Stage 1 Cost Recovery Impact Statement

Financial contribution for Treaty partner consultation in concessions processes

Context

Issuing concessions is a key lever for regulating commercial activities on public conservation land

Any activity on public conservation land (PCL) with a specific gain or reward requires authorisation in the form of a concession from the Minister of Conservation, with some exceptions[1]. This means a wide range of activities are regulated through concessions, such as grazing, guiding and other tourism businesses, visitor accommodation, energy infrastructure, filming and research activities. Concessionaires have:

- A legal right to carry out their activity on PCL,
- A formal relationship with DOC, so both parties are aware of their obligations, and
- Security of tenure for the term of the concession, provided the conditions of the concession are complied with.

Appendix A sets out concession types, their purpose, and terms.

DOC must undertake consultation with Treaty partners and other interested stakeholders to meet its statutory and Treaty obligations when considering concession applications

The Department of Conservation (DOC) consults a range of stakeholders, communities and interested parties to varying degrees in relation to concession applications. Notably, DOC has an obligation under section 4 of the Conservation Act to 'give effect to the principles of the Treaty of Waitangi' for all its statutory functions, including when interpreting and administering the concession scheme. DOC commonly does this by giving effect to the principles of partnership, active protection, informed decision-making, and redress and reconciliation. One of the primary ways that DOC meets its section 4 obligations in relation to concessions is through targeted consultation with Treaty partners. DOC engages with Treaty partners on most concession applications (including those that do not need to be publicly notified).

Both DOC and Treaty partners need to be aware of each other's interests and concerns, and DOC needs to know how the proposed activity in an application potentially impacts Treaty partners' interests. This is connected closely to the principle of informed decision-making. In addition, when considering a concession application, DOC must also consider "effects of the activity" (including on Treaty partner interests) and measures that can avoid, remedy, or mitigate any adverse effects of the activity. Treaty partner consultation also provides DOC valuable information to apply these statutory tests.

For Treaty partners, full information needs to be provided to enable them to contribute to the decision-making process. This is connected closely to the principles of partnership and active

[1] Per section 17O of the Conservation Act.

protection. Treaty settlement legislation and Deeds of Settlement (including associated documents, such as protocols and relationship agreements) can also set out processes for how DOC will consult with Treaty partners on concession applications (and sometimes how DOC meets its responsibilities under section 4 of the Conservation Act). However, the Conservation Act does not currently prescribe any specific process or requirements for giving effect to Treaty principles for concessions.

Proposed legislative amendments may limit Treaty partners' ability to meaningfully participate in the concessions process

Cabinet agreed to set statutory timeframes on decision-making on different concession application types, including timeframes for when Treaty partners must provide their views when they are consulted (20 working days). While this clarifies *the period over which* consultation will occur, it subsequently risks increasing the barrier for Treaty partner participation if they have insufficient capacity to operate within these timeframes. A 20-40 working day timeline is current DOC operational practice (though it is not a statutory deadline), which Treaty partners can struggle to meet due to resourcing constraints. The impact of statutory timeframes 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.

Cabinet also directed the Minister of Conservation to report back on an appropriate mechanism for a financial contribution to Treaty partners for efficient engagement on statutory processes, which is what this CRIS is limited to.

DOC can charge applicants for its costs associated with processing and managing concessions

Section 60B of the Conservation Act provides the Director-General the authority to recover concession processing costs. The Director-General may require an applicant to pay all or part of any direct and indirect costs of dealing with a concession application.

Broadly, there are four elements to concessions fees:

- Application processing fees: charged to applicants (regardless of whether a concession is approved), and depends on the complexity of application and whether it needs to be notified.
- Activity fees[2]: annual fee for concessionaires undertaking activities on conservation land, intended to price the externalities of PCL use and ensure that there is a financial return to conservation where somebody undertaking an activity is benefitting from the use of PCL.
- Management fees: annual management fees concessionaires pay DOC to manage the concession, based on the kind of activity undertaken on the concession.
- Monitoring fees: variable fee based on conditions in concession and time spent monitoring the concession (environmental effects and compliance).

[2] Once a concession is in place, s17Y of the Conservation Act allows the Minister to charge concessionaires a rent, fee, or royalty as part of their lease, license, permit, or easement. DOC refers to these charges collectively as activity fees.

We recommend a charge on concession applications to contribute to Treaty partners' costs for consultation on concessions

Section 48(1)(k) of the Conservation Act also allows for regulations to prescribe or fix fees and levies payable in respect of any matter under the Act (including concessions). However, this does not empower DOC to pay out fees collected to third parties (in this case, Treaty partners).

We propose a charge on concession applications, to be disbursed to Treaty partners to help meet the cost of engaging with statutory consultation on concession applications within statutory timeframes.

Policy Rationale: Why a user charge? And what type is most appropriate?

We propose a new charge, separate to the processing fee, to disburse to Treaty partners for their consultation

Currently, Treaty partners participate in concession applications to varying degrees, depending on their level of interest in the area and/or activity, available resourcing, and interactions with other priorities and interests. Some proposed changes through the Conservation Act (Land Management) Amendment Bill (the Bill) will change the nature of consultation required, notably through the introduction of class concessions (having exempt and pre-approved activities) in the National Conservation Policy Statement (NCPS). This is expected to reduce the volume of individual concessions applications requiring processing and consultation by 30-40%.

The new charge is intended to achieve the following objectives (options will be assessed against these criteria):

- **User pays**: Central government is not required to subsidise the system, and Treaty partners are supported financially to participate in application processes[3].
- **Reasonableness**: Costs to users should be reasonable.
- **Minimises cross-subsidisation**: Wherever possible, users pay for the costs that are specifically attributable to them.
- **Provides certainty**: Applicants have a degree of certainty about the likely cost of using the concessions system.

A charge on concession applicants is appropriate as they are the primary recipients of the benefits of obtaining a concession

A user pays approach is appropriate as the economic benefits of obtaining a concession accrue primarily[4] to the applicant. Further, the concessions system should also be non-rivalrous (the benefits of which also accrue primarily to the applicant) – one applicant's use of

[3] There may be complex interactions where a Treaty partner is the applicant, which will be covered in the design of the charge in the Stage 2 CRIS.

[4] Concessions do result in some broader public benefits due to the Crown's decision-making having regard to protecting the conservation values of the land and from enabling some conservation activities, such as pest control.

the system (including Treaty partner consultation) should not prevent another applicant's use. To ensure this, it is necessary to build sufficient capacity and capability into the system to ensure that all applications can be processed effectively and efficiently, in line with the statutory timeframes set out in legislation.

Where Treaty partners cannot meaningfully participate in the concession process, there are legal and financial risks to the Crown and concessionaires:

- Some of DOC's consultation process with Treaty partners on concession applications have been judicially reviewed on the basis of the current section 4 provision. This results in delays and uncertainty, and increased costs to businesses as their concession application is called into question.
- s9(2)(j) [redacted]

A charge would also be consistent with cost recovery for concession processing and management

Processing fees can vary depending on the complexity of the application and whether it needs to be publicly notified or if a hearing is required.

Table 1: Current processing fees

Minimum rates for processing an application	Fees (plus GST)
Conforming tracks applications	$400 for up to 10 tracks $515 for 11–20 tracks $630 for 21–30 tracks
Simple non-notified applications	$2,065
Complex non-notified applications	$2,565
Notified applications	$3,425

At present, processing fees include DOC's costs for consulting with Treaty partners on applications, as well as costs associated with public notification and hearings, but do not include a charge on applications to compensate Treaty partners for their involvement in consultation processes.

In addition to processing fees, DOC can also charge applicants in full for managing and monitoring concessions, as well as activity fees to price the externalities associated with the activity. While DOC has historically under-recovered, work is underway to improve DOC's cost recovery practices.

Consistent with fees charged for concessions required under the Fast-track Approvals Act, we recommend setting a charge for Treaty partner contributions in secondary legislation rather than in operational guidance (e.g., the price book, which is publicly available but not binding) as it will provide greater clarity in advance of what amount Treaty partners will

receive for their input (this is also consistent with Cabinet's decision to include activity fees in secondary legislation). Periodic review of the contribution can also be included to ensure that the amount is reasonable. It is important to note that the financial contribution does not extend to pre-application engagement between applicants and Treaty partners (which is at applicants' discretion, but encouraged by DOC).

Risks remain with cost recovering to support Treaty partner consultation on concessions applications, but not in other statutory processes

DOC undertakes consultation with Treaty partners on a range of statutory processes required under the Conservation Act and other legislation DOC administers (e.g., the Wildlife Act 1953). This proposal seeks to cost recover to reimburse Treaty partners for one statutory process DOC undertakes (concessions), but does not address others that may happen in parallel and engage the same stakeholders:

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

High level cost recovery model (the level of the proposed fee and its cost components)

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

[redacted]

While we do not have estimates of true Treaty partner costs upon which to base a charge, fee settings will be covered in the Stage 2 CRIS and informed by a range of considerations, such as:

- Current concession fees charged to applicants;
- Complexity of applications likely to be subject to the charge (e.g., activities for which applications are sought, number of Treaty partners/groups consulted); and
- Fast-track contributions for Treaty partners (comparator).

Table 2 provides illustrative examples for charges as a percentage of processing fees:

Table 2: Illustrative examples for charges, relative to processing fees

Minimum rates for processing an application	Fees (plus GST)	Illustrative fee examples (as percentage of processing fees for different application types)				
		10%	15%	20%	25%	30%
Conforming tracks applications	$400 for up to 10 tracks	$40	$60	$80	$100	$120
	$515 for 11–20 tracks	$51.50	$77.25	$103	$128.75	$154.50
	$630 for 21–30 tracks	$63	$94.50	$126	$157.50	$189
Simple non-notified applications	$2,065	$206.50	$309.75	$413	$516.25	$619.50
Complex non-notified applications	$2,565	$256.50	$384.75	$513	$641.25	$769.50
Notified applications	$3,425	$342.50	$513.75	$685	$856.25	$1027.50

Average activity, management, and monitoring fees will also help to contextualise any charge for Treaty partner contributions and will be considered in the stage 2 CRIS as we do not have this data at present.

It is challenging to quantify the impacts of a charge on concession applicants or other stakeholders

An additional charge will increase the cost of applying for concessions; however, it is not known to what extent this will deter potential applicants and will be considered in more depth when consulting on fee levels. Any impact of the charge will interact with other changes being progressed through the Bill, which are intended to speed up regulatory decisions, enable biodiversity protection, and enable greater economic activity on public conservation land:

- Exempt and pre-approved activities will reduce the volume of concession applications sought by 30-40%, which is a cost saving for DOC over the medium term and reduces the number of applicants subject to the charge.
- The introduction of statutory timeframes for processing times and Treaty partner consultation provides greater certainty and faster decisions for concession applicants, thereby offsetting the impact (either in part or in full) of the charge.
- The charge will also help Treaty partners to participate in a timely, meaningful, and effective manner in the process, thereby reducing risk for concessionaires.

Consultation

Public consultation took place on proposals to modernise conservation land management from November 2024 to February 2025. DOC held 25 regional hui with iwi/hapū during this period, as well as 15 stakeholder engagements and four public engagements. More than 5,500 submissions were received on proposals to modernise conservation land management, of which 4,800 were pro-forma submissions from Forest and Bird.

The consultation included a set of questions focusing on streamlining the conservation management system and speeding up concession processing. Feedback noted that cost-recovery mechanisms for concessions needed to appropriately charge applicants to achieve a more efficient and effective system. Inconsistent consultation practices and Treaty partner resourcing were also identified as issues:

- Several Treaty partners, some statutory bodies and a few others also mentioned that iwi and hapū should be remunerated for advising DOC when consulted on concession applications[5].
- Some Treaty partners also wanted DOC to provide additional resources for iwi and hapū to prepare and participate in concessions processes. These submitters generally wanted iwi and hapū to determine when they provide feedback, as opposed to it being determined by the Crown.
- Remuneration for iwi and hapū who have provided advice while engaging on statutory processes was also a strong theme raised during the regional hui.

In response to this feedback, DOC recommended to the Minister of Conservation that appropriate mechanisms to remunerate Treaty partners for consultation in statutory processes be explored. We recommend a user-pays model for concessions processes, and will also explore other funding mechanisms for management planning consultation.

Further consultation will be required to set an appropriate charge via regulation, following enactment of the Bill.

[5] Iwi and hapū are compensated when commissioned to provide specialist advice or reports under s17SE of the Conservation Act.

Appendix A: Types of concessions

Table 3: Concession types

Type	Purpose	Examples	Term
Permit	Gives the right to undertake an activity that does not require an interest in the land	Guiding, filming, aircraft landings, research	Up to ten years
Easement	Grants access rights across land e.g. for business, private property access or public work purposes	Ability to access utilities through PCL	Up to 30 years (or 60 years in exceptional circumstances)
Licence	Gives the right to undertake an activity on the land and a non-exclusive interest in land	Grazing, beekeeping, telecommunications infrastructure	
Lease	Gives an interest in land, giving exclusive possession for a particular activity to be carried out on the land	Accommodation facilities, boat sheds, storage facilities	