



Intention to Grant a 15-year Lease

(Approval In Principle)

To Auckland Mataatua Society Incorporated

Context

The Auckland Mataatua Society Incorporated (the Society or Applicant) operates the Mataatua Marae. Auckland Mataatua Society Incorporated is affiliated with Ngāti Awa iwi who are based in the Bay of Plenty. Ngāti Awa originally identified a need for a marae to be located in Auckland to provide for their members based there.

The marae is operational and based on land that is currently owned by the Crown and administered by the Department. This facility currently has the following 5 main structures:

- Kohanga Reo (Early Childhood)
- Wharenui (Sleeping hall)
- Wharekai (Eating Hall)
- Wharematauranga (Conference Hall)
- Shed/Storage

The Applicant currently services the community by:

- Allowing the use of the facilities for hire
- Providing education for children
- Running of cultural programmes
- Running of health clinics
- Hosting of celebrations and memorials

The Applicant has applied for a new lease to replace their expired lease (AK-0023-OTH) for the continuation of the existing activities.

Additional context:

The Society was established in May 1975 after Ngāti Awa leaders saw the need for a marae for the descendants of Ngāti Awa who lived in Tāmaki Makaurau. The Society obtained consent from the Māori Queen and subsequently requested land for their marae from the Crown. A lease was granted for Auckland Mataatua Society Marae Recreation Reserve.

The Department of Conservation, Auckland District Office approved upgrades to structures on site in 2010 and 2012. There has been a large investment by the Applicant on the structures especially the Wharekai and Wharenui.

The site was included as potential cultural redress within the Agreement in Principle (AIP) for the Te Ākitai Waiohua Treaty settlement. The AIP provides that the site would be transferred to Te Ākitai as a local purpose (marae / community building) reserve, subject to creation of a new third-party interest in favour of the current occupants, the Society (refer also Part 6 below).

Location

Conservation area	Description of location	Land status	District Office	Activity
Auckland Mataatua Society Marae Recreation Reserve	Legal Description: Part lot 161, DP 58968	Recreation Reserve	Tāmaki Makaurau/Auckland Mainland	Lease of land for Marae

Relevant details about the Applicant

Credit check result	No credit check undertaken as the Applicant is an existing/previous Concessionaire. No financial concerns are known and the audited accounts set out on the Incorporated Societies webpage show satisfactory finances.
Compliance with previous permission conditions	No compliance issues are known by the Department.
Relevant convictions	The Department is not aware of any convictions or charges relating to the Applicant.

Iwi Consulted

Ngati Tamaoho - Ngati Te Ata - Ngati Whanaunga - Ngati Paoa - Te Ākitai Waiohua

Consultation with the Treaty Partners above

1. Does this application activate any agreed triggers for consultation with Treaty Partners?

Yes – Answer questions 2-7

2. What is the interest of the whānau, hapū, or iwi in the site or activity?

The site is within the rohe of Te Akitai Waiohua and they have an interest in the proposed activity. Additionally, the land has been identified as a potential cultural redress site as a part of Treaty of Waitangi settlement with Te Ākitai Waiohua.

3. How significant is that interest to them?

Two of the five iwi partners consulted chose not to comment on the application (Ngati Te Ata and Ngati Tamaoho). Two (Ngati Whanaunga and Ngati Paoa), deferred to Te Akitai Waiohua specifically, or generally as other “iwi taketake (manawhenua)”.

Te Ākitai Waiohua’s interest in the application is very significant. As outlined in the above table and letters received Te Akitai Waiohua are nearing settlement of their individual Treaty claims and “*the Crown and Te Ākitai Waiohua have reached an Agreement in Principle which includes, as one of the proposed redress items, the vesting of Mataatua Marae reserve.*” The site is of great cultural significance to Te Akitai Waiohua because of its proximity to other culturally significant sites. The site would also help re-establish the footprint of Te Akitai Waiohua in their traditional rohe. Finally, the site is of practical significant because one third of members of Te Akitai Waiohua live near to the site.

4. What are their views on the activity (taking place at the specified site)?

As detailed in the table above and expanded on in the received letters Te Ākitai Waiohua stated that they oppose the renewal of a lease for a term of around 60 years, however, they are willing to support a term of 5 years. They have also indicated that should the reserve be vested in Te Akitai Waiohua as a redress site, they will continue to operate a marae from the location.

5. What sort of adverse effects do the whānau, hapū, or iwi believe the activity will have on their interests (at the specified site)?

As detailed in the table above and expanded on in the received letter, Te Ākitai Waiohua stated that they are virtually landless and that the return of land such as the Reserve will help them re-establish the Te Ākitai Waiohua footprint and presence in its rohe. A longer term will encumber the land for a longer period and in turn will delay Te Ākitai being able to utilise the land if it transferred under the negotiated Treaty settlement.

6. Have the whānau, hapū, or iwi identified any methods to avoid, remedy, or mitigate these effects?

As detailed in the table above and expanded on in the received letter, Te Ākitai Waiohua have requested a shorter lease term of 5 years.

7. Summarise any other information provided by the whānau, hapū, or iwi.

No additional information has been provided. Given the significance of the site and application to Te Ākitai Waiohua, it is important that the information they have provided be read in full (links in the table above).

Consultation with the Auckland Conservation Board

Tāmaki Makaurau/Auckland Mainland District Office

Consultation with the Auckland Conservation Board

Being a publicly notified application and as a lease of longer than 10 years, the application triggered the need to seek the advice of the Auckland Conservation Board. A copy of the application was sent to the Board for their comments on 14 June 2017 and the following comments were received on 13 July 2017:

"With regards to the Auckland Mataatua Society Inc's application for an extension on the lease of the Auckland Mataatua Marae, the Conservation Board Concessions Committee is supportive of this application.

It is the view of the Committee, after discussions between Alex and Glenn, and Alex researching the depth of community involvement that the Applicant undertakes and the commitment the Applicant requires for long term development planning, it is reasonable that the Department agree to a 50 or 60 year lease."

A further email was sent to the Board on 29 March 2018. This email provided important context regarding the Te Ākitai Waiohua Treaty settlement implications of the application, which had not been included in the original consultation email.

The Board forwarded further questions on 10 April 2018, which were responded to on 30 April 2018.

A meeting was held on 30 May 2018 to discuss the application with three Board members, Alec Hawke, Glen Wilcox and Robin Taua-Gordon.

Further to the discussion at the meeting, additional final comments were received from the Board.

"Further to matter of the Auckland Mataatua Society Inc lease application please find our updated advice below.

The Department has recently provided new information to the Board Concessions Sub-committee regarding the circumstances of this lease application. This new information concerning context and potential Treaty redress implications for Te Ākitai Waiohua has

required the Sub-committee to update its advice of 13 July 2017 regarding the term of this lease.

Following discussions between the Board and Sub-committee iwi representatives and the Department, we now advise that we will withdraw from this issue. We recommend instead that the Office of Treaty Settlements work with both the Auckland Mataatua Society Inc and Te Ākitai Waiohua to determine an outcome that meets the mana, needs and aspirations of both parties." [emphasis added]

Treaty Negotiations Background

Treaty Negotiations.

Te Ākitai Waiohua (Te Ākitai) has been in negotiations with the Crown towards settlement of its historical Treaty claims since 2012. Te Ākitai is a beneficiary of the Waikato Raupatu Claims Settlement Act 1995 and the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, and a party to the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014.

The Te Ākitai Waiohua Iwi Authority is the mandated entity representing Te Ākitai in individual Treaty negotiations. Negotiations on behalf of the Crown are led by the Office of Treaty Settlements (OTS) (now Treaty Settlements Rōpū but referred to throughout this document as OTS for convenience), with input from other agencies, including the Department's Treaty Negotiations Team, as appropriate.

Included in the AIP is a list of potential cultural redress properties to be transferred to Te Ākitai on the conditions set out in the AIP. One of these properties is the Auckland Mataatua Society Marae Recreation Reserve. The conditions set out in the AIP and agreed to by Te Ākitai are that the site would be transferred as a local purpose (marae/ community building) reserve, subject to creation of a new third-party interest in favour of the current occupants, the Society.

It was also noted that consideration of the lease application would proceed in accordance with conservation legislation and the Department's policies and procedures.

Analysis of the Principles of the Treaty of Waitangi

Section 4 of the Conservation Act 1987 states 'This Act shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi'.

The key principles of the Treaty of Waitangi that apply generally to DOC's work are:

1. Partnership – mutual good faith and reasonableness: The Crown and Māori must act towards each other reasonably and in good faith;

2. Informed decision-making: Both the Crown and Māori need to be well informed of the other's interests and views;
3. Active protection: The Crown must actively protect Māori interests retained under the Treaty as part of the promises made in the Treaty for the right to govern;
4. Redress and reconciliation: The Treaty relationship should include processes to address differences of view between the Crown and Māori.

Discussion:

The Department considers that the consultation, application assessment and decision-making process undertaken give effect to the principles of the Treaty of Waitangi.

Te Ākitai

Te Ākitai Waiohua Iwi Authority signed their AIP with the Crown in December 2016. The Auckland Mataatua Society Marae Recreation Reserve is listed as potential cultural redress, to be transferred to Te Ākitai as a local purpose (marae / community building) reserve, subject to creation of a new third-party interest in favour of the current occupants, the Society. The Reserve also falls within the rohe of Te Ākitai and is of great importance to them.

Te Ākitai has a significant interest in this application, as described in the iwi consultation section above, and it is essential that the Department consider their views as tangata whenua and as a Treaty party.

During consultation Te Ākitai identified that the “*purpose of the Reserve will not change once ownership has been transferred to Te Ākitai Waiohua under our Deed of Settlement. Mataatua Marae will still be used as a marae. The Iwi authority plans to establish a kura kaupapa, hauora māori and social services section attached to the marae, to take advantage of its urban location and provide access to members of Te Ākitai Waiohua.*”

Te Ākitai went on to say that they oppose “*the proposed renewal of the lease for a 60-year term*” but are “*willing to discuss an arrangement of a much shorter term of five years*”.

It has been emphasised to Te Ākitai, that the decision on the application must be made by the Department. Te Ākitai have indicated during the consultation on this lease application that they are open to discussions on finding another site for their Treaty settlement instead of the Mataatua site. The possibility of an alternative site for Te Ākitai could be pursued through Treaty settlement negotiations if Te Ākitai wish, but it is a separate issue and does not affect the Department’s obligation to make a timely decision on the Society’s lease application.

The Department has consulted with Treaty partners, particularly with Te Ākitai. Their view has been considered and discussed throughout the document. A direct reflection of this consideration can be seen in the discussion of the term of the lease.

The Department is committed to be open and transparent to all Treaty Partners to find a workable outcome for all parties. A meeting was held with Te Ākitai to seek their feedback prior to the initial

decision-in-principle. A meeting was also held with Te Ākitai to explain the public notification process.

The Applicant

The Applicant is also a Treaty partner. Section 4 requires the Department to inform itself of the nature and strength of the applicant's interest in the decision and reconcile that with Te Ākitai Waiohua's interests.

The Department must be mindful of the Society's long history, ties to the land and importance of the site for the Society in Auckland.

The Society established was in 1975 by members of Ngāti Awa who had moved to Auckland/Tāmaki Makaurau from their Bay of Plenty rohe. Ngāti Awa, who have historical connections to the Auckland area and are related to Auckland iwi, followed a tikanga process to ensure that they had support from Auckland iwi and the Maori Queen for the establishment of a marae in Auckland.

The Applicant originally built the marae in 1978 with approval and support of both the Crown and neighbouring iwi groups and has applied for this concession in good faith. The Department must be aware of the important aspirations of the Applicant to continue the operation of the marae for the wider community.

The Department must be mindful of these matters and actively protect the interest of this iwi group when considering the lease. Although the land has been identified for use in a Treaty settlement for Te Ākitai, the rights of the Applicant have been recognised in the AIP in the form of a third-party lease over the land.

Conclusion:

The Department has considered the principles of the Treaty of Waitangi as they apply to this concession application.

The Department sought the views from all relevant iwi, specifically Te Ākitai and the Applicant, in order to operate with respect and transparency throughout the decision-making process.

Giving full consideration to matters important to all parties will ensure all decisions are well informed and based on accurate information and truly reflect the views of all those who are impacted.

The discussion of the term of the lease below is an example of the Department giving effect to Treaty principles and being mindful and giving consideration to the wider context. Consultation immediately identified a difference in views on who would control the land in the future. The Applicant sought 30+30 year term, which greatly varies from a term of 8 years currently supported by Te Ākitai.

Considering the views of all parties involved will ensure that a fair outcome is reached at the end of the decision-making process and upholds the protection of iwi as Treaty Partners under the Treaty.

The Reserve has great importance to the Applicant as it has enabled them to provide an important service to Māori of their iwi since the start of their last lease in 1978. However, Te Ākitai have a significant interest in this site as it is within their rohe and now subject to Treaty Settlement negotiations.

The Department consulted a wide range of resources to ensure the views of iwi are fully understood and considered. In this instance, local Auckland operations and rangers, permissions advisors and other arms of the Department have discussed this application in depth to ensure a thorough decision-making process is followed which addresses the different views between Crown, iwi and all other relevant parties.

As a result of the feedback and discussions held, the Department are proposing a lesser term than that requested by the Applicant. The term length is the biggest difference in opinion between the parties.

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

Statutory Analysis: Notified Concession under Part 3B of the Conservation Act 1987 **Decision in Principle**

S17S: Contents of application

To be complete (s17S), 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, all information was included in the application form.

S17T(4): 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 access to public conservation land;
- The term of the concession exceeds ten years;
- The effects of the activity mean it is appropriate to do so.

Criteria for decision:

2. Is public notification required?

Yes

The Applicant has requested a lease which means any decision in principle requires public notification under section **17T(4)**. Any lease application (regardless of the recommended term) requires notification. Public notification will follow the process set out in section 49 of the Act if a decision is made in principle to grant the concession. It is considered that this application is of regional interest only and public notification will occur in the relevant newspapers in the Auckland Region. The relevant newspaper is the New Zealand Herald.

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

Briefly discuss the positive and adverse effects of the proposed activity, drawing on information from:

- The application form, as provided by the Applicant;
- The contributions described in the context and check in meetings, and outlined in this document.

Any adverse effects identified that are not managed by a standard condition for the activity may require a site/activity specific special condition to either avoid, remedy, or mitigate the adverse effect. Include the condition proposed and a description of how it avoids, remedies, or mitigates the adverse effect, and list the condition in the Proposed Operating Conditions section of this document.

Note that only information relevant to the activity on public conservation land can be considered – if information about effects of the activity is included in the above sources that is outside of this scope, note why it is not a relevant consideration under the Conservation Act (for example, economic benefits to an area).

Criteria for decision:

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

Yes

Discussion:

General:

The Applicant states they undertake general maintenance and upkeep of the facilities and structures to maintain its purpose of a traditional Marae. They recognise its importance to Maori and the community, and this means they are vigilant in delivering the best standards and procedures to avoid any form of adverse effects. They state that they may look at upgrading and maintaining the existing structures. The Applicant may decide to add removable buildings during the term of the concession.

The Permissions team note that the reserve has already been modified to provide for the Marae buildings and this application is for an existing activity where no significant additional effects are anticipated. The Applicant keeps the land in good order. As per the standard conditions of a lease, the Applicant would need to obtain approval from the Grantor if they do upgrade any structures or add any removable buildings.

Structures:

It is essential to consider the structural integrity of all building structures and improvements of a structural nature to mitigate health and safety hazards. Schedule 2 standard lease conditions 11.5 – 11.7 requires the Concessionaire to have a building warrant of fitness under the Building Act 2004 and display a copy of the certificate in each building. The Concessionaire must keep and maintain all building systems and structures in accordance with the requirements of any compliance schedule.

It is also essential to consider the effects of the structures on the land once the concession expires or is surrendered/terminated. Special conditions have been drafted to ensure the lease provides the Lessor and Lessee flexibility to manage the lease in a suitable way. These conditions can be found below under clause 7, which acts as an amendment to schedule 2.

The Department determined that matters such as transfer or purchase of buildings upon expiration of lease should be managed outside the concession process. The special conditions (clause 7 below) will provide for and facilitate any discussions of this nature. It is likely that the land will be owned by Te Ākitai at this time and the future of the buildings is best determined between the two parties. It would not be suitable for the Department to unduly bind other party.

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:

1. Is the activity not contrary to the purpose for which the land is held?

Yes

Discussion:

The land is Auckland Mataatua Society Marae Recreation Reserve which is a recreation reserve held under section 17 of the 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 area of New Zealand*”. In accordance with Section 59A of the Reserves Act 1977, the Minister may, in accordance with Part 3B of the Conservation Act 1987, grant a concession in respect of any reserve vested in the Crown. Each

different classification of reserve possesses certain values or features as set out in Part 3 of the Reserves Act 1977.

Recreation reserves are held for the purpose of providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with an emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside.

The reserve was classified as the Auckland Mataatua Society Marae Recreation Reserve and was gazetted in 1972 prior to the marae being built in 1978. Although classified as a recreation reserve, there is clear intention that the reserve is used for Auckland Mataatua Society's Marae facilities.

The Society is now applying to continue the same activity that has been undertaken on the land since its establishment in 1978.

The Society services the community by hiring out the marae facilities for children education, cultural programmes, health clinics, celebrations and memorials. Hiring out the facilities for the above purposes brings a wide range of people onto the reserve and encourages recreational and community use of the land.

It is considered that the proposed activity is not contrary to the purpose for which the land is held or is to be held. Under the proposed Treaty settlement legislation, the land would be reclassified as a local purpose (marae/ community building) reserve.

S17U(4), (5) and (6): Granting of a lease – (This was written under the Conservation Act 1987, prior to the October 2017 amendment. The analysis remains relevant as the application was received prior to that time).

2. Is the activity consistent with s17U (5), and (6) of the Conservation Act?

Yes

Discussion:

Section 17U(4) – The Minister shall not grant any application for a concession to build a structure or facility, or to extend or add to an existing structure or facility, where he or she is satisfied that the activity (a) could reasonably be undertaken in another location that is (i) outside the conservation area to which the application relates or (ii) is in another conservation area or in another part of the conservation area to which the application relates, where the potential adverse effects would be significantly less or (b) could reasonably use an existing structure or facility or the existing structure or facility without the addition.

The lease will grant the Applicant exclusive right over the existing marae and other buildings. Considering that the structures already exist on the site, and the on-going effects are minimal, it is not necessary to move and relocate or construct buildings elsewhere. No plausible alternative sites were identified. Authorising this concession will result in no new adverse effects.

Section 17U(5) – The Minister may grant a lease only if the lease relates to one or more fixed structure and (if the lease includes areas around the structures) if it is necessary for the purposes of safety or security, or is an integral part of the land and is essential to enable the activity to be carried out.

The proposed activity is for the continuation of an existing marae and includes multiple structures on the land. The lease area also includes areas around the structures but are an integral part of the marae operations. It is also necessary for the safety and security of the marae when visitors are using the facilities.

Section 17U(6) – No lease may be granted unless exclusive possession is necessary for the protection of public safety, the protection of the physical security of the activity concerned or the competent operation of the activity concerned.

The granting of a lease is essential to protect the physical security and competent operation of the marae and people using the facilities. It is considered that exclusive possession is required as per section 17U(6).

The activity is consistent with s17U (4), (5), and (6) and it is appropriate to grant a lease for the activity.

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:

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

Yes

Discussion:

Conservation General Policy 2005 (CGP)

Accommodation and related facilities are covered in section 10 of the CGP. The following policies are relevant to the application:

10 (a)	Accommodation and related facilities on public conservation lands and waters may be allowed for public recreation, educational and community services, consistent with the outcomes planned for places.
10 (b)	Accommodation and related facilities on public conservation lands and waters owned and occupied by people and organisations other than the Department, will require a concession.

10 (c)	Any application for a concession will comply with, or be consistent with, the objectives of the relevant Act, the statutory purposes for which the place is held, and any relevant conservation management strategy or plan.
10 (e)	All accommodation and related facilities including replacements, additions and extensions on public conservation lands and waters should: <ol style="list-style-type: none"> i. be consistent with the outcomes planned for places; ii. avoid or otherwise minimise adverse effects on natural resources and historical and cultural heritage, and on the benefit and enjoyment of the public, including public access; iii. complement and, wherever possible, be located close to existing accommodation and related facilities; iv. be located, designed, constructed and maintained to meet all legal requirements and standards; v. be of such a scale, design and colour that they harmonise with the landscape and seascapes; vi. provide for disabled people in places where this is practicable; and vii. be available for use by the public.
10 (f)	The Department and all concessionaires should monitor the effects of the use of accommodation and related facilities on natural resources and historical and cultural heritage, and on the benefit and enjoyment of the public, including public access, to inform future management decisions

The proposed activity is consistent with the CGP as it provides for educational and community services as a cultural hub which is opened to the public for hire. The proposed activity is for the continuation of an existing activity and is consistent with policies 10 (c) and 10 (e) as shown in this report. Monitoring of concessions is a standard condition and is recommended to be incorporated into the concession as discussed in section e) of this report above.

Auckland Conservation Management Strategy 2014 (Auckland CMS)

The Auckland CMS is made up of three parts. Part One covers general policies of the region. Part Two covers specific places but the proposed activity is not within any of the places set out in this part. Part Three covers specific policy requirements for Auckland.

Part One:

Section 5 of the Auckland CMS covers the Treaty of Waitangi principles. The Department recognises the role of tangata whenua as kaitiaki and acknowledges their mana whenua. Effective partnerships with tangata whenua also help to achieve conservation of natural resources and historic and cultural heritage. Settlement processes are underway with most iwi in Auckland/Tāmaki Makaurau. The Department has a contributing role in the settlement of historical claims.

Objective 5.1.1.1	Maintain and strengthen relationships with tangata whenua to enhance conservation and recognise mana. These relationships should be based on mutual good faith, cooperation and respect.
5.1.1.3	Actively consult and work with tangata whenua, ensuring consultation is early, ongoing, informed and effective.

5.1.1.4	Consider customary practices and the customary use of traditional materials and indigenous species by tangata whenua, consistent with kaitiakitanga, the relevant legislation, regulations, general policies and the purposes for which the land concerned is held.
5.1.1.5	Encourage tangata whenua involvement and participation in conservation management on public conservation lands and waters.

These policies are all written to strengthen tangata whenua relationships with the Department. When considering this application, the Department aimed to maintain and strengthen relations with tangata whenua, Te Ākitai. In alignment with the policies/objectives, the Department has consulted with Te Ākitai to understand their views and current Treaty Settlement negotiations over the land. The Department aims to cooperate in good faith to recognise and protect tangata whenua mana, to build stronger relationships which will assist and enhance conservation efforts into the future.

Refer to section 5 for a full analysis of the iwi consultation undertaken and section 6 for Treaty Settlement discussions (Te Ākitai as tangata whenua).

Part Two:

Part two covers specific places, however the proposed activity does not fall within any of the specific places.

Part Three:

Part Three, section 24 covers Specific Policy requirements and is relevant to the application. General authorisations are covered under section 24.2. The policies in 24.2.1 sets out a list of seven policies to consider when granting authorisations. These policies include issuing authorisations in accordance with the relevant legislation and the provisions of the Conservation General Policy. Policy 24.2.1.5 sets out the following criteria to use when considering applications to retain structures on public conservation lands and waters:

Policy 24.2.1.5

The following criteria will be used when considering applications to erect or retain structures or for the adaptive reuse of existing structures on public conservation lands and waters:

- a) the purposes for which the land concerned is held;
- b) the outcomes and policies for the Place where the activity is proposed to occur;
- c) whether the structure could reasonably be located outside public conservation lands;
- d) whether the structure could reasonably be located in another location where fewer potential adverse effects would result from the activity;
- e) whether the structure adversely affects conservation, including recreational, values;
- f) whether the structure is readily available for public use;
- g) whether the structure is consistent with the visitor management zone in Volume II, Map 3 and as described in Appendix 11;
- h) whether the structure enhances the visitor experience;

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| i) whether the activity promotes or enhances the retention of a historic building; and |
| j) whether the activity is a suitable adaptive reuse of an existing building. |

The matters outlined above in 24.2.1.5 are common place in the Departments decision making process. Each point has already been addressed within this report above. For the sake clarity please see further discussion below:

- a) The purpose for which the land is held is discussed above in **the S17U(3) analysis on page 19**. The land was gazetted as the Auckland Mataatua Society Marae Recreation Reserve in 1972 for the purposes of setting aside land for the Society to set-up their marae facilities.
- b) The Policies for the place where the activity is proposed is covered by this section and the matters outlined directly above within the analysis of the Auckland Conservation Management Strategy.
- c) Considering that the structures are existing this matter should not be considered as relevant. This is discussed further within analysis of S17U(4), (5) and (6) on page 20.
- d) As per (c).
- e) The resulting effects of approving this application will be minimal as the buildings already exist. Analysis of this is outlined further in s17U(1)&(2).
- f) The facilities provide as a community centre, providing services and catering for those who seek it. The Society are seeking a lease for safety and security purposes, as they have valuable property and equipment/chattels on the land. This is further outlined within S17U(4), (5) and (6) on page 20.
- g) The land is considered as front country under the visitor management zoning. Appendix 11 outlined relevant considerations that should be given when considering applications for front country land. As long as effects are avoided and mitigated sufficiently concessions may be permitted.
- h) Considering that the reserve was gazette for this purpose and that the reserve has been used for this purpose since 1978, it should be considered that authorising future use of this land for this purpose will enable future use of this land for the benefit of the public and members of iwi. Although the marae generally caters to a defined grouping of persons, (directly affiliated to Ngāti Awa) they also function as a community centre, open to all who are interested in what they provide. Furthermore, the Marae also provide use of their facilities for a wider range of purposes (e.g. Meetings and event hosting – subject to the lease conditions).
- i) These buildings have a significant history to the Auckland Mataatua Society, however, for the purposes of this assessment they are private non-historic buildings. Not subject to any historical covenants.
- j) The buildings are privately owned and have been used for this purpose since 1978. If applicable, the proposed activity should be considered as a suitable adaptive reuse of an existing building.

This report analysis has outlined and discussed the relevant CMS provisions. These discussions highlight that the proposed activity should be considered consistent with the policies of the Auckland CMS.

It should be considered the proposed activity is consistent with the Auckland CMS.

Proposed Operating Conditions

Special conditions

1. Location

The activity has been applied for at the following location:

Conservation area	Description of location (if applicable)	Land status	District Office	Activity
Auckland Mataatua Society Marae Recreation Reserve	Legal Description: Part lot 161, DP 58968	Recreation Reserve	Tāmaki Makaurau/Auckland Mainland	Lease of land for Marae

- If the Grantor determines that the conditions of this Document or the effects of Concession Activity should be monitored, the Concessionaire shall meet: either the full costs of any monitoring programme that is implemented; or, if the Grantor determines that the costs should be apportioned among several Concessionaires who use the same locations, part of the costs of the monitoring programme. These costs will include the Department's standard charge-out rates for staff time and the mileage rates for vehicle use associated with the monitoring programme.

Fuels, hazardous materials, chemicals and waste

- Any waste or rubbish must be disposed of in an approved manner off the Land at a Council approved site. Waste held on the Land prior to its removal must be stored in a manner so as to ensure it does not become a contaminant or is not blown by wind or present a potential hazard to users of the land.
- The Lessee shall not commence or undertake the erection, construction, reinstatement or making of any structure building or improvement of a structural nature nor alter or extend or permit to be altered any structure building or improvement of a structural nature so erected on the leased area without first supplying the Grantor with detail plans and specifications and obtaining the Grantor's prior approval. Approval from the Grantor shall be required and be requested not less than 4 weeks prior to the proposed construction or activity of a structural nature.

Annual Returns

5. The Concessionaire must provide the Grantor with an annual 'Activity Return' one month prior to the concession fee payment date.
6. The Activity Return must stipulate total gross revenue made under this concession. Note: Gross Revenue includes all revenue from activities such as hall rental or any financial gain resulting from the concession.

What happens on termination or expiry of the Concession?

7. Clauses 20.2 to 20.4 of Schedule 2 are deleted and replaced with the following:
 - 20.2 On expiry or termination of this Concession, either as to all or part of the Land, the Concessionaire is not entitled to compensation for any structures or other improvements placed by the Concessionaire on the Land.
 - 20.3 The Concessionaire may, with the Grantor's written consent, remove any specified structures and other improvements on the Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Land in a clean and tidy condition.
 - 20.4 The Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Land in a clean and tidy condition.
 - 20.5 No later than ten years from the date of commencement of this concession, the Concessionaire and the Grantor must work together in good faith to reach an agreement on how any structures and other improvements on the Land will be dealt with on expiry or termination of the lease.
 - 20.7 For the avoidance of doubt, the agreement under clause 20.5 may override clauses 20.2 to 20.4.
 - 20.8 If the Concessionaire and the Grantor cannot reach an agreement, either party may invoke clause 23 (disputes).

Term Analysis

A term of 30 years has been requested by the Applicant with the possibility of a second 30-year term for a total of 60 years. Under section 17Z(1) a lease may be granted for a term not exceeding 30 years or 60 years if exceptional circumstances apply.

In order to grant a lease or licence for a term of 60 years the Minister would need to be satisfied that there are exceptional circumstances. This application is for a new lease and exceptional circumstances do not apply for this application.

Assessing the Term

The Applicant has sought a term of 30 years. Consultation with Te Ākitai Waiohua identified that they are open to a term of no more than 8 years.

There are a range of decisions the Department could make, including declining the application through to granting the application for the fullest term allowed by the Act (30 years).

A term of 30 years will be the starting point for consideration as this is the longest term the Department could possibly grant consistent with section 17Z of the Conservation Act 1987 and would give the greatest protection to the interests of the Applicant.

Considering that the Applicant is applying for a concession to continue the same activity over existing buildings, the effects will be no more than what is existing. Furthermore, it is also relevant to note that the land was classified as the Auckland Mataatua Society Marae Recreation Reserve in 1972 and has a long historical use as a Marae facility for the Applicant. The Applicant has occupied the land since 1978 and has built the current structures on the land since this time. The previous lease expired in 2011 and the right of renewal for an additional 33 years was not exercised. The Applicant has continued using the land as a marae since this time and has requested a 30-year term. The activity applied for is to continue the existing marae facilities and activity for a reasonable period to provide security and certainty.

Given the information above, on the surface the Decision Maker should be comfortable in approving a concession authorising this activity for the fullest possible term.

However, it is also important to note that Te Ākitai Waihou (Te Ākitai) has been in negotiations with the Crown towards settlement of its historical Treaty claims since 2012.

Te Ākitai and the Crown signed an Agreement in Principle (AIP) in December 2016. Included in the AIP is a list of potential cultural redress properties to be transferred to Te Ākitai on the conditions set out in the AIP. One of these properties is the Auckland Mataatua Society Marae Recreation Reserve. The significance of this site to Te Ākitai has been discussed above. Broadly, it is close to other culturally significant sites, a third of Te Ākitai members live within an accessible distance of the site, and ownership and use of the site would help to re-establish the footprint of Te Ākitai in their rohe.

Granting this lease to the Applicant creates an interest in the land which will endure through the treaty settlement as a third party protected interest. This lease will bind Te Ākitai as the Lessor for the remainder of the term. Te Ākitai are understanding of the importance of the site to the Applicant, however, they are only supportive of a shorter term.

It is also important to note that in the medium to long term Te Ākitai propose to use the site for their own marae.

The Department must be mindful that although Te Ākitai agreed in principle to the third-party interest on the land within their Treaty Settlement negotiations. As outlined, consultation identified that they are only supportive of an 8-year term.

Considering that the Applicant and Te Ākitai are both Treaty partners, the Department must act in accordance with the Treaty principles. The term length must fairly reflect the values and views of the Applicant and Te Ākitai. On the basis that the land is likely to be transferred to Te Ākitai in their Treaty Settlement, the Department must set a term which does not unfairly burden, while also giving the Applicant a reasonable timeframe to consider their options and relocate their buildings (if required).

On consideration of factors outlined above, the Department has reached a view that a term of 15 years should be granted. This term can be broken down as follows:

- An initial five years for the continuation of the status quo to provide the Applicant security and time to assess their options and work with their people and the Grantor.
- Followed by a further 10 years to identify an alternate location, make necessary arrangements and reinstate the land (subject to further agreements between Lessor and Lessee).

Although practically these timeframes could be shorter, the Department recognises that this situation is difficult for the Applicant. Relocation not only results in the Applicants loss of land use, and has high costs, it also has great cultural sensitivity to the Society and their people who hold these facilities with high importance for their community. The Department recognises the difficult decisions for the Applicant as a result of this decision. Understandably, when considering opposing views and aspirations for the land, the Decision Maker must make a difficult decision. The aim is to reach a decision that creates a fair outcome for all parties involved.

Based on the current state of Treaty Settlement negotiations, it is unlikely the site will transfer to Te Ākitai before the end of 2019. The Department will remain the Grantor of the lease until its transfer on settlement following the enactment of a settlement bill.

It is recommended that a term length of 15 years will reconcile the difficult situation and views of both the Applicant and Te Ākitai. 15 years will provide the Applicant security and time to assess their options, work with their people, and relocate their Marae.

Although this recommended term is significantly lower than requested by the Applicant, the Department must consider the views of both Te Ākitai and the Applicant as treaty partners and parties with an interest in the land. It is for this reason that a 15-year term is recommended.

The Department also notes that this term of 15 years provides the opportunity for the two treaty partners to establish a relationship as lessee and lessor and that there is nothing in the lease that precludes the parties from negotiating an extension, shared access or other such arrangement as might satisfy both parties' future desires for the site.

Building Ownership

The buildings are currently being used as a marae and other related purposes. The Department acknowledges that there are cultural implications if Te Akitai proposes to take over the use of the

buildings upon expiry of this concession (if approved). This situation is something which is unique for this concession. If the land is transferred, Te Akitai as the Lessor must discuss this with the Lessee, the Applicant.

To provide flexibility in this situation, the Department proposes lease conditions that allow the Concessionaire to have discretion to remove structures and buildings prior to the concession expiration. On the other hand, the conditions also provide the Grantor/Lessor the ability to demand the removal of some or all of the buildings on expiration of the concession (this will override the Concessionaires discretion to remove or leave any buildings). The Department does not wish to directly impose provisions will burden either party unnecessarily.

Term Security

Maintenance and investment by the Applicant into the structures is also a consideration when determining the term. The Applicant has stated that they would like to upgrade the existing structures. It is noted that although useful to consider for justification, the ability of the Applicant to access finances is outside the scope of consideration of the concession application.

Term Outcome

It is on the assessment above that the Department are approving in principle to grant a 15-year lease term.

Comments on Decision Support Document

Hui with Applicant, Auckland Mataatua Society / Ngati Awa.

Tuesday 16 October 2018

Hui with Applicant

Those speaking on behalf of the Applicant and Ngati Awa expressed the important of the land and marae to them and their people. The land was granted by the Maori Queen and has been used by Ngati Awa since the 1978 lease and has provided a centre in Mangere for those who moved to Auckland (around 12,000 people affiliate with the marae).

The facilities provide an important place for Ngati Awa in Auckland as a centre for the community for past and hopefully future generations. It is noted that the marae provides great facilities and benefits to the community and will be difficult to relocate if required to do so.

Ngati Awa have noted that they attempted many times to engage with the current Chair of Te Akitai but had never received a response.

A term of 30 years has been sought as Ngati Awa wish continue on the land.

On top of the loss of facilities and cultural ties to the land and marae, relocating will be difficult and will pose logistical matters for Ngati Awa.

Discussion:

Ngati Awa have expressed the important function the land provides their people in Auckland and that it will be difficult without it. It is understandable that without the land, they will struggle to provide these services and facilities to those in Auckland.

Given the benefit that this land provides Ngati Awa, it is reasonable to seek a 30-year term. However, given that Te Akitai have negotiated transfer of the land under treaty negotiations, the Department is required to consider all interests in a fair manner.

The key matter to ascertain is term, which has been discussed above.

Comments received from Te Akitai Waiohua

- Letter Response on 07 September 2018
- Hui on 19 October 2018

The draft Decision Support Document (extracts) was sent to Te Akitai Waiohua for their review and comments on 17 August 2018. Te Akitai Waiohua provided comprehensive comments within a letter received by email on 10 September 2018. This email is attached in full at the link the key feedback points outlined below.

Initial response by letter:

7 September 2018

"Te Ākitai Waiohua Feedback

4. *The Iwi Authority notes that extracts from the Report appear to take into consideration the significance of the Auckland Mataatua Marae Society Reserve (the Reserve) in terms of the:*
 - a) *Relevant provisions of the Conservation Act 1987;*
 - b) *Te Ākitai Waiohua Treaty of Waitangi settlement claims with the Crown;*
 - c) *Cultural importance of the Reserve to the people of Te Ākitai Waiohua;*
 - d) *Te Ākitai Waiohua rohe and location of the Reserve; and*
 - e) *Current marae of Te Ākitai Waiohua at Pūkaki and intended use of the Reserve in the future.*
5. *The Iwi Authority accepts the decision of the Department to provide the Society with five (5) years to arrange the transfer and relocation of buildings and fixtures.*
6. *Following the Report, the Iwi Authority considers the five (5) year term to locate a new site to be high.*

7. When providing a term for the Society to locate a new site, the Iwi Authority would like the Department to reduce the period to three (3) years in its final decision by specifically considering the following matters:
- f) The period for locating a new site effectively starts from Settlement Date, which may be up to two (2) years away;
 - g) Since 2012 the Society has been without a formal lease representing six (6) years to contemplate an alternative site;
 - h) Since 2014 the Iwi Authority has been seeking a decision from the Department in a four (4) year process to confirm that the Reserve may be a part of the cultural redress package for the Te Ākitai Waiohua Treaty settlement claim.
8. The Iwi Authority proposes the Department grant the Society a lease of eight (8) years representing a period of three (3) years to locate a new site and a further five (5) years to arrange transfer and relocation of buildings and fixtures."

Discussion:

Te Akitai provided comments in support on most of the draft decision support document. They are understanding of the situation; however, they believe that an eight-year term would be more suitable.

In their view, eight years will provide a five-year window to operate the facility and locate a new site followed by a three-year window to move all buildings and reinstate the land.

It is also noted that Te Akitai are requesting that concession fees are set at a commercially viable rate. If the land is successfully transferred to Te Akitai, this is a relevant considered to have in mind when processing the concession. As discussed above, the recommended fees are set at a commercial rate as set out by the Permissions Pricing Book.

The Department should see to grant a viable term that does not unreasonably burden Te Akitai as the potential new land owner.

Lastly, it is important to note that Te Akitai wish the site to be fully cleared by the concession term expiry date. This will enable Te Akitai to step in and make use of the land as soon as possible.

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 lease to Auckland Mataatua Society Incorporated subject to the standard concession contract and the special conditions listed below:

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 New Zealand Herald.

Agree / Disagree

5. Determine the appropriate term length

_____ 15 _____ years



Signed by David Speirs, Director, Operations, Hauraki-Waikato-Taranaki.

Pursuant to the delegation dated 9 September 2015