

Standard - Recommendations and Decision Report

(refer to Guidance document [DOC-7687416](#))

Replace highlighted text – red text must be deleted once completed

Applicant: ~&~HolderTableLegalName^&^
Permission number: ~&~PermissionPermissionNumber^&^
Application Type: ~&~PermissionTypeDescription^&^

To: [Name of Decision Maker], [Role]
From: [Name], Permissions Advisor
Peer Reviewed by: [Name], [Role]
Date sent: [Date]

Executive Summary - Whakarāpopoto ā kaiwhakahaere

Information below is captured in individually numbered sections of text, ranging from a sentence or two up to paragraphs of 3-5 sentences. Consider what are the key questions to be answered:

1. ~&~HolderTableLegalName^&^ (the Applicant) has applied to Briefly summarise the activity, the location/s, term applied for (the Application). The Application has been considered under the non-notified process.
2. What is the recommended term.
3. What is the key district office advice, tech advice (any other contributors).
4. Were there any key concerns to address and was this done. e.g. Applicant is a Treaty Partner.
5. Did Treaty partners raise any concerns or are they supportive, are there any issues to consider in recommending a decision that gives effect to the principles of the Treaty of Waitangi.
6. Is there any other relevant information the decision maker needs to know? e.g. the application is inconsistent/contrary to the; legislation, statutory planning documents, policies, position statements and if so why the DM should or should not approve it.
7. Permit/Licence/Easement/Authorisation for approval (DOC). Delete if not required.

I recommend that you..... (Ngā tohutohu)

Further points can be added if there are other key points the Decision Maker needs to be aware of or make decisions on.

	Non-notified Concession under Part 3B of the Conservation Act 1987	Decision
a)	Approve / Decline the Application. Subject to the standard concession contract and the special conditions identified in this report (if decline is recommended, state which section you are declining under).	Yes / No
b)	Add any bespoke decisions required (delete row if not required)	

Delete if not required

	Research and Collection Authorisation under the Conservation Act 1987, Reserves Act 1977, National Parks Act 1980	Decision
a)	Approve the granting of a to subject to the standard authorisation document and the special conditions identified in this report (if decline is recommended, state which section you are declining under).	Approve / Decline
b)	Add any bespoke decisions required (delete row if not required)	

Decision Maker Rational:

The Decision Maker **must provide rationale for decision made**, including but not limited to how the decision complies with section 4 of the Conservation Act 1987 and other statutory requirements.

This assists us when dealing with cases where decisions are judicially reviewed, result in a complaint to the Ombudsman or result in an OIA/ministerial letter. You don't need to put much in if you agree with the recommendations, but if you make a decision against the recommendations, then we would expect a bit more comment from you.

If in agreement example: *"I agree with the recommendations set out in this report. I am satisfied that this application meets the tests of Part 3B of the Conservation Act 1987, and that the assessment of it has been done with full regard of Section 4 of the Conservation Act 1987."*

Item 1

If you do not include comments below it will be returned to you for completion.

Time spent considering application and making a decision	hrs / mins
--	------------

Permissions Advisor to input time into the Cost Recovery Tool for final processing fee and delete from final saved RDR.

_____Date:

[Name of Decision Maker], [Role]

Pursuant to the Delegation dated 9 September 2015 and 7 July 2019

(Check the Conservation Act Instrument of Delegation Schedule: [DOC-2583744](#))

Purpose - Te aronga

8. The purpose of this report is to bring together the relevant information and recommendations to support you to make a statutory decision.

Context - Te horopaki

9. The applicant has applied to activity summary.
10. The proposed location/s are listed below. If more than 5 locations include table in Appendix 2, include map/s if relevant in Appendix 3

Activity	Conservation Area	Land category status	Description of location (if applicable)
Guided Walking	Fiordland National Park	National Park	Milford Track – Glade Wharf to Clinton Hut
		Amenity Area	
		Conservation Park	
		Ecological Area	
		Government Purpose Reserve	
		Historic Reserve	
		Local Purpose Reserve	
		National Park	

Item 1

		Nature Reserve	
		Recreation Reserve	
		Sanctuary	
		Scenic Reserve	
		Scientific Reserve	
		Stewardship Area	
		Wilderness Area	
		Wildlife Management Reserve	
		Wildlife Refuge	

11. The Applicant is seeking a term of [term]. This term is sought because [reason].
12. The Applicant has no outstanding or existing compliance issues. **or**
The Applicant has outstanding or existing compliance issues summarise.
13. Key concerns: Summarise key concerns, and how these are proposed to be addressed.
Delete if none.
14. A copy of the Application can be found here (DOC).

Treaty Partner Relationships

15. The table below summarises our engagement with Treaty partners on this application:

Treaty partner	Summary of Treaty partner engagement	Mitigations proposed by Treaty partner
Create one row per Treaty partner	<p>This should note:</p> <ul style="list-style-type: none"> - where there was no response and if so how Te Papa Atawhai attempted to engage i.e. email or phone call, how many attempts were made, the dates of these etc. - a summary of Treaty partner view on the application 	Include any mitigations proposed by Treaty partner

16. Links to full Treaty partner engagement summaries and correspondence can be found at Appendix 1.

Item 1

17. Include a summary of any other relevant considerations and how they impact the process or decision. For example; relevant Treaty Claims Settlement legislation OR context OR Marine and Coastal Area Act provisions and statutory tests, statutory overlay OR trigger documents.

Section 4: Giving effect to the Principles of The Treaty of Waitangi - Ngā mātapono Tiriti

18. Four principles have been identified as most relevant to the work of Te Papa Atawhai: Partnership, Informed Decision-Making, Active Protection, and Redress and Reconciliation. Assess how the principles of the Treaty of Waitangi have (or may not have) been given effect to with respect to the application process, as well as whether a particular outcome/decision can give effect to the Treaty principles. Refer to [this resource \(DOC-7675208\)](#) for detailed background on these principles, and [this guidance \(DOC-7675209\)](#) on how to consider the principles within your analysis.
19. List any special conditions to provide for a section 4 compliant outcome or recommendation to decline including rationale.

Contributions

Technical Advice

20. Summarise technical advice (link to full advice can be found 'Contributions document register' in Appendix 1).
21. List bespoke conditions here, or recommendation to decline, including rationale.

Advice from District Operations

22. Summarise contributions/issues (link to full advice can be found 'Contributions document register' in Appendix 1).
23. List bespoke conditions here, or recommendation to decline, including rationale.

Statutory Analysis

Complete this section for applications for concessions under the Conservation Act 1987, the Reserves Act 1977, and/or the National Parks Act 1980 – concessions under these Acts are all managed under Part 3B of the Conservation Act 1987 and any variations under s17ZC(2) of the Conservation Act 1987 to an existing concession that are not a minor or technical change. Only assess the 'new' part of the activity, not the activity that has already been granted. S17U(1) and (2): analysis of effects.

Section 17S: Contents of Application

Does the Application include all required information as per s17S?	Yes/No
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24. Discussion: Include if additional information was requested and not provided or if we commissioned our own report etc.

Section 17SC: Public Notification

The concession application must be publicly notified if it meets any of the following criteria:

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

Is public notification required?	Yes/No
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25. Discussion: EXAMPLE The Applicant is not applying for a lease, term exceeding 10 years, (unless it is an easement). The effects of the application are minimal and will be sufficiently remedied, mitigated or avoided as in the next section; and therefore, notification is not considered appropriate.

Section 17U(1) and (2): Analysis of effects

Is the activity consistent with S17U(1) and (2)	Yes/No
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26. Discussion: 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 discussions 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.

Note that only information relevant to the activity on public conservation land can be considered (for example, economic benefits to an area).

Section 17U(3): Purpose for which the land is held

Is the activity consistent with S17U(3) of the Conservation Act? (that is, not contrary to the purpose for which the land is held).	Yes/No
--	--------

The following types of conservation areas are included in the application. See guidance document for examples.

Title	Section	Considerations
<i>Conservation Park</i>	<i>s19 of the Conservation Act 1987</i>	<i>Managed to protect natural and historic resources and to facilitate public recreation and enjoyment.</i>

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

Section 17U(4): Can a structure or facility be reasonably undertaken elsewhere?

Is the activity consistent with S17U(4) of the Conservation Act? (that is, the activity cannot reasonably be undertaken at another location or in an existing structure?)	Yes/No/NA
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28. Discussion: A concession to build or extend a structure or facility shall not be granted if the activity could reasonably be undertaken in another location that is outside conservation land or in another conservation area where the potential adverse effects would be significantly less, or if the activity could reasonably be undertaken in an existing structure.

Section 17W: Relationship between concessions and conservation management strategies and plans

Is the activity consistent with all relevant statutory planning documents?	Yes/No
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List relevant documents and sections that apply e.g. [Conservation General Policy 2005](#), [Conservation Management Strategies](#), [Conservation Management Plans](#), [General Policy for National Parks 2005](#), [National Parks Management Plans](#), [Wilderness Policy 1985](#).

Do not copy and paste the full section of the Act.

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

Consistency with Departmental operational policy Delete if not relevant

30. Departmental operational policy assessed:

List relevant documents and sections that apply.

Is the activity consistent with relevant operational policy documents? Yes/No

31. Discussion (if required): Explain how it is or is not consistent. Note: relevant operational policy should always be applied in order to manage legal risk in undertaking our functions.

Other relevant information Delete if not relevant

32. Discussion: Is there anything else the DM should know, e.g. similar applications granted / declined, policy in development, pending changes to legislation, cumulative effects, UNESCO provisions, Applicant comments e.g. if they are not supportive of proposed terms and conditions.

Recommended Operating Conditions

33. **Term:** [state] In addition if you are recommending a change in term from what the applicant has requested, state why.

Check s17Z to ensure term is appropriate and meets the tests.

34. **Standard and Special Conditions:** No amendments to the standard conditions applied to Non-notified Concession or Research Authority are proposed. **and/or** Additional Special Conditions are proposed to be included in this Non-notified Concession or Research Authority, see Appendix 3.

35. **Fees:** Detail all processing fees, activity fees, management and monitoring fees. Any fee waivers must be approved by the Commercial Manager and the approved fee waiver form linked below, with comment.

Processing Fee: \$[insert amount] plus GST

Management Fee: \$[insert amount] plus GST

This is comprised of:

- The base rate (managing invoices and follow up): \$150.00 plus GST

Item 1

- Rent/fee review (covers the annual portion of the three yearly rent reviews):
\$100.00 plus GST
- Collection and calculation of annual activity returns: \$150.00(<90 mins) to
\$200.00 (>90 mins) plus GST
- Rates recovery: \$150.00 + GST

Activity Fee: \$[insert amount] plus GST

Released under the Official Information Act

Appendices

Appendix 1 – Contributions document register (DOC)

Appendix 2 – Table of activity and locations

Appendix 3 – Map/s

Appendix 4 – Proposed Schedule 3 Special Conditions highlight those that are bespoke to the concession activity.

Feedback

To provide feedback on this form (suggestions for improvement, whats good, bad, what else could help you do your job) please complete the form linked below.

[Standard RDR Feedback Form](#)



Complex Conservation Act Recommendation and Decision Report

(refer to Guidance document DOC-7687416)

Replace **highlighted** text – red text must be deleted once completed

Applicant: ~&~HolderTableLegalName^&^
Permission number: ~&~PermissionPermissionNumber^&^
Application Type: ~&~PermissionTypeDescription^&^

To: [Name of Decision Maker], [Role]
From: [Name], Permissions Advisor
Peer Reviewed by: [Name], [Role]
Date sent: [Date]

Executive Summary - Whakarāpopoto ā kaiwhakahaere

Information below is captured in individually numbered sections of text, ranging from a sentence or two up to paragraphs of 3-5 sentences. Consider what are the key questions to be answered:

1. ~&~HolderTableLegalName^&^ (the Applicant) has applied to Briefly summarise the activity, the location/s, term applied for (the Application). This application has been considered under the notified process.
2. What is the recommended term.
3. What is the key district office advice, tech advice (any other contributors).
4. Were there any key concerns to address and was this done e.g. Applicant is a Treaty Partner.
5. Did Treaty partners raise any concerns or are they supportive, are there any issues to consider in recommending a decision that gives effect to the principles of the Treaty of Waitangi.
6. Was the application publicly notified, were there submissions, hearing, summarise this process here.
7. Is there any other relevant information the decision maker needs to know? e.g. the application is inconsistent/contrary to the; legislation, statutory planning documents, policies, position statements and if so, why the DM should or should not approve it.

Item 2

8. Permit/Licence/Lease/Easement/Authorisation for approval (DOC). Edit and delete if not required.

I recommend that you..... (Ngā tohutohu)

Further points can be added if there are other key points the Decision Maker needs to be aware of or make decisions on.

	Concession under Part 3B of the Conservation Act 1987	Decision
a)	Approve / Decline the Application. Subject to the standard concession contract and the special conditions identified in this report (if decline is recommended, state which section you are declining under).	Yes / No
b)	Add any bespoke decisions required (delete row if not required)	

Decision Maker Rational:

The Decision Maker **must provide rationale for decision made**, including but not limited to how the decision complies with section 4 of the Conservation Act 1987 and other statutory requirements.

This assists us when dealing with cases where decisions are judicially reviewed, result in a complaint to the Ombudsman or result in an OIA/ministerial letter. You don't need to put much in if you agree with the recommendations, but if you make a decision against the recommendations, then we would expect a bit more comment from you.

If in agreement example: *"I agree with the recommendations set out in this report. I am satisfied that this application meets the tests of Part 3B of the Conservation Act 1987, and that the assessment of it has been done with full regard of Section 4 of the Conservation Act 1987."*

If you do not include comments below it will be returned to you for completion.

Time spent considering application and making a decision	hrs / mins
--	------------

Permissions Advisor to input time into the Cost Recovery Tool for final processing fee and delete from final saved RDR.

Date:

[Name of Decision Maker], [Role]

Item 2

Pursuant to the Delegation dated 9 September 2015 and 7 July 2019

(Check the Conservation Act Instrument of Delegation Schedule: [DOC-2583744](#))

Released under the Official Information Act

Purpose - Te aronga

9. The purpose of this report is to bring together the relevant information and recommendations to support you to make a statutory decision.

Context - Te horopaki

10. The Applicant has applied to**activity summary**.
11. The proposed location/s are listed below. **If more than 5 locations include table in Appendix 2, include map/s if relevant in Appendix 3**

Activity	Conservation Area	Land category/status	Description of location (if applicable)
Guided Walking	Fiordland National Park	National Park	Milford Track – Glade Wharf to Clinton Hut
		Amenity Area	
		Conservation Park	
		Ecological Area	
		Government Purpose Reserve	
		Historic Reserve	
		Local Purpose Reserve	
		National Park	
		Nature Reserve	
		Recreation Reserve	
		Sanctuary	
		Scenic Reserve	
		Scientific Reserve	
		Stewardship Area	
		Wilderness Area	
		Wildlife Management Reserve	
		Wildlife Refuge	

12. The Applicant is seeking a term of [term]. This term is sought because [reason].
13. The Applicant has no outstanding or existing compliance issues. **or**

Item 2

The Applicant has outstanding or existing compliance issues **summarise**.

14. Key concerns: **Summarise key concerns, and how these are proposed to be addressed. Delete if none.**
15. A copy of the final application can be found here (**DOC**).

Treaty Partner Relationships

16. The table below summarises our engagement with Treaty partners on this application:

Treaty partner	Summary of Treaty partner engagement	Mitigations proposed by Treaty partner
Create one row per Treaty partner	This should note: <ul style="list-style-type: none">- where there was no response and if so how Te Papa Atawhai attempted to engage i.e. email or phone call, how many attempts were made, the dates of these etc.- a summary of Treaty partner view on the application	Include any mitigations proposed by Treaty partner

17. Links to full Treaty partner engagement summaries and correspondence can be found at Appendix 1.
18. **Include a summary of any other relevant considerations and how they impact the process or decision. For example; relevant Treaty Claims Settlement legislation OR context OR Marine and Coastal Area Act provisions and statutory tests, statutory overlay OR trigger documents.**

Section 4: Giving effect to the Principles of The Treaty of Waitangi - Ngā mātapono Tiriti

19. Four principles have been identified as most relevant to the work of Te Papa Atawhai: Partnership, Informed Decision-Making, Active Protection, and Redress and Reconciliation. **Assess how the principles of the Treaty of Waitangi have (or may not have) been given effect to with respect to the application process, as well as whether a particular outcome/decision can give effect to the Treaty principles. Refer to [this resource \(DOC-7675208\)](#) for detailed background on these principles, and [this guidance \(DOC-7675209\)](#) on how to consider the principles within your analysis.**
20. List any special conditions to provide for a section 4 compliant outcome **or recommendation to decline including rationale.**

Contributions

Technical Advice

21. Summarise technical advice (link to full advice can be found 'Contributions document register' in Appendix 1).
22. List bespoke conditions here, or recommendation to decline, including rationale.

Advice from District Operations

23. Summarise contributions/issues (link to full advice can be found 'Contributions document register' in Appendix 1).
24. List bespoke conditions here, or recommendation to decline, including rationale.

Summary of public notification process **Delete if not applicable**

25. Complete this section to summarise the submissions received and the views heard at the hearing. This information is provided to the Decision Maker by the Permissions Manager in a separate report (DOC).

Statutory Analysis

Complete this section for applications; for concessions under the Conservation Act 1987, the Reserves Act 1977, and/or the National Parks Act 1980 – concessions under these Acts are all managed under Part 3B of the Conservation Act 1987 and any variations under s17ZC(2) of the Conservation Act 1987 to an existing concession that are not a minor or technical change. When completing this section, incorporate analysis as a result of the submissions received and the hearing. Clearly identify where you are including the views from the public to demonstrate how these have been considered.

Section 17S: Contents of Application

Does the Application include all required information as per s17S?	Yes/No
--	--------

26. Discussion: Include if additional information was requested and not provided or if we commissioned our own report etc.

Section 17SC: Public Notification (delete if not required)

The concession application must be publicly notified if it meets any of the following criteria:

Item 2

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

Is public notification required?	Yes
----------------------------------	-----

27. Discussion: **EXAMPLE** The Applicant is applying for a lease, term exceeding 10 years, (unless it is an easement). The effects (e.g. environmental, effects on public access, potential safety concerns) of the application are considered appropriate to do so.

Section 17U(1) and (2): Analysis of effects

Is the activity consistent with s17U(1) and (2)	Yes/No
---	--------

28. Discussion: 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 discussions 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.

Note that only information relevant to the activity on public conservation land can be considered (for example, economic benefits to an area are out of scope).

Section 17U(3): Purpose for which the land is held

Is the activity consistent with s17U(3) of the Conservation Act? (that is, not contrary to the purpose for which the land is held).	Yes/No
---	--------

The following types of conservation areas are included in the application. See guidance document for examples.

Title	Section	Considerations
Conservation Park	s19 of the Conservation Act 1987	Managed to protect natural and historic resources and to facilitate public recreation and enjoyment.

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

Section 17U(4): Can a structure or facility be reasonably undertaken elsewhere?

Is the activity consistent with s17U(4) of the Conservation Act? (that is, the activity cannot reasonably be undertaken at another location or in an existing structure?)	Yes/No/NA
--	-----------

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

Section 17U(6) and (7): is exclusive possession necessary

Is the activity consistent with s17U(6) and (7) of the Conservation Act? (That is, exclusive possession is necessary)?	Yes/No
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31. Discussion: No lease may be granted unless the Minister is satisfied that exclusive possession is necessary for the protection of public safety, the protection of physical security of the activity concerned or the competent operation of the activity concerned. Section 17U(7) clarifies the competent operation includes the necessity for the activity to achieve adequate investment and maintenance.

Section 17W: Relationship between concessions and conservation management strategies and plans

Is the activity consistent with all relevant statutory planning documents?	Yes/No
--	--------

List relevant documents and sections that apply e.g. Conservation General Policy 2005, Conservation Management Strategies, Conservation Management Plans, General Policy for National Parks 2005, National Parks Management Plans, Wilderness Policy 1985.

Do not copy and paste the full section of the Act.

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

Consistency with Departmental operational policy Delete if not relevant

33. Departmental operational policy assessed:

List relevant documents and sections that apply.

Is the activity consistent with relevant operational policy documents? Yes/No

34. Discussion (if required): Explain how it is or is not consistent. Note: relevant operational policy should always be applied in order to manage legal risk in undertaking our functions.

Other relevant information Delete if not relevant

35. Discussion: Is there anything else the DM should know, e.g. similar applications granted / declined, policy in development, pending changes to legislation, cumulative effects, UNESCO provisions, Applicant comments e.g. if they are not supportive of proposed terms conditions.

Recommended Operating Conditions

36. **Term:** [state] the term you are recommending, if different from what the applicant has requested include why.

Check s17Z to ensure term is appropriate and meets the tests.

37. **Standard and Special Conditions:** No amendments to the standard conditions applied to Notified Concession are proposed. **and/or**

Additional Special Conditions are proposed to be included in this Non-notified/Notified Concession, see Appendix 3.

38. **Fees:** Detail all processing fees, activity fees, management and monitoring fees. Any fee waivers must be approved by the Commercial Manager and the approved fee waiver form linked below, with comment.

Item 2

Processing Fee: \$[insert amount] plus GST

Management Fee: \$[insert amount] plus GST

This is comprised of:

- the base rate (managing invoices and follow up): \$150.00 + GST
- rent/fee review (covers the annual portion of the three yearly rent reviews):
\$100.00 + GST
- Collection and calculation of annual activity returns: \$150.00 (<90 mins) to
\$200.00 (>90 mins) + GST
- Rates recovery: \$150.00 + GST

Activity Fee: \$[insert amount] plus GST

Appendices

Appendix 1 – Contributions document register (DOC)

Appendix 2 – Table of activity and locations

Appendix 3 – Map/s

Appendix 4 – Proposed Schedule 3 Special Conditions highlight those that are bespoke to the concession activity.

Feedback

To provide feedback on this form (suggestions for improvement, whats good, bad, what else could help you do your job) please complete the form linked below.

[Complex RDR Feedback Form](#)

Guide to completing the Recommendations and Decision Report

Context

The Recommendations and Decision Report (RDR) replaces the Decision Support Document (DSD). Permissions Advisors prepare the report with input and contributions from multiple sources. It can be tailored to suit different statutory requirements of different permission types. It is not to be used for One-off applications.

The RDR should hold key information for the Decision Maker, to support them when they make statutory decisions on permission applications. It is designed to record all key information required to analyse the permission application. The Permissions Advisor's job is to *summarise contributions* within the report and link full contributions in the Appendix.

Note: While the RDR is unlikely to be provided in whole to the Applicant, Treaty Partner or be put on the DOC website, parts of the document may be. The RDR may also be made available under the Official Information Act.

Purpose

To support the Decision Maker in making a statutory decision on a permission application.

For Decision Maker

The RDR has been designed to provide you with the information you require to make a decision on the application you are considering. The depth and breadth of information provided will be determined by you in the Context meeting (if held) and any subsequent Check In meetings (if held) – while there are some standard tasks, such as the Permissions Advisor providing an analysis of the statutory context, you will determine what other contributions are required to support you in making your decision.

Tasks you may wish to consider assigning to the Community Ranger to be recorded in the associated [Request for Comments](#) document:

- Undertaking consultation with Treaty Partners;
- Undertaking consultation with the Conservation Board;
- Providing local context about the effects of the activity;

- Checking for any situations where the land may be controlled and Managed by another authority.

When it comes to making your decision, the Permissions Advisor will have completed the 'Recommendations' box in the Executive Summary section of the RDR. You need to make your decision in the 'Decision' box and **provide your rationale for your it**.

If there is nothing contentious in the RDR, your comments can be brief. If there are differing views between DOC staff and/or DOC and Treaty Partners, or there are multiple options available, or the decision made is different to what has been recommended, the rationale for the decision made must be clearly provided.

When you have made your decision, the Permissions Advisor will communicate the decision and your rationale for it to the team members on your behalf. Community Rangers have the task of sharing the outcome with the Treaty Partner/Conservation Board if they were consulted with.

For Permissions Advisors

You are the sole writer of the RDR, other than the Decision Maker. You are responsible for ensuring the document is completed and fit for purpose.

All relevant contributions received from other resources must be summarised and incorporated into the report.

1. Summarise contributions from other resources;
2. Provide a statutory analysis;
3. Analyse Applicant comments (if received)
4. Draft proposed operating conditions, to address key concerns
5. Provide recommendations to the Decision Maker.

Summarise contributions from other resources

It is expected that you may have received contributions from District Operations, BHV, Legal (should not be referred to directly, see [doc-6970622](#)), Commercial, Management planners. These should be captured in either a 'Request for Comments' form, or some other type of document. Your job is to summarise what has been received and discuss this in the RDR. Do no copy and paste. Provide a link to the full document in the Appendix.

Provide a Statutory analysis

Check the guidance in Promapp/ SOP's and Concession Guidance documents for how to undertake this.

- When completing the statutory analysis, draw on the contribution's others have provided. You should assess the effects identified in these contributions and other relevant information against the statutory tests in the legislation. You may propose methods to avoid, remedy, or mitigate effects identified.

If you are processing an application that does not fit the template, contact a National Permissions Advisor.

Complete the Analysis of the Principles of the Treaty of Waitangi box.

Four principles have been identified as most relevant to the work of Te Papa Atawhai: Partnership, Informed Decision-Making, Active Protection, and Redress and Reconciliation. Assess how the principles of the Treaty of Waitangi have (or may not have) been given effect to with respect to the application process, as well as whether a particular outcome/decision can give effect to the Treaty principles. Refer to [this resource](#) (DOC-7675208) for detailed background on these principles, and [this guidance](#) (DOC-7675209) on how to consider the principles within your analysis.

List any special conditions to provide for a section 4 compliant outcome or recommendation to decline including rationale.

If you are processing an application that includes complex issues, contact the National Treaty Advisor.

S17U(1) and (2)

When providing the Analysis of Effects you will need to:

Check the relevant legislation, Statutory planning documents (e.g. CMS, CMP, National Park Management Plan).

You will need to provide comments on any effects you are aware of (positive or negative, temporary or permanent) on the Public Conservation Land and Waters, that need to be managed for example:

Environmental (landform, flora, fauna, freshwater, biodiversity, other, including impacts on such)

Social (noise, visual, recreational, other users of PCL&W, other)

Historic, archaeological

You must indicate which locations your comments are relevant to.

Summarise any local context/advice that you can share with the Permissions Advisor about the location/activity.

Please bullet-point any planning issues you are aware of (zoning, carrying capacity limits, back/front country limits etc.) and summarise effects.

Propose special conditions to avoid, remedy, mitigate adverse effects that are identified

Completing the RDR

- Input required information – Purpose, Context, Treaty Partner Relationships summary, S4 analysis, Summary of contributions, Statutory analysis, Consistency with departmental operations policy (if applicable), Other relevant information, Recommended operating conditions, Appendices
- Add additional context as identified by all contributors;
- Add additional context as required about the Applicant and the proposed locations;
- Generate a Cost Recovery Tool and link against the PD record;
- Delete any sections of the RDR that are not required;
- Generate a Task Register to record tasks as set by the Decision Maker following the Context meeting (if held), link to the Permissions Database record;
- Summarise the application, analysis, consultation and recommendation, key considerations, in the Executive Summary.

Statutory Analysis

Proposed Operating Conditions, Applicant comments, and Recommendations

- Identify proposed Schedule 3 conditions which apply to the proposed activity – for example, the standard conditions for guiding concessions highlight those that have been suggested by contributors.
- Draft additional special conditions that are relevant to the application (any new conditions should be peer reviewed and if complex get a legal review);

- Identify the proposed term and provide the rationale for that term if required – for example, if the term is significantly reduced from what is requested;
- Set out any monitoring that will be required – remember you will need to include instructions in the Post Approval Admin check sheet for the National Transaction Centre Team to set up tasks in the Permissions Database for the District Office to undertake the monitoring;
- Identify proposed fees – a [fee waiver](#) or a fee assessment approved by the Commercial Manager, must be linked for any fee that is not standard (processing fees) or consistent with the [Concession Activity Fee Price Book – Concession Activity Fee Price Book \(sharepoint.com\)](#)
- Section 17X(e) of the Conservation Act - Bonds, guarantors, bank surety, include discussion the Fee section, if required;
- If Environmental Monitoring Contribution Fee is required, include in Fee section.
- If Ecological Compensation is required, include in Fee section.
- Complete the Applicant comments section (if required);
- Draft recommendations to the Decision Maker;

When drafting recommendations to the Decision Maker, synthesise the information in the contributions provided in the [Request for Comments](#) document or any other consultation feedback you have received. You may evaluate the different options presented by contributions. If there are conflicting options presented by different contributors and you are not confident to make a recommendation on those options, evaluate the options for the Decision Maker to consider without making a recommendation.

If you are recommending an application, be declined, you will need to work with the legal team to draft appropriate options for the Decision Maker to consider in the Decision box.

Section 17W: Relationship between concessions and conservation management strategies and plans (To be provided at a future date)

For Community Rangers

There are three tasks you are likely to be assigned by the Decision Maker that will involve you inputting directly into the [Request for Comments](#) document:

1. Undertaking and reporting back on consultation with Treaty Partners;
2. Undertaking and reporting back on consultation with Conservation Board;

3. Providing local information relevant to the application, including about potential effects of the proposed activity.

When you are assigned a task by the Decision Maker or their delegate e.g. Stat Manager, the Permissions Advisor will ask you how long you expect the task to take. This is an estimate to help the Permissions Advisor provide a cost estimate to the applicant. When you have completed your contributions, please ensure you record your actual time spent in the [Request for Comments](#) document, so that this can be accurately cost recovered from the Applicant. Make sure to include any other resource time you may have required.

Consultation with Treaty Partners

The Request for Comments is the place to record the Consultation with Treaty Partners. Firstly, identify any Treaty Settlement implications. Secondly, summarise the consultation you have undertaken – this is important to demonstrate the efforts the Department has undertaken to engage with Treaty Partners. Thirdly, detail the outcomes of the consultation. There are questions to guide you in this.

If there are agreed triggers in place that mean you aren't required to consult with Treaty Partners on an application, you will need to note this in this section.

Local information

You may also be assigned a task to provide the local context or discuss the effects of the activity on the ground. Input this information directly into the [Request for Comments](#) document. Be clear about what information you have been asked to provide.

A key part of your contribution will be discussing the potential effects of the activity applied for. Where you propose special conditions be included, be clear about how these conditions avoid, remedy, or mitigate the effects of the activity.

For Other Contributors

If you are assigned a task by the Decision Maker, you will be required to input into either a [Request for Comments](#) form or some other contributions document. **Not the RDR.** Your task will be listed in the Task Register. Be clear about what information you have been asked to provide.

When you are assigned a task by the Decision Maker, the Permissions Advisor will ask you to estimate how long you expect the task to take. This is to help the Permissions Advisor provide a cost estimate to the Applicant.

When you have completed your contributions, please ensure **you record your actual time** spent in the contributions document, so that this can be accurately cost recovered from the Applicant.

Resources

- Nintex (ex Promapp)
- Wildlife Act Recommendation and Decision Report template: [DOC-7688947](#)
- Standard Recommendation and Decision Report template: [DOC-7688941](#)
- Complex Recommendation and Decision Report template: [DOC-7688946](#)
- Request for Comments template: [DOC-7693518](#)
- Permissions Contribution documents register for – RDR template: [DOC-7690126](#)
- Guide to sending Recommendation and Decision Report to Applicant for comment: [DOC-3000114](#)

Notified Process

For more information about publicly notified applications, see [DOC-3216912](#) (s17SC process description) and [DOC-5479090](#) (notified application quick links).

Standard and Complex types of permissions

Appendix – Standard and Complex Criteria for Permissions

Category	Examples	Strategic objective	Current state	Future state features	Short term actions	Resources
Standard <i>Effects largely known, iwi interests are to be woven in, long term interests not created</i>	Access, aircraft, collection, easements, events, films, gravel extraction, grazing, live wildlife permits, mining, marine mammal research and viewing, pest control, research on wildlife and in marine reserves, sounds foreshore licences, telecommunications	Timely decisions that are national consistent	<ul style="list-style-type: none"> Currently merged with complex re process, leading to overcooking 	<ul style="list-style-type: none"> National regulatory position statements Technical guidelines Template decision documents Tailored standard conditions Quality assurance and peer review within ORS Spot monitoring 	<ul style="list-style-type: none"> Project manage for speed Batch up decisions Horizontal quality assurance and peer review Technical guidelines Design decision templates Design standard & standard special conditions (<i>the cyclone model</i>) 	<ul style="list-style-type: none"> Statutory analysis Community rangers Operations managers Technical guidelines and standard conditions with Bio, Heritage & Visitors Templates with Legal Operational policy
Novel, complex or risky <i>Iwi interests conflict, publicly financed, safety, third party assets, CMS/CMP silent, clash with General Policy, Historic commitment, International obligations</i>	Long term ski fields, structures and private accommodation	Thorough statutory analysis, transparent process, and nuanced decision making High level assurance	<ul style="list-style-type: none"> Treaty principles – lack confidence, capability Historic promises not kept Low risk appetite Inertia Lack of visibility - double handling Reactive issue management 	<ul style="list-style-type: none"> Bespoke engagement and consultation with iwi, hapu, whānau Bespoke analysis and conditions Peer review Vertical quality assurance Compliance monitoring 	Establish the disciplines of: <ul style="list-style-type: none"> Triage Quality and peer review assurance Senior leader visibility and assurance Assurance practices: inform, review and learn, report 	<ul style="list-style-type: none"> Legal Treaty Relationships Statutory analysis Technical experts Project management Community rangers Senior Managers Regulatory assurance

Purpose for which the land is held - considerations

Title	Section	Considerations
NATIONAL PARK ACT 1980		
National Park		
CONSERVATION ACT 1987		
Specially protected areas		
Conservation Park	s19	Managed to protect natural and historic resources and to facilitate public recreation and enjoyment.
Wilderness area	s20	Conformity with conservation management strategy/plan and desirable or necessary for preservation of indigenous natural resources. Note restrictions in 20(1), but these are subject to Ministerial authorisation.
Ecological areas	s21	Managed to protect value for which area is held.
Sanctuary areas	s22	Preserve in their natural state the indigenous plants and animals in it, and for scientific and other similar purposes.
Watercourse areas	s23	Held for conservation purposes; or a reserve classified pursuant to section 16 of the Reserves Act 1977; or held under section 21(2)(a) of the QEII National Trust; or subject to s23(1)((d) provisions.
Amenity areas	s23A	To protect its indigenous natural resources and its historic resources; and contribute to and facilitate people's appreciation of its indigenous natural resources and its historic resources; and, to foster the recreational attributes of the area.
Wildlife management areas	s23B	To protect its wildlife and wildlife habitat values (including the capacity for the movement of wildlife, genetic material of indigenous plants, and genetic material of wildlife); and its indigenous natural resources and its historic resources are protected.
Marginal strip	s24C	Held for conservation purposes, in particular the maintenance of adjacent

		<i>watercourses or bodies of water; and the maintenance of water quality; and the maintenance of aquatic life and the control of harmful species of aquatic life; and the protection of the marginal strips and their natural values; and to enable public access to any adjacent watercourses or bodies of water; and for public recreational use of the marginal strips and adjacent watercourses or bodies of water.</i>
<i>Stewardship area</i>	<i>s25</i>	<i>Natural and historic values are protected.</i>
RESERVES ACT 1977		
<i>Recreation reserves</i>	<i>s17</i>	<i>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 emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside.</i>
<i>Historic reserves</i>	<i>s18</i>	<i>For the purpose of protecting and preserving in perpetuity such places, objects, and natural features, and such things thereon or therein contained as are of historic, archaeological, cultural, educational, and other special interest.</i>
<i>Scenic reserves</i>	<i>s19</i>	<i>For the purpose of protecting and preserving in perpetuity for their intrinsic worth and for the benefit, enjoyment, and use of the public, suitable areas possessing such qualities of scenic interest, beauty, or natural features or landscape that their protection and preservation are desirable in the public interest; and for the purpose of providing, in appropriate circumstances, suitable areas which by development and the introduction of flora, whether indigenous or exotic, will become of such scenic interest or beauty that their development, protection, and preservation are</i>

Item 3

		<i>desirable in the public interest.</i>
<i>Nature reserves</i>	<i>s20</i>	<i>For the purpose of protecting and preserving in perpetuity indigenous flora or fauna or natural features that are of such rarity, scientific interest or importance, or so unique that their protection and preservation are in the public interest.</i>
<i>Scientific reserves</i>	<i>s21</i>	<i>For the purpose of protecting and preserving in perpetuity for scientific study, research, education, and the benefit of the country, ecological associations, plant or animal communities, types of soil, geomorphological phenomena, and like matters of special interest.</i>
<i>Government purpose reserves</i>	<i>s22</i>	<i>For the purpose of providing and retaining areas for such government purpose or purposes as are specified in any classification of the reserve.</i>
<i>Local purpose reserves</i>	<i>s23</i>	<i>For the purpose of providing and retaining areas for such local purpose or purposes as are specified in any classification of the reserve.</i>

Appendix 1 – Contributions

	Contributor name (District and role)	Document description	DOC link e.g. DOC-1234567
NNI Region	<i>Kaitaia District</i>	<i>Request for Comments</i>	
	<i>Bay of Islands District</i>	<i>Request for Comments</i>	
	<i>Kauri Coast District</i>	<i>Request for Comments</i>	
	<i>Whangarei District</i>	<i>Request for Comments</i>	
Auckland Operations Region	<i>Great Barrier/Aotea District</i>	<i>Request for Comments</i>	
	<i>Auckland Inner Islands District</i>	<i>Request for Comments</i>	
	<i>Tāmaki Makaurau/Auckland Mainland District</i>	<i>Request for Comments</i>	
HWT Region	<i>Whitianga District</i>	<i>Request for Comments</i>	
	<i>Hauaki District</i>	<i>Request for Comments</i>	
	<i>Waikato District</i>	<i>Request for Comments</i>	
	<i>King Country District</i>	<i>Request for Comments</i>	
	<i>New Plymouth District</i>	<i>Request for Comments</i>	
ENI	<i>Tauranga District</i>	<i>Request for Comments</i>	
	<i>Whakatane District</i>	<i>Request for Comments</i>	
	<i>Rotorua District</i>	<i>Request for Comments</i>	
	<i>East Coast District</i>	<i>Request for Comments</i>	
Te Urewera Region	<i>Te Urewera District</i>	<i>Request for Comments</i>	
CNI Region	<i>Taupo District</i>	<i>Request for Comments</i>	
	<i>Turangi District</i>	<i>Request for Comments</i>	
	<i>Tongariro District</i>	<i>Request for Comments</i>	
	<i>Whanganui District</i>	<i>Request for Comments</i>	
LNI Region	<i>Hawkes Bay District</i>	<i>Request for Comments</i>	

	Contributor name (District and role)	Document description	DOC link e.g. DOC-1234567
	<i>Manawatu District</i>	<i>Request for Comments</i>	
	<i>Wairarapa District</i>	<i>Request for Comments</i>	
	<i>Wellington District</i>	<i>Request for Comments</i>	
NSI Region	<i>Golden Bay District</i>	<i>Request for Comments</i>	
	<i>Sounds District</i>	<i>Request for Comments</i>	
	<i>Motueka District</i>	<i>Request for Comments</i>	
	<i>Nelson Lakes</i>	<i>Request for Comments</i>	
	<i>South Marlborough District</i>	<i>Request for Comments</i>	
WSI Region	<i>Buller District</i>	<i>Request for Comments</i>	
	<i>Greymouth District</i>	<i>Request for Comments</i>	
	<i>Hokitika District</i>	<i>Request for Comments</i>	
	<i>South Westland District</i>	<i>Request for Comments</i>	
ESI Region	<i>North Canterbury District</i>	<i>Request for Comments</i>	
	<i>Mahaanui District</i>	<i>Request for Comments</i>	
	<i>Geraldine District</i>	<i>Request for Comments</i>	
	<i>Twizel District</i>	<i>Request for Comments</i>	
	<i>Aoraki Mt Cook District</i>	<i>Request for Comments</i>	
SSI Region	<i>Central Otago District</i>	<i>Request for Comments</i>	
	<i>Coastal Otago District</i>	<i>Request for Comments</i>	
	<i>Wakatipu District</i>	<i>Request for Comments</i>	
	<i>Te Anau District</i>	<i>Request for Comments</i>	
	<i>Murihiku District</i>	<i>Request for Comments</i>	
	<i>Rakiura District</i>	<i>Request for Comments</i>	

Item 3

	<i>Contributor name (District and role)</i>	<i>Document description</i>	<i>DOC link e.g. DOC-1234567</i>
<i>Biodiversity Tech Advisor</i>			
<i>Heritage Tech Advisor</i>			
<i>Visitor Tech Advisor</i>			
<i>Legal</i>			
<i>Commercial Advisor</i>			
<i>Other</i>			

Feedback

To provide feedback on this form (suggestions for improvement, what's good, bad, what else could help you do your job) please complete the form linked below.

[Request for Comments Feedback Form](#)



Department of
Conservation
Te Papa Atawhai

MAKING GOOD DECISIONS

A RESOURCE FOR DECISION-MAKERS,
PERMISSIONS ADVISORS AND ALL STAFF
INVOLVED IN STATUTORY DECISION-MAKING

ACKNOWLEDGEMENTS

This document incorporates a large amount of material from the Ministry for the Environment's "Making Good Decisions" programme, for Resource Management Act Hearing Commissioners (adapted here for use in the context of concessions). The department would like to thank the Ministry for making this information available for use.

Module 1 incorporates a lot of material from "The Judge Over Your Shoulder; A Guide to Judicial Review of Administrative Law Decisions" (2005; Crown Law).

Contents

INTRODUCTION.....	4
STRUCTURE OF THIS RESOURCE	5
OVERVIEW.....	5
Glossary.....	7
MODULE 1: THE PRINCIPLES OF GOOD DECISION MAKING	8
[1] OVERVIEW OF MODULE	9
[2] ILLEGAL / UNLAWFUL.....	10
[3] UNFAIRNESS	13
[4] UNREASONABLENESS	20
[5] ATTITUDES AND BEHAVIOURS	20
MODULE 2: CONCESSION DECISION MAKING FRAMEWORK	22
[1] OVERVIEW OF MODULE	23
[2] TYPES OF CONCESSIONS	23
[3] WHAT MUST AN APPLICATION INCLUDE?	24
[4] THE CONCESSION PROCESSING SOP	26
[5] RELEVANT MATTERS TO CONSIDER IN DECIDING WHETHER TO GRANT A CONCESSION.....	26
[6] SITUATIONS WHEN A CONCESSION SHALL NOT BE GRANTED (MANDATORY DECLINE).....	33

[7] SITUATIONS WHEN A CONCESSION APPLICATION MAY BE DECLINED (DISCRETIONARY DECLINE)	35
[8] THE REPORT	36
[9] CONDITIONS	36

INTRODUCTION

On behalf of the department, thank you for reading this Good Decision Making resource, based on the award-winning Making Good Decisions¹ training, assessment and certification programme for decision-makers under the Resource Management Act 1991 (RMA). Whether you are a permissions advisor or Decision-maker, your role in implementing the concessions and other permissions processes is vital to its success, and to its perception in the community as a success.

Many of the principles you will cover in this resource apply to decision-making not only for concession decision making but also statutory planning related matters i.e. hearings for Conservation Management Strategies and National Park Management Plans.

Decisions on concessions affect the lives and livelihoods of applicants, submitters and whole communities. The decisions DOC makes on individual proposals are certainly of local significance and in some cases will be of regional or even national significance. The effect of all the collective decisions around the country can also be of national significance, and this is part of the motivation behind this resource.

To do their job well, decision-makers and permissions advisors need to have at their disposal the skills, knowledge and confidence to write reports, process a great deal of information and opinion, and make decisions that are consistent with Part 3B of the Conservation Act 1987.

The department has established this resource with these main aims:

- to improve the quality and consistency of the decision-making for concessions;
- to ensure permissions advisors have the skills, knowledge and confidence to make robust recommendations;
- to build capacity by providing decision-makers with the skills, knowledge and confidence to make informed, well-founded decisions;

□

¹ The Making Good Decisions programme received the Resource Management Law Association's Supreme Award for 2005, the New Zealand Planning Institute's Award of Merit for 2006, and the University Continuing Education Association's Region West Outstanding Non-Credit Programme for 2007. The programme was also a finalist in the public service category of the 2005 BearingPoint Innovation Awards. In 2010 the Recertification programme was recognised by the University Continuing Education Association and awarded the Outstanding Program – Non credit Award.

- to secure the confidence of applicants, submitters and communities in local decision-making processes under the concessions provisions.

Regardless of how much experience you have, it is important to periodically review and update your knowledge, reflect on issues, learn from the experience of others, and perhaps help others learn from your experience. In this way, we will be able to collectively 'lift the bar' in terms of performance around the country.

Thank you again for your investment of time and effort to achieve the above outcomes. Good luck.

STRUCTURE OF THIS RESOURCE

This resource is presented in a series of modules and each module contains:

- an overview of the topic
- learning objectives
- examples
- key points
- good practice tips.

We hope you will find the material presented in these modules a useful reference for many years to come.

You might like to make notes on the pages or to insert additional sheets. Please do make this manual your own. The aim is for this workbook to be a working document, one you can annotate, recording your own thoughts and the views of others. We also hope that the resource becomes a useful compendium for the future.

OVERVIEW

This resource takes you through the ethical, legal and practical basis of report writing, Chairing and decision making within the framework of Part 3B of the Conservation Act 1987. It explains your role and the role of others in the decision making process. It provides guidance to help you deal with complex procedures, examine and evaluate evidence, draft sound reports, and make sound decisions. The resource is presented module by module, with each module dealing with a

discrete topic. In the sections that follow we provide a summary of each module.

MODULE 1: THE PRINCIPLES OF GOOD DECISION MAKING

Underpinning every report, hearing and decision is the concept that all recommendations and decisions must be lawful, fair and reasonable.

Natural justice relates to the elements of fairness in a process. A fair process is one where there can be no suggestion that the decision was made in any way other than on its merits. This module deals with those aspects of natural justice and fair process that relate to decision making under Part 3B of the Conservation Act 1987.

At the heart of natural justice lie ethics. In this section the ethics of transparent decision making and conflicts of interest are covered. The attitudes and behaviours that convey our ethical principles are also outlined.

MODULE 2: CONCESSION DECISION MAKING FRAMEWORK

This module gives an overview of the statutory framework of Part 3B of the Conservation Act 1987. The aim is to ensure that, as a permissions advisor, hearing Chair (or panel member) or Decision-maker, you understand the purpose and principles of Part 3B of the Conservation Act 1987 and the key sections relevant to making decisions on concession applications and hearing any submissions.

The following module will be added in time:

MODULE 3: DOC'S RESPONSIBILITIES AS A TREATY PARTNER

Glossary

Decision

A decision that must be made, as a requirement of an Act, by the Minister of Conservation under delegation to a member of Department of Conservation staff – a statutory decision.

Decision-maker / Delegate

The person who holds the power to make a decision (as above) under a particular section in a particular Act. DOC must be clear that the correct person is exercising any delegated power.

Minister

Minister of Conservation, the Acts often refer to the Minister as the decision-maker however this power is delegated formally to Departmental staff according to the delegations list for the appropriate Act.

CA87 / CA

Conservation Act 1987.

Permissions advisor

In this document the phrase 'permissions advisor' refers to any who is writing a report that includes a recommendation for a delegated decision-maker on which to make a decision. It includes rangers or other staff who are undertaking functions that require them to make recommendations to a delegated decision-maker.

MODULE 1: THE PRINCIPLES OF GOOD DECISION MAKING



[1] OVERVIEW OF MODULE

This module sets out the general principles to be applied to all situations – how these general principles fit the concessions process is explained in Module 2.

Maintaining integrity of decision-making

To maintain the integrity of the decision-making (and to avoid legal challenge of the decision by way of judicial review), it is critical that the decision-makers strictly follow administrative and natural justice principles. In summary these require, the decision-makers all times to remain neutral, impartial, objective and be careful not to create any perception of conflicts of interest (either directly or indirectly) or to make commitments or raise expectations of a certain outcome.

Any decision-makers must be well informed of and follow the requisite statutory process, be confident of his/her power to make the decision and apply the statutory considerations or constraints when making the decision. A sound and defensible statutory decision will be one that is fair and reasonable in the circumstances and not tainted by notions of illegality, improper purpose, irrelevant considerations, errors of fact, bias, pre-determination, or acting under the direction or influences of others. The presence of any of these matters will likely result in the decision being set aside for reasons of unfairness, illegality or unreasonableness.

In terms of communications (in advance and during the decision-making process), any directly affected or interested person, group or organisation or any other external party - a decision-maker must be careful to remain neutral and impartial. This will generally mean that it is inappropriate to meet or engage with such people because it could lead to allegations that the final decision was motivated by one of the grounds above, especially bias or predetermination. Of course, there will be times where engagement is unavoidable or otherwise required in order to maintain relationships, but in those cases it is important that the decision-maker clearly stipulate that while she is prepared to listen - it would be inappropriate to comment.

It would be advisable for a decision-maker to seek legal advice if considering whether to meet with an interested or affected party.

Underpinning every report, hearing and decision is the concept that decision-makers have obligations to the public in terms of how decisions are made. It is important to recognise that anyone can apply to the High Court to have a statutory decision judicially reviewed. If this happens the court will look at the process itself to decide if the decision was a) illegal, b) unfair or c) unreasonable. This section expands on these principles.

Please note that following the concessions processing SOP and all related guidance is how we show a court that DOC has followed these principles.

Learning objectives

- To understand the importance of the principles of good decision making and how they guide the entire concession process.
- To understand the situations in which a decision can be unlawful.
- To understand what is meant by ‘a fair process’.
- To be able to identify and deal with conflicts of interest.
- To know how ethical values and behaviour influence a fair hearing process.
- To be able to identify how a decision can be unreasonable.

[2] ILLEGAL / UNLAWFUL

A decision may be found to be unlawful when whoever made the decision got the law wrong. Seeking assistance from a solicitor is the best way to guard against this. There are a number of bases where a court might hold that the decision may be unlawful and therefore ultra vires.

These are:

Legal error - not applying the law correctly. It is important that the decision-maker get the law right. A court will focus on laws that are directly relevant to the decision, or “materially affects” a decision, not a minor technical error. To help ensure this is followed the report to the decision-maker needs to be very clear as to which laws must be applied and how.

The decision is made for an improper purpose under the relevant statute. If a power granted for one purpose is exercised for a different purpose, that power has not been validly exercised. Even where a statute seems to confer very wide discretion to the decision-maker, the court will consider that the discretion has not been properly exercised if the decision is outside

the purpose or the spirit of the Act² - for example consider the purpose of the Conservation Act, DOC's and the Minister's role (among many things) is to manage public conservation land for conservation purposes and allow tourism – it is not within the ambit of that to ensure a tourism business is profitable.

The decision fails to take into account relevant matters. The report must contain an analysis of all relevant matters and the decision must only be based on these. The permissions advisor must ensure they confirm each time what is a relevant matter and include it for consideration. Usually this is the same set of criteria – as set out in Part 3B of the Conservation Act, however it is not an exhaustive list and the concessions processing SOP contains much more extensive details of the things to consider (this is all discussed in depth in Module 2).

Sometimes there will be matters that are unique to a particular application that must be considered, as well as matters that arise during report writing. For example the decision-maker was required to consider the financial viability of the business as part of the application for the Milford Dart tunnel – this was to satisfy the decision-maker that if there was a chance that such a large business venture failed the business operations including the infrastructure would not be left to the Department to deal with.

The decision takes into account irrelevant matters. Conversely, the report must not include information that is not relevant to the concession being applied for. Any number of issues are irrelevant and to keep them out of the decision-making we do it by reference to only those matters which are relevant. If the decision is based on matters that are not pertinent to the application, a court may find that the decision is unlawful. An example of this would be if a decision to grant an application was based on the belief that allowing a particular concession would improve the economy of a nearby town, or declining an application for a wind farm because people in the local area are against it due to noise concerns at their property.

Factual error - getting the facts wrong. A court in a judicial review is generally concerned with the process by which a decision was reached. However, it may find unlawfulness if a decision was made on the basis of a serious factual error. A mistake of fact must be central to the decision and an established fact rather than a matter which is disputed.³ Permissions

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² "The Judge Over Your Shoulder; A guide to judicial review of administrative law decisions" (2005; Crown Law) at 10.

³ Ibid at 7.

advisors and Decision-makers must be careful to get the facts right. This will ensure that the final decision is supported by proper evidence. For example DOC might decline an application where it interpreted the location as a nature reserve but it was actually a conservation area where the application could have been approved.

Rigidly applying a policy without regard to the merits of the case. The only way the Minister is absolutely directed to do (or not do) something is via the law, bylaws or regulations. A Decision-maker is entitled to adopt a policy as a guide, but is not permitted to apply that policy so rigidly as to exclude the merits of an individual case – the Minister must always keep an open mind when making a decision – his/her discretion cannot be “fettered” by prohibitions (explicitly or otherwise) in policy documents.

That said; policies in statutory planning documents – conservation management strategies, conservation management plans and national park management plans – provide a strong expectation of a particular outcome as they have been developed as part of a public process⁴. All the policies in these are phrased as a ‘should’ not a ‘must’. “Should” is defined to mean that the Minister can only exercise discretion (ie can only divert from the policy or rule) when there are ‘exceptional circumstances’. Exceptional circumstances can only be assessed at the time in the particular situation but it is a very high test – a CMS, CMP or NPMP cannot be ignored lightly by a decision-maker. See further in Module 2.

Other DOC policies and guides are important tools to ensuring consistency in decision making, but a lesser test than “strong expectation of outcomes” and “exceptional circumstances” will be applied.

The decision-maker acts under dictation from someone else. Acting under dictation can happen if a decision-maker purports to make the decision themselves but allows someone else to have a decisive say in the matter, or follows a direction from someone on what decision to make, or that a decision is a ‘rubber stamp’ for another person. Decision-makers may consult and receive advice from others, but they must personally make the final decision.

Invalid delegation. This happens if the right person does not exercise the power to make a decision. If a power to make a decision has been delegated, for example from the Director-General to a manager, the delegation needs to be in the Instrument of Delegation on the

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⁴ Office of the Ombudsman: Investigation of DOC renewal of Routeburn Track concession, Final Opinion ref:361523 para 45

Intranet and clearly follow the terms of the empowering Act. What this means is that only a person with the piece of paper saying they have been delegated the power to make decisions can actually make those decisions and sign the decision. A person can “Act” for another however they must have been given the delegations on that piece of paper. What is not acceptable is for a person to exercise a statutory power when the delegate isn’t there – eg a concession or other permission cannot be “pp’d” by a senior ranger when the delegated decision-maker is out of the office. The exercise of the power must be passed to someone else who also holds the delegation. See the intranet for the Delegations List for each Act.

Key points

Unlawfulness arises when whoever made the decision got the law wrong. There are several reasons why a decision may be found to be unlawful. These are:

- When a decision is made for an improper purpose under the relevant statute.
- Not applying the law correctly.
- The decision fails to take into account relevant matters.
- The decision takes into account irrelevant matters
- Getting the facts wrong.
- Rigidly applying a policy without regard to the merits of the case.
- The decision-maker acts under dictation from someone else.
- Invalid delegation.

[3] UNFAIRNESS

Natural Justice

Natural justice is based on the theory that deep down we all know right from wrong – the natural law – and those who know the natural law will use principles of natural justice. The theory of natural justice has evolved into the concept of legal rights to which everyone is entitled and is the basis of democracy. Parties trust that decisions will be made on the basis of merit. The parties have an expectation that decision-makers will behave properly, and that any breach of

natural justice will result in the process being reconsidered by a different decision-maker. Such an outcome is not only expensive but can discredit the Department of Conservation and the specific decision-makers.

In this context natural justice relates to report writing, hearings and decision making conducted under all the Acts DOC is responsible for eg Conservation Act 1987, Reserves Act 1977 etc, and requires the following:

- Everyone who makes an application should expect a consistent process with all other applicants;
- No one should be judge and jury in their own case. The decision-maker should not have an interest in the outcome;
- Everyone who is a 'party to proceedings' has a right to be heard;
- Everyone who is a party to a hearing should be able to hear what everyone else is saying;
- There should be adequate opportunity to respond to a recommendation or decision.

Section 27 of the New Zealand Bill of Rights Act 1990 provides:

(1) Every person has the right to the observance of the principles of natural justice by any tribunal⁵... which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.

Section 27 applies, by virtue of section 29 of the Bill of Rights Act 1990, to any legal person as well as to any natural person.

Fair Process

Ensuring that natural justice has been complied with and that there has been a fair process are probably two of the most important elements of concession processing. The assessment process is often not seen by external parties therefore a high standard must be upheld to retain the integrity of the Department's reputation. A lapse from high standards may affect the whole concession process.

Fair process arises from the principles of natural justice. Some examples of where the provision

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⁵ Tribunal includes a decision-maker on a concession

of fair concession processing can be compromised include:

- An applicant was not given the chance to comment on or correct misinterpretations of facts (or law) by the permissions advisor prior to a decision being made;
- Application X was received prior to application Y but application Y was processed first and was granted the rights that application X would have received;
- people have a right to know how and why a decision was made– it must be transparent;
- the decision-maker, permissions advisor (or indeed any staff involved in the process or decision-making) had a perceived or real conflict of interest or bias;
- a party was not given proper notice of the matter to be heard (notified processes);
- a party was not told of the hearing time and place (notified process);
- a party was not able to present their case (notified processes);
- the decision dealt with a subject that did not fall within the matter before the hearings panel(notified process);
- the hearing Chair was not appropriate to sit on the particular hearing (notified process).

A decision-maker cannot refuse to exercise a discretionary power in circumstances where the decision-maker is under a duty to do so, nor can they unreasonably delay the making of a decision.

Bias

To keep themselves safe and maintain a fair process, those processing concession applications, conducting hearings and making decisions should be alert to every possibility or perception of bias. In practical terms this means that decision-makers should not discuss the matter with the applicant, or other parties that may submit, at any time after the application is made. Even then, decision-makers who have had informal discussions with the parties or even others not involved in the application (such as the media) may wish to disqualify themselves rather than be thought to be biased.

Indications of possible bias include:

- words or actions that might indicate a foregone conclusion;

- consulting one tangata whenua group and not another;
- consulting one stakeholder group and not another;
- having a close friendship or a business relationship with an applicant or being known to be disparaging of an applicant;
- allowing one party to give evidence and restricting the rights of another (notified process);
- being formal with one party while being informal or familiar with another;
- requiring strict proof from one party and relying on local knowledge for another.

Even a perception of bias may be sufficient to damage the credibility of an officer's report, hearing or decision. For example, in *Barefoot v Auckland City Council* (A160/06) some of the hearing commissioners for a resource consent process attended a presentation by the Applicant on an issue directly related to the issue in the consent application that the Environment Court held:

"We are not suggesting that actual bias was present in this case, but public perceptions of bias can only decrease confidence in the Council's decisions, and increase the prospects of appeals to this Court"

Care must be taken when deciding to limit information on which a recommendation is made so as not to restrict to information that has a bias. The permissions advisors will liaise with the legal team to ensure the report is complete but does not contain irrelevant information. In hearings, take care when limiting repetition or restricting submissions, as discussed further in Module 7 under 'Speaking rights'. People whose rights are under consideration are usually more sensitive than most, and are quick to spot behaviour that indicates favouritism.

Legitimate Expectation

An applicant expects that they will be treated in the same way they have been treated previously, or in the same way that other applicants are treated, or according to a promise or assurance. This is what we call "consistency" – the same process considering the same issues in the same way according to the rules of administrative law and the applicable Acts. This does not mean every time the outcome will be the same – that will depend on the facts – where, how and by whom the activity will be undertaken.

Legitimate expectation is often confused with a 'precedent'. However, because each concession is judged on its merits in the circumstances at the time, previous concession decisions are not

considered precedents. Therefore if all the circumstances and facts of a particular application are the same as a previous case then the outcome would likely be the same.

Lack of consultation

NB: This is not related to the Crown's responsibility under the principles of the Treaty of Waitangi to make informed decisions and the consultation DOC undertakes to ensure the decision is informed of cultural perspectives – that is discussed in Module 3.

The Department must approach consultation honestly and be open to changing its mind, however consultation is not a negotiation or a way of forming an agreement it is a way of gathering views which are then part of the final consideration and decision. For DOC this usually refers to consultation with the Conservation Board, and is to be done by the operations rangers as part of the process and will be incorporated into the report by the permissions advisors as relevant.

Conflict of Interest

A conflict of interest can arise when two different interests overlap. Permissions advisors, hearing chairs, decision-makers and other Departmental staff involved in processing concessions may have business interests, or hold strong personal views on business, development or environmental issues. This can bring them into situations where conflicts of interest may arise, or where *perceptions* of conflicts of interest may be held by applicants or other interested parties. In these cases, a clear and consistent process for addressing conflicts of interest is required.

The department has a policy on conflicts of interest entitled "Conflict of Interest Declaration for concessions and other applications" and staff members and decision-makers involved with concession decision making need to read and sign the declaration each time they are involved in a concession process.

Conflicts of interest are often difficult to determine. They can be a matter of perception rather than reality, where other parties are concerned. In the end, if a decision is to have any credibility, then it is the *perception* of potential conflicts that must be given greatest consideration. If there is any *suggestion* of a conflict of interest, then decision-makers should have a process for addressing the issue; namely by:

- seeking advice (from solicitors);
- excusing themselves from the decision making process or as a decision-maker where

perceptions of conflict are unlikely to be overcome or there are clear cases of conflict;

- making declarations⁶ as to their interests at the earliest possible stage (especially if not evident at first).

Examples of conflicts of interest

Business interests that are either in competition or collaboration with; or personal involvement with the applicant or a submitter would seriously compromise an individual's credibility as a permissions advisor/impartial hearing Chair/decision-maker.

If you are a member of an organisation that is making an application, or submitting in opposition or support of a proposal, this is also a good reason to excuse yourself from the process or from making the decision.

If you belong to a society or organisation that is an interested party to the outcome or process, take care to avoid any suggestion of a conflict of interest. If you are an owner or on the executive of such an entity, then a conflict of interest may arise and you should excuse yourself from the process or making the decision. If you are a minor shareholder or belong to a large organisation involved in the proceedings, but you take no active part in the raising of issues directly relevant to the application by that organisation, it is less clear that a conflict of interest would arise. In such situations it is wise to disclose any interest before a process starts and call for any objections. A decision can then be made as to whether you should excuse yourself.

As well as the department's own conflict of interest policy, the Auditor-General has published a booklet entitled *Managing Conflicts of Interest: Guidance for public entities*. Those involved with concession decision making should be familiar with the principles set out in this guide.

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⁶ See standard Conflict of Interest Declaration for Concessions and other applications, docdm 1017632

Key points

The following are key elements of natural justice relevant to a concession process:

- No one should be judge and jury in their own case. The decision-maker should not have an interest in the outcome.
- There should be no possibility or even perception that anyone involved in or deciding an issue is biased
- Processes must be transparent and people are entitled to know why a decision has been made.
- Everyone who is a party to proceedings has a right to be heard. This concept includes providing an opportunity to present a case (including adequate notice) and to have the case decided fairly.
- Everyone who is a party to proceedings should be able to hear what everyone else is saying.
- Permissions advisors and decision-makers must focus on the facts of the particular case and put aside personal views and positions;
- It must be clear to all concerned that decisions are made without favouritism given to any party or position;
- It is the *perception* regarding potential conflicts of interest that must be given greatest consideration. Whether you are a permissions advisor, hearing chair, hearing panel member or a decision-maker, if there is any suggestion of a conflict of interest then you should seek advice (from solicitors) and after seeking legal advice, either:
 - excuse yourself where perceptions of conflict of interest are unlikely to be overcome or there are clear cases of conflict; or
 - where the situation is less clear cut making declarations at the earliest possible stage as to their interests and seeking interests and seeking the views of applicants and possible participants in the hearing of the appropriateness of their involvement.

[4] UNREASONABLENESS

A decision-maker must act in a reasonable way and the decision he or she makes must rely on some reasonable basis. There is a high threshold to prove unreasonableness in a court of law. It is more likely a decision would be considered unfair or unlawful rather than unreasonable. For a decision to be unreasonable, it must be so perverse, absurd or outrageous that Parliament could not have contemplated such a decision being made.⁷ To make out unreasonableness the decision must be shown that no reasonable person could have come to that conclusion therefore the only inference is that the decision-maker has misused their power of discretion.

Unreasonableness can come from both the decision making process as well as the outcome of the decision. The means that it is not just up to the decision-maker to act reasonably; the permissions advisor must rely on true and reasonable information in drafting the concession report.

[5] ATTITUDES AND BEHAVIOURS

During the course of a concession process the conduct of departmental staff has a bearing on the perception of fairness.

Concession process

The key characteristics that are helpful to display are:

- genuine interest
- even-handedness
- patience
- attentiveness
- firmness
- flexibility
- practicality

Maintaining appropriate behaviour is directly related to certain underlying attitudes and skills,

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⁷ The Judge over your Shoulder: A guide to Judicial Review of Administrative Decisions. Crown Law Office

including:

- enough understanding to ask relevant questions
- the persistence to explore issues until they are well understood
- a desire to ensure that applicants and staff understands the process
- an understanding of broader policy commitments and the 'bigger picture'
- humility (don't assume you know all you need to know)

All department staff involved in a concession process can and should take responsibility for upholding the integrity of the system. This applies not just to declaring potential conflicts of interest, but also to how departmental staff members conduct themselves. Any behaviour that undermines the fairness or integrity of the process should be challenged. If the behaviour of another departmental staff member is inappropriate, this issue is best raised with managers as soon as possible.

Key points

- The perception and reality of consistency and impartiality depend on the behaviour and demonstrated attitudes of permissions advisors, decision-makers and all department staff involved in the concession process
- Key characteristics of appropriate behaviour need to be demonstrated at all times during a concession process
- Decision-makers must avoid any indication or evidence of pre-determination

**REMEMBER IF YOU FOLLOW THE SOP AND THE GUIDANCE
DOCUMENTS YOU WILL BE ON SAFE GROUND**

MODULE 2: CONCESSION DECISION MAKING FRAMEWORK



[1] OVERVIEW OF MODULE

This module gives an overview of the statutory framework for concessions, contained in Part 3B of the Conservation Act 1987 (CA). Part 3B is an umbrella part that covers granting of concessions under not only the Conservation Act but also the Reserves Act 1977, the National Parks Act 1980, the Wildlife Act 1953 and the Wild Animal Control Act 1977. The aim is to ensure that you understand the purpose and principles of Part 3B of the CA and the key sections relevant to making decisions on concession applications. This section is important for all permissions advisors as well as decision-makers themselves.

Learning objectives

To understand structure and application of Part 3B of the Conservation Act 1987, in particular:

- Types of concessions (leases and licences, permits and easements)
- What must an application include
- Relevant matters to consider
 - Purpose for which the land is held
 - Consistency with management strategies and plans
 - Effects – and methods to avoid, remedy or mitigate adverse effects
 - Other matters
- Situations when a concession **shall not** be granted
- Situations when a concession **may not** be granted
- How to write conditions

[2] TYPES OF CONCESSIONS

Any person (and this includes a legal person ie a company or incorporated society) can make an application for a concession. Concessions come in the form of a lease, licence, easement or permit.

A *lease* (as defined in the Act) gives an exclusive interest in land – this means that a

concessionaire can decide who has access to that land. The best way to think about this is that if the concessionaire is able to exclude people from using the land (eg close the door, lock a gate, put up a barrier, or erect a building of any kind ON the land) then the concession should be a lease. Some examples of leases are ski fields; lodges or a private/club huts; someone renting a historic building for retail purposes.

A *licence* (as defined in the Act) is either a:

- “profit a prendre” – a non-exclusive grant that gives the right to take something from the land or soil e.g. the right to fell timber; or
- a grant allowing an activity somehow connected to the land but doesn’t give an exclusive right like a lease eg most grazing concessions are licences as they give only that specific concessionaire the right to graze but still allow trampers to cross the land; structures that still allow access to others eg a rain gauge or cell phone tower.

A *permit* (as defined in the Act) is a grant to undertake an activity that does not involve a specific legal interest in land and is for 10 years or less eg most guiding, helicopter landings, sports events, and filming concessions.

An *easement* is generally a right of access over an area of public conservation land. Examples of easements over public conservation land are driveways or vehicle access, stock crossings, water pipes, underground power lines, telecommunications cables.

[3] WHAT MUST AN APPLICATION INCLUDE?

The Act requires that every application must include⁸:

- a description of the activity, where it will be carried out, the type of concession and the status of the land – this allows DOC to clearly understand the request in order to perform the assessments required by the Act;
- a description of the potential effects of the activity and any actions the applicant proposes to avoid, remedy or mitigate the adverse effects – this will demonstrate the applicant’s willingness to understand protection requirements, and clarify the effects

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⁸ Conservation Act 1987 section 17S

for DOC's assessment purposes;

- the proposed duration of the concession and reasons for that – this allows DOC to assess cumulative effects across time, and ensure the concession meets the strict term restrictions in the Act;
- relevant information relating to the applicant, including their ability to carry out the activity – this may include suitability and financial viability;
- for a lease, easement or licence granting a legal interest in land, the applicant must also supply reasons for the request and sufficient information to satisfy the Minister it is both appropriate and lawful to grant it.

Seeking further information, commissioning a report

The Minister can also commission a report or seek advice from any person (including the Director General), including a review of any information provided by the applicant. Such information must be supplied to the applicant.

Sometimes, even when the Minister is provided with unsolicited advice, it can be relevant to provide this to the applicant and to submitters (where there is a hearing). One example where the Minister did not provide such information involved glacier guiding on the West Coast, *Franz Josef Glacier Guides Ltd v Minister of Conservation*⁹. There it was held a breach of natural justice not to provide an unsolicited letter which contained expert opinion about safety on the glacier (a central issue in the case) to the applicant and submitters.

When is an application complete?¹⁰

The Minister must consider every “complete” application.

An application is incomplete where:

- the Minister has requested but not yet received any commissioned report/advice; and/or
- the timeframe for an applicant to respond to any commissioned report/advice has not expired; and/or

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⁹ HC GRV CP14/98, 13 October 1999

¹⁰ Conservation Act 1987 section 17S(6) and section 17T(1)

- an applicant has failed to provide any specified/required information.

Key points:

- The application forms are set out to help applicants provide DOC all the required information as above.
- If the Minister deems any of the information listed above not to be included in the application then it may be classified as an incomplete application.
- DOC is only required to process complete applications; therefore it may refuse to process an application that is deemed incomplete.
- This is not a test of sufficient information to make an informed decision but a test of whether all the required parts are included in the application.

[4] THE CONCESSION PROCESSING SOP

The concession processing SOP and all the templates and accompanying documentation and guidance have been created with all the principles of good decision making and the requirements of the legislation in mind. Following it will reduce the risk of judicial review of a decision.

[5] RELEVANT MATTERS TO CONSIDER IN DECIDING WHETHER TO GRANT A CONCESSION

When processing a complete application, the relevant **mandatory** matters for the delegated decision-maker to consider are listed in the Conservation Act. Both permissions advisors and decision-makers must always keep in mind the principles of natural justice, lawfulness and reasonableness from Module 1.

1. Contrary to the provisions of the relevant Act or the purposes for which the land is held

It is important to know that a concession **shall not** be granted if it is contrary to the provisions of the Act or the purposes for which land concerned is held, s17U(3). There are a number of

“purposes for which the land is held”. These include the purpose of the Act(s) – the long title of the Conservation Act for example, the general purpose of the Act in the Reserves Act s3; as well as the category/status of the land – eg nature reserve, conservation area, wilderness area.

Each location applied for in a concession may therefore have more than one purpose. As part 3B is under the Conservation Act – the purpose of that Act will always be relevant, if the location is a reserve the Reserves Act will be relevant, or if it is a national park then the National Parks Act is relevant, if it is a wildlife reserve then that is also relevant, furthermore there may be a UNESCO World Heritage, or RAMSAR overlay to consider also.

The relevant provisions and purpose of each and every applicable Act that the Department administers, and any overlay status, will be researched by the permissions advisor and the application will be assessed to ascertain if it is contrary to any of those purposes, and if so it shall not be granted.

Some examples of where an application may be contrary to the purposes of the Act include building a 5 storey apartment building in a national park; or leasing an area on a recreation reserve for farming.

It is important to note that often specific words are defined in legalisation and given a special meaning. For example the long title to the Conservation Act states the Act is to promote the conservation of New Zealand’s natural and historic resources. “Conservation” is defined to mean the preservation and protection of natural and historic resources for the purpose of:

- maintaining their intrinsic values
- providing for their appreciation and recreational enjoyment by the public, and
- safeguarding the options of future generations.

From the above definition, “natural resources” and “historic resources” are defined (and can include exotic flora and fauna) along with “preservation” and “protection”. It is important that the permissions advisor checks the definitions of all words in an Act to ascertain any special meaning that will be important to the purpose.

2. Consistency with a relevant conservation management strategy or management plan – where they *provide for the activity*

Both sections (17T(2)) and 17W(1)) require the granting of a concession to be “consistent with” statutory planning documents – Conservation Management Strategies or Plans and National Park Management Plans. However, as we learnt in Module 1, the Minister must always keep an

open mind when making a decision – his/her discretion cannot be “fettered” by prohibitions (explicitly or otherwise) in those statutory documents. The only way the Minister is absolutely directed to do (or not do) something is via the law, bylaws or regulations.

Policies in statutory planning documents are phrased as a ‘should’ not a ‘must’ (if they are phrased as a ‘must’ they are to be read as a ‘should’) and need to be considered in the context of the management plan as a whole. “Should” is defined to mean that the Minister can only exercise discretion (ie can only divert from the policy or rule) when there are ‘exceptional circumstances’. Exceptional circumstances can only be assessed at the time in the particular situation but it is a very high test – a CMS, CMP or NPMP cannot be derogated from lightly.

In extreme examples ‘does not comply with’ and / or ‘inconsistent with (legislation and plans)’ is quite clear and easy to articulate, however, applications can be inconsistent in a more general way. So each application must be dealt with on a case by case basis, depending on the wording of the legislation / strategy or plan.

That said; it has been made very clear to DOC that policies in statutory planning documents have been created in conjunction with all interested stakeholders and accordingly give very strong guidance to a decision-maker and therefore should only be deviated from in exceptional circumstances. ‘Exceptional circumstances’ are hard to define and can really only be made out at the time. But a possible example might be where a statutory plan that limits aircraft numbers at a landing site to manage noise effects is near its expiry date or is overdue, and an application comes in that will exceed the landing numbers. However in recent times technology has changed and the modern aircraft are significantly quieter than when the plan was written – therefore the effects on the users will not be increased.

The important thing to bear in mind is that there are really two considerations for the decision-maker which the permissions advisor will consider and record in the report-

- is the application consistent with the policy in the planning document? If so then it passes this test. If not, consider:
- are there an exceptional circumstances that mean the plan should be diverted from? If no then the application should be declined (or a plan review undertaken see further down). If yes then the application is seen as being consistent with the planning document and therefore can be granted.

3. Effects of the activity, structure or facility and whether the information is available to assess the effects, s17U

“Effect’ has the same meaning as it has in the RMA. Thus it includes any:

- positive or adverse effect;
- temporary or permanent effect;
- past, present or future effect;
- cumulative effect that arises over time or in combination with other effects;
- regardless of the scale, intensity, duration or frequency of the effect also includes -
- any potential effect of high probability;
- any potential effect of low probability that has a high potential impact.

Note the above includes positive effects of the activity itself – so that when an adverse effect is being mitigated that mitigation is not considered a positive effect.

Only effects on land and natural and historic resources managed by the Department are relevant. Effects that may occur on adjacent non public conservation land or to other non-DOC managed resources, or to a community, or to the economy or sustainability of the applicant’s (or any other) business are irrelevant, (compare to the RMA, where all effects on the environment are relevant, not just on the land where the activity is taking place).

It is very important to note that even if there is insufficient and inadequate information regarding effects the ability to decline a concession on this basis is only discretionary – therefore it may be granted. However when we take into consideration the other tests in the Acts and the administrative law principles it becomes clear that the Minister would need to have strong reasons for doing so.

A good example of not having information regarding effects is where an application for commercial eeling was declined as the effects of the activity on a particular eel species couldn’t be scientifically assessed due to insufficient evidence – the effects were just too scientifically uncertain.

It is the permissions advisor’s responsibility to record in the report all relevant effects as advised by the applicant and Departmental staff.

Some examples of relevant effects are – cutting down indigenous trees in a scenic reserve; damage to burrows of threatened bird species while walking through an known nesting/burrow site; spreading didymo by using equipment that has been through didymo infested waters; damage to riparian land and waterways from stock pugging or fouling; depletion of food sources

of native species by bees from beehives; damage to a historic site from visitors touching or walking on it; noise and crowding resulting from large numbers of visitors at the same place and same time; noise of helicopters on other recreationalists.

Some examples of irrelevant effects are – adverse economic or social outcomes for a local community or individual business person (including the applicant); positive economic or social outcomes for a local community or individual business person (including the applicant); adverse or positive outcomes of competition; effects that are covered by another Act eg effects on dolphins – this is managed under the Marine Mammals Protection Act, or whether the guide has a P endorsement on her driver's licence – this is managed under the Transport Act, or whether a proposal for a lodge will have an effect on a neighbouring landowner – this is managed under the Resource Management Act and so on; sustainability (unless it impacts on conservation values on public conservation land).

4. Measures that can reasonably and practicably be undertaken to adequately avoid, remedy or mitigate any adverse effects of the activity s17U

It is very important to note that in the same way as above the power to decline an application that does not avoid, remedy or mitigate all adverse effects is discretionary. A concession that doesn't have methods to avoid, remedy or mitigate all adverse effects may be granted. It is important to note here that the Minister can require the concessionaire under s17X(d) to pay compensation for those adverse effects. The Minister would need to be very clear that an approval in these circumstances is in line with the purpose of the Act.

Once the permissions advisor has recorded all relevant effects in the report they will then, using advice from Departmental staff (science, local rangers, legal), draft special conditions that will set out methods to be employed by the concessionaire to avoid, remedy or mitigate those adverse effects. These will form part of the special conditions of a concession. See the section below on writing enforceable conditions.

5. Information received under s17S and s17T

This includes the application requirements and any report that the DG or the Minister has commissioned in order to assess effects.

Information

There are plenty of opportunities for an applicant to work with the department (mainly pre-application) to ascertain what information may be likely, so although the Minister has the ability to seek further information, it is not his/her responsibility to chase an applicant to provide it.

As we have already mentioned if the information is insufficient to clarify all adverse effects and any methods to avoid, remedy or mitigate those effects the Minister may decline the application - bearing in mind that this means the Minister may also grant the concession however s/he would have to have strong reason for doing so.

Ability of the applicant

“Ability” could be interpreted in several ways to include:

- *Suitability*: Look for relevant issues about the applicant depending on the application for example it may be relevant that an applicant who wants to conduct wildlife tours viewing has previous convictions for killing protected wildlife.
- *Financial viability*: As the managers of public land it may be relevant to assess the ability of an applicant to ensure that any applicant is able to leave public land as they found it, this was the case with the monorail application – the Minister required financial evidence to prove that it was viable enough to complete construction and successfully carry out the activity thereby not leaving the public financially liable for a large piece of infrastructure if the operation folded.

6. Nature of the activity and type of structure or facility (if any)

A clear explanation of the activity, structure, facility will enable DOC to ensure it is able to assess effects sufficiently.

7. Relevant oral or written submission received as a result of public advertising

These will be incorporated into the report by the permissions advisor.

8. Relevant information which could be withheld from any person in accordance with the Official Information Act 1993

All information in a concession application, the report and the concession document itself is available to the public unless it meets an exemption in the OIA for with-holding it, this is usually information around fees but may be other issues, the permissions advisor will clarify this with the legal team when information is requested.

9. Structure or facility could reasonably be undertaken in another location or could use an existing structure or facility or the existing structure or facility without an addition

The permissions advisor will receive comments from local staff as well their own assessment of the land status and incorporate this into the report.

10. A lease or licence granting an interest in land is related to one or more fixed structure or facility and if a curtilage area is required this must be clearly justified

It is important that any legal interest gained by a concessionaire in public conservation land is well justified – the permissions advisor will consider this and incorporate into the report.

11. Satisfy the Minister exclusive possession is necessary for a lease

If a concessionaire is able to “lock out” the public from public conservation land it must be for well justified reasons – the permissions advisor will consider this and incorporate into the report.

12. The effects of the activity are such it is more appropriate to review or prepare a new CMS or MP

The caveat to using this ground to decline it is must relate to the effects of the activity *concerned*, not other activities.

13. Other matters to consider

It is important to note that the list in s17U is not exhaustive and it may also be appropriate to consider other relevant matters, known as “permissible” considerations. As a permissions advisor, when you write your report it is your role to seek legal advice to address what ‘other matters’ may be relevant and therefore can be considered in the particular situation. Other matters may include:

- Conservation General Policy – although not a matter listed in 17U, there are matters listed in General Policy that aren’t covered by CMS’s and MP’s that are relevant to consider;
- safety may also be a relevant matter in deciding whether or not to grant a concession, e.g. glacier guiding (see e.g. *Franz Josef Glacier Guides Ltd v Minister of Conservation*);
- specific provisions in Treaty settlements which could require special consultation, or conditions that must be imposed etc;
- greenhouse gas emissions and climate change.

Key points:

Matters to be reported on and considered by the decisionmaker include:

- Is the application contrary to the purposes for which the land is held, or to the relevant Acts? Note there may be several purposes
- Is the application consistent with any applicable CMS or CMP (including NPMP and General Policy)?
- What are the effects of the activity and what methods can be used to avoid, remedy or mitigate adverse effects?
- Is the type of concession applied for appropriate and justified?
- Is there other relevant information required to make an informed decision?

[6] SITUATIONS WHEN A CONCESSION SHALL NOT BE GRANTED (MANDATORY DECLINE)

A concession shall not be granted in the following situations:

- when an application is for an easement but a lease, licence or permit is more appropriate, s17Q(2) eg where the applicant will need exclusive use of the area to enable the activity to be safe;
- when a complete application does not comply with/is inconsistent with the provisions of the Act or any relevant CMS or CMP, s17T(2) eg an application for helicopter landings in a wilderness area under the Conservation Act 1987;
- when the proposed activity is contrary to the provisions of the Act or the purposes for which the land is held, s17U(3) eg a proposal for earthworks and construction of an office building in a nature reserve;
- for a proposal to build a structure or facility (or extend or add to an existing one)

where Minister is satisfied the *activity*¹¹ could reasonably:

- be undertaken in another location:
- outside the conservation area to which the application relates, eg the shed could be built on the applicant's own land or
- in another conservation area/part of a conservation area where the potential adverse effects would be less; or
- use an existing structure or facility or the existing structure or facility without the addition, s17U(4) eg co-siting a telecoms device on another already existing tower;
- Where a lease is proposed over marginal strip (subject to some limited exceptions), s17V(3);
- Where there is a CMS/CMP that provides for the activity, and the granting is not consistent with the CMS/CMP, s17W.

Declining an application outright pursuant to s17T(2)

There is a potential difficulty in the application of s17T(2) for Decision-makers, given the need to decline a "complete application" within 20 working days if it does not comply with or is inconsistent with the provisions of the Conservation Act or any relevant CMS/CMP or contrary to the purposes for which land is held.

When is an application 'Complete'?

The power to decline concessions under s17T(2) requires the application to be complete. The minimum level of information to be provided in an application is set out in s17S(1) and s17S(2) of the Conservation Act. After that the Minister has discretion whether to require further information under s17S(3) and s17S(4).

If it is clear that the application would be declined on the basis that it is inconsistent with the provisions of relevant management plans, strategies and /or legislation (pursuant to s17T(2)), then the Minister would not need to require further information on the effects of the application, for example an environmental impact assessment or consultation with stakeholders.

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¹¹ Note the distinction here, as opposed to the structure or facility.

However, there would have to be a clear inconsistency with the relevant management plan, strategy and/or legislation. It must also be clear that this inconsistency could not be remedied by further information which could be requested by the Department and supplied by the applicant.

It is recommended that legal advice is obtained by the permissions advisor at this point if it is considered that s17T(2) may be relevant. If there is uncertainty about the inconsistency then the permissions advisor should proceed with a full assessment of the matters under s17U.

As an extreme example, an application to clear fell a large part of Rakiura National Park would be declined under s17T(2) on the basis that the activity is clearly inconsistent with the purpose of a National Park under the National Parks Act. Requiring the applicant to do further environmental impact studies, consultation, or provide further methods of mitigating adverse effects would not change this inconsistency/conflict with the legislation, and it would be unreasonable to require an application as such to proceed.

Key points

- There are a number of situations in which a concession application **MUST** be declined.
- Permissions advisors and decision-makers must be aware of these situations differ from situations when there is a discretion to decline (see next point below).

[7] SITUATIONS WHEN A CONCESSION APPLICATION MAY BE DECLINED (DISCRETIONARY DECLINE)

The Minister **may** decline a concession if:

- The information available is insufficient or inadequate to enable him/her to assess the effects (including effects of proposed methods to avoid, remedy or mitigate adverse effects) of any activity, structure or facility), s17U(2)(a) (see the section on effects above);
- There are no adequate or reasonable methods for avoiding, remedying or mitigation the adverse effects of the activity, structure or facility s17U(2)(b) (see the section on effects above);

- In relation to a marginal strip, she/he considers it is more appropriate to enter into a management agreement under s24H CA, s17V(1);
- Whether or not it is in accordance with a CMS/CMP, she/he considers the effects of the activity are such a review of the strategy or plan is more appropriate, s17W(3) (see the section on statutory plans above).

Key points

- Most declines for concession applications are based on the inability of the applicant to avoid, remedy or mitigate the adverse effects of the activity.
- Note that this discretion means that the Minister can still approve an application if she/he believes the adverse effects are not avoided, remedied or mitigated or if there is insufficient information on the effects.

[8] THE REPORT

In order for the Minister to make a decision on an application the permissions advisor drafts a report. This sets out everything we have discussed above - the applicable law and, the objectives and implementation of all applicable CMSs, CMPs, NPMPs and the General Policy, any other pertinent documents and agreements, and the effects of the activity. It then describes in plain language how the activity applied for, will fit (or not) within the scope of those. This is based on their professional analysis and with supporting advice from local rangers, science advisors, legal advisors, GIS staff, national permissions advisors, SLM advisors and management planners. The analysis should then coherently lead to a recommendation for the decision-maker as to whether to approve or decline the grant of a concession.

It is the permissions advisor's role to ensure the process, the report and recommendation meet all the tests of administrative law and conservation law. The report must keep the decision-maker's mind focussed on relevant issues and disregard the irrelevant issues. If the recommendation is to approve the grant of a concession the permissions advisor will then draft special conditions to avoid, remedy or mitigate the adverse effects.

[9] CONDITIONS

This section is aimed at the permissions advisors who will be drafting conditions for concession documents but is also very important for the decision-maker to read to understand why conditions are written the way they are.

Section 17X of the CA provides the Minister with the power to impose conditions on a concession, including conditions relating to the activity itself, how it may be carried out, where and by whom. It can also include payment of rent, fees, royalties and compensation.

However the types of conditions set out in the Act are not exhaustive – other relevant conditions may be included e.g. for adaptive management, where appropriate.

DOC has created a standard concession document for each type of concession. These templates include all the basic legal standard conditions that protect DOC, public conservation land and the values thereon in a very general way. These conditions are not to be altered in any way without legal input and consent from the permissions national team. It is advisable for all departmental staff who are involved in permissions to become familiar with the standard templates.

Where there are specific issues that require the concessionaire to behave in a certain way to ensure conservation values are protected a “special condition” may be drafted and added to the standard template. These will generally be to achieve an objective in a statutory planning document, or an applicable Act(s), or to avoid, remedy or mitigate an adverse effect identified in the assessment of the application.

Conditions imposed under section 17X must conform to common law principles regarding the validity and scope of conditions – again think about all the principles of good decision making – relevance, fairness, reasonableness. Any conditions imposed must comply with these principles otherwise they are likely to be *ultra vires*, or invalid at law – this means that the condition actually cannot be enforced; there is no obligation on the concessionaire to abide by it¹².

If the conditions are not complied with, the concessionaire will be in breach of the concession and there are a variety of mechanisms to deal with this, depending on the nature of the breach (warning, suspension, termination, prosecution etc.). The effectiveness of any remedies will be largely dependent on the effectiveness and enforceability of the conditions.

Essential requirements for conditions

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¹² see *Ferguson v Far North District Council* [1999] NZRMA 238 (Environment Court)

Conditions must:

- be within the Minister's powers to impose under the Conservation Act¹³; and
- be for a Conservation Act purpose; and
- be related to the activity authorised by the concession; and
- be fair, reasonable and practical; and
- have certainty, clarity, simplicity and conciseness; unintentional vagueness, ambiguity, or unnecessary features are to be avoided; and
- only be for as long as necessary to achieve their objective and no longer; and
- not reserve discretion; and
- be enforceable.

There is further explanation of each requirement below.

Within the powers of the Minister and for Conservation Act purposes

This requires the decision-maker to be aware of the purposes of the Conservation Act – see above for information on this. Broadly, the purpose of the Conservation Act is to promote the preservation and protection of natural and historic resources, and in the case of concessions, only within public conservation land boundaries. Therefore this is the ambit within which a special condition can be drafted. An example that is not within this ambit is a condition that tells how a concessionaire how to fly a plane, or what type of driver's license a concessionaire requires, or that they must control weed species on their own land.

A condition must be for a Conservation Act purpose, not an ulterior one. For example a condition cannot require an applicant to undertake a course in Te Reo or tikanga, or compel an applicant to help with a search and rescue emergency.

Relate to the proposal authorised by the concession

Concession conditions must relate to the activity the concession has been applied for and be relevant to the purposes of the Conservation Act, and be appropriate under section 17X of the Act. For example a concession cannot require a grazing concessionaire to provide a carpark and

□

¹³ Or any of the other relevant Acts under which a concession may be granted.

an over-bridge for access from the carpark to public conservation land. However requiring a grazing concessionaire to participate in pest management work on the land they graze is valid.

Fair, reasonable and practical

In general, conditions are lawful if they are within the jurisdiction of the decision-maker, and as such a reasonable body could have imposed them, based on the relevant facts of the particular circumstances.

Incorporation of standards

It may be appropriate for a condition to incorporate standards by reference to other documents. For example, a condition could incorporate a standard set under the Captive Management Policy, or a measurement standard for noise, pollution or other specified effect. Where standards are incorporated, it is necessary for the date of the standard to be specified, to avoid any uncertainty which may arise through subsequent modification or amendment to those standards. Where the standard is certain and does not reserve any discretion, but may require an objective determination of a performance level, the condition should be valid and enforceable.

Frustration

Frustration is when circumstances undermine the purposes of the concession. A condition cannot be imposed if it has the effect of frustrating the concession ie a condition can't make it impossible to undertake or complete the authorised activity. However, a condition requiring an applicant to carry out significant works, the cost of which calls the financial viability of the business itself into question, is not necessarily invalid – that situation would require the concessionaire to make a business decision as to whether they will continue with the activity or surrender their concession. The imposition of such a condition will need to be justified on the facts and explained with reasons.

Certainty, clarity, conciseness and simplicity

The basic rule of drafting conditions is to say what you mean. This is not as easy as it sounds.

Good conditions:

- have certainty, clarity, simplicity and conciseness;
- are not vague, ambiguous and do not have unnecessary features;

The purpose of adopting a clear, simple and concise drafting style is to ensure the intended meaning of conditions is achieved. Difficulty interpreting a condition is likely to result in

compliance problems and may necessitate court intervention to clarify the meaning of the conditions. Conditions must be interpreted on their face value and according to their plain meaning, or by resort only to documents expressly incorporated into the conditions.

Remember that concessions can be assigned to a third party. Conditions should therefore be drafted with enough certainty so that someone without knowledge of the history of the application process can understand and know what is required of them to comply with the concession conditions.

Phrases like 'the best practicable option' are ambiguous and should be avoided unless they are to achieve a clear, concrete objective that is set out in the condition. Sometimes the best way to do is to incorporate a standard practice or set out a specific process they are to follow.

Another example of vagueness is "The hut must be painted in colours that reflect the colours of the surrounding area." An artistic person could interpret this quite literally and cover the hut in mirrors that 'reflect the surrounding area', or paint it in stripes of blue for the sky, and white for the clouds, and green for the trees, and black for the tui! Or it could mean paint it from a palette of greens from the Dulux range XYZ. Any of these is a sound interpretation of that condition.

Compare "*Prior to undertaking the activity, the concessionaire must ensure all beehives approved under Schedule 1 clause 2, are labelled with the Concessionaire's name, contact phone number, Concession number 1234-BEE, and the hive registration number. All the information on this label must be visible 10 metres away from the hive*" with "*The Concessionaire must label their hives with their contact details*". The first example is specific and sets out exactly what the Concessionaire is required to do. The second is vague and could be taken to mean numerous things.

When drafting any condition, a good test is to ask two people with little or no knowledge of the application what they think the condition actually requires, or allows, the concessionaire to do. If you get two different responses you have an unclear condition.

Reserving discretion

A condition must not reserve discretion. This means two things a) the condition should not allow subjective interpretation on the concessionaire's part or b) require secondary approval from the decision-maker (or anyone else).

A) Subjectivity

Be careful not to use subjective language for example words like "appropriate" as what is

appropriate to one person may be inappropriate to another. Where these words are used and there is a dispute, the condition will be invalid possibly thereby leaving all discretion in the concessionaire – see the example above about “reflecting the colours”. Again use a standard or be specific about the parameters of what is acceptable.

B) Secondary approval

Along with subjectivity a condition cannot require a concessionaire to wait for approval from someone. A common example of this is a condition that requires the concessionaire or permission holder to contact local iwi/hapū /whanau to get their approval before undertaking the activity. This delegates or transfers the decision-making power to someone other than the delegated decision-maker. It also derogates from the grant of the permission – ie it gives with one hand and takes away with the other, and as the concessionaire would not have to abide by it we are actually doing a disservice to iwi.

Another example is “*Prior to undertaking any activities under the authorisation/concession on lands administered by the Department of Conservation (DOC) the Applicant shall notify and obtain approval for access from the relevant Conservation Services Manager of the local Department of Conservation (DOC) office, at least 20 working days prior to undertaking activities. Approval to undertake any activities under the authorisation on lands administered by DOC is entirely at the discretion of the relevant Conservation Services Manager.*” Again this gives with one hand and takes away with the other, and it gives no clue as to the circumstances in which access might be denied. If the concessionaire themselves requires an entry permit to access the land this must be arranged at the time of the concession approval.

A condition like: “A fencing plan shall be submitted to the local DOC office for approval” is again requiring further approval. The applicant and DOC should work together to ascertain the parameters within which the fencing should be provided – again using some kind of standard and this standard can be incorporated as a condition. See also adaptive management.

Enforceability

The ultimate test of a condition is whether it is enforceable if challenged in court. If it is invalid then, as discussed above, the concessionaire is not required to abide by it. Another to bear in mind is that when conditions are imposed on concessions, DOC has a public responsibility to ensure that the conditions are strictly adhered to.

Good practice tip

Writing conditions is a technical skill that as a permissions advisor you will learn as part of your role. You are expected to engage legal expertise to assist you with the need for, and wording of, possible conditions.

Key points

Conditions must:

- be within the Minister's powers to impose under the Conservation Act¹⁴; and
- be for a Conservation Act purpose; and
- be related to the activity authorised by the concession; and
- be fair, reasonable and practical; and
- have certainty, clarity, simplicity and conciseness; unintentional vagueness, ambiguity, or unnecessary features are to be avoided; and
- only be for as long as necessary to achieve their objective and no longer; and
- not reserve discretion; and
- be enforceable.

Adaptive management

The adaptive management realm is a complicated and very specific area of management of effects that may be applied to the concessions/permissions field. It is a detailed managed process to try techniques and continually monitor and adapt before any adverse effect becomes irreversible¹⁵. It is not, as widely believed, a process that allows an activity to occur and if it doesn't seem to be working (avoiding, remedying or mitigating the adverse effect) then we change the way we do the activity and "have another go".

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¹⁴ Or any of the other relevant Acts under which a concession may be granted.

¹⁵ *Clifford Bay Marine Farms v Marlborough District Council* A 132/09 para 40

Adaptive management should only be used where there is a need to avoid, remedy or mitigate significant effects of an activity, and must only be considered once the assessment of, and compliance and consistency with, the legislation and the statutory planning documents has been established. It also cannot be used to delegate decision-making – ie reserve discretion.¹⁶

If the permissions advisor thinks that adaptive management principles and processes may be the best practice for a particular concession please discuss this with the RMA planning and legal advisors.

Biodiversity offsets/compensation

Biodiversity offsets

Biodiversity offsets are “conservation actions intended to compensate for the residual, unavoidable harm to biodiversity caused by development projects, so as to ensure no net loss of biodiversity.”

This is acceptable under the Resource Management Act, however if the likely adverse effects of the activity are not able to be avoided, remedied or mitigated, the Minister of Conservation may turn down a concession application regardless of whether a significant package of compensation, or a biodiversity offset, is proposed.

However, in theory it is possible that the Minister may grant a concession where all the adverse effects are not avoided, remedied or mitigated. In this situation there would need to be clear reasons why this is appropriate (see the next section on compensation) and one might be that there are clear conditions regarding compensation for those remaining effects. So in a way, a biodiversity offset can be considered by the Minister as a form of compensation.

The permissions advisor must seek technical and legal advice if an applicant proposes biodiversity offsets or compensation.

Compensation

Compensation, both in general terms and in the context of the Conservation Act, is the means by which an applicant provides reparation for the loss caused by the adverse effects of an activity. Compensation will normally (but not always) occur offsite. It is different from mitigation and should not be confused with it.

□

¹⁶ Resource Management Law Association Roadshow paper: *Conditions of Consent*. Jennifer Caldwell et al

Compensation should only be considered after the consideration of avoiding, remedying and mitigation of adverse effects. Note that it would be very unlikely for the Minister to grant a concession and require compensation for significant adverse effects that couldn't be adequately avoided, remedied or mitigated, as the activity would then be likely to be contrary to the purposes for which the land is held.

Interpretation and Application of Statutory Planning Documents

Context

In December 2014, the Office of the Ombudsman published a report assessing a decision made by the Minister of Conservation's delegated Decision Maker which allowed a guiding concession to exceed prescribed limits in the relevant National Park Management Plan. The Ombudsman determined the decision made was unreasonable.

The Ombudsman recommended the Department 'review its processes for handling applications for concessions in national parks in light of [the] opinion'.

The Department has now undertaken a review of how concession applications are to be assessed against statutory planning documents. This document sets out guidance for Permissions Advisors, Community Rangers, Decision Makers, and Statutory Managers as to how concession applications should be assessed against these planning documents.

Purpose

To provide users of statutory planning documents with guidance to interpret and apply these documents when assessing concession applications.

For everyone

Sections 17T(2) and 17W(1) of the Conservation Act 1987 require the granting of a concession to be 'consistent with' all relevant statutory planning documents – that is, Conservation Management Strategies (CMSs), Conservation Management Plans (CMPs), and National Park Management Plans (NPMPs).

That being said, the Minister of Conservation's discretion cannot be fettered by the statutory planning documents. This means the Minister's right to make the decision they wish to make cannot be restricted by these documents. The only way the Minister can be absolutely directed to do or not do something is via the law, bylaws, or regulations.

Statutory planning documents are developed in consultation with the Department's Treaty partners, the community, and other stakeholders. They are seen as a handshake with the community, and are the Department's commitment to the public about how an area will be managed.

Will / Should / May

Policies in CMSs, CMPs, and NPMPs are phrased as a 'will', a 'should', or a 'may' (note that older documents may use the phrase 'must' – in this situation, read a 'must' as a 'should'). Definitions for will, should, and may are included in the [Conservation General Policy](#).

So as not to fetter the Minister's discretion, 'will' policies are only used where the policy is mandatory – that is, where the policy is reiterating a legal requirement. A legal requirement can be set by a law, a bylaw, or a regulation.

‘May’ is used to provide guidance to the Minister. ‘May’ allows the Minister flexibility in whether or not to adopt the policy.

Both ‘will’ and ‘may’ are easy to interpret when assessing statutory planning documents. ‘Should’ is the one which can create difficulties.

Where ‘should’ is used, a strong expectation of the outcome of the planning documents is created. A decision that is inconsistent with a ‘should’ policy is not to be made lightly.

The use of the phrase ‘should’ does not fetter the Minister’s discretion, as the Minister is able to make a decision contrary to this. However, the Minister is only to exercise this ability where there is evidence of a special case or exceptional circumstances.

Quick Definitions

Will: Mandatory, only to be used to reiterate legislative requirements

Should: Strong expectation of the outcome, to be followed unless ‘exceptional circumstances’ exist

May: Allows flexibility, provides guidance to the Decision Maker

Exceptional Circumstances

‘Exceptional circumstances’ are just that – exceptional. This is because the Department has made a commitment to the community and its Treaty Partners through the statutory planning documents and the processes to develop these documents that there is a strong expectation of the outcome of the ‘should’ policies in the statutory planning documents.

The Supreme Court has defined exceptional circumstances as ‘well outside the normal range of circumstances’ – that is, truly an exception rather than the rule, although they do not have to be unique.

The test of ‘exceptional circumstances’ before there can be a departure from a ‘should’ policy is to be applied to all the Department’s statutory planning documents. In the Department’s view, there is no real or meaningful difference between the ‘strong expectation of outcome’ provided for in the Conservation General Policy and the ‘exceptional circumstances’ provided for in some national park management plans.

If you consider exceptional circumstances exist, you must follow the processes set out in this guidance before a decision is made that is inconsistent with a ‘should’ policy.

Examples

Examples of circumstances which might be considered to be exceptional:

Context and Activity	May be an exceptional circumstance?	Explanation
The Canterbury CMS expired six months ago, but is still operative as the new CMS has not been completed. Aircraft landings are limited in St James Conservation Area to manage the noise effects for recreation users. No aircraft policies have been drafted for the new CMS yet.	Yes	The aircraft policies were developed to manage noise effects. The noise of the drone is not comparable to that of a helicopter. Drones are a new activity

Context and Activity	May be an exceptional circumstance?	Explanation
You have received a concession application to use a drone within St James Conservation Area to film for a documentary. The aircraft landings allocation is already fully exhausted.		since the CMS was approved over ten years ago.
<p>The Auckland CMS states grazing should be phased out on Great Barrier Island.</p> <p>You receive a concession application for a grazing licence for 50 hectares of land on Great Barrier Island. The application is to replace the Applicant's current grazing licence when it expires. The grazed area is prone to fires during summer months. There have been two fires in the last two years.</p> <p>The District Office does not have a finalised plan in place to immediately manage the land once grazing is phased out, but has started to form a plan of how this might be managed in the future.</p> <p>The concession application is for one year.</p>	Yes	<p>If the land being grazed is left unmanaged before the District Office has a plan to restore the natural vegetation, there is a concern of fire during summer months due to the long dry grass that may result.</p> <p>A one year term is not a long term commitment for the Department.</p> <p>The plan to manage the land could then be developed during the term of the concession.</p>
<p>The Tongariro NPMP limits the number of guided walking concessions for the Tongariro Crossing to manage the effects on other visitors.</p> <p>You receive a one off concession application for guided walking on one day only.</p>	No	Even though the application is for one day only, this does not mean the adverse effects of additional guided walkers may not affect walkers on that day.
<p>The Nelson-Marlborough CMS restricts helicopter landings to specified locations in order to protect the natural quiet outside of these areas.</p> <p>A beehive operator wants to place beehives by helicopter at different locations in North West Nelson Forest Park. Instead of landing, they want to hover at least 100 metres above the ground to place the beehives.</p>	No	<p>Under s17ZF of the Conservation Act, hovering an aircraft is classified as landing.</p> <p>The noise from hovering the helicopter will be similar to landing on the ground.</p>

For Permissions Advisors

If you are processing a concession application where you intend to make a recommendation that is inconsistent with a 'should' policy in a statutory planning document and you consider an exceptional circumstance exists, you need to:

1. Speak to a National Permissions Advisor to discuss the circumstances;
2. Request legal advice on the exceptional circumstance.

If its determined exceptional circumstances may exist, you should then:

1. Hold a critical issues discussion with the Decision Maker to raise the issue, if appropriate;
2. Advise the District Office as early as possible, as this may influence the advice they provide and will allow them to consult on the potential exceptional circumstance with whānau/hapū/iwi and any iwi post-settlement governance entities with an approving role in the planning document;
3. Advise the relevant Statutory Manager;
4. Highlight the circumstances to your manager to ensure they are aware of the risk.

Before recommending a decision that is inconsistent with a 'should' policy, you must get legal advice. However, you cannot quote this advice or make reference to it in your report, as it is subject to legal privilege. The Decision Maker may ask to view the legal advice received to support them in making their decision. If the Decision Maker asks for this information, provide it to them outside of the report. This will ensure the information retains legal privilege.

Clearly analyse the concession application against the planning document in your report to the Decision Maker, considering the legal advice, District Office and Science and Policy comments, the views of whānau/hapū/iwi and the Conservation Board, and any other advice received. Note that there may be views from both whānau/hapū/iwi in their role as a Treaty Partner, and from iwi post-settlement governance entities that have a role in approving the statutory planning document. These views should be clearly differentiated between when they are analysed in the report.

It must be absolutely clear to the Decision Maker in your report where a decision will be inconsistent with a statutory planning document.

For Community Rangers

Processing a one off concession

If you are processing a one off concession application where you intend to make a recommendation that is inconsistent with a 'should' policy in a statutory document, the application does not fit the criteria for a one off.

The Applicant should be advised the application does not fit the one off concession criteria due to its lack of consistency with the relevant statutory planning documents. The application is to be forwarded to the appropriate Service Centre to process through either the notified or non-notified concession process.

Providing comments on a concession application

If you are providing comments on a concession application being processed by a Permissions Advisor, the Permissions Advisor will advise you there is the potential for exceptional circumstances to exist as early as possible. As well as commenting on this in the comments you provide, advise whānau/hapū/iwi at the earliest opportunity a decision may be recommended that is inconsistent with a 'should' policy. Either you or your Statutory Manager should also seek comment from the relevant Conservation Board on the application.

You must consult with whānau/hapū/iwi specifically about how the activity is inconsistent with a statutory planning document.

Where iwi post-settlement governance entities have an approving role for a statutory planning document

Some Treaty Settlements give iwi post-settlement governance entities roles in approving conservation management strategies or plans.

If you are advised by a Permissions Advisor a decision may be made that is inconsistent with a 'should' policy in a statutory planning document, you need to check whether any iwi post-settlement governance entities have an approving role for that planning document. If any iwi post-settlement governance entities do have an approving role, consult with these post-settlement governance entities about how the proposed activity is inconsistent with the statutory planning document as early as possible. The feedback provided by the post-settlement governance entities should then be provided to the Permissions Advisor to be incorporated into the report.

A list of iwi post-settlement governance entities with a role in approving a statutory planning document, and the statutory planning document they have a role in approving, is attached as Appendix One.

This consultation is additional to the general consultation with whānau/hapū/iwi about the activity described above.

If there is an iwi post-settlement governance entity with an approving role for a statutory planning document as a result of a Treaty Settlement, you must consult with them specifically about how the proposed activity is inconsistent with the statutory planning document.

For Statutory Managers

The relevant Conservation Board is to be advised if a recommendation is to be made for a decision on a concession application that is inconsistent with a 'should' policy in a statutory planning document. Either you or a Community Ranger should advise the Conservation Board of such a circumstance and seek their comments.

The Permissions Advisor will advise you if they intend to make a recommendation that is inconsistent with a 'should' policy in a statutory planning document.

For Decision Makers

The report to the Decision Maker may make a clear recommendation to make a decision that is inconsistent with a 'should' policy in a statutory planning document, or it may set out options for the decision, some or all of which may be inconsistent with a 'should' policy. In all situations, where you are being asked to treat a concession application as an exceptional circumstance and make a decision that is inconsistent with a statutory planning document, it will be clear to you in the report from the Permissions Advisor that this is being asked in your decision. It is part of the Permissions Advisor's role to ensure you are equipped with the necessary information to make this decision.

In their report, the Permissions Advisor will have sought and analysed:

- Legal advice;
- District Office comments;
- Science and Policy comments;
- The views of whānau/hapū/iwi (consultation undertaken by the Community Ranger);

- The views of any iwi post-settlement governance entities with an approving role for the statutory planning document (consultation undertaken by the Community Ranger);
- Conservation Board comments (consultation undertaken by the Community Ranger and/or Statutory Manager).

If the report sets out this information, you should have the necessary information to make such a decision. The [Making Good Decisions](#) resource is available to support you in making these decisions.

Note that as legal advice is subject to legal privilege, the Permissions Advisor cannot discuss legal advice directly in the report. As per the guidance in this document, the Permissions Advisor will have sought legal advice before recommending a concession application be treated as an exceptional circumstance. If the report is clear an exceptional circumstance exists, you can make the decision being comfortable legal advice has been received on this issue.

To view the legal advice provided, contact the Permissions Advisor. They will provide the advice to you separate from the report, in a form that retains legal privilege.

Further Resources

Making Good Decisions: A Resource for Permissions Advisors, Hearing Chairs, and Decision Makers – available at [DOCDM-1411341](#).

Approved by: Mike Slater, DDG Operations



15 July 2016

Appendix One

Iwi post-settlement governance entities that have an approving role in a statutory document, current as of July 2016:

Post-Settlement Governance Entities	Statutory Planning Document
Te Aupouri Claims Settlement Act 2015 Te Rarawa Claims Settlement Act 2015 Ngāti Kuri Claims Settlement Act 2015 Ngāi Takoto Claims Settlement Act 2015	Te Hiku Conservation Management Strategy
Ngāti Manuhiri Claims Settlement Act 2012	Te Hauturu-o-Toi/Little Barrier Island Conservation Management Plan
Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 1914	Hauraki Gulf/Tikapa Moana Inner Motu Conservation Management Plan
Ngāti Whare Claims Settlement Act 2012	Whirinaki Te Pua-a-Tāne Conservation Park Conservation Management Plan
Ngāti Awa Claims Settlement Act 2015	Te Tāpui Tokotoru Conservation Management Plan for Moutohorā (Whale Island) Wildlife Management Reserve, Ōhope Scenic Reserve, and Tauwhare Pā Scenic Reserve
Te Urewera Act 2014	Te Urewera Management Plan
Ngāti Porou Claims Settlement Act 2012	Ngā Whakahaere Takirua (chapter of the Conservation Management Strategy)
Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009	Harbour Islands Reserves
Ngāti Toa Rangatira Claims Settlement Act 2014	Kapiti Island Reserves
Ngāi Tahu Claims Settlement Act	Te Waihora (Lake Ellesmere) Joint Management Plan

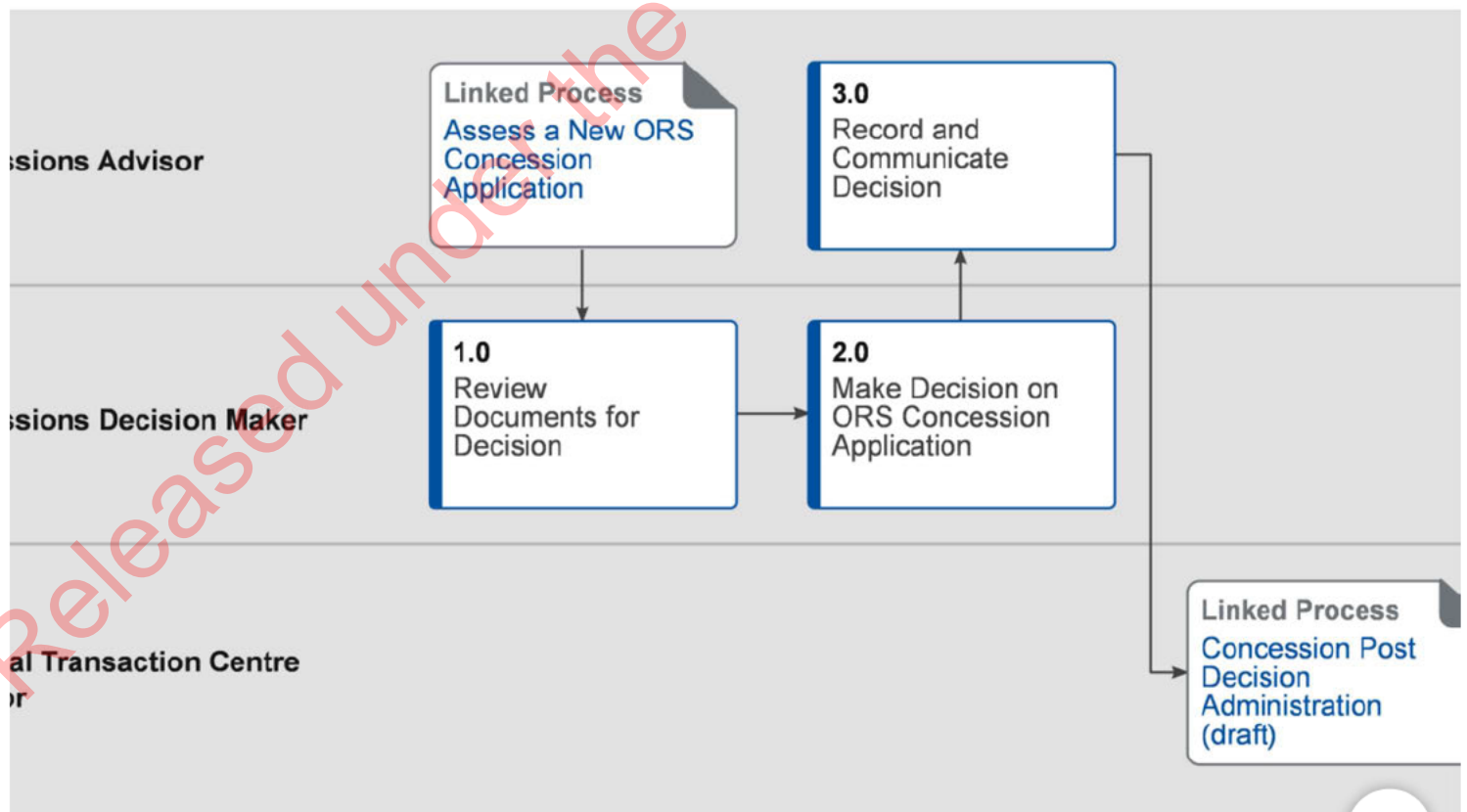
This page contains information and operational policy to support making a decision on an application in the permissions system.

^ Standard Operating Procedure/ Process

Process

- Decide on Concession Application

Note: Aspects of this process are out of date and being reviewed



Process map

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 RDR

1.0 Review documents for decision

Permissions Decision Maker

- Receive email that RDR is ready
- Open RDR in docCM
- Read RDR

2.0 Make decision on ORS concession application

Permissions Decision Maker

- Make a decision, referring to the [Conservation Act 1987 pt 3B Concessions](#) and using Making Good Decisions - a resource for Decision Makers and Permissions Advisors ([DOCDM-1411341](#))
- Open RDR and contract in docCM
- Add decision and rationale for the decision to RDR
- Place digital signature onto RDR and Contract, follow Signing reports, Concessions and Authorisations using a digital signature ([DOCDM-1497180](#)) guidance.
- Check in signed documents as new revisions into docCM
- Inform Permissions Advisor about signature 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 for using tasks in the Permissions Database ([DOC-6409886](#))
- Share the decision with the team members on behalf of the Decision Maker. Ensure that the Community Ranger shares the decision with those consulted with (including Treaty Partners and the Conservation Board).

Next step: [Complete an application](#)

^ Guidance/ Resources

Guidance

- Making Good Decisions - a resource for Decision Makers and Permissions Advisors ([DOCDM-1411341](#))
- Signing reports, Concessions and Authorisations using a digital signature ([DOCDM-1497180](#))
- Guidance for using tasks in the Permissions Database ([DOC-6409886](#))
- Cost Recovery Tool Instructions ([DOC-5629328](#))

What do you think of the new regulatory intranet pages?

Your chance to comment

Related pages



Permissions system



Application assessment categories for permissions



Complete a permissions application



Regulatory Services



Operational staff involved in permissions



Crown revenue and cost recovery

Contact

PU

Permissions Updates

Regulatory operational policy owner

Concession Activity Fee Price Book

The price book is used to determine what activity fee a concessionaire should pay to operate on public conservation land. Check out the resources here to learn more about the price book, what it is used for, and who to contact for help.

About the price book

The purpose of the price book is to provide staff with instructions on how to set activity fees for concession agreements. The price book enables concessionaire activity fees to be set in an efficient, consistent, and transparent manner that realises the value for both DOC and concessionaire. Concession activity fees are considered throughout a concession lifecycle during the following processes:

- applications for new concessions
- fee reviews
- re-issues assessments
- variations to a concession
- renewals of a concession

The price book provides guidance on two aspects of activity fees:

- how to set the market rate for activity fees based on the activity category
- how to calculate discounts and waivers to activity fees



Concession Activity Fees

Departmental Fees

Released under the Official Information Act

Other Pricing Information

Calculating a market fee

The guidelines in these pages are to be applied when calculating the market fee payable by a concessionaire. This market fee should be established independent of consideration of any potential waiver, discount or conservation credit:

[net fee payable by concessionaire] = [market fee] – [any potential waiver/discount/conservation credit]

Note:

- The prices listed are the minimum fee that can charge.
- If the opportunity arises, Permissions staff are encouraged to seek a higher price than the ones listed.
- For a concessionaire to obtain a fee lower than the ones stated in these pages requires sign off by an authorised decision maker.


Tips for Navigating the Price Book

- Each of our established activity fee categories has their own page containing fee setting information Concession Activity Fees
- Supporting information that applies to fees generally can be found under Other Pricing Information.
- Although this is the "Activity Fee Price Book", we have included information on other fees in the Departmental Fees section.
- Information on how to make changes to the price book and how changes are communicated can be found in the pricing.policy section .
- Where they are available, training resources have been added as links on the relevant pages and created a hub for all Training Resources

- A link on how to get help or provide improvement suggestions has been included on every page so that you can provide real time feedback or get help.


Recent Updates

[See all](#)



Concession Activity Fee Price Book
Price Book Change Log

Sec 9(2)
(a) **Carolyn Parker**
Edited 5 days ago



Concession Activity Fee Price Book
Parking & Transport

Sec 9(2)
(a) **Carolyn Parker**
Edited 5 days ago

Need Fee Setting Support?

[Request Help](#)

Something Missing?

[Suggest an Improvement](#)

Price Book Coordinator

The Commercial Team, Regulatory Systems Performance, Policy and Regulatory Services.

Item 7

Contact:

P Permissionfees

Meet the Commercial Team

Released under the Official Information Act

Item 7

Permissionfees

P

The teams shared inbox - Please send queries here!

Sec 9(2)(a)

Kirsty Cameron

Commercial Manager

Sec 9(2)(a)

Arna Litchfield

AL

Regulatory Operational Polic...

Acting Manager while

Sec 9(2)(a)

Sec 9(2)(a)

Sec 9(2)(a)

Carolyn Parker

Principal Commercial and Re...

Sec 9(2)(a)

Kayla Mahon

Senior Commercial and Reve...

Released under the Official Information Act

How to set an activity fee for concessionaires seeking easements over public conservation land.

Note: A Category Review In Progress for Easements

Easement pricing process

Follow the steps below to set an easement fee:

- ^ **Step 1: Determine the number of beneficiaries serviced by the easement and the number of easement activities.**

Where an easement services more than one lot, the fee is calculated by multiplying the relevant fee by the number of lots or beneficiaries that the easement serves.

The same applies for applications with multiple, independent activities, where the concessionaire should also be charged easement fees for each activity they plan to carry out, e.g. a concessionaire applies for a pipeline easement plus a separate access easement for a different purpose than servicing the pipeline.

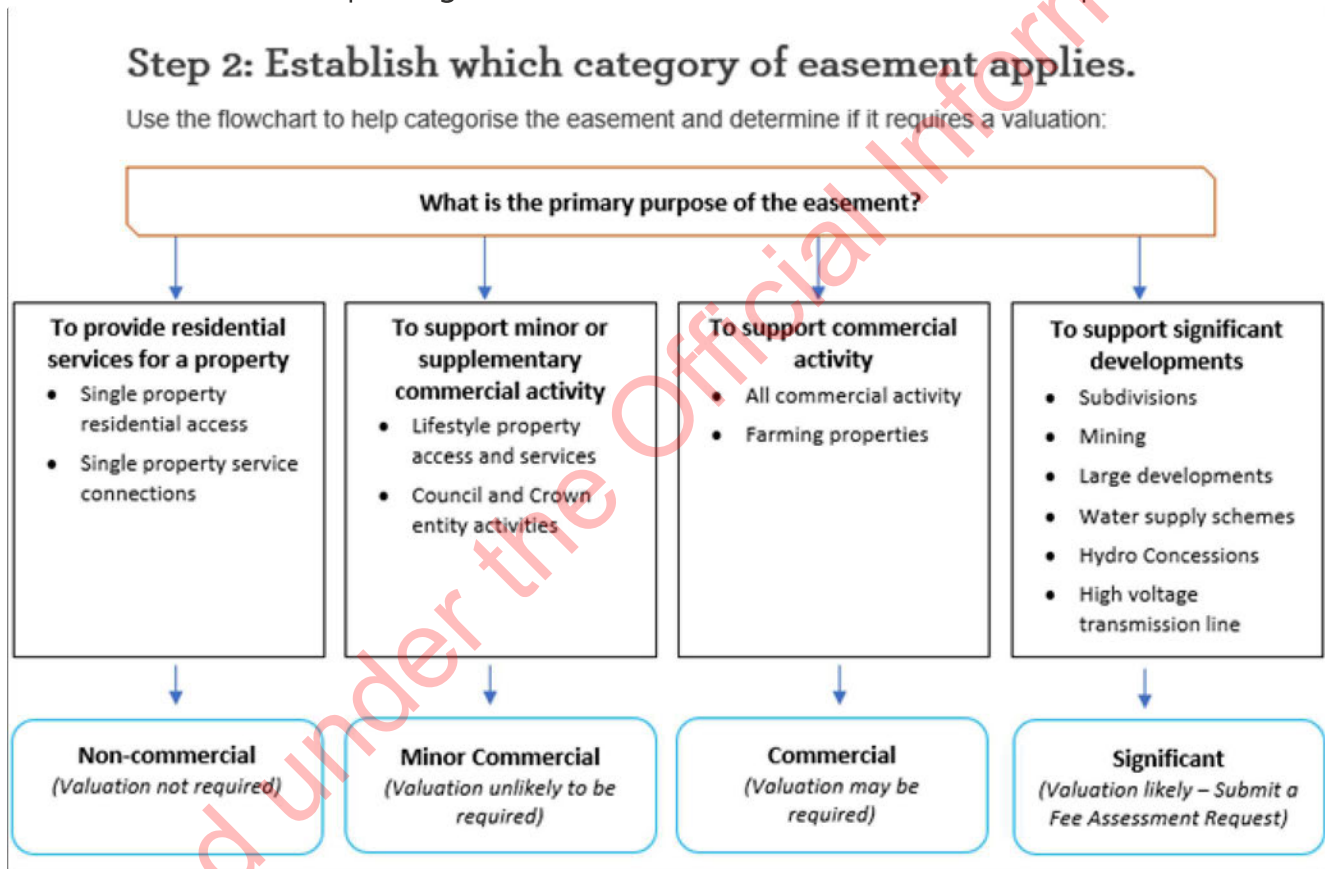
The easement fee will depend on both the activity (access, water pipe, powerline etc.) and which category the beneficiaries fall into (i.e. non-commercial, minor commercial or commercial).

This policy also applies to developers creating subdivision plans, any easement fee should be multiplied by the number of lots that the easement serves.

See step 2 for categorising the beneficiaries.

^ Step 2: Establish which category of easement applies.

Use the flowchart to help categorise the easement and determine if it requires a valuation:



Example beneficiary, activity & category calculation

An easement application is received for water pipelines servicing 20 beneficiaries/lots of land. 10 of the beneficiaries are classified as minor-commercial, 7 are commercial and 3 are non-commercial.

The pricing will be as follows:

10 x minor commercial water pipeline fee (\$385 plus GST) +
 7 x minor commercial water pipe fee (\$960 plus GST) +
 3 x commercial water pipe fee (\$1,600 plus GST).

^ Step 3: Environmental premium.

An environmental premium may be required on the easement depending on the status of the land (e.g. National Park or Conservation Park etc.).

See the [land type definitions](#) page to determine if the easement should have an Environmental Premium added to the concession fee.

^ Step 4: Environmental damage compensation fee.

When an easement causes significant environmental damage, an environmental damage compensation fee may be warranted. Determining this fee is very complex and it is often decided by negotiation. If you think the easement warrants an environmental damage compensation fee, discuss it with your manager. Most easements will not require this fee. Legislation requires that environmental compensation fees are regarded as Crown Revenue and coded to Crown Accounts.

^ Step 5: Annual payment vs lump sum payment.

The Department is no longer in the practice of offering a capitalised concession fee for easement concessions. A one-off fee should only be considered as a default where the activity is a residential subdivision, and we would charge a one-off fee to the developer as the primary benefactor of the subdivision being created.

We could also use this option as a way of negotiating fee disputes for existing easements or in exceptional circumstances.

The use of the one-off fee option is subject to approval by the Commercial Manager.

Use the [present value formula spreadsheet \(DOCDM-542624\)](#) to calculate a lump sum easement fee.

Example property subdivision lump sum fee

A property developer has subdivided land to create residential sections but needs an easement for a sewage pipeline that services all the houses and makes the subdivision viable.

In this case it would be impractical and inefficient to make all of the eventual homeowners pay an annual easement fee. It would be better to make the property developer pay a one-off lump sum – as part of the development costs.

Easement Fee Options

Easement activity fees can be calculated at different rates, depending on which option applies and whether a valuation may be required.

^ Non-Commercial Activity Fees

Non-commercial easements are low impact and associated with single occupier situations where no commercial activity is conducted. A valuation is not required for a non-commercial easement.

Activity category	Activity	Fee
Access	Cycle	\$400.00 + GST
	Foot	\$400.00 + GST
	Livestock bridge	\$400.00 + GST
	Vehicle	\$530.00 + GST
Pipelines	Storm water/sewer	\$400.00 + GST
	Water pipes	\$400.00 + GST
Power	Underground/overhead cable	\$335.00 + GST
Telecommunications	Fibre optic cable	\$400.00 + GST
Valuation	No valuation is required.	

^ Minor Commercial Activity Fees

Minor Commercial easements are generally small but support a commercial activity. They are associated with lifestyle farm properties and other small scale single occupier situations, along with Council and Crown entity activities. A valuation is not required for a minor commercial easement.

Activity category	Activity	Fee
Access	Cycle	\$1,000.00 + GST
	Foot	\$1,000.00 + GST
	Livestock bridge	\$1,000.00 + GST
	Vehicle	\$1,330.00 + GST
Pipelines	Storm water/sewer	\$1,000.00 + GST
	Water pipes	\$1,000.00 + GST
Power	Underground/overhead cable	\$665.00 + GST
Telecommunications	Fibre optic cable	\$665.00 + GST
Valuation	No valuation is required.	

^ Commercial Activity Fees

Commercial easements support larger scale commercial activity. When assessing the fee how often the easement is used should not be a consideration. If a valuation is not required use the fees below.

Activity category	Activity	Fee
Access	Cycle	\$1,665.00 + GST
	Foot	\$1,665.00 + GST
	Livestock bridge	\$1,665.00 + GST
	Vehicle	\$1,995.00 + GST
Pipelines	Storm water/sewer	\$1,665.00 + GST
	Water pipes	\$1,665.00 + GST
Power	Underground/overhead cable	\$1,665.00 + GST

Item 8

Telecommunications	Fibre optic cable	Single activity		\$1,330.00 + GST
		Part of network	Base fee	\$1,995.00 + GST
			Per metre	\$3.00 per metre + GST
Valuation	<p>Easements which are complex or create a significant commercial opportunity for the concessionaire normally require a <u>valuation</u> – discuss with your manager.</p> <p>These are usually profit oriented activities such as:</p> <ul style="list-style-type: none">• Telecommunications• Hydro electric• Overhead power lines• High voltage transmission lines			

FAQ

Q: What about major scale businesses (e.g. forestry) that only use their easement occasionally?

A: The scale of the commercial activity determines the type of easement, rather than the volume of use. Forestry operations are major scale commercial activities requiring commercial easements.

Need Help?

Suggest Improvement

Need Help?

Related Information

Item 8



Concession Activity Fees



Other Pricing Information



Other Fees

Released under the Official Information Act

Why we commission valuations and how to request a valuation.

Valuations can extend the timeframe 20-40 working days or longer depending on the location, so it is important to request them as soon as possible.

Valuations in the context of concessions

Valuations are a qualified indication of the market rate for a fee.

In terms of activity fees, external valuations are advice from independent registered valuers on the market value of the opportunity being provided to the concessionaire. That advice is delivered to us in the form of a recommended fee.

Why we commission valuations

Seeking external advice ensures impartiality and credibility in DOC's activity fees. Valuations enable fair fee setting and reduce the likelihood of arbitration. External advice can also be used to inform future fee reviews and ensure that DOC is using appropriate pricing methods.

As we work across a wide range of commercial activities, industry specific expertise is often required. External specialist valuers can provide that expertise.

How to request a valuation

If you think a valuation may be required, fill in the Commercial team's [concession fee assessment request form](#) (DOC-6445088).

[Guidance on how to use the concession fee assessment request form is also available](#) (DOC-6458643).

The Commercial team will advise you if a valuation is required and liaise with the Commercial Manager, who approves valuation requests. Valuations should not be commissioned by anyone without approval from the Commercial Manager.

Valuations can extend the timeframe 20-40 working days or longer depending on the location, so it is important to request fee advice as soon as possible.

Need Help?

Related Information



Concession Activity Fees



Other Fees



Other Pricing Information

Discounts & Waivers

Find out how to request a discount or waiver for a concession fee and what we consider when reviewing these requests.

Why we consider applying discounts and waivers

Under [Section 17\(X\) of the Conservation Act 1987](#), we may at times discount or waive activity fees and other concession revenue to a level below the market rate.

The purpose of providing a discount or waiver is to recognise concession activities providing non-commercial public benefits, which would not otherwise take place if the concessionaire were required to pay full fees. Generally, this involves an activity carried out by non-profit or community groups.

NOTE:

Any discount or waiver is revenue forgone by DOC and results in a decrease in conservation funding. It is important to consider the merit of a potential discount against the resulting decrease to DOC's budget.

For this reason, it is only under exceptional circumstances that a discount or waiver applies.

How to complete an fee waiver request

^ Step 1: Check that the concession activity meets eligibility requirements

Primary purpose of the concession activity

For non-commercial activities, we may consider a discount to the standard fees where you can provide clear evidence that the primary purpose of the activity aligns with one of the following criteria and there are no financial or other commercial benefits:

- The activity supports or contributes to DOC's intermediate outcomes
- The activity supports curriculum-based education for students 18 or under)
- The concessionaire contributes to the management of, or public interest in, the area covered by the authorisation
- Other well-defined circumstances that justify a discount or waiver to the fee.

Note: Councils and Crown agencies

Treasury has advised that discounts and waivers cannot be applied to activity fees on the sole basis that the concessionaire is a Council or Crown agency. In the majority of cases, this means that Councils and Crown agencies should be charged the full market rate for activity fees. A discount or waiver can still be granted, but only if they can provide compelling evidence that they are going to meet their statutory requirements and meet the criteria above.

Step 2: Complete the fee waiver application form

If the primary purpose of the concession activity meets the criteria above, complete the fee waiver form and submit it to the commercial team for consideration.

For one-off applications and other processes led by the District Office use the [fee waiver application form](#). This can be generated through the permissions database in the "create standard documents section".

For long-term applications and processes undertaken by the Permissions Teams and National Transaction Centre use this [Fee Waiver Form](#).

Example of applying a discount

A charitable outdoors group that takes school groups on multiday hiking trips and stays in DOC huts applies for a fee waiver. They are a non-profit, that improves social outcomes for disadvantaged youth (school aged) by connecting them with nature.

The sole intended purpose of the concession activity meets the criteria for receiving a discount or waiver:

Rationale for proposed waiver	
The proposed waiver or discount should be consistent with at least one of the following factors and involve no monetary gain for the applicant:	
Activity supports or contributes to DOC's Intermediate Outcomes	Yes/No
Educational activities (non-commercial)	Yes/No
Concessionaire contributes to the management of, or public interest in, the area covered by the authorisation	Yes/No
There will be other non-commercial benefits from the authorisations	Yes/No
The concessionaire makes no financial gain from this activity	Yes/No

Example of a declining a discount

A developer applies for a water pipe easement to service an irrigation scheme for commercial landholders. This scheme will pass on the costs of the activity fee to the landholders who will receive water for irrigation via the easement, increasing their production and the value of their private land.

During email correspondence, the concessionaire asks for a discount because they plan to establish a community group to restore the riverbank near the water pipe easement.

This is a request for a discount for an activity that is not the sole intended purpose of the concession, which in this case is a water pipe easement for an irrigation scheme. This activity is not eligible for a discount as it results in private commercial gains and does not meet other criteria.

Rationale for proposed waiver	
The proposed waiver or discount should be consistent with at least one of the following factors and involve no monetary gain for the applicant:	
Activity supports or contributes to DOC's Intermediate Outcomes	Yes/No
Educational activities (non-commercial)	Yes/No
Concessionaire contributes to the management of, or public interest in, the area covered by the authorisation	Yes/No
There will be other non-commercial benefits from the authorisations	Yes/No
The concessionaire makes no financial gain from this activity	Yes/No

Step 3: Record the details in schedule 1 and conditions in schedule 3

After approval has been granted by the Commercial Manager, communicate the outcome to the concessionaire and record the fee details in the contract. If the application is declined the process ends at step 2.

Schedule 1

The waiver amount must be recorded separately from the undiscounted activity fee total to ensure transparency around the total dollar amount of the discount.

Examples of contract text

For a full waiver:

\$xxx per annum plus GST

(Waived until the first concession fee review or the concession is assigned)

For a discount:

\$xxx per annum plus GST

(Reduced by \$xxx to \$xxx until the first concession fee review or the concession is assigned)

For a conditional discount or waiver:

\$xxx per annum plus GST

(To be reduced by \$xxx to \$xxx in accordance with Schedule 3, Clause x, until the first concession fee review or the concession is assigned)

Schedule 3: Special conditions

If there are conditions that must be met to continue to receive the discount or waiver, these must be recorded in Schedule 3. This is so that monitoring can be done easily and that conditions can be checked at rental reviews.

Note: Discounts and waivers policy review

The Commercial team are working on a policy to support the consistent and strategic application of discounts and waivers for activity fees.

Currently, the widely interpretable legislative framework and the lack of practical guidance means applying discounts and waivers to concession fees and revenue is often inconsistent and not well recorded.

Through this policy, we aim to:

- Provide a strategic purpose for why we apply discounts and waivers to activity fees
- Make it easier for staff to know when and how a discount or waiver should be applied to activity fees
- Provide oversight of the revenue forgone through applying discounts and waivers to activity fees, and the conservation value that is provided in exchange for waived/discounted activity fees.

Need fee setting support?

Request Help

Something missing?

Suggest an Improvement

Contact

P Permissionfees

Released under the Official Information Act

PERMISSIONS DECISION MAKING FLOWCHART FOR ACTIVITY FEE SETTING

Applies to fees set during:

- Concession Fee Reviews
- Reissue Fee Assessments
- New Concession Fee Assessments

Category 1 All types	Category 2 Concession Fee Reviews & Reissue Fee Assessments	Category 2 New Concession	Category 3 and 4 All types	Category 4 and 5 All types
<p>The recommended activity fee is:</p> <ul style="list-style-type: none"> • consistent with the price book and is • reflective of a singular fixed fee. <p>(E.g., Guiding and Aircraft pricing)</p>	<p>The recommended activity fee is:</p> <ul style="list-style-type: none"> • less than \$10k • is consistent with the price book where a calculation is required of a pricing range is offered • Phased in fee changes <p>(E.g., easements, grazing)</p>	<p>The recommended activity fee is less:</p> <ul style="list-style-type: none"> • less than 10k • is consistent with the price book where a calculation is required of a pricing range is offered <p>(E.g., easements, grazing)</p>	<p>The recommended activity fee is:</p> <ul style="list-style-type: none"> • between \$10K and \$100K • a significant increase • not able to be calculated using any guidance provided in the price book • contains a medium risk to the department 	<p>The recommended activity fee is:</p> <ul style="list-style-type: none"> • over \$100k or likely to be over \$100k. • not able to be calculated using any guidance provided in the price book • contains a high risk to the department
Approval is already granted through the price book.	Statutory Processes Manager (System Transactions)	Commercial Manager (via fee assessment requests as required)	Commercial Manager	Commercial Manager Elevation to Director may be required

Updated 03/09/2024

Notes:

Except as provided for in the Telecommunications Pricing Framework, where a discount or waiver (for activity, management or processing fee) is recommended the decision maker is automatically set to the Commercial Manager

Where there are risks identified as part of the fee review/setting which should be elevated to the Commercial Manager

Where there is any reason triggering a peer review, this does not change the identified decision maker, but a peer review is required before it is sent for a decision.

DALEFIELD WATER SUPPLY SOCIETY INC.

DATE : 8/7/97
TO : Ken Stewart
ORGANISATION : Conservation Department
FACSIMILE # : 03 477-8626
SUBJECT : Dalefield Water Supply Society/DOC concession easement
OF PAGES : 1 page

Dear Ken,

I refer to your letter of approval, dated 7/7/97, to the Society's application for a concession easement.

The Society is in agreement with the conditions as outlined in your letter.

Yours sincerely

Nigel Mayson
Chairman, Dalefield Water Supply Society Incorporated
cc Simon Stammers-Smith, Berry & Co.



*f.c. advised that applicant
accepted conditions
Stewart
21/7/97.*

Ken

*R Sol Please prepare draft easement. We will
need to want survey*



Department of Conservation
Te Papa Atawhai

Our ref: EAS 17

7 July, 1997

Duffill Watts and King Ltd
Consulting Engineers
Box 460
QUEENSTOWN

Dear Sir

**CONCESSION APPLICATION
DALEFIELD WATER SUPPLY SOCIETY**

I refer to the application for a concession by Dalefield Water Supply Society to install a pipeline and operate to bores on the Tuckers Beach Wildlife Reserve.

I can now advise that the regional conservator has approved the following:

- 1 An easement for the two bores and pipeline easement including electric cabling.
- 2 Term of 30 years.
- 3 Route of pipeline to be protected from erosion by laying the cut broom and briar over the line.
- 4 Installation to be completed by end of July to avoid interference with banded dotterel and oystercatchers. In this regard you will need to apply to the Otago Regional Council for a variation to their consent. The department has advised the regional council of our agreement to this variation.
- 5 All bore equipment and pipelines and associated electrical cabling to be underground where possible and ground restored to department's satisfaction.
- 6 The existing surplus power pole and aerial cable to be removed on completion of the new pipelines and underground power source.
- 7 Contractor to leave site in a condition satisfactory to the department.
- 8 All costs of creating easement to be met by applicant.
- 9 The Crown to be indemnified against any claims for damage or injury caused as a result of the existence of the easement.
- 10 All documents to be executed when presented for signing.

Otago Conservancy

P.O. Box 5244, 77 Stuart Street, Dunedin, New Zealand
Telephone 03-477 0677, Fax 03-477 8626

31/4 30/9/97
16h

Please have your client provide written acceptance of conditions prior to any work proceeding. In due course please advise if a registered easement is required and provide a copy of the survey plan depicting the easement. The department will prepare the easement documents at your client's expense.

Yours faithfully



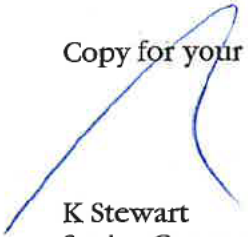
K Stewart
Senior Conservation Officer (Statutory Management)
for Regional Conservator

Released under the Official Information Act

COPY TO

Mr Nigel Mayson
Chairman
Dalefield Water Supply Society Incorporated
c/o Ward Wilson and Partners
99 Shotover Street
QUEENSTOWN

Copy for your information.



K Stewart
Senior Conservation Officer (Statutory Management)
for Regional Conservator

FCM
QUEENSTOWN

Copy for your information.



K Stewart
Senior Conservation Officer (Statutory Management)
for Regional Conservator

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STEWART, Ken [A&I,DUN]

From: PALMER, Dawn[QTWN,QTWN]
 To: STEWART, Ken [A&I,DUN]
 Subject: R Perkins comments on Dalefield water supply application
 Date: Thursday, 26 June 1997 01:03PM

Mr Brady (OCB) advised
 OCB Secretary no comments (9)
 subject to FC recommendations
 That
 2/1/97

Ken

I have just (11:30 am 26/6/97) spoken to Rachel Perkins about this application, hers comments are;

She concurs with the recommendations of the Field Centre report.

That the Board is not usually consulted over matters as minor as this and the fact that she was consulted over this application is probably symptomatic of the way business gets done in Queenstown.

She has continuing concerns over people undertaking these activities without the appropriate consent.

Rachel support s a recommendation that advertising is not required for this activity as it will have only minor effects

Dawn
 for FCM

26 June 1997 12:08 pm

Case No 97/98/1

R.C.

Application folio 1 and FC report folio 4 refers. OCB members have no concerns

1. Recommend pursuant to section 17 T (5) ^{59A Reserves Act 1977} Conservation Act advertising not be required in view of minor effects

2. Recommend pursuant to section 59A Reserves Act 1977 that an easement be granted to the applicants on the following terms and conditions

1. Term 30 years (section 172)
2. No compensation or rental proposed in view of community nature of scheme
3. Route of pipeline to be protected from erosion by laying the cut broom and brier over the line
4. Installation to be completed by end of July to avoid interference with banded dotted and oyster catchers
5. All costs of creating legal easement to be met by applicants
6. Contractors to leave site in a condition satisfactory to the department (Turtle)

7. The ^{Item #2} existing surplus power pole and aerial cable be removed on completion of the new pipelines and underground power source.
8. All equipment to be underground and ground restored to departments satisfaction

Denson

Approved / ~~declined~~

John
R.C 7/7/97

Released under the Official Information Act

**FIELD CENTRE REPORT
APPLICATION FOR A CONCESSION**

From : Field Centre Manager - QUEENSTOWN

Applicant : Dalefield Water Supply Society Inc.
C/- Ward Wilson & Partners Chartered Accountants

Conservancy File : _____

Report due by : Rec'd 23/6/97 **Report submitted by :** 24/6/97

1 CONTENTS OF THE APPLICATION (Section 17S Conservation Act)

Has the applicant provided sufficient details on:

a The proposed activity to be undertaken?

No. The application is to upgrade the pipeline of the existing installation. It is stated that the installation has been located in its current position for 22 years. The only reference to the proposed realignment in the application is on an enlarged plan which shows the existing pipeline route up to the junction with the proposed pipeline route.

The application should stand alone and provide the assessor with all the relevant facts of the proposal and its effects.

During a site inspection undertaken on 23 June 1997 it was observed that the work had largely been carried out prior to authority being issued, and it was observed that electrical cable was being laid into the trench. It is noted that no mention was made to electrical cabling in either this easement application or the resource consent land use application.

b The places where the proposed activity is to be undertaken and the status?

c The potential adverse effects of the proposed activity and the actions which the applicant proposes to avoid, remedy or mitigate?

The applicant does not provide any information as to how their adverse effects would be mitigated. The applicant notes that the area is a Wildlife Management Reserve and yet makes no reference to the species that may be affected by the work, although conditions attached to their resource consent application made some reference to the importance of the timing of the operation in respect of protecting banded dotterel which return in the spring to breed.

The area was originally set aside as a game reserve for upland quail. There is no mention of this in the application. In identifying effects, the applicant indicates that the activity will disturb soils, wetlands or natural features during installation only. The applicant has not identified the steps to be taken to minimise disturbance or restore the site such that the area will not be eroded in the future as a result of the proposed disturbance.

The applicant also indicates that noise will be associated with the activity during the installation phase only, but does not explain steps taken to minimise the effects eg to have the work carried out within a time frame and to consult with neighbours, their resource consent indicated the proposed hours of operation.

d The type of concession?

e The duration of the concession and reasons?

f Relevant information relating to the applicant, including any information relevant to the applicant's ability to carry out the proposed activity?

No. Parts B (vii) and (viii) of the application have not been adequately filled out.

(vii) Is there any other route which may be reasonably used to obtain access? Provide details.

There is another route that may be used i.e. the existing route. In terms of minimising the effects on the erodable slopes above the Shotover River, using the existing route would be preferable to realigning the pipes up the slope. It would be helpful to view a topographic map of the proposed pipe alignment. This would enable an assessment of the actual route of disturbance.

A site visit was made with Sec 9(2)(a) of Duffil, Watts and King on 29 May 1997. The general route of the realignment was discussed although the area had not been pegged and Sec 9(2)(a) was not certain of the exact route. He was asked to provide a photograph of the area with the pipeline marked on to it.

Access to the area has not been discussed although it was anticipated that access would be via the existing track. - access has been gained across the Shotover River as at 23 June 1997.

The contractors interviewed on the site 23 June 1997 indicated that they had anticipated gaining access via the Faulks property but this had not been possible.

(viii) Please supply details of negotiations with other landowners adjoining the property and along a proposed route of access. Have you sought access from any other party?

The applicant has responded "N/A" to this question. I consider the answer to this question to be very applicable in that Sec 9(2)(a) conversations with me have indicated that attempts to negotiate an easement along the existing alignment have not been successful to date. This has been confirmed by Sec 9(2)(a) - the landowner on the existing alignment, it was noted from her contact with this office that she does not consider negotiations to have been concluded.

2 COMPATIBILITY WITH MANAGEMENT POLICIES FOR AREA/S INVOLVED (AS PER CMS, MPSs, MANP MP, OTHER PLANNING DOCUMENTS, ETC)

Conservation Unit F41046

The CMS describes water easements as an existing landuse, therefore the applicant would not appear to be an inconsistent use. The area is also identified as one having landscape value, it is actually within the Kawarau Water Conservation Order area. It is not considered that the proposal will adversely affect the landscape values of this area.

3 ASPECTS OF PROPOSAL NEEDING CLARIFICATION

An explanation as to why the applicant undertook the work prior to receiving an easement.

4 DESIRABILITY OF PROPOSED SERVICE FROM A RECREATION/ TOURISM VIEWPOINT

5 MATTERS TO BE CONSIDERED BY MINISTER (Section 17U Conservation Act)

Your comments on the following matters which the Minister is required to have regard to are required:

a The nature of the activity and the type of structure or facility proposed to be constructed.

b The effects of the activity, structure or facility.
The activity will result in minor effects.

c Any measures that can reasonably and practicably be undertaken to avoid, remedy or mitigate any adverse effects of the activity.
The pipeline route must be restored such that the potential for erosion down the steep slope of the line is minimised.

The easement should record an electrical cable in the trench as a matter of safety.

The timing should be such that interference with the breeding banded dotterel is avoided and the gravel on the river terrace has time to reconsolidate where disturbed prior to the arrival of banded dotterel and oyster catchers. I recommend as that work be concluded by the end of July and if not completed by that time that the applicant not be permitted to recommence until after the end of February.

d Any environmental impact assessment.
Minor, erosion and disturbance to wader habitat being the potential adverse effects.

6 OTHER MATTERS NOT COVERED ABOVE, IE, IMPACT ON DOC FACILITIES, OTHER USERS, LOCAL COMMUNITY

7 a HAVING REGARD TO THE EFFECTS OF THE PROPOSAL (IF IT IS A PERMIT) DO YOU RECOMMEND THE PROPOSAL BE ADVERTISED

No because we approved the applicant's resource consent as non-notified. However, I note that in terms of easements over land administered by the Department, we have required public advertisements for water easements of a lesser size and effect.

b RECOMMENDATION (INCLUDING ANY SPECIAL CONDITIONS AND / OR RECOMMEND ALTERATIONS TO DETAILS IN APPLICATION FORM)

That consent be permitted subject to the timing restrictions mentioned above, that the route of the pipeline be protected from erosion by laying the cut broom and briar over the line.

Signed: Dawn Palmer
for Field Centre Manager

Date : 24 June 1997

Total time spent (eg 0.25, 0.5, 0.75, 1.5) : 1 hours

Nature of any other costs: _____

Total other costs: \$ _____

R =

Ian Whittell

In view of the report I would recommend that advertising not be required (section 17 T (5) Conservation Act)

Decision

Deferred*

(J. Connell)

26-6-97

~~Approved / declined~~

* For ① Consultation with local Conservation Board members and Wakatipu ES

② An explanation from the company as to why they proceeded prior to approval being

obtained (I have read the Chairman's letter to Ian of 24/6. It does not adequately explain why they went ahead after being told on 29 May that they needed one)

Berry & Co.

(Incorporating Buckham Stammers-Smith)
Barristers & Solicitors

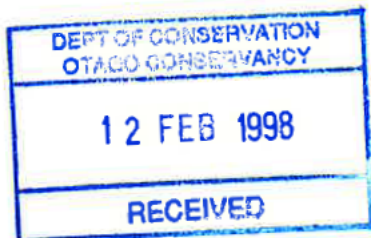
Queenstown Partners
Revell W. Buckham, LL.B.
Simon Stammers-Smith, LL.B.

Oamaru Partners
George Latham Berry, LL.B.
David R.T. Salter, B.A., LL.B.
Michael John De Buyzer, L.L.B.

Cnr Camp & Shotover Streets
P.O. Box 179
DX ZP 95002
Queenstown
New Zealand
Telephone 0-3-442 7040
Fax 0-3-442 7043

Your Reference

Our Reference L1102DOC



11 February, 1998

The Regional Conservator
Department of Conservation
P O Box 5244
DUNEDIN

Attention: Mr J Beard

Dear Sir

DALEFIELD WATER SUPPLY EASEMENT

Thank you for your note of the 3rd of February. We now enclose a transfer which, if in order, we would ask that you arrange to execute. If you have any suggested amendments, please return and we will make them. If it is in order could you please loan us the Certificate of Title 18C/313 so that we can attend to registration of the transfer. Thank you for your assistance.


Yours faithfully
BERRY & CO.

Per: 

SHN STAMERS-SMITH

SSS:PJG

email: SimonS@berryco.co.nz

CONSERVATOR	
A.M.	
C.R.M.	
B.S.M.	
T.S.M.	
H.R.A.	
H.C.T.R.M.	
K.A.A.	
OTHER	

document in safe
see 1212



Department of Conservation
Te Papa Atawhai

Our ref: EAS 17
Your ref: L1401 doc

3 February, 1998

Messrs Berry and Co
Barristers and Solicitors
Box 179
QUEENSTOWN

ATTENTION: Mr Stammers-Smith

Dear Sirs

DALEFIELD WATER SUPPLY : EASEMENT

I refer to your letter of 14 January.

The conditions of approval were set out in a letter to Duffill Watts and King Limited dated 7 July last year. A copy of this letter is attached.

As regards condition 9, the wording is:

THAT the Transferee shall indemnify the Transferor against all and any action claim injury damage or loss which may arise in any manner whatsoever from the creation of this easement.

Please let me have a draft transfer for perusal and a copy of the plan.

Yours faithfully


J H Beard
Solicitor
for Conservator
3-2

copy photo 10 sent

Otago Conservancy

P.O. Box 5244, 77 Stuart Street, Dunedin, New Zealand
Telephone 03-477 0677, Fax 03-477 8626, www.doc.govt.nz

Berry & Co.

(Incorporating Buckham Stammers-Smith)
Barristers & Solicitors

Queenstown Partners
Revell W. Buckham, LL.B.
Simon Stammers-Smith, LL.B.

Oamaru Partners
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Cnr Camp & Shotover Streets
P.O. Box 179
DX ZP 95002
Queenstown
New Zealand
Telephone 0-3-442 7040
Fax 0-3-442 7043

Your Reference

Our Reference L1401doc

14 January, 1998



The Regional Conservator
Department of Conservation
P O Box 5244
DUNEDIN

Dear Sir

DALEFIELD WATER SUPPLY - EASEMENT

The Society and the Department have agreed to the grant of an easement from the two wells in the Shotover up to the nearest adjoining freehold property. The Regional Conservator has signed the easement plan and it is now deposited. We can now prepare a transfer and forward it to you for execution. The reason for this note is to ask if there are any special conditions that you would like to be included in the transfer. If there are, could you please let us have the text and we will let you have a transfer.

Yours faithfully
BERRY & CO.

Per: *[Signature]*

S H N STAMERS-SMITH

SSS:PJG

E-Mail: Qtown@BerryCo.co.nz

CONSERVATOR	
A.M.	
C.R.M.	
B.S.M.	
T.S.M.	
H.R.A.	
H.C.T.R.M.	
K.A.A.	
OTHER	

*Schuster - our
conditions in folio 10
Are there any legal
matters to resolve*

[Signature]
19/1/98

Berry & Co.

(Incorporating Buckham Stammers-Smith)

Barristers • Solicitors • Notary Public

Queenstown Partners

Revell W. Buckham, LL.B.
Simon Stammers-Smith, LL.B.

Oamaru Partners

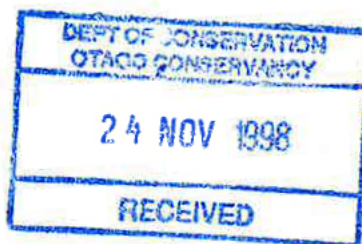
George Latham Berry, LL.B.
David R.T. Salter, B.A., LL.B.,
Michael John De Buyzer, LL.B., Notary Public

Legal Offices

Cnr Camp & Shotover Streets
P.O. Box 179
DX ZP 95002
Queenstown
New Zealand
Telephone: 0-3-442 7040
Fax: 0-3-442 7043
email - qtown@berryco.co.nz

Your Reference

Our Reference: 231198DOC



23 November, 1998

The Conservator
Department of Conservation
PO Box 5244
DUNEDIN

CONSERVATOR	
A.M.	
C.R.M.	
G.S.M.	
T.S.M.	
H.R.A.	
H.C.T.M.	
K.A.A.	
OTHER	

Dear Sir

RE: DALEFIELD WATER SUPPLY EASEMENT - YOUR REF: FAS17

We refer to correspondence back in March of your letter to us of the 9th of March. We now enclose the Transfer duly executed by the Dalefield Water Supply Incorporated. We would appreciate it if you could arrange for it to be signed on account of the Crown. Will you register or will we? If it is to be us could you please let us have the Transfer back together with Certificate of Title 18C/313. Please advise.

Yours faithfully,
BERRY & CO

Per:

S H N STAMERS-SMITH
SSS:MJL

done & received
24-11



Department of Conservation
Te Papa Atawhai

Our ref: FAS 17
Your ref: LII02DOC

9 March, 1998

Messrs Berry and Co
Barristers and Solicitors
Box 179
QUEENSTOWN

ATTENTION: Mr Stammers-Smith

Dear Sir

DALEFIELD WATER SUPPLY EASEMENT

I refer to your letter of 11 February.

- 1 I think your page 2 should be re-worded as shown on the copy of that page attached.
- 2 Clause 2(b) needs altering since there is no clause 7 of the schedule.
- 3 The following needs to be added on page 2:

AND IT IS HEREBY AGREED AND DECLARED by and between the Transferor and the Transferee:

- 1 The easement shall be for a term of 30 years commencing on the 7th day of July 1997.
- 2 For the first three years of the term the annual fee shall be one peppercorn (if demanded).
- 3
 - a Before the expiry of the first three years of the term the annual fee shall be fixed for the next following period of three years.
 - b The Conservator Department of Conservation Dunedin ("the Conservator") shall give notice in writing to the Transferee of the annual fee for the next ensuing period fixed in accordance with section 17Y(2) of the Conservation Act 1987.
 - c If the parties reach agreement on the suggested fee or any modification thereof the fee so agreed upon ^{shall} become payable from the expiry of the preceding period.
 - d If the parties shall fail to reach agreement within three months of service of the notice referred to in subclause b the annual fee for the next succeeding period shall be fixed and determined by the parties referring the matter to mediation by a duly qualified mediator (being a member of

(13h03)
Otago Conservancy

P.O. Box 5244, 77 Stuart Street, Dunedin, New Zealand
Telephone 03-477 0677, Fax 03-477 8626, www.doc.govt.nz

the Mediators Institute or a member of LEADR) appointed if the parties cannot agree upon one by the President for the time being of the Otago District Law Society and in the event that such dispute is not capable of being resolved by mediation then the matter shall be resolved by arbitration in accordance with the provisions of the Arbitration Act 1996 or any enactment passed in substitution therefor. If the Arbitration Act 1996 is used and the parties fail to agree on the person to be appointed as arbitrator the Appointment shall be made by the president for the time being of the Otago District Law Society.

- 4 That if the Transferee shall fail to perform or observe any of the covenants or to pay the fee the Transferor may on giving the Transferee one calendar month's written notice determine this easement and all the rights of the Transferee shall thereupon cease and determine but without releasing the Transferee from liability for damages for any breach of covenant or from liability to pay the fee. Within three months of expiration or sooner determination of this easement the Transferee shall remove the pipe line and its other improvements from the servient tenement and shall leave the servient tenement in a clean and tidy condition to the satisfaction of the Conservator.

Covenant 3 above is required because of section 17Y(3) of the Conservation Act 1987.

The letter of 7 July (a copy of which I sent to you) refers to electric cabling also being the subject of the easement. This is not mentioned in your draft so I have assumed it is not to be the subject of the easement.

Your transfer is returned.

Yours faithfully


J H Beard
Solicitor
for Conservator

9-3

TRANSFER

Land Transfer Act 1952

If there is not enough space in any of the panels below, cross-reference to and use the approved Annexure Schedule: no other format will be received.

Land Registration District

Otago

Certificate of Title No. All or Part? Area and legal description — *Insert only when part or Siratum, CT*

18C

313

All

Transferor Surnames must be underlined

HER MAJESTY THE QUEEN as a wildlife management reserve

Transferee Surnames must be underlined

DALEFIELD WATER SUPPLY SOCIETY INCORPORATED

Estate or Interest or Easement to be created: *Insert e.g. Fee simple; Leasehold in Lease No.; Right of way etc.*

1. Right to draw water
(Continued on page 2 of annexure schedule)
2. Right to convey water

Consideration

10 cents

Operative Clause

For the above consideration (receipt of which is acknowledged) the TRANSFEROR TRANSFERS to the TRANSFEE all the transferor's estate and interest in the land in the above Certificate(s) of Title and if an easement is described above such is granted or created.

Dated this

day of

19

Attestation

Signed in my presence by the Transferor
Signature of Witness

Witness to complete in BLOCK letters
(unless typewritten or legibly stamped)

Witness name

Occupation

Address

Signature, or common seal of Transferor

Certified correct for the purposes of the Land Transfer Act 1952

Certified that no conveyance duty is payable by virtue of Section 24(1) of the Stamp and Cheque Duties Act 1971.
(DELETE INAPPLICABLE CERTIFICATE)

Solicitor for the Transferee

Annexure Schedule

TRANSFER

Dated

1998

Page

2

of

2

Pages

Continuation of "Estate or Interest or Easement to be Created:"

1. The right to convey water shall have the meaning set out in paragraph 2 of the seventh schedule of the Land Transfer Act 1952 ("the schedule") and the transferee shall have the further rights set out in paragraph 5 of the schedule.
2. The right to draw water shall mean the full, free, uninterrupted and unrestricted right, liberty and privilege for the grantee and its tenants (in common with the grantor & its tenants and other persons lawfully entitled so to do) for the purposes of the easement concerned:
 - (a) To bore and dig a well in the designated places to place necessary pumping equipment within those wells and piping and lining and to construct any headworks necessary for its protection; and
 - (b) Otherwise to have the rights set out in clause 7 of the schedule as if reference to pipes therein were reference to the well.
3. The transferee shall have the right to convey water over that part of the land in Certificate of Title 18C/313 marked "water easement" on Deposited Plan 26578 and to draw water from the two water bores marked 'A' and 'B' on Deposited Plan 26578 with the rights and powers set out in clauses 1 and 2 of this schedule.
4. The transferee shall indemnify the transferor at all times against all and any action, claim, injury, damage or loss which may arise in any manner whatsoever from the creation of this easement.

AND IT IS HEREBY ORDERED AND DECLARED by the between the
Transferor and the Transferee;

(1) The easement shall be for a term of 30 years commencing on the
 7th day of July 1997

BEFORE the expiry of the first three years of the term of this Deed the annual fee shall be fixed for the next following period of three years or the final period of two years as the case may be.

THE ^{Department of Conservation (The Conservator)} Regional Conservator shall give notice in writing to the ^{Grantee} of the annual fee for the next ensuing period fixed in accordance with section 17Y(2) of the Conservation Act 1987.

IF the parties reach agreement on the suggested fee or any modification thereof the fee so agreed upon shall ~~accrue~~ and become payable from the expiry of the proceeding period.

IF the parties shall fail to reach agreement within three months of service of the notice referred to in subclause c the annual fee for the next succeeding period shall be fixed and determined by the parties referring the matter to mediation by a duly qualified mediator (being a member of the Mediators Institute or a member of LEADR) appointed if the parties cannot agree upon one by the President for the time being of the ^{Otago} Southland District Law Society and in the event that such dispute is not capable of being resolved by mediation then the matter shall be resolved by arbitration in accordance with the provisions of the Arbitration Act 1998 or any enactment passed in amendment thereto or substitution therefor. ^{If the Arbitration Act 1996 is used the parties}

3 **THAT** the Grantee shall maintain the pipe line in good order condition and repair and shall notify the Regional Conservator Department of Conservation Invercargill immediately it becomes aware of any structural damage to the pipeline.

4 **THAT** if the Grantee shall fail to perform or observe any of the covenants or to pay the fee the ^{Grantor} may on giving the ^{Grantee} one calendar month's written notice determine this easement and all the rights of the ^{Grantee} shall thereupon cease and determine but without releasing the ^{Grantee} from liability for damages for any breach of covenant or from liability to pay the fee. Within three months of expiration or sooner determination of this easement the ^{Grantee} shall remove the pipe line from the servient tenement and shall leave the servient tenement in a ^{clean and tidy condition to the satisfaction of the Conservator}

President for the time being of the Otago District Law Society.

I have taken the liberty of re-drafting the easement with these amendments (and other minor ones shown on your original, which is returned) and have had it executed on behalf of the Crown. If you are happy with it, please get it re-executed, dated, and return it.

I will register the easement on receipt of a cheque from you made out to the DLR for \$128 (registration fee).

Yours faithfully



J H Beard
Solicitor
for Conservator

35-11

Released under the Official Information Act

TRANSFER

Land Transfer Act 1952

This page does not form part of the Transfer.

TRANSFER
Land Transfer Act 1952

If there is not enough space in any of the panels below, cross-reference to and use the approved Annexure Schedule: no other format will be received.

Land Registration District

Otago

Certificate of Title No. All or Part? Area and legal description — *Insert only when part or Stratum, CT*

18C	313	All	
-----	-----	-----	--

Transferor Surnames must be underlined

MINISTER OF CONSERVATION

Transferee Surnames must be underlined

DALEFIELD WATER SUPPLY INCORPORATED

Estate or Interest or Easement to be created: *Insert e.g. Fee simple; Leasehold in Lease No.; Right of way etc.*

1. Right to draw water 2. Right to convey water 3. Right to convey electricity (all in gross)
(continued on page 2 annexure schedule)

Consideration


10 cents

Operative Clause

For the above consideration (receipt of which is acknowledged) the TRANSFEROR TRANSFERS to the TRANSFEE all the transferor's estate and interest described above in the land in the above Certificate(s) of Title and if an easement is described above such is granted or created.

Dated this day of 19

Attestation

	Signed in my presence by the Transferor	<u>SIGNED</u> for and on behalf of the
	Signature of Witness	<u>MINISTER OF CONSERVATION</u> by Jeff
		Connell pursuant to a
	Witness to complete in BLOCK letters (unless typewritten or legibly stamped)	delegation given to him by the Director-General of Conservation and dated the 27th day of June 1996 in the presence of:
	Witness name	
	Occupation	(continued on page 3 annexure schedule)
	Address	
Signature, or common seal of Transferor		

Certified correct for the purposes of the Land Transfer Act 1952
Certified that no conveyance duty is payable by virtue of Section 24(1) of the Stamp and Cheque Duties Act 1971.
(DELETE INAPPLICABLE CERTIFICATE)

Solicitor for the Transferee

Annexure Schedule

Insert below

"Mortgage", "Transfer", "Lease" etc

Transfer

Dated

Page

2

of

3

Pages

Continuation of "Estate or Interest or Easement to be Created"

- 1 The right to convey water shall have the meaning set out in paragraph 2 of the seventh schedule of the Land Transfer Act 1952 ("the schedule") and the Transferee shall have the further rights set out in paragraph 5 of the schedule.
- 2 The right to draw water shall mean the full, free, uninterrupted and unrestricted right, liberty and privilege for the Transferee and its tenants (in common with the Transferor, her tenants and other persons lawfully entitled so to do):
 - a To bore and dig a well in the designated places to place necessary pumping equipment within those wells and piping and lining and to construct any headworks necessary for its protection; and
 - b Otherwise to have the rights set out in clause 5 of the schedule as if reference to pipes therein were reference to the well.
- 3 The Transferee shall have the right to convey water over that part of the land in Certificate of Title 18C/313 marked "a-b" and "c-d" on Deposited Plan 26578 and to draw water from the two water bores marked 'A' and 'B' on Deposited Plan 26578 with the rights and powers set out in clauses 1 and 2 of this schedule.
- 4 The Transferee and its tenants shall also have:
 - a the full free uninterrupted and unrestricted right liberty and privilege to transmit electrical energy along that part of the land in Certificate of Title 18C/313 marked "a"-b" and "c"-d" on Deposited Plan 26578.
 - b the full free uninterrupted and unrestricted right liberty and privilege together with its servants agents and workmen with any tools implements machinery vehicles or equipment necessary for the purpose to enter upon such part of the land in Certificate of Title 18C/313 and by such route as is reasonable in the circumstances for the purpose of laying inspecting renewing or maintaining the line for the transmission of electrical energy and to remain there for any reasonable time for those purposes and to open up the soil of that land to such extent as may be necessary and reasonable in that regard subject to the condition that as little disturbance as possible is caused to the surface of that land and that the surface is restored as nearly as possible to its original condition and any other damage done by reason of the aforesaid operations is repaired.

AND IT IS HEREBY AGREED AND DECLARED by and between the Transferor and the Transferee:

- 1 The easement shall be for a term of 30 years commencing on the 7th day of July 1997.

(Continued on page 3 of the annexure schedule)

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.

Item 16
Annexure Schedule

TRANSFER

Dated

Page

3

of

3

Pages

- 2 For the first three years of the term the annual fee shall be one peppercorn (if demanded).
- 3 a Before the expiry of each three years of the term the annual fee shall be fixed for the next following period of three years.
- b The Conservator Department of Conservation Dunedin ("the Conservator") shall give notice in writing to the Transferee of the annual fee for the next ensuing period fixed in accordance with section 17Y(2) of the Conservation Act 1987.
- c If the parties reach agreement on the suggested fee or any modification thereof the fee so agreed upon shall become payable from the expiry of the preceding period.
- d If the parties shall fail to reach agreement within three months of service of the notice referred to in sub-clause b the annual fee for the next succeeding period shall be fixed and determined by the parties referring the matter to mediation by a duly qualified mediator (being a member of the Mediators Institute or a member of LEADR) appointed if the parties cannot agree upon one by the President for the time being of the Otago District Law Society and in the event that such dispute is not capable of being resolved by mediation then the matter shall be resolved by arbitration in accordance with the provisions of the Arbitration act 1996 or any enactment passed in substitution therefor. If the Arbitration act 1996 is used and the parties fail to agree on the person to be appointed as arbitrator the Appointment shall be made by the president for the time being of the Otago District Law Society.
- 4 That if the Transferee shall fail to perform or observe any of the covenants or to pay the fee the Transferor may on giving the Transferee one calendar month's written notice determine this easement and all the rights of the Transferee shall thereupon cease and determine but without releasing the Transferee from liability for damages for any breach of covenant or from liability to pay the fee. Within three months of expiration or sooner determination of this easement the Transferee shall remove the pipe line and its other improvements from the servient tenement and shall leave the servient tenement in a clean and tidy condition to the satisfaction of the Conservator.
- 5 The Transferee shall indemnify the Transferor at all times against all and any action, claim, injury, damage or loss which may arise in any manner whatsoever from the creation of this easement.

Continuation of "Attestation"

Signed in my presence by the Transferee
Signature of Witness

Witness to complete in BLOCK letters
Witness name

Signature or common seal of
Transferee

Occupation
Address

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.

Approved by Registrar-General
of Land under No. 1995/1004

TRANSFER

Land Transfer Act 1952

Law Firm Acting
BERRY & CO SOLICITORS QUEENSTOWN

Auckland District Law Society
REF: 4135

This page is for Land Registry Office use only.
(except for "Law Firm Acting")

Berry & Co.

(Incorporating Buckham Stammers-Smith)

Barristers • Solicitors • Notary Public

Queenstown Partners

Revell W. Buckham, LL.B.
Simon Stammers-Smith, LL.B.

Oamaru Partners

George Latham Berry, LL.B.
David R.T. Salter, B.A., LL.B.,
Michael John De Buyzer, LL.B., Notary Public

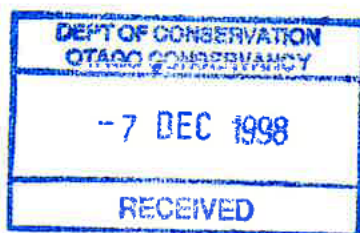
Legal Offices

Cnr Camp & Shotover Streets
P.O. Box 179
DX ZP 95002
Queenstown
New Zealand
Telephone: 0-3-442 7040
Fax: 0-3-442 7043
email - qtown@berryco.co.nz

Your Reference

Our Reference L021298DOC

2 December, 1998



The Regional Conservator
The Department of Conservation
PO Box 5244
DUNEDIN

Attention: Mr Beard

CONSERVATOR	
A.M.	
C.R.M.	<i>gpc</i>
B.L.M.	
P.C.M.	
T.R.A.	
H.C.T.R.M.	
K.A.A.	
OTHER	

Dear Sir

DALEFIELD WATER SUPPLY

Thank you for your letter of the 27th of November. Your redrafting is of course quite correct. Thank you for your assistance. We will return everything to you after execution by Dalefield.

Yours faithfully,

BERRY & CO

Per: *[Signature]*

S H N STAMERS-SMITH

SSS:MJL

Easement Fee Calculator

Concessionaire			
Concession Number			

1st Right Granted	Right Granted:	RTCW - Water supply	Assessed Fee
	Number of Benefiting Non-Commercial Lots or persons (if in gross)	100	\$ 40,000.00
	Number of Benefiting Minor-Commercial Lots or persons (if in gross)	0	\$ -
	Number of Benefiting Commercial Lots or persons (if in gross)	0	\$ -
	SUBTOTAL:		\$ 40,000.00

2nd Right Granted	Right Granted:	RTCE - Overhead/ Underground Cables	Assessed Fee
	Number of Benefiting Non-Commercial Lots or persons (if in gross)	100	\$ 16,750.00
	Number of Benefiting Minor-Commercial Lots or persons (if in gross)	0	\$ -
	Number of Benefiting Commercial Lots or persons (if in gross)	0	\$ -
	SUBTOTAL:		\$ 16,750.00

3rd Right Granted	Right Granted:		Assessed Fee
	Number of Benefiting Non-Commercial Lots or persons (if in gross)		\$ -
	Number of Benefiting Minor-Commercial Lots or persons (if in gross)	0	\$ -
	Number of Benefiting Commercial Lots or persons (if in gross)	0	\$ -
	SUBTOTAL:		\$ -

4th Right Granted	Right Granted:		Assessed Fee
	Number of Benefiting Non-Commercial Lots or persons (if in gross)	0	\$ -
	Number of Benefiting Minor-Commercial Lots or persons (if in gross)	0	\$ -
	Number of Benefiting Commercial Lots or persons (if in gross)	0	\$ -
	SUBTOTAL:		\$ -

5th Right Granted	Right Granted:		Assessed Fee
	Number of Benefiting Non-Commercial Lots or persons (if in gross)	0	\$ -
	Number of Benefiting Minor-Commercial Lots or persons (if in gross)	0	\$ -
	Number of Benefiting Commercial Lots or persons (if in gross)	0	\$ -
	SUBTOTAL:		\$ -

Summary	RTCW - Water supply	Fee:	\$ 40,000.00
	RTCE - Overhead/ Underground Cables	Fee:	\$ 16,750.00
	0	Fee:	\$ -
	0	Fee:	\$ -
	0	Fee:	\$ -
	SUBTOTAL:		\$ 56,750.00

Network Fees (Commercial Telco. and Electricity Easements)	
Is this a Telco. or Electricity Easement which forms part of a Network?	No
What is the length of the cable?	
Per Meter Rate	
Per Metre Fee	\$ -
Subtotal	\$ 56,750.00

Premiums	
What is the Status of the PCL burdened by this easement? (per NaPALIS):	Wildlife Management Reserve
Environmental Premium Rate (%)	25%
Environmental Premium	\$ 14,187.50
Total Recommend Fee	\$ 70,937.50

Find out when and how to set management, monitoring and community service/contribution fees for a concession.

^ Community Service Fees

Why we charge community service fees

A community service fee applies in instances where DOC acts as a local council. This typically occurs when concessionaires are located in villages on public conservation land, such as Mount Cook village or Deep Water Basin in Milford Sound.

This fee covers the cost to DOC for carrying out duties such as rubbish removal and other activities that are usually covered by council rates. If you believe a community service fee applies, contact the regional business accountant for that area to ascertain the fee that should apply.

Deep Water Basin fees

Deep Water Basin community service fees are based on year round or partial year use and the number of trips allocated in the concession contract.

Usage	Trips per year <i>based on maximum allocation in concession contract, not activity returns</i>	Fee
Structure at Deep Water Basin year round	n/a	\$1250.00 +GST (full fee)
Year round	More than 365	\$1250.00 +GST

Usage	Trips per year <i>based on maximum allocation in concession contract, not activity returns</i>	Fee
		(full fee)
Year round or partial year use	273 - 365	\$937.50 +GST
Year round or partial year use	91 - 273	\$625.00 +GST
Year round or partial year use	Up to 91	\$312.50 +GST

Additional guidance

- If there are criteria outside of those in the table to be considered the Te Anau Operations Manager will decide on the tier of pricing to be applied.
- If concessionaires wish to set their own limits to come down a tier and reflect what they are actually undertaking versus their concession allocation, they need to discuss this with the Te Anau Operations Manager.
- Concessionaires that need to move up more than one tier will be provided with a stepped approach so that the increase is not too much in one rent review.

Example of a stepped payment increase

If a concessionaire was previously paying \$100.00 but through this system needed to be moved up to \$625.00, they would go to the next tier \$312.50 and that next rent review move to \$625.00 the rent review after that.

^ Community Service Contributions

Why we charge community service contributions

Community service contributions typically cover the cost of facility or track maintenance for areas used by concessionaires conducting day visit activities, such as guiding or boating.

These fees are also referred to as "Day User Facilities Fees".

Community contribution fees on other price book pages

On other price book pages there are references to community contribution fees.

Location	Fee
Skippers area (Mt Aurum Recreation Reserve)	\$1.00 + GST per guided person
Lower Routeburn Track (Routeburn roadend to Routeburn Flat inclusive)	\$1.00 + GST per guided person
Tongariro Alpine Crossing	\$3.00 plus GST per person (guided and/or transported)

Tongariro Alpine Crossing had community services charges added from 1 January 2024. This is \$3.00 plus GST per person for anyone who is transporting visitors to the TAC or guiding visitors on the TAC. Information on this community services charge and the special pricing applied for TAC is available on the [Guiding](#) and [Parking & transport](#) pages.

Need Help?

Suggest Improvement

Need Help?

Related Information



Concession Activity Fees



Other Fees



Other Pricing Information

Released under the Official Information Act