

First Determination Report to: Mark Davies, Conservation
Support Manager; Bay of Plenty Conservancy

(Approval in Principle/Decline)

**Application for a Recreation Concession by
Sir Edmund Hillary Outdoor Pursuits Centre**



1.0 Introduction

1.1 The Application

The Department has received an application for Education/Instruction from Sir Edmund Hillary Outdoor Pursuits Centre (OPC).

The purpose of this report is to consider the application in accordance with the relevant legislation and recommend whether the application should be approved in principle, or declined.

1.2 The Law

Part IIIB of the Conservation Act 1987 sets out the provisions dealing with concessions. These include:

- *Section 17S - 'Contents of the application'*. This is discussed in section 2 of this report.
- *Section 17T - 'Process for a complete application'*. This requires the Minister to decline an application within 20 working days of it being deemed complete, if the "...application does not comply or is inconsistent with the provisions of this Act or any other relevant conservation management strategy or plan..." It is discussed in section 2.6 of the report
- *Section 17U - 'Matters to be considered by the Minister'* - This includes, but is not limited to, the consideration of the effects of the proposal (s17U(1)(b)); measures that can be taken to avoid, remedy, or mitigate, any adverse effects of the activity (s17U(1)(c)); and the purpose for which the land is held under the relevant legislation (s17U(3)). These matters are discussed more comprehensively in section 3 of this report.
- *Section 17W - 'Relationship between concessions and conservation management strategies and plans'*. This is discussed in section 4 of this report.

2.0 Contents of the Application - Section 17S

Under section 17S of the Conservation Act 1987 the applicant is required to outline details relating to the application. These are outlined in this section. A copy of the complete application is attached as Appendix (A).

2.1 The Applicant

Sir Edmund Hillary Outdoor Pursuits Centre
Private Bag 37
TURANGI

The applicant is a Non-profit Charitable Trust, established by Graeme Dingle in 1972.

2.2 Description of the Activity - Section 17S(1)(a)

The Sir Edmund Hillary Outdoor Pursuits Centre is an outdoor education Centre running courses for school students as well as skill, leadership and experiential training programmes open to the public. These courses may involve tramping, camping, orienteering, mountaineering, canoeing, rafting etc.

The applicant has applied for a multi conservancy concession to operate guided outdoor education on public land, including areas within the Bay of Plenty Conservancy. These areas would be used for low impact activities such as tramping, kayaking and use of designated camp sites.

2.3 Identity and Status of Area under Application - Section 17S(1)(b)

The status of the land affected by the application is:

Bay of Plenty Conservancy
Lake Tarawera Scenic Reserve
Lake Okataina Scenic Reserve

2.4 Effects of the Proposed Activities - Section 17S(1)(c)

The applicant has identified a number of effects. These and the appropriate avoidance and mitigation measures are discussed in Section 3.2 of this report.

2.5 Proposed Type of Concession and Duration - Section 17S(1)(d) & (e)

A licence for a term of fifteen years has been applied for. The reason given for this term is to "*allow security in forward planning*". Further discussion on the term is provided in section 3.3 of this report.

Comment

The Sir Edmund Hillary Outdoor Pursuits Centre has been operating for over thirty years. It has expanded during that time to become a large, well established centre. There is no evidence to indicate that this will not continue in the future.

2.6 Relevant Information relating to the Applicant's Ability to carry out the Activity - Section 17S(1)(f)

The applicant has been operating successfully for over 30 years. The following information is taken from the OPC website "*OPC is committed to environmental*

responsibility and sustainability. We implement and maintain a documented Environmental Management System that establishes a framework of suitable objectives, strategies and indicators. Through continual monitoring and audit of our environmental performance OPC is able to take a leading role in environmental best practice in the field, domestic and educational arenas.

OPC has an excellent reputation nationally and is seen as a leading provider of outdoor education in NZ. Our reputation as a provider of quality education is expanding into the international arena and we have an increasing number of foreign full fee paying students enrolling onto our tertiary courses.

OPC has strong relationships with all major providers of Outdoor Leadership training in the country – offering work placements and employment opportunities for their students when appropriate. We also have a close working relationship with Waiariki Institute of Technology, with whom we offer our year long Certificate courses in a joint venture arrangement.

OPC is active in ensuring that decisions made by our ITO are reflective of the outdoor industry and meet the needs of our organization. We have a strong working relationship with Sfrito.

OPC is committed to ensuring that the organisation develops and supports a staff profile that reflects its mission and special character. This is demonstrated through, regular strategic evaluation and planning, a robust quality management system, effective risk identification, a dynamic mentoring scheme, a significant financial commitment to staff training, and consistent performance monitoring and assessment.

OPC will continue to foster a learning environment that is comfortable, safe and supportive for people from all cultures.

The OPC Trust Board is the legal authority for OPC. The Trust Board's role is one of governance and it delegates the day-to-day operations of the organisation to the Director and his/her staff. Trustees volunteer their time to OPC and are a dedicated, hard working, diversely skilled, enthusiastic group. Local iwi have a representative on the Trust board. This person is nominated by the local hapu.

The Trust's role is setting philosophy; establishing organisational policy, long range planning and financial control. OPC is incorporated as a Charitable Trust Board and has its own legal identity outside the Trustees."

2.7 Process for a Complete Application - Section 17T(2)

This section requires the Minister to decline a complete application within 20 working days of its receipt if the "...application does not comply or is inconsistent with the provisions of this Act or any other relevant conservation management strategy or plan..."

Comment

This application is considered to be complete. It appears to comply with and be consistent with, the provisions of the Conservation Act 1987 and the relevant conservation management strategy, or plan.

3.0 3.0 Matters for Consideration

Section 17U(1) requires the Minister to have regard to the following matters:

3.1 Nature of Activity - Section 17U(1)(a)

The land and concession activity are further defined as follows:

Bay of Plenty Conservancy

Activity	Area	Maximum number of trips per year	Maximum party size
Tramping Guide to Client Ratio 1:10	Lake Tarawera Scenic Reserve <ul style="list-style-type: none"> • Tarawera Falls Walkway Lake Okataina Scenic Reserve <ul style="list-style-type: none"> • Eastern Okataina Walkway 	5 (4 days each)	10 clients + guides
Camping	Lake Tarawera Scenic Reserve <ul style="list-style-type: none"> • Hot Springs Reserve • Te Tapahoro Bay • Humphries Bay 	5	10 clients + guides
Sea Kayaking Guide to client ratio 1:5	Lake Tarawera Lake Rotomahana	5	10 clients + plus guides

Comment

The activities proposed within these areas are low impact activities and utilise existing tracks and camp sites. Kayaking is not required to be specified in the concession document. The Lake Okataina Scenic Reserve Board control and manage Lake Okataina Scenic Reserve. All activity fees associated with this area are to be paid to the Lake Okataina Scenic Reserve Board. Payment details can be arranged with the Bay of Plenty Conservancy should the application be approved.

3.2 Effects of Activity - Section 17U(1)(b) and any Measures to Avoid, Remedy, or Mitigate Effects - Section 17U(1)(c)

The applicant has made an assessment of the effects of the proposed activity (refer section F and Appendix 1 of the application).

The Applicant has identified the following effects:

- Natural waterways will be affected or used.
- Unsure about disturbance of native vegetation.
- Unsure about disturbance to soils, wetlands and other natural features.

- Activity will be visible from within or adjoining areas.
- Unsure about the possibility of introducing weeds to the area.
- Other visitors will be present in the area(s).
- Activity will focus on plants, animals and/or sites of traditional importance to Maori.
- Positive effects on natural and historic values.
- Foster recreation
- Promotion of understanding of conservation.

The Applicant has standard operating procedures in place to avoid, remedy or mitigate these effects on the environment and other users.

The Department has identified a number of issues relating to the use of the Lake Tarawera Scenic Reserve including:

- Environmental protection and impact minimisation
- Not compromising Treaty claims/provisions
- Accuracy of historic/cultural interpretation

Consultation with local iwi in July 2002 identified a number of other issues which should be largely addressed by the following special conditions.

- *The Concessionaire shall be familiar with the natural and cultural history of the area and impart that information accurately to its clients. The applicant shall consult with Ngati Rangitahi, Tuhourangi, the Lake Okataina Scenic Reserve Board and Tuwharetoa ki Kawerau to ensure accuracy of interpretation.*
- *The Concessionaire shall not disclose the location of any wahi tapu or culturally sensitive sites without first obtaining permission from respective hapu.*
- *The Concessionaire shall be familiar with the boundaries of private and Maori Land and respect areas of wahi tapu.*
- *The Concessionaire shall be aware of the boundaries of the site.*
- *The permit does not confer rights to cross any land or water other than that of the Site.*
- *The Concessionaire shall obtain authorizations from the landowner, to cross any private or Maori land.*
- *The Concessionaire agrees that should the Site (or part thereof) be transferred from the Grantor to tangata whenua as a result of any Treaty of Waitangi claim or provisions, during the term of this concession, that the Site (or part thereof) as described in Schedule I, shall be excluded from the concession.*
- *The Grantor may impose any extra special conditions as appropriate to remedy, mitigate or avoid the effects of the Concession Activity.*

- *The permit does not grant any special entitlement to use jetties and access ramps.*
- *Overnight camping is restricted to designated camping areas.*
- *The Concessionaire and invitees shall pay, in addition to the Concession fee, the standard fee for overnight camping at Te Rata (Hot Water Beach) and Te Tapahora (Tarawera Outlet). This permit does not grant any special entitlement to campsites.*
- *Open fires of any kind are strictly prohibited.*
- *The Tarawera Falls track is to be accessed from the Tarawera Outlet end of the track only and not from the carpark end.*

Comment

Adherence to standard and special conditions included in the contract will ensure the applicant avoids remedies or mitigates many of the effects of the proposed activity.

3.3 Term

The term applied for is fifteen years on the basis that length of tenure was needed for security and future planning and this is the recommended term.

However, consultation with the Okataina Scenic Reserve Board has led to a request that the term of the permit be limited to 5 years. Considerable discussion had occurred with the following recommendation put forward:

The Bay of Plenty Conservancy have requested that the decision maker notes the feedback received from the Okataina Scenic Reserve Board in regard to OPC's multi conservancy guided walking application and the relationship to the Okataina Scenic Reserve Board.

The Conservator acknowledges this advice from the Board but supports the proposed term recommended. He notes the application is consistent with the BOP CMS and the Act. The Conservator will brief the Reserves Board of the final outcome of the application.

3.4 Any Information Received under Section 17S or 17T- Section 17U(1)(d)

Additional information on the proposal was requested and supplied by the applicant.

3.5 Any Relevant Environmental Impact Assessment Including Audit or Review - Section 17U(1)(e)

The applicant has provided an adequate assessment of effects in Section F and Appendix G of the application.

Comment

This appears to cover all of the relevant issues.

3.6 Any Relevant Oral or Written Submissions Received as a Result of Public Notification - Section 17U(1)(f)

The effects of this type of activity and the term applied for (fifteen years) require this application to be publicly notified pursuant to section 49 of the Conservation Act 1987. If the recommendation from this report is accepted, then it is recommended that the application be notified in the "Bay of Plenty Times". Whakatane Beacon and the "Rotorua Post". Individuals, or groups, may then object, or submit and be heard on the proposal. The objections and submissions will be considered in a 'final' report following notification.

3.7 Any Relevant Information which may be Withheld under the Official Information Act 1982 or the Privacy Act 1993 - Section 17U(1)(g)

While any request for information under the Privacy Act, or the Official Information Act, would be considered on its merits and on a case by case basis, there is no relevant information concerning this application which may be withheld under the Official Information Act, or Privacy Act.

3.8 Decline of Application - Section 17U(2)

This provides that the Minister may decline any application if the Minister considers that:

- (a) *The information available is insufficient or inadequate to enable him or her to assess the effects (including the effects of any proposed methods to avoid, remedy, or mitigate the adverse effects) of any activity, structure, or facility; or*
- (b) *There are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure, or facility."*

Comment

It is considered that there is sufficient information on the effects of this proposal to enable the Minister to assess the effects of the proposed activity.

It is considered that the Department's standard permit conditions and special conditions will allow the applicant to avoid, remedy or mitigate, the effects of the application, if it is to be granted.

3.9 Purpose for which the Land is held - Section 17U(3)

The areas under application are managed under the Reserves Act 1977. The Minister may not grant a concession if the proposed activity is contrary to the purpose for which the land is held.

Reserves Act 1977

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(a) of the Act.

Comment

The use of the areas listed in Section 3.1 for the purposes of Education/Instruction is not inconsistent with the purpose for which the land is held.

4.0 Planning Instruments

4.1 Relationship between Concessions and Conservation Management

Strategies and Plans - Section 17W

Section 17W(1) provides *"Where a conservation management strategy or conservation management plan has been established for a conservation area and the strategy or plan provides for the issue of a concession, a concession shall not be granted in that case unless the concession and its granting is consistent with the strategy or plan."*

Section 17W(3) of the Conservation Act states that *"the Minister may decline any application, whether or not it is in accordance with any relevant conservation management strategy or conservation management plan, if he or she considers that the effects of the activity are such that that a review of the strategy or plan or the preparation of a strategy or plan is more appropriate."*

4.2 Conservation Management Strategies

The Bay of Plenty Conservation Management Strategy will be relevant to the areas under application.

The Bay of Plenty CMS states...

4.6.7 Concessions

Objective

Concessions that ensure the conservation of natural and historic resources, the recognition of cultural values and accurate interpretation and also provide for the following (one or both):

- *Public enjoyment*
- *Business*

Implementation

2. Any concession may have terms or conditions on it to ensure the relevant matters implemented in this section (4.6.7 Concessions) are fulfilled or adhered to and may include environmental compensation.

7. The Department must ensure that proposed applications have adequate regard to the interests of tangata whenua.

9. Rents, fees and royalties may be charges at market rates.

Comment

The proposed activity is not inconsistent with the objectives of the Bay of Plenty Conservation Management Strategy.

4.3 Conservation Management Plan

There are no Conservation Management Plans for the areas under application within the Bay of Plenty Conservancy.

5.0 Conclusion and Special Conditions

The information provided by the applicants is complete enough to allow further consideration.

The use of the stated Reserves for the purposes of Guiding Educational groups as well as skill, leadership and experiential training programmes open to the public is not inconsistent with the purpose for which the land is held.

In addition to the Department's standard concession conditions, the special conditions requested in this report to be included in the concession document are considered appropriate.

There appears to be no reason why the Minister cannot publicly notify his intention to grant a concession to Sir Edmund Hillary Outdoor Pursuits Centre with a final decision on this application being made subject to the applicant's acceptance of the conditions and the outcome of the public notification process.

6.0 Applicants Comments

The applicant will be sent the draft report and concession document for comment on ... Comments were received on ... The applicant's comments and the Department's response are outlined below for your consideration...

7.0 Recommendation

1. Pursuant to a written delegation it is recommended that the Conservation Support Manager **approve in principle** the granting of a fifteen year concession to Sir Edmund Hillary Outdoor Pursuits Centre subject to the standard and special conditions identified.

If this application is approved in principle then the intention to grant the concession will be publicly notified.



Clint Savage
Concessions Supervisor

Date: 13 DEC 02

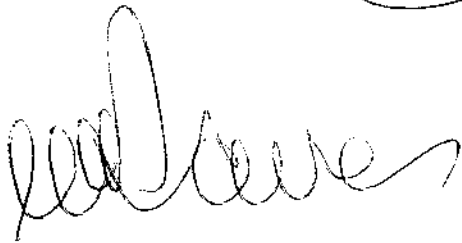
Conservancy Solicitor comments:

Report deals with appropriate legal considerations
& recommendation is warranted.

Date: 13 December 2007 *Alfred*

Recommendation:

1. Approved / ~~Declined~~



Mark Davies

Conservation Support Manager, Bay of Plenty Conservancy

Date:

19/12/07