

Item 1

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Office of Hon Poto Williams



Departmental Briefing



Department of Conservation
Te Papa Atawhai

In Confidence

GS ref: 22-B-0761
DOCCM: 7212388

To: Minister of Conservation

Date: 30 November 2022

Subject: Delegating decision making for transfer of Ruapehu Alpine Lift's concessions

Action sought: Agree to delegate decision making

Time Frame: 12 December 2022
In preparation for Voluntary Administrator's watershed meeting, tentatively scheduled for 15 December 2022

Risk Assessment:	There is a risk decision making may delay implementing outcomes of the voluntary administration process	Department's Priority:	Normal
		Level of Risk:	High

Contacts

Name and position	Cellphone	First contact	Principal author
Marie Long, Deputy Director-General, National Operations and Regulatory Services	9(2)(a)	✓	
Karl Beckert, Director, Operations Support	9(2)(a)		
Stacey Wrenn, Principal Advisor	9(2)(a)		✓

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. Ruapehu Alpine Lifts Limited (**RAL**) entered voluntary administration on 11 October 2022. RAL's voluntary administrators and MBIE's Kānoa – Regional Development and Investment Unit (**Kānoa - RDU**) are exploring solutions that will allow the ski fields at Whakapapa and Tūroa to continue operating under a new entity.

2. Both the administrators and Kānoa – RDU are working to determine solutions by 15 December 2022.
3. If a new entity takes over RAL's ski field operations, the administrators will apply to us to transfer RAL's concessions to the new entity via a deed of novation. Either you or your delegate need to approve the transfer of the concessions.
4. We recommend you agree to delegate decisions on the transfer to Department officials, likely to be a Deputy Director-General. This will ensure we can escalate decisions to you in the future if decisions are reviewed.
5. We will consult with iwi as part of the transfer process.
6. We are considering options to reduce our liabilities to remove infrastructure and remediate the land if the new entity terminates their concessions in the future without being able to fulfil the make good conditions in the concessions. We are discussing these options with the administrators and Kānoa – RDU.

We recommend that you ... (Ngā tohutohu)

- a) Agree to delegate decision making to transfer Ruapehu Alpine Lifts' concessions to a Department official

Decision

Yes/No

M Long

Date: 30/11/2022

Marie Long
Deputy Director-General, National
Operations and Regulatory Services
For Director-General of Conservation

[Signature]

Date: 5 / 12 / 22

Hon Poto Williams
Minister of Conservation

Not at this stage - However we may revisit this - He Ngai Year

[Signature]

Released under the Official Information Act

Purpose – Te aronga

1. This briefing describes the process to transfer Ruapehu Alpine Lifts' concessions to another entity, and seeks your agreement to delegate statutory decision making to a Department official.

Background and context – Te horopaki

2. On 11 October 2022, RAL entered voluntary administration. John Fisk and Richard Nacey of PricewaterhouseCoopers were appointed as voluntary administrators (**the administrators**).
3. RAL operates two ski fields in Tongariro National Park under concessions, one at Whakapapa and one at Tūroa. The Whakapapa concession was granted in 2016 for a term of thirty years, with up to an additional six rights of renewal of five years. The Tūroa concession was granted in 2017 for a term of twenty-five years, with up to an additional seven rights of renewal of five years.
4. The administrators are currently exploring options that will allow the ski fields to continue to operate under a new entity.
5. MBIE's Kānoa – RDU have developed a proposal that will allow the ski fields to continue to operate. Under this proposal, the ski field operations will shift to a new entity, and Crown Regional Holdings Limited and ANZ, two of RAL's substantial creditors, will write off their debts. This proposal requires life pass holders to contribute capital to establish the new entity, in exchange for their life passes being transferred to the new entity.
6. If either a solution developed by the administrators or Kānoa – RDU's proposal is successful, the administrators will seek to transfer RAL's concessions to the new entity via a deed of novation. You, or your delegate, will be the decision maker for the assignment.
7. Both the administrators and Kānoa – RDU are working to determine a solution by 15 December, as the administrators have estimated they will not have sufficient funds to run RAL's operations by the end of the year. A solution needs to be agreed in time to allow essential maintenance to be carried out for the 2023 ski season, if the ski fields are to open in 2023 under a new entity.
8. If a solution that enables the ski fields to continue operating is not found, it is likely RAL will shift to liquidation and their assets sold by the administrators.
9. There is substantial infrastructure at both ski fields that has been developed since the 1950s, including lifts, buildings, car parking, and snow making infrastructure. Under the terms of their concessions, RAL is required to remove the infrastructure and remediate the land on the expiry or termination of the concession, if required by us (**make good condition**). If RAL, or another entity who takes over the concessions, is unable to fulfil this condition, this liability will practically fall to us.

Transferring RAL's concessions to another entity

10. If RAL's operations are transferred to a new entity, the administrators will need to apply to transfer their ski field concessions to that entity by way of deed of novation. A deed of novation transfers both RAL's rights and liabilities under the concession to the new entity. This process is also known as an assignment process.
11. You, or your delegate, must approve the transfer of the concession.
12. The administrators are likely to seek to transfer three of RAL's concessions: the Whakapapa ski field concession, the Tūroa ski field concession, and an easement for snow making pipes at Whakapapa.
13. We will consult with iwi as part of the transfer process to ensure we meet the requirements of section 4 of the Conservation Act to give effect to the principles of the

Treaty of Waitangi. We will consult with Ngāti Haua, Ngāti Hikairo, Ngāti Rangī, Ngāti Tūwharetoa, and Uenuku.

14. We have contacted iwi to ask them how they wish to engage in this process. We have received a response from Ngāti Haua, who have advised they expect the Crown to provide a timeframe for consultation that allows for genuine and sincere engagement.

Delegating decision making for transfer of RAL concessions

15. Most statutory decisions, including decisions to transfer concessions, are generally delegated to Department officials. Statutory decisions that are particularly high risk are sometimes made by you.
16. Decisions to transfer concessions may be made by Operations/Regulatory Managers, Operations/Regulatory Directors, Deputy Director-Generals, and the Director-General.
17. We recommend you agree any decisions to transfer RAL's concessions are made by a delegated official, for the following reasons:
- While matters relating to RAL's voluntary administration are complex and high risk, the process to assign the concession is a well understood regulatory process that is almost always delegated to officials.
 - If the decision is later contested for any reason, a new statutory decision will be made by a decision maker at the same or a higher level. If you make the decision, it can only be reviewed by another Minister, whereas a decision made by a Department official can be reviewed by either another official or you.
18. If you agree to delegate decisions on any transfer process, decisions will likely be made by a Deputy Director-General.

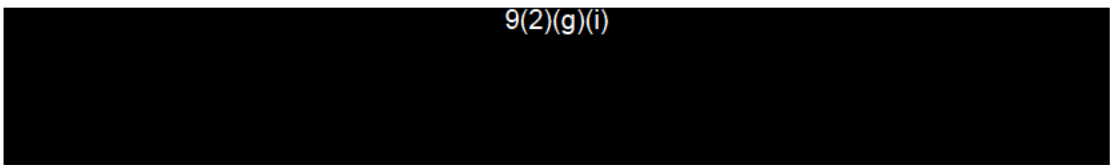
Reducing our liability in the event the new entity cannot fulfil make good conditions

19. [Redacted] 9(2)(j)
20. [Redacted] 9(2)(j)
21. [Redacted] 9(2)(j)
22. [Redacted] 9(2)(j)
23. We will continue to discuss these options with both Kānoa – RDU and the administrators as they progress potential solutions.

Risk assessment – Aronga tūrarū

24. [Redacted] 9(2)(g)(i)

25.



26. If we are not able to process the transfer of the concessions in a timely manner, there is a risk our regulatory processes will be criticised. We are preparing for this process with the information available to us at this time.

27. If another entity does not take over the ski field activities, it is likely RAL will enter liquidation and terminate their concessions. We will then be practically responsible for the removal of any infrastructure left on the ski fields and remediation of the land. We have estimated this cost at \$47 million to \$88 million [22-B-0702 refers].

Next steps – Ngā tāwhaitanga

28. We will continue to work with both the administrators and Kānoa – RDU as they progress potential solutions.

29. We will engage with iwi about the potential transfer of concessions.

ENDS

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Briefing: Mt Ruapehu Tūroa concession – Decision making

To	Minister of Conservation	Date submitted	21 February 2024
Risk Assessment	Medium	Priority	High
Reference	24-B-0073	DocCM	DOC-7563432
Security Level	In Confidence		

Action sought	Agree to be Decision Maker for Pure Tūroa Limited's concession application in respect of the Tūroa Ski Area	Timeframe	5 March 2024 In preparation for final decision on the concession application to be made before 31 March 2024
Attachments	No attachments		

Contacts	
Name and position	Cell phone
Ruth Isaac, Deputy Director-General, Policy and Regulatory Services	9(2)(a)
Stacey Wrenn, Senior Manager, Regulatory Delivery	9(2)(a)

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Executive summary – Whakarāpopoto ā kaiwhakahaere

1. Ruapehu Alpine Lifts Limited (RAL) is currently in receivership. Alongside RAL's receivers, MBIE's Kānoa – Regional Development and Investment Unit have undertaken a process to determine a preferred purchaser for RAL's assets at Tūroa Ski Area.
2. The preferred purchaser is Pure Tūroa Limited (PTL) who have recently signed a conditional Sale and Purchase agreement with RAL's receivers. One of the conditions that must be satisfied in order for the sale and purchase to complete is that PTL must obtain a concession to operate the Turoa Ski Area.
3. PTL has applied for a concession in the form of lease/licence to operate the Tūroa Ski Area.
4. Concession decisions are made by the Minister of Conservation or your delegate. Accordingly, you can retain the decision making or delegate it to a Department of Conservation official.
5. We recommend you agree to retain decision making for this concession application rather than delegating the decision.

We recommend that you ... (Ngā tohutohu)

		Decision
a)	Agree to retain decision making for Pure Tūroa Limited's concession application to operate the Tūroa Ski Area	Yes / No



Date: 21/02/2024

Ruth Isaac
Deputy Director-General, Policy and
Regulatory Services
For Director-General of Conservation



Date: 06/03/2024

Hon Tama Potaka
Minister of Conservation

Purpose – Te aronga

1. This briefing seeks your agreement to be the decision maker for Pure Tūroa Limited's (PTL) concession application in relation to Tūroa Ski Area.

Background and context – Te horopaki

2. RAL operates two ski fields in Tongariro National Park under concessions: one at Whakapapa and one at Tūroa. The Tūroa concession was granted in 2017 for a term of twenty-five years, with up to an additional seven rights of renewal of five years.
3. RAL entered voluntary administration on 11 October 2022, liquidation on 21 June 2023 and subsequently receivership from 27 October 2023. RAL currently has receivers and liquidators appointed to conduct its affairs.
4. Pure Tūroa Limited (PTL) has recently signed a Sale and Purchase agreement to buy RAL's assets and operations at Tūroa Ski Area. The Sale and Purchase of RAL's assets to PTL is (among other things) conditional upon PTL obtaining a concession from you to operate Tūroa Ski Area by 31 March 2024.
5. PTL submitted a concession application to the Department on 7 December 2023.

Concession application process

6. PTL's concession application includes a request for a lease (for buildings and base area) and a licence to operate in the remainder of the ski area. The company has requested a term of ten years for both the lease and licence. As the application includes a lease area, the application must be publicly notified.
7. Public submissions on the proposal closed on Friday 9 February 2024. A hearing will be held in late February to allow people to speak to their submissions. A total of 481 submissions were received, of which 83 people have requested to be heard at a hearing.
8. The Hearing Chairperson will provide the Decision Maker with a recommendation report outlining the extent of submissions and objections, and whether they should be allowed or accepted.
9. The Department has engaged with iwi as part of the concession application process to meet the requirements of section 4 of the Conservation Act 1987 to give effect to the principles of the Treaty of Waitangi.
10. You, or your delegate, will be the decision maker for this application. As decision maker, you or your delegate will need to consider the recommendation report from the Hearing Chairperson, the outcomes from iwi engagement, technical advice and statutory analysis. Officials will prepare a report addressing these matters.

Delegating decision making for concession applications

11. The preamble to the instrument of delegation sets out the high-level principles for when a Department decision maker who is acting on delegation should consider escalating a decision. The instrument also states that if a matter is of national interest or involves such environmental, social or economic implications as warrant the power only being exercised by the Minister, it shall be referred to the Minister.
12. The Department's operating approach for delegations is that authority should be delegated to the lowest appropriate level, taking into account the nature of the authority that is being delegated, for example Operations Manager to a Director, a Deputy Director-General or the Director-General. This allows decisions to be made by staff with the relevant expertise and local context, and lessens the workload on the Minister and Director-General.

13. As a result of this approach, there are few examples of concession decisions being escalated by delegated decision makers up to Ministerial level. Examples of concession decisions made at Ministerial level include the proposed Milford monorail, the proposed the Milford/Dart Tunnel and, more recently, the proposed Waitaha Hydro Project.
14. We consider the decision on PTL's application meets the threshold set out in the delegation principles to be referred to you, as:
- There is a high level of public interest in Mount Ruapehu and the future of the ski areas.
 - The location is highly significant for local iwi and hapū.
 - The conservation values are very high, as reflected by Tongariro National Park's dual world heritage status.
 - There are significant economic implications of the decision, including the potential cost to the Crown for removal of RAL's infrastructure if the ski field operation does not continue.
15. We therefore recommend that you are the decision maker on this application.
16. If you elect to delegate your decision on PTL's application, it is likely that the Director-General or a Deputy Director-General will make the decision given its profile and significance.

Risk assessment – Aronga tūraru – legally privileged

17. [Redacted] 9(2)(h) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
18. [Redacted] 9(2)(h) [Redacted]
[Redacted]
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19. [Redacted] 9(2)(h) [Redacted]
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Treaty principles (section 4) – Ngā mātaḡpono Tiriti (section 4) – Legally privileged

20. [Redacted] 9(2)(h) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

9(2)(h)

Consultation – Kōrero whakawhiti

21. The Department is working closely with MBIE and Te Arawhiti on this matter.

Legal implications – Te hīraunga a ture – Legally privileged

22. 9(2)(h)

23. 9(2)(h)

24. 9(2)(h)

25. 9(2)(h)

Next steps – Ngā tāwhaitanga

26. The Department will continue to process the application received by PTL, including holding hearings in February 2024.

27. The Department will continue to engage with iwi about the concession application.

28. If you agree to make this decision rather than delegate it to a Department official, a report will be forwarded to you for a decision in March 2024.

ENDS
