



Department of Conservation  
*Te Papa Atawhai*

## Notified Concession Officer Report to Decision Maker

Application for Notified Lease Concession, Wairua Hut

Applicant: Fish & Game Council Eastern Region

Permission Number: 62279-ACC

### 1. Summary of Proposal

The department has received an application from Eastern Region Fish and Game Council to formalise their occupancy of Wairua Hut at Lake Tarawera Scenic Reserve.

Fish & Game is a statutory state sector agency pursuant to the Conservation Act with responsibility for the management of sports fish and game birds in New Zealand.

Lake Tarawera is a key sports (trout) fishery within the Eastern Region.

The Wairua Hut situated on Lake Tarawera Scenic reserve land has been owned by Fish & Game NZ since 1990 when Fish & Game was formed and the role to manage sports fish was split from DOC. Since then, Fish & Game has owned and managed this hut for fishery management purposes at the Wairua Stream.

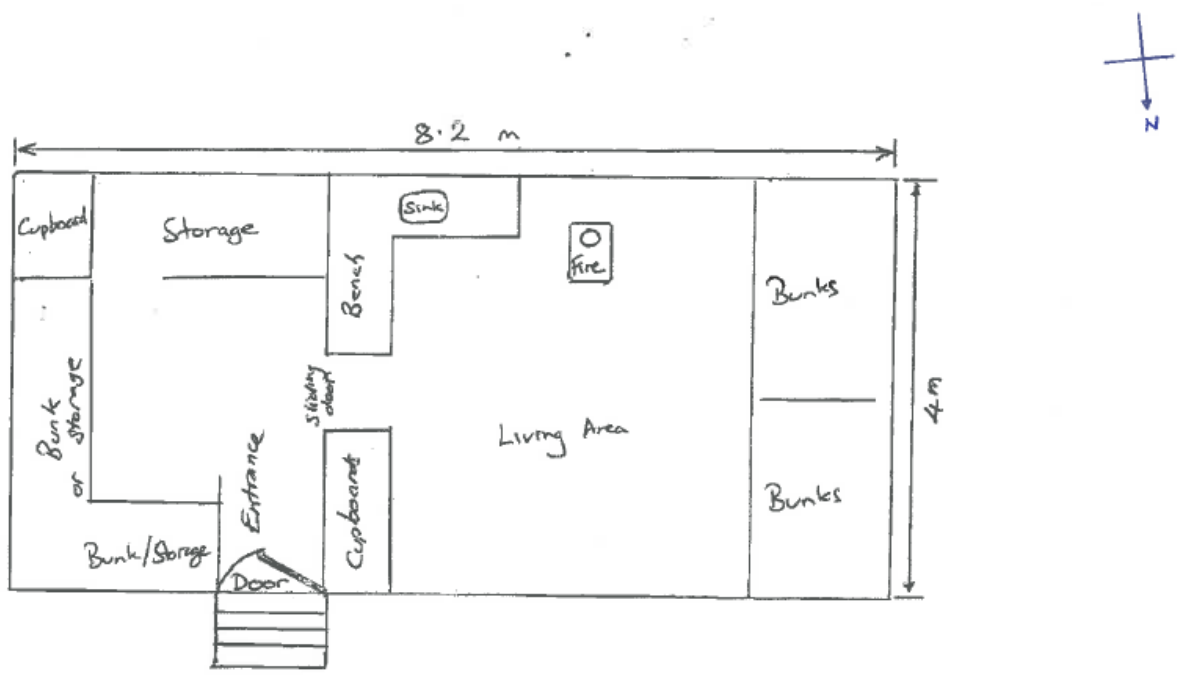
It appears that when Fish & Game was separated from DOC in 1990, formalisation of an arrangement to occupy the site was omitted.

The application is for a lease for the hut itself to provide for exclusive use of the hut along with hire of the hut to approved members and anglers. This would also allow Fish and Game to be able to keep it secure. The area surrounding the hut would be a licence and does not provide for exclusive use however allows the surrounding area to be used as part of the activity.

The red line in the aerial map below shows the proposed area of the licence around the hut:



The floor plan below shows the size and area of the lease required for the hut structure. The floor areas is 33 m<sup>2</sup>.



## Location/s

The activity has been applied for at the following location/s:

Conservation area	Description of location (if applicable)	Land status	District Office	Activity
Lake Tarawera Scenic Reserve	Wairua Hut	Scenic Reserve	Tauranga	Hut/Accommodation

## 2. Statutory Analysis: Notified Concession under Part 3B of the Conservation Act 1987

Diana Clendon, Permissions Advisor

### Intention to Grant

#### S17S: Contents of application

To be complete (s17S(1)), an application for a concession must include:

- A description of the proposed activity;
- A description of the locations for the proposed activity;
- A description of the potential effects of the proposed activity and proposed action to avoid, remedy, or mitigate adverse effects;
- The proposed term and reasons for that term;
- Relevant information about the application (as requested in the application form).

#### Criteria for decision:

1. Does the application include all the required information as per s17S?

Yes

#### S17T: Process for complete application

The intention to grant a concession must be publicly notified if it meets any of the following criteria:

- The concession type is a lease – this is for exclusive use of public conservation land;
- The term of the concession exceeds ten years (unless it is an easement – an easement may be granted for a term exceeding ten years without public notification);
- The effects of the activity mean it is appropriate to do so.

#### Criteria for decision:

2. Is public notification required?

Yes

The activity is considered to be of local interest only and therefore the decision in Principle should be notified in Rotorua daily post.

### **S17U(1) and (2): Analysis of effects**

#### **Criteria for decision:**

3. Is the activity consistent with s17U(1) and (2) of the Conservation Act?

Yes / No

#### **Discussion:**

The Wairua Hut is an existing hut that has been used by Fish & Game – Eastern Region since 1990, there are no proposed changes to the building and therefore there will be no new effects.

Fish and Game regularly visit the site and clean up any rubbish left by other users of the area. The hut is regularly maintained, is tidy and in good condition. There is a composting toilet located about 20 m from the rear of the hut. The toilet is maintained by Fish & Game and has remained available for use by the public to avoid toileting occurring in the surrounding areas.

Fish and Game have noted that the toilet is receiving heavy public use and is becoming onerous in terms of cleaning and maintenance. The Department considers it is important that the toilet is kept in good working condition to avoid any adverse effects from it. The following condition should be included:

4. The Concessionaire must ensure that the toilet is kept in good repair and is available for public use.

### **S17U(3): Purpose for which the land is held**

A concession shall not be granted if the proposed activity is contrary to the purpose for which the land is held.

#### **Criteria for decision:**

5. Is the activity not contrary to s17U(3) of the Conservation Act? (That is, consistent with the purpose for which the land is held – although note that ‘not contrary to’ is not as high as a test as ‘consistent with’).

Yes

#### **Discussion:**

The land under application is Part Lake Tarawera Scenic Reserve. Reserves are managed by the Department for the purpose of “...*providing for the preservation and management for the benefit and enjoyment of the public...*”, areas of New Zealand possessing a number of values or features as set out in Section 3(1)(a) of the Reserves Act 1977.

Section 19(1)(a) of the Reserves Act 1977 states that “...*the appropriate provisions of this Act shall have effect, in relation to reserves classified as scenic reserves - “For the purpose of protecting and preserving in perpetuity for their intrinsic worth and for the benefit, enjoyment, and use of the public, suitable areas possessing such qualities of scenic interest, beauty, or natural features or landscape that their protection and preservation are desirable in the public interest. ”*

As the hut already exists there would be no new effects on the scenic interest, beauty, or natural features or landscape. Along with being used for trout fishery management it would also be available between March and June each year for the benefit and enjoyment of anglers, as long as they are a member of an angling club or other organisation known to Fish and Game. Therefore, the authorisation of the existing hut is not considered to be contrary to the Reserves Act.

**S17U(4): Can a structure or facility be reasonably undertaken elsewhere?**

A concession to build or extend a structure or facility shall not be granted if the activity could reasonably be undertaken in another location that is outside conservation land or in an another conservation area where the potential adverse effects would be significantly less, or if the activity could reasonably be undertaken in an existing structure.

**Criteria for decision:**

6. Is the activity consistent with s17U(4) of the Conservation Act? (That is, the activity cannot reasonably be undertaken at another location or in an existing structure?)

Yes

**Discussion:**

The hut already exists and therefore cannot be carried out elsewhere on public conservation land with lesser effects. It also therefore could not reasonably be located off Public conservation land.

**S17W: Relationship between concessions and conservation management strategies and plans**

A concession shall not be granted unless the proposed activity is consistent with any established conservation management strategy, conservation management plan, and/or national park management plan.

**Criteria for decision:**

7. Is the activity consistent with all relevant statutory planning documents?

Yes

**Discussion:**

The Bay of Plenty Conservation Management Strategy (CMS) is the relevant planning document. The Wairua Hut is in the Rotorua Management Area. Relevant sections include:

Sections 3.6 - Rotorua Management Area and 3.6.2 - General, seem relevant, however there are no specific management actions/policies that are relevant to huts or accommodation facilities.

Sections 4.5 - Recreation and Access and 4.5.1 visitor Opportunities and Trends are relevant and Objective 3 requires that all facilities are constructed and maintained for public safety. Implementation policy 1 provides for recreation activities and facilities where these do not damage natural and historic resources or conflict with other users and they should be in accordance with the Visitor Strategy for the Bay of Plenty, this document however is outdated and no longer in use. It is not clear if the Wairua hut would be considered a recreation facility however if it was any ongoing impacts on natural and historic resources are considered to be

minimal and the hut and toilet supports users of the area by providing public access to the toilet.

Policy 3 requires all facilities to be built and maintained to relevant safety standards and comply with relevant legislation. Standard lease/licence conditions in Schedule 2, clause 15 would ensure these policies are met. Adding the following standard special conditions to schedule 3 of the lease/licence may also help to highlight these requirements:

#### **Building Act Compliance**

- Further to clause 15.1(b) of Schedule 2, the Concessionaire must ensure that all structures whose construction or alterations commenced after 1 July 1992 comply with the Building Act 1991, the Building Act 2004 and any relevant regulations (including the Building Code).
- Without limitation to any other clause in this Concession, the Concessionaire must:
  - (a) Ensure that all existing structures and any new structures or alterations are not dangerous or unsanitary in terms of sections 64 to 71 of the Building Act 1991 and sections 121-130 of the Building Act 2004, as amended from time to time;
  - (b) Comply with any notices issued in accordance with any of the provisions referred to above;
- Nothing in this Concession shall be deemed to amount to endorsement by the Grantor of the standard of the hut and associated structures or services for the purposes of compliance with the Building Act 1991 and/or 2004 or Resource Management Act 1991 or any other statutory requirements administered by the local or territorial authorities.

Section 4.5.2 - Managing Visitor Impacts, implementation policy 7 provides that where an existing toilet is having an adverse effect on the environment replace it with a composting one or similar. As the toilet at the hut is already a composting one the application is consistent with this policy. Policy 8 provides that rubbish pits be filled in and visitors are encouraged to take their rubbish home. There is no rubbish pit on site and standard conditions require the area to be kept rubbish free. Fish and Game also note they regularly visit the site and pick up rubbish left by other users in the area. Hut users are required to remove their own rubbish.

Section 4.6, Uses of Lands Administered by the Department and 4.6.2 - Utilities and Related Structures, provides for structures and utilities where they avoid, remedy or mitigate adverse effects on natural and historic resources. As stated above the effect of the hut is considered minimal. Implementation policy 6 requires operators to provide unrestricted public access except where this conflicts with public safety and security. Only the hut itself will have exclusion use for security reasons, the area surrounding the hut will not restrict public access in any way and the toilet will be open to the public.

Section 4.6.7 - Concessions, Objective 1 provides for concessions of this nature and implementation policy 7 requires the Department to have adequate regard to the interests of Tangata Whenua. Consultation with Tangata Whenua has occurred as outlined earlier in this report.

Policy 8 provides that leases and licences may be granted for a maximum term of 30 years and in exceptional circumstances 60 years. This concession would be 30 years and so would be consistent with this policy.

**Conclusion**

Standard conditions of the lease/licence document would ensure the authorisation of the existing hut would be consistent with the Bay of Plenty CMS.

### 3. Proposed Operating Conditions

**Conditions****Standard conditions applicable to the proposed activity:**

See Schedule 2 of the standard lease /licence contract for the standard lease /licence conditions

**Ownership of hut and associated structures**

1. For the avoidance of doubt, the bach and associated structures on the Land are owned by and are the responsibility of the Concessionaire.

**Sewage and water disposal**

2. The Concessionaire must comply with any lawful notice or direction issued by the West Coast Regional Council regarding sewage and/or stormwater disposal from the Land. The Concessionaire must indemnify the Grantor for any loss or damage caused or suffered as a result of non-compliance with this condition, including without limitation, the cost of ensuring compliance with any such direction or notice.

**Toilet facilities**

3. The Concessionaire's toilet facilities on the Land must comply with the following:
  - (a) There must be no discharge of sewage from the toilet onto the Land or adjoining public conservation land;
  - (b) The toilet facilities must comply with the provisions of the Resource Management Act 1991 at all times, including any requirements to obtain and comply with all resource consents necessary to install and operate a toilet system, and must comply with all district and regional plans, including any relevant permitted activities.
4. The Concessionaire must obtain the prior written approval of the Tauranga Operations Manager prior to installing any new toilet facilities on the Land.

**Vegetation**

5. Notwithstanding clause 9.1 of Schedule 2, the Concessionaire may undertake minimal vegetation clearance only for the purposes of keeping the Land tidy and keeping access to the Land open.

**Monitoring Costs**

6. The Concessionaire must pay the reasonable costs of and incidental to the Grantor's on site visits and associated attendances required to confirm the Concessionaire's compliance with the conditions of this Concession and the effects of the Concession

Activity. The rates will be charged at the Department's then current standard charge-out rates for staff time and mileage.

### **Building Act compliance**

7. Further to clause 15.1(b) of Schedule 2, the Concessionaire must ensure that all structures whose construction or alterations commenced after 1 July 1992 comply with the Building Act 1991, the Building Act 2004 and any relevant regulations (including the Building Code).
8. Without limitation to any other clause in this Concession, the Concessionaire must:
  - (a) Ensure that all existing structures and any new structures or alterations are not dangerous or unsanitary in terms of sections 64 to 71 of the Building Act 1991 and sections 121-130 of the Building Act 2004, as amended from time to time;
  - (b) Comply with any notices issued in accordance with any of the provisions referred to above.

### **Local and Territorial Authority Approvals**

9. Nothing in this Concession shall be deemed to amount to endorsement by the Grantor of the standard of the hut and associated structures or services for the purposes of compliance with the Building Act 1991 and/or 2004 or Resource Management Act 1991 or any other statutory requirements administered by the local or territorial authorities.
- 10.

### **Special conditions relevant to this application and resulting from the discussions in this report:**

11. The Concessionaire must ensure that the toilet is kept in good repair and is available for public use.

### **Term**

30 years which is the reasonable given the type of structure and the expected life of the hut.

### **Fees**

There has been a fee waiver approved by Marie Long, Director of Planning, Permissions and Land. This waiver includes processing costs, annual activity and management fees but not any notification costs which would be recovered. Fee Waiver approval [DOC-3191623](#)

## **4. Decision Making**

### **Recommendation**

The application is considered to be consistent with the Bay of Plenty CMS and not contrary to the purpose of Lake Tarawera Scenic Reserve. The Hut is existing and the effects appear to minimal. Consultation has occurred with the relevant iwi and while concerns have been raised



in regards to a 30 year term iwi indicated they would be happy if the concession was reviewed 10 yearly. As conditions can be reviewed every 3 years along with the fees the District staff considered that this would alleviate their concerns. Iwi also identified that they would like to build a better relationship with Fish and Game Eastern region, to share knowledge, this has now been facilitated.

There appears no reason not to Approve in Principle the granting of a lease for the hut and a licence for use of the surrounding area for this activity.

**Decision: Notified Concession under Part 3B of the Conservation Act 1987**

**Decision in Principle**

1. Deem this application to be complete in terms of s17S of the Conservation Act 1987:

Agree / Disagree

2. Agree that if this application is approved in principle then the intention to grant the concession will be publicly notified:

Agree / Disagree

3. Approve in principle the granting of a 30 year Lease/Licence to Fish & Game New Zealand - Eastern Region subject to the standard Lease/Licence concession contract and the special conditions listed above:

Approve / Decline

4. Having regard to s49(1) of the Conservation Act 1987, agree that any intent to grant the permission would be of local or regional interest only, in which case the publication of public notice on this matter be limited notice in the Rotorua Daily Post

Agree / Disagree

Special conditions to be included:

1 - 11 noted in section 7 above



Signed by Jeff Milham, Operations Manager Tauranga District  
Pursuant to the delegation dated 9 September 2015

04/12/17

Date