Regulatory Impact Statement: Modernising the concessions framework

Decision sought	Cabinet decisions on changes to concessions legislation
Agency responsible	Department of Conservation
Proposing Ministers	Hon Tama Potaka, Minister of Conservation
Date finalised	17 June 2025

This proposal seeks to:

- streamline concessions processing and improve regulatory practice in the concessions system
- address ambiguity about how to give effect to Treaty principles in concessions processing
- improve cost recovery settings for concessions processing and increase returns to the Crown.

Summary: Problem definition and options

What is the policy problem?

Processing concessions is an increasingly lengthy and burdensome process not just for the Department of Conservation (DOC), but also applicants and Treaty partners. The settings under which concessions are processed do not promote efficiency or good regulatory practice, requiring individual decision-making.

There is significant ambiguity about how to give effect to Treaty principles, which is required by the Conservation Act 1987 (the Act). This ambiguity has impeded or slowed most major concession decisions in recent years, leading to protracted and costly processes. There are also no specific roles for Treaty partners. For example, while DOC tends to engage with Treaty partners on most concession applications, this is not specified in the Act. Instead, DOC engages with Treaty partners to comply with the general obligation in section 4 of the Act.

In addition, some Treaty settlements established relationship instruments, which might include concession decision-making frameworks or consultation and engagement expectations.

There is also ambiguity associated with the cost recovery settings for concessions processing and there is an opportunity to strengthen those settings and improve returns to the Crown.

In addition, management plans, which set the rules under which concessions are granted, are largely outdated, sometimes containing contradictory rules. A companion RIS details a proposal to address the issues with management planning.

What is the policy objective?

The proposal aims to provide:

- greater scope for simplification and standardisation of concession decisions, price-setting and contractual terms.
- flexibility where needed for efficient regulatory decisions, but reducing discretion where ambiguity has slowed processes.

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

Options have been considered for each sub-problem as follows:

Improving efficiency and regulatory practice in how concessions are processed

(Implementing the change options as a package is the preferred option)

Triage	• Broaden the grounds for declining an application within the first 10 working days and allow an incomplete application to be returned at any time. • Clarify that applications are required to be made in a specified form or include certain information.
Assessment	• Pause processing a concession application until an interim payment is received. • Create a statutory timeframe within which an applicant should provide further information, after which the application can be returned.
Public notification	• Eligible applications only need to be notified if there is an intent to grant them. • Clarify that public notification is not required for grazing licences. • Clarify that the Minister can determine when a hearing would be appropriate.
Decision-making	• Set statutory timeframes for making decisions on concession applications.
Reconsideration	• Clarify that applicants must submit a reconsideration request within 20 working days of the concession decision and a request can only be submitted once. • Require the Minister to process a reconsideration within 30 working days. • Clarify the scope of a reconsideration.

Simplifying and standardising price-setting and contractual conditions

(Implementing the change options as a package is the preferred option)

Terms and conditions	• Strengthen the Minister's ability to set standard terms and conditions for concessions.
Concession pricing	• Set standard prices for concessions.
Transitions and term end	• Allow concessions to be transferred to a new operator. • Limit how long concessionaires can continue on old terms and conditions after a decision has been made on a new application.

Addressing ambiguity about how DOC gives effect to Treaty principles in concessions decisions

- Engagement remains a matter for operational discretion (status quo).
- Engagement is only required for notified applications and must take place before notification.
- Clarify when engagement with Treaty partners is not required.
- Engagement remains a matter for operational discretion, plus Treaty partners must provide feedback on individual concession applications within 20 working days ***(preferred option)***.

Addressing ambiguity about when cost recovery can commence in concessions processing

- Enable charging a lodgement fee for a concession application.
- Option above, plus clarify when the Director-General can require interim payments ***(preferred option)***.

Non-regulatory options have been considered in some instances. However, making operational improvements within an environment of fiscal restraint and continued growth in concession applications will not be sufficient. The legislative rules for concessions need to be modernised to enable more efficient granting of concessions.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

The combination of changes to concession processes described above will provide benefits over the status quo, including supporting more confident decision-making, more consistent outcomes for conservation and a fairer return to the Crown for allowing private commercial activities on Public Conservation Land (PCL). For regulated parties, the changes will provide faster regulatory decisions and more certainty about outcomes.

What consultation has been undertaken?

Public consultation on potential changes to concessions settings took place from November 2024 to February 2025. More than 5,500 submissions were received.

Overall, submitters agreed concession processing times are too long. Support for the concessions processing proposals was generally positive.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

Yes.

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

The main monetised and non-monetised costs are for DOC in transitioning to the new system, but more streamlined concessions processing settings will reduce DOC's processing costs over the medium term. There should be no additional costs for applicants or for Iwi/hapū as a result of the concessions process changes. However, the tighter statutory timeframes for consultation and other processes may result in the timing of costs being more concentrated in some periods.

Benefits (Core information)

Process changes will encourage more consistent and robust decisions about activities that can be undertaken on PCL and support faster processing. This will benefit all parties.

Balance of benefits and costs (Core information)

Greater certainty and clarity provide a more robust foundation for day-to-day management of activities on PCL, supporting a more efficient process regarding permissible activities for local communities, businesses, Iwi and hapū and the public.

Implementation

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

The new processes and approach to conservation land management require legislative change to implement.

Limitations and Constraints on Analysis

Cabinet priorities for Conservation portfolio

In October 2024, Cabinet agreed on a range of potential changes to the concessions system on which to seek feedback from the public [ECO-24-MIN-0235 refers]. Following public consultation, the Minister of Conservation has agreed to progress a package of options for final policy approval.

The scope of this RIS largely reflects the Minister's decisions about what options to take forward, though discounted options are also noted for some potential changes.

Timeframe limitations

The Minister of Conservation intends for Parliament to enact legislation in the current term. This has limited the time and resources available for analysis following public consultation. Due to the tight timeframes for policy analysis, some options in this RIS were developed after the public consultation process and there has been no opportunity to engage on them.

Data and information limitations

Known data issues relating to concession processing mean it is hard to understand or track performance. Beyond regulatory performance, there are also limits to what is knowable in terms of the broader regulatory environment. For example, DOC does not know the scale of latent economic development/tourism opportunities that are potentially hindered by current regulatory settings and for which there is supply in the market.

Assumption that objectives sought can be achieved within current scope of work

The Government is not considering changes to the purpose of the conservation system and the primacy of achieving conservation outcomes, compared to enabling other outcomes through conservation rules and processes (e.g. economic outcomes).

Other fundamental aspects of the conservation system that are not changing are the purposes for which PCL is held, and the requirement that any use of or activities on PCL must be consistent with those purposes. The proposals also do not involve any changes to how the effects of a proposed activity on PCL, or the use of PCL are assessed.

The proposals do not amend section 4 of the Act but are intended to support effective implementation of section 4 by clarifying its application to concessions processes through the addition of specific provisions/measures. Drafting will make it clear that complying with these specific measures will be sufficient to comply with section 4 (in relation to the relevant processes).

A key assumption in preparing this RIS is that the nature and extent of change sought can be achieved within the scope described above.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:

s9(2)(a)

Eoin Moynihan
Policy Manager – Regulatory Systems Policy
17/06/25

Quality Assurance Statement	
Reviewing Agency: Department of Conservation, Ministry for Primary Industries, Ministry of Business, Innovation and Employment	**QA rating:** Partially meets
Panel Comment: The Regulatory Impact Assessment Panel of officials from multiple agencies 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 engagement undertaken on certain options. Further detail is also needed on real world impacts of issue.	

Structure of this RIS

1. This regulatory impact statement (RIS) is structured around eight different opportunities which contribute to an overarching policy opportunity: amendments to conservation concession processes can enable a more efficient and effective concession system.

Modernising the process for individual concessions		
Section 1: Diagnosing the policy problem		Pg 6-22
Section 2: Options to address the problem.	Improve the efficiency of concessions processing and lift regulatory practice: • Options to improve how concession applications are triaged. • Options to improve the assessment stage. • Options to improve the public notification process. • Options to improve the decision-making process. • Options to improve the reconsideration process.	Pg 22-39
	• Options to clarify Treaty partner engagement.	Pg 40-45
	• Options to simplify and standardise price-setting and contractual conditions.	Pg 46-55
	• Options to improve cost recovery.	Pg 55-59
Section 3: Delivering an option.		Pg 60

2. This RIS should be read alongside the RIS on modernising management planning and land exchanges and disposals.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem?

3. Under the Conservation Act 1987 (the Act), the Department of Conservation (DOC) is responsible for managing public conservation land (PCL), protecting biodiversity, enabling recreational and economic activities, advising the Minister of Conservation and advocating for conservation.

4. DOC manages nearly a third of the country's land mass (over 8 million hectares). This includes native forests, tussock lands, alpine areas, wetlands, dunelands, estuaries, lakes and islands, national forests, maritime parks, marine reserves, nearly 4,000 reserves, river margins, some coastline, and many offshore islands.

5. DOC is the lead agency in the conservation regulatory system and has a key role in protecting and supporting ecosystems and encouraging sustainable tourism. In doing so, DOC works with a network of statutory organisations, community groups, Iwi, hapū, Māori organisations, private landowners, regional councils and non-government organisations (NGOs).

6. DOC faces growing challenges in meeting its statutory responsibilities. These include increasing cost pressures driven by growing wages and inflation, funding shortfalls for maintaining DOC's visitor network amid growing visitor numbers, ageing infrastructure, and repair costs following extreme weather events and natural disasters. DOC's annual budget is around $650 million, which is roughly 0.45% of core Crown spending.

7. Meanwhile, biodiversity is under threat, and these threats are growing. Recent examples include the global spread of avian flu, and incursions of sea spurge, caulerpa seaweed and golden clams. Native wildlife is also at serious risk of extinction. This country has one of the highest proportions of threatened species and one of the highest extinction rates in the world. Despite all we are doing to try to protect and restore habitats and assist species, nearly 4000 native species are either at risk or threatened with extinction.

An overview of concessions

8. Any activity on PCL requires authorisation in the form of a concession from the Minister of Conservation, with some exceptions.[1] This means a wide range of activities are regulated through concessions, such as grazing, guiding and other tourism businesses, visitor accommodation, energy infrastructure, filming and research activities.

9. The concessions system helps DOC ensure activities on PCL and other uses of PCL are compatible with the overriding purpose of conservation.[2] It also helps ensure services and facilities provided for visitors are appropriate and of a suitable standard, and that activities do not conflict with visitor enjoyment and recreation.

10. The concessions system has four key regulatory objectives:

- **Delivering effective land management**: The concessions system is responsible for ensuring any activities maintain the values of PCL. It enables DOC to control which activities can occur, assess any adverse effects, and apply any conditions necessary for activities to take place.

- **Providing well-governed access opportunities**: Appropriate private use and development of PCL needs an enabling mechanism. A clearly regulated environment gives legitimacy to that use, provides a reasonable level of certainty and clarifies responsibilities.

- **Securing public benefit from private use and development**: A royalty is paid when the use of PCL results in commercial gain. DOC generally refers to these royalties as activity fees. Securing a fair return to the public for the use of a public asset is the basis for charging activity fees.

- **Clarifying public and private entitlements and responsibilities**: A concession agreement clarifies entitlements and responsibilities for both parties in situations where both DOC and the concessionaire have interests and duties relating to the activity.

Statutory framework for concessions

11. Part 3B (sections 170 – 17ZJ) of the Act sets out the statutory framework for concessions,

---

1 These exceptions are recreational activities without any specific gain/reward; activities carried out by the Minister of Conservation or DOC in exercising functions, duties or powers under any law; activities authorised by conservation legislation; and activities to save or protect life or health, to prevent serious damage to property, or to avoid actual or likely adverse effect on the environment.

2 The Conservation Act defines 'conservation' as preserving and protecting natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.

including:

- the Minister of Conservation's decision-making, condition-setting and fee-collection powers
- the process for considering an application
- factors that must be considered in determining if a concession can be granted
- the Minister's responsibilities to monitor and enforce concession agreements.

12. Section 4 of the Act applies to all of DOC's work under conservation legislation, and therefore to administering concessions.

13. Section 4 requires the Act to "be interpreted and administered as to give effect to the principles of the Treaty of Waitangi." This is one of the strongest Treaty principles clauses in New Zealand legislation. Section 4 requires anyone working under the Act (or any of the associated Acts listed in schedule 1 of the Conservation Act) to give effect to the principles of the Treaty of Waitangi when interpreting or administering anything under those Acts.

14. All Treaty principles apply, but the principles of partnership, informed decision-making, and active protection are most frequently relevant to concessions management.

15. A concession may be in the form of a permit, easement, licence or lease:

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

16. When deciding whether a concession can be granted, DOC assesses:

- if the activity is consistent with the purpose for which land is held, the Act and other statutory tests (e.g. for some concessions, can it take place off PCL), relevant statutory planning documents, DOC's own land management goals for the area

- if the effects of the activity can be understood, and if there are any methods to avoid, remedy or mitigate these effects (referred to as an 'effects assessment')

- it against Treaty rights and interests and sometimes consults with Iwi, hapū and whānau at place.

17. While concessions are granted in the name of the Minister of Conservation, applications are administered by DOC acting under delegation. DOC typically receives more than 1,500 concession applications each year and manages more than 4,000 ongoing concessions. A concession gives a concessionaire:

    - a legal right to carry out their activity on PCL alongside obligations that go with it

    - a formal relationship with DOC, so both parties are aware of their obligations

    - security of tenure for the term of the concession, provided the conditions of the concession are complied with.

The Minister can tender the right to make a concession application

18. Section 17ZG(2)(a) of the Act allows the Minister (or his delegate) to tender the right to make a concession application, invite applications, or carry out other actions that may encourage specific applications.

19. This mechanism is often used for concession opportunities where there are limits on the opportunity (i.e. carrying capacity) or where multiple parties have expressed an interest in the opportunity.

20. In some cases, DOC may tender the right to apply for an already defined opportunity (including any environmental or social conditions that will be attached to the concession). The purpose of the competitive process in these cases is to determine the most appropriate concessionaire(s) or allocate limited supply among multiple potential operators. Tendering guiding opportunities where a limit has been set out in the National Park Management Plan is an example of this.

21. In 2022, Cabinet agreed to amend the Act to provide the Minister of Conservation with the ability to return a concession application in favour of initiating any competitive allocation process, as opposed to only when the Minister considers a tender may be appropriate (ENV-22-MIN-0059). The Minister has agreed to progress this proposal as part of the wider reforms in this package.

22. This proposal has been further refined to clarify the timeframe for DOC to make the initial decision to return the application (20 working days).

Terms and conditions can be set in contractual concession agreements

23. Section 17X of the Act provides the Minister with the ability to set conditions in contractual concessions agreements at the time of granting a concession. These conditions can relate to the activities or any relevant facility or structure as well. The conditions that can currently be imposed cover:

    - the carrying out of an activity and where it can take place

- the payment of rents, fees or royalties (provided in section 17Y), compensation for any adverse effects of the activity, the ability to set a bond and a waiver or reduction of any rent, compensation or bond
- the restoration of the site and the removal of any structure or facility at the expense of the concessionaire
- periodic reviews of the conditions
- a covenant on any transfer, sublease, sublicence, or assignment of a concessions
- the payment of any fees relating to the preparation of the concession document.

24. There are standard conditions that are generally applied to concessions. For instance, DOC has templates with standard conditions for guiding permits, telecommunications infrastructure, easements, leases and licences. These conditions are available to the public prior to lodging applications and have previously been available directly from the DOC website.

25. For concessions that involve fixed infrastructure, common 'make good' provisions are applied. Some conditions are also set on a case-by-case basis to manage unique aspects of certain activities.

Term lengths are also set in contractual concession agreements

26. Section 17Z of the Act sets out limits on the term lengths based on concession types. The following table describes these current limits.

Type of concession	**Term length**
Permit	May be granted for a term not exceeding 10 years.
Easement	May be granted for a term not exceeding 30 years.
Lease	May be granted for a term not exceeding 30 years, or for a term not exceeding 60 years when the Minister of Conservation is satisfied that there are exceptional circumstances.
Licence	

27. While leases and licences can currently be granted for 60 years under 'exceptional circumstance', there are no policy settings that determine what 'exceptional circumstances' are.

Rents, fees and royalties are set in contractual concession agreements

28. Section 17X of the Act allows the Minister to charge concessionaires a rent, fee or royalty as part of their lease, license, permit or easement. DOC refers to these charges collectively as activity fees. The purpose of activity fees is to ensure that there is a return to conservation where somebody undertaking an activity is benefitting from the use of PCL.

29. The method for setting the fee depends on the nature of the concession activity and the scale of their activity. Tourism-related activities are generally charged on a percentage of

revenue or per person basis. Non-tourism activities such as telecommunications infrastructure, grazing and easements are usually charged a fixed monthly or annual fee.

30. Activity fees may be set at the market value, having regard to any factors that mean the concession is more valuable or less valuable than comparable opportunities. For example, a grazing license may have more strict contractual conditions placed on it than a standard private transaction.

31. Rents, fees and royalties imposed under Part 3B of the Act must be reviewed at least once in every three years.

Compliance and enforcement mechanisms are set in contractual concession agreements

32. Compliance and enforcement conditions and the ability to use step-in powers are set in concession contracts. For example, DOC's General Licence and Lease and License Concession Documents provide for the conditions where DOC may terminate a concession, either in whole or part.

33. Once a concession is active, DOC's regulatory role includes monitoring the concession and ensuring compliance with each concession's contractual obligations. DOC can observe and check the concession's progress or quality over time to ensure that concessionaires are meeting their contractual obligations, to detect risk and to confirm there are no adverse effects from the concession on the environment or visitor experience.

A concessionaire can transfer their interest in a concession in limited situations

34. Under section 17ZE of the Act, a concessionaire can transfer their interest in a concession to another party, if approved by the Minister of Conservation and if it is permitted within the concessionaire's concession document. Section 17X also enables the Minister to impose a covenant whereby if a concession is transferred to a new owner, both the outgoing and incoming concessionaires are bound by the same conditions as the original concession.

35. A concession cannot be sold (including as part of business sale, for example), but concessionaires can apply to DOC to transfer their concession to the new owner. In most instances, the sale of a business that includes a concession to operate happens solely between the incoming and outgoing concessionaire, without DOC's involvement until an application is made to transfer the concession.

36. Operators are generally expected to remove any structures or facilities at the end of the term and to remediate the land unless the Minister permits them to leave them behind. Where structures or facilities are left behind, these are considered to be surrendered to the Crown. The Crown is not obliged to pay the operator for those assets and is free to re-let or re-licence them to new operators. In some situations, the Crown can be under an obligation to remove infrastructure (e.g. if required to remove redundant infrastructure from protected areas by a statutory planning document).

37. DOC does not own some of the major concession assets on conservation land. In effect, the operator needs to make a return on its investment during the life of the concession. If the concession is cut short, perhaps because of poor performance or a change in the law, the risk lies with the operator.

What is the policy problem or opportunity?

Concessions settings do not promote efficiency or consistent regulatory practice

38. The concessions framework does not allow for broadly similar concessions to be dealt with in a consistent way. The framework also provides little standardisation or guidance, including few statutory timeframe requirements.

39. This is compounded by operational issues, including capacity constraints within DOC, poor data to understand performance, technology constraints which require significant manual data entry, an operating model with distributed responsibilities and a risk-averse regulatory culture, which leans towards protection over proportionality.

40. As a result, most applications get approached on a case-by-case basis and in bespoke ways.

41. Processing concessions is an increasingly lengthy and burdensome process not just for DOC, but also applicants and Treaty partners (who are generally consulted on all applications, unless they have indicated this is not needed). As of April 2025, there are nearly 1,000 current applications, of which 10% are more than a year old.

42. While concession applications can vary greatly in nature and scale, delays in processing applications reduce certainty for concessionaires (including applicants), Treaty partners, businesses, infrastructure partners and the public. Businesses that operate on PCL need certainty to make the kinds of investments needed to provide quality services for New Zealanders.

43. Significant delays in processing applications can limit or prevent the efficient use of PCL. Faster, more consistent and robust decisions about activities that can be undertaken on PCL can support increased economic activity, where appropriate from a conservation perspective.

44. Unique and bespoke approaches to applications contribute to inconsistent approaches to monitoring and compliance, limiting DOC's ability to consistently monitor how concessions meet conservation objectives. There is an opportunity to strengthen DOC's monitoring and compliance role through increased standardisation, where appropriate.

45. In recent years, many organisations and entities in the conservation system have expressed that wide-ranging changes are needed to the concessions system. Previous governments have also attempted to make targeted changes to improve conservation management and concessions processes.

46. The Minister of Conservation is developing targets for DOC to meet when processing concession applications, and a range of operational improvements are underway such as a technology upgrade.

47. As of April 2025, DOC's monthly concession processing rate has doubled compared to April 2024 and the backlog is reducing, but application volumes are rising.

48. However, making operational improvements within an environment of fiscal restraint and continued growth in concession applications will not be sufficient. The legislative rules for concessions need to be modernised to enable more efficient concessions processing.

Regulatory decision-making could be strengthened at the triage stage

49. There is an opportunity to address the inefficiencies associated with the triage process and improve regulatory decision-making at the initial stage of an application.

50. Currently, the Minister can only return an incomplete application within the first ten working days of receiving it and can only decline an application that is obviously inconsistent within the 20-day period after that. There is also no ability for the Minister to decline applications at an early stage for previous non-compliance with the conditions of a concession, or where the Crown may have plans for that land.

The assessment process has no statutory timeframes or stop clocks

51. There is an opportunity to address the inefficiencies associated with the assessment process.

52. Currently, DOC has no ability to pause processing an application that has incurred overdue processing fees. There are also no statutory timeframes for an applicant to provide further information to support an application.

There is an opportunity to streamline the public notification process

53. There is an opportunity to address inefficiencies in the public notification process.

54. Currently, the Minister must publicly notify every application for a lease or a licence for a term (including renewals) of more than 10 years. The Minister may publicly notify any other application for a licence, permit or easement if, having regard to the effects, he or she considers it appropriate to do so.

55. Public notification is intended to support input on concession applications that are likely to have impacts on conservation values and that will be of significant public interest, given the property rights involved.

56. Prior to 2017, if a preliminary decision was to grant an application, and it met the criteria for notification, DOC would publicly notify an "intention-to-grant". In 2017, the Resource Legislation Amendment Act replaced the public notification of an 'intent to grant' with public notification of an application for a concession. The change meant that DOC would not notify an "intention-to-grant" and instead take no position on the application before notification. Submissions are considered as part of the assessment, and at hearings the Director-General is a neutral listener rather than testing an intended course of action.

57. The 2017 change has not achieved the desired process efficiencies. The public can invest significant time in opposing applications that may be declined or promoting conditions that DOC already planned to include.

58. The requirement to run hearings for every notification process is also inefficient. Hearings can come at significant additional cost to DOC, applicants and Treaty partners and can be poorly attended.

There are inefficiencies in the grazing license process

59. Grazing is typically undertaken on conservation land that is assessed by DOC as suitable for that purpose (i.e. grazing pasture that has little to no conservation values and where

the impact of the grazing will have little to no impact on the surrounding environment).

60. The majority of applications for grazing licences are for ten-year terms to avoid triggering public notification. As at May 2025, all active concessions for grazing are for eight to ten-year terms. This results in system inefficiencies, when it is likely that grazing will continue for longer periods.

The decision-making process has no statutory timeframes

61. There are currently no statutory timeframes for the Minister to make decisions on concession applications. Statutory timeframes can drive faster processing times and provide applicants with more certainty about when their application may be processed.

62. Statutory timeframes are common in other regulatory systems. Examples from other systems include:

- The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 includes an end-to-end time for non-notified marine consents (50 working days after a complete application is received).
- The Building Act 2004 requires councils to grant or decline a complete application for a building consent within 10 or 20 working days depending on the type of application.
- The Hazardous Substances and New Organisms Act includes end-to-end timeframes for rapid assessments (albeit uses step-specific timeframes for other types of assessments).

Reconsideration settings lack clarity and create administrative churn

63. Under current settings, the Minister has broad discretion to decide whether to reconsider an application. There is lack of clarity about what matters the Minister should consider when deciding to undertake a reconsideration. There are also no statutory timeframes for applicants or the regulator and no limits on the number of times an applicant can ask for the same decision to be reconsidered.

64. This ambiguity can lead to applicants unreasonably challenging a reconsideration decision (for example, until the desired outcome is gained). It also creates administrative churn and resource wastage for DOC.

There is ambiguity about how DOC gives effect to Treaty principles in concessions decisions

65. The Act does not prescribe any process or specific requirements for giving effect to Treaty principles in concessions management. The operational approach will differ based on the factual context, including the Treaty partners, the locations in question, and the nature of the activity. Some Treaty settlements also have bespoke requirements and processes outlining how DOC and the relevant Iwi or hapū will manage concessions.

66. The *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* Supreme Court decision in 2018 highlighted shortcomings in DOC's approach to giving effect to the principles of the Treaty of Waitangi, as required by section 4 of the Act. The Supreme Court stated that, "in applying s 4 to a decision relating to a concession application, DOC 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".[3] The decision also emphasised the importance of the factual context in determining how Treaty principles might influence particular decisions, and the need to reconcile Treaty interests with other values and the broader statutory regime.

67. The *Ngāi Tai ki Tāmaki* case was specifically about a concession decision but provided a strong directive to DOC to improve how it gives effect to the principles of the Treaty of Waitangi more broadly. In March 2022, the Options Development Group (convened by the then-Director-General of Conservation) highlighted the importance of the active protection principle in conservation "particularly when DOC is granting concessions, and the need to take the interests (including the economic interest) of tangata whenua into account."[4]

68. The Government does not have a clear policy position on how aspects of the *Ngāi Tai ki Tāmaki* decision is to be implemented, including when 'preference' for Treaty partners would be appropriate for concessions on economic or other grounds. More generally, it has been left up to statutory decision-makers (Minister or DOC on delegation) to determine how Treaty principles might influence particular decisions, which requires a balance of Treaty partner interests and views with other considerations in a way that is compliant with the law.

69. This means there is ongoing ambiguity about how to give effect to Treaty principles and a range of divergent views and competing interests in different situations. This pervades statutory processes and decision-making and creates ongoing tension in areas where Treaty partners consider the current law or policy settings do not provide for their interests to be actively protected. Because section 4 is part of the legislative framework, different views about its application mean that there is a high risk of legal challenge in many such processes.

70. Reflections on how DOC gives effect to section 4 in concessions processes were a common theme in engagement with whānau, hapū, and Iwi on the Options Development Group's draft proposals. Many shared concerns around how hapū and Iwi are engaged in concession decisions.

71. Some whānau, hapū, and Iwi are overwhelmed by the volume of emails they receive relating to concessions in their rohe, while others expressed concern that they were not being asked to contribute to the process. There is also unease relating to whether or not the right people are currently being involved at the right stage of the concession process.

The concession framework is not suited for the commercial realities of managing concessions on an ongoing basis

Terms and conditions

72. Negotiating terms and conditions can often prolong concession processing timeframes,

---

3 *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122 at [53].

4 Partial reviews of the Conservation General Policy and General Policy for National Parks regarding the Treaty of Waitangi, Options Development Group, March 2022. The Options Development group statement was directed by reflections on Ngāi Tai ki Tāmaki, the Waitangi Tribunal's report *Ko Aotearoa Tēnei* (Wai 262), and the Whales case (refer *Ngāi Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553).

increases costs to the applicant and DOC, and it can lead to inconsistent outcomes for conservation and the Crown's management operators who undertake the same activity.

There is uncertainty about when a longer concession term may be appropriate

73. While leases and licences can currently be granted for 60 years under 'exceptional circumstance', there are no policy settings that determine what 'exceptional circumstances' are. This is assessed on a case-by-case basis. The Ombudsman has determined 'exceptional circumstances' to be extremely limited in practice.

74. Decision-makers have been dependent on operational policy to guide these decisions. However, the public are not aware of what determines granting an 'exceptional circumstance' and they have not contributed to what that determination is.

75. There are trade-offs between shorter and longer concession terms. Longer concession terms can provide transparency to operators by setting clearer expectations, offer more certainty to operators, and encourage maintenance and further investment. Frequent renewals of short-term contracts are less efficient.

76. However, shorter terms offer benefits like the ability to foster competition among concessionaires and preserve flexibility for the regulator over a longer time horizon (e.g. to change the mix of activities in protected areas over time). Shorter terms also mean less reliance on in-term monitoring, and potentially also regulation of contracts, as longer contracts are inherently more complex to account for more variables over the life of a contract.

There is no process to guide the transfer of assets

77. Uncertainty around concession transfer arrangements and asset valuation can create a chilling effect on investment and innovation. DOC has also faced specific, high-profile challenges, s9(2)(f)(iv) [redacted]

78. In addition, despite remediation clauses, DOC faces risks of stranded assets following the end of a concession, and uncertainty about the potential for a future concession may affect operators' willingness to invest.

79. DOC's practice has varied over the decades and there have been inconsistent approaches to certain matters. For instance, imposing make-good requirements or requiring that an incumbent operator is reimbursed for its assets.

80. The default position in current concession templates is as follows. Operators are expected to remove their infrastructure at the end of the term and to remediate the land unless the Minister permits them to leave the assets behind. Where assets are left behind, the Minister is not obliged to pay the operator for those assets and is free to re-let or re-licence them.

81. It is difficult to assess the scale of the risk: since there are many variables which amplify or ameliorate the impact. For instance: the risk may only become evident towards the end

of the term; business failure may occur without much warning; the scale of loss to the Crown may depend on whether a new operator can be located promptly.

The process to review concession fees is onerous and inefficient

82. The requirement to review all concession fees every three years creates an administrative burden for DOC, as many concessions have bespoke fees and it is currently a manual process to review each concession.

83. Many concessions are based on a percentage of revenue, meaning that the return adjusts to inflation and changes in demand. However, a change in methodology is seen as a variation to the contract.

84. When undertaking a rent review DOC is limited to the charging method set out in the contract. DOC is not able to change a fixed fee to a fee based on percentage of revenue without the agreement of the concessionaire (which generally does not occur where this would result in a higher fee).

There is ambiguity about when cost recovery can commence in concessions processing

85. A cost recovery model is already applied in the concession regime, as the economic benefits of obtaining a concession accrue primarily to the applicant.

86. There is ambiguity about when DOC can commence invoicing for the costs associated with processing an application. Cost recovery generally occurs at the end of the application process and there have been instances when applicants have returned to another country before the end of the application process or have applied for a concession without real intent to use that concession.

87. Ensuring cost recovery mechanisms appropriately charge applicants supports delivery of a more efficient and effective concessions system.

Cabinet priorities for the Conservation portfolio

88. In August 2024, Cabinet agreed the following priorities for the Conservation portfolio [ECO-24-MIN-0154 refers]:

- Update the conservation regulatory system by progressing legislation to improve performance in processing concessions and permissions.
- Target investment in high conservation value areas to restore key degraded habitats, support recovery of native species and maximise carbon storage on PCL.
- Generate new revenue and build a more financially sustainable conservation system by 2026 and develop a plan to partner for investment in protecting high value conservation domains in 2025.
- Build positive working relationships with Iwi/hapū to make the most of their strong and long-term commitment to the environment.

89. The proposal in this RIS largely contributes to the first priority above of fixing concession processes and also provides an opportunity to advance work relating to the fourth priority of improving working relationships with Iwi and hapū.

90. This proposal is part of a wider set of reforms to conservation land management settings. A companion RIS details proposed changes to streamline and modernise the management planning system, provide more flexibility in land exchange and disposal settings and establish amenities areas.

How is the status quo expected to develop?

91. Without changes to concessions processes, the shortcomings described above are expected to continue or worsen in the coming years.

92. Namely, the backlog in concessions applications would be expected to remain (or grow further), there will continue to be inconsistent practice in concessions decision-making and uncertainty as to what Treaty principles might require in concession decisions.

What objectives are sought in relation to the policy problem?

93. There are five broad objectives for this work. These are guided by the purpose of the concessions system outlined on page 7 (i.e. to ensure that any activities undertaken on PCL support its values and provide a fair return to the public for its use):

- **Effectiveness**: this objective relates to the purpose of the conservation system, which is supporting conservation by educating, regulating and enforcing for good outcomes, while also supporting other outcomes, such as allowing for recreation, tourism, economic opportunities or key infrastructure development.

- **Efficiency**: this means reducing the time and cost involved in processing concessions on all parties involved. This includes concessionaires, applicants, Treaty partners, stakeholders, researchers, businesses, local government, the public and DOC.

- **Good regulatory practice**: this includes ensuring clarity and certainty for the regulator and regulated parties. It also includes ensuring DOC has the necessary tools, functions, powers and levels of discretion/flexibility to satisfactorily perform its statutory duties.

- **Upholding Treaty obligations**: this means having clarity about the legal requirements for the Minister or DOC to interpret and administer the Act in a way that gives effect to the principles of the Treaty of Waitangi. It is also about ensuring any changes or new arrangements uphold the intent of Treaty settlements, including redress commitments made by the Crown.

- **Successful implementation of any changes**: processing concessions is a significant parts of DOC's day-to-day work and how regulated parties interact with the conservation system. Poor implementation of any changes could mean that the intended benefits are not able to be realised.

What consultation has been undertaken?

Submissions overview

94. In total, more than 5,500 submissions were received on the proposals.

95. Most of the submissions were from individuals – with a large number using the Forest and Bird's form submissions (87% of total submissions) or using the DOC website submission

(80% of 451 website submissions were from individuals), as well as half of standalone submissions coming from individuals.

96. In terms of 'unique submissions' 12% came from Treaty partners and Māori organisations, 12% from various recreation and commercial stakeholders, 11% from concessionaires, 9% from statutory bodies, 5% from environmental NGOs and conservation groups and 3% from councils. In addition, 20% of website submissions were from conservation groups, tourism businesses and Treaty partners.

Type of submission	**Number of submissions**	**Proportion of total submissions**
Forest and Bird form submission	4,837	87 %
Website submission	451	8 %
'Unique' submission	276	5 %
Total submissions	**5,564**	

97. Approximately 2% of submissions (98 individual submitters) did not engage directly with the proposals in the discussion document, instead expressing support for other submissions, or support for protecting conservation values, or that Crown should not treat Treaty partners differently to others.

98. Feedback from website submissions responded to high-level questions from the discussion document and generally did not engage with specific parts of the proposals.

99. Approximately 1,300 people who used the Forest and Bird form submission also provided personalised comments, expressing concerns about climate change, a lack of safeguards to protect nature, the sale of land and that the discussion document was too focused on managing commercial interests.

100. Submitters were generally supportive of the proposed changes to concessions processing.

101. There was mixed feedback in response to proposals relating to statutory timeframes. Those who supported the proposals believed they could encourage efficiency. However, some also said additional resourcing would be needed to support DOC's processing of applications on time. Those who opposed the proposals suggested they may not favour small operators without administration support.

102. There was also mixed feedback about the proposed 20-working day timeframe for Treaty partner feedback. While concessionaires expressed their support, Treaty partners including Pou Taiao (Iwi Leaders Forum) disagreed, with the view that the Crown deciding when engagement should take place does not reflect partnership. Some stated that Iwi or hapū should be the ones to decide when they are engaged with.

103. Submitter feedback on the proposals included in the discussion document is provided under each option below.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

104. Options for change will be compared to the status quo using the criteria below:

Effectiveness	• First order: contribution to conservation outcomes, including ensuring that conservation values and the effects of the concession activity are well managed through the concession process. • Second order: contribution to other outcomes in section 6 of the Conservation Act 1987 (allowing for recreation, tourism, economic opportunities or key infrastructure development).
Efficiency	• Time and cost for concessionaire to obtain concession decisions. • Time and cost to regulator (DOC) to assess, approve and regulate concessions.
Good regulatory practice	• Clarity for regulated parties about concessions. • Certainty for regulated parties about concessions. • Flexibility for the regulator in making concession decisions (including commercial decisions where required). • Consistent regulatory decision-making.
Consistency with Treaty obligations	• Certainty about performing statutory functions in a manner that gives effect to Treaty principles, consistent with section 4 of the Conservation Act 1987 (noting the interpretation of section 4 may evolve as a result of clarifying and codifying its application). • Consistency with Treaty settlement commitments and other obligations.
Successful implementation	• Feasibility. • Ease of implementation, including time and costs.

105. When it comes to effectiveness, contribution to conservation outcomes is weighted more heavily than contribution to other outcomes. This reflects the purpose of the conservation regulatory system.

106. In addition, some options may only be able to be assessed for direct impacts at this stage, rather than indirect impacts, making it hard to draw conclusions about effectiveness. For example, the Government is considering changes to the concessions framework, but the effectiveness of concessions in achieving conservation and other outcomes will ultimately also depend on what rules are set through changes to the planning system (i.e. how any new framework or processes are used).

107. Some of the criteria, and relationships between criteria, are founded in law. For example, section 4 of the Act requires DOC to interpret and administer the Act (e.g. process concessions) in a way that gives effect to the principles of the Treaty of Waitangi. In relation to effectiveness and contribution to outcomes other than conservation, the Act also sets out that fostering the use of natural and historic resources for recreation and tourism is only to the extent that this is not inconsistent with conservation of those resources.

108. There are likely to be trade-offs between the criteria in the table above, and they will need to be carefully balanced when analysing each set of options. For example, significant resourcing increases could be applied to speed up concession processing but would also increase the cost of doing so. There are also likely to be differing views on how to balance the objectives.

109. Options will be assessed in this RIS using the most relevant criteria for the policy problem/opportunity. This means different combinations of criteria may be used when assessing particular options.

What scope will options be considered within?

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

- the purpose of the conservation system, and the primacy of achieving conservation outcomes compared to enabling other outcomes through conservation rules and processes (e.g. economic outcomes)
- the purposes for which PCL is held, and the requirement that any use of or activities on PCL must be consistent with those purposes.

Approach to Treaty obligations

111. The Government's Treaty obligations relating to conservation are reflected in section 4 of the Act, specific commitments in Treaty settlement legislation, and agreements with Iwi and hapū (e.g. relationship agreements and protocols).

112. The Minister's approach to resolving ambiguity relating to section 4 is to:

- retain section 4 as a general, operative clause in the Act
- add specific measures to clarify what is (or is not) required to give effect to Treaty principles in particular processes or decisions
- make it clear that complying with these specific measures will be sufficient to comply with section 4 in relation to the relevant processes or decisions.

113. This approach may evolve during drafting based on legal advice about how best to achieve the Government's desired outcome. The Legislation Design and Advisory Committee's guidelines advise caution about the interaction between new legislation, existing legislation and the common law. Not properly understanding and addressing these interactions can make the law more confusing, undermining the policy objective.

114. Any changes that would not uphold Treaty settlements are out of scope. This means options that allow for bespoke arrangements – where needed to accommodate existing settlement commitments in law – are explicitly in scope of option design.

Issues out of scope due to phasing of work

115. Any options that relate to the next phase of work on concessions are out of scope. This includes:

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

- rationalising aspects of the conservation system e.g. integrating multiple land classification and management regimes.

Options to improve the efficiency of the concessions process and lift regulatory practice

Options to improve the efficiency and effectiveness of the triage process

116. These options are intended to address the inefficiencies associated with the triage process and improve regulatory decision-making at the initial stage of an application.

117. The change options below are not mutually exclusive and can be implemented as a package. Implementing options Two and Three as a package is the preferred option.

Option One – Status Quo

118. Under the status quo, the Minister can only return an incomplete application within the first ten working days of receiving it and can only decline an application that obviously does not comply with, or is inconsistent with the Act, any Conservation Management Strategy (CMS), Conservation Management Plan (CMP) or National Park Management Plan (NPMP) within the 11th and 30th working day after receiving an application.

119. There is no ability for the Minister to decline applications at an early stage for previous non-compliance with the conditions of a concession, even in instances of serious or repeated non-compliance. There is also no ability to decline applications in instances where the Crown may have plans for specific areas of PCL and the Minister needs the ability to decline upfront any applications to undertake activities on that land. An example may include where the Minister wishes to undertake afforestation on an area of PCL.

Option Two – Broaden the grounds for returning an application

120. This option proposes to amend the Act to allow the Minister to decline applications upfront:

- If it is clear that the application will not meet statutory requirements, i.e. the application obviously does not comply with, or is inconsistent with, the Act or any statutory planning document (currently the general policies, CMS, CMP and NPMPs; in future the NCPS and area plans). This is the status quo.

- If the applicant has a history of serious or repeated non-compliance with concession conditions, including if the applicant owes money to the Crown in relation to current or previous concessions.

- Where the Crown may have plans for specific areas of public conservation land and the Minister needs the ability to decline any applications to allow for those plans to be implemented.

- If the application is incomplete.

121. DOC does not currently systematically monitor compliance with concession conditions. Patchy information about non-compliance may mean it is unfair in practice for only some applications to be declined for previous non-compliance, compared to undetected non-compliance.

122. This option may increase the amount of information DOC needs to request from applicants and analyse during the initial review phase. The establishment of a standard application fee (see below option) would assist in meeting some of the additional costs for DOC to analyse this information.

123. All of the submitters who provided feedback on this proposal supported it. Some submitters expressed other criteria for the Minister to consider when declining applications, including if applicants have a criminal record, a record of financial malpractice or if the applicant is unable to appropriately remediate the site from any damages following the concession term.

124. The discussion document included a proposed ground to allow the Minister to decline an application upfront where the applicant clearly lacks financial viability, for example the ability to pay fees associated with getting or using the concession. We have not included this ground in the proposal as it would not be possible to assess an applicant's financial viability from the information provided in the application. We instead propose specifying that non-compliance includes if the applicant owes money to the Crown in relation to current or previous concessions.

Option Three – Clarify that applications are required to be made in a specified form or include certain information

125. This option would clarify that concession applications can be required to be made in a specified form or include certain information in addition to what is already required by the Act.

126. At present, applications can vary in terms of quality and completeness, even though the law requires certain information to be included in them. This option will clarify that applications can be required to be made in a specified form or include information in addition to what is already required by law.

127. For example, applications involving fixed assets and significant structures require financial due diligence. This change would support requiring applicants to provide the necessary information to allow for financial due diligence.

128. This option was not included in the discussion document.

How do the options compare to the status quo?

	Option One – Status Quo	Option Two – Broaden grounds for declining an application	Option Three – Clarify that applications are required to be made in a specified form or include certain information
Effectiveness	0	+ Unclear of impact on conservation outcomes. Indirect contribution to other outcomes in section 6 (i.e. expectation of faster processing may support business certainty etc).	+ May support higher quality of applications overall and assist in assessment. Indirect contribution to other outcomes in section 6 (i.e. expectation of faster processing may support business certainty etc).
Efficiency	0	++ Clearer tests for declining an application upfront will make it faster for the applicant to know when their application has been declined and take pressure off the system to focus on processing other applications.	+ Providing more clarity upfront about what is required to be included in an application may support more efficient processing and reduce time and costs for DOC and applicants.
Good regulatory practice	0	+ Provides clarity and certainty for DOC and applicants.	+ Provides clarity and certainty for applicants about what is required to be included in their application.
Consistency with Treaty obligations	0	0	0
Successful implementation	0	+ May be some initial work to establish additional operational guidance. Will require faster triage of applications than currently occurs, which may require some changes to resourcing. Likely to be more efficient going forward.	+ May be some initial work to establish additional operational guidance – likely to be more efficient going forward.
Overall assessment	0	5	4

Options to improve the efficiency of the assessment process

129. The change options below are not mutually exclusive and can be implemented as a package. Implementing options Two and Three as a package is the preferred option.

Option One – Status Quo

130. Under the status quo, there would continue to be regulatory constraints on DOC's ability to speed up concession processing. There would continue to be operational ambiguity about certain steps in the process.

Option Two – Pause processing a concession application until an interim payment is received

131. This option would enable the Minister (or their delegate) to pause consideration of a concession application in the situation that:

- the Director-General has made a written demand under s60 of the Act for payment (to recover costs incurred to date in considering the application); and
- the requested payment has not been received within 28 days of receiving the written notice.

132. Consideration of the application can recommence once the payment has been received.

133. This option was not covered in the discussion document.

Option Three – Create a statutory timeframe within which an applicant should provide further information

134. At present, when DOC needs further information from an applicant to process their application, they are given a reasonable period to provide the information. If this information is not provided, the application is not processed any further.

135. This change would create a default statutory timeframe for applicants to provide further information: 10 working days.

136. One submitter suggested that this proposal will likely put pressure on some small operators who do not have administrative support. Some other submitters also said that time limits relating to requests for further information must consider providing appropriate time for Treaty partners to respond.

137. This option would also allow for the Minister to provide a longer time period if they consider the nature and scope of the request warrants it (as long as it is reasonable). The Minister can return an application after this timeframe has elapsed.

How do the options compare to the status quo?

	Option One – Status Quo	Option Two - Establish a statutory timeframe within which an applicant should provide further information	Option Three- Pause processing a concession application until an interim payment is received
Effectiveness	0	+ Unclear of impact on conservation outcomes. Indirect contribution to other outcomes in section 6 (i.e expectation of faster processing may support business certainty etc).	+ Ensures that costs associated with lodging applications are covered by users of the concession system and $ available for conservation outcomes.
Efficiency	0	++ Statutory timeframes are likely to drive faster processing times.	+ Discourages applications from those without intent/ability (e.g. financial means) to get or undertake the concession. Reduces churn.
Good regulatory practice	0	+ Provides clarity and certainty for DOC and applicants.	+ More certainty for DOC and for regulated parties. Common in many regulatory systems.
Consistency with Treaty obligations	0	0	+ Supports better cost recovery, including to remunerate Iwi to participate in concession processes
Successful implementation	0	+ May be some initial work to establish additional operational guidance – likely to be more efficient going forward.	+ Can be collected using systems already established to recover application costs after they are incurred. Will be some additional processing costs for DOC.
Overall assessment	0	5	5

Options to improve public notification

138. The change options below are not mutually exclusive and can be implemented as a package. Implementing options Two, Three and Four as a package is the preferred option.

Option One – Status Quo

139. Under the status quo, the Minister must publicly notify every application for a lease or a licence for a term (including renewals) of more than 10 years. The Minister may publicly notify any other application for a licence, permit or easement if, having regard to the effects, he or she considers it appropriate to do so.

Option Two – Applications to be publicly notified when the Minister has the intention to grant a concession

140. This option proposes that applications would be publicly notified when the Minister has the intention to grant a concession. The same subset of activities requiring notification would be retained.

141. Prior to 2017, if a preliminary decision was to grant an application, and it met the criteria for notification, DOC would publicly notify an 'intention-to-grant'. In 2017, the Resource Legislation Amendment Act replaced the public notification of an 'intention-to-grant' with public notification of an application for a concession. The change meant that DOC would not notify an 'intention-to-grant' and instead take no position on the application before notification. Submissions are considered as part of the assessment, and at hearings the Director-General is a neutral listener rather than testing an intended course of action.

142. Just over half of the submissions that engaged with this option were opposed to it. While concessionaires expressed their support, Treaty partners, Environmental Non-Government Organisations and some conservation boards disagreed with the proposal because they consider that it limits public engagement on concession applications.

143. While this option would mean that less applications are notified, it also means that the public will not waste time participating in concession processes for applications that DOC will decline anyway. Currently, the public can invest significant time in opposing applications that may be declined or promoting conditions that DOC already planned to include. The proposal may also support participation in notification processes by providing the public with DOC's assessment of the application prior to the submission process (i.e. to support a more informed submission).

144. This option would not preclude the Minister making a different decision to the one notified (i.e. a decline) following the submissions process.

Option Three – Clarify that public notification is not required for grazing licences

145. This option will remove grazing licences from the set of activities requiring public notification. Grazing is typically undertaken on conservation land that is assessed by DOC as suitable for that purpose (i.e. that has little to no conservation values and where the impact of the grazing will have little to no impact on the surrounding environment).

146. Applicants for grazing licences sometime request terms shorter than ten years to avoid triggering public notification, causing system inefficiencies.

147. This proposal was not covered in the discussion document.

Option Four – Clarify that the Minister can determine when a hearing would be appropriate

148. This option will provide the Minister with the discretion to determine when a hearing would be appropriate for any application that will be notified.

149. At present, any person or organisation may request to be heard by the Director-General in relation to their submission. Hearings can come at significant additional cost and can be poorly attended. The participation benefits of notification can be obtained through a written submission process alone, with the discretion to hold hearings for applications with greater public interest.

150. This proposal was not covered in the discussion document.

How do the options compare to the status quo?

	Option One – Status Quo	Option Two – Application to be publicly notified when the Minister has the intention to grant a concession	Option Three – Clarify that public notification is not required for grazing licences	Option Four – Clarify that the Minister can determine when a hearing would be appropriate
Effectiveness	0	+ Notifying at the intent to grant stage means that submitters can be more informed about the potential conservation impacts/mitigations of a proposal.	+ Grazing is typically undertaken on conservation land that is assessed by DOC as suitable for that purpose. This will free up resources for public notification for activities that may have a higher impact on conservation values.	+ Would free up resources to allow more focus on hearings for activities that may impact on conservation values.
Efficiency	0	+ Reduces time for people submitting on applications that are unlikely to be approved and DOC to undertake notification processes for applications that are unlikely to be approved.	+ Applicants for grazing licences sometime request terms shorter than ten years to avoid triggering public notification, causing system inefficiencies. Likely to impact a small number of applications.	+ Reduces processing cost and time to DOC and applicants. Likely to impact a small number of applications.
Good regulatory practice	0	+ More certainty for applicants, submitters and DOC.	+ More certainty for applicants, submitters and DOC.	+ More certainty for applicants, submitters and DOC.
Consistency with Treaty obligations	0	0 No change to how DOC upholds Treaty obligations as a result of this option.	0 No change to how DOC upholds Treaty obligations as a result of this option.	0 No change to how DOC upholds Treaty obligations as a result of this option.
Successful implementation	0	+ Less time/cost for DOC to administer	+ Less time/cost for DOC to administer	+ Less time/cost for DOC to

		notification processes.	notification processes.	administer hearing processes.
Overall assessment	0	4	4	4

Options to streamline decision-making

Option One – Status Quo

151. Under the status quo, there would be no statutory timeframes for assessment of concession applications. There would only be operational targets for concessions processing.

Option Two – Establish an end-to-end timeframe for decisions on applications *(preferred option)*

152. This option would establish the following end-to-end statutory timeframes for the Minister to make a decision on a concession application:

- One-off applications: 10 working days.
- Permits (other than one-off applications): 80 working days.
- Non-notified licenses and easements (other than one-off applications): 140 working days.
- Notified licences and leases: 180 working days.

153. The statutory timeframe starts when the Minister accepts a complete application and the applicant pays the lodgement fee. It concludes when the Minister makes the decision to grant or decline the application.

154. This specific option was not covered in the discussion document. However, the discussion document included an option to introduce a timeframe for DOC to triage applications and noted that other timeframes for DOC could be considered.

155. There was mixed feedback from submitters in response to the other proposals relating to statutory timeframes. Many submitters generally supported the intent of these proposals and believed they could encourage efficiency. However, some also said additional resourcing would be needed to support DOC's processing of applications on time.

156. This option will allow the Minister to extend the application timeframe at their discretion, and at any point in the process. More substantial engagement and processing are sometimes necessary to support decision-making for some complex applications. It is not possible to anticipate in advance the types or categories of applications where this may be needed, which is why we consider a general discretion for the Minister to extend timeframes is more appropriate. This aligns with the ability for the Minister to specify longer timeframes for Treaty partner engagement on applications, or for the applicant to provide further information.

157. If the Minister is extending a timeframe, they must provide reasons for the extension to the applicant.

158. The processing clock will be paused in some situations, largely to reflect steps in the process that can contribute to delays and that are beyond DOC's control. This is the approach taken in the resource management system for consenting timeframes. One key situation that we do not recommend the clock be paused in is Treaty partner engagement. Time for Treaty partner engagement has been factored into the recommended end-to-end timeframes.

159. The processing clock would be paused when:

- the applicant requests their application be put on hold
- further information is requested from the applicant and a timeframe longer than ten days is provided to the applicant
- a report is commissioned or advice is sought on matters raised in relation to the application (excluding Treaty partner engagement)
- interim payments have not been settled by the specified deadline.

160. Existing performance monitoring and reporting can be used to monitor how often extensions are used and any trends in their use over time.

161. These timeframes would also apply to applications for variations or extensions to concessions under section 17ZC(2).

162. We recommend setting these timeframes and the circumstances where the clock can be paused in primary legislation, rather than using the existing regulation-making powers under section 48. Setting timeframes in primary legislation is more stable than setting them in regulation and will support a more transparent process with public scrutiny.

Defining a one-off concession

163. Many applications are processed in a much shorter time than those provided for in Option Two. We have also included a timeframe for a one-off concession to reflect current operational practice.

164. As an indication of what could be a one-off concession, DOC operational policy defines a one-off concession as:

- being for a period of no longer than three months
- having only minor environmental effects
- having clearly defined limits
- not involving permanent structures; and
- not taking place in the same location more than once in three years.

Discounted option – Establishing prescribed timeframes for each step of the process

165. This option has been discounted, as using end-to-end timeframes avoids the need to specify the exact order in which steps must take place in the application process, which preserves operational flexibility.

How do the options compare to the status quo?

	Option One – Status Quo	Option Two - Establish end-to-end timeframes for concessions processing *Preferred option*
Effectiveness	0	+ Faster processing of permits may allow more time for more complex applications with more significant conservation impacts. Indirect contribution to other outcomes in section 6 (expectation of faster processing may support business certainty etc).
Efficiency	0	++ Statutory timeframes are likely to drive faster processing times.
Good regulatory practice	0	++ Provides clarity and certainty for concessionaires.
Consistency with Treaty obligations	0	0 Statutory timeframes for overall processing may drive more compressed Treaty partner engagement for some applications. While the proposal includes flexibility to allow for a longer engagement period where necessary, some Treaty partners may consider that this option does not reflect partnership (this was raised during consultation).
Successful implementation	0	0 Aligns with timeframes for DOC's new operational targets for concessions processing.
Overall assessment	0	5

Options to improve clarity in the reconsideration process

166. The change options below are not mutually exclusive and can be implemented as a package. Implementing options Two, Three and Four as a package is the preferred option.

Option One – Status Quo

167. Under the status quo, the Minister would retain the general discretion to decide whether to reconsider an application. There would be no clarity about what the Minister should consider when deciding to undertake a reconsideration. There would be no timeframes and no limits on the number of times an applicant can ask for the same decision to be reconsidered.

168. Applicants may continue to unreasonably challenge a reconsideration decision (for example, until the desired outcome is gained). The administrative churn and resource wastage associated with reconsideration applications would remain.

Option Two – Clarify that applicants must submit a reconsideration request within 20 working days of being notified of the concession decision and a request can only be submitted once

169. In 2022, Cabinet agreed to amend the Act to require applicants to submit a reconsideration application within 20 working days of a decision on a concession (ENV-22-MIN-0059). This change was not enacted due to changes in government and government priorities.

170. The current Minister of Conservation now seeks to make this change as part of current reforms to the law relating to concessions. After further analysis the timeframe for applicants to return an application has been adjusted from the timeframe previously agreed by Cabinet to 20 working days. This better aligns with the timeframe for an applicant to sign a concession (one month).

171. There was majority support from submitters for the proposal to require requests within 20 working days.

Option Three - Require the Minister to process a reconsideration within 30 working days

172. This option would require the Minister to complete a reconsideration within 30 working days or any longer timeframe specified by the Minister.

173. This specific option was not covered in the discussion document. However, the discussion document included two options to impose statutory time limits on DOC:

- Reconsideration applications must be accepted or declined by DOC within 20 working days.
- If accepted, DOC has a further 20 working days to complete the reconsideration.

174. There was broad support for these two options from submitters. Submitters also suggested that DOC may need additional time to process complex reconsiderations.

175. After further analysis we have combined these two timeframes into one, as the operational steps to consider whether to process a reconsideration may overlap with the

steps to assess the request itself. We have also added an extension provision to allow for more complex reconsideration requests.

Option Four – Clarify the scope of a reconsideration

176. This option proposes to amend the Act to clarify that as part of the reconsideration, the Minister may not consider any information that was not considered by the decision-maker, unless:

- the information existed at the time the decision was made and would have been relevant to the making of that decision; and
- in all the circumstances it is fair to consider the information.

177. This is common in other appeal or reconsideration processes (for example the visa application process under the Immigration Act). Inclusion of this ground would streamline the reconsideration process by removing any need for further assessments or Treaty partner engagement. It would not prevent the application from pointing out information DOC had failed to consider (e.g. a relevant policy in an area plan), allowing for the reconsideration process to be used to correct errors or oversights.

178. If the applicant wishes to provide new information, this should be considered as a new application.

179. This option was not covered in the discussion document.

How do the options compare to the status quo?

	Option One – Status Quo	Option Two - Require reconsideration requests to be submitted within 20 working days and to only be submitted once	Option Three - Require the Minister to process a reconsideration within 30 working days	Option Four – Clarify scope and purpose of a reconsideration
Effectiveness	0	+ Indirect contribution to conservation outcomes and other outcomes in section 6 (i.e reduces time spent on frivolous applications - can be focused on priority applications and ensuring the effects of those activities are well managed).	+ Unclear of impact on conservation outcomes. Indirect contribution to other outcomes in section 6 (i.e expectation of faster processing may support business certainty etc).	+ Will ensure that processing time is focused on priority/more complex requests and ensuring the effects of those activities are well managed.
Efficiency	0	++ Reduces time and costs for DOC and regulated parties in submitting/processing reconsideration applications that will likely result in same decision.	++ Expectation of time for DOC to process a reconsideration – likely to drive faster processing times.	++ Reduces time and costs for DOC and regulated parties in submitting/processing reconsideration applications that will likely result in same decision. Frees up tome for priority reconsideration requests or other processing.
Good regulatory practice	0	++ Provides clarity and certainty for concessionaires and the regulator.	++ Provides clarity and certainty for concessionaires and the regulator.	++ Provides clarity and certainty for concessionaires and the regulator. Common in other

				appeal or reconsideration processes (for example the visa application process under the Immigration Act).
Consistency with Treaty obligations	0	0	0	0
Successful implementation	0	0 Aligns with new operational policy and process.	0 Aligns with new operational policy and process.	0 Aligns with new operational policy and process.
Overall assessment	0	5	5	5

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

180. The preferred package of options to strengthen concessions processing is as follows:

Triage	• Broaden the grounds for returning an application. • Clarify that applications are required to be made in a specified form or include certain information. • Enable the ability to return a concession application within 20 working days to initiate a competitive allocation process.
Assessment	• Pause processing a concession application until an interim payment is received. • Create a statutory timeframe within which an applicant should provide further information.
Public notification	• Applications to be publicly notified when the Minister has the intention to grant a concession. • Clarify that public notification is not required for grazing licences. • Clarify that the Minister can determine when a hearing would be appropriate.
Decision-making	• Establish an end-to-end timeframe for decisions on applications: o One-off applications: 10 working days. o Permits (other than one-off applications): 80 working days. o Non-notified licenses and easements (other than one-off applications): 140 working days. o Notified licences and leases: 180 working days.
Reconsideration	• Clarify that applicants must submit a reconsideration request within 20 working days of being notified of the concession decision and a request can only be submitted once. • Require the Minister to process a reconsideration within 30 working days. • Clarify the scope of a reconsideration.

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

181. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

182. Amending the concessions process to clarify expectations, streamline some steps and introduce new statutory timeframes will encourage more consistent and robust decisions about activities that can be undertaken on PCL and support faster processing of concessions (compared to the status quo).

183. A clearer more consistent concession process will provide more certainty for concessionaires (including applicants), DOC and Treaty partners.

184. There will be set up costs for DOC in transitioning to the new system, but more streamlined concessions processing settings will reduce DOC's processing costs over the medium term. There should be no additional costs for applicants or for Iwi/hapū as a result of the proposed changes.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
DOC	• Immediate implementation costs – communicating changes to regulated parties, establishing new operational policy and processes. • In the medium term costs will reduce as efficiency gains are realised.	*Low*	*Medium*
Concessionaires (including applicants)	• There are no additional costs to concession operators arising from the option.	*Low*	*High*
Iwi and hapū	• There are no additional costs to Iwi and hapū as a result of these changes.	*Low*	*Medium*
Total monetised costs	• Economic costs have not been monetised due to poor evidence certainty.	*N/A*	*Low*
Non-monetised costs	• Additional set up costs for DOC to establish operational guidance and communicate changes but likely to be more efficient going forward. No additional costs to regulated parties.	*Medium*	*Low*
Additional benefits of the preferred option compared to taking no action			
DOC	• In the medium term, the option will reduce concession processing time and costs for DOC.	*High*	*Low*
Operators	• A clearer more consistent concession process will provide more certainty for operators. • In the medium term, supported by the changes to management planning, the option will support faster decision-making, allowing more activities to be undertaken on PCL.	*Medium*	*Low*
Māori	• Improved transparency in the process and reduced time engaging on applications.	*High*	*Low*
Total monetised benefits	• Economic benefits have not been monetised due to poor evidence certainty.	*N/A*	*Low*
Non-monetised benefits	• More consistent and robust decisions about activities that can be undertaken on PCL and faster processing of concessions compared to the status quo.	*High*	*Low*

Addressing ambiguity about how DOC gives effect to Treaty principles in concessions processing

Option One – Status Quo

185. Under the status quo, DOC will continue to assess when engagement with Treaty partners on a concession application should occur, based on current relationships held at place and in relationship agreements. Note that Treaty partners are invited to respond to applications that require public notification and that would continue under the status quo.

186. This option is likely to mean Treaty partners continue to be engaged on most concession applications, unless they have agreed with DOC the types of concessions they wish to be engaged on.

Option Two – Engagement with Treaty partners is only required for notified applications and must take place before notification

187. Engagement would only be required for concessions that will be publicly notified, given that such applications typically involve activities that may incur more significant impacts on a range of values and/or confer valuable property rights. This would not prevent DOC from engaging with Treaty partners beyond what is required in law, e.g. to ensure informed decision-making.

188. This option was not covered in the discussion document. However, concerns raised by Treaty partners in relation to Option Three are likely to apply to this option. Treaty partners noted (in response to Option Three below) that the Crown deciding when engagement should take place does not reflect partnership. Some stated that Iwi or hapū should be the ones to decide when they are engaged with.

Option Three – Clarify when engagement with Treaty partners is not required

189. This option would clarify that engagement is not required where Treaty partners have said they do not need to be engaged on particular applications or types of applications; or where applications are similar to or only make minor changes to previous or existing concessions.

190. This option would require decision-makers to assess what is “minor” or “similar” based on the circumstances, creating another decision that is subject to challenge. For example, it may be that some applications are similar to currently allowed activities but would still have significantly different potential impacts on Treaty rights and interests, suggesting engagement may still be needed to ensure informed decision-making.

191. While many submitters supported the intent of this proposal, feedback was mixed. Several concessionaires expressed their support for the proposal.

192. Treaty partners including Pou Taiao (Iwi Leaders Forum) disagreed with this proposal on the basis that the Crown deciding when engagement should take place does not reflect partnership. Some Treaty partners stated that Iwi or hapū should be the ones to decide when they are engaged with.

Option Four – Engagement will remain a matter for operational discretion (status quo) plus Treaty partners must provide feedback on a concession application within 20 working days

193. This option proposes that DOC will continue to assess when engagement with Treaty partners on a concession application should occur, based on current relationships held at place and in relationship agreements.

194. Under this option, Treaty partners are likely to continue to be engaged on most concession applications, unless they have agreed with DOC the types of concessions they wish to be engaged on.

195. Where DOC assesses that engagement is required, this option will clarify that Treaty partners must provide feedback on a concession application within 20 working days of receipt of the application.

196. If 20 working days is not reasonable in the circumstances:

- the Minister can specify a longer, reasonable timeframe
- Treaty partners can request an extension to the deadline.

197. This timeframe will not apply in situations where DOC and Treaty partners have agreed a specific timeframe for engagement on concession applications (for example, where a decision-making framework or relationship agreement includes a specific timeframe). If the deadline for Treaty partners to provide feedback has elapsed, decision-making will proceed based on existing information.

198. The proposals to improve the planning process (including proposals to establish classes of exempt or pre-approved activities) and ongoing engagement with Treaty partners will build stronger, enduring understanding of Iwi and hapū interests, reducing the need for extensive responses on individual applications.

199. While many submitters supported the intent of this proposal, feedback was mixed. Several concessionaires expressed their support for the proposal. Some recommended that more flexibility and clearer provision is needed for Iwi and hapū to apply for an extension, or to request further information or support from DOC.

200. Concerns raised by Treaty partners in relation to the other options in this section are likely to apply to this option. Treaty partners noted (in response to Option Three) that the Crown deciding when engagement should take place does not reflect partnership.

Discounted option – Clarifying in legislation when Treaty partner engagement is needed

201. A further option, which DOC has discounted, is not seeking Treaty partners' views where the Minister considers there are no or minimal Māori rights and interests involved, and these are well understood. This is likely to be highly contentious in practice, without providing significantly more operational certainty for DOC.

How do the options compare to the status quo?

Options one, two and three are mutually exclusive. Option four can be implemented alongside any of the options. Options one (status quo) and four are the preferred options.

	Option One – Status Quo	**Option Two - Engagement is only required for notified applications and must take place before notification**	**Option Three: Clarify when engagement with Treaty partners is not required**	**Option Four – Engagement will remain a matter for operational discretion, plus Treaty partners must provide feedback on a concession application within 20 working days** *Preferred option*
Effectiveness	0	0 Unclear of impact on conservation outcomes.	0 Unclear of impact on conservation outcomes.	+ Indirect contribution to other outcomes in section 6 (i.e expectation of faster processing may support business certainty etc).
Efficiency	0	0 Engagement may still be needed for many applications to ensure informed decision-making, limiting process efficiencies.	0 Engagement may still be needed for many applications to ensure informed decision-making, limiting process efficiencies.	++ Clarifying timeframes in statute can support process efficiency.
Good regulatory practice	0	0 Would not provide additional clarity and certainty, given that engagement may still be required.	0 Would not provide additional clarity and certainty, given that engagement may still be required.	++ Supports transparency and clarity for regulated parties, the regulator and Treaty partners.
Consistency with Treaty obligations	0	0 Would not provide additional clarity	0 Would not provide additional	0 More certainty about what is required to give

		and certainty, given that engagement may still be required. Engagement may still be needed for many applications to ensure informed decision-making. There are participation steps/requirements prescribed in the MACA Act and NP Act in relation to "publicly notified applications for concessions". These would not be impacted.	clarity and certainty, given that engagement may still be needed for many applications to ensure informed decision-making.	effect to section 4 in concessions processing. However, this certainty is provided by narrowing the application of section 4, s9([redacted] Some Treaty settlements and protocols include their own timeframes, and these might be different to what is proposed. These timeframes would not be impacted. Flexibility to extend for more complex applications allows opportunity to support informed decision-making regardless of the application type. However, some Treaty partners may consider that this option does not reflect partnership (this was raised during consultation).
Successful implementation	0	- May just create additional process step with same result. Decision-makers would still consider whether engagement is required beyond what is required in law, e.g. to ensure informed decision-making.	- Would require decision-makers to assess what is "minor" or "similar" based on the circumstances, creating another decision that is subject to challenge.	+ Aligns with existing operational policy.
Overall assessment	0	-1	-1	6

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

202. Options one (status quo) and four are the preferred options:

- Option One – (status quo) Retain operational discretion to determine when engagement with Treaty partners occurs).
- Option Four -Treaty partners must provide feedback on a concession application within 20 working days.

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

203. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

204. Retaining the status quo means that decisions on when to engage will remain a matter for operational discretion. This allows the flexibility for DOC to make operational decisions about engagement based on current relationships held at place.

205. Clarifying statutory timeframes will provide more certainty of process for concessionaires (including applicants), DOC and Treaty partners and support process efficiency.

206. Tighter statutory timeframe for consultation may result in the timing of costs being more concentrated for Treaty partners in some periods. While the proposal includes flexibility to allow for a longer engagement period where necessary, some Treaty partners may consider that this option does not reflect partnership (this was raised during consultation).

207. The wider proposals to improve the planning process (including proposals to establish classes of exempt or pre-approved activities) and ongoing engagement with Treaty partners will build stronger, enduring understanding of Iwi and hapū interests, reducing the need for extensive responses on individual applications.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
DOC	• Immediate implementation costs – communicating changes to regulated parties, establishing new operational policy and processes.	*Low*	*Medium*
Concessionaires (including applicants)	• There are no additional costs to concession operators arising from the option.	*Low*	*High*
Iwi and hapū	• There are no additional costs to Iwi and hapū as a result of these changes. Tighter statutory timeframe for consultation may result in the timing of costs being more concentrated in some periods.	*Low*	*Low*
Total monetised costs	• Economic costs have not been monetised due to poor evidence certainty.	*N/A*	*Low*
Non-monetised costs	• Additional set up costs for DOC to establish operational guidance and communicate changes but likely to be more efficient going forward. No additional costs to regulated parties.	*Medium*	*Low*
Additional benefits of the preferred option compared to taking no action			
DOC	• The option will provide more clarity for decision-makers and reduce processing time and costs for DOC.	*High*	*Low*
Operators	• A clearer more consistent concession process will provide more certainty for operators. • Supported by the changes to management planning, the new process will support faster decision-making, allowing more activities to be undertaken on PCL.	*Medium*	*Low*
Iwi and hapū	• Improved transparency in the process and reduced time engaging on applications.	*High*	*Low*
Total monetised benefits	• Economic benefits have not been monetised due to poor evidence certainty.	*N/A*	*Low*
Non-monetised benefits	• More consistent and robust decisions about activities that can be undertaken on PCL and faster processing of concessions compared to the status quo.	*High*	*Low*

Options to simplify and standardise price-setting and contractual conditions

208. The change options below are not mutually exclusive and can be implemented as a package. The preferred set of options is indicated in the table on page 50.

Options to strengthen the use of terms and conditions

Option One – Status Quo

209. Under the status quo the Minister would retain the general discretion to set terms and conditions in concession contracts. Without the ability to set terms and conditions in secondary legislation, concession processing timeframes will likely continue to be prolonged, as applicants negotiate bespoke conditions. It is likely that there will continue to be inconsistent outcomes for conservation and the Crown's management operators who undertake the same activity.

Option Two – Enable the Minister to set binding, standard terms and conditions for concessions

210. This option would amend the Act to enable the Minister to set standard terms and conditions which are binding on all relevant concessions.

211. The vehicle for standard terms and conditions could be secondary legislation, as it is likely that terms and conditions will need to be updated periodically. Standard terms and conditions will apply to all concessions granted after standard terms and conditions commence.

212. Most submitters agreed that standard terms and conditions should be regulated. However, some noted that these standard terms and conditions should not limit other terms and conditions from being imposed depending on the circumstances of the application.

Options to clarify when longer term lengths may be appropriate

Option One – Status Quo

213. Under the status quo, the application of the 'exceptional circumstances' test (i.e. when leases or licenses can be issued for 60 years) will continue to be assessed on a case-by-case basis. The Ombudsman has determined 'exceptional circumstances' to be extremely limited in practice.

Option Two – Allow a term corresponding to the useful life of fixed assets and structures associated with the concession, if longer than 30 years

214. This option would amend the Act to replace the current 'exceptional circumstances' test to provide that a concession be issued for a term corresponding to the 'useful life' of fixed

assets and structures associated with the concession, if longer than 30 years. The 'useful life' of fixed assets is a common methodology in accounting practices.

215. This provision would only apply where concessionaires own fixed assets and structures associated with the concession. Further operational guidance would likely be needed on how this is assessed.

216. This option was not covered in detail in the discussion document. However, many submitters who responded on the proposal to clarify when concessions can be granted for more than 30 years opposed it. They were concerned that it would allow for concessions to be more easily granted for more than 30 years. Some were also concerned that it would make it more difficult to reallocate concessions.

217. Most concessionaires supported clarifying when longer term lengths are possible in exceptional circumstances and expressed that longer concession terms should be awarded to infrastructure heavy operations.

Option Three – Option Two, plus a term of up to 60 years for critical infrastructure

218. In addition to option Two, this would allow longer terms (up to the current maximum term in exceptional circumstances) for concessions that provide critical infrastructure.

219. Concessions that meet the 'critical infrastructure' threshold are likely to include three waters (drinking water, stormwater, wastewater, reservoirs) power (electricity or gas pipelines, hydro dams, windmills), transport infrastructure (roads, bridges, wharves, jetties, rail, airports and land spaces), and telecommunications (cell towers or internet cables). These generally provide long-term public benefits.

Discounted option – Replacing the current maximum terms of 30 years and 60 years in exceptional circumstances with 50 years

220. This option would amend the Act to clarify that concessions that have significant assets or provide critical infrastructure can be granted a maximum term of 50 years.

221. This option has been discounted, as our maximum term lengths are already at the higher end when comparing to similar jurisdictions. For example, the United States National Park Service can grant concessions for up to 10 years, or 20 years in limited circumstances. In Victoria, leases can only be granted for up to 21 years.

Options to smooth end-of-term transitions

Option One – Status Quo

222. Under the status quo, there will continue to be uncertainty for decision-makers and applicants about what will happen to fixed assets in a competitive allocation process. Concession contracts will continue to be used on a case-by-case basis to set terms about valuation to support asset transfer. There will remain incentives for concessionaires operating on expired terms to hold out when discussing new terms with DOC.

Option Two – Enable the Minister to transfer or reassign an entire concession and contract

223. This option would amend the Act to enable to Minister to transfer or reassign an entire concession and contract (i.e. liabilities in addition to benefits and conditional transfers).

224. Transfer or reassignment would be subject to the new owner meeting due diligence requirements. Due diligence could take the form of a 'fit and proper person' test; demonstrating ability to meet contractual terms and conditions, including in relation to effects management; or maintaining or improving service levels and costs.

225. DOC could also add update terms and conditions for the concession contract as part of this process. This is based on the current ability for the Minister to set conditions on a concession at the point of granting.

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

227. Concessionaries noted that more security and clarity is required at the end of a concessions term. Concessionaires, particularly those with significant infrastructure, also said that situations where they may be forced to sell assets following a competitive process is undesirable and may be unlawful.

How do the options compare to the status quo?

	Options to strengthen the use of terms and conditions		Options to clarify when longer term lengths are appropriate			Options to support end-of-term transitions	
	Option One – Status Quo	**Option Two - Enable the Minister to set binding, standard terms and conditions for concessions** *Preferred option*	**Option One – Status Quo**	**Option Two: Allow a term corresponding to the useful life of fixed assets and structures associated with the concession, if longer than 30 years**	**Option Three: Option Two, plus a term of up to 60 years for critical infrastructure** *Preferred option*	**Option One – Status Quo**	**Option Two - Enable the Minister to transfer or reassign an entire concession and contract** *Preferred option*
Effectiveness	0 It is likely that there will continue to be inconsistent outcomes for conservation and the Crown's management operators who undertake the same activity.	+ Increased standardisation can support more consistent approaches to the management of concessions which may have an overall improved impact on conservation outcomes and DOC's other section 6 outcomes.	0	+ May incentivise future investment in quality infrastructure that supports conservation outcomes. Should ensure that the effects of concessions granted for longer terms are managed appropriately, while contributing to DOC's other functions.	+ Should ensure that the effects of specific concessions that are granted longer terms are managed appropriately while contributing to DOC's other functions.	0	++ Will offer DOC ability to ensure concessions continue to contribute to key conservation outcomes and are well managed throughout transfers, including the reassessment of effects of the activity and the concessionaire's ability to support. May support contribution to other outcomes in section 6
Efficiency	0 Concession processing timeframes will likely continue to be prolonged, as applicants negotiate bespoke conditions.	++ Likely to reduce the time taken for concessionaires to apply for concessions. Likely to reduce the time and cost for DOC to assess, approve and regulate concessions.	0	+ May reduce time and costs for concessionaires due to a more transparent process. Would allow operators to gain a fair return on their investment in an asset. Should provide more clarity for decision-makers on when to approve longer terms and may reduce time and costs for DOC.	++ Should provide more clarity on when to approve longer terms, and may reduce times and costs to DOC. May also create more efficiencies in the permissions system and allow DOC to concentrate its regulation on other concessions that require the status quo term length.	0	++ Will reduce time and costs for incoming and outgoing concessionaires to transfer concessions. Will reduce time and costs for DOC to assess, approve and regulate concessions transfers.
Good regulatory practice	0	++ Improved clarity and transparency for concessionaires and regulated parties. Should support more consistent and higher performing regulatory management of concessions.	0	++ Improves clarity and transparency for applicants and decision-makers. Could rely on advice on the IRD and OAG on an asset's life to improve consistency of decision-making.	- Granting longer terms to permissions with significant asset bases without improving enforcement conditions may expose DOC to further risks. Unclear whether it would hold concessionaires to account to maintain and invest in their assets across the term. Would provide more clarity and certainty for concessionaires of significant assets or those providing long-term benefits.	0	++ May offer greater clarity and certainty for most concessionaires. Allows greater flexibility for DOC to impose additional conditions and reassess a concession as part of the transfer.
Consistency with Treaty obligations	0	0 No change to how DOC upholds Treaty obligations as a result of this option.	0	0 May not be able to be consistently used as some Treaty settlements will take precedence. Some settlements provide for rights of first refusal in relation to leases over 50 years,	0 May not be able to be consistently used, as some Treaty settlements (for example, first rights of refusal after a certain time) will take precedence. Must consider Treaty partners' expectations of effective alienation.	0	+ Drafting of provision in legislation will need to ensure any transfers still uphold statutory functions to give effect to Treaty principles and uphold Treaty settlements.

				including extensions and renewals. These will effectively limit term lengths offered. Longer terms may specifically shut out Treaty partners from certain concession opportunities, though the potential impact of this on Māori rights and interests would need to be assessed based on the facts of a particular situation.			
Successful implementation	0	0 May require a reasonable amount of upfront work to standardise contractual conditions but should support more effective implementation going forward.	0	++ Likely to be easy to implement once guidance and supporting policy established on use of 'life of asset' methodology. Could rely on advice on the IRD and OAG. May take time to develop and embed operational policy to support change.	++ Likely to be very easy to implement once clear criteria of what types of concessions are meet this threshold.	0	+ Option is feasible and likely to be easy to implement as would follow same process as for concession renewal. Would require additional guidance on due diligence requirements. s9(2)(f)(iv) [redacted]
Overall assessment	0	5	0	6	4	0	8

Options to modernise the concessions fee framework

228. The change options below are not mutually exclusive and can be implemented as a package. Implementing the change options as a package is the preferred option.

Option One – Status Quo

229. Under the status quo, concessionaires will continue to pay specified rents, fees and royalties to the Minister, which must be reviewed at intervals not exceeding three years. There is an ability to specify fees in regulations, but this has not been used to date.

230. In practice, rents, fees and royalties will continue to be set on a case-by-case basis in concession contracts, with reference to a standard DOC price book. DOC will continue to be engaged in prolonged discussions with concessionaires about activity fees.

231. For active concessions, fees must be reviewed every three years. Fee reviews will likely continue to be of limited benefit as there is no ability to change the charging method set out in the concession contract when a fee review is undertaken.

Option Two – Enable the Minister to set rents, fees and royalties for concessions in secondary legislation, with periodic review

232. The Act requires activity fees for active concessions to be reviewed every three years and allows for regulations to be made fixing fees and levies in respect of any matter under the Act.

233. This option would combine and strengthen existing legislative provisions about setting activity fees to:

- enable the Minister to set rents, fees and royalties for concessions in secondary legislation, including discounts and waivers; and
- require such rents, fees and royalties for specific activities to be reviewed periodically.

234. Periodic review of regulated fees provides the opportunity to ensure that they reflect current market rates. Any changes made to fees following the review will apply to all active concessions.

235. The fees set in secondary legislation could be differentiated by activity type, as is currently the case with the DOC price book. They could also contain a mixture of charging methods, e.g. percentage of revenue or flat fees.

236. While the intention is to regulate all concession activity fees this way, there is scope to retain discretion to set fees other ways (e.g. through negotiation based on DOC operational policy and guidance) for any activities that are not included in secondary legislation.

237. As any changes will apply to all active concessions, we propose the inclusion of a requirement to consult the public on any proposed changes to fees set in secondary legislation. This provides an opportunity for regulated parties and other stakeholders to engage on proposed fees at the activity level.

238. Regulated pricing apply to all concessions after the first secondary legislation containing set fees is made, including active concessions. This means the empowering provision will technically have retrospective effect through the ability to affect existing concessions, the same way the requirement to review fees at the moment has retrospective effect.

239. Many submitters who responded on this proposal expressed their support. Those who supported this proposal said that it would be appropriate for commonly applied for concessions rather than unique activities. Some noted that regulated pricing would likely only work for some activities, and not all of them.

240. Those who disagreed with this proposal said that a one-size-fits-all approach may not adequately reflect the varied and complex values associated with different conservation lands and the variation in different types of activities.

241. Some said that regulated pricing should not apply to complex activities with significant infrastructure. Others also said that regulated pricing should not limit DOC from charging more for an opportunity.

Option Three – Option Two, plus enable the Minister to change the charging method set out in the concession contract when undertaking a rent review

242. While fees for some activities may be suitable for standardisation in secondary legislation, there will remain some activities that require bespoke pricing, for example novel activities.

243. The Minister must continue to review fees other than those covered by regulated pricing every three years (status quo), and the outcome of a review could be that no change is needed.

244. This option will enable the Minister to change the charging method set out in the concession contract when a rent review is undertaken. Any changes made following a rent review will apply to all relevant active concessions.

245. This proposal was not covered in detail in the discussion document. However, general feedback suggested that DOC's approach to concession pricing should be responsive to unforeseen circumstances.

Discounted option – Changing the basis for fees from 'market value' to 'fair return to the Crown'

246. This option has been discounted as further analysis has identified that market value should be retained as the basis for setting concession fees. Market value is a common methodology for setting fees across many regulatory systems.

247. Addressing the ambiguity associated with what constitutes a market rate for concession fees is best addressed through clearer operational guidance about what market value means for specific activities.

How do the options compare to the status quo?

	Option One – Status Quo	Option Two **Enable the Minister to set rents, fees and royalties for concessions in secondary legislation, with periodic review**	Option Three **Option Two, plus enable the Minister to change the charging method set out in the concession contract when undertaking a rent review** *Preferred option*
Effectiveness	0	+ Expected to ensure that the Crown will receive a fair return for allowing private commercial activities on PCL. Resources saved can be put towards other Departmental priorities. Standardised terms and conditions can support more consistent outcomes for conservation.	+ Expected to ensure that the Crown will receive a fair return for allowing private commercial activities on PCL. Resources saved can be put towards other Departmental priorities.
Efficiency	0	++ Standard pricing adds efficiency by removing prolonged discussions and haggling with applicants who otherwise may refuse to sign their concession. More efficient processing timeframes will reduce costs to the applicant and DOC.	++ Standard pricing adds efficiency by removing prolonged discussions and haggling with applicants who otherwise may refuse to sign their concession. Clarifying approach to pricing for activities that require bespoke pricing (likely to be a small number of concessions) may speed up processing time.
Good regulatory practice	0	++ Provides greater clarity in advance in terms of what fees will be. Provides certainty to operators that they are not being charged more than another operator to undertake the same activity. It also provides a greater degree of certainty in fees than regular rent reviews. Applying fees to all active concessions will bring concessionaires' fee payments for the same activities in line. It ensures that concessionaires are paying the	++ Provides clarity about pricing settings for activities that require bespoke pricing. Likely to apply to a small number of concessions (e.g. novel activities).

		same fees for the same activity at the same point in time.	
Consistency with Treaty obligations	0	0 No change to how DOC upholds Treaty obligations as a result of this option.	0 No change to how DOC upholds Treaty obligations as a result of this option.
Successful implementation	0	+ May require a reasonable amount of upfront work to determine fee levels and applicable activities but should support more effective implementation going forward.	++ Standardised pricing may require a reasonable amount of upfront work to determine fee levels and applicable activities. Changing rent review settings is likely to be easy to implement, as existing operational process for rent reviews would continue but would require additional guidance on changes to charging methodology.
Overall assessment	0	6	7

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

248. The preferred package of options is as follows:

Term length	• Allow terms corresponding to the useful life of fixed assets and structures where longer than 30 years. • Allow terms of up to 60 years for concessions involving critical infrastructure.
Terms and conditions	• Strengthen the Minister's ability to set standard terms and conditions for concessions, for example through secondary legislation or another instrument. • Set provisions for smooth transitions of concessions, protection of private property rights, and management of Crown risks when a business is sold, goes under, or a term ends.
Concession pricing	• Set standard prices for concessions through secondary legislation or another instrument, rather than relying on three-yearly fee reviews and lengthy negotiations as at present.
Transitions and term end	• Allow concessions to be transferred in their entirety to a new operator subject to due diligence. • Limit how long concessionaires can continue on old terms and conditions after a decision has been made on a new application.

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

249. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

250. The combination of changes to contract management settings described above will provide benefits over the status quo, including supporting more confident decision-making, more consistent outcomes for conservation and a more fair return to the Crown for allowing private commercial activities on PCL.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
DOC	• Immediate additional costs to communicate changes and establish operational guidance. Medium term - There will be some additional processing costs for DOC but should support more efficient processing and reduced costs in the long run.	*Medium*	*Low*
Current operators	• Additional costs to undertake the valuation of any relevant fixed assets.	*Medium*	*Low*
Total monetised costs	• Economic costs have not been monetised due to poor evidence certainty.	*N/A*	*Low*

Non-monetised costs	• Additional set up costs for DOC to establish operational guidance and communicate changes but likely to be more efficient going forward. Additional costs for some operators to undertake the valuation of any relevant fixed assets.	*Medium*	*Low*
Additional benefits of the preferred option compared to taking no action			
DOC	• Reduced ambiguity improves confidence in decision-making, reduces churn in contract negotiation processes and improves returns to the Crown.	*High*	*Low*
Current operators	• Expected to provide certainty that current operators will receive a fair return on investment in assets.	*Medium*	*Low*
Total monetised benefits	• Economic benefits have not been monetised due to poor evidence certainty.	*N/A*	*Low*
Non-monetised benefits	• More efficient processing of concessions through clearer price settings. Reduces time and costs for incoming and outgoing concessionaires to transfer concessions and provides more certainty for investment.	*High*	*Low*

Options to improve cost recovery in concessions processing

251. The change options below are not mutually exclusive and can be implemented as a package. Implementing options Two and Three as a package is the preferred option.

Option One – Status Quo

252. Under the status quo, applications will be received and checked if incomplete. No upfront payment will be required. People can apply for a concession even if they have no intention or means of getting or executing the concession.

Option Two – Enable the Director-General to charge a lodgement fee for a concession application

253. This option would amend the Act to enable the Director-General to require the payment of a lodgement fee when a concession application is submitted. It would be a fixed upfront fee for a set group of concession types. The lodgement fee would be deducted from the total cost recovery charges invoiced to the applicant, because they would have already paid the lodgement fee.

254. The fee will go towards recovering actual and reasonable costs incurred by DOC in performing its functions, powers and duties in relation to the lodging of a concession application.

255. A cost recovery model is already applied in the concession regime, as the economic benefits of obtaining a concession accrue primarily to the applicant. The costs to government of carrying out its functions and duties and exercising its powers should be fully funded by users of the concession system. This means that the Crown should not subsidise the services provided when a concession application is lodged.

256. The receipt of an application fee is a useful part of formally recognising that an

application has been made. It discourages frivolous applications, including applications from those without the financial means to pay fees associated with getting or using the concession. A lodgement fee can be introduced because we can identify the individuals and businesses who benefit from the concessions system, and we can charge these individuals or entities for the service they receive when they lodge their application.

257. This option was not included in the discussion document.

Option Three – Clarify when the Director-General can require interim payments

258. Section 60B provides a statutory basis for the Director-General to recover costs after the Minister (or delegate) has considered the concession, whether or not the consideration has been concluded.

259. There is an opportunity to address an ambiguity in the legislation, in which it is unclear when interim payments can first be required (i.e. what counts as "considered").

260. This option would clarify that an invoice for payment of costs associated with processing a concession application can first be issued when a complete application has been received (i.e. once initial checks have been completed).

261. This option was not included in the discussion document.

How do the options compare to the status quo?

	Option One – Status Quo	Option Two – Enable the Director-General to charge a lodgement fee for a concession application	Option Three – Clarify when interim payments can be requested
Effectiveness	0	+ Ensures that cost associated with lodging applications is covered by users of the concession system and $ available for conservation outcomes.	+ May increase proportion of costs recovered which will increase $ available for conservation outcomes.
Efficiency	0	+ Discourages applications from those without intent/ability (e.g. financial means) to get or undertake the concession. Reduces churn.	+ May support more efficient processing through improved cost recovery.
Good regulatory practice	0	++ An upfront application fee supports transparency and certainty for regulated parties. Common in many regulatory systems.	+ Provides more clarity to DOC and applicants about when costs can be recovered.
Consistency with Treaty obligations	0	0 No change to how DOC upholds Treaty obligations as a result of this option.	0 No change to how DOC upholds Treaty obligations as a result of this option.
Successful implementation	0	0 Can be collected using systems already established to recover application costs after they are incurred. Will be some additional processing costs for DOC.	0 No/little change as clarifies when existing processes can be undertaken.
Overall assessment	0	4	3

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

262. Implementing Options Two and Three as a set is the preferred option:

- Option Two – Enable the Director-General to charge a lodgement fee for a concession application.
- Option Three – Clarify when the Director-General can require interim payments.

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

263. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

264. This option supports process efficiency through improved cost recovery and also by discouraging applications from those without the intent or ability to get or undertake the concession. An upfront application fee provides more clarity to DOC and applicants about when costs can be recovered.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
DOC	• Immediate additional costs to communicate changes and establish operational guidance. • Medium term - Can be collected using systems already established to recover application costs after they are incurred but there will be some additional processing costs for DOC.	*Medium*	*Low*
Operators	• There are no additional costs to operators.	*Low*	*High*
Total monetised costs	• Economic costs have not been monetised due to poor evidence certainty.	*N/A*	*Low*
Non-monetised costs	• Additional set up costs for DOC to establish operational guidance and communicate changes but likely to be more efficient going forward. No additional costs to regulated parties.	*Medium*	*Low*
Additional benefits of the preferred option compared to taking no action			
DOC	• The option will provide more clarity for decision-makers and applicants and reduce processing costs for DOC.	*High*	*Low*
Operators	• More clarity for applicants about when costs will be recovered.	*Medium*	*Low*
Total monetised benefits	• Economic benefits have not been monetised due to poor evidence certainty.	*N/A*	*Low*
Non-monetised benefits	• More efficient processing of concessions through improved cost recovery. Increased clarity to DOC and applicants about when costs can be recovered.	*High*	*Low*

Section 3: Delivering an option

How will the proposal be implemented?

265. DOC will be responsible for implementing changes to concessions processes and contract management settings. There may also be changes to how other parties interact with these processes, such as concessionaires (including potential concessionaires), Treaty partners, businesses, researchers, local councils and the public.

Legislation

266. Parts of the Act will need to be rewritten to give effect to the proposals in this paper. The Conservation Amendment Bill holds a category 5 priority on the 2025 Legislation Programme (to be referred to Select Committee within the year).

267. Concessions being processed at commencement will be assessed under the improved legislative framework.

268. The Minister will decide the commencement period(s) for the Bill during drafting, which will determine when any changes come into effect. Other implementation details and arrangements are not yet clear and will be the subject of further work during drafting. The Minister has several potential Cabinet report-backs during drafting which provide an opportunity to resolve any implementation risks or issues.

Upholding Treaty settlements

269. The conservation portfolio has more Treaty settlement commitments than any other portfolio. Many of these commitments embed involvement of Treaty partners in planning and concessions processes and are relevant to the proposals in this paper. Treaty partners' feedback during consultation strongly emphasised the need for the Crown to uphold settlement redress, and to engage meaningfully and in good faith.

270. DOC is currently engaging with post-settlement governance entities and this will continue for several months to come. These conversations will help identify how to provide material equivalence for redress in the context of system reform. For example, there may need to be appropriate carve-outs or grandparenting of bespoke arrangements and processes in settlements.

Operational policy and guidance

271. DOC will ensure it has the necessary systems, processes and resources to deliver the new concessions process, as well as establishing new processes for monitoring compliance and enforcement. DOC will also provide information about the changes to regulated parties.

272. Additional operational guidance may be necessary to give effect to the proposals. This includes operational guidance to give effect to Treaty principles when DOC interprets and administers conservation legislation, in addition to any changes made that relate to, for example, engagement with Treaty partners or considering of Treaty rights and interests in decision-making.

How will the new arrangements be monitored, evaluated and reviewed?

273. DOC will be responsible for monitoring, evaluating and reviewing any changes. In addition, the planned second phase of this work provides a vehicle to make any adjustments if immediately needed.

274. The success of the proposal may not be known for several years. To measure the success or failure of the proposal, several key indicators can be used.

275. A key outcome will be the extent to which the proposal supports faster concessions processing. We would also expect to see shorter processing times for permissions, permits and concessions for businesses and community groups. DOC actively monitors application numbers and processing times, and this will continue to be a metric in assessing the efficiency of the new system.

276. As the proposed new statutory timeframes for concession processing align with DOC's new operational targets, reporting on the statutory timeframes can build on monitoring and reporting processes created for the operational targets.

277. Another key outcome will be the extent to which the concessions framework supports robust effects assessment. DOC currently monitors the extent to which PCL is maintained and improved. We would expect the proposal to support continued maintenance and improvement. This is measured through the level of indigenous dominance: ecological processes are natural – exotic species spread and dominance and ecosystem function (terrestrial, freshwater, marine).

278. A secondary measure will be the extent to which the proposal supports growth in recreation, tourism, economic activity, infrastructure development in some places, where appropriate.

279. The information emerging from monitoring will be included in DOCs usual accountability reporting (e.g. annual report) and will be used to inform any future policy development or legislative change to further improve the concessions framework.