



Department of Conservation  
*Te Papa Atawhai*

**To: Aaron Fleming, Director Operations SSI, Delegate of Minister of Conservation**

**From: Judi Brennan Permissions Manager as Delegate of Director General of Conservation**

**Date: 21 May 2021**

**REPORT TO DECISION MAKER PURSUANT TO SECTION 49 (2) (d) OF THE CONSERVATION ACT 1987; SUMMARY OF ALL OBJECTIONS AND COMMENTS RECEIVED IN RESPONSE TO PUBLIC NOTIFICATION, AND RECOMMENDATIONS AS TO THE EXTENT TO WHICH THEY SHOULD BE ALLOWED AND ACCEPTED.**

**Concession Application**

**Concession Applicant: Tourism Milford Limited  
Permission Number: 80053-GUI**

The purpose of this report is to provide you with:

- A summary of the objections and comments received.
- A recommendation as to the extent to which the objections and comments should be allowed or accepted.
- How suggestions from those submissions should be incorporated – e.g. special conditions, further information.

For the purposes of this report, submissions which are ‘allowed’ are submissions which are relevant for you to consider pursuant to the Conservation Act 1987. Allowed submissions are then analysed as to the extent to which they should be ‘accepted’ by the Minister. This requires consideration of:

- Information provided under Part 3B of the Conservation Act 1987, and relevant statutory management planning documents under Conservation legislation.
- Any new information or a perspective not previously considered.

The implications of allowed and accepted submissions are noted for you to assist you in forming a view ‘*before deciding whether or not to proceed with the proposal*’, pursuant to section 49(2)(e) of the Conservation Act 1987.

I note that any recommendation I, as the Director General’s delegate, makes to you in no way fetters your discretion in considering relevant issues.

## 1.0 BACKGROUND

The application is for a Lease, Licence and Easement from Tourism Milford Limited (TML) trading as Ultimate Hikes to continue operating multiday Milford Track Guided Walk operations, including activities that support and are integral to the operation. The application includes combining all existing activities within Fiordland National Park into one concession document for a term of 40 years.

Details of the operation include:

- Leasing land for accommodation facilities at 3 sites (Glade House, Pompolona and Quintin Lodge), various day and emergency shelter facilities along the Milford Track, associated water and fuel tanks, septic tanks, helipads, and telecommunication structures; bulk fuel storage at Deepwater Basin and Glade Wharf on Lake Te Anau.
- Guided walking, watercraft, (including barge activities on Lake Te Anau) and aircraft activities to support multiday walk activities.
- Easement for the right to convey water, right to drain sewage and wastewater at various locations.

The application was received on the 16<sup>th</sup> August 2019 and publicly notified on Thursday 23<sup>rd</sup> January 2020 on the website and in the Advocate South and on Saturday 25<sup>th</sup> January 2020 in the Otago Daily Times and the Southland Times, with the notification period closing on Tuesday 23<sup>rd</sup> February 2020.

One submission was received, and the submitter did not wish to be heard. No hearing was held. Copy of full submission [DOC-6222610](#).

## 2.0 DETAILS OF HEARING

N/A

## 3.0 SUMMARY OF KEY POINTS FROM WRITTEN SUBMISSIONS AND HEARING

We received one written objection as part of the public notification phase.

The objection was received from S. J. Martin (full submission is at [DOC-6222610](#)) who made comment on the following six areas:

- The 40-year period of concession proposed by the applicant.
- The aggregation of all operational functions under one concession.
- The proposed exclusive lease around land and buildings.
- Milford Track and the Milford Opportunities Project.
- There are no required performance standards in terms of client service, tangata whenua presence, employment contracts for the applicant to achieve over the term of the concession.
- This concession should be tendered.

## 4.0 ANALYSIS OF SUBMISSION

### 4.1 The extent to which the submissions be allowed.

A submission can be allowed if it is relevant to the matters to be considered under S17U(1).

In this case, the submission refers to the concession term, amalgamation of activities into one concession, exclusive use of land surrounding accommodation facilities, and the maintenance standard of existing buildings and facilities. These relate to the purpose for which the land is held (S 17U(3)) and to the nature and combined effects of the activity (S17U(1)(a), (b) and any measures that can reasonably and practicably be undertaken to avoid, remedy, or mitigate any adverse effects (S17U(1)(c)).

As the Ministers delegate, the Decision Maker must have regard to the effects of the activity.

That being the case, I recommend that this submission be **allowed**.

### 4.2 The extent to which the allowed submissions be accepted.

The submission has raised 6 issues that have been presented separately below to determine the extent to which each individual issue should be accepted.

Issue 1	Concession Term
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From the submitter's written submission –

*“The 40 year concession period is excessive and lenient, it would create a license for a continuous service monopoly on public land with no known required performance criteria other than compliance with current health, safety, conservation and infrastructure regulations....”*

Outcome being sought -

*Reduce the concession period to five years with rights of renewal subject to achievement of performance criteria.*

#### **Recommendation – to the extent to which the submission matter should be accepted.**

I recommend that this point be **accepted**. The submitter identifies potential impacts that may occur if the activity term of 40 years were to be approved. The Conservation Act allows for concession terms up to 30 years and the applicant as the incumbent concessionaire, has already held concessions for some (but not all) the activities for a term of 30 years. Consideration should be given to managing the activities and term in a more appropriate manner. The applicant is not proposing to undertake any new development during the term being sought and any term over 30 years requires the Minister to be satisfied that exceptional circumstances exist to consider a term over 30 years and not exceeding 60 years. As the Ministers delegate, the Decision Maker must have regard to the term of the activity.

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**Issue 2            Single Concession**

From the submitter’s written submission –

*“A single concession fails to account for the widely varying operational elements of the Milford Track - separate accommodation facilities, separate supply interfaces, separate transport types. Flexibility of concession structure allows for future regulatory change. A blanket 40-year concession imposes restrictions on change to future regulatory control, which is a certainty. Multiple concessions also allow for flexibility in compliance with other regulatory agencies....”*

Outcome being sought -

*Split the concession into separate concessions for each accommodation site, shelter, and transport activity.*

**Recommendation – to the extent to which the submission matter should be accepted.**

I recommend that this point be **accepted**. The submitter identifies potential impacts that may occur if the activities were combined into one concession were to be approved. The applicant has relied on other concessionaires to deliver the aircraft activity previously. Consideration should be given to managing the activity term in a more appropriate manner. As the Ministers delegate, the Decision Maker must have regard to the effects of the activity and the appropriateness of combining all of the activity elements into one concession.

**Issue 3            Exclusive lease around land and buildings**

From the submitter’s written submission -

*“The proposed exclusive lease to include the space between land and buildings is unjustifiable on the basis, of, the arguments presented by the applicant.... The applicant has not declared what might happen in these spaces over 40 years. One could speculate that this is an attempt to bar independent walkers from the concession holder’s accommodation environs to facilitate the exclusive privacy of their clients. This is public land, and independent walkers have a legitimate interest in historic structures that were once in public ownership such as Glade House. Hazardous operations for example helicopter landings are unlikely at the time walkers are in the vicinity, and even if they are temporary means of exclusion from operational zones for safety can easily be agreed with DOC.... It is accepted that independent walkers are not permitted to use the applicant’s facilities, this can be easily managed by effective briefing. Pompolona Lodge is off the main track, so it does not receive high volume opportunist visits from independent walkers anyway.”*

Outcome being sought -

*Decline the applicant’s proposal to define an exclusive lease area.*

**Recommendation – to the extent to which the submission matter should be accepted.**

I recommend that this point be **accepted**. The submitter identifies potential impacts that may occur on public access if the accommodation activity lease footprint is extended over the land areas in and around the buildings were to be approved. Under s17U(6), no lease may be granted unless the applicant satisfies the Minister that exclusive possession is necessary for (a) the protection of public safety; or (b) the

protection of the physical security of the activity concerned; or (c) the competent operation of the activity concerned. As the Ministers delegate, the Decision Maker must have regard to the effects of exclusive possession for the activity.

<b>Issue 4</b>	<b>Integrated approach to managing Milford Sound / Piopiotahi</b>
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From the submitter's written submission -

- (a) *"The multi-agency Milford Opportunities Project has a vision: Piopiotahi - New Zealand as it was, forever - A moving experience: visitors experience the true essence, beauty and wonder of Milford Sound Piopiotahi - Visitors are offered a world class visitor experience that fits with the unique natural environment and rich cultural values of the region...*
- (b) *Similarly the Southland Murihiku Conservation Management Strategy 2016 section 2.2.6b seeks to 'develop and sustain an integrated approach to managing Milford Sound / Piopiotahi, and access to it as an icon destination, thereby enhancing its international reputation'. These statements overlap and express a comparable aspirational goal for visitors' experience of Milford Sound...*
- (c) *Because the Sandfly Point – Freshwater Basin transfer is on water it is outside the jurisdiction of this application. However it is undeniable that this transfer is a key part of the Milford Track experience for both the applicant's clients and independent walkers, and crucially it is also the first experience of Milford Sound Piopiotahi and a climax location for all Milford Track walkers. The water taxi fails to meet the criteria of both the CMS and MOP extracted above, so DOC should be mindful of this in its handling of both policy documents...*
- (d) *Similarly, the accommodation facilities operated by the applicant show all the signs of additive development, and repeat maintenance in a challenging environment. These buildings may be considered inadequate well before the expiry of the concession period applied for, yet no mention of this is made in the application, or any mention of a bond lodged for ongoing maintenance if the applicant should fail to maintain their assets on public land or fail as a going concern."*

Outcome being sought -

- (a) *Include the Milford Track Guided Walk in the scope of the Milford Opportunities Project.*

**Recommendations – to the extent to which the submission matters should be accepted.**

I recommend that point 4(a) **not be accepted**. This issue is not a relevant consideration or effect that the Minister can consider. The Milford Opportunities Project sits outside of the current legislation and planning documents.

I recommend that point 4(b) **not be accepted**. While the Southland Murihiku Conservation Management Strategy 2016 includes a general statement regarding aspirations for the development of an integrated approach to managing Milford Sound / Piopiotahi. The activities have already been identified as existing activities occurring within the Fiordland National Park Management Plan. This issue is not a relevant consideration or effect that the Minister can consider.

I recommend that point 4(c) **not be accepted**. The submitter has made a general statement regarding the performance of the water taxis and does not identify how the water taxi fails to meet the criteria of the CMS. While the transfer of clients between Sandfly Bay and Freshwater Basin does form part of the activity, the issue is not a relevant consideration or effect that the Minister can consider.

I recommend that point 4(d) **be accepted**. The submitter identifies potential effects on the maintenance and additive development of the accommodation buildings if the 40-year term were to be approved. As the Ministers delegate, the Decision Maker must have regard to the effects of building additions for the activity.

<b>Issue 5</b>	<b>Performance standards</b>
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From the submitter's written submission -

*"A commercial operation which is granted a service monopoly to an iconic visitor destination in a New Zealand National Park should be subject to a minimum and reviewable service standard criteria for transport, accommodation building, hospitality services, employment contracts and guiding services. These are not declared in this application and are a notable omission."*

Outcome being sought -

*Establish independently reviewable minimum performance criteria for the applicant to cover accommodation facilities, transport services, hospitality services, guiding services and employment contracts. If performance criteria are not achieved, have a progressive system to monitor improvement within a limited time period with penalties for non compliance, which could go as far as terminating the concession and re-tendering the service to alternative providers.*

**Recommendation – to the extent to which the submission matter should be accepted.**

I recommend that this point be **accepted**. The submitter identifies the potential visitor experience impacts that may occur if this activity were to be approved. Concession contracts contain minimum standards for health and safety; aircraft use and building maintenance conditions. Consideration should be given to ensure these effects are managed appropriately. As the Ministers delegate, the Decision Maker must have regard to the effects of all aspects of the activity.

<b>Issue 6</b>	<b>Concession should be tendered</b>
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From the submitter's written submission -

*"National Park Management plan reviews for Aoraki Mount Cook and Fiordland National Parks have been delayed, my understanding is that DOC is reviewing the relevance of Te Tirit o Waitangi to these plans. With this being the case, and considering the history of the Milford Track area, there is no mention of the role of tangata whenua in this application, such as in an affirmative action employment policy or standard."*

Outcome being sought -

*DOC should review its monopoly concession policy to open concessions of this type to a competitive tendering process subject to a broad range of performance criteria.*

**Recommendation – to the extent to which the submission matter should be accepted.**

I recommend that this point **not be accepted**. A statement or policy change to the Fiordland National Park Management Plan is not a relevant matter the Minister can consider.

**5.0 APPLIANTS RIGHT OF REPLY**

With no hearing required a copy of the submission was provided to the applicant. A right of reply dated 9 April 2020 (full reply [DOC-6664837](#)) was provided in response to each of the 6 points raised by the submitter and these have been summarised in the table below.

**Applicant’s Right of Reply – in response to Issue 1**

TML is unclear if the submitter is suggesting five-year periods with rights of renewal to equal 40 years. TML provided clarification for the purpose of comprehensiveness in response to the submission by:

- Outlining the provisions of S.17Z (1) and S.17Z (3) of the Conservation Act.
- Restated reasons for the term as provided for in the original application.
- Outlining S.17U of the Conservation Act does not expressly state that ‘performance criteria’ or similar should be considered by the Minister.

TML provided a list of Awards achieved through Qualmark, and an explanation of the status Qualmark has within the New Zealand tourism industry as described in the original application.

Additionally, TML are members of the New Zealand Outdoors Instructors Association (NZOIA). An organisation providing education and promoting excellence in outdoor leadership.

**Applicant’s Right of Reply – in response to issue 2**

TML considers that one concession contractual agreement is not only a legal function but is the most practical and efficient way to manage the proposed concession activities if it is approved.

- S.17X of the Conservation Act gives powers to the Minister to impose and enforce appropriate concession conditions when granting a concession.
- The concession contract can account for and manage the varying operational elements of the proposed concession activity through appropriate standard and special concession conditions.

**Applicant’s Right of Reply – in response to issue 3**

TML has provided, together in the original application and the response to the request for further information from the Department, details that support an application to include the land in and around the structures. The pertinent points are that; the land is integral to the competent operation of the activity, including the safe and successful carrying out of repair and maintenance; the safety of all visitors to the areas of the accommodation sites and the appropriate mechanism to manage this; the security and safety of the buildings and chattels for multiple reasons; and for the effective, rationalised management of any developments within the proposed lease area that can be regulated through appropriate concession conditions, if it is granted.

As the submitter points out, there is no plan for improvements over the proposed 40-year term included within the application, as it was not judged necessary. However, repair and maintenance are a considered measure for each one of the assets that TML owns and operates for the multiday guided walk. Any development/improvement would trigger an application to the Department and would not circumvent appropriate consideration.

#### **Applicant's Right of Reply – in response to Issue 4**

As previously mentioned, repair and maintenance are a considered measure of TML's operation management. The application, including the further information provided as a response to the Department's request, describes how integral repair and maintenance are to the operation.

- The submitter is accurate in stating the facilities show signs of 'additive development', if by that terminology the submitter means that over time TML has improved its facilities gradually and individually at the lodge sites.
- Reasons for this developmental approach of the facilities is simply the nature of the activity. This method is the most economically sound when delivering structural development within regulated parameters and requiring extensive resources. Any planned or proposed development, outside of the repair and maintenance schedule required for statutory compliance, would be submitted to the Department for consideration and approval prior to any implementation.

#### **Applicant's Right of Reply – in response to Issue 5**

As a responsible, successful, and persevering business operator TML is also conscious of providing a superior service level in every characteristic of its operation to its visitors and for all who interact with the operation. As aforementioned, TML have received a Gold Sustainable Tourism Business Award from Qualmark, representing the quality and standard of product TML delivers as a leading tourism business operator in New Zealand. This independent evaluation... occurs annually.

- The submitter has mentioned in several of its submission points the performance criteria concern, directly relating this to the limited opportunity situation (monopoly) that is evident for multiday guided walking on the Milford Track.
- The current Fiordland National Park Management Plan (FNPMP) provides a strong management direction that there is to be only one multi-day guided walk operator on the Milford Track. The FNPMP also provides management direction on limited opportunity situations, where concession opportunities need to be limited on conservation grounds. In accordance with the relevant legislation, the Department may tender applications, applications may be invited, or other actions may be carried out that encourage specific applications.
- TML has a minimum expectation, as the incumbent operator on the Milford Track for over 30 years and with significant investment and interest in not only the current infrastructure but the planning and preparation for future operations, that if the Department were to carry out any of those actions it would indicate the intention to TML years in advance.

#### **Applicant's Right of Reply – in response to Issue 6**

- As previously mentioned above, the FNPMP provisions enable the Department to enact a concession management approach that may include the option of tendering the multiday guided walk opportunity on the Milford Track. TML reinforces its position that if the Department entertained considering this option, or any other, it would expect indication of this at the initial stages.

- In response to the comment relating to the role of tangata whenua, the application by TML speaks to the obligations and accountabilities of section 4 of the Act as they relate to the current statutory planning and management instruments, such as the General Policy National Parks 2005 and the Fiordland National Park Management Plan 2007.
- Additionally, the application identifies and recognises the significance the track and the national park are to Ngāi Tahu .
- While the application does not speak to it, TML is an equal opportunity employer in accordance with New Zealand employment laws.
- TML has indicated throughout the application that it is willing to collaborate with papatipu rūnanga regarding the preservation and enhancement of the cultural values associated with the track and national park.

## 6.0 RECOMMENDATIONS

Pursuant to SI7U(1)(f) of the Conservation Act 1987, I have made recommendations to you in respect of the extent to which submissions should be (i) allowed and (ii) accepted, which I have summarised in the table below where relevant, this considers the applicants right of reply.

### Summary of issues raised in submissions and recommendations on acceptance

<b>Submitter Issues</b>	<b>Summary of Submitters Issues</b>	<b>Recommendation</b>
Issue 1: Concession term	The 40-year period of concession proposed by the applicant.	Accept
Issue 2: Single concession	The aggregation of all operational functions under one concession.	Accept
Issue 3: Exclusive lease	The proposed exclusive lease around land and buildings.	Accept
Issue 4a: Integrated approach	Milford Track and the Milford Opportunities Project.	Do not accept
Issue 4c: Integrated approach	The Southland Murihiku Conservation Management Strategy 2016 section 2.2.6b seeks to 'develop and sustain an integrated approach to managing Milford Sound / Piopiotahi.	Do not accept
Issue 4c: Integrated approach	The water taxi fails to meet the criteria of both the CMS and the Milford Opportunities Project vision.	Do not accept
Issue 4d: Integrated approach	Accommodation facilities operated by the applicant show all the signs of additive development, and repeat maintenance in a challenging environment.	Accept

Issue 5: No performance standards	There are no required performance standards in terms of client service, tangata whenua presence, employment contracts for the applicant to achieve over the duration of the concession.	Accept
Issue 6: Tender concession	This concession should be tendered.	Do not accept

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Judi Brennan, Permissions Manager  
 Delegate of the Director General of Conservation as Manager of the notification process

Date: 24/05/2021

Recommendation:

- Note the summary of objections and comments received during the public notification process:  
 Yes /  No
- Note the recommendations as to the extent to which objections and comments should be allowed or accepted:  
 Yes /  No
- Note the recommendations on further information to be considered:  
 Yes /  No

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Aaron Fleming, Director Operations SSI - Delegate of the Minister of Conservation

Date: 20 September 2022

