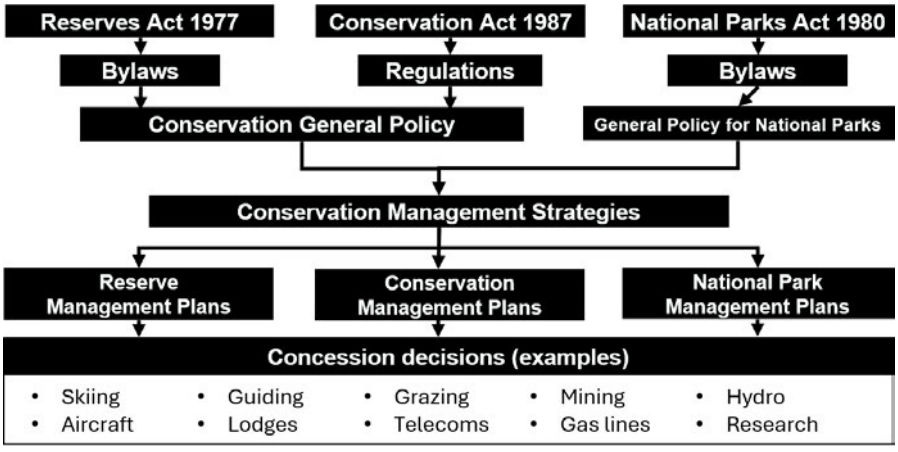
11 I intend to seek final policy decisions from Cabinet in April 2025, following public consultation. This will include options for developing planning changes in parallel to effect change as soon as possible. My aim is to introduce legislation in the second half of 2025 with a view to enactment in Q2 2026.

Background

12 PCL makes up a third of New Zealand's land mass (over 8 million hectares). Concessions authorise people including businesses, infrastructure providers and researchers to use PCL through leases, licenses, permits and easements. Conservation-related tourism, which relies on concessions, is worth around $3 – 4 billion a year.

13 Cabinet has agreed to progress legislation to help fix concessions alongside a programme of other improvements [ECO-24-MIN-0154]. It is taking too long to process concessions. As of September 2024, more than a third of concession applications were received more than one year ago. The Department of Conservation (**DOC**) receives more than 1,200 applications each year, and volumes are rising.

14 Concessions are regulated through a complex framework of policies and plans:



15 Ambiguous rules, a lack of clear provisions outlining what is required to give effect to Treaty rights and interests, poor contractual management, and the lack of a framework for allocating concessions all contribute to uncertainty for the regulator and concessionaires. This uncertainty disincentivises investment, leads to poor economic and conservation outcomes, and creates liability risks that can be costly for the Crown and taxpayers (e.g. Ruapehu Alpine Lifts).

16 These issues are well known and documented by others in the conservation system. For example, the Environmental Defence Society (**EDS**) recently made recommendations to modernise the conservation system. Appendix 1 summarises how my proposals relate to EDS' priority recommendations on the same issues.

17 My proposals also address some recommendations from the Options Development Group.[1] However, most of the recommendations are beyond the scope of the Bill. Their report concentrated on how to incorporate Treaty responsibilities into conservation management. My proposals provide clarity about Iwi involvement in regulatory processes and enable greater use of PCL.

Objectives: fix concession processes and enable land transactions

18 My objectives for changes to conservation legislation are to:

18.1 Speed up concession processing times and bring down costs.

18.2 Get better conservation and economic outcomes through the regulation, allocation, and commercial management of concessions.

18.3 Provide clarity and certainty to support investment.

18.4 Provide clarity on how Treaty rights and interests should be recognised and protected in concessions and management planning.

19 The Conservation portfolio has more Treaty settlement commitments than any other Government portfolio. Many of these embed involvement of Treaty partners in planning and concessions processes. Any changes we make will implement these commitments and any rights under Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

Summary of the proposals in the discussion document

20 The proposals in the discussion document are grouped into five areas:

20.1 Creating a more streamlined, purposeful and flexible planning system.

20.2 Setting clear process requirements and timeframes for concessions.

20.3 Establishing how and when concessions should be competitively allocated.

20.4 Establishing standard terms and conditions for concessions.

20.5 Enabling more flexible land exchange and disposal settings.

The planning system needs to be fixed to improve concession processes

21 The planning system has proven to be ineffective and inflexible in managing concessions. The framework of lengthy and sometimes ambiguous policies and plans slows decision-making, creates legal risks, and restricts consideration of potentially

[1] Options Development Group. 2021. Partial reviews of the Conservation General Policy and General Policy for National Parks regarding Te Tiriti o Waitangi / the Treaty of Waitangi. Department of Conservation [accessed Oct 2024].

permissible new activities (e.g. drones and new mountain bike tracks). Changing the rules has proven difficult, expensive and time consuming. National direction has not been updated since 2005 and more than 80% of the plans are overdue for review.

22 The discussion document includes proposals to:

22.1 Simplify the structure of the planning system with a single National Conservation Policy Statement (**NCPS**) and a single layer of area plans;

22.2 Ensure appropriate and faster decision-making and engagement, with clear process requirements and the Minister approving the NCPS and area plans;

22.3 Set a clear purpose for what plans can and cannot do to enable operational flexibility and make planning documents more effective; and

22.4 Standardise effects assessment of some commonly applied for activities to reduce the number of applications requiring assessment.

23 The current settings and further detail on these proposals are outlined in Appendix 2.

24 A new NCPS approved by the Minister is a gamechanger, and key for an effective and efficient conservation system. It will enable Government to set and revise policy as it would with other portfolios. Otherwise, key rules are set by others and become stale as review processes stall.

25 Improvements to the planning system will have benefits beyond concessions. Addressing the backlog of planning documents will help implement Treaty settlements: there are currently several plans stemming from Treaty settlements that need to be made. Removing duplicated material from plans and the unnecessarily prescriptive actions they dictate for the Government will bring efficiency gains.

26 I also propose enabling better use of ‘amenities areas’ to encourage investment in high-quality visitor infrastructure and services. These enable development in a designated area and therefore protect the wider conservation area. I propose giving them a consistent purpose across Acts and enabling the Minister to create them without needing the recommendation of the New Zealand Conservation Authority.

Faster processing of concession applications

27 The proposals enable DOC to process concession applications more efficiently by:

27.1 Improving triaging through clearer tests for declining or returning applications and aligning timeframes for this initial triaging step;

27.2 Creating statutory timeframes for relevant steps in the process, including on applicants who sometimes fail to engage for long periods or refuse to agree with proposed terms and conditions while continuing to operate;

27.3 Clarifying engagement requirements to give effect to Treaty obligations;

27.4 Only needing to notify applications when there is an intention to grant a concession and consulting on which activities require notification; and

27.5 Clarifying the scope and process for reconsiderations.

Better allocation of concessions for greater competition and economic outcomes

28 Most concessions are allocated on a 'first-come-first-served' basis, which can be economically inefficient in limited supply situations. Competitive allocation can drive better economic outcomes, especially where a monopoly right to operate is allocated to the market for long periods (e.g. leases for more than 30 years). It can also address a key concern of Iwi/Hapū that the current system restricts their connection to taonga and economic development by limiting their opportunity to apply for relevant concessions, often for multiple generations.

29 I propose creating a framework for allocating these economic rights that balances the tension between enabling competition at appropriate points and providing certainty to existing concessionaires to support investment. Proposals include specifying when concessions should be put to market, and ways to ensure fair compensation for businesses and/or privately-owned assets on PCL should a concession change hands. This will address a key concern of long-running businesses on PCL.

30 I also propose consulting on criteria for selecting a preferred concessionaire in a competitive process, to apply to future allocation decisions. This includes concessionaires' capability and performance record, returns to conservation, offerings to visitors, community benefits, and recognition of Treaty rights and interests.

31 The 'recognition of Treaty rights and interests' criterion will better clarify how we should consider any reasonable degree of preference for Iwi/Hapū where they have mana whenua responsibilities and active protection of their interests is required in the circumstances. Currently there is significant ambiguity and inconsistent decision-making within DOC. It is a key factor which influences decision-making on significant concessions, which is problematic for the Government, Iwi/Hapū (either as concessionaires or as Iwi/Hapū), concessionaires and the public.

32 The criterion would carefully consider applications that foster or provide for recognition of Treaty rights and interests. It will clarify how Iwi/Hapū interests, such as connection to taonga, are accounted for. However, it would not provide Iwi/Hapū a guaranteed right to concessions because it would not be the only criteria used to determine who is awarded the concession. This is consistent with the Supreme Court who did not consider that section 4 of the Conservation Act provided a right of veto over concessions for Iwi/Hapū.

Standardising concessions terms and conditions

33 Greater standardisation of concession terms and conditions will support more efficient processing, set consistent and fair operating conditions for concessionaires, and provide greater transparency for the public. I intend to consult on proposals to establish standardised approaches for:

33.1 Asset management, including 'make good' provisions and performance conditions that reduce the risk of Crown liabilities should a business fail.

33.2 The length of concession terms, including clarifying when leases and licences can be granted for periods longer than 30 years.

33.3 The rents, fees, and royalties associated with concessions.

Enabling more flexible land exchange settings where it would benefit conservation

34 Current law and the Conservation General Policy only allow PCL of 'no or very low' conservation value to be exchanged. PCL with any meaningful conservation values therefore cannot be exchanged, even for land of higher conservation values.

35 Law change should enable more flexibility to exchange land where it would provide a net conservation benefit. Like the fast-track regime, I propose this not be allowed for the most precious land types. That would include PCL of international or national significance, national reserves (under the Reserves Act 1977), ecological areas (specially protected under the Conservation Act) or land within Schedule 4 of the Crown Minerals Act 1991.

Enabling disposal of PCL that is surplus to conservation needs

36 Similarly, disposal of PCL is currently limited to reserves and stewardship areas that have been assessed as having 'no or very low' conservation values. In practice this is too restrictive. While there is a strong conservation rationale for some restrictions, disposing of PCL in certain cases can have positive outcomes. For example, there may be PCL where the costs for maintenance or compliance (e.g. fire risk) draw resources away from better investments in other areas or where ownership would be better suited (for various reasons) with Iwi/Hapū.

37 I propose to enable easier disposal of PCL where there is a conservation benefit and to remove the 'no or very low' conservation values requirement. This is not targeted at specific land types, and will likely be for land that is surplus to conservation needs.

Treaty implications of the proposals

38 The current system has created too much ambiguity concerning how to give effect to Treaty requirements. In 2018 the Supreme Court issued its decision in *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation*.[2] The case concerned DOC's consideration of Treaty principles when it granted two commercial concessions. The Supreme Court found section 4 was not properly applied in the decisions challenged.

39 These proposals will clarify what is required to give effect to Treaty rights and interests in concessions and planning processes. I will seek to clarify engagement requirements in concessions and planning processes and how rights and interests are considered when consenting and allocating concessions. The regulatory system will provide for active protection of taonga and appropriate Iwi/Hapū engagement to ensure informed decision-making in ways that are clearly endorsed by Parliament and set out for all to understand.

[2] *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122.

40 I intend to conduct initial engagement with Iwi/Hapū on the issues raised by these proposed changes. I anticipate there will be diverging views on what the Treaty does and does not require to give effect to the rights and interests of Iwi/Hapū. It is possible that many Iwi/Hapū will view the proposals as diminishing the requirements on the Crown. The proposals reflect the existing requirement for reasonable engagement but may not aspire to the level of involvement many Iwi/Hapū aspire to. There is some expectation of this as it has been provided for in some of the more contemporary Treaty settlements.

41 It is also highly likely that efforts to add statutory requirements to account for Iwi/Hapū rights and interests in the competitive allocation of concessions will be met with suspicion and opposition. Iwi/Hapū may view the criteria as insufficient protection of their access to taonga and wāhi tapu on PCL, and their economic interests in development.

42 My proposals are relevant to the wider review of Treaty clauses [CAB-24-MIN-0346]. Both seek to provide clarity on what the Treaty requires in the specific legislative context. I will work with the Minister of Justice on the wider review.

These changes will require targeted engagement with post-settlement governance entities to ensure the mana and intent of their settlements is upheld

43 To ensure that existing Treaty settlements are upheld, officials will continue to undertake work during and after consultation to shape the proposals appropriately. [redacted] section 9(2)(j) [redacted]

44 Settled groups may consider that the proposals do not uphold their Treaty settlement commitments, particularly in relation to their membership on Conservation Boards, Ngāi Tahu representation on the NZCA, and the role of those bodies in the approval of strategies and plans. Current settlement provisions include things like the ability to write chapters in plans, seats on Conservation Boards, plan approvals, and consultation requirements. Proposals to remove some plans will be perceived as cutting across these provisions. Engagement will be a good opportunity to hear the views of these groups.

Links to other work

45 I am also exploring targeted access charges for popular visitor areas on PCL. I intend to seek feedback on access charging through a separate discussion document. Any legislative changes required to enable access charging would be combined with the proposals in this paper in a Conservation Amendment Bill.

46 The Milford Opportunities Project has identified many of the same issues outlined here. The changes I am proposing would provide the tools not only for Milford Sound but also to address the systemic issues affecting many other places. I will report to Cabinet with the Minister for Tourism and Hospitality on the Milford Sound/Piopiotahi business case shortly.

47 section 9(2)(f)(iv) [redacted]

[redacted]

48 Concessions are how DOC authorises activities on and use of PCL. The other major category of DOC authorisations is under the Wildlife Act 1953. The Wildlife Act system is similarly in need of reform, and I aim to release a discussion document during this term on potential changes.

49 Alongside changes to the regulatory framework for concessions, DOC is improving its operational processes to the extent possible. I have set new timeframe targets for DOC that I intend to make more ambitious as changes take effect (see Appendix 3).

Next steps and timeline for progressing the Bill

50 Outlined below is the proposed timeline for this work.

Milestones (subject to future decisions)	Timeline
Iwi engagement begins	Nov 2024
Public consultation and engagement	Mid-Nov 2024 to Mar 2025
Cabinet agreement to policy and Bill drafting begins	Apr 2025
Cabinet paper seeking agreement to introduce Bill	Oct/Nov 2025
Introduction and first reading	Nov/Dec 2025
Select Committee (if 4 months is agreed to)	Nov/Dec 2025 to Q1 2026
Second and third readings, and enactment	Q2 2026

Delivery of the NCPS and revised area plans

51 If Cabinet agrees to the proposed changes, I intend to prepare the NCPS alongside the Bill. It could then be included as a schedule in the Bill, receive public feedback during select committee, and come into force immediately as part of any new framework. This will also mean that the process of revising the area plans can begin soon after legislation is passed. I intend to prioritise area plans that implement outstanding Treaty obligations and the Fiordland National Park Management Plan that will address some of the key recommendations of the Milford Opportunities Project.

section 9(2)(f)(iv)

[redacted]

Cost-of-living implications

53 There are no immediate cost-of-living implications from this paper.

Financial implications

54 There are no immediate financial implications arising from this paper. There may be financial implications from amendments proposed in the discussion document, but it is intended that any costs be met from existing baselines.

Legislative implications

55 There are no direct legislative implications resulting from the proposals in this paper. I will report back to Cabinet with any proposed law changes after public consultation.

56 A new legislative bid will be prepared for the proposed Conservation Amendment Bill for the 2025 Legislative Programme. Subject to Cabinet agreement, I intend to introduce the Conservation Amendment Bill in Q4 2025. This would likely require PCO to prioritise drafting of this Bill.

Impact analysis

Regulatory Impact Statement

57 A quality assurance panel has reviewed the two interim Regulatory Impact Statements (concerning concessions and management planning, and concerning land exchanges and disposals), and discussion document, and found that the quality of analysis meets expectations for documents designed to support public consultation.

Climate Implications of Policy Assessment

58 The Climate Implications of Policy Assessment (**CIPA**) team has been consulted and confirms that the CIPA requirements do not apply to these proposals as the threshold for significance is not met.

Population implications

59 There are no immediate population implications from this paper. Iwi/Hapū and rural communities in particular stand to benefit from fixing concessions processes through more effective and efficient regulation of businesses on and proximate to PCL.

Human rights

60 The proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Use of external resources

61 Consultants from MartinJenkins assisted with the development of the discussion document given their prior work on the Milford Opportunities Project.

Consultation

62 The Department of Internal Affairs, Land Information New Zealand, the Ministry for Culture and Heritage, the Ministry for Primary Industries, the Ministry for the Environment, the Ministry of Business, Innovation and Employment, the Ministry of Housing and Urban Development, the Ministry of Justice, the Ministry of Transport, the New Zealand Transport Agency, the Ministry for Regulation, Te Arawhiti, Te Puni Kōkiri, Te Waihanga and The Treasury were consulted on this Cabinet paper. The Department of the Prime Minister and Cabinet and Parliamentary Counsel Office have been informed.

Communications

63 I will announce the release of the discussion document and publicise key information (including concessions targets) via a press release. DOC will publish the discussion document on their website and distribute links via social media platforms and other key communications channels. DOC will directly consult with key groups including Iwi and stakeholders informing them of consultation and inviting their participation.

Proactive release

64 I intend to proactively release this Cabinet paper alongside the discussion document.

Recommendations

The Minister of Conservation recommends that the Committee:

1 **note** the Minister of Conservation intends to initiate public consultation to modernise conservation land management, including:

1.1 creating a more streamlined, purposeful and flexible planning system;

1.2 setting clear process requirements and timeframes for concessions;

1.3 establishing how and when concessions should be competitively allocated;

1.4 establishing standard terms and conditions for concessions;

1.5 enabling more flexible land exchange and disposal settings; and

1.6 providing clarity around Treaty obligations in these processes, including engagement requirements and decision-making considerations.

2 **approve** the release of the attached discussion document for public consultation between mid-November 2024 and late February 2025.

3 **authorise** the Minister of Conservation to make minor amendments to the discussion document as required prior to release to ensure it gives effect to its intent and is appropriately designed.

4 **note** the proposals to modernise conservation land management can be progressed in a Conservation Amendment Bill alongside changes enabling charging for access to public conservation land, for which a separate discussion document is being considered by Cabinet.

5 **note** through this work the Minister of Conservation intends to address some issues identified in the Milford Opportunities Project, and that the Minister of Conservation will report back on implementation of the business case for Milford Sound/Piopiotahi with the Minister for Tourism and Hospitality shortly.

6 **invite** the Minister of Conservation to report back to Cabinet with recommended amendments to legislation following public consultation in April 2025.

Hon Tama Potaka

Minister of Conservation

Appendix 1: Links between proposals and EDS recommendations

The table below compares recommendations from the Environmental Defence Society (**EDS**)[3] with Government proposals in this Cabinet paper.

EDS recommendation	Government proposal	Comparison of EDS and Government approaches
Conservation management system		
Replace the Conservation General Policy and General Policy for National Parks with a clearer and more directive Conservation Policy Statement. This should be linked to National Conservation Standards that provide a national template for plans, so they are shorter, clearer, more consistent and easier to navigate. The Standards should also set national rules and identify categories which can be applied to activities in plans.	The Government proposes to create a National Conservation Policy Statement to replace the two general policies and creating a template for area plans. The introduction of a template aims to support area plans that are more consistent and easier to navigate.	There is alignment on having one clearer National Conservation Policy Statement. The Government is proposing a template for area plans that will carry out some of the same functions as envisaged by the EDS' National Conservation Standards in terms of provision for classes of activities.
Replace the current plethora of conservation management strategies and plans with one plan per region – a Regional Conservation Plan – that implements national policies at place. This should be linked to a Regional Operational Plan that sets out DOC's regional work plan and budget over the short term (1-3 years) and reports on progress with implementing the Regional Conservation Plan.	The Government proposes there only be one plan per area. These area plans would focus on outcomes and values rather than prescriptive rules, operational planning and budget.	The Government's proposal explicitly decouples DOC's work and budget planning from the management planning system. The EDS approach recommends constraints on Government operations and prioritisation.

[3] Environmental Defence Society. 2024. Restoring Nature: Reform of the conservation management system. Environmental Defence Society Incorporated [accessed Sept 2024]. eds.org.nz/wp-content/uploads/2024/08/Restoring-Nature-Report-FINAL-web-1.pdf

EDS recommendation	Government proposal	Comparison of EDS and Government approaches
Streamline the planning process, and make it more robust, through use of Independent Hearings Panels.	The proposals are aimed at streamlining the planning process but do not include independent hearing panels, as they could slow the process down.	The Government's proposals do not include having Independent Hearing Panels. The Minister of Conservation will approve the National Conservation Policy Statement and area plans rather than the NZCA and Conservation Boards (which the EDS also proposes).
Replace concessions with 'consents' to make it clearer that commercial use of conservation areas is a privilege and not a right.	The Government agrees that a concession is made up of consent-style rights as well as contractual elements. The proposals deal with both features of concessions and aim to make efficiencies while also reinforcing that commercial use of PCL is a privilege through appropriate terms, conditions and monitoring provisions.	Government proposals are aimed at driving greater efficiency in how concessions address environmental effects and being clearer on what are the contractual elements of a concession. A change of name could be considered if a clearer separation between consent and contract is needed when transitioning to any new arrangements.
Concessions		
Provide a broader range of allocation mechanisms (e.g. financial tendering, weighted attribute tendering, auctioning and balloting).	The Government's proposals provide clearer guidance on when and how allocation mechanisms can be used, to broaden their use for concessions.	The EDS recommendation aligns with Government proposals in providing for or improving broader allocation processes including auctioning and tendering.

EDS recommendation	Government proposal	Comparison of EDS and Government approaches
Provide some priority for allocation to tangata whenua and activities that deliver conservation gains (e.g. to climate adaptation, carbon sequestration, biodiversity protection).	The Government proposes that criteria in making allocation decisions include recognition of Treaty rights and interests and returns to conservation. These criteria will support consistent and appropriate decisions when an opportunity is competitively allocated.	There is broad alignment in terms of providing for tangata whenua in the concessions process, including during competitive allocation of concession opportunities. The Government's proposals will prioritise activities that deliver returns to conservation, as well as other outcomes such as capability and performance.
Adjust concession rents, fees and royalties to ensure a fair market value is charged.	The Government proposes that concession fees reflect a 'fair return to the Crown' rather than the current approach.	The Government proposal aligns with the EDS recommendation, which is founded in a concern that the current approach undercharges for commercial access to PCL.
Increase DOC's ability to review and amend concession conditions when merited, such as when there are significant impacts on indigenous wildlife.	Proposals include an option to introduce conditions to better measure performance and enable Government to respond to under-performance faster. It is important to make sure the right terms and conditions are in place before a concession is granted. To achieve this, the Government proposes setting standard contractual obligations, for example in the new National Conservation Policy Statement.	There is broad alignment between the Government's proposals and EDS recommendation.
Giving effect to Treaty principles		
Provide clear direction on how section 4 of the Conservation Act and Treaty principles are to be given effect to in conservation decision-making.	Multiple proposals aim to provide clarity on how Treaty rights and interests should be recognised and protected (i.e. how to better implement Conservation Act section 4 obligations) in concessions and management planning.	There is general alignment between the Government's proposals and EDS recommendation.

Appendix 2: Summary of current planning system and proposed changes

The discussion document proposes the following changes to enable a more streamlined, effective, proportionate, and flexible planning system:

Simplifying the structure of the planning system	
Current: • Two national direction instruments • Two layers of plans for national parks and some other PCL	Proposed: • A single **National Conservation Policy Statement** • A single layer of **area plans**
Setting a clear purpose for what plans do and do not do	
Current: • Ambiguous or contradictory objectives and policies • Overly prescriptive rules, including conditions on activities	Proposed: • Plans focus on setting outcomes, which guide concessions decisions • Plans will not set conditions and rules for concessions, other than some limits to manage effects where necessary
Standardising assessment of some commonly applied for activities	
Current: • Case-by-case assessment of applications • Only primary legislation can exempt activities	Proposed: • Create classes of exempted activities, activities permitted in advance, and prohibited activities • Increased scope for standardisation
Ensuring appropriate and streamlined decision-making and engagement	
Current: • Minister approves Conservation General Policy • The New Zealand Conservation Authority (**NZCA**) approves strategies and plans, and the General Policy for National Parks[4] • Ambiguity for giving effect to Treaty requirements when engaging on new plans • Excessive process steps make it hard to change the rules	Proposed: • Minister of Conservation approves the new National Conservation Policy Statement and area plans • Clear engagement requirements – including with Iwi – when developing plans • Easier, faster amendments

[4] Some Treaty settlements also provide a role for post-settlement governance entities in approving area plans.

Appendix 3: Processing targets for conservation authorisations

Backlog target:	By the end of 25/26 FY, no active applications are older than one year *(exceptions may be identified)*

Additional targets from the date a complete application is received:	Target for end of 24/25 FY	Target for end of 25/26 FY
Permits [concessions under the Conservation Act], including one-off permits *e.g. guiding, aircraft landings*	80% within 4 months	95% within 4 months
Permits for one-off drone use [concessions under the Conservation Act]	70% within 1 week	95% within 1 week
Wildlife Authorities [under the Wildlife Act] *e.g. lizard salvage for development, species translocation*	80% within 6 months	95% within 6 months
Non-notified licenses and easements [concessions under the Conservation Act] *e.g. grazing, telecoms sites*	80% within 7 months	95% within 7 months
Leases and notified licenses [concessions under the Conservation Act] *e.g. ski fields, accommodation*	70% within 9 months	95% within 9 months
Mining access arrangements [under the Crown Minerals Act] *e.g. coal and alluvial gold mining*	70% within 6 months	95% within 6 months

ECO-24-MIN-0235

Cabinet Economic Policy Committee

Minute of Decision

Modernising Conservation Land Management: Approval to Consult

Portfolio **Conservation**

On 23 October 2024, the Cabinet Economic Policy Committee (ECO):

1 **noted** that the Minister of Conservation (the Minister) intends to initiate public consultation to modernise conservation land management, including:

1.1 creating a more streamlined, purposeful, and flexible planning system;

1.2 setting clear process requirements and timeframes for concessions;

1.3 establishing how and when concessions should be competitively allocated;

1.4 establishing standard terms and conditions for concessions;

1.5 enabling more flexible land exchange and disposal settings;

1.6 providing clarity around Treaty of Waitangi obligations in these processes, including engagement requirements and decision-making considerations;

2 **approved** the release of the discussion document attached under ECO-24-SUB-0235 for public consultation between mid-November 2024 and late February 2025;

3 **authorised** the Minister to make minor amendments to the discussion document, as required, prior to release to ensure it gives effect to its intent and is appropriately designed;

4 **noted** that the proposals to modernise conservation land management can be progressed in a Conservation Amendment Bill alongside changes enabling charging for access to public conservation land, for which a separate discussion document is being considered under ECO-24-SUB-0236;

5 **noted** that, through this work, the Minister intends to address some issues identified in the Milford Opportunities Project, and will report back to Cabinet with the Minister for Tourism and Hospitality on implementation of the business case for Milford Sound/Piopiotahi shortly;

6 **invited** the Minister to report back to ECO in April 2025, following public consultation, with recommended legislative amendments for modernising conservation land management.

Rachel Clarke
Committee Secretary

Present:
Rt Hon Winston Peters
Hon David Seymour
Hon Nicola Willis (Chair)
Hon Chris Bishop
Hon Brooke van Velden
Hon Simeon Brown
Hon Erica Stanford
Hon Paul Goldsmith
Hon Louise Upston
Hon Judith Collins KC
Hon Mark Mitchell
Hon Tama Potaka
Hon Matt Doocey
Hon Simon Watts
Hon Melissa Lee
Hon Penny Simmonds
Hon Chris Penk
Hon Nicola Grigg
Hon Andrew Bayly
Hon Andrew Hoggard
Hon Mark Patterson
Simon Court MP

Officials present from:
Office of the Prime Minister
Office of Hon Chris Bishop
Department of Conservation
Officials Committee for ECO

Interim Regulatory Impact Statement: Modernising conservation land management

Coversheet

Purpose of Document	
Decision sought:	Release of a discussion document
Advising agencies:	Department of Conservation
Proposing Ministers:	Hon Tama Potaka, Minister of Conservation
Date finalised:	16 October 2024

Problem Definition

Any activity on public conservation land (PCL) must generally be authorised by the Minister of Conservation, referred to as obtaining a "concession". Processing concessions is slow and unwieldy, with about a third of applications on hand in September 2024 being older than a year. This is eroding certainty for concessionaires (including applicants), Treaty partners and the public, and frequently results in unnecessary costs and delays.

The Department of Conservation (DOC), which administers concessions on behalf of the Minister, is making a range of operational improvements. However, changes to the overall regulatory framework for concessions could enable more significant improvements in how concessions are processed. They could also provide more certainty about how DOC gives effect to principles of te Tiriti o Waitangi / the Treaty of Waitangi (Treaty principles), which is a requirement under the Conservation Act 1987.

Statutory planning documents in the conservation are one way of regulating concession decisions. There are known issues with the structure of the planning hierarchy, which has resulted in a large suite of planning documents. At times, these documents contain too much prescription, limiting activities without a strong conservation rationale. The manner in which their contents have evolved across regions and over time make it hard to consistently and clearly interpret them. Sometimes, they contain contradictory or conflicting rules. Improving concessions processes therefore also requires addressing these issues with the conservation management planning system.

There are also opportunities to modernise other aspects of the concessions process and broader land management tools used by DOC alongside this work. For example, while there is specific legislative authority to allocate concessions through competitive processes, DOC needs more procedural clarity and consistency to fully realise the benefits to conservation of competitive allocation. In addition, DOC may benefit from more sophisticated tools to manage the contractual and commercial aspects of concessions.

Executive Summary

A multi-faceted approach could help address the problems above. This could comprise:

Area	*Specific changes*
Conservation management planning framework *Sections 2.1 and 2.2*	Streamlining the conservation management planning framework to take pressure off concessions by: • Going from two national direction instruments to a single National Conservation Policy Statement. • Going from two layers of plans for national parks and some other PCL to a single layer of area plans with no overlap. • Allowing plans to set outcomes for concessions, and not conditions or rules (other than some limits where necessary to manage effects). • Creating classes of exempted activities, activities permitted in advance and prohibited activities to allow a class approach to concessions, rather than requiring case-by-case assessment of all applications. • Shifting approval of the new National Conservation Policy Statement and area plans to the Minister of Conservation, rather than the New Zealand Conservation Authority at present. • Setting clear engagement requirements—including with Māori—when developing plans. • Rationalising the two different types of "amenities areas" in the Conservation Act and National Parks Act 1980 and making it easier for the Minister of Conservation to create amenities area in national parks.
Concession processes *Section 2.3*	Enabling faster processing of concession applications by: • Improving triage of applications through clearer tests for declining or returning applications and aligning statutory timeframes. • Creating statutory timeframes for certain steps in the process, including on applications who do not provide additional information needed to process applications, or who continue to operate while refusing to agree to proposed terms and conditions. • Clarifying engagement requirements to give effect to Treaty obligations. • Only notifying applications where there is an intention to grant a concession, and potentially changing the activities that require public notification (currently all leases and any license longer than ten years). • Clarifying the scope and process for reconsiderations when a decision is appealed.
Concession allocation *Section 2.4*	Developing a framework for competitive allocation of concession opportunities including: • Rules/guidelines for when concession opportunities should be put to market. • Criteria for selecting a preferred concessionaire in a competitive process, including connection to taonga (to clarify how DOC will consider any reasonable degree of preference for iwi/hapū). • Allowing fair compensation for businesses and/or privately-owned assets on PCL should a concession change hands.
Concession terms, conditions and pricing *Section 2.5*	Establishing standardised approaches for: • Asset management, including "make good" provisions and performance conditions that reduce the risk of Crown liabilities should a business fail. • The length of concession terms, including clarifying when leases and licenses can be granted for periods of longer than 30 years. • The rents, fees and royalties associated with concessions.

The Minister of Conservation intends to consult the public on the suite of changes above, including targeted engagement with Treaty partners and stakeholders. Feedback from engagement will support further development and consideration of the options, including identification of preferred options, and detailed analysis of those preferred options (i.e. costs, benefits, impacts on different population groups and regulated parties, risks and risk mitigations). This will be reflected in the final RIS prepared to support Cabinet decisions on whether to proceed and which changes to take forward, expected around April 2025.

Limitations and Constraints on Analysis

Cabinet priorities for Conservation portfolio

The key constraints and limitations on analysis are decisions by Cabinet. In August 2024, Cabinet agreed the following priorities for the Conservation portfolio:

1. Update the conservation regulatory system by progressing legislation to improve performance in processing concessions and permissions.
2. Target investment in high conservation value areas to restore key degraded habitats, support recovery of native species and maximise carbon storage on PCL.
3. Generate new revenue and build a more financially sustainable conservation system by 2026, and develop a plan to partner for investment in protecting high value conservation domains in 2025.
4. Build positive working relationships with iwi/hapū to make the most of their strong and long-term commitment to the environment.

The Minister of Conservation was also invited to engage with the public on increased flexibility to remove restrictions on the exchange or sale of PCL and assets where this would deliver a net benefit to conservation.

This interim RIS mainly relates to the first priority of fixing concessions processes. [redacted] section 9(2)(f)(iv) [redacted]

	Indicative timing	*Matters to address*
section 9(2)(f)(iv)	Cabinet approval to consult the public by October 2024. Cabinet policy decisions by April 2025. Cabinet agreement to introduce legislation around September 2025, which is then passed in the current parliamentary term.	Key pain points in the system for concessions: • Reduce DOC's permissions backlog. • Make concessions processes more timely, predictable and efficient. • Increase the number and range of activities on PCL consistent with conservation values. • Encourage more competition and investment in economic opportunities on PCL. • Deliver on the National Party manifesto commitment that no concession process takes more than a year.
section 9(2)(f)(iv)	[redacted]	[redacted]

The Minister of Conservation has also since agreed the following priorities in fixing concessions processes:

- Speed up processing times and bring down costs,
- Improve conservation and economic outcomes through the regulation, allocation and commercial management of concessions,

- Provide clarity and certainty to support investment,
- Provide clarity on how Treaty rights and interests should be recognised and protected in concessions and conservation management planning.

section 9(2)(f)(iv) [redacted]

[redacted]

Timeframe limitations

9(2)(f)(iv) [redacted] This has constrained the time available for DOC to prepare proposals for public engagement, and specifically to analyse/define the problem, identify options and analyse them.

In the time available, DOC has prioritised identifying all potential areas for change relating to concessions. This will allow the public a meaningful opportunity to provide early feedback ahead of Cabinet policy decisions.

DOC is planning to carry out policy development and analysis alongside the public engagement process as feedback is received. Where possible, the interim RIS identifies potential secondary design issues that may emerge, but at this stage it has not been possible to analyse all options that relate to the overarching policy problem.

Interim RIS produced ahead of engagement

This interim RIS has been produced to support Cabinet decisions on whether to proceed to public engagement. There has been no engagement on the proposals in this interim RIS.

In 2022, DOC consulted the public on legislative changes to conservation management planning and the concessions system, some of which relate to or are similar to proposals in this interim RIS. Where relevant, feedback from that engagement has been taken into consideration. The 2022 consultation resulted in Cabinet policy decisions and drafting beginning on a Bill in 2023, but that work was not taken forward following the change of government later that year.

Data and information limitations

In the time available, DOC has generally not been able to assess whether data and information is available to support analysis of the specific problems and options in this interim RIS. Where readily available, existing data and information has been used in some sections. Gathering the necessary data and information (including from DOC as regulator and submitters) to support informed decision-making will be a priority during the public engagement period.

However, even with additional time, it may not be possible to obtain all the data and information desired. For example, known data issues relating to concession processing mean it is hard to understand or track performance, and these issues will not be resolved

in the timeframes for Cabinet policy decisions (i.e. by April 2025). Beyond regulatory performance, there are also limits to what is knowable in terms of the broader regulatory environment. For example, DOC does not know the scale of latent economic development/tourism opportunities that are potentially hindered by current regulatory settings and for which there is supply in the market.

Choices about regulatory lever or instrument

Because of timeframe and engagement limitations, DOC has not been able to analyse what regulatory lever or instrument is best suited to deliver the changes canvassed in this interim RIS. It is likely that a combination of legislative and non-legislative means will need to be pursued.

Addressing the policy problems outlined in this interim RIS will require *some* legislative change. However, some options may be able to be delivered without amending legislation such as through changes to operational policy and practice. For example, one of the options considered in this interim RIS is setting a template for area plans in secondary legislation. It may be possible to achieve the same effect through non-legislative means, such as having the same template, but without including it in secondary legislation.

Assumption that objectives sought can be achieved within current scope of work

The Government is not considering changes to the purpose of the conservation system, and the primacy of achieving conservation outcomes compared to enabling other outcomes through conservation rules and processes (e.g. economic outcomes). Other fundamental aspects of the conservation system that are not changing are the purposes for which PCL is held, and the requirement that any use of or activities on PCL must be consistent with those purposes. The proposals also do not involve any changes to how the effects of a proposed activity on or use of PCL are assessed.

A key assumption in preparing this interim RIS is that the nature and extent of change sought can be achieved within the scope described above.

Differentiating between direct and indirect impacts of some options

While some of the options considered involve changes to regulation, others relate to frameworks within which regulations are set (i.e. the management planning system). This makes it hard to definitively assess whether and how certain options could contribute to the objectives sought, because that would ultimately depend on how any new framework is used by the regulator and regulated parties to create regulation.

Responsible Manager(s) (completed by relevant manager)

Eoin Moynihan

Manager, Regulatory Systems Policy

Policy and Regulatory Services Group

Department of Conservation

16 October 2024

Quality Assurance (completed by QA panel)

Reviewing Agency:	Department of Conservation and Ministry of Business, Innovation and Employment
Panel Assessment & Comment:	A quality assurance panel has reviewed the two interim Regulatory Impact Statements (concerning concessions and management planning, and concerning land exchanges and disposals), and discussion document, and found that the quality of analysis meets expectations for documents designed to support public consultation.

Section 1: Diagnosing the policy problem

Structure of this interim RIS

1. This interim regulatory impact statement (RIS) is structured around five different opportunities which contribute to an overarching policy opportunity: amendments to conservation management planning and concession processes can enable a more efficient and effective concession system.

2. This interim RIS has been produced partway through the policy development process, to support Cabinet decisions on whether to consult the public on potential changes. It should therefore be read alongside the draft discussion document, titled 'Modernising conservation land management', and one other interim RIS on land exchanges and disposals.

3. Some sections of this interim RIS are also high level, because the options are likely to become more detailed through engagement and further policy work. For example, the delivery section (section 3) will only be able to be completed in detail when the preferred options are more developed. The preferred options in this interim RIS represent proposals the Government is seeking feedback on, and could change following engagement and further policy development.

4. There has been no specific engagement on the proposals in this interim RIS. However, significant policy work and public engagement took place in 2022 on similar proposals to those in this interim RIS. Where available, feedback from that engagement has been included.

What is the context behind the policy problem?

5. Under the Conservation Act 1987, the Department of Conservation (DOC) is responsible for managing public conservation land (PCL), protecting biodiversity, enabling recreational and economic activities, advising the Minister of Conservation and advocating for conservation.

6. DOC manages nearly a third of the country's land mass (over 8 million hectares). This includes native forests, tussock lands, alpine areas, wetlands, dunelands, estuaries, lakes and islands, national forests, maritime parks, marine reserves, nearly 4,000 reserves, river margins, some coastline, and many offshore islands.

7. DOC is the lead agency in the conservation regulatory system, and has a key role in protecting and supporting ecosystems, and encouraging sustainable tourism. In doing so, DOC works with a network of statutory organisations, community groups, iwi, hapū,

Māori organisations, private landowners, regional councils and non-government organisations (NGOs).

8. DOC faces growing challenges in meeting its statutory responsibilities. These include increasing cost pressures driven by growing wages and inflation, funding shortfalls for maintaining DOC's visitor network amid growing visitor numbers, ageing infrastructure, and repair costs following extreme weather events and natural disasters. DOC's annual budget is around $650 million, which is roughly 0.45% of core Crown spending.

9. Meanwhile, biodiversity is under threat, and these threats are growing. Recent examples include the global spread of avian flu, and incursions of sea spurge, caulerpa seaweed and golden clams. Native wildlife is also at serious risk of extinction. 94% of our reptile species, 82% of bird species, 80% of bat species, 76% of freshwater fish species, and 46% of plant species either face extinction or are at risk of being threatened with extinction.

An overview of concessions

10. Any activity on PCL requires authorisation in the form of a concession from the Minister of Conservation, with some exceptions.[1] This means a wide range of activities are regulated through concessions, such as grazing, guiding and other tourism businesses, visitor accommodation, energy infrastructure, filming and research activities.

11. A concession may be in the form of a permit, easement, licence or lease:

Type	*Purpose*	*Examples*	*Term*
Permit	Gives the right to undertake an activity that does not require an interest in the land	Guiding, filming, aircraft landings, research	Up to ten years
Easement	Grants access rights across land e.g. for business, private property access or public work purposes	Ability to access utilities through PCL	Up to 30 years (or 60 years in exceptional circumstances)
Licence	Gives the right to undertake an activity on the land and a non-exclusive interest in land	Grazing, beekeeping, telecommunications infrastructure	
Lease	Gives an interest in land, giving exclusive possession for a particular activity to be carried out on the land	Accommodation facilities, boat sheds, storage facilities	

12. When deciding whether a concession can be granted, DOC:

    - Assesses if the activity is consistent with:

[1] These exceptions are recreational activities without any specific gain/reward; activities carried out by the Minister of Conservation or DOC in exercising functions, duties or powers under any law; activities authorised by conservation legislation; and activities to save or protect life or health, to prevent serious damage to property, or to avoid actual or likely adverse effect on the environment.

- The purpose for which land is held,
- The purpose of the Conservation Act,
- Relevant statutory planning documents,
- DOC's own land management goals for the area,

- Assesses if the effects of the activity can be understood, and if there are any methods to avoid, remedy or mitigate these effects (referred to as an 'effects assessment'), and
- Consults with iwi, hapū and whānau at place.

13. While concessions are granted in the name of the Minister of Conservation, applications are administered by DOC acting under delegation. DOC typically receives more than 1,500 concession applications each year and manages more than 4,000 ongoing concessions. A concession gives a concessionaire:

- A legal right to carry out their activity on PCL,
- A formal relationship with DOC, so both parties are aware of their obligations, and
- Security of tenure for the term of the concession, provided the conditions of the concession are complied with.

14. The concessions system helps DOC ensure activities on and uses of PCL are compatible with the overriding purpose of conservation.[2] It also helps ensure services and facilities provided for visitors are appropriate and of a suitable standard, and that activities do not conflict with visitor enjoyment and recreation.

15. The concessions system has four key regulatory objectives:

- **Delivering effective land management**: The concessions system is responsible for ensuring any activities maintain the values of PCL. It enables DOC to control which activities can occur, assess any adverse effects, and apply any conditions necessary for activities to take place.
- **Providing well-governed access opportunities**: Appropriate private use and development of PCL 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 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

---

2 The Conservation Act defines 'conservation' as preserving and protecting 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.

where both DOC and the concessionaire have interests and duties relating to the activity.

16. Part 3B (sections 170 – 17ZJ) of the Conservation Act set out the statutory framework for concessions, including:

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

17. Section 4 of the Conservation Act applies to all of DOC's work under conservation legislation, and therefore also the administering of concessions. Section 4 requires the Act to "be interpreted and administered as to give effect to the principles of the Treaty of Waitangi." This is one of the strongest Treaty principles clauses in New Zealand legislation. Section 4 requires anyone working under the Conservation Act (or any of the associated Acts listed in schedule 1 of the Conservation Act) to give effect to the principles of the Treaty of Waitangi when interpreting or administering anything under those Acts.

What is the policy problem or opportunity?

18. DOC considers and decides on concession applications under delegated authority from the Minister. Processing concessions is an increasingly lengthy and burdensome process not just for DOC, but also applicants and Treaty partners (who are generally consulted on all applications, unless they have indicated this is not needed). While concession applications can vary greatly in nature and scale, delays in processing applications reduce certainty for concessionaires (including applicants), Treaty partners, businesses, infrastructure partners and the public. This can create undue delays and costs for parties, and inefficiencies for DOC.

19. As of September 2024, more than a third of concession applications on hand were more than a year old. There are many factors that impact how long it takes to process concessions and the scope of operational improvements, such as:

- Capacity constraints within DOC.
- Poor data to understand performance or recover costs from applicants.
- Technology constraints which require significant manual data entry.
- An operating model with distributed responsibilities across DOC for processing concessions.
- A risk-averse regulatory culture, which leans towards protection over proportionality.
- Little standardisation or guidance in the system, which means most applications get approached in unique or bespoke ways.
- Few statutory timeframe requirements.

- Applicants taking time to provide further information, which is included when measuring processing time.

- Difficulties in making assessments against statutory planning documents which are overlapping, outdated, hard to interpret or which result in perverse outcomes.

- Requirements for public notification.

- All applications involving engagement with iwi and hapū and analysis of section 4 requirements.

- Broader legal uncertainties requiring additional time to engage with applicants and their legal advisors, particularly where there is greater potential for legal challenge or judicial review.

20. The Minister of Conservation is developing targets for DOC to meet when processing concession applications, and a range of operational changes are underway such as a technology upgrade. As a result of these improvements, in the last year the number of applications awaiting a decision reduced or remained stable despite a 36% increase in application volumes.

21. However, making operational improvements within an environment of fiscal restraint and continued growth in concession applications will not be sufficient. The legislative rules for concessions and the broader conservation management framework within which concessions sit need to be modernised to enable faster granting of concessions.

22. Beyond the decision about whether an activity should be allowed, the concession framework is also not suited for the commercial realities of managing concessions on an ongoing basis. For example, the terms and conditions of each concession can be subject to individual negotiation. While there is an explicit ability to run competitive allocation processes for high-value concession opportunities, there is no clarity about when or how this might happen. The latter shortcoming has been noted by the

Parliamentary Commissioner for the Environment, the Environmental Defence Society and the Tourism Futures Taskforce.[3]

Relationship between concessions and the conservation management framework

23. Our conservation management framework is a complex hierarchy of policy and planning documents. There are two national-level instruments, the Conservation General Policy (CGP) and General Policy for National Parks (GPNP). These articulate rules and policy for the conservation system which is then delivered through Conservation Management Strategies (CMSs), Conservation Management Plans (CMPs), National Park Management Plans (NPMPs) and freshwater fisheries management plans.[4]

24. CMSs, CMPs and other plans play an important role in the conservation system by setting objectives for the management of PCL. They also guide what concession activities should and should not be authorised, because a concession cannot be granted unless the activity and its granting are consistent with any application planning documents. However, there are several known issues with statutory planning documents.

25. The tiered management planning means there is a large suite of lengthy planning documents. This leads to difficulties interpreting plans, for example because they have taken different approaches across regions and over time to setting conservation objectives. There are also issues with overlapping and conflicting rules across documents that apply to the same place.

26. In their current form, statutory planning documents contain highly prescriptive and detailed rules. Planning documents have tended to become catch-all instruments, even when there may be better tools or avenues for some of their contents. The contents of planning documents span a range of functions, such as articulating conservation

---

3 Not 100% - but four steps closer to sustainable tourism, Parliamentary Commissioner for the Environment, February 2021. Conserving Nature: Conservation Reform Issues Paper, Environmental Defence Society (Deidre Koolen-Bourke and Raewyn Peart), July 2021, at page 162. Tourism Futures Taskforce Interim Report, December 2020.

4 Some Treaty settlement legislation also includes bespoke requirements for developing, reviewing and approving planning documents. For example, the Ngāti Whare Claims Settlement Act 2012 requires the Whirinaki Te Pua-a-Tāne CMP to be prepared in consultation with the trustees of Te Rūnanga o Ngāti Whare, with the Conservation Board and Te Rūnanga o Ngāti Whare having a joint role in approving the CMP.

values, outcomes and priorities in a particular area; defining permissible activities and setting capacity limits on those; spatial planning; and directing DOC's business and operational planning.

27. Statutory planning documents are costly to make, review and update in terms of time and resources. Processes to create or review them tend to take years rather than months, and involve heavy resource burdens for DOC, conservation institutions, iwi, hapū, communities and conservation groups.

28. These issues with the structure, content and processes relating to management planning contribute to slow concession decision-making, legal risk and inconsistent outcomes.

Giving effect to Treaty principles in concessions decisions

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

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

31. The *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* Supreme Court decision in 2018 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. 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".[5] The decision also emphasised the importance of the factual context in determining how Treaty principles might influence particular decisions, and the need to reconcile Treaty interests with other values and the broader statutory regime.

32. The *Ngāi Tai ki Tāmaki* 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. In March 2022, the Options Development Group (convened by the then-Director-General of Conservation) highlighted the importance of the active protection principle in conservation "particularly when DOC is granting concessions, and the need to take the interests (including the economic interest) of tangata whenua into account."[6]

33. 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 Options

---

5 *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122 at [53].

6 Partial reviews of the Conservation General Policy and General Policy for National Parks regarding the Treaty of Waitangi, Options Development Group, March 2022. The Options Development group statement was directed by reflections on Ngāi Tai ki Tāmaki, the Waitangi Tribunal's report *Ko Aotearoa Tēnei* (Wai 262), and the Whales case (refer *Ngāi Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553).

Development Group's draft proposals. Many shared concerns around how hapū and iwi are engaged in concession decisions.

34. 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.

Cabinet priorities for the Conservation portfolio

35. In August 2024, Cabinet agreed the following priorities for the Conservation portfolio:

- Update the conservation regulatory system by progressing legislation to improve performance in processing concessions and permissions.
- Target investment in high conservation value areas to restore key degraded habitats, support recovery of native species and maximise carbon storage on PCL.
- Generate new revenue and build a more financially sustainable conservation system by 2026, and develop a plan to partner for investment in protecting high value conservation domains in 2025.
- Build positive working relationships with iwi/hapū to make the most of their strong and long-term commitment to the environment.

36. The proposals in this interim RIS largely contribute to the first priority above of fixing concession processes, and also provide an opportunity to advance work relating to the fourth priority of improving working relationships with iwi and hapū. section 9(2)(f)(iv) [redacted]

	Indicative timing	*Matters to address*
section 9(2)(f)(iv)	Cabinet approval to consult the public by October 2024. Cabinet policy decisions by April 2025. Cabinet agreement to introduce legislation around September 2025, which is then passed in the current parliamentary term.	Key issues in the system for concessions: • Get rid of DOC's permissions backlog. • Make concessions processes more timely, predictable and efficient. • Increase the number and range of activities on PCL consistent with conservation values. • Encourage more competition and investment in economic opportunities on DOC land. • Deliver on the National Party manifesto commitment that no concession process takes more than a year.
section 9(2)(f)(iv)	[redacted]	[redacted]

		section 9(2)(f)(iv) [redacted]

How is the status quo expected to develop?

37. Without changes to concessions processes and the management planning framework, the shortcomings described above are expected to continue or worsen in the coming years. Namely, the backlog in concessions applications would be expected to remain (or grow further), there will continue to be uncertainty as to what Treaty principles might require in any particular concession decisions, and ambiguity about competitive allocation processes will continue to encourage a 'first-come, first-served' default

approach to concession allocation.What objectives are sought in relation to the policy problem?

The nature and extent of change sought

38. The Minister seeks to achieve the following through this work:

Aspect of change sought	*Nature and extent of desired change*
Speed up concession processing times and bring down costs	There is a National Party manifesto commitment to ensure no concession process takes more than a year. Currently, about a third of concession applications on hand would not meet this bar. The Minister is also setting targets for DOC on improving the timeliness of concessions processing, which could provide different – or differentiated – articulations of the extent of change sought (e.g. different desired processing times for permits vs other types of concession applications).
Improve conservation and economic outcomes through the regulation, allocation and commercial management of concessions	In an ideal future, DOC would have better processes to recover costs associated with concession applications and collect fees that offer a fairer return to the Crown for the use of PCL. DOC would be able to shift resources from lengthy negotiations over concession terms, conditions, term lengths and fees to monitoring compliance with concession conditions and take enforcement action as appropriate.
Provide clarity and certainty to support investment	This could look like having processes to enable competition for more valuable concession opportunities that are in limited supply, allowing DOC to choose applications which would offer the best conservation outcomes. Concessionaires would also have clarity about the approach to development and commercial opportunities in busiest tourist areas, and certainty about how these will be planned for to protect conservation outcomes.
Provide clarity on how Treaty rights and interests should be recognised and protected in concessions and conservation management planning	DOC's Treaty obligations are articulated in section 4 of the Conservation Act, Treaty settlement commitments, and other agreements with iwi and hapū. Some of these are specific, whereas section 4 requires the DOC give effect to Treaty principles when interpreting or administering conservation legislation. While it is possible to regulate to provide some procedural certainty mainly relating to engagement with iwi and hapū, this will not completely encapsulate giving effect to Treaty principles. The likely steps and considerations required are broader than engagement and will be highly fact specific. The nature of change sought is therefore to reduce some – but not all – of the operational ambiguity DOC faces in relation to Treaty rights and interests.

39. The nature and extent of change sought is indicative at this stage. Public engagement could change, or add greater detail to, what this work aims to achieve.

Objectives for this work

40. There are five broad objectives for this work:

- **Effectiveness**: this objective relates to the purpose of the conservation system, which is supporting conservation by educating, regulating and enforcing for good outcomes, while also supporting other outcomes, such as allowing for recreation, tourism, economic opportunities or key infrastructure development.

- **Efficiency**: this means reducing the time and cost involved in processing concessions on all parties involved. This includes concessionaires, applicants, tangata whenua, stakeholders, researchers, businesses, local government, the public and DOC. This also means reducing the time and cost involved in keeping statutory planning documents current.

- **Good regulatory practice**: this includes ensuring clarity and certainty for the regulator and regulated parties. It also includes ensuring the regulator (DOC) has the necessary tools, functions, powers and levels of discretion/flexibility to satisfactorily perform its statutory duties.

- **Upholding Treaty obligations**: this is about the legal requirement for DOC to interpret and administer the Conservation Act in a way that gives effect to the principles of the Treaty of Waitangi. It is also about ensuring any changes or new arrangements uphold Treaty settlement commitments and other Treaty obligations (e.g. those in relationship agreements between DOC and iwi/hapū).

- **Successful implementation of any changes**: management planning and concessions are significant parts of DOC's day-to-day work and how regulated parties interact with the conservation system. Poor implementation of any changes could mean that the intended benefits are not able to be realised.

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

41. Options for change will be compared to the status quo using the criteria below:

Effectiveness	• First order: contribution to conservation outcomes, including ensuring that conservation values are well managed. • Second order: contribution to other outcomes, such as fostering recreation, allowing tourism and contributing to economic outcomes.
Efficiency	• Time taken to make or obtain concession decisions. • Cost to regulator and regulated parties of concessions process, including value-for-money. • Time taken to make, review or amend statutory planning documents. • Cost of processes to make, review or amend statutory planning documents.
Good regulatory practice	• Clarity for regulated parties about concessions. • Certainty for regulated parties about concessions. • Flexibility for regulator in making concession decisions. • Consistent regulatory decision-making.
Upholding Treaty obligations	• Certainty about performing statutory functions in a manner that gives effect to Treaty principles. • Consistency with Treaty settlement commitments and other obligations.
Successful implementation	• Feasibility and ease of implementation. • Implementation time and costs.

42. When it comes to effectiveness, contribution to conservation outcomes is weighted more heavily than contribution to other outcomes. This reflects the purpose of the conservation regulatory system. In addition, some options may only be able to be assessed for direct impacts at this stage, rather than indirect impacts, making it hard to

draw conclusions about effectiveness. For example, the Government is considering changes to the framework and processes of the management planning system, but the effectiveness of management planning in achieving conservation and other outcomes will ultimately also depend on what rules are set through planning documents (i.e. how any new framework or processes are used).

43. Some of the criteria, and relationships between criteria, are founded in law. For example, section 4 of the Conservation Act requires DOC to interpret and administer the Conservation Act (e.g. process concessions) in a way that gives effect to the principles of the Treaty of Waitangi. In relation to effectiveness and contribution to outcomes other than conservation, the Conservation Act also sets out that fostering the use of natural and historic resources for recreation and tourism is only to the extent that this is not inconsistent with conservation of those resources.

44. There are likely to be trade-offs between the criteria in the table above, and they will need to be carefully balanced when analysing each set of options. For example, significant resourcing increases could be applied to speed up concession processing, but would also increase the cost of doing so. There are also likely to be differing views on how to balance the objectives. During consultation in 2022 on potential changes to concessions processes and management planning, tangata whenua regularly asserted that efficiency and making things easier should not limit DOC's ability to give effect to Treaty principles. Some submitters also raised that conservation values and outcomes should not be trumped by other objectives, while others said that recreation values should also be included in the objectives.

45. Options will be assessed in this interim RIS using the most relevant criteria for the policy problem/opportunity. This means different combinations of criteria may be used when assessing particular options.

What scope will options be considered within?

46. The Government has set some boundaries for this work. The Government is not considering changes to:

- The purpose of the conservation system, and the primacy of achieving conservation outcomes compared to enabling other outcomes through conservation rules and processes (e.g. economic outcomes),
- The purposes for which PCL is held, and the requirement that any use of or activities on PCL must be consistent with those purposes, and
- How the effects of a proposed activity on or use of PCL are assessed.

Approach to Treaty obligations

47. The Government's Treaty obligations relating to conservation are reflected in section 4 of the Conservation Act, specific commitments in Treaty settlement legislation, and agreements with iwi and hapū (e.g. relationship agreements and protocols).

48. It is beyond the scope of this work to amend the requirement in section 4 of the Conservation Act for DOC to interpret and administer its statutory functions in a manner that gives effect to Treaty principles. Specifically, the Minister wants to reduce uncertainty relating to section 4 by stating some of what might be required to give effect to Treaty principles in relation to concessions and management planning processes. Because giving effect to Treaty principles will depend on the factual context of a

specific circumstance, the changes being considered will only reduce some, not all, ambiguity.

49. Any changes that would require changes to settlement commitments in legislation[7] are out of scope. This means options that allow for bespoke arrangements – where needed to accommodate existing settlement commitments in law – are explicitly in scope of option design.

50. However, it may be necessary to explore potential changes to Treaty obligations in protocols, relationship agreements and other agreements (i.e. documents and instructions that are not settlement legislation). The Government intends to engage with iwi and hapū to identify whether and how any such obligations would be affected by the proposals and seek views on an appropriate design approach.

[redacted]

[redacted] section 9(2)(f)(iv) [redacted]

- [redacted]

- [redacted]

- The Minister has agreed on a range of potential changes to the conservation management planning framework and concessions system on which to seek feedback from the public. The scope of this interim RIS therefore largely reflects the Minister's decisions about what options to take forward, though discounted options are also noted for some potential changes.

7 Conservation has more Treaty settlement commitments than any other portfolio. In addition to commitments in settlement legislation, the Government intends to uphold any rights under Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

Section 2.1: National Conservation Policy Statement

National level guidance and rules are spread across two instruments

52. The current management planning system[8] was established in an attempt to bring the protected areas, and natural and historic resources administered by DOC under different conservation legislation into one cohesive system. The system relies on a hierarchy of policy and planning documents that guide management of PCL and other natural and historic resources managed by DOC.

53. Under the Conservation Act and National Parks Act 1980, there are two general policy statements: the General Policy for National Parks (GPNP) and the Conservation General Policy (CGP). These instruments are intended to set national direction for how DOC and others with conservation roles fulfil their responsibilities under conservation legislation. They articulate policy which is then delivered through CMSs, CMPs, NPMPs and other plans like freshwater fisheries management plans,[9] including what DOC needs to consider when making decisions such as:

    - How DOC works with whānau, hapū and iwi and Māori and the wider community on particular issues (e.g. managing public access or recreational activities in certain areas)
    - set conservation objectives or outcomes for specific areas
    - prioritise conservation work within a region
    - consider what concession activities should and should not be authorised.

54. Both general policies were published in 2005, with only minor or technical amendments undertaken since that time. Since their approval, there have been several changes to the context under which protected areas and protected species are managed, including a significant increase in the number of visitors to PCL, agreements or settlement of historic Treaty claims, and changes to species management and how built assets are managed as a result of climate change.

55. Having several layers of policy and planning documents with overlapping and largely outdated content creates complexity and uncertainty for decision-makers and applicants. This contributes to slow decision-making, legal risk and inconsistent outcomes.

56. For example, until recently, DOC's interpretation of CGP requirements for vehicles (including biking) in CMS was that tracks (or areas where tracks could go) had to be specifically listed in a CMS for a new proposal to be considered. This meant a CMS

---

8 When referring to the management planning system in this interim RIS, it describes management planning for PCL and other natural and historic resources managed by DOC, not for reserves that may be administered or controlled and managed under the Reserves Act 1977 by others.

9 Some Treaty settlement legislation also includes bespoke requirements for developing, reviewing and approving planning documents. For example, the Ngāti Whare Claims Settlement Act 2012 requires the Whirinaki Te Pua-a-Tāne CMP to be prepared in consultation with the trustees of Te Rūnanga o Ngāti Whare, with the Conservation Board and Te Rūnanga o Ngāti Whare having a joint role in approving the CMP.

partial review, or amendment process with full public consultation, was necessary in order to consider a track that was not listed in the CMS.

57. In 2022, a partial review of the Otago CMS was undertaken to specifically consider the addition of new locations where biking opportunities had significant funding from the Ministry of Business, Innovation and Employment. This was a time and resource intensive process, which took two years to complete and has been estimated to have cost DOC $500,000.

58. While more recent re-examination of CGP requirements has resulted in a more flexible understanding of how CMS meet the requirements to 'identify' where bike tracks are located, this flexibility is only able to be applied to 10 of the 16 CMS regions, leaving the remaining 6 subject to the need to undertake a CMS review or amendment process in order to consider a new bike track on its merits, where it is not listed in a CMS.

The process to update the policies is slow and onerous

59. Both general policies are out of date and the process to update them is slow and onerous.

60. Each general policy has a different statutory process to amend, revoke and update it. The New Zealand Conservation Authority (NZCA) approves the GPNP, while the Minister of Conservation approves the CGP. Both processes include the Director-General preparing drafts, consultation with statutory bodies, and a public submissions process.

61. There have been several attempts to update both general policies since their development, but only minor technical amendments have taken place. The most recent review process was initiated in 2019 with the aim of updating both general policies to ensure they give effect to the principles of the Treaty (referred to as the 'Partial Reviews').

What is the policy problem and opportunity?

62. There is an opportunity to streamline the guidance and rules that apply to all protected areas (i.e. at a national level) and ensure that these rules can be updated more efficiently when required.

63. There is also an opportunity to manage commonly applied for activities more efficiently by taking a proactive approach to assessing the potential effects in advance at the activity level, rather than for each application. This opportunity exists in the management of activities that are commonly applied for and present a low risk of cumulative impacts.

Options to set a clear purpose for plans and simplify the structure

Option for consultation: Establish a single national policy instrument

64. This option proposes replacing the CGP and GPNP with a single national conservation policy statement (NCPS).

65. The NCPS could be established as a single instrument in secondary legislation. It would apply to all land administered by DOC and be used to set national level guidance and rules. In particular, it would:

    - Outline matters that must be considered when determining whether a concession can be granted.

- Impose conditions or requirements on concessionaires for specific activities at a national level.

- Exempt an activity, at a national level, from requiring a concession, either for all PCL or for specific land classifications only (e.g. National Parks).

- Provide for classes of activities to be permitted in advance (for specific land classifications only).

- Designate something as a prohibited activity for specific land classifications only.

- Bind area plans (see section 2.2), including their ability to establish further classes of exempt activities, activities permitted in advance, prohibited activities and limits.

66. The NCPS could also be used to set a single, simple template for area plans (see section 2.2).

The NCPS could exempt some activities from needing a permit

67. The NCPS could exempt common activities that would otherwise require a permit (for example, minimal impact activities undertaken for recreational purposes). Granting exemptions for common activities would eliminate the need for processing of individual concession applications for those activities and provide greater clarity about what activities are acceptable.

68. In 2022, the Government consulted on a proposal to permit activities to be authorised through national level regulation. Consultation feedback demonstrated general support for the proposal. Issues raised included the need to consider local factors (including Treaty partner rights and interests) and to ensure that cumulative effects are adequately managed.

69. Potential criteria for designating a class of activities as exempt from requiring a permit are:

    - The activity would not require an interest in land (for example it would not require exclusive use).

    - The activity is consistent with the purposes for which land is held (assessed at a land type level).

    - It is reasonable to forgo the collection of any royalties, fees, or rents from the activity.

    - The risk of cumulative effects from the activity is low.

70. General conditions could be imposed on an exemption for an entire activity if necessary to satisfy the Minister that there would be little to no impact on conservation values (e.g. only applicable during certain hours of the day).

71. Indicative examples of activities that might be exempt from requiring a permit include news media filming on formed tracks and carparks (e.g. a single person with a

handheld camera) and collection of air samples. Currently, all applications for these activities tend to be approved, subject to conditions.

The NCPS would enable classes of activities to be permitted in advance

72. There is also an opportunity to manage commonly applied for activities more efficiently by taking a proactive approach to assessing the potential effects in advance at the activity level, rather than for each application. This opportunity exists in the management of activities that are commonly applied for and present a low risk of cumulative impacts.

73. In 2022, the Government consulted on a proposal to allow DOC to pre-approve concessions where the possible effects of an activity are well understood and have been assessed in advance. As with the proposal for exempt activities, consultation feedback demonstrated general support for the proposal. Issues raised included the need to consider local factors (including Treaty partner rights and interests) and to ensure that cumulative effects are adequately managed.

74. The NCPS could therefore be used as in instrument to identify and permit certain low risk activities in advance. Because the effects assessment and setting of conditions would be done in advance, permits would be instantly available for these activities.

75. Applicants would still need to purchase a permit, subject to agreeing to any applicable terms and conditions. Further work is needed on the implementation mechanism, including what controls are needed to be in place to allow permits to be automatically granted (for example to ensure compliance with management plans and public safety).

76. Allowing for classes of activities to be permitted in advance via the NCPS would relieve pressure on the concessions system by reducing the need for case-by-case decision-making on some concession applications.

77. The risks raised during previous consultation regarding potential cumulative impacts could be mitigated through proposed criteria limiting the scope of their use. The Minister could also have the ability to put a temporary hold on purchasing permits for these activities if there are concerns with volume (cumulative effects) or unforeseen effects.

78. The classes of activities that could be permitted in advance are those where:

- The activity would not require any corresponding rights over the land (for example it would not require exclusive use or access rights).
- The activity is consistent with the purposes for which land is held.
- Adverse effects from the activity can be avoided or mitigated through conditions.

79. Classes of activities would be permitted in advance rather than exempted from needing a concession if:

- Conditions are required on the activity; and/or
- There is a risk of cumulative effects and so volumes should be actively monitored; and/or
- Fees, rents and/or royalties should be collected from the user.

80. Indicative examples of activities that might be permitted through the NCPS include commercial transport in formed carparks, or small-scale commercial filming on formed

trails (for example, one or two people using a handheld camera). Currently, all applications for these activities tend to be approved, subject to conditions.

The NCPS would also prohibit some activities

81. Listing prohibited activities in the NCPS would avoid the need to assess an activity when it has already been established that the activity will not be granted a concession. This supports greater efficiency within the regulatory system by reducing the number of applications.

82. Prohibited activity lists should not unduly restrict potential activities that would be consistent with the overall concession effects management framework. Activities should only be prohibited where the effects of the activity have been assessed and found to be unmanageable. Activities should also be prohibited where they are contrary to the purpose for which the land is held and interfere with DOC's own plans for the land.

83. The NCPS would prohibit activities if either:

- The activity is inconsistent with the purpose for which the land is held at a land classification level; or
- The effects of the activity cannot be reasonably avoided, mitigated, or remedied.

84. This designation would be applied to specific land classifications only.

85. Plans should also only be able to designate a prohibited activity if the NCPS allows it and the prohibition is based on a reason outlined in the NCPS. This would help avoid inconsistencies in why certain activities are prohibited. Although the threshold for effects may differ from place to place, the rationale for restricting activities should be consistent.

86. Rather than explicitly prohibiting activities, the outcomes established in an area plan should inform whether a concession application should be declined. This would enable greater consideration of conditions to manage the adverse effects of an activity.

Process for developing the NCPS

87. The Minister would be responsible for approving a NCPS following public consultation and impact analysis. Ministerial approval of a NCPS would allow more directive and consistent decisions.

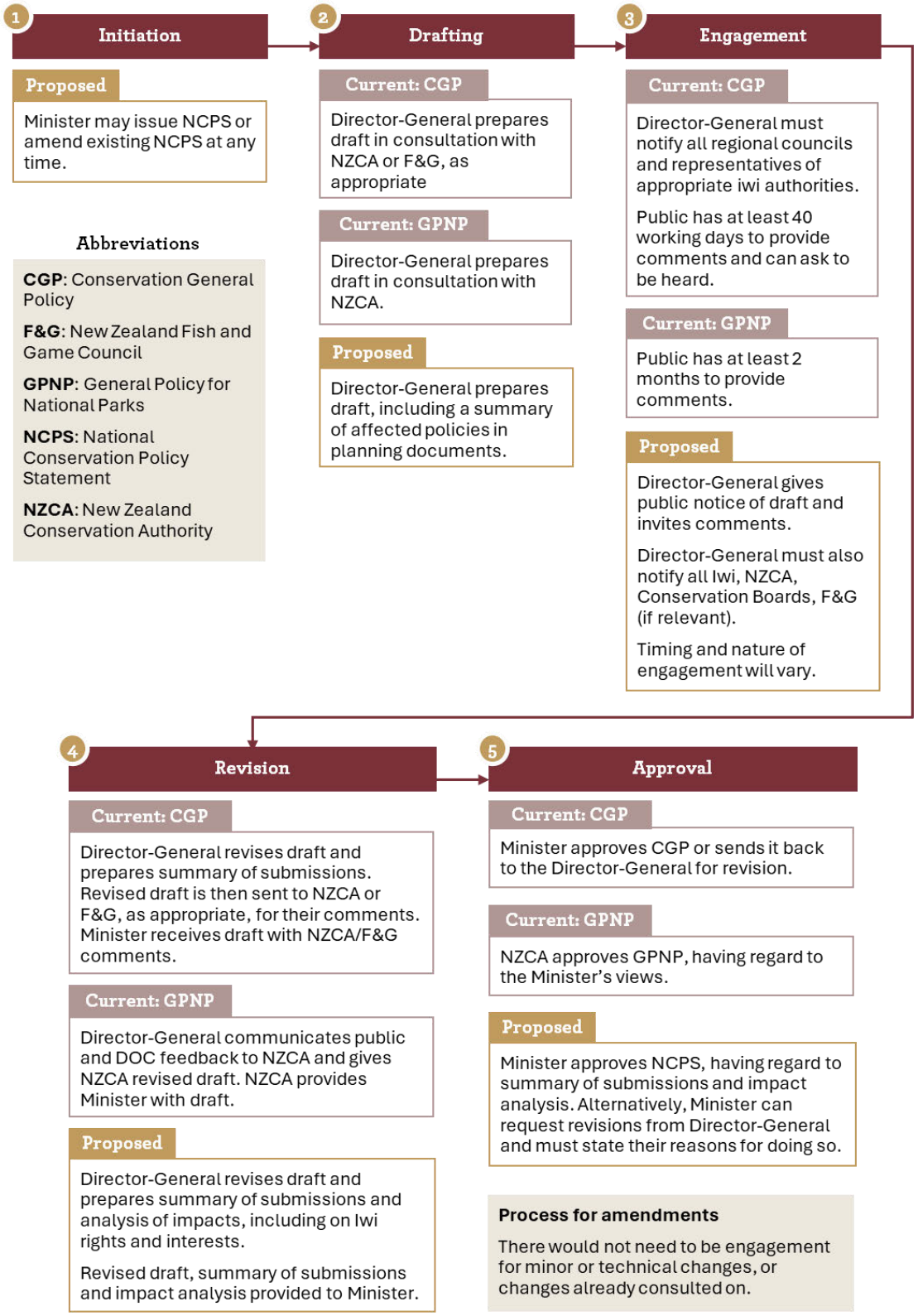
88. The form of engagement would not be prescribed, which allows engagement with stakeholders to be tailored to the nature and scale of the review. More informed participation would be supported by the requirement for the Director-General to prepare a report analysing the policy based on submissions. Seeking public comment would not be required for minor and technical amendments or for policy changes already consulted on.

89. The Minister must receive advice from the Director-General on the impacts of the NCPS, including on iwi rights and interests, before any NCPS is approved.

90. Some Treaty settlements have relationship agreements in place that require specific consultation on changes to conservation policy in the rohe or takiwā of the post-settlement governance entity (PSGE). There will also be a requirement for the Director-

General to ensure that all iwi are appropriately engaged in the NCPS process. All settlement requirements will be upheld.

91. The proposed process to issue or amend a NCPS is summarised below, including how it compares to the current process for the CGP and GPNP.



How does this address the problem definition?

92. Combining the two general policies into one instrument (NCPS) and streamlining the process to amend or update the NCPS will help support faster and more effective decision-making on concession applications. Decision makers and applicants will have more clarity about the rules that apply to all protected areas which creates a better environment for doing business on PCL.

93. Establishing the NCPS as a regulatory tool will provide the ability to make class decisions on activities and will remove some volume of applications from the concessions system, speeding the regulator's decisions on other applications.

Alternative ways of addressing the problem

94. Replacing the two sets of general policies with a single instrument, but maintaining their general form, role and purpose (i.e. a single General Policy) could also be considered. This would provide greater clarity to decision-makers and applicants by ensuring that national level rules and guidance are in one instrument and would support faster and more effective decisions on concession applications. There would be process efficiencies associated with removing the need to run two separate processes to develop or update national level rules.

95. However, this would not provide the ability to make class decisions on concessions, so would not reduce the volume of applications from the concessions system to the same degree as the option being consulted on (i.e. the NCPS).

Further work is required

96. The process of moving from two national-level instruments to a single one will require careful analysis of the current contents of both instruments, and how they interact with other planning documents, regulatory tools or operational processes at present. This will ensure key rules are transitioned to the new instrument where this aligns with the policy intent for the scope, roles and functions of that instrument.

97. Some decision-making frameworks with Treaty partners also include provisions for a list of concessions where the PSGE does not need to be engaged on each application. Further work is needed on how to incorporate these frameworks into the NCPS' processes for permitting activities in advance and setting exemptions.

98. The Marine and Coastal Area (Takutai Moana) Act 2011 provides for the participation of affected iwi, hapū, or whānau (meaning those exercising kaitiakitanga) in conservation process, including publicly notified concessions. A determination of customary marine title (CMT) allows a 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.

99. DOC is analysing the implications of the proposal on obligations for CMT groups. 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 process for developing the NCPS or relevant area plan permitting the activity.

How do the options compare to the status quo/counterfactual?

	Status quo	Replace the two sets of general policies with a single instrument in secondary legislation
Contribution to conservation outcomes	**0**	**+** Having national level rules and guidance in one document means that only one set of rules is developed for protected areas. This reduces the likelihood of inconsistent approaches to conservation values across national parks and the rest of the protected area network.
Time taken to make or obtain concession decisions	**0**	**+** Proactive management of common activities (ie through the use of class approaches) would alleviate pressure on the concessions processing system by eliminating processing times for these activities. This would benefit applicants across the system by allowing DOC's resources to focus on processing more complex or high-risk applications. This will also remove some volume of applications from the concessions system, speeding the regulator's decisions on other applications (all else remaining constant). Streamlined national level policies will support faster decision-making on concession applications, reducing friction for businesses, researchers, tangata whenua and communities. This will create a better environment for doing business on PCL. However, this option alone is unlikely to change the substance of decisions (ie whether an activity will be approved or declined), because that will depend more on the contents of any future NCPS.
Clarity for regulated parties about concessions	**0**	**+** Having one set of national level rules to guide planning documents in one document and enabling a list of acceptable activities will provide more clarity and certainty for applicants and decision-makers.
Consistency with Treaty settlement commitments and other obligations	**0**	**TBC** This option will provide for Treaty partner views and consider impacts on Treaty rights and interests in the development of the NCPS. However, further engagement and policy design is required to ensure any processes and substantive requirements are consistent with Treaty settlement commitments and other obligations.
Successful implementation	**0**	**-** Compared to the status quo, there will costs for DOC to establish the NCPS (including to engage on establishment of classes of activities) and to communicate the changes. Monetised costs cannot be estimated at this stage.
Overall assessment	**0**	**++**

Key for qualitative judgements

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

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

100. Establishing a single NCPS to replace the general policies has the potential to be more beneficial than the status quo, but feedback from engagement, additional data and information, and further policy work is required to confirm the preferred option.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
DOC	• Implementation costs: costs to communicate changes to regulated parties, and to establish new processes.	*Medium*	*Medium*
	• Costs of making or amending NCPS if greater than costs of updating two existing general policies.	*Medium*	*Low*
Concessionaires (include applicants)	• There are no additional costs to operators.	*Low*	*High*
Iwi and hapū	• Costs of participating (including time) in making or amending NCPS if greater than costs of updating two existing general policies. • Costs of engaging with DOC (including time) on potential classes of permitted or exempted activities, or activities permitted in advance, if greater than costs of engaging on relevant individual applications.	*Medium*	*Low*
Total monetised costs	• These will be implementation costs for DOC, and engagement-related costs for iwi and hapū. • Monetised costs cannot be estimated at this stage.	*N/A*	*Low*
Non-monetised costs	• These will likely be time taken to engage with DOC for iwi and hapū. • Non-monetised costs cannot be estimated at this stage.	*N/A*	*Low*
Additional benefits of the preferred option compared to taking no action			
DOC	• Only needing to make and update one national-level policy. • Greater clarity for concession decision-making. • Reduced number of concession applications to process on case-by-case basis.	*Medium*	*Medium*
Concessionaires (including applicants)	• Greater clarity and certainty (including transparency of process) for applicants. • Faster decision-making for applicants. • Reduced costs relating to applications.	*Medium*	*Low*

Iwi and hapū	• Fewer high-volume low-complexity concession applications to engage with DOC on. • Greater transparency of concessions decision-making. • Improved transparency of process.	*High*	*Low*
Total monetised benefits	• The main monetised benefits relate to DOC having fewer high-volume, low-complexity concession applications to process, if the tools in the NCPS to allow class approaches to activities are used. Where activities are exempt, this will also result in some cost savings to concessionaires. • Monetised benefits cannot be estimated at this stage.	*N/A*	*Low*
Non-monetised benefits	• The main non-monetised benefits relate to improved clarity and certainty about what activities are allowed or prohibited for all parties, including DOC are regulator. • Non-monetised benefits cannot be estimated at this stage.	*N/A*	*Low*

Section 2.2: Area plans

Most management plans are out of date and the process to update them is slow

101. The conservation management planning framework includes three main types of planning documents:

- Conservation management strategies (CMS): These are intended to implement the general policies and set objectives for the integrated management of natural and historic resources, including any species, managed by DOC.
- National park management plans (NPMP): These plans sit underneath the CMSs in the planning hierarchy and set the specific management direction of the park. NPMPs must not derogate from the relevant CMS.
- Conservation management plans (CMP): These also sit below CMSs, implement CMS policies, and can be used to provide management direction for a specified area. CMPs are optional except where required by Treaty settlements. CMPs that are not part of settlements are largely being phased out of use.

102. Reviews into the conservation management planning framework have identified a need to clarify its purpose and what it should deliver.[10] Currently, management planning is used to support a wide scope of functions including regulatory decision making on PCL, land use management, marine area decisions and management, species management and DOC input into RMA regional planning and decision-making. Plans are also intended to guide DOC's operational planning and resource prioritisation. In addition to supporting these functions, the management planning framework plays important roles in giving effect to Treaty settlements and Conservation Act section 4 obligations, and enabling public participation in the management of PCL.

103. Although plans are used for a broad remit, their ability to effectively deliver on these functions varies and, in many cases, duplicates work that is done elsewhere. For example, plans are not linked to government resource prioritisation frameworks, so their utility to influence and direct DOC's operational work programme is limited. DOC has a separate business planning system that drives delivery of work on the ground and does not operate in sync with management planning or its timeframes. This wide breadth of scope has also resulted in an overly complex planning system, with too much detail, that does not effectively drive the core decisions about what matters in the conservation system.

104. Under the status quo, there is a significant backlog of overlapping, lengthy and outdated planning documents, including some that have not been updated since the 1990s. Planning documents are intended to be operable for 10 years and kept up to date through the review and amendment processes outlined in the Conservation Act and National Parks Act. However, under the current system a review can take up to 4

10 Environmental Defence Society. 2023. Independent review of the Conservation Management Planning System, Independent Review of the Conservation Management Planning System | EDS and Department of Conservation. 2021. Management Planning system review - Findings and recommendations report.

years or more to complete. There are options for amending plans, but except for minor or technical changes, these require the same lengthy process as a full review.

What is the current process?

105. Each plan type has its own process for the development and review of plans prescribed in either the Conservation Act or National Parks Act (see Appendix 1).

106. For CMSs and CMPs, the Director-General of DOC is responsible for developing and reviewing plans in consultation with Conservation Boards[11] and others. However, under some Treaty settlement legislation, the drafting and revision of plans is required to be done in consultation with affected PSGEs. The process for making a NPMP requires public notification of the intent to draft before the Director-General prepares it.

107. After the plans are drafted, they are all publicly notified, and communities have an opportunity to provide written submissions and have their submissions heard in public hearings. There is a 40 working day timeframe for public submissions and hearings for CMSs and CMPS, and a 2-month timeframe for NPMPs.

108. After public engagement, the NZCA[12] and/or relevant Conservation Board usually have responsibilities for reviewing, amending and approving plans. The NZCA can also consult further with anyone they think is appropriate. The Minister of Conservation provides comment before plans are approved and may request for the draft to be revised. In some cases, Treaty settlement legislation also provides a co-approval role for affected PSGEs or enables PSGEs to provide final submissions on plans before they are approved.

109. DOC is also required to give effect to the Treaty principles when implementing its legislative responsibilities including developing and reviewing planning documents. However, outside of settlement, there is not a clear role for iwi set out in legislation. This lack of clarity results in inconsistent approaches to how DOC gives effect to the Treaty principles during the planning process and contributes to longer review and development times.

Outdated and overlapping plans are impacting DOC's concessions system

110. Outdated plans are impacting the effectiveness of DOC's concessions system. One of the key functions of planning documents is to inform statutory decision making, including concessions and other authorisations. However, outdated plans are not up to date with evolving economic activities and opportunities, and some contain overly prescriptive criteria for concessions. This affects decisions made on concessions applications, because they cannot be granted unless they are consistent with the relevant planning documents.

111. One example is the Fiordland National Park Management Plan which is seven years overdue. In addition to setting limits for activities such as guiding and aircraft, it includes prescriptive requirements for how concessions are allocated and how many concessions can be granted per limit. This outdated approach significantly inhibits the ability for new concessions to be granted. There is an opportunity for plans to be updated with limits that will effectively manage cumulative effects on PCL but without

---

11 Conservation Boards are independent bodies that enable local communities and iwi to contribute to the management of conservation areas.

12 The NZCA is an independent statutory body that advises the Minister of Conservation and the Director-General on conservation priorities at a national level. Membership includes a representative of Ngāi Tahu who is appointed as a requirement under Te Rūnanga o Ngāi Tahu Act 1996. Other appointments require consultation with the Ministers for Māori Development, Tourism and Local Government.

imposing unnecessary restrictions on the number of operators or creating bespoke concessions processes.

112. The concessions system is also affected by overlapping plans that can be inconsistent in approach and sometimes have conflicting guidance. Under the current planning structure, some PCL can be covered and directed by multiple plans which can duplicate and cause confusion. For example, guiding is not dealt with consistently across different plan types nor in the general policies. Processing concessions for guiding in areas that are covered by overlapping plans is significantly more complex and contributes to lengthy concessions processing times. Overlapping plan jurisdictions also creates inefficiencies for DOC when updating plans. For example, work on the Westland NPMP, which was being developed alongside the Aoraki NPMP, had to be paused due to inconsistent aircraft provisions in the West Coast CMS, which needed to be reviewed first.

113. There is an opportunity to create a more streamlined, purposeful and flexible planning system by:

- Setting a clear purpose for what plans do and do not do,
- Simplifying the structure of the planning system, and
- Updating the processes for keeping plans up to date.

Options to set a clear purpose for plans and simplify the structure

Option for consultation: Streamlined area plans

114. This option proposes to set a clearer purpose for area-based plans, streamline their content[13] and reduce the number of overlapping plans which cover each area. It is proposed that the primary function of plans will be to establish conservation outcomes for places to guide regulatory decision-making on PCL. Those conservation outcomes will also be able to be an input into DOC's operating planning but would not be binding on resource prioritisation decisions. The framework currently plays roles in other regulatory systems, but public input will be sought into whether the framework should continue to guide these other areas.

115. A template could be developed, either in legislation or in the NCPS, to direct the content of each area plan. Area plans would:

- set local conservation outcomes to guide concession decisions,
- provide local direction on how national policy (via the proposed NCPS) applies at a given place, and
- proactively assess where some activities can occur by establishing exemptions, permitting activities in advance, and limits (where needed).

116. Shifting the focus of plans to setting outcomes that inform concessions decisions and guide operational activity will address the levels of prescription that have led to

[13] Any changes to the management planning framework will continue to provide for integrated management of World Heritage Areas.

inflexibility with outdated plans. The use of a template will also ensure consistency across plans and improve clarity about the scope of plans.

117. Plans will be able to set a reasonable limit on the volume of an activity that can occur to protect against harmful cumulative effects on important environmental or recreational outcomes. For example, how many aircraft landings that can occur in each area. However, when setting a limit, the plan will not be able to prescribe the number of operators or concessions that can operate within the limit or prescribe the process for allocating concessions within the limit.

118. The ability for plans to exempt or permit common activities that would otherwise require a concession will alleviate pressure on the concessions processing system making it more efficient. Area plans will be able to exempt or permit activities in specific areas but must be consistent with the NCPS. For example, plans would be able to exempt activities such hang-gliding or research (non-extractive) and could approve permits in advance for classes of activities like recreational drone use, guiding, or harvesting flora in specific areas. The criteria used for determining when an activity can be exempt or permitted is set out in the NCPS proposal above.

119. Plans would not be able to impose further conditions on activities, unless they are conditions on classes of exempt activities, activities permitted in advance, or within amenities areas. Similarly plans will not be able to create additional process requirements for concessions. This would ensure a nationally consistent approach to concessions processing.

120. This option also proposes that instead of a hierarchy of strategies and plans, there is a single layer of area-based plans without overlapping coverage. For example, National Parks would only be covered by a NPMP and not subject to any CMSs. Likewise, CMSs would still be used in a region but would not dictate the regulatory settings for any National parks or other areas also covered by a CMP. Having a single layer of area plans would create significant efficiencies.This change will allow for all relevant rules and guidance for an area to sit in one place. It would also be easier to update plans, including to take advantage of evolving economic activities and opportunities. This is subject to the eventual number of area plans, noting there is no intention at this stage to limit the number or scale of area plans.

121. It is also proposed that national park bylaws will no longer need to be consistent with NPMPs. Under the National Park Act, the Minister has the power to make bylaws for national parks, but this is constrained by the fact that bylaws cannot be inconsistent with the relevant NPMP, even when these are significantly out of date.

122. Some Treaty settlements provide conservation redress including that the relevant PSGE(s) can develop a CMP and/or a “chapter” of a CMS for a specific area, either themselves or in partnership with the Conservation Boards:

- 6 areas currently require a CMP as part of a Treaty settlement (only 3 have been developed),
- At least 6 settlements also place requirements for a chapter or specific content in a CMS.

- There are numerous overlay classifications[14] which are required to be notified in CMSs, CMPs and NPMPs.

123. The roles and responsibilities for affected PSGE(s) in developing a CMS chapter or in the CMP development process are not proposed to be changed. However, the content and scope of what plans do will be affected. It is possible that some PSGE(s) will consider the use of the template as diminishing their ability to inform decision-making in the development of a CMP. Some iwi may also expect plans to be empowered to take a more prescriptive role in concessions management, having seen previous planning documents do so. The mitigation against this risk is engagement with iwi at the concession decision level.

How will this address the problem definition?

124. This option is unlikely to significantly reduce the number of planning documents within the framework, noting there are no intentions at this stage to limit the number or scale of area plans. However, the narrower focus of plans and use of a plan template will make it easier for plans to be updated and to provide clearer direction in regulatory decision-making. The ability for plans to exempt or permit common activities will provide significant efficiencies for the concession system.

125. Moving to a single layer of area plans would be a significant revision to the current structure. This would likely require a multi-year process to make new area plans – but options for speeding this process up can be considered so that the benefits of the new system can be realised as quickly as possible.

What are other options to address the problem definition?

<u>Regional plans</u>

126. Another way to simplify the structure of the management planning framework is to consolidate existing plans into regional CMSs. Instead of separate NPMPs and CMPs, the CMS would include specified chapters for any national parks or areas requiring a CMP through settlement. This option would simplify and reduce the number of plans. However, this approach is not recommended as it would be difficult and contentious to reconcile with Treaty settlement obligations. Affected PSGE(s) could view any consolidation of plans as diminishing the effect of their roles in the development of CMPs and/or CMSs. To maintain the integrity of existing settlement, there would need to be exemptions to this proposal which could mean that the reduction in the number of plans is less than at face-value.

<u>Removing CMPs</u>

127. Another option for simplifying the management planning framework would require that each area administered by DOC is either covered by a CMS or NPMP. CMPs would be removed and replaced with a chapter in the relevant CMS. This option would prevent plans from being covered by multiple areas. However, like the regional plan option, replacing CMPs with a chapter in the CMS would affect various Treaty settlements and could be seen as diminishing the effect of redress. Iwi are likely to favour a greater number of separate plans with a more specific focus on their area. Engagement will

---

14 An overlay classification acknowledges the traditional, cultural, spiritual and historical association of an iwi with certain sites of significance administered by DOC. An overlay classification status requires the Minister of Conservation and the settling group to develop and publicise a set of principles that will assist the Minister to avoid harming or diminishing values of the settling group with regard to that land. The NZCA and relevant Conservation Boards will also be required to have regard to the principles and consult with the settling group.

help provide understanding around whether more specific plans would improve or hinder keeping plans up to date.

Non-legislative change

128. DOC is also exploring a management planning system improvement work programme to improve its performance through non-legislative change. Some of the key changes could include refining the purpose of management planning and providing a template to streamline the content. These changes would improve the function of current system but would not address the issues of overlapping plans and would not be able to address the impact on the concessions system as effectively as legislative change.

Further work is required

129. Further analysis is required to specify which activities will be able to be exempted or permitted by plans and which activities may include limits. DOC is also undertaking further analysis of Treaty settlement arrangements and will work with affected PSGEs to mitigate risk to redress.

How do the options compare to the status quo/counterfactual?

	Status quo	Streamlined area plans
Conservation values	**0**	0 Plans would provide local conservation outcomes to support the preservation and protection of conservation values in the areas they cover. Having one plan per area will support clearer guidance for protected areas.
Plans are made and updated within statutory timeframes	**0**	+ A plan template would improve clarity about the scope of the content and make plan review and development more efficient..
Time taken to obtain concessions decisions	**0**	+ Proactive management of some activities through the plans will support faster concessions processing by reducing the burden on the concessions system.
Certainty for regulated parties about concessions	**0**	+ The ability to grant exemptions and permit activities in advance could provide greater certainty to users of the system. The refined content and template of the plan would make it easier for users to navigate and understand what they can and cannot do.
Consistent regulatory decision-making	**0**	+ Removing overlapping guidance/rules and proactive management of some activities could make regulatory decisions more consistent.
Treaty of Waitangi settlements	**0**	**0** Like the status quo, this option will uphold existing Treaty settlement obligations including the development of area-specific chapters or plans with affected PSGEs.
Feasibility of implementation	**0**	- Moving to a single layer of area plans would be a significant revision to current structure. This would likely require a multi-year process to make new area plans.
Overall assessment	**0**	+++

Key for qualitative judgements

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

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

130. The option being consulted on has the potential to be more beneficial than the status quo, but feedback from engagement, additional data and information, and further policy work is required to confirm the preferred option.

131. The option being consulted on could address the problem under the status quo of plans that are impacting the effectiveness of DOC's concessions system by being overly prescriptive, inconsistent or lengthy. Local conservation outcomes and a template for

planning would ensure that plans contain information that can effectively guide concessions decisions whilst ensuring conservation values are protected and preserved. The change in plan hierarchy would mean there are no longer overlapping or inconsistent policies to navigate for one conservation area.

132. By permitting activities that would otherwise require a concession (for example, minimal impact activities undertaken for recreational purposes), the option would remove some concession applications from the processing pipeline.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
DOC	• Implementation costs: costs to communicate changes to regulated parties, and to establish new processes.	*Medium*	*Medium*
	• Costs of making or amending area plans if greater than costs of updating existing plans.	*Medium*	*Low*
Concessionaires (include applicants)	• There are no additional costs to operators.	*Low*	*High*
Iwi	• Costs of participating (including time) in making or amending area plans if greater than costs of updating existing plans. • Costs of engaging with DOC (including time) on potential classes of permitted or exempted activities, or activities permitted in advance, if greater than costs of engaging on relevant individual applications.	*Medium*	*Low*
Total monetised costs	• These will be implementation costs for DOC, and engagement-related costs for iwi. • Monetised costs cannot be estimated at this stage.	*N/A*	*Low*
Non-monetised costs	• These will likely be time taken to engage with DOC for iwi and hapū. • Non-monetised costs cannot be estimated at this stage.	*N/A*	*Low*
Additional benefits of the preferred option compared to taking no action			
DOC	• Likely reduction in number of area plans that need to be made and kept up-to-date. • Greater clarity for concession decision-making. • Reduced number of concession applications to process on case-by-case basis.	*Medium*	*Medium*
Concessionaires (including applicants)	• Greater clarity and certainty (including transparency of process) for applicants. • Faster decision-making for applicants. • Reduced costs relating to applications.	*Medium*	*Low*
Iwi	• Fewer high-volume low-complexity concession applications to engage with DOC on.	*High*	*Low*

	• Greater transparency of concessions decision-making. • Improved transparency of process.		
Total monetised benefits	• The main monetised benefits relate to DOC having fewer high-volume, low-complexity concession applications to process, if the tools in area plans to allow class approaches to activities are used. Where activities are exempt, this will also result in some cost savings to concessionaires. • Monetised benefits cannot be estimated at this stage.	*N/A*	*Low*
Non-monetised benefits	• The main non-monetised benefits relate to improved clarity and certainty about what activities are allowed or prohibited for all parties, including DOC are regulator. • Non-monetised benefits cannot be estimated at this stage.	*N/A*	*Low*

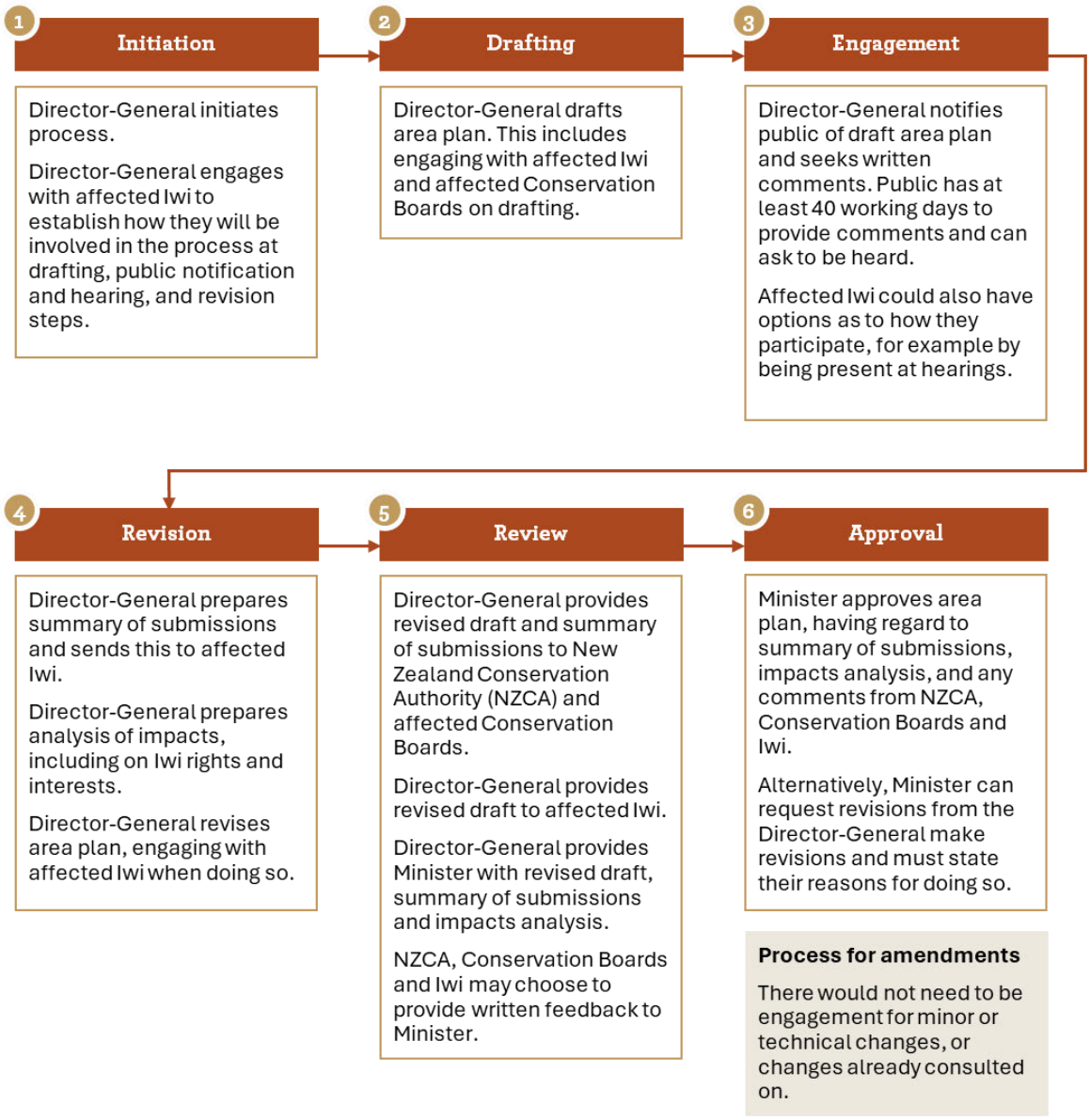
Options for processes to make and update area plans

Option for consultation: Clearer planning process

134. The Government is considering a new process to develop and update plans. Proposed changes include:

- Refining roles and responsibilities in the process including making the Minister of Conservation the final approver,
- Clarifying how to engage with iwi in the planning process, and,
- Introducing statutory timeframes to ensure plans are kept up to date.

135. It is proposed that each of the plan types (CMS, CMP and NPMP) will share one process for development and review, rather than the three separate processes that exist under the status quo. The processed development and review process is shown below:



136. There are no changes proposed to the ten-year lifespan of planning documents. They will still be required to be reviewed every ten years but are likely to need small updates

more frequently. This review process can be used to make partial updates to plans but there is also scope to clarify the process for amendments to plans.

The Minister to approve all area plans

137. Under the proposed changes, the Minister of Conservation would approve all plans. This strengthened role aims to ensure regulatory consistency between the nationally set policy and local application in area plans. With the functions and roles of statutory planning documents proposed to be more oriented towards guiding regulatory decision-making and concessions, and the need for a coherent set of regulatory rules across the framework, it is more appropriate for the Minister to be the decision-maker, than the NZCA and Conservation Boards as present.

138. The NZCA is an independent statutory body that advises the Minister of Conservation and the Director-General on conservation priorities at a national level. They include representatives from Ngāi Tahu, environmental NGOs and recommended by Ministers for Tourism, Local Government and Māori Development. They are responsible for approving CMSs, NPMPs and in some cases CMPs. Conservation Boards are independent bodies that enable local communities and iwi to contribute to the management of conservation areas. They are responsible for the approval of most CMPs (unless they are referred to the NZCA for approval). Notably, the role for approving CMPs is already affected by the gradual phase out of CMPs except for those developed under Treaty settlement.

139. Despite approving planning documents, neither the NZCA nor Conservation Boards are accountable for ensuring the objectives and policies set out in plans are implemented operationally or given effect to through regulatory decision-making. This can mean the inclusion and approval of content or conditions in plans which makes it harder for DOC to perform its regulatory functions or do not align with its operational budget. There is opportunity to refine the roles in the planning process to better reflect the advisory role of the NZCA and Conservation Boards and make the overall process more efficient.

140. The NZCA will still have a role in making area plans, but it will be more of an advisory nature. Conservation Boards will continue to have a role in the drafting stage led by the Director-General with affected iwi. NZCA and Conservation Boards will also both review plans after public engagement alongside a summary of submissions and public opinion. They can then provide final written recommendations to the Minister before approval of an area plan.

141. Some Treaty settlements stipulate bespoke approval requirements for the affected PSGE, such as requiring a CMP to be co-approved by the PSGE either with Conservation Boards or the Minister. These bespoke roles for PSGEs are intended to be upheld where applicable, which means grandparenting/carve-outs as needed.

142. Other Treaty settlement requires PSGEs' representation on local Conservation Boards (e.g. Te Hiku o Te Ika Conservation Board) or an appointment to the NZCA (Ngāi Tahu). Changes to the approval roles of those independent bodies will accordingly have an impact on some Treaty settlement redress. This proposal is likely to need to include some exemptions to ensure the intent and integrity of Treaty settlement is upheld. Further engagement is needed with affected PSGEs to determine the options for doing this.

The public and stakeholders are likely to be concerned about the change to NZCA and Conservation Boards' roles

143. It is likely that the public and stakeholders will perceive the changes to the role of Conservation Boards and NZCA as lessening public voice accountability in the management of PCL. They may also consider that limiting the input of these

independent bodies could lead to weaker conservation outcomes in area plans. However, the proposed process continues to provide for public engagement in the plan development or review unless the changes are only minor and/or technical, or already consulted on. Conservation Boards and NZCA will also continue to have input into plan development.

Clarifying engagement with iwi in the plan process

144. It is proposed that the Director-General will be required by legislation to engage with affected iwi in the drafting, public notification and hearings, and revision stages of the plan process. The Director-General will lead the process and be responsible for ensuring that affected iwi are appropriately engaged early and meaningfully to ensure informed decision-making by both parties.

145. This option explicitly codifies expectations of how to involve iwi when making plans, which would provide greater certainty to decision-makers in the plan process and support DOC to more consistently meet its obligations under section 4 of the Conservation Act. This clarity would in turn support more efficient and effective reviews of planning documents.

146. Further engagement and policy analysis is required to determine the level of engagement with iwi that is required, and the specific duties that may be required of the Director-General to ensure Treaty principles are given effect to. Engagement requirements may also need to scalable to different circumstances including for areas where there are numerous affected iwi and for different plan types. However, the following requirements are currently included in the proposal for public consultation:

- Requirement for engagement during drafting of area plans (pre-public notification),
- Affected iwi can choose how to participate e.g. by attending public hearings on a draft plan,
- Requirement for the Director-General to provide a summary of submissions and public opinion to affected iwi,
- Requirement for engagement during the revision of area plans (post-public notification),
- Affected iwi can provide written recommendations to the Minister before plans are approved,
- Requirement for Director-General to report to the Minister an analysis of the impacts on Treaty rights and interests before the Minister's approval of plans.

147. Many existing Treaty settlements already include bespoke requirements relating to engagement. This proposal intends to uphold existing settlements, whilst providing greater certainty for how DOC gives effect to Treaty principles outside of settlement. For example, for iwi that are yet to settle or for those where their settlement does not provide any roles in the plan process.

148. section 9(2)(f)(iv) [redacted] Similarly, in places where there are

numerous affected iwi there may need to be a mechanism or process established for ensuring effective representation by all parties.

How will this address the problem definition and what are the risks?

149. Under status quo, the lack of clarity about how to give effect to Treaty principles in the plan process can make reviews harder to navigate and can cause delays. Providing greater certainty in this area would enable more efficient reviews and support plans in being up to date and functional as part of DOC's broader regulatory system. However, the numerous Treaty settlement requirements means that each process will still require different approaches for engaging with PSGEs and other affected iwi. Codified expectations for engaging with iwi in the plan process will also lessen the discretion of decision makers to adapt their approach in different contexts or as understanding of the Treaty principles evolves.

150. It is likely that some affected iwi will consider that this proposal does not go far enough in giving effect to Treaty principles, particularly partnership, in the management planning process by not providing for joint decision-making or joint approval of plans. There may also be concern that the proposals focus on engagement with iwi and accordingly do not reflect the interests of other Treaty partners who have rights and interests in conservation.

What are other ways to address the problem definition?

Joint decision-making

151. Another option that was considered for clarifying how to engage with iwi in the management planning process was a requirement for joint decision-making and preparation in the development and review of planning documents between the Director-General and affected iwi. It would prescribe statutory roles and responsibilities for iwi across each stage of the development and review of planning documents. Under this option, iwi together with the Director-General would also make joint decisions in the development or review of plans, which could also include a co-approval role. For this option to be effective, it would require the establishment of a joint decision-making body and disputes resolution mechanism.

152. This option reflects a partnership-based approach and is highly collaborative. It is highly aspirational but unlikely to be implemented effectively in the short-medium term. Effective implementation of this option would require sufficient resourcing of joint decision-making bodies and a disputes resolution mechanism. This option does present insight to what a future preferred process could look like based on a strong and empowering Māori Crown relationship.

Non-legislative change

153. DOC is also exploring a management planning system improvement work programme to improve its performance through non-legislative change. Some of the key changes could include establishing a more consistent approach to implementing section 4 of the Conservation Act. This change would likely improve DOC's consistency in giving effect to Treaty principles, but is unlikely to fully address the lack of legislative clarity for involving iwi in the plan process.

Further work is required to give effect to this proposal

154. Further consideration will also need to be given to the processes used for identifying and notifying affected iwi of the opportunity to participate in the plan process. Although DOC has close working relationships with many iwi, it does not always have a robust mechanism for identifying relevant iwi, outside of settlement commitments, to work with

in the planning process. This creates risk that not all affected iwi are included in the planning process and further, creates risk for DOC. Consultation on the discussion document will provide useful insight in the how affected iwi can be identified for engagement.

155. section 9(2)(f)(iv) [redacted]

Introducing statutory timeframes

156. This option also introduces statutory timeframes to speed up the revisions to plans and ensure that plans are kept up to date as necessary. There are some existing timeframes in the planning process which are proposed to be reduced. Currently,

- There are 40 working days for public submissions from the date of public notification,
- The Director-General has eight months to revise the draft plan from the date of public notification,
- Conservation Boards have six months to review draft plans once the Director-General has sent them.

157. Under the proposed new process, timeframes would also be introduced for other stages including a timeframe for the Director-General to draft and prepare advice on plans and for when the Director-General revises the plans. Based on these proposed timeframes, a plan development or review would be completed within approximately one year. The proposed timeframes are detailed below:

158. In 2022, DOC consulted on various options to enable more timely and efficient development and review of planning documents to address this backlog. This included changes to the public notification and engagement steps. Those changes were not supported in consultation due to the impact on public participation. Accordingly, under this proposal the 40 working day timeframe for public submissions would remain the same as the status quo to ensure adequate engagement with the public is maintained.

However, it is proposed that technical and minor amendments would not require public notification.

Further consideration needs to be given to how timeframes would impact engagement with iwi

159. Further consideration will need to be given to the impact and workability of statutory timeframes on both Treaty settlement requirements and proposed engagement with affected iwi. For example, if engagement is required with iwi during the revision stage, the two-month timeframe could affect the quality of engagement. Options to mitigate the risk to meaningful engagement with Iwi may include options to extend the timeframes when required.

There is also opportunity to clarify the scope of amendments to plans

160. There is an opportunity to clarify the scope of, and process for, amendments to plans. The different options for updating plans under the status quo are shown below:

Options	Process requirements for each category of planning document		
	CMS	**CMP**	**NPMP**
Review in part or in full	Requires public notification, submissions, hearings, and full consideration and approvals process. *s 17H(2) of Conservation Act	Requires public notification, submissions, hearings, and full consideration and approvals process. *s 17H(3) of Conservation Act	Requires two public notifications, submissions, hearings, and full consideration and approvals process. *s 46(2)&(3) of National Parks Act
Amendment (if change will materially affect objectives, policies, or the public interest)	Requires public notification, submissions, hearings, and full consideration and approvals process. *s 17I(2) of Conservation Act	Requires public notification, submissions, hearings, and full consideration and approvals process. *s 17I(3) of Conservation Act	Requires public notification, submissions, hearings, and full consideration and approvals process. *s 46(4) of National Parks Act
Amendment (If change will not materially affect objectives or policies, or the public interest)	Does not require public notification, submissions, hearings. Requires consideration by Conservation Board and approval by NZCA *s 17I(4)(a) of Conservation Act	Does not require public notification, submissions, hearings. Requires approval by Conservation Board (and potentially NZCA) *s 17I(4)(b) of Conservation Act	Does not require public notification, submissions, hearings. Requires consideration by Conservation Board and approval by NZCA *s 46(5) of National Parks Act
Amendment (if limited to updating statutorily required information on protected areas)	Does not require public notification, submissions, hearings. Does not require consideration by Conservation Board or approval of NZCA *s 17(1A) of Conservation Act but Director-General must	Not allowed	Not allowed

	notify Conservation Boards affected.		

161. Presently, amendments that will materially affect policies, objectives and the public interest require the same process as a review of a plan which makes it a duplicative option for change. The definition of amendment under the Conservation Act does not mention policies or public interest: "amendment…means any change that does not affect the objectives of the strategy or plan".

162. It is proposed that the definition of amendment is updated to specify a clearer scope that is consistent with the process requirements. Amendments would only be used for updates:

- that will *not* materially affect local conservation outcomes, policies, or the public interest,
- that reflect changes that have already been consulted on (i.e. through a select committee process), or
- to statutorily required information on protected areas.

163. Under this proposal, like the status quo, amendments would not require public notification or hearings. However, further work is required to determine if there should be options for targeted engagement with iwi and other key stakeholders in some cases.

164. Like the development and review process, the role of the NZCA and Conservation Boards in approving amendments is also proposed to be changed to the Minister. For changes other than updates to statutorily required information on protected areas, the Conservation Boards and NZCA would have an opportunity to review amendments before the Minister approves them.

How do the options compare to the status quo/counterfactual?

	Status quo	Clearer planning process
Conservation outcomes	**0**	**0** The process maintains opportunities for public, iwi and stakeholder input into the development of local conversation outcomes and determining conservation values.
Plans are made and updated within statutory timeframes	**0**	**+** Increased clarity for engaging with iwi will enable more efficient plan review. Statutory timeframes for the plan process will enable plans to be updated more readily within their ten-year lifespan.
Cost to update plans	**0**	**0** Reduced timeframes for updating plans may make them more cost effective. However, codified expectations for engagement with iwi may require remuneration or resourcing to support.
Consistent regulatory decision-making.	**0**	**+** Changing the role of the Minister to final approver of plans will create a clearer and more consistent application of national policy in area plans.
Certainty about performing functions in a matter that gives effect to Treaty principles	**0**	**TBC** Providing explicit requirements for engagement with iwi during the planning process will support a stronger and more consistent approach to giving effect to the Treaty principles under section 4 of the Conservation Act. However, further engagement and policy design is required to ensure any processes and substantive requirements are consistent with Treaty obligations.
Overall assessment	**0**	**++**

Key for qualitative judgements

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

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

165. The option being consulted on has the potential to address the problem of plans that are impacting the effectiveness of DOC's concessions system by being out of date and slow to review. The proposed process provides clearer guidance for how iwi should be engaged in the management planning process. It also refines the roles in the process to make it more efficient and consistent with the broader regulatory framework. Feedback from engagement and further policy work is required to confirm the preferred option.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
DOC	• Implementation costs: costs to communicate changes to regulated parties, and to establish new processes.	*Medium*	*Medium*
	• Costs of making or amending area plans if greater than costs of updating existing plans.	*Medium*	*Low*
Concessionaires (include applicants)	• There are no additional costs to operators.	*Low*	*High*
Iwi and hapū	• Costs of participating (including time) in making or amending area plans if greater than costs of updating existing plans. • Costs of engaging with DOC (including time) on potential classes of permitted or exempted activities, or activities permitted in advance, if greater than costs of engaging on relevant individual applications.	*Medium*	*Low*
Total monetised costs	• These will be implementation costs for DOC, and engagement-related costs for iwi. • Monetised costs cannot be estimated at this stage.	*N/A*	*Low*
Non-monetised costs	• These will likely be time taken to engage with DOC for iwi. • Non-monetised costs cannot be estimated at this stage.	*N/A*	*Low*
Additional benefits of the preferred option compared to taking no action			
DOC	• Likely reduction in number of area plans that need to be made and kept up-to-date. • Greater clarity for concession decision-making. • Reduced number of concession applications to process on case-by-case basis.	*Medium*	*Medium*
Concessionaires (including applicants)	• Greater clarity and certainty (including transparency of process) for applicants. • Faster decision-making for applicants. • Reduced costs relating to applications.	*Medium*	*Low*

Iwi and hapū	• Fewer high-volume low-complexity concession applications to engage with DOC on. • Greater transparency of concessions decision-making. • Improved transparency of process.	*High*	*Low*
Total monetised benefits	• The main monetised benefits relate to DOC having fewer high-volume, low-complexity concession applications to process, if the tools in area plans to allow class approaches to activities are used. Where activities are exempt, this will also result in some cost savings to concessionaires. • Monetised benefits cannot be estimated at this stage.	*N/A*	*Low*
Non-monetised benefits	• The main non-monetised benefits relate to improved clarity and certainty about what activities are allowed or prohibited for all parties, including DOC are regulator. • Non-monetised benefits cannot be estimated at this stage.	*N/A*	*Low*

Options for amenities areas

166. There are currently 26 amenities areas in existence. They can enable more development and commercial management in a limited number of high-demand parts of PCL. By containing development to discrete areas, they can protect the wider conservation areas they sit within while still boosting regional growth.

167. However, there is no single, consistent amenities area instrument: similarly named instruments exist in the National Parks Act and in the Conservation Act. Their objectives are framed in different ways, and the way in which they can be established is different. As a result, very few amenities areas have been established and their differing rules and objectives are not an attractive option for leveraging for better economic outcomes.

168. Under existing rules, amenities areas may be established in National Parks by the Minister of Conservation on the recommendation of the NZCA in accordance with the area management plan.

169. There is an opportunity to establish more consistent amenity area tools that allow for spatial planning to protect the wider conservation area, while encouraging regional economic growth.

Option for consultation: Streamlining amenities areas tools

170. This option proposes to amend the Conservation Act and the National Parks Act to rationalise the two different types of amenities areas in these Acts, and better integrate the concept into the planning system. It will also enable the Minister to create an amenities area in a national park without requiring the recommendation of the NZCA.

171. There is an opportunity to make greater use of spatial planning approaches to set aside areas from the wider planning documents to allow for finer controls on development and support economic activity – while at the same time protecting the wider conservation area outside the amenities area. Rather than a management plan determining whether an area is suitable for being an amenities area, the plan should implement the amenities area classification by setting objectives based on that purpose.

172. The Milford Opportunities Project has identified that a ‘special amenities area’ tool would allow more concentrated development to occur in the visitor hub, while supporting more stringent controls on development in the wider national park. This tool could also be useful in other high-pressure tourism areas around New Zealand.

Proposed criteria for an amenities area

173. The following could be considered when declaring an amenities area:

- Whether a spatial planning tool with more enabling rules can provide better outcomes for public use, tourism and conservation in a congested conservation area.
- Whether there are benefits from more stringent controls on development in the wider conservation area surrounding an amenities area, while allowing for finer controls on concentrated development within.
- Whether the impacts of the amenities area can be reasonably contained.

How do the options compare to the status quo/counterfactual?

	Status quo	Streamlining amenities areas tools
Contribution to conservation outcomes	**0**	**+** Greater use of spatial planning approaches to set aside amenity areas will allow for stronger controls on the wider conservation area outside the amenities area.
Contribution to other outcomes, such as fostering recreation, allowing tourism and contributing to economic outcomes	**0**	**+** Supports economic growth and fosters recreation by enabling concentrated development of visitor and tourism assets, where appropriate.
Certainty for regulated parties	**0**	**+** More clarity about the rules that apply to amenities area will provide more certainty for DOC and operators about their use.
Consistency with Treaty settlement commitments and other obligations	**0**	**0** Like the status quo, this option will uphold existing Treaty settlement obligations.
Overall assessment	**0**	**+++**

Key for qualitative judgements

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

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

174. The option being consulted on has the potential to be more beneficial than the status quo, but feedback from engagement, additional data and information, and further policy work is required to confirm the preferred option.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
DOC	• Implementation costs: costs to communicate changes to regulated parties, and to establish new processes.	*Medium*	*Medium*
Concessionaires (include applicants)	• There are no additional costs to operators.	*Low*	*High*
Iwi and hapū	• There are no additional costs to iwi and hapū.	*Low*	*High*
Total monetised costs	• These will be implementation costs for DOC. • Monetised costs cannot be estimated at this stage.	*N/A*	*Low*
Non-monetised costs	• Non-monetised costs cannot be estimated at this stage.	*N/A*	*Low*
Additional benefits of the preferred option compared to taking no action			
DOC	• More straightforward regulatory approach to amenities areas under a single, rather than two, regimes.	*Medium*	*Medium*
Concessionaires (including applicants)	• If amenities areas are used more in the appropriate high-volume tourism areas, this should offer a more planned approach to commercial opportunities, which would be fairer to concessionaires and applicants.	*Medium*	*Low*
Iwi and hapū	• Greater transparency of concessions decision-making. • Improved transparency of process.	*High*	*Low*
Total monetised benefits	• The main monetised benefits relate to • Monetised benefits cannot be estimated at this stage.	*N/A*	*Low*
Non-monetised benefits	• The main non-monetised benefits relate to improved clarity and certainty about what activities are allowed	*N/A*	*Low*

	or prohibited for all parties, including DOC as regulator. • Non-monetised benefits cannot be estimated at this stage.		

Section 2.3: Concession processes

The process for considering concession applications is often slow and lacks transparency

175. Part 3B of the Conservation Act sets out the legislative framework for providing concessions to individuals, businesses, or organisations who wish to undertake activities on PCL. See Appendix 2 for a summary of the current process for authorising concessions.

176. The Conservation Act currently sets few statutory timeframes for concessions decision-making, apart from timeframe limits for immediate declines and the length of public notification periods. There is also a lack of clarity regarding how some statutory steps should be applied (for example, tests for declining or returning applications when the initial triage of an application is undertaken). This creates ambiguity for applicants and those involved in the decision-making process and can slow down decision-making.

177. Section 4 of the Conservation Act requires DOC to give effect to the principles of the Treaty of Waitangi when processing and making decisions on concession applications. Section 4 does not articulate what the principles of the Treaty are. DOC's approach has been to identify four principles most relevant to its work, including informed decision-making and partnership.

178. The operational approach differs depending on the Treaty partners, the location relevant to the application and the nature of the activity. Some Treaty settlement obligations also have bespoke requirements and processes outlining how DOC and the relevant iwi or hapū will manage the processing of concessions.

179. The lack of operative provisions relating to section 4 of the Conservation Act is currently resulting in overly complex and time-consuming engagement processes that are often bespoke for individual applications, even though they may share common elements. This creates a large resource burden for DOC and our Treaty partners and can slow down decision-making.

There is an opportunity to process concessions more efficiently by clarifying key steps and establishing statutory timeframes

180. The proposed shifts to one plan per area and clearer, more concise plans will help DOC process concessions faster and with more confidence once new plans are in place. In addition, introducing exempt activities, prohibited activities, and permitting classes of activities in advance will relieve pressure on the concessions system by reducing the need for extensive case-by-case decision-making on some concession applications.

181. The changes to the planning framework outlined above will shift a portion of current engagement with iwi and hapū from understanding their views and concerns on specific *applications* to types of *activities*, which is a more efficient way of addressing rights and interests.

182. Alongside these proposed changes, there is an opportunity to:

- provide more certainty for applicants and decision-makers by clarifying some key steps in the statutory decision-making process and enabling further statutory timeframes.

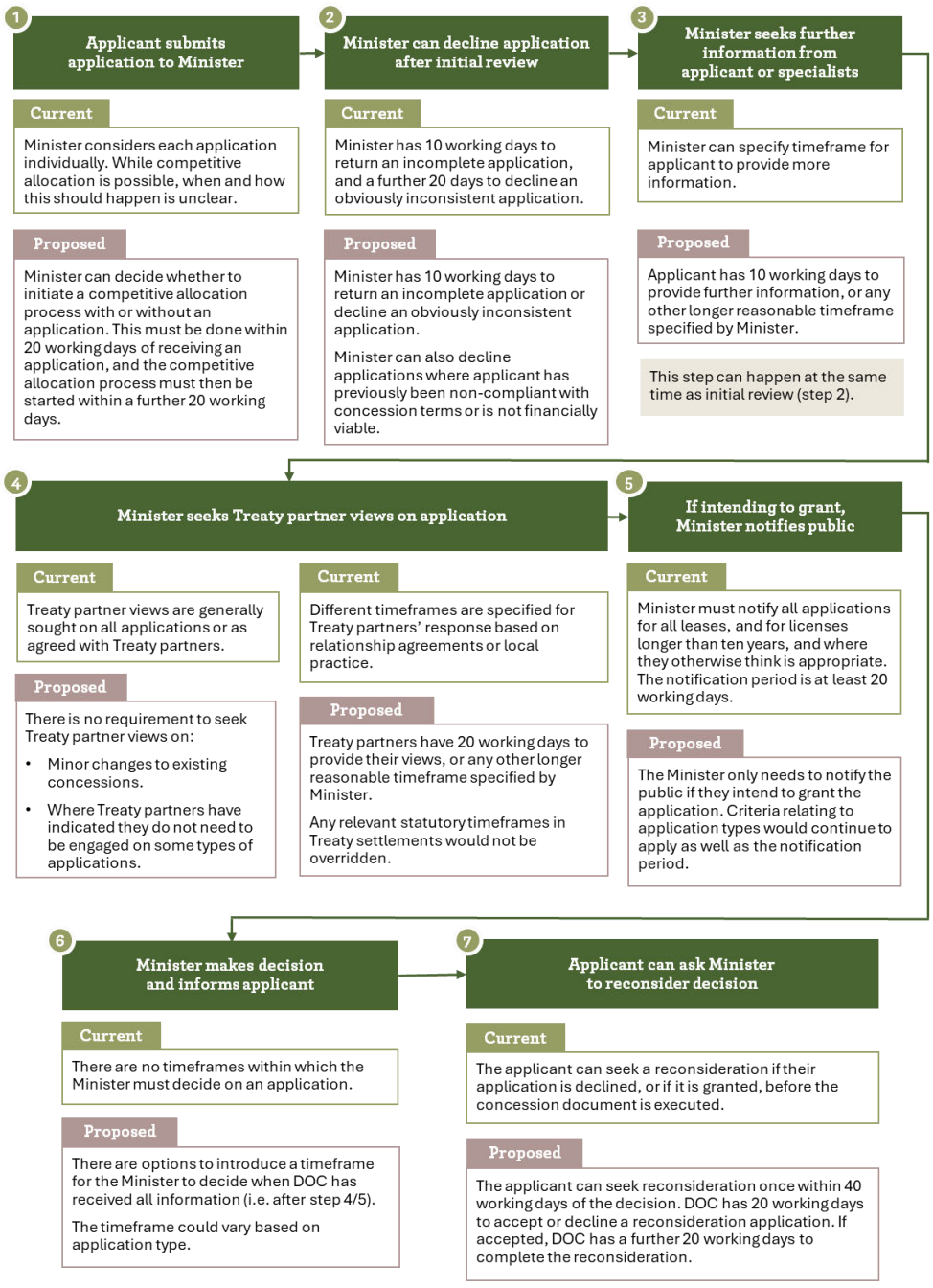
- provide more certainty about how DOC will give effect to the Treaty principles in concessions management by codifying key steps and establishing statutory timeframes.

Options to clarify expectations and processing timeframes

Option for consultation: Amend concessions decision-making process to clarify expectations and introduce new statutory timeframes

183. This option will amend the concessions decision-making process, including introducing statutory timeframes and clarifying expectations for specific parts of the concessions process. This includes clarifying how Treaty partners will be engaged in the application process. The option is intended to provide more certainty about how section 4 of the Conservation Act will be implemented and to enable prompt and robust decision-making.

184. The proposed process is summarised below.



Clarifying requirements when triaging a concession application

185. The triage process could be amended to allow the Minister to decline applications upfront if it is clear that the application will not meet statutory requirements, and/or if the applicant does not have the financial means to execute the concession or has a history of non-compliance.

186. Currently, the Minister may decline any application that obviously does not comply with, or is inconsistent with, the Conservation Act, any CMS, or any CMP. Such decisions may only be made within the 11th and 30th working days after receiving an application.

187. There is no ability for the Minister to decline applications at an early stage where the applicant clearly lacks financial viability, for example the ability to pay fees associated with getting or using the concession. Previous non-compliance with the conditions of a concession also cannot be considered at this stage in the application process. A concession is a privilege, not a right. Allowing a Minister to decline applications at an early stage if it is clear the applicant would either not be able to pay concession/activity fees, or abide by the conditions of a concession, would reinforce this concept.

188. However, DOC does not currently systematically monitor compliance with concession conditions. Patchy information about non-compliance may mean it is unfair in practice for only some applications to be declined for previous non-compliance, compared to undetected non-compliance. In addition, previous financial performance is not a predictor of future financial viability. In addition, assessing both these aspects will also increase the amount of information DOC needs to request from applicants and analyse during the initial review phase.

Clarifying timeframes

189. The new process would introduce statutory timeframes for specific steps in the concessions decision-making pipeline. Setting overall timeframes for a statutory decision-making process in legislation is difficult to get right especially where there can be significant technical advice and analysis required and legal processes can create delays.

190. This option proposes to establish timeframes for specific processes (similar to the approach taken in the RMA and the Fast-track Approvals Bill). Analysis of each proposed timeframe is provided below.

<u>Aligning the deadlines for declining applications after the initial review</u>

191. At present, the Minister can only return an incomplete application within the first ten working days of receiving it. The Minister can also only decline an obviously inconsistent application within the following 20 working days.

192. Combining these time periods (i.e. to be the same ten working day period after receiving an application) would require initial review of applications to be completed within two weeks of receipt.

193. Searching any relevant CMS and CMP for an application today requires more processing time, particularly with a backlog of applications on hand. In the future, if conservation management planning documents are reformed in line with the rest of this

document, the NCPS and area plans are likely to be more streamlined and easier to search for obvious inconsistencies.

194. After this ten working day period, the Minister would need to complete the rest of the decision-making process before being able to decline an application.

195. While aligning these statutory timelines and establishing in statute the ability to decline an application based on financial viability may support process efficiencies and better regulatory practice, DOC is undertaking further work on the operational feasibility to implement these options.

Establishing a deadline for applicants to provide further information

196. At present, when DOC needs further information from an applicant to process their application, they are given a reasonable period to provide the information. If this information is not provided, the application is not processed any further.

197. This change would create a default statutory timeframe for applicants to provide further information: 10 working days. It allows for the Minister to provide a longer time period if they consider the nature and scope of the request warrants it (as long as it is reasonable).

198. Section 48 AA of the Act includes a regulation-making power for concession timeframes. DOC is undertaking further work on what instrument would be used to give effect to the new timeframes if they are progressed, including whether the power in Section 48 AA would be used.

Clarifying engagement requirements to give effect to Treaty obligations

199. Currently, Treaty partners' views are generally sought on all concession applications, unless they have agreed with DOC the types of concessions they wish to be consulted on. Consultation with Treaty partners is not explicitly required by the Conservation Act, but always done in practice to give effect to section 4.

200. For some Treaty partners, this means a large volume of concession applications on which they are consulted. There are also specific instances where it is reasonable to conclude that varying a concession is inconsequential to rights and interests and does not require consultation with iwi/hapū (e.g. allowing five cows instead of three to graze in an area where grazing is already allowed).

201. The proposed new process will clarify that Treaty partners must be engaged with on concessions applications, except when:

- Treaty partners have previously agreed engagement is not required on that category of activities; or
- the application proposes only minor changes to existing or previous concessions.

202. There are likely several ways for Treaty partners to express if there are particular types of applications on which they do not need to be engaged. This could take the form of a rights and interests framework provided to DOC, or any other written notice given to DOC. Treaty partners could also indicate that DOC may use any recent comments on other relevant applications in lieu of fresh feedback. Ultimately, Treaty partners are best placed to assess what types of applications require their detailed consideration and feedback, weighed against their capacity.

203. A further option, which DOC has discounted, is not seeking Treaty partners' views where the Minister considers there are no or minimal Māori rights and interests

involved, and these are well understood. This is likely to be highly contentious in practice, without providing significantly more operational certainty for DOC.

Clarify when feedback from Treaty partners is required

204. The proposed process also clarifies that Treaty partners must provide feedback on most applications within 20 working days, or within any longer, reasonable timeframe specified by the Minister for more complex applications. If the deadline for Treaty partners to provide feedback has elapsed, decision-making will proceed based on existing information.

205. Decision-making would proceed after the timeframe has elapsed if iwi do not provide views on the application to ensure the decision-making process does not stall. This should not remove the requirement for the decision-maker to consider Treaty rights and interests, but that would be based on current knowledge and previous analysis (i.e. previous engagement and general resources like Wai262: Ko Aotearoa Tēnei). This is consistent with the current law – if reasonable attempts to engage with Treaty partners have been made, lack of input does not prevent a decision from being made.

206. Different timeframes would apply where those timeframes are set out in deeds of settlement and settlement Acts. Some timeframes have been agreed outside of settlement deeds and Acts as part of DOC-PSGE settlement protocols and relationship agreements. These protocols and relationship agreements would require updating to be consistent with the new statutory timeframes.

207. Timeframes risk decision-makers not being fully informed if iwi are unable to respond, or their response is limited. There are two key mitigations to this risk. First, there will be the option to provide a longer timeframe if the Minister (or delegate) believes it is necessary (which could be triggered, where reasonable, following a request from the iwi). Second, there is an opportunity through the improved planning process and ongoing engagement to build a stronger enduring understanding of iwi interests in an area outside of engagement on individual concession applications.

208. If the Government decides to progress this proposal, the regulation-making power in s 48AA would not, as it currently stands, be used to give effect to it.

Publicly notify applications when there is an intention to grant a concession

209. Currently, the Minister must notify the public for applications for all leases, licenses of more than ten years, and where they otherwise consider it appropriate. This is a small subset of activities, limited to those where public interest will be greatest, given leases provide exclusive use of public land and longer-term licenses confer a valuable property right.

210. This option proposes that applications would be publicly notified when the Minister has the intention to grant a concession (rather than when an application is received). The same subset of activities requiring notification would be retained.

211. This change will save decision-makers and applicants time and cost participating in public notification processes for applications that may be declined anyway. Currently,

the public can invest significant time in opposing applications that may be declined anyway or promoting conditions that DOC already planned to include.

212. This change would not preclude the Minister making a different decision to the one notified (i.e. a decline), but knowing DOC's preliminary views may assist some submitters.

213. This was how the Conservation Act operated prior to 2017. The change was made to align Conservation and Resource Management processes but has created inefficiencies in the system for no gain.

214. A different approach to public notification is proposed for concessions that will be competitively allocated. Refer to section X below for the proposed approach to public notification in the competitive allocation process.

Clarify the scope and process for reconsiderations of a decision

215. Currently, an applicant can seek a reconsideration of their application if it is declined, or if it is granted but before the concession document is executed (e.g. to contest conditions associated with the concession). There are no statutory timeframes, and no limits on the number of times an applicant can ask for the same decision to be reconsidered. This leads to significant churn, wastes time and resources, and can create incentives to unreasonably challenge a decision until the desired outcome is gained.

216. It is possible to constrain the circumstances in which reconsiderations can be sought without limiting access to justice. The right balance needs to be sought to allow proper opportunity to correct decisions where appropriate.

217. Proposed changes to the reconsideration process are to clarify that:

- An applicant can seek a reconsideration within 40 working days of the decision and may only do so once (i.e. can't apply multiple times).
- A reconsideration application must be accepted or declined within 20 working days of receipt, and the application must be reconsidered within a further 20 working days unless further notification is required.

218. Section 48 AA of the Act includes a regulation-making power for concession timeframes. DOC is undertaking further work on what instrument would be used to give effect to the new timeframes if they are progressed, including whether the power in Section 48 AA would be used.

If the status quo continued

219. Under the status quo, there would continue to be regulatory constraints on DOC's ability to speed up concession processing. There would continue to be operational ambiguity about certain steps in the process.

220. The Fast-track Approvals Bill (FTA Bill) is currently going through the legislative process. It provides a streamlined decision-making process to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

There is a modified process in the FTA Bill for authorising concessions under the Conservation Act for projects dealt with by the FTA Bill.

221. The proposals the Government intends to consult on relating to concessions differ from the concessions process under the FTA Bill:

	Status quo: Conservation Act	Proposed: FTA Bill	Proposed: Conservation Act
Matters to be considered	Minister must consider a range of matters under section 17U of Conservation Act including the nature of the activity and structure/facility to be constructed; effects of the activity, structure or facility; measures to avoid, remedy or mitigate any adverse effects; and any relevant environmental impact assessment.	The matters in section 17U are considerations to be weighed against the overall purpose of the FTA Bill, which is to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits.	No change to the matters which must be considered by Minister under section 17U of Conservation Act.
Relationship to statutory planning documents	Concessions cannot be inconsistent with any applicable planning document. At present, this includes the CGP, GPNP, CMSs, CMPs and NPMPs.	Applicable CMSs or CMPs that have been co-authored, authored or approved by a Treaty settlement entity must be taken into consideration. Any other applicable CMS or CMP may be considered.	Concessions cannot be inconsistent with any applicable planning document, such as the NCPS, area plans and NPMPs. The nature and number of planning documents may change under proposals in sections 2.1 and 2.2 of this interim RIS.
Ability to decline applications after initial review	Minister can decline application that is obviously inconsistent with the Conservation Act or any relevant planning documents.	No 'mandatory decline' ability.	In addition to Minister's ability to decline application that is obviously inconsistent with the Conservation Act or any relevant planning documents, Minister can also decline if applicant does not have the financial means to execute the concession or has a history of previous non-compliance.

How does this address the problem definition and what are the risks?

222. This option would encourage more consistent and robust decisions about activities that can be undertaken on PCL and support faster processing of concessions. Introducing statutory timeframes and clarifying expectations for specific parts of the concessions

process will provide more certainty for Treaty partners, applicants and decision makers and enable prompt and robust decision-making.

Further work is required

223. DOC is undertaking further analysis of Treaty settlement arrangements and will work with affected PSGEs to mitigate risk to redress relating to concession decisions.

224. section 9(2)(f)(iv) [redacted]

225. DOC is undertaking further work on the operational feasibility to align the timelines for immediate declines and to establish the ability to decline an application based on financial viability.

226. section 9(2)(f)(iv) [redacted]

How do the options compare to the status quo/counterfactual?

	Status quo	Amend the concessions decision-making process to clarify expectations and introduce new statutory timeframes
Contribution to other outcomes including economic outcomes	0	+ Will encourage more consistent and robust decisions about activities that can be undertaken on PCL. Faster processing of concessions will allow more appropriate activities to be undertaken on PCL and increase economic benefits to local communities.
Time taken to process concessions	0	+ Will save significant time for concessionaires, DOC, and the public. For example, a clearer test for declining an application upfront will make it faster for the applicant to know when their application has been declined and take pressure off the system to speed up processing other applications.
Certainty for regulated parties about concessions	0	+ Introducing statutory timeframes and clarifying expectations for specific parts of the concessions process will provide more certainty for applicants and decision makers and enable prompt and robust decision-making.
Giving effect to Treaty principles	0	+ Codifying when Treaty partners will be engaged on concession applications provides more clarity for Treaty partners and can hold the Crown to account.
Feasibility of implementation	0	- Some of the process steps (in particular, aligning the timelines for immediate declines and establishing clearer tests for declining an application) will likely require significant changes to resourcing.
Overall assessment	0	+++

Key for qualitative judgements

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

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

227. Amending the concessions process to clarify expectation and introduce new statutory timeframes has the potential to offer benefits over the status quo, but feedback from engagement, additional data and information, and further policy work is required to confirm the preferred option. This option most closely supports the objectives by encouraging more consistent and robust decisions about activities that can be undertaken on PCL and supporting faster processing of concessions (compared to the status quo).

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
DOC	• Additional costs to communicate changes and establish operational guidance.	*Medium*	*Low*
Operators	• There are no additional costs to operators.	*Low*	*High*
Māori	• Additional costs to establish a process to engage on exempted activities, where engagement has not occurred previously.	*Medium*	*Low*
Total monetised costs	• Economic costs have not been monetised due to poor evidence certainty.	*N/A*	*Low*
Non-monetised costs	• Low confidence, given that public consultation on the proposals has not yet been undertaken.	*Medium*	*Low*
Additional benefits of the preferred option compared to taking no action			
DOC	• The option will provide more clarity for decision makers and reduce processing time and costs for DOC.	*High*	*Low*
Operators	• A clearer more consistent concession process will provide more certainty for operators. • Supported by the changes to management planning, the new process will support faster decision-making, allowing more activities to be undertaken on PCL.	*Medium*	*Low*
Māori	• Improved transparency in the process and reduced time engaging on applications.	*High*	*Low*
Total monetised benefits	• Economic benefits have not been monetised due to poor evidence certainty.	*N/A*	*Low*
Non-monetised benefits	• Low confidence, given that public consultation on the proposals has not yet been undertaken.	*High*	*Low*

Section 2.4: Concession allocation

Decision makers can competitively allocate concessions

228. The concessions system allows the use of various allocation methods to grant concessions. Section 17ZG of the Conservation Act gives the Minister the ability to competitively allocate concession opportunities. In addition, the Minister can also invite applications for particular concession opportunities, or carry out other actions that may encourage specific applications.

229. The following table provides an overview of the most common allocation methods available to DOC.

Allocation type		Description
Standard concession process		A concession applicant processed by DOC through its standard process (i.e. the proposal discussed above).
Competitive allocation	Expression of interest	An invitation to potential concessionaires to express interest in an opportunity. This process is not an invitation to apply for a concession. Any applications received during this process will be returned to the applicant.
	Tender	An invitation to potential concessionaires to submit applications for a concession opportunity. Applications are evaluated against weighted criteria and the right to apply for the opportunity is awarded to the highest scoring applicant.
	Auction	A process where the right to apply for the opportunity is awarded to the highest bidder.

230. Competitive allocation processes are an effective mechanism for determining the best use of PCL and/or the most appropriate concessionaire. Tendering and auctions are also effective in determining the market rate.

231. In some cases, DOC may allocate 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 is an example of this.

232. In other cases, the opportunity may be less clearly defined, and 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.

But there is ambiguity over when and how to competitively allocate

233. Although the Conservation Act provides for competitive allocation, DOC's use of competitive allocation processes is limited. 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.

234. DOC's allocation practice has often defaulted to this position due to ambiguity surrounding a decision maker's ability to initiate a competitive process. This is because once a concession application has been received, that unsolicited application cannot

be confidently returned to initiate a competitive allocation process. This means a competitive allocation process needs to be initiated by DOC before an unsolicited application is received.

235. The flow on effect is a concession system that does not competitively allocate as many opportunities as it could to maximise returns to conservation from private activities. This ambiguity has also resulted in some applications requiring additional deliberation over whether they can be competitively allocated, which can significantly prolong processing times.

236. Even if a competitive allocation process is initiated by DOC, a person cannot independently apply for the concession opportunity under section 17R(2) of the Conservation Act. Only applications that conform with the competitive allocation process can progress. Non-conforming applications are returned to the applicant. Where appropriate, that applicant may be encouraged to participate in the competitive allocation process if it is still open. This duplicates work, adds costs for both DOC and the applicant, and prolongs the time needed to allocate the concession.

DOC sought public feedback on this issue in 2022

237. In 2022, feedback was received on various proposals to improve the statutory planning and concessions systems. Two of the proposals in that discussion document were related to better enabling the initiation of competitive allocation processes and streamlining the process for the successful applicant. Feedback on those proposals is reflected in the table below.

It is unclear whether a concession application can be returned if tendering the opportunity would be more appropriate - *Note that 83 submitters did not provide their preferred option*		**Number of Supporting submitters**
Option 1	Amend the Conservation Act to provide the Minister of Conservation with the ability to return a concession application if initiating a tender process would be more appropriate	9
Option 2	Amend the Conservation Act to provide the Minister of Conservation with the ability to return a concession application if initiating a tender process would be more appropriate, and include a timeframe for which the tender process must be initiated	27
Option 3	Retain the status quo	5
The tender process does not allow a successful tender candidate to be offered a concession outright - *Note that 82 submitters did not provide their preferred option*		**Number of Supporting submitters**
Option 1	Amend the Conservation Act to allow the Minister of Conservation to offer a successful tender candidate a concession directly, but only if relevant statutory requirements have been met	38
Option 2	Retain the status quo	4

238. The competitive allocation proposals received majority support from those who engaged with them in 2022. However, commercial operators highlighted that more clarity and certainty is needed to support operators if concession opportunities they

previously held concessions for are being competitively allocated. The main concerns included:

- The need for clarity in how existing businesses and fixed assets owned by incumbent concessionaires would be treated in a competitive allocation process.
- The need for a clear understanding of when and how a concession would be competitively allocated.

Current settings do not encourage the optimal allocation of concessions

239. Beyond the legal ambiguity relating to a decision maker's ability to return an application and initiate a competitive allocation process, DOC lacks guidance on when and how to run competitive allocation processes.

There is a lack of settings to support decisions on when to competitively allocate

240. There is currently a lack of policy settings to help decision makers choose the most appropriate allocation method to run in different scenarios. This has caused DOC to not proactively identify opportunities to competitively allocate. Alongside the 'first come, first served' system, this has also encouraged DOC to process most concessions as they are received.

241. Failing to competitively allocate concession in appropriate scenarios means that suitable opportunities are not available to a greater pool of applicants. This has resulted in sub-optimal outcomes for conservation because competitive tension in the market is not regularly being tested to determine what a fair market rate for the concession is. In-kind returns to conservation (e.g. pest control) and innovation relating to eco-friendly solutions and the visitor experience is also being stifled.

There is a lack of standardisation when choosing successful applicants

242. When competitively allocating opportunities (except for auctions), criteria are used to determine who is granted the right to apply for a concession. Criteria are currently developed on a case-by-case basis based on considerations such as the type of activity, the appropriateness of the operator, and the purpose for which the land is held.

243. This lack of standardisation does not provide clarity and certainty for applicants because they are not aware of what their applications are being tested against before it has been decided to initiate a tender process.

There is no process to guide the transfer of assets

244. Concession opportunities are often dependent on the availability of infrastructure to support operations. Many of the assets can be easily removed at the end of the concession term (e.g. beehives) but some assets (e.g. fixed structures, like buildings) cannot.

245. DOC recognises fostering development of high-quality assets in suitable locations is desirable. Likewise, ensuring the assets are maintained through their usable lives is also beneficial to recreation, and removing spent infrastructure at the end of a concession preserves ecological values. DOC has used various methods to achieve those aims:

- Requiring bonds or sureties coupled with proactive monitoring can ensure that assets are maintained throughout the term and removed when defunct.

- Offering longer-term leases (over 30 years) can also provide adequate time for concessionaires to recoup substantial upfront development costs and incentivise investment in large assets.

- Discounted rents or rent waivers can also incentivise development of large infrastructure.

- It is also possible to require incoming operators who take over another's assets to pay for those assets. Again, this can incentivise capital investment and ongoing maintenance.

246. It is the last method (compensating an outgoing concessionaire for the value of its assets) which is the focus of this consultation. DOC does not have clear policy to determine when assets should or should not be compensated for. DOC anticipates that compensation may be appropriate when large infrastructure is developed and where the duration of a concession is too short for a return to be made on that investment.

Managing Crown risks relating to fixed infrastructure on PCL

247. DOC's practice has varied over the decades and there have been inconsistent approaches to certain matters. For instance, imposing make-good requirements or requiring that an incumbent operator is reimbursed for its assets.

248. The default position in current concession templates is as follows. Operators are expected to remove their infrastructure at the end of the term and to remediate the land unless the Minister permits them to leave the assets behind. Where assets are left behind, the Minister is not obliged to pay the operator for those assets and is free to re-let or re-licence them.

249. Managing private infrastructure on PCL creates risk for the Crown. Sometimes an operator's concession will expire but the operator will fail to remove it and making-good the land. Business failure can also result in premature abandonment of the land with assets left for the Crown to deal with. In some cases, the assets may be nearing the end of their life and be poorly maintained.

250. This can create an unexpected financial and environmental burden for the Crown to deal with. That is particularly so where no new operator wishes to take over the assets or where the assets are in poor condition.

251. It is difficult to assess the scale of the risk: since there are many variables which amplify or ameliorate the impact. For instance: the risk may only become evident towards the end of the term; business failure may occur without much warning; the scale of loss to the Crown may depend on whether a new operator can be located promptly.

Options to help determine when and how to competitively allocate concessions

Develop criteria to support decision makers to decide which is the most appropriate allocation tool

252. Criteria could be developed to support decision makers at DOC to decide which allocation method is the most appropriate in different scenarios. This guidance would

provide a reference point for decision makers to consistently choose which allocation methods and provide some clarity to operators as well.

253. There are three possible criteria for considering when to competitive allocate.

- **The potential supply is limited**: For example, a management plan sets limits on acceptable number of activities, such as flight landings.
- **A concession is for exclusive use:** Instances where the allocation of a concession will prevent others from undertaking similar activities. This includes key strategic infrastructure which is essential to the visitor experience in high value sites.
- **There is likely to be a market**: Instances when there is more than one interested party. This is not always clear because some interested parties may not understand when and where opportunities are available.
- **The costs outweigh the benefits**: This criterion would not always be appropriate, especially where there is uncertainty of the value of a new activity, where there are multiple operators, or where Treaty partners have a specific interest.

254. Once it has been determined that an opportunity should be competitively allocated, there are several types of allocation processes that can be used:

- **Expression of interests** are preferred when DOC is seeking to determine the level of interest in an opportunity. This would confirm who is interested before undertaking a process to determine who the best concessionaire is.
- **Tenders** are preferred when comparing multiple concession applications against each other. This is done by weighing up a range of potential outcomes to determine what the best use of the land is and/or who the is best concessionaire.
- **Auctions** are preferred where the best use of the land is already known, and price is the only determining factor. This enables standards, terms, and conditions to be set before the auction takes place.

The proposal to publicly notify when there is an intention to grant a concession overlaps with this proposal

255. While the intent of the proposal to publicly notify once there is an intention to grant a concession will be upheld, where public notification takes place in a competitive allocation scenario will be different in comparison to processing standard concessions.

256. There are two scenarios to consider:

- When allocating an existing concession (brown field), or
- When allocating the opportunity to undertake a new activity (green field).

257. In brown field scenarios, public notification (when it's required) would take place after it's been decided to initiate a competitive process but before the actual competitive process takes place.

258. This is consistent with the intention to publicly notify once it's intended for the concession to be granted. This is because competitively allocating an existing

concession reflects that the Minister is intending for that activity to continue in the future.

259. An additional benefit of undertaking public notification at this point is that it will also notify other prospective concessionaires that the opportunity is going to be competitively allocated. In this sense it carries similar benefits to running an expression of interest process before tendering or auctioning an opportunity.

260. In green field scenarios, public notification (when required) will take place after the competitive process is complete. This is because the best use of the land would not be determined until a successful applicant has been chosen.

261. If the competitive process is complete and there are no applications that have been deemed appropriate on an effects management basis, then there is no need to public notify because there is no intention to grant a concession. This is consistent with the proposal to only publicly notify when there is an intention to grant a concession.

Develop standardised criteria to determine who the most appropriate applicant is

262. This option involves developing standardised criteria that would support decision makers to choose the most appropriate concessionaire in a competitive allocation scenario. Criteria would support decision makers to make consistent decisions and it would provide more clarity to operators as well.

263. Introducing standardised criteria would drive better outcomes for conservation by:

- Enabling prompt and robust decision making.
- Giving more certainty and transparency to an increased pool of applicants.
- Adding more clarity in relation to section 4 of the Conservation Act.
- Reducing the risk of judicial review.

264. Applications must be complete and submitted to DOC on time. Once the submission period has closed, all applications will be assessed against the criteria. If there is not clear winner following the assessment of applications against the proposed criteria, more granular criteria could be developed on a case-by-case basis to act as a tiebreaker.

265. The following table provides a list of criteria that could support decision makers to choose the most appropriate applicant in a competitive allocation scenario.

Criteria	Description
Performance	A comparison of an applicant's ability to undertake an activity. This would consider: • Applicants' experience and compliance record • Financial sustainability of applicant (and activity if alternative proposals) • Capability of meeting any environmental or cultural conditions
Returns to conservation	Comparing the net returns to conservation. This would include consideration of: • Financial returns to the Crown • In-kind returns to conservation (e.g. pest control) • Contribution to conservation, scientific, and mātauranga research

Offerings to visitors	Comparing implications to the visitor experience. This would consider: • The quality of experience offered to customers • Readiness of applicant to begin their operation • How it meets the vision and outcomes for the place
Benefits to the local area	A comparison of an applicant's relationship with community and place. This would include: • Employment or training opportunities • Enhance the cultural, historic or conservation narratives at place • Building authentic relationships with tangata whenua and communities
Recognising Treaty rights and interests	The extent to which a concession activity recognises Treaty rights and interests. This would consider: • Importance of taonga (resource or land) to the activity • Utilises and enhances kaitiakitanga, connection to whenua, and customary practices (may include modern technology) • Promotes general awareness of tikanga and mātauranga Māori

Note: This criterion is not relevant to auctions because price would be the only determining factor.

266. The inclusion of the 'recognising Treaty rights and interests' criterion is a proposed response to the Supreme Court's ruling in the *Ngāi Tai ki Tāmaki Tribal Trust vs Minister of Conservation* case. The Supreme Court found that:

- The Treaty principle of active protection may sometimes, or for a period, require a degree of preference to iwi and hapū in relation to concession opportunities over lands where they have mana whenua.
- The right to economic interests was also a relevant consideration to this assessment.
- Section 4 of the Conservation Act does not create a power of veto by an iwi or hapū over the granting of concessions.

267. The intention of the 'recognising Treaty rights and interests' criterion is to require a decision-maker to determine whether active protection is necessary based on the rights and interests associated with certain concession opportunities. This means that the criterion would not be considered if relevant rights and interests that require protection are not present in the opportunity being competitively allocated.

268. There are a number of criteria that determine who should be awarded the concession, including the criterion about 'recognising Treaty rights and interests'. This criterion does not necessarily mean a concession would be awarded to iwi or hapū with mana whenua status.

Develop an approach to determine the value of fixed private assets

269. Developing an approach to value fixed private assets on PCL would support any transfer of assets following a competitive allocation process. This could include:

- A specific formula: For example, construction cost + consumer price index – depreciation for the value of assets.
- Concessionaire sourcing a valuation: This valuation should cover fixed asset improvements from an independent valuer.

- DOC sourcing a valuation: This would provide the right to arbitration over the valuation for the concessionaire. The cost to undertake this valuation will be covered by the incoming concessionaire.

If the status quo continued

270. Decision makers will continue to have the ability to competitively allocate concessions. However, they will not be able to confidently return concession applications to initiate a competitive process. This means that the concessions regime will continue to predominantly operate on a first come first served basis. Competitive processes will also have a two-step application process.

    - There will not be policy settings to inform which allocation method is most appropriate in different scenarios. Also, criteria to determine who is granted the right to apply for a concession will be developed on a case-by-case basis.

    - There will also not be a formalised process to support the valuation and transfer of private assets.

Alternative ways of addressing the problem

271. Competitively allocating every concession was considered, but discounted. This would not be an efficient or effective approach. This is because it is unlikely that there will be multiple parties who are interested in applying for every available concessions.

272. Competitively allocating every opportunity would also create a resource burden for DOC and potential applicants because it would require every potential applicant to be notified for every upcoming concession. This would slow processing times.

Further work is required

273. Some Treaty relationship instruments may include obligations on DOC to help Treaty partners to understand or upskill to compete for concession opportunities. That would need to be incorporated into any operational processes accompanying changes in this area.

274. More work is needed to understand how criteria for competitive allocation processes have been developed and used to date, and whether a standardised approach would offer benefits over past practice (which has tended to result in highly fact-specific criteria being set). This would involve deciding the appropriate balance between regulator discretion/flexibility and certainty and clarity for regulated parties.

275. Further work is also required on the ‘recognising Treaty rights and interests’ criterion for allocation decisions. Engagement with Treaty partners will help inform whether it should be included as a criterion, and if so how it should be defined, whether criteria should be weighted. Engagement may also result in another approach being identified as more beneficial in giving practical effect to Treaty principles.

276. If an approach to asset valuation is developed to smooth transitions between outgoing and incoming concessionaires, further work would be required to design this approach, decide whether other processes would need to be in place to support any transfer of fixed private assets, and whether goodwill and intellectual property need to be considered in the valuation of private assets. This would require a more thorough

understanding of the situations in which a regulatory response or change in regulatory approach is needed during these transitions.

277. DOC expects feedback received during the consultation period on the above matters to inform development and analysis of potential changes to when and how competitive allocation occurs.

How do the options compare to the status quo/counterfactual?

	Status quo	Combined option: criteria for deciding when and how to allocate, and a valuation method
Contribution to conservation outcomes	0	+ It is likely that competitive tension will increase fees received by the Crown and in-kind returns, such as contributions to pest control or conservation research. Ensuring fair compensation for assets if a concession is transferred on expiry is expected to encourage investment in quality infrastructure on PCL. This should minimise the risk of derelict or redundant fixed assets being abandoned.
Contribution to other outcomes (recreation, tourism, economic)	0	+ Provides a mechanism to determine the most appropriate commercial use consistent with the statutory purposes of PCL. It is likely that competitive tension will encourage innovation and investment in the services provided to consumers. The criteria also enable wider economic benefits to be accounted for in decision-making (e.g. employment impacts).
Time taken to make or obtain concession decisions	0	+ Addresses the ambiguity around whether DOC can initiate a competitive process after an application has been received, which can prolong processing times. While the option is expected to improve processing times across the system, some specific applications may take longer if they are competitively allocated when they would have previously been directly allocated. In the competitive process, this option provides efficiency over the status quo by supporting more confident decision-making on what process to follow and how to identify which applicant is successful. A clear mechanism for transferring assets is expected to limit negotiation's relating the sale, purchase and transfer of fixed assets on PCL if a concession opportunity changes hands.
Clarity for regulated parties	0	+ Incumbent and prospective concessionaires will have greater visibility of the situations DOC intends to run competitive allocation processes and how DOC intends to run them (including the outcomes sought).
Certainty for regulated parties	0	+ A mechanism to ensure fair compensation provides greater certainty for investment by addressing the disincentive to invest in improvements and/or new fixed assets.
Flexibility for the regulator	0	+ The option enables DOC to initiate a competitive allocation process without requiring it in all circumstances meaning they can be initiated when suitable and cost effective. The nature of the criteria means that they can be used in different scenarios and different types of applications to identify the best use and applicant of a concession opportunity.

	Status quo	Combined option: criteria for deciding when and how to allocate, and a valuation method
Giving effect to Treaty principles	0	+ Competitive allocation addresses a key barrier to accessing taonga by providing Māori the ability to apply for a concession that would likely be allocated directly under the status quo. The proposed "recognising Treaty rights and interests" criteria ensures that the importance of taonga and Māori connection to them, including practicing tikanga and kaitiakitanga, is accounted for in decision-making.
Feasibility and ease of implementation	0	- DOC generally lacks expertise in running competitive allocation processes and assessing economic impacts. The capacity and capability to run competitive allocation processes such as auctions and assess tender applications will need to be developed or procured externally. This may be resource intensive. Depending on the eventual specifics of the process for asset valuation, additional resources and capacity may also be required (e.g. procuring external valuers).
Overall assessment	0	++++++

Key for qualitative judgements

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

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

278. The combination of changes to allocation processes described above has the potential to be more beneficial than the status quo, but feedback from engagement, additional data and information, and further policy work is required to confirm the preferred option.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
DOC	• Additional costs to communicate changes and establish operational guidance.	*Medium*	*Low*
Current operators	• Additional costs to develop applications to submit to a competitive process. These are sunk costs if the current operator is unsuccessful. • Additional costs to undertake the valuation of any relevant fixed assets.	*Medium*	*Low*
First applicant	• If an applicant is returned, additional costs to adjust initial application to submit to a competitive process.	*Medium*	*Low*
Prospective concessionaires	• Additional costs to develop applications to submit to a competitive process. These are sunk costs for applicants who are unsuccessful.	*Medium*	*Low*
Māori	• Additional costs to develop applications to submit to a competitive process. These are sunk costs for applicants who are unsuccessful.	*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 and run competitive allocation processes.	*High*	*Low*
Current operators	• Improved transparency in the process for determining when and how to allocate concessions. • Expected to provide certainty that current operators will receive a fair return on investment when	*Medium*	*Low*
First applicant	• Improved transparency in the process for determining when and how to allocate concessions.	*Low*	*Low*
Prospective concessionaires	• Improved access to opportunities. • Improved transparency in the process for determining when and how to allocate concessions.	*High*	*Low*
Māori	• Improved access to opportunities. • Provides for active protection of when tendering an opportunity by ensuring that Treaty partner applicants rights and interests are considered when choosing who is successful.	*High*	*Low*

	• Improved transparency in the process for determining when and how to allocate concessions.		
Total monetised benefits	• Economic benefits have not been monetised due to poor evidence certainty. Most benefits are indirect as they relate to the outcomes from competitive allocations the options would enable.	*N/A*	*Low*
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 2.5: Concession terms and conditions

Terms and conditions can be set in contractual concession agreements

279. Section 17X of the Conservation Act provides the Minister of Conservation with the ability to set conditions in contractual concessions agreements. These conditions can relate to the activities or any relevant facility or structure as well. The conditions that can currently be imposed cover:

- The carrying out of an activity and where it can take place.
- The payment of rents, fees or royalties (provided in section 17Y), compensation for any adverse effects of the activity, the ability to set a bond and a waiver or reduction of any rent, compensation or bond.
- The restoration of the site and the removal of any structure or facility at the expense of the concessionaire.
- A covenant on any transfer, sublease, sublicence, or assignment of a concessions.
- The payment of any fees relating to the preparation of the concession document.
- Periodic reviews of the conditions.

280. There are standard conditions that are generally applied to concessions. For instance, these are template conditions for guiding permits, telecommunications infrastructure, easements, leases and licences. These conditions are available to the public prior to lodging applications and have previously been available directly from the DOC website. For concessions that involve fixed infrastructure, common 'make good' provisions are applied.

281. Some conditions are also set on a case-by-case basis to manage unique aspects of certain activities.

282. The Government needs to make sure that the right terms and conditions are in place before every concession is granted.

283. Negotiating terms and conditions can often prolong concession processing timeframes, increases costs to the applicant and DOC, and it can lead to inconsistent outcomes for conservation and the Crown's management operators who undertake the same activity.

Term lengths are also set in contractual concession agreements

284. Section 17Z of the Conservation Act sets out limits on the term lengths based on concession types. The following table describes these current limits.

Type	Term length
Permit	May be granted for a term not exceeding 10 years.
Easement	May be granted for a term not exceeding 30 years.
Lease	

Licence	May be granted for a term not exceeding 30 years, or for a term not exceeding 60 years when the Minister of Conservation is satisfied that there are exceptional circumstances.

285. While leases and licences can currently be granted for 60 years under ‘exceptional circumstance’, there are no policy settings that determine what ‘exceptional circumstances’ are.

286. Decision makers have been dependent on operational policy to guide these decisions. However, the public are not aware of what determines granting an ‘exceptional circumstance’ and they have not contributed to what that determination is.

Rents, fees and royalties are also set in contractual concession agreements

287. Section 17X of Conservation Act allows the Minister to charge concessionaires a rent, fee or royalty as part of their lease, license, permit or easement. DOC refers to these charges collectively as activity fees. The purpose of activity fees is to ensure that there is a return to conservation where somebody undertaking an activity are benefitting from the use of PCL.

288. The method for setting the fee depends on the nature of the concession activity and the scale of their activity. Tourism-related activities are generally charged on a percentage of revenue or per person basis. Non-tourism activities such as telecommunications infrastructure, grazing and easements are usually charged a fixed monthly or annual fee. Rents, fees and royalties imposed under Part 3B of the Conservation Act must be reviewed at least once in every three years.

289. Activity fees may be set at the market value, having regard to any factors that mean the concession is more valuable or less valuable than comparable opportunities. For example, a grazing license may have more strict contractual conditions placed on it than a standard private transaction. The Conservation Act requires DOC to review the activity fee for concessions at least every three years.

290. As discussed above, competitive allocation mechanisms such as tendering and auctions are a clear and transparent way of determining a market rate. However, it isn’t always efficient, practical, or appropriate to run a competitive allocation process every time a concession is granted.

291. The current framework for setting concession activity fees is not efficient. Ambiguity around what constitutes a market rate has resulted in prolonged discussions with concessionaires. There is also a risk that concessionaires are treated unequally if some are successful in arguing for a lower rate while others are not.

292. Determining a market rate has proven difficult for DOC where the activity is unique or largely occurs on PCL. Where DOC effectively has a monopoly, establishing comparative values is more challenging than for other asset categories such as grazing rights.

293. The requirement to review all concession fees every three years creates an unnecessary administrative burden for DOC. Many concessions are based on a

percentage of revenue, meaning that the return adjusts to inflation and changes in demand.

What options are being considered relating to conditions and term lengths?

Setting common or default terms and conditions in the proposed NCPS

294. Setting common or default terms in the new NCPS would clarify to everybody what outcomes are being sought by imposing concession contracts. This option does not limit additional conditions from being set on a case-by-case basis to manage unique aspects of certain activities.

295. The intention of this option is to make it clear to operators, prospective concessionaires, Treaty partners and the public that concessionaires are expected to clean up their mess and protect the conservation values that are present on site. This is reflective of the types of conditions that can already be imposed under the Conservation Act.

Clarifying when term lengths can be granted for more than 30 years

296. Criteria could be introduced to clarify when leases and licences could be granted for more than 30 years.

297. The criteria could include:

- The activity is appropriate on an effect management basis.
- Ensuring enough time for a fair return on capital improvements.
- Protects intellectual property associated with a new idea.

298. Some Treaty settlements include a right of first refusal for leases beyond a certain length that are less than 60 years. These agreements will be honoured if criteria are introduced.

If the status quo continued

299. Terms and conditions would continue to be set without direction being set in a regulatory instrument.

300. Decisions on whether to grant a concessions for more than 30 years under exceptional circumstances will continue without supporting policy settings.

Further work is required

301. Further work is required to determine what standard terms and conditions should be included in the NCPS. Engagement will help to identify relevant activities and conditions to be covered. Further analysis of common terms and conditions in existing concession agreements is also required. Analysis of frequency of application types will also aid in determining what standard terms and conditions are necessary.

302. section 9(2)(f)(iv) [redacted]

section 9(2)(f)(iv) [redacted]

303. Further work is required to establish the circumstances where concession terms longer than 30 years are appropriate and what criteria would be used to aid decision-makers in that assessment. Engagement will form the basis of this further work by seeking views on the circumstances where longer concession terms are justified.

304. Engagement will help DOC understand when it would be justified to grant leases and licences for more than 30 years. This includes exploring:

- Setting minimum and/or maximum term lengths for certain activities.
- The circumstances that would justify providing longer or shorter term lengths.
- Whether applications for new activities justify granting longer term lengths.
- Whether there are other options to consider.

How do the options compare to the status quo/counterfactual?

	Status quo	Setting common and default terms and conditions in proposed NCPS	Clarifying when term lengths can be set for more than 30 years
Conservation outcomes	0	+ Ensures that concessions are granted with common conditions that are designed to manage the impacts of most activities.	+ Ensures that concessions granted for more than 30 years are appropriate on an effects management basis.
Speed of decisions	0	+ Removes lengthy negotiations over conditions relating to the restoration of a site and compensation for any adverse effects of the activity.	+ Disincentivises lengthy negotiations over whether a concession can be granted for more than 30 years.
Clarity for regulated parties	0	+ Provides more clarity to applicants about the conditions are being imposed on their contractual concession agreement.	+ Clarifies a prospective concessionaires' expectations by explaining when, and when a decision maker wont, grant a concession for more than 30 years.
Consistent regulatory decision making	0	+ Terms and conditions in the NCPS would be standard across all relevant concessions	+ Guidance and clarity would mean consistency in the circumstances where concessions are granted for more than 30 years
Giving effect to Treaty principles	0	0 Standard terms and conditions in the NCPS can ensure that relevant conditions to protect rights and interests are included in all relevant concessions. However, there is a risk that standardisation does not properly account for localised rights and interests.	TBC Engagement with Treaty partners will inform whether there are implications from greater clarity around when concessions will be granted for more than 30 years, and what the circumstances should be.
Overall assessment	0	++++	++++

Key for qualitative judgements

+ better than doing nothing/the status quo/counterfactual

0 about the same as doing nothing/the status quo/counterfactual

- worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

305. The changes to setting terms, conditions and term lengths described above has the potential to be more beneficial than the status quo, but feedback from engagement, additional data and information, and further policy work is required to confirm the preferred option.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
DOC	• Additional costs to communicate changes, establish operational guidance for term lengths and maintain common contractual conditions that are available online.	*Medium*	*Low*
Concessionaires (including Treaty partners)	• Expected to result in more strict conditions relating to restoration of sites and compensation relating the effects of an activity.	*Low (so long as operators are compliant)*	*Low*
Public (including Treaty partners)	• There are no anticipated monetary costs to the public or Treaty partners.	*Low*	*Low*
Total monetised costs	• Costs have not been monetised due to poor evidence certainty.	*N/A*	*Low*
Non-monetised costs	• TBC – Engagement will inform if there are notable non-monetised benefits	*N/A*	*Low*
Additional benefits of the preferred option compared to taking no action			
DOC	• Setting common terms and conditions should reduce drawn out negotiations on every contract.	*Medium*	*Medium*
Concessionaires (including Treaty partners)	• Provides clarity to potential applicants before an application is submitted. • Supports operators to be more confident that they are being treated fairly in comparison to other operators undertaking the same activity.	*Medium*	*Low*
Public (including Treaty partners)	• Provides more certainty to Treaty partners that common conditions will be imposed on contractual concession agreements.	*Medium*	*Low*
Total monetised benefits	• Benefits have not been monetised due to poor evidence certainty.	*N/A*	*Low*
Non-monetised benefits	• Increased confidence in the consistency of the regulators decisions.		

What options are being considered relating to concession pricing?

Replacing reference to a "market value" with "a fair return to the Crown"

306. Removes the reference of 'the rent, fee, or royalty may be fixed at the market value' in section 17Y(2) of the Conservation Act and replaces it with 'the rent, fee, or royalty may be fixed as a fair return to the Crown'.

Regulating concession fees

307. Concession fees could be regulated in the proposed National CPS. This would be optional, not mandatory. If no rate is outlined in the regulations for the activity, fees would continue to be set for each concession based on DOC's guidance for decision makers.

308. The Minister would retain the ability to seek a return greater than the regulated rate by auctioning or tendering the opportunity. In a competitive allocation, the regulated rate would act as a price floor.

Amending the requirement to review concession every three years

309. The requirement to review activity fees every three years would also be removed. Concession fees set through regulation would be updated if the regulated fee changes.

310. The Minister would retain the ability to review fees not set by regulation, but it would be optional rather than necessary every three years.

If the status quo continued

311. Rents, fees and royalties imposed under Part 3B of the Conservation Act would continue to be set on a case-by-case basis and may be set at the market value. They would also continue to be required to be reviewed at least once in every three years.

Further work is required

312. Feedback from engagement and analysis of existing concessions will assist in identifying the circumstances in which regulating (and setting standard) fees for certain activity types would be beneficial, and the circumstances in which more regular fee reviews are needed.

How do the options compare to the status quo/counterfactual?

	Status quo	Combined option: setting fees based on fair return to Crown, regulating some fees and changing frequency of review
Contribution to conservation outcomes	0	+ Expected to ensure that the Crown will receive a fair return for allowing private commercial activities on PCL. Resources saved can be put towards other Departmental priorities. A price floor ensures that negotiations on rents, fees, and royalties do not sit below what a fair return to the Crown is. Does not limit increased returns to the Crown if an opportunity is competitively allocated.
Time taken to make or obtain concession decisions	0	+ Setting a fee according to 'market value' is difficult because there is often no market comparison off PCL. Fee-setting according to a 'fair return to the Crown' would shift expectations and reduce churn. Standard pricing adds efficiency by removing prolonged discussions and haggling with applicants who otherwise may refuse to sign their concession.
Clarity for regulated parties	0	+ May address ambiguity relating to the determination of a 'market value'. Regulated pricing provides greater clarity in advance in terms of what fees will be.
Certainty for regulated parties	0	+ Regulated pricing provides a greater degree of certainty in fees than regular rent reviews.
Overall assessment	0	++++

Key for qualitative judgements

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

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

313. The changes to concession pricing described above have the potential to be more beneficial than the status quo, but feedback from engagement, additional data and information, and further policy work is required to confirm the preferred option..

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
DOC	• Additional costs to communicate changes, establish regulated prices, and develop guidance to inform when rent, fee, and royalty reviews should be undertaken. • Could result in prolonged discussion about 'a fair return to the Crown' when there is not regulated price in place.	*Low*	*Low*
Concessionaires (including Treaty partners)	• Removes a concessionaire's ability to negotiate a lower fee than other operators when a regulated price is in place. • Could result in prolonged discussion about 'a fair return to the Crown' when there is not regulated price in place.	*Low*	*Low*
Public (including Treaty partners)	• There are no additional costs to the public.	*Low*	*High*
Total monetised costs	• Economic costs have not been monetised due to poor evidence certainty.	*N/A*	*Low*
Non-monetised costs	• TBC – Engagement will inform if there are notable non-monetised benefits	*N/A*	*Low*
Additional benefits of the preferred option compared to taking no action			
DOC	• Sets a price floor for some activities that is expected to ensure a fairer return to the Crown. • Does not limit increased returns to the Crown via competitive allocation. • Removes prolonged discussions about fees when a regulated price is in place. • Allows rent, fee and royalty reviews to be undertaken when required rather than being required at least once every three years.	*High*	*Low*
Concessionaires (including Treaty partners)	• Provides certainty to operators that they are not being charged more than another operator to undertake the same activity. • Removes prolonged discussions about fees when a regulated price is in place.	*Medium*	*Low*
Public (including Treaty partners)	• Provides more transparency relating to how much concessionaries are being charged to undertake an activity.	*Low*	*High*
Total monetised benefits	• Economic benefits have not been monetised due to poor evidence certainty.	*N/A*	*Low*
Non-monetised benefits	• Increased confidence in the consistency of the regulators decisions.		

Section 3: Delivering an option

How will the new arrangements be implemented?

314. The proposals in this interim RIS cover a wide range of options and mechanisms, ranging from changes in operational policy and practice to changes to primary legislation. There are also many different parties with potential responsibilities or involvement in delivering the changes described. As such, this interim RIS cannot detail how any new arrangements will be implemented until preferred options are identified. The final RIS produced following engagement and further policy work will contain more information on implementation.

315. DOC will be responsible for implementing changes to concessions processes and the conservation management planning framework. There may also be changes to how other parties interact with these processes, such as concessionaires (including potential concessionaires), tangata whenua, businesses, researchers, local councils and the public.

316. Issues that will need to be addressed during implementation include:

- section 9(2)(f)(iv) [redacted]
- Transitioning between current statutory planning documents and new arrangements. This includes identifying approaches for planning documents that are currently being drafted/reviewed, or due for drafting/review in the likely few years before any new arrangements come into force. Decisions will likely also be needed about how to transition the current contents of statutory planning documents, which may require differential approaches based on the type of content.
- Ensuring DOC has the necessary systems, processes and resources to deliver changes, monitor implementation and compliance, and take enforcement action as needed for conservation outcomes.
- What additional operational guidance may be necessary to give effect to Treaty principles when DOC interprets and administers conservation legislation, in addition to any changes made that relate to, for example, engagement with Treaty partners or considering of Treaty rights and interests in decision-making.

317. Some implementation activities may need to happen alongside the policy development and legislative process, particularly for the NCPS. The Government is considering drafting the first NCPS at the same time as the potential Conservation Amendment Bill to improve concessions. It could then receive public input during the select committee phase and come into force immediately when the Bill becomes law. This would mean prioritising the following:

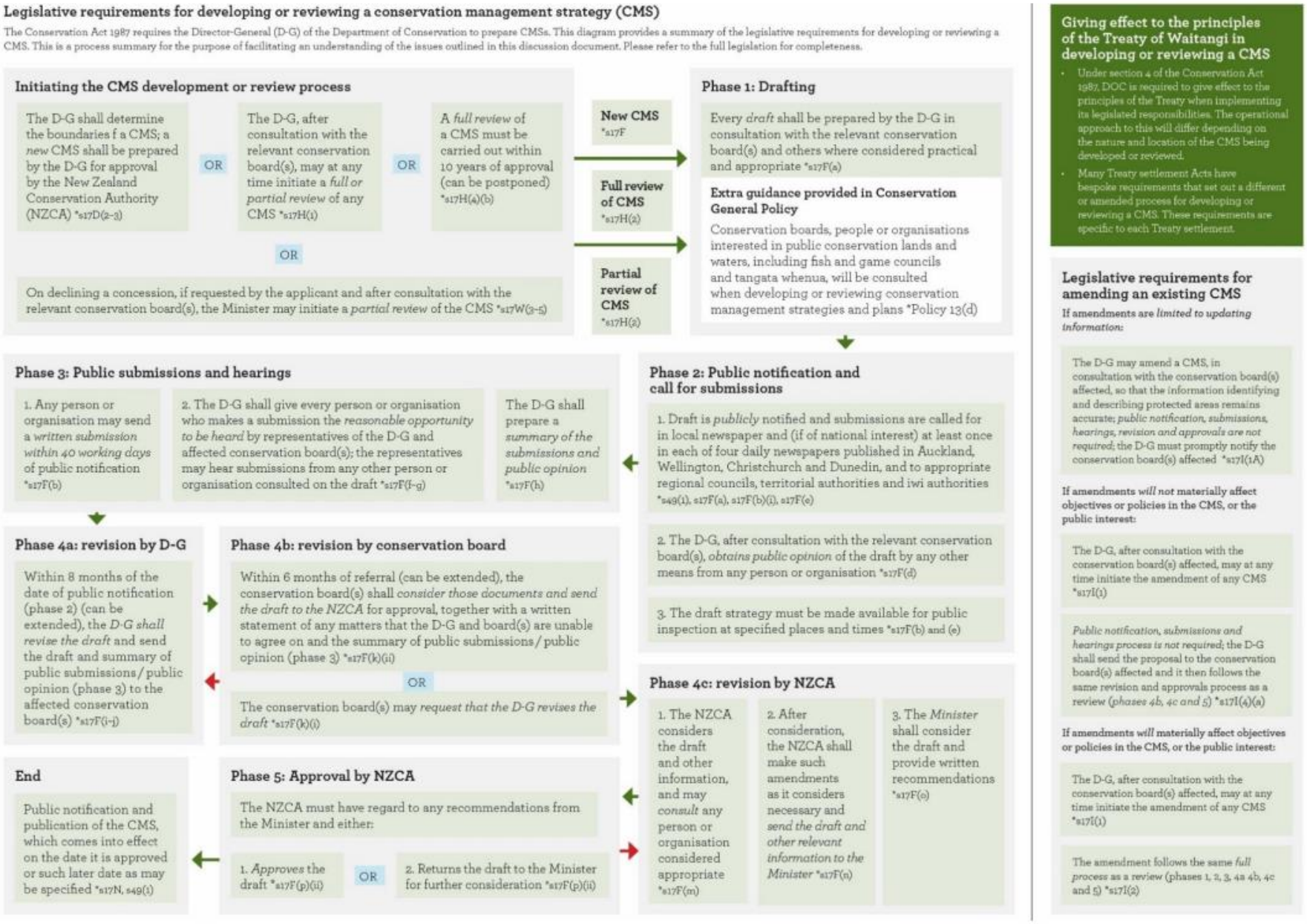
- Further work on identifying what activities may be appropriate to designate as permitted in advance, prohibited or exempt from needing a concession would need to be prioritised. This would require analysis of concessions data, engagement with Treaty partners, and effects analysis across several classes of activities. This would also require meeting iwi and hapū expectations around the Crown developing a bespoke understanding of the rights and interests in specific areas or with specific activities.

- The contents of the current CGP and NPGP would need to be assessed to identify what rules should be carried over to the NCPS.

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

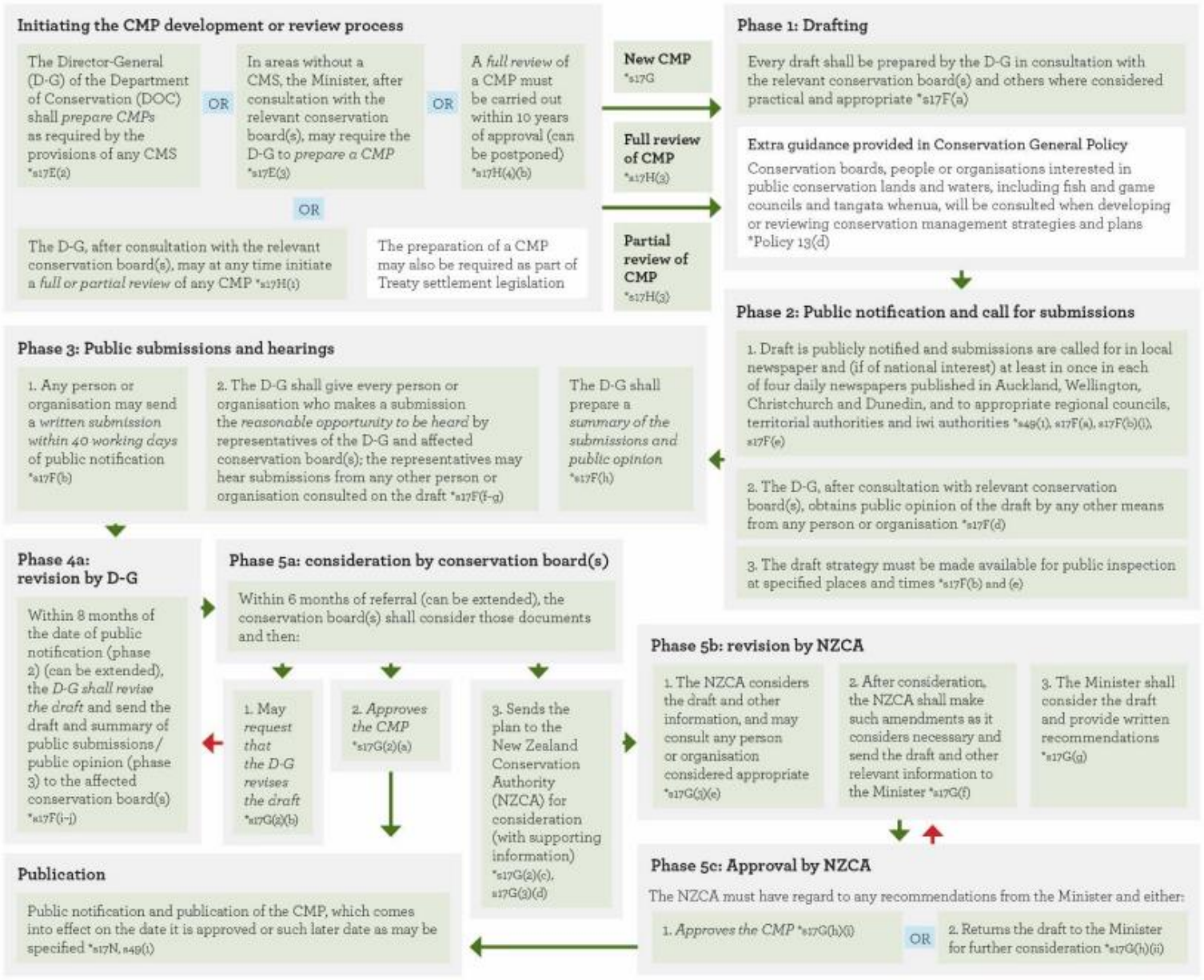
318. DOC will be responsible for monitoring, evaluating and reviewing any changes. In addition, the planned second phase of this work provides a vehicle to make any adjustments if immediately needed.

Appendix 1


Legislative requirements for developing or reviewing a conservation management strategy (CMS)
The Conservation Act 1987 requires the Director-General (D-G) of the Department of Conservation to prepare CMSs. This diagram provides a summary of the legislative requirements for developing or reviewing a CMS. This is a process summary for the purpose of facilitating an understanding of the issues outlined in this discussion document. Please refer to the full legislation for completeness.
Initiating the CMS development or review process
The D-G shall determine the boundaries f a CMS; a new CMS shall be prepared by the D-G for approval by the New Zealand Conservation Authority (NZCA) *s17D(2-3)
OR
The D-G, after consultation with the relevant conservation board(s), may at any time initiate a full or partial review of any CMS *s17H(1)
OR
A full review of a CMS must be carried out within 10 years of approval (can be postponed) *s17H(4)(b)
OR
On declining a concession, if requested by the applicant and after consultation with the relevant conservation board(s), the Minister may initiate a partial review of the CMS *s17W(3-5)
New CMS *s17F
Full review of CMS *s17H(2)
Partial review of CMS *s17H(2)
Phase 1: Drafting
Every draft shall be prepared by the D-G in consultation with the relevant conservation board(s) and others where considered practical and appropriate *s17F(a)
Extra guidance provided in Conservation General Policy
Conservation boards, people or organisations interested in public conservation lands and waters, including fish and game councils and tangata whenua, will be consulted when developing or reviewing conservation management strategies and plans *Policy 13(d)
Phase 2: Public notification and call for submissions
1. Draft is publicly notified and submissions are called for in local newspaper and (if of national interest) at least once in each of four daily newspapers published in Auckland, Wellington, Christchurch and Dunedin, and to appropriate regional councils, territorial authorities and iwi authorities *s49(1), s17F(a), s17F(b)(i), s17F(e)
2. The D-G, after consultation with the relevant conservation board(s), obtains public opinion of the draft by any other means from any person or organisation *s17F(d)
3. The draft strategy must be made available for public inspection at specified places and times *s17F(b) and (e)
Phase 3: Public submissions and hearings
1. Any person or organisation may send a written submission within 40 working days of public notification *s17F(b)
2. The D-G shall give every person or organisation who makes a submission the reasonable opportunity to be heard by representatives of the D-G and affected conservation board(s); the representatives may hear submissions from any other person or organisation consulted on the draft *s17F(f-g)
The D-G shall prepare a summary of the submissions and public opinion *s17F(h)
Phase 4a: revision by D-G
Within 8 months of the date of public notification (phase 2) (can be extended), the D-G shall revise the draft and send the draft and summary of public submissions / public opinion (phase 3) to the affected conservation board(s) *s17F(i-j)
Phase 4b: revision by conservation board
Within 6 months of referral (can be extended), the conservation board(s) shall consider those documents and send the draft to the NZCA for approval, together with a written statement of any matters that the D-G and board(s) are unable to agree on and the summary of public submissions / public opinion (phase 3) *s17F(k)(i)
OR
The conservation board(s) may request that the D-G revises the draft *s17F(k)(i)
Phase 4c: revision by NZCA
1. The NZCA considers the draft and other information, and may consult any person or organisation considered appropriate *s17F(m)
2. After consideration, the NZCA shall make such amendments as it considers necessary and send the draft and other relevant information to the Minister *s17F(n)
3. The Minister shall consider the draft and provide written recommendations *s17F(o)
End
Public notification and publication of the CMS, which comes into effect on the date it is approved or such later date as may be specified *s17N, s49(1)
Phase 5: Approval by NZCA
The NZCA must have regard to any recommendations from the Minister and either:
1. Approves the draft *s17F(p)(ii)
OR
2. Returns the draft to the Minister for further consideration *s17F(p)(i)
Giving effect to the principles of the Treaty of Waitangi in developing or reviewing a CMS
Under section 4 of the Conservation Act 1987, DOC is required to give effect to the principles of the Treaty when implementing its legislated responsibilities. The operational approach to this will differ depending on the nature and location of the CMS being developed or reviewed.
Many Treaty settlement Acts have bespoke requirements that set out a different or amended process for developing or reviewing a CMS. These requirements are specific to each Treaty settlement.
Legislative requirements for amending an existing CMS
If amendments are limited to updating information:
The D-G may amend a CMS, in consultation with the conservation board(s) affected, so that the information identifying and describing protected areas remains accurate; public notification, submissions, hearings, revision and approvals are not required; the D-G must promptly notify the conservation board(s) affected *s17I(1A)
If amendments will not materially affect objectives or policies in the CMS, or the public interest:
The D-G, after consultation with the conservation board(s) affected, may at any time initiate the amendment of any CMS *s17I(1)
Public notification, submissions and hearings process is not required; the D-G shall send the proposal to the conservation board(s) affected and it then follows the same revision and approvals process as a review (phases 4b, 4c and 5) *s17I(4)(a)
If amendments will materially affect objectives or policies in the CMS, or the public interest:
The D-G, after consultation with the conservation board(s) affected, may at any time initiate the amendment of any CMS *s17I(1)
The amendment follows the same full process as a review (phases 1, 2, 3, 4a 4b, 4c and 5) *s17I(2)

Legislative requirements for developing or reviewing a conservation management plan (CMP)

This diagram provides a summary of the legislative requirements for developing or reviewing a CMP under the Conservation Act 1987. This is a process summary for the purpose of facilitating an understanding of the issues outlined in this discussion document. Please refer to the full legislation for completeness.



Giving effect to the principles of the Treaty of Waitangi in developing or reviewing a CMP

- Under section 4 of the Conservation Act 1987, DOC is required to give effect to the principles of the Treaty when implementing its legislated responsibilities. The operational approach to this will differ depending on the nature and location of the CMP being developed or reviewed.
- Many Treaty settlement Acts have bespoke requirements that set out a different or amended process for developing or reviewing a CMP. These requirements are specific to each Treaty settlement.

Legislative requirements for amending an existing CMP

If amendments *will not* materially affect objectives or policies in the CMP, or the public interest:

The D-G, after consultation with the conservation boards affected, may at any time initiate the amendment of any CMP *s17I(1)

Public notification, submissions and hearings process is not required; the D-G shall send the proposal to the conservation board(s) affected and it then follows the same revision and approvals process as a review (*phases 4b, 4c and 5*) *s17I(4)(b)

If amendments *will* materially affect objectives or policies in the CMP, or the public interest:

The D-G, after consultation with the conservation board(s) affected, may at any time initiate the amendment of any CMP *s17I(1)

The amendment follows the same full process as a review (*phases 1, 2, 3, 4a 4b, 4c and 5*) *s 17I(3)

Legislative requirements for developing or reviewing a national park management plan (NPMP)

An NPMP is required for each national park. This diagram provides a summary of the legislative requirements for developing or reviewing an NPMP under the National Parks Act 1980. This is a process summary for the purpose of facilitating an understanding of the issues outlined in this discussion document. Please refer to the full legislation for completeness.

Initiating the NPMP development or review process

An NPMP shall be *prepared for each* national park; where a new national park is created, *an NPMP shall be prepared within 2 years* *s45(1), s45(5)

OR

The Director-General (D-G) of the Department of Conservation (DOC) and the conservation board(s) affected shall *review* the NPMP so that it takes account of increased knowledge or changing circumstances; an NPMP may be *reviewed* in whole or in part *s46(1), s46(2)

OR

A *full review* of an NPMP must be carried out within 10 years of approval (can be postponed) *s17H(4)(b)

New NPMP *s45, s47

Full review of NPMP *s46, s47

Partial review of NPMP *s46, s47

Phase 1: public notification of intent to review

The D-G, in consultation with the relevant conservation board(s), shall give notice of the intent to prepare or review the NPMP in a local newspaper and in daily newspapers in Auckland, Hamilton, Wellington, Christchurch and Dunedin, including an invitation for written suggestions on the proposed plan *s47(1)

Phase 2: Drafting

Every *draft* shall be prepared by the D-G in consultation with the relevant conservation board(s) *s47(2)

Extra guidance provided in General Policy for National Parks

When developing or reviewing an NPMP, DOC will consult the relevant conservation board(s) and tangata whenua and seek written comments from, and have regard to the views of, interested people and organisations, including fish and game councils *Policy s12(a)

Phase 3: Public notification and call for submissions

1. Draft is *publicly notified* in local newspaper and (if of national interest) at least once in each of four daily newspapers published in Auckland, Wellington, Christchurch and Dunedin, and to appropriate regional councils, territorial authorities and iwi authorities *s47(2)(a)

2. Notice is given in writing to all persons and organisations who made written submissions in phase 1 (intent to review NPMP) *s47(2)(b)

3. The *draft NPMP must be made available for public inspection* at specified places and times *s47(2)(c)

Phase 4: Public submissions and hearings

1. Any person or organisation may send a *written submission within 2 months* of public notification *s47(2)(a-b)

2. The D-G shall give every person or organisation who makes a submission the *reasonable opportunity to be heard* by representatives of the D-G and affected conservation board(s) *s47(3)

Phase 5a: revision by D-G

After considering submissions, the *D-G shall revise the draft* and send the draft to the affected conservation board(s) *s47(4)

Phase 5a: revision by D-G

The conservation board(s) shall consider the revisions and send the draft to the NZCA for approval, together with a written statement of any matters that the D-G and conservation board(s) are unable to agree on *s47(5-6)

OR

May *request that the D-G revises the draft* *s47(5)

Phase 5c: revision by NZCA

1. The NZCA considers the draft and supporting information *s48(1)

2. The NZCA shall make such *amendments* as it considers necessary and *send the draft to the Minister* *s48(1)

Phase 5d: Views of the Minister

The NZCA, before approval, must have regard to the views of the Minister *s48(2)

Phase 6: Approval and publication

The plan comes into effect on the date it is approved by the NZCA or such later date as may be specified by the NZCA *s48(3)

Every plan must be available for public inspection, free of charge, at DOC's Head Office and in other places as determined by the relevant conservation board(s) *s48(4)

Giving effect to the principles of the Treaty of Waitangi in developing or reviewing an NPMP

- Under section 4 of the Conservation Act 1987, DOC is required to give effect to the principles of the Treaty when implementing its legislative responsibilities. The operational approach to this will differ depending on the nature and location of the NPMP being developed or reviewed.
- Some Treaty settlement Acts have bespoke requirements that set out a different or amended process for developing or reviewing an NPMP. These requirements are specific to each Treaty settlement.

Legislative requirements for amending an existing NPMP

If amendments *will not* materially affect objectives or policies in the NPMP, or the public interest:

The D-G shall send the proposal to the conservation board(s) affected and it shall then follow the same revision and approvals process as a review (*phases 5b, 5c and 6*); public notification, submissions and hearings are not required *s46(5)

If amendments *will* materially affect objectives or policies in the NPMP, or the public interest:

The amendment follows the same process as that of a review, including full public notification, submissions and hearings (*phases 1, 2, 3, 4, 5a, 5b, 5c, 5d 6*) *s46(4)

Appendix 2

Step	*Description*
Applying for a concession	The applicant applies for their concession with the required information (detailed in relevant forms).
Checking the application	DOC checks the application to ensure it is not 'obviously inconsistent' with the Conservation Act or any management planning documents. DOC also checks that the application has the required and correct information to progress through processing.
Additional information (if required)	Additional information is requested from the applicant when required. If necessary, DOC will commission additional information to inform its analysis of the application.
Public notification	DOC must publicly notify every application for a lease (including renewals) of more than 10 years. DOC may publicly notify any other application if, having regard to the effects, it considers it appropriate to do so.
Analysing the application	The application is analysed and assessed against: • The purpose of the Conservation Act • Section 4 of the Conservation Act. • Specific requirements in Part 3B of the Conservation Act. • Effects assessments. • The purpose for which the land is held. • The relevant statutory planning document. Section 4 of the Conservation Act requires DOC to give effect to the principles of the Treaty of Waitangi when processing and making decisions on concession applications. Engagement with iwi and hapū takes place for most concession applications. Treaty partner engagement is an important mechanism to enable DOC to give effect to Treaty principles and section 4 through the application and decision processes. Various engagement may occur with other interested or impacted parties as well.
Decision, including setting conditions	The decision maker for the relevant application makes a decision to approve, approve in part, or decline the application based on the information provided and any supplementary advice. As part of the decision, the decision maker will set any conditions to avoid, remedy or mitigate any adverse effects of the activity. There are standard conditions that apply to most concessions. When reasonable, bespoke conditions may be developed for specific applications.

Interim Regulatory Impact Statement: Land exchanges and disposals

Coversheet

Purpose of Document	
Decision sought:	Release of a discussion document
Advising agencies:	Department of Conservation
Proposing Ministers:	Hon Tama Potaka, Minister of Conservation
Date finalised:	16 October 2024

Problem Definition

The current restrictions around the exchange or disposal of public conservation land (PCL) under the Conservation Act 1987 mean that potential transactions are limited, even in situations where the transaction would benefit conservation outcomes. The way the courts have interpreted the interaction between the Conservation Act and statutory planning documents (namely the Conservation General Policy) have contributed to this situation.

Executive Summary

Exchange or disposal of PCL under the Conservation Act is currently limited to land that is:

- Classified as stewardship areas (and some marginal strips), and
- Of no or very low conservation value.

Around a third of PCL is held in stewardship. It is practically very difficult to revoke a protective classification and reclassify PCL as stewardship land. Land can only have a protective classification revoked if the conservation values of the land no longer warrant that specially protected status.

Furthermore, exchange or disposal of stewardship land and marginal strips can only be considered if the land has no or very low conservation value. The conservation benefits of an exchange or disposal under the Conservation Act cannot be considered unless land is first assessed to be of no or very low conservation value.

These restrictions mean the Government is unable to exchange or dispose of PCL, and therefore unable to take advantage of exchange or disposal opportunities that would be beneficial for conservation.

The Government is seeking public feedback on changes to enable exchange or disposal of PCL for more land types (excluding those with the highest protective status), but only where there would be a net conservation benefit from the transaction. Some potential changes have been identified to address the two barriers above, i.e. PCL first needing to be classified as stewardship land, and needing to be of no or very low conservation value. Feedback from the public will be sought on when the Crown should have the ability to dispose of PCL, and how to design a test or criteria for net conservation benefit.

Feedback is also being sought on whether a net conservation benefit test should include supporting iwi/hapū aspirations to be met. The Department of Conservation (DOC) and the

Minister of Conservation must give effect to principles of the Treaty of Waitangi/te Tiriti o Waitangi (Treaty principles) when doing anything under or administering conservation legislation. DOC also has Treaty settlement commitments relating to rights of first refusal (RFR) for iwi and hapū over certain PCL, which the Minister has indicated would be incorporated into any option the Government chooses to proceed with.

The Minister of Conservation intends to consult the public on the changes above, including targeted engagement with Treaty partners and stakeholders. Feedback from engagement will support further development and consideration of the options, including identification of preferred options, and detailed analysis of those preferred options (i.e. costs, benefits, impacts on different population groups and regulated parties, risks and risk mitigations). This will be reflected in the final RIS prepared to support Cabinet decisions on whether to proceed and which changes to take forward, expected around April 2025.

Limitations and Constraints on Analysis

Cabinet priorities for Conservation portfolio

The key constraints and limitations on analysis are decisions by Cabinet. In August 2024, Cabinet agreed the following priorities for the Conservation portfolio:

1. Update the conservation regulatory system by progressing legislation to improve performance in processing concessions and permissions.
2. Target investment in high conservation value areas to restore key degraded habitats, support recovery of native species and maximise carbon storage on PCL.
3. Generate new revenue and build a more financially sustainable conservation system by 2026, and develop a plan to partner for investment in protecting high value conservation domains in 2025.
4. Build positive working relationships with iwi/hapū to make the most of their strong and long-term commitment to the environment.

The Minister of Conservation was also invited to engage with the public on increased flexibility to remove restrictions on the exchange or disposal of PCL and assets where this would deliver a net benefit to conservation. This is the subject of this interim RIS.

Timeframe limitations

The Minister of Conservation intends for Parliament to enact legislation relating to these proposals in the current term, should the Government decide to proceed. This has constrained the time available for DOC to prepare proposals for public engagement, and specifically to analyse/define the problem, identify options and analyse them.

DOC is planning to carry out policy development and analysis alongside the public engagement process as feedback is received. Where possible, the interim RIS identifies potential design issues or questions that may emerge, but at this stage it has not been possible to analyse all options that relate to the overarching policy problem.

Interim RIS produced ahead of engagement

This interim RIS has been produced to support Cabinet decisions on whether to proceed to public engagement. There has been no engagement on the proposals in this interim RIS.

Data and information limitations

In the time available, DOC has generally not been able to assess whether data and information is available to support analysis of the specific problems and options in this interim RIS. Where readily available, existing data and information has been used in some sections. Gathering the necessary data and information (including from DOC as regulator and submitters) to support informed decision-making will be a priority during the public engagement period.

However, even with additional time, it may not be possible to obtain all the data and information desired. For example, DOC does not know the scale of land that interested parties may wish to acquire, the specific conservation values of that land, and extent of land with conservation values suitable for DOC to acquire through an exchange. DOC also lacks information on the scale of land suitable for disposal under the Government's proposals.

Responsible Manager(s) (completed by relevant manager)

Eoin Moynihan

Manager, Regulatory Systems Policy

Policy and Regulatory Services Group

Department of Conservation

section 9(2)(a)

16 October 2024

Quality Assurance (completed by QA panel)	
Reviewing Agency:	Department of Conservation and Ministry of Business, Innovation and Employment
Panel Assessment & Comment:	A quality assurance panel has reviewed the two interim Regulatory Impact Statements (concerning concessions and management planning, and concerning land exchanges and disposals), and discussion document, and found that the quality of analysis meets expectations for documents designed to support public consultation.

Section 1: Diagnosing the policy problem

This is an interim RIS

1. This interim RIS has been produced partway through the policy development process, to support Cabinet decisions on whether to consult the public on potential changes. It should therefore be read alongside the draft discussion document 'Modernising conservation land management' and another interim RIS with the same title. Some sections of this interim RIS are also high level, because the options are likely to become more detailed through engagement and further policy work. For example, the delivery section (section 3) will only be able to be completed in detail when the preferred options are more developed. The preferred options may also change following engagement.

2. The overarching policy problem is that the Crown lacks the flexibility to exchange or dispose of conservation land in circumstances where there would be a clear benefit to conservation. This presents the opportunity to amend regulatory settings to better enable exchange or disposal of PCL. Given the public interest in conservation outcomes, any changes to exchange or disposal settings would need to be finely tuned to strike the right balance. The Government considers that any changes should only enable exchanges and disposal of PCL where this would better serve conservation outcomes.

3. Though sharing the same root cause and overarching system level problems, land exchange (exchanging of conservation land for new land) and land disposal (selling conservation land) will be treated as separate policy issues as each trigger distinct risks and opportunities.

What is the context behind the policy problem?

4. Land that is managed as PCL has come into the protected estate through a wide range of pathways, including from transfer to DOC at its establishment; transfer to DOC upon a public works purpose ceasing; acquisition for the values it holds; and gifting from another party for management as a protected area.

5. Management of PCL by DOC provides economy of scale for effective management, the ability to set standards of service for wildlife and visitor delivery, and the ability to acquire and apply knowledge to improve management.

6. DOC is the single largest manager of heritage sites in New Zealand. As well as archaeological sites from pre-European times, DOC manages a range of buildings and sites that preserve and tell the story of stages of the development of our country.

7. There is an increasing focus of biodiversity management on species and ecosystems where it is needed to conserve the most threatened or vulnerable species and places. The majority of PCL is not actively managed for biodiversity outcomes, as there is insufficient funding to enable that, and because in some cases DOC does not possess the tools to manage the pressures from predators at scale.

8. The public recreation experience network on PCL is largely a legacy network. Most of it was established by predecessor agencies. DOC manages the network to deliver safe visitor experiences and a standard of experience that meets the experience level of a range of visitors. Maintaining this network in its current extent at current standards is unaffordable.

9. DOC is both a land manager and a regulator. Part of being a responsible land manager is ensuring land that needs to be managed is retained, taking opportunities to acquire land where it is precious, but also sometimes identifying when DOC would benefit from

disposing or exchanging land where it would bring a net conservation benefit to the conservation estate.

10. PCL is held under a range of legislation and classifications. Significant changes to the status of PCL, such as the exchange, transfer or disposal of such land is provided for in limited circumstances and has stringent conditions.

11. A **land exchange** is the exchange of land between the Crown and another party. DOC administers provisions in the Conservation Act 1987 and Reserves Act 1977 that provide for land exchanges, each involving different criteria and/or processes. Only PCL that is of 'no or very low' conservation value can be exchanged. Under case law, exchanges are 'deemed' to be made up of a disposal and an acquisition.

12. A **land disposal** is the transfer of land ownership from the Crown to another party. While it is possible for land administered by DOC to be sold, the process of land disposal by the Crown is more complex than the transfer of freehold title. The Reserves Act provides for the disposal of reserves and the Conservation Act provides for the disposal of stewardship areas. Disposals are only allowed if the land is of 'no, or very low' conservation value.

13. The costs associated with the disposal process can be a major factor in determining whether a disposal proceeds, especially in the case of small areas of land with low value, which are not adequately defined and have no title. In these cases, the disposal costs may make the proposal uneconomic to progress.

What is the overarching policy problem?

14. The Government has limited flexibility to manage PCL.

15. Land exchange and disposal settings are restrictive to the point that the Crown cannot utilise these options where they could better achieve conservation benefit. Although not impossible, current limitations mean it is very hard to exchange or dispose PCL for strategic conservation priorities. This means land exchange and disposals are restricted even when it is in the interest of conservation.

16. The current policy settings for exchanges and disposal of PCL are limited in part by legislation: the Conservation Act only allows disposal of stewardship area and not land with specially protected status. The Conservation General Policy (CGP), a statutory planning document under the Conservation Act, also restricts disposals to land only with no or very low conservation values.

17. Such policy settings are intended to avoid breaking up or reducing the areas of land protected for conservation and future generations. However, the effect of these settings means the Crown is unable to exchange or dispose of conservation land even in circumstances where there would be a clear benefit to conservation.

18. Decisions for revocations, exchanges and disposals need to be based on the conservation values of the PCL being disposed of. The land's existing status may not be revoked or changed, in whole or part, unless the conservation values on the land no longer warrant that level of protection (i.e. hold low or no value) and therefore that status is no longer appropriate.

19. The current regulatory settings for land disposals and exchanges do not allow consideration of the benefits from exchange or disposal of PCL, such as the opportunity cost of being unable to exchange or dispose of certain land. The current provisions do not allow for consideration of overall conservation benefit, where there

would be some trade-offs in conservation values. This limits decision makers' ability to deliver more strategic conservation outcomes via land exchange and disposal.

20. If settings remained unchanged, the Government would continue to be unable to exchange or dispose of PCL in circumstances where there would be a clear benefit to conservation.

Conservation law and general policy set out when exchanges and disposals are possible

21. The Reserves Act provides for the exchange and disposal of reserves.

- The Reserves Act requires the administration of reserves to preserve and protect its values. Subject to that overall purpose, the Act provides for the disposal and exchange of reserves.
- If a reserve is exchanged, there must be an equality of exchange to protect the public interest in the existing reserve (i.e. if exchanging a scenic reserve, the land to be received should have the same values and be given the same classification).
- Where a reserve is sold, or money is paid during an exchange to approximate a similar value, proceeds must be spent for reserve purposes. This can include the acquisition of new reserve land and spending on the management of existing reserves.
- Exchange or disposal of DOC administered reserves must be consistent with Chapter 6 of the CGP.

22. The CGP significantly restricts the disposal of land by requiring that the Crown can only dispose of land if it is of low or very low conservation value. It also restricts disposal being undertaken for other more prescriptive reasons including where the land is important for the survival of any threatened indigenous species or represents a habitat or ecosystem that is under-represented in public conservation lands (or could be restored into one).

23. Other than reserves held under the Reserves Act, stewardship areas under the Conservation Act are the only form of conservation land that can be exchanged or disposed of. Stewardship areas are mostly conservation areas that have not been assessed yet to determine whether additional protection or preservation is required.

24. Once an assessment has been done, the land is classified as held for another specific purpose such as national park, ecological area, or scenic reserve or it can be disposed of for having 'low or no conservation value.' Land also becomes stewardship area if the

classification of land is no longer applicable and is revoked (e.g. if a natural disaster destroys the values which the classification is based on).

25. Section 26 of the Conservation Act provides for the disposal of stewardship areas and Section 16A provides for the exchange of stewardship areas. Chapter 6 of the CGP is also binding on any decisions to dispose of or exchange stewardship areas.

Key legal cases confirm that disposal is restricted to land with 'no or very low conservation value'

26. Two court cases, *Buller Electricity*[1] and *Ruataniwha*,[2] have added significant jurisprudence around disposal and exchange provisions in statute. These decisions have confirmed that the scope for exchange or disposal is limited to a narrow set of circumstances even for stewardship areas.

27. In 1995 in the *Buller Electricity* case, a stewardship area in the Buller area was being sought for a proposed hydro scheme on the Ngākawau river. The High Court held that there was no basis on which the Minister of Conservation could sell or otherwise dispose of the stewardship area unless he was satisfied that it was no longer required for conservation purposes. This was based on the mandatory nature of section 26 of the Conservation Act to manage the land to protect its values and the various definitions in the Act that reinforce this.

28. In July 2017, the Supreme Court issued its decision in *Hawke's Bay Regional Investment Company Limited v Royal Forest and Bird Conservation Society of New Zealand Limited* (also known as *Ruataniwha*). It found that the conservation park status of the land was to be revoked so that the land could be exchanged as a stewardship area.

29. The Supreme Court held that the status of the land could not be revoked unless the conservation values of the resources on the subject land no longer justify that protection.

30. Prior to *Ruataniwha*, DOC had processed exchanges on the basis of what DOC was getting through the exchange, as well as considering what was being giving up. A general principle of 'achieve a net conservation benefit' had been applied to exchanges in the past, although that particular phrase may not always have been used. If those requirements had been met, a decision is still needed on whether the exchange is desirable.

31. Since *Ruataniwha*, an exchange must be considered to involve a disposal, then an acquisition. The CGP restricts consideration of land disposal (and therefore exchanges) to instances where the land has no or very low value for conservation. Another effect of *Ruataniwha* is the conservation benefit of the exchange cannot be given consideration, significantly limiting what can considered in an exchange proposal.

How is the status quo expected to develop?

32. If the status quo continued, DOC would continue to experience disincentives to advancing disposal or exchange proposals. While the costs of disposal or exchange

---

1 *Buller Electricity Ltd v Attorney-General* [1995] 3 NZLR 344 (HC).

2 *Hawke's Bay Regional Investment Co Ltd v Forest & Bird & Minister of Conservation* [2018] NZSC 122.

can be recovered from the other party under section 60B of the Conservation Act, quite often the costs of preparing the land for sale exceed the value to a potential purchaser.

What objectives are sought in relation to the policy problem?

33. The Minister seeks to enable more flexibility for exchanges and disposals of PCL where this is in the interest of conservation.

34. That leads to the following objectives for this work:

- **Effectiveness**: this means whether, and the extent to which, any changes contribute to achieving conservation outcomes.
- **Good regulatory practice:** this includes ensuring the regulator (DOC) has the necessary flexibility, guidance, powers and tools to satisfactorily perform its statutory duties relating to exchanges and disposal of PCL. This also includes ensuring more clarity for the public about the situations in which the Crown may exchange or dispose of PCL.
- **Giving effect to Treaty principles:** section 4 of the Conservation Act requires that DOC administer the Conservation Act in a way that gives effect to the principles of the Treaty of Waitangi.

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

35. Options for change will be compared to the status quo using the criteria below:

Effectiveness	• Contribution to conservation outcomes.
Good regulatory practice	• Greater flexibility for the regulator to pursue exchanges and disposal of PCL. • Sufficient guidance, powers and tools for the regulator to perform statutory duties relating to exchanges and disposal of PCL. • Clarity for regulated parties about land exchanges and disposals.
Giving effect to Treaty principles	• Certainty about performing statutory functions in a manner that gives effect to Treaty principles. • Consistency with Treaty settlement commitments and other obligations.

36. Some of the criteria, and relationships between criteria, are founded in law. For example, section 4 of the Conservation Act requires DOC to administer land exchanges and disposals in a way that gives effect to the principles of the Treaty of Waitangi.

37. There are likely to be trade-offs between the criteria in the table above, and they will need to be carefully balanced when analysing each set of options. For example, it would theoretically be possible to give the regulator (DOC) the broadest powers, tools and discretion to exchange or dispose of PCL. However, that would be in tension with

achieving conservation outcomes, which would not be served by large-scale exchange or disposal (regardless of whether this is just enabled or also carried out) of PCL.

What scope will options be considered within?

38. The Minister has decided that the scope is to amend legislation to enable greater flexibility to exchange and dispose of PCL where it would contribute to conservation outcomes.

39. The scope does not include:

- Providing for greater flexibility to pursue exchanges and disposals beyond situations that are in the interests of conservation (e.g. enabling land disposals specifically for economic development or to generate revenue for the conservation system).
- Non-regulatory options such as amending operational processes. The interactions between current legislation and case law have demonstrated the need for legislative change. Nevertheless, any changes to regulation may be accompanied by changes to operational practice and guidance to best support implementation.

Section 2.1: Exchange of PCL

Exchange of PCL

40. Exchanges of PCL are currently possible in the below circumstances:

Requirements from conservation legislation	Conservation Act: Exchanges are possible for stewardship areas and marginal strips (to which section 24A of the Conservation Act would apply). The Minister of Conservation must be satisfied the exchange will enhance the conservation values of land managed by DOC and promote the purposes of the Conservation Act. Reserves Act: If a reserve is exchanged, there must be an equality of exchange to protect the public interest in the existing reserve (i.e. if exchanging a scenic reserve, the land to be received should have the same values and be given the same classification).
Requirements from statutory planning documents	CGP: Subject to 6(c) and 6(d), exchanges can only be considered if the land has no or very low conservation values.
Requirements from case law	*Ruataniwha* confirmed the above requirements and: • the process of exchange requires a disposal • for land administered under the Conservation Act there is no lawful basis to revoke the status of specially protected land to stewardship land (which can be disposed of) if the intrinsic values present warrant the specially protected status in the first place • the benefits of an exchange (net benefit gained) cannot be taken into account as part of a revocation decision.

41. Many exchanges are minor, usually with a neighbouring landowner. These may be prompted by the need for a more appropriate boundary fence line, or to improve the value of both properties (the neighbouring farmer receiving areas of pastureland and DOC receiving remnant natural areas), or by the need to achieve other objectives such as improving access to a protected area or a private land-locked property.

42. Other exchanges are generally initiated because an external party seeks to use part of the protected area network for an activity that would either not be able to be authorised by a concession or wishes to have a stronger property right (e.g. this may enable them to borrow money for the development). Because sale of PCL is seldom possible, exchanges are the legal mechanism that is normally considered in those cases (rather than special legislation), with the developer buying (or already owning) a property that

is known to have high conservation value, and then offering that in exchange for the area they wish to acquire.

What is the policy problem and opportunity?

43. Land exchange settings could be adjusted to enable exchanges with another party where this would support conservation outcomes and safeguard vulnerable biodiversity.

44. Exchanges can enable better representation of high value areas in the protected area network. Enabling exchanges could present opportunities to acquire land with values that are highly threated or underrepresented within Aotearoa's network of protected areas. They can also expand on or connect existing conservation areas. For example, ensuring the protection of a network of wetlands may be higher priority in an area with extensive areas of protected forest.

In 2019, DOC received a proposal from a hapū to exchange a 75 ha conservation area for 105 ha of land. Both areas of land supported good examples of modified but regenerating native forest.

The conservation area sought was significant to the hapū because it could enable them to manage climate change impacts and the future needs of their settlement (e.g. papakāinga housing), and to improve connectivity between areas of significance to the hapū.

The land offered in exchange held high conservation values (though different to those of the DOC area) and was larger. An exchange would also have supported the aspirations of the hapū and their resilience to climate change. However, as the DOC area had significant conservation values, it was deemed unlikely that it would meet the current tests (CGP 6(c) or (d)) required for the exchange to proceed.

What options are being considered?

45. The Government wants to seek feedback on the following changes to enable more flexibility for land exchanges:

- Allowing eligible areas to be exchanged directly without having to revoke their status and reclassify them as stewardship areas first.
- Replace the restriction that only land that is of no or low conservation value can be exchanged, with a requirement for exchanges to result in overall net conservation benefit.
- Exclude the following types of land from exchanges: PCL of international or national significance (e.g. a site like Tāne Mahuta); national reserves under the Reserves Act; ecological areas protected under the Conservation Act; land within Schedule 4 of the Crown Minerals Act 1991.
- Enable continued protection for land that is exchanged, where appropriate, through instruments such as covenants.

46. These changes could be pursued individually or in combination. However, the first two elements – enabling exchange without first needing to classify land as stewardship land and replacing the ‘no or low conservation value’ requirement – would be essential to overcome the current impediments for land exchanges.

47. These changes would enable and set clear criteria around exchanges of conservation land so that a net benefit test can be applied, while conservation bottom lines are maintained even in cases where development is an outcome of an exchange. A net

conservation benefit test would ensure that losing any high conservation values must be met by the acquisition of equally high, or higher, values.

48. There is an opportunity to clarify the tests for exchanges with a net conservation benefit test and safeguards. There are existing criteria around exchanges and disposals in the CGP that could be retained.

49. These changes would clarify the tests for exchange of PCL. As stated by the New Zealand Conservation Authority (NZCA) in their 2018 response to the *Ruataniwha* decision, it was not the intention of either the then-NZCA or then-Minister that the disposals provisions in the CGP were to apply to exchanges under the Conservation Act. To ensure clarity to those who may be interested in acquiring PCL via an exchange, it is important for DOC to outline eligibility criteria and process for exchanges under a net conservation benefit test.

50. While there are potential conservation benefits from enabling and broadening the scope of eligible land exchanges, DOC recommends strong safeguards to mitigate the risk of known high value conservation areas being exchanged e.g. applying a bottom-line to protect ecosystems that are already seriously under threat. Where appropriate, there is potential for continued protection for land that is given up through instruments such as covenants.

51. In practice, broadening the 'scope' to include areas with higher conservation protections would mean that suitable land would still likely be scarce. Identifying such land for exchange would be set at a higher bar and will be costly and time-consuming for the applicant/other party interested in exchanging land.

Allow eligible areas to be exchanged directly without first needing to be reclassified

52. The primary change required is to allow the Minister to authorise exchanges of land for conservation areas other than stewardship areas. It would also be necessary that land with greater than no or very low conservation value be exchanged, so long as there is a net conservation benefit. As is the case for stewardship areas currently, the Minister would need to demonstrate that the exchange would have a net conservation benefit.

53. This approach would look to resolve the issue raises through the *Ruataniwha* case - which found that for land administered under the Conservation Act, there is no lawful basis to revoke the status of specially protected land to stewardship land (which can be disposed of) if the intrinsic values present warrant the specially protected status in the first place.

54. This would remove the procedural step to reclassify land to stewardship areas just in the effort to allow PCL to be considered for an exchange.

Replace the 'no or low conservation value' requirement with a net conservation benefit test

55. Restricting exchanges to 'like for like' values or no or low value limits the ability to achieve optimal conservation outcomes. In some situations, an exchange of a stewardship area with other land with different but equal or higher conservation values could result in a superior conservation outcome. However, caution needs to be exercised in such a situation because making relative assessments of conservation value is inherently difficult and the assessment would be particularly vulnerable to differences in expert opinion.

56. The current tests for exchanges are primarily concerned with protecting the 'intrinsic values' of conservation land. This means that land where any meaningful conservation values exist cannot be exchanged for land that has higher conservation values. The

test to authorise an exchange could be amended to consider whether the conservation values of the land are enhanced overall.

57. It is difficult to meet the current ‘no or low value’ test to exchange PCL as judging the conservation value of land is highly subjective. Any land can be argued to have some level of conservation value and can therefore restrict an exchange from even being considered. This risk also exists when assessing net conservation benefit. Given the inherent subjectivity, it would be necessary to create a process with criteria and guidance to ensure decisions are procedurally and substantively robust.

58. The ‘net conservation benefit’ test relates to the protected area network overall, as the two areas of land in an exchange proposal are likely to be in very different environments and impact different ecosystems. Exchanges are therefore likely to affect multiple communities and perhaps multiple iwi and hapū.

59. Applying the net conservation benefit test may mean that a land exchange may require the loss of some conservation value on the original piece of PCL. In these situations, it would be especially important that the ‘net conservation benefit' be demonstrated before authorising an exchange.

60. This approach prioritises the conservation value (via net conversation benefit) over the market value of the land which can be financially risky in cases where the financial value of the land is not like for like.

Exclude some types of land from exchanges

61. PCL of international or national significance (e.g. a site like Tāne Mahuta); national reserves under the Reserves Act; ecological areas protected under the Conservation Act; land within Schedule 4 of the Crown Minerals Act would be excluded to protect their known high conservation value.

62. Exact figures regarding the proportion of PCL that this represents is unknown and will need to be calculated.

63. After removing these types of land from eligibility, the amount of land that may be sought for exchange is currently unknown – presenting the risk of undertaking legislative change to enable a potentially low number of exchanges.

Enable continued protection through covenants

64. Conservation values on the land being exchanged could potentially be protected through a covenant however, a covenant may not be able to entirely ensure a particular outcome for conservation values on the land in question.

65. Any additional protections such as covenants could decrease the interest of parties wanting to exchange land with the Crown.

66. Conservation covenants would require monitoring to ensure new owners are compliant which would drive up operational costs. DOC would require further resources allocated to the processing of exchanges if covenants are to be applied as a safeguard.

Treaty considerations

67. Tangata whenua have significant connections and interests in PCL, and the Government has an obligation to consider active protection of interests of the land identified by iwi and hapū. DOC notifies and, in some cases, consults with iwi and hapū

once an exchange proposal is received, and generally seeks to ensure applicants consult with all relevant parties prior to making a proposal.

68. Engagement with iwi and hapū will affect the design of this proposal. A range of options could be employed to ensure Māori rights and interests are appropriately considered in exchange decisions.

69. This could include but not limited to engaging with iwi directly to ensure active protection of taonga and wāhi tapu on land that may be eligible for exchange. It may also be appropriate to provide for active settlement discussions by excluding some land in the eligible pool of land to be exchanged e.g. through the Crown's ability to utilise covenants.

70. Rights of first refusal are activated when the Crown no longer requires land and decides to dispose it. Exchanges of PCL for new land to be protected for conservation purposes may not trigger an RFR. Early settlement legislation provides that a disposal for the purposes of exchanges does not trigger the RFR, which likely informed subsequent settlements.

71. A net conservation benefit test would include consideration of Treaty rights and interests. An outstanding policy issue is the degree of weighting afforded to tangata whenua rights and interests in an exchange decision. For instance, in the scenario where a developer is seeking to acquire PCL, consideration should be given to whether and what circumstances DOC should decline and approve an application based on consultation with iwi, where other elements of a net benefit test can be met.

72. More flexible exchange provisions could have positive economic impacts for iwi or hapū if they have ownership or investment in a development seeking a land exchange.

Areas where further work is required

73. The proportion of PCL that this might apply to and the volume of people who would be interested to seek exchanges are yet to be understood.

74. For both exchanges and disposals, further work is required to understand the range of protections over PCL needed, which will inform the specific type of covenants (e.g. whether existing types of conservation covenants are sufficient). For disposals, where PCL is marketed through LINZ, further work is needed on the best manner to ensure protections on the land are transferred through the sale.

Fast-track Approvals Bill

75. The Fast-track Approvals Bill (FTA Bill) is currently going through the legislative process. It provides a streamlined decision-making process to facilitate the delivery of

infrastructure and development projects with significant regional or national benefits. The FTA Bill allows for exchanges of PCL for projects dealt with by the FTA Bill.

76. The proposals the Government intends to consult on relating to exchanges differ from those under the FTA Bill:

	Status quo: Conservation Act, Reserves Act and CGP	**Proposed: FTA Bill**	**Proposed: Conservation Act**
Test for exchange	The benefits of an exchange cannot be taken into account.	Exchanges are only possible where they would enhance the conservation values of land managed by DOC, including any money received for improvements to enable enhancements of conservation values (i.e. to result in net conservation benefit).	Exchanges are only possible where they would result in net conservation benefit.
Matters to be considered	The exchange must enhance the conservation values of PCL managed by DOC and promote the purposes of the Conservation Act.	The purpose of the FTA Bill must be given the greatest weight of all factors, except for the net conservation benefit test above. Other factors that must be considered are: the conservation values of the land concerned; the financial implications for the Crown; whether the consequences of the exchange would be practical to manage on an ongoing basis (including whether enclaves of private land within conservation areas or Crown-owned reserves would be created); legal and financial liabilities, and health and safety risks; the CGP.	To be identified through public consultation and further policy work.
Scope of PCL available for exchange	Only PCL of no or low conservation value can be exchanged. For exchanges under the Conservation Act, land must be either a stewardship area or a marginal strip. There is no lawful basis to revoke the status of protected land to classify it as stewardship land. For exchanges under the Reserves Act, there must be an equality of exchange (i.e. the land being received must have the same values as the land being exchanged).	All conservation areas (excluding most of the land listed in Schedule 4 of the Crown Minerals Act and national reserves) and Crown-owned reserves. No requirement for PCL to first be classified as stewardship areas.	PCL of international or national significant is not eligible for exchange. PCL listed in Schedule 4 of the Crown Minerals Act is not eligible for exchange. No requirement for PCL to first be classified as stewardship areas.

How do the options compare to the status quo/counterfactual?

	Status quo	Consultation option
Contribution to conservation outcomes	0	+ This option would allow exchanges in situations where there is net conservation benefit. Under the status quo, there are situations where exchanges may offer net conservation benefit but cannot be pursued. Exchanges relating to the most precious PCL (eg natural reserves, ecological areas) would be explicitly ruled out.
Greater flexibility to pursue disposals	0	+ Currently, exchanges are very hard and impractical for DOC to pursue. This option would give DOC greater flexibility by removing the practical barriers of needing to first reclassify land as a stewardship area, or first meet the test for disposals.
Sufficient guidance, powers and tools for regulator	0	+ This option would give DOC the ability to protect conservation values on the land being exchanged, e.g. through covenants. For example, a covenant could restrict extractive industry being pursued on the land in future. However, use of such instruments could decrease the market value of the land being disposed of and may affect the viability of sales.
Clarity for regulated parties about exchanges	0	+ By clarifying the circumstances in which exchanges are possible and the statutory tests for exchanges, the public would have greater knowledge about the range of situations in which exchanges of PCL may be possible.
Certainty about giving effect to Treaty principles	0	TBC Direct engagement with iwi and hapū will affect the design of this proposal and how it gives effect to Treaty principles and existing commitments. For example, a range of options could be pursued for considering Māori rights and interests in exchange decisions.
Consistency with Treaty settlement commitments and other obligations	0	
Total	0	++++

Key for qualitative judgements:

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

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

77. The option could offer potential benefit over the status quo. Further policy work, including feedback from public engagement, is required before a preferred option can be identified.

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			
Regulated groups	Nil	N/A	N/A
Regulator	Greater indirect costs from: • volume of land exchanges that are able to be pursued (e.g. surveying, conveyancing), • monitoring and enforcing covenants.	Low	Low
Others (e.g., wider govt, consumers, etc.)	Nil	N/A	N/A
Total monetised costs	The main costs are indirect: to the regulator (DOC) in using any greater flexibility provided through this option (i.e. actually pursuing a greater volume of land exchanges than is currently feasible).	This cost can be monetised but cannot be estimated in advance.	
Non-monetised costs		*(High, medium or low)*	
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Greater ability to make exchanges with the Crown.	Low	Low
Regulator	Ability to acquire lands of greater conservation value.	Medium	Low
Others (eg, wider govt, consumers, etc.)			
Total monetised benefits	Because this would be a change to an enabling framework, rather than a change to direct particular exchanges of parcels of land, there are no direct monetised benefits arising from this change.	N/A	N/A
Non-monetised benefits	The main non-monetised benefits are to the Crown and potential interested parties in being able to pursue mutually beneficial exchanges of land.	Low to medium	Low

78. Further policy work, including feedback from public engagement, is required before the marginal costs and benefits of the preferred option can be identified.

Section 2.2: Disposal of PCL

Disposal of PCL

79. Disposals of PCL are currently possible in the below circumstances:

Requirements from legislation	Conservation Act: Disposal is only possible for stewardship areas or marginal strips (to which section 24A of the Conservation Act would apply). Reserves Act 1977: Subject to the purpose of the Act, the Act allows for reserves to be disposed.
Requirements from statutory planning documents	CGP: 6(c) and 6(d) means that disposal can only be considered if the land has no or very low conservation values.
Requirements from case law	*Ruataniwha* confirmed that there is no lawful basis to revoke the status of specially protected land to stewardship land (which can be disposed of) if the intrinsic values present warrant the specially protected status in the first place.

80. While it is possible for PCL administered by DOC to be sold, the process of land disposal by the Crown is somewhat more complex than the normal transfer of freehold title. The costs (e.g. surveying, conveyancing) associated with the process can be a major factor in determining whether a disposal proceeds, especially in the case of small areas of land with low value, which are not adequately defined and have no title. In these cases, the disposal costs may make the proposal uneconomic to progress.

81. While the costs of disposal or exchange can be recovered from the other party under section 60B of the Conservation Act, quite often the costs of preparing the land for sale exceed the value to a potential purchaser. Although the Minister of Conservation holds authority to dispose of PCL (e.g. under section 26 of the Conservation Act and section 25 of the Reserves Act), giving effect to this decision remains subject to LINZ processes for disposing of Crown land at present.

82. After Departmental land status checks and relevant disposal tests public notification, approval by the relevant regional director, and valuation, the disposals process is referred to LINZ. A LINZ-accredited agent then confirms whether the land is subject to requirements under the Public Works Act, or any offer backs to previous owners. Where there is a RFR in place, the land will be offered to relevant iwi/hapū.

83. Where land is not subject to a Treaty settlement, the Māori Protection Mechanism policy requires that the

MetService Building, Wellington

The MetService building is located on the Kelburn Community Buildings Reserve, a local purpose reserve administered by DOC in Wellington. In May 2023, MetService terminated their long-term lease on the land due to earthquake damage to the building and the significant cost of remediation.

DOC is not funded to manage the building. DOC considers there no DOC or conservation need for the building or land.

A possible option is to revoke reserve status for the part of the reserve containing the footprint of the building and the carpark to allow for potential disposal. However, the building has been assessed as holding heritage values and was recently scheduled as a heritage building in the Wellington District Plan.

Given this, the site is unlikely to meet the current tests for disposal, as conservation values include natural and historic resources.

protection of Māori interests is considered before the disposal can occur. The Crown may decide to hold the land for a future settlement. LINZ has a regulatory role in ensuring that these obligations are met.

84. The land is generally marketed on the open market via a tender process, run by an accredited LINZ agent.

What is the policy problem and opportunity?

85. Disposing land may present opportunities for conservation. For example, there may be marginal parts of PCL where liabilities (e.g. from degraded fixed assets and structures) and maintenance and/or compliance costs (e.g. fire risk). If such land was disposed of, greater conservation outcomes could be achieved overall given the removal of costs and liabilities, allowing resources to be redirected towards purposes that better serve conservation outcomes.

86. Liberalisation of disposal provisions could allow DOC to better and more strategically manage PCL. Some land has no or low value for conservation, and some value land could be managed by others. For example, the land may be adequately protected by district or regional plan provisions, or the values may be at risk from impacts that would not be managed by inclusion in the protected area network (e.g. drainage of land adjacent to a wetland).

87. There are parcels of PCL that due to departmental prioritisation, have gone without funding and therefore active management. There are ways to transfer administration and management of reserves to other parties (through an appointment to control and manage or a vesting of the reserve). The conservation values on the land could be protected through a covenant put in place in a decision to dispose or exchange the land.

88. While economic development and revenue making is not a policy driver, it was agreed at Cabinet [ECO-24-MIN 0154] that additional conservation revenue from the transfer or sale of PCL will be reinvested into the conservation estate to improve biodiversity, recreation and heritage.

89. It should be noted that simply holding land as a protected area without active investment or management can have good conservation outcomes. The protective status itself can provide for natural maintenance of the conservation value the land has and allow for natural rewilding/regeneration of flora and fauna, even in the absence of active management by DOC.

What options are being considered?

90. The Government wants to seek feedback on the following changes to enable more flexibility for disposals of PCL:

- Allowing eligible areas to be disposed without having to revoke their status and reclassify them as stewardship areas first.
- Replace the effective restriction that only land that is of no or low conservation value can be disposed with a requirement for transactions to result in overall net conservation benefit.
- Restrict disposals to situations where land is surplus to conservation needs.
- Exclude the following types of land from exchanges: PCL of international or national significance (e.g. a site like Tāne Mahuta); national reserves under the

Reserves Act; ecological areas protected under the Conservation Act; land within Schedule 4 of the Crown Minerals Act.

- Enable continued protection for land that is disposed, where appropriate, through instruments such as covenants.

Allow eligible areas to be exchanged directly without first needing to be reclassified

91. This would remove the procedural step to reclassify land to stewardship areas just in the effort to allow PCL to be considered for a disposal.

Restrict disposals to situations where land is surplus to conservation needs

92. Land that is 'surplus to conservation needs' is yet to be defined. This gap currently limits our ability to discern what type and level of conservation benefit would be enabled through more flexibility in how land is assessed for disposal.

93. Based on current understandings, it is highly unlikely that any assessment of PCL would result in finding a notable amount of land that could be disposed from a conservation perspective.

Replace the 'no or low conservation value' requirement with a net conservation benefit test

94. A net conservation benefit test for the disposal of PCL is a more difficult assessment to make than for an exchange.

95. The net conservation benefit of disposal of land surplus to conservation needs would be the removal of costs and liabilities, allowing resources to be redirected towards purposes that better serve conservation outcomes.

96. Development of criterion and conservation rationale for disposals would allow consideration of a disposal in more situations than present, provided that there is net conservation benefit from the disposal.

97. Enabling the disposal of PCL more broadly would require DOC to create a new robust methodology to assess a net conservation benefit from a disposal. This would likely be time intensive and difficult due to the subjective nature of assessing conservation values. It is unlikely to be many cases involving like for like comparisons to test for net benefit – meaning like-unlike comparisons will usually be required.

98. If the land being disposed of is of low or moderate conservation value, a net conservation benefit test for disposals will be a more simplistic assessment. A net conservation benefit test for disposals of higher conservation values could include safeguards.

99. Any money acquired for land would need to be spent on enhancement projects in the remaining estate that provided a similar conservation enhancement in perpetuity, and ongoing maintenance costs could not exceed the maintenance cost equivalent of the disposed land. Should the ongoing costs of a project endure unanticipated variations, this would create unintended financial risks for the Crown.

100. Other than removing some of costs and liabilities through disposal, realising conservation benefit would require that any money from land sales be ringed fenced for DOC to invest in conservation elsewhere, for example buy another parcel of land with higher actual or potential conservation value or pay for specific conservation projects. Market value of such land may not be significant. To maximise the value of the

transaction, DOC would require prior thinking to be done to decide what to fund, for example from certain DOC listed projects.

Exclude areas of high conservation value from disposals

101. PCL of international or national significance (e.g. a site like Tāne Mahuta); national reserves under the Reserves Act; ecological areas protected under the Conservation Act; land within Schedule 4 of the Crown Minerals Act would be excluded to protect their known high conservation value.

102. Exact figures regarding the proportion of PCL that this represents is unknown and will need to be calculated.

103. After removing these types of land from eligibility, the amount of land that may be sought for exchange is currently unknown – presenting the risk of undertaking legislative change to enable a potentially low number of disposals.

Enable continued protection through covenants

104. As per section 2.1 regarding the exchange of PCL, conservation values on the land being disposed could potentially be protected through a covenant, however a covenant may not be able to entirely ensure a particular outcome for conservation values on the land in question. For example, covenants could allow the construction of a hotel but not allow extractive industry.

105. A process to identify land to be disposed will need to appropriately assess the full conservation value of PCL, so that DOC can fully consider any trade-offs to conservation. In the case of stewardship land, it cannot be assumed that land does not have conservation value. All land would need to be assessed ahead of being considered for disposal rather than using any blanket approaches, for example, land held as a certain land classification to be considered for disposal.

Treaty considerations

106. Actively seeking disposal of certain land parcels has not been enabled for PCL more broadly. Where PCL has been determined as eligible/listed for disposal, RFR would be triggered, and this would provide respective settled Treaty partners the opportunity to purchase that land which may have significance in enhancing ownership and mana over lands.

107. The Crown is increasingly receiving requests for the transfer of ownership of PCL from both settled and non-settled iwi and hapū. More flexibility in disposal settings presents an opportunity to meet Treaty partner aspirations for the return of suitable PCL which could support enhanced mana, rangatiratanga and exercise of kaitiakitanga over their land.

Areas where further work is required

108. Further policy work is required to understand the situations in which disposal of PCL could result in net conservation benefit. This will also help inform the detailed design of

any net conservation benefit test. Additional work is also needed to design a method or process of assessing whether land is surplus to conservation needs.

Alternative options beyond scope

109. Pursuing disposals for reasons not related to conservation is possible, but there would still be ancillary conservation benefits e.g. from others managing land better are beyond the scope of this work.

How do the options compare to the status quo/counterfactual?

	Status quo	Consultation option
Contribution to conservation outcomes	0	+ This option would allow disposals in situations where there is net conservation benefit. Under the status quo, there are situations where disposals may offer net conservation benefit but cannot be pursued. Disposals relating to the most precious PCL (e.g. natural reserves, ecological areas) would be explicitly ruled out.
Greater flexibility to pursue disposals	0	+ Currently, disposals are very hard and impractical for DOC to pursue. This option would give DOC greater flexibility to pursue exchanges by removing the practical barriers of needing to first reclassify land as a stewardship area, or meet tests for disposals.
Sufficient guidance, powers and tools for regulator	0	+ This option would give DOC the ability to protect conservation values on the land being sold or disposed of, e.g. through covenants. For example, a covenant could restrict extractive industry being pursued on the land in future. However, use of such instruments could decrease the market value of the land being disposed of and may affect the viability of sales.
Clarity for regulated parties	0	+ By clarifying the circumstances in which disposals are possible and the statutory tests for disposals, the public would have greater knowledge about the range of situations in which disposal of PCL may be possible.
Certainty about giving effect to Treaty principles	0	TBC Direct engagement with iwi and hapū will affect the design of this proposal and how it gives effect to Treaty principles and upholds existing settlement commitments. For example, a range of options could be pursued for considering Māori rights and interests in disposal decisions. RFR commitments will be upheld.
Consistency with Treaty settlement commitments and other obligations		
Total	0	++++

Key for qualitative judgements:

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

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

110. The option offers potential benefit over the status quo. Further policy work, including feedback from public engagement, is required before a preferred option can be identified.

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			
Regulated groups	Nil	N/A	N/A
Regulators	Greater cost from: • volume of disposals that are able to be pursued, • monitoring and enforcing covenants.	Low	Low
Others (e.g., wider govt, consumers, etc.)	Nil	N/A	N/A
Total monetised costs	The main costs are indirect: to the regulator (DOC) in using any greater flexibility provided through this option (ie actually pursuing a greater volume of land disposal than is currently feasible).	This cost can be monetised but cannot be estimated in advance.	
Non-monetised costs		*(High, medium or low)*	
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Greater ability to purchase land from the Crown	Low	Low
Regulators	Reduced liabilities associated with land that is potentially disposed of	Low	Low
Others (e.g., wider govt, consumers, etc.)			
Total monetised benefits	Because this would be a change to an enabling framework, rather than a change to direct particular disposals of parcels of land, there are no direct monetised benefits arising from this change.	N/A	N/A
Non-monetised benefits	The main non-monetised benefits are to the Crown and potential interested parties in being able to	Low to medium	Low

	pursue mutually beneficial land transactions.		

Section 3: Delivering an option

How will the new arrangements be implemented?

111. The proposals in this interim RIS will require legislative change to implement. Further detail about implementation will be provided in a final RIS following engagement and further policy work.

112. Processing exchanges and disposals of PCL are time and resource intensive. The proposals being considered by the Government are about enabling or adding more flexibility for exchanges and disposals, rather than deciding whether to use that added flexibility to exchange or dispose of certain PCL. Actual decisions about whether to use any new arrangements or provisions to carry out exchanges and disposals will depend on the circumstances of each case, including whether the proposal meets any new statutory criteria, the availability of resource, and whether the proposal accords with DOC's land management priorities and objectives.

113. It was recently agreed by Cabinet [ECO-24-MIN 0154] that additional conservation revenue from the transfer or sale of public conservation land will be reinvested into the conservation estate to improve biodiversity, recreation and heritage.

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

114. DOC will be responsible for monitoring, evaluating and reviewing any changes. Further detail about this will be provided in a final RIS following engagement and further policy work.

Department of Conservation
Te Papa Atawhai

Briefing: Conservation Amendment Bill

To	Minister of Conservation	**Date submitted**	25 March 2024
Action sought	Your agreement to begin policy work on a Conservation Amendment Bill to be introduced in mid-2025.	**Priority**	High
Reference	24-B-0128	**DocCM**	DOC-7590818
Security Level	In Confidence		

Risk Assessment	Medium Rephasing the review of the Wildlife Act may cause frustration and a negative reaction from stakeholders and Māori.	**Timeframe**	8 April 2024
Attachments	No attachments		

Contacts	
Name and position	**Cell phone**
Ruth Isaac, Deputy Director-General, Policy and Regulatory Services	section 9(2)(a)
Eoin Moynihan, Policy Manager – Regulatory Systems Policy	section 9(2)(a)

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. The management of public conservation land (PCL) and regulatory settings for its use, such as through concessions, are at the core of your priorities and associated desired outcomes. Improving the management of PCL is integral to meeting those priorities in terms of improving regulatory performance, prioritising conservation efforts that will have the highest conservation value, and harnessing the benefits of iwi involvement.

2. Modern and empowering legislation is required to achieve better land management and better meet the challenges raised by the evolving context around tourism, biodiversity, and Treaty settlement obligations.

3. Current legislation is slow to respond to change or is silent on what are now key land management questions. The planning and permitting systems aren't adaptive to changes in people's interests and technology and are unfit for managing increased interest in activities on PCL such as mountain biking and drones. Ambiguity in current legislation, particularly regarding DOC's section 4 responsibilities when processing and allocating concessions, also slows processing times and creates legal risks for the Crown and uncertainty for operators. Finally, current legislation prescribes a rigid and Crown-led land management model where alternatives could enhance outcomes for conservation, Māori, and local communities.

4. The Conservation Management and Processes (CMAP) Bill is narrow in scope. We recommend pursuing a more extensive set of legislative changes through a Conservation Amendment Bill to achieve substantial regulatory improvement and address wider land management issues. The amendments in the CMAP Bill could be incorporated into a broader Conservation Amendment Bill.

5. Legislative amendments are an opportunity to:

    - substantially deal with DOC's permissions backlog and speed up processing times through a better planning system and more proactive consenting;
    - reduce churn, improve outcomes, support investment, and manage Crown risks through clearer settings for economically significant concessions;
    - ensure land classification, planning, acquisition, and disposal processes support and prioritise conservation efforts with the highest conservation value; and
    - recognise the value of iwi and hapū by supporting the implementation of Treaty settlements and enabling devolved management of conservation land where appropriate outside of settlement.

6. The work can also provide an opportunity to respond to recommendations in the Options Development Group (ODG) report. Our assessment is that legislative changes are a better vehicle for responding the ODG report than partially reviewing the general policies.

7. If you agree to progress this work, we can provide you with a series of options for public consultation with the intention of introducing a Bill in late Q2 or early Q3 2025 that could be passed by the middle of 2026. Adequately resourcing this alongside work to implement the Fast Track Approvals regime will require rephasing work on the review of the Wildlife Act 1953.

We recommend that you … (Ngā tohutohu)

		Decision
a)	**Agree** that the Conservation Management and Processes Bill will not be progressed in its current form	Yes / No
b)	**Agree** that officials will identify and assess policy options to include in a broader Conservation Amendment Bill that incorporates the changes developed for the Conservation Management and Processes Bill	Yes / No
c)	**Agree** that officials focus on the following workstreams: **a)** Clearer policy settings for how significant commercial activity on PCL is allocated, priced and managed **b)** Reviews of the management planning and land classification systems **c)** Enabling the shared and devolved management of conservation areas where appropriate **d)** Enabling exchange and disposal of conservation land where appropriate	Yes / No Yes / No Yes / No Yes / No
d)	**Note** that DOC will seek your views on policy options in each of these areas separately	Noted
e)	**Note** that if you agree to progress with the above areas, we will advise you on early targeted engagement options with Treaty partners and Ministers	Noted
f)	**Agree** that this work programme will be communicated as the Government's response to the Options Development Group report – changes to legislation were recommended and effectively supersede changes to the Conservation General Policy	Yes / No
g)	section 9(2)(f)(iv) [redacted]	Yes / No

Date: 22/3/24

Ruth Isaac
Deputy-Director General, Policy and Regulatory Services
For Director-General of Conservation

Date: / /

Hon Tama Potaka
Minister of Conservation

Purpose – Te aronga

1. The purpose of this briefing is to seek your agreement to a work programme to improve regulatory performance and ensure land management processes and settings are fit-for-purpose. This follows previous advice, including in our BIM, where we advised that alongside operational improvements, a review of key policy, institutional and legislative settings will be required to put in place a modern and fit for purpose regime.

Background and context – Te horopaki

2. Your conservation priorities include: improvements to the performance and productivity of the conservation regulatory system[1]; identifying and prioritising 'high value' conservation domains; ensuring that Te Tiriti o Waitangi/Treaty of Waitangi responsibilities are effectively met, and that the value of involving our Treaty partners in conservation is realised; and generating revenue to support a sustainable focus on high value conservation domains.

Improving the management of public conservation land is integral to meeting your conservation priorities

3. The management of public conservation land (PCL) is at the core of these priorities and associated desired outcomes -– both in terms of regulating how people use PCL and, to some extent, guiding the prioritisation of conservation work and investment.

4. Improving the conservation land management system is expected to have benefits and address issues across a number of key conservation areas. This includes:

    - Addressing DOC's permissions backlog, slow processing times, and the high levels of legal challenge and cost for all parties. Rigid and out-of-date planning documents are limiting often otherwise legitimate activities (e.g. bike tracks) and ambiguous rules and processes for concessions may be discouraging investment and asset maintenance;
    - Maximising the benefits to conservation by reviewing the regulatory and planning processes for classifying, acquiring or disposing of land, and identifying and prioritising conservation objectives; and
    - Ensuring the land management system is geared up to implement Treaty settlement responsibilities and harness the value of these relationships to lift conservation outcomes.

Modern and empowering legislation is required to achieve better land management

5. Conservation legislation has not been substantially reviewed or updated since the 1990s. Since then, the biodiversity challenges we face have worsened considerably and tourism has become one of New Zealand's highest earning exports based in some large part on the appeal of the conservation estate. New Zealanders are also increasingly exploring PCL, often in non-traditional ways such as hang gliding and mountain biking. Moreover, conservation legislation largely predates the Treaty settlement process where conservation-related redress has become a core part and has evolved to include much greater shared management and decision-making.

6. This shift in context has left parts of the conservation system lacking. There is an opportunity to drive modernisation through amendments the key pieces of conservation land management legislation – the Conservation Act 1987, the National Parks Act 1980, and the Reserves Act 1977.

[1] We are currently preparing advice for you on targets for regulatory performance [24-B-0038 refers].

7. Non-legislative improvements through technology, operational policy, and science-driven prioritisation frameworks are integral but their impact will be hamstrung without legislative change. The cascade of rigid statutory policy and planning instruments constrain the development of a fit-for-purpose regulatory framework and will be difficult and time consuming to fix without legislative amendments.

Better conservation land management - a Conservation Amendment Bill

The Conservation Management and Processes Bill is too narrow in scope to achieve substantial regulatory improvement and doesn't address the full scope of other issues

8. In 2021, Cabinet agreed to progress targeted amendments to conservation management planning and concessions legislation. The scope of the Conservation Management and Processes (CMAP) Bill is limited to streamlining and clarifying concession processes i.e. it sought to improve the processes without looking at parameters and criteria that determine whether a concession is granted and how it is managed.

9. The key benefit of these will be improvements in regulatory performance by enabling proactive permitting tools.[2] DOC will pre-assess activities which can then be offered available online or authorised through regulations (removing the need for a permit) or making permits available on-demand through an online platform. Including these in a Bill to be passed later in the term has the added benefit of allowing time to develop the relevant regulations needed to implement those changes and enact them at the same time as passing the Bill.

10. As previously advised, you have a choice between progressing the CMAP Bill in its current form or introducing a new Bill that has an expanded scope for regulatory improvements that could therefore address a wider set of issues [23-B-0456 refers]. Given the limited scope of the current CMAP Bill, we recommend pursuing a broader Conservation Amendment Bill instead. The amendments in the CMAP Bill can be incorporated into the broader amendment Bill.

11. We do not recommend progressing both sequentially as the intent and objectives of the two Bills would overlap. This would be a poor use of resourcing and parliamentary time and may make it difficult for you to obtain a place on the legislative agenda for the more impactful Bill.

12. Although the amendments in the CMAP Bill would help improve regulatory performance, our assessment is that they are not comprehensive enough to see a material shift in regulatory performance to target levels. The amendments were developed as 'quick wins' in a context where more substantial reform of conservation legislation was expected to follow. The CMAP Bill also will not drive improvements across your other land management related priorities.

13. The Bill also contains amendments to streamline the stewardship land reclassification process, as well as minor and technical amendments to reduce administration costs, clarify existing practice, and address errors and inconsistencies in conservation legislation. We will consider whether to continue with these changes in our analysis.

[2] We have estimated that these mechanisms would have a net-benefit of between $400,000 and $1,000,000 per year. This is between 4.5% and 11% of resourcing spent on concessions processes each year. Source: *Regulatory Impact Statement – Targeted amendments to concessions processes*, November 2022.

A more extensive set of legislative changes can drive better regulatory performance and conservation outcomes

14. There are barriers and gaps in land management legislation which will limit your ability to achieve your conservation priorities, or at least your ability to do so effectively, efficiently, and without legal ambiguity.

15. We have identified four targeted areas relating to conservation land management to consider. We suggest focussing on these areas as the issues are somewhat understood already, in large part because they have been the focus of key reports and are common themes during stakeholder and iwi engagement. The four areas are:

Workstream 1: Clearer policy settings for significant commercial activity on PCL

16. There is a lack of clear policy settings for commercial operations on PCL where significant infrastructure is involved and/or there is limited supply. Better tools to allocate property rights and price commercial opportunities are needed, as well as criteria for determining which applicants should be successful. Crucially for incumbent operators and the Crown, it is not clear how privately owned infrastructure will be managed (i.e. transferred or removed) when current concessions expire and when a degree of preference for iwi applies.

17. This lack of policy settings creates ambiguity for everyone and risks of legal challenge for the Crown. This ambiguity contributes to a decision-making paralysis that has seen many significant concession applications take more than two years to be processed. These gaps in legislation and clear policy direction have been most keenly felt upon the expiry or surrender of significant tourism concessions at Tongariro (e.g. Tūroa, Whakapapa, Chateau) and Piopiotahi/Milford Sound (Freshwater Basin, Milford Track). In some cases, shorter concession terms are being offered as a sort of stop gap measure to allow more enduring and legally robust allocation processes to be developed. These challenges are present in less infrastructure intensive activities such as beehives as well.

18. The result is sub-optimal economic and conservation outcomes. Current settings do not provide the stability necessary for investment, fail to take advantage of competitive tension in the market, and leave the Crown open to significant financial and legal liabilities. The outstanding ambiguity around DOC's section 4 responsibilities, particularly around what constitutes a reasonable degree of preference in accessing concession opportunities, also has the effect of limiting mana whenua access to economic opportunities when decisions are increasingly prolonged. Ambiguity around what constitutes sound engagement with mana whenua and how iwi and hapū interests impact on the terms and conditions of an activity is also frustrating fast and transparent processes.

Workstream 2: Reviews of the management planning and land classification systems

19. The management planning system plays key roles in the management of PCL by regulating how people use conservation land and by setting conservation objectives and priorities. However, the planning system has become bloated, inflexible, and ineffective. A recent independent review of the system highlighted the need for legislative reform.[3]

20. The management planning system consists of three layers of planning documents. The Conservation General Policy and General Policy for National Parks (general policies) set national direction for the planning system. Below this, the legislative purpose of a Conservation Management Strategies (CMS) is to implement general policies and establish objectives for the integrated management of natural and historic resources at a regional level. Place-specific Conservation Management Plans (CMP)

[3] https://eds.org.nz/resources/documents/reports/independent-review-of-the-conservation-management-planning-system/

and National Park Management Plans (NPMP) have the same purpose but are more detailed than a CMS.

21. The opportunity to improve regulatory performance through planning reform is two-fold. Firstly, it is a chance to address constraints that the general policy and planning documents have put on concession decision-making and ensure that planning documents can be updated more easily to adapt to changes in context or policy objectives. For example, ambiguous settings are currently limiting the consideration of new bike tracks in some areas, even where their effects could likely be managed. Secondly, a streamlined and adaptive planning system can drive efficiency in the concessions system by making it clear upfront what activities are and are not allowed in different locations. This would be very useful for high volume applications, like drone permits, that are putting pressure on the system even though each one is not complex.

22. A review of the planning system is also an opportunity to better implement Treaty settlement requirements and could be a more effective tool for prioritising conservation objectives than it is currently. The focus on management planning in conservation redress is as much about enabling mana whenua involvement in conservation efforts as it is about setting rules for people's commercial and recreational use. The current inability to progress planning reviews in any reasonable timeframe means these requirements simply aren't being implemented.

23. As part of this workstream, we will also consider how the land classification system can be simplified and utilised to support making clearer rules for concession applicants (e.g. deeming certain activities acceptable without a permit in areas with a certain land classification). Simplifying the options for how land is classified and clarifying what different classifications mean for access, commercial use, and conservation goals may also make future processes for reclassifying stewardship areas easier.

Workstream 3: Enabling shared and devolved management arrangements

24. Enabling co-management or devolved management of conservation land can leverage the efforts of mana whenua and local communities to support conservation outcomes. We are aware of a desire for shared or devolved management arrangements as the Crown has received several such requests, particularly from iwi and hapū. section 9(2)(j)

25. section 9(2)(f)(iv)

26. If the Government wishes to pursue co-management or devolution under a new framework, current legislation and general policies are likely to limit this. Co-management and devolution of conservation management has largely occurred through Treaty settlement to date, with options in current legislation largely confined to the devolved management of reserves.

Workstream 4: Enabling land exchanges and disposals

27. Both exchange and disposal, if managed appropriately, can enable conservation protection and investment to be directed to toward places where it will have the best outcomes for conservation. Through exchange it is possible to acquire land housing highly threatened or under-represented habitats and ecosystems. Divestment from conservation land through disposal of lower value conservation land allows DOC's resources to be reprioritised.

28. Current settings limit the exchange and disposal of conservation land to places with low or no conservation value, even where the transaction would benefit conservation

outcomes overall as in the Ruataniwha case.[4] Building off and supporting the work on the Fast Track Approvals (FTA) Bill, we will look at whether to widen changes to enable exchange and disposal outside of the FTA regime and how to ensure conservation interests are maintained and enhanced through exchange or disposal.

This work can respond to recommendations in the Options Development Group (ODG) report

29. As previously advised, DOC's view is that the current scope of the partial reviews of the General Policies (partial reviews) and package of proposed changes is limited in their nature and effect [23-B-0501 refers]. The Government has not made decisions on which recommendations from the report it wishes to take forward.

30. While some improvements can be made through a revised set of general policies and operational change, many of the substantial ODG recommendations require legislative change to realise the intent of the recommendation. Therefore, if the Government wishes to take those forward, it is not possible to do so through changes to the general policies and operational processes alone.

31. Many of the recommendations in the ODG report relate to iwi and hapū interests in conservation land management – including what and how conservation work is done, opportunities to actively engage in conservation, concessions decisions, and access to economic opportunities on the land. These align with the focus areas proposed for the broader amendment Bill, giving you the option to progress this work as an alternative to the partial review work programme.

32. Additionally, if you choose to progress with this amendment Bill, *workstream 2* (outlined above) proposes to review the management planning system which would include assessing the form and function of the general policies. Considering this broader approach, it would make sense not to progress or implement the current suite of proposed changes via the partial reviews of the general policies work programme [23-B-0501 refers].

Resourcing this will impact on other work

33. Work on the FTA regime is underway and will continue to draw on similar expertise as work to progress a Conservation Amendment Bill.

34. To ensure we have the resources available to deliver this work as well as further expected resource management reform (including of the NZCPS), ongoing marine policy priorities, increased third party revenue and the financial sustainability review, and the new hunting and fishing work programme, we recommend you deprioritise work on the Wildlife Act, by re-phasing its delivery over a longer period.

35. We will provide fuller advice on the options available for the Wildlife Act in the next month. This will include options for amending the legislative bid on this work you previously submitted, and on how to communicate changes to the Wildlife Act review's independent advisory group, the Strategic Oversight Group (SOG), and to the public more broadly.

36. Note that we have considered the potential to fold changes to the Wildlife Act within the proposed Conservation Act amendment work. While it is possible that this approach could address some of the legal issues with the Wildlife Act in a quicker timeframe than the review, we do not consider it would adequately address the fundamental problems with the Act and make it fit for purpose. Targeted amendments are also unlikely to meet stakeholder expectations for the Wildlife Act review, [redacted] section 9(2)(f)(iv)

[4] Hawkes Bay Regional Investment Co Ltd v Forest & Bird & Minister of Conservation (SC) [2018] NZSC 122

37. Folding the Wildlife Act changes in would also mean the Bill would need to be an omnibus Bill and would need to meet strict scope criteria.

Risk assessment – Aronga tūraru

38. If you agree to deprioritise the work programmes above, we expect a level of frustration to manage. Expectations of new and improved species legislation to support better outcomes for biodiversity have been raised with tangata whenua and key stakeholders across the conservation system, who widely support the review of the Wildlife Act. Deprioritising the work could decrease the level of buy-in from tangata whenua and stakeholders and make it hard to re-gain momentum.

39. On the other hand, there is a high degree of frustration about current concessions performance and out of date statutory plans from all parties, and work on this will be welcomed.

40. Some Treaty partners may be frustrated if the partial reviews are not progressed. However, many will likely welcome legislative change given it can implement more substantial ODG recommendations than changes to the general policies.

41. To manage these risks, clear communications will be vital. This will be challenging ahead of Cabinet agreement to the scope of the Conservation Amendment Bill, given that the potential scope includes a number of likely controversial matters which could be dropped prior to release of any discussion document. Gaining early buy-in from key Ministerial colleagues to the scope of work will help to reduce this risk. Alternatively, you could wait until after Cabinet agreement is secured before any public communications.

Next steps – Ngā tāwhaitanga

Proposed work programme for a Conservation Amendment Bill

42. A Conservation Amendment Bill could be introduced in mid-2025.

43. We propose the following timeframes to pass legislation during this term:

Milestones	**Indicative timing**
Options identification, analysis, and discussion document	Mar. to Jul. 2024
Draft Cabinet paper – Agreement for public engagement	Jul. 2024
Cabinet decisions for discussion document	Aug. 2024
Public consultation and engagement	Sep. to Nov. 2024
Finalising policy options and advice	Dec. 2024 to Feb. 2025
Draft Cabinet paper – Final Policy decisions	Feb. 2025
Cabinet policy decisions and agreement to draft the Bill	March. 2025
Introduction, first reading, and select committee	Mid-2025

44. Hitting this timeframe will require careful management of scope. This would not be a comprehensive or first principles review of the Conservation Act, even though some commentators see that as desirable. You would need to communicate that your focus is on solving the most pressing problems in the current law. These timeframes could

enable some changes to conservation law of a similar nature identified in the Milford Opportunities Project recommendations to be incorporated too.

45. Should you agree to pursue this work, we will progress the four workstreams outlined above in parallel and brief you on these over the coming months. We will seek policy direction and decisions from you in each area to progress the work in an efficient and managed way. Deep dives will also be an effective way of working through detail on these topics.

46. All changes to policy settings will also be supported by DOC's ongoing work to lift regulatory performance by improving staff capability, simplifying internal processes, and adopting new technology. Clearer operational policy within current statutory settings also will support staff and applicant clarity in the interim and once new legislation is enacted.

Communications and early engagement

47. If you agree, we will prepare communications material for you to announce this work, including how it responds to the ODG report. This should be announced after wider Government support for the approach and scope is secured.

48. We will provide further advice on any early targeted engagement with Treaty partners, key stakeholders and Ministers.

Wildlife Act review

49. We will provide fuller advice on the options available relating to the Wildlife Act and proposed next steps to manage the implications of delay, in the upcoming weeks.

ENDS

Department of Conservation
Te Papa Atawhai

Briefing: Conservation Amendment Bill – Timeline and scope

To	Minister of Conservation	**Date submitted**	7 June 2024
Action sought	Agree the timeline and scope for the Conservation Amendment Bill	**Priority**	High
Reference	24-B-0264	**DocCM**	DOC-7659513
Security Level	In Confidence		

Risk Assessment	Medium The scope of the Bill needs to be managed to ensure that key improvements to conservation land management can be delivered.	**Timeframe**	18 June 2024
Attachments	Attachment A – Summary of proposals for Conservation Amendment Bill Attachment B – Management planning proposals		

Contacts	
Name and position	**Cell phone**
Ruth Isaac, Deputy Director-General, Policy and Regulatory Services	section 9(2)(a)
Sam Thomas, Director Policy	section 9(2)(a)

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. Improving the Department's regulatory performance – including issuing concessions faster and providing more economic opportunities on conservation land – is one of your top priorities for the Conservation portfolio. In addition to operational improvements, achieving this will require legislative change.
2. In April 2024, you agreed that the Conservation Management and Processes Bill would not be progressed in its current form, and that officials would scope a broader Conservation Amendment Bill that combines those amendments with more proposals.
3. This briefing seeks your agreement to begin drafting a Cabinet paper and consultation document.

Scope

4. The Bill would include amendments to:
    - *Cut concessions timeframes*: Remove the need for some permits, eliminate processing times for a range of activities, and set fast regulatory processing times.
    - *Get better economic outcomes on conservation land*: Competitively allocate economic rights, make fee-setting certain and clear with a fair return to conservation, allow for the exchange of conservation land for economic opportunities with a net conservation benefit, and clarify how and when to dispose of conservation land.
    - *Cut unnecessary bureaucracy and planning documents*: Cut the number of planning documents and move to a simpler, focused and effective way of planning that can help speed up decisions, be less rigid and more fit for purpose.
    - *Make the Conservation estate more financially sustainable*: Allow for access charging, to provide a return for the ongoing and sustainable enjoyment of, and recreation within, the country's most precious places.
    - *Refining the roles of the New Zealand Conservation Authority (NZCA) and the Conservation Boards*: Make the Minister of Conservation responsible for regulations and bylaws, the national planning framework, and the approval of planning documents, thus removing the incentive and ability of Conservation Boards and the NZCA to load planning documents with overly complex policies and direction that are better suited in regulation.
    - *Clarify, and provide certainty around, the Department's Treaty obligations*: Clarify what is required by section 4 in management planning and concession processes.
5. Attachment A provides a summary of proposals that we recommend including in a consultation document to be taken to Cabinet for approval. We are committed to work on this.
6. You have asked whether we have the right institutional arrangements for managing concessions, particularly commercial concessions. Our recommended starting point is to review the concessions framework and determine the appropriate scope, limitations on and decision-making system for commercial use of the Conservation estate [redacted] section 9(2)(f)(iv) [redacted]
7. section 9(2)(f)(iv) [redacted]

8. section 9(2)(f)(iv) [redacted]

9. Clear direction is needed from you on some proposals to prepare the Cabinet paper and consultation document. These relate to what section 4 requires in the concessions system, whether to charge for access to conservation land, and the extent to which the Government wishes to consider the sale of conservation land.

Timeline

10. The timeline set out for the Bill would see public consultation from September to December this year, with introduction in August 2025, and legislation enacted in the first quarter of 2026. The scope of the Bill will need to be managed as the time allowed for further policy development before public consultation is tight.

section 9(2)(f)(iv) [redacted]

Next steps

15. We will discuss options for the scope of the Bill and the proposed timeline with you on 13 June 2024.

16. Based on your agreed scope, we will prepare a Cabinet paper and discussion document seeking approval to consult in August 2024.

We recommend that you … (Ngā tohutohu)

		Decision
1.	**Note** that officials will meet with you on 13 June 2024 to discuss the proposals and timeline for progressing the Bill.	Noted
2.	**Agree** that officials will prepare a Cabinet paper and consultation document for you to consider in mid-July, based on the proposals in Attachment A.	Yes / No
3.	**Note** that early engagement with your colleagues on key policy areas including section 4 requirements for concessions and management planning, access charging, and disposal of conservation land will support timely policy development.	Noted
4.	**Note** that alongside the first draft of the Cabinet paper and consultation document in mid-July, section 9(2)(f)(iv) [redacted]	Noted
5.	**Agree** that the scope of the Conservation Amendments Bill will not include: • Alternative institutional options for managing concessions • Major conservation governance reform • Reform of the land classification system	Yes / No
6.	**Agree** to the proposed timeline for the Bill [paragraphs 72-76 refer]: • 26 August 2024 – Cabinet approval to consult • September to December 2024 - Public consultation and engagement • March 2025 – Cabinet agreement to policy and drafting • March to August 2025 – Drafting • September 2025 – Cabinet approval and introduction to Parliament	Yes / No
7.	section 9(2)(f)(iv) [redacted]	Noted

section 9(2)(a) [redacted]

Date: 7/ 6 /2024

Ruth Isaac
Deputy Director-General, Policy and Regulatory Services

Date: / /

Hon Tama Potaka
Minister of Conservation

Purpose – Te aronga

1. This briefing seeks your agreement on the timeline for progressing the Conservation Amendment Bill and to the proposals officials will include in a draft consultation document for you to consider in mid-July.

2. We will discuss the contents of this briefing with you at a deep dive on 13 June.

Background and context – Te horopaki

3. In April 2024, you agreed that officials will identify and assess policy options to include in a potential Conservation Amendment Bill. The Bill would incorporate proposals developed for the Conservation Management and Processes Bill while having a broader scope [24-B-0128 refers].

4. Officials have been undertaking work to identify proposals focused on the following workstreams:

    - Clearer policy settings for how significant commercial opportunities on conservation land are allocated, priced and managed.
    - Reviews of the management planning and land classification systems.
    - Enabling exchange and disposal of conservation land where appropriate.
    - Enabling the shared and devolved management of conservation areas.

5. You have also received advice on opportunities to make the conservation system more financially sustainable by growing third-party revenue [24-B-0236 refers]. Some of these opportunities would require legislative change and so we have looked at how those could be included in the Bill.

6. We have not proposed including any amendments to further enable the shared and devolved management of conservation areas. section 9(2)(i) [redacted] We will continue to work with you on next steps for managing such requests from iwi. Note that in some cases there are already mechanisms in conservation legislation that could be used, but no policy directing when they are suitable and appropriate.

Scope: Faster concessions, cutting bureaucracy and documents, better economic and conservation outcomes, and more financial sustainability

7. The scope of the Bill is focussed on:

    - Speeding up processing times and deal with the Department of Conservation's (DOC's) permissions backlog.
    - Enabling more economic opportunities on conservation land where appropriate.
    - Allocating economic opportunities in a way that encourages competition and innovation while providing certainty for investment.
    - Growing revenue from the use of public conservation land.
    - Focusing conservation efforts on land with the highest conservation value by enabling land to be exchanged or sold more easily based on better conservation outcomes.

8. This Bill is fundamental to achieving your priority of supporting businesses by improving the regulatory system. Concessions currently account for a significant portion of the processing load. The Bill will also support increasing revenue and

focussing investment on high value conservation. We will provide more information on the EDS report and international examples in future advice.

9. We recommend incorporating other minor and technical amendments developed for the Conservation Management and Processes Bill, such as removing the public auditing requirement for reserve boards and administering bodies with revenue or expenses less than $500,000 a year. These amendments will reduce administration costs and make legislation clear and more user-friendly.

We have prepared a summary of potential proposals to discuss with you

10. The table in Attachment A provides a summary of proposals to include in the Bill. As well as outlining the rationale for the change, the table also notes how well developed each proposal is.

11. It is important that the scope of the Bill is managed well because the timeframe for policy development before public consultation is tight. We are confident we can deliver policy development and a consultation document for the proposals outlined in Attachment A. Expanding the scope risks slowing down the Bill and the significant benefits it will achieve.

Officials require direction from the Government on key policy questions

12. Clear direction is needed from you on some key policy questions so that officials can prepare a consultation document. They require particular consideration and clear direction as they may have significant public interest and/or implications for the interpretation of the Treaty of Waitangi. These are:

    - When the requirement for informed decision-making is satisfied through engagement with iwi and hapū on policy and plans and when engagement on specific applications is required.
    - When active protection of iwi and hapū interests requires the decision-maker to decline activities or impose conditions on activities.
    - Whether iwi and hapū are afforded a degree of preference over other applicants for concessions (and in what circumstances) or whether ensuring they have the ability to express interest and apply through an open market is sufficient protection of those rights.
    - Whether DOC should explore charging for access to popular conservation areas.
    - The extent to which you wish to contemplate sale of public conservation land and on what grounds.

13. After the deep dive, we recommend engaging with your colleagues early on these questions and updating officials on any preferences. This will facilitate timely policy development and avoid the need for significant changes to the Cabinet paper and consultation document during formal ministerial consultation.

14. Your upcoming Cabinet paper on increasing revenue will seek an in-principal decision to consult on charging for access to a small number of iconic sites on conservation land. This is another proposal we recommend engaging your colleagues on early and will brief you on this shortly.

Summary of proposals: Improving regulatory performance and productivity

Part 3B: Cutting processing times and costs on businesses

15. Too many concessions processes are repeated unnecessarily, and ambiguous requirements discourage fast and effective decisions. There are also activities that could be exempt from needing a permit at all.

16. The proposed amendments to Part 3B of the Conservation Act would:

- Remove the need for some permits entirely by permitting them in regulations (e.g. research activities like water and air sample collection).
- Eliminate processing times by pre-assessing activities where a permit is required to monitor numbers and collect revenue (e.g. buses).
- Reduce processing times and the risk of legal challenge by setting statutory timeframes for DOC and applicants and clarifying what is required to give effect to Treaty principles in these processes.

Part 3B: Getting better economic outcomes from concessions

17. Part 3B of the Conservation Act focuses mainly on effects management and lacks clear provisions for managing the economic and business side of concessions. This has become more glaring over time as the economy supported by conservation land has grown, especially through tourism. The current system does not effectively drive quality service delivery for customers or better conservation outcomes.

18. The proposed amendments to Part 3B of the Conservation Act would:

- Create a framework for competitively allocating economic rights, including robust selection criteria and protections for privately owned capital on conservation land.
- Make the process of setting concession fees more robust and efficient by setting fees in regulations at rates that provide a fair return to conservation.

Part 3A: Unlocking the management planning system

19. The management planning system is ineffective, inflexible and lacks a clear purpose. This has resulted in significant backlog of prescriptive and lengthy planning documents, including some that haven't been updated since the 1990s. The outdated plans have a detrimental impact when concessions applications are assessed against their criteria, and they fail to keep up with evolving economic activities and opportunities.

20. The planning system needs to be looked at to achieve a faster and more productive concessions system. Concessions decisions must be consistent with the general policy and management strategy applicable to the area. In the case of national parks and some other specific conservation areas, a management plan adds another layer of regulation to comply with. The overly detailed plans, plethora of uncoordinated and prescriptive rules, and complex processes for updating them is slowing concession processing times and sometimes restricts activities that would otherwise be acceptable from an effects management perspective (e.g. new mountain bike tracks).

21. When done effectively, planning documents are a useful stocktake of the conservation values of an area. This makes effects assessment for concessions more efficient and helps DOC set operational priorities that deliver the best outcomes for conservation.

<u>Proposal 1: Move more activities to permitted activities</u>

22. The shift to less activities requiring permits will remove these from the scope of the planning system. This will cut bureaucracy and help streamline plan development.

<u>Proposal 2: Align national direction under a single national planning framework</u>

23. Currently, national parks are managed differently to other conservation areas. Crucially, the NZCA is responsible for general policy and planning documents can limit the Minister's ability to make bylaws to manage national parks.

24. Management of all protected areas could be unified under a single planning framework, including one type and process for national direction. Stronger override

powers would also ensure that content in plans can be removed efficiently if it contradicts new direction set by the Minister in the national planning framework.

25. This would also help align the regulatory and planning functions of the conservation system by ensuring the Minister is responsible for regulations and bylaws, the national planning framework, and the approval of planning documents. This would remove the current incentive and ability of Conservation Boards and the NZCA to load planning documents with overly complex policies and direction that are better suited in regulation.

Proposal 3: Remove duplication of layers so only one plan applies in an area

26. Currently, national park management plans must be consistent with the regional conservation management strategy (or strategies) covered by the area. This often means two layers of documents need to be updated to effect change. This is also an issue for specific conservation areas outside national parks that have management plans (often required through Treaty settlement)

27. The system can be simplified to one layer of place-based planning documents by carving areas out of conservation management strategies if there is a more place-specific management plan already (i.e. national parks and sites part of settlement redress).

Proposal 4: Narrow the scope and content of planning documents

28. This would be done by creating a template through the national planning framework that would narrow the purpose and scope of planning documents to focus on the conservation values.

29. Conservation management strategies and plans will become an effective repository of conservation values and the community's aspirations for an area – informing, but not dictating, effects management assessments and DOC's operational work.

30. The template will stop planning documents venturing into areas where the content is impractical, unnecessary, or unhelpful by creating obligations on the Minister or DOC without full consideration of costs, resources, and wider conservation priorities. For example, some planning documents can be interpreted as requiring certain areas of private land should it become available for sale. Others foreshadow processes for which there is already robust statutory processes, such as stewardship land reclassification.

Proposal 5: Set timeframes and clarify section 4 requirements

31. In addition to simplifying the structure of the system and the content of planning documents, there is an opportunity to speed up processes by setting timeframes and clarifying what section 4 requires.

32. Part 3A lacks timeframes for some stages such as drafting the plan or review by the conservation board. This can lead to reviews stalling at these stages.

33. The lack of clarity on how section 4 should be implemented leaves each review of planning documents at risk of an expensive, drawn-out judicial review. The system is also not adequately meeting DOC's responsibilities to give effect to the principles of the Treaty of Waitangi. Clear requirements can hold the Crown to account.

Proposals in the Bill reduce the risk of abandoned infrastructure and poor incentives for existing operators by enabling easier transfer of concessions and transfer and sale of capital improvements

34. We have been analysing options to manage Crown risks from redundant infrastructure when a company fails or abandons operation (e.g. Ruapehu Alpine Lifts).

35. Improvements to the concessions management framework proposed for the Bill will reduce the risk of abandoned infrastructure liabilities and ensure protected property rights and incentives to invest and operate on PCL are maintained and improved. These include enabling concessions to be transferred more easily, clearer settings for when opportunities are taken to market, and rules to support the transfer and sale of capital improvements when concessions are competitively tendered.

There is no obvious legislative solution to managing Crown risks associated with infrastructure on conservation land

36. Legislative options we have identified to manage liability risks in the absence of easier transfer of assets and concessions are likely to be impractical and problematic for concessionaires. Existing tools such as parent company guarantees and bonds can be used better and more often without legislative change, but do not resolve the issue.

37. A strict legislative requirement on all concessions with infrastructure would impose significant costs that would likely make operating unviable for some concessionaires. In cases like the club-based ski fields, this will likely be a decision based on the level of risk the Crown is willing to accept to facilitate recreational and economic activity on conservation land. Imposing requirements on existing concessions also raises questions about natural justice and contract law.

38. We will continue work on this and brief you in mid-July with the draft Cabinet paper and consultation document.

Summary of proposals: Generating revenue by charging for access

39. Access charges are a significant source of third-party revenue internationally, but their use is prohibited by conservation legislation. There is currently limited ability to charge users who do not use our overnight facilities (e.g. day hikers). Enabling access charges could significantly increase third-party revenue for DOC, making the visitor network more financially sustainable.

40. We propose using the public consultation process to test key aspects of how a user charge could work.

41. Providing an appropriate amount of time for analysis and policy development will help strengthen the case for access charging. It's likely that public interest in access charges will be high, even though there will be support for appropriate use of this tool. There are also Treaty implications that require more thorough assessment that would best done most effectively through engagement with iwi and hapū.

Summary of proposals: Land exchange and disposal settings

Enabling exchange of land where it would mutually benefit conservation and development

42. Exchange settings could be adjusted to provide net conservation benefit and safeguard vulnerable biodiversity while supporting other government priorities by making land available for development. Land exchange settings are restrictive to the point where a transaction cannot take place even if there would be clear net conservation benefit.[1]

43. Exchanges can achieve a net conservation benefit when acquiring land with higher conservation value. Exchanges are an opportunity to acquire land with values that are seriously threatened or underrepresented within New Zealand's network of protected areas. They can also expand on or connect existing conservation areas.

[1] See Chapter 6 of Conservation General Policy (doc.govt.nz)

44. While there are potential conservation benefits from enabling land exchanges, DOC recommends stronger safeguards than those in the Fast Track Consenting Bill to mitigate the risk of high value conservation areas being exchanged like a bottom line for ecosystems that are already seriously under threat.

Clearer settings to enable the disposal of low conservation value areas

45. Selling conservation land is currently limited to reserves under the Reserve Act 1977 and stewardship areas that have been assessed as having "no or very low" conservation values. The somewhat ambiguous wording of "no or very low" has also been interpreted by the courts in a way that restricts disposal to land with no conservation value at all.[2]

46. While there is a strong conservation rationale for these restrictions, disposing of conservation land can have positive conservation outcomes and enable economic development. For example, there may be parts of the Conservation estate where the costs for maintenance and/or compliance (e.g. fire risk) draw resources away from better investments in other areas. This is more likely to be the case where the proceeds of sale of low conservation land are directed to conservation.

47. We do not recommend a large-scale programme to identify land for disposal. It is very unlikely that it would identity a significant amount of land suitable for disposal from a conservation perspective. The process would be expensive and would require other priority work to stop. We recommend focusing resources on the new work underway to improve the return on investment in high conservation value areas.

Enabling disposal for economic development is beyond the scope of the Bill

48. If the Government wishes to explore larger scale disposal of conservation land for the purposes of economic development, this would be a larger exercise. The scope of the proposed Bill is focused on improving regulatory efficiency and generating better economic outcomes from within the conservation system.

49. Looking at disposal to enable broader economic objectives beyond conservation would be best supported by a cross-agency work programme involving DOC and other agencies such as the Treasury, MBIE, and MfE.

50. Fundamental questions about the size of the conservation estate are not in scope of this Bill. This would require considering questions such as the very purpose of conservation that are not currently on your work programme.

Treaty principles (section 4) – Ngā mātāpono Tiriti (section 4)

51. We will include Treaty of Waitangi rights and interests' analysis as part of the interim-Regulatory Impact Assessment. These implications will also be outlined in the draft Cabinet Paper. Engagement with iwi and hapū during the public consultation phase will help us to inform and complete this analysis for Cabinet's final policy decisions next year.

52. The lack of operative provisions relating to section 4 creates ambiguity that is hindering good processes and outcomes from the regulatory system. This makes decision making slow because procedural requirements are unclear. Uncertainty in the operating environment may discourage investment due to the ambiguity around which circumstances require:

    - Protective conditions to be imposed;
    - An application to be declined; or
    - The granting of concessions to iwi.

[2] Hawkes Bay Regional Investment Company Limited v Royal Forest and Bird Protection Society of New Zealand Incorporated – [2017] NZSC 106

53. In particular, decision-makers are grappling with the risk of legal challenge from both Māori and non-Māori in navigating the ambiguity around what section 4 does and does not require when allocating limited supply concessions. DOC is currently processing applications to renew a number of commercially significant concessions.

54. On the one hand, operative provisions can support giving effect to the principles of the Treaty of Waitangi by codifying clear requirements that hold the Minister and DOC to account. On the other hand, there is a risk that prescriptive requirements such as timeframes may limit the ability of Māori to engage in processes, hindering the principle of informed decision-making. Concerns around the Crown taking a one-size-fits-all approaches to engagement with Māori in permitting was a common theme in our engagement on Conservation Management and Processes Bill in 2022.

55. Depending on how it is shaped the inclusion of any legislative guidance relating to section 4 could be seen by some as narrowing its scope. It is highly likely that some agreements at place will be impacted by any legislative changes around timeframes and guidance around engagement, and these agreements may need to be renegotiated in line with any changes.

section 9(2)(f)(iv)

section 9(2)(f)(iv) [redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted]

[redacted] [redacted]

[redacted] [redacted]

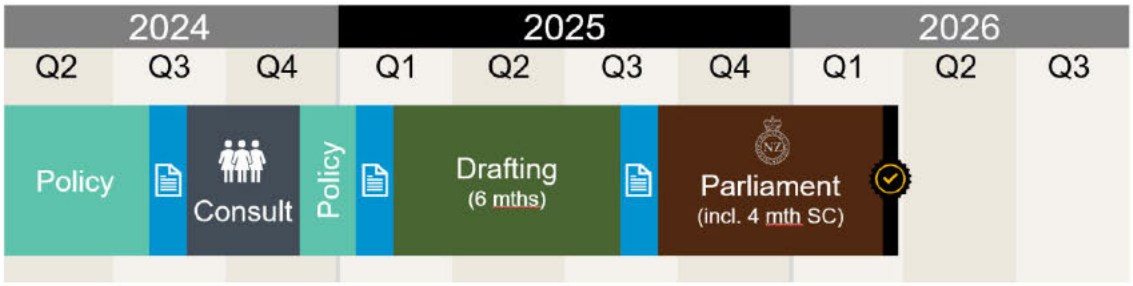
- [redacted] [redacted]
- [redacted] [redacted]
- [redacted] [redacted]

71. section 9(2)(f)(iv) [redacted]

Timeline for progressing the Bill

72. We provided advice when initiating this work that a Bill could be introduced into the House in mid-2025 [24-B-0128 refers].

73. We have provided an updated and more detailed timeline, including the steps required to bring your paper to Cabinet in August:



Milestone	Timing
Deep dive on proposals for consultation document	13 June 2024
Preparing policy advice, Cabinet paper and consultation document	14 June to 5 July 2024
Agency consultation on draft Cabinet paper and consultation document	8 to 12 July 2024
Two weeks to refine draft Cabinet paper (approval to consult) and consultation document	15 to 26 July 2024
Ministerial consultation on Cabinet package	29 July to 9 August 2024
Lodge Cabinet paper (approval to consult)	15 August 2024
ECO Cabinet sub-committee	21 August 2024
Cabinet	26 August 2024
Public consultation and engagement	September to December 2024
Finalising policy options and advice	Dec. 2024 to Feb. 2025
Draft Cabinet paper – Final Policy decisions	February 2025
Cabinet agreement to policy and drafting the Bill	March 2025
Drafting	March to August 2025
Cabinet paper (LEG agreement to introduce)	September 2025
Introduction, first reading	September 2025
Select Committee (if 4 months is agreed to)	September 2025 to January/February 2026
Second and Third Readings, and enactment	Late-Q1 2026

This timeline enacts legislation this term while providing sufficient time for public consultation and developing the Bill

74. Based on the current suite of proposals, we consider the Bill to be of medium complexity. The Parliamentary Counsel Office (PCO) estimates that the average process for a medium complexity Bill is around 6 months. This includes three months for PCO to draft the Bill and reasonable time for ministerial consultation, review, and Bill of Rights vetting.

75. This timeframe allows for 3 months of public consultation on the proposals and the appropriate amount of time to draft the Bill. This will improve the effectiveness of the proposals and help ensure settlement commitments are upheld. It will reduce the risk of matters arising during drafting of the Bill or at select committee which prolong the timeframe, or worse, mean the policy is ineffective or legally problematic.

76. The select committee has six months to report to the House as a default. Public consultation before the Bill will strengthen your case to seeking a four month select committee process. Note that if a Bill is referred for 4 months or less, there is a time-unlimited debate on that in the House.

Consultation – Kōrero whakawhiti

77. Agencies have not yet been consulted in developing this paper. MBIE was engaged in developing advice on exchange and disposal for the Fast Track Consenting Bill. We will undertake agency consultation on the draft Cabinet paper and consultation document before your consideration of those materials.

78. Note that the timeline proposes undertaking public consultation from September to December this year. Alongside the consultation document, this will include hui with Treaty partners and key stakeholders. We will prepare an engagement plan and include a high-level summary of the approach in the draft Cabinet paper.

Next steps – Ngā tāwhaitanga

79. We will discuss the contents of this briefing with you on 13 June 2024.

80. After the deep dive, we recommend you engage with your colleagues on the scope of the Bill as soon as possible – particularly on the key areas requiring clear direction from the Government. We will provide materials to support your discussions.

81. If you agree, officials will prepare a draft Cabinet paper and consultation document on the proposals in Attachment A for you to consider in mid-July. This will include advice on proposals to manage Crown risks and any proposals stemming from the Milford Opportunities Project recommendations.

ENDS

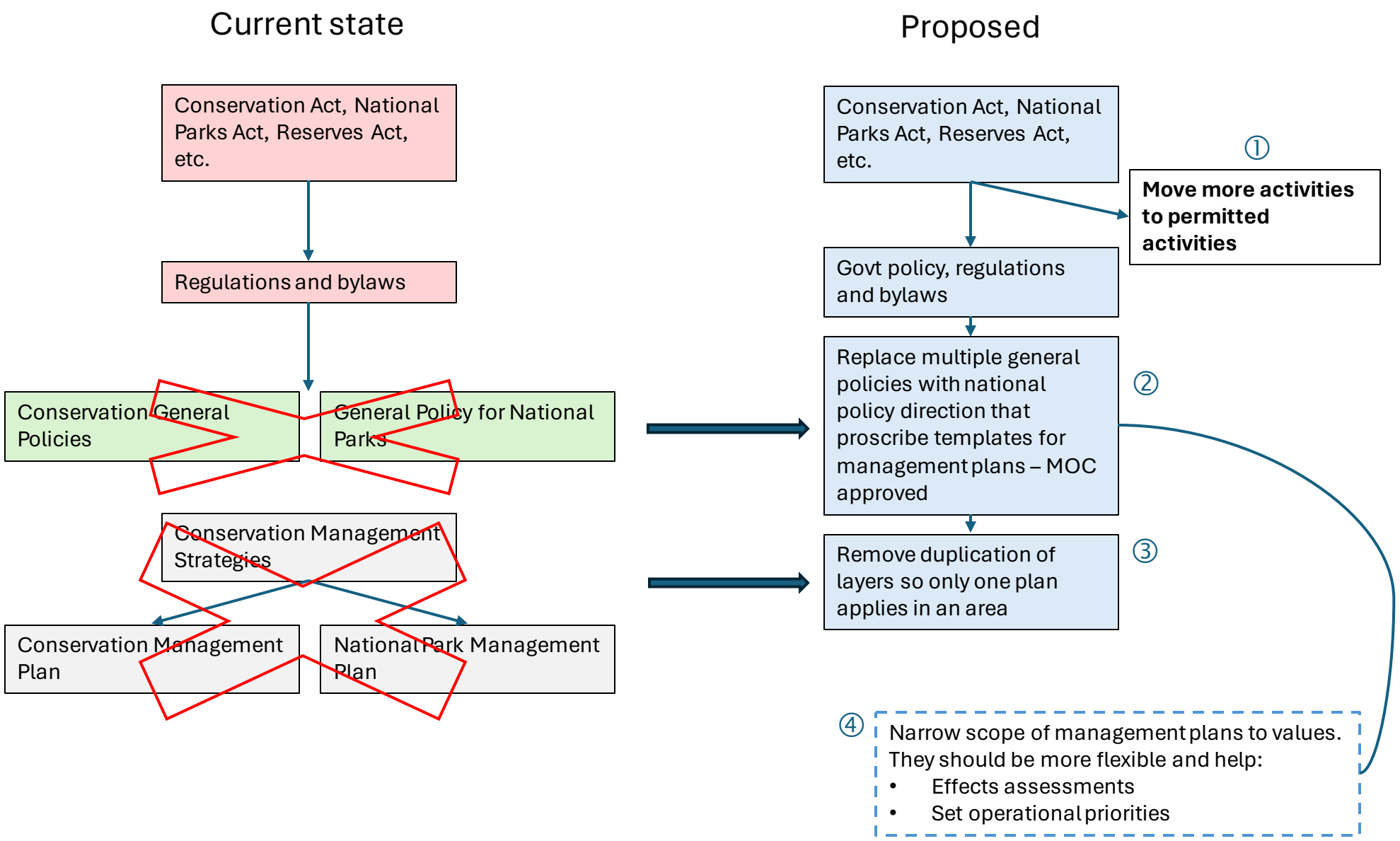
24-B-0264 – Attachment A – Summary of proposals for Conservation Amendment Bill

Proposal	Act/Part/section	Rationale	General comment	Policy development
Reducing the number of concession processes required				
Provide the Minister of Conservation with the power to make regulations authorising activities.	CA87: Part 3B	• Too many applications are handled on a case-by-case basis. • Enables a streamlined approach to permitting commonly applied for activities (e.g. drones, buses, guiding).		Already in draft CMAP Bill
Enable the Minister of Conservation to offer pre-approved concessions.				
Clarify the process to transfer a concession to a new operator.	CA87: Part 3B - s 17ZE	• Lack of clarity in concessions transfer process can result in unnecessary costs and delays (for example, transfer of Turoa concession).	• Further policy work is required to determine how the transfer process would work, including what tests are applied to ensure the new operator can take on the concession.	
Clear requirements and timeframes for processing concessions				
Add statutory timeframes to Part 3B (Concessions).	CA87: Part 3B	• Lack of statutory timeframes allows processes to drag on indefinitely. • Lack of clarity in what section 4 requires is getting in the way of prompt decision-making. Clearer s4 requirements would reduce risk of judicial review. • Legislative prescription can protect Māori rights and interests through strict obligations on DOC/MOC.	• Iwi have expressed concerns with timeframes. There are relationship agreements and decision-making frameworks that include concession timeframes. • Considerable risk to relationships with iwi and hapū if these provisions are hurriedly developed and not consulted on. • Relationships will need to be carefully managed at a local level and some agreements re-negotiated between the PSGE and DG-Conservation.	
Clarify section 4 requirements regarding consultation/engagement, the role of iwi in decision-making, and the right to preference.				
Require reconsideration requests to be submitted within 40 working days.				Already in draft CMAP Bill
Clarify that DOC is only required to proactively provide advice to applicants before a decision when it is reasonable and practical.	CA87: Part 3B - s 17SE(2)(a)	• Legally privileged [redacted]	• Legally privileged [redacted]	
Clear requirements and timeframes for developing plans				
Outline what is required by section 4 in terms of Treaty partner roles in the planning process.	CA87: Part 3A - s 17F-17I	• The management planning system does not effectively fulfil its obligations under section 4 of the Act (Treaty partner roles in the planning process). The Act does not provide clear requirements for meeting these obligations. • There is risk of judicial review related to Treaty compliance. This risk also causes delays in developing and reviewing plans. • Treaty responsibilities policies for the planning system as outlined in the Conservation General Policy and National Parks General Policy are outdated and inadequate. • Some parts of the process lack timeframes, or they are too long. For example, the consideration of Conservation Boards, NZCA and MOC of drafts after public notification.	• Further policy development is required to establish the requirements and determine how to uphold Treaty settlements. • Legally privileged [redacted]	
Process simplification: add statutory timeframes to the steps in Part 3A (Management Planning) and only convene Conservation Boards as required.				
Enable 'digital-by-default' for drafts and published planning documents.	CA87: Part 3A - s 17F-17I	• Legislation current requires hard copies to be printed, creating unnecessary costs as most people access online.		Already in draft CMAP Bill

Proposal	Act/Part/section	Rationale	General comment	Policy development
Empowering the Government to set effective rules and policy				
Create provisions to replace the general policies with a combined planning framework set out in secondary legislation.	CA87: Part 3A - s 17B-17B	• A combined planning framework aligns the management of national parks with other conservation areas. • The framework would include national regulations to provide clearer settings for activities that would benefit from a nationally consistent approach. • It would also set out a template to clarify and streamline the content of planning documents. • These changes would take pressure off the management planning system and reduce the length and complexity of the plans. • The current process for amending general policy includes lengthy public consultation. There is potential for this to be streamlined. • Currently the NZCA approves planning documents. The regulatory and planning functions of the conservation system would be more aligned if Minister is responsible for both the regulations and bylaws and the full scope of the national planning framework. • This would clarify that the role of NZCA is as an independent advisory body which advises on, and reviews general policy and planning documents.	• Risk that the 'public voice' in general policy development is perceived to be lessened. • Any streamlined process needs to account for the role of Treaty partners, as well as roles for PSGEs in Treaty settlements.	
Amend so that Minister of Conservation sets general policy for national parks instead of the NZCA.	CA87: Part 3A - s 17B-17C NPA80: Part 5 - s 44		• Removing NZCA as approver could be perceived as removing a level of public accountability. However, NZCA would retain reviewing, monitoring, and reporting functions.	
Amend the approval processes for CMSs, NPMPs, and CMPs including that: • MOC approves CMS and NPMPs instead of NZCA, • MOC can choose to approve a CMP, where they see it as necessary (this currently applies to NZCA).	CA87: Part 3A - s 17F-17I NPA80: Part 5 - s 47-48		• Several Treaty settlements set out specific requirements and shared roles for the approval of CMPs, CMSs and NPMPs. section 9(2)(j) [redacted]	
Enable more flexible policies and rules that are responsive to change				
Simplifying the system by disapplying the Conservation Management Strategy where there is a National Park Management Plan or Conservation Management Plan for that place.	CA87: Part 3A - s 17E-17D NPA80: Part 5 - s 44A	• CMP and NPMP sit below CMSs in the planning hierarchy. Can require changing multiple documents to effect change. • Jurisdictional boundaries of NPMP can sometimes overlap with areas of multiple CMSs, requiring alignment with each. • This change would simplify the planning hierarchy and make it easier to effect change.	• Risk of gaps in policies or rules until documents are updated where lower document just used CMS direction for that topic or issue (esp. for CMPs). • Further policy work is required to determine how to uphold Treaty settlements and structure planning boundaries.	
Changes in national rules and policies to override outdated operational policies in plans and strategies.	CA87: Part 3A - s 17H-17I NPA80: Part 5 - s 46	• The current framework relies on planning documents being updated when general policy changes. • Changing national rules and policies to override outdated operational policy, where appropriate, will allow flexibility to respond to changing needs, new technology and evolving pressures. It also supports clearer settings for concessions. • It would also remove the current restriction national park plans have over the Minister's ability to make bylaws to manage national parks.	• More policy work is required to determine how this would work. • Risk that the 'public voice' in developing long term plans is (perceived to be) lessened. • Any streamlined process will need to account for the role of Treaty partners as well as any roles for PSGEs in Treaty settlements.	
Remove the requirement that national park bylaws be consistent with the management plan.	NPA80: Part 5 - s 56(1)		• Allows Minister to make bylaws to manage national parks. section 9(2)(g)(i) [redacted]	
Encouraging competition in the market for concessions while providing certainty for investment				
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.	CA87: Part 3B - s 17SA - s 17ZG	• Confidently initiate competitive allocation processes in appropriate scenarios and more regularly test competitive	• Publicly tested in 2022 and received strong support.	Already in draft CMAP Bill

Proposal	Act/Part/section	Rationale	General comment	Policy development
Combine the competitive allocation process with the process to make a decision on a concession allocation (remove two-step process).		tension in the market by considering a broader pool of applicants. • A more transparent process for choosing successful applicants, and valuing and transferring infrastructure to successful applicants. • Provide more certainty for investors to plan their activities and invest with confidence.		Already in draft CMAP Bill
Create criteria to support selection of applicants (also addressing ambiguity around a reasonable degree of preference by building into the criteria).	CA87: Part 3B - s 17ZG (lacks provisions)		• There are currently no provisions in the Act. • Not tested with concessionaires or the public. Risk that proposals will not be supported by users.	
Set rules to support transfer and sale of capital improvements when concessions are competitively tendered.				
Enabling the ability to revoke a concession if it's not being used.	CA87: Part 3B - s 17Q - s 17SA - s 17SB	• DOC is unable to revoke a concession that has been used but is not currently active. This means it can't be reallocated to somebody else who is interested.	• There are currently no provisions in the Act.	
More effective and efficient pricing of concessions				
Enable concession fees to be set and reviewed in regulation.	CA87: Part 3B - s 17Y - s 17ZAA	• More certainty on how concession fees are set. • Charging fees closer to market rate and increasing returns to the Crown. • Reduced churn negotiating fees.	• Increasing activity fees is likely to encounter significant pushback and resistance from concessionaires. • Note there is an overlap here with price-based auctions and tendering. Need to determine when to allocate based on price and when to use regulated pricing.	
Amend/remove requirement for 3-yearly rent reviews.				
Access charging				
Enabling Minister to impose a charge or access to a conservation area or part of a conservation area.	CA87: Part 3 - s 17 NPA80: Part 1 - s 4	• Access charges are a significant source of third-party revenue internationally, but their use is prohibited in New Zealand. There is currently limited ability to charge users who do not use our overnight facilities (e.g. day hikers). • Enabling access charges could significantly increase third-party revenue for DOC, making the visitor network more financially sustainable.	• Will have high interest from, and implications on, Treaty partners. • section 9(2)(f)(iv) [redacted]	
Land exchange and disposal				
Enable land exchanges by replacing "no or very low" conservation test with a clear net conservation benefit test.	CA87: - Part 3 (s 16A) - Part 5 (s 26) RA77: - Part 2 (s 15, 15AA) - Part 4 (s 83) General Policy - Chapter 6	• Land exchange settings are restrictive to the point where a transaction cannot take place even if there would be clear net conservation benefit. • Changes present the opportunity to achieve net conservation benefit and to be achieved on new PCL gained and acquire land with values that are seriously threatened or underrepresented.	• Potential value for government objectives beyond conservation.	
Enable land disposals by replacing "no or very low" conservation test with clear criteria.	CA87: - Part 3 (s 16) - Part 5 (s 26) RA77: Part 4 - s 82 General Policy - Chapter 6	• Disposing land (Crown asset) for cash is limited to reserves under the Reserve Act and stewardship areas that have been assessed as having "no or very low" conservation values. • Changes present the opportunity to reinvest money into other conservation efforts and support iwi aspirations through land ownership.	• Potential value for government economic and development priorities beyond conservation.	
Other minor and technical proposals (from Conservation Management and Processes Bill)				

Proposal	Act/Part/section	Rationale	General comment	Policy development
Require reserve boards and reserve administering bodies only be audited when their total annual operating expenditure is $550,000 or more.	RA77: Part 4 - s 88 PFA89: - s 45M - s 45O - s 150	• Due to the age and complexity of conservation legislation, some provisions are hindered by minor and technical errors, inconsistencies, or outdated references. • There are also several processes relating to the internal administration of government which are overly onerous. Addressing these will reduce administration costs. • Legislation also does not provide full protection from personal liability for some statutory bodies. • The benefits from the proposed minor and technical amendments include: o Correcting or updating these provisions will make legislation clearer and more user-friendly. o Reducing administration costs. o Ensuring unfettered decisions or advice by removing personal liability.	• Changes to provide administrative efficiency and improve the accuracy/quality of the legislation.	Already drafted in CMAP Bill
Remove the requirement that New Zealand Police must have DOC authorisation to hold seized item(s).	WACA77: Part 5 - s 39C			Already drafted in CMAP Bill
Allow for role of 'Commissioner' to be delegated to a specific job title (regardless of which individual holds that title).	RA77: Part 2 - s 12(3)			Already drafted in CMAP Bill
Require the Public Service Commission to give written consent for the Director-General to delegate powers to a DOC officer or employee.	CA87: Part 7 - s 58(3)(c)			Already drafted in CMAP Bill
Explicitly state that aircraft concessions are required for landing or taking off on all public conservation land, not just 'conservation areas.'	CA87: Part 3B - s 17ZF(1)			Already drafted in CMAP Bill
Explicitly state that all aircraft activities (whether recreational or not) require a concession for landing or taking off on public conservation land.	CA87: Part 3B - s 17ZF(1)(c)			Already drafted in CMAP Bill
Explicitly state any management plan approved under the National Parks Act 1980 is a 'conservation management plan.'	CA87: Part 1 - s 2(1)			Already drafted in CMAP Bill
Update the National Parks Act where references are made to Westland National Park/Tai Poutini National Park.	NPA80: Part 1 - 6(1)(i) NPA80: Schedule 3			Already drafted in CMAP Bill
Update the definition of 'disability assist dog' in legislation.	CA87: - Part 1 (s 2) - Part 5C			Already drafted in CMAP Bill
Declare that land under section 62 of the Conservation Act 1987 is held for conservation purposes under section 7 of the Act.	CA87: Part 8 - s 62			Already in draft CMAP Bill
Allow a 'conservation area' to be established as a nature reserve or scientific reserve without first needing to be established as a 'reserve.'	RA77: Part 3 - s 16A(2)-(3)			Already in draft CMAP Bill
Ensure that NZCA members and conservation board members cannot be personally liable for decisions they make in good faith when exercising their statutory powers in role	CA87: Part 2A (lacks provisions)			Already in draft CMAP Bill


Current state
Conservation Act, National Parks Act, Reserves Act, etc.
Regulations and bylaws
Conservation General Policies
General Policy for National Parks
Conservation Management Strategies
Conservation Management Plan
National Park Management Plan
Proposed
Conservation Act, National Parks Act, Reserves Act, etc.
①
Move more activities to permitted activities
Govt policy, regulations and bylaws
Replace multiple general policies with national policy direction that proscribe templates for management plans – MOC approved
②
Remove duplication of layers so only one plan applies in an area
③
④
Narrow scope of management plans to values. They should be more flexible and help:
• Effects assessments
• Set operational priorities

Department of Conservation
Te Papa Atawbai

Briefing – Proposals for Conservation Amendment Bill

To	Minister of Conservation	**Date submitted**	4 September 2024
Action sought	Decisions on options to consult on to include in the Bill as outlined in Attachment A. Confirmation of timing to ensure enactment of Bill in 2026.	**Priority**	High
Reference	24-B-0390	**DocCM**	DOC-7714517
Security Level	In Confidence		

Risk Assessment	Medium Timely decisions are required to ensure you can deliver concessions reform and enable enactment in early 2026.	**Timeframe**	9 September 2024 (you have a meeting with officials on this date)
Attachments	Attachment A - Key policy options for discussion document Attachment B – A3 Overview: Current concessions and planning framework and key shifts Attachment C – A3 Overview: Proposed concessions and planning framework Attachment D – A3 Overview: Competitive allocation of concessions and Treaty rights and interests Attachment E – A3 Overview: Proposed concessions process Attachment F – A3 Overview: Proposed planning processes Attachment G – A3 Overview: Treaty interactions across the package of proposals		

Contacts	
Name and position	**Cell phone**
Ruth Isaac, Deputy Director-General, Policy and Regulatory Services	section 9(2)(a)
Eoin Moynihan, Policy Manager, Regulatory Systems Policy	section 9(2)(a)

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. This briefing seeks decisions to progress proposals for the Conservation Amendment Bill. To meet your timelines for public consultation later this year, decisions will be required as soon as possible on the objectives of the new system, the functions, the structure, and the streamlined concessions process as well as policy matters around land exchanges.
2. Given the significant and extensive nature of these matters, officials intend to guide you through a table covering all key outstanding decisions at a meeting on 9 September (Attachment A).
3. Attachment A outlines the key decisions to be made across:
    - Table A: Objectives for the Bill
    - Table B: The Conservation Management Framework
        - Options around the functions of the conservation planning system
        - Structure of the conservation planning system
        - How the planning system sets rules and guides decision-making to lift pressure from the concessions system
        - Setting out the processes for developing plans and the proposed Conservation Policy Statement
    - Table C: Processing, allocating, and managing concessions
        - Outlining clear expectations and timeframes for processing concession applications
        - Driving better performance from the concessions system through competitive allocation and better contract management
    - Table D: Enabling more flexibility around land exchange
4. Over the next two weeks, we will provide further advice on:
    - Options for enabling more flexibility around land disposal settings
    - Implementation options, timelines and transition arrangements
    - Connections with the Options Development Group report and how other recommendations can be addressed
5. section 9(2)(f)(iv) [redacted]
6. The key proposed options and changes are summarised in Attachments B, C, D, E, F and G.
7. Following your direction on 9 September, officials will provide a draft Cabinet paper and discussion document to enable you to undertake engagement with your Ministerial colleagues, and if approved by Cabinet, with the public from approximately November 2024 to February 2025.

We recommend that you … (Ngā tohutohu)

		Decision
a)	**Agree** that decisions made, as outlined in Attachment A, will determine the policy options and proposals included in a draft discussion document and Cabinet paper (to be shared with you on 16 September, following your feedback on 9 September).	Yes / No
b)	**Note** that officials will meet with you on 9 September to receive feedback on the policy proposals.	Noted
c)	section 9(2)(f)(iv) [redacted]	Noted
d)	**Agree** to the proposed timeline to lodge the Cabinet paper on 10 October 2024, noting that your policy decisions are required as soon as possible to meet your timeline to pass the Conservation Amendment Bill by early 2026.	Yes / No

section 9(2)(a) [redacted]

Date: 4 / 9 /2024

Ruth Isaac
Deputy Director-General,
Policy and Regulatory Services

Date: / /

Hon Tama Potaka
Minister of Conservation

Purpose – Te aronga

1. This briefing provides information on the proposed Conservation Amendment Bill and outlines:
   - What decisions are required across management planning, concessions, and land exchange settings
   - How those decisions will determine the contents of the discussion document
   - How the discussion document will be used for public engagement
   - section 9(2)(f)(iv) [redacted]
   - Proposed timelines and next steps

Background and context – Te horopaki

2. You have directed DOC to modernise conservation area management through legislative improvements [24-B-0128 refers]. This is a priority in your work programme that has been endorsed by Cabinet [24-K-0017 refers].
3. The proposed Conservation Amendment Bill (**the Bill**) will focus on changes to respond to the need for more effective and efficient planning and regulatory processes for public conservation land. This is an opportunity to cut processing times and compliance costs, provide greater certainty for investment on public conservation land, and get better returns for conservation.
4. The Bill aims to modernise the conservation system by proposing changes to management planning, concession processes, and land exchange and disposal settings.
5. To complete the draft Cabinet paper and discussion document to support public engagement, there are policy decisions that require your direction. Options and decision points have been outlined in the attached table (see Attachment A).
6. Subject to your decisions, we will finalise the discussion document to enable you to undertake engagement with your Ministerial colleagues and if approved by Cabinet, with the public.
7. Following your feedback, we will provide you the draft Cabinet paper and discussion document on 16 September 2024.
8. section 9(2)(f)(iv) [redacted]

Your direction is needed to confirm options in the discussion document

9. Attachment A outlines policy options and decisions needed across management planning, concessions and land exchange settings. These will form the basis of policy options and questions in the discussion document to support public engagement.
10. As outlined in your priorities Cabinet paper, proposed changes across these areas aim to:
    - Provide certainty for investment and achieve better economic outcomes through clear concession allocation settings
    - Cut processing times and costs on businesses through more proactive authorisation of activities
    - Unlock management planning through a streamlined and more flexible system

- Enable exchange of land where it would mutually benefit conservation and development
- Enable the disposal of conservation areas where it makes sense from a conservation perspective
- Clarify, and provide certainty around, the Department's Treaty obligations

11. We have grouped the proposed changes into the following tables (see Attachment A):

- Table A: Objectives for the Bill
- Table B: The Conservation Management Framework
    - Options around the functions of the conservation planning system
    - Structure of the conservation planning system
    - How the planning system sets rules and guides decision-making to lift pressure from the concessions system
    - Setting out the processes for developing plans and the proposed Conservation Policy Statement
- Table C: Processing, allocating, and managing concessions
    - Outlining clear expectations and timeframes for processing concession applications
    - Driving better performance from the concessions system through competitive allocation and better contract management
- Table D: Enabling more flexibility around land exchange

12. The key proposed options and changes are also summarised in Attachments B, C, D, E, F and G.
13. Over the next two weeks, we will provide further advice on:

- Enabling more flexibility around land disposal settings
- Implementation options, timeframes and transition arrangements
- Connections with the Options Development Group report and how other recommendations can be addressed

A discussion document forms the basis of engagement

14. We propose using a discussion document to engage the public on the issues and proposals outlined in Attachment A.
15. The discussion document will describe key issues in the system, outline each proposal, the rationale, Treaty of Waitangi considerations and provide high level impact assessments.
16. Undertaking engagement is key to discovering unforeseen issues early, avoiding delays and costs in the future. It ensures legislative change reflects the needs of users of the conservation system and provides for necessary engagement with Treaty partners.

Public engagement process

17. We propose:

- Discussion document to be available on the DOC website inviting public feedback
- Targeted engagement with Treaty partners – including inviting comment from post-settlement governance entities – and key stakeholders such as tourism sector representatives, other concessionaires, conservation boards, and environmental non-governmental organisations.

18. We will provide further information on the intent for the engagement process following your feedback (alongside a draft discussion document) and will finalise the details of the engagement plan based on our meeting with you on 9 September.

section 9(2)(f)(iv)

[redacted]

section 9(2)(f)(iv) [redacted]

- [redacted]
- [redacted]
- [redacted]

[redacted]

[redacted]

Timelines

29. We require your decisions across this package of papers as soon as possible on or about **9 September** to enable us to complete a draft discussion document and Cabinet paper as outlined in the timeline below. This timeline is based on ensuring that the Bill can be passed in early 2026.

Date	Milestone
4 Sept '24	MOC to receive briefing paper
9 Sept '24	MOC/DOC to discuss decisions needed at Officials meeting (Attachment A)
9 Sept '24	Agency consultation on draft Cabinet paper and discussion document begins[1] [2 weeks] Further discussion with MOC as required
16 Sept '24	MOC to receive draft Cabinet paper and discussion document [1 week for feedback and any changes ahead of providing to Ministers] Further discussion with MOC as required
20 Sept '24	MOC to receive a revised draft Cabinet paper and discussion document for Ministerial consultation
23 Sept to 4 October '24	Ministerial consultation [2 weeks] plus time to revise and finalise the documents Further discussion with MOC as required
10 October '24	Cabinet paper lodgement
16 October '24	Cabinet Economic Policy Committee
21 October '24	Cabinet
November '24 to early February '25	Public engagement period
March '25	Confirm final policy decisions
October '25	Bill introduced[2]
End of October '25 to end of Q1 '26	Select Committee [4-6 months]
End of Q1/early Q2 '26	Third reading and Bill passed.

[1] Lined up with DIA, DPMC, HUD. LINZ, MBIE, MCH, MFE, MoJ, MOT, MPI, NZTA, PCO, Regulation, Te Arawhiti, Te Puni Kokiri, Te Waihanga, the Treasury.
[2] Noting that PCO require six months to draft the Bill once policy decisions are finalised.

Risk assessment – Aronga tūraru

30. Meeting the above timeframes will require decisions from you as soon as possible either when we meet you on 9 September or shortly thereafter, and limited delays through the Ministerial/Cabinet consideration process. Slippage of one week (ECO on 23 October) would still work, but the next ECO thereafter is not until 6 November.

31. There is likely to be high public interest in certain proposals given the scope of the Bill and potential or perceived impact. Officials will produce a communication and engagement plan to manage expectations ahead of and during public engagement.

Treaty principles (section 4) – Ngā mātāpono Tiriti (section 4)

32. Iwi/Māori will have a strong interest in any proposed changes around Treaty principles and how giving effect to them may be codified in legislation through this Bill. Note that this Bill does not propose amending section 4 of the Conservation Act but does propose ways in which section 4 could be more specifically given effect to. We will develop an appropriate Treaty partner engagement strategy.

33. These changes seek to enable appropriate iwi/Māori participation in the regulatory system while maximising opportunities for activities on PCL within conservation limits and ensuring that we provide a suitable operating environment for businesses.

34. Upholding Treaty settlements is a key bottom-line. DOC has more Treaty of Waitangi settlement implementation commitments than any other Government entity. Treaty settlement legislation embeds iwi participation in the existing system. Any changes will need to be worked through with iwi to avoid a perception that their settlement agreement is being undermined by the Crown.

35. Recommendations of the Options Development Group (ODG) are wide-ranging and there are some links with this work. We consider the most relevant ODG recommendations in this context are Theme 4: Lands, Waters, Resources, Indigenous Species, and other Taonga, Theme 5: Te Tiriti Partnership, Theme 6: Tino Rangatiratanga. Some ODG recommendations suggest more fundamental reform and address other Acts of Parliament (e.g., Wildlife Act). Nonetheless this Bill and revised planning documents following the Bill will provide an opportunity to address some of the ODG recommendations.

Consultation – Kōrero whakawhiti

36. The draft Cabinet paper and discussion document are scheduled to be shared for agency and Ministerial consultation in September 2024 as outlined above.

Financial implications – Te hīraunga pūtea

37. The Department will fund the cost of public engagement from existing funding allocations.

38. Future implementation costs, timelines, and funding sources will be determined in upcoming months as options for implementation are worked through. section 9(2)(f)(iv)

[redacted]

Legal implications – Te hīraunga a ture

39. Proposals would primarily make changes to the Conservation Act 1987 and National Parks Act 1980. Other legislation is likely to include the Reserves Act 1977, Marine Reserves Act 1971, Marine Mammals Protection Act 1978 and Wildlife Act 1953.

40. Minor consequential amendments to Treaty settlement legislation may be required e.g. references back to the Conservation Act.

Next steps – Ngā tāwhaitanga

41. Further advice is being prepared on a number of matters for the Bill, including:

- Options for enabling more flexibility around land disposal settings
- Implementation options, timelines and transition arrangements
- Connections with the Options Development Group report and how other recommendations can be addressed

42. We are preparing a draft discussion document, a proposed engagement strategy, and a draft Cabinet paper. Following your feedback on the policy proposals, we will provide these for your review on the 16 September for your approval ahead of Ministerial consultation.

ENDS

Attachment A: Key policy options for Discussion Document

Table A: Objectives for the Bill

Proposal	Options	Decision	Analysis and Advice
The Conservation Management System should be efficient, speedy, certain and uphold Treaty settlements			
Objectives of reform	1. **Agree** that the changes proposed in the discussion document aim to: • Significantly speed up processing times and cut compliance costs • Modernise and avoid duplication in planning and land management • Ensure that activities are only restricted or regulated where required to protect the values of public conservation land • Provide certainty and clarity to support investment in new and existing activities • Increase returns to conservation and improve DOC's financial sustainability.	**Yes | No**	These objectives reflect the Priorities set out in your Cabinet paper [24-K-0017 refers] and the previous briefing on the Bill [24-B-0264 refers].
Upholding Treaty settlements	2. **Agree** that amendments will uphold the integrity and intent of Treaty settlements.	**Yes | No**	To avoid undermining Treaty settlements and the Māori-Crown relationship more broadly, it is important that any changes to the conservation planning and regulatory system uphold the mana and influence of these agreements. A number of Treaty settlements bake in roles for Māori in some plans and in concession processes, and these will be preserved in any new framework. Note that achieving this will be more challenging if the scope and purpose of the framework is significantly changed. This cannot extend to preserving all non-statutory agreements. A number of relationship agreements established under Treaty settlements also include minimum timeframes for consultation on decisions, which will already require resetting in the context of new performance targets being set by the Minister and Fast Track statutory timeframes.
Clarifying how to give effect to Treaty provisions	3. **Agree** to provide more specificity in the legislation about how Treaty rights and interests will be met in concessions, management planning, and land exchange and disposal.	**Yes | No**	These reforms seek to clarify and codify how the Government is to uphold Treaty rights and interests in practice in relation to concessions and management planning. This is critical to provide greater certainty for concessions decision-making, and to reduce delays and litigation in relation to such decisions. Clarity in the law about how Treaty interests are to be applied can be beneficial for all parties – the Government, concessionaires, Treaty partners, and the public as users of the system. Note the Treaty clauses review of legislation is a separate process coordinated by the Ministry of Justice and that it will be looking at Treaty principles clauses more widely. As such the scope of this Bill is limited to those parts of Conservation legislation relating to concessions and management planning and changes to section 4 itself are not proposed to be in scope. DOC will work closely with the Ministry of Justice and Te Arawhiti on the wider review.
section 9(2)(f)(iv) [redacted]	[redacted]	[redacted]	[redacted]
Links to other work	5. **Note** that consultation on access charging is being progressed separately and it is proposed to be included in this Bill at drafting. 6. section 9(2)(f)(iv) [redacted]	**Noted** **Noted**	Government agreed to consult on access charging as part of the Conservation Revenue Action Plan [CAB-24-MIN-0293 refers]. A parallel process will take that work forward, and agreed changes to the law can be included in this Bill. section 9(2)(f)(iv) [redacted]

Table B: The Conservation Management Planning Framework

Proposal	Options	Decision	Analysis and Advice
Overarching objectives of the conservation management planning system	7. **Agree** that the primary function of the conservation management planning framework is to establish outcomes for places to guide regulatory decision-making on public conservation land. 8. **Agree** that the outcomes established for places can be in input into business planning but are not binding on resource prioritisation decisions. 9. **Note** the framework currently also plays roles in other regulatory systems beyond managing public conservation land, including species management, marine area decisions and management, and informing DOC input into RMA regional planning and decision-making.	**Yes | No** **Yes | No** **Noted**	The current management planning system comments on other regulatory and non-regulatory decisions to varying degrees of effectiveness. Public input will be sought into whether the current mechanisms should continue to guide these other areas. The role that the general policies and plans currently play in regulating conservation beyond public conservation is relatively minor. Nonetheless, we will want to ensure that any changes do not unintentionally undermine the effective and efficient operation of those other regulatory functions.
Conservation Policy Statement: Set regulatory rules in one national-level instrument instead of two			
One national-level Conservation Policy Statement (NCPS) instead of two instruments	10. **Agree** to replace the two sets of general policies with a single national-level instrument called a National Conservation Policy Statement; it would be used to set national level guidance and rules, including to permit activities.	**Yes | No**	Establishing a National Conservation Policy Statement (NCPS) as a single instrument, instead of the existing two instruments (General Policy and General Policy for National Parks), creates efficiencies and streamlines the system. Both also need significant updating and the statutory processes for doing so are currently problematic. A new NCPS will enable a larger number of current problems in the system to be addressed.
What a Conservation Policy Statement (CPS) will do	11. **Agree** that the National Conservation Policy Statement: a. Outlines matters that must be considered when determining whether a concession can be granted. b. Can impose conditions and/or requirements on concessionaires for all activities or for specific activities at a national level. c. Can exempt an activity nationally, for all PCL or for specific land classifications only (e.g. National Parks). d. Can provide for an instant permit and can also do so for specific land classifications only. e. Can designate something as a prohibited activity and can also do so for specific land classifications only. f. Is binding on area-level plans, including upon their ability to establish further exemptions, instant permits, prohibited activities, and limits.	**Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No**	The National Conservation Policy Statement would permit activities that would otherwise require a concession (for example, minimal impact activities undertaken for recreational purposes), creating greater simplicity for operators. It would also be used to set national level guidance and rules (for example, to set standards and conditions for decisions and to set a single, simple template for management planning documents).
The process to create a National Conservation Policy Statement (CPS)	12. **Agree** that the Minister of Conservation will initiate the process for developing or amending the National Conservation Policy Statement. 13. **Agree** the Director-General will draft the policy, seek public comment on the proposals, and provide the Minister of Conservation with a summary of submissions and an impact analysis report. 14. **Agree** the final Conservation Policy Statement will be approved by the Minister of Conservation. 15. **Note** that some Treaty Settlements have relationship agreements in place that require specific consultation on changes to conservation policy in the rohe or takiwā of the PSGE.	**Yes | No** **Yes | No** **Noted**	The Minister approves the NCPS following public consultation and impact analysis. Ministerial approval of a NCPS would allow more directive and consistent decisions. The form of engagement would not be prescribed, which allows engagement with stakeholders to be tailored to the nature and scale of the review. More informed participation would be supported by the requirement for the Director-General to prepare a report analysing the policy based on submissions. Seeking public comment would not be required for minor and technical amendments or for policy changes already consulted on. **Treaty impact assessment** In addition to the requirement to engage with Iwi/Hapū, we recommend requiring the Director-General's report to include an analysis of the effect of the proposed policy on Māori rights and

Proposal	Options	Decision	Analysis and Advice
	16. **Agree** that there will be a requirement for the Director-General to ensure that Iwi/Hapū are appropriately engaged in the process and that specific settlement requirements will be upheld. 17. **Agree** there will be a requirement on the Director-General to include analysis of impacts of the policy on Treaty rights and interests in the report informing the Minister's decision.	**Yes | No** **Yes | No** **Yes | No**	interests. This is an effective way of ensuring the specific analysis of Māori rights and interests is considered by the Minister when approving the National Conservation Policy Statement.
Area-based plans: Have one plan per area that sets simple rules, instead of multiple plans			
One plan per conservation area	18. **Agree** that each area of land administered by DOC should only be subject to one planning document (as well as the National Conservation Policy Statement). 19. **Note** that transition arrangements will need to be provided for and will be the subject of further advice. 20. **Agree** that National Park Management Plans will be the default plan for all National Parks. 21. **Agree** that there will be limits to ensure that Statutory Plans are set at the right scale and are not for areas which are too small.	**Yes | No** **Noted** **Yes | No** **Yes | No**	Having a single, area-based plan will create significant efficiencies. It will allow for all relevant rules and guidance to sit in one place. Currently, a parcel of public conservation land can be covered and directed by multiple plans. They can overlap, duplicate, conflict, and cause confusion. There will still likely be a significant number of plans in the framework and it will be important not to have plans proliferate. Too large a number will be difficult to administer and to keep up to date. A more significant revision to the framework to provide for fewer plans would require a more significant multiyear process of plan redrafting and would require more engagement on changes to uphold some Settlements. We recommend you consult on several ways to achieve this. **Treaty impact assessment** Iwi and hapū are likely to favour a greater number of separate plans with a more specific focus on their area. Engagement on options will ensure their views are gained. section 9(2)(j) [redacted]
What an area plan will do	22. **Agree** to establish a template in either legislation or the National Conservation Policy Statement (NCPS) to guide the content of plans. *Setting local conservation outcomes* 23. **Agree** that area plans will set conservation objectives for the areas they cover, and that concessions should not be inconsistent with them. 24. **Agree** that conditions, including offsetting or compensation, may be applied to mitigate or remedy any effects that would not be compatible with the vision or objective of a management plan. *Role in concession management* 25. **Agree** that an area plan can exempt an activity from needing a permit in specific areas, where consistent with the NCPS. 26. **Agree** that an area plan can provide for an instant permit for an activity in specific areas, where consistent with the NCPS. 27. **Agree** that a plan may set a reasonable limit on the volume of an activity that can occur to protect against harmful cumulative effects on important environmental or recreational outcomes. 28. **Agree** that when setting a limit, a plan will not:	**Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No**	Plans should be simple and not overly prescriptive. They should provide local direction to how the National Conservation Policy Statement applies at a given place, where needed only, but they should not go beyond that. This ensures there is a neat, simple flow between nationally-set direction and local application, without the ability for a plan to introduce new rules or requirements outside of that. We propose that a plan: • Sets objectives for the management of an area • proactively assesses where some activities can occur by establishing exemptions, instant permits, and limits (where needed) **Treaty settlement and other arrangements** Some Treaty Partners (and other stakeholders) may expect plans to be empowered to take a more prescriptive role in concessions management. Engagement can further explore Treaty Partner views.

Proposal	Options	Decision	Analysis and Advice
	• Prescribe the number of operators or concessions that can operate within the limit. • Prescribe the process for allocating concessions within the limit. 29. **Agree** that plans cannot impose conditions on an activity, unless it is an exempt activity or instant permit, or occurs in an amenities area. 30. **Agree** that plans cannot create additional process requirements for concessions.	**Yes | No** **Yes | No**	
The process to create an area plan	31. **Agree** that the Director-General will initiate the process for developing or amending an area plan. 32. **Agree** the Director-General will draft the plan and seek public comment on the draft. 33. **Agree** that the New Zealand Conservation Authority and conservation board's role in the planning process will be of an advisory nature. 34. **Agree** area plans will be approved by the Minister of Conservation. 35. **Note** that some Treaty Settlements include bespoke requirements to include the affected PSGE in the development or review of plans. 36. **Agree** that the Director-General will engage with Iwi/hapū during the drafting, public notification and revision stages of the plan. 37. **Agree** to consider options for introducing statutory timeframes to speed up revisions to plans and ensure that plans are kept up to date as necessary. 38. **Agree** that plans continue to apply whether or not they are reviewed. 39. **Agree** that changes can be made without public notification if minor or there has already been consultation on the changes 40. **Agree** to seek approval from Cabinet for further work on a consistent approach to funding Treaty partner input into the planning process	**Yes | No** **Yes | No** **Yes | No** **Yes | No** **Noted** **Yes | No** **Yes | No** **Yes | No** **Yes | No**	Currently, area plans are approved by the NZCA or relevant conservation boards. The Department recommends that all plans are initiated and approved by the Minister of Conservation. This is a key way to streamline and simplify the system. This proposal strengthens the regulatory role of the Government in relation to concessions and land management, relative to the NZCA and boards. An objective of the current statutory framework was to fetter executive power and the design somewhat mimics resource management architecture. However, conservation boards have never had the functions and powers of local authorities and are not consenting authorities. Accordingly, the architecture makes less sense and creates unnecessary layers where the Government remains the funder, consenting authority and manager of the area. The key issue is to ensure that the new system provides for appropriate local and community input while enabling an efficient, effective, and nationally consistent statutory framework, and the proposals will test how that should be done. **Treaty impact assessment** Engagement with Iwi/hapū while drafting the plan enables informed decision-making by the Director-General when preparing the plan. The engagement requirements for area plans are expected to be more extensive than for the NCPS given the localised content of these plans. We propose seeking Iwi/hapū views on options for ensuring engagement is efficient and efficient, noting that a one-size-fits-all approach is not fitting to the diversity in local contexts. We suggest the Director-General engages early to establish how Iwi/hapū will be engaged through the process. Like the NCPS, we also recommend exploring mechanisms to ensure that the Minister appropriately considers rights and interests when approving the plans. **Treaty settlement and other arrangements** Some Treaty settlements stipulate bespoke requirements for the affected PSGE in the development or review of plans. For example, requiring a planning document is co-approved by the post-settlement governance entity. section 9(2)(f)(iv)
Amenities areas	41. **Agree** to more effective use of amenity areas for high-demand areas of conservation land where there is a need for detailed spatial planning and active management of visitor services. 42. **Agree** that the Minister can declare an amenities area in a national park after consulting with the NZCA, rather than only on the recommendation of the NZCA. 43. **Note** that advice from the Milford Opportunities Project recommends exploring the use of an amenities area to better manage the commercial allocation and management of activities.	**Yes | No** **Yes | No** **Noted**	Amenity areas provide for visitor infrastructure and services. The Minister can declare an amenities area under the Conservation Act and under the National Parks Act. In a national park this can only be done on the recommendation of the NZCA. Amenities areas enable development in conservation areas through setting the provision of services as the purpose for which the land is held, and by exempting these areas from strict adherence to the conservation outcomes for the area as a whole. Although the recommendation is to lift the focus of planning documents to setting outcomes, amenities areas can be used to enable more detailed spatial planning and active management of commercial outcomes where desirable. Stakeholder engagement on the Milford Opportunities Project suggest that there is support for amenities areas amongst ENGOs and others sometimes opposed to development on conservation land as they confine the built environment to specific and actively managed areas.

<table>
<tr><th>Proposal</th><th>Options</th><th>Decision</th><th>Analysis and Advice</th></tr>
<tr><td></td><td></td><td></td><td>We recommend seeking views on the key considerations for the Minister when declaring an amenities area. The current test for national parks is agreement of the NZCA, rather than a focus on outcomes and management of conservation values.</td></tr>
<tr><td colspan="4">Make the new system able to exempt some activities from needing a permit, and able to grant an instant permit</td></tr>
<tr><td>What activities a plan can exempt from getting a permit, or give an instant permit for</td><td>Exempting activities
44. Agree that activities can be exempt from requiring a permit if they meet the following criteria:
• The activity would not require any corresponding rights over the land.
• The activity is consistent with the purposes for which land is held (assessed at a land type level).
• It is reasonable to forgo the collection of any royalties, fees, or rents from the activity.
• The risk of cumulative effects from the activity is low.
45. Agree that general conditions can be imposed on an exemption for an entire activity if necessary to satisfy the Minister that there will be little to no impact on conservation values (e.g. applicable during certain hours of the day).
Instant permits
46. Agree that instant permits should be used instead of exemptions if:
• Conditions are required; and/or
• There is a risk of cumulative effects and so volumes should be actively monitored; and/or
• Fees, rents and/or royalties should be collected from the user.
47. Agree that instant permits can be set up where:
• The permit does not provide any corresponding rights over the land.
• The activity is consistent with the purposes for which land is held.
• Adverse effects from the activity can be avoided or mitigated through conditions.
48. Agree that the Minister can put a temporary hold on issuing new instant permits if there are concerns with volume (cumulative effects) or unforeseen effects.
49. Agree that classes of exempt or instant permits may also be established outside of the National Conservation Policy Statement and area plans by seeking comment from Treaty partners and the public.</td><td>Yes | No

Yes | No

Yes | No

Yes | No

Yes | No</td><td>Granting exemptions or instant permits for common activities would eliminate processing times for those activities and provide greater clarity by encouraging Government to set out a list of acceptable activities.
<table><tr><th>Examples:</th><th>CPS (national)</th><th>Plan (area-specific)</th></tr><tr><td>Exempt activity (no permit required)</td><td>• News media on formed tracks and carparks
• Collection of air samples</td><td>• Recreational hang-gliding
• Research (non-extractive), noting a Wildlife Act or Marine Mammal permit may still be necessary</td></tr><tr><td>Instant permit</td><td>• Commercial transport in formed carparks
• Small-scale commercial filming on formed trails</td><td>• Recreational drone use
• Guiding permits
• Harvesting flora (incl. cultural - e.g. harakeke)</td></tr></table>Enabling new exemptions or instant permits to be established outside of the NCPS and area plans will increase the agility of the regulatory system.
Treaty impact assessment
During previous engagement on these issues, iwi cautioned that efficiency should not be achieved by taking a pan-Māori approach to authorisations. This can be mitigated by taking a more place-specific approach through plans if the effects of the activity vary from place-to-place.
Treaty settlement and other arrangements
Some Treaty settlements include specific decision-making frameworks for concessions. Those decision-making frameworks often include provisions for a list of concessions where the PSGE does not need to be engaged on each application. Officials will undertake further work on how to incorporate those requirements into the processes for establishing exemptions or instant concessions.</td></tr>
</table>

Proposal	Options	Decision	Analysis and Advice
Prohibited activities	50. **Agree** that activities may only be classed as prohibited if either: • The activity is inconsistent with the purpose for which the land is held at a land classification level; or • The effects of the activity cannot be reasonably avoided, mitigated, or remedied. 51. **Agree** that the National Conservation Policy Statement may prohibit an activity on specified classifications of public conservation land. 52. **Agree** that area plans will not explicitly prohibit activities.	**Yes | No** **Yes | No** **Yes | No**	Prohibited activities listed in the National Conservation Policy Statement avoid the need to assess an activity when it has already been established that the activity will not be granted a concession. They are an effective tool in enabling efficiency within the regulatory system by reducing the number of applications. Prohibited activity lists should not unduly restrict potential activities that would be consistent with the overall concession effects management framework. Rather than explicitly prohibit activities, the outcomes established in an area plan should inform whether a concession application should be declined. This enables greater consideration of conditions (including compensation and offsetting) to manage the adverse effects of an activity. We could explore greater use of bylaws or wilderness areas to cover areas where structures and modifications will generally be prohibited (e.g. the tops of mountains).

Table C: Processing, allocating, and managing concessions

Proposal	Options	Decision	Analysis and Advice
Outline clear expectations and timeframes for processing concession applications			
Improved concession processing through the plans	53. **Note** that the shifts above to one plan per area and clear concise plans will help DOC process concessions faster and with more confidence once new plans are in place. 54. **Note** that introducing exempt activities, prohibited activities, and instant permits will relieve pressure on the concessions system by reducing the need for extensive case-by-case decision-making on some concession applications.	**Noted** **Noted**	
Triaging applications	55. **Agree** that applications may continue to be declined upfront if it is clear that the application will not meet statutory requirements, and/or if the applicant does not have the financial means to execute the concession or has a history of non-compliance. 56. **Agree** to align the timeframes for returning incomplete applications and declining obviously inconsistent applications (10 working days). 57. **Agree** that DOC will return an application within 20 working days if a competitive allocation process is going to be run instead.	**Yes | No** **Yes | No** **Yes | No**	A clearer test for declining an application upfront will make it faster for the applicant to know when their application has been declined and take pressure off the system to speed up processing other applications. Aligning timeframes for returning incomplete applications and declining obviously inconsistent applications allows applicants to know the outcome of their application within two weeks. Changes in DOC processes, better application systems, and new technology being implemented, alongside the proposed streamlining of the planning framework, will support these decisions to be made in a more timely way. DOC previously consulted on allowing the ability to return applications if it was better to run a competitive process. Concessionaires have a strong desire for a timeframe so that there is clarity around the process going forward.
Timeframes	58. **Agree** to introduce statutory timeframes for making decisions on concession applications and to consult on options for specific parts of the process (like Fast Track or RM applications) 59. **Agree** that DOC can "stop the clock" while awaiting further information or advice from external parties. 60. **Agree** applicants must provide any further information requested by the Minister or DOC within 10 working days, or within any longer, reasonable timeframe specified by the Minister or DOC.	**Yes | No** **Yes | No** **Yes | No**	You are considering advice from the Department on targets for the next two years in respect of timeliness of concession decision-making – these are context specific, taking into account the current backlog and other time-sensitive matters. These will not be suitable for statutory timeframe requirements. The Conservation Act currently sets few statutory timeframes for concessions decision-making, apart from timeframe limits for immediate declines and the length of public notification periods. Decision-making is likely to be the aspect of the process the public will most want a statutory timeframe for (compared to steps like the applicant providing further information, or Treaty partners providing feedback). However, setting overall timeframes in legislation is difficult to get right especially where there can be significant technical advice and analysis required and legal processes can create delays,

Proposal	Options	Decision	Analysis and Advice
			which is why other statutes, like the Fast Track Bill, have tended to set limits on the length of specific processes. In terms of consequences, missing the statutory deadline to make a decision would not mean a concession was automatically granted (or not granted). Instead, the deadline would provide a strong public message about expected service levels, and missing the deadlines set would be a performance matter for the Government.
Consultation with Iwi/hapū	61. **Agree** that Treaty partners must be engaged with on concessions applications, except when: • Treaty partners have previously agreed engagement is not required on that category of activities; or • the application proposes only minor changes to existing or previous concessions. 62. **Agree** Treaty partners must provide feedback on most applications within 10 working days, or within a reasonable timeframe specified by the Minister for more complex applications. 63. **Agree** for the avoidance of doubt that if the deadline for Treaty partners to provide feedback has elapsed, decision-making can proceed based on existing information.	**Yes | No** **Yes | No** **Yes | No**	The changes to the planning framework outlined above (instant permits, exemptions, prohibited activities) will shift a portion of current engagement with Iwi and hapū from understanding their views and concerns on specific *applications* to types of *activities*, which is a more efficient way of addressing rights and interests. There are also specific instances, as occurs now, where it is reasonable to conclude that varying a concession is inconsequential to rights and interests and does not require consultation with iwi/hapu (e.g. allowing 5 cows instead of 3 to graze in an area where grazing is already allowed.) Statutory timeframes are desirable from an efficiency perspective. Decision-making would proceed after the timeframe has elapsed if Iwi do not provide views on the application to ensure the decision-making process does not stall. This should not remove the requirement for the decision-maker to consider Treaty rights and interests, but that would be based on current knowledge and previous analysis (i.e. previous engagement and general resources like Wai262: Ko Aotearoa Tēnei). This is consistent with the current law – if reasonable attempts to engage with Treaty partners have been made, lack of input does not prevent a decision from being made. **Treaty impact assessment** Iwi and hapū will most likely oppose the imposition of timeframes and suggest they undermine the principle of partnership, particularly given that proposed timeframes would be shorter than those set out in current relationship agreements or less formal operational arrangements. Some Iwi/hapū may be concerned about their ability to resource this work, and requests for remuneration for consultation on these processes are already made from time to time. Timeframes risk decision-makers not being fully informed if Iwi are unable to respond or their response is limited. There are two key mitigations to this risk. Firstly, there should be the option to provide a longer timeframe if the Minister (or delegate) believes it is necessary (which could be triggered, where reasonable, following a request from the Iwi). Secondly, there is an opportunity through the improved planning process and ongoing engagement to build a stronger enduring understanding of Iwi interests in an area outside of engagement on individual concession applications. This is what many Iwi tell DOC they are looking for. **Treaty settlements and other arrangements** To uphold settlements, different timeframes would apply where those timeframes are set out in deeds of settlement and settlement Acts. Some timeframes have been agreed outside of settlement deeds and Acts as part of DOC-PSGE settlement protocols and relationship agreements. These protocols and relationship agreements cannot override primary legislation. Therefore, they should be updated to be consistent with the new statutory timeframes, as with the new Fast Track Bill. Iwi and hapū may consider this as undermining the intent of their Settlements.
Public notification	64. **Agree** that if public consultation is required, notification is on the intention to grant the concession rather than seeking views on the application. 65. **Note** that we have looked at whether to narrow the scope of activities but consider that public notification requirements strike a reasonable balance between the public interest and efficient processing. 66. **Agree** that the NCPS can exempt applications for licenses of more than 10 years from the public notification requirement (for example grazing licenses)	**Yes | No** **Noted**	The proposed change to notify the intention to grant (rather than a received application) would save significant cost and time for concessionaires, the Government and the public. Currently, the public can invest significant time in opposing applications that may be declined anyway or promoting conditions that DOC already planned to include. It would not preclude making a different decision to the one notified (i.e. a decline), but knowing DOC's preliminary views may assist some submitters. This is how the Conservation Act operated prior to 2017. The change was made to align Conservation and Resource Management processes, but has created inefficiencies in the system for no gain. Currently, the Minister must notify the public for applications for all leases, licenses of more than 10 years, and where they otherwise consider it appropriate. This is a small subset of activities, limited to those where public interest will be greatest given leases provide exclusive use of public land and

Proposal	Options	Decision	Analysis and Advice
			longer-term licenses confer a valuable property right. We do not see a strong rationale for limiting the subset of activities requiring notification further. Greater cost savings will be achieved through modernising notification requirements (i.e. removing the cost of newspapers).
Ability to seek a reconsideration	67. **Agree** an applicant can seek a reconsideration within 40 working days of the decision and may only do so once (i.e. can't appeal multiple times). 68. **Agree** that a reconsideration application must be accepted or declined within 20 working days of receipt, and the application must be reconsidered within a further 20 working days unless further notification is required. 69. **Note** that further work will be undertaken on appropriate guidance in the law around when reconsideration can be requested, and when it can be declined.	**Yes | No** **Yes | No** **Noted**	Applicants can currently seek a reconsideration of a decision if it is declined, or if they disagree with the terms and conditions imposed. There are no statutory timeframes, and no limits on the number of times an applicant can ask for the same decision to be reconsidered. This leads to significant churn, wastes time and resources, and can create incentives to unreasonably challenge a decision until the desired outcome is gained. A timeframe for reconsideration by the Government (Minister or DOC) should also be applied. Further guidance in the law would also be helpful around reconsideration requests. There is currently no other avenue for appeal, apart from judicial review, and so reconsideration plays an important role in the system. However, it would benefit from clearer boundaries for both parties. Simply not agreeing with the decision should not be sufficient grounds for reconsideration.
Drive better performance from the concessions system through competitive allocation and improved contract management			
Competitive allocation of concessions	70. **Agree** that competitive allocation can be used when the concession is for a limited supply opportunity (either due to a limit or because it is for exclusive use) and there are likely to be multiple interested parties. 71. **Agree** that: • **The standard concession process (direct allocation)** is preferred for small scale, non-exclusive activities. • **Tenders or Expressions of Interest** are preferred when parties may compete over the quality of their service offering and/or the best use is unknown (incl. green field). • **Auctions** are preferred where the best use and conditions are known and so allocation is based on price. 72. **Note** that applying a minimum 'revenue threshold' may help balance the costs and benefits of undertaking competitive allocation to avoid unnecessary time and costs in allocating opportunities. 73. **Agree** that active protection of Māori interests in taonga and accessing economic opportunities may be met through competitive allocation where access to these opportunities would otherwise be limited/exclusive. 74. **Agree** that incumbent concessionaires should receive fair compensation for any business and assets if an existing activity is re-allocated through competitive allocation and that standard terms and conditions in contracts should be developed to manage this. 75. **Agree** to remove the two-step application process for tendering opportunities and to combine the allocation process with the concession application process (instead of having to run a concession application process for the successful applicant following conclusion of a competitive allocation process).	**Yes | No** **Yes | No** **Noted** **Yes | No** **Yes | No** **Yes | No**	Competitive allocation methods drive more efficient and effective economic outcomes, and better outcomes for consumers. They allocate use based on market value and optimal use of a limited resource. They also help to promote competitive tension, encouraging better performance and rewarding innovation - including in managing conservation and environmental effects. It is not effective and efficient to run competitive allocation processes for all concession opportunities. However, they can create significant efficiencies when: • The potential supply is limited, or a concession is for exclusive use. • There is likely to be market interest, at least from one other party. A two-stage process including an Expression of Interest may be warranted to test the market before committing to a full competitive allocation process. • The benefits of a competitive allocation exceed the costs. This could be achieved by applying a test of materiality of the size of the commercial opportunity (e.g. annual revenues of at least $100,000). We note that access arrangements for mining on PCL include exclusive use and are not likely suited to competitive allocation as there is usually not a competing operator ready to go. The same is often true for other large undertakings such as ski field operations. We recommend consulting on the circumstances in which competitive allocation may not be appropriate. **Treaty impact assessment** Note that competitive allocation processes can give effect to Treaty rights and interests by providing iwi and hapū the ability to apply where they would otherwise be locked out by the 'first-come, first served' allocation model. You can also consider weighted criteria to further give effect to those interests [Appendix D – "Competitive allocation and Treaty rights and interests" refers]

Proposal	Options	Decision	Analysis and Advice
Standard criteria for tender-based allocations	76. **Agree** to consult on a set of criteria to use when tendering opportunities, including: • The applicant's capability and compliance record. • Returns to conservation. • Quality of the visitor offering. • Benefits to the local area. • Connection to taonga.	**Yes | No**	Standardised criteria will provide more certainty and transparency for applicants and the public. These have been modelled off criteria used in similar jurisdictions – particularly Australia. **Treaty impact assessment** Having a taonga connection criterion would be a transparent and outcomes-focused mechanism. It can provide for active protection of Treaty interests in situations, especially when creating an opportunity to apply alone might not be sufficient. Including it as a criterion would give greater weight in appropriate circumstances, however, it would be one criterion alongside wider criteria that the Crown needs to consider, to also deliver other outcomes and provide access to others. We recommend seeking feedback on these criteria and any weighting of these criteria [Appendix D – "Competitive allocation and Treaty rights and interests" refers].
Term lengths and rights of renewal	77. **Agree** that terms above 30 years may be considered where necessary to encourage investment by: • Ensuring enough time for a fair return on capital improvements. • Protecting intellectual property associated with a new idea. 78. **Note** that some Treaty settlements include a right of first refusal for leases beyond a certain length that are less than 60 years and will need to be honoured. 79. **Note** that the Department is undertaking further work on the interplay across settings for term lengths, end of term requirements and expectations, how concessions transfer between businesses, and how competition works for concessions involving significant infrastructure and investment, and may suggest further changes ahead of final policy decisions for the Bill.	**Yes | No** **Noted** **Noted**	Concessions can be granted for up to 30 years, or 60 years in "exceptional circumstances" in the current law, and exceptional circumstances are not defined. There are no right of renewals. Shorter terms and uncertainty around end of term arrangements are currently having a chilling effect on some industry players. Longer concession lengths could provide surety for investment in infrastructure with a longer useful life than the maximum concession term. However, this could dampen competitive tension and may be viewed by Iwi/hapū as a form of alienation from rights that they may hold on particular land. We may wish to shift the perception that at the end of the concession term, there is the presumption that the operation will close down and require removal where this isn't a likely outcome. We may wish to delineate the approval of an activity from the right to operate that activity to address this. For example, a mine operates for as long as the activity of the mine continues. We will explore whether the same should be true for some other activities which have a less defined end point so long as effects continue to be acceptably managed (such as ski fields). We recommend using consultation to build a better understanding of a) other reasons where longer concessions are necessary or desirable, and b) the concerns and issues people have with longer concession terms and how these can be better balanced in the legislation.
Asset valuation	80. **Agree** to develop an approach to asset valuation that: • Provides a mechanism for the fair transfer of the investment in these assets if concessions are competitively allocated. • Recognises the improvements and maintenance of significant fixed assets that concessionaires have made to support service delivery. • Provides greater visibility for DOC and the Crown on the value of fixed asset improvements made on PCL by concessionaires. 81. **Agree** to explore options for a formalised valuation process, including: • **A specific formula** (such as construction cost + CPI – depreciation for the value of assets). • **Concessionaire sourcing a valuation** of fixed asset improvements from an independent valuer. (perhaps an agreed list) • **DOC sourcing a valuation** with the concessionaire having the right to arbitration over the valuation. 82. **Agree** that goodwill and intellectual property should also be accounted for in the valuation of a going concern.	**Yes | No** **Yes | No** **Yes | No**	A standard asset valuation process ensures concessionaires are incentivised to look after their assets, and that they get a fair return if they are unsuccessful in a future competitive tender process. A standardised approach to asset valuation can also address poor information on the commercial value derived from operating on PCL, or on the value of fixed assets. This poor information leads to three main challenges: • It is more difficult to set appropriate activity fees. • The lack of a fair valuation mechanism may disincentivise investment and makes it difficult to run a competitive allocation process that ensures the outgoing concessionaire receives a fair return. Investors are concerned about this at the start of the concession period. • A lack of insight into potential financial challenges for the Crown if assets deteriorate, or the operators encounter business difficulties. Many such assets are owned by the Crown in terms of standard property law, except where there is only a ground lease concession, and will in any case fall to the Crown if an operator goes bust.

Proposal	Options	Decision	Analysis and Advice
Performance conditions and step-in powers	83. **Agree** to consult on how the Government should respond to situations where a concessionaire is underperforming and/or where there is a risk that a business may fall over and leave the Crown liable.	**Yes | No**	Most conditions included in concession contracts are aimed at managing environmental effects. There is an opportunity to engage with stakeholders on the role and scope of concession conditions, what effective monitoring looks like, and how to improve DOC's monitoring performance. It is also an opportunity to better understand compliance costs and what is practical for DOC and concessionaires. The introduction of conditions to measure poor performance and enabling DOC to respond where conditions are not being met can: • reduce some of the large risks that Ministers are currently exposed to including legal risks, financial risks from redundant infrastructure, and reputational risks for the Crown • drive greater quality in the visitor experience, and NZ's tourism brand • set clear expectations with operators on how the Government will respond if conditions are not met.
Concession fees	84. **Agree** that pricing concessions should seek "a fair return to the Crown". 85. **Agree** to enable concession fees to be set in regulation for certain classes of activities and that standardised approaches (such as percentage of revenue) can be imposed – removing case by case negotiation and hold out problems, reducing costs and improving efficiency of the system for all. 86. **Agree** that regulated rates would be a price floor (allowing for higher returns if allocated through tender or auction).	**Yes | No** **Yes | No** **Yes | No**	Many activities that require a concession are unique and there is often no clear market comparison off PCL. This makes setting a fee according to 'market value' difficult, drawn out, and typically does not allow the Crown to get the full value expected from a concession opportunity. Fee-setting according to a 'fair return to the Crown' shifts negotiation expectations. Regulating fees and reducing scope for negotiation adds further efficiency. It removes prolonged discussions and haggling with applicants who otherwise may refuse to sign their concession. They are also more transparent for the public and ensure that concessionaires are being charged a consistent (and therefore fair) rate. The new National CPS would also make it easier to impose standard terms and conditions, which should reduce drawn out individual negotiations on every contract that lengthens concession processing timeframes, increases costs and leads to inconsistency across the Crown's management of the estate and between competing providers.

Table D: Enabling more flexibility around land exchange

Proposal	Options	Decision	Analysis and Advice
You can make it easier to exchange conservation land for new land			
Enable increased flexibility to exchange public conservation land where this would deliver a net benefit to conservation.	*Consult on more easily doing exchanges* 87. **Agree** to enable increased flexibility for the exchange of parcels of PCL where this would deliver a net benefit to conservation. 88. **Note** the Fast Track Approvals Bill provides for land exchanges to facilitate the delivery of infrastructure and development projects with **significant** regional or national benefits. 89. **Note** the Fast Track Approvals Bill excludes high value PCL and requires a net conservation benefit and also includes safeguards around: • Land status checks on the land involved and identifying if there are any land-related issues, e.g. accessibility, survey required, land-locked land, existing users, contamination, etc.	**Yes | No** **Noted** **Noted**	section 9(2)(f)(iv) [redacted] Land exchange settings are restrictive to the point where a transaction cannot take place even if there would be clear net conservation benefit and is limited to a small amount of conservation land – reserves administered by DOC and stewardship areas determined as having no or low conservation value. Exchange settings could be adjusted to provide net conservation benefit and safeguard vulnerable biodiversity while supporting other government priorities by making land available for development. Existing policy already provides some helpful guidance on how exchanges can be carefully managed to ensure net conservation value is realised.

Proposal	Options	Decision	Analysis and Advice
	• Ensuring that enclaves are not created, and species corridors are protected. • Considering the impacts on existing users of conservation land proposed for exchange. • Requiring the applicant to offset any Crown financial losses that would result from the land exchange. • Taking into account consideration of any potential Crown liabilities on land offered in an exchange. *A net conservation test and options around further bottom lines* 90. **Agree** that any changes to the Conservation Act should be more restrictive than a Fast Track process, given Fast Track is only available for projects that have significant regional and national benefits, and should include at a minimum the safeguards and exclusions of the Fast Track regime. 91. **Agree** that the net conservation benefit considerations would include consideration of Treaty rights and interests. 92. **Agree** to consult on the following to enable more flexibility: • Allowing eligible areas to be exchanged directly without having to revoke their status and reclassify them as stewardship land first, where there is a net conservation benefit. • Removing the threshold that only land that is of no or low conservation value can be exchanged but being clear that the highest value PCL is off limits (i.e. schedule 4 land types such as National Parks). • The potential for continued protection for land that is given up, where appropriate, through instruments such as covenants. 93. **Agree** that the discussion document should provide a broad outline of the matters that may be considered in a conservation net-benefit decision based on those contained in the Fast Track Approvals Bill, but also seek public feedback on what additional matters should and should not be considered. 94. **Agree** that the following bottom-line (ineligibility) criteria are included in the discussion document to be tested through public engagement: • *PCL is not eligible for disposal or exchange where it has international or national significance, is a national reserve (under the Reserves Act), an ecological area (specially protected under the Conservation Act) or is land within Schedule 4 of the Crown Minerals Act 1991.* • *PCL should otherwise not be exchanged of if it is of high conservation value UNLESS the values that make it of high value can be adequately protected as part of the agreement to exchange.*	**Yes | No** **Yes | No** **Yes | No** **Yes | No** **Noted**	Exchanges can achieve a net conservation benefit when acquiring land with higher conservation value. A net conservation benefit test would ensure that losing any high conservation values must be met by the acquisition of equally high, or higher, values. Enabling land exchange may also be an opportunity to acquire land with values that are seriously threatened or underrepresented within New Zealand's network of protected areas. While there are potential conservation benefits from enabling land exchanges, DOC recommends stronger safeguards than those in the Fast Track Consenting Bill to mitigate the risk of high value conservation areas being exchanged. For example, a bottom line preventing the exchange of land accommodating seriously threatened ecosystems or land that contains rare ecosystems. We do not recommend an additional broader societal or economic value test be applied in exchanges instead of a net conservation benefit test. A broader benefit assessment would be highly challenging to undertake, could lead to loss of significant conservation values, and would undermine the wider management planning system that the land sits within. This is because a broader economic cost-benefit analysis may lead to important land being exchanged, despite the wider management system and associated public consultation processes deeming it necessary to contribute to key conservation outcomes. section 9(2)(g)(i) [redacted] The Fast Track regime is set up for projects with such high benefits, so that is the appropriate route for such projects. Statutory mechanisms to enable important economic activity on protected land such as those in the Fast Track Approvals Bill provide an alternative pathway for exchange provisions in conservation legislation to enable economic development. **Treaty Impact Assessment** Tangata whenua have significant interests in PCL, and DOC has an obligation to consider active protection of interests in the land that are identified by iwi and hapū. DOC notifies and, in some cases, consults with iwi and hapū once an exchange proposal is received, and generally seeks to ensure applicants consult with all relevant parties prior to making a proposal. Rights of first refusal are activated when the Crown no longer requires the land and is disposing of it. Exchanges of public conservation land for new land to be protected for conservation purposes may not trigger an RFR. The Ngāi Tahu Claims Settlement Act provides that disposal for the purposes of exchange does not trigger the RFR, and this early settlement will likely have informed the RFR provisions in later settlements. An outstanding policy issue is the degree of weighting afforded to tangata whenua in exchange decisions. For instance, in the scenario where a developer is seeking to acquire PCL, we need to consider whether and in what circumstances DOC should decline or approve an application based on consultation with iwi, when a net benefit test can be met. section 9(2)(g)(i) [redacted] Liberalising exchange presents an opportunity for enhanced mana, rangatiratanga and exercise of kaitiakitanga over the land, as well as potentially enabling employment and economic benefit from the land, although it will be rare that there is a proposed or desirable land swap. section 9(2)(f)(iv) [redacted]

Proposal	Options	Decision	Analysis and Advice
	95. **Note** that a net conservation benefit approach requires criteria to assess the potential net conservation benefit of an exchange proposal. 96. **Note** that achievement of a net benefit for conservation from a land transaction is contingent upon funding being available for management of the conservation values on the land. 97. **Agree** that revenue from an equality of exchange payment will be held in Trust for reinvestment back into conservation.	**Noted** **Yes | No**	

Attachment B - Overview of the current concessions and planning framework and key shifts

What are concessions?

Concessions are a lease, license, permit or easement third-party use of public conservation land. They enable activities while managing their effects. **Examples**:

Key consenting considerations

- Protected area status (e.g. national park)
- Objectives and policies in the planning framework
- Treaty settlements and rights and interests
- Effects assessment
- Public submissions (larger activities only)

The planning framework

Legislative change is needed to modernise the system

The regime was setup in the 1990s, with a similar framework to the Resource Management Act. Since then, New Zealand's tourism industry has boomed and the way people enjoy conservation land is constantly evolving with things like mountain bikes and drones.

The conservation planning framework has not kept pace with social and economic change and legislation lacks the economic tools to manage demand and support sustainable investment.

The processes to update the framework prescribed in legislation are too slow and onerous to effect change in a timely and cost-effective way.

The result has been slow processes, high compliance costs, and sub-optimal conservation, economic and recreational outcomes.

Objectives: Performance & productivity

- Speed up processing times and reduce costs
- Provide certainty for investment
- Improve the economic productivity of PCL
- Modernise the planning framework

Current state

The current conservation management planning framework and concessions framework are not supporting effective and efficient decision-making.

There have been calls for change from both economic and conversation stakeholders and a number of key reports.

Treaty settlement redress is also not being implemented as plans sit in the backlog awaiting review.

The planning system is complex and most plans are out-of-date

The complex system is difficult for users to navigate, especially across different conservation areas.

The processes for amending, revoking and updating both national direction and planning documents are slow, costly, and onerous.

Planning documents, and the General Policy for National Parks, are approved by the New Zealand Conservation Authority (after comment by the Minister).

Concession application processes are often slow and costly:

- Only a limited number of process steps have statutory timeframes
- Legislation limits DOC's ability to take a more proactive and standardised approach to pre-assessing and permitting activities
- Unclear process requirements and considerations (incl. on Treaty obligations) slow processes, risk litigation, and increases costs.

The planning framework is contributing to slow processes and constrains potential economic and recreational activity:

- Complex, out of date, and sometimes conflicting national direction and plans slows processes down, increases costs, and can constrain activities with manageable effects
- Some places have three layers of planning documents (national, regional, and areas), making policy settings hard to update
- The Government has limited ability to update policy settings quickly and does not approve planning documents

Legislation lacks the tools to effectively and efficiently allocate economic rights and manage commercial contracts:

- No processes or policy direction for determining when opportunities are contestable
- Challenges to property rights and the threat of litigation (incl. Treaty requirements) limit prompt and consistent decision-making
- Ambiguity around concession fees settings leads to prolonged negotiations and inconsistent charging across operators

Future state: An effective and efficient concessions system

Shorter processing times and reduced compliance costs:

- Create a simpler standard process with statutory timeframes, and litigation through clear process requirements (incl. iwi engagement)
- Bring commonly applied for activities into an online pre-assessment-based system enabling instant permits (e.g. guided walks, drones)
- Enable exempt activities meaning some activities don't require a permit

A more flexible planning framework that supports fast decision-making and is easier for applicants to navigate:

- Bring national parks and all other conservation land under a streamlined and unified planning system with one set of national direction
- Create clarity and efficiency by having only one plan per conservation area based on a consistent national template
- Make plans easier to update through a new process based on ministerial approval with greater clarity on Treaty requirements

Better economic and conservation outcomes and greater certainty for investment:

- Clear settings for operators on when an opportunity will or won't be contestable, term lengths, and compensation settings that better support the development of infrastructure with a longer economic/capital life
- Consistent and fair concession fees set through regulations
- Market-based allocation improves economic, recreational and conservation outcomes by leveraging competitive tension and encouraging innovation

Attachment C - Overview of proposed concessions and planning framework

Objectives: Performance & productivity

- Speed up processing times and reduce costs
- Provide certainty for investment
- Improve the economic productivity of PCL
- Modernise the planning framework

Common national standards for concessions

The proposed National Conservation Policy Statement (NCPS) will replace two sets of general policy – bringing all conservation land under a single streamlined regulatory regime.

The Minister will approve the NCPS following public consultation and impact analysis. Ministerial approval will allow more directive and consistent decisions.

There is an opportunity to establish clearer rules of operating on public conservation land through standardised assessment of activities and terms and conditions for concession contracts – including regulated concession fees for some activities.

More effective and efficient plans

Creating a clear purpose for area plans and streamlining their content will make them easier to use and keep up to date.

Plans will focus on outcomes, not rules

Shifting the focus of plans to setting outcomes that guide operational activity and concession decisions will address the levels of prescription that have led to inefficient duplication and inflexibility with outdated plans.

Plans will not:

- Impose additional conditions on a concession
- Create additional process requirements or act as relationship protocols
- Duplicate other statutory processes such as suggesting land reclassification
- Constrain the Minister's ability to make bylaws

A hierarchy of instruments sets the framework

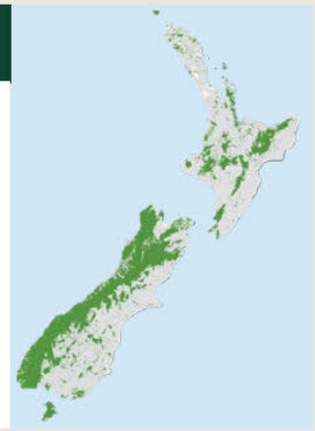
Legislation

Establishes the concession regime, and sets out:

- Purposes for which land is held (high-level values)
- What needs a concession + requirements (incl. effects assessment, and consistency with land status and plans)
- Regulations and bylaws set general rules for places

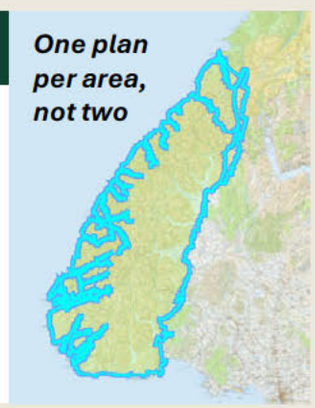
National Conservation Policy Statement

- Applies to all public conservation land, or specific land classifications
- Outlines criteria to guide concession decision-making)
- Sets standard conditions for concessions + creates classes to standardise permitting of some activities



Area management plans

- Set outcomes to guide decisions based on local values
- May set limits on the amount of a concession activity that can occur in order to protect an area
- Enables exempted activities and instant permits for specific places



Concession decisions

- Activity should not be inconsistent with the outcomes in the relevant area plan(s) – conditions may be imposed
- Concession decisions made based on rules and consideration set by the NCPS – including instant permits, exempted activities, prohibited activities

Enabling standard assessment of some activities

New legislation is an opportunity to standardise the approach for some commonly applied for activities.

Instant permits	Exempted activities	Prohibited activities
DOC provides online permit	No concession needed	Application won't be accepted

Creating classes for common activities would eliminate processing times for those activities and provide greater clarity by encouraging Government to set out a list of acceptable activities.

Examples: National Conservation Policy Statement

Exempted activities

- News media on tracks and carparks
- Non-extractive research

Instant permits

- Small-scale commercial filming
- Tourist transport in formed carparks

Prohibited activities

- No grazing in national parks, nature reserves or ecological areas

Examples: Area plans

Exempted activities

- Hang-gliding zones

Limits

- Number of aircraft landings

Instant permits

- Drones
- Guiding
- Harvesting flora (e.g. harakeke)

Examples: Individually processed concessions

Non-notified

- Aircraft landings
- Grazing
- Beehives

Notified

- Visitor attractions
- Ski fields
- Infrastructure

Attachment D – Competitive allocation of concessions and Treaty rights and interests

Most concessions are granted on a first-come, first served based basis – and the law currently reinforces this.

This does not leverage competitive tension in the market to drive the best outcomes. The need for competitive allocation has grown as demand for tourism and other economic uses of conservation land have increased.

DOC's allocation of concession opportunities has also been challenged in the courts for not giving effect to the Treaty of Waitangi.

Objectives

- Drive innovation, optimal use of scarce resources and better returns to conservation
- Provide for active protection of Māori interest in taonga (incl. economic benefits)
- Ensure any competitive allocation provides sufficient certainty for investment and development of new ventures
- Reduce legal uncertainty regarding the application of section 4 to speed up decisions and reduce risk of challenges

Note the inherent tension between some of these objectives - enabling greater competition reduces certainty (esp. for existing businesses)

When to run a competitive allocation process:

- Supply is limited or a concession is for exclusive use
- There is likely to be a market (i.e. demand exceeds supply)
- There might be other potential uses for the land
- It's cost effective given the market value of the concession(s)

Methods

Expressions of Interest: Used to ascertain demand and/or potential uses of the land

Tenders: Parties compete (open or closed) over the quality of the offering when use is broadly known

Auctions: Price-based allocation where best use and concession conditions are known

Active protection does not provide a right of veto

We have looked at providing Māori a right-of-first-refusal or quota as a means of active protection.

We have discounted this option as it is too blunt a tool to properly consider the circumstances.

Active protection of Māori interests in taonga

Active protection requires the Crown to consider how allocation of concessions can restrict or provide for Māori connection to taonga

- Some of these taonga (wahi tapū and species) occur predominantly or entirely on conservation land. Māori interests in taonga are not constrained to traditional uses and methods, and include development based on those resources for economic benefit.
- *Ngāi Tai ki Tamaki Tribal Trust vs Minister of Conservation* found that active protection may sometimes require a reasonable degree of preference for mana whenua, if justified by the circumstances of the concession. However, what is reasonable in relation to preference has not been defined in the courts or legislation.
- The Crown should consider the right to economic development (beyond connection to taonga) where there are limited economic opportunities for iwi in the area.

'First-come, first served' can restrict Māori connection to taonga and economic use

- Direct allocation can limit Māori connection to taonga if there are limited opportunities (e.g. # of permits) or a lease provides exclusivity. This includes when existing concessions come to an end. Competitive allocation mechanisms address a key barrier to accessing taonga by providing Māori the ability to apply. It provides a level of access without providing a veto – which the court found was not necessary.
- Competitive allocation won't be necessary (or effective) where there isn't scarcity. Where there is exclusive use, DOC should also consider whether there are other opportunities for Māori to access these resources and provide them that information.

Enabling opportunities to apply may not always be sufficient for active protection

- The ability to compete for a concession does not ensure connection to taonga if Māori are repeatedly unsuccessful. We recommend seeking feedback through the discussion document on criteria that consider connection to taonga alongside wider outcomes.

Proposed criteria for EOIs and tender-based allocations

Performance	• Applicants' experience and compliance record • Financial sustainability of applicant (and activity if alternative proposals) • Capability of meeting any environmental or cultural conditions
Returns to conservation	• Financial returns to the Crown • In-kind returns to conservation (e.g. pest control) • Contribution to conservation, scientific, and mātauranga research
Offerings to visitors	• The quality of experience offered to customers • Readiness of applicant to begin their operation • How it meets the vision and outcomes for the place
Community benefits	• Employment or training opportunities • Enhance the cultural, historic or conservation narratives at place • Building authentic relationships with tangata whenua and communities
Connection to taonga	• Importance of taonga (resource or land) to the activity • Utilises and enhances kaitiakitanga, connection to whenua, and customary practices (may include modern technology) • Promotes general awareness of tikanga and mātauranga Māori

Criteria are an effective way to operationalise the principle of active protection

- Including criteria would give greater weight to applications based on taonga within the context of the Crown also needing to consider wider outcomes and provide access to others.
- The connection to taonga criteria would be a transparent and outcomes-focused mechanism. It will also be amenable to situations where there are multiple mana whenua applicants or different business arrangements (e.g. iwi in partnership with a non-iwi entity)

Attachment E - Proposed concessions process

Overview

The statutory process for making decisions on individual concession applications can be improved to:

- Promote faster processing of applications, and
- Clarify how DOC will give effect to section 4 of the Conservation Act.

Proposed new tools to permit, exempt or prohibit classes of activities will allow for some volume of concession applications to be removed from the system.

These proposed tools are:

Instant permits	Exempted activities	Prohibited activities
DOC provides online permit	No concession needed	Application won't be accepted

Note that classes of activates will be established, not applications, for instant permits and exempted activities through the planning process or separately (where required).

Proposed process for standard concession applications

1 Applicant submits application to Minister

Current

Minister must consider each application individually, even if others may be interested in applying for the same opportunity.

Proposed

Minister can decide whether to initiate a competitive allocation process with or without an application.

This decision must be made within 20 working days of receiving an application, and the competitive allocation process must then be started within a further 20 working days.

2 Minister can decline application after initial review

Current

Minister has 10 working days to return an incomplete application, and a further 20 days to decline an obviously inconsistent application.

Proposed

Minister has 10 working days to return an incomplete application or decline an obviously inconsistent application.

Minister can also decline applications where applicant has previously been non-compliant with concession terms or is not financially viable.

3 Minister seeks further information from applicant or specialists

Current

Minister can specify timeframe for applicant to provide more information.

Proposed

Applicant has 10 working days to provide further information, or any other longer reasonable timeframe specified by Minister.

4 Minister seeks Treaty partner views on application

Current

Treaty partner views are sought on all applications or as agreed with Treaty partners.

Proposed

There are options to not seek Treaty partner views on:

- Applications for minor changes to existing concessions.
- Where Treaty partners have indicated they do not need to be engaged on some types of applications.

Current

Different timeframes are specified for Treaty partners' response based on relationship agreements or local practice.

Proposed

Treaty partners have 10 working days to provide their views, or any other longer reasonable timeframe specified by Minister.

Any relevant statutory timeframes in Treaty settlements would not be overridden.

5 If intending to grant, Minister notifies public

Current

Minister must notify applications for all leases, and for licenses longer than ten years, and where they otherwise think is appropriate.

Proposed

The Minister only needs to notify the public if they intend to grant the application. Criteria relating to application types would continue to apply (or may be amended).

6 Minister makes decision and informs applicant

Current

There are no timeframes within which the Minister must decide on an application.

Proposed

There are options to introduce a timeframe for the Minister to decide when DOC has received all information (i.e. after step 4/5).

The timeframe could vary based on application type.

7 Applicant can ask Minister to reconsider decision

Current

The applicant can seek a reconsideration if their application is declined, or if it is granted, before the concession document is executed.

Proposed

The applicant can seek reconsideration within 40 working days of the decision. Applications will only be reconsidered once.

Attachment F – Potential changes to the management planning process

Proposed process to prepare Conservation Policy Statement

The Minister may issue a new policy statement or amend an existing one at any time.

↓

D-G prepares draft policy statement (including a summary of affected policies in planning documents).

↓

D-G notifies and seeks comments from: PSGEs, Pre-settlement groups, NZCA, Conservation Boards, Fish and Game (if relevant), the public.

↓

D-G prepares a report for the Minister, including:

- A summary of public submissions.
- Any submissions from PSGE's, pre-settlement groups, and the NZCA in full, alongside a summary of those submissions.
- Any changes recommended by the D-G to give effect to the policy and/or mitigate any risks.

↓

Minister must consider the report and any concerns from PSGEs, other relevant Treaty partners, and the NZCA.

↓

Once satisfied, the Minister approves the policy statement.

Proposed process for development and review of area plans

Giving effect to Treaty principles in the plan process

- Director-General leads the development and review of plans but will engage with Iwi/hapū in the drafting, public notification and revision stages.
- We also recommend exploring mechanisms to ensure that the Minister appropriately considers rights and interests when approving the plans.

Initiate plan development / review
- The D-G initiates plan development or review.
- D-G engages early with Iwi/hapū to establish how they will be involved in the process.

→

Drafting
- D-G holds the pen on draft plan.
- Drafting stage requires engagement with affected Iwi/hapū.

→

Public notification and hearings
- D-G notifies plan and seeks public submissions.
- D-G required to engage affected iwi/hapū in the public notification phase.

→

Revision
- D-G prepares summary of submissions and revises the draft plan.
- D-G engages with affected Iwi/hapū regarding revisions made after public engagement.

Proposed change from NZCA to Minister as approver

Current process – NZCA approves

D-G initiates and drafts statutory plans
- No timeframe.

↓

Public notification and hearings
- D-G notifies the plan and seeks submissions
- Minimum of 40 WDs for submissions
- Must provide opportunity to be heard (no specific timeframe but built into next step)
- May, after consultation with the Conservation Boards affected, seek public input in other ways too.

→

D-G revises plan
- Prepares summary of submissions
- Revises the plan based on summary of submissions
- Must send to the conservation board within 8 months of public notification.

↓

Conservation board reviews
- Within 6 months of referral (can be extended) the conservation board(s) consider drafts and send to NZCA for approval together with written statement of any matters the D-G and board(s) are unable to agree on and the summary of public submissions.

→

NZCA amends
- NZCA considers the draft and other information and may also consult any person or organisation that they consider appropriate.
- Make amendments they consider necessary and send the draft and relevant information to the Minister.

↓

Minister considers
- The Minister considers the draft and provides written recommendations.

→

NZCA approves
- The NZCA must have regard to any recommendations from the Minister and either:
  - Approves the draft OR
  - Returns the draft to the Minister for further consideration.

Proposed process – Minister approves

Note: *Public notification not required for minor and technical changes.*

D-G initiates and drafts statutory plans
- Two months.

↓

Public notification and hearings
- Notifies plan and seeks submissions
- Minimum of 40 WDs for submissions
- Provide opportunities to meet (hearings).

→

Director General revises plan
- Prepares summary of submissions
- Revises the plan based on summary of submissions and engagement
- Timeframe – 40 days.

↓

NZCA and conservation board(s) review
- Within three months of referral conservation board(s) and NZCA consider draft and send back to D-G.

→

Revision and written recommendations
- D-G revises draft after NZCA and conservation board review.
- NZCA receives revised draft to provide final written recommendations to the Minister.
- Two months.

↓

Minister approves
- Minister considers final draft and the recommendations from the NZCA.
- Minister either approves the draft or sends back to Director-General for revision. The Minister must provide reason for the further revisions.

Note: *Total timeframe for proposed process is 8 months.*

Attachment G - Treaty interactions across the package of proposals

Management planning – challenges	Management planning – opportunities	Concessions	Land exchange
Settlements and section 4 provide Iwi role(s) in developing plans, and sometimes in approving them.	Making plans relevant and fit for purpose (while retaining Iwi input into their development) means Iwi will effectively have more influence. Current plans often have limited influence outside of concessions and are usually out of date.	DOC struggles to consistently implement section 4 in concessions processes.	Enabling land exchange could have positive economic impacts and would enhance rangatiratanga over the land if iwi or hapū have ownership or investment in a development involved in a land swap.
Narrowing the geographic scope and/or content of plans could be seen as limiting Iwi role and undermining settlements.	Currently there are inconsistent approaches to how DOC gives effect to Treaty principles during the planning process and the opportunity to codify and improve the role for Iwi in the planning process.	We propose to address this by enabling a more competitive allocation process that has criteria that reflects Iwi interests in an area.	Iwi also have an interest in making the exchange of land easier. For example, we have had a request to exchange land to enable managed retreat of pā from the coastline.
Settlement and relationship agreement often provide Iwi a role on conservation boards who approve plans. Removing this approval role could be seen as limiting Iwi role and undermining settlements.		We also propose that there is a connection to taonga criteria to reflect that local Iwi have a higher level of interest in areas of cultural significance.	Exchanges of public conservation land for new land to be protected for conservation purposes does not always trigger a right of first refusal (RFR). For example, many settlements specify that disposal for the purposes of exchange does not trigger the RFR. If settlements do require an RFR this will be upheld (in effect this would rule out an exchange).
		We propose to clarify and codify the role that Iwi have in the concessions decision-making process to provide clarity and consistency on how we engage with them. A key aim here is to improve how we use the information that is provided to us.	

Department of Conservation
Te Papa Atawbai

Briefing: Draft cabinet paper and land disposal options for Conservation Amendment Bill

To	Minister of Conservation	**Date submitted**	17 September 2024
Action sought	Your feedback is sought on the draft Cabinet paper and land disposal options	**Priority**	High
Reference	24-B-0463	**DocCM**	DOC-7747655
Security Level	In Confidence		

Risk Assessment	Medium Timely decisions are required to ensure you can deliver concessions reform and enable enactment in early 2026.	**Timeframe**	18 September 2024 (you have a meeting with officials on this date)
Attachments	Attachment A – Draft Cabinet paper Attachment B – Land disposal policy options for discussion document Attachment C –- Options Development Group themes at a glance and connections to the proposed Conservation Amendment Bill		

Contacts	
Name and position	**Phone**
Ruth Isaac, Deputy Director-General, Policy and Regulatory Services	section 9(2)(a)
Eoin Moynihan, Policy Manager, Regulatory Systems Policy	section 9(2)(a)

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. This briefing provides you with a draft Cabinet paper which seeks approval to undertake public consultation on proposals for the Conservation Amendment Bill (**the Bill**).
2. To meet your timelines for public consultation later this year and key upcoming milestones, such as Ministerial consultation and lodging the Cabinet paper, your feedback is required as soon as possible or shortly after your meeting with officials on Wednesday 18 September. This includes any remaining policy decisions regarding proposals to consult on e.g. land disposals.
3. A draft discussion document and engagement plan will be submitted to you on 20 September.
4. The Cabinet paper and discussion document will cover the following proposal areas:
    - Creating a more streamlined, purposeful and flexible planning system
    - Setting clear process requirements and timeframes for concessions
    - Creating a clear framework for how concessions should be allocated
    - Establishing standard terms and conditions for concessions
    - Enabling more flexible land exchange and disposal settings
5. We would like to discuss the approach to engagement with you in the meeting with officials on Wednesday 18 September.

We recommend that you … (Ngā tohutohu)

		Decision
a)	**Note** that officials will meet with you on Wednesday 18 September to discuss the draft Cabinet paper, land disposal options and engagement approach.	Noted
b)	**Note** if you wish to submit the Cabinet paper to Cabinet Economic Policy Committee (**ECO**) for 16 October you will ideally start ministerial consultation on Monday 23 September.	Noted
c)	**Note** that you will receive a draft discussion document, draft engagement plan and revised Cabinet paper (informed by feedback from your meeting and Government agencies) on Friday 20 September.	Noted
d)	**Agree** to make decisions in the attached table (Attachment B) around land disposal proposals to include in the discussion document for consultation.	Yes / No
e)	**Note** that proposals for the Bill can address some of the recommendations of the Options Development Group (ODG) and overtake the partial review of General Policies it was convened to inform, but the scope of this legislative reform will not cover all of the ODG recommendations.	Noted

section 9(2)(a)

Date: 17/ 9 /2024

Ruth Isaac
Deputy Director-General
Policy and Regulatory Services

Date: / /

Hon Tama Potaka
Minister of Conservation

Purpose – Te aronga

1. This briefing:
    - Provides you the draft Cabinet paper seeking approval to publicly engage on proposals for the Conservation Amendment Bill
    - Seeks your decisions on targeted engagement with Treaty partners, and land disposal options for the Bill
    - Outlines connections to the Options Development Group (**ODG**) recommendations

Background and context – Te horopaki

2. A briefing pack seeking your direction on proposals for the Conservation Amendment Bill was sent to you on 4 September 2024 [24-B-0390 refers]. You met with officials on 9 September to discuss these proposals.
3. This briefing provides you with the draft Cabinet paper which seeks Cabinet approval to consult on proposals for the Conservation Amendment Bill.
4. A draft discussion document which presents the proposals will be attached to the final Cabinet Paper when it is considered by Cabinet Committee. We will share the initial draft discussion document with you on 20 September.
5. At the time of your meeting with officials, more work was required on land disposal options. This has now been developed and is outlined below for your direction on what to consult on.
6. We will need your feedback on the matters in this briefing as soon as feasible to ensure project timelines are met.

We are seeking your direction on the Cabinet paper and land disposal options

Cabinet paper feedback

7. The draft Cabinet paper is attached for your review (see Attachment A). This has been informed by feedback and discussions from the meeting with you on 9 September.
8. We require your feedback on the Cabinet paper as soon as practicable or shortly after the upcoming meeting scheduled with officials on Wednesday 18 September. We will provide a revised version on 20 September incorporating feedback received from you in the meeting and any feedback from agencies.

Discussion document

9. A discussion document is being prepared and you will receive a first draft on 20 September.
10. If you have feedback and would like changes made to it, there is some space to delay Ministerial consultation to later in the week (week starting 23 September – see timeframe tabled below) to allow for officials to action. Editorial changes can be made to the discussion document while undergoing Ministerial consultation.
11. You must allow at least two weeks for Ministerial consultation. Starting later than 23 September will make it difficult to lodge on the 10th if there is substantial feedback from Ministers to address.
12. As outlined in 24-B-0390, the discussion document will outline the following proposal areas:
    - Creating a more streamlined, purposeful and flexible planning system
    - Setting clear process requirements and timeframes for concessions
    - Creating a clear framework for how concessions should be allocated

- Establishing standard terms and conditions for concessions
- Enabling more flexible land exchange and disposal settings

Land disposal options for consultation

13. We have developed options to enable more flexible land disposal settings. The main purpose of the proposed changes would be to free up disposal in limited circumstances where it is in the interests of conservation. As previously agreed with you, wider changes to the conservation estate are not proposed to be within the scope of this Bill.

14. We have modelled the proposal on work undertaken for the Fast Track Approvals Bill. We propose:

    i. To enable disposal of land with higher than 'low or no' conservation values, but to provide that PCL is not eligible for disposal where it has international or national significance, is a national reserve (under the Reserves Act), an ecological area (specially protected under the Conservation Act) or is land within Schedule 4 of the Crown Minerals Act 1991.

    ii. To alleviate some of the administrative burden in the disposal process by allowing the disposal of categories of land other than stewardship land (but not the excluded higher value categories such as National Parks) without the need to reclassify or revoke its current status.

    iii. To enable restrictions to be placed on subsequent development of disposed land using covenants or other mechanisms. For example, for some parcels of land, it may be appropriate and desirable to allow the construction of essential infrastructure or hotels, or use for marae purposes and social housing, but prohibit extractive industries.

    iv. To restrict disposals to situations where land is surplus to PCL needs and there is a net conservation benefit. More work is needed on appropriate criteria and situations for disposals to ensure that the Bill is clear about when it is appropriate and when it is not appropriate and so that implementation is not subject to continual testing in the Courts. Clarifying how section 4 might apply to these provisions is likely to be helpful in this regard. You could consult on whether 'net conservation benefit' should include meeting Iwi aspirations (for example, returning sites of significance to Māori) amongst other possible rationales for disposal.

15. section 9(2)(f)(iv) [redacted]

16. See Attachment B for options and advice.

Project timeline

Date	Milestone
9 Sept '24	Agency consultation on draft Cabinet paper and discussion document begins[1] [2 weeks] Further discussion with MOC as required
17 Sept '24	MOC to receive draft Cabinet paper and land disposal options [1 week for feedback and any changes ahead of Ministerial consultation] Further discussion with MOC as required
18 Sept 24	MOC to discuss decisions Cabinet paper feedback at officials meeting
20 Sept '24	MOC to receive a revised draft Cabinet paper and first draft discussion document
Week of 23 Sept to 4 October '24	Ministerial consultation [2 weeks] plus time to revise and finalise the documents Further discussion with MOC as required
10 October '24	Cabinet paper lodgement
16 October '24	Cabinet Economic Policy Committee (ECO)
21 October '24	Cabinet
November '24 to early February '25	Public engagement period
March '25	Confirm final policy decisions and seek approval to draft with Parliamentary Counsel Office (**PCO**)
October '25	Bill introduced[2]
End of October '25 to end of Q1 '26	Select Committee [4-6 months]
End of Q1/early Q2 '26	Third reading and Bill passed.

We would like to discuss engagement approach with you

17. Changes via the Bill seek to enable appropriate Iwi/Māori participation in the regulatory system, maximise opportunities for activities on PCL within conservation limits and ensure that we provide a suitable operating environment for businesses.

[1] Lined up with DIA, DPMC, HUD. LINZ, MBIE, MCH, MFE, MoJ, MOT, MPI, NZTA, PCO, Regulation, Te Arawhiti, Te Puni Kokiri, Te Waihanga, the Treasury.
[2] Noting that PCO require six months to draft the Bill once policy decisions are finalised.

18. Upholding Treaty settlements is a key bottom-line and any changes will need to be worked through with Iwi to ensure that settlements are upheld by the Crown We would like to discuss an approach to engagement with you to support this.

19. DOC also plans to undertake public consultation on charging for access to some public conservation land, at the same time - from approximately November 2024 through to February 2025 [24-B-0415 refers]. It would therefore make sense to align engagement where possible.

Connections with the Options Development Group recommendations

20. As discussed with you on 9 September and referred to in 24-B-0390, recommendations of the ODG are wide-ranging. The Government still has a decision to make on how to address the recommendations of ODG report.

21. ODG recommendations cover: fundamental conservation reform (beyond the Conservation Act), revising the purpose of the Conservation Act, centring kawa, tikanga and mātauranga within the conservation system, devolving powers and management/decision making to Iwi/Māori, remunerating Iwi for involvement in conservation, and enabling broader access and use of lands and waters.

22. Some of the recommendations around how the concessions system expressly provides for tangata whenua interests, clarifying engagement with iwi/Māori in the planning system – are relevant to the proposals in the Bill.

23. The aim of the partial reviews of the general policies was to ensure Treaty obligations were both visible and easy to understand in the general policies. That intent and purpose remain important when redrafting the general policies into one proposed National Conservation Policy Statement.

24. We consider the most relevant ODG recommendations in this context are Theme 4: Lands, Waters, Resources, Indigenous Species, and other Taonga; Theme 5: Te Tiriti Partnership; and Theme 6: Tino Rangatiratanga, with links outlined in Attachment C.

Risk assessment – Aronga tūraru

25. Meeting current agreed timeframes will require decisions from you as soon as possible, and limited delays through the Ministerial/Cabinet consideration process. There is an ECO scheduled in the following week (23 October), but the next ECO thereafter is not until 6 November.

26. There is likely to be high public interest in certain proposals given the scope of the Bill and potential or perceived impact. There may also be interest around the decision to overtake the partial review of the general policies in lieu of progressing this legislative reform work programme. Officials will produce a communication and engagement plan to manage expectations ahead of and during public engagement. This will be shared with you this coming week.

27. There will likely be a mixed reception to the proposals to increase flexibility by removing restrictions on the exchange or sale of public conservation land and assets where this would deliver a net benefit to conservation. We expect conservation organisations will be very concerned at any proposal to overturn the current policy that PCL cannot be exchanged or otherwise disposed-of if conservation importance/values are higher than very low.

Treaty principles (section 4) – Ngā mātāpono Tiriti (section 4)

28. Iwi/Māori will have a strong interest in any proposed changes around Treaty principles and how giving effect to them may be codified in legislation through this Bill. Note that this Bill does not propose amending section 4 of the Conservation Act but does

propose ways in which section 4 could be more specifically given effect to. We will develop an appropriate Treaty partner engagement strategy.

29. As noted above, where proposals have links to some of the ODG recommendations, it may be welcomed by Iwi/Māori. Some proposals however will likely trigger strong negative reactions such as shorter, stricter statutory timeframes for Treaty partners to provide feedback on concession applications. Similarly, the potential for the Conservation Policy Statement and area plans may be perceived as providing for less Iwi input on restrictions at-place due to the proposed narrower scope of what plans should do.

30. This is why we propose early engagement – to provide the opportunity to test proposed changes with PSGEs as soon as possible. This is a key consideration that will inform the draft engagement plan which will be provided to you by 20 September.

Consultation – Kōrero whakawhiti

31. The draft Cabinet paper and discussion document have now been shared for agency consultation and we have incorporated initial feedback into this draft. We will continue to engage constructively with them as we further develop the proposals. Broadly speaking the initial response from tourism, infrastructure and other land management agencies has been supportive.

32. We will make changes based on feedback from you and agencies and provide a revised version ahead of the scheduled Ministerial consultation period, from 23 September to 4 October [24-B-0390 refers].

Financial implications – Te hīraunga pūtea

33. The Department will fund the cost of public engagement from existing funding allocations.

34. Future implementation costs, timelines, and funding sources will be determined in upcoming months as options for implementation are worked through. [redacted] section 9(2)(f)(iv) [redacted] Our future advice will include faster implementation options and transition arrangement options, including any opportunities for parallel processes to deliver a faster impact.

Legal implications – Te hīraunga a ture

35. Proposals would primarily make changes to the Conservation Act 1987 and National Parks Act 1980. Other legislation that may need change includes the Reserves Act 1977, Marine Reserves Act 1971, Marine Mammals Protection Act 1978 and Wildlife Act 1953.

36. Consequential amendments to Treaty settlement legislation may be required e.g. references back to numbered sections in the Conservation Act.

Next steps – Ngā tāwhaitanga

37. Following your review of the Cabinet paper, we will make appropriate edits and share a revised version with you on 20 September. This is with the aim of providing you the final version to lodge the Cabinet paper on 10 October for the Cabinet Economic Policy Committee (ECO) on 16 October.

38. We will also provide you the draft discussion and engagement plan by 20 September to support the above Cabinet date.

39. Based on your decisions here, we will draft:

- Communications material to PSGEs as part of targeted engagement with Treaty partners.
- Land disposal content to include in the discussion document.

40. We therefore request your feedback as soon as practicable – either during your meeting with officials on 18 September or shortly thereafter.

ENDS

24-B-0463 - Attachment B: Public Conservation Land Disposals

Table A: Enabling more flexibility around land disposal of PCL in limited circumstances

Proposal	Options	Decision	Analysis and Advice
You can make it easier to dispose of PCL in limited circumstances			
Enable increased flexibility to dispose of public conservation land in limited circumstances	There are options to lessen the administrative burden in the disposal process and to broaden the scope for disposals. *Consult on making the process of disposal more flexible* 1. **Agree** to enable increased flexibility for the disposal of parcels of PCL where this would deliver conservation outcomes. 2. **Note** the Fast Track Approvals Bill excludes the exchange of high value PCL. It requires a net conservation benefit and also includes safeguards around: o Land status checks on the land involved and identifying if there are any land-related issues, e.g. accessibility, survey required, land-locked land, existing users, contamination, etc. o Ensuring that enclaves are not created, and species corridors are protected. o Considering the impacts on existing users of conservation land proposed for exchange. o Requiring the applicant to offset any Crown financial losses that would result from the land exchange. o Taking into account consideration of any potential Crown liabilities on land offered in an exchange. 3. **Note** enabling disposal for general economic development or generating revenue is beyond the scope of the Bill. *Scope of land eligible for disposal* 4. **Agree** to consult on the following to enable more flexibility: o Allowing eligible areas to be disposed of directly without having to revoke their status and reclassify them as stewardship land first. o Removing the threshold that only land that is of no or low conservation value can be sold **but** being clear that the highest value PCL is off limits (i.e. schedule 4 land types such as National Parks).	**Yes | No** **Noted** **Noted** **Yes | No**	Currently, land can only be disposed of when of "low" or "no" conservation value. It was recently agreed by Cabinet [ECO-24-MIN 0154 refers] that you will engage with the public on increased flexibility to remove restrictions on the exchange or sale of public conservation land and assets where this would deliver a net benefit to conservation. It was also agreed that additional conservation revenue from the transfer or sale of public conservation land will be reinvested into the conservation estate to improve biodiversity, recreation and heritage. The transaction costs of disposal or exchange are also a disincentive to DOC advancing proposals. While the costs of disposal or exchange can be recovered from the other party under s.60B of the Conservation Act 1987, quite often the costs of preparing the land for sale exceed the value to a potential purchaser. Development of criterion for conservational rationale for disposals would allow consideration of a disposal in more situations than present, provided that there is conservation benefit from the disposal. Conservation values on the land being disposed of could potentially be protected through a covenant or other instrument, while enabling other uses on the land that would be difficult to approve while it was public conservation land. For example, covenants could allow the construction of a hotel but not allow extractive industry. Any additional protections, such as covenants, will decrease the market value of the land being disposed of and may affect the viability of the sale. **Treaty Impact Assessment** Many Treaty settlements provide iwi rights of first refusal (RFR) whenever the Crown parts with land. Some settlements provide an RFR over any Crown owned land in the rohe of the iwi, while others list specific parcels of land. RFRs cover a majority of public conservation land, including all conservation land in the Ngāi Tahu takiwā which is a significant portion of the land administered by DOC. Rights of first refusal are activated when the Crown no longer requires the land and is disposing of it. Disposal with no new Crown land in return would almost certainly trigger RFR. The Crown is also increasingly receiving requests for the transfer of ownership of PCL from both settled and non-settled Iwi and hapū [24-B-0016 refers]. Liberalising disposal presents an opportunity for enhanced mana, rangatiratanga and exercise of kaitiakitanga over the land, as well as potentially enabling employment and economic benefit from the land, although it is unclear how much land would be suitable or available.

Proposal	Options	Decision	Analysis and Advice
	○ The potential for continued protection for land that is given up, where appropriate, through instruments such as covenants. ○ Restricting disposals to situations where land is surplus to PCL needs or could be better managed to deliver conservation, social, environmental and climate adaptation outcomes.		section 9(2)(f)(iv) [redacted]
	5. **Agree** that the following bottom-line (ineligibility) criteria are included in the discussion document to be tested through public engagement: *PCL is not eligible for disposal where it has international or national significance (for example a site like Tane Mahuta), is a national reserve (under the Reserves Act), an ecological area (specially protected under the Conservation Act) or is land within Schedule 4 of the Crown Minerals Act 1991.*	**Yes | No**	
	Options around disposal criterion / conservation test 6. **Agree** that PCL should not be disposed of if it is of high conservation value UNLESS the values that make it of high value can be adequately protected as part of the agreement to dispose.	**Yes | No**	
	7. **Note** that a conservation test or criterion would guard against opening up wider disposals by requiring a conservation rationale for disposal. What this could look like in legislation will be developed while consultation is under way. There may be some difficulty in allowing disposal for afforestation without raising expectations with other parties interested in development on conservation land.	**Noted**	
	8. **Agree** that the conservation test for disposals would include consideration of Treaty rights and interests.	**Yes | No**	
	9. **Agree** that potential revenue from disposals will be held in Trust for reinvestment back into conservation.	**Yes | No**	
	10. **Note** that if progressed to final policy proposals, further work will need to be undertaken on the fiscal impacts around asset and land valuations, and decisions around possible provisions for write offs/funding provisions.	**Noted**	
	Scope of proposals for public consultation in the discussion document 11. **Agree** that the discussion document should provide a broad outline of the matters that may be considered in a disposal decision but also seek public feedback on what additional matters should and should not be considered.	**Yes | No**	
	12. **Consider** noting in the discussion document that additional criteria might be added to reflect Government's afforestation	**Yes | No**	

Proposal	Options	Decision	Analysis and Advice
	goals if the work on afforestation is sufficiently progressed in time. 13. **Note** there are areas of the estate that have value for conservation for a particular reason, that could be better managed by another party e.g. Iwi could have interests in acquiring PCL based on the mana of ownership rights.	**Noted**	

24-B- 0463 Attachment C: Options Development Group themes at a glance and connections to the proposed Conservation Amendment Bill

Theme	Problem	ODG Recommendations	Connection to the Bill
Theme 1: Fundamental reform	*There are significant and system-wide inconsistencies between the Crown's Te Tiriti obligations and the nature and implementation of the current conservation system, as well as the state of Aotearoa New Zealand's rapidly declining biodiversity.*	**'Undertake a fundamental reform of the conservation system as a whole.'** Sub-recommendations: 1A: Review and replace the Conservation Act 1987 and all associated Schedule 1 Acts (and associated policies, strategies, and delivery) to honour Te Tiriti and provide for the meaningful exercise of rangatiratanga and kaitiakitanga by tangata whenua to ensure that Papatūānuku thrives; and 1B: Adopt a Te Tiriti partnership approach when undertaking fundamental reform of the conservation system.	**OUT OF SCOPE**: This is for future Government consideration, as recognised by the ODG.
Theme 2: 'Purpose of Conservation'	*The existing purpose of conservation does not include a te ao Māori perspective, resulting in the Crown not fulfilling its responsibilities as a Treaty partner.*	**'Reframe the purpose of conservation to ensure it is fit for purpose for Aotearoa New Zealand.'** Sub-recommendation: 2A: Embed a new understanding of conservation that is specific to Aotearoa New Zealand that reflects both tangata whenua and tangata tiriti perspectives and supports thriving indigenous biodiversity.	**OUT OF SCOPE**: s9(2)(f)(iv) [redacted]
Theme 3: Kawa, tikanga and mātauranga	*Reference to, and understanding of kawa, tikanga and mātauranga are largely absent within the conservation system.*	**'Centre kawa, tikanga and mātauranga within the conservation system.'** Sub-recommendations: 3A: Ensure the conservation system and decision-making within it gives weight to mātauranga and upholds kawa and tikanga; 3B: Ensure that the terms and principles under conservation legislation, policies, strategies and plans reflect kawa, tikanga and mātauranga; and 3C: Ensure the relationship between tangata whenua and conservation lands, waters and wāhi tapu, resources, species and other taonga (including kawa, tikanga and mātauranga relating to that relationship) is determined by tangata whenua, and that that relationship is enabled and empowered by the conservation system.	**OUT OF SCOPE:** To be considered in future reviews. Amending terms and principles to reflect kawa, tikanga and mātauranga across conservation legislation, strategies and plans would require widely scoped legislative change or would be better addressed through operational policy.
Theme 4: Lands, Waters, Resources, Indigenous Species, and other Taonga	*The conservation system does not adequately allow tangata whenua to actively maintain their relationships with te taiao and environmental taonga.*	**'Recast the legal status of conservation lands, waters, resources, indigenous species and other taonga.'** Sub-recommendations: 4A: Reform the ownership model of public conservation lands and waters to reflect the enduring relationships tangata whenua have with these places and the resources and taonga within them; 4B: Undertake a review of all classifications applied to public conservation lands and waters to recognise tangata whenua relationships; 4C: Revoke Crown ownership of indigenous species; and 4D: Resolve tangata whenua rights and interests in the freshwater and marine domains.	**4A/B: OUT OF SCOPE –** s9(2)(f)(iv) [redacted] **4C: OUT OF SCOPE –** To be considered as part of the Wildlife Act review. **4D: OUT OF SCOPE** - To be considered in future. Noting that fully resolving rights and interests would require further cross-portfolio policy work and is not exclusively a conservation policy issue. **4E: IN-SCOPE** • Proposal to make changes to create a more effective and efficient regulatory system. This aims to make it easier to get a concession and can therefore support Iwi to gain better access to public conservation land (PCL), the taonga on PCL, and the economic opportunities they provide. • Proposal to establish 'connection to taonga' criteria to reflect that Iwi have a higher level of interest in areas of cultural significance. This aims to provide Iwi/Māori greater opportunities when we do more competitive tendering.

		4E: Ensure tangata whenua access to and use of all lands, waters, species and resources managed within the conservation system, including within the context of permissions and concessions.	**Note** broader changes to support access and use of conservation resources could be taken forward as part of a future reviews of the Conservation Act, Wildlife Act and Trade in Endangered Species Act.
Theme 5: Te Tiriti Partnership	*The Crown's structures and processes for conservation governance and management fall short of what is required by the principles of Te Tiriti.*	***'Reform conservation governance and management to reflect Te Tiriti partnership at all levels.'*** Sub-recommendations: 5A: Review and reform conservation governance entities including the New Zealand Conservation Authority, conservation boards and other statutory bodies to reflect Te Tiriti partnership; 5B: Adopt appropriate models for mana-to-mana relationships, planning and decision-making at the appropriate geographic scale; 5C: Honour and implement existing Te Tiriti settlement commitments and arrangements, noting these do not limit the full expression of Te Tiriti partnership; and 5D: Make immediate changes to make sure that tangata whenua are engaged in decision-making that affects their interests, including in the context of permissions and concessions.	**5A: OUT OF SCOPE -** s9(2)(f)(iv) [redacted] **5B/C/D: IN-SCOPE** • Proposal to clarify the roles and timing of when DOC/D-G will engage with Iwi and hapū to inform concessions and plans, e.g. Iwi feedback on concession applications and the development of proposed National Conservation Policy Statements (NPCS) and area plans. This aims to achieve consistency in how DOC engages with Treaty partners in the regulatory system. • Proposal to address the planning system backlog will help with the implementation of settlements and will ensure Iwi and hapū values and aspirations are reflected in the plans. Engaging on classes of activities through plans rather than on individual applications for some activities will also reduce the administrative burden on Iwi and hapū. **Note** • Iwi and hapū are likely to perceive the proposed targeted focus of area plans as diminishing an expression of partnership and reducing their role in concession management. Alternative ways of engaging them in Conservation planning should be provided for to mitigate this risk. • Shorter timeframes for Treaty partner feedback/input on concession applications, NPSs and plans are also proposed. Iwi and hapū will most likely oppose the imposition of timeframes and suggest they undermine the principle of partnership (and therefore go against this ODG recommendation), particularly given that proposed timeframes would be shorter than those set out in current relationship agreements or less formal operational arrangements. • **5C** - The implementation and honouring of Tiriti settlements largely do not require changes to legislation. Upholding Treaty settlements is a key bottom-line for this work. Wider work is also ongoing in DOC to support operational improvements.
Theme 6: Tino Rangatiratanga	*The conservation system is not giving effect to the principles of Te Tiriti as it does not adequately provide for the exercise of autonomy and control by tangata whenua over their environmental taonga.*	***"Enable the devolution of powers and functions including decision-making to meaningfully recognize the role and exercise of rangatiratanga.'*** Sub-recommendation: 6A: Provide for the delegation, transfer and devolution of functions and powers within the conservation system to tangata whenua.	**6A: IN-SCOPE (partly)** • Proposal to enable increased flexibility to exchange or dispose of public conservation land where this would deliver a net benefit to conservation. **Note** • This could have positive economic impacts and enhance rangatiratanga over the land if Iwi or hapū have ownership or investment in a development involved in a land swap. • as recognised by the ODG, this largely requires further policy work around the theme of co-management and decision-making functions and powers in the conservation system. The landscape of conservation decision-making is increasingly complex, and there are a range of arrangements being put in place through Treaty settlements and relationship agreements.
Theme 7: Resourcing	*The current system is built on a culture that does not place appropriate value on tangata whenua perspectives and involvement in conservation. Structures, processes and practices that give effect to Te Tiriti are not adequately resourced or prioritised relative to other DOC work.*	***'Build capability and capacity within Te Papa Atawhai and with tangata whenua'*** Sub-recommendation: 7A: Provide resourcing for both Te Papa Atawhai and tangata whenua to build capability and capacity to give effect to the principles of Te Tiriti, including but not limited to: i. partnering in fundamental reform; ii. exercising autonomy and participating in decision-making; iii. developing policy, strategy and planning documents; and iv. delivering conservation at place; and reconnecting and strengthening the relationship of tangata whenua with conservation lands and waters, resources, and species.	**OUT OF SCOPE** – Resourcing is not a matter for this reform process as this concerns Crown Budget/finance decisions. s9(2)(f)(iv) [redacted]