

Giving better effect to the principles of the Treaty of Waitangi

Partial reviews of the Conservation General Policy and the General Policy for National Parks

A background paper about the process and main issues

JUNE 2020



Department of
Conservation
Te Papa Atawhai

New Zealand Government

Giving better effect to the principles of the Treaty of Waitangi. Partial reviews of the Conservation General Policy and the General Policy for National Parks.

COVER: A kete commissioned for the 2018 memorial service held for DOC Biodiversity Ranger Scott Theobald – one of three men killed in a tragic helicopter crash on 18 July 2018. The weaver is Edna Pahewa, of Te Arawa, Ngāti Tūwharetoa, Tūhourangi, Ngāti Wāhiao and Ngāti Umutahi. Some of her work is held in the permanent collection of Museum of New Zealand Te Papa Tongarewa. *Photo: Nick Graham*

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Summary

The Department of Conservation is the government agency charged with protecting native species and overseeing the management of about a third of New Zealand's land area. We also protect marine mammals and manage 4.5 million hectares of marine reserves and sanctuaries. Many of the species and places DOC manages are of great cultural significance for Māori.

Over many years, DOC has heard whānau, hapū and iwi concerns about, and aspirations for, the Treaty partnership in conservation. We have heard these concerns and aspirations in our daily work locally and regionally, in Treaty settlement negotiations, in the Waitangi Tribunal and in the courts. Although we have worked together to build closer partnerships, a common theme in our conversations with Treaty partners is that there are still barriers to achieving a thriving Treaty partnership in conservation and a desire to improve the way the partners work together.

Partial reviews of the general policies are an opportunity to shape Treaty partnership in conservation

The Minister of Conservation and the New Zealand Conservation Authority (NZCA)¹ have directed DOC to partially review the Conservation General Policy and the General Policy for National Parks (the general policies).

The purpose of the partial reviews is to ensure DOC's and others' Treaty responsibilities are both visible and easy to understand within the general policies. The partial reviews may also identify limitations to Treaty partnership in conservation laws or other policies, and potential solutions.

Treaty settlements include specific obligations to some of our Treaty partners for how we work together on conservation. Any changes made to the general policies through the partial reviews will not alter existing Treaty settlements.

Whether a Treaty settlement is in place or not, DOC has Treaty responsibilities to Māori. The partial reviews are an exciting opportunity for DOC and Māori to collaborate to shape the Treaty partnership in conservation for the future, and to develop recommendations to achieve this change. We held hui with Treaty partners in 2019 about how DOC should engage with Māori in this work; Treaty partners told us they want to be closely involved in the partial reviews.

¹ The NZCA is an independent statutory body appointed by the Minister of Conservation to advise the Minister and DOC on conservation priorities, policies and practices at the national level.

This paper aims to support our Treaty partners to nominate people to work with DOC on the partial reviews

The Director-General of Conservation will establish Options Development Groups that will be responsible for developing ideas for change. The Director-General will consider nominations for membership of the groups, and will appoint people who can bring a te ao Māori perspective and policy skills to these groups. DOC officials and conservation board representatives will also be members of the groups.

Information about the process for nominating Options Development Group members is available at www.doc.govt.nz/general-policies-partial-reviews/

DOC will bring the Options Development Groups' ideas to whānau, hapū and iwi for their feedback. We will also hold workshops and meetings with conservation stakeholders to ensure we are able to understand and consider their views on any proposed changes. We will be mindful of the COVID-19 situation as we seek feedback.

The Director-General of Conservation will consider these views and publish the proposed changes to the general policies after consulting the Minister of Conservation and the NZCA. In line with the legislation, the Director-General will then hold a formal and wide-ranging public consultation process. The Minister of Conservation and the NZCA, after considering the responses and submissions, will then make final decisions about changes to the general policies.

As a starting point for the work of the Options Development Groups, DOC has summarised the main issues we think need to be addressed through the partial reviews. We think these include changes to:

- ensure the general policies reflect Treaty responsibilities in relevant, clear and practical ways
- ensure that DOC and whānau, hapū and iwi work in a Treaty partnership relationship
- enable access for whānau, hapū and iwi to public conservation lands and waters, and to native species, to carry out their practices as kaitiaki.

We welcome your comments

We welcome your comments on the main issues for the partial reviews, including what is summarised in this background paper. Please send your comments to tepaewhakatere@doc.govt.nz by **21 August 2020**.

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Purpose of this background paper

The Department of Conservation (DOC and ‘we’) is reviewing the Conservation General Policy and the General Policy for National Parks to ensure Treaty responsibilities in conservation are visible and understood within them.² This work is referred to as ‘the partial reviews’ of the general policies because of the specific focus on Treaty responsibilities in the two documents.

The general policies need to clearly reflect Treaty responsibilities because the policies guide and direct conservation work in many ways. In particular, the general policies are the foundation for statutory management planning for public conservation lands and waters, and decision making about any activities that engage with our natural and historic heritage

(permissions, for example). If we get the foundations right by ensuring the general policies reflect DOC’s and others’ Treaty responsibilities, this will flow through to conservation strategies and plans, to how conservation work is done, and to how we work with Treaty partners.

This background paper provides information to support our Treaty partners to nominate people to work with DOC on the partial reviews.

- **Section 1** outlines how DOC would like to work in partnership with Māori to develop recommendations for change.
- **Section 2** summarises the background to the partial reviews and the main issues that DOC thinks need to be considered.

² www.doc.govt.nz/conservationgeneralpolicy and www.doc.govt.nz/general-policy-for-national-parks



Allan Halliday, Chair of Te Ruapekapeka Trust and Sue Reed-Thomas, DOC’s Director Operations – Northern North Island, at the signing of the Te Ruapekapeka Historic Reserve Strategic Intent and Action Plan. Photo: Shaughan Anderson

SECTION 1

The process – we want to work together

As a Treaty partner, DOC has responsibilities to Māori, whether a Treaty settlement is in place or not. We know that whānau, hapū and iwi have strong connections to their whenua, awa and moana, and as kaitiaki, they have a strong interest in the management and wellbeing of native species and public conservation lands and waters, including National Parks. It is important that we work with our Treaty partners to develop conservation policy and deliver conservation outcomes in Aotearoa New Zealand. We can only develop recommendations for policy changes to better reflect Treaty responsibilities in partnership with Māori.

The purpose of the partial reviews is to improve the general policies

The partial reviews will be directed by Terms of Reference (see **Appendix**, page 28). The purpose of this mahi is to improve the Conservation General Policy and the General Policy for National Parks so that these documents clearly reflect DOC's and others' Treaty responsibilities.

The general policies strongly influence conservation work. They set the national direction for how DOC and others with conservation roles³ fulfil their responsibilities under conservation legislation.⁴ **Figure 1** on the next page provides examples of Treaty partnership in conservation supported by the general policies.

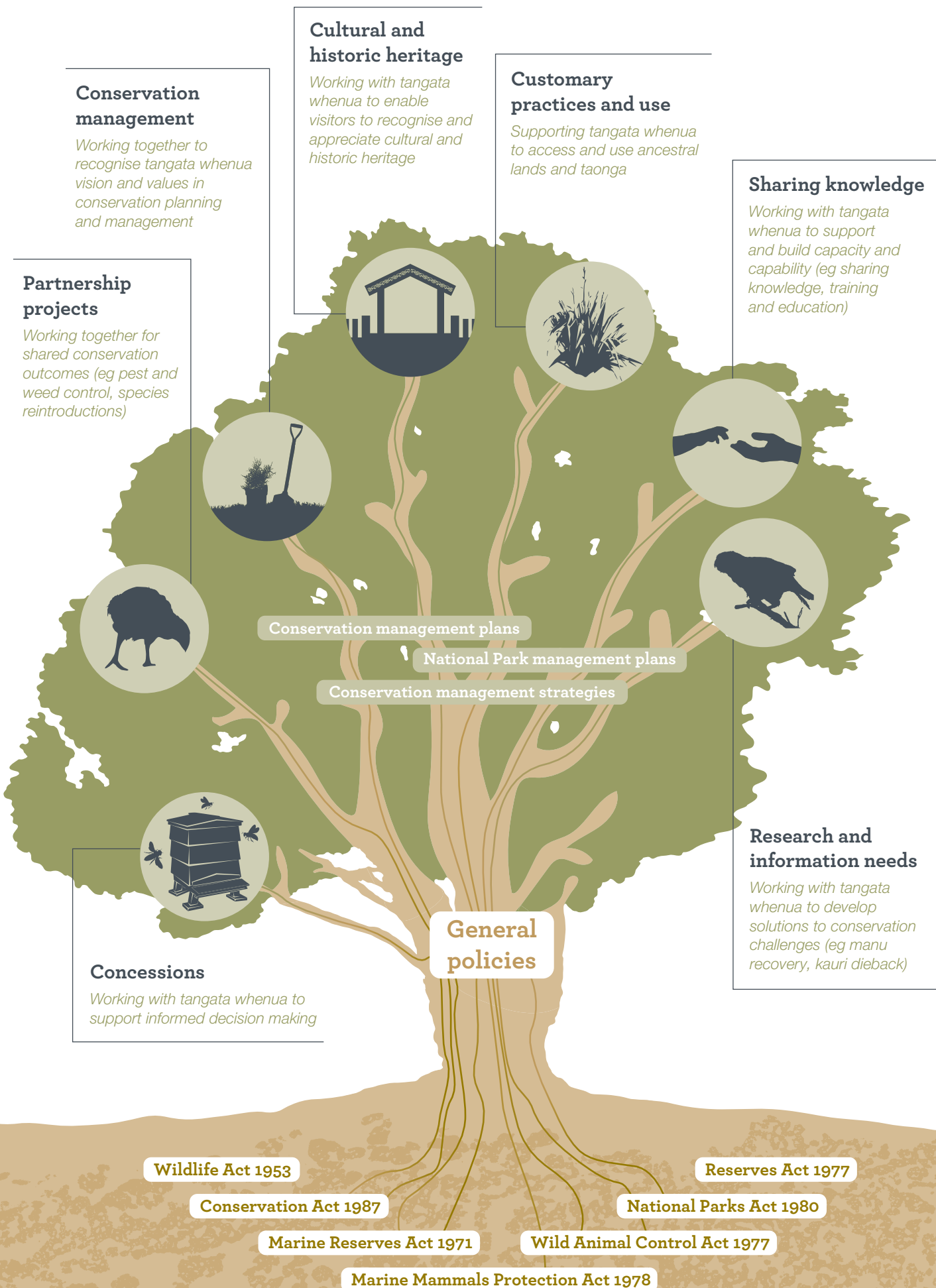
The partial reviews may also identify limitations in conservation laws or other policies

The general policies do not operate in isolation – conservation legislation and other policies also direct or guide the operations of DOC and other bodies with conservation roles. The partial reviews are therefore an opportunity to identify if changes are needed to legislation or other policies to remove any limitations on how DOC and others fulfil Treaty responsibilities. However, the Government's agreement would be required before recommendations to change legislation could be taken further.

³ Including the NZCA, conservation boards and the Minister of Conservation.

⁴ The Conservation General Policy provides unified policy for the implementation of six pieces of legislation: the **Conservation Act 1987**, the **Wildlife Act 1953**, the **Marine Reserves Act 1971**, the **Reserves Act 1977**, the **Wild Animal Control Act 1977** and the **Marine Mammals Protection Act 1978**. The General Policy for National Parks provides direction for administration of National Parks under the **National Parks Act 1980**.

Figure 1: Examples of how the general policies guide Treaty partnership in conservation



The process provides for national and flaxroots engagement with Māori

DOC has designed an engagement process for the partial reviews after hui with Treaty partners to seek feedback on what the process should look like (see **Section 2**, 'Background to the partial reviews', for more information).

The process provides for engagement at both national and flaxroots levels through the following two stages of policy development.

1. Options Development Groups, that include participants nominated by whānau, hapū and iwi and Māori organisations, work at a national level on ideas for change.
2. Options Development Groups' ideas for change are brought out to whānau, hapū and iwi for discussion – preferably in person at hui, but also through an online forum.

Engagement may need to be adapted to the COVID-19 environment

The need to keep people safe in the COVID-19 environment means it is unclear how much kanohi ki te kanohi engagement will be possible through the policy development process. DOC is committed to completing the partial reviews in a way that is consistent with the principles of the Treaty. We will be guided by our Treaty partners about the best way to engage as work progresses, and by the COVID-19 alert level at the time.

Options Development Groups – reviewing the general policies in partnership

DOC is asking whānau, hapū and iwi and Māori organisations to nominate people to be on the Options Development Groups to ensure perspectives from te ao Māori are brought to the work. These groups will make recommendations to the Director-General of Conservation for how the general policies should be changed to better reflect Treaty responsibilities. The groups may also identify limitations within legislation and other policies, and suggest possible solutions.

The groups will comprise representatives from te ao Māori, conservation boards and DOC

To make the work manageable, we anticipate three kaupapa-specific groups, but the participants will decide how to arrange the groups and what the kaupapa for each group will be. If there are three Options Development Groups, each group would have:

- two to four participants nominated by whānau, hapū and iwi and Māori organisations
- a participant from a conservation board
- up to three DOC officials (and no more than the number of participants from te ao Māori).

The members nominated by whānau, hapū and iwi and Māori organisations will not be appointed as representatives of a particular group or iwi. Their membership will be on the basis that they represent perspectives, insights and skills from across Māori society and have the capability to develop policy. They will also need to understand conservation policy and practice. Their role will be to participate in the groups to develop and analyse ideas for change.

The Director-General of Conservation will appoint the Options Development Group members

The Director-General is establishing the groups to help him prepare changes to the general policies. He has called for nominations from whānau, hapū and iwi and Māori organisations, which are open until **11 August 2020**.

At the end of the nomination period, the Director-General will review the nominations and appoint members to the Options Development Groups.

The Options Development Groups will meet regularly over a 6-month period

The groups will be established for about 6 months to develop recommendations for change. Over the 6 months, each group will meet every 4–6 weeks and all groups will come together up to four times. Between meetings there may be background reading, analysis and policy writing to do.

We will seek feedback from Māori

It is important we understand how any potential changes to the general policies might affect whānau, hapū and iwi at a local level.

Once the Options Development Groups have developed options and recommendations for change, DOC will come and discuss these ideas at hui with whānau, hapū and iwi. We hope that at least one member from each group who was nominated by whānau, hapū and iwi and Māori organisations will attend the hui.

We will also run an online forum to discuss the options and recommendations, and their potential effects. We hope this will provide another way for people who are unable to attend the hui to share their views with us.

As noted above, we may need to adjust how we engage depending on the situation with COVID 19.

We will also engage with conservation stakeholders

At the same time as we discuss the options and recommendations with whānau, hapū and iwi, we will also hold workshops and meetings with key conservation stakeholders to understand how potential changes to the general policies might affect them. These stakeholders include the conservation boards, New Zealand Fish & Game Council, New Zealand Federated Mountain Clubs, Forest & Bird, the Environmental Defence Society, Heritage New Zealand Pouhere Taonga, New Zealand Māori Tourism, and Tourism Industry Aotearoa.

The Options Development Groups' recommendations will go to the Director-General of Conservation

Once the ideas for change have been discussed with Treaty partners and conservation stakeholders, the Options Development Groups will consider their feedback and present final recommendations in a report to the Director-General.

The Director-General will consult the Minister of Conservation and the NZCA about the recommendations. Once the Minister and the NZCA have given feedback, and any further consultation needed at this stage is complete, DOC will begin drafting the changes to the general policies. We hope that some members from each Options Development Group will do the drafting work with us.

There will be a further public consultation and submissions process

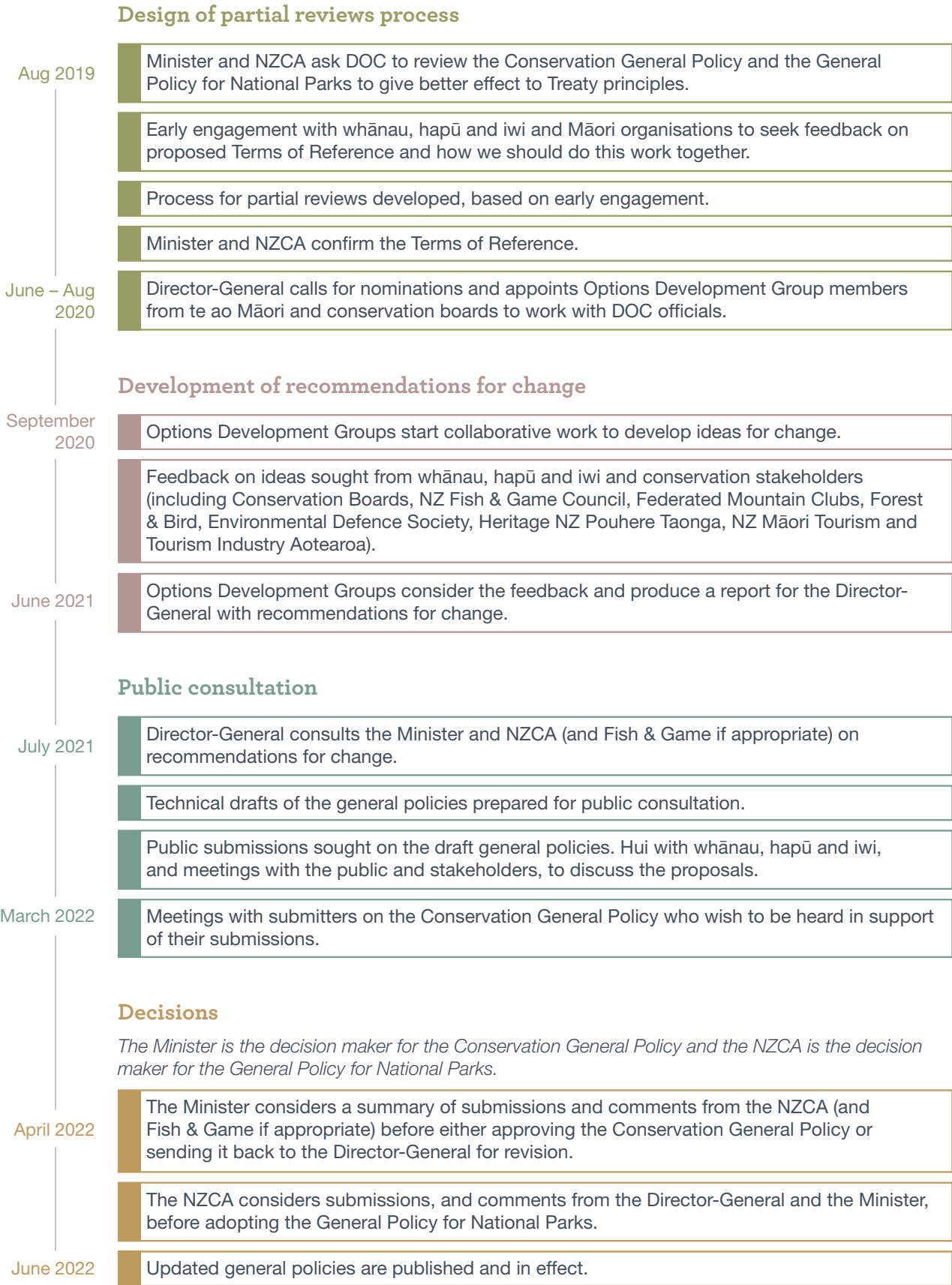
The law requires the Director-General to notify the public about any proposed changes to the general policies. Once the proposed revisions to the general policies have been drafted, they will be published and DOC will call for public submissions. We will also hold consultation meetings around the country on the proposals.

The Minister of Conservation and the New Zealand Conservation Authority make final decisions

The law states that the final decision makers for changes to the general policies are the Minister of Conservation (for the Conservation General Policy) and the NZCA (for the General Policy for National Parks). Before approving the revised general policies, they will review public feedback and make any changes needed.

We expect the revised general policies will be finalised and published in 2022. **Figure 2** on the next page shows the different steps in the partial reviews process and indicative timeframes.

Figure 2: The partial reviews process and indicative timeframes



The steps at the public consultation and decisions stages are summaries of the requirements set out in section 17B of the Conservation Act 1987 and section 44 of the National Parks Act 1980.

SECTION 2

Background and main issues for the partial reviews

Background to the partial reviews

In August 2019, the Minister of Conservation and the NZCA asked DOC to begin partial reviews of the Conservation General Policy and the General Policy for National Parks to better reflect Treaty responsibilities.

The partial reviews of the general policies are an opportunity for DOC and Māori to work together to address concerns and aspirations that Treaty partners have raised with DOC over many years about Treaty partnership in conservation, and to consider how partnership should look in the future.

The main drivers that led to the Minister and the NZCA initiating the partial reviews are:

- the Supreme Court's judgment in the *Ngāi Tai ki Tāmaki* case⁵
- the recommendations of the Waitangi Tribunal (the Tribunal) in the Wai 262 (Flora and Fauna) claim⁶
- the Government's priority to build closer partnerships with Māori.

What is the *Ngāi Tai ki Tāmaki* case?

This case concerned DOC's consideration of Treaty principles in the granting of two commercial concessions on Motutapu and Rangitoto islands. The Conservation Act 1987 requires DOC to give effect to the principles of the Treaty. Although the case dealt with concessions, at its heart it was about Treaty partnership.

The Supreme Court released its decision on the case in December 2018. The court found that DOC did not properly give effect to Treaty principles in the concession decisions because it failed to a) properly consider the economic interests of Ngāi Tai ki Tāmaki; and b) consider the possibility of affording them a degree of preference. The court did not find that the decisions necessarily were wrong, but it directed DOC to reconsider its decisions. The court also criticised the way the general policies described Treaty responsibilities relative to other statutory considerations.

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

⁶ Waitangi Tribunal 2011: *Ko Aotearoa tēnei: a report into claims concerning New Zealand law and policy affecting Māori culture and identity. Te taumata tuarua*, vol. 1. Report no. Wai 262. Legislation Direct, Wellington.

What did the Waitangi Tribunal recommend following the Wai 262 claim?

The Tribunal issued *Ko Aotearoa Tenei*, its report setting out findings and recommendations in the flora and fauna claim, in 2011. It made many recommendations for change in the Crown's approach to managing conservation, including about:

- involvement of iwi and hapū in conservation decision making and partnership with DOC
- reflection of the Treaty principles in the general policies
- co-management of customary use (harvest of and access to flora and fauna)
- ownership of protected wildlife and taonga works derived from protected wildlife
- commercial activity on the conservation estate and a reasonable degree of preference for tangata whenua interests in taonga.

The partial reviews process has been shaped by engagement with Treaty partners

DOC held hui with Treaty partners between August and December 2019, where we sought feedback on the proposed Terms of Reference and process for the partial reviews.⁷ Some key points we heard from Treaty partners are summarised on the next page.

DOC used Treaty partners' feedback to design the process for undertaking the partial reviews in partnership. The partial reviews will consider issues that significantly affect Māori interests at both local and national levels. Our Treaty partners emphasised that the process should include both local- and national-level engagement with Māori. **Section 1** outlines how this will be done.

The Terms of Reference for the partial reviews were confirmed unchanged by the Minister of Conservation and the NZCA following feedback from Treaty partners. See the **Appendix** for the Terms of Reference.

⁷ As well as the partial reviews, hui topics included biodiversity and marine protection.

What we heard from Treaty Partners

Feedback on scope

Hui attendees consistently supported the partial reviews having a broad scope, as outlined in the proposed Terms of Reference presented at these hui. Some potential areas for change were identified:

- the reflection of Treaty principles and/or Te Tiriti o Waitangi
- partnership approaches to conservation activities and decision making
- customary harvest provisions and access to cultural materials
- reconciling te ao Māori and te ao Pākehā approaches to conservation
- treatment of the Treaty principle of 'active protection'.

Feedback on process

Hui attendees confirmed the importance of Māori being highly engaged and involved in the partial reviews. However, opinions differed regarding the shape this could take.

- Attendees generally agreed that the partial reviews process needs to engage Māori at the flaxroots level, as well as at the national level.
- Some attendees highlighted the difficulty of achieving representative Māori participation on the Options Development Groups (and similar entities). Others saw the benefits of intensive involvement through this type of approach.
- Many expressed concerns that the capacity for Māori to engage substantively in this mahi would be limited unless they are resourced appropriately.
- Some expressed concerns about the timeframe in which the partial reviews could be delivered and whether there will be enough time for marae-level engagement through internal iwi and hapū processes.
- Attendees identified kanohi ki te kanohi collective involvement as the preferred means of engagement. However, the process should be made as accessible as possible by using technology (such as video conferencing).

Photo on the next page:

Tomokanga carved by Ihaia Puketapu of Te Atiawa and erected on Matiu/Somes Island in 2017. The name of the tomokanga is Tāne-Te-Waiora (middle figure), kaitiaki of the ngahere. The two figures at the bottom are the two tipua of Te Whanganui-a-Tara – Ngake and Whātaimai. The figure at the top left is Te Poari, which represents the Harbour Islands Kaitiaki Board. In its hands is the deed of settlement that gives the board its mana as the administering body of the Harbour Islands. The figure at the top right, with a shovel in its hand, is an acknowledgement to all the workers and volunteers who helped bring back the mauri of Matiu. *Photo: Gemma Wright*

Main issues for the partial reviews

This section summarises the main issues we think need to be considered in the partial reviews and addressed through recommendations for change. We have drawn on Tribunal reports, court judgments and feedback from our Treaty partners, as noted above, to identify these issues. We have grouped the issues into the following three topics, but the issues are connected and the topics overlap.

1. Reflecting Treaty responsibilities in the general policies
2. Realising the Treaty partnership in conservation
3. Access to and use of public conservation lands, waters and resources

If you would like to comment on any issues outlined in this document, or if you think we have missed out an important issue, you are welcome to send your comments to tepaewhakatere@doc.govt.nz by **21 August 2020**.



1. Reflecting Treaty responsibilities in the general policies

The Conservation Act must be interpreted and administered to give effect to the principles of the Treaty of Waitangi.⁸ This responsibility applies to the Minister of Conservation, DOC and other statutory bodies such as the NZCA and conservation boards. It also extends to how DOC administers all the legislation it is responsible for, such as the National Parks Act 1980 and the Wildlife Act 1953.⁹

There is no definitive list of Treaty principles. The Conservation Act does not list or define them, nor does it prescribe how to give effect to the Treaty principles. The general policies attempt to do this: they include Treaty principles published by the Government in 1989 and contain policies about partnership with tangata whenua, participation in conservation, and customary use of traditional materials and indigenous species.

The references to Treaty principles in the general policies have become outdated and, as noted by the Tribunal in 2011, they are skewed to the interests of the Government. For example, the general policies do not refer to the principle of Treaty partnership, which the courts and the Tribunal have indicated is the foundation of the Treaty relationship.¹⁰

Over the past 30 years, the courts have developed the law on Treaty principles (including in the *Ngāi Tai ki Tāmaki* case – see box on page 14), and the Tribunal has also provided extensive commentary on Treaty principles. The courts and the Tribunal have also said that Treaty principles are not set in stone, and that they can and must evolve to meet new circumstances.¹¹

In *Ko Aotearoa Tēnei*, the Tribunal recommended the general policies be amended to reflect:

- the full range of Treaty principles that apply in law, with consideration also given to principles articulated by the Tribunal
- that the Treaty principles can and must evolve.¹²

In 2014, DOC developed a Statement of Treaty Principles as a practical tool for staff. This statement was anchored in what the courts and the Tribunal had said about Treaty principles up to 2014.

The statement identified the following four principles as most relevant to DOC's work.

1. Partnership – mutual good faith and reasonableness
2. Informed decision making
3. Active protection
4. Redress and reconciliation

This is the interpretation of Treaty principles most used by DOC in its work. The statement was not intended to be a definitive list – DOC acknowledges that different Treaty principles may apply in different situations.

⁸ Section 4 of the Conservation Act 1987.

⁹ DOC administers over 20 Acts of Parliament.

¹⁰ Waitangi Tribunal 2011: Vol. 1, p. 323.

¹¹ Waitangi Tribunal 2011: Vol. 1, p. 372.

¹² Waitangi Tribunal 2011: Vol. 1, p. 372.

In kōrero over recent years, including DOC's engagement in 2019 with Treaty partners about reviewing the general policies, we heard many concerns about how DOC defines and implements the principles of the Treaty. These include questions about:

- how DOC understands the Treaty principles
- whether Treaty principles can adequately reflect Te Tiriti o Waitangi
- who decides which Treaty principles are relevant
- why some principles have been left out of the general policies.

One of the main tasks for the Options Development Groups is to clearly articulate what 'giving effect to Treaty principles' means in the conservation context, in such a way that guides us now and in the future. This vision will then need to be translated into changes to the general policies that will set clear expectations about how DOC and others carrying out conservation functions should work with whānau, hapū and iwi.

2. Realising the Treaty partnership in conservation

Thriving Treaty partnership between DOC and tangata whenua is essential for better outcomes – both for our natural ecosystems and native species, and for whānau, hapū and iwi as kaitiaki. The Tribunal, in *Ko Aotearoa Tēnei*, expressed the following view about the need for partnership in conservation:

Given the importance of the environment under DOC control to the survival of the Māori culture, Treaty principle requires that partnership and shared decision-making between the department and kaitiaki must be the default approach to conservation management.¹³

The courts have affirmed the importance of the Treaty principle of partnership in several cases.¹⁴ This requires a balance to be struck, specific to the context, between the Crown's exercise of kāwanatanga and the exercise of rangatiratanga by Māori.¹⁵

A partnership between Ngāti Oneone, DOC and the Gisborne District Council guided the redevelopment of **Puhi Kai Iti/ Cook Landing National Historic Reserve**. The purpose of this project was to share the stories and acknowledge the history of this significant voyaging and heritage site where two distinct cultures first met. Sculpture and storytelling at the site acknowledge the tipuna Māia, who landed at Tawararo (Kaiti Beach) and settled at the site, and the landing of James Cook at the same site 750 years later.

The project's success was built on the foundation of partnership. Each of the partners had clear and agreed roles and responsibilities, which were carried out with a focus on collaboration, cooperation and respect.

In *Ko Aotearoa Tēnei*, the Tribunal also recommended policy and legislative changes to support the Treaty partnership in conservation. In summary, it recommended that:

- the general policies be amended to make it mandatory for DOC to partner with tangata whenua and to achieve its conservation mission in a manner that is consistent with the tino rangatiratanga of iwi and hapū wherever practicable¹⁶
- the partnership be formalised in conservation governance structures that give the Māori voice its own space, and allow the Crown and Māori to engage effectively at both national and local levels¹⁷
- conservation legislation be reviewed to bring together the different approaches to conservation presented by mātauranga Māori and te ao Pākehā, with such a review identifying and responding to any statutory barriers to kaitiakitanga¹⁸
- the Wildlife Act be amended to provide for shared management of protected wildlife species,¹⁹ and that DOC's policies and practices encourage joint decision making and management of taonga (such as species, places and landscape features)²⁰
- provision be made for statutory co-management of customary use by DOC and kaitiaki representatives.²¹

¹³ Waitangi Tribunal 2011: Vol. 1, p. 372.

¹⁴ For example, *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, *Te Rūnanga o Wharekauri Rekohu v Attorney-General* [1993] 2 NZLR 301, *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513, *Taiaroa v Minister of Justice* [1995] 1 NZLR 411.

¹⁵ *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 at [664].



¹⁶ Waitangi Tribunal 2011: Vol. 1, p. 372.

¹⁷ Waitangi Tribunal 2011: Vol. 1, pp. 343–345 and p. 372.

¹⁸ Waitangi Tribunal 2011: Vol. 1, p. 372.

¹⁹ Waitangi Tribunal 2011: Vol. 1, p. 373.

²⁰ Waitangi Tribunal 2011: Vol. 1, p. 370.

²¹ Waitangi Tribunal 2011: Vol. 1, p. 373.

Partnership between DOC and Māori has been growing over the years and takes many forms. Some partnership approaches have been implemented through Treaty settlements, and others have been developed to achieve local outcomes that DOC and tangata whenua wanted to work on together. See the text boxes for some examples.

Although we have made progress, we have heard from our Treaty partners a desire for a closer partnership in conservation – echoing the commentary in *Ko Aotearoa Tēnei* in many cases. Aspirations we have heard include:

- Māori have ‘a seat at the table’ to create space for te ao Māori
- Treaty partners are able to make decisions together
- whānau, hapū and iwi are supported to build capacity to do conservation work
- tangata whenua manage harvest of cultural materials
- conservation-related work is contracted to tangata whenua.

Russell Forest is a dominant feature in Te Tai Tokerau – it is the largest inland forest and scrubland area of the eastern landscape and has great ecological value. This ngahere was, however, under sustained attack from possums, stoats, weasels, rats and feral cats. The Russell Forest Rōpū is a group of nine hapū whose lands and interests surround the forest; their long-term goal is ‘returning what was lost’. The rōpū collaborated with DOC and the Northland Regional Council to produce a 20-year forest health strategy. Hapū members are also working with DOC on the ground to control pests.

The Options Development Groups will need to consider what sorts of structures and approaches would strengthen and support Treaty partnership in conservation, and what changes to the general policies and/or legislation would be needed to give effect to new structures and approaches. As part of this, care will need to be taken to ensure that Treaty settlements – many of which have put specific conservation partnership models in place – are respected and upheld.

The **Harbour Islands Kaitiaki Board** provides co-governance for islands of great significance to Taranaki Whānui. The board includes nominees of the post-settlement governance entity (PSGE) of Taranaki Whānui and DOC, who together develop the reserve management plan for the Makaro, Mokopuna and Matiu reserves. The plan is jointly approved by the Minister of Conservation and the Chair of the PSGE. The board also takes on the responsibilities of the Minister for many decisions relating to the islands’ administration, including authorisations and concessions.

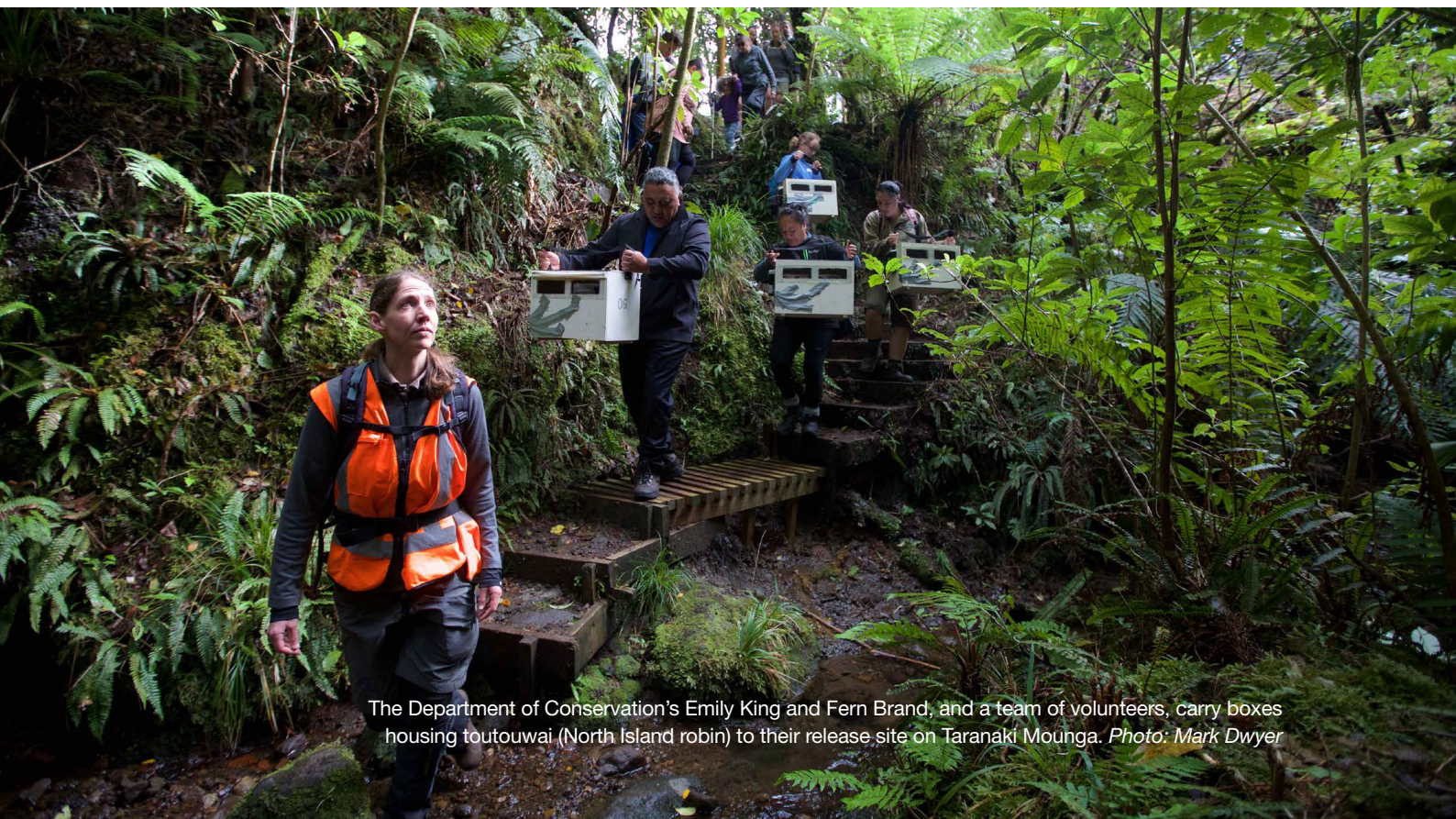
Under this model, the relationship between Taranaki Whānui and the Crown has been strengthened and, with wider iwi and community support, the four pou of the plan for the islands are coming to life: kaitiakitanga, manaakitanga, rangatiratanga and whanaungatanga.

Kia korowaitia ngā raukura i
whakamarumaruru atu ai kei runga
i te whanga.

The **Taranaki Mounga Project** is founded on the principles of mana motuhake/ authority, te tirohangaroa/forward looking, kotahitanga/collaboration, manaakitanga/ reciprocity, and kia tika, kia pono/ transparency. The project is brought together by DOC, the Taranaki Iwi Chairs Forum, the community and philanthropic investor NEXT Foundation, and is supported by founding sponsors TSB Community Trust, Jasmine Social Investments, Shell New Zealand and Manaaki Whenua Landcare Research. All share the vision of He Kawa Ora: bringing the unique ecosystems on Taranaki Mounga back to life.

The aspirations and expertise of iwi and hapū of Taranaki are intricately woven into the project. This includes guiding the vision and ongoing strategy at board level through to the project's operational delivery. Iwi and hapū are fundamental in achieving the vision, as all partners collectively chart the pathway towards the restoration of Taranaki Mounga.

DOC and Te Ruapekapeka Trust are working in partnership to ensure that **the Ruapekapeka Historic Reserve**, including **Te Ruapekapeka Pā**, is maintained, protected and preserved for the future. The partnership has been growing over the past 20 years; milestones have included construction of a car park and track, carving and erection of a waharoa, and the development of visitor facilities. A genuine and proactive partnership has been developed, underpinned by principles agreed in a strategic intent document. The strategic intent sets out how DOC and Te Ruapekapeka Trust will continue to work together to achieve the shared vision that Te Ruapekapeka is a place of reverence, authenticity and belonging.



The Department of Conservation's Emily King and Fern Brand, and a team of volunteers, carry boxes housing toutouwai (North Island robin) to their release site on Taranaki Mounga. *Photo: Mark Dwyer*



Collecting kawakawa leaves for rongoā. Photo: Tessa Ralston

3. Access to and use of public conservation lands, waters and resources

Whānau, hapū and iwi have told us they need to be able to access and use native species and public conservation lands and waters, including sites of cultural significance. This access is essential to them, as kaitiaki, to be able to engage in their cultural practices and develop economically.

Over recent years, we have heard from Treaty partners their frustrations about, and aspirations for, how they engage with public conservation lands, waters and resources. These include:

- concerns that lack of access and use limits their ability to uphold mana and to pass on mātauranga
- a wish for a sustainability model that allows for customary harvest
- a desire for changes in the concessions process, including more time for consultation, not having to pay for a concession, and a need to keep space for Māori aspirations to be realised once Treaty partners have built their capacity.

The Tribunal has said that customary use is critical to the survival of mana Māori and Māoritanga, and that public conservation lands and waters are often the only place where taonga species (particularly land-based species)²² remain. In *Ko Aotearoa Tēnei* it criticised the current general policies for treating every decision to grant access or harvest rights as an exception to a ‘no access’ rule.²³

The Tribunal expressed the view that commercial activities permitted on public conservation lands, whether private businesses or DOC contracts,

can strengthen relationships between iwi, whenua and taonga species. It said that a reasonable degree of preference for tangata whenua on concession applications that derive from taonga on public conservation lands would be consistent with Treaty principles.²⁴

The Supreme Court’s *Ngāi Tai ki Tāmaki* judgment (see box on page 14) supports this view.

The judgment noted that enabling iwi or hapū to reconnect to their ancestral lands by taking up opportunities on public conservation lands is one way the Crown can give practical effect to Treaty principles. In some cases, giving effect to Treaty principles may require iwi to be given a degree of preference, for example through concession applications by others being declined.²⁵

Ngā Aitanga ā Nuku agreements provide for whānau, hapū and iwi to manage collection and holding of cultural materials, in line with a cultural materials plan. The plan is jointly created with DOC and then approved by the relevant decision maker (either the Minister or Director-General, depending on the place and species or material). Once the plan is in place, the authorised people within the whānau, hapū or iwi consider requests to access materials for cultural use, and issue permissions. Cultural or customary materials plans are sometimes included in Treaty settlements.

²² Taonga species also exist in freshwater and marine environments that are outside public conservation lands and waters.

²³ Waitangi Tribunal 2011: Vol. 1, pp. 358–359.

²⁴ Waitangi Tribunal 2011: Vol. 1, p. 362.

²⁵ *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122 at [52].

The Tribunal also made several recommendations for policy and legislative changes to support tangata whenua to access and use public conservation lands, waters and resources. In summary, the Tribunal recommended that:

- the general policies be amended to make it obligatory – rather than optional – for decision makers to allow customary harvest and access, provided that conditions relating to the survival and recovery of the species are satisfied²⁶
- the general policies be amended to remove the requirement for there to be an established tradition of customary use at a place before customary use may be permitted²⁷
- the Wildlife Act be amended so that no one owns protected wildlife, and tangata whenua have lawful ownership of taonga crafted from natural materials that sustain culture and tradition²⁸
- DOC policies and practices be amended to give tangata whenua interests in taonga a reasonable degree of preference when decisions are made about commercial activities²⁹
- DOC formalise its policies for consultation with tangata whenua about concessions within their rohe.³⁰

DOC has taken some steps to support customary practices (see the text boxes on this and the previous page for some examples) but more needs to be done to address what has been said by the courts, Tribunal and Treaty partners. The Options Development Groups will need to consider ways to better enable Treaty partners' access to and use of public conservation lands, waters and resources. The groups will also need to consider practical processes for making good decisions that are consistent with Treaty principles. This could include the support and policies needed to ensure decision makers are able to actively protect Māori interests, while still carrying out other statutory requirements.

Protecting Waipoua Forest from kauri dieback: DOC has been working closely with Te Roroa to protect Waipoua Forest – the home of Tāne Mahuta – from kauri dieback disease. This work includes supporting Te Roroa track ambassadors, building our joint understanding of the disease through sampling and monitoring activities, and exploring the use of new remote sensing technology to monitor forest health. DOC has also been working with Te Roroa to build a shared understanding of a long-term visitor experience for the whole of Waipoua. Although this has a kauri dieback component, it incorporates cultural, recreational, biodiversity and scientifically informed management into a single vision.

²⁶ Waitangi Tribunal 2011: Vol. 1, pp. 358 and 373.

²⁷ Waitangi Tribunal 2011: Vol. 1, p. 373.

²⁸ Waitangi Tribunal 2011: Vol. 1, p. 373.

²⁹ Waitangi Tribunal 2011: Vol. 1, p. 373.

³⁰ Waitangi Tribunal 2011: Vol. 1, p. 373.



Te Roroa Ambassador Heeni Matthews at the platform of Tāne-Mahuta, addressing the Hālau 'Ōhi'a group from Hawai'i who travelled to Aotearoa to connect with Te Roroa and to understand kauri dieback disease. *Photo: Fredrik Hjelm*

Appendix: Terms of Reference for the partial reviews

The Terms of Reference for the partial reviews were confirmed by the Minister of Conservation and the NZCA following engagement with Treaty partners in 2019.

The Terms of Reference refer to ‘section 4’. This is section 4 of the Conservation Act 1987, which requires the Act – and all legislation DOC is responsible for – to be interpreted and administered to give effect to the principles of the Treaty of Waitangi.

Terms of Reference

The partial reviews will:

- be constrained to assessing the reflection of section 4 considerations – namely, our obligation to give effect to the principles of the Treaty of Waitangi – throughout all chapters (including explicit policies as well as guidance) of the general policies
- update the description of the 1989 ‘Principles of Crown action on the Treaty of Waitangi’ included as a preamble to Chapter 2
- consider whether any revisions to the general policies should be made in light of the Waitangi Tribunal’s recommendations in its report, ‘Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity’, and issues raised in the Wai 262 claim
- in the context of section 4 considerations only, assess the relative alignment of phrasing currently applied in the Conservation General Policy and the General Policy for National Parks, identifying areas where better alignment could be achieved
- identify current limitations (if any) within wider policy settings, including legislation, and possible remedies to these.

The partial reviews will not:

- amend primary legislation
- have any direct effect on decision makers’ consideration of specific concession (or similar) decisions whilst the partial review process is underway
- alter the delivery of DOC’s statutory management planning function, including the development and/or review of conservation management strategies, national park management plans and conservation management plans, whilst the partial review process is underway
- have any effect on the content of the DOC Strategy, Stretch Goals, or Intermediate Outcomes, the design of DOC’s systems (partnerships, policy, visitors, permissions), or the substance of any of DOC’s internal guidelines (eg Standard Operating Procedures), whilst the partial review process is underway.

Whilst the partial reviews are underway, DOC will continue to undertake its work in line with the direction provided by the Supreme Court in *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122.

