Department of Conservation
Te Papa Atawhai

Approach to upholding Treaty settlements for the Conservation Amendment Bill

To	Minister of Conservation	**Date submitted**	30 January 2025
Action sought	Indicate your preferred option for the approach to upholding Treaty settlements in the Conservation Amendment Bill	**Priority**	High
Reference	25-B-0017	**DocCM**	DOC-7868812
Security Level	In Confidence		

Risk Assessment	High Risks to Crown-Māori relations and timeframes for the Conservation Amendment Bill	**Timeframe**	5 February 2025
Attachments	Attachment A: Initial list of settlements needing specific equivalence proposals		

Contacts	
Name and position	**Phone**
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Executive summary – Whakarāpopoto ā kaiwhakahaere

1. This briefing discusses high level approaches to upholding Treaty settlement commitments in the Conservation Amendment Bill, in light of further analysis of the complexity and expectations involved.

Background and context

2. Since November 2024, we have been seeking feedback on proposals to modernise land management in the conservation system. In November and December 2024, DOC engaged with Treaty partners in a series of regional hui. At the time, we informed them DOC would engage with post-settlement governance entities (PSGEs) in January and February 2025 to discuss upholding settlement commitments.

3. Detailed analysis has highlighted that approximately 80 settlements have commitments that we expect can be relatively easily upheld under the proposal, but that approximately 30 settlements contain commitments that embed iwi/hapū in the processes and structures of management planning. These are significant because it is proposed to replace conservation management strategies (CMSs) and conservation management plans (CMPs) with a single layer of area plans, and to streamline processes for preparing and approving them.

4. Treaty partners will expect that decisions on how to uphold these commitments in a new system are informed by substantive good faith discussions that reconcile the interests of PSGEs and the Crown. In some places, this may involve providing a specific 'equivalent' to the existing commitment in the new system, while in others it may require 'carving out' or grandparenting and preserving the existing arrangement. These choices will be complex and create tension with the objectives to simplify and streamline management planning.

5. s9(2)(g)(i) [redacted]

6. s9(2)(g)(i) [redacted]

7. s9(2)(g)(i) [redacted]

Options and analysis

8. Given the above, we do not think it will be a good idea for DOC to send letters to PSGEs in the next fortnight with initial DOC views on how settlements can be upheld in the Bill.

9. We consider there are three broad options for progressing these issues:

   - Option 1: A general equivalence clause, with a comprehensive post-enactment programme of discussions.
   - Option 2: Remove some management plan proposals from the scope of the Bill.
   - Option 3 (recommended): Undertake targeted engagement on equivalence and re-assess in June 2025.

Proposed way forward

10. We have understood that it is not your intention for the Conservation Amendment Bill process to re-open settlement commitments, and we do not propose this. At the same time, regardless of the Crown's objectives, we think it will be important and useful to at least test the extent of concerns about equivalence via a more substantive, good faith engagement process.

11. s9(2)(g)(i) [redacted]

s9(2)(g)(i) [redacted] Given this, we recommend the targeted engagement approach in Option 3.

12. At this stage, our advice is that this targeted engagement could involve a time-limited series of face-to-face meetings with the 30 most impacted PSGEs between March and June 2025, with the remaining 80 dealt with via substantive correspondence. It may also be beneficial to undertake a parallel stream of engagement with Iwi Chairs Forum Pou Taiao technicians to help generate specific carve-out solutions for some categories of commitment. This could help achieve buy-in with PSGEs.

13. Under option 3, we would brief you again in May/June 2025 with an assessment of whether (or to what extent) agreement with PSGEs is possible prior to introduction. If some groups cannot or choose not to engage, or do not provide explicit agreement, you may need to consider other options for progressing these parts of the Bill. For example, some version of Options 1 or 2 could be pursued at that stage to maintain your timeframes for introduction.

14. Even if Option 3 does not result in explicit agreement from all groups in the time available prior to introduction, we still consider it the best option to pursue in the first instance. It supports the Treaty principles and Crown obligations engaged when undertaking law reform that affects Māori interests generally, and deed of settlement provisions in particular. This means any future choices about whether to pursue Options 1 or 2 are clearer and better informed through engagement. s9(2)(h) [redacted]

15. You are meeting Pou Taiao chairs on Monday, 3 February 2025. You may wish to express interest in working with them on approaches to the proposals and upholding redress. We have briefed you separately with proposed talking points for this meeting (25-B-0017 – Supp).

16. If you indicate a preference for Option 3, we can provide you with advice in February 2025 setting out parameters for a more detailed engagement. This would cover:

- Principles to govern these discussions,
- A draft communication to PSGEs putting forward this approach,
- Some of the specific challenges for upholding different types of commitments and initial thoughts on options for doing so,
- Coordinating engagement on settlements across both RM and conservation reform, including the benefits and risks in doing so (subject to Cabinet decisions about next steps for RM reform).

We recommend that you … (Ngā tohutohu)

a)	**Note** DOC has been undertaking detailed analysis of the challenges in upholding Treaty settlements under the Conservation Amendment Bill.	
b)	**Note** while DOC had been intending to give PSGEs an initial view of how their redress could be upheld in February 2025, following detailed analysis, we now consider a change in approach is needed to ensure meaningful, good faith engagement and to generate more specific policy options for upholding settlements.	

c)	**Indicate** your preference for an approach to upholding settlements in this context:	Choose one:
	Option 1 (not recommended): A general equivalence clause, with a comprehensive post-enactment programme of discussions.	Yes / No
	Option 2 (not recommended): Remove some management plan proposals from the scope of the Bill.	Yes / No
	Option 3 (recommended): Undertake targeted engagement on equivalence and re-assess in June 2025, with parallel engagement with Pou Taiao technicians.	Yes / No
d)	**Note** you may wish to express interest in working with Pou Taiao technicians at your meeting with some Pou Taiao members on Monday, 3 February 2025, and suggested talking points for this are in the accompanying briefing (25-B-0017 – Supp).	
e)	**Note** should you indicate a preference for Option 3, we will brief you later in February 2025 with more detailed parameters and proposals for a targeted engagement process.	

s9(2)(a)

Date: 30/01/25

Ewan Delany
Acting Deputy Director-General, Policy and Regulatory Services

Date: / /

Hon Tama Potaka
Minister of Conservation

Purpose – Te aronga

17. This briefing discusses high-level approaches to upholding Treaty settlement commitments in the Conservation Amendment Bill, in light of new analysis of the complexity and expectations in this context.

Background and context – Te horopaki

18. Since November 2024, we have been seeking feedback on proposals to modernise land management in the conservation system. These comprise potential changes to management planning, concessions, and land exchange and disposal processes.

19. Your October 2024 Cabinet paper seeking approval to consult noted targeted engagement with post-settlement governance entities (PSGEs) would be needed to uphold the mana and intent of their Treaty settlements. The discussion document for consultation set out a high-level approach to Treaty obligations for this work:

    - Some proposals would support effective implementation of section 4 by creating specific requirements as a means of giving effect to Treaty principles.
    - The mana and intent of Treaty settlements would be upheld, and rights under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 would be preserved.
    - Any agreements in protocols, relationship agreements and other agreements (i.e. not in legislation or deeds) would continue where consistent with any new legislative arrangements.

20. In November and December 2024, DOC engaged with Treaty partners in a series of regional hui. At the time, we informed them DOC would engage with PSGEs in January and February 2025 to discuss upholding settlements. During hui, Treaty partners asked for more detail about how specifically their settlements would be upheld if the proposed changes go ahead, and what system design elements could look like in practice. It also became clear that we needed to map potential planning boundaries, taking account of planning redress, before engagement with PSGEs.

Detailed analysis has highlighted significant policy choices

21. The conservation portfolio has more Treaty settlement commitments than any other. Further detailed analysis of these has highlighted that approximately 80 settlements have commitments that we expect can be relatively easily upheld under the proposals. These largely relate to rights of first refusal (RFRs), overlay classifications and concession processes. Some may require purely consequential amendments to settlement legislation (e.g. references to general policies being amended to refer to the National Conservation Policy Statement).

22. However, some settlements (approximately 30) contain commitments that **embed** iwi/hapū in the processes and structures of management planning. These are significant because it is proposed to replace conservation management strategies (CMSs) and conservation management plans (CMPs) with a single layer of area plans, and streamline processes for preparing and approving them, to clear a significant backlog in the planning system.

23. Treaty partners will expect that decisions about how to uphold these commitments amid changes to structures and processes will involve substantive, good faith discussions, which reconcile both PSGE and Crown interests. In some places, this may involve providing a specific ‘equivalent’ to the existing commitment in the new system. In others, it may require ‘carving out’ or grandparenting and preserving the existing arrangement. For example:

- **Some settlements (approximately 12) provide for iwi nomination to conservation boards**, with the expectation this would provide influence over the Boards' current role in reviewing and advising on CMSs, or in approving CMPs. The Bill would replace CMSs and CMPs with a single layer of area plans and shift the approval role for both to the Minister (as opposed to the NZCA or the Boards). s9(2)(j) [redacted]

- **Other settlements (approximately 26) provide for the co-authoring or co-approval of specific CMSs, CMS chapters, NPMPs or CMPs.** s9(2)(j) [redacted]

24. The numbers above are preliminary. Line-by-line analysis of deeds and legislation is still underway. As such, we do not yet have a comprehensive sense of which (and how many) commitments might need to be upheld via a change to deeds and direct amendment to settlement legislation, and how many might be resolved by deeming or referential provisions in the Conservation Act itself. It is unlikely we will be able to complete this before consultation ends on 28 February 2025.

Engagement on resource management reform s9(2)(g)(i) [redacted]

25. We have recently discussed these issues with the Ministry for the Environment (MfE), which is considering its approach to upholding Treaty settlements in the context of the proposed repeal and replacement of the Resource Management Act 1991 (RMA). This is analogous to the conservation context in that a number of redress commitments (including co-management models linked to statutory plan-making) will need to be upheld in the new system.

26. The previous government passed legislation to replace the RMA[1] that contained a prescribed 18-month process[2] under which the Crown was required to use 'best endeavours' to work with PSGEs to reach agreement on how the intent, integrity and effect of Treaty settlement redress would be upheld. This necessitated direct discussions with PSGEs with the intention of agreeing 'deeds to amend' existing settlement deeds, and subsequent amendments to settlement legislation. This process was contained in Schedule 2 of the NBA.

27. s9(2)(g)(i) [redacted]

1 The Natural Built Environment Act 2023 (NBA) and Spatial Planning Act 2023 (SPA).

2 s9(2)(g)(i) [redacted]

28. s9(2)(g)(i) [redacted]

29. s9(2)(g)(i) [redacted]

30. s9(2)(g)(i) [redacted]

Options for upholding settlements in the Conservation Amendment Bill

31. Given all of the above, we do not think it will be a good idea for DOC to send letters to PSGEs in the next fortnight providing specific thoughts on how settlements can be upheld under the Bill. While some iwi/hapū reacted to consultation on the discussion document by asking for this kind of information, in most cases (particularly for the 30 groups that have more complex redress), we think such proposals will be seen as pre-empting a more substantive, good faith engagement approach, and as the Crown not being cognisant of the strategic context raised by the amendments.

32. s9(2)(g)(i) [redacted]

33. In this context, we see three main options for progressing the Conservation Amendment Bill while upholding settlement commitments. The pros and cons of these options are discussed under the headings below.

Option 1: A general equivalence clause, with a comprehensive post-enactment programme of discussions

34. This option would mirror the approach taken during the development of the NBA and SPA.

35. s9(2)(g)(i) [redacted]

36. s9(2)(g)(i) [redacted]

s9(2)(g)(i) [redacted]

Option 2: Remove some management planning proposals from the scope of the Bill

37. An alternative option for progressing the Bill in this context is to simply remove the content most likely to require substantive engagement with PSGEs. This would mean retaining a focus on fixing concessions without **some** of the management planning changes, such as the introduction of area plans.

38. s9(2)(g)(i) [redacted]

39. [redacted]

40. s9(2)(g)(i) [redacted]

41. s9(2)(g)(i) [redacted]

42. s9(2)(g)(i) [redacted]

Option 3 (recommended): Undertake targeted engagement on equivalence and re-assess in June 2025

43. We recommend you consider a third option. This would involve undertaking less formal engagement ahead of introduction on specific equivalence proposals for the most complicated 30 settlements, and a parallel, correspondence-based approach for the other 80 relevant settlements, as set out in the table below.

Type of settlements	*Number (est.)*	*Approach*
Can be upheld <u>without substantive change to settlements</u>	80 settlements	• Inform in writing why we consider the substance of their commitments are not affected/would not change. • Invite feedback on, and where necessary seek agreement to, any consequential changes needed.
Need <u>specific equivalence/carve out</u> proposals to be able to incorporate	30 settlements – see list in Attachment A	• Propose discussions about specific equivalence provisions that uphold mana and intent of commitments. This would be a time-limited process for getting consensus, e.g. 3 face-to-face hui with each PSGE between March and June 2025.[3] • Discussions would focus on the nature of Bill provisions needed to provide equivalence or 'carve out' existing commitments from reform. E.g. would it be acceptable to preserve CMPs created under redress by deeming them area plans with the same coverage under the new framework and preserving existing processes for drafting, approving and reviewing them?

[3] The Waitangi Tribunal has emphasised in some reports that where customary interests are at stake, Crown consultation must include kanohi ki te kanohi (face-to-face) hui with the groups concerned; anything less would be culturally inappropriate: Waitangi Tribunal *The Tāmaki Makaurau Settlement Process Report* (Wai 1362) at 89 – 90; and Waitangi Tribunal *The Te Arawa Settlement Process Reports* (Wai 1353) at 74. In the *Motiti: Report on the Te Moutere o Motiti Inquiry*, the Tribunal found the Crown had met its consultation obligation to all groups in part by departing from its initial plan and consulting earlier and kanohi ki te kanohi: Waitangi Tribunal *Motiti: Report on the Te Moutere o Motiti Inquiry* (Wai 2521) at 213.

How the recommended option 3 could help meet your objectives

44. These proposed arrangements are based on your objective of achieving reform to the extent possible within the current parliamentary term, which would require introducing the Conservation Amendment Bill by October/November 2025. Any matters to be contained in the Bill at introduction would therefore need to be resolved by around May/June 2025.

45. The approach under option 3 would focus on practical solutions: which/how many instances require direct amendment of settlement legislation/a deed to amend, or carve-outs/grandparenting. You could write to PSGEs at the outset to help set your expectations and objectives for your engagement, or to communicate any Crown bottom lines to help manage the risk of discussions spreading into more strategic questions about the contemporary Treaty relationship.

46. We consider it possible to have a limited number of (e.g. three) face-to-face hui with PSGEs for the 30 settlements between March and June 2025. We would regularly update you as discussions evolve on how they might impact your choices about the Bill.

47. We would then brief you again in May/June 2025 with an assessment of whether (or to what extent) agreement with PSGEs is possible prior to introduction, and what options this presents for progressing these parts of the Bill. We could also seek more specific advice from Crown Law about the associated risks of those options.

48. s9(2)(g)(i) [redacted]

Resourcing and supporting arrangements

49. We would aim to keep this engagement as efficient and low-key as possible, with discussions led by senior DOC staff instead of external 'engagement leads'. Treaty partners have also consistently expressed at regional hui that PSGEs should be resourced by the Crown to participate in discussions about changes that affect their redress.

50. If we progressed this option, we also recommend running a parallel engagement with the Pou Taiao technicians. Their input on approaches to equivalence at a national level will be valuable. In addition, any specific solutions (e.g. equivalence proposals, carve-outs) that we can agree with them could have a significant, positive influence on many PSGEs' willingness to express comfort with the way forward.

Proposed way forward and next steps

51. We understand it is not your intention for the Conservation Amendment Bill process to re-open settlement commitments, and we do not propose to do so. s9(2)(g)(i) [redacted] Regardless of the Crown's objectives, we also think it will be constructive to at least test the impacts of the proposals and options to address them via a more

substantive, good faith, but time-limited engagement process. We therefore recommend Option 3.

52. s9(2)(g)(i) [redacted]

53. You are meeting Pou Taiao chairs on Monday, 3 February 2025. You may wish to express interest in working with them on approaches to the proposals and upholding redress. Their views will be valuable in shaping the options, and any way forward agreed with them could have a significant, positive influence. We have briefed you separately with proposed talking points for this meeting (25-B-0017 – Supp).

54. If you indicate a preference for Option 3, we can provide you with advice later in February 2025 setting out parameters for a more detailed engagement approach. This would cover:

- Principles to govern these discussions,
- A draft communication to PSGEs putting forward this approach,
- Some of the specific challenges for upholding different types of commitments and initial thoughts on options for doing so,
- Coordinating engagement on settlements across both RM and conservation reform, including the benefits and risks in doing so (subject to Cabinet decisions about next steps for RM reform), and

s9(2)(h) [redacted]

55. s9(2)(h) [redacted]

56. s9(2)(h) [redacted]

57. s9(2)(h) [redacted]

58. s9(2)(h) [redacted]

s9(2)(h)

59. s9(2)(h)

60. s9(2)(h)

61. s9(2)(h)

62. s9(2)(h)

63. s9(2)(h)

64. s9(2)(h)

[6]

65. s9(2)(h)

s9(2)(h)

s9(2)(h) [redacted]

66. s9(2)(h) [redacted]

Consultation – Kōrero whakawhiti

67. MfE was consulted in the preparation of this briefing. Crown Law was informed. Te Puni Kōkiri and Te Arawhiti have also been provided with a copy of this briefing.

Financial implications – Te hīraunga pūtea

68. It is highly likely DOC will be asked to resource PSGEs and/or Pou Taiao to participate in the targeted engagement recommended under Option 3. In addition, that option will require significant resourcing to be reprioritised from within DOC to deliver.

69. We will brief you on the options and implications of these costs should you indicate a preference to explore Option 3.

ENDS

Attachment A: Initial list of settlements that may need specific equivalence proposals

Settlement	*CMP, CMP, NPMP redress (co-approval, co-drafting)*	*NZCA, conservation board redress*	*Any other redress relating to proposals (e.g. RFRs)*
Hauraki Collective	✓		✓
Maniapoto	✓		✓
Ngāi Tahu	✓	✓	✓
NgāiTakoto	✓	✓	
Ngāti Awa	✓		✓
Ngāti Kuri	✓	✓	
Ngāti Maniapoto (Waipa River)	✓		✓
Ngāti Manuhiri	✓		✓
Ngāti Porou	✓		✓
Ngāti Rangi	✓	✓	✓
Ngāti Toa Rangatira	✓		✓
Ngāti Tūwharetoa	✓	✓	✓
Ngāti Tūwharetoa (Bay of Plenty)		✓	✓
Ngāti Tūwharetoa (Waikato River)	✓		✓
Ngāti Whare	✓		✓
Rangitāne o Wairau	✓		✓
Raukawa (Waikato River)	✓		
Tāmaki Collective	✓		✓
Taranaki Maunga	✓		✓

Settlement	*CMP, CMP, NPMP redress (co-approval, co-drafting)*	*NZCA, conservation board redress*	*Any other redress relating to proposals (e.g. RFRs)*
Tauranga Moana Iwi Collective	✓		✓
Te Arawa Affiliates (River interests) / Te Arawa River iwi (Waikato River)	✓		
Te Aupōuri	✓	✓	
Te Iwi o Whanganui (River Claim)		✓	✓
Te Korowai o Wainuiārua	✓	✓	✓
Te Rarawa	✓	✓	
Waikato-Tainui (Raupatu claim)		✓	✓
Waikato-Tainui (River interests)	✓		✓
Whakatōhea	✓		✓

This table excludes two settlements that have not reached the deed signing or legislation stages yet:

- Ngāti Hāua (Whanganui): deed initialled
    - Includes NZCA or conservation board redress
    - Includes other redress relating to proposals
- Te Whānau a Apanui: deed initialled
    - Includes CMS, CMP or NPMP redress
    - Includes other redress relating to proposals

We would need to consider and brief you on how to engage with these groups following your initial indication of preference.