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Department of Conservation

Treaty Partner Issues and Options Paper

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Tēnā koe Steven

Thank you for the opportunity for Deloitte Hourua Pae Rau (we or us) to prepare the attached Treaty Partner Issues and Options paper (the Paper) in respect of the review you are undertaking into the Percentage Revenue Framework (PRF). The PRF review provides the Department of Conservation (DOC) with an opening to engage with your Treaty Partners on whether the PRF is 'fit for purpose' from a Treaty Partner perspective.

This Paper summarises the themes, insights, observations and issues in relation to the rental (concession activity fee) for businesses operating on public conservation land (PCL) based on our knowledge of the Māori sector, our literature review and two wānanga conducted with Treaty Partners selected by DOC (a list of the wānanga participants is provided in Appendix A3 as per the CSO).

Neither this Paper or the two wānanga are intended to replace direct public engagement by DOC with it's Treaty Partners on the review of the PRF. We also draw your attention to Appendix A1 titled 'Restrictions and Disclaimer' in which we refer to any limitations that this report is subject to.

We also note for your attention, due to the nature of the Treaty Partners connection to PCL and their Treaty relationship with the Crown, their input and perspectives extended further than the PRF fee structure. We have also captured these themes within the paper for your consideration.

We take this opportunity to also thank the Pou team whose input prior to the wānanga with Treaty Partners provided necessary contextual direction. We trust you will find the information in this document beneficial and look forward to working further with you and DOC in the future.

Nāku noa, nā

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Executive Summary

Executive Summary

Purpose

The Department of Conservation (DOC) is currently reviewing its fee structure for activity fees that are determined by a percentage of revenue earned through a concession. This method is called the Percentage Revenue Framework (PRF). The purpose of the review of the PRF is to identify and implement a transparent and fair mechanism for assessing the rentals for approved commercial activities on public conservation land (PCL) (DOC, 2020).

The purpose of this paper is to inform the beginning of the review of the PRF with a Treaty Partner perspective. We note that specific engagement with Treaty Partners as part of the wider review process is intended. Neither this Paper or the two wānanga are intended to replace direct public engagement by DOC with its Treaty Partners on the review of the PRF.

In particular, it provides issues and insights from the Treaty Partner perspective in relation to the determination of DOC's concession activity fee for operating businesses on PCL. This paper also highlights the broader issues that emerged during the wānanga[1] with Treaty Partners.

Desktop Research

New Zealand review

This sections reports past issues that raise a number of considerations for the PRF review, including:

- The Ngāi Tai ki Tāmaki v Supreme Court case raising matters involving Treaty Partners in the handling of current and future concession applications by DOC, consideration of The Treaty of Waitangi (TToW) with respect to Section 4 of the Conservation Act 1987, and in broadening the scope of the PRF review to consider the application and granting processes of concessions.
- The Minister of Conservation's response to the above case, highlighting the need to review the approaches to allocating PCL in resource constrained situations, and the need to work towards designing a framework that involves Treaty Partners in decisions.

International Review

We conducted desktop research on Australia and Canada in particular, and we were unable to find specific examples of the indigenous perspective on relevant fee setting frameworks. However, three case studies are presented to demonstrate models and policies that may be applicable for this review, which include:

- Indigenous Protected Areas and land and sea management - Balangarra, Kimberley Region
- Government owned protected areas – reduced or zero fee policies for customary activities
- Jointly managed protected areas – The Uluru/Kakadu Model

Treaty Partner Perspectives

Two wānanga were facilitated with Treaty Partners to capture the Treaty Partner perspective of the issues with determining concession activity fees.

Some of the issues raised by Treaty Partners were concerned with reforming the formal concession application and approval process, and the allocation of concession revenue. On the following slide we show a summary of the key issues and options directly related to the PRF and the broader, more important issues to Treaty Partners, with options for DOC to consider as part of this review.

Executive Summary | Insights, Observations and Options

Key

	Direct connection to the PRF
	Indirect connection to the PRF

No alignment to Mātauranga Māori

Issue
- PRF neither contains or refefences the knowledge systems of Māori, or customary practices of iwi

Option
- Amend PRF formula to include Māori dimensions
- Consider introducing cultural training courses run by iwi to educate commercial concessionaires about mātauranga Māori

Giving effect to section 4 of the Conservation Act 1987 in the PRF

Issue
- The current PRF does not reflect the requirements of section 4 of the Conservation Act 1987

Option
- Consider including the principles of TToW in the PRF formula
- Engage the DOC legal team to provide legal advice on the application of Section 4 of the Conservation Act 1987 to the PRF

Subjectivity in the formula

Issue
- The application of the 'premium' factor is subjective. Treaty Partners would like 'uniqueness of rohe' recognised in the fee

Option
- Consider reviewing the measure of the 'premium' factor in particular
- Co-design with iwi how to appropriately reflect the 'uniqueness of rohe' (which includes Te Ao Māori elements)

Zero fees for customary activities (commercial and non-commercial)

Issue
- Treaty Partners stated that it is a customary right to conduct cultural activities in their rohe

Option
- Consider Australian examples where customary activities are able to be carried out for no fee
- Note: customary activities includes commercial and non-commercial activities

Cultural impact and exclusive concessions

Issue
- Exclusive concessions negate or over-ride Treaty Partners' ability to practice cultural activities or apply for concessions themselves
- Adverse outcomes can hinder tribal development

Option
- Consider the inclusion of non-financial indicators that measure cultural outcomes for mana whenua

Designing a new PRF

Issue
- Overall, Treaty Partners currently have little involvement in the process of granting, fee setting, and monitoring, of concessions

Option
- Consider iwi able to manage and grant concessions by using a 'first hurdle' Te Ao Māori approach
- Co-design a new concession fee framework that DOC continues to administer

Exclusive rights for commercial activities

Issue
- Exclusive concessions and preference for mana whenua to hold concessions is an important aspect of giving effect to TToW

Option
- Consider providing mana whenua the option of exclusive use of their land in carrying out commercial activities
- Alongside this, consider providing a fee discount or no charge

Joint-management / Partnerships for PCL

Issue
- There is a strong desire for Treaty Partners to be brought into the design and decision-making regarding PCL

Option
- Consider utilising a co-design approach when developing the future PRF formula
- Consider investigating the Australian National Reserve System and its governance models

Data Limitations

Issue
- DOC does not currently ask or record iwi/hapū information about concessionaires

Option
- Design new application forms to capture data
- Investigate support from wider data infrastructure capabilities within DOC

Allocation of PCL Income

Issue
- DOC is unable to trace where fee revenue is distributed. Treaty Partners want this this money invested back into the rohe that it was generated from

Option
- Consider resolving the data limitation issue
- Formulate an allocation model co-designed with iwi/hapū

Introduction

Introduction| Purpose and Background

The purpose of this paper is to inform the review of the Percentage Revenue Framework (PRF) with a Treaty Partner perspective

Purpose

DOC is currently undertaking a review of its fee structure for activity fees that are determined by the PRF. The aim of the review is to examine its ongoing relevance in the current New Zealand context and ensure that fees are fair, transparent, and set at an appropriate market rate. The process of the review includes DOC considering the issues, options, and feedback from review participants, to determine a preferred option to replace the PRF (Deloitte, 2020).

The purpose of this paper is to inform the review of the PRF from a Treaty Partner perspective. In particular, we provide a summary of:

- themes, insights, issues, and observations from the perspectives of Treaty Partners,
- a high-level national literature review to identify relevant issues in relation to the review of the PRF, and
- A high-level Australian literature review that highlights approaches for DOC to consider for working with iwi and granting and setting fees.

An important component of the review process is to gain an understanding of the issues with determining concession activity fees from a Treaty Partner perspective. Treaty Partners have a strong connection spiritually and physically to the land and play a role as kaitiaki (guardians) to preserve and protect whenua and taonga (land and other associated treasures) within PCL in their area.

DOC also has a legislative obligation to ensure that the review process and outcome respects the principles of TToW by consulting iwi and incorporating their perspectives into the preferred option. The relevant legislation is Section 4 of the Conservation Act 1987, "*which features one of the strongest weightings of Treaty of Waitangi principles in legislation"* (Minister of Conservation, 2019):

> *"This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi."*

Section 4 requires the Minister of Conservation and DOC to give effect to the principles of the Treaty of Waitangi in the interpretation and administration of the Conservation Act 1987 (including all enactments listed in Schedule 1 of the Act). It is also necessary to consider the issues with the PRF more broadly. From an indigenous perspective, the fee structure is only one factor that is under review. Therefore, this paper also provides insights into the perspectives of Treaty Partners about the use, management, and administration of PCL, including decision-making, allocation of fee revenue, and the process by which concessions are granted.

Background

Public conservation land

One third of New Zealand is held as PCL and managed by the Department of Conservation. PLC is land that is protected for the purpose of conserving areas of our natural and historic landscapes inhabited by native plants and animals, for future generations. The land has different categories of protection which are determined by the status the land holds under the various legislation. These categories include national parks, wildlife areas, reserves and conservation areas. Although access to and use of PCL is generally open and free to the public, activities that generate a specific gain or reward for an individual or organised group, must apply to DOC for a concession and a reasonable charge is imposed (DOC, 2020). The conservation legislation permits the public to carry out such activities on PCL if a concession for that activity has been applied for and subsequently authorised by DOC under the Conservation Act 1987 (Deloitte, 2020).

Concessions

In a nutshell, a concession is a lease, license, permit or easement for the use of PCL to carry out an approved commercial activity. A concession is generally granted on a first-come-first-serve basis and is considered by DOC based on the contents of each respective application (and possibly some background checks). For instance, DOC will take into consideration the nature and effect of the proposed activity, structure or facility, and the measures proposed to avoid, remedy or mitigate potential adverse effects on the environment, the proposed duration of the concession, and whether the applicant is able to carry out the concession, lawfully and appropriately. DOC may request environmental impact assessments, audits or reviews, and may use public submissions and other relevant information to inform their decision. Concession terms can extend from 10 years up to 60 years, depending on the type of concession applied for (Deloitte, 2020).

Percentage Revenue Framework

DOC administers a range of approaches that determine the fee to charge a concessionaire. These fee types include fixed, per person, and percentage per revenue. Subject to this review is the latter fee structure, the PRF. In 2019, concessions generated a total of $27.3m for Crown revenue, and the PRF accounted for 30% ($8.2m). The PRF is used to estimate a market-based royalty or rental for each concession in the sense that the fee is calculated based on a percentage of concessionaires' gross revenue. It is mainly used for high revenue generating activities and services. Nationally the average fee is 4.5%, with guiding services paying the highest average fee of 6.95%. This fee structure has been employed for over three decades, however, the current framework has been in place for the past five years. For more detail about concessions in general and the PRF within the context of this review, please refer to the "Percentage Revenue Framework Issues and Options Paper" (2020) prepared by Deloitte and available on the DOC website.

Introduction| Approach

We specifically draw on the principles of TToW and Mātauranga Māori to understand and communicate the issues and options with determining concession activity fees

Research Framework

The research for this Paper was undertaken employing a Kaupapa Māori research approach. Kaupapa Māori Research is research for Māori by Māori. Iwi have a direct connection to this research spiritually and culturally, therefore it draws on a range of principles to capture, critique and conceptualise data and findings from Te Ao Māori (the Māori world) view. We specifically draw on the principles of TToW and Mātauranga Māori to understand and communicate the issues and options with determining concession activity fees (Tuhiwai-Smith).

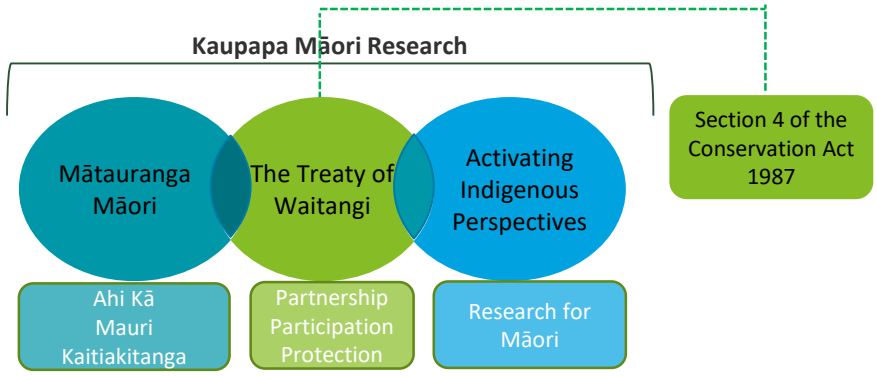
Te Tiriti ō Waitangi (The Treaty of Waitangi) Principles

These principles form the centre of Treaty Partner perspectives and the framework within which DOC is required to effectively consider for all decisions about PCL. Māori are the traditional owners of PCL and the history behind the land inherently aligns with thoughts, feelings, connections, redress and grievances of Māori. TToW therefore provides a basis through which we critically analyse relationships, challenge the status-quo, and affirm Māori rights. The core principles applied through this research are as follows:

- Partnership – we partner with DOC, Treaty Partners and Pou to value the taonga each other brings.
- Protection – we respect the anonymity of participants and Māori knowledge, values and language.
- Participation and Equity – although we could not invite every Treaty Partner due to resource restrictions, we took an equitable approach to the selection, aiming to capture a wide range of perspectives.

Mātauranga Māori

Mātauranga can be defined as "the knowledge, comprehension, or understanding of everything visible and invisible existing." In general form, Mātauranga Māori is the Māori way of being and engaging in the world. It employs kawa and tikanga to critique, examine, analyse and understand the world.



Data Collection Method

Desktop Research

We researched and reviewed a range of national and international secondary resources that provided insights into, and options for determining concession activity fees for the use of PCL. We also considered the systems that surround concession fee frameworks. This review was carried out from an indigenous perspective and broadly considers the environmental/ecological impacts and implications of concessions.

Wānanga | Focus Groups | Kānohi Kitea

Kānohi ki te kānohi is about face-to-face meetings and is regarded by Māori as critical when one has an important 'take' or purpose. This form of consultation allows people to use all their senses as complementary sources of information for the research. Three focus groups were carried out online using a series of open ended questions and encouraging an open dialogue. To capture perspectives, we used an interactive software tool called Nureva. The questions are outlined in the Wānanga section.

Pou Wānanga

One Wānanga with DOC staff from the Kāhui Kaupapa Atawhai Team was held which provided initial insights and observations to carry forward and continue exploring in the Treaty Partner Wānanga.

Treaty Partner Wānanga

Two wānanga were held with Treaty Partners to gain their perspectives of the PRF for commercial activities on PCL.

Data Collection

Desktop Research	Pou Wānanga	Treaty Partner Wānanga
Desktop research on conservation estate issues and themes from an indigenous perspective	Focused workshop with DOC staff from Kāhui Kaupapa Atawhai team	Focused workshop with Treaty Partners

Desktop Research

Desktop Research – New Zealand Review

New Zealand research focused on the Ngai Tai decision which provides important guidance for DOC moving forward in partnership with iwi

Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation (2018)

Ngāi Tai ki Tāmaki iwi are mana whenua of Rangitoto and Motutapu and sought review of two decisions by DOC, which granted concessions for commercial tour operations on the islands. Ngāi Tai ki Tāmaki at the time had outstanding Treaty claims over the islands. The iwi argued that DOC had not properly given effect to TToW principles of partnership, active protection, right to development, and redress. We note from the Supreme Court case, the views expressed by Ngāi Tai:

- "DoC was obliged not to grant concessions to other parties as part of its duty of active protection of Māori interest".
- "granting other concessions would limit or remove opportunities for Māori, whether economic or otherwise".

The Supreme court decision highlights that:

- DOC is required in some circumstances to show iwi a degree of preference when granting commercial rights.
- Section 4 is a powerful Treaty clause because it requires the decision-maker to give effect to the principles of the TOW.
- Section 4 requires more than procedural steps. Substantive outcomes for iwi may be necessary including, in some instances, requiring that concession applications by others be declined.
- Enabling iwi or hapū to reconnect to their ancestral lands by taking up opportunities on the conservation estate (whether through concessions or otherwise) is one way that the Crown can give practical effect to Treaty principles.

The Government has acknowledged that the capabilities of the public sector need strengthening with respect to understanding what partnership and protection looks like with iwi/Māori. Te Arawhiti portfolio aims to rectify this. The Minister of Conservation acknowledged that DOC need to consider more actively the importance of TToW principles in decision-making and the role that iwi/Māori partnerships can play in the development of conservation outcomes (Office of the Minister of Conservation, 2019).

Office of the Minister of Conservation (2019). Responding to the Ngāi Tai ki Tāmaki Supreme Court decision and giving effect to Treaty Principles in Conservation

The Minister of Conservation responded to the Ngai Tai case outlining that "iwi/Māori and others have raised questions about allocation approaches in resource constrained situations, particularly in instances where Treaty Settlements acknowledge the interests of iwi/hapū in particular areas or in specific species (e.g. Mānuka)" (Officer of the Minister of Conservation, 2019).

There is still a need to review allocation approaches in resource constrained situations to preserve the environment but also to work with Treaty Partners to align with the aspirations of the rohe. The broader implication for the PRF review is that it demonstrates a further the need to consider the wider landscape of a concession to work towards a model that involves Treaty Partners in decisions regarding allocation of PCL.

Desktop Research - Australian Review

Australia has a pioneering approach to governance and management of PCL, providing a range of approaches for consideration

Australia

National Reserve System (NRS)

The Department of Agriculture, Water and the Environment (2021) is the Australian equivalent to DOC. It holds the federal oversight over the National Reserves which is Australia's network of protected areas (PA). The National Reserve System (NRS) includes over 12,000 PAs spanning 19.7% of Australia (over 151 million hectares, per the table below). It is made up of:

- Commonwealth reserves,
- State and territory reserves,
- Indigenous lands,
- PAs run by non-profit conservation organisations, and
- Ecosystems protected by farmers on their private working properties.

Australia has a pioneering approach to governance and management of PAs while by comparison, New Zealand has been slower to adopt change for PCL. In particular, indigenous people own PAs and are actively involved in the management and governance of PAs. The table below highlights the ownership breakdown of the NRS. Governance means "management and decision-making responsibility."

Ownership of PAs

Governance	Number of PAs	Total area (ha)	Proportion of total PA	Percent of Australia	Average size (ha)
Indigenous (IPAs)	75	66,880,819	44.06%	8.7%	891,744
Government	6,686	63,889,747	42.09%	8.31%	9,556
Joint	2,323	12,274,084	8.09%	1.6%	5,284
Private	2,968	8,742,851	5.76%	1.14%	2,946
Total	**12,052**	**151,787,501**	**100%**	**19.74%**	**12,594**

Source: Collaborative Australian Protected Area Database - CAPAD 2018

Indigenous Protected Areas (IPAs)

IPAs, commenced in the late 1990s, are areas of land and sea owned and managed by indigenous groups of the land as PAs for biodiversity conservation through voluntary agreements with the Australian Government. A significant proportion of PAs are governed by indigenous people. There are 75 dedicated IPAs covering over 66 million hectares, and accounting for more than 44% of the NRS. IPAs form the largest component of the NRS and the individual PAs are typically large with an average size of 891,744 hectares.

The IPA model can provide a feasible and effective way for protecting and preserving the ecological landscapes while working towards developing social and cultural enterprises. It promotes indigenous leadership and recognition of indigenous rights to customary land.

Some groups are using their IPAs to develop tourism businesses, immersion experiences, and to undertake environmental projects and research contracts. Meanwhile, one of the mechanisms used to create revenue for indigenous land managers is the Fee for Service for Indigenous Rangers (Commonwealth of Australia, 2018). Among others, we discuss this approach on the next page.

Government owned protected areas

The Australian national, state, or local government publicly own and manage more than 42% of the NRS on mainland Australia (8.1% of Australia). They comprise over 6,600 PAs and cover over 63 million hectares. This component of the NRS has similar key features to those evident in the DOC's governance and management of PCL in New Zealand.

Jointly managed protected areas

Joint management, commenced in the late 1970s, means the establishment of a legal partnership with a co-management structure that reflects the rights, interests and obligations of both the indigenous owners of the park and the relevant Government (Lawrence, 1997). Over 2,300 PAs are jointly managed by the Australian Government and indigenous groups spanning 12 million hectares and 1.6% of Australia. Generally, several representatives share in the decision-making authority, responsibility and accountability of the PA, however, joint management models differ according to several aspects, including the existence and provision of a lease, and the provisions in the relevant legislation. The structure is usually set up by way of a joint management committee, which includes traditional owner / indigenous representatives and Government, and began in the northern territory in response to indigenous land claims over existing national parks to resolve pending land claims. The extent to which indigenous people are involved in a national park is generally reflected by the legal recognition of their ownership, rights and responsibilities relating to the park. Gurig (the first jointly managed park), Kakadu and Uluru Kata-Tjuta national parks are three such examples whereby formal joint management arrangements were set up between the Government in the Northern Territory and indigenous owners (Ross et al., 2012).

Privately owned protected areas

Privately owned PAs are important for protecting the biodiversity value on private land. These areas are typically protected ecosystems on land owned by farmers in the agricultural and pastoral regions of Australia. Over 2,900 Pas are on private land covering 5.8% of the NRS and over 1% of Australia (Department of Agriculture, Water and the Environment, 2021).

On the following page, we explore some of the approaches that are of relevance to New Zealand.

Desktop Research | Australian Review | Indigenous Protected Area

Case Studies of Australian approaches applicable to Māori in New Zealand

Governance Model: Indigenous Protected Area (IPA)
Protected Area: Balanggarra, Kimberley Region, Western Australia
Approach: Indigenous Land and Sea Management (by Indigenous Ranger Groups)

Summary

The IPA governance model for PA management seeks to provide a better platform for Traditional Owners to have greater autonomy over the management of their land and sea, and support integrating indigenous knowledge with PA management practices. An IPA is typically indigenous-owned. Indigenous Ranger Groups (IRGs) who implement the management plans are supported financially through funding arrangements with the federal and state Government and other partners. These arrangements include Working on Country and Fee for Service.

The Kimberley region is a remote landscape representing one sixth of Western Australia's land mass. Five percent of the land is PA (national parks and conservation reserves). There are nine IPAs in total with four linking up to create the largest indigenous-owned conservation corridor in Northern Australia.

The Balanggarra people are from the Kimberley region and declared an IPA across 10,000 km2 in 2013. Support and administration is carried out through the Kimberley Land Council (KLC) which is an indigenous organisation formed in 1978 to represent Kimberley indigenous people and secure native title recognition. The Balanggarra IRG is one of 13 hosted through the KLC. The rangers look after PAs by blending modern scientific approaches with indigenous knowledge systems and approaches.

Two key funding programs are currently in place to support the indigenous Balanggarra Rangers:

- Working on Country program: State and Federal Government provide funding to employ rangers to implement the Healthy Country Plan. The funding process is competitive such that, Government call for applications in a particular funding round, and assess against criteria including employment opportunities, and the need to have an environmental management plan in place.
- Fee for Service program: A contractual agreement where a partnering organisation (e.g. city councils, socially responsible corporations, private environmental firms) pays fees to a ranger group, or pays the salaries of ranger group staff, in return for land and sea management services. Funding is typically provided under a 3-5 year contract. Partners include Department of Biodiversity, Conservation and Attractions, Murdoch University, and World Wide Fund for Nature. All income is retained by the IPA and ordinarily invested back into the land and people.

Ranger groups also deliver commercial based services including tourism, resource management contracts, commercial harvesting of wildlife, and cultural heritage survey work (Pew Charitable Trust, 2015; Ross et al., 2009; Commonwealth of Australia, 2018).

Key outcomes of IPAs

- Career pathways, increased employment and skillsets with access to training and increased on-the-job exposure.
- Higher incomes increasing economic wellbeing and self determination.
- New commercial ventures on PAs and supporting services.
- Strengthened partnerships between Traditional Owners and Government with better alignment of priorities.
- Strengthened connections to whenua and its protection, revitalising cultural values and self-identity.
- Better environmental outcomes from the exchange of knowledge between Traditional Owners and western science.
- Practice of customary lore, and better intergenerational transfer of this knowledge.
- Stable funding allowing pursuit of tribal priorities, and cultural and social investment.
- Implementation of longer term strategies and projects with improved environmental outcomes from certainty and stability of funding.
- Better quality of life for communities due to reduced imprisonment, crime, anti-social behaviour, and alcohol and substance abuse.
- Commercial activity strengthens the local economy by generating new revenue streams and employment opportunities.
- Increased workforce participation and productivity through improved indigenous health and wellbeing.
- Increased cost-savings to governments through preventative health and reduced need for corrective services.
- Increased tax revenues on new indigenous business ventures.
- Value of environmental and cultural protection outcomes to wider community.

New Zealand relevance

- The literature review suggests that the models adopted by Australia, particularly around Western Australia, are worth investigating further.
- Māori and indigenous Australians share common values and beliefs with respect to land and sea, and have similar socio-economic issues. Given that IPAs and IRGs have produced successful outcomes for indigenous people in Australia, adopting a similar model in New Zealand may generate similar outcomes.

Desktop Research | Australian Review | Government Protected Area

Case Studies of Australian approaches applicable to Māori in New Zealand

Governance Model: Government owned and managed PAs
Protected Area: Government Protected Areas in Western Australia
Approach: Reduced or zero access fees for customary activities

Summary

The Department of Environment and Conservation (DEC) - Western Australia changed legislation in 2012 relating to PAs managed by the Government. The legislation provides that entry fees do not apply to indigenous people when visiting DEC-managed lands to conduct customary activities. Camping fees may apply however, if indigenous people are camping in designated camp sites where fees normally apply. To conduct activities for financial gain or reward, a license is typically required by the Government (DEC, 2012).

Key outcomes of the program

- Defines indigenous peoples fundamental connection to the land.
- Acknowledges in part, indigenous customary rights to the land.

New Zealand relevance

- This model would be the least appropriate with respect to Treaty Partner perspectives on the rights to, and use of PCL.
- However, it is applicable to the current model in New Zealand where DOC holds governance over PCL.
- Treaty Partners will likely conduct customary practices on PCL land (customary practices can include commercial and non commercial activities).

Desktop Research | Australian Review | Joint Management Protected Area

Case Studies of Australian approaches applicable to Māori in New Zealand

Governance Model: Joint Management
Protected Area: Kakadu National Park, Northern Australia
Approach: Uluru/Kakadu Model

Summary

The 'Uluru/Kakadu Model' was first developed for Uluru - Kata Tjuta National Park (Ayers Rock) in 1985. This joint management arrangement features land returned to indigenous people now held as freehold land, leased back to a Government conservation agency, and governed by a board of management with indigenous majority. The land is held by a land trust on behalf of the Traditional Owners. Breach of the lease agreement constitutes full control of the land being returned to Traditional Owners (Ross et al., 2009). The Kakadu National Park later adopted this model. Around half of the park has been returned to Traditional Owners under the Aboriginal Land Rights (Northern Territory) Act 1976 and is held as freehold land. Owners have leased back the land to Government to be managed as part of the Kakadu National Park. The Kakadu Management Board manages the park as if it was all indigenous land with policies and procedures strongly tilted towards the development, and customary rights of, the Bininj/Mungguy people. The majority of the Management Board are Traditional Owners (Director of National Parks, 2016; Ross et al., 2009).

As part of the lease arrangements, Binini/Mungguy people can exercise traditional rights to use and occupy the land, fish and hunt in the park, although these activities are regulated for environmental preservation. An annual lease fee of $175k is paid by the Government to Traditional Owners together with a percentage of revenue of 25% generated from park entrance and camping fees, and fees or penalties from commercial activity concessions on the land (Director of National Parks, 2016).

Leasing policy – for leases, sub-leases and licenses

One particular fee structure which can be broadly compared to the PRF is for leases, sub-leases and licenses which are used if a commercial business seeks exclusive use over an area for a long period of time. They are negotiated via an open expression of interest or via a tender process. Applications are evaluated by a general criteria and specific criteria may be developed based on the circumstances. The general selection criteria looks at: 1) Sustainability, 2) appropriateness of concept, and 3) experience and capability (Director of National Parks, 2015).

The commercial fee structure begins with a non-refundable application fee of $200. Fees are considered on a case by case basis and may be fixed based on market valuation of a comparable premises, a percentage of revenue from commercial operations, or a combination of the two. The leasing fee is based on the consideration of: 1) level of capital investment, 2) potential growth in market, 3) current commercial rates for leasing of land/buildings, 4**) potential benefits to Traditional Owners, other relevant indigenous people and communities**, 5) establishment costs for new businesses (to support them with lower fees), and 6) other tangible and intangible benefits from the proposed activity (Director of National Parks, 2015).

Key outcomes of Joint Management

- Training and development opportunities
- Participation in park decision-making and the development of programs and work plans
- Control over who is granted concessions
- Implies that customary rights over land would provide exclusivity over land use for commercial activities
- Enhanced opportunities to teach people about indigenous culture
- Income received through lease payments and percentage of revenue derived from park revenue
- Increased opportunities to apply indigenous knowledge in park management

New Zealand relevance

- Close relationships between DOC and Conservation and Parks Australia has previously raised DOC's interest in the joint management arrangements (Logan, 2016).
- Māori rangatira have visited the Kakadu National Park and the Crown had offered a joint management agreement with Tūhoe using the Uluru/Kakadu Model as a starting point for negotiations around engagement and participation of Tūhoe. However, the Crown had not offered transfer of ownership to Tūhoe (Logan, 2016).
- This model may be suitable for cultural redress land although not for all iwi. Some iwi have expressed their preference to own, govern and manage their land. The key feature of the Uluru/Kakadu model is the majority of governance is weighted towards Traditional Owners. This would provide iwi with greater influence over decision-making, while partnering with DOC.
- An option in the agreement may be to phase out DOC representation as the iwi develops the required skill set for PCL governance and management.
- One component of the leasing fee framework considers the potential benefits to Traditional Owners. Although it is not clear how this is assessed, it highlights that this joint management model considers the impact of a concession on mana whenua and seeks to compensate them accordingly.

Wānanga

Wānanga | Treaty Partner Perspectives

Summary of approach

Wānanga | Focus Groups | Kānohi Kitea

Kānohi ki te kānohi is about face-to-face meetings and is regarded by Māori as critical when one has an important 'take' or purpose. This form of consultation allows people to use all their senses as complementary sources of information for the research. Three focus groups were carried out online using a series of open ended questions and encouraging an open dialogue.

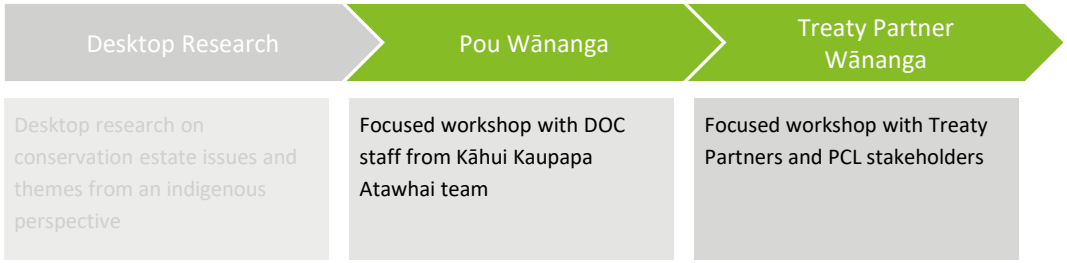
Treaty Partner Wānanga

Two wānanga were held with Treaty partner stakeholders to gain their perspectives of the PRF for commercial activities on PCL. To capture perspectives, we used an interactive software tool called Nureva. The perspectives provided by the Treaty Partner wānanga participants is provided on the following slides.

An initial scoping wānanga was held with DOC staff from the Kāhui Kaupapa Atawhai Team which provided initial insights and observations to carry forward and continue exploring in the Treaty Partner Wānanga. The content from internal wānanga is not included in this Paper.

Treaty Partners were asked a range of questions relating to the PRF. We have grouped their responses into themes.

For completeness we note that, all participants were asked whether they saw their role in relation to the granting of concessions and the review of the PRF as minor, moderate or significant – all saw their role as significant. All participants were also asked if they saw how they would participate in the review (spanning from inform, consult, collaborate, co-design/partner or empower) – Treaty Partners saw their involvement as being between co-design/partner and empowered to make decisions on concessions and the PRF design.

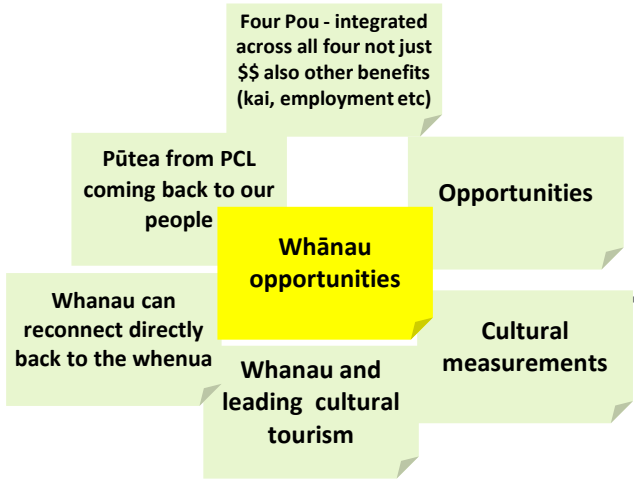


Wānanga | Treaty Partner Perspectives

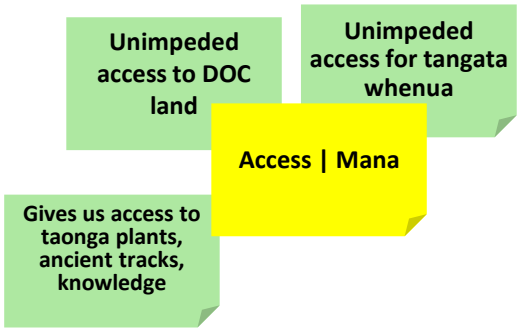
What is Important to You? Treaty Partners were asked "what do you think is valuable to iwi, hapū and whānau in terms of public conservation land?"

- Treaty Partners highly value the return of ownership back to hapū to exercise their responsibilities of rangatiratanga and kaitiakitanga of the whenua, applying traditional conservation practices in the management model.
- They want to see TToW better represented, with more urgency to build crown-iwi partnerships and to explore joint-management models for PCL.

- Environmental care is important to Treaty Partners to ensure it is respected and sustained for current and future generations to enjoy.

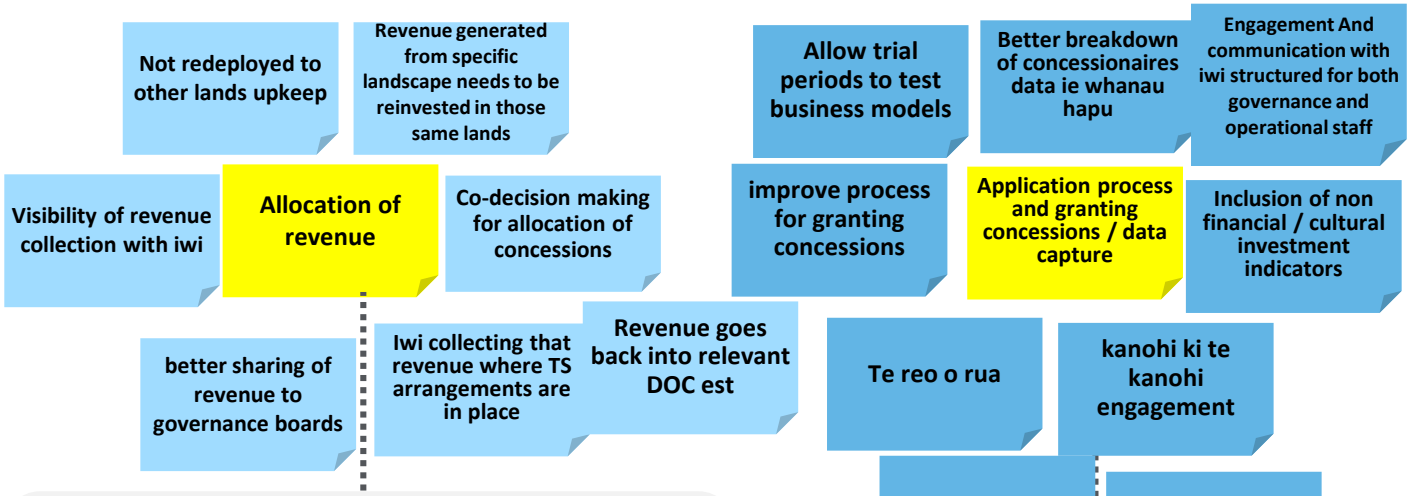


- Treaty Partners shared a vision of the land providing an integration of economic, social, environmental and cultural benefits and outcomes to all iwi, hapū and whānau.
- They want to see whānau better able to connect to the whenua, through complementary ways including PCL supporting development and employment opportunities that create environmental / cultural careers and financial wellbeing. Employment is at the centre of this korero.



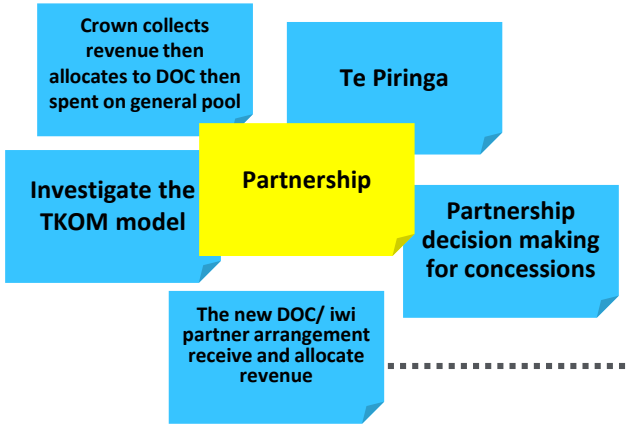
Wānanga | Treaty Partner Perspectives

Percentage Revenue Concession Fees over Public Conservation Land: Treaty Partners were asked "What are your thoughts about the PRF and its potential impact on iwi/hapū? Are there any improvements, changes or additions that would better align with Treaty Principles and iwi/hapū aspirations?



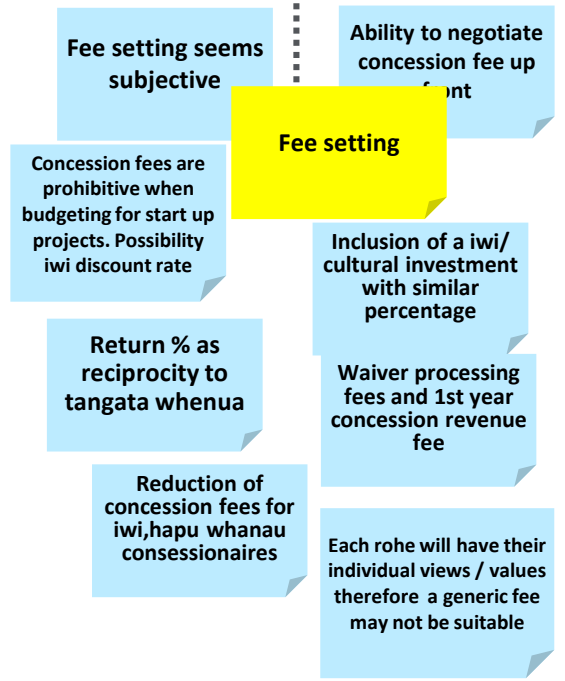
- Allocation of the concession revenue was a priority topic discussed. Treaty Partners want better engagement and co-decision making for the allocation of revenue and better data analytics for visibility.

- Treaty Partners suggested to incorporate a 'first hurdle' into the concession granting process whereby the screening criteria assessed whether the activity and concessionaire met the aspirations and values of local iwi.



- Joint-management / partnerships to make decisions about the allocation of revenue was a strong topic of discussion, and to ensure that the pūtea is going back into the relevant DOC estate.

- Treaty Partners feel that there is subjectivity involved with fee setting. For instance, evaluating the 'uniqueness' of a landscape for the 'premium' factor in the PRF.
- There is a preference for the fees to be zero for mana whenua concessionaires, or even a reduction of concession fees. This will help create more incentive for iwi/hapū to engage and develop cultural commercial enterprises.



Wānanga | Treaty Partner Perspectives

Concessionaire Activities: This topic was centred around understanding what kind of activities were most important to iwi, why, and how they felt about paying for these activities while carried out on PCL

What activities might interest iwi/hapū?

- Accommodation X 4
- Filming/ photography X 2
- Guiding X 5
- Grazing
- Retail
- Beehive placement X 2
- Wild animal control
- Extraction X 3
- Boating
- Rongoa X 5
- All activities
- Whare wānanga X 2
- General agriculture
- Free Attractions i.e. cultural
- Natural University - He whare wananga i Te wao nui o Tane
- Activities that reconnect people back to the land
- Access
- Traditional practice
- Nga Taonga Tuku Iho
- Events

Why?

- Employment X 3
- Whakapapa / Purakau | retelling our story, sharing history X 4
- Medicinal purposes
- Whanau/hapu development
- Reduced and limited access to Kauri. Providing alternatives. Using VR etc
- Succession opportunities for kaitiaki
- Recreation, kai gathering
- Flora and fauna
- Cultural and traditional activities

How do you feel about being charged 4.5%?

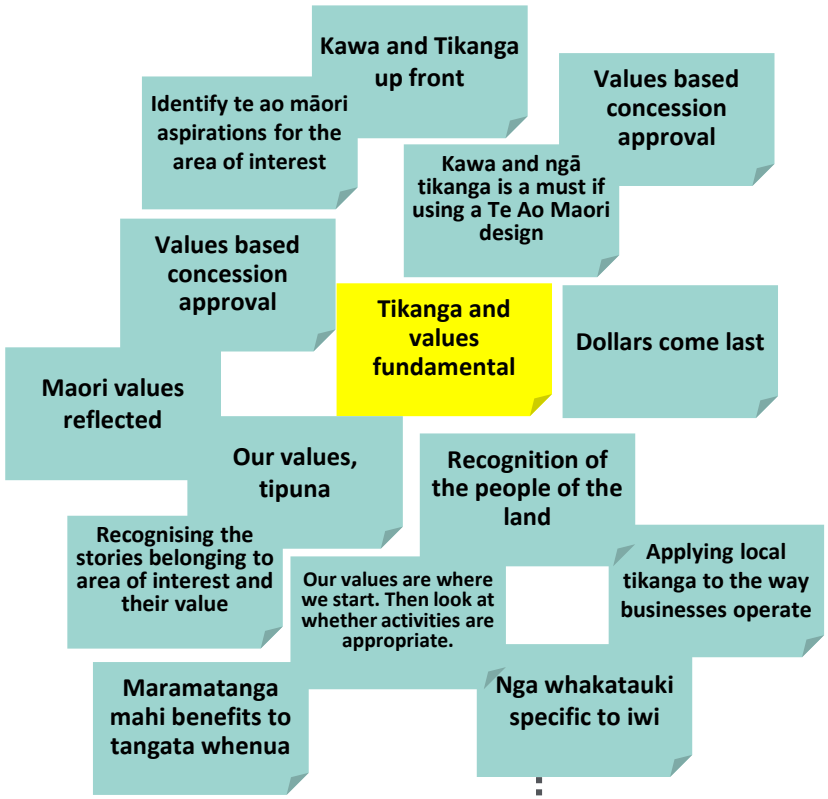
(Note: Nationally the average fee is 4.5%)

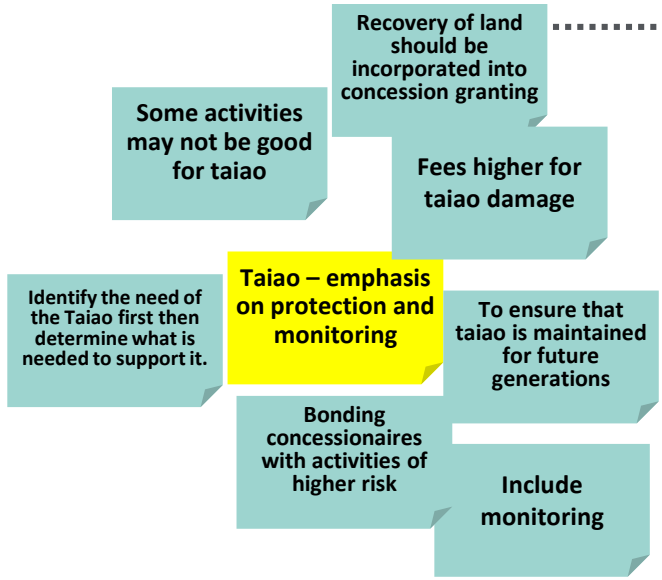
- Cultural redress properties with encumbrances should decided by Iwi
- Not sure we want to pay for the use of our own land!
- Why should we pay as 'PARTNERS'
- Tangata whenua have had long standing grievance and as a treaty partner we should not be charged
- On co governed of co managed lands
- If non commercial ie cultural activity should be koha based or free
- Good if part or all of fee applied to local use
- Acceptable benchmark to negotiate up or down pending activity
- Non commercial use should be heavily discounted or no fee.
- Review alternative options to support iwi/marae and hapū. Time, support etc
- In principle for tangata whenua should be lower than wider public
- Happy to pay if putea is going back to the Taiao
- As mentioned earlier discounts for Māori of ...4.5% 😀

- The importance of these activities is largely linked to cultural aspirations, keeping taonga alive, creating employment and development opportunities for iwi/hapū.
- Treaty Partners clearly evidenced a desire for fees to be zero or be koha-based for non-commercial use of the land (i.e. customary activities), and commercial activity fees to be lowered.

Wānanga | Treaty Partner Perspectives

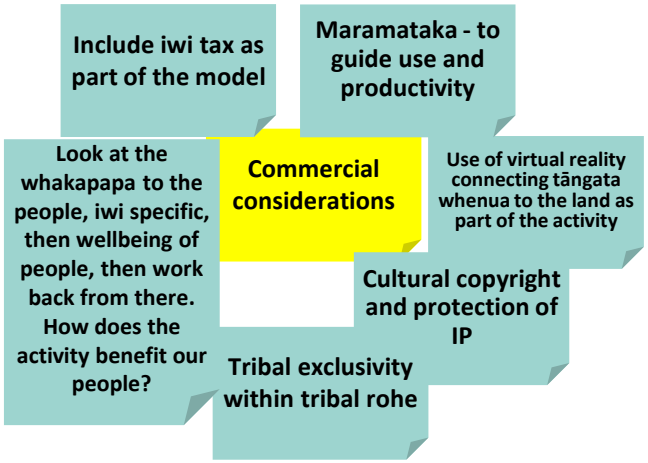
Designing from a Māori Perspective? Treaty Partners were asked "If you had to design a system like the percentage revenue framework, how would you design it from a Te Ao Māori perspective?





- Environmental degradation was a key theme and concern that Treaty Partners want rectified.
- Treaty Partners want to increase fees for greater taiao damage and monitor the potential damage (potentially carried out by iwi/hapū).

- Treaty Partners want to be involved from the beginning through co-design and decision-making.
- For cultural redress properties, they want to have the opportunity to develop their own methods.



- Treaty Partners' design principles for a new PRF are underpinned by Te Ao Māori and giving effect to Section 4 of the Conservation Act 1987. Kōrero focused around how this would be captured, as opposed to the actual activity fee.
- Preference was to design a 'first hurdle' to score a concession at the granting stage based on the taiao protection, Iwi aspirations, rohe values, and TToW.

Conclusion

Conclusion

The purpose of this paper is to inform the review of the Percentage Revenue Framework (PRF) with a Treaty Partner perspective

The Department of Conservation is currently undertaking a review of its fee structure for activity fees that are determined by a percentage of revenue earned through a concession. This method is called the Percentage Revenue Framework (PRF). The aim of the review is to examine its ongoing relevance to the current New Zealand context and ensure that fees are fair, transparent, and set at an appropriate market rate.

The purpose of this paper is to inform the review of the PRF with a Treaty Partner perspective. In particular, we provide a summary of:

- themes, insights, issues, and observations from the perspectives of Treaty Partners,
- a high-level national literature review to identify relevant issues in relation to the review of the PRF, and
- A high-level Australian literature review that highlights approaches for DOC to consider for working with Iwi and granting and setting fees.

Treaty Partners have a strong connection spiritually and physically to the land and its environment and play a role as kaitiaki (guardians) to preserve and protect PCL in their area. DOC also has a legisltative obligation to ensure that the review process and outcome respects the principles of TToW by consulting Iwi and incorporating their perspectives into the preferred option. Therefore, it was also necessary to consider the issues with the PRF more broadly. This paper also provides insights into the perspectives of Treaty Partners about the use, management, and administration of PCL, including decision-making, allocation of fee revenue, and the process by which concessions are granted.

We have presented a number of issues and options for DOC to consider in the design of a new PRF. Some of the issues raised by Treaty Partners were concerned with reforming the formal concession application and approval process, and the allocation of concession revenue. We trust you will find the information in this document beneficial and look forward to working further with you in the future.

Conclusion| Issues and Options

This section provides key issues from the perspectives of Treaty Partners and offers options to consider for the design of a new framework

Issue	Option
No alignment to Mātauranga Māori The concession granting framework and the PRF should place greater importance on the knowledge systems of Māori, or customary practices of iwi. The importance of mātauranga Māori transmission and moving further along the continuum, toward a Māori world view through the use of local narratives told by local people in place.	Decision-makers of some PAs in Australia require concessionaires to undertake commercial operation training courses prior to receiving a concession. These programs include an aspect led by Traditional Owners facilitating a wānanga to teach private organisations about the history, cultural practices and principles of their area. Essentially this activity is of a customary nature, allowing iwi to share mātauranga and encourage concessionaires to respect and take care of the land.
Giving effect to section 4 of the Conservation Act 1987 in the PRF Currently DOC considers five assessment factors in the Percentage Revenue Framework (PRF) when assessing how much revenue, based on the activities undertaken on Department of Conservation (DOC) land, should be charged to any concessionaire. Presently the PRF formula does not reflect the requirements of section 4 of the Conservation Act 1987. The ambit of Section 4 seems broad and would likely apply to the PRF.	We note the following from the recent Ngai Tai Supreme Court decision: • DOC is required in some circumstances to show iwi a degree of preference when granting commercial rights. • Section 4 is a powerful Treaty clause because it requires the decision-maker to give effect to the principles of the TOW. • Section 4 requires more than procedural steps. Substantive outcomes for iwi may be necessary including, in some instances, requiring that concession applications by others be declined. • Enabling iwi or hapū to reconnect to their ancestral lands by taking up opportunities on the conservation estate (whether through concessions or otherwise) is one way that the Crown can give practical effect to Treaty principles.
Joint-management / Partnerships for PCL There is a strong and urgent preference for Treaty Partners to be brought into the design and decision-making of PCL.	New Zealand has been slow to adopt change to global trends of increased indigenous engagement with conservation land / PAs. We recommend to review the Australian case studies exemplifying IPAs and joint-management models, and to consider further investigating the suitability of these models for the New Zealand context.

Conclusion| Issues and Options

Issue	Option
Data limitations DOC does not currently ask or record whether a concessionaire is from or part of an iwi or hapū that holds a relationship with the area that is part of the concession. Among other data limitations, this is the most crucial one and Treaty Partners want to see some clarity. For example: • What is the percentage of concessions that are issued to mana whenua? • How many are Māori? How many are Iwi? • How much revenue is being generated in each rohe? • What is the return from concession from Treaty Partners, Māori, and the like? The ability to extract this information would allow DOC and Treaty Partners to jointly make better decisions for Māori and PCL.	Recommend a high level review of the information, data and supporting technology used in collecting information concerning concessions and the PRF. This would require infrastructure changes to data systems and would begin with reviewing the application forms and designing how to capture integral information about the concessions held by iwi, hapū, and other Māori entities.
Use of PCL income Where PCL income is used is a key concern of iwi. DOC is currently unable to trace where concession revenue is applied - it goes into and is distributed from 'one big bucket of funding'. Treaty Partners' view is that the pūtea generated from each rohe should be invested back into the rohe of where it was generated from.	The primary issue is to resolve the data limitation of the DOC so that allocation analysis can be carried out, and formulate an allocation model co-designed with iwi/hapū. A policy change would be required to allow the allocation of income back to the rohe it was generated from. Treaty Partners also spoke about how it might be applied – taiao, iwi/hapū/whānau development placing significant importance on employment in the rohe.
Zero fees for customary activities Treaty Partners feel that they should not be charged for undertaking customary activities on their traditional lands and a concession fee should not be charged. For the avoidance of doubt customary activities includes both commercial and non-commercial activities. These activities include making and eating food and medicine, ceremonial or other cultural activities, accommodating visitors, and using natural resources to generate the former activities mentioned. Treaty Partner perspectives however also spanned across a spectrum – from being open to paying a proportion of revenue to not paying anything - provided that the fee revenue is invested back into the same land that the revenue was generated from.	In Western Australia, Traditional Owners of PAs are able to carry out cultural activities without applying for a concession or paying a fee. Similar legislative amendments to those used in Western Australia could be developed for use in the New Zealand context.
Exclusive rights for commercial activities The Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation case demonstrated that exclusive concessions and preference for mana whenua to hold concessions is an important aspect of giving effect to TToW, and for the development and wellbeing of the people, to engage and develop cultural commercial enterprises.	Consider providing mana whenua the option of exclusive use of their land in carrying out commercial activities.

Conclusion| Issues and Options

Issue	Option
Designing a new PRF Treaty Partners were asked how involved they should be in the granting and setting of concession fees. There was a mix of responses between developing a partner/co-design model to make joint decisions, and having autonomy (empowerment) over decisions with DOC implementing Treaty Partner decisions. The conclusion of this exercise was that Treaty Partners currently have little involvement and are seeking to be brought into these processes. Treaty Partners suggested to incorporate a 'first hurdle' into the concession granting process whereby the screening criteria assessed whether the activity and concessionaire met the aspirations and values of local iwi.	The PRF review represents an opportunity to co-develop a better way of administering PCL and concessions by bringing Treaty Partners on board now. One option is to give Iwi the decision-making rights to concessions based on a Te Ao Māori screening framework. Each Iwi would potentially create a 'first hurdle' based on the uniqueness of their local tikanga (customary practices), kawa (customary law), and mātāpono (values), while allowing Iwi to acknowledge the people of the area first. DOC could complete the end of the granting process or potentially pick up at the fee-setting stage. Ideally the framework for the concession fee would be co-designed with Treaty Partners appropriately incorporating the uniqueness of each rohe in the fee, and the consideration of cultural impact.
Subjectivity in the formula A level of subjectivity is currently required to evaluate and set the percentage fee for some of the five components in the formula. For example, how does DOC evaluate the 'uniqueness' of a site? Treaty Partners would like clarity in the formula and the fee to consider the uniqueness of each rohe however this is an evaluation that would need to be conducted by iwi/hapū.	Consider reviewing the 'premium' factor while developing the options for the new framework. This component could potentially be replaced by 'uniqueness of rohe'. The pricing framework could be developed by the respective Treaty Partner. Any new process will need to be clearly defined so that applications are not unreasonably delayed.
Cultural impact and exclusive concessions to non-mana whenua The provision of PCL to non-mana whenua applicants is an allocation of resources channelled away from mana whenua. In particular, exclusive concessions, negates or over-rides Treaty Partners' ability to practice cultural activities or apply for concessions over these parcels of land themselves. The adverse outcomes can lead to hidering cultural outcomes as well as economic outcomes for whānau, hapū and iwi. The granting of exclusive concessions also questions whether treaty principles are being considered during the granting process.	The fee could consider the inclusion of non-financial, cultural investment indicators that compensated for the loss or gain of cultural outcomes for mana whenua. This would require a model built similar to Social Return on Investment or Social Impact models. Provided that the suggested 'first hurdle' approach was adopted, Treaty Partners can incorporate the exclusive concession issue at that stage.

Appendices

Appendices | A1 – Restrictions and Disclaimer

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COVID-19

The scope of Services does not include any consideration of the likely impact of Coronavirus (COVID-19) on the review process or options for the DoC in relation to the Percentage Revenue Framework Review.

Appendices | A2 – References

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Appendices | A3 – Treaty Partner Participants

Participant	Iwi / Treaty Partner
1	Ngāti Tūwharetoa
2	Te Arawa
3	Te Arawa
4	Te Arawa
5	Te Arawa
6	Te Rarawa
7	Te Rarawa
8	Te Rūnanga o Ngāti Porou
9	Te Rūnanga o Ngāti Porou
10	Te Rūnanga o Ngāti Porou

Appendices | A4 – Glossary

Māori Translations

Ahi kā	Title to land - the burning fires of occupation or a title to land through occupation by a group, generally over a long period of time
Hapū	Sub-tribe of the main tribe (iwi)
Iwi	A tribe or group of people that descends from a common ancestor and is associated with a distinct territory
Kaitiaki / Kaitiakitanga	Guardians / Guardianship
Kawa	Cultural principles
Mana whenua	Traditional owners with territorial rights and authority over the land
Mātauranga Māori	Māori knowledge and encompasses the knowledge, comprehension, or understanding of everything visible and invisible existing from a Māori perspective
Mauri	Life force, the essential quality and vitality of a being or entity
Rangatira	To be of high rank, a chief
Rohe	An area, region, or territory of land
Taiao	The natural environment that contains and surrounds us consisting of an ecosystem of water, land, climate, the sky, and life
Taonga	Land and other associated treasures
Te Ao Māori	The Māori world
Tikanga	Cultural practices
Wānanga	A learning of tribal knowledge, forum, educational seminar, conference, focus group
Whānau	Family or extended family group and includes physical, emotional and spiritual dimensions
Whenua	Land

Abbreviations

DOC	Department of Conservation
IPA	Indigenous Protected Area
IRG	Indigenous Ranger Group
NRS	National Reserve System
PA	Protected Area
PCL	Public Conservation Land
TToW	The Treaty o Waitangi (Te Tiriti o Waitangi)

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