

20 April 2023

[REDACTED]
[REDACTED]

Tēnā koe [REDACTED]

Thank you for your email of 21 February 2023 requesting information relating to how the Department of Conservation (the Department) may incorporate Te Tiriti o Waitangi/Treaty of Waitangi obligations and commitments in our organisational policies and practices. Your request has been considered under the Official Information Act 1982 (OIA).

You requested the following information:

Can you please send me any information (specifically looking for examples of policy, guidelines, report, instruction, templates, frameworks) as to how Te Tiriti o Waitangi and/or The Treaty of Waitangi, including any principles are applied, or considered or analysed in the creation, development or review of policies and practices at the Department.

On 17 March 2023, we extended your request to 20 April 2023, as consultations necessary to make a decision on your request are such that a proper response could not reasonably be made within the original time limit.

Your question and our response is listed below:

1. [...] *how the Department may incorporate/embed/give effect to Te Tiriti o Waitangi/Treaty of Waitangi obligations and commitments in its organisational policies and practices. Can you please send me any information (specifically looking for examples of policy, guidelines, report, instruction, templates, frameworks) as to how Te Tiriti o Waitangi and/or The Treaty of Waitangi, including any principles are applied, or considered or analysed in the creation, development or review of policies and practices at the Department.*

The Department considers its Treaty obligations in all policy development and implementation as required by Cabinet Circular CO (19)5 (October 2019). Te Arawhiti guidance encourages policymakers to, 'consider the Treaty early in the policy process and to think about the broad range of options available to reflect the Treaty relationship – both legislative and non-legislative.' Our briefing templates include a specific section on Treaty considerations.

The Department has prioritised key pieces of work in the policy work programme that cover a range of Treaty-related issues.

a. The partial reviews of the Conservation General Policies and General Policy for National Parks (the general policies)

In 2019, in response to the Ngāi Tai ki Tāmaki decision, the whole-of-government response to Wai 262, and the Government's priority to build closer partnerships with Māori, the Minister of Conservation, and the New Zealand Conservation Authority (NZCA) initiated concurrent partial reviews of the general policies. The aim of this work is to give better effect to section 4 of the Conservation Act 1987 by ensuring our Treaty responsibilities are both visible and easy to understand within the general policies.

b. Wildlife Act Review

In October 2021, Cabinet agreed to a phased approach to conservation law reform, starting with a first principles review of the Wildlife Act 1953. Included as one of the three major driver of this change is, 'the Māori–Crown partnership in conservation needs to be reset in a way that recognises contemporary partnership approaches and considers the post-settlement environment.'

c. Conservation Management and Processes Bill

The Bill contains targeted legislative amendments to enable a more proactive approach to concessions management. The proposed amendments will enable the Department and Treaty partners to engage on concessions management matters at a system-level, rather than through ad-hoc responses to specific applications.

The Bill also addresses a legislative ambiguity around allocating concession opportunities. Competitive allocation processes provide an opportunity for Treaty partners to inform criteria and desired outcomes, as well as enabling the Department to consider a degree of preference for tangata whenua applicants in a more robust and transparent manner.

d. Section 4 of the Conservation Act 1987 principles in all of our work

Section 4 of the Conservation Act 1987 reads, 'This Act shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi.'

For practical purposes, the Treaty principles most relevant to our work are:

- ***Partnership - mutual good faith and reasonableness***

The Crown and Māori must act towards each other reasonably and in good faith. These mutual duties of reasonableness and good faith describe the nature of the relationship between the Crown and Māori. They are the core of what has been described as the Treaty partnership. This principle is about how the Crown should behave to Māori and Māori to the Crown.

- ***Informed decision-making***

Both the Crown and Māori need to be well informed of the other's interests and views. When exercising the right to govern, Crown decision-makers need to be fully informed. For Māori,

full information needs to be provided in order to contribute to the decision-making process. This is connected closely to the principles of good faith and active protection. Consultation is a means to achieve informed decision-making.

- **Active protection**

The Crown must actively protect Māori interests retained under the Treaty as part of the promises made in the Treaty for the right to govern. This includes the promise to protect tino rangatiratanga and taonga. Active protection requires informed decision-making and judgement as to what is reasonable in the circumstances.

- **Redress and reconciliation**

The Treaty relationship should include processes to address differences of view between the Crown and Māori. The Crown must preserve capacity to provide redress for proven grievances from not upholding the promises made in the Treaty. Māori and the Crown should demonstrate reconciliation as grievances are addressed.

- **Honourable Treaty Partner Framework**

With the implementation of a new organisational strategy in 2022, being an honourable Treaty Partner is the foundation for everything we do to achieve shared outcomes with whānau, hapū and iwi.

When and how we work together with whānau, hapū and iwi is dependent on a number of factors. The main factors are, commonly, shared goals and priorities, Treaty obligations and requirements, and the status and stage of settlements.

We have the strongest obligations in law, to give effect to the principles of Te Tiriti o Waitangi/Treaty of Waitangi under section 4 of the Conservation Act 1987. A commitment to being an honourable Treaty Partner needs to be the foundation for everything we do, alongside the Treaty Principles.

The Honourable Treaty Partner Framework is currently being developed.

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Department's website.

Nāku noa, nā

Tame Malcolm
Deputy Director-General, Treaty Relationships
Department of Conservation
Te Papa Atawhai