Deep dive on competitive allocation

Conservation Amendment Bill

9 April 2025

Department of Conservation
Te Papa Atawhai

Te Kāwanatanga o Aotearoa
New Zealand Government

Agenda

- Recap of proposals + initial views from submissions
- Suggested approach to competitive allocation
  - General approach
  - Approach for existing long-term leases
  - Section 4 and approach to existing long-term leases
- Law change needed for proposed approach

[IN-CONFIDENCE]

Proposals in discussion document

The discussion document proposed criteria for deciding:

- When to competitively allocate:
  - Potential supply is limited
  - Concession is for exclusive use
  - Market is likely to exist
  - Costs do not exceed benefits
- How to competitively allocate (i.e. choosing the most appropriate concessionaire):
  - Recognition of Treaty rights and interests
  - Performance
  - Returns to conservation
  - Offerings to visitors
  - Benefits to local area

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Interim analysis of submissions

- Feedback on competitive allocation was mixed.
- Treaty partners and some statutory bodies, ENGOs and recreation stakeholders feel there are benefits to providing an opportunity for others to compete for concessions.
- Concessionaires said:
  - Competitive allocation may be appropriate in some scenarios, but not in others.
  - Where they have invested heavily in infrastructure and establishing a business, another's aspiration to run that business is not a valid reason to initiate a competitive process.
- On preference:
  - Treaty partners, PCE and some ENGOs say that recognising Treaty rights and interests in competitive scenarios may be required in some circumstances to give effect to section 4.
  - Incumbents with significant investment in infrastructure say they should have preference in a competitive scenario.

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Context

- “Standard” approach in other sectors is that major opportunities are put to market to maximise value-for-money outcomes, and provide fair opportunities to do business with government.
- This works for some situations we encounter on conservation land, like rationing limited supply activities among multiple operators. We’ve done this for landing permits in Subants, beehives, Abel Tasman NP water taxis.
- But the standard approach raises questions where conditions only allow for a single operator, and for asset-heavy concessions.
- Some overseas jurisdictions deal with this by separating asset ownership and operation, e.g. Leasehold Surrender Interest in the United States. But this is paired with other features like relatively shorter term lengths and federal ownership of structures.

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Proposed general approach

E.g. new opportunities, rationing within limits

- Main choice for new opportunities is the extent to which DOC should seek to maximise environmental outcomes and economic returns.
- We recommend maintaining status quo: discretionary use of competitive allocation.
    - This would be based on criteria consulted on for ‘when’ and ‘how’, which allow for reasonable degree of preference for iwi and hapū.
    - Could also adapt Treasury guidance for when to negotiate exclusively with a single applicant for market-led proposals.
- Trying to ensure best use of land for all new opportunities through contestability is unlikely to be financially viable, and would test the boundaries of the Conservation Act.

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Proposed approach for existing long-term leases

There are two broad choices:

Contestable by default	Not contestable by default
• Drives performance and investment • Reduces expectations of indefinite incumbency • Provides greater regulatory control over activity mix and ratios in protected areas	• Provides concessionaires with longer investment horizon and more certainty of operating environment • Can support working towards longer-term outcomes • Could reduce need to run costly and disruptive allocation processes where there is weak market interest or real competition

We recommend not allowing contestable processes for long-term leases if:

- Incumbent's performance is satisfactory,
- Incumbent applies for and is granted a new concession, and
- Minister and incumbent reach agreement on new terms and conditions (which could be different to previous ones).

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Section 4 and approach to existing long-term leases

- Giving effect to Treaty principles does not necessarily require a particular concession to be operated by Māori.
- Whether to allow contestability for existing long-term leases depending on views about the extent of the Crown's obligations to give effect to Treaty principles in these situations.
- The question is whether the Government can or should force the sale of private property to support Māori economic development, as a means of giving effect to Treaty principles.
- Given these potential implications of an allocation process, we think it is reasonable to restrict when existing long-term leases are put to market.
- There are multiple other ways the Crown can support Māori economic development on and off conservation land.
- Opportunities are also available to Māori to purchase businesses – and other changes you are making will ease assigning and transferring concessions in these situations.

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Law change needed for proposed approach

Changes to support <u>general discretion</u> to use competitive allocation

- Allowing applications to be returned if Crown has other plans for land.
- Allowing applications to be returned so competitive allocation can be initiated.
- Increasing maximum term for some leases and licences.

Limiting competitive allocation in <u>specific situations</u>

- Clarifying the Minister must not (or may choose not to) use competitive allocation for existing leases and licences involving fixed assets and structures where:
    - Incumbent's performance is satisfactory, and
    - Incumbent applies for and is granted a concession at end of term, and
    - Minister and incumbent reach agreement about contractual terms and conditions.

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

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