



Memo: Clarifying section 4 in conservation processes

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Security Level	In Confidence		
From	Ruth Isaac, Deputy Director-General, Policy and Regulatory Services		
Subject	Clarifying section 4 in conservation processes		
Attachments	No attachments		

Purpose – Te aronga

1. This memo updates you on potential measures to add clarity about section 4 of the Conservation Act 1987, to be advanced through the Conservation Amendment Bill.

Background and context – Te horopaki

2. Consultation closed at the end of February 2025 on a range of changes to modernise land management in the conservation system. Your objectives include improving how concessions are granted and clarifying how DOC will give effect to Treaty obligations and responsibilities in related areas.
3. DOC's Treaty obligations and responsibilities are reflected in section 4 of the Conservation Act, specific commitments in Treaty settlements, and agreements with iwi and hapū. Section 4 requires conservation legislation to so be "interpreted and administered as to give effect to the principles of the Treaty of Waitangi."
4. There is no legislative specification as to how section 4 operates in Parts 3A (management planning) and 3B (concessions) of the Conservation Act. There are also no specific roles for Treaty partners or protections for Treaty interests in these sections. For example, while DOC tends to engage with Treaty partners on most concession applications and during all management planning processes, this is not specified in parts 3A or 3B of the Conservation Act.
5. The meaning and application of section 4 has been the subject of a number of court rulings. It was most recently considered by the Supreme Court in *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation*¹ (*Ngāi Tai*). The Supreme Court said:
 - In some circumstances giving effect to the Treaty principle of active protection requires decision-makers to consider extending a degree of preference to iwi as well as looking at the potential economic benefit to iwi of doing so.

¹ *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122.

- Section 4 requires more than procedural steps. Substantive outcomes for iwi may be necessary including, in some instances, that concession applications by others be declined.
 - Enabling iwi or hapū to reconnect to their ancestral lands by taking up opportunities on the conservation estate (whether through concessions or otherwise) is one way the Crown can give practical effect to Treaty principles.
 - Section 4 does not create a power of veto by an iwi or hapū over the granting of concessions.
6. The Government has not established a clear policy position on how *Ngāi Tai* is to be implemented and when 'preference' for iwi would be appropriate for concessions. More generally, it has been left up to statutory decision makers (Ministers, or the Department on delegation) to determine how to balance iwi views with other considerations in a way that is compliant with the law.
 7. A policy process to determine the meaning and impact of the *Ngāi Tai* decision, and how to give effect to section 4 more generally, was started under the previous government with an external reference group called the Options Development Group. The Group's report has not been taken to Cabinet and there has been no Government response. That process has been, in essence, overtaken by later events.
 8. This means there is ongoing ambiguity about how to give effect to Treaty principles and a range of divergent views and competing interests in different definitions. This pervades statutory decision-making in particular, and also creates ongoing tension in areas where iwi consider that the current law or policy settings do not provide for their interests to be actively protected. For example, the law does not provide for joint decision-making over conservation lands and waters, and restricts customary access and practices in some areas.
 9. Areas particularly impacted in recent years relate to concessions and management plans (as these are the core documents which determine what can happen where on conservation land, and therefore how Treaty partners and others both conserve and use it). These areas also need to be tackled to support the Government's priority to fix concession processes and thereby unlock economic activity on conservation land.
 10. In both areas, questions include how much engagement and agreement with Treaty partners is required, whether and how much to remunerate for their input, how to deal with overlapping interests, when (if ever) to afford preference, the relevance of Treaty partner economic interests, and how to take on board Treaty partner views. Because section 4 is part of the legislative framework, different views about its application mean that there is a high risk of legal challenge in many such processes.
 11. Recent examples include Treaty partners arguing that section 4 requires the Department/Minister to run contestable processes for major concessions rather than granting them to the incumbent applicant s9(2)(f)(iv) or to decline concessions outright s9(2)(f)(iv). Management plan reviews are also being held up due to Treaty partners objecting, for example, to a draft being notified. s9(2)(f)(iv)

Proposals to codify and clarify section 4

12. The discussion document noted the Government's desire to support effective implementation of section 4 by clarifying its application to concessions and management planning processes. You also communicated to Treaty partners that section 4 will not be removed from the Conservation Act or amended.

13. Following consultation, you are preparing to seek Cabinet approval to proposals which will codify and clarify section 4. These are summarised in the table below:

<p>Consultation on concession applications</p>	<p><i>Current section 4 pain points</i></p> <ul style="list-style-type: none"> • Drawn out engagement on concession applications. <p><i>Proposals</i></p> <ul style="list-style-type: none"> • Class concessions will remove significant applications from the system, reducing consultation burden. • Statutory timeframe for Treaty partners to provide their views on applications. • Ability for decision-making to proceed if Treaty partners do not provide their views in time. • Remuneration for Treaty partner consultation (similar to fast-track).
<p>Allocation of concession opportunities</p>	<p><i>Current section 4 pain points</i></p> <ul style="list-style-type: none"> • Lack of clarity about whether contestable processes should be run to allow Treaty partners to contest major concessions, and whether this should be facilitated by only giving incumbents short concession terms pending competitive allocation. <p><i>Proposals</i></p> <ul style="list-style-type: none"> • Clearly allowing competitive allocation where it makes sense, but ruling it out in a limited range of circumstances where there is significant private investment. <ul style="list-style-type: none"> ○ Discretion to competitively allocate concessions where there is limited supply, and demand exceeds supply. ○ Except for long-term leases where significant private investment is at stake, so long as incumbent wants to continue operating and is performing satisfactorily. ○ Clearer rules about how concessions and assets can be transferred e.g. when business is sold or goes under before or at end of term. • When a concession is contestable and there are multiple suitable applicants: clear criteria which require consideration of Treaty rights and interests alongside other criteria (e.g. performance, returns to conservation).
<p>Role in management planning</p>	<p><i>Current section 4 pain points</i></p> <ul style="list-style-type: none"> • Processes grind to a halt when Treaty partners disagree with DOC, or among themselves. Disagreements arise in relation to process, content and decision rights. <p><i>Proposals</i></p> <ul style="list-style-type: none"> • Ability for Director-General to move to next step in process if statutory timeframe has elapsed. • National Conservation Policy Statement:

	<ul style="list-style-type: none"> ○ Clear consultation role for iwi in process for National Conservation Policy Statement. • Area plans: <ul style="list-style-type: none"> ○ Options for role of iwi: either a consultation role (recommended) or co-drafting role. ○ Clear timeframes for every step in process, binding DOC as well as iwi. ○ Remuneration for iwi participation in area plan processes (similar to resource management system). ○ Clarity about what content can and can't be included in area plans.
Role in land exchanges and disposals	<p><i>Current pain points</i></p> <ul style="list-style-type: none"> • Law does not enable Treaty partners to acquire parcels of conservation land outside of settlements and limited vesting options. <p><i>Proposals</i></p> <ul style="list-style-type: none"> • Broaden ability to exchange and dispose of conservation land. • Requirement to consult Treaty partners before notifying a potential exchange/disposal. • Potential additional option: first option for Treaty partners on disposals of conservation land.

14. s9(2)(f)(iv) [REDACTED]

Relationship to Treaty clause review

15. We have previously advised that attempting to codify section 4 in relation to all of the Conservation Act—and the 24 Acts listed in Schedule 1 of the Conservation Act—would be a huge undertaking on an unprecedented scale. Instead, your current reforms focus on providing clarity about Treaty principles in relation to concessions and management planning. These are the conservation processes where clarity is most urgently needed to unlock economic activity on conservation land.
16. The Conservation Amendment Bill and Treaty clause review have common objectives. The Bill would clarify the role that iwi play in concessions and planning processes, with timeframes for some of these steps. The specific measures proposed for the Bill could shrink a vast grey area in relation to preferential allocation of concession opportunities to iwi. They will set clear Government direction that it is not reasonable or necessary to provide iwi preference and/or an opportunity to apply when there is an existing concession with significant private investment and property rights at play.

Timeframes for current reform processes

17. You intend to seek Cabinet approval of changes to modernise land management in the conservation system next month. These changes include codifying and clarifying section 4 in relation to management planning and concession processes.

18. The current timetable is below:

<i>1 – 9 May 2025</i>	Ministerial and agency consultation on draft Cabinet paper, with draft regulatory impact statements
<i>15 May 2025</i>	Lodge Cabinet paper
<i>21 May 2025</i>	Paper discussed at Cabinet Economic Committee (ECO)
<i>26 May 2025</i>	ECO decisions confirmed at Cabinet
<i>Jun 2025</i>	Drafting instructions issued to PCO
<i>Oct 2025</i>	Cabinet approval to introduce Conservation Amendment Bill
<i>Nov 2025</i>	Conservation Amendment Bill introduced
<i>Dec 2025 – Mar 2026</i>	Select committee consideration of Conservation Amendment Bill
<i>Apr – Jun 2026</i>	Remaining legislative stages for Conservation Amendment Bill

19. Timeframes are very tight to pass the Conservation Amendment Bill this term. Parliamentary Counsel Office (PCO) have indicated they need at least 4 – 5 months to draft the Conservation Amendment Bill, and will only be able to confirm this timeframe after they receive drafting instructions in June 2025 following Cabinet policy decisions. PCO will also need to draft the first National Conservation Policy Statement (NCPS) at the same time as the Bill, as your intention is to make the first NCPS through the Bill.
20. Ultimately, to meet your timeframes of introducing legislation by the end of this year, we need to start issuing drafting instructions to PCO in June 2025. These instructions can be sequenced. For example, we can instruct first on the specific measures to be added to the Conservation Act, and then later about the relationship between these specific measures and section 4. This means it is imperative to get some Cabinet policy decisions to enable drafting to begin, with any outstanding issues resolved in parallel with drafting.

Next steps – Ngā tāwhaitanga

21. On 24 April 2025, your office will receive a draft Cabinet paper for feedback. Ministerial and agency consultation needs to start on this draft Cabinet paper by 1 May 2025 to meet the timeframes set out above.

ENDS