

# Guide to sending a Decision Support Document to an applicant for comment

With Anne Bogle's comments May 2024 to discuss with Vicki

## Context

The [Concession Application Processing SOP](#) includes a step 'Seek Applicant's Comments'. This step is to seek the Applicant's comments on the draft concession report.

This step is to be undertaken for both notified and non-notified applications where the application is recommended to be declined, or for complex applications. In practice, this step is undertaken when all or part of an application is recommended to be declined (or there is not a clear recommendation to approve the application), or where the operating conditions proposed are different to what the Applicant is likely to expect. This includes if the term proposed is significantly different to what is proposed.

This step is important to ensure the Department is satisfying the principles of natural justice by providing the opportunity to comment on a decision, that may be adverse to their interests in some way, before it is made.

It is also a way of giving effect to section 17SE(2)(a) and (b) of the Conservation Act.

Failure to undertake this step could increase the risk of a successful legal challenge to a decision to decline an application (or impose a term or conditions that is not favourable to the Applicant), i.e. not seeking the Applicant's comments could expose the Department to legal and reputational risk.

In the usual circumstance when seeking Applicant comment, it is best to provide the draft Decision Support Document in full to the Applicant.

This process may be used for all permission types.

## Purpose

To provide the Applicant the opportunity to provide comments to the Decision Maker on the analysis of their permission application.

## Process

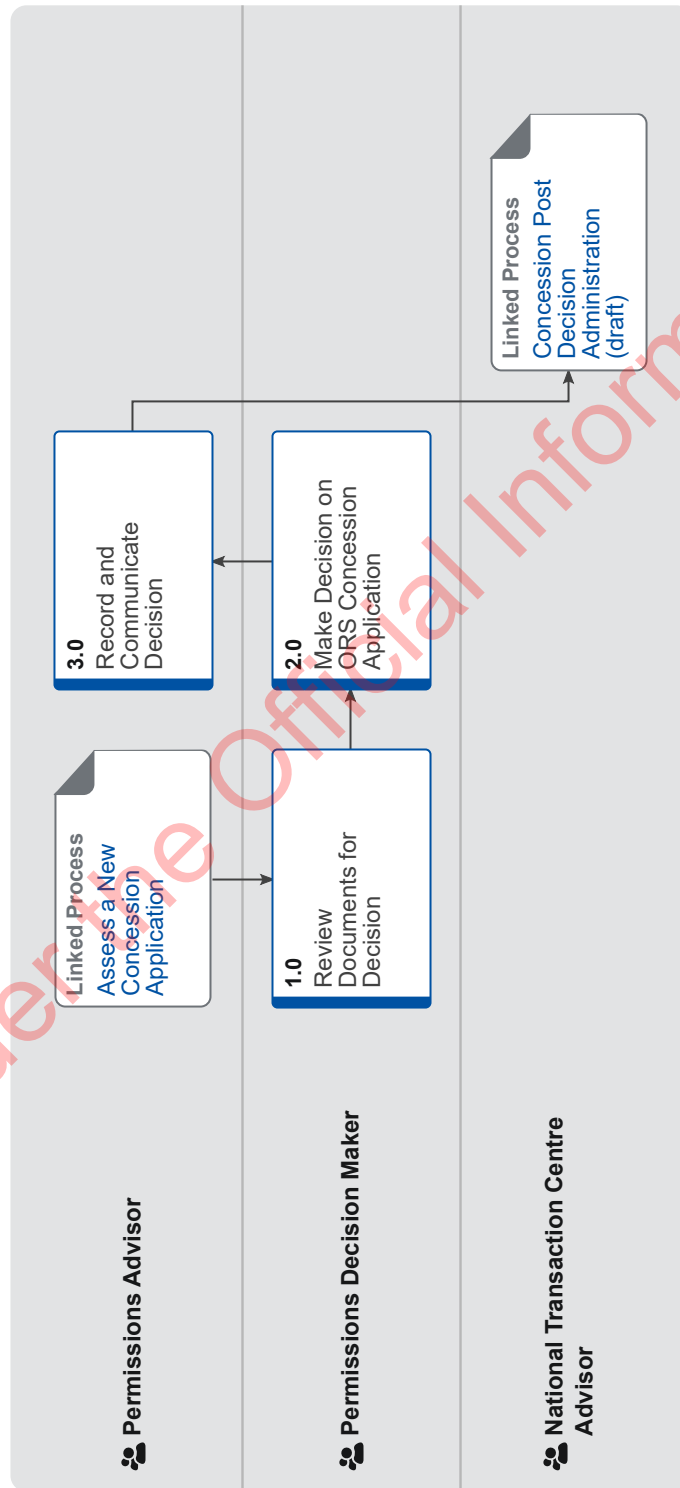
1. Permissions Advisor to advise Decision Maker that the Applicant should be provided an opportunity to comment before a decision is made (this could be at a check in meeting or via email).
2. x
3. The Conservation Act does not specify a timeframe in which an Applicant must provide their comments – it says “any reasonable time that the Minister considers appropriate” . In most situations 15 working days would be appropriate, however this may be too short in some circumstances ( for example where the report is complex or long). If the Permissions Advisor considers more than 15 days is reasonable, they should seek the

decision of [the relevant delegated decision maker ]. Also, if an Applicant makes a reasonable request for more time, then this should be accommodated.

4. Permissions Advisor to generate [Letter Requesting Applicant Comments](#) template from the Permissions Database.
5. Permissions Advisor to populate letter and attach the Decision Support Document to the letter:
6. Permissions Advisor to attach draft authorisation document (if relevant).
7. Permissions Advisor to send letter to the Applicant..
8. If the Applicant seeks documents that are linked to the DSD ( such as biodiversity or planning advice) these should be provided to the Applicant.
9. If comments are received, Permissions Advisor to copy comments as received from the Applicant to the Applicant Comments section of the Decision Support Document and discuss the comments received in the Discussion section. If comments are not received, the Permissions Advisor to email Applicant and advise that since no comments have been received the Department will continue processing the application to a decision. Permissions Advisor to note in DSD that comments were requested from the Applicant but not received.

## Resources

Template - Request for applicant comment letter: [DOC-6728282](#)



Released under the Official Information Act

## Summary

### Objective

To make a decision to either grant or decline a permission.

### Required Outcomes:

- To base decision on all Statutory requirements
- To record rationale for the decision in the DSD

**Owner** Vicki Crosbie

**Expert** Sanjay Thakur

## Procedure

**PROCESS** **Assess a New Concession Application**  
Permissions Advisor

### 1.0 Review Documents for Decision

Permissions Decision Maker

- Receive email that Decision Support Document (DSD) is ready
- Open DSD in docCM
- Read DSD

### 2.0 Make Decision on ORS Concession Application

Permissions Decision Maker

- Make a decision, using the guidance if required:
  - Conservation Act 1987 pt 3B Concessions
  - Making Good Decisions - a resource for Decision Makers and Permissions Advisors (DOCDM-1411341)
- Open DSD and contract in docCM
- Add decision and rationale for the decision to DSD
- Place digital signature onto DSD and Contract:
  - Signing reports, Concessions and Authorisations using a digital signature (DOCDM-1497180)
- Check in signed documents as new revisions into docCM
- Inform Permissions Advisor about decision being made

### 3.0 Record and Communicate Decision

Permissions Advisor

- Update the completion of the task in Permissions Database
- Record all additional time spent by task team members in database, using the guidance:
  - Guidance for using tasks in the Permissions Database (DOC-6409886)
- Share the decision with the team members on behalf of the Decision Maker

**NOTE** Ensure that the Community Ranger shares the decision with those consulted with (including Treaty Partners and the Conservation Board).

**PROCESS** **Concession Post Decision Administration (draft)**  
National Transaction Centre Advisor

## Triggers & Inputs

### TRIGGERS

None Noted

### INPUTS

None Noted

## Outputs & Targets

### OUTPUTS

None Noted

### PERFORMANCE TARGETS

None Noted

## Process Dependencies

### PROCESS LINKS FROM THIS PROCESS

Process Name	Type of Link	Assigned Role
Assess a New Concession Application	Process	Permissions Advisor
Concession Post Decision Administration (draft)	Process	National Transaction Centre Advisor

### PROCESS LINKS FROM OTHER PROCESSES

Process Name	Type of Link	Assigned Role
Aquatic Life Concessions Information	Process	Permissions Decision Maker
Assess a New Concession Application	Process	Permissions Decision Maker
Assess a New ORS Permissions Application for Use of Vertebrate Pesticides	Process	Permissions Decision Maker
Assess a Notified Concession Application	Process	Permissions Advisor
Assess an ORS Application Under MMPA - New and Renewal	Process	Permissions Decision Maker
Assess an ORS Marine Mammal Viewing Permit Transfer	Process	Permissions Decision Maker
Assess an ORS Non-Notified Renewal Marine Mammal Viewing Permit	Process	Permissions Decision Maker
Assess an ORS Notified Marine Mammal Viewing Permit	Process	Permissions Decision Maker

Concession Post Decision Administration (draft)	Process	Permissions Decision Maker
Manage Concession Reissue Part 2 (draft)	Process	Permissions Decision Maker
Manage New Concession Application - Overview	Process	Permissions Decision Maker

**RACI**

**RESPONSIBLE**

Roles that perform process activities

National Transaction Centre Advisor, Permissions Advisor, Permissions Decision Maker

**ACCOUNTABLE**

For ensuring that process is effective and improving

**Process Owner** Vicki Crosbie

**Process Expert** Sanjay Thakur

**CONSULTED**

Those whose opinions are sought

**STAKEHOLDERS**

None Noted

**STAKEHOLDERS FROM LINKED PROCESSES**

Process	Owner	Expert	Process Group
Assess a New Concession Application	Vicki Crosbie	Sanjay Thakur	Concessions: New Application Process Guidance
Concession Post Decision Administration (draft)	Becky Port	Kayla Mahon	Concessions: Technical Information

**INFORMED**

Those notified of changes

All of the above. These parties are informed via dashboard notifications.

### Summary

#### Objective

This Library holds contextual information about the concessions process under the Conservation Act 1987.

#### Background

This Library is intended to act as a knowledge base for advisors and other staff involved in processing concession applications.


**Owner** Vicki Crosbie

**Expert** Bryn Sheppard

### Procedure

#### 1.0 Concessions 101

- a** A concession is a statutory authorisation to undertake an activity on public conservation land.

 [When is a Concession Required? \(ex-Wiki\) \(DOC-6843967\)](#)

#### 2.0 Types of Concession

- a** There are four main types of concession: lease, licence, permit and easement. There are also a number of options within these permission types.
- b** There are different template documents in the Permissions Database for each of the main types of concession. Each document sets out the legal requirements for that concession type.

##### **NOTE** Lease (also lease and licence)

A lease is used where a Concessionaire requires exclusive possession of land - the public is excluded from the land. A lease is the only mechanism that allows a Concessionaire exclusive use to conservation land. Exclusive access may be required for commercial or safety reasons. All leases must be publicly notified under s17SC of the Conservation Act.

##### Lease and licence:

Sometimes, a Concessionaire requires exclusive occupation of some land, but some of the concession area can still be used by the public with no restrictions. An example is a building for a café - the Concessionaire will require exclusive access of the footprint of the building itself, not the area in front of the café building. However, they still want to use the area in front of the building, for example for a path to the building itself. This concession type still requires public notification, as some of the land is being used exclusively by the Concessionaire. In this situation, use the Lease and Licence concession document.

##### **NOTE** Licence

A licence is used where a Concessionaire requires a profit à prendre (a non-possessory interest in the land), or another form of non-exclusive interest in the land. Examples of a licence include grazing stock on the land, placing beehives on the land, or the occupation of land for a communication tower.

##### Concession documents

As well as the standard licence concession document template, there are a number of specific templates that may be used for different activities, such as grazing, telecommunications structures, and a lease and licence.

##### **NOTE** Permit

A permit is used where a Concessionaire requires a right to carry out an activity on conservation land. Where an activity is authorised by a permit, there must be no legal interest in the land being granted. Examples of an interest in the land are grazing stock (a profit à prendre, authorised as a licence), or using a building on conservation land (a right of exclusive possession, authorised as a lease).

A permit can be authorised for no longer than ten years. You may see references to a maximum term of five years for permits - this is outdated, and the legislation now allows for permits to be authorised for up to ten years.



Examples of permits include guiding, aircraft landings, and filming.

##### **NOTE** Easement



An easement is used when a concessionaire requires access across public conservation land for a business or private property. This includes activities such as conveying electricity, telecommunications, water and gas, or right of way for vehicles or stock.

#### 3.0 Legislation, Policy and Statutory Plans




##### **a** Legislation

-  [Conservation Act 1987](#)
-  [Reserves Act 1977](#)


##### **b** General policies

-  [Conservation General Policy \(DOC website\)](#)
-  [General Policy for National Parks \(DOC website\)](#)

##### **c** Statutory Plans





-  [Conservation Management Plans \(DOC website\)](#)
-  [Conservation Management Strategies \(DOC website\)](#)
-  [National Park Management Plans \(DOC website\)](#)

##### **d** Guidance on interpreting statutory planning documents, including exceptional circumstances:

-  [Interpretation and Application of Statutory Planning Documents Guidance \(DOC-2827557\)](#)

## 4.0 Purpose for which Land is Held







**NOTE** This section is relevant to concessions issued under part 3B of the Conservation Act 1987, and may not be relevant to permissions granted under other Acts.





- a s17U(3) of the Conservation Act 1987 states 'The Minister shall not grant an application for a concession if the proposed activity is contrary to the provision of this Act or the purposes for which the land concerned is held'.
- b This means that during the statutory analysis, you are considering whether the activity being applied for is contrary to the purpose for which the land is held. An application can be declined under s17SU(3) if it is contrary to the purpose.
- c This is a high test to meet - as long as the activity doesn't go completely against the purpose for which the land is held, then there is an argument that it isn't contrary to the purpose.
- d If you need support with this statutory test, contact the Statutory Land Management team.
- e Refer to the sections on land status in the appropriate legislation:
  -  Conservation Act 1987
  -  Reserves Act 1977
  -  National Parks Act 1980
  -  Wildlife Act 1953

## 5.0 Conservation Boards

- a A board's role in relation to concession management is purely advisory.
- b DOC's view is that the board's role is to provide policy advice on concession management, rather than detailed comments. Boards provide another stream of advice based on their members' skills to help DOC make decisions on applications.
- c Boards may also be consulted over the interpretation of a management plan, especially when a concession application relates to a new activity for which there is no provision in the plan.
- d DOC has developed a list of triggers to identify if consultation with a Board should take place. If you think a trigger is met, identify this as a critical issue. The Decision Maker will determine if consultation should be undertaken with the relevant Conservation Board. This is usually managed within the region by a Community Ranger or Statutory Manager, rather than by the Permissions Advisor.

**NOTE** Conservation Board Consultation Triggers:

-  Auckland Conservation Board Concessions Advice Triggers - Nov 2018 (DOC-5646328)
-  Canterbury Aoraki Conservation Board Triggers (DOC-6717650)
-  East Coast Hawkes Bay Concessions Triggers 2015 (DOCDM-1587825)
-  Nelson Marlborough Board Triggers - concessions (DOCDM-669005)
-  Otago Conservation Board Concession Triggers (DOC-2532869)
-  Southland Conservation Board Concessions Triggers (DOCDM-1023697)

-  Taranaki Whanganui Conservation Board Concessions Protocols and Trigger Mechanisms (DOCDM-355313)
-  Wellington Conservation Board Concession Triggers 2015 (DOCDM-1588068)
-  West Coast Tai Poutini Conservation Board Concession Triggers - February 2021 (DOC-6712871)
- e General information about the role of Conservation Boards and the New Zealand Conservation Authority (NZCA) can be found here:
  -  NZCA and CB fact sheets - a complete list (DOCDM-1398904)

## 6.0 Effects Analysis on Ramsar and World Heritage Sites

- a Ramsar status wetlands are wetlands around the world that meet the criteria. We are required to "formulate and implement planning so as to promote conservation of the wetlands" (Article 3.1) when they are Ramsar listed.
- b If a concession activity will impact on a Ramsar site, consider the effects of the activity on the Ramsar criteria.


**NOTE** Ramsar sites in New Zealand:

Kopuatai Peat Dome  
Whangamarino  
Farewell Spit  
Awarua Wetland  
Firth of Thames  
Manawatu River Mouth and Estuary


- c A site can be listed as having UNESCO World Heritage status for being a 'cultural or natural heritage site of outstanding universal value'. Once listed, it is managed to protect and conserve the site according to the reasons it is on the list.
- d For sites listed with World Heritage status, consider the values they were listed for when analysing the effects of activities at that site.

**NOTE** UNESCO World Heritage sites in New Zealand:

Tongariro National Park  
Te Wahipounamu - South West New Zealand  
Sub-Antarctic Islands

-  Permissions in World Heritage Areas (DOC-2534233)

## 7.0 Stewardship Land Review

- a Stewardship land is the term used for land that was allocated to DOC when it was formed in 1987. It includes former state forest and Crown land which was considered to have conservation value.
- b DOC is supporting the reclassification of stewardship land to ensure land with conservation and cultural values is protected.
- c 504 pieces of stewardship land on the West Coast have had draft recommendations prepared and the public have been notified. The conservation values reports for these pieces of land are available on the DOC website:
  -  Documents supporting stewardship land reclassification (DOC website)  
<https://www.doc.govt.nz/stewardship-land-documents>

- d The interim advise for Permissions Advisors processing concessions for land which has been recommended for reclassification is to follow the status quo. However, the conservation values reports could be a helpful resource for effects and statutory assessments.
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