Regulatory Impact Statement: Limitations on competitive allocation of certain concessions on conservation land

Decision sought	*Cabinet agreement to limit the circumstances in which an existing concession can be competitively allocated*
Agency responsible	*Department of Conservation*
Proposing Ministers	*Minister of Conservation*
Date finalised	*4 September 2025*

Description of the Minister's regulatory proposal
In June 2025, Cabinet agreed to changes that will make it easier to competitively allocate concessions for activities on conservation land (CAB-25-MIN-0213 refers).

Building on these decisions, the Minister of Conservation (the Minister) is proposing to provide for an exclusive window between 2 and 5 years before certain concessions expire where only the incumbent would be permitted to apply. Additionally, the Minister could only initiate a contestable process for the concession outside of this window (either more than 5 years in advance of expiry, or within two years).

This approach should balance the potential benefits of increased competition with the legitimate concerns of concessionaires who have invested in infrastructure on public conservation land (PCL).

Summary: Problem definition and options

What is the policy problem?
On 30 June 2025, Cabinet agreed to enable greater use of competitive allocation of concessions on PCL and invited the Minister to report back on "whether there are any situations in which leases and licences with significant private capital investment should be contestable".

An approach that *always* required competitive allocation of concessions could have a significant impact on existing concessionaires that have invested in fixed assets, such as buildings, that cannot be moved. In some cases, making particular concessions contestable would effectively force the sale of privately owned fixed assets on unfavourable terms, as the assets would only be able to be used by an incoming concessionaire.

The problem, therefore, is how to realise the benefits of competition without discouraging investment on PCL to maintain, renew or expand fixed assets by creating an unmanageable risk for concessionaires or significantly limiting the flexibility of the Crown to manage PCL.

What is the policy objective?

The objective of wider decisions already made to enable competitive allocation of concessions was to encourage high performing activities on PCL, including when significant private investment is needed.

The objective of this further proposal is to still realise as great a proportion of these benefits as possible, while also providing the necessary certainty to businesses to maintain, renew and expand fixed assets such as buildings on PCL and ensuring flexibility for the Crown to manage PCL.

What policy options have been considered, including any alternatives to regulation?

DOC has identified six options in response to this issue:

- **Option 1: Do nothing (counterfactual)** – legislation would be amended in line with June 2025 Cabinet decisions. Although this is not the status quo (that being the current legislation), this RIS uses Option 1 as the baseline for analysis, on the grounds that if no further policy decisions are made, this is how the Bill would be drafted.
- **Option 2: Third-party applications or contestable process only permitted within 2 years of concession expiry (DOC's preferred option)** – until two years prior to the expiry of an affected concession, third-party applications would not be accepted for an existing concession. The Minister would also not be able to initiate a contestable process until two years prior to the expiry of an affected concession.
- **Option 3: Protected application window for incumbent between 2 and 5 years of concession expiry (Minister of Conservation's preferred option)** - until two years prior to the expiry of an affected concession, third-party applications would not be accepted for an existing concession. Incumbent concessionaires would be able to apply for the concession within five years of the expiry of the concession, unless the Minister has signalled an intention to initiate a contestable process more than five years in advance. The Minister would also be able to initiate a contestable process within two years of expiry.
- **Option 4: Greater protection from competition for affected existing concessionaires** – certain concessionaires would be shielded from competition with respect to their concessions. There are several ways this could be given effect, but for the purpose of this analysis, they have been treated as a single option since the benefits and costs would be similar.
- **Option 5: Protections apply more widely** – a significantly greater number of concessions would be subject to changes that limit competitive allocation (though that limitation itself may only be moderate). There are several ways this could be given effect, but for the purpose of this analysis, they have been treated as a single option since the benefits and costs would be similar.
- **Option 6: Mandatory contestable process** – all affected concessions would be subject to a competitive allocation process, with no exceptions.

What external consultation has been undertaken?

Consultation on changes to competitive allocation took place from November 2024 to February 2025 as part of consultation on a wider suite of changes to modernise conservation land management. Of those who provided relevant feedback, there was general support for enabling greater use of competitive allocation, with clear criteria.

There were divergent views on whether criteria for allocation should grant preference to incumbent operators. In particular, many concessionaires thought that it was unfair for a concession to be competitively allocated after they have invested heavily in infrastructure for it. Concessionaires, particularly those with significant infrastructure on PCL, also said that

situations where they may be forced to sell assets or businesses following a competitive process would be undesirable.

The decisions now being taken around competitive allocation, and the analysis presented in this RIS, address previous feedback from concessionaires around this issue.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?
Yes. Option 3 is both the Minister's preferred option in this RIS and the Minister's proposed approach in the Cabinet paper. DOC's preferred option is Option 2 in this RIS.

Summary: Minister's preferred option in the Cabinet paper

Costs

Description of costs and where they fall
The main cost of the proposal would be the forgone benefits of competition. This would be realised mainly as reduced returns to conservation, either in the form of reduced activity fees paid or other benefits to conservation not achieved through competitive processes.

These costs would primarily fall on the Crown as landowner, as well as the wider public who might benefit from greater competition and businesses that might otherwise seek to apply for existing concessions.

However, these costs will be moderated by the design of the Minister's preferred approach, which seeks to intervene only to the minimum extent necessary to balance competition benefits with encouraging businesses to invest on PCL (supporting economic development) and ensuring that the Crown has flexibility to manage PCL (as opposed to options that might limit flexibility for the Crown by requiring a competitive process).

Benefits

Description of benefits and where they fall
The main direct benefits of this proposal will accrue to a small number of affected concessionaires.

However, DOC considers that the benefits of this proposal for this group are likely to be modest, and will not constitute a significant regulatory windfall. This is because:

- the concessions will not contain a right of renewal, and the design of the Minister's preferred option will still allow broad discretion to allocate a particular concession through a contestable process, where there are good reasons to do so (such as where the benefits of competition are likely to be high);
- the threat of competition, rather than competition itself, is central to achieve the benefits of competition. This means that, by virtue of the fact that a contestable process *could* be run, the Crown is likely to be able to capture the benefits of competition, even without actually running a contestable process in all cases (such as through direct negotiation around terms and conditions with an incumbent concessionaire, where a failure to agree terms satisfactory to the Crown may result in an application being decline and a contestable process initiated);
- the factors that must be considered in determining whether, or for how long, or on what conditions, to grant a concession will remain the same; and
- tourism businesses already face high competition for customers, who have many options about specific attractions to visit.

In addition, the proposal is expected to generate greater economic activity in some areas compared with the counterfactual scenario, by giving concessionaires greater confidence to invest in assets on PCL and scale up businesses.

Balance of benefits and costs

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

Yes, the benefits of the preferred option are very likely to outweigh the costs. The costs primarily relate to the potential failure to achieve competition benefits. However, because the Crown would retain the ability to terminate or renegotiate a concession, or test the value of the concession in the market through a contestable process where there are likely to be significant benefits from doing so, the costs are likely to be low.

The benefits of the proposal, while relatively modest, are likely to significantly outweigh the costs of the proposal. This is because the proposal is expected to support increased economic activity (generating wide benefits) and as the Crown will likely capture part of the value of any benefit flowing to existing concessionaires through increased activity fees.

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?

This proposal will be implemented through:

- amendments to the Conservation Act 1987 and other conservation legislation; and
- the development of guidance around how decisions will be made to competitively allocate particular concessions.

Limitations and constraints on analysis

On 30 June 2025, Cabinet made a number of policy decisions relating to the reform of conservation land management legislation (CAB-25-MIN-0213 refers). These decisions are not being revisited.

I am satisfied that, given the available evidence, this RIS represents a reasonable view of the likely costs, benefits and impact of the preferred option.

s9(2)(a)

Responsible Manager(s) signature:
Angela Bell
Manager, Regulatory Systems Policy
4 September 2025

Quality Assurance Statement

Reviewing agencies: Department of Conservation; Ministry of Business, Innovation and Employment	**QA rating:** Partially meets

Panel Comment: The Regulatory Impact Assessment Panel has reviewed the Regulatory Impact Statement (RIS). The Panel considers that the RIS partially meets the Quality Assurance criteria. The requirements were not fully met because of the limited supporting data, little detail on monitoring and evaluation, and limited engagement related to this proposal. However, there will be further opportunities for the public to engage on the proposals in the RIS through the Select Committee process for the Conservation Acts (Land Management) Amendment Bill.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

An overview of concessions

1. Activities such as grazing, tourism businesses (such as running historic hotels) and research activities on PCL require authorisation in the form of a concession from the Minister, with limited exceptions.

2. The concessions system is intended to enable tourism and other commercial activities on PCL, where they can be done without conflicting with its protection and the overriding purpose of conservation. It also helps ensure services and facilities provided for visitors are appropriate and that activities don't conflict with visitor enjoyment.

3. The concessions system has four key regulatory objectives:

    a. delivering effective land management: the concessions system is responsible for ensuring any activities maintain the values of PCL;

    b. providing well-governed access opportunities: appropriate private use and development of PCL needs an enabling mechanism;

    c. securing public benefit from private use and development: the concessions system allows the Crown to collect royalties (activity fees) for use of PCL; and

    d. clarifying public and private entitlements and responsibilities: concession agreements clarify rights and responsibilities for concessionaires and DOC.

Recent Cabinet decisions will expand the use of competitive allocation

4. Competitive allocation of concessions can be an effective mechanism to leverage competitive tension in the market to drive better outcomes for conservation on PCL (whether directly through reduced environmental impacts from activities, or through financial returns on PCL that support wider conservation activities). Although the competitive allocation of concessions is already possible under section 17ZG(2)(a) of the Conservation Act, its use is relatively limited as the current legislation constrains when and how this can happen.

5. In June 2025, Cabinet agreed to reforms to the conservation land management system, including the following changes with respect to competitive allocation of concessions [CAB25-MIN-0213 refers]:

    a. the concessions process would be amended to make it easier to competitively allocate new concessions among multiple operators;

    b. the Minister 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;

    c. competitive allocation cannot be triggered on the grounds of section 4 of the Conservation Act; and

d. 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.

6. These decisions have yet to be implemented. It is expected that the Conservation Acts (Land Management) Amendment Bill (the Bill) will be enacted by mid-2026.

Cabinet acknowledged that further work was required on this issue

7. Recognising that this issue required further consideration, Cabinet invited the Minister of Conservation to report back to Cabinet on "whether there are any situations in which leases and licences with significant private capital investment should be contestable".

8. This RIS sets out the scope of this problem and the Minister's proposed solution.

Status quo and counterfactual scenario

9. Policy decisions have already been made to amend legislation relating to concessions. The options set out in this RIS would be additional changes implemented alongside these earlier decisions through the Bill.

10. For this reason, this RIS presents the June 2025 Cabinet decisions as the baseline against which other options should be assessed ("the counterfactual scenario"). In this scenario, only those changes agreed in June 2025 would be made with respect to the competitive allocation of concessions.

11. The current legislative settings ("the status quo") are not considered as an option, because Ministers have already agreed to make changes to Conservation Act and other conservation legislation.

What is the policy problem or opportunity?

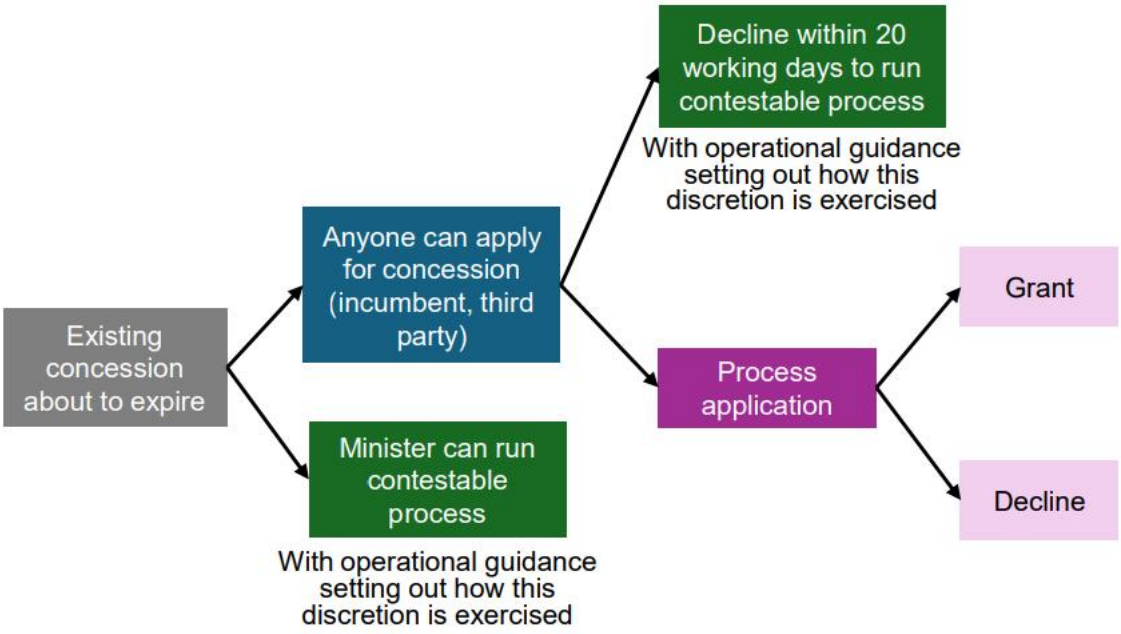
Some concessionaires have built significant, privately owned fixed assets on PCL and should not be discouraged from maintaining, renewing or expanding those assets

12. Concessions are used to provide regulatory permissions for a very wide range of different activities. While most concessions (eg: for research activities) are for a relatively short period of time and do not allow for land development on PCL, this is not always the case.

13. There are a small number of concessions granted in the form or a lease or licence over PCL, where the concessionaire is permitted to construct buildings or other significant fixed assets to operate businesses, especially those related to tourism (such as a ski lift).

14. It is possible for a third party to apply for a concession held by someone else, and DOC is required to process applications in the order they are received. Under the current legislative settings DOC would be required to consider an application from a third party that is submitted first ahead of any application from an incumbent. Once enacted, the Bill will allow the Minister to either process such an application, or to decline the application to initiate a contestable process to allocate the concession.

15. The diagram below shows how the Bill's changes to enable competitive allocation would operate when concessions expire, based on Cabinet's June 2025 policy decisions:



16. This could lead to situations where:

    a. DOC must 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

    b. 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.

17. For most concessions, the above situations are not problematic and can be managed through operational processes. This is because:

    a. the Minister retains the power to decline a concession, including where the Minister considers that "the grant of the concession is inappropriate in the circumstances of the particular application having regard to the matters set out in this section [s17U of the Conservation Act]";

    b. the majority of concessions are not likely to be subject to a competitive allocation process (e.g. those where there is no constraint on supply); and

    c. of those that are subject to a competitive allocation process, most do not permit the construction or operation of fixed assets such as buildings on PCL or, if they do, the value of these assets is low (for example, a storage shed).

18. However, for a small number of high-value, tourism related businesses operating under concessions on PCL, this could present a major risk that could discourage ongoing investment in maintaining, expanding or improving fixed assets where there is no clear basis to decline a concession from a third -party under the Conservation Act. This would reduce the effectiveness of the reforms in encouraging greater economic activity on PCL.

The number of affected concessions is small, but the value and impact of each is high

19. The detailed definition of the concessions to which this applies will be set in secondary legislation. This would provide flexibility over time to adjust thresholds for concession size and the fixed assets/structures involved, as well as the range of activities covered

20. However, the number of concessions where this issue could occur is very small.

21. For this analysis, it has been assumed that this would be only those existing concessions:

    a. that are for a lease or licence granting exclusive occupation over land related to tourism activities;

    b. that have an annualised activity fee payable to DOC of more than $100,000; and

    c. where there are significant privately owned fixed-assets and structures essential for the concession (such as a landing strip for aircraft).

22. In total, DOC has identified 31 concessions that would currently meet the first two of these criteria. While this is a very small proportion of all concessions, this cohort has an average annualised activity fee of $402,977.02 and accounts for around 49.2% of all activity fee revenue for DOC. This is because each affected concession is used by a substantial business that is significant to local or regional economies, and deliver regionally or nationally significant services and facilities.

23. DOC does not have information available to assess whether there are significant privately owned fixed assets for each of these concessions. However, it is likely that at least some of these concessions would meet this criterion due to the scale of commercial activity, noting that some concession agreements will set out how privately owned assets are to be managed at the end of the concession term.

24. There are a number of concessions of similar scale that include significant fixed assets, including concessions held by Crown entities, and utilities. There are materially different considerations around these concessions – either for Crown purposes or private businesses – than there are for tourism businesses operating under concessions on PCL. For this reason, the scope of the proposal is limited to tourism activities rather than including, for example, electricity generation and transmission.

25. The annual activity fee threshold of $100,000 is arbitrary, but broadly aligns with the cohort of larger tourism businesses operating on PCL. DOC also considered setting this threshold at a higher or lower level. For example:

    a. a threshold of $200,000 would capture 10 fewer tourism concessions; and

    b. a threshold of $50,000, would capture an additional 23 tourism concessions.

This issue can only reasonably be solved through legislative change

26. DOC has considered whether this issue could be addressed through non-regulatory mechanisms. Non-regulatory options are appropriate with respect to most concessions. However, legislative change is required to provide certainty for concessionaires operating large businesses with potentially very substantial capital assets.

27. The intention is not to shield businesses from investment risk. There is no intention to guarantee the right to continue to hold a concession indefinitely for any concessionaire or provide any safeguards against a loss of value associated with the concession itself. Nonetheless, there is a compelling case for reasonable and measured legislative safeguards to give existing concessionaires that have invested in developing fixed assets on PCL certainty around processes when the term of their concession expires in order to encourage investment on PCL.

The proposed approach adopts the minimum required regulatory intervention to address the issue

28. It is not generally desirable to limit the use of competitive allocation where this method would increase returns to conservation or provide other benefits. For this reason, the proposal is designed as narrowly as possible around *who* the changes would apply to, and *how* they would apply. The goal is to address the specific issue, while minimising benefits forgone by more broadly inhibiting competition.

29. Specifically, the proposed changes would not apply to:

    a. **Concessions that do not involve a lease or licence which grants exclusive occupation over PCL for tourism activities** – this means that the changes would not apply to uses of PCL for utilities, telecommunications or other non-tourism related infrastructure, or concessions for Crown activities unrelated to tourism or concessions that do not involve an interest in land.

    b. **Concessions with an annualised activity fee under the threshold of $100,000** – this means that only a small subset of high-value concessions used by substantial businesses would be covered by the proposed changes. This threshold is indicative, and may be set through secondary legislation in the future.

    c. **New concessions granted for the first time** – in particular, this means that concessions issued over currently undeveloped land would not be subject to the changes. These are the concessions where the benefits of competitive allocation are likely to be greatest, as the Crown could seek proposals for a variety of different kinds of uses and assess them based on both returns to conservation (both through activity fees or other returns) and the extent to which there are environmental impacts arising from the activities and what happens at the end of the term.

    d. Concessions where there are no significant privately owned fixed assets – the central rationale for the proposed changes is that there is a need to provide certainty for certain businesses in order to encourage greater investment on PCL. Where there are no fixed assets (or where those assets are owned by the Crown), or where they have a low value in aggregate (for example, if the only fixed assets were a storage shed and wayfinding markers along a trail used by a business offering guided walks), the investment risk would be low regardless of any intervention, so this rationale does not apply.

    For this reason, the proposed changes will only apply to concessions where there are significant privately owned fixed assets that cannot be readily relocated, and which would be devalued by a change in concessionaire. In practice, this would occur by forcing the sale of the assets on unfavourable terms, because only the incoming concessionaire could realise the full value of the assets and the outgoing concessionaire may be required to meet the cost of decommissioning or demolition if the assets are not sold). This might include buildings, plant like a ski lift, or earthworks like a land strip for light aircraft or a private road. It would not include vehicles, furniture or chattels in buildings that can be readily removed from the site, intellectual property or goodwill in the business, or the value of liabilities relating to winding up a business (such as paying out employee leave balances or making redundancy payments).

30. Additionally, the proposed changes would provide the minimum reasonable level of protection for affected concessionaires in order to provide certainty. They would do this by establishing safeguards around a fair process for existing concessionaires, rather than dictating the outcome of that process. In particular, they:

    a. **Would** provide preferential treatment for certain existing concessionaires, by preventing any third party from applying for the same concession until 2 years prior to its expiry. This means that there would be a window during which existing concessionaires had the exclusive right to apply for a new concession, unless the Minister had already signalled their intention to initiate a contestable process at least 5 years prior to the expiry of the concession;

    b. **Would** prevent the Minister from commencing a contestable process until 2 years prior to the expiry of affected concessions, unless the Minister has already signalled their intention to initiate that process at least 5 years prior to the expiry of the concession;

    c. **Would not** include a right of renewal for existing concessionaires. The Minister would retain the ability to decline an application for the concession (for example, to use the land for a different purpose) or to negotiate changes to the terms of the concession, including any conditions;

    d. **Would not** change the criteria or considerations which the Minister would need to take into account in assessing a concession application or in deciding whether to commence a contestable process; and

    e. **Would not** create any entitlement to compensation for loss of assets or business for existing concessionaires where an affected concession is ultimately not granted to an incumbent and/or is granted to a third party.

What objectives are sought in relation to the policy problem?

31. The objective of wider decisions already made to enable competitive allocation of concessions was to encourage high performing activities on PCL including when significant private investment is needed. This involves making it easier to competitively allocate concession opportunities on PCL, where it makes sense to do so.

32. **The primary objective of this further proposal is to realise as great a proportion of these benefits as possible, while also providing certainty needed to encourage businesses to invest in certain kinds of assets.**

33. Certainty is a critical enabler of private sector investment, because business owners and managers need to make investment decisions on the basis of *expected* risk and return. By providing greater certainty to businesses (that is, reducing risk), the state can reduce the threshold at which investment is commercially sound, enabling greater private sector investment, and therefore greater economic activity, on PCL. This investment will support wider government objectives, particularly increasing economic growth.

34. A secondary objective is to maximise flexibility for the Crown in managing PCL, in order to support statutory objectives and wider government objectives.

What consultation has been undertaken?

35. In October 2024, Cabinet agreed to consult on changes to modernise conservation land management [ECO-24-MIN-0235]. The proposals aimed to:

    a. create a more streamlined, purposeful and flexible planning system;

    b. set clear process requirements and timeframes for concessions;

    c. establish how and when concessions should be competitively allocated;

    d. establish standard terms and conditions for concessions;

    e. enable more flexible land exchange and disposal settings; and

    f. provide clarity around Treaty of Waitangi obligations in these processes, including engagement requirements and decision-making considerations.

36. Consultation on these changes took place from November 2024 to February 2025, alongside proposals on charging for access to some PCL. DOC held 25 regional hui with iwi, as well as 15 stakeholder engagements and 4 public information sessions during the consultation period. DOC also engaged with the Director-General of Conservation's commercial External Advisory Panel and the Concessionaire Reference Group.

Submissions overview

37. In total, more than 5,500 submissions were received on a discussion document released in late 2024 proposing modernisation of conservation land management.

38. Most submissions were from individuals, with a large number using Forest & Bird's template (87% of total submissions). This template did not directly engage with the proposals in the discussion document.

Type of submissions	Number of submissions	Proportion of all submissions
Forest & Bird template submission	4,837	87%
DOC website submission	451	8%
Freeform submission	277	5%
Total submissions	**5,565**	

39. The discussion document proposed criteria for when and how competitive allocation could be used. Feedback was also sought on whether there were situations in which competitive allocation should not be used, and the approach to asset valuation to smooth transitions between concessionaires.

40. Around 250 non-template submissions engaged directly with proposals relating to competitive allocation. More submitters were neutral/unsure than the combination of those explicitly in support or opposed to the proposed changes. The number of submitters opposed to the proposals slightly outnumbered those in favour.

41. Themes from submissions included the following:

    a. **Treaty partners** said competitive allocation is not appropriate in places of high cultural value to mana whenua, and that Treaty Partners should be involved in the co-design of any competitive allocation models. They also said it is important for people to have an opportunity to compete for a concession. Treaty

Partners expressed that they should have preference in competitive allocation over other applicants.

b. **ENGOs** said the criteria for when and how competitive allocation is used should focus more on conservation outcomes and returns to conservation.

This RIS addresses issues raised by concessionaires in consultation

42. During this consultation, **concessionaires** told us that they thought competitive allocation is more suitable for activities where there are limited opportunities or supply is limited, but that incumbent operators should not need to compete to retain opportunities they have previously held a concession for.

43. In particular, many thought it was unfair for those who have invested heavily in infrastructure to have what was previously their concession competitively allocated, and that they should have preference in any competitive allocation. Concessionaires, particularly those with significant infrastructure on PCL, also said that situations where they may be forced to sell assets following a competitive process is undesirable.

44. The decisions now being taken relate to these issues, and take into account the feedback from concessionaires.

Further consultation will take place through and alongside the legislative process

45. While it is clear that there is a need for legislative change to address this issue, more work needs to be done to test the specific criteria for which existing concessions would be covered by the proposed changes.

46. There is not sufficient time to undertake this further consultation prior to drafting the Bill. Additionally, it is likely to be beneficial to be able to engage with key stakeholders around the detailed design and implementation of these changes as part of wider discussions around the Bill in its totality.

47. This is particularly due to the concerns that affected concessionaires have previously raised about the interpretation of section 4 of the Conservation Act, which has been the subject of other decisions that will be implemented through the Bill.

48. For these reasons, the Minister intends to further test the proposal through the select committee process, and also in parallel to that process through direct engagement with key stakeholders (and particularly businesses holding concessions which may be affected and tourism industry representatives). DOC will also gather further information about the extent of fixed assets on particular concessions.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the counterfactual scenario?

49. Options have been assessed against the following three criteria, based on the primary and secondary objectives of the proposal.

Maximises competition benefits	The extent to which the option maximises the benefits of competitively allocating concessions, including consideration of: • any explicit or implicit constraints on when or how concessions may be competitively allocated; and • whether the option grants an unfair advantage, subsidy or regulatory windfall to one competitor in a market over another.
Encourages businesses to invest in assets on PCL	The extent to which the option will give businesses confidence to invest in maintaining, renewing or expanding fixed assets on PCL.
Maximises flexibility for the Crown to manage PCL	The extent to which the option would enable the Crown to make decisions that support the objectives set out in the Conservation Act and other legislation, or wider government objectives.

What scope will options be considered within?

50. The Government has set some boundaries for this work. The Government is not considering changes to:

    a. the general intent to expand the use of competitive allocation of concessions or the decision not to *require* competitive allocation for all concessions (which would be impractical in many cases);

    b. other specific decisions already made in relation to the conservation land management reforms on 30 June 2025 (for example, decisions around clarification of section 4 of the Conservation Act); or

    c. create any entitlement to financial compensation for a concessionaire where a fresh concession is not granted at expiry, either in respect of the concession itself or any fixed assets built on PCL.

51. For this reason, the options identified deal narrowly with the specific issue to be addressed.

52. Additionally, further work is planned around the practicalities involved in the transfer of assets and/or change of business. The intention of these changes is to smooth arrangements for the transfer of assets following a contestable process, as well as allowing for the transfer of a concession to a new operator where they have purchased the previous concessionaire's business.

53. These changes are expected to enable and encourage alternative, market-led solutions for the exit of an incumbent concessionaire, as an alternative to the Minister running

contestable processes for concessions. This work is out of scope of this RIS, and so has not been directly considered in the options analysis.

54. Other matters out of scope due to the phasing of decisions and implementation work include:

    a. institutional arrangements across the conservation system (e.g. conservation governance reform or alternative institutional arrangements for managing concessions);

    b. rationalising aspects of the conservation system (e.g. integrating multiple land classification and management regimes); and

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

What options are being considered?

55. Six options have been identified:

Option 1: **Do nothing (counterfactual scenario)**	The Government could introduce the Bill based only on the June policy decision. This could lead to situations where: • DOC is required by law 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 encourage use of the Minister's new ability to decline an application early and instead run a competitive allocation process. Under this option, the Minister would still have the ability to decline an application for a concession (for example, to use the land for a different purpose).
Option 2: **Third-party applications or contestable process only permitted within 2 years of concession expiry (DOC's preferred option)**	The Government could seek legislative changes to prevent: • a third party making an application for an existing concession more than 2 years prior to its expiry; or • the Minister of Conservation commencing a contestable process with respect to an existing concession more than 2 years prior to its expiry. An incumbent concessionaire could apply for the concession at any time. Indicatively, these changes would only apply to 'major tourism concessions'. The precise definition is yet to be determined, but for the purposes of this analysis is assumed to be concessions: • that are for an exclusive lease or licence over land related to tourism activities; • that have an annualised activity fee payable to DOC of more than $100,000; and

	• where there are significant privately owned fixed-assets and structures essential for the concession. Under this option, the Minister would still have the ability to decline an application for a concession for a different reason at any time (for example, to use the land for a different purpose).
Option 3: **Protected application window between 2 and 5 years (Minister of Conservation's preferred option)**	The Government could seek legislative changes to: • prevent anyone *including the incumbent* making an application for an affected concession more than 5 years before its expiry; • prevent anyone *other than the incumbent* making an application for an affected concession between 2 and 5 years before its expiry, if a contestable process has not been initiated before this; and • provide that the Minister may only commence a contestable process with respect to an affected concession either: o more than 5 years before its expiry; or o within 2 years of its expiry. The same indicative definition of 'major tourism concession' would apply as for Option 2. Under this option, the Minister would still have the ability to decline an application for a concession for a different reason at any time (for example, to use the land for a different purpose).
Option 4: **Greater protection from competition for affected existing concessionaires**	The Government could seek legislative changes to grant greater protection from competition to affected concessionaires. This may take the form of an automatic right of renewal of their concessions on the same terms, perpetual leases or licences, or prohibiting the competitive allocation of an existing concession where the incumbent wishes to apply for a fresh concession. For the purposes of this analysis, all these variations are considered as a single option, as they would have materially the same effect of providing a very high level of protection from competition for affected concessionaires. It would be possible to implement both Option 4 and Option 5 simultaneously.

Option 5: Protections apply more widely	The Government could seek legislative changes to expand protection from competition more broadly than the proposed, narrow definition. For example, the threshold for the annualised activity fee could be removed or set at a very low level, or the changed expanded to cover concessions not involving a lease or licence over land, or the changes could be expanded to activities not related to tourism. For the purposes of this analysis, all such variations are considered as a single option, as they would have materially the same effect of significantly increasing the number of affected concessionaires. It would be possible to implement both Option 4 and Option 5 simultaneously. It would also be possible to implement Option 5 alongside either Option 2 or Option 3, which would significantly loosen the definition of 'major tourism concession'.
Option 6: Mandatory contestable process	The Government could seek legislative changes that mandate the use of a contestable process to allocate affected concessions in all cases.

How do the options compare to the counterfactual scenario?

	Maximises competition benefits	Encourages businesses to invest on public conservation land	Maximises flexibility for the Crown to manage public conservation land	Overall assessment
Option 1: **Do nothing (counterfactual scenario)**	**0** Option 1 could result in the contestable processes being sought for a high proportion of concessions with significant fixed assets. There would be strong incentives for third parties to apply for existing concessions, if they are lucrative. This would be likely to realise the benefits of competition in terms of returns to conservation, due to aggressive bidding behaviour by third-party applicants (either on price or other conservation benefits).	**0** Option 1 would make it possible for a third party applicant to game the concession system, in order to force the sale of fixed assets on PCL owned by an existing concessionaire. This option would not give certainty to businesses to invest on PCL, and would likely therefore discourage investment.	**0** Option 1 would provide a high degree of flexibility for the Crown to manage PCL. The Minister would be able to choose when or if to commence a contestable process for any particular concession. There would also be no constraint on taking preliminary steps to investigate or enable a competitive process later (such as market sounding).	**0**
Option 2: **Third-party applications or contestable process only permitted within 2 years of concession expiry (DOC's preferred option)**	- Option 2 would limit the circumstances in which a contestable process could commence by giving the incumbent a protected window from the commencement of the concession until 2 years prior to expiry during which only they can apply for a new concession, and an own-motion contestable process cannot be initiated by the Minister. However, the impact of this on competition benefits would be moderated by the Minister having discretion to decline an application during this period for reasons other than to commence a contestable process (for example, to use the land for a different purpose). This option would also not preclude the Minister or DOC from taking preliminary steps to investigate or enable a competitive process later (such as market sounding) at any time.	+ Option 2 would provide preferential treatment – an opportunity to apply for a concession before other potential applicants – for a limited group of concessionaires with significant privately owned fixed assets on PCL. However, it would not guarantee the right to continue to use these assets, and there may still be circumstances where a concessionaire is effectively forced to sell assets on unfavourable terms due to the loss of a concession. This is comparable to circumstances that might be faced by businesses leasing land, who are not guaranteed to always be able to renew leases. s9(2)(h) [redacted]	- Option 2 would provide less flexibility for the Crown to manage PCL than the counterfactual scenario, as there would be some constraints on when the Minister of Conservation could commence a contestable process with respect to certain concessions. However, the Minister would retain broad discretionary powers around the use of PCL, including the ability to decline an application for a concession to change the use of the land. This option would also not preclude the Minister or DOC from taking preliminary steps to investigate or enable a competitive process later (such as market sounding) at any time. s9(2)(h) [redacted]	**Suitable – DOC's preferred option.** Option 2 would provide a degree of certainty to existing concessionaires, and could be expected to encourage businesses to invest on PCL. However, in doing so, it may forgo some of the competition benefits and would impose some modest limitations on the Crown's flexibility to manage PCL, compared with the counterfactual scenario.
Option 3: **Protected application window between 2 and 5 years (Minister's preferred option)**	- Compared with the counterfactual scenario, Option 3 would limit the circumstances in which a contestable process could commence by giving the incumbent a protected window from 2 to 5 years of term expiry during which only they can apply for a new concession, and an own-motion contestable process cannot be initiated the Minister. However, the impact of this on competition benefits would be moderated by the Minister having discretion to decline an application during this period for reasons other than to commence a contestable process (for example, to use the land for a different purpose).	+ Compared with the counterfactual scenario, Option 3 would provide preferential treatment – an opportunity to apply for a concession before other potential applicants – for a limited group of concessionaires with significant fixed assets on PCL. However, it would not guarantee the right to continue to use these assets, and there may still be circumstances where a concessionaire is effectively forced to sell assets on unfavourable terms due to the loss of a concession. This is comparable to circumstances that might be faced by businesses leasing land, who are not guaranteed to always be able to renew leases.	- Option 3 would provide less flexibility for the Crown to manage PCL than the counterfactual scenario, as there would be some constraints on when the Minister of Conservation could commence a contestable process with respect to certain concessions. However, the Minister would retain broad discretionary powers around the use of PCL, including the ability to decline an application for a concession to change the use of the land. Additionally, the Minister would have the ability to signal their intention to commence a competitive process more than five years ahead of the expiry of the concession.	**Suitable – Minister's preferred option.** Option 3 would provide a degree of certainty to existing concessionaires, and could be expected to encourage businesses to invest on PCL. However, in doing so, it may forgo some of the competition benefits and would impose some modest limitations on the Crown's flexibility to manage PCL, compared with the counterfactual scenario.

	Maximises competition benefits	Encourages businesses to invest on public conservation land	Maximises flexibility for the Crown to manage public conservation land	Overall assessment
	Additionally, Option 3 would provide an additional mechanism for the Minister to signal a contestable process more than 5 years in advance. This option would also not preclude the Minister or DOC from taking preliminary steps to investigate or enable a competitive process later (such as market sounding) at any time.	Where the Minister decided to signal their intention to commence a contestable process in advance, concessionaires would have some certainty that this process would be undertaken, and when. However, this may also create an incentive for some businesses to sweat fixed assets during this period, avoiding investment that is not essential to keep the assets in operation, rather than managing the business as a going concern. s9(2)(h) [redacted]	This option would also not preclude the Minister or DOC from taking preliminary steps to investigate or enable a competitive process later (such as market sounding) at any time. s9(2)(h) [redacted]	There is also a risk that the Minister signalling an intention to initiate a contestable process more than five years before expiry may create an incentive for businesses to sweat assets rather than manage them as a going concern.
Option 4: **Greater protection from competition for affected existing concessionaires**	**- -** Option 4 would provide robust protection from competition for certain concessionaires, such as through an automatic right of renewal. Compared with the counterfactual scenario, this would have a significant, deleterious effect on competition. While the number of concessionaires is low, the impact of each concession protected from a contestable process may be high. Option 4 would also likely reduce the returns to conservation by reducing or eliminating pressure for some concessionaires to compete to retain their concession, or meet Crown expectations on terms.	**0** Compared with the counterfactual scenario, Option 4 would grant a high degree of protection from competition for concessionaires with existing investments in fixed assets on PCL. In turn, this *may* provide greater certainty for concessionaires to invest in maintaining, renewing or expanding such assets. However, this would be offset (at least in part) by a reduced threat of competition reducing the incentive to invest in assets to increase productivity or innovate. This would be particularly true if there was an automatic right to renewal of certain concessions *on the same terms*. s9(2)(h) [redacted] It is therefore far from certain whether Option 4 would provide any net benefit in terms of encouraging businesses to invest on PCL compared with the counterfactual scenario.	**- -** Option 4 would impose considerable constraints on the ability of the Crown to effectively manage PCL, and in particular to maximise returns to conservation and to change the use of particular parcels of land over time. s9(2)(h) [redacted]	**Not suitable** Option 4 would provide considerable and disproportionate protections for certain existing concessionaires, well beyond a reasonable level, irrespective of any other considerations. Additionally, Option 4 would significantly constrain Crown management of PCL and, while it would provide certainty to businesses, may not actually encourage more investment overall due to the reduced threat of competition.
Option 5: Protections apply more widely	**- -** Compared with the counterfactual scenario, Option 5 would significantly undermine the benefits of expanding the competitive allocation of concessions by limiting its use for a broader range of concessions. Option 5 would be poorly targeted, providing protection from competition where there is no reason to do so.	**+** Compared with the counterfactual scenario, Option 5 would likely encourage some businesses with significant fixed assets to invest in maintaining, renewing or expanding those assets (in the same way as Options 2 and 3).	**- -** Option 5 would impose considerable constraints on the ability of the Crown to effectively manage PCL, and in particular to maximise returns to conservation and to change the use of particular parcels of land over time. The potential extension of protection from competition (in whatever form) to a large number of concessions may	**Not suitable** Option 5 would provide a degree of certainty to existing concessionaires, and could be expected to encourage businesses to invest on PCL. However, it would be poorly targeted, providing protection from

	Maximises competition benefits	Encourages businesses to invest on public conservation land	Maximises flexibility for the Crown to manage public conservation land	Overall assessment
		The wider scope of the protections would have little if any additional impact, as they would primarily relate to businesses without significant fixed assets.	also make it significantly more complex and costly for DOC to manage PCL in the future.	competition for a wide range of concessionaires where there is no reason to do so. This means that Option 5 would forgo a substantial portion of the benefits of increased competition for concessions. It would also significantly constrain the Crown's ability to effectively and efficiently manage PCL by adding complex considerations to a large number of concessions.
Option 6: **Mandatory contestable process**	**0** Option 6 would *require* a contestable process for the first grant or subsequent grant of all affected concessions. This may ultimately be simplified to require a contestable process wherever the annualised activity fee was expected to exceed a certain threshold. This would likely maximise the gross benefits of competition, but may also create instability and significantly reduce concessionaires' willingness to invest in businesses on PCL as a going concern, especially as a concession approached its expiry date. As this option would require a contestable process whether or not there were benefits to running one, it is not clear that the net benefits of competition would be greater for option than for counterfactual scenario. The gross benefits of competition would be offset by the costs of running competitive processes that did not yield benefits greater than their costs.	**0** Compared with the counterfactual scenario, it is unclear whether Option 6 would encourage businesses to invest on PCL. In the absence of further measures, Option 6 would almost certainly lead to situations where an existing concessionaire is effectively forced to sell fixed assets built on PCL to the incoming concessionaire following a contestable process in which they are not successful, or face decommissioning and demolition costs. This risk could be at least partially mitigated (at least with respect to new concessions issued for the first time after the enactment of the Bill) by the inclusion of express conditions in concession agreements dealing with asset transfers and valuations at the end of the concession term. However, this would not necessarily be suitable for concessions that already exist, where concessionaires have already invested in fixed assets. This means that the net effect of this option in encouraging businesses to invest is highly uncertain. In some cases, the absolute certainty provided by mandating a contestable process would allow concessionaires to plan investment on the basis that they may no longer hold the concession beyond its expiry. On the other hand, this may discourage investment in businesses as a going concern, by concessionaires approaching the expiry of the concession. That is, concessionaires who know that they would face a contestable process may have a strong incentive to sweat fixed assets, rather than invest in maintenance and renewal of those assets in a timely way.	**- -** The effect of Option 6 would be to force the use of contestable processes for certain kinds of concessions, even where there may be no value (or net costs) in doing so. Compared with the counterfactual scenario, this would prevent DOC managing Crown land efficiently on behalf of the Crown, imposing unavoidable costs of going to market with concessions where there is not likely to be any meaningful benefit. This option would limit the capacity of the Crown to negotiate with incumbent concessionaires, and may also limit the ability to consider unsolicited proposals. Further consideration would also need to be given to the circumstances in which the Minister could choose not to run a contestable process (for example, to use the land for Crown purposes or where a contestable process had recently failed). This would need to be considered as part of the Bill, because if contestable processes were mandated in law, there would be a corresponding need for legislation explicitly setting out any exemptions (or alternatively, a power allowing for those exemptions to be determined in secondary legislation).	**Not suitable** While Option 6 would significantly limit flexibility for the Crown to manage PCL efficiently and effectively by mandating competitive allocation for all affected concessions. While this would be likely to maximise *gross* competition benefits, the *net* competition benefits would be uncertain. The impact on businesses' investment decisions is also unclear.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

56. It is not feasible to estimate in monetary terms the costs and benefits of the options set out above.

57. This is because, with a very high number of variables around policy choices and concessionaire behaviour, thin markets for unique and non-substitutable products and few historical transactions to use as an evidence base, there is insufficient information to make reasonable estimates of either the costs or benefits.

58. The scale of the benefits and costs is also unlikely to be sufficiently large to justify the expense of developing an economic model to estimate the impact of the different options.

59. For this reason, DOC has approached the options analysis on a purely qualitative basis, based on *relative* expected impacts (not quantified expected impacts), taking into account competition principles and qualitative considerations around benefits for the Crown and economic growth.

60. Based on this analysis, DOC has recommended Option 2. This option would provide:

    a. a reasonable degree of certainty for businesses to encourage investment on PCL;

    b. have only a modest impact on the potential benefits of greater competition; and

    c. would give the Crown a reasonable degree of flexibility to manage PCL.

61. DOC preferred Option 2, on the basis that it would provide a greater degree of certainty for affected concessionaires – they would know that if they apply for a new concession first, their application would be processed before any decision to run a contestable process is made.

62. However, DOC advised the Minister that Option 3 would also be reasonable, if he preferred to provide greater flexibility for the Crown to initiate a contestable process well in advance. This option would otherwise have a similar impact to Option 2.

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

64. None of the other options considered are considered suitable, either because they would fail to address the issue at hand (Option 1, the counterfactual scenario) or would result in worse outcomes overall than the counterfactual scenario (Options 4-6).

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

65. No, the Minister of Conservation has decided to take **Option 3** to Cabinet.

What are the marginal costs and benefits of the Minister of Conservation's preferred option in the Cabinet paper (Option 3)?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Wider community	Lower returns to conservation (including but limited to activity fees and other benefits to conservation)	Low	Medium It is relatively certain that higher competition may prompt more aggressive bidding behaviour in contestable processes where there is meaningful competition. On this basis, constraining competition could generally be expected to reduce returns to conservation, either in terms of activity fees able to be paid and/or other benefits for conservation However, because there are often thin markets for affected concessions, and because the counterfactual scenario also does not require the use of contestable processes to allocate concessions, the forgone competition benefits are likely to be low overall.
DOC	Reduced flexibility for DOC to manage PCL to meet statutory or government objectives	Low	High The proposed legal framework would provide less flexibility to manage PCL that the counterfactual scenario.
s9(2)(h) [redacted]	[redacted]	[redacted]	[redacted]
Non-monetised costs		**Low**	**Medium**
Additional benefits of the preferred option compared to taking no action			
Affected concessionaires	Reasonable safeguards against gaming behaviour by third-party concession applicants. Where a contestable process is to be initiated, this may be with considerable notice.	Medium	Medium DOC is aware of concern among some concessionaires around the threat of contestability for existing concessions. We can be reasonably sure that this proposal will be positively regarded by potentially affected concessionaires and the wider tourism industry, in combination with other policy decisions. Nonetheless, some concessionaires may feel that the level of protection afforded in inadequate.
Wider community	Greater stability of tourism related businesses (more incentive to manage as a going concern)	Low	Low Likely to be only one factor among many – may not be determinative
	Higher economic activity on PCL by providing some certainty to concessionaires to invest in maintaining, renewing or expanding fixed assets, and rebalancing incentives towards investment in *new* concessions by new entrant businesses (rather than applying for existing concessions)	Medium	Medium We can be reasonably sure that greater certainty is conducive to discretionary capital expenditure by the private sector. Compared with the counterfactual scenario, Option 3 would provide greater certainty and therefore, all other things being equal, could be expected to lead to greater investment. However, the scale of this investment, and where it would occur, is uncertain.
Non-monetised benefits		**Medium**	**Medium**

What are the marginal costs and benefits of DOC's preferred option (Option 2)?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Wider community	Lower returns to conservation (including but limited to activity fees and other benefits to conservation)	Low	Medium It is relatively certain that higher competition may prompt more aggressive bidding behaviour in contestable processes where there is meaningful competition. On this basis, constraining competition could generally be expected to reduce returns to conservation, either in terms of activity fees able to be paid and/or other benefits for conservation However, because there are often thin markets for affected concessions, and because the counterfactual scenario also does not require the use of contestable processes to allocate concessions, the forgone competition benefits are likely to be low overall.
DOC	Reduced flexibility for DOC to manage PCL to meet statutory or government objectives	Low	High The proposed legal framework would provide less flexibility to manage PCL that the counterfactual scenario.
s9(2)(h) [redacted]	[redacted]	[redacted]	[redacted]
Non-monetised costs		**Low**	**Medium**
Additional benefits of the preferred option compared to taking no action			
Affected concessionaires	Reasonable safeguards against gaming behaviour by third-party concession applicants. Where a contestable process is to be initiated, this may be with considerable notice.	Medium	Medium DOC is aware of concern among some concessionaires around the threat of contestability for existing concessions. We can be reasonably sure that this proposal will be positively regarded by potentially affected concessionaires and the wider tourism industry, in combination with other policy decisions. Nonetheless, some concessionaires may feel that the level of protection afforded in inadequate.
Wider community	Greater stability of tourism related businesses (more incentive to manage as a going concern)	Low	Low Likely to be only one factor among many – may not be determinative
	Higher economic activity on PCL by providing some certainty to concessionaires to invest in maintaining, renewing or expanding fixed assets, and rebalancing incentives towards investment in *new* concessions by new entrant businesses (rather than applying for existing concessions)	Medium	Medium We can be reasonably sure that greater certainty is conducive to discretionary capital expenditure by the private sector. Compared with the counterfactual scenario, Option 3 would provide greater certainty and therefore, all other things being equal, could be expected to lead to greater investment. However, the scale of this investment, and where it would occur, is uncertain.
Non-monetised benefits		**Medium**	**Medium**

Section 3: Delivering an option

How will the proposal be implemented?

66. This proposal will be implemented through:

    a. amendments to the Conservation Act, the National Parks Act 1980 and other conservation legislation, by way of the Conservation Acts (Land Management) Amendment Bill (the Bill), which is expected to be introduced to the House in December 2025; and

    b. the development and publication of guidance around how decisions will be made to competitively allocate particular concessions. This may take the form of policy decisions made by the Minister of Conservation, DOC operational policy or guidelines, or a combination of the two.

67. Work on this guidance will be undertaken concurrently with the legislative process to enact the Bill, and will be completed prior to commencement of the proposals.

68. However, the proposal will be implemented alongside other changes to conservation land management legislation that are significantly more complex. There is a risk that implementation of the reforms as a whole may be delayed due to the complexity of other elements of the reforms.

69. Additionally, there will be a need for DOC to resource ongoing engagement around this issue, in parallel to supporting the Select Committee process. No additional implementation budget is available, so this risk will need to be managed within existing departmental resources.

Sequencing of assessment of whether a particular concession is a 'major tourism concession'

70. DOC will make operational decisions about how to structure and sequence assessment of whether a particular concession should be subject to these changes (for example, by assessing based on objective criteria like the activity fee threshold first, and only assessing those that meet this test against subjective criteria).

71. Assessment is also only likely to occur when a particular concession is being considered (for example, ahead of a decision by the Minister about whether to initiate a contestable process for a concession).

How will the proposal be monitored, evaluated, and reviewed?

72. DOC will be responsible for monitoring, evaluating and reviewing any changes. The Minister of Conservation intends to continue with a second phase of reform (for example, to institutional arrangements and land classifications in the conservation system). This provides a further legislative vehicle to make adjustments if any issues arise.