Modernising conservation land management proposals

Additional information for Iwi and Hapū

We are seeking your feedback

The Government is seeking feedback on proposals to simplify how we manage public conservation land and speed up the processing of 'concessions' – the right to do an activity on conservation land administered by the Department of Conservation Te Papa Atawhai (DOC).

These proposals are outlined in the discussion document, available at: www.doc.govt.nz/modernising-conservation-land-management-consultation.

We would appreciate your feedback by 5 pm on Friday, 28 February 2025.

The proposed Conservation Amendment Bill aims to focus on changes to respond to the need for more effective and efficient planning and regulatory processes for public conservation land (PLC). This is an opportunity to modernise what is allowed on PCL, clarify the role of Treaty partners in management plans and concessions processes, cut processing times and compliance costs, provide greater certainty for investment on public conservation land and get better returns for conservation.

Working with our Treaty partners

We understand that Iwi (and Hapū) have a fundamental role in conservation and an intergenerational responsibility for kaitiakitanga. We would like your feedback to help shape these proposals, to ensure your rights and interests are upheld and that your contribution to conservation management is recognised.

Responsibilities under section 4 of the Conservation Act 1987

Section 4 requires the Conservation Act 1987 to 'be interpreted and administered as to give effect to the principles of the Treaty of Waitangi'.

This is one of the strongest Treaty principles clauses in New Zealand legislation. Section 4 requires anyone working under the Conservation Act (or any of the associated Acts listed in Schedule 1 of the Act) to give effect to the principles of the Treaty of Waitangi when interpreting or administering anything under the Act.

The principles of the Treaty must be given effect when doing anything in the conservation system. This includes how DOC manages PCL, involves Iwi and Hapū in management planning, issues concessions authorising activities on PCL, and engages with Iwi and Hapū on concession decisions. These proposals relate to all of these areas.

Department of Conservation Te Papa Atawhai

Te Kāwanatanga o Aotearoa New Zealand Government

In 2018, the Supreme Court issued its decision in *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation*.[1] The case concerned DOC's consideration of Treaty principles when it granted two commercial concessions on Rangitoto and Motutapu Islands to Fullers Group Limited and the Motutapu Island Restoration Trust. The Supreme Court found section 4 was not properly applied in the challenged decisions. The Supreme Court said that 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 of doing so.

The Ngāi Tai ki Tāmaki case highlights the importance of giving effect to Treaty principles as referenced in section 4. Although the decision dealt specifically with concessions, it has wider implications for all of DOC's work.

Responsibilities in Treaty settlements

Conservation has more Treaty of Waitangi settlement commitments than any other government portfolio. These include management planning, concessions, and land management commitments. The Government is committed to ensuring that any changes proposed uphold these settlement commitments and any rights under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

Protocols, relationship agreements and other agreements

Agreements that we have with you that are not settlement commitments – agreements made in protocols, relationship agreements and other types of agreement – will continue where they are consistent with any new legislative arrangements. Specific obligations may be affected, however, by some of the changes proposed (for instance, the creation of statutory time frames to comment on specific concession proposals). We want to continue to work with you during and after consultation to shape the proposals appropriately. The Government's Fast-track legislation will also override a number of agreements around processes and time frames.

What are we proposing?

Proposals to modernise conservation land management include:

- Streamlining management planning – the way we plan and manage conservation land
- Simplifying concessions processes
- Driving better performance and outcomes from concessions
- Enabling the use of 'amenities areas' to protect nature and enhance tourism
- Enabling flexibility in land exchange and disposals to benefit conservation.

1 *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122. https://www.courtsofnz.govt.nz/cases/ngai-tai-ki-tamaki-tribal-trust-v-minister-of-conservation-1

Proposals with direct Treaty implications

We expect the following elements may have the most direct Treaty implications and may be of high interest to you.

Streamlining the management planning system

Enabling class approaches to concessions

We propose engaging with you on 'classes' of activities, rather than engaging on individual applications for some activities. We think this will reduce the administrative burden on you, and allow you to consider how you want to deal with a particular activity and its impacts, rather than getting bogged down by individual applications. Where they are lower risk, they could be standardised to protect conservation outcomes. This is an approach already implemented with some Iwi by agreement, and is being implemented to support faster processing of concessions where appropriate.

Proposed process for making statutory planning documents

The management of conservation land is done through a series of statutory planning documents that set rules for certain places, based on the conservation outcomes we want to achieve. Some Treaty settlements provide a process for post-settlement governance entities (PSGEs) to develop statutory planning documents (or parts of documents) themselves or in partnership with the Government or New Zealand Conservation Authority (NZCA). These settlement commitments will be upheld and incorporated into any new processes, but may be amended with your agreement if an equivalent approach is a better fit.

We propose setting clearer engagement requirements when developing plans including with Iwi. Changes could help us to meet our Conservation Act section 4 responsibilities more consistently and make processes faster through clear expectations of when and how we must engage Iwi.

Speeding up concession processing

Clarifying Treaty partner engagement requirements

We propose clarifying that engagement on individual applications is not needed on some applications when we already know your views, or the changes are minor. This could reduce the churn and administrative burden on you, so we can focus our time on the things that matter.

Creating statutory time frames for some steps

We want to speed up the processing of concessions because they take too long. We propose introducing a range of time frames for concessions processes, including for DOC and for Treaty partners to provide any views on an application. This could help set clear expectations around time frames for processing concession applications for all.

Driving better performance and outcomes through concessions

Enabling more opportunities and competition for concession opportunities

We want to increase the visibility of potential opportunities for Treaty partners and others to apply and compete for some concessions. We propose developing guidance on when to run a competitive process and criteria to support decision-makers to consistently choose the most appropriate concessionaire when an opportunity is being competitively allocated. This includes clarity about how to consider Treaty rights and interests.

Enabling more flexibility for land exchanges and disposals

Enabling more flexibility for exchanges and disposals where it makes sense for conservation

Proposals to exchange or dispose of land where it makes sense for conservation could have positive economic impacts if Iwi/Hapū have ownership or investment in a development seeking a land exchange. Exchanges or disposals may also facilitate the transfer of sites holding cultural significance to Iwi/Hapū including in cases where continued protection remains appropriate. Disposals may give effect to and would not override rights of first refusal, and will take into consideration potential future settlement requirements.

What we heard in recent engagement

In 2022 the Government consulted on proposals in the Conservation Management and Processes (CMAP) discussion document.[2] It outlined proposals to make conservation legislation more efficient and user-friendly in categories:

- **Conservation management planning:** improving the ability to develop and review the statutory plans that dictate the rules for activities on conservation land.
- **Concessions:** improving the ability to process, manage and allocate concession opportunities on conservation land.
- Removing or clarifying **minor and technical** legal complications.

Feedback from Iwi and Hapū supported the need for change

Iwi and Hapū raised these matters during consultation:

- Small tweaks to legislation are not going to fix the problem, but systematic change could.
- Rights and interests of Iwi and Hapū should not be negatively affected by any proposed changes.
- Tangata whenua should have their mana reflected in statutory planning documents.
- There needs to be clear mechanisms for working in partnership with tangata whenua across these systems.

This, along with other feedback received at the time, highlighted that more significant changes were needed to address issues with land management, concessions and planning, which we now seek your feedback on.

We also intend to include the minor and technical changes that were consulted on in 2022 into this work.

Links to the Options Development Group report

In 2019, the Minister of Conservation at the time and NZCA started reviews of the Conservation General Policy (CGP) and General Policy for National Parks (GPNP) – together known as the 'general policies.' The general policies are a key part of the conservation management framework – they set out the outcomes and rules for how conservation land ought to be managed. The review was carried out by the Options Development Group (the ODG), which produced recommendations for change.

The Government now proposes replacing the general policies completely, and instead having a single, simplified 'conservation policy statement.' We will consider the recommendations from the Options Development Group when redrafting the general policies into one proposed national conservation policy statement.

Proposed changes also provide an opportunity to address some of the ODG recommendations around how the concessions system expressly engages tangata whenua interests and clarifying engagement with Iwi in the planning system.

2 Department of Conservation. 2022. Conservation management and processes discussion document and the summary of submissions [accessed November 2024]. www.doc.govt.nz/cmap-2022-consultation.