Department of Conservation
Te Papa Atawbai

Briefing: Conservation land management reform – Matters for Cabinet report-back

To	Minister of Conservation	**Date submitted**	14 August 2025
Action sought	Decide on policy for conservation land management reform	**Priority**	Very High
Reference	25-B-0334	**DocCM**	DOC-10385320
Security Level	In Confidence		

Risk Assessment	High	**Timeframe**	18 August 2025, to allow ministerial consultation on Cabinet paper to start on 25 August 2025
Attachments	Attachment A: Concession decisions – Legislative requirements and interactions Attachment B: s9(2)(h) [redacted]		

Contacts	
Name and position	**Phone**
Ruth Isaac, Deputy Director-General, Policy and Regulatory Services	s9(2)(a) [redacted]
Sam Thomas, Director Policy	s9(2)(a) [redacted]

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. In June, Cabinet agreed to a suite of changes to conservation land management [CAB-25-MIN-0213]. Drafting is underway on the Conservation Acts (Land Management) Amendment Bill (the Bill) to implement these changes.
2. As part of this decision, Cabinet invited you to report back on several different issues.
3. This briefing provides policy advice to inform your decisions, and ultimately those of Cabinet, on:
    - An appropriate mechanism for a financial contribution to Treaty partners for efficient engagement on statutory processes; and
    - Whether there are any situations in which leases and licences with significant private capital investment should be contestable.
4. This briefing also seeks your decision on the approach to amending the purpose statement of the Conservation Act 1987, as directed by Cabinet. Your decision will be reflected in drafting instructions to Parliamentary Counsel Office (PCO). Note that while Cabinet did not direct a report-back on this, we expect they will want an update in your report-back Cabinet paper.
5. In order to introduce the Bill this year, you will need to make decisions on the policy issues set out in this briefing no later than 18 August 2025. This will allow us to provide you with a draft Cabinet paper to start ministerial consultation on 25 August 2025.

We recommend that you … (Ngā tohutohu)

		Decision
Purpose of the Conservation Act		
a)	**Agree** to draft Cabinet's intent for amending the Conservation Act purpose through the following approach (subject to further drafting advice from PCO): • Adding specific purpose provisions to Parts 3A (management planning) and 3B (concessions) of the Conservation Act. The provisions would allow the NCPS and area plans to include policies that provide for the use and development of natural and historic resources to the extent that effects can be avoided, remedied or mitigated; and • Explicitly stating that one of the functions of the NCPS and area plans is to provide additional detail about the relationship between different types of activities and purposes for which types of land are held; and • Changing the 'purposes for which land is held' from a requirement that concessions must be consistent with to a mandatory consideration.	Yes / No
A mechanism for financial contribution to Treaty partners		
b)	**Agree** to provide financial contributions to Treaty partners for their consultation role on concession applications, and that this is	Yes / No

	funded through a charge on concessionaires (similar to the Fast-track Approvals Act 2024 approach).	
c)	**Note** that as benefits of management planning are experienced by the wider public, it is not viable to charge concessionaires for iwi consultation on management planning.	Noted
Contestability of leases and licences with significant private capital investment		
d)	**Agree** not to require or prohibit competitive allocation of leases and licences with significant private capital investment in law.	Yes / No
e)	**Agree** that, for existing major tourism concessions only, the approach to competitive allocation is (choose one): • EITHER option 1 (recommended): Until 2 years before term expiry, only the incumbent may apply for a new concession. It is only within 2 years of term expiry that either the Minister can initiate a contestable process, or can process applications from anyone in relation to that concession. • OR option 2: If the Minister intends to run a contestable process, they must make this decision and notify the incumbent at least 5 years before the concession expires. If a decision to run a contestable process is not made and communicated to the applicant, the incumbent has a protected window until 2 – 5 years before term expiry to apply for a new concession.	Option 1 / Option 2
f)	**Agree**, in addition to the ability to specify standard terms for concession contracts, to also allow mandatory terms (i.e. types of contractual terms that must be included in contracts) to be specified in secondary legislation.	Yes / No
g)	**Note** DOC will develop guidance on the use of competitive allocation incorporating decisions Cabinet has already made about when it will be considered, and how decisions will be made in a contestable process.	Noted
h)	s9(2)(f)(iv) [redacted]	[redacted]
Marginal strips		
i)	**Note** that marginal strips have very particular values and importance to the public such as providing access to waterways and coasts, protecting water quality through riparian buffers,	Noted

	maintaining biodiversity corridors across landscapes and are also subject to public and private riparian management programmes.	
j)	**Note** that existing marginal strip settings in the Conservation Act can and should continue to apply alongside Cabinet's decisions on exchanges and disposals without issue, and officials do not recommend any changes.	Noted

Date: 14/08/2025

Ruth Isaac
Deputy Director-General, Policy and Regulatory Services

Date: / /

Hon Tama Potaka
Minister of Conservation

Purpose – Te aronga

1. This briefing seeks decisions for the Conservation Acts (Land Management) Amendment Bill on:
   - Changes to the purpose of the Conservation Act 1987;
   - A mechanism for financial contributions to Treaty partners for efficient engagement in statutory processes (i.e. concession applications and area plans); and
   - Competitive allocation, specifically in relation to leases and licences with significant private capital investment.
2. This briefing also provides information about how Cabinet's decisions on land exchanges and disposals will interact with the current statutory requirement to reserve marginal strips for certain exchanges and disposals.

Background and context – Te horopaki

3. On 30 June 2025, Cabinet made major policy decisions in relation to the Bill (CAB-25-MIN-0213).
4. As part of these decisions, Cabinet invited you to report back on:
   - Policies for the new National Conservation Policy Statement (NCPS) which will unlock economic activity within appropriate constraints;
   - An appropriate mechanism for a financial contribution to Treaty partners for efficient engagement on statutory processes;
   - s9(2)(f)(iv) [redacted]
   - Whether there are any situations in which leases and licences with significant private capital investment should be contestable;
   - Upholding relevant Treaty settlement commitments; and
   - Arrangements to uphold rights under the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.
5. Additionally, Cabinet directed you to amend the purpose statement for the Conservation Act to ensure the NCPS and area plans can enable greater economic development on conservation land.
6. Drafting is underway on the Bill to implement Cabinet's decisions from June 2025. Cabinet decisions on the report-back topics are now needed to allow the Bill to be drafted in time for introduction this year.
7. Cabinet has also authorised you to make other policy decisions that arise during drafting.
8. In order to introduce the Bill this year, you will need to make decisions on the policy issues set out in this briefing no later than 18 August 2025. This will allow us to provide you with a draft Cabinet paper to start ministerial consultation on 25 August 2025.
9. A separate briefing (25-B-0346) covers matters related to Treaty settlements and Takutai Moana rights.

Purpose of the Conservation Act

10. Cabinet directed you to amend the purpose statement of the Conservation Act to ensure the NCPS and area plans can enable greater economic development on

conservation land. We are now seeking your agreement to the approach for this so that we can issue drafting instructions. You can make this decision within your delegation from Cabinet.

11. s9(2)(f)(ii) [redacted] The new framework for the NCPS and area plans is aimed at supporting faster, clearer, and more consistent decision-making on concessions and removing the rigidity in existing management plans. To achieve this, the NCPS is different to its current equivalents in two key ways:

    - The NCPS will provide for some concession decisions to be pre-approved or not required through class concessions; and
    - The NCPS is currently proposed to include visitor zones and standardised effects assessments to provide additional detail about the relationship between different types of activities and the purposes for which land is held, ensuring consistency and speed of processing.

12. The following advice relating to the Conservation Act's purpose is centred on making sure those changes influence decisions on concessions as intended, and the NCPS, area plans and concession decisions are consistent with the primary legislation.

13. A report-back on this topic was not specifically directed, but Cabinet is likely to be interested in understanding your approach. Any requirement for further Cabinet decisions will extend timeframes and require a regulatory impact analysis. However, Cabinet will approve the drafting at Cabinet Legislation Committee (LEG) prior to introduction of the Bill.

Cabinet's direction will apply predominantly to tourism and smaller infrastructure projects on conservation land

14. Changing the purpose as directed by Cabinet will better enable activities such as tourism opportunities (e.g. guiding) or infrastructure projects that aren't regionally or nationally significant. s9(2)(g)(i) [redacted] It is not targeted at mining projects, projects of national or regional significance, or wildlife authorisations because:

    - Mining permissions for conservation land are managed under the Crown Minerals Act 1991, not the concessions system in the Conservation Act. Enabling mining on a broader range of conservation land would require changes to the Crown Minerals Act. The purpose of the Crown Minerals Act is also already very enabling. From 1 January to 30 June this year, there were 69 mining applications processed. Only two were declined, one was returned, and five were withdrawn – the remainder were approved.
    - Any projects of regional or national significance have access to the Fast-track Approvals Act 2024 as an authorisation pathway. The Fast-track Approvals Act already has a more development-focussed purpose than conservation legislation.
    - Wildlife authorisations are under the Wildlife Act 1953, are out of scope of this reform, and are not affected by the purposes for which land is held.

15. Remaining concession applications are typically approved. Between 1 January 2025 and 30 June 2025, of the 1,395 decisions made on concessions, only 2% were declined. On this basis and given that the reforms do not intend to introduce the ability for new types of activities not typically approved on conservation land, DOC does not see a strong case for needing to change the purpose of the Conservation Act to create a fundamental shift away from conservation as the primary purpose of the system. Cabinet's intent can be achieved through a more incisive approach. The key enabling

elements of the reforms are to remove outdated, prescriptive constraints in the management plans.

The purpose of the Conservation Act is encompassed across multiple provisions

16. The Conservation Act does not have an explicit purpose statement. Rather the purpose is implicitly reflected through a range of its provisions. These include the long title, definitions of conservation, preservation and protection (section 2), functions of the Department (section 6), and the purposes for which different categories of land are held. In particular, section 6 sets up the following hierarchy of functions:

    - The management, for conservation purposes, of land and natural and historic resources is the primary function.
    - Recreation use is to be fostered where it is not inconsistent with conservation.
    - Tourism use is to be allowed where it is not inconsistent with conservation.

17. Concession decisions are made with reference to provisions in the Conservation Act as well as other Acts under which conservation land is held. This includes the National Parks Act 1980, Wildlife Act 1953 and Reserves Act 1977 when deciding concessions in national parks, wildlife areas, and reserves respectively.

18. Parts 3A and 3B in the Conservation Act respectively outline the framework for management planning and granting concessions for all relevant Acts mentioned above.

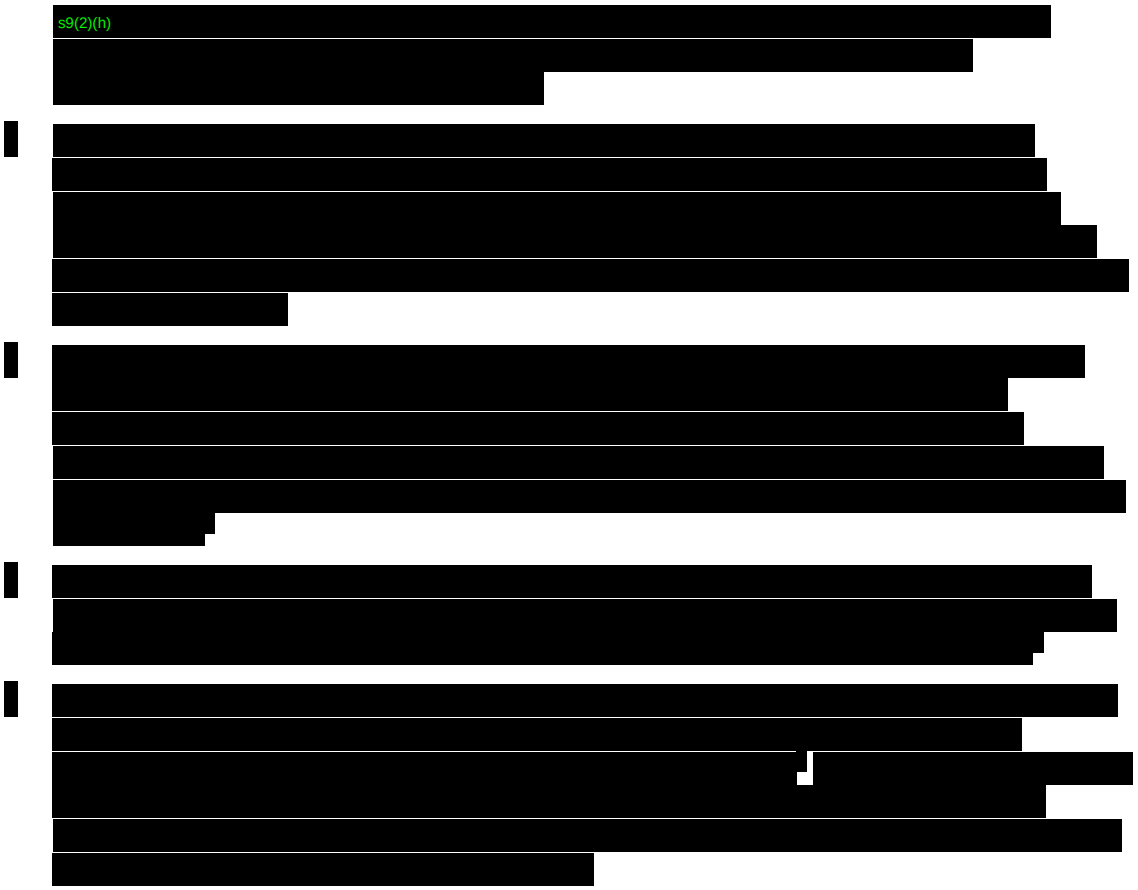
19. However, each Act also has its own provisions specific to the land held under those Acts. For example, section 4 of the National Parks Act requires that parks be maintained in a natural state, and that the public have right of entry. Another example is the specific provisions under the Wildlife Act that outline how protected wildlife areas are to be managed (sections 9, 14, and 14A).

20. These provisions (about the purposes for which different types of land are held) and the overarching Conservation Act provisions (about the functions of the Department and definition of conservation) provide a complex framework that implicitly provides the purpose of the conservation system and drives how concession decisions are made (Attachment A refers).

Any large shifts in purpose are not required and cannot be achieved on current timeframes without significant risk of legal challenge

21. Meeting Cabinet's intent involves carefully working through the interactions across multiple Acts. We have proposed an incisive approach below that achieves this with the greatest certainty and effectiveness. Any approach that is a significant departure from the current purpose framework (i.e. a new overarching purpose statement and/or balancing of conservation and development outcomes) introduces significant risks and reduced certainty of effectiveness.

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



23. However, a significant shift is not required, and we recommend a more incisive approach. This would achieve Cabinet's intent more effectively, can be drafted within your timeframes, and minimises risk of future legal challenge.

There is only one workable option to effectively achieve Cabinet's intent on current Bill timeframes

24. We recommend, in line with Cabinet's broader reform decisions, explicitly allowing for use and development of natural and historic resources where adverse effects can be managed. This approach would involve doing all of the following (subject to further drafting advice from Parliamentary Counsel Office (PCO)):

    - Adding specific purpose provisions to Parts 3A (management planning) and 3B (concessions) of the Conservation Act. The provisions would explicitly provide that the NCPS and area plans can include policies that provide for the use and development of natural and historic resources to the extent that effects can be avoided, remedied or mitigated.
    - Explicitly stating that one of the functions of the NCPS and area plans is to provide additional detail about the relationship between different types of activities and purposes for which types of land are held.

s9(2)(h)

- Changing the weighting of 'the purposes for which the land concerned is held' to a mandatory consideration from something that concessions must not be contrary to. Under section 17U, concessions currently cannot be granted if they are inconsistent with the purposes for which land is held. Changing this to a mandatory consideration would make its weighting the same as in the Fast-track Approvals Act and the Crown Minerals Act, but with conservation as the primary purpose rather than development, which is appropriate and less legally risky.

25. This approach ensures that the NCPS and area plans are explicitly enabled to provide for use and development and that activities are not required to be consistent with the purposes for which the land is held. It does so without making fundamental shifts that would introduce uncertainty, significant litigation risk or questions around the purpose of the conservation system more generally. It allows you to hit your Bill timeframes and provides greater commercial certainty.

26. Once the policies of the NCPS are clearer, we will work with Crown Law and the PCO to assess whether any other changes are required to conservation legislation. We will confirm the final drafting with you when we provide you with the draft LEG Cabinet paper.

Consultation – Kōrero whakawhiti

27. We have consulted Crown Law and PCO. s9(2)(h) [redacted]

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

Risk assessment – Aronga tūraru

29. Any fundamental change provides less certainty, and potentially prompts more litigation. Our recommended approach minimises these risks while providing for your intent to better enable economic activity on conservation land.

30. Any change to the purpose framework in the conservation system is likely to be contentious with environmental NGOs and the recreation sector. This is particularly the case because these changes were not included in public consultation and could represent a fundamental shift in the meaning of public conservation land. However, the recommended approach is targeted to concessions and management planning rather than attempting a fundamental change to the entire system and is, in our view, in line with the reforms you have consulted on. More fundamental change will risk greater challenge and scrutiny from concerned parties.

s9(2)(h) [redacted]

A mechanism for financial contributions to Treaty partners

32. You have been directed to report back to Cabinet on an appropriate mechanism for financial contributions to Treaty partners for efficient engagement on statutory processes, including concessions and management planning processes [CAB-25-MIN-0213.01 refers].

We recommend providing a financial contribution to Treaty partners for concession consultation, funded by concessionaires

33. DOC engages with Treaty partners to ensure informed decision-making on concessions, including to satisfy section 4 of the Act. Some Treaty settlements also establish relationship instruments, which might include concession decision-making frameworks or consultation and engagement expectations.

34. Currently, Treaty partner engagement in concession applications is not covered by the concessions cost recovery regime. This has been a source of concern for iwi for some time.

35. Recent Cabinet decisions to provide statutory timeframes for Treaty partner consultation on concession applications will speed up concession processing. There is a risk that some Treaty partners may not be adequately resourced to engage in concession decisions within the statutory timeframes. This may be particularly acute for smaller iwi or those who have only recently received settlement redress, as costs may be concentrated into shorter periods with limited ability to absorb or manage them. Without sufficient support, the effectiveness of consultation requirements may be undermined even if statutory timeframes are met.

36. Therefore, consistent with the Government's approach in fast-track consenting processes, we recommend providing a financial contribution to Treaty partners for concession consultation, funded by a charge on concession applications.

37. Charging concessionaires is appropriate as the economic benefits of obtaining a concession accrue primarily to the applicant. However, policy work for the Fast-track Approvals Act showed full cost recovery is not possible for third parties.[4] There are challenges with implementing a true cost-recovery model for non-Crown bodies. For example, it is difficult to adequately constrain third party cost recovery to 'fair and reasonable' charges.

We do not recommend charging concessionaires for financial contributions for management planning consultation

38. We also considered whether a levy on concessionaires could be used to provide financial contribution to iwi for their consultation in area plans.

39. Based on the Treasury's cost recovery guidance, we do not recommend progressing such a levy to recover either system-wide costs or costs associated with iwi consultation in management planning.

40. This is because, while concessionaires are a key regulated party, the benefits are shared widely (i.e. are a public good), and it is not appropriate to recover costs from only a single group of users. s9(2)(f)(iv) [redacted]

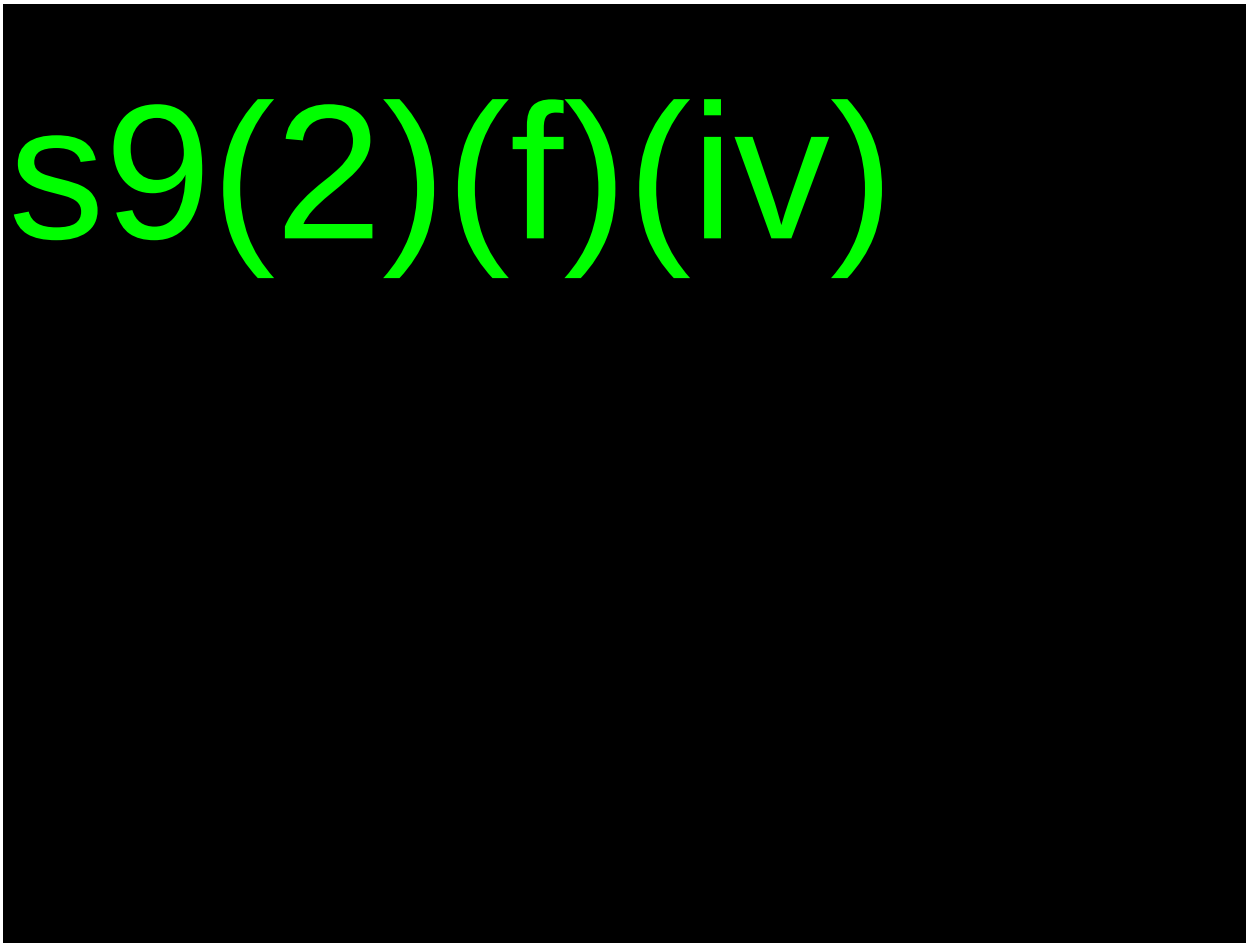
[4] Third parties are not subject to the same public accountability requirements that central and local government agencies are. The requirements mean that cost recovery powers for government must be 'actual and reasonable' and include oversight from the Auditor-General, and meet requirements under the Public Finance Act, Local Government Act and others. In commercial environments, there is an ability for buyers and sellers to negotiate.

[5] Section 24B of the Conservation Act provides for the Minister of Conservation to declare certain disposals be exempt from the marginal strip requirement only if satisfied—

We require legislative change to enable providing contributions to Treaty partners

41. The Conservation Act already has the empowering provisions to set fees and levies. However, implementing this option requires a new power in the Act to disburse funding to third parties (Treaty partners). This kind of power was required in the Fast-track Approvals Act.

42. Cabinet will need to agree to the power to provide contributions to Treaty partners in September 2025. However, the details of the framework (e.g. fee levels, how it will be distributed) don't need to be agreed by Cabinet until the corresponding regulations are drafted.



Consultation – Kōrero whakawhiti

48. Treasury and Ministry for Regulation were consulted in this briefing. Treasury asked about costing models. These will be developed for the Stage 2 Cost Recovery Impact Statement, which will be provided to Cabinet next year to support decisions on the exact details including fee and contribution levels.

Risk assessment – Aronga tūraru

49. Some concessionaires may object to being charged a contribution to support Treaty partner consultation. However, this is consistent with the Fast-track Approvals Act and will support faster processing by enabling Treaty partners to respond within the new timeframes.

50. Some iwi will object to not receiving contributions for consultation on management planning. They may also consider that their role through section 4 is different to that of the general public and therefore warrants a financial contribution. However, this does

not change that the benefits of management planning accrue to the general public, and it is therefore unfair to charge only concessionaires. Any contribution to iwi for participation in management planning should not be met by charging concessionaires. s9(2)(f)(iv) [redacted]

Competitive allocation

51. In June 2025, Cabinet agreed the following in relation to competitive allocation [CAB-25-MIN-0213.01 refers]:

    - The concessions process would be amended to make it easier to competitively allocate new concessions among multiple operators.
    - The Minister of Conservation will have discretion to decide when to competitively allocate based on whether supply is limited; a market is likely to exist (i.e. demand would exceed supply); and the benefits of running a competitive allocation process outweigh the costs.
    - Competitive allocation cannot be triggered on the grounds of section 4 of the Conservation Act.
    - In any competitive allocation process, the criteria for choosing between multiple suitable applicants include performance; returns to conservation; offerings to visitors; benefits to the local area and recognition of Treaty rights and interests.

52. You were also directed to report back to Cabinet on whether there are any situations in which leases and licences with significant private capital investment should be contestable. This involves considering whether there are any situations in which competitive allocation for these concessions should ever be prohibited in law – or conversely, required.

We do not consider it necessary to require or prohibit competitive allocation in law as a general rule

53. Contestability raises issues for concessions involving privately-owned fixed assets and structures on conservation land. These cannot easily be removed at the end of a concession, raising practical issues if the concession could be allocated to a new operator at the end of a term. Operators may also feel they lack the certainty to plan for longer-term capital investment if contestability could regularly occur when their terms expire. Sometimes activities have no fixed end, and there is public benefit in allowing the activity to continue on, despite a lease term coming to an end.

54. We consider Cabinet's decision to rule out contestability on the basis of section 4 goes some of the way to addressing concerns from existing concessionaires about contestability of major concessions. In addition, the ability to have longer concession terms in some circumstances will allow operators to have term lengths that enable a fair return on the investment in assets, corresponding to the useful life of fixed assets they own, and providing greater certainty to invest. Nonetheless, there will be times when it is desirable for activities to continue beyond term end.

<u>There is no strong case to require contestability for any concessions</u>

55. Contestability is just one of several tools to achieve our objectives for use of the land, both as conservation system regulator and as a landowner.

56. Making existing operators with significant investment in fixed assets/structures compete whenever their terms end is unlikely to significantly improve conservation

outcomes and returns to conservation. While having regular change in operators or uses could encourage innovation and efficiencies, it is also likely to result in negative environmental impacts resulting from enforcing make good clauses, and issues associated with service disruption, asset valuation/transfer and compensation.

57. In this context, requiring contestability at the end of a term would devalue existing operators' investments or effectively force a sale of their assets to another business. Contestable processes do provide a market-based mechanism to drive 'highest and best use' or service improvements, but market competition factors are already strong given customers have many alternative tourism options and given the potential for market sales of businesses. DOC could also drive performance through operational arrangements, such as performance conditions in concession contracts combined with in-term monitoring and graduated responses for poor performance.

58. The value to be gained from contestability is clearer for new leases/licences rather than existing ones, particularly where the use of the land is still wide open and testing 'highest and best use' is desirable. Even then, a strict requirement to contestably allocate concessions may not be as beneficial as having clear and publicly available guidance on when contestability will be used.

59. For example, we may want flexibility to deal exclusively with an applicant in certain situations. Treasury's guidance on market-led proposals provides a useful starting point to address concerns about regulatory settings potentially stifling innovation. For example, we could indicate a preference to contestably allocate major, new tourism concessions other than in the following circumstances (when we are more likely to deal exclusively with an applicant): when the concession cannot be readily delivered by others; when the applicant owns something that limits contracting with other parties (e.g. real property, intellectual property); when the concept is new and not in the public domain. Concessionaires have also made it clear that while contestable allocation of the land may be reasonable, it would stifle innovation if their business proposals were put to market.

60. It is also unclear whether always <u>requiring</u> competitive allocation for some concessions (as opposed to it being discretionary) will generate the competitive benefits to outweigh the costs of running such processes. Thin markets, particularly for major concessions, mean it is not always clear how many ready and willing participants are interested in bidding on specific rights.

61. Competition is better enabled by making it easier for DOC to contestably allocate new concessions where this makes sense, and to transfer a concession from one business to another without needing to run a new concession process (which the Bill will do).

We instead recommend the following changes

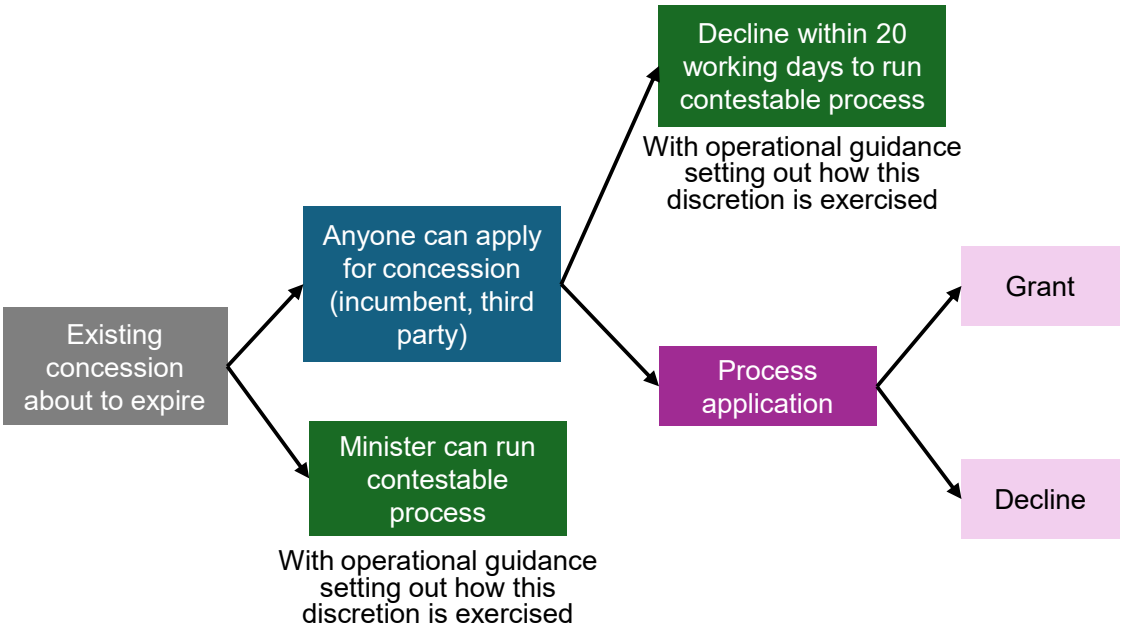
62. We now consider that prohibiting the use of contestability for any concessions in all circumstances is not warranted. We instead recommend the following additional changes.

<u>An application window for incumbents only</u>

63. Under both the status quo and the Bill, it is possible for a third party to apply for a concession held by someone else. DOC is required to process applications in the order they are received. This would mean having to consider an application from a third party that is submitted first ahead of any 'renewal' application from an incumbent.

64. Under the status quo, once an application is received, the Minister must process it to completion and cannot easily initiate competitive allocation instead. The Bill will add the option of declining any application within 20 working days to instead run a contestable process to allocate the new concession.

65. The diagram below shows how the Bill's changes to enable competitive allocation would operate when concessions are about to expire:



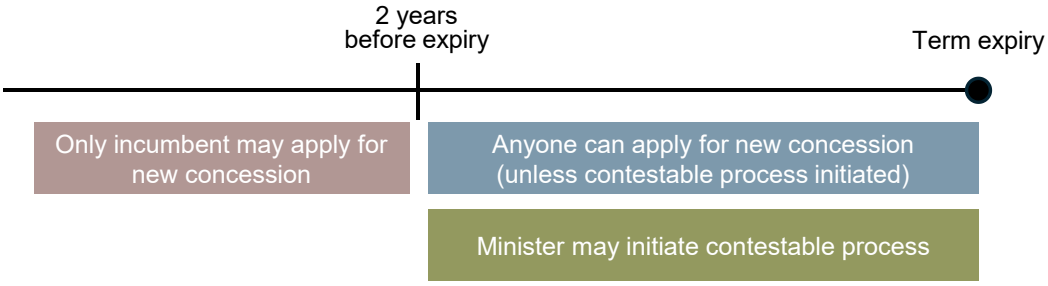
66. This could lead to situations where:

- DOC has to process applications from third parties seeking to take over a concession, even if that concession requires capital assets owned by an incumbent to operate; or
- Applications are made for concessions seeking to trigger (or encourage use of) the Minister's new ability to decline an application early and instead run a competitive allocation process.

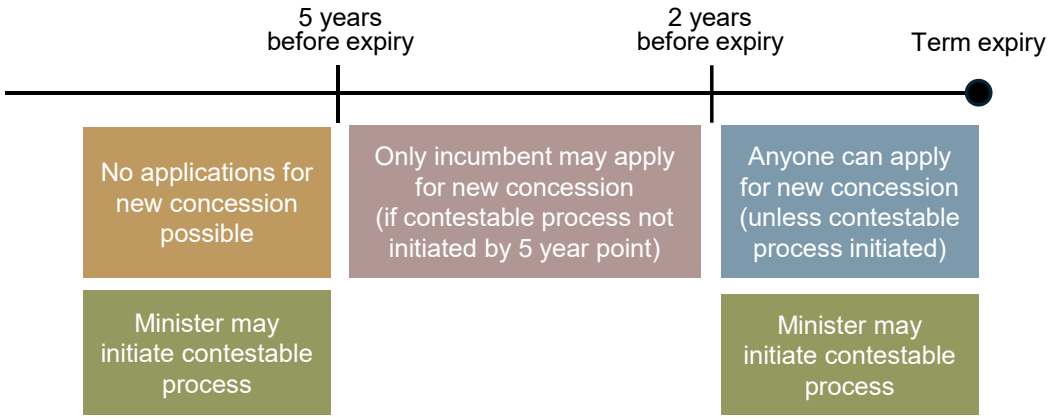
67. For most concessions, the above situations are not problematic and can be managed through operational processes. However, for major tourism concessions with significant private capital investment, we recommend only the incumbent is allowed to apply for a 'renewal' (i.e. a new concession upon expiry of the current concession) until 2 years before expiry, at which point anyone can apply.

68. We consider there are two ways to design this.

- Option 1: Until 2 years before term expiry, only the incumbent may apply for a new concession (i.e. a 'renewal' of their existing concession). It is only within 2 years of term expiry that either the Minister can initiate a contestable process, or process applications from anyone in relation to that concession. The Minister could still decline the incumbent's application, including to use the land for a different purpose.



- Option 2: If the Minister intends to run a contestable process, they must make this decision and notify the incumbent at least 5 years before the concession expires. If a decision to run a contestable process is not made and communicated to the applicant, the incumbent has a protected window between 2 and 5 years before term expiry to apply for a new concession. The Minister could still decline the incumbent's application, including to use the land for a different purpose.



69. We think either of the above options is a more proportionate approach than ruling out competitive allocation entirely for these concessions, or restricting the ability of third parties to apply for them. They give the incumbent an opportunity to have their application considered first, recognising that any application by a third party is effectively seeking to use the incumbent's fixed assets/structures for a concession.

70. Option 1 provides more certainty to incumbents – they will know if they apply for a new concession first, their application will be processed first, before any decision to run a contestable process is made. On the other hand, option 2 allows additional flexibility. The Minister may initiate a contestable process that is signalled well in advance of term expiry, but if a decision is made not to do that, the incumbent has a protected window to apply ahead of any other parties.

71. Based on the arguments against contestability for these types of major tourism concessions, we prefer option 1. However, you may choose option 2 if you wish to retain greater flexibility for the Minister in these situations.

72. We are also continuing to work on the best way to define 'major tourism concessions'. s9(2)(f)(iv) [redacted]

Ability to require certain terms to be included in concession documents

73. We recommend the Bill also allow specifying that concession documents (or certain categories of them) must include particular types of contractual terms. For example, this could be used to require that all major concession documents must include mandatory terms on performance conditions, step-in powers, and other end-of-term matters like asset valuation/compensation provisions.

74. This change would be in addition to the ability to specify standard terms for concessions, which has been agreed by Cabinet (and builds on an existing ability to set standard terms in the Conservation Act). It will provide more flexibility, particularly for concession documents where setting a boilerplate term would not be appropriate (e.g. what level of bond should be required for a given concession), but the Crown considers a term of that nature should be included after being negotiated between the parties.

75. s9(2)(f)(iv) [redacted]

Additional work on guidance and operational practice will support implementation

Competitive allocation guidance

76. To support implementation of the Bill, DOC will develop guidance for the use of competitive allocation. This guidance will incorporate the criteria agreed by Cabinet for when competitive allocation may take place and how to choose between multiple suitable applicants in a contestable process.

77. The guidance could take several forms:

- DOC operational policy or guidelines; or
- Government policy based on decisions by the Minister (recommended).

78. Competitive allocation guidance could also provide signals to the market about when the Minister is more likely to exercise their discretion to run a contestable process. For example, this could be based on whether it is a new or existing concession, whether the concession involves private ownership of fixed assets and structures on conservation land, and whether there are any circumstances that justify dealing exclusively with an applicant.

79. Subject to your decisions on this briefing and Cabinet decisions, we can work towards having this guidance ready for your approval before the Bill is passed.

s9(2)(f)(iv) [redacted]

Consultation – Kōrero whakawhiti

83. We have consulted the Treasury, Ministry for Regulation and Crown Law on an incumbent-only application window.

84. The Treasury and the Ministry for Regulation's feedback was largely focussed on improving contestability in concession allocation. For example, the Treasury advised including an outer bound timeframe limit on incumbent applications in primary or secondary legislation would be their preferred option to improving contestability. We have incorporated this feedback into option 2.

85. Both also raised concerns about 'first in, first served' as the default approach. However, as a regulator, we consider that 'first in, first served' is a useful and efficient default approach to have, provided there is flexibility to decline an application and run a contestable process where appropriate (which the legislative change is intended to do).

86. s9(2)(h)

Risk assessment – Aronga tūraru

87. Responses to an incumbent-only application window for some concessions are likely to be mixed. Incumbent operators are likely to support it, whereas others wanting to enter the market by taking over existing concessions may consider this change a barrier. However, given this is limited to the largest tourism concessions involving fixed assets and structures owned by incumbent operators, we consider it reasonable to allow a protected period in which applications from the incumbent will be processed before applications from any other parties, or before initiating a contestable process.

88. There is currently ambiguity over how to deal with applications from third parties for concessions held by incumbent operators. This change would clarify the approach required to be taken.

Legal implications – Te hīraunga a ture

89. Earlier this year, we advised that it would be possible to rule out contestability in law for some major concessions. s9(2)(h)

Marginal strips

90. Cabinet agreed categories of land to be excluded from new, more flexible land exchange and disposal settings [CAB-25-MIN-0213.01]. This decision means conservation land considered to be of higher value will be excluded from exchange

and disposal. However, no decisions were made on the relationship between these new settings and marginal strips.

91. Marginal strips are land parcels, generally 20 metres wide, that adjoin some parts of a foreshore, lake, river or stream. They have very particular values and importance to the public. They:

- Protect water quality through riparian buffers;
- Maintain biodiversity corridors across the landscape;
- Provide public access to rivers, lakes, and coastlines including for game bird hunters and anglers to rivers and lakes; and
- Are subject to public and private riparian management programmes (e.g. fencing, planting, erosion control), which are often co-funded by government with rural communities and catchment groups.

Marginal strip settings should continue as they currently operate

92. Marginal strips have separate specific provisions in the Conservation Act to reflect these values, which set them apart from the way other conservation land is treated. Currently marginal strips of a certain width must be reserved (i.e. retained as conservation land or made into conservation land) where Crown land adjacent to foreshore, a lake, a river or stream is exchanged or disposed of. The function of this is to reserve the water margin.

93. These provisions are only triggered when exchanges and disposals take place that involve land adjoining rivers, lakes and coastal areas. Even with Cabinet's decisions to facilitate more exchanges and disposals, marginal strip reservation is unlikely to be a matter that arises frequently.

94. The Minister of Conservation can exempt disposals from the requirement to reserve marginal strips, but the test for doing so has a high bar.[5] This means the exemption is rarely used in practice.[6]

95. Once established, marginal strips cannot be disposed of. Marginal strips can only be exchanged on a like-for-like basis (i.e. for other land that would act as or provide marginal strips).

96. These settings should continue to apply alongside Cabinet's decisions on exchanges and disposals without issue. This reflects the unique role marginal strips play for hunters, fishers and the public more generally, as well as the investment made by public and private entities to protect water quality.

97. Maintaining these settings does not necessarily mean that marginal strips will always have to be reserved. The exemption allows for disposals without reserving marginal strips in limited circumstances.

---

[5] Section 24B of the Conservation Act provides for the Minister of Conservation to declare certain disposals be exempt from the marginal strip requirement only if satisfied—

(a) that the land has little or no value in terms of the purposes specified in section 24C; or

(b) that any value the land has in those terms can be protected effectively by another means.

[6] The Fast-track Approvals Act 2024 allows for projects of regional and national significance to exchange conservation land without the requirement to reserve a marginal strip. Disposals are not possible under the Fast-track Approvals Act.

Consultation – Kōrero whakawhiti

98. The Ministry for Primary Industries and Ministry for the Environment support the status quo.

Risk assessment – Aronga tūraru

99. Any changes to marginal strips are likely to be highly contentious as they impact the "Queen's chain". Removing or disposing of marginal strips in particular is likely to cause a strong reaction from the public, the Outdoor Access Commission, fishers, as well businesses, and other central and local government agencies that have invested in riparian protection over the years.

Next steps – Ngā tāwhaitanga

100. In order to introduce the Bill this year, you will need to make decisions on the policy issues set out in this briefing by 18 August 2025.

101. We are working to the dates below for remaining Cabinet decisions and Bill introduction this year:

Week beginning 18 August	**Draft Cabinet paper provided so ministerial consultation can start the following week.**
22 August	NCPS targeted consultation concludes.
25 August – 2 September	Ministerial consultation on draft Cabinet paper. Agency consultation will be concurrent.
3 September	Finalise Cabinet paper based on feedback received during ministerial and agency consultation.
4 September	Lodge Cabinet paper covering Bill report-back issues, NCPS and upholding Treaty settlements.
10 September	Cabinet paper discussed at ECO.
15 September	ECO decisions confirmed. As soon as possible after this, drafting instructions for the remainder of the Bill will be issued to Parliamentary Counsel Office (PCO). All remaining dates are subject to the time taken for PCO to complete drafting.
October	Final policy decisions and Cabinet approvals for a parliamentary paper on the NCPS to be referred to select committee alongside the Bill.
October – December	Bill completed and approved for introduction. Your office is looking into whether there is House time for the Bill in the December sitting block. If this is confirmed, we would aim for LEG on 4 December and Cabinet on 8 December for approval to introduce the Bill. Introduction, first reading and referral to select committee would then take place in the December sitting block.

ENDS

Attachment A: Concession decisions – Legislative requirements and interactions

Attachment A: Concession decisions – legislative requirements and interactions

Legislative requirements under the Conservation Act 1987 (CA)

Section 2 - **Definition of conservation** - 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.

Section 4 - CA shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi. This also applies to Schedule 1 legislation.

Section 6 - **Functions of Department** - Primary purpose of managing land and natural and historic resources is for conservation (as defined in s 2). Recreation use is to be fostered, and then tourism use is allowed – but only where not inconsistent with conservation.

⊗ Part 3A - Management planning

Section 17A - DOC must administer and manage all conservation areas and natural and historic resources in accordance with general policies, CMSs, CMPs.

Section 17B - The purpose of general policies is to implement the Act. General policies must not derogate from any Act.

Section 17D - The purpose of a CMS is to implement general policies and establish objectives for the integrated management of natural and historic species. CMSs cannot derogate from the provisions of any Act or general policy.

Section 17E - The purpose of a CMP is to implement CMSs and establish detailed objectives for the integrated management of natural and historic resources. CMPs cannot derogate from provisions of any Act, general policy or CMSs.

Primary clauses outlining requirements for concession decisions

⊗ Part 3B - Concessions

Section 17SB - The Minister may decline a concession application that is obviously inconsistent with provisions of CA, CMSs, CMPs etc.

Section 17U - List of matters the Minister must consider. Applications may be declined if effects cannot be avoided, remedied or mitigated. Concessions for structures cannot be granted if they could reasonably be built off conservation land, or on other conservation land with significantly less adverse effects. Concessions cannot be granted if contrary to CA provisions or the purposes for which land is held.

Section 17W - Concessions must be consistent with CMSs and CMPs.

Land classifications outline the purpose for which land is being protected and preserved. They further protect specific values and prioritise how the area is managed. They are selected based on the Act the land is held under.

Additional legislative requirements when considering concessions in national parks, reserves and wildlife areas

National Parks Act 1980 (NPA)

Section 4 - List of principles to be applied in all national parks e.g. parks to be maintained in natural state, and public to have right of entry.

⊗ **Section 15 -** The Minister can set apart (amenities) areas in a park for the development and operation of recreational and public amenities. This must be on the recommendation of the NZCA and aligned with the NPMP. S 4 above applies only so far as the principles are compatible with the development and operation of amenities and services.

⊗ **Section 43** - DOC must administer national parks in accordance with the NPA, General Policy for National Parks, CMSs and NPMPs.

⊗ **Section 44** - General Policy for National Parks implements NPA. General policy must not derogate from any Act.

⊗ **Section 44A** - NPMPs cannot derogate from CMSs.

Section 49 - Concessions in national parks are granted under Part 3B of CA. Other NPA clauses (e.g. s 4) also apply to those decisions.

⊗ **Section 51A(2)** - The Minister must not authorise anything in a national park that is inconsistent with the relevant NPMP.

Reserves Act 1977 (RA)

Section 3 - The main functions of the RA are:

- To provide for the preservation and management, for the benefit and enjoyment of the public, areas possessing some special feature or values (recreational use, wildlife, landscape amenity or scenic value).
- To ensure the preservation of representative natural ecosystems or landscapes and the survival of indigenous species.
- To ensure the preservation of access for the public to the coastline, islands, lakeshore and riverbanks and to encourage the protection and preservation of the natural character of these areas.

⊗ **Section 15A** - Conservation General Policy applies to reserves. General policy must not derogate from any Act.

Sections 17-21 - Additional provisions for recreation, scenic, nature and scientific reserves which must be interpreted in line with s 3 above.

Section 59A - Concessions on reserves administered by the Crown are granted under Part 3B of CA. Other RA clauses (e.g. s 3, relevant provisions for the type of reserve) also apply to those decisions.

⊗ **Section 40A** - CMSs must not derogate from RA.

⊗ **Section 40B** - CMPs for reserves managed by DOC must not derogate from RA or any other Act, general policy or CMSs.

Concessions regime only applies to DOC-administered reserves. **For non-DOC administered reserves** the administering body provides approvals in place of DOC granting a concession.

Wildlife Act 1953 (WA)

Sections 9, 14, 14A - State the purposes of wildlife sanctuaries, wildlife refuges and wildlife management reserves.

⊗ **Section 14AA** - Concessions in wildlife sanctuaries, wildlife refuges, and wildlife management reserves are granted under Part 3B of CA. Other WA clauses (e.g. s 9,14, 14A, 14B and 14C) also apply to those decisions.

Section 14B - DOC must manage wildlife sanctuaries, wildlife refuges and wildlife management reserves in accordance with general policy, and relevant CMSs and CMPs.

Section 14C - Conservation General Policy applies. General policy must not derogate from any Act.

Key

⊗ Impacted by changes to new National Conservation Policy Statement, concession processes, management planning and amenities areas

Abbreviations

CA - Conservation Act
NPA - National Parks Act
RA - Reserves Act
WA - Wildlife Act
NZCA – New Zealand Conservation Authority
CMS - Conservation management strategy
CMP - Conservation management plan
NPMP - National park management plan

Attachment B: s9(2)(h) [redacted]

s9(2)(h)

s9(2)(h)

s9(2)(h)

s9(2)(h)

s9(2)(h)

s9(2)(h)

s9(2)(h)

s9(2)(h)

s9(2)(h)

s9(2)(h)

s9(2)(h)

s9(2)(h)

s9(2)(h)

s9(2)(h)

s9(2)(h)

s9(2)(h)