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The Directors
Whakapapa Holdings 2024
Limited

Email:

Privacy of natural
persons

DOC-10220992

Tēnā koe Directors

Whakapapa Holdings 2024 Limited,

CONCESSION APPLICATIONS IN RESPECT OF WHAKAPAPA SKI AREA AND STAFF ACCOMMODATION IN WHAKAPAPA VILLAGE

Introduction

1. Whakapapa Holdings 2024 Limited (**WHL**) has applied for concessions (lease and licence) under section 49 of the National Parks Act 1980 (**NPA**) and Part 3B of the Conservation Act 1987 to operate the Whakapapa Ski Area. In addition, WHL seeks an easement to convey water from the Waipuna stream for snowmaking purposes, and a lease of six buildings in the Whakapapa Village for staff accommodation.
2. All proposed concession activities are located within the Tongariro National Park (**TNP**) which is of high cultural significance to iwi and hapū. Treaty partners with an interest in the Whakapapa Ski Area are the Office of Te Ariki Tumu te Heuheu, Te Kotahitanga o Ngāti Tūwharetoa (**TKNT**), Ngāti Hikairo, Ngāti Hāua Iwi Trust (**Ngāti Hāua**), Ngāti Rangī, Te Korowai o Wainuiārua and Te Patutokotoko. Their views range from supporting the continuation of the ski fields in principle, to neutral or opposed and cover a wide range of matters.
3. The area in which the concession activities are located is also a World Heritage Area (WHA).
4. The opportunity for WHL to operate the Whakapapa ski field and other concession activities has arisen as a result of the liquidation and receivership of Ruapehu Alpine Lifts Limited (RAL). Before its liquidation and receivership, RAL had operated the Whakapapa ski field for many years, its most recent concession having been granted in 2016 for a term of 60 years (inclusive of rights of renewal).
5. In December 2024, the Crown agreed to provide a loan to WHL to support the sale and purchase of Whakapapa Ski Area. The loan is conditional on WHL obtaining a concession to operate the Ski Area. As a result, WHL and RAL have entered into a conditional Sale and Purchase agreement for WHL to purchase RAL's Whakapapa assets. The agreement is conditional on WHL's obtaining a concession.
6. WHL wishes to operate the Whakapapa ski field for the 2025 season. To do so, WHL considers that it needs to know before the end of April 2025 whether it has appropriate permissions to operate or not. If the former, it needs a sufficient lead-in time to prepare for the 2025 season. It is a condition of the Sale and Purchase Agreement that WHL must obtain a concession by 30 April 2025.

The application

7. WHL seeks the following:
 - a) A lease of land occupied by specified structures within the ski field with no curtilage area. This includes all buildings, drive and return stations and pump shed. WHL has also requested the ability to sublease the retail component of the activity (cafes, retail, rental, ski school).
 - b) A licence to operate the Whakapapa ski field licence Ski Area, approximately 550 hectares, including authorisation to use helicopters/drones and explosives in areas beyond the ski field. It has also requested the ability to sublease retail components of the activity being cafes, retail, rental and ski school, although no applications for sub-licences have been received.
 - c) A water pipeline easement from the ski field to the Waipuna Valley, including electricity required to operate the pump.
 - d) A lease of staff accommodation in Whakapapa Village, being 6 buildings as well as existing curtilage, garaging, and car parking areas.
8. In all cases, WHL seeks 10-year terms, with reviews after 5 years.

Summary of Decision

9. I have decided to grant WHL's application for leases, licence and easement for 10 years, subject to some modifications and conditions which are set out in the Concession Documents in Attachment 1.
10. In short, I am satisfied that:
 - a) There is adequate information in support of the applications for concessions.
 - b) Having regard to the factors in section 17U(1) of the Conservation Act, it is appropriate to grant concessions to WHL on the terms contained in the enclosed concession documents.
 - c) The applications are consistent with relevant planning documents (although this has necessitated declining the request to use aircraft for promotional filming).
 - d) The granting of concessions is consistent with sections 4 and 49 of the NPA and consistent with the purposes for which the land is held.
 - e) The proposed concession of the Ski Area will provide the public with the benefit, recreational use and enjoyment of an area of TNP containing outstanding scenery and natural features. This also covers the use of aircraft (principally drones but also helicopters) for purposes of WHL's operations; and permits filming but excludes the use of aircraft for this purpose.
 - f) Leases of the land on which the structures and facilities are located, both in the Ski Area and Whakapapa Village, meets the requirements in section 17U(5) and (6) of the Conservation Act.
 - g) The granting of concessions is not inconsistent with the WHA status.
 - h) My decision is consistent with the obligations of the Crown under relevant Treaty settlement legislation and Deeds of Settlement.

- i) My decision is consistent with the requirements in section 4 of the Conservation Act 1987 to give effect to the principles of the Treaty of Waitangi.

11. I set out my reasons in respect of the leases, licence and easement more fully below.

Information considered

12. The Conservation Act requires me to consider a list of matters set out in section 17U(1), namely:

- a) the nature of the activity and the type of structure or facility (if any) proposed to be constructed.
- b) The effects of the activity, structure, or facility.
- c) Any measures that can reasonably and practicably be undertaken to avoid, remedy, or mitigate any adverse effects of the activity.
- d) Any information received by the Minister under section 17S or section 17T.
- e) Any relevant environmental impact assessment, including any audit or review.
- f) Any relevant oral or written submissions received as a result of any relevant public notice issued under section 49.
- g) Any relevant information which may be withheld from any person in accordance with the Official Information Act 1982 or the Privacy Act 1993.

13. To assist me in having regard to the matters in section 17U(1), I have referred to the following documents in particular:

- a) WHL's application for leases, licence and easements together with its 14 appendices, its application for use of aircraft, including to carry out filming.
- b) The Objections and Submissions Summary Report (being the report prepared under section 49 of the Conservation Act 1987 following the notification of WHL's application and public hearings on the application).
- c) Various correspondence.
- d) The Recommendation and Decision Report (RDR) and the Appendices to it.
- e) The proposed concession documents.
- f) The proposed Deed of Surrender.
- g) Relevant statutory management planning documents including the General Policy for National Parks (GPNP), the Tongariro/Taupo Conservation Management Plan (CMS) and the Tongariro National Park Management Plan (TNPMP).

14. I have also considered, in particular:

- (a) An overview of iwi and hapū engagement, including correspondence.
- (b) An overview of iwi and hapū consultation feedback.
- (c) The Department's commitment to enter into a Terms of Reference with Ngā Tāngata Tiaki.

15. I have also considered relevant legislation including:
- a) NPA, principally sections 4, 15 and 49.
 - b) Conservation Act 1987, Part 3B and section 4.
 - c) Te Awa Tupua (Whanganui River) Claims Settlement Act 2017 (**Te Awa Tupua Act**), principally sections 11, 15 and 37.
 - d) Ngāti Rangi Claims Settlement Act 2019.
 - e) Ngāti Tūwharetoa Claims Settlement Act 2018.
 - f) Te Korowai o Wainuiārua Claims Settlement Act 2025.
16. I have considered key settlement obligations relating to the applications including He Kaupapa Rangatira (the principal means by which Treaty principles and objectives are to be implemented and achieved in the current TNPMP), and Te Awa Tupua Act.
17. I observe that Ngāti Hāua's Treaty settlement process has not yet concluded with final legislation. In addition, settlements of the Tongariro National Park claims have yet to occur.
18. The World Heritage Convention and the Operational Guidelines for the World Heritage Convention are also relevant given the WHA status.

Reasons for decision

19. As prefaced above, there are a number of reasons which, in combination, have led me to grant the applications (with variations from what was sought which are reflected in the attached concession documents).
20. I deal with each reason in turn.

A. Factors considered under section 17U Conservation Act.

Section 17U(1) and (2)

21. As required, I have considered the nature of the activities, the effects of the activities, the proposed mitigation measures (including make good obligations) and refer to the discussion of effects and mitigations in the RDR. I have also considered other information lodged in support of the applications, and relevant oral and written submissions received as a result of the public notice issued under section 49 of the Conservation Act.
22. WHL has been created for the purpose of operating the Whakapapa Ski Area. I accept that the shareholders and Directors of WHL have significant experience in ski field management as well as a range of experience in other business-related matters.
23. It is important not to lose sight of the fact that RAL (now in liquidation and receivership) has been operating the Whakapapa Ski Area under long-term concessions from the Minister of Conservation which were granted in 2016 for a term of 60 years (inclusive of rights of renewal).
24. WHL seeks to take over the operation of the Whakapapa Ski Area, the accommodation buildings in Whakapapa Village and to continue to extract water from the Waipuna Stream for snow making purposes. In essence, it is seeking concessions for the same activities authorised by the RAL concessions. While it must satisfy me that it meets key parts of section 17U(1) as a new operator,

it has utilised some of the information provided by RAL in support of its application. The reason for this is its wish for the application to be turned around in time for the 2025 ski season.

25. WHL is not applying to install new infrastructure in a pristine environment – the infrastructure already exists. And, as noted in the RDR, there are no significant differences between the anticipated effects of the activity that RAL has been carrying out and what the effects would be if WHL's application is approved.
26. In particular, the Department has carried out an assessment of WHL's assessment of effects. It concludes that the assessment is comprehensive, the effects have been adequately assessed and described and are largely minor, and that no mitigation is required. It does, however, note that some environmental monitoring aspects could be improved, and that an ecological survey should be carried out and completed within the first year of operation.
27. The RDR recommends a range of conditions be imposed to mitigate effects in other areas. I agree that these are appropriate, although I have made some changes/additions which I will address later in this letter.
28. WHL has indicated that a number of structures that were part of the RAL concession are redundant for the purposes of WHL's proposed operations and it does not seek authority to control and operate them. As a result, the Department will become responsible for them.
29. A decision by me to decline would not necessarily result in the Whakapapa Ski Area being preserved in its current state. A decision to decline could result (at least in the short to medium term) in negative environmental consequences (for example if infrastructure is not maintained and falls into disrepair) and the loss of a significant recreational resource for the public. I am satisfied that WHL's application on its own merits warrants the grant of a concession. But the potential negative impacts of a decision to decline also support my decision.
30. I note, in particular, a request that I decline to grant WHL's application for the six accommodation buildings and run an allocation process instead. I have, however, decided to grant WHL's application because I see it as a critical component of the Ski Area operation.
31. WHL will be assuming \$14m of debt for Sky Waka bonds and has obtained loans from the Ruapehu District Council and the Crown. A number of submitters have commented on the ability of WHL to perform the activities applied for. In light of all these matters, I am satisfied that WHL is a suitable applicant and possesses the necessary acumen and skills to carry out the proposed activities.
32. In sum, I am satisfied that there is sufficient information to grant concessions (section 17U(2)) and having considered the mandatory factors in section 17U(1) I am satisfied that it is appropriate to grant the concessions.

Section 17U(3)

33. Section 17U(3) prevents me from granting an application for a concession if the proposed activity is contrary to the provisions of the NPA or the purposes for which a national park is held. It is clear from section 4(1) NPA that the focus is on preserving national parks for their intrinsic worth but also that national parks are for the benefit, use and enjoyment of the public.
34. In my view, WHL's applications are consistent with section 4 for two reasons. First, almost the entirety of the infrastructure required to operate the Whakapapa ski field as well as the accommodation in Whakapapa Village are in amenities areas under section 15 NPA. Under section

15(3), the section 4 NPA principles apply only so far as they are compatible with the development and operation of the amenities and services constructed/occurring within the amenities area.

35. Secondly, section 4 NPA highlights that, among other things, national parks are for the benefit, recreational use and enjoyment of the public. The Whakapapa Ski Area provides for that opportunity in the sense that the public is free to roam over the ski field and enjoy the experience/scenery. In addition, having ski field infrastructure in place provides a significant recreational benefit for the public. More generally, the presence of lifts enhances the public's ability to access more of the national park.

Section 17U(4)

36. I do not consider this subsection to be engaged as the application relates to existing structures and facilities.

Section 17U(5) & (6)

37. I consider that leases are appropriate for existing buildings and ski field infrastructure, but I do not see the need for the Ski Area lease to extend over the curtilage around each building. This does not meet the test in section 17U(5)(b) as I do not consider the curtilage necessary for the purposes of safety or security around the structures; neither is it integral to enabling the activities to occur.
38. I am aware that there has been interest from several parties to obtain concessions over six buildings in Whakapapa Village. I have, however, concluded that it is appropriate for me to grant a lease of these buildings to WHL for purposes of staff quarters; but I do not approve WHL's request to utilise the buildings for back-packers during the off-season.

Section 17U(8)

39. Having regard to all the matters in section 17U, I do not consider section 17U(8) to be applicable.

B. Consistency of application with management planning instruments – section 17W Conservation Act

40. There are various planning documents that are relevant to WHL's applications. As noted in the RDR, they are the GPNP, the CMS and the TNPMP.
41. As discussed in the RDR, I agree that the GPNP does not prevent the grant of concessions provided appropriate terms and conditions are imposed; and that the proposed activities are not inconsistent with the CMS which largely defers to the TNPMP.
42. The RDR concludes that the application is broadly consistent with the TNPMP except for the use of aircraft for filming and advertising purposes and construction work which have not been included in WHL's application; the use of existing walking tracks (the Tracks) which have not been approved by the Department; the use of the cafeteria for certain events; and the use of snowmaking equipment outside the ski season. Additional information is required in respect of some of these if they are to be approved at a later stage. I have, however, authorised WHL to maintain and service the Tracks as they have been in existence well before the TNPMP was passed, and the proscription in the TNPMP is against the creation of new tracks. The Tracks have been defined in the concession documents.

43. The RDR also contains recommendations that protocols established under He Kaupapa Rangatira are applied to the Ski Area concession application and any resulting lease and licence.
44. An Indicative Development Plan is to be prepared by WHL, as required by the TNPMP, and the intention is that WHL will develop that Plan with Treaty partners and other stakeholders once they have developed relationships with them. I accept the Department's recommendation that the Plan must be drafted within four and a half years of the grant of the concessions.
45. As the RDR points out, many sections of the TNPMP are relevant to the application, including a full chapter of Ski Area management and specific policies. I have already set out my views above in terms of the statutory tests in section 17U(5) and (6) and do not address this matter further.
46. I am satisfied that the grant of the concessions is consistent with relevant planning instruments.

C. Consistency with NPA

47. Section 49(2) NPA provides that before granting a concession over a park, I must satisfy myself that concessions can be granted without permanently affecting the rights of the public in respect of the park and this is not inconsistent with section 4 of the NPA.
48. The concessions are for a term of 10 years and will not permanently affect the rights of the public. I refer to paragraphs 34 and 35 above which indicate that I am satisfied that the application (in the manner granted) is consistent with sections 4 and 49 of the NPA.

D. World Heritage Area status

49. As noted in the RDR, the Whakapapa Ski Area sits within the WHA which recognises both the outstanding natural values of the TNP but also its outstanding cultural values. The WHA status requires TNP to be managed in a manner consistent with the articles against which the application for such status was approved and consistent with relevant statutes and the TNPMP.
50. The Whakapapa Ski Area has been in existence long before the WHA status was granted (1990 for natural values and 1993 for cultural values). The RDR has noted that the initial evaluation of values for WHA status highlighted concerns about possible expansion of the ski fields, especially the possibility of moving higher and into more sensitive areas because of global warming.
51. It appears that a new management plan resolved the concerns of the committee both in terms of protecting the natural values but also enhancing cultural and spiritual values. The more recent management plan has continued the theme of protection and enhancement of core values.
52. While paragraph 172 of the Operational Guidelines for the World Heritage Convention requires State Parties to inform the World Heritage Committee of major restorations or new constructions that may affect the Outstanding Universal Value of TNP, I do not consider that approving the concession applications would trigger this reporting requirement. As I have noted earlier, WHL effectively seeks to take over the operation of an existing ski field in the sense of substituting for a previous operator. It follows that I am satisfied that the concession application is consistent with the World Heritage status.

E. Treaty Settlement Legislation obligations on the Crown

53. As noted at the outset, Kāhui Maunga remains sacred to all iwi and hapū of the region, and that Ngāti Rangī, Ngāti Hāua, Te Korowai o Wainuiārua, Patutokotoko, Ngāti Hikairo, and Ngāti Tūwharetoa have each expressed cultural interests and responsibilities. Te Pou Tupua and Ngāti

Tāngata Tiaki o Whanganui also have connections with Kāhui Maunga because a number of catchments of the Whanganui River arise there.

54. I acknowledge the immeasurable historical, cultural and spiritual importance of Kāhui Maunga and the whenua contained within the TNP boundaries to the Collective iwi of this rohe. I also acknowledge that the nucleus of TNP was a tuku of the mountain peaks to be protected for and enjoyed by all peoples of New Zealand and the Crown's acknowledgement that through his tuku, Horonuku Te Heuheu Tūkino IV sought to create a shared responsibility with the Crown to protect and preserve the mountains for Ngāti Tūwharetoa, for other iwi and for all New Zealanders.
55. Since the grant of a concession to RAL in 2016, Te Awa Tupua Act, the Ngāti Tūwharetoa Claims Settlement Act 2018 (NTCSA), Ngāti Rangi Claims Settlement Act 2019 (NRCSA) and Te Korowai o Wainuiārua Claims Settlement Act 2025 have come into force. Each imposes obligations on the Crown (although cultural redress for the TNP is part of outstanding collective negotiations between the Crown and iwi and hapū of the region).
56. Negotiations with Ngāti Hāua are awaiting ratification (signing is expected in May 2025), Ngāti Hikairo claims were resolved through the Ngāti Tūwharetoa settlement and Patutokotoko interests have been covered through collective settlements.
57. The Ngāti Rangi Settlement includes obligations on the Crown in respect of the Whangaehu River or an activity within Te Waiū-o-Te Ika catchment that affects the Whangaehu River. Importantly, however, the footprint of the application area is not contained within the Te Waiū-o-te-Ika catchment. Notwithstanding this and having considered the impacts of the activity on water catchments, I agree that special conditions that address these impacts should be included in the Ski Area concession.

He Kupapa Rangatira

58. As noted earlier, key settlement obligations relating to the application include He Kaupapa Rangatira which is part of the TNMP and was formally created in the Ngāti Tūwharetoa Deed of Settlement 2017.
59. He Kaupapa Rangatira was developed in 2006 and, until the Kāhui Maunga Treaty negotiations are finalised, it is the principal means by which Treaty principles and objectives are to be implemented and achieved in the TNMP. It is viewed as a practical and pragmatic expression of the relationship between the Department and the Kāhui Maunga iwi and revolves around nine key principles. The Treaty principles the Department has identified as most important to its work (partnership, informed decision making, active protection, and redress and reconciliation) also give expression to these principles.

Te Awa Tupua Act

60. This Act recognises the special relationship between Te Awa Tupua – the Whanganui River and Whanganui iwi and hapū. It also lists other iwi with interests in the Whanganui River to include includes Ngāti Tūwharetoa, Ngā Rauru Kītahi, Ngā Wairiki Ngāti Apa, Ngāti Maniapoto, Ngāti Ruanui, Ngāti Rereahu and Ngāti Maru and their hapū.
61. The Whakapapa Ski Area is within the Whanganui River catchment and a small number of tributaries of Te Awa Tupua begin on the maunga and flow through parts of the Ski Area footprint. The Te Awa Tupua Act vested the beds of these tributaries in Te Pou Tupua and then

simultaneously restored their status as national park with the result that the provisions of the NPA and Conservation Act continue to apply.

62. The purpose of Te Awa Tupua Act includes giving effect to the provisions of the deed of settlement that establish Te Pā Auroa nā Te Awa Tupua. As the RDR notes, the legal effect of Te Pā Auroa is that Te Awa Tupua framework is a relevant consideration in the exercise of all statutory functions, powers and duties in relation to the Whanganui River or to activities in its catchments that affect the Whanganui River. Additionally, and to the extent that the Te Awa Tupua status or Tupua te Kawa relates to my decision, I must recognise and provide for Te Awa Tupua status and Tupua te Kawa, and have particular regard to Te Heke Ngaharu, the Te Awa Tupua strategy.
63. I am advised that the Department has been in regular discussions with Te Pou Tupua and Ngā Tāngata Tiaki o Whanganui and other Whanganui River Iwi Collective members over the last 12 months to understand the impacts of the concessions on the Whanganui River and how to recognise and provide for Te Awa Tupua status and Tupua te Kawa for all relevant matters.
64. I understand that the Whanganui River Iwi Collective, Ngā Tāngata Tiaki o Whanganui for itself and Te Pou Tupua consider that the Department has failed to meet the legal framework of Te Awa Tupua. Their view is that the framework of Te Awa Tupua needs to be put in place in order to give effect to the legislation. The process entails determining the values which will then guide the principles after which specific conditions can be developed.
65. More recent discussions occurred in February 2025 and resulted in a commitment by the Department and Ngā Tāngata Tiaki to enter into a Terms of Reference (or similar) to set out the respective commitments to enable the Department to deepen its understanding of the intrinsic values that represent the essence of Te Awa Tupua, of Tupua te Kawa, the status as a legal person, and the importance of Te Awa Tupua to the whole Whanganui catchment community.
66. I acknowledge that the iwi of Whanganui consider it necessary for there to be articulation of the values that they see as fundamental to the decision-making framework. I agree but observe that such a framework will take some time to develop and further consider that a deeper understanding of the Department's obligations will be gained through the Department's further engagement with Ngā Tāngata Tiaki, the office of Te Pou Tupua, and Te Kōpuka with respect to Te Heke Ngahuru, and the Te Awa Tupua strategy.
67. Moreover, without discounting their position, many of these values align with section 4 of the Conservation Act considerations and the Department's obligations in respect of the implementation of Treaty settlements. For example, both iwi and the Department have a shared desire to protect, restore and provide for the use of our natural world; and while the source of each party's aspirations is different, the shared aspiration is cemented through Te Tiriti/section 4.
68. In addition to the further engagement with Treaty partners, Ngāti Hāua submitted during the statutory process on the WHL application. This relied in large part of their submission in respect of the Pure Tūroa Ltd application in which they stated that they did not consider the application process complied with the obligation in section 15(2) of Te Awa Tupua Act to recognise and provide for Te Awa Tupua status and Tupua te Kawa. But they suggested that these could be given effect to by the Department building a relationship with Ngāti Hāua. They have also indicated that including them in the monitoring of the concession in a meaningful way will recognise and provide for Tupua te Kawa.

69. In considering whether to grant WHL's application in respect of the Whakapapa ski field, I understand that:
- a) Te Pā Auroa is a relevant consideration; and
 - b) I must recognise, provide for and have particular regard to Te Awa Tupua status and Tupua te Kawa to the extent that Te Awa Tupua status or Tupua te Kawa relates to my decision and my decision must state how this obligation has been complied with; and
 - c) I must have particular regard to Te Heke Ngahuru, and my decision must state how this obligation has been complied with.
70. My view is that the operation of the Whakapapa Ski Area has the potential to impact on catchments that affect the Whanganui River and on the intrinsic values that represent the essence of Te Awa Tupua (being the Tupua te Kawa obligation) and that management of these potential effects is required to comply with the respective obligations at sections 11, 15 (2), and 37(1) of Te Awa Tupua Act.
71. Standard and special conditions will be imposed that require WHL to address possible effects on Te Awa Tupua and Tupua Kawa to limit impacts on catchments/ waterways. They also include requirements to protect environmental and cultural values and to establish and build relationships with iwi and hapū. Any cultural impact assessment and cultural monitoring undertaken will feed into the 5 year review.
72. My view is that these conditions comply with the requirements of the Act. They recognise and provide for Te Awa Tupua status and Tupua te Kawa and in deciding to impose them I have had particular regard to Te Awa Tupua status and Tupua te Kawa. In my view, the importance of WHL's requirement to comply with these particular conditions cannot be understated.
73. I understand that the Whanganui Iwi (Whanganui River) Deed of Settlement (Ruruku Whakatupua) includes obligations on Whanganui iwi and the Crown to enter into a relationship agreement, Te Pākurukuru which, once established, will help both parties as they work together to implement and give effect to the settlement (clause 4, Te Mana o Te Iwi o Whanganui). Further, it includes obligations on the Department to enter into a relationship agreement with Te Pou Tupua on agreed terms concerning matters of mutual interest, including the application of the statutory process for considering and determining applications for concessions for a lease, licence or easement in relation to land vested in Te Awa Tupua but that is subject to the Conservation legislation (clause 3.38 Te Mana o Te Awa Tupua). The obligations further state that the Director-General will commence discussions with Te Pou Tupua for that purpose within 12 months after the commencement date. While I understand that initial conversations have begun and are on-going, the parties have not yet entered into a relationship agreement addressing matters of mutual interest.
74. The fact that this work has not been able to be accomplished because of the timeframe within which WHL's application has been processed is not determinative and I am confident that the conditions imposed on WHL in the concession documents will mean that this work will be carried out in a suitable manner. I note that WHL's application states that WHL will, like RAL, avoid areas of high ecological value including streams and their margins.

F. Section 4 of the Conservation Act 1987

75. I recognise that in exercising powers under the NPA and Conservation Act I am required by section 4 of the Conservation Act to give effect to Treaty principles. For the purposes of WHL's application, I accept that the key Treaty principles are those listed in the TNPMP. And further consider that the principles the Department has identified as most important to its work also give expression to these principles (partnership, informed decision-making, active protection, and redress and reconciliation).
76. The Ngāi Tai decision is the leading case on the interpretation and application of section 4 in a concession context and it recognised, among other things, that section 4 is a "powerful" provision that should not be narrowly construed. Substantive outcomes for iwi may be necessary but section 4 does not create a power of veto by iwi over the outcome. In applying section 4, I must so far as is possible, apply the relevant statutory and other legal considerations in a manner that gives effect to the relevant principles of the Treaty.
77. The principles fundamentally require Treaty partners to act reasonably and in good faith towards each other. Informed decision making, that is, understanding the Treaty interest engaged, is critical to this. Treaty principles also require that the Crown take active steps to protect identified Treaty interests, although what is required by way of active protection will vary depending on what is reasonable in the circumstances.
78. I accept that the principle of active protection may have both procedural and substantive implications – that is, both in terms of adopting fair consultation processes as well as determining whether to grant an application, including the consideration of appropriate conditions.
79. But, as recognised in the *Broadcasting Assets* case¹, whatever obligations sit with the Crown, does not mean that those obligations are absolute and unqualified and the protective steps which it is reasonable for the Crown to take change depending on the situation which exists at any particular time. In my view, Whakapapa ski field offers a key form of recreation that attracts a range of people wanting to receive in full measure the inspiration, enjoyment, recreation and other benefits derived from the Maunga and the ski field. Were this to be potentially diminished or no longer available because of the previous concessionaire's receivership and liquidation, the grant of a short-term concession to a new operator on appropriate terms and conditions that recognises the key role of iwi and hapū is an appropriate action that might not be appropriate in other times.
80. Further, while iwi connection to the Maunga is a taonga, it does not necessarily follow that granting short-term concessions in circumstances where the previous incumbent had been granted a 60-year term (including all rights of renewal) of the same area is contrary to the principle of active protection. Moreover, while the approval of the concessions is not fully consistent with Kāhui Maunga iwi cultural and spiritual values, that is not the same as a determination that the approval of the concessions would fail to give effect to Treaty principles. And it is also relevant that not all iwi are opposed to the applications being granted.²

¹ *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 517 (PC)

² *Greenpeace Aotearoa Inc v Hiringa Energy Ltd & Ors* [2023] NZCA 672.

81. As I understand matters:

- a) The Department has attempted to engage with Te Ariki's office and TKNT since before WHL's application was received. The Department has engaged with Ngati Hikairo, although I acknowledge that TKNT has now advised the Department that the Ngati Hikairo feedback should be read as that of an individual. Nevertheless, I accept that the Department engaged in good faith with the information it had at the time. The Department has been actively engaging with Te Ariki's office and TKNT throughout April 2025 following their response to the Department's attempts to engage.
- b) The Department has engaged with Whanganui iwi and the hapū of Whanganui iwi as listed in Schedule 1 of Te Awa Tupua Act through the application process and up to decision-making, both with the iwi as a collective group, as well as individual engagement where this has been requested.
- c) The Department has also been engaging with Te Pou Tupua and Ngā Tāngata Tiaki o Whanganui and other Whangau River Iwi Collective members over the past year to understand how to apply and implement Te Awa Tupua status and Tupua Te Kawa for all relevant matters. The Department also advised the office of Te Pou Tupua and Ngā Tāngata Tiaki o Whanganui of the WHL concession application on 8 November 2024, followed by a hui with the Whanganui River Iwi Collective on 21 February 2025.
- d) There has also been a public submission process run between December 2024 and February 2025.
- e) It is clear that, in a number of areas, there have been few physical changes since RAL was granted its concession in 2016 and that it is proposed that a number of conditions imposed on RAL will be carried over to the WHL concession.
- f) This 'carry-over' approach has been discussed with several of the iwi and hapū as well as WHL up to the concession application being made and steps taken to notify it.
- g) The timeframe within which WHL's application has been processed to the point of a decision is attributable to WHL's need to know as soon as possible whether it is to be granted concessions, so that it can start preparing for the 2025 ski season if the answer is yes. Conversely, RAL (and its liquidators and receivers) need to know as soon as possible if RAL's concession will still be in place for the 2025 season. It is also a condition of the Sale and Purchase agreement with RAL. Either way, the Department needs to know who will be responsible for the Whakapapa Ski Area for winter 2025.
- h) WHL's application is very much a 'lift and drop' from RAL's concession (although I recognise that the RAL application leading to the grant of its concession in 2016 did not have to contend with the Treaty Settlement Acts that I have referred to above).
- i) Some of the key concerns of iwi and hapū with this particular application appear to turn on the need for there to be articulation of the values that they see as fundamental to the decision-making framework for Te Awa Tupua (including through the development of action plans for Te Heke Ngahuru); the fact that the Department and Te Pou Tupua have not so far amended and adopted the draft of Te Heke Ngahuru; and that the Department and Te Pou Tupua have not yet entered into a relationship agreement. But this is a work in progress.

- j) In addition, Te Awa Tupua status and Tupua te Kawa are being recognised and provided for as evidenced by appropriate concession conditions as protecting the environmental and cultural values including encouraging WHL to build relationships with iwi and hapū. This may include a cultural impact assessment or individual/collective relationship agreements that will feed into the year 5 review.
 - k) A cultural monitoring plan is also proposed with the ability to contract this work out to Treaty partners. In addition, there will be conditions directly or indirectly addressing a range of activities such as watercourses, restriction on the use of vehicles, consultation in the preparation of interpretation materials, and so on.
 - l) It takes account of the significant public interest in having a functioning ski field in place at Whakapapa that enables the public to derive the benefit, recreational use and enjoyment from it;
 - m) The application is for an existing activity largely using existing infrastructure and is consistent with existing RAL use.
 - n) The shortened term of 10 years sought by WHL is significantly less than the term currently provided for in the RAL concession.
 - o) The inclusion of the year 5 review in the Concession document is designed to check in on a range of matters and, in particular, to address cultural matters.
 - p) As a result, there is greater specification of conditions relating to these matters.
82. Given all of the above, I consider my decision to grant a concession to WHL gives effect to the principles of Te Tiriti o Waitangi / Treaty of Waitangi in terms of section 4 of the Conservation Act 1987. I do not consider that the principle of active protection, particularly as it relates to cultural values and effects on them, requires me to decline the application.
83. The active protection principle falls under the overarching principle of partnership. Where possible, adverse effects on Māori spiritual or cultural values can be balanced with mitigating measures within the terms of the concession. I consider the conditions I have imposed requiring the undertaking of cultural impact assessments, cultural monitoring as well as environmental assessments and planning matters to be sufficient to discharge the duty of active protection in the circumstances of this application.
84. In short, with a range of diverse views being put forward by iwi and hapū, my view is that a concession document that carries on existing activities, provides for a 10 year concession, and contains appropriate mitigating measures such as dealing with cultural effects at the year 5 review (following significant engagement with iwi and hapū), gives effect to the duty of active protection and the overarching principle of partnership in the circumstances.
85. I encourage WHL to engage in good faith discussions and coordinate and develop relationships with all Kāhui Maunga iwi and/or hapū, including Ngā Tāngata Tiaki o Whanganui and Te Pou Tupua.

Attachments

86. I am attaching the Concession Documents for signing and return.

Reconsideration

87. You should be aware that section 17ZJ of the Conservation Act provides WHL with an opportunity to seek a reconsideration of my decision, or any conditions it imposes, but any application must be lodged before the concession document is surrendered.

Deed of Surrender

88. Once WHL signs and returns the concession document, I will forward a Deed of Surrender to RAL for signing. The effect of this will bring to an end the concession under which RAL has operated. WHL's concession will not take effect until RAL has surrendered its concession.

Ngā mihi ki a koutou



Penny Nelson
Director-General of Conservation