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Ministry for the Environment
Manatū Mō Te Taiao

PROACTIVE RELEASE COVERSHEET

Minister	Bishop	**Portfolio**	RMA Reform
Subject Matter	Fast Track Approvals Bill	**Date to be published**	24 May 2024

List of documents that have been proactively released

Date	*Title*	*Author*
19 Dec 2023	Briefing 23-B-0523: Background on fast-track consenting regime	DOC
21 Dec 2023	Letter From Minister Potaka to Ministers Bishop and Jones	DOC
15 Jan 2024	Memo 24-B-0003 Fast-track Consenting Cabinet Paper	DOC
17 Jan 2024	Email chain: Re memo 24-B-0003: Fast-track Consenting Cabinet Paper	DOC
23 Jan 2024	Talking Points 24-K-0001: On Cab Paper: A permanent fast-track consenting regime for regional and national projects of significance	DOC
7 Feb 2024	Memo 24-B-0033: DOC advice on Fast-track Legislation Delegated Decisions Paper #1	DOC
11 Feb 2024	Memo DOC-2613390: Update on Fast Track Bill One Stop Shop – Conservation Approvals	DOC
11 Feb 2024	Memo attachment: One Stop Shop: Conservation authorisations (Policy options and advice)	DOC
14 Feb 2024	Memo 24-B-0080: Fast Track Consents – additional Treaty settlement information	DOC
20 Feb 2024	Briefing 24-B-0087: Briefing: Options for exchange or disposal of land to support Fast Track	DOC
25 Feb 2024	Decision note: Decisions on conservation land swaps etc from briefing 24-B-0087	DOC
18 Feb 2024	Briefing 24-B-0089: Engagement on the conservation aspects of Fast Track Consenting	DOC
19 Feb 2024	Briefing 24-B-0091: Fast Track Consenting Bill – Policy decisions related to conservation approvals	DOC
27 Feb 2024	Memo 24-B-0116: Fast Track Consenting Bill – delegated decisions meeting 27 February	DOC
4 Mar 2024	Talking Points 24-K-0002: For Cab paper: Fast Track Approvals Bill – Approval for Introduction	DOC
5 Mar 2024	Briefing 24-B-0133: Status of ecological areas in Fast Track Approvals Bill	DOC
5 Mar 2024	Maps: PCL status in relation to fast-track processes	DOC

Information redacted **YES**

Any information redacted in this document is redacted in accordance with the Ministry for the Environment's policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Summary of reasons for redaction

Some information has been withheld for the reasons of a) maintaining legal privilege, b) to protect the privacy of natural persons and c) maintain the constitutional convention protecting the confidentiality of advice rendered by Ministers and officials

Attachment A

Department of Conservation
Te Papa Atawbai

RECEIVED
19 DEC 2023

Briefing: Development of fast-track consenting regime (100-day priority)

To	Minister of Conservation	**Date submitted**	19 December 2023
Risk Assessment	Medium Fast-track consenting and RMA amendments that affect the coastal environment and NZCPS require your consideration. Otherwise, there may be litigation risks that are not considered, risks to achieving the Government's outcomes (including Treaty settlements), and avoidable adverse environmental effects.	**Priority**	High
Reference	23-B-0523	**DocCM**	DOC-7524678
Security Level	In Confidence		

Action sought	Agree to send the attached letter to the Minister Responsible for RMA Reform and the Minister for Oceans and Fisheries	**Timeframe**	21 December 2023 Delays will reduce your ability to influence policy decisions in areas of your statutory responsibility.
Attachments	Attachment A – Draft letter to Minister Responsible for RMA Reform and Minister for Oceans and Fisheries		

Contacts	
Name and position	**Cell phone**
Ruth Isaac, Deputy Director-General, Policy and Regulatory Services	s 9 (2)(a)
Sam Thomas, Policy Director	s 9 (2)(a)

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. The Ministry for the Environment (MfE) is advising the Minister Responsible for RMA Reform on options for an RMA fast-track consenting regime. This is a 100-day priority.
2. Some of the changes being proposed by agencies and other Ministers have significant implications for the Conservation portfolio and carry significant risks if not worked through carefully. This includes proposals to have a 'one-stop shop' for approvals that includes authorisations under conservation legislation, s 9(2)(f)(iv) s 9(2)(f)(iv) [redacted]
3. s 9(2)(f)(iv) [redacted]
4. We recommend sending a letter to the Minister Responsible for RMA Reform and the Minister for Oceans and Fisheries outlining your support for working with other Ministers on the fast-track regime, and the need for your involvement in policy decisions in areas affecting your statutory responsibilities. We have drafted a letter for you in **Attachment A**.
5. DOC is ready to support the policy development process and lead on advice related to intersections with conservation legislation and the NZCPS. We would propose working together with MPI and MfE to advise joint Ministers.

We recommend that you … (Ngā tohutohu)

		Decision
a)	**Agree** to send the attached letter to the Minister Responsible for RMA Reform and the Minister for Oceans and Fisheries	Yes / No

Date: 19/12/2023

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

Date: 20 / 12 / 2023

Hon Tama Potaka
Minister of Conservation

Purpose – Te aronga

1. This briefing provides background to support you in discussions with Ministerial colleagues on the 100-day priority to establish a Resource Management Act (RMA) fast-track consenting regime.

2. It also includes a draft letter (**Attachment A**) from you to the Minister Responsible for RMA Reform and the Minister for Oceans and Fisheries expressing your support for the work and outlining your role in fast-track consenting policy decisions as lead for the New Zealand Coastal Policy Statement (**NZCPS**).

Background and context – Te horopaki

3. The Ministry for the Environment (MfE) has briefed the Minister Responsible for RMA Reform on the 100-day priority of developing a fast-track consenting regime. This briefing may be forwarded to you (MfE reference BRF-3993) given your statutory responsibilities for the coastal environment and NZCPS under the RMA (23-B-0478 refers). You should be invited to participate in a discussion with your ministerial colleagues about the issues.

4. This briefing provides an overview of Conservation portfolio interests related to the advice and DOC's views on it.

5. MfE's briefing covers some high-level design choices for a fast-track consenting regime. It outlines that there is a trade-off between policy ambition and what can be achieved within the 100-day timeframe. However, we understand that other agencies and Ministers are likely to advocate for more substantial changes, some of which will have significant implications for you and DOC and would require careful analysis. In particular, s 9(2)(g)(i) [redacted]

6. Under the existing Natural and Built Environment Act (NBA) fast-track process you and the Minister for the Environment currently determine which applications in the coastal marine area can be fast-tracked. This role is proposed to continue with the retention of the NBA fast-track process in the NBA repeal Bill.

Conservation portfolio interests in developing a fast-track consenting regime

7. DOC has considerable experience of recent fast-track processes, both under the Natural and Built Environments Act and in stand-alone legislation. Fast-track consenting can be very effective for more regular, easily understood developments. However, fast-track pathways must be designed carefully to avoid the opposite outcome to that sought; proposals can be slowed down and become mired in lengthy legal proceedings.

8. There are two broad areas where a fast-track consenting regime has implications for your responsibilities as Minister of Conservation (discussed further below):

Interactions with conservation legislation and Treaty rights and interests

9. Ensuring sufficient environmental safeguards, especially for cumulative effects[1] (most notably, through the NZCPS)

[redacted]

[1] The results of multiple activities whose individual direct impacts may be relatively minor can, in combination with others, result in significant environmental effects.

[redacted]

Interactions with conservation legislation and Treaty rights and interests

11. We understand that some Ministers may be interested in developing a regime that is a 'one-stop shop' for fast-tracking authorisations under a variety of legislation including the Wildlife Act 1953, Reserves Act 1977, and concessions under the Conservation Act 1987, as well as other agency legislation such as the Public Works Act 1981 and Crown Minerals Act 1991.

12. There may be merit in this approach to improve efficiency for developers/applicants. However, further analysis and consultation is required to ensure there are no unintended consequences, litigation risks or better options due to:

- Treaty settlement obligations - DOC has thousands of Treaty settlement commitments and obligations, many of which relate to authorisations under conservation legislation. Careful analysis is required to ensure both DOC and you as Minister continue to meet these commitments through a fast-track regime.
- Section 4 of the Conservation Act 1987 - Conservation legislation is subject to Section 4 of the Conservation Act 1987 (the Treaty clause requiring decision-makers to give effect to Treaty principles). Any fast-track regime that covers conservation legislation will need clarity on how it interacts with Section 4.
- Conservation legislation purposes - Conservation legislation has different purposes to the RMA. Assessing authorisations under this legislation requires different technical skills and meets different legal tests. It would be important to work through the interactions to mitigate litigation risks and ensure other Government objectives are also met. Simply bypassing the tests in conservation legislation is not likely to meet fast-track objectives as it may result in lengthy court processes.
- DOC's role in conservation approvals - Clarity on DOC's role regarding Wildlife, Conservation and Reserves Act approvals in any one-stop shop process.
- Implications for DOC's RM role in relation to submitting on consent applications and engagement in any appeals process that may be proposed - This is a practical question for DOC, as well as a system coherence and effectiveness question as the role DOC plays forms part of the checks and balances in the system to ensure achievement of the Government's overall RM objectives.
- Land management - Like any land manager DOC has a particular interest in what happens on the land we manage (which is subject to the RMA).

s 9(2)(f)(iv) [redacted]

s 9(2)(f)(iv)

[redacted]

s 9(2)(f)(iv)

[redacted]

Conservation portfolio interests in potential targeted amendments

s 9(2)(f)(iv)

[redacted]

Your role as Minister of Conservation in policy development

23. As Minister responsible for the coastal environment under the RMA, you should influence and inform policy to guide coastal decision-making. We can support your active engagement in these processes, together with other agencies.

24. A Ministerial group is likely to be set up for fast-track consenting policy (and perhaps RMA reform policy more broadly); you should be a key member of this group.

25. We can also support you in your role in the existing NBA/amended RMA fast-track process, as required.

Risk assessment – Aronga tūraru

26. Policy decisions on fast-track consenting and RMA amendments require your input. Otherwise, there may be litigation risks that are not considered, risks to achieving the Government's outcomes, and avoidable adverse environmental effects.

s 9(2)(f)(iv) [redacted]

Treaty principles (section 4) – Ngā mātāpono Tiriti (section 4)

28. Careful analysis is required to ensure that any changes to the RMA system do not prevent you and DOC from meeting Treaty settlement commitments and section 4 obligations. This is particularly relevant for any inclusion of conservation legislation permissions in a fast-track regime and changes to your responsibilities in the coastal marine area.

Consultation – Kōrero whakawhiti

29. We have not consulted with other agencies on this paper.

Financial implications – Te hīraunga pūtea

30. There are no financial implications of the advice in this briefing.

Legislative implications – Te hīraunga a ture

31. Policy decisions for the fast-track consenting regime will result in legislative changes to the RMA.

Next steps – Ngā tāwhaitanga

32. We understand you will have the opportunity to discuss this work with your Ministerial colleagues.

33. Timeframes for the fast-track regime are still to be confirmed with Ministers, but we understand a bill is expected to be introduced to the House in early March to meet the 100-day deadline.

34. Officials propose a meeting with you in January to discuss the conservation interests outlined in this memo.

ENDS

Hon Tama Potaka

Minister of Conservation
Minister for Māori Crown Relations: Te Arawhiti
Minister for Māori Development
Minister for Whānau Ora
Associate Minister of Housing (Social Housing)

21 DEC 2023

Minister Responsible for RMA Reform
Minister for Oceans and Fisheries

Tēnā kōrua Chris and Shane

I understand work is underway in earnest on the 100-day priority of a fast-track consenting regime. I support improving the efficiency of consenting processes and particularly ensuring that projects of national and regional significance are not unduly delayed.

I have statutory roles and responsibilities that require my involvement with decision-making on fast-track consenting and RMA reform more broadly.

s 9(2)(f)(iv)

[redacted]

I understand that there is also potential for the fast-track regime to cover other legislation, including conservation legislation for which I am responsible. There may be merit in this approach to improve efficiency for developers. However, careful analysis will be required to ensure there are not significant risks to wider Government objectives, including meeting Treaty settlement and customary marine title obligations, and to understand practical implications for administration of the legislation.

I look forward to working with you on improving outcomes for New Zealanders through changes to the RMA system.

Mauriora

Tama Potaka

Hon Tama Potaka
Minister of Conservation

Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand | +64 4 817 6811 | t.potaka@ministers.govt.nz

Department of Conservation
Te Papa Atawbai

Departmental Memo

To	Minister of Conservation	**Date submitted**	15 January 2024
GS tracking #	24-B-0003	**DocCM**	DOC-7541484
Security Level	**In Confidence**		
From	Sam Thomas, Policy Director - s 9(2)(a)		
Subject	**Fast-track consenting Cabinet paper**		
Attachments	No attachments		

Purpose – Te aronga

1. This memo provides advice on a fast-track consenting briefing and Cabinet paper on which you will be consulted on. Delivering a Fast-Track Consenting Bill is part of the Government's 100-Day Plan.

Background and context – Te horopaki

2. There are three phases to the Government's resource management reform:
   - Phase one (complete): repeal the Natural and Built Environment Act (NBA) and Spatial Planning Act (SPA) by Christmas 2023.
   - Phase two: introduce a permanent fast-track regime, and make targeted amendments to the Resource Management Act 1991 (RMA) by late 2024.
   - Phase three: replace the current RMA with new legislation in 2026.
3. You will soon be forwarded a briefing and consulted on a draft Cabinet paper for part of phase two – the permanent fast-track regime. The purpose of the fast-track regime is to enable projects of national and regional significance to get off the ground sooner by speeding up relevant consenting processes.
4. The Minister Responsible for RMA Reform, Minister Bishop, is the responsible Minister for the Fast-Track Consenting Bill, and the lead agency is the Ministry for the Environment (MfE). Minister Bishop intends to introduce the Bill by March this year.
5. The papers seek agreement to the design of a permanent fast-track consenting regime that has the following features:
   - Standalone legislation (rather than an amendment to existing legislation), with its own statutory purpose
   - Provides for RMA approvals only (additional approvals required under other legislation – like approvals under the Wildlife Act 1953 – can be added through future amendments)
   - Includes eligibility criteria that enable a broad range of activities and are based on an assessment of whether the project would result in significant national or regional benefits

- Ministerial decision-making to refer projects to an Expert Consenting Panel
- A requirement for Expert Consenting Panels to finalise consents within a legislated timeframe.

6. As Minister of Conservation, you have strong interests in the design of the fast-track consenting regime (23-B-0523 refers) given:
   - your statutory responsibility for resource management in the coastal environment under the RMA
   - your interests in the strength and effectiveness of safeguards against adverse environmental effects
   - the possible inclusion in the fast-track process of any approvals usually obtained through conservation legislation, such as the Wildlife Act.

7. s 9(2)(f)(iv) [redacted]

Key conservation-related features of the fast-track proposal

You are proposed to be part of the Ministerial group making delegated decisions on policy

8. The fast-track briefing and draft Cabinet paper detail the high-level design of the fast-track regime and propose that further detailed policy decisions are made by the following Ministers (your portfolios underlined):
   - Minister Responsible for RMA Reform
   - Minister of Housing
   - Minister for Infrastructure
   - Minister for Regional Development
   - Minister of Transport
   - Minister for Māori Crown Relations
   - Minister of Conservation.

9. s 9(2)(g)(i) [redacted] However, your inclusion is critical given your statutory responsibilities in the coastal environment under the RMA. While you have these responsibilities, you are subject to risks (including any litigation risks) associated with policy decisions that impact the coastal marine area – if you are unable to influence these decisions, you will not be able to control the risks.

10. DOC officials are available to support your role on this group.

s 9(2)(f)(iv) [redacted]

12. s 9(2)(f)(iv) [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

18. s 9(2)(f)(iv) [redacted]

An effective environmental test for projects to be eligible for the fast-track process is critical

19. The fast-track process would ideally apply to projects that provide high quality applications, demonstrate good engagement with Māori and affected interests and communities, and undertake reasonable steps to ensure negative environmental impacts are appropriately avoided, remedied, or mitigated.

20. It is possible that the fast-track process will only allow consents to be declined in very limited circumstances. This means it is critical that any projects accepted to the fast-track process meet an appropriate test regarding adverse environmental impacts.

21. Further policy work is required to develop an appropriate environmental test that projects must meet to qualify for fast-tracking. DOC will work with MfE and other agencies on this and we will keep you appraised as this develops.

Further work is planned on the potential to include conservation authorisations in the fast-track regime

22. The objective of the permanent fast-track regime is to eventually become a 'one-stop shop' for fast-track authorisations under a variety of legislation including the Wildlife Act 1953, and possibly other legislation administered by DOC. The draft Cabinet paper outlines that time constraints mean the policy work on including authorisations outside of the RMA will continue alongside the fast-track bill and need to be incorporated through amendments if and when these can be appropriately developed. This may be before or after the Fast-Track Consenting Bill is enacted.

23. DOC supports this approach given the significant complexities with aligning conservation legislation and a fast-track regime, including issues around Treaty rights and interests (23-B-0523 refers). We are preparing analysis on options to include Wildlife Act authorisations in a 'one-stop shop' process.

Amendments to extend consent durations for marine farms

24. The Minister Responsible for RMA Reform and Minister for Oceans and Fisheries have agreed to progress an RMA amendment to extend consent durations for marine farms. The briefing proposes to do this through a separate amendment to the RMA rather than the Fast-Track Consenting Bill.

25. This is in line with the standing orders which require a Bill to relate to one subject matter only and allows the amendments to potentially be implemented more quickly.

26. Pending legal advice, DOC is generally comfortable with this. There may be a small selection of marine farms for whom extending consents may not be appropriate and we are working with the Ministry for Primary Industries and Ministry for the Environment on the policy options for this.

27. We will provide you with advice on this issue as policy develops.

Next steps – Ngā tāwhaitanga

28. The Cabinet paper is expected to be out for Ministerial consultation from 15-17 January and we expect the briefing and draft Cabinet paper to be forwarded to you for your feedback.

29. The Cabinet paper is to be considered by Cabinet on 23 January 2024. We can provide you with a Cabinet paper memo in advance of this meeting to support your conversations at Cabinet.

30. The intention is for a Fast-Track Consenting Bill to be introduced to Parliament on 7 March 2024 (within 100 days of the new Government taking office).

31. s 9(2)(f)(iv) [redacted]

ENDS

Attachment C

From: Amelia Smith
To: "Harry Evans"
Cc: Tui Arona (parliament); Sam Thomas; Ruth Isaac; Guy Kerrison; Neil Deans; Government Services
Subject: RE: ATTACHED: 24-B-0003 – Memo – Fast-track consenting Cabinet paper
Date: Wednesday, 17 January 2024 11:59:00 am
Attachments: image001.jpg

Hi Harry,

This version isn't much different from the previous version we saw. The key point for the Minister is that he is included in the group of Ministers that decisions are being delegated to and he still is so that's good.

The key change since the version we advised on is the purpose – it has changed from being about 'regionally and nationally significant projects' to enabling "infrastructure and other projects that have significant local, regional and national benefits". The inclusion of 'local' suggests this could be very broad and encompass a wide range of projects. The risk is that this then 'clogs up' and overwhelms the fast-track system which means it might not be so fast. But that's a broader issue that we can flag across agencies and isn't specific to the Minister of Conservation's responsibilities.

s 9(2)(f)(iv) [redacted]

We expect to receive the final version of the Cabinet paper on Thursday evening or Friday morning, and it will be lodged on Friday. We are preparing to try and send a Cabinet paper memo up before COP Friday given Monday is a public holiday and Cabinet is on Tuesday. But it will be tight. I understand SLT is meeting with the Minister on Tuesday morning so we may need to provide verbal advice then although I am conscious it would be good for Minister Potaka to have something in writing he can take to the Cabinet meeting.

Let me know if you have any questions.

Ngā mihi,

Amelia Smith

From: Harry Evans <Harry.Evans@parliament.govt.nz>
Sent: Wednesday, January 17, 2024 9:03 AM
To: Amelia Smith <ajsmith@doc.govt.nz>
Cc: Tui Arona (parliament) <Tui.Arona@parliament.govt.nz>; Sam Thomas <samthomas@doc.govt.nz>; Ruth Isaac <risaac@doc.govt.nz>; Guy Kerrison <gkerrison@doc.govt.nz>; Neil Deans <ndeans@doc.govt.nz>; Government Services <GovernmentServices@doc.govt.nz>
Subject: RE: ATTACHED: 24-B-0003 – Memo – Fast-track consenting Cabinet paper

Kia ora Amelia, here is the fast track cab paper we've been sent for consultation. Can I have any feedback, further to the briefing you provided on Monday by midday?

Thanks

Harry

Harry Evans
Private Secretary – Conservation | Office of Hon Tama Potaka MP

Minister of Conservation | Minister for Māori Development
Minister for Māori Crown Relations: Te Arawhiti | Minister for Whānau Ora
Associate Minister of Housing (Social Housing)

DDI: s 9(2)(a) | M: s 9(2)(a)
Email: harry.evans@parliament.govt.nz | Website: www.beehive.govt.nz
Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

Please also send all e-mails directed at me to my colleague: **Tui Arona** tui.arona@parliament.govt.nz

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From: Amelia Smith <ajsmith@doc.govt.nz>
Sent: Monday, 15 January 2024 12:23 PM
To: Harry Evans <Harry.Evans@parliament.govt.nz>
Cc: Tui Arona <Tui.Arona@parliament.govt.nz>; Sam Thomas <samthomas@doc.govt.nz>; Ruth Isaac <risaac@doc.govt.nz>; Guy Kerrison <gkerrison@doc.govt.nz>; Neil Deans <ndeans@doc.govt.nz>; Government Services <GovernmentServices@doc.govt.nz>

Subject: ATTACHED: 24-B-0003 – Memo – Fast-track consenting Cabinet paper

Kia ora Harry,

Please find advice on the fast-track Cabinet paper attached.

We expect Minister Bishop's office to share the draft Cabinet paper with your office this week.

I'll also put this in the 2pm bag.

Let me know if you have any questions.

Ngā mihi,

Amelia Smith [she/her]
Acting Manager | Marine Policy Team | Policy and Regulatory Services Group
Department of Conservation—*Te Papa Atawhai*
DDI: s 9(2)(a)

Department of Conservation
Te Papa Atawhai

Cabinet Paper Talking Points

To	Minister of Conservation		
Date of meeting	23 January 2024		
Cabinet Paper	**A permanent fast-track consenting regime for regional and national projects of significance**		
GS tracking #	24-K-0001	**DocCM**	DOC-7545330
Minister lead	Minister Responsible for RMA Reform		
Committee	Cabinet		
DOC Contact/s	Ruth Isaac, DDG Policy and Regulatory Services – s 9 (2)(a) Sam Thomas, Policy Director - s 9 (2)(a)		
Security Level	In Confidence		

Key points

1. The paper seeks agreement to the design of a permanent fast-track consenting regime to be introduced to the House by 7 March. As a result of ministerial consultation the paper has been amended several times and now includes the following features:
   - Standalone legislation (rather than an amendment to existing legislation), with its own statutory purpose
   - The revised purpose aims to enable a broad range of infrastructure and other projects that have significant local, regional and national benefits – without any reference to environmental/sustainable management considerations
   - Provision for a range of 'one stop shop' approvals including under the RMA, and potentially other legislation including conservation legislation (e.g. Wildlife Act) and heritage legislation
   - The final set of wider approvals that will be covered by the regime is to be determined by delegated Ministers (which includes you) in coming weeks following further advice from joint officials
   - In all cases, the Minister of Infrastructure, subject to Cabinet agreement, would decide to refer projects to an Expert Consenting Panel
   - A requirement for Expert Consenting Panels to finalise consents within a legislated timeframe, with limited opportunity to decline referred projects.
2. As Minister of Conservation, you have strong interests in the design of the fast-track consenting regime given:

- your statutory responsibility for resource management in the coastal environment under the RMA
- the potential for inclusion in the fast-track process of any approvals usually obtained through conservation legislation, such as the Wildlife Act, and the impact this might have on species outcomes and DOC activities
- your interests in the strength and effectiveness of safeguards against adverse environmental effects generally, especially on biodiversity and high value conservation areas.

3. Key elements of the proposed fast-track regime have received limited analysis by officials to date, including whether the overall proposed approach will meet its objectives. The late inclusion of "local" projects, for example, risks bogging down the regime with a high number of applications.

4. In addition, it is not clear to DOC how the potential coverage for the 'one stop shop' has been identified to date (why the Wildlife Act, for example) nor how the new regime might work for these wider approvals and the implications for these regulatory regimes – no advice on this point has yet been provided to Ministers as far as we know.

5. Your inclusion in the group of Ministers delegated responsibility for policy decision-making is critical given your statutory responsibilities across the coastal environment under the RMA and affected conservation legislation (e.g. the Wildlife Act and potentially the Reserves Act and Conservation Act). While you have these responsibilities, you are subject to risks (including any litigation risks) associated with policy decisions that impact them – if you are not involved in these decisions, you cannot control the risks. Likewise, it is critical to understand the potential impacts of the regime on DOC's current and future regulatory activities.

6. s 9(2)(g)(i) [redacted]

7. s 9(2)(g)(i), s 9(2)(f)(iv) [redacted]

s 9(2)(g)(i), s 9(2)(f)(iv) [redacted]

8. s 9(2)(g)(i), s 9(2)(f)(iv) [redacted]

Appendix 1: Talking points

General

- I support improving the efficiency of consenting processes to expedite well-prepared projects of national and regional significance.
- s 9(2)(h) [redacted] Getting the criteria right – including covering our Treaty obligations, environmental safeguards, and wider benefits typically assessed – is critical to ensuring faster decision-making, minimising legal risks and challenges (including judicial review), and getting the right social outcomes we need.

Minister of Conservation role in delegated decisions

- I look forward to working with relevant Ministers to agree detailed policy for the Fast-Track Consenting Bill and helping to advance our development objectives.
- The Minister of Conservation's statutory responsibilities for decisions made through a 'one stop shop' process under conservation legislation and for the coastal environment under the Resource Management Act 1991 means my involvement in these decisions is important.

Inclusion of further permissions

- Whilst there is merit in a 'one-stop shop' approach to improve efficiency for developers, I consider careful analysis will be required to ensure this delivers an efficient process without risks to wider Government objectives, including meeting Treaty settlement and customary marine title obligations, and to understand practical implications to administer the legislation. I look forward to getting further advice from officials.

Importance of appropriate environmental safeguards

- The fast-track process should apply to projects that provide high quality applications, ready for consideration and investment. These should demonstrate good engagement with Māori and affected interests and communities and undertake reasonable steps to ensure negative environmental impacts are appropriately avoided, remedied, or mitigated or in accordance with appropriate statutory considerations.
- Assessment criteria should include appropriate environmental tests to ensure that we safeguard important biodiversity and public interests in the management of public resources.

s 9(2)(f)(iv), s 9(2)(g)(i)

Appendix 2: Cabinet Paper Recommendations

1 Note I intend to take a phased approach to reform of the resource management system:

1.1 Phase one: repeal the Natural and Built Environment Act (NBA) and Spatial Planning Act (SPA) (now complete)

1.2 Phase two: introduce a fast-track consenting regime within the first 100 days, make targeted legislative changes to the Resource Management Act 1991 (RMA) by late 2024, develop new, or amend existing, national direction under the RMA, and the Going for Growth work package

1.3 Phase three: replace the current RMA with new resource management legislation based on the enjoyment of property rights, while ensuring good environmental outcomes.

2 Note the proposal to introduce a bill within our first 100 days in office to establish a fast-track consenting regime is part of the National/NZ First Coalition Agreement.

3 Agree that the fast-track legislation would repeal the NBA fast-track consenting process (with appropriate transitional arrangements to provide for live applications), which was retained as an interim measure while a permanent fast-track consenting regime was developed.

4 Agree to introduce other phase two amendments to the RMA as a Category 3 – a priority to be passed by the end of 2024.

Delegated decisions

5 Agree to delegate the ability to jointly make further detailed decisions as set out in Appendix 2, and issue drafting instructions to PCO, to the following ministers to enable the bill to be drafted for introduction by 7 March 2024:

5.1 Minister Responsible for RMA Reform

5.2 Minister for the Environment

5.3 Minister of Housing

5.4 Minister for Infrastructure

5.5 Minister of Transport

5.6 Minister of Conservation

5.7 Minister for Māori Crown Relations: Te Arawhiti

5.8 Minister for Regional Development

5.9 Minister for Oceans and Fisheries

5.10 Minister for Resources

6 Agree that delegated ministers will consult with other ministers on matters that are relevant to their portfolios.

Scope, purpose of the Act and Treaty clause

7 Agree that the fast-track consenting regime will be provided for in standalone legislation (rather than an amendment to existing legislation).

8 Agree that the fast-track pathway can be used for resource consents, notices of requirement, or certificates of compliance under the RMA.

9 Agree that the fast-track regime will also be a ‘one-stop shop’ for approvals under other legislation in addition to the RMA.

10 Agree the purpose of the legislation be aimed at enabling infrastructure and other projects that have significant local, regional and national benefits.

11 Agree that agencies will refine the purpose clause and seek final approval on it from delegated Ministers.

12 Agree that further decisions about the Treaty clause and interaction with Part 2 of the RMA will be made by delegated ministers.

Eligibility for fast-track process and applications

13 Agree that a broad range of projects can access the fast-track process if they would provide significant local, regional, or national benefits.

14 Agree that the legislation will set out clear eligibility for the pathway, including by clarifying 'local, regional and nationally significant benefits'.

15 Agree that decisions about criteria for determining whether a project would have significant local, regional, or national benefits and other eligibility criteria will be made under delegation.

Listed projects

16 Agree that, in addition to the standard application process, the bill will contain a list of individual projects to be automatically provided to the Minister for referral assessment.

17 Agree that listed projects should be subject to the same criteria in the legislation.

18 Agree that listed projects must be considered, and a referral decision made within a specified timeframe.

19 Note that Cabinet will have a chance to consider the proposed listed projects on 4 March 2024 as part of the LEG package seeking approval to introduce the bill.

Referral to the Expert Panel

20 Agree that the Minister responsible for making referral decisions under the bill will be the Minister for Infrastructure, with the Minister's referral decisions subject to Cabinet agreement.

21 Agree that the Minister will determine whether an application should be referred (in part or in full) to the EP.

22 Agree that the responsible Minister may decline an application after seeking input from relevant parties, if satisfied that the project does not meet the eligibility criteria.

23 Agree that the Minister must consult with other relevant portfolio ministers, local authorities and iwi including Post-Settlement Governance Entities as part of the initial assessment of projects.

Decision-making by Expert Panels

24 Agree that the EP will make decisions on applications, including consent conditions and designations.

25 Agree that a very high threshold must be met for the EP to decline projects referred by the Minister.

26 Agree that the EP must make decisions on applications within timeframes specified in the legislation.

27 Agree that decisions about appeals will be made by delegated ministers.

28 Agree that there will be no requirement to hear applications, and the need for a hearing and the ability to be heard is at the discretion of the EP.

29 Agree that further decisions about notification and hearing procedures and timeframes will be made under delegated authority.

30 Agree that panels must invite submissions from relevant persons or groups, which will be determined by delegated ministers.

Expert Panels: composition and operation

31 Agree that a Panel Convenor will be tasked with appointing EP members.

32 Agree that further decisions about panel composition and operation will be made by delegated ministers.

Upholding Treaty settlements

33 Agree that the legislation will include protections for Treaty of Waitangi settlements and other legislative arrangements including under the Marine and Coastal Area (Takutai Moana) Act 2011, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management agreements under the RMA.

Implementation

34 Agree that the agency/agencies responsible for the operation of the fast-track consenting regime will be determined by delegated ministers.

35 Agree that the agency/agencies who will support the process by ensuring applications have the required information and providing secretariat services to the EP will be determined by delegated ministers.

36 Note that funding to deliver the administration of fast-track consenting regime will be considered through Budget 2024.

37 Agree that if the funding for the fast-track consenting component is not provided through Budget 2024, all costs associated with the regime will be met from existing baselines.

Engagement

38 Agree that targeted engagement with groups representing local government, infrastructure, development and environment interests, and Māori will be undertaken to inform the design of the regime and the development of the bill.

39 Agree that officials will work with relevant Post-Settlement Governance Entities and other relevant entities to ensure any impacts on Treaty Settlements and other legislative arrangements are addressed appropriately.

Legislative Process

40 Note that I will take the bill and accompanying LEG paper back to Cabinet on 4 March 2024, seeking approval to introduce on 7 March 2024.

41 Authorise the Minister Responsible for RMA Reform to issue drafting instructions for a bill to give effect to the proposals in this paper and further delegated decisions.

42 Agree the bill will be introduced by 7 March 2024 with a priority Category 3 rating – a priority to be passed by the end of 2024.

ENDS

Department of Conservation
Te Papa Atawhai

Departmental Memo

To	Minister of Conservation	**Date submitted**	7 February 2024
GS tracking #	24-B-0033	**DocCM**	DOC-7560114
Security Level	**In Confidence**		
From	Ruth Isaac, DDG Policy and Regulatory Services – s 9(2)(a)		
Subject	**DOC advice on Fast-track Legislation Delegated Decisions Paper #1**		
Attachments	Attachment A – Key questions to work through Attachment B – 9(2)(f)(iv)		

Purpose – Te aronga

1. This memo provides you with conservation portfolio advice to support your consideration of 'Fast-track Legislation Delegated Decisions Paper #1' (MFE ref BRF-4115).
2. It also provides an initial summary of key issues to work through for how conservation legislation may be included in the Fast-track Bill.

Background and context – Te horopaki

3. Cabinet agreed on 23 January [CAB-24-MIN-0008] to develop a new, permanent fast-track consenting regime and to authorise a group of delegated Ministers to jointly make further detailed decisions. You are a member of this Ministers group in your capacities as Minister of Conservation and Minister for Māori Crown Relations: Te Arawhiti.
4. DOC has been working with other agencies to support the development of the advice in your first delegated decisions paper 'Fast-track Legislation Delegated Decisions Paper #1' (MFE ref BRF-4115). Your office received this paper on Monday 5 February, and you will be agreeing your preferred options with other delegated Ministers on Thursday 8 February.
5. The delegated decisions paper seeks decisions on:
    - The purpose of the fast-track legislation
    - Other approvals to include in the Fast-track Bill (including a number of conservation acts)
    - The weighting of the Fast-track Bill purpose in making decisions under other Acts
    - The eligibility and ineligibility criteria for the Fast-track Bill
    - What the fast-track process does and who makes decisions
    - Listed projects
6. This memo provides more detailed advice on conservation portfolio considerations to support your decision-making.

Inclusion of some conservation-related approvals in the one stop shop regime has potential benefits if scope and limits are appropriate

7. Cabinet agreed that the Fast-track Bill will be a 'one stop shop' for approvals under other legislation in addition to the Resource Management Act 1991 (RMA). You have a strong interest in the proposed inclusion of the Conservation Act 1987, Wildlife Act 1953, and Reserves Act 1977 (Decision II, Appendix 1 in the Delegated Decisions Paper 1).

8. We agree that there is potential for achieving streamlined and more coherent processes, improved timeframes from concurrence, and reduced duplication with resource management (RM) decisions, from including elements of the approvals under the Wildlife Act, Conservation Act (including freshwater fisheries regulations), and Reserves Act in the fast-track regime. However, there are significant areas where further analysis is required to ensure we meet the intention of the fast-track regime, minimise unintended consequences, and appropriately resolve Treaty considerations.

<u>Adapting conservation legislation requirements for the fast-track regime</u>

9. How to include these pieces of legislation appropriately and effectively, including any limits on scope, decision-makers' considerations, any prohibitions, or loosening of requirements to provide for a 'lower hurdle' in respect of fast-track projects, requires more analysis. Achieving this within the timeframes for introduction will be highly challenging, s 9(2)(h) [redacted] DOC is, however, preparing advice on options at pace.

10. Ensuring clarity on how the various statutory tests and requirements in the legislation are to be integrated into the new Bill is critical to provide certainty for developers and Ministerial decision-making, to limit the reach and impact of the Bill to only where it is intended to lead to changes, as well as to reduce future litigation risk (and associated delay and cost).

11. Unlike the RMA, where previous fast-track models have been drafted and implemented, no such work has occurred for the conservation legislation above at this scale or outside of emergency regimes, and conservation laws are complex and challenging in their own right. Decisions under these Acts are frequently (and currently) subject to legal challenges. The Wildlife Act, in particular, is widely acknowledged to be nearly unworkable and requires replacement.

12. 9(2)(f)(iv) [redacted]

- There are explicit activities which are prohibited in general, or in particular protected areas, under conservation legislation or under international obligations (e.g., for World Heritage Areas) that you are likely to want to consider maintaining.
- The scope of approvals that are relevant needs to be carefully delineated from wider "BAU" permissions or there is a risk that the Fast-track Bill will be used to get around standard processes and rules wherever it supports 'economic development' (e.g., for ski field concessions or 'housing' projects).

- Even if the Fast-track Bill purpose prevails where there is a conflict in relation to other legislation within its scope, substantive considerations and protections will be required for the conservation related approvals to have any meaning under the new regime – even if these are less restrictive by design for the purposes of the regime.
- How any conditions or compensating/mitigating activities are applied will matter – the current proposals would appear to enable damage on public conservation land (PCL) to be made up for by activities off PCL, leading to a degradation of PCL and wildlife habitats or ecosystems over time.
- Whether statutory documents which currently establish rules (e.g., conservation management strategies and conservation management plans) are overridden, noting in particular that some iwi have redress related to these documents.

13. In addition, many of the approvals that are relevant to major infrastructure and renewable energy projects within the sights of the fast-track regime, that are either wholly on PCL s 9(2)(f)(iv) or have impacts and activities on PCL from upstream private land s 9(2)(f)(iv), involve ongoing Crown liabilities, health and safety duties, and other risks. Whereas protections for private (and Māori) landowner rights are appropriately built into the regime, there are no such protections for the Crown as a major landowner through PCL unless we build them in as part of the design of the one stop shop. This exposes the Crown, the Minister of Conservation, and DOC to real legal and financial risks without the ability to make decisions, in addition to the exposure of PCL to degradation over time.

14. It may be appropriate for the Minister of Conservation to be a decision-maker in the regime given the extent of potential implications that are wider and more systemic. At present the Minister of Conservation has no role in the Fast-track Bill. Officials will consider this further as options are developed.

s 9(2)(f)(iv)

<u>Understanding how Treaty obligations will be recognised</u>

16. All conservation legislation is subject to a strong Treaty clause (section 4 of the Conservation Act that requires giving effect to the Treaty principles) and is frequently tied to commitments in Treaty settlements (both for consultation, but also for joint planning and decision-making over some matters). This has direct consequences for the processes and rights related to the operation of these Acts and therefore for what is carried over into the new regime unless otherwise explicitly ruled out.

17. Section 4 of the Conservation Act applies to all conservation laws and creates a responsibility that is broader than the commitments contained in Treaty settlements as it covers Māori rights and interests more broadly, including for non-settled iwi. Successive decisions by the courts are continuing to clarify the extent of these responsibilities and they permeate all aspects of the implementation of conservation legislation, including approvals/permissions.

18. If the intent is to align processes and timeframes for fast-track approvals, there will likely need to be an explicit provision for any new or different requirements depending on

where the new Bill itself lands in relation to any Treaty clauses (which is still being worked through). Section 4 may be either implicitly or explicitly overridden for the purposes of the Fast-track Bill, which would be highly controversial. If the intention is to maintain section 4 considerations for the conservation approvals, then the new regime is likely to be subject to considerable legal risk and resource-intensive processes. In reality, the risks and the processes are also likely to fall to DOC and the Minister of Conservation.

19. The more the Fast-track Bill moves away from the purpose and principles of the various Acts the more complicated it becomes to ensure Treaty obligations are appropriately considered. There are at least 73 settlements that include commitments relating to conservation and the effect of these strongly linked to the 'parent' Acts. Each arrangement is different, for example:

    - Persons exercising functions under the Conservation Act, Reserves Act, Wildlife Act (including approval decisions) must 'recognise and provide for' Te Awa Tupua (Whanganui River) status (including the legal personality) and Tupua Te Kawa (river values).
    - A concession in the form of a lease for more than 50 years triggers the Ngāi Tahu right of first refusal and that lease must first be offered to Ngāi Tahu.
    - Some Treaty settlements require the Minister and DOC to work through a six-stage process to provide for the participation of the PSGE in the process and decision-making on processes such as concessions.

20. To uphold the Treaty settlement redress, it would be necessary to demonstrate that these Treaty settlement mechanisms have the same or equivalent level of influence in the statutory processes and decision-making as is provided for under the Treaty settlement (including the ability to influence whether or not a concession or other authorisation is granted).

21. Understanding how this will manifest in the new regime, or changes that may be required in respect of that, requires more work than is feasible in the timeframe for decisions on drafting for introduction.

<u>Lack of engagement with Māori (and others) on policy development</u>

22. No options for including conservation legislation have yet been approved for consultation purposes so there is no possibility of engagement with Māori (which would need to cover both settled and non-settled iwi) or stakeholders on incorporation of these Acts prior to delegated Ministers' decisions. **This is the key challenge to timeframes for inclusion of conservation legislation at introduction on 7 March.**

23. Officials therefore recommend Ministers agree in principle to include these Acts in the regime and:

    - signal to the Select Committee that the Government intends to look further at this over the coming months, and
    - direct officials to provide advice and undertake engagement on agreed options for potential inclusion at a later Parliamentary stage through Amendment Papers.

24. DOC is identifying and developing initial options so that this can be completed on the required timeframe for Amendment Papers. This will still be very tight, and because of the scale of the proposals and the relevant consultees, will require deprioritisation of some of your wider policy work programme for some months (see section below on impacts on DOC prioritisation).

Options for inclusion of conservation legislation in 'one-stop shop'

25. Attachment A outlines key questions that will need to be worked through for including the Conservation Act (including the freshwater fisheries regulations), Wildlife Act, and Reserves Act. Further work will be completed in coming days on conservation (land access) approvals under the Crown Minerals Act 1991 as well. We welcome your feedback.

26. DOC approvals broadly cover two issues:

    - approvals to authorise operation and manage effects of a project, and
    - (in the case of public conservation land) securing access to the land on which a proposed project will occur (with appropriate conditions and/or contracts).

27. In some cases, these approvals cover similar issues to RM consents, but they also always consider the purpose for which the land is held (if PCL is involved) and relevant constraints on that (in primary legislation or in government policy statements or management planning documents). As noted above, they may also engage property right issues and management of associated Crown rights, risks and liabilities.

Wildlife Act approvals

28. Permission under the Wildlife Act is required in respect of wildlife (the ownership of which is vested in the Crown) wherever that wildlife is found. The Wildlife Act involves permissions to hold, catch, handle or release, and in some cases to kill, absolutely protected wildlife. This includes a wide range of wildlife, not just threatened species. RM consents do not test for these impacts or manage them.

Conservation Act approvals

29. The Conservation Act includes processes for granting of permissions relating to activities over conservation land. Permissions granted to occupy and use this Crown land are known as concessions and take the form of a lease, licence, permit, or easement, which may include a right to establish structures and timeframes up to 60 years, subject to criteria. Major projects seeking to use and occupy the public conservation estate often require concessions in the form of leases or licences to occupy, because the Crown is the landowner and the project proposed would establish structures or involve long-term occupation and use of Crown land (for example, telecommunications infrastructure). These approvals typically involve consideration of (i) effects on conservation values, (ii) the purpose for which the land is held (and any rules/requirements/constraints around that), as well as (iii) Treaty rights and interests, and (iv) management of Crown property rights, duties and risks. The RM regime does not cover off these considerations.

Freshwater Fisheries Regulations approvals

30. The Freshwater Fisheries Regulations are deemed to have been made under the Conservation Act and concern aspects of the management of sports fish and indigenous freshwater fish and their habitat. Particularly, proposals that involve a culvert, ford, dam or a diversion structure (with some exceptions) in any natural river stream, or water require authorisation to ensure fish passage is provided for where the natural flow of water is proposed to be altered or where structures might create a barrier. The Conservation Act also includes a process to approve moving fish. Inclusion of these approvals in the Fast-track Bill may be fairly straightforward.

Reserves Act approvals

31. The Reserves Act includes processes to grant authorisations/consents (including concessions in accordance with Part 3B of the Conservation Act for certain reserves), taking or killing of fauna, grants of rights of way and other easements. Some authorisations/consents (including leases/licences) are applicable to certain reserve classifications (e.g., scenic, nature, historic, recreation, scientific) and can be granted by the relevant administering body, (with prior MOC consent where relevant). The considerations for these approvals directly relate to the type of reserve and can also relate to the type of activity being considered (e.g., there are specific provisions related to the use of a reserve for communications stations). The RM regime does not cover off these considerations.

Crown Minerals Act approvals

32. Section 61 of the Crown Minerals Act provides for the consideration and granting of access arrangements for mining activities on Crown land and the marine and coastal area. If an access arrangement is sought for public conservation land, the Minister of Conservation (and the Minister of Resources in the case of large mining proposals) must determine whether the proposed mining activities are 'significant', and in doing so must have regard to:

    - the effects the activities are likely to have on conservation values for the land concerned;
    - the effects the activities are likely to have on other activities on the land;
    - the activities' net impact on the land, either while the activities are taking place or after their completion; and
    - any other matters that the Minister(s) consider(s) relevant to achieving the purpose of the Crown Minerals Act.

33. Access cannot be provided (except in a limited range of specific instances) for areas listed in Schedule 4 of the Crown Minerals Act which includes (for example) national parks, nature and scientific reserves, and marine reserves.

34. The above considerations essentially give the landowner the opportunity to place conditions on the mining activities that can take place on the land owned or managed by the landowner (in this case, the Minister of Conservation on behalf of the Crown). The RM regime does not consider these issues.

Impacts of this work on DOC prioritisation

35. The complex and rapid work on including conservation legislation in the fast-track regime, and s 9(2)(f)(iv) [redacted], has required significant reprioritisation of DOC resources and will mean delays on other advice to you and potentially to the Minister for Hunting and Fishing, s 9(2)(f)(iv) [redacted]. DOC will provide further advice to you on the impact of this work once it is clear what the next steps are following delegated Ministers' decisions. s 9(2)(f)(iv) [redacted]

36. Once the Fast-track Bill is implemented, we also expect that resourcing fast-track projects will become a non-discretionary priority for DOC (potentially with statutory timeframes to meet) and, all else being equal, will have to be prioritised above other permissions work due to constraints on our regulator, legal and scientific/technical

capacity. Should the new regime be subject to judicial reviews or litigation, we also expect this will increase demand for DOC.

37. DOC will also need to be involved in the design of any cost recovery mechanisms for the fast-track regime to ensure we can adequately fund our involvement.

Next steps – Ngā tāwhaitanga

38. DOC will continue to work at pace to develop feasible options for including conservation legislation in the fast-track regime. Further advice will be provided in the next delegated decisions briefing on 12 February – either for decisions (if joint Ministers do not wish to take more time) or for consultation purposes and agreement on scope and next steps.

39. The time we have to finalise our options and mitigate the risks outlined in this memo depends on Ministers feedback regarding Decision II, Appendix 1 in the Delegated Decisions Paper 1. Ministers have a few options:

    a. Include conservation approvals in the Fast-track Bill in time for introduction on 7 March (**not recommended** by joint officials as this requires final drafting decisions by 15 February and precludes any engagement).

    b. Complete policy analysis, engage with Māori and other key groups, refine the advice, seek decisions from Ministers over the next 3 months and develop drafting for incorporation into the Fast-track Bill post-introduction (**recommended** by joint officials).

40. There are in practice two further options:

    c. Decide the timing on including conservation approvals once further advice has been provided on 12 February (not recommended as this would require DOC to complete work to drafting level of specificity within the next week anyway)

    d. Push out the introduction of the Fast-track Bill to later in March to provide a couple of extra weeks for analysis, rapid and targeted engagement, and decisions (not recommended as highly challenging in this timeframe).

41. 9(2)(f)(iv) [redacted]

42. You will be agreeing your preferred options on the delegated decision briefing with other delegated Ministers on Thursday 8 February. You have a pre-meeting with DOC officials (Ruth Isaac, Deputy Director-General, and Sam Thomas, Policy Director) to discuss this on Wednesday 7 February.

ENDS

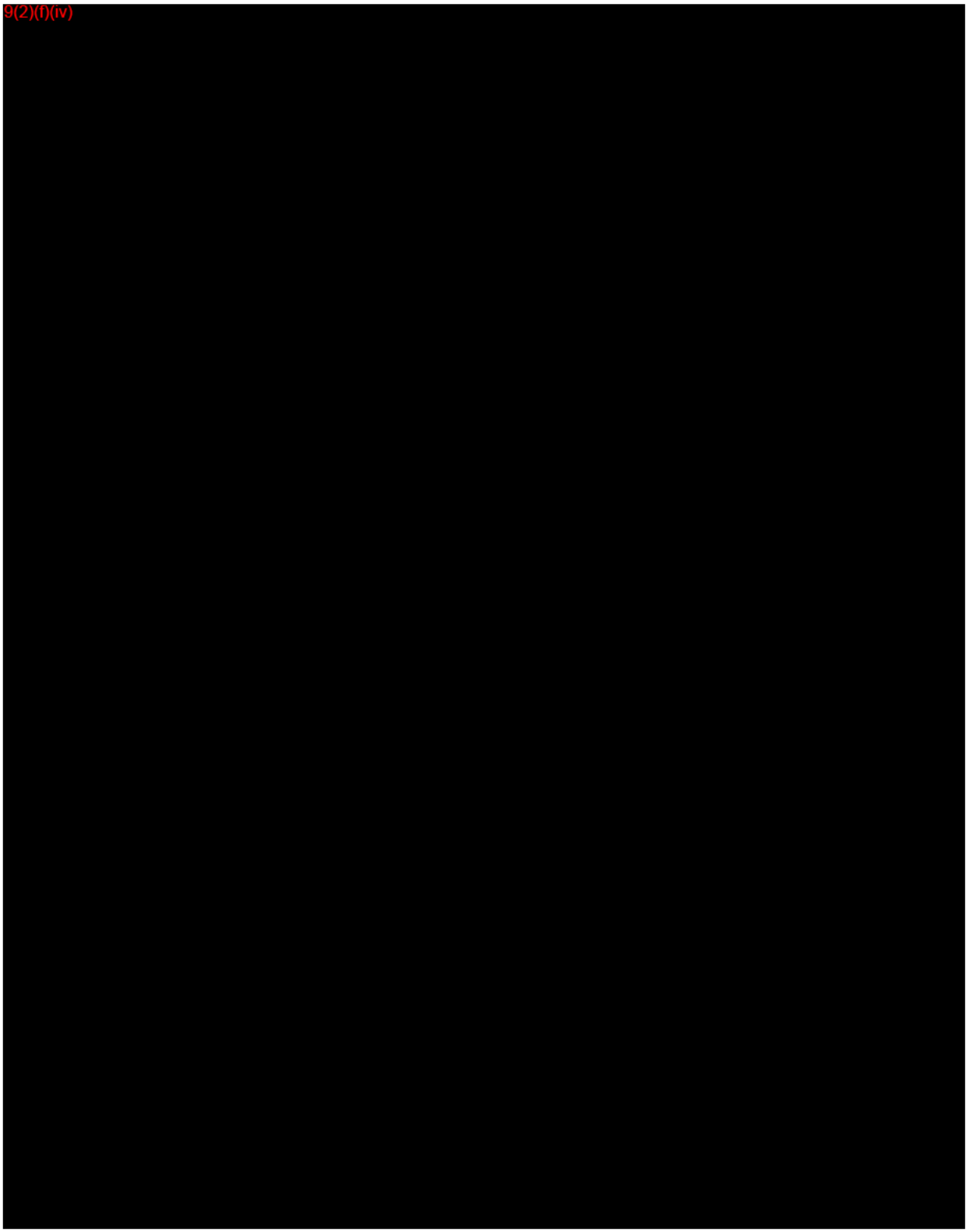
Attachment A – Key questions to work through

Key questions to work through with regard to the proposal to include conservation legislation in the Fast-track Bill are below. 9(2)(f)(iv) [redacted]

- Options for addressing the Conservation Act's Section 4 obligations:
    - Including it - Section 4 could be carried over to the Fast-track Bill which would maintain the integrity of the clause but would also include all the process and substance requirements and resulting timeframe implications.
    - A specific clause that outlines what meeting Section 4 obligations means in the context of the Fast-track Bill.
    - Overriding it – The Fast-track Bill could override Section 4.
- How to address consideration of conservation values and existing tests for conservation legislation, including purpose for which the land is held, the magnitude and type of effects, and the Crown obligations and associated risks. Are there any thresholds that you would not want crossed regardless of the benefits of the project (e.g. extinction of a species)? Or do the standard tests apply which are then balanced against the benefits?
- How wide is the scope of the Fast-track Bill with regard to conservation approvals – are any major concessions included (e.g., tourism concessions) or just those for the development of critical infrastructure?
- How to approach any changes to the Wildlife Act itself including the challenges around section 71 and section 53, bearing in mind the current legal challenges with this Act.

Attachment B – 9(2)(f)(iv) [redacted]

9(2)(f)(iv)



Department of Conservation
Te Papa Atawhai

Departmental Memo

To	Minister of Conservation	**Date submitted**	11 February 2024
GS tracking #	tbc	**DocCM**	DOC-2613390
Security Level	**In Confidence**		
From	Ruth Isaac, DDG Policy and Regulatory Services, s 9(2)(a)		
Subject	**Update on Fast Track Bill One Stop Shop – Conservation Approvals**		
Attachments	Attachment A – One Stop Shop: Conservation authorisations		

Purpose – Te aronga

1. Attached is a first draft of advice on the policy decisions that are required for drafting instructions to be prepared for inclusion of conservation approvals in the FT Bill. This is a work in progress. At this stage, there remain matters which are not complete or fully resolved, and there is still a need to remove unnecessary detail from the main decisions table.

2. The purpose of this check in session is to:
   - Familiarise you with the material, and with the direction of our thinking
   - Discuss key policy choices, and understand your perspectives on these issues
   - Identify any options which should be discounted before the paper is finalised.

3. There are lots of issues and recommendations because:
   - there are complex policy, legal and technical considerations and interactions,
   - we are dealing with 4 different regulatory systems and a large number of Treaty settlements,
   - the legislation is dated and not well integrated, and the institutional framework which is the fabric of the regulatory systems bakes participation in and makes change difficult by design,
   - the legislation we are working with is subject to litigation and frequent challenge, and
   - a one stop shop has not been legislated for before under any of these statutory regimes. **This is novel territory**.

Timing and process from here

4. The current timetable:

Test initial advice with MOC	**Sunday 11 Feb**
Paper reviewed by agencies and further internal review/testing/finalisation Detailed decisions table also completed	Monday 12 and Tuesday 13 Feb
DOC to review and input to wider Briefing 2 matters as required	Ongoing
Briefing 2 submitted to joint Ministers, with our tables attached	Wednesday 14 Feb
Meeting of delegated Ministers	Thursday 15 Feb
All decisions, including detailed decisions, must be approved and sent to PCO for drafting	Friday 16 Feb
Engagement Concurrent with drafting support for PCO	W/c 19 Feb
Likely delegated Ministers meeting to mop up any outstanding matters (must be exceptions only, or issues arising during drafting that are not minor)	W/c 19 Feb
Drafted Bill submitted by Hon Bishop to LEG and Cabinet for approval for introduction	Late Feb/early March

Progress so far

5. The attached table covers:
    - general matters applicable across the FT Bill in relation to conservation approvals
    - options for each of the approval types which have been agreed in principle to be included
    - decisions at a level of detail that will be necessary for drafting instructions and to resolve any ambiguities that might otherwise arise – especially given there is less time than usual to clarify matters throughout drafting.

6. Overall, DOC considers that including any PCL-related approvals in the One Stop Shop is problematic – they are NOT fundamentally the same as RM approvals. The key consideration is the purpose for which the land is held, which is mostly set aside precisely for protection purposes. Some of the necessary options for the FT Bill undermine fundamentals of the Conservation system – and while this is only for 'significant' projects (although the criteria are loose), some of these are precisely the projects which require the strongest protections to be in play and are not appropriate on PCL. Improvements to how the system works are needed, including what is allowed where with some relaxation needed in relation to some matters in some places, but this should be considered as a whole.

7. The major areas we'd like to discuss are as follows:

Key decisions	DOC advice

Scope/what is eligible
 	
• Ruling out FT projects on PCL listed at schedule 4 of the CMA (with some marginal changes possible to that list for the FT Bill) – this decision makes a significant difference to all further advice on the application of the regime as it protects most of the highest value conservation areas.
  ○ 9(2)(f)(iv) [redacted]
  ○ Stewardship land could in theory be added to exclusion with others, but we haven't mentioned it
 	
• Keep current requirement to decline projects on PCL that could be off PCL (except s61 approvals – already allowed)
  ○ Lighter version could be (eg): except for critical infrastructure?
 	
• Who deals with variations, further authorisations, renewals etc?
	STRONGLY RECOMMENDED
	
	There is a significant interaction here with the Stewardship Land reclassification project and decisions you will be making this year. This will be noted and may make schedule 4 carve out less palatable for the FT regime.
	
	STRONGLY RECOMMENDED – could live with lighter option
	
	Have suggested either FT decisionmaker or "BAU" but under provisions of the FT Bill

Wildlife Act
 	
• Options include:
  ○ Amended regime of protections but DG/Ministers decides under WA
  ○ Or Panel decides under FT Bill (ie not a Wildlife Act authorisation) – a number of elements to this
 	
• Under either option: provide for more targeted protections?
  ○ If so, focus on threatened species and avoiding irreversible loss (could be mandatory consideration or make projects ineligible)
  ○ DOC to advise Panel on this
	Likely developers want faster/better processes more than lower standards or a different decision-maker
	
	Either way, approvals will usually involve operational plans to be agreed. Critical that best practice used in handling or moving protected wildlife – needs to be maintained in new regime
	
	But there have been calls for a more targeted approach to what is protected – ultimately this is a question for the Wildlife Act review as a whole. But there is a case for a higher bar for the most important developments – especially for critical infrastructure that cannot go elsewhere
	
	Still looking at how to manage data deficient species

Concessions • Are all Fast Track projects eligible for concessions? Or just critical infrastructure? • Two options for Ministers given the complexity of risk around Crown owned land: ○ concessions are in FT Bill and decided by Panel with alternative requirements; or	Cannot separate property related approval instruments from effects related approvals – all take into account effects, purpose for which land is held (as these interrelate), as well as Treaty considerations, economic value and Crown risk management.

○ concessions decisions remain with MOC, but Bill provides for process alignment improvements and some alternative requirements • eg remove need for public notification, remove need for complying with CMS/CMP etc (except where required as part of a Treaty settlement) • If concessions decisions are in the FT regime and made by the Panel: role of Minister of Conservation: ○ Concurrence on decision ○ Consulted by Panel • Charging for leases/licenses/easements (economic rentals above processing fees) – currently negotiated as part of contracts so difficult to separate from "approvals"	Therefore we recommend two options be presented – we have not presented any status quo option Unclear how referrals work yet (which Minister(s) refer), but hard to see how MOC could be a joint decision-maker with Panel Will Panel have expertise/time to negotiate challenging 30+ year property contracts and rents? In practice if DOC still does the negotiating, what is the Panel's role? Fully standardised Ts and Cs / charges aren't possible either.
Treaty settlements and s4 matters • There are protections in the regime so far that cover many aspects required to uphold Treaty settlements – we are banking these and looking at what else needs to be considered for conservation specifically • Key issues/grey areas: ○ Does any specific existing redress cut across FT regime (approvals) and if so, what to do about it ○ PCL in iwi sights – for future settlement or post-settlement – treat as all other PCL (ie no special arrangements proposed) ○ S4 – applies to FT regime approvals and referrals as well as implementation by DOC? If not, need to explicitly disapply it and/or provide alternative approach.	Upholding Settlements is already agreed policy – but some murkiness in what this means in practice and between iwi expectations and legally enforceable elements Lots of complexity here, with interrelationships with s4/settlements and a fraught legal landscape Recommend that due to both litigation/JR risks and sensitivity, clarity is required in the application of any ambiguous matters Any disapplication/alternative to s4 likely to be seen as a diminution of protection of rights and interests – whether worth it depends on whether there is a wider Treaty clause in Bill But greater clarity on what Parliament wishes in respect of Treaty considerations and policy settings would be beneficial for the Crown and other parties
Reserves Act • This is a very complex area with hundreds of arrangements • Propose to include DOC owned and managed reserves and local authorities, and others if they agree • Other improvements could be included later to support FT objectives	Recommending, for now, only incorporating Reserves approvals relating to DOC administered/owned reserves and local authorities, except if approved by administrators

S61 CMA (access arrangements on PCL for mining)
 	
• Similar issues and choices as concessions
• Decisions by Panel or MOC
  o Crown property issues arise as well as environmental effects and impacts for other users (recreation)
 	
• Option presented to lower bar for consistency across FT regime – but why?
  o Proposing to retain most current "must considers"
  o But remove need for public notification, remove need for complying with CGP/CMS/CMP etc (except where required as part of a Treaty settlement)
 	
• Note World Heritage Area issues – expected not to approve extractive activities in WHA
	Purpose of the Act is more permissive than conservation legislation.
	
	We see opportunities for improvements in DOC's approach (especially for existing mines) but regime is already enabling (likely more permissive than it should be) – just not speedy and some duplication of assessments
	
	No evidence that legislative bar needs reducing from DOC perspective – many mining approvals granted
	
	Raises similar Crown land risk/liability issues as concessions – real examples of downstream liabilities falling to DOC and ongoing unfunded costs

General/other matters • Role of DOC in referral process, in supporting Panel, and implementation – workload impact, opt out option, s4 requirements for DOC's inputs in the process • Cost recovery for DOC – needs to be enabled by the Bill, especially given required timeframes	A number of the main or detailed decisions need minor additions to cater to conservation inclusions It is likely that DOC will be called upon by the referring Minister (through EPA) and the Panel to respond within set timeframes on almost all FT projects Likely that post approvals, there will be ongoing implementation and monitoring work for DOC, as well as follow up approvals/variations

8. General comments at this juncture:

   a. The speed of analysis means that there are risks in the advice – it is likely that there will be unintended consequences and errors which need remediation in the Select Committee or thereafter, but also policy options which on reflection were not optimal and which cannot be easily amended unless removed through legislative stages.

   b. Many of the matters contained in this advice are matters which we would like to consider in Conservation legislation reviews (eg repeal of Wildlife Act, expanded CMAP), and further legislative changes will potentially have consequences for the FT regime down the track.

c. We have sought to provide alternatives to the status quo in all cases in terms of options, to achieve the objectives that Ministers have set for the FT regime for accelerated development of significant projects to New Zealand. Also to address the problems we know exist in relation to conservation approvals in respect of developments. In some areas, it is not clear to us that a one stop shop is addressing the key issues. A full analysis would take more time, but we expect that a number of issues will not be improved by this approach.

d. Conservation approvals are not a ONE OFF or linear in terms of project development and interaction with RM consents. Often a Wildlife Act approval will be needed after projects begin, or a further/different approval. Likewise, variations are frequently needed to leases/licenses/easements. Sometimes earlier engagement through the consenting process on Conservation related matters would make things easier and faster on all fronts. But not always.

e. DOC needs better processes and timeframes in its authorisation regimes, and many of the legislative settings are suboptimal. We will continue to work on operational and policy options to support this, along with new performance targets for you to consider. However, the FT Bill will likely have a significant impact on DOC processing resources once passed and this will likely impact what is possible outside of FT projects too.

Risk assessment – Aronga tūraru

9. Note comments above.

Next steps – Ngā tāwhaitanga

10. Following discussion with you, DOC will continue to work on the advice for delegated Ministers, including further internal review and feedback from other ‘fast track’ agencies including Crown Law and Te Arawhiti. The advice will be finalised and provided to Ministers on Wednesday for your Thursday meeting. Detailed decisions will need to be made by Friday 16 February.

ENDS

One Stop Shop: Conservation authorisations

Ministers have agreed in principle to include authorisations from the following Acts in the One Stop Shop Fast Track Consenting regime:

- Wildlife Act
- Conservation Act
- Freshwater Fisheries Regulations
- Reserves Act
- S 61 permits under the Crown Minerals Act.

Key policy options for decision are set out in Table B. More detailed policy decisions required for drafting are set out in Table X and are required to be confirmed by Friday 16 February by PCO. It is proposed that delegated Ministers agree that the Minister of Conservation be delegated to approve the detailed decisions related to Conservation approvals. Joint officials will ensure that any decisions from Table B are reflected in the detailed recommendations before signoff.

The key issues for Ministers to consider in relation to conservation authorisations include:

- Which approvals are relevant and in scope (within and across the Acts and regulations identified)
- What changes are required at law to existing limits and constraints on these approvals, including whether to disapply current statutory policy and planning documents which set mandatory rules below the primary legislation
- What changes are required at law to improve and align processes; particularly as to decision-making
- Whether there are additions to be added to the agreed list of mandatory or discretionary referral considerations, eligibility criteria or ineligibility criteria for FT projects
- The role of Ministers and DOC in respect of these approvals
- How Treaty settlements will be upheld, and wider Treaty obligations under section 4 of the Conservation Act (to give effect to the principles of the Treaty)
- How Crown property rights and risks are best managed in respect of these approvals, and the roles of the Minister of Conservation, DOC and the Panel in authorisations that are provided through property-related contracts and charges
- How costs will be recovered in respect of conservation-related approvals under the FT Bill – noting that officials consider that these will likely be significant in that expertise in this statutory decision-making is largely held in DOC

Limited information and analysis on these issues is able to be provided in this table, and there are complex legal, policy and technical issues involved in some areas. The advice is necessarily caveated as the best able to be prepared in the timeframes.

Table B: Conservation authorisations, key policy decisions

Proposal	Options	Decisions	Advice and Analysis

(I) Scope of land classifications covered and other general matters	**1. Agree** that applications for fast-track permits under the Wildlife Act, Conservation Act, Freshwater Fisheries Regulations and Reserves Act, must not relate to land listed under Schedule 4 of the Crown Minerals Act 1991 **2. Agree** that a project will be ineligible for the Fast Track process if it requires permissions on Schedule 4 land *Additions/exclusions in terms of land covered for the purposes of the Fast Track process* **3. Agree** to exclude the following from Schedule 4 for the purposes of the Fast Track Bill: a. All Crown land— i. held, as at 1 October 1991, under the Conservation Act 1987 or any enactment set out in Schedule 1 of that Act; and ii. situated on the Coromandel Peninsula and lying north and north-west of State Highway 25A (Kopu–Hikuai road) and the road from Hikuai to Pauanui Beach known as the Hikuai Settlement Road. b. The internal waters of the Coromandel Peninsula **4. Agree** to add to the areas excluded from the Fast Track Bill as if they were listed in Schedule 4: a. ecological areas b. Te Urewera, Taranaki Maunga and Whanganui River **5. Agree** that if permissions are requested in relation to either World Heritage Areas or Ramsar Wetlands of International Significance for Fast Track projects, the Minister of Conservation must be consulted. **6. Agree** that applications for fast-track permits under the Wildlife Act, Conservation Act, Freshwater Fisheries Regulations and Reserves Act, must not relate to a reserve under the Reserves Act that is managed or administered by an entity other than DOC or local authorities, unless the administrator agrees. *Other general matters for conservation-related approvals* **7. Agree** to retain the requirement for concessions that projects, including Fast Track projects, cannot be approved on PCL that could be off PCL – by making such projects ineligible for the Fast Track process. **8. Note** that recommendation 7 does not apply to s 61 approvals under the CMA. **9. Agree** that if offsetting or compensation is provided for in relation to projects with adverse effects on PCL, the offsetting or compensation will be for use on PCL. **10. Either:** a. **Agree** that where subsequent variations and conservation-related authorisations are required in	**Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No**	**General Advice** You have a choice about which public conservation land (PCL) classifications are within scope of the fast-track regime. PCL is variable in terms of the magnitude of the conservation values and the purposes for which it is held, and who it is held/administered by. Schedule 4 of the Crown Minerals Act includes the categories of PCL that warrant the highest levels of protection (e.g. national parks, nature reserves). It was a response to concerns from the public about all public lands being potentially open for mining. There is an expectation of very minimal human intervention in Schedule 4 areas (e.g. nature reserves, scientific reserves, wilderness areas and marine reserves), and/or they are considered to be special areas where human activities are more frequent and intensive but should be related to the use and management of those areas (e.g. national parks). Officials recommend that these areas are excluded from the fast-track regime. However, you may choose to allow the fast-track regime to apply to the Coromandel-specific aspects of Schedule 4; all PCL on the Coromandel Peninsula (and the internal waters) is included in Schedule 4 regardless of its status. Suggested additions to the list at Schedule 4 for Fast Track purposes: • Ecological areas are not listed in Schedule 4 of the Crown Minerals Act but are of similar value to scientific reserves which are listed. Scientific reserves were established to protect areas with specific scientific values – fossil sites, unusual geological formations, unusual ecosystems, and places used for scientific research. Ecological areas were established through a scientific coordinating committee (mostly by the former NZ Forest Service), to identify and protect parts of production and protection forests that had particular scientific significance, both representative and unusual ecosystems. There are 44 ecological areas collectively covering approximately 130,000 hectares. Officials recommend that ecological areas are also excluded from the fast-track regime. • Te Urewera, Taranaki Maunga and Whanganui River should also be treated as if they are on Schedule 4. • Consideration of Ramsar sites (wetlands of international significance) and World Heritage Areas is required to meet international obligations and protect New Zealand's reputation. Not all reserves under the Reserves Act are owned by the Crown or administered by DOC. Reserves may be owned by another body (generally a council), or the underlying ownership may be with the Crown, but the reserve vested in another body, or the main decision-making functions for a reserve may have been assigned to another body (through a "control and manage" arrangement). The term "administered" is used to cover all three levels of control over reserves. Reserve administrators include councils, reserve boards, trustees, societies and other public bodies. Reserves can also be owned by iwi (generally as a result of the land being transferred to iwi in settlements but remaining as reserves). For example, around 282 reserves are privately owned by iwi but managed by DOC by arrangement or agreement. You have already agreed that a project must not include an activity that would occur on land returned under a Treaty settlement, or identified Māori land, that has not been agreed to in writing by the relevant landowner(s) (including PCL). There have been no discussions with other reserve managers in the development of this policy, so you may wish to exclude local authority administered reserves as well. That should not prevent agreements between applicants and the reserve administrators being taken into the fast-track process, or arrangements (e.g. an easement to allow truck movements across a reserve) being sorted out afterwards. In addition, the purposes for which non-DOC land is held and administered are generally more varied, and include activities such as lighthouses, council workshops, courthouses, bowling clubs, cricket grounds, racecourses, etc. It would be difficult to anticipate all implications of changing decision-making processes for these types of lands. We have suggested you allow these reserves to be included if the reserve administrator agrees but have not completed any analysis on whether that option was feasible and if any types of reserves could be included. **Development implications** Preventing projects from accessing the fast-track pathway, or preventing certain approvals from being sought through it, reduces the potential for this legislation to enable development. However, other pathways exist for projects to be consented/acquire approvals which may be more appropriate for those projects than the fast-track regime. Ineligibility for

Proposal	Options	Decisions	Advice and Analysis
	relation to approved Fast Track projects, these will be determined through the Fast Track process. **OR** b. **Agree** that where subsequent variations and conservation-related authorisations are required in relation to approved Fast Track projects, these will be determined through normal decision-makers but subject to the provisions of the Fast Track Bill. 11. **Agree** that authorisations under the Fast Track Bill relating to Conservation authorisations must be able to be declined if Fast Track mandatory requirements are not able to be met [*note: may not need this recommendation if the wider Bill covers it*]. 12. **Note** that conditions will often be required to be applied to approvals for the purposes of follow up operational agreements (eg translocation arrangements) and monitoring/enforcement. 13. **Agree** to add conservation expertise to the Panels where appropriate.	**Yes | No** **Yes | No**	the fast-track regime does not mean a project is ineligible to proceed by other means. That will also free up space in the fast-track system for more easily resolved development projects. **System efficiency** Including the land that is proposed to be excluded above will reduce the chances of fast-track applications getting mired in legal proceedings due to negative reaction to destruction of conservation values or the complexity of decision-making processes with different bodies who administer the land. **Treaty Impact Assessment** The proposal that projects would be ineligible on land returned under a Treaty settlement or identified Māori land – unless permitted by the owners – provides an important protection, whilst also enabling Māori landowners to support or undertake development (e.g., papakāinga).

(II) Treaty matters	**14. Note** that delegated Ministers have confirmed that the Fast Track Bill will uphold Treaty settlements. **15. Note** that conservation redress within Treaty settlements is a complex landscape to navigate: spanning freehold land transfer, land vesting, creation of legal personalities with specific statutory connections to wider conservation laws, and involvement in governance and DOC/MOC decision-making including on permissions or plans. **16. Note** that DOC currently notifies iwi of permission applications in their area and consults relevant iwi on permissions decisions and takes their views and interests into account – and that in some cases this is built into settlements or relationship agreements. **17. Note** that what upholding Treaty settlements means in this context is not straightforward and is likely to be subject to dispute and litigation, and this is further complicated by reference to section 4 of the Conservation Act in some settlements (Acts, Deeds or further instruments). **18. Note** that your decisions to date, including detailed decisions approved by Minister Bishop, would apply to conservation related settlement redress by, e.g.: a. ruling out projects that occur on land returned under a Treaty settlement, or identified Māori land, that has not been agreed to by the landowner(s). b. including in identified Māori land legal personality areas (such as Te Urewera), and land under a Treaty settlement managed under the Conservation Act or Reserves Act. c. requiring a report on Treaty settlement and other obligations before accepting an application for referral and that an application may be declined on that basis. d. requiring that the Panel must comply with the procedural arrangements in relevant Treaty documents unless agreement from the relevant entity is obtained, but that the entity must not unreasonably withhold their agreement. e. enabling consideration of iwi interests in Panel appointments. **19. Note** that DOC is the responsible agency that will provide the report on Treaty settlement and other obligations in respect of conservation-related approvals. **20. Note** that it is highly likely that some current process-related agreements with iwi that are not stipulated in settlements will be frustrated by standard timeframes imposed in the Fast Track projects, but most such agreements are noted to be subject to change and none remove the ability to change laws or undertake functions or powers. **21. Note** that around 60-70% of settlements include provision for decision-making frameworks as part of conservation redress and this includes procedural requirements and, in limited cases, content / substantive matters – which should be protected.	**Yes | No**	**General advice** All Treaty settlements include significant conservation redress, and the Treaty has been described as a core feature of the relationship between the Crown generally, DOC and Māori in relation to conservation. There is a wide range of conservation redress. The range and number of redress commitments reflect Cabinet guidance that redress is commensurate with the strength of association of an iwi with a place or landscape. The types of activity that would be progressed through an FTC process would be of interest to iwi. The more straightforward types of redress (deeds of recognition, statutory acknowledgements and overlay classifications) are intended to provide for iwi involvement in the process leading up to DOC decision-making. There are "static" parts of the redress (for example a statement about an association or interest in a place). There is potential for settled groups to be frustrated by a truncated or "on paper" version of a consent process that limited their direct involvement in a process. Some redress involves iwi in activities directly (for example preparing strategies and plans) or in some form of decision-making role (joint management, involvement in CMS and CMPs, approval of management plans). These types of redress are intended to provide iwi with a hands-on involvement in mechanisms for managing and protecting whole landscapes. They could be frustrated by a process that was not required to consider their ambitions or expectations for those landscapes or didn't allow them to influence decision-making. There are forms of redress that involve the transfer of land (in fee-simple or with encumbrances) to iwi, or to vest in the entity itself (Te Urewera, Whanganui River, Taranaki Maunga). This includes land administered under the Reserves Act. DOC recommends these legal entities should be excluded as equivalent to Schedule 4 Crown Minerals Act land. There are relationship agreements which commit DOC to working with the iwi to explore both process and decision-making roles, and potentially subsequent transfer of sites. 57 (of 65) have specific section relating to concessions/statutory authorisations. A breach of an agreement is not a breach of the settlement though a breach can be directly enforceable and subject to public law remedies (i.e. judicial review). There is public conservation land that will or is very likely to be subject to a future settlement: for example, all of the public conservation land north of Auckland up to and including the Mangamuka range, and land that makes up North Island east coast harbours. The schema of the FT Bill agreed to date builds in protections for Treaty settlement arrangements. It is possible that these protections do not cover all of the several thousands of conservation-related settlement commitments that exist (noting there is some ambiguity in the scope of these protections), and so there is a residual risk that a settlement could be undermined by the fast-track regime. We have sought to identify key areas that require a potential carve out for ongoing protection. This schema will likely constrain the further decisions you will wish to make to streamline these approvals or create a more enabling regime – for example, to enable the Panel to override or disregard the current requirement to comply with statutory documents such as conservation management strategies and plans. **Treaty clause – s 4 of the Conservation Act** Public conservation land not subject to Treaty settlements is still subject to s 4 of the Conservation Act for conservation decision-making. Section requires that the Act (and Acts listed in Schedule 1 of that Act) be 'interpreted and administered as to give effect to the principles of the Treaty of Waitangi'. This section has been described as the strongest form of Treaty clause on the statute books. It is possible to apply a different Treaty clause to the Fast Track Bill, and a move away from section 4 of the Conservation Act when considering conservation related-matters, without necessarily affecting settlements, provided that where s 4 is specifically integrated into settlements, those obligations are maintained. While there are different verbal formulations of Treaty clauses, some stronger than others ("give effect to", or weaker such as "consistent with" (FTCA) or an even weaker injunction such as "have regard to"), the particular verbal formulation is not always necessarily of decisive importance for any given set of facts, and what ultimately matters is the legislative indication that the principles of the Treaty need to be addressed. In many cases, the practical effect of different Treaty clauses will be the same. However, any move away from s 4 would be seen as a significant diminution of rights and interests afforded to

Proposal	Options	Decisions	Advice and Analysis
	22. Agree that the Panel: a. must consider CMS/CMPs in making decisions on conservation-related approvals where these have been co-authored, authored, or jointly approved by iwi and seek the views of the relevant iwi before granting approvals. b. must not disapply the relevant CMS/CMP if this would undermine a Treaty settlement. **23. Note** that the Supreme Court has confirmed that section 4 is a powerful Treaty clause which can require a decision maker to take 'more than procedural steps' to give effect to Treaty principles. **24. EITHER (depending on what Treaty clause the Bill contains if any)** a. **Agree** that the requirement in section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi will continue to apply for Fast Track referrals and projects. **OR** b. **Agree** that the requirement in section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi *will not apply* for Fast Track referrals and projects and the provisions of the Fast Track Bill, if any, will apply instead.	**Yes | No** **Either** **Yes | No** **OR** **Yes | No**	iwi and hapū. Given this, and the integration of s 4 in several settlements, if there is a Treaty clause in the Fast Track Bill, DOC recommends that there may be little to gain in moving away from the section 4 standard for conservation-related decision-making. If no Treaty clause is included in the Fast Track Bill, then there is arguably more at stake in both directions.

(III) Wildlife Act approvals	**25. Note** that both section 4 and Treaty settlements may impact the timeframes for Wildlife Act permissions processes. **26. Note** that some Treaty settlements include requirements relating to Wildlife Act permissions that you intend to uphold, which will need to be identified and provided for. *Decision-making on protected wildlife permits/matters* **27. EITHER OPTION 1** a. **Agree** that for projects that meet the criteria for the Fast Track regime, Wildlife Act permits under s 53 or s 71 will be determined, including any required conditions, by the Director General of Conservation and relevant Ministers as currently, but subject to any further changes agreed below. **OR OPTION 2** b. **Agree** that for projects that meet the criteria for the Fast Track regime, the Panel will determine whether approval is granted for the purposes of providing lawful authority to undertake actions otherwise prohibited by the Wildlife Act; AND c. **Agree** that for any fast-track consent that authorises an action that is otherwise prohibited by the Wildlife Act (such as killing wildlife), DOC is empowered to enforce any relevant conditions of the consent as if the consent is an authorisation issued by the Director-General, or consent issued by joint Ministers; AND d. **Agree** that a consent granted under the fast-track regime is deemed to be lawful authority to do anything in respect of wildlife that is otherwise prohibited under the Wildlife Act, where consent specifically provides for this; AND e. **Agree** that the Panel will take into account the purpose of the Wildlife Act (wildlife protection) in assessing wildlife effects AND f. **Agree** that for any project that is within the fast-track regime, section 71 of the Wildlife Act is disapplied. AND g. **Agree** that following initial decisions, ongoing management of a permit is done under the Wildlife Act, even if also covered in an RM condition, to allow DOC to undertake enforcement. *Considerations and limits for Fast Track projects under either above option* **28. EITHER** a. **Agree** that the ineligibility criteria for the fast-track regime includes any project that is likely to cause an irreversible loss of a threatened species as defined in the NZ Threat Classification System. **OR** b. **Agree** that for wildlife-related permits or approvals on Fast Track projects, the decision-maker must consider	**Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No** **Or** **Yes | No**	**General advice** Authority under the Wildlife Act is often required in respect of protected wildlife (the ownership of which is vested in the Crown) wherever that wildlife is found. The Wildlife Act involves permissions to hold, catch alive, handle or release, and in some cases to kill, absolutely protected wildlife. This includes a wide range of wildlife, not just threatened species. Applicants will often need lawful authority to kill wildlife, where such wildlife will be incidentally killed as part of their operations; they often seek lawful authority to catch alive and/or kill wildlife under s 53 of the Wildlife Act. For certain activities, joint Ministerial consent is instead needed under s 71 of the Wildlife Act (rather than s 53), where activities authorised by enactments listed in Sch 9 of the Wildlife Act (e.g. including the Coal Mines Act 1979, Government Railways Act 1949, and Government Roading Powers Act 1989, and others) affect wildlife. For protected wildlife, the legislation itself confers no specific priority to threatened species, but DOC takes threat status into account when managing and considering applications for authorisations. Applications for Wildlife Act authorities are rarely declined, but grounds to decline would include if the proposal posed a significant risk to a major population of a threatened species that could not be offset or mitigated, and so is not able to be protected. *Scope* Sections 53 and 71 of the Wildlife Act are currently subject to legal challenge, and the Act itself is widely acknowledged to be nearly unworkable and needing replacement. Officials recommend that amendments to the Act outside those specifically for the fast-track regime (including any proposals to repeal s 71) are not progressed through this bill. Instead, DOC recommends that they be addressed in a wider review and replacement of the Wildlife Act. *Role of decision-makers* Under the Wildlife Act, the decision-maker for s 53 is the Director-General of Conservation and the decision-maker for s 71 is the Minister of Conservation and other relevant Ministers. For decisions made under s 53, there is legal uncertainty as to when the Director-General can authorise the killing of wildlife can be authorised consistently with requirement to protect wildlife. A significant difficulty with consenting under s 71 is the need for joint decision-making, which is difficult to administer, time consuming, not currently delegated (except in relation to s 71 decisions involving the Government Roading Powers Act), exposes Ministers to litigation, and is legally uncertain. *Process* Significant process improvements could be made to reduce duplication of effort across resource management and Wildlife Act decisions if the decision-making remains with joint Ministers / Director-General of Conservation. This could include the provision of advice by DOC to the Panel on wildlife-related matters. Conditions set by the Panel or by DOC subsequent to the Panel decisions would have effect in law as if they had been made under the Wildlife Act to allow Wildlife Act enforcement powers to be used, and DOC to easily amend conditions (e.g. on where captive animals are to be held) at the request of the applicant. *Thresholds* Officials understand you would like the purpose of the FTC Bill to prevail over the purposes of other included legislation. It will remain important to ensure clarity on how effects dealt with under the Wildlife Act are addressed through the fast-track regime. If there is a gap or ambiguity regarding how the environmental effects of a proposal are to be assessed or managed, the courts will fill any such gap by looking to the statutory context. In the absence of any decision-making criteria, a court could find, for example, that permitting the killing of wildlife that is otherwise absolutely protected by s 63 of the Wildlife Act necessarily imports a need to consider wildlife protection (or even absolute protection). Not using the purpose of the Wildlife Act (relevantly, wildlife protection) for decisions without replacement criteria/considerations would increase legal uncertainty and legal risk. DOC therefore recommends any decisions of the Panel are to be consistent with wildlife protection, and subject to any other statutory criteria. For example, a different threshold is preferred than the purpose of the Wildlife Act, the decision-maker should be satisfied that the project is not likely to result in irreversible loss of species and must consider impacts on threatened and at-risk species as defined in the NZ Threat Classification System. **Development implications**

Proposal	Options	Decisions	Advice and Analysis
	whether there is likely to be an irreversible loss of a threatened species as defined in the NZ Threat Classification System. **OR** c. **Agree** that the decision-maker must take into account impacts on threatened species as defined in the NZ Threat Classification System. **29. Agree** that assessments of impacts on wildlife must be based on a report from DOC. **30. Agree** that activities relating to handling etc of protected wildlife must be required to meet relevant best practice standards, which can be established as part of conditions **31. Agree** that in setting conditions, the decision-maker must have regard to whether the condition would minimise any impacts on protected wildlife, through avoidance, mitigation or offsetting, or that any impacts which cannot be mitigated are compensated for. **32. Agree** that the decision of the Panel will be deemed to have been made as if under the Wildlife Act and further decisions/variations will be done under the Wildlife Act.	**Or** **Yes | No** **Yes | No** **Yes | No** **Yes | No**	The process improvements recommended for all options will help overcome potential for duplicated consideration of the same matters under the Wildlife Act and RMA, which will reduce costs and uncertainty for developers. **System efficiency** The proposed process improvements would shorten timeframes and improve efficiency, for the reasons set out above **Treaty Impact Assessment** Wildlife species are frequently considered taonga (and some Treaty settlements list taonga species for that iwi) with DOC often managing wildlife in accordance with settlement requirements, requiring considerable specific engagement with relevant PGSE or tangata whenua. **Note:** It Is not recommended that the Fast Track process be available for other Wildlife Act matters, such as approvals to undertake fast-track activities in wildlife sanctuaries or to allow hunting or killing of wildlife, which would rarely be required.
(IV) Conservation Act	<u>Scope for inclusion in the Fast Track Bill</u> **33. Agree** to: <u>Either:</u> a. Apply the conservation concessions framework to <u>all</u> projects that qualify for fast track under the Fast Track Bill (i.e. as per the FTC qualifying criteria); <u>OR:</u> b. Apply the conservation concessions framework only to the most critical infrastructure projects that qualify for fast track under the Fast Track Bill.	**Yes | No** **Yes | No**	**General Advice** Public conservation land has been set aside for a very particular purpose related to the conservation of conservation and cultural values. Given this intended purpose, Ministers may wish to consider the scope of projects that are eligible for the fast-track process on this land. This is particularly critical because such projects will be subject to more enabling conditions that will lower the relevance of other considerations, including those relating to conservation (for which public conservation land is held). Critical infrastructure can include critical linear infrastructure, and critical projects that can be shown to be unable to be delivered off public conservation land (likely candidates may be certain types of renewable energy projects). Excluded projects are likely include regional tourism projects on conservation land, which would continue to be managed through the standard concessions processes.

Proposal	Options	Decisions	Advice and Analysis
	<u>Determining which requirements to include</u> **34. Agree** to disapply the requirement for public notification of concession applications. **35. Agree** to retain the requirement that the decision maker must consider the effects of the activity, structure, or facility. **36. Agree** to retain the requirement that the decision maker must consider any relevant environmental impact assessment. **37. Agree** to retain the requirement that the decision maker shall not grant an application for a concession if the proposed activity is contrary to the purposes for which the land concerned is held, except where this is explicitly disapplied. **38. Agree** to remove the discretion for the decision-maker to decline an application if an application obviously does not comply with any relevant conservation general policy, conservation management strategy or conservation management plan, except where required under Treaty Settlements.	 **Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No**	*Public notification process*

	Determining the decision-maker **39. Note** that a concession can confer a property right as well as a permission for access to land, an activity and managing its effects. **40. Note** that consideration of these two functions cannot easily be disaggregated in the time available. **41. Note** that the legal, health and safety and financial risks associated with concessions on public conservation land will continue to fall to the Crown, the Minister of Conservation and DOC as the owner and land managers of public conservation land. **42. Note** that, in making decisions on concessions, the decision maker in an FTC process (Ministers or Panel) would therefore be making decisions on managing Crown risks (i.e. on behalf of the Crown as land manager). This includes contract negotiations, including rental fees. **43. Note** that DOC/MOC will continue to be responsible for all further monitoring/enforcement/variations and implementation required. **44. Agree** to: Either: **Option 1** a. The Minister of Conservation, on behalf of the Crown, remains the decision-maker for fast-track concessions, and that concessions are excluded from the Fast-Track Bill where required for use of public conservation land; *and* b. Amend the Conservation Act to align processes with the Fast Track regime and apply any alternative requirements agreed above to the consideration of Fast Track projects. OR **Option 2** a. applicable concessions required for use of public conservation land will be determined by the Panel under the Fast Track Bill; *and* Either: b. The Fast Track Bill decision-maker will make decisions concerning concessions with the concurrence of the Minister of Conservation; *or* c. The Fast Track Bill decision-maker will make decisions concerning concessions in consultation with the Minister of Conservation.	**Yes | No** **Yes | No** **Yes | No** **Yes | No**	*The complex nature of concessions* The Conservation Act includes processes for granting of permissions relating to activities over conservation land. Permissions granted to occupy and use this Crown land are known as concessions and take the form of a lease, licence, permit, or easement, which may include a right to establish structures and timeframes up to 60 years, subject to criteria. Major projects seeking to use and occupy the public conservation lands often require concessions in the form of leases or licences to occupy, because the Crown is the landowner and the project proposed would establish structures or involve long-term occupation and use of Crown land (for example, telecommunications infrastructure). These approvals typically involve consideration of the following matters (that are not considered by the RM regime): • effects on conservation values, effects on other uses, and whether the activity reasonably needs to be on the land, • consistency with the relevant statutory planning documents, • the purpose for which the land is held (and any rules/requirements/constraints around that), as well as • Treaty rights and interests, and • management of Crown property rights, duties and risks. Unlike the RMA, where previous fast-track models have been drafted and implemented, no such work has occurred for concessions at this scale except for emergency response regimes. Therefore, designing a far-reaching fast-track concessions regime at speed creates more significant risks associated with poor design and unintended consequences/adverse effects than it does for other pieces of legislation being included in the FTC process. *The Crown as landowner* In particular, the Crown's interests and rights as landowner create liabilities through concession arrangements, including for infrastructure and health and safety, that would fall to the Minister of Conservation, DOC and/or the Crown through issuing concessions. Unless this is built into the regime, this exposes the Crown, the Minister of Conservation, and DOC to real legal and financial risks without the ability to make decisions, in addition to the exposure of PCL to degradation over time. Examples of this include the outcomes of mining and other similar regimes which in some cases have left major liability for the Crown. **Development implications** In previous work that sought to find a way to achieve integration between concession and RM consent processes, developers we spoke to wished to have a choice of the order of consents, and did not necessarily want the two decisions to be taken at the same time. What they sought was that technical assessments and public concerns addressed in one process would not need to be addressed a second time in the later process. Providing for that improvement to process would be a low risk. **System efficiency** Officials consider that similar levels of system efficiency can be achieved for Fast Tracked projects, regardless of the inclusion of Concessions in the FTC process. This can be achieved by providing for alignment of processes, timeframes, and decision-making criteria, and removing duplicative processes between the Concessions process and the FTC process. This is explored further in the discussion of Decision Set 2 below. **Treaty Impact Assessment** In addition to the overarching Treaty and settlement implications that apply across the whole of the Fast Track process, which are discussed elsewhere, DOC is subject to more than 100 settlement tools and agreements that set out specific process or substantive obligations for the Crown in relation to their management of PCL. The inclusion of concessions in the FTC process will require the EP to consider how each of the relevant obligations relevant to a given project can be given effect to, and the significant number and variety of obligations creates a significant risk that the Crown could be challenged for not appropriately giving effect to these obligations through the FTC process. In order to mitigate this risk, it would be important for these obligations to be considered both when a project is considered for acceptance into the FTC process, and in the design of the specific process to be conducted by the EP that would allow these obligations to be fulfilled. *Timeframes* There are currently no statutory timeframes relating to the final decision on Concessions. This creates a risk that Concessions could otherwise hold up fast tracked projects as a result of long decision-making processes. We recommend mitigating this risk by applying the procedural principles set out in s10 of the FTCA to concessions processes for project that have been accepted into the FTC process. These provisions specify that:

Proposal	Options	Decisions	Advice and Analysis
			(1) Every person performing functions and exercising powers under this Act must take all practicable steps to use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions, duties, or powers being performed or exercised. (2) This includes a duty to act promptly in circumstances where no time limit has been set for the performance or exercise of a function, power, duty, or requirement under this Act. This would require the Minister to consider concessions in an expeditious manner, while still retaining the flexibility required to appropriately consider more complex concessions applications, including negotiating contracts. *Notification and hearings* The Conservation Act requires that all concessions applications for a lease, or a licence for a terms of more than 10 years MUST be publicly notified. The Minister also has discretion to publicly notify applications for any other licences, permits or easements where they consider it appropriate. These notification provisions would create significant delays and inconsistencies of process for projects being considered under the FTC process (where comments are invited from a list of specified parties instead of standard public/limited notification processes). To address this discrepancy and to prevent duplication of information provisions across the two parallel processes, we recommend disapplying the public notification provisions at 17SC of the Conservation Act, and instead requiring: (1) That the comments provided to the Expert Panel for consideration of the Fast Tracked project permissions are shared with the MOC for consideration for the Concession application to prevent multiple submissions of similar information (2) That those who were contacted for comments by the Expert Panel for the FTC permissions are contacted and advised that their submissions have been shared with MOC for the consideration of the concession, and inviting them to provide any additional information not already provided that they consider relevant to the consideration of the Concession. This should prevent unnecessary duplication, while ensuring that new information relating specifically to the Concession (and which may not have been relevant to the other permissions being considered by the EP) is able to be provided from the same targeted list of parties that are outlined by the FTCA. **Treaty Impact Assessment** *Simplified decision-making considerations* In line with Ministerial decisions not to consider NPS/NES/regional plans/district plans for FTC processes, the requirement for the Minister to have regard to conservation management plans, conservation management strategies, and the General Policy could be either made a discretionary matter, or removed from the matters that can be considered. This would reduce the tests that needed to be met in order for a Concession to be granted. However, there is some risk involved with this option, as there are some treaty settlement tools that create obligations around CMS/CMPs which could be breached by excluding them from the process. For example, the Ngāti Whare Claims Settlement Act 2012 provides for the development of the Whirinaki Te Pua-a-Tāne Conservation Management Plan by Ngāti Whare – the obligations being to prepare the CMP "in consultation with" Ngāti Whare, for iwi to be on a hearing panel for submissions, and a shared approval role with the Conservation Board. Policies in such statutory planning documents have legal effect and can apply to concession decision-making. A concession cannot be granted if the proposed activity is contrary to the Conservation Act (including conservation statutory planning documents). Disapplying the Plan, which was specifically designed to provide cultural redress to Ngāti Whare, would undermine its settlement with the Crown. This could be mitigated by specifying that CMS/CMPs/GP are disregarded, *except where required by treaty settlement obligations*.
• Reserves Act approvals	**45. Note** that the proposed general exclusions would mean that these provisions would not apply to nature reserves and scientific reserves. **46. Agree** that these provisions would only apply to reserves managed by the Department of Conservation or local authorities. **47. Agree** that approvals under fast-track consenting legislation on a reserve that is not administered by DOC should enable	**Yes | No** **Yes | No**	**General Advice** The Reserves Act encompasses a wide range of reserves, held for many different purposes. These include reserves with high conservation values, such as nature and scientific reserves, but also local purpose and recreation reserves set aside for boat ramps, navigation aids, council workshops, community buildings, sports fields, racecourses, etc. It also includes government purpose reserves managed by DOC or other agencies for purposes such as courts, defence facilities, lighthouses, railways, etc. When the concession provisions were added to the Conservation Act in 1996, they applied only to DOC managed reserves. Because there was no opportunity to consult councils and other reserve administrators, the provisions were not applied to

Proposal	Options	Decisions	Advice and Analysis
	agreement to exchange reserve land for new reserve land (the approach used in the Urban Development Act).		any other reserves. For DOC-managed reserves, the concession provisions effectively replaced the many provisions in the Reserves Act under which activities could be approved. It is therefore not considered necessary to include any Reserves Act approvals within the FTC regime, unless reserves not managed by DOC were to be included. We do not recommend that reserves not owned by the Crown and managed by DOC or local authorities be included, except by agreement with the administrators (including government departments, local authorities, iwi, reserve boards and other public bodies). The other issue that has been identified in past work relating to housing is the need to easily swap land, so reserve land can be used for developments and new reserves provided. This might be appropriate for many local purpose and recreation reserves. The aim of the Act and most council management plans is to maintain an effective network of reserves, rather than protect each specific reserve. As cities change, the reserve network also needs to be adjusted. Provisions were included in the Urban Development Act to make exchanges of land easier. We recommend that there be agreement in principle to providing something similar for any FTC project, with further work on the details carried out in consultation with LGNZ. The aim of the provisions would be to allow the panel to recommend exchanges of land where that is desirable to facilitate the development, if they are satisfied that the outcome would result in as good or better overall reserve network, and would not result in the loss of important intrinsic values of the reserve (e.g. historic features, heritage trees, important biodiversity). The council would need to implement that recommendation, but could appeal to the Minister of Conservation if they considered that the proposal would reduce the value of the reserve network or affect an important intrinsic value. Exchange would then proceed without the council needing to go through normal Reserves Act consultation processes. Another problem that has arisen in some large urban development programmes has been difficulties purchasing large blocks of land before they become expensive, to be subsequently used for a range of public purposes (schools, parks, stormwater management). This used to be relatively easy using the Reserves Act, but is now inhibited by public finance and related requirements (e.g. Kainga Ora cannot buy land for purposes other than housing). We recommend that we do further work with other agencies to seek a solution to that problem in future. **Treaty impact assessment** **Treaty settlements and other arrangements**
Freshwater Fisheries regulations approvals	**48. Note** that the Conservation Act, Fisheries Act, Biosecurity Act and associated regulations control a wide range of matters relating to freshwater fisheries, including for indigenous fish and sports fish (e.g. trout). **49. Agree** that fast track will be limited to four matters that are commonly involved in large development applications, and that do not require complex technical assessments – a. the approval of culverts and other structures to which the NIWA guidelines apply, and b. the approval of fish rescue activities where the fish are moved to an alternative location in the same waterbody, and c. the approval of temporary works for infrastructure projects that would affect fish passage or local habitat. d. the killing of noxious fish that are encountered during fish rescue or other operations. **50. Agree** that the approvals for these activities would be provided through the RM Act process (subject to specific requirements in the FTC legislation), and an applicant that was acting in accordance with conditions in the FTC consent in relation to those specific matters would be exempt from any equivalent freshwater fisheries legislative requirements (while still needing	**Yes | No** **Yes | No** **Yes | No**	**General Advice** The legislative regime relating to freshwater fisheries is complex and spread across the Conservation Act, Fisheries Act, Biosecurity Act and two sets of regulations. The regime covers a wide range of matters, including the take of sports fish, whitebaiting, trout fishing, disturbance of spawning events and eggs, damage to spawning sites, barriers to fish passage, movement of fish, management of noxious fish, holding of fish in aquariums, fish farming, and causing fish kills. Three decision-makers are involved – the Minister of Conservation, Minister of Fisheries, and Fish and Game Councils. Most of these matters are not relevant to the sorts of activities that would be seeking FTC approvals. A range of activities that are likely to seek fast track approval involve activities in waterbodies, such as installation of culverts, temporary diversion of streams to allow bridge abutments to be constructed, rescue of fish from areas that are being dewatered or heavily impacted, removal of gravel and minor re-shaping of river bends, etc. In contrast, it is highly unlikely that any will require whitebaiting, harvest of eels, holding fish in captivity, moving fish between catchments, or disturbance of inanga or trout spawning events. A few projects may involve highly complex fish passage barriers (e.g. where fish ladders might be required) or freshwater aquaculture, but these are technically complex matters that need to be managed on a case-by-case basis, DOC and MPI hold the relevant expertise, and these issues need to be resolved before the application would be ready for RM consideration or could be sorted subsequently (e.g. in the case of some aquaculture matters). We therefore see no benefits in trying to bring these into the fast-track process. We have identified four areas where we believe there would be benefits from inclusion in the fast-track process: • the approval of culverts and other structures to which the NIWA guidelines apply, and • the approval of fish rescue activities where the fish are moved to an alternative location in the same waterbody, and • the approval of temporary works that would affect fish passage or local habitat.

Proposal	Options	Decisions	Advice and Analysis
	fisheries legislation consent for other activities such as harvest of fish for consumption or disturbance of spawning activities).		• the killing of noxious fish that are encountered during fish rescue or other operations. In most cases, we consider that these can be handled by requiring that there be appropriate conditions on consents, and that if that was done, the freshwater fisheries regime would not apply to those specific activities. In two cases we recommend that the legislation set a standard condition: 1. That any noxious fish that are removed from the water during operations are killed and not returned to the water or removed from the site while alive. Noxious fish are listed in the Freshwater Fisheries Regulations 1983, Schedule 3, and includes a small number of species that are not widespread and are a serious risk to New Zealand's fisheries – e.g. koi carp. This is the standard approach where these species are fished up, e.g. in fish surveys. 2. That fish may be removed from a part of a waterbody where that is necessary to prevent unnecessary death or injury to fish as a result of the operations, but they must be released as soon as practicable into the same waterbody, as close as practical to where they were taken. This activity normally requires a consent by the Minister of Fisheries. Movement of fish to a new waterbody poses serious risks to fisheries and biosecurity (e.g. it can result in impacts on resident fish or transfer of diseases and parasites) and holding of fish for long periods can result in disease outbreaks. Neither of those activities will be required by normal construction activities, as these will be limited to a small part of a waterbody. This condition will allow, for example, the fish within an area of stream that is being dewatered for construction purposes to be rescued and dropped into the unaffected part of the stream above or below the temporary structures. In the case of structures in streams, such as culverts, small weirs, etc, we recommend that conditions be set to require the structures to be constructed and maintained so they are in compliance with the recently agreed national guidelines for such structures, which will ensure that fish passage is maintained. The creation of barriers to fish passage requires approval from the Department of Conservation under the Freshwater Fisheries Regulations. A National Fish Passage Advisory Group, DOC, NIWA and MfE have been working to develop approaches to streamline approvals for common structures such as culverts where best practice is used and therefore fish passage maintained. Guidelines for such structures are now in place. Provided compliance with those are required, we do not consider that a second approval from DOC would be needed for FTC projects. The final area we have identified is temporary works in waterbodies for infrastructure projects. Provided these are not for long periods, and the RMA process ensures no major long-term effects on the waterbody, these should have no long-term effects on fisheries. If this was provided for, we consider that the FTC consent could address the issue and those activities could then be exempt from Conservation Act and Fisheries Act requirements. We recommend that "temporary" should be works where: • active disturbance to the waterbody (e.g. diversions, in-stream operations, removal of gravel) does not persist for more than three months; and • where the works are within 500 m of the coast, they do not occur during the whitebaiting season; and • where the works are in an area known to be used for trout or salmon spawning, do not occur during the spawning season; and • where repeated disturbance is required (e.g. for staged works) there is a period of at least 6 months between each period of temporary works.

Proposal	Options	Decisions	Advice and Analysis
Crown Minerals Act approvals:	**Scope for inclusion in the Fast Track Bill** **51. Agree** that s 61 access arrangements are in scope for projects that qualify for the Fast Track Bill (i.e. as per the FTC qualifying criteria)	**Yes | No**	**General Advice** The Crown Minerals Act provides a regime for managing mining activities, which includes a permit process to allocate Crown minerals, and access arrangements to allow landowners to agree (or decline) access to their land. For conservation land, the decision on access is made by the Minister of Conservation, or jointly with the Minister of Energy where an application involves certain minerals with a high market value.
	Determining which requirements to include		**General Advice**

	52. Agree to RETAIN the requirements that the decision-maker must consider the following: a. s 62(1)(a) - the objectives of any Act under which the land is administered, b. s 62(1)(b) - any purpose for which the land is held by the Crown c. s 62(1)(d) - any the safeguards against any potential adverse effects of carrying out the proposed programme of work d. s 62(1)(da) - the direct net economic and other benefits of the proposed activity in relation to which the access arrangement is sought e. s 62(1)(e) - any other matters that that Minister or those Ministers consider relevant. **53. Agree** to AMEND the requirement under s 62(1)(c) - any policy statement or management plan of the Crown in relation to the land – so that the decision-maker "may consider", rather than "must consider". The decision-maker must consider the policy statement or management plan if required by Treaty settlement. **54. Agree** that public notification of s61 applications will not be required for FTC projects.	**Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No**	The legislation was designed to allow impacts of mining that would not be allowed for other activities (e.g. tourism operations), and to allow compensation payments to be taken into account in determining whether impacts will be allowed, but still to ensure that important values of conservation lands are maintained. Access applications are therefore seldom declined, with conditions being used to protect important values and prevent ongoing liabilities being created. Impacts of activities, particularly at the early exploration stage, can often be avoided through appropriate location (e.g. with one operation a drilling proposal was moved from a fossil reserve to a nearby area) and ensuring that best practice is used (e.g. using a helicopter to place drill rigs on platforms instead of doing earthworks, using relocatable buildings that can be easily removed). Other impacts, however, cannot be avoided. In general, if they are impacts to an irreplaceable value, decline is appropriate (e.g. an ilmenite mine was declined at Barrytown because the proposal would destroy a rare type of wetland, and the miner moved to Cape Foulwind), while for less important values, compensation will be used. The Department considers that there is no need to change the criteria for decision-making, given the current ability to consider compensation and the low rate of decline for access arrangements. "Any other matters that that Minister or those Ministers consider relevant" should be retained to allow compensation to be considered for environmental effects. If this is removed, this would need to be provided for in some other way.
	<u>Determining the decision-maker</u> **55. Agree** to: Either **<u>Option 1</u>** a. The Minister of Conservation, and [Minister of Energy and Resources] where relevant, on behalf of the Crown, remain the decision-maker(s) for access arrangements. *and* b. Amend the Crown Minerals Act to align processes with the Fast Track regime and apply any alternative requirements agreed above to the consideration of Fast Track projects. <u>OR</u> **<u>Option 2</u>** a. Applicable access arrangements will be determined by the Panel under the Fast Track Bill. *And* *Either* b. The Fast Track Bill decision-maker will make decisions concerning concessions with the concurrence of the relevant Minister(s);	**Yes | No** **Yes | No** **Yes | No**	Ongoing liabilities are a significant risk with some types of mining, including tailings dams that remain hazardous for very long periods, abandoned structures, land instability and subsidence risk, and acid mine drainage. Negotiation of bonds, insurance requirements and consideration of the company's past record and ability to carry out the work well are used to reduce risks to the Crown. There are some examples from the past that demonstrate the high costs that can arise for the Crown from mining operations, such as the Tui Mine tailings dam and acid drainage issues, and Pike River mine disaster. The Department also notes that the FTC process may not be an appropriate mechanism for addressing ongoing liabilities, for example through negotiating bonds. From past discussions with the industry, we consider that the greatest gains for them would be from changes to the process, particularly to provide timeframes and reduce duplication of matters that are common to RM and access arrangement processes. Those changes would carry a far lower risk to the Crown than allowing higher risk and more impacting activities. We have therefore included recommendations related to those matters, but also potential changes to decision-making criteria that we consider would be of lowest risk to the Crown if Ministers wish to further reduce the criteria that apply to decisions. We note that there has been discussion about the criterion "any other matters", but we do not recommend that be removed because it is the criterion that allows compensation to be considered. We note that a lower risk approach to access arrangements would be to have the Panel's consideration of RM matters become the basis for the Minister's access arrangement decision. For example, if the Panel had assessed effects on vegetation or hydrology, their findings would be what the Minister considered, and DOC would not provide advice on those matters. But on matters not considered by the RM process, such as bonds and removal of structures, the access arrangement would be undertaken in the normal way, but with timeframes for a decision (with the clock starting once the panel decision had been made and provided to the Minister). This will allow the DOC-specific matters to be handled in parallel to the fast-track process.

	Or c. The Fast Track Bill decision-maker will make decisions concerning concessions in consultation with the relevant Minister(s)	**Yes | No**	

Department of Conservation
Te Papa Atawhai

Departmental Memo

To	Minister of Conservation	**Date submitted**	14 February 2024
GS tracking #	24-B-0080	**DocCM**	DOC-7566302
Security Level	**In Confidence**		
From	Peter Galvin, Director. Treaty Negotiations: s 9(2)(a)		
Subject	**Fast Track Consents – additional Treaty settlement information**		
Attachments	Attachment A – Overview of conservation redress (examples) Attachment B – Conservation Management Strategy (CMS) redress maps Attachment C – Conservation Management Plan (CMP) redress maps Attachment D – Decision Making Framework (DMF) redress maps		

Purpose – Te aronga

1. The attached maps show examples of particular redress mechanisms/DOC's Treaty settlement redress obligations that may be impacted by Fast Track Consent proposals.

Attachment A - Overview of conservation redress (examples)

2. Due to the breadth of redress it is not possible to provide a useful map showing all redress at a national scale. **Attachment A** shows two examples of overview maps for two settlements showing the complexity and layering of main redress elements in those rohe: Ngāti Rangi and Ngāti Tūwharetoa.

Attachment B – Conservation Management Strategy (CMS) redress

3. **Attachment B** shows areas covered by obligations for a PSGE to have a role in authoring or co-authoring the whole, or chapters of, a CMS. Map 1 covers enacted settlements. Maps 2, 3 and 4 cover CMS redress for Te Korowai Wainuiārua, Te Hiku (He Korowai, enacted) and Te Whānau a Apanui/Ngāti Porou (proposed Raukūmara CMS).

Attachment C – Conservation Management Plan (CMP) redress

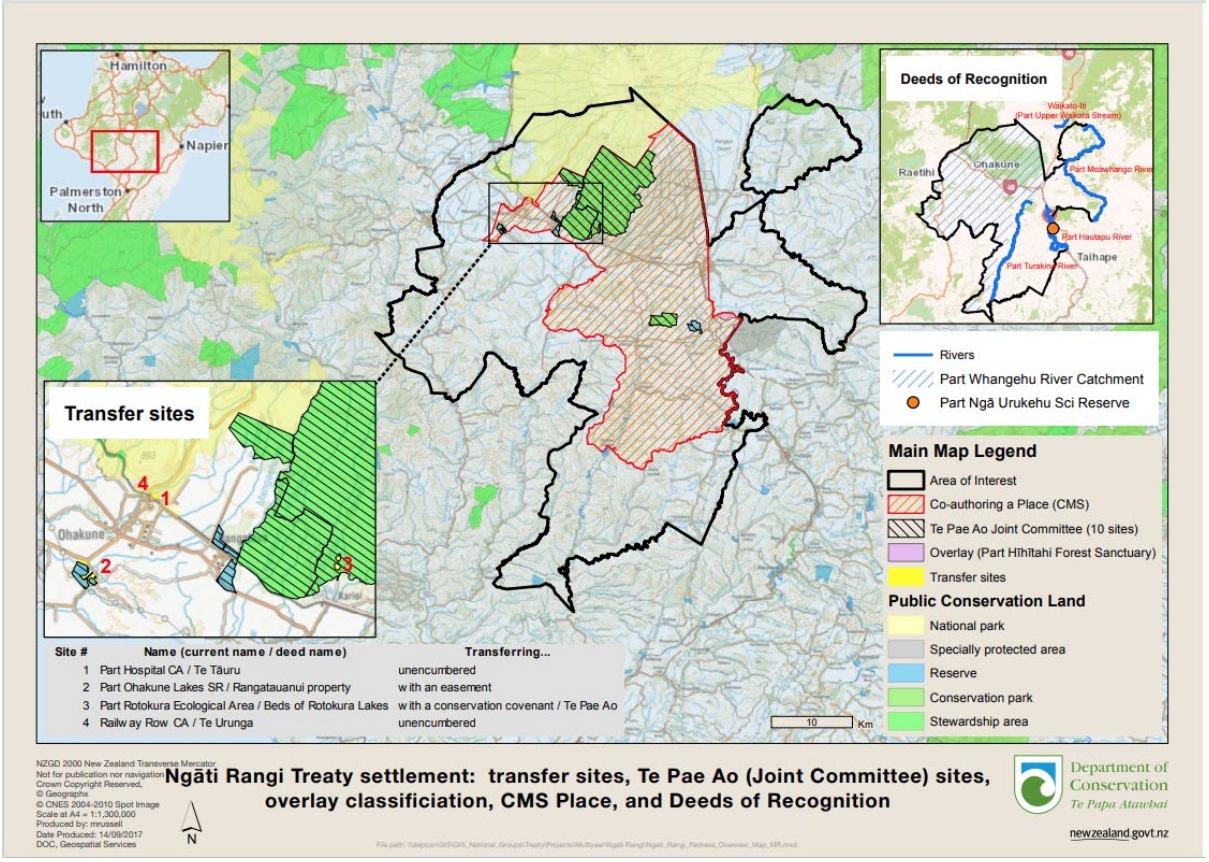
4. **Attachment C** shows areas covered by obligations for a PSGE to have a role in developing and/or approving a CMP.

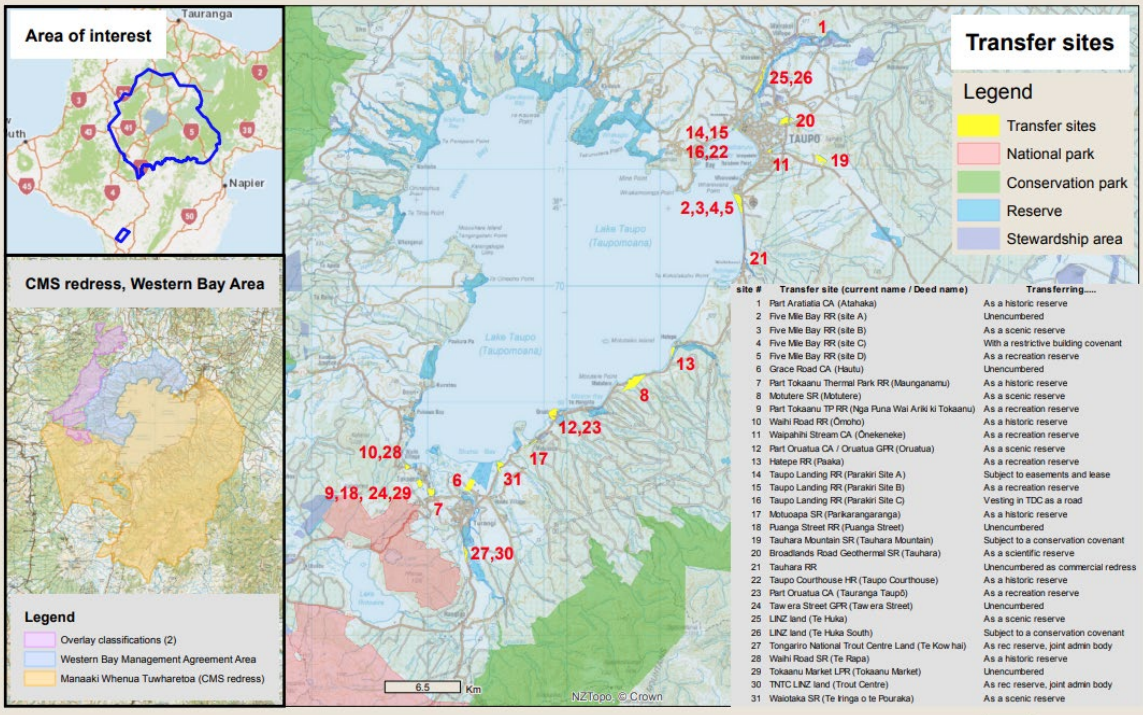
Attachment D – Decision Making Framework (DMF)

5. **Attachment D** shows PSGE or collective areas of interest within which a step-by-step commitment for involvement in either all of DOC's statutory decision-making (coloured orange) or only concession/statutory authorisation decision-making process (coloured blue) applies. These commitments differ slightly in content and may be either in settlement legislation, a deed of settlement or a relationship document.

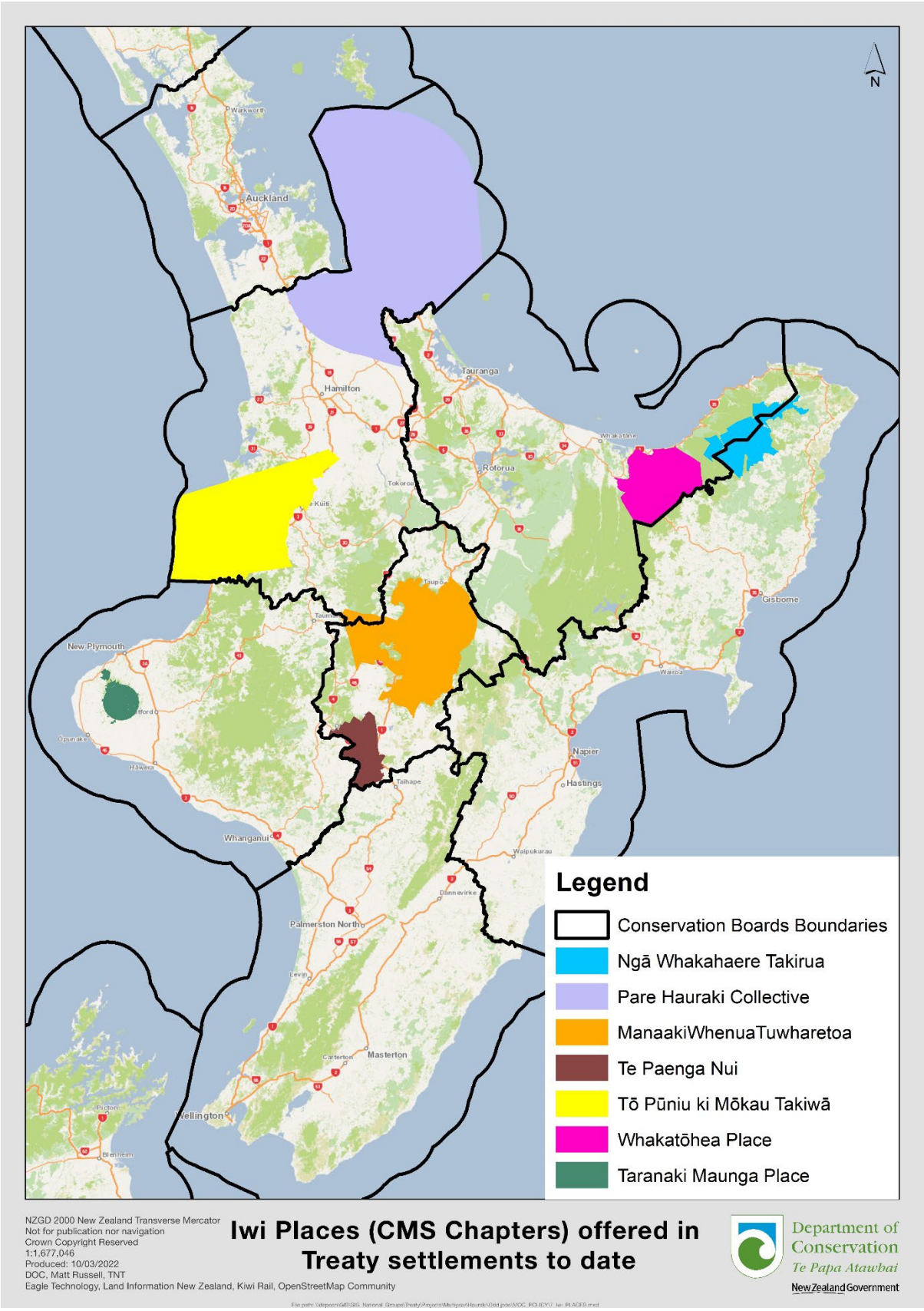
ENDS

ATTACHMENT A – Overview of conservation redress (examples)





ATTACHMENT B – Conservation Management Strategy (CMS) redress maps
Map 1 - Enacted Conservation Management Strategy (CMS) redress



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1:1,677,046
Produced: 10/03/2022
DOC, Matt Russell, TNT
Eagle Technology, Land Information New Zealand, Kiwi Rail, OpenStreetMap Community

Iwi Places (CMS Chapters) offered in Treaty settlements to date

Department of Conservation
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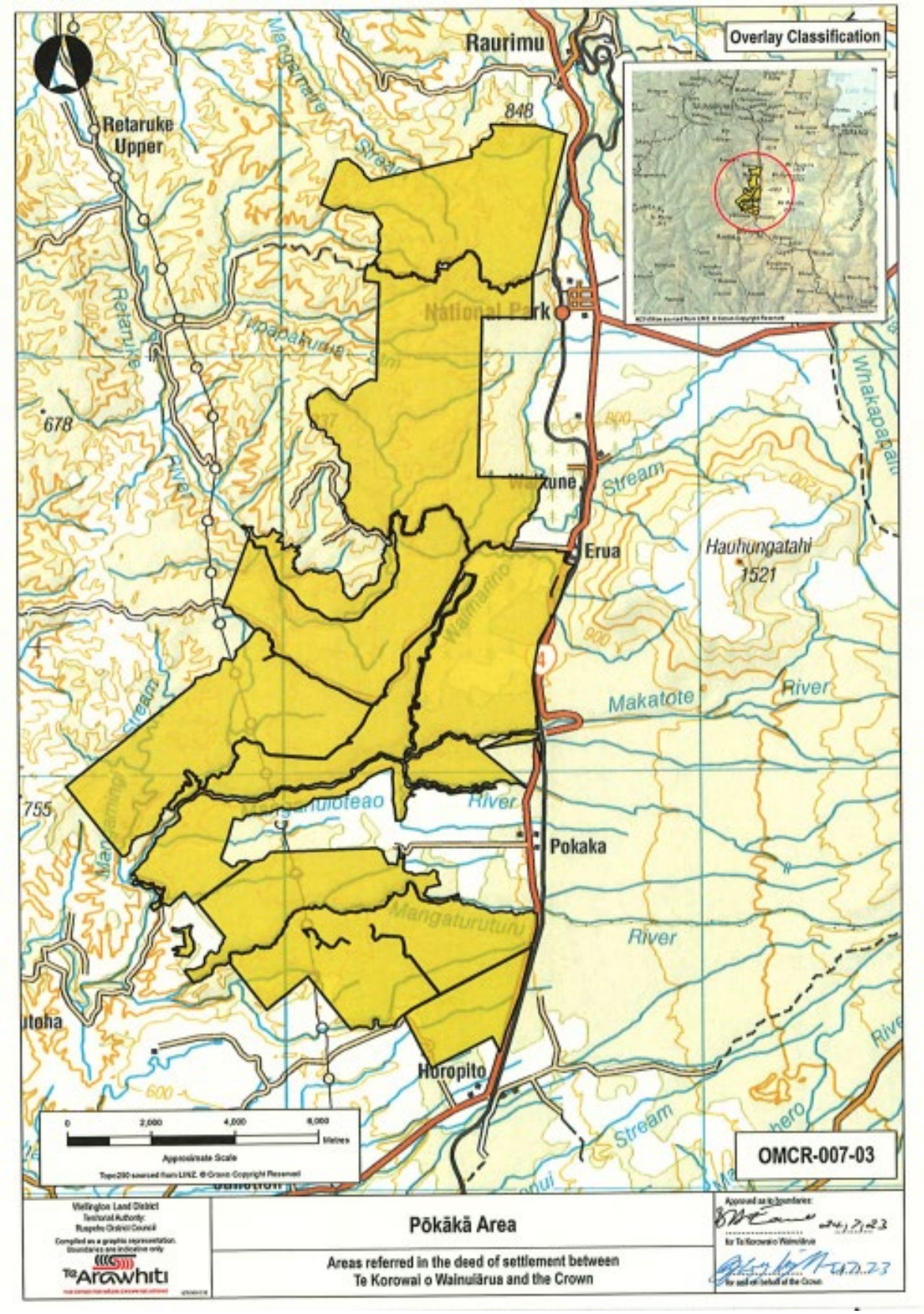
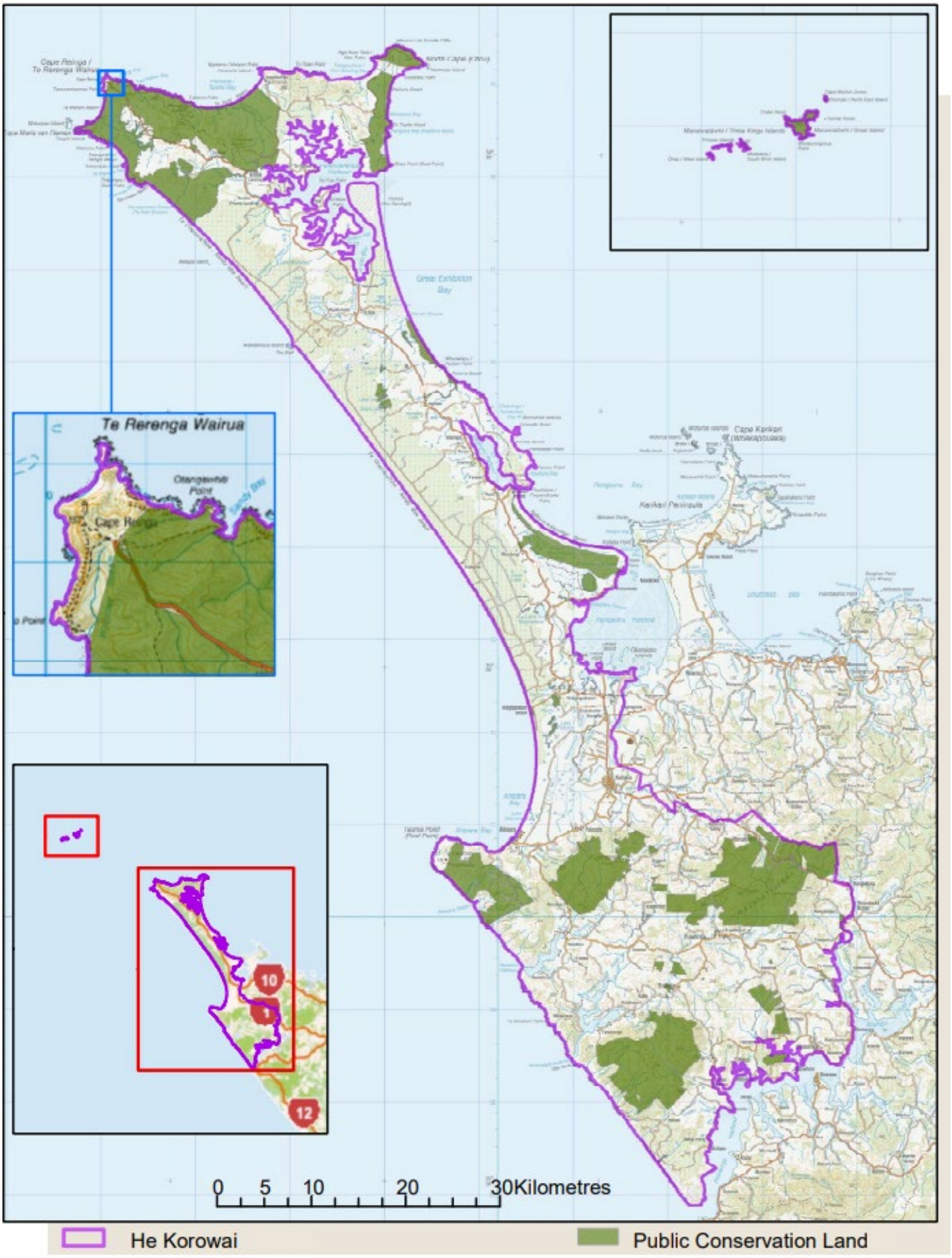
New Zealand Government

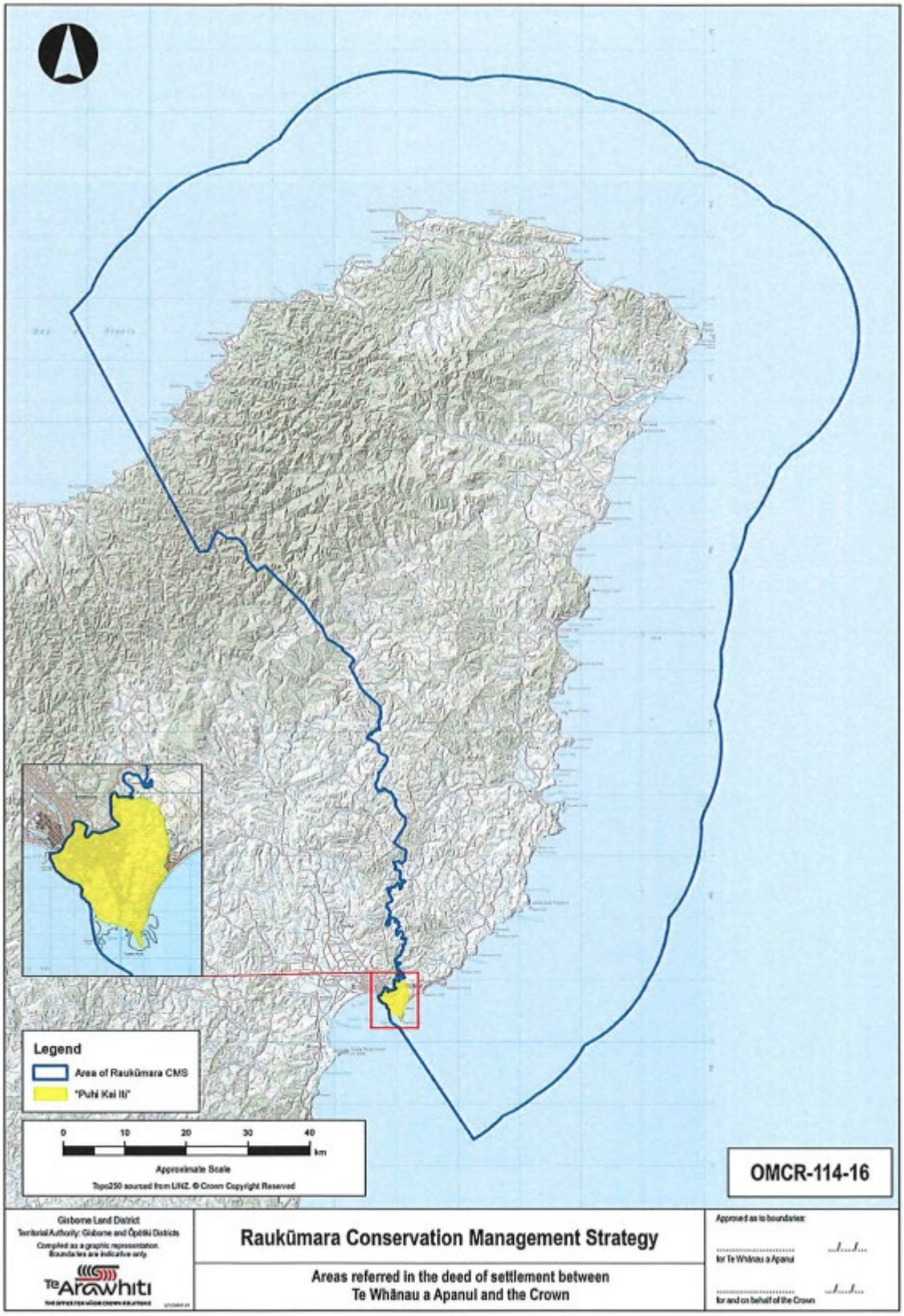
Map 2 – Proposed Te Korowai Wainuiārua CMS redress



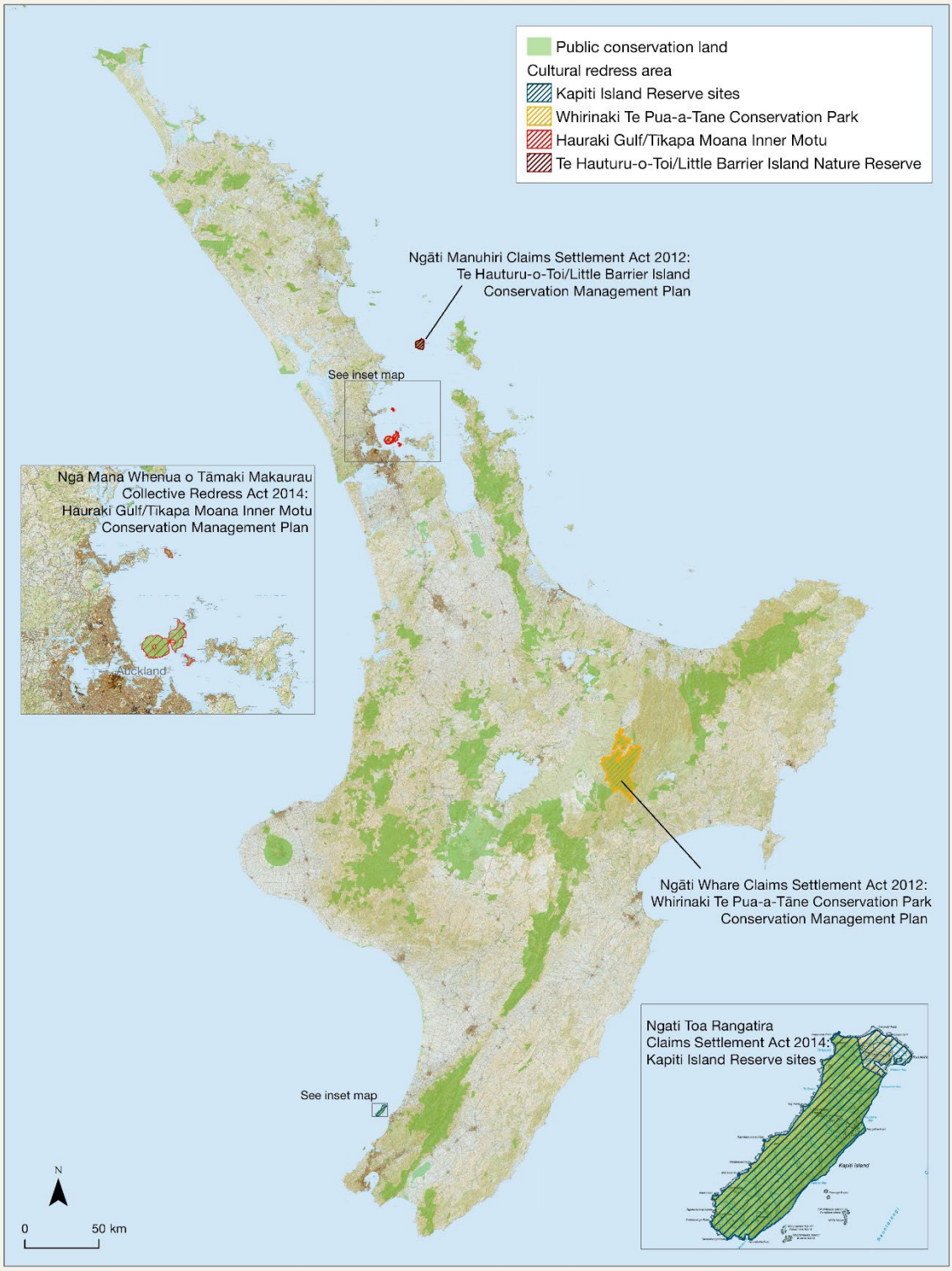
Map 3 - Te Hiku CMS redress (He Korowai, enacted)



Map 4 – Proposed Raukūmara CMS redress



ATTACHMENT C – Conservation Management Plan (CMP) redress maps



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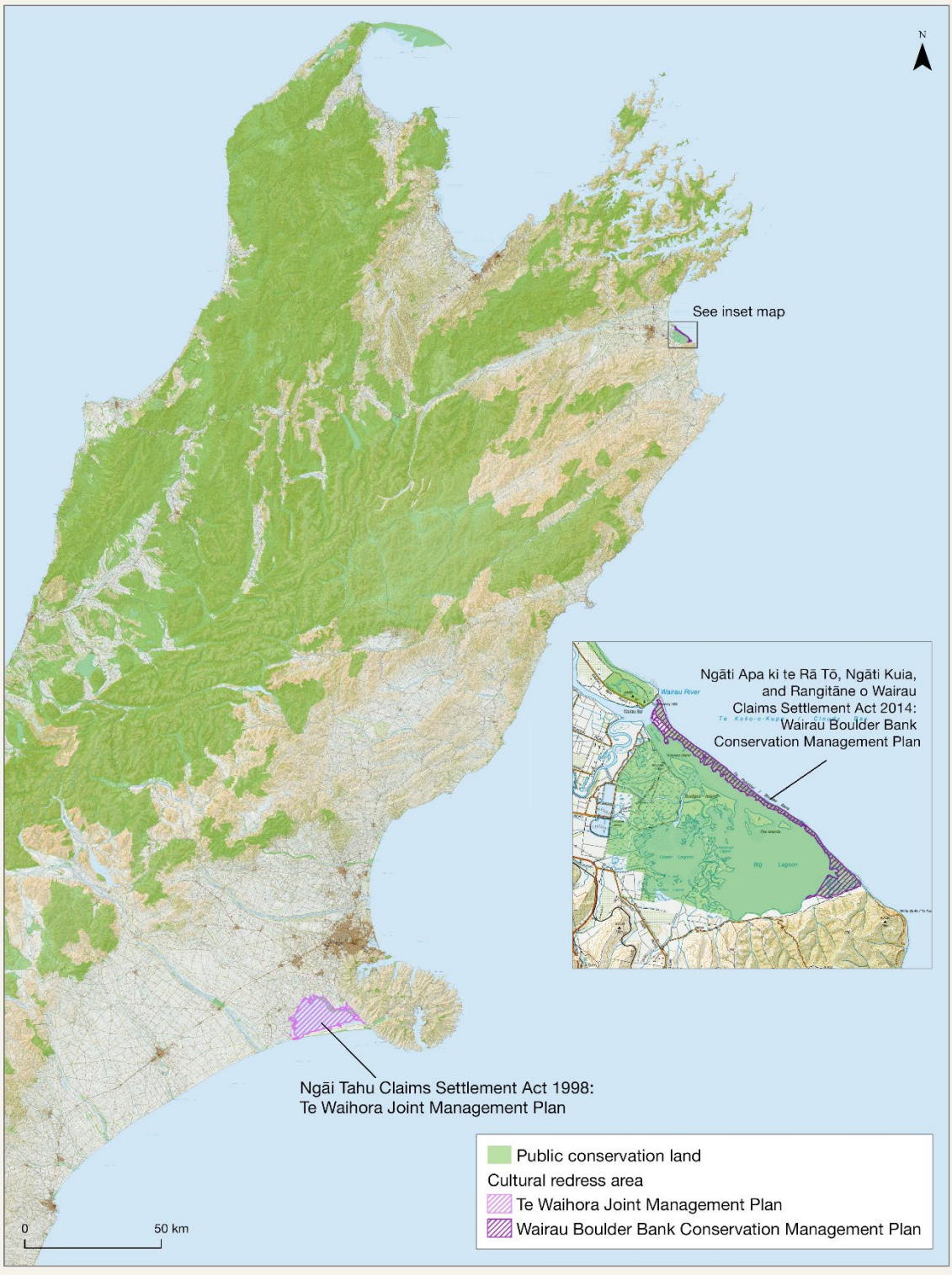
Conservation Management Plan redress areas

Te Kāwanatanga o Aotearoa
New Zealand Government



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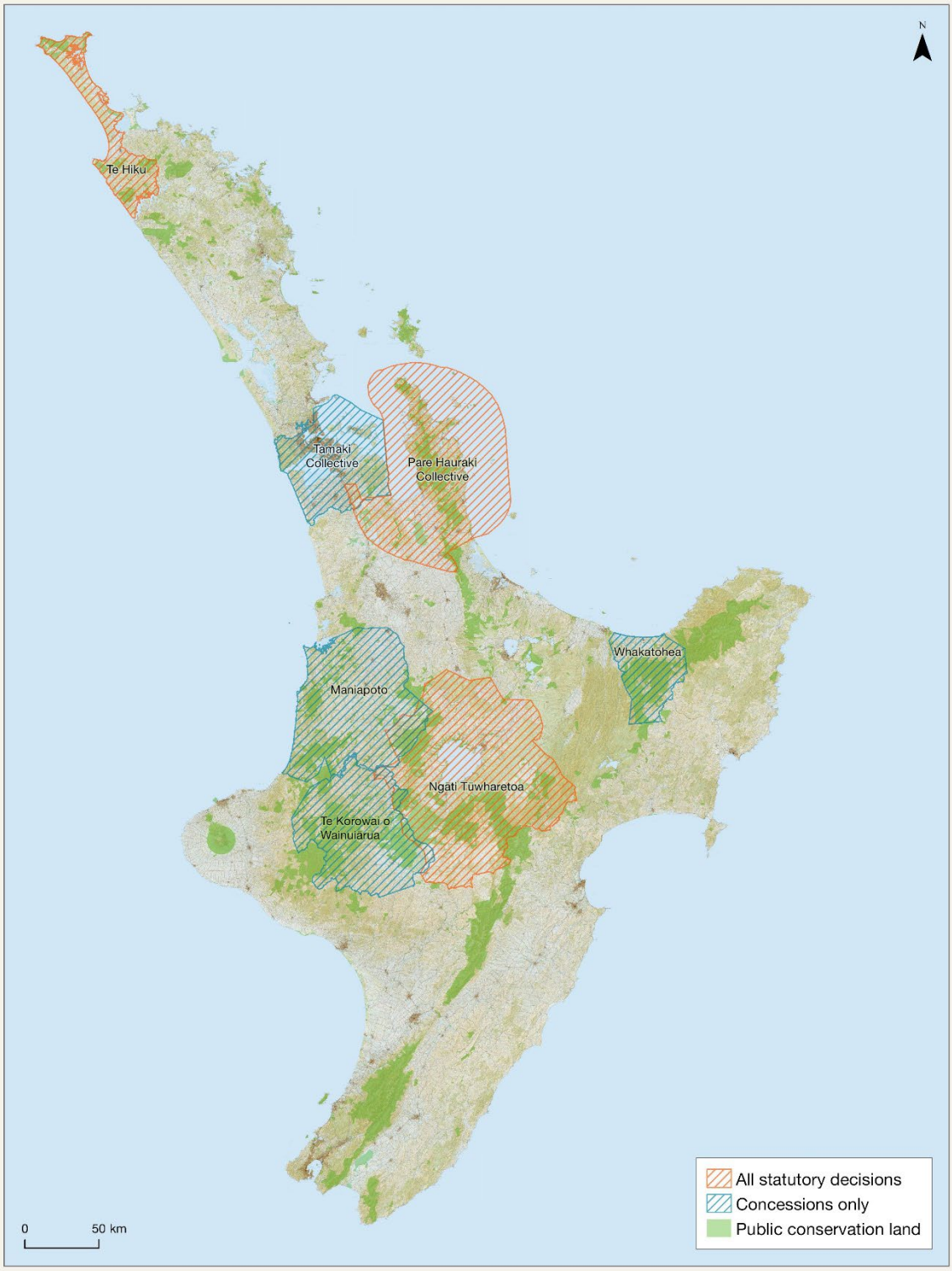
Te Papa Atawhai

Conservation Management Plan redress areas

Te Kāwanatanga o Aotearoa
New Zealand Government

ATTACHMENT D – Decision Making Framework (DMF) redress map



Department of Conservation
Te Papa Atawhai

Decision making framework

Te Kāwanatanga o Aotearoa
New Zealand Government

Department of Conservation
Te Papa Atawhai

Briefing: Options for exchange or disposal of land to support Fast Track

To	Hon Tama Potaka, Minister of Conservation Hon Chris Bishop, Minister Responsible for RMA Reform Hon Shane Jones, Minister for Regional Development	**Date submitted**	20 February 2024
Action sought	Agree to discuss this advice with your ministerial colleagues, and direct officials whether options should be drafted into the Fast Track Consenting Bill	**Priority**	Very High
Reference	24-B-0087	**DocCM**	DOC-7569992
Security Level	In Confidence		

Risk Assessment	High Disposal of conservation land (including exchanges) presents significant risk to conservation values without appropriate procedures and safeguards. This risk is amplified by policy and drafting instructions being developed at pace for the Fast Track Consenting Bill.	**Timeframe**	22 February 2024 URGENT
Attachments	No attachments		

Contacts	
Name and position	**Cell phone**
Ruth Isaac, Deputy Director-General, Policy and Regulatory Services	s 9 (2)(a)

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. On Thursday 15 February, Ministers requested advice on whether the Fast Track Consenting Bill (the Bill) should enable a Fast Track project to acquire public conservation land (PCL) while ensuring a net benefit to conservation. This paper provides advice on two potential mechanisms:
    - Exchange – Exchanging the land in return for other land with the same or greater conservation value and protecting the new land as conservation land.
    - Disposal – Disposing the land in return for money that would sufficiently provide for the restoration of the conservation values lost elsewhere.
2. Allowing developers to acquire PCL in exchange for land or financial compensation is an alternative to them seeking a concession. There may be situations where these alternatives are preferable - either because they enable a development that would otherwise not be able to go ahead, or because the project can go ahead but conservation outcomes would be better.
3. In practice, land exchanges or disposals may only be feasible alternatives in a few cases. The wider changes to favour development on PCL in the proposed regime may lower the need for land exchange. The 'right of first refusal' protections in Treaty settlements may also reduce the potential areas available for exchange or disposal.
4. There are risks to threatened and critical species, ecosystems, and habitats if land is swapped or disposed of and equivalence cannot be provided. For example, there may not be alternative sites available suitable for a habitat to be replaced.

Exchange could be enabled for Fast Track

5. In the context of the Fast Track, we recommend enabling the exchange of PCL where the Minister is satisfied the exchange would result in a net-conservation benefit and with safeguards to ensure the protection of threatened species, habitats and ecosystems that cannot practically be replaced. This is particularly preferable as an alternative to a concession with irremediable effects being granted.
6. We consider this is a relatively low-risk option for the Crown, and it ensures that the equivalent conservation value of the land lost is attained in return, at the point of exchange. Projects s 9(2)(f)(iv) which have previously sought land swaps, could potentially proceed under this policy.

Disposal carries much greater risk than exchange

7. We do not recommend including this tool in the Bill because disposal of land for cash creates much greater risk to the Crown. This is because the Crown essentially takes on an obligation to either acquire land elsewhere or bolster the value of existing land using the money it has acquired. s 9(2)(h) [redacted] There are also greater risks of taking on unintended additional financial liabilities (i.e. in the form of unanticipated, unfunded ongoing costs for any new projects).
8. We have also provided advice on conservation covenants created under the Conservation Act 1987 and Reserves Act 1977. These Acts do not provide the ability to revoke a conservation covenant, though some covenants include clauses that allow them to be extinguished by mutual agreement of the landowner and covenanting agency. The Public Works Act 1981 does provide powers to extinguish conservation covenants through the Compulsory Acquisition process.

We recommend that you … (Ngā tohutohu)

		Decision
1.	**Note** that Ministers have requested advice on whether the Fast Track Consenting Bill (the Bill) should enable a Fast Track project to acquire public conservation land (PCL), and that DOC has considered both exchange and disposal in terms of options	
2.	**Note** that exchange or disposal would not be considered for any land listed in Schedule 4 of the Crown Minerals Act 1991 as Ministers have agreed that no projects involving such land are eligible for Fast Track – this ensures the integrity of the most highly protected classifications of public conservation land (PCL).	
3.	**Note** that the majority of PCL is subject to rights of first refusal in Treaty settlements that would be triggered if land is being sold to developers other than Crown entities	
4.	**Agree** that, if the Bill enables exchange or disposal mechanisms, the Minister of Conservation, representing the Crown's ownership and conservation interests, will be the decision maker, as for decisions on Fast Track concessions.	Yes / No
	Exchange of public conservation land for new land	
5.	**Agree** that the Bill will enable the exchange of public conservation land with a Fast Track project where the exchange will result in a net-benefit for conservation	Yes / No
6.	**Agree** that the enabling provisions will only apply to Fast Track projects and that officials will undertake further work on how best to align any exchange or disposal processes with the agreed Fast Track consenting framework	Yes / No
7.	**Agree** that the Minister of Conservation must be satisfied that an exchange will result in a net-conservation benefit in order to approve the transaction, and must consider (but is not bound by) Chapter 6 of the Conservation General Policy	Yes / No

8.	**Agree** that:
	• the Bill will require that applicants identify the land to be offered when proposing an exchange; and
	• DOC will prepare an assessment of conservation values for both the Crown's land and the land being offered in return when an exchange is proposed; and
	• DOC's report will assess:
	  ○ the conservation values present, how threatened or abundant they are, and whether the values are too unique to allow the land to be exchanged;
	  ○ any financial implications for the Crown from the exchange; and
		Yes / No

	○ whether the exchange would be practical from an ongoing management perspective (e.g. avoiding enclaves of private land within conservation areas)	
	Financial compensation for the disposal of public conservation land	
9.	**Note** that officials do not recommend including any provisions enabling disposal in the Bill as further analysis of the costs and benefits of selling conservation land for development purposes is required	
10.	**Agree** not to include provisions in the Bill that would enable Fast Track projects to acquire PCL in return for financial compensation	Yes / No
11.	**Note** that if provisions to enable disposal in return for financial compensation are included in the Bill, DOC strongly recommends: • these will only apply to Fast Track projects; • DOC will value the cost of replacing the conservation values lost; and • exclusions and safeguards applied to land exchanges will also apply to disposals	Yes / No

Date: 20 / 2 /24

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

Date: / /

Hon Tama Potaka
Minister of Conservation

Date: / /

Hon Chris Bishop
Minister Responsible for RMA Reform

Date: / /

Hon Shane Jones
Minister for Regional Development

Purpose – Te aronga

2. The purpose of this briefing is to provide Ministers with advice on whether to enable exchange or disposal of public conservation land in a manner that supports the objectives of the Government's Fast Track Consenting Bill without risking the degradation of conservation values. This advice was requested at the joint Ministers' meeting on the Fast Track Consenting Bill on Thursday 15 February.

3. We have also provided further information on conservation covenants and the barriers they may create to infrastructure projects, as requested by Hon Jones.

Background and context – Te horopaki

4. In the context of creating the Fast Track Consenting Bill (the Bill), Ministers have requested that DOC prepare advice on enabling the exchange of conservation land. We understand there is a desire to avoid a situation s 9(2)(f)(iv) [redacted] where the project was halted as the proposed land exchange could not be lawfully approved.

5. We have prepared this advice on the basis of decisions made so far on the purpose and general architecture of the Bill, including the concessions part of the 'One Stop Shop' (with varied requirements for Fast Track projects). The overall schema of the Fast Track Act will weigh the purpose of that Act above other considerations.

6. It is crucial that the Crown is able to fully account for conservation values when considering land swaps and disposals. Ministers have agreed that "Schedule 4" land is out of scope of the Bill. It is important to note that some of the remaining land (ecological areas, scenic reserves, conservation parks, etc) holds high conservation value, and has been classified and is protected for that purpose. Though most stewardship land has not yet been assessed, much of it has significant conservation value. It is likely that much of this land will be recommended for 'higher' protection land classifications as part of the reclassification process.

7. In wider circumstances, the restrictions around exchange or disposal of public conservation land, while put in place for good reasons, can be problematic. For example, the inability to dispose of PCL without bespoke legislation creates a barrier to potential "win-win" solutions with post-settled iwi and others. On the other hand, the prohibitions in place are intended to act as a handbrake against breaking up or reducing the areas of land protected for conservation and future generations. In addition, New Zealand has signed up to an international target for the protection of 30 percent of land under the Convention on Biological Diversity.

8. Given this wider context, it is critical that any liberalisation of the settings is well thought through – that is, the precedent effects need to be analysed for both wider interests and the overall integrity of the conservation network and estate. Changes at this time should be targeted at Fast Track consenting only. The Minister of Conservation can seek further advice on changes to enable exchange or disposal outside of the Fast Track regime separately.

It may be necessary for Fast Track projects to acquire land in a small number of cases

9. Without further changes, Fast Track projects will need to seek a concession as part of the 'One Stop Shop' in order to develop on public conservation land. It is unlikely that existing land exchange or disposal options, and the settings that direct those decisions, will allow Fast Track projects to acquire land. There may be scenarios where obtaining a concession is not possible or desirable, even under the more development enabling Fast Track regime, given the effects the activity would have on the land.

10. There may also be scenarios where a concession granted through the Fast Track that would have irremediable effects on the conservation values of the land. In those

scenarios, an alternative where conservation values are enhanced elsewhere could be preferable from a conservation perspective.

11. Broadly, there are two options for enhancing conservation values elsewhere:

    a. Exchanging the land in return for other land with the same or greater conservation value and protecting the new land as conservation land.

    b. Disposing the land in return for money that would sufficiently provide for the restoration of the conservation values lost elsewhere where it would be protected for conservation purposes.

12. Exchange or disposal of public conservation land should only be explored for Fast Track options after other alternatives have been exhausted and deemed unsuitable. This includes development off public conservation land or a concession through the Fast Track 'One Stop Shop'. Exchange or disposal enabled through the Fast Track regime should not create an adverse incentive for developers to acquire public conservation land because it would be cheaper or easier than purchasing private land.

Current mechanisms for disposing of public conservation land

The Reserves Act provides for the exchange and disposal of reserves

13. The Act requires the administration of reserves to preserve and protect its values. Subject to that overall purpose, the Act provides for the disposal and exchange of reserves.

14. If a reserve is exchanged, there must be an equality of exchange to protect the public interest in the existing reserve (i.e. if exchanging a scenic reserve, the land to be received should have the same values and be given the same classification).

15. Where a reserve is sold, or money is paid during an exchange to approximate a similar value, proceeds must be spent for reserve purposes. This can include the acquisition of new reserve land and spending on the management of existing reserves.

16. Exchange or disposal of DOC administered reserves must be consistent with Chapter 6 of the Conservation General Policy. Ministers have agreed that the Conservation General Policy will not, however, be binding on Fast Track decisions.

17. The Conservation General Policy significantly restricts the disposal of land by requiring that the Crown can only dispose of land if it is of low or very low conservation value. It also restricts disposal being undertaken for other more prescriptive reasons including where the land is important for the survival of any threatened indigenous species or represents a habitat or ecosystem that is under-represented in public conservation lands (or could be restored into one).

18. DOC recommends that the Minister be required to consider the protections in the Conservation General Policy as part of any exchange or disposal regime, though it would not be binding.

Beyond reserves, disposal and exchange is limited to stewardship areas

19. Other than reserves held under the Reserves Act 1977, stewardship areas are the only form of conservation land that can be exchanged or disposed of. Stewardship areas are mostly conservation areas that have not been assessed yet to determine whether additional protection or preservation is required.

20. Once an assessment has been done, the land is classified as held for another specific purpose such as national park, ecological area, or scenic reserve or it can be disposed of for having 'low or no conservation value.' Land also becomes stewardship area if the classification of land is no longer applicable and is revoked (e.g. if a natural disaster destroys the values which the classification is based on).

21. Stewardship land is often misunderstood to be low value land from a conservation perspective – but the recent assessments of the West Coast area suggest otherwise. It is likely that much of this land will be recommended for 'higher' protection land classifications as part of the reclassification process.

22. Section 26 of the Conservation Act provides for the disposal of stewardship areas and Section 16A provides for the exchange of stewardship areas. Chapter 6 of the Conservation General Policy is also binding on any decisions to dispose of or exchange stewardship areas.

Key legal cases have confirmed that disposal is restricted to land with no or very low conservation value

23. The *Buller Electricity*[1] and *Ruataniwha*[2] decisions have added significant jurisprudence around these disposal and exchange provisions. These decisions have confirmed that the scope for exchange or disposal is limited to a narrow set of circumstances even for stewardship land.

24. In 1995 in the *Buller Electricity* case, stewardship land in the Buller area was being sought for a proposed hydro scheme on the Ngākawau river. The High Court held that there was no basis on which the Minister of Conservation could sell or otherwise dispose of the land unless he was satisfied that it was no longer required for conservation purposes. This was based on the mandatory nature of section 26 of the Conservation Act to manage the land to protect its values and the various definitions in the Act that reinforce this.

25. In the 2017 *Ruataniwha* case, the conservation park status of the land was to be revoked so that the land could be exchanged as a stewardship area. The Supreme Court held that the status of the land could not be revoked unless the conservation values of the resources on the subject land no longer justify that protection. The decision maker could not take into account the fact that revocation was to enable an exchange that would result in overall conservation benefit.

26. Changes to enable exchange or disposal for Fast Track would need to disapply the section 26 requirement to protect specific conservation values in favour of a requirement that a transaction would result in overall conservation benefit.

Conservation land can be compulsorily acquired through the Public Works Act

27. Public conservation land can be acquired through the Compulsory Acquisition process under the Public Works Act 1981. The Compulsory Acquisition process is an option for enabling land to be acquired for the purposes of government and local works. For Compulsory Acquisition, the provisions of conservation legislation and general policy do not apply.

28. We understand that the Public Works Act will be looked at as part of the Fast Track consenting process, but that advice has not yet been provided to agencies or Ministers.

29. Section 65 of the Public Works Act relates to "compensation for land for which no general demand exists" which essentially requires compensation equivalent to the reasonable cost of reinstating the non-market values of the land in some other place.

30. DOC does not have much experience with the valuation of compensation under Section 65. This is because the legislative and general policy restrictions on disposal mean that only land of no or low conservation value is disposed of. Where there is no

[1] Buller Electricity v Attorney General (HC) [1995] 3 NZLR 344
[2] Hawkes Bay Regional Investment Co Ltd v Forest & Bird & Minister of Conservation (SC) [2018] NZSC 122

conservation value, the Crown would normally seek a return based on the market value of the land.

Fast Track projects may be unable to acquire land for other reasons

31. Even if a disposal or exchange is deemed acceptable from a conservation perspective, the developer of the Fast Track project may often be unable to acquire the land. This is because the Crown may have other uses for the land, legal commitments to offer the land back to settled iwi or a previous owner who gifted the land, or there is a need to retain the land for future settlement negotiations.

32. Some of this information is not publicly available (e.g. offer back requirements) or requires confirmation by other government agencies (e.g. public works). Therefore, a report will need to be provided from all relevant land management agencies to advise on these matters *before* testing whether conservation exchange is an option. There is some risk that an enabling provision encourages developers to pursue unworkable exchange or disposal proposals that waste the time and resources of both the applicant and agencies.

Treaty settlements and rights of first refusal

33. Many Treaty settlements provide iwi rights of first refusal (RFR) whenever the Crown parts with land. Some settlements provide an RFR over any Crown owned land in the rohe of the iwi, while others list specific parcels of land. RFRs will cover a majority of public conservation land, including all conservation land in the Ngāi Tahu takiwā which is a significant portion of the land administered by DOC.

34. Rights of first refusal are activated when the Crown no longer requires the land and is disposing of it. Exchanges of public conservation land for new land to be protected for conservation purposes may not trigger an RFR. The Ngāi Tahu Claims Settlement Act provides that disposal for the purposes of exchange does not trigger the RFR, and this early settlement will likely have informed the RFR provisions in later settlements. Similar provisions allow for land to be transferred to other Crown agencies without triggering an RFR (e.g. transfer to Ministry of Transport for an airport to be built).

35. s 9(2)(h) [redacted]

36. Disposal with no new Crown land in return would almost certainly trigger RFR. For the Fast Track project to go ahead, iwi or hapū would need to either waive their right of first refusal or purchase the land themselves. If an iwi or hapū were to purchase the land, the development could go ahead through them selling the land on to the developer or leasing it to them. The Government could not compel a further sale of the land to occur after disposal and transfer to iwi or hapū, though, and thus could not guarantee the land would be used as intended.

37. Land may also need to be retained in Crown ownership in places where Treaty negotiations are ongoing or yet to be initiated. This is to ensure the land can be considered as part of future Treaty settlements. Collectively, RFRs and future settlement considerations will likely apply to almost all land disposals and many exchanges.

Other Crown uses and gift backs

38. Land may be deemed as required for another Crown purpose (e.g. for public works). DOC would need to confirm with other agencies that this is not the case before progressing any assessment. It seems unlikely that this would present a significant

barrier given that the intention of the Bill is to support projects of economic significance, including Crown owned infrastructure.

39. Some conservation land has been gifted to the Crown, subject to a condition that it must be offered back to the original owner if the Crown disposes of it. This process will need to be followed and relies on the original owner not taking up the offer. The process of identifying previous owner interests can be time consuming as many giftings occurred generations ago.

40. These circumstances will limit the extent to which enabling land exchange or disposal supports the development objective of the Fast Track regime. However, it is difficult to determine in advance how many cases these circumstances might apply to.

Iwi and hapū have sought to acquire public conservation land outside settlement

41. The Crown is increasingly receiving requests for the transfer of ownership of public conservation land from both settled and non-settled iwi and hapū. Ministers, DOC, and other agencies (e.g. Land Information New Zealand) are generally receiving these requests during meetings with iwi and hapū that take place outside of the settlement process.

42. Ministers will need to consider the impact that enabling only Fast Track projects to acquire land could have on the Crown's relationship with iwi and hapū. Enabling the exchange or disposal of public conservation land for Fast Track projects, but not more generally, may disgruntle iwi and hapū who have been told that it is not possible for them to acquire public conservation land for conservation policy reasons.

43. The transfer of land from the Crown to Māori is a fundamental part of Treaty settlement redress. Public conservation land made available to developers may not have been made available during settlement in line with the 2010 Cabinet policy on the availability of land in Treaty settlement [TOW Min (10) 2/4 refers]. RFRs will protect against such a scenario for most land, but there is a minority of public conservation land not covered by an RFR.

44. There will be cases where iwi or hapū are full or part owners of the Fast Track development. Though changes would support their aspirations regarding that specific project, change will likely heighten expectations amongst iwi and hapū that transfers also be enabled outside of the Fast Track process. DOC is developing advice for the Minister of Conservation on requests for transfer or vesting of public conservation land to iwi and hapū.

Determining whether land can be considered for exchange or disposal

45. Further consideration needs to be given to protecting conservation values beyond the overall net-conservation benefit test. DOC recommends the following requirements and considerations be incorporated into any land exchange or disposal decisions if Ministers wish to go ahead with one or both.

The scope of land that can be considered should align with the Fast Track process

46. Ministers have agreed that projects will not be eligible for Fast Track consenting (incl. relevant conservation approvals) if the proposed activity would take place on land listed in Schedule 4 of the Crown Minerals Act 1991. This ensures that the land with the highest conservation values is protected, even though some high conservation value land is not in Schedule 4.

47. DOC notes that our recommendation to include ecological areas and national reserves to the exclusions alongside Schedule 4 was not agreed and is to be considered by Cabinet before introduction. This would be an important addition more broadly to the Fast Track safeguards, but especially if wider land exchanges or disposals are enabled.

There are significant conservation values on land not in Schedule 4

48. There will be situations where conservation land that is not held under a classification listed in Schedule 4 of the CMA has conservation values that cannot be exchanged or disposed of. In some cases, that will be because those values are irreplaceable (e.g. a wahi tapū site). In other cases, it will be because the conservation values are seriously threatened and removing protection would risk irreversible ecological loss (e.g. one of the last remaining ecosystems or habitats of a specific type).

49. We have not had time to develop any ineligibility criteria to ensure land is not exchanged or disposed of where these irreplaceable or highly threatened values are present. It will be necessary to rely on a DOC assessment of the specific land in question to raise these issues and recommend that the land cannot be exchanged or that, in essence, no net conservation benefit option can be supplied. Case-by-case reports would be more practical and suitable than developing criteria to include in legislation given the diverse range of values across public conservation land.

50. Almost all exchanges will have an element of subjectivity, especially where different types of conservation values are being traded off (e.g. wetland versus podocarp forest). This subjectivity means that there is a risk that conservation values overall end up worse off. The ability to trade-off specific types of conservation values also presents risk to specific species and ecosystems. We have proposed safeguards against these risks below.

51. The policies in the Conservation General Policy pertaining to exchange and disposal provide a strong set of established considerations for DOC's assessment. For example, the policy restricts disposal where the land in question has international, national or regional significance, or represents a habitat or ecosystem that is under-represented in public conservation lands (or could be restored as one).

52. Although Ministers have agreed that the Conservation General Policy will not be binding on the Fast Track regime, DOC recommends requiring the Minister of Conservation to consider it. Though it would not be binding, it would require consideration of the most important and threatened conservation values and would likely be seen as an important safeguard by conservation stakeholders.

Exchange or disposal should not create private enclaves within conservation areas

53. Exchange or disposal should not create the situation where there is a piece of privately held land surrounded by a conservation area. This would be impractical both for the developer's access and use and for the Crown's management of the surrounding area.

54. There is also a need to consider the species protection and effective management benefits of networks of adjoining conservation areas. In some cases, species rely on corridors of protected areas or DOC's work can be more effective (e.g. trap lines are based on terrain, not map boundaries). Therefore, any exchange or disposal of land should also avoid severing an existing conservation area or a link between two or more conservation areas.

Exchange of public conservation land for new land

55. Ministers could progress the exchange of public conservation land for other land which would then become protected as public conservation land.

56. The Minister of Conservation would be able to agree to an exchange where he/she is satisfied there is net conservation benefit. DOC would assess the conservation value of the land held by the Crown, weigh that up against the assessed conservation value of the land being offered in return and make a recommendation to the Minister.

Changes required to enable exchange

57. The primary change required is to allow the Minister to agree to exchanges of land for conservation areas other than stewardship areas. It would also be necessary that land with greater than no or very low conservation value can be exchanged, so long as there is a net-conservation benefit. As is the case for stewardship areas currently, the Minister would need to demonstrate that the exchange would have a net conservation benefit.

58. Enabling eligible conservation areas to be exchanged directly instead of revoking their status and having them become stewardship area also avoids a two-step process.

59. Policy 6(a) of the Conservation General Policy puts requirements around the benefits of an exchange. In the Fast Track regime, the requirement to manage the land in accordance with planning documents has been disapplied. The Fast Track Act could nonetheless direct that the Minister "must consider" the General Policy and planning documents in this matter (as noted above). The net conservation benefit test would remain a legislated safeguard against the degradation of conservation values.

60. Further detailed work is required to determine whether any amendments are required to amend or disapply Part 4A of the Conservation Act which relates to the creation of marginal strips.

Benefits

61. Land exchanges would support the purpose of the Fast Track consenting regime by enabling development on areas of public conservation land that would otherwise not be consented through a concession. Under this option, projects s 9(2)(f)(iv) [redacted] could proceed (which was held up over land swap matters not deemed legal).

62. It also supports significant capital investment by not placing a time-limit on the activity as would happen with a concession. Concession leases and licenses can be issued for a maximum of 30 years, or 60 in exceptional circumstances. Under a land swap, a parcel of land would be owned by the developer (rather than DOC) for as long as they wish to have it.

63. This could be a positive outcome for conservation if the exchange is seen as at least like for like. Without the exchange, granting a concession through the Fast Track could degrade conservation values without providing for replacement conservation protection elsewhere like an exchange would.

64. It could present opportunities to acquire land with values that are seriously threatened or underrepresented within New Zealand's network of protected areas. For example, ensuring the protection of a network of wetlands may be higher priority in an area with extensive areas of protected forest. DOC generally does not purchase new land as this requires Crown investment, whereas an exchange would be fiscally neutral.

65. This option is also more effective at managing potential Crown risks. That is because:

- The Crown would avoid any potential financial and legal liabilities related to the project as the landowner by sanctioning an exchange rather than issuing a concession;
- When the land is swapped, the equivalent conservation value would be achieved at the point of exchange, conferring no risks upon the Crown to 'regain' the lost conservation value over time (unlike a land-for-cash deal, discussed below); and
- Any ongoing financial liabilities of new land are more readily measurable, and manageable, providing minimal risk to the Crown of unintended financial liabilities.

Identifying, assessing and acquiring alternative land may take time

66. In many cases, the developer will not have land with conservation value readily available for exchange nor will they fully understand the value of the conservation land in their sights. In those cases, the alternative land would need to be identified, its conservation values assessed by DOC, and a purchase agreement sought by the developer with the landowner.

67. This may make it procedurally difficult to align the timing of an exchange with the expedited timeframes of the Fast Track process. However, we would anticipate discussions between DOC and developers on potential swaps prior to a Fast Track application to speed things up.

Conclusion: Exchange could be enabled for Fast Track

68. In the context of the Fast Track regime, DOC recommends providing for land exchange as it could be a better alternative to a concession in some circumstances. We consider this option could more effectively manage potential Crown risks, while providing for development.

Financial compensation for the disposal of public conservation land

69. Ministers may also wish to consider the disposal of land (i.e. for monetary exchange). The conservation value of both the Crown and private land could be assessed, and financial compensation could ensure a net-conservation benefit where there is clear conservation value in the private land being offered but it is lower than the Crown land being exchanged.

Allowing for land to be purchased would be more flexible than land exchange…

70. The Reserves Act currently allows the Minister of Conservation to direct that the proceeds of sale from any reserve must be used for the purposes of reserves management. This can be for either the acquisition of new reserve land or the improvement and protection of existing reserves.

71. In the context of Fast Track projects, the Crown could sell the land to the Fast Track project developer and ringfence the funding to be used for conservation purposes. Ministers would need to consider whether the funds for conservation benefit should be ringfenced only for the acquisition of new public conservation land or extended to enable spending on the enhancement of existing conservation land. Any sale of land would also be subject to the other considerations and requirements such as rights of first refusal (as above).

72. The key advantage of this option is that disposal can likely be actioned more quickly than an exchange, although determining the monetary equivalent value can take time and be challenging where there are conservation values present.

… but exchanging an asset (land) for cash confers more risk to the Crown, and may result in a reduction in value to the Crown and conservation over time

73. Exchanging land-for-land puts more of the risk on the developer: an onus to find land of equivalent value. The exchange itself ensures that the Crown, in giving up land of conservation value, simultaneously acquires land of equivalent value (that is, assuming the land value assessment is accurate, it is a low-risk option for the Crown).

74. Acquiring money for land, to be used for wider conservation purposes, puts more of the risk on the Crown and less on the developer. This is because, at the point of exchange, the Crown essentially takes on an obligation to either acquire land elsewhere, or to bolster the value of existing land, using the money it has acquired. Failure to do either of these things in a way that ensures equivalence of value could open the Crown to legal challenge. DOC is not experienced in providing advice on

reinstatement costs given disposal is currently restricted to land with no or low conservation value.

75. Disposing of land with conservation value for cash will result in an immediate reduction in conservation value. Conservation value will only be regained to 'equivalence' in time, once the money has been spent and the necessary time has elapsed for any new projects to yield their benefits (e.g. creating a new wetland, or a new forest). There is a risk that events occur during that time that threaten the realisation of new projects (like the recent extreme weather events). As such, risks to ensuring conservation value equivalence are higher with land disposal for cash, and is it more likely that conservation values will decrease over time as a result.

76. Ecosystems that are being restored are inherently more fragile than mature ones. This increases the risk of net-conservation loss where the net-benefit test is relying on financial compensation being used to fund restoration to replace the conservation values of the land being disposed of. This means that a disposal is inherently riskier for conservation than an exchange. It would be very rare that the Crown could replace these by purchasing land with mature conservation values as much of this is already on the conservation estate.

77. Finally, there is a risk of unintended additional financial liabilities being accrued by the Crown. Any money acquired for land would need to be spent on enhancement projects in the remaining estate that provided a similar conservation enhancement in perpetuity, and ongoing maintenance costs could not exceed the maintenance cost equivalent of the disposed land. Should the ongoing costs of a project endure unanticipated variations, this would create unintended financial risks for the Crown.

78. We note that enabling disposal outside of carefully managed exchanges would also open up an unnecessary further front for significant concern about the Fast Track regime undermining conservation. Without a clearer cost benefit and policy assessment to justify this option, DOC does not recommend taking this step.

Conclusion: We do not recommend disposal for Fast Track

79. DOC does not recommend enabling disposal in the Bill. Given the complexity and risks associated with disposal (even with a net-conservation benefit requirement), more work is required to undertake appropriate analysis of the pros and cons and to develop appropriate conservation safeguards, valuation tools and expertise.

80. If Ministers wish, enabling disposal could be looked at as part of wider improvements to the Conservation framework. This would enable policy development to better mitigate against net-loss of conservation values or creating inappropriate incentives around the conservation estate. It would also provide for more robust public consultation and engagement with iwi and hapū.

81. If Ministers still wish to include exchange or disposal in the Bill, it must ensure that mechanisms and tests are in place requiring that there is a net conservation benefit. s 9(2)(f)(iv) [redacted] We would also recommend the conservation safeguards DOC has proposed for exchanges are applied to disposals.

Conservation covenants

82. Ministers have also requested advice on conservation covenants and how their requirements might relate to the Fast Track Consenting Bill. This advice is for information only and does not seek policy decisions as the relationship between the Fast Track Consenting Bill and the Public Works Act remains unclear. We can provide further advice on this once advice on the Public Works Act and the Fast Track Consenting Bill has been prepared by other agencies.

Conservation covenants

83. Section 77 of the Reserves Act and section 27 of the Conservation Act enable a conservation covenant to be placed over private or Crown land. They are entered into voluntarily by the landowner and either the Minister of Conservation, a local authority, or any other body approved by the Minister.

84. The covenant requires that the land be managed for the purpose of conservation or a particular purpose. Those purposes include the preservation of the natural environment, landscape amenity, wildlife or freshwater-life or marine-life habitat, or historical value. They are usually put in place with the purpose of protecting specific natural or historic values.

85. We acknowledge that conservation covenants may be a barrier to infrastructure projects. These tools place legal restrictions on the property rights of the landowner and are binding on the subsequent owners of the land.

86. The Reserves Act and Conservation Act do not provide for the removal of a conservation covenant, though some covenants have the ability for the covenant to be extinguished by mutual consent of the landowner(s) and the covenant authority or trust. Ministers would need to consider alternative options to support Fast Track for covenants without an extinguishment clause.

The Urban Development Act provides for revocation or cancellation of a covenant

87. Provisions in the Urban Development Act provide powers for the extinguishing of conservation interests (which includes conservation covenants) on land relating to a development project. It would be possible to import a similar mechanism into the Fast Track Consenting Bill relatively easily.

88. To revoke or cancel a conservation covenant through the Urban Development Act, Kainga Ora must obtain the landowners' agreement and approval from the Minister of Conservation. The Minister of Conservation must have regard to the purpose of the covenant and the values of the area and be satisfied that approval will not compromise values of regional, national, or international significance.

89. This type of provision would likely be effective for the purposes of Fast Track while providing safeguards for important values. However, it may not be effective where covenants have a large number of individual landowners, such as the covenant over s 9(2)(b) [redacted]. It may be possible to look at further provisions that would allow work so long as agreement was obtained from the landowner(s) whose land is specifically affected (rather than all landowners).

The Public Works Act can extinguish a covenant when compulsorily acquiring land

90. The Public Works Act provides powers to extinguish a conservation covenant as part of the Compulsory Acquisition process. Unlike the Urban Development Act process, landowner agreement is not required. Therefore, the Public Works Act is more likely to be effective in addressing scenarios where there are multiple landowners and consensus would be difficult (s 9(2)(b) [redacted]

91. Note that if a Compulsory Acquisition extinguishes a conservation covenant, the need for 'compensation for land for which no general demand exists' usually applies under s 65 of the Act. As discussed above in the context of disposal, this is basically the monetary equivalent of reinstating the conservation interest somewhere else (planting out a greenfield site, fencing, legal protection, etc.).

Risk assessment – Aronga tūraru

92. Land swaps offer a lower risk option compared to land disposals for equivalent monetary value. This is because:

- Land swaps ensure conservation value equivalence is attained at the point of exchange (unlike acquiring a cash value, whereby conservation equivalence can only be attained over time, subject to a series of risks – such as extreme weather events – not being realised);
- s 9(2)(h) [redacted] and
- Land swaps make it easier for the Crown to measure and manage any ongoing financial liabilities (such as ongoing maintenance costs) and maintain the Crown's asset base. Acquiring cash for use on a future project to enhance the remaining DOC estate does not provide the same degree of certainty regarding potential future ongoing financial liabilities (i.e. the Crown will only scope potential projects, and associated ongoing liabilities, after the land-cash deal has concluded) and would reduce the Crown's asset base if spent on operating costs.

Treaty principles (section 4) – Ngā mātāpono Tiriti (section 4)

93. Māori have significant interests in public conservation land and the protection of conservation values includes the protection of places and resources with cultural value. In some cases, the Minister of Conservation may turn down a proposed land exchange to ensure active protection of taonga and wahi tapū or to protect land that is part of settlement discussions.

94. Beyond the RFRs, an assessment of cultural values important to mana whenua should be undertaken for every exchange or disposal, if enabled, to ensure informed decision making and the protection of Māori rights and interests. DOC would engage with iwi and hapū as appropriate in developing those assessments.

95. Rights of first refusal agreed to in Treaty settlements will protect interests in land that was not made available when those settlements where negotiated. However, iwi and hapū may be disgruntled by the Crown signalling that the land is disposable, but only of the purposes of Fast Track projects.

96. Enabling land exchange could have positive economic impacts and would enhance rangatiratanga over the land if iwi or hapū have ownership or investment in the project seeking to be Fast Tracked.

Consultation – Kōrero whakawhiti

97. We have not consulted with other agencies in developing this advice as it has been developed at pace.

98. We have not consulted with local authorities or Local Government New Zealand as our focus has been on public conservation land rather than reserves. They will have a strong interest in any policy proposals that seek to amend the exchange and disposal mechanisms in the Reserves Act if it impacts them – but the proposal here would be targeted in design to PCL as discussed.

99. We have not engaged with the New Zealand Conservation Authority (NZCA) on this. However, following the following *Ruataniwha* decision the NZCA prepared a report supporting legislative amendments that would enable exchanges of stewardship land where there was net-conservation benefit.

100. We have not publicly consulted on any of the policy in this paper. However, it was evident during public consultation on changes to streamline the stewardship land reclassification process that any proposals to enable the disposal of public conservation land will likely be highly controversial. Even for land exchange, decisions

are likely to be controversial and subject to challenge where the land swap is neither ‘like-for-like’ or demonstrably beneficial from a conservation perspective.

Legal implications – Te hīraunga a ture

101. Enabling the exchange or disposal of land to support Fast Track objectives will require legislative change. Necessary amendments can be incorporated into the Bill for introduction.

102. s 9(2)(h) [redacted]

Next steps – Ngā tāwhaitanga

103. If you decide to include amendments to enable exchange and/or disposals for Fast Track, we will prepare drafting instructions and provide them to the Parliamentary Counsel Office so that the amendments can be included in the Bill for introduction.

104. It is likely that, following further work, some details would need to be worked through in later Parliamentary stages of the Bill.

105. DOC can provide further advice on conservation covenants if requested, preferably after Ministers have been provided advice on the Public Works Act by other agencies.

ENDS

Decisions on conservation land swaps etc from briefing 24-B-0087

For meeting Sunday 25 February (Ministers of RMA Reform, Regional Development and Conservation)

Drafting instructions will follow to PCO asap

Note:

- underlining in recommendation text represents minor amendments requested by Hon Potaka
- underlined decisions represent where Ministers Potaka and Bishop landed on Thursday 22 February, to be confirmed with Minister Jones at this meeting

		Decision
1.	**Note** that Ministers have requested advice on whether the Fast Track Consenting Bill (the Bill) should enable a Fast Track project to acquire public conservation land (PCL), and that DOC has considered both exchange and disposal in terms of options	
2.	**Note** that exchange or disposal would not be considered for any land listed in Schedule 4 of the Crown Minerals Act 1991 as Ministers have agreed that no projects involving such land are eligible for Fast Track – this ensures the integrity of the most highly protected classifications of public conservation land (PCL).	
3.	**Note** that the majority of PCL is subject to rights of first refusal in Treaty settlements that would be triggered if land is being sold to developers other than Crown entities	
4.	**Agree** that, if the Bill enables exchange or disposal mechanisms, the Minister of Conservation, representing the Crown's ownership and conservation interests, will be the decision maker, as for decisions on Fast Track concessions.	<u>Yes</u> / No
	Exchange of public conservation land for new land	
5.	**Agree** that the Bill will enable the exchange of public conservation land with a Fast Track project where the exchange will result in a net-benefit for conservation	<u>Yes</u> / No
6.	**Agree** that the enabling provisions will only apply to Fast Track projects and that officials will undertake further work on how best to align any exchange or disposal processes with the agreed Fast Track consenting framework	<u>Yes</u> / No
7.	**Agree** that the Minister of Conservation must be satisfied that an exchange will result in a net-conservation benefit in order to approve the transaction, and	<u>Yes</u> / No

	must consider (but is not bound by) Chapter 6 of the Conservation General Policy	
8.	**Agree** that: • the Bill will require that applicants identify the land to be offered when proposing an exchange; and • DOC will prepare an assessment of conservation values for both the Crown's land and the land being offered in return when an exchange is proposed; and • DOC's report will assess: o the conservation values present, how threatened or abundant they are, and weighting of the values; o any financial implications for the Crown from the exchange; and o whether the exchange would be practical from an ongoing management perspective (e.g. avoiding enclaves of private land within conservation areas)	Yes / No
	Financial compensation for the disposal of public conservation land	
9.	**Note** that officials do not recommend including any provisions enabling disposal in the Bill as further analysis of the costs and benefits of selling conservation land for development purposes is required	
10.	**Agree** not to include provisions in the Bill that would enable Fast Track projects to acquire PCL in return for financial compensation	Yes / No
11.	**Note** that if provisions to enable disposal in return for financial compensation are included in the Bill, DOC strongly recommends: • these will only apply to Fast Track projects; • DOC will estimate the cost of replacing the conservation values lost; and • exclusions and safeguards applied to land exchanges will also apply to disposals	Yes / No [although as noting rec, no decision strictly necessary]

Officials have also added further recommendations relating to conservation covenants since the briefing and these also require decisions from all three Ministers to be made:

Proposal	Options	Decisions	Advice and Analysis
Conservation Covenants	**1. Note** that conservation covenants are intended to lock in land status and protections for current and future landowners, but that the Urban Development Act enabled covenants to be revoked with the mutual consent of the landowner and Minister of Conservation for significant housing developments. **2. Agree** that: a. the Fast Track Bill provides that conservation covenants under the Conservation Act and Reserves Act can be amended by mutual consent of the landowner and the Minister of Conservation; **and** b. the Minister of Conservation would follow a process similar to that in the Urban Development Act; **and** c. where a covenant covers multiple land parcels the covenant can be changed by mutual agreement for all or some of the land parcels covered by the covenant. **3. Note** that further work will be needed on how this part of any Fast Track application should be managed alongside the resource consent and 'one stop shop' approvals.	**Yes | No** **Yes / No** **Yes / No**	**Conservation covenants** Section 77 of the Reserves Act and section 27 of the Conservation Act enable a conservation covenant to be placed over private or Crown land. They are entered into voluntarily by the landowner and either the Minister of Conservation, a local authority, or any other body approved by the Minister. The covenant requires that the land be managed for the purpose of conservation or a particular purpose. Those purposes include the preservation of the natural environment, landscape amenity, wildlife or freshwater-life or marine-life habitat, or historical value. They are usually put in place with the purpose of protecting specific natural or historic values. We acknowledge that conservation covenants may be a barrier to infrastructure projects. These tools place legal restrictions on the property rights of the landowner and are binding on the subsequent owners of the land. The Reserves Act and Conservation Act do not provide for the removal of a conservation covenant, though some covenants have the ability for the covenant to be extinguished by mutual consent of the landowner(s) and the covenant authority or trust. Ministers would need to consider alternative options to support Fast Track for covenants without an extinguishment clause. **The Urban Development Act provides for revocation or cancellation of a covenant** Provisions in the Urban Development Act provide powers for the extinguishing of conservation interests (which includes conservation covenants) on land relating to a development project. It would be possible to import a similar mechanism into the Fast Track Consenting Bill relatively easily. To revoke or cancel a conservation covenant through the Urban Development Act, Kainga Ora must obtain the landowners' agreement and approval from the Minister of Conservation. The Minister of Conservation must have regard to the purpose of the covenant and the values of the area and be satisfied that approval will not compromise values of regional, national, or international significance. This type of provision would likely be effective for the purposes of Fast Track while providing safeguards for important values. However, it may not be effective where covenants have a large number of individual landowners, s 9(2)(b) [redacted] It may be possible to look at further provisions that would allow work so long as agreement was obtained from the landowner(s) whose land is specifically affected (rather than all landowners).

			Options and impacts The original policy intent of covenants is that they are locked in, binding current and future landowners. Under the Urban Development Act it was considered appropriate to revisit that underlying policy and allow for the Minister of Conservation and the landowner through mutual agreement to be able to reopen a covenant if the societal benefits of a housing development warrant it. As the FTC regime is only for projects that are deemed to have significant benefits, officials consider it may be appropriate to at least allow the opportunity for a covenant to be reconsidered in much the same way as the UDA does for housing, but only by mutual consent of the MOC and landowner. Generally covenants reduce the market value of land as its use is restricted, and making the land available for wider use will impact values. Further opening up the potential to undo covenants may have a knock on effect on the value of wider covenanted land, and may impact the incentives to put covenants in place in the future. Officials have not analysed these potential impacts. The potential impact on conservation is that this could open up development on rare and threatened habitats and ecosystems on private land (where a covenant is the only way of protecting that in perpetuity). This is a matter that the Minister of Conservation would consider in deciding whether to grant consent. It is not possible to quantify the potential impact in this regard, as a case by case assessment would be necessary once FTC projects are identified. s 9(2)(f)(iv) [redacted]

Attachment K

Department of Conservation
Te Papa Atawhai

Briefing: Engagement on the conservation aspects of Fast Track Consenting

To	Minister of Conservation	**Date submitted**	18 February 2024
Action sought	Agree a proposed approach to engagement on conservation one stop shop Approve draft talking points/key communications messages Refer draft key messages to Fast Track Ministers and confirm timing and detail of engagement on conservation proposals	**Priority**	High
Reference	24-B-0089	**DocCM**	DOC-7569709
Security Level	In Confidence		

Risk Assessment	Medium Getting the engagement approach right will support more constructive responses to the Government's proposed Fast Track regime	**Timeframe**	19 February 2024 To allow time to meet stakeholders prior to introduction in late Feb/early March, noting that key messages may also be useful for iwi engagement on 19 February
Attachments	Appendix A – Draft Talking Points/Key Messages Appendix B – List of stakeholders informed to date about the Fast Track Bill (RM elements) by Minister Bishop		

Contacts	
Name and position	**Cell phone**
Sam Thomas, Director Policy	s 9(2)(a)
Ruth Isaac, Deputy Director-General Policy and Regulatory Services	s 9(2)(a)

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. With confirmation that conservation legislation is to be included in the Fast Track Consenting regime, you may wish to engage with key conservation stakeholders ahead of the introduction of the Bill. Key stakeholders have already received high level information about the resource management aspects of the Bill, but do not have any information about how the 'one stop shop' will apply in relation to conservation approvals.
2. The Ministry for the Environment is updating key messages for Ministers and wishes to include messages on conservation approvals and the one stop shop in the pack. They have agreed that you should approve the messages and refer them to wider Ministers. A key point for discussion with your colleagues will be the level of detail you wish to provide ahead of the Bill being introduced.

We recommend that you … (Ngā tohutohu)

		Decision
a)	**Note** that some targeted stakeholder engagement has been undertaken on the overall Fast Track Consenting process by the Ministry for the Environment and this has included environmental groups but this has only outlined the resource management proposals	
b)	**Note** that: (i) you and Minister Bishop are due to meet with the Pou Taiao iwi leaders on Monday 19 February 2024 to discuss the Fast Track Consenting regime, and (ii) DOC can provide talking points for you for this meeting on the conservation elements (following the meeting on Sunday 18 February to finalise broader Treaty elements for the Bill)	
c)	**Agree**: (i) **Either** to meet with the following key conservation stakeholders prior to introduction of the Fast Track Consenting Bill in late February or early March (ii) **Or** to DOC engagement only with the following key conservation stakeholders prior to introduction of the Fast Track Consenting Bill in late February or early March	Either Yes / No OR Yes / No
	i) New Zealand Conservation Authority	Yes / No
	ii) Local Government New Zealand	Yes / No
	iii) Environmental Defence Society	Yes / No
	iv) Forest & Bird	Yes / No
	v) WWF (NZ)	Yes / No
	vi) Greenpeace Aotearoa	Yes / No
	vii) Federated Mountain Clubs	Yes / No

	viii) Fish & Game New Zealand	Yes / No
d)	**Approve** the draft talking points in Appendix 1 to assist you with conversations with stakeholders, which will be updated once Treaty-related decisions are clear	Yes / No
e)	**(i)** **Refer** the draft talking points and key messages to other Fast Track Ministers for feedback, agreement and for wider use, and **(ii)** **Seek to confirm** the appropriate level of detail for pre-introduction engagement with your colleagues	Yes / No

Date: 18 / 02 / 24

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

Date: / /

Hon Tama Potaka
Minister of Conservation

Purpose – Te aronga

1. This briefing seeks your direction on how to engage with wider stakeholders on the conservation aspects of the Fast Track Consenting process.

Background and context – Te horopaki

2. The Government intends to introduce the Fast Track Consenting Bill into the House in the first week of March 2024.

3. The Ministry for the Environment has been undertaking engagement on the overall Fast Track Consenting regime with a targeted set of stakeholders. These stakeholders have included:

   - Post-Settlement Governance Entities (PSGEs)
   - Local government representatives
   - Environmental NGOs.

4. We understand that the possible inclusion of conservation legislation into the Fast Track Consenting regime was raised in some of these stakeholder meetings but no details were discussed. DOC did not attend these meetings, as no formal decisions had been made on the inclusion of Conservation legislation into the Fast Track Consenting regime at the time.

5. There has been no specific consultation or engagement with stakeholders on the conservation aspects of this proposal to date. There is a high degree of interest in this from stakeholders, including Māori and NGOs, and DOC is fielding questions on these matters.

6. You and Minister Bishop are due to meet with the Pou Taiao iwi leaders forum on Monday 19 February 2024 to discuss the Fast Track Consenting regime. This has been arranged by Te Arawhiti. DOC recommends that you have an agreed set of talking points on the conservation elements of the Bill for this meeting, including FAQs, which we can provide. DOC also recommends that you include a senior DOC official at this meeting to support you in relation to the conservation portfolio decisions and to hear feedback/concerns that may require follow up advice from the Department.

Options for engagement prior to introduction

7. In addition to your Pou Taiao meeting, the Department recommends that you consider undertaking some limited engagement with targeted stakeholders prior to the introduction of the Fast Track Consenting Bill.

Option 1: Minister(s) engage directly with priority stakeholders

8. We recommend you engage directly with some key stakeholders to discuss the conservation aspects of the Fast Track Consenting regime. The purpose of this engagement would be to outline the broad approach and how this achieves the Government's objectives for accelerating development while protecting key conservation and environmental values. Depending on your preference, this could be done jointly with Minister Bishop – you may like to canvas his views on this.

9. Suggested priority stakeholders are listed below for your consideration.

Group	Particular Interest
NZ Conservation Authority (NZCA)	The NZCA will be interested in decisions impacting the management of public conservation areas, particularly those administered by DOC as well as how Treaty settlements will be upheld and how section 4 will apply.

Group	Particular Interest
Local Government New Zealand (LGNZ)	LGNZ will be particularly interested in the proposed provisions that would apply the FTC process to local authority owned and administered reserves, but also the impact of the one stop shop on wider 'consenting' of regionally and nationally significant projects. Minister Bishop is likely to have an interest here.
Environmental Defence Society	EDS, Forest and Bird, WWF, and Greenpeace are all likely to be particularly interested in provisions which may be seen to reduce protection for existing conservation land or environmental effects, or that reduce public participation in decision-making processes. They will also be interested in how Treaty settlements will be upheld and how section 4 will apply. Any Ministerial meeting on the proposals with this set of ENGOs would likely be of relevance to Minister Bishop.
Forest & Bird	
WWF (NZ)	
Greenpeace Aotearoa	
Federated Mountain Clubs	The Federated Mountain Clubs and Fish and Game NZ are likely to be most interested in maintaining protection and recreational access to a range of conservation areas, and provisions that will reduce public participation in decision-making processes.
Fish & Game NZ	

10. Ministerial engagement with environmental NGOs can be used to inform their position more effectively, including explaining the key conservation safeguards in the Bill that may otherwise be overlooked. It can also be used to highlight the Select Committee process as a genuine opportunity to obtain feedback on the Bill.

11. These engagements would ideally be completed prior to the introduction of the Bill into the House in early March. There is a risk that information shared will be leaked or made available through public commentary prior to introduction. While this is a key consideration, that risk exists for the wider regime and has not restricted engagement.

12. **Appendix 1** provides draft key talking points to support you in these engagements, and key high-level details of the conservation aspects of the Fast Track Consenting regime. This will be updated once decisions on Treaty elements are clear. If you do not wish to go into so much detail prior to introduction, a revised set of messages will be provided or the table outlining proposals can be dropped – but it is likely that any engagement would need to outline the basics of the Bill.

Option 2: (Joint) Ministerial letter to key stakeholders, with follow up by officials

13. A less direct approach to engagement would be to send a letter to key stakeholders (perhaps jointly with Minister Bishop) informing them of the proposed inclusion of conservation permissions within the Fast Track Consenting regime at a high level. This could provide for follow up by Department officials on details with these stakeholders. Meetings will facilitate a more free-and-frank exchange.

14. Again, there is a risk that any letter is shared more broadly than the targeted stakeholders and could result in media coverage ahead of any formal announcements or introduction of the Bill. This limits the detail the letter should go into, including on the conservation safeguards secured in the Bill.

15. **Appendix 2** provides the list of stakeholders initially advised by Minister Bishop about the Fast Track Bill, many of whom have had follow up meetings with MfE officials on the resource management elements of the Bill.

Option 3: Do no further prior engagement on Conservation specific matters

16. Should you opt not to directly engage with conservation stakeholders prior to introduction, they will be able to submit on all aspects of the Fast Track Consenting Bill through the select committee process.

17. Given that engagement on the wider proposals has been undertaken by the Ministry for the Environment, and targeted discussions with other stakeholders on the resource management proposals has been ongoing through other Ministers and agencies, the Department considers that a total vacuum around the conservation elements prior to introduction is asymmetric and unwise. It is likely that elements will be shared with some stakeholders by other Ministers, and the overall narrative and safeguards you have built in will be lost in subsequent public commentary.

18. Without an engagement approach, recent policy decisions concerning conservation legislation may also lead to significantly greater opposition at Select Committee than might otherwise be the case.

Risk assessment – Aronga tūraru

19. There are no specific risks associated with this briefing, but there are risks outlined above around your options for pre-introduction engagement.

20. ENGOs are likely to be concerned with the three interlinked aspects of the Bill:

    - The decision to disapply the requirement that Ministers shall not grant an application for a concession if the proposal could instead take place off PCL (presumption in favour of protection);
    - The decision, if you make it (advice pending), to allow land swaps under the Reserves Act or wider; and
    - The decision to remove the Coromandel Peninsula from Schedule 4, and possibly not to include ecological areas and the 5 special national reserves which are not covered, or only partially covered, by Schedule 4 (decision on the latter deferred to LEG/Cabinet).

21. Cumulatively, ENGOs may regard the above measures as an attempt to dismantle the integrity and totality of the conservation estate/PCL.

22. Officials are rapidly working on advice on potential land swaps, as requested, and depending on final decisions, it may be possible to show that there is no net loss to conservation. This would add to the list of safeguards provided for in the Bill (as well as the list of enabling provisions).

23. The Minister of Conservation can also highlight:

    - The role of the Minister in decision-making for any project on PCL. This ensures the potential impacts on the integrity of PCL, as well as any Crown risks and liabilities, can be accounted for by the responsible Minister in decision-making.
    - The requirement that, if any compensation or offsetting is provided for a project with adverse effects on PCL, this can only be used on PCL as a means of showing that the value of PCL goes back into PCL. This does not guarantee the ongoing integrity and totality of PCL itself but is an important counterbalancing safeguard.

Treaty principles (section 4) – Ngā mātāpono Tiriti (section 4)

24. Fast track consenting and the implications for conservation matters and Treaty settlements are likely to be of particular interest to iwi.

25. The Ministry for the Environment has already engaged with PSGEs to discuss the proposed fast track regime at a high level – but not how this would apply to conservation one stop shop approvals.

26. As noted above, you and Minister Bishop are meeting with the Pou Taiao iwi leaders on Monday 19 February to discuss the proposal, arranged by Te Arawhiti. We recommend that DOC supports you at this meeting on conservation matters.

27. The Department considers that wider or more comprehensive engagement with PSGEs or other iwi groups by officials on the conservation proposals is not now feasible unless further pan-group meetings are arranged with Te Arawhiti's assistance.

Consultation – Kōrero whakawhiti

28. No consultation has been undertaken on this briefing.

Financial implications – Te hīraunga pūtea

29. There are no financial implications arising from this briefing.

Legal implications – Te hīraunga a ture

30. There are no legal implications arising from this briefing – however, Ministers have been advised that limited engagement prior to introduction of this Bill does create risks in relation to informed decision-making and Treaty rights and interests.

ENDS

Appendix 1: Draft Talking Points/Key Messages

Why a Fast Track Bill

- The Government considers that approvals for major projects cost too much and take too long, and that this situation is stifling economic growth and improvements for our environment and communities. We were elected on a platform that included accelerating development for nationally and regionally significant projects including infrastructure. This is a priority in our 100 day plan.
- The Infrastructure Commission/Te Waihanga estimates that current consenting processes cost infrastructure projects $1.3 billion every year, and the time taken to get a resource consent for key projects has nearly doubled in five years. Conservation permissions are part of this problem.
- A permanent fast-track process, with a 'one stop shop' for all key authorisations related to the project, will help solve this problem.
- The new process will build on previous fast-track regimes established through the COVID-19 Recovery (Fast-track Consenting) Act 2020 and Natural and Built Environment Act 2023 and lessons we have learned through recent post-cyclone processes for conservation approvals.
- The Fast Track Bill is part of the Government's phased approach to reforming the resource management system.
- The Government's proposed approach to the Fast Track regime has been carefully designed to ensure that we can unlock development with the right safeguards in place to protect nature and uphold Treaty settlements, as well as manage Crown risks and liabilities relating to use of Crown land.
- The Select Committee process on this Bill will ensure that we have wide input on how this will work and whether we have got the balance of settings right. I would welcome you testing the proposals through that process to make sure that the right safeguards remain in place for nature, while critical development is enabled.

  [The table below describes the critical conservation considerations for a fast track process and the proposed safeguards to ensure they are achieved. The second table outlines the schema of the Bill for each of the in-scope Acts. Ministers will need to decide if this level of detail is shared prior to introduction.]

Ensuring nature remains protected

Key conservation considerations	Key safeguard in the Bill
Our most special places are protected	• Land listed in Schedule 4 of the Crown Minerals Act will not be in scope of the Bill. That includes National Parks, Wilderness Areas, and Nature Reserves.
Reinvesting in conservation	• Any compensation or offsetting that is provided for projects with adverse effects on PCL can only be used on PCL.
Impacts on threatened wildlife must be accounted for	• This Bill will provide greater clarity to ensure protection of our most endangered species.

	• Ministers and the Panels must take into account any impact on threatened, at-risk or data-deficient species.
Approving activity on Conservation Land must meet strict tests	• For any concession on Conservation Land, the decision maker must consider: o The purpose for which the land is held; o The effects of the activity; and o Any relevant environmental impact assessment. • For any mining on Conservation Land, the decision-maker must consider: o The objectives of any Act under which the land is administered; o The purpose for which the land is held by the Crown; o Safeguards against potential adverse effects.
The Minister of Conservation remains decision-maker	• The Minister of Conservation will be the decision-maker for any proposal on Conservation Land, or the Minister of Conservation and the Minister of Resources for mining access on PCL as is the case now.

Key features of conservation matters in Fast Track Consenting Bill

Act	Key Features of the Fast Track Consenting Regime
General (not including Treaty)	• The Fast track Consenting (FTC) process will include approvals under: o The Conservation Act 1987 o The Wildlife Act 1953 o The Reserves Act 1977 o The Crown Minerals Act 1991 o The Freshwater Fisheries Regulations 1983 • The purpose of the FTC will override the purposes of the other Acts for FTC approvals. • Conservation expertise to be on expert panels where appropriate.
Scope of conservation land	• All Public Conservation Land (PCL) types listed in Schedule 4 of the Crown Minerals Act are excluded from the FTC process (*except* for the specific Coromandel provisions which will not apply). • MOC will be consulted on any proposals involving World Heritage Areas.

Act	Key Features of the Fast Track Consenting Regime
Wildlife Act	**General** • The Wildlife Act involves permissions to hold, catch alive, handle or release, and in some cases to kill, absolutely protected wildlife.
	Process • In their decision-making, Ministers must take into account, the purpose of the Wildlife Act, and impacts on threatened, data deficient and at-risk wildlife species. • Activities related to handling of protected wildlife will be required to meet relevant best practice standards. • DOC will enforce any relevant conditions as part of that authorisation.
	Decision-maker • Joint Ministers [to be confirmed in LEG paper whether this includes MOC] will make the decision on permits, which will be deemed to have been made as if under the Wildlife Act. • DOC will provide a report on wildlife effects to the decision-maker and the decision-maker will need to have particular regard to it. This report will also set out the conditions needed for all protected wildlife.
Conservation Act	**General** • The Conservation Act includes processes for granting of permissions (concessions) relating to activities over Crown conservation land. • Concessions take the form of a lease, licence, permit, or easement.
	Process • Must still consider key aspects of the Conservation Act (including purpose for which the land is held, and effects, as well as ongoing Crown risks and liabilities). • No public notification under FTC.
	Decision Maker • An expert panel will make recommendations to Ministers and MOC will make final decisions on all concessions matters. • This also ensures that matters relating to Crown risks and liabilities can be taken into account and managed through terms and conditions.
Reserves Act	**General** • The Reserves Act encompasses a wide range of reserves, held for many different purposes and with varied ownership and administration structures.

Act	Key Features of the Fast Track Consenting Regime
	Scope • Fast Tracked projects can include activities on reserves owned/administered by DOC or local authorities. • Reserves with other ownership/administration arrangements – e.g. iwi or trusts - can also be included in the Fast Track process by agreement of the owner and administrator.
	Process • DOC reserves are managed through the concessions regime now. Activities on other reserve types are managed through a range of Reserve Act permissions. • To simplify processes, all Reserve Act permissions under the Fast Track process will use concessions, including for council-owned reserves.
	Decision-maker • An expert panel will make recommendations to Ministers and MOC will make final decisions on all concessions matters.
Freshwater Fish Regulations	**General** • The legislative regime relating to freshwater fisheries is complex and spread across the Conservation Act, Fisheries Act, Biosecurity Act and two sets of regulations.
	Scope • Four specific activities will be included that do not require complex technical assessments: a. the approval of culverts and other structures to which the NIWA guidelines apply, and b. the approval of fish rescue activities where the fish are moved to an alternative location in the same waterbody, and c. the approval of temporary works for infrastructure projects that would affect fish passage or local habitat, and d. the killing of noxious fish that are encountered during fish rescue or other operations.
	Process • No separate authorisations for applicable processes will be required – they will be dealt with through the resource consent process (subject itself to the FTC).
	Decision-maker • Decision maker would be Minister(s) approving the resource consent (not the MOC).

Act	Key Features of the Fast Track Consenting Regime
Crown Minerals Act S61	**General** • The Crown Minerals Act provides a regime for managing mining activities, which includes a permit process to allocate Crown minerals, and access arrangements to allow landowners to agree (or decline) access to their land.
	Process • Decision-makers must still consider: a. the objectives of any Act under which the land is administered b. any purpose for which the land is held by the Crown c. safeguards against any potential adverse effects of carrying out the proposed programme of work d. the direct net economic and other benefits of the proposed activity in relation to which the access arrangement is sought e. any other matters that the Minister(s) consider relevant. • No public notification under FTC.
	Decision-maker • An expert panel will make recommendations to joint Ministers, and MOC and the Minister for Resources will make final decisions on all Fast Track CMA s61 matters.

Appendix 2: List of stakeholders informed to date about the Fast Track Bill by Minister Bishop

Department of Conservation
Te Papa Atawbai

Briefing: Fast Track Consenting Bill – policy decisions related to conservation approvals

To	Minister of Conservation	**Date submitted**	19 February 2024
Action sought	Agree to the recommendations in Attachment A. Forward your decisions to the Minister Responsible for RMA Reform.	**Priority**	High
Reference	24-B-0091	**DocCM**	DOC-7570427
Security Level	In Confidence		

Risk Assessment	Low There are no significant risks associated with any of the detailed decisions in this briefing.	**Timeframe**	20 February 2024 to allow PCO to complete drafting the FTC Bill this week
Attachments	Attachment A – Further decisions to incorporate conservation approvals		

Contacts	
Name and position	**Cell phone**
Ruth Isaac, Deputy Director-General, Policy and Regulatory Services	s 9(2)(a) [redacted]
Sam Thomas, Policy Director	[redacted]

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. This briefing seeks your decisions on the detailed policy in Attachment A which is needed to give effect to the key decisions made by delegated Ministers on the Fast Track Consenting Bill.
2. We recommend you share your decisions with the other delegated decisions ministers for the Fast Track Consenting Bill.
3. Your decisions will be confirmed with PCO and incorporated into the draft Bill.

We recommend that you … (Ngā tohutohu)

		Decision
a)	**Indicate** your decision on the specific recommendations in Attachment A.	Refer Attachment A
b)	**Agree** to forward this briefing and appendices to the Minister Responsible for RMA Reform, Minister of Regional Development, and Minister of Transport.	Yes / No

Date: 19/2/24

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

Date: / /

Hon Tama Potaka
Minister of Conservation

Purpose – Te aronga

1. This briefing seeks your decisions on the detailed policy needed to give effect to the key decisions made by delegated Ministers on the Fast Track Consenting Bill.

Background and context – Te horopaki

2. You met with delegated Ministers on 15 February 2024 to discuss key policy questions for the fast-track regime. These included decisions on the inclusion of conservation approvals. To ensure drafting can continue to occur, Attachment A seeks your agreement on the following:
   - Further detailed decisions specific to the inclusion of conservation approvals
   - Amendments to previous decisions on the broader architecture to accommodate conservation approvals.
3. We recommend you share your decisions with the other delegated decisions ministers for the Fast Track Consenting Bill.

Risk assessment – Aronga tūraru

4. There are no significant risks associated with any of the decisions.

Treaty principles (section 4) – Ngā mātāpono Tiriti (section 4)

5. Decisions on how Treaty principles and Treaty settlements are being considered in the Fast Track Consenting Bill are being made separately to this briefing.

Consultation – Kōrero whakawhiti

6. Other agencies involved in the development of the Fast Track Consenting Bill were provided an opportunity to comment on these decisions.

Financial implications – Te hīraunga pūtea

7. There are no financial implications regarding the specific decisions in this briefing other than some changes to allow for cost recovery.

Legal implications – Te hīraunga a ture

8. Decisions in this briefing will inform the drafting that PCO is doing on the Fast Track Consenting Bill.

Next steps – Ngā tāwhaitanga

9. Your decisions will be confirmed with PCO and incorporated into the draft Bill.

ENDS

Attachment A – Further decisions to incorporate conservation approvals

Table 1: Further technical or clarifying policy decisions to give effect to Ministers' previous decisions on conservation approvals in BRF-4203

Proposal	Advice and analysis	Recommendations	Decisions
Considerations for concessions approvals	In BRF-4203 Policy Decisions Tranche 2A Joint Ministers agreed: • Agree to retain the requirement that the decision maker must consider the purpose for which the land is held. • Agree to retain the requirement that the decision maker must consider the effects of the activity, structure, or facility. • Agree to retain the requirement that the decision maker must consider any relevant environmental impact assessment. Joint Ministers also agreed to retain the Minister of Conservation as decision maker for concessions under the Fast Track regime following advice on the legal and financial liabilities associated with some types of concessions. We recommend that, in addition to the considerations above, it is made clear that legal and financial liabilities must be considered by the decision maker.	1. **Agree** that, for the avoidance of doubt, the decision maker must consider legal and financial liabilities associated with decisions on leases, licences to occupy, and easements.	**Yes | No**
Consideration of Conservation Management Strategies (CMSs) and Conservation Management Plans (CMPs)	In BRF-4203 Policy Decisions Tranche 2A Joint Ministers agreed to remove the requirement for the decision-maker to decline an application if an application obviously does not comply with any relevant conservation general policy, conservation management strategy, conservation management plan or reserve management plan. This removes the ability to decline applications that do not comply with conservation policies and planning documents but does not speak to whether/how they will be considered beyond that. We recommend that, in a similar approach to resource management planning documents, the decision maker may "have regard" to these documents when making decisions on Fast Track conservation approvals. Joint Ministers have separately agreed that the Panel/ Ministers must consider CMS/CMPs in making decisions on conservation-related approvals where these have been co-authored, authored, or jointly approved by iwi and seek the views of the relevant iwi before granting approvals. They have not yet decided on whether the Panel/Ministers can disapply the relevant CMS/CMP or reserve management plan if this would undermine a Treaty settlement.	2. **Agree** that the decision-maker may have regard to any relevant conservation general policy, conservation management strategy, conservation management plan or reserve management plan.	**Yes | No**
Agency support for Panels	In BRF-4203 Policy Decisions Tranche 2A Joint Ministers agreed that assessments of impacts on wildlife must be based on a report from DOC which will also set out conditions needed more generally for protected wildlife. With the addition of conservation and other legislation, it is important that the panel is fully supported by any other relevant agencies (including DOC) in the form of technical or other advice as necessary. This includes a report and recommendations to the panel on wildlife issues, which is already agreed policy . It is also desirable that a report from the Department be required to be provided to the panel for all permissions sought under conservation legislation, given the technical information knowledge held by the Department of Conservation needed by the panel to make its recommendations.	3. **Agree** that the EPA must require the Department of Conservation to provide a report including an assessment of impacts on relevant conservation values and any proposed conditions to the panel where the applicant seeks consent under any Act administered by the Department.	**Yes | No**

Incorporating concessions into the Fast Track regime	In BRF-4203 Policy Decisions Tranche 2A Joint Ministers agreed: • that the Minister of Conservation, on behalf of the Crown, remains the decision-maker for fast-track concessions, and that concessions are excluded from the Fast-Track Bill where required for use of public conservation land • to amend the Conservation Act to align processes with the Fast-Track regime and apply any alternative requirements agreed above to the consideration of Fast-Track projects. The intent of these recommendations is that the Minister of Conservation will make decisions for fast-track concessions with procedural and policy alignment to the Fast Track regime; and amendments to processes set out in Part 3B of the Conservation Act will apply only in the context of a relevant fast-track application under the Fast Track process. We recommend clarifying this decision through a new recommendation.	4. **Agree** that the Minister of Conservation, on behalf of the Crown, remains the decision-maker for fast-track concessions under the Fast Track Consenting Bill (not under the Conservation Act). 5. **Agree** that process requirements for concessions in Part 3B of the Conservation Act are applied to the Fast Track Consenting Bill with amendments as necessary to align with decisions on which requirements to include.	**Yes | No**

Table 2: Changes to previous decisions on wider architecture of Fast-Track to accommodate inclusion of conservation permissions

The below recommendations relate to amendments to previous decisions (or recommendations that have been put to Ministers that they are yet to decide on) to accommodate inclusion of conservation permissions. Changes are presented as underlined (for additions) or strikethrough (for removals).

Proposal	Advice and analysis	Recommendations	Decisions
Changes to decisions from BRF-4115 – Delegated Decisions Paper #1			
Process after Minister receives an application – inviting written comments	If additional authorisations are applied for in addition to those under the RMA, this process should require the relevant Minister to invite responses from the statutory agencies relevant to the process.	1. **Agree** that if the Minister receives an application for referral (unless they decide to decline the application before inviting comments), they must copy the referral application and invite written comments from: (i) the relevant local authorities (ii) relevant portfolio Ministers (iii) <u>relevant agencies or statutory bodies</u> (iv) relevant iwi authorities (v) relevant Treaty Settlement entities (vi) relevant Takutai Moana rights holders and applicants (vii) Ngā hapū o Ngāti Porou (if the proposed activity is in or adjacent to ngā rohe moana o ngā hapū o Ngāti Porou) (viii) iwi and hapū parties to Mana Whakahono ā Rohe and Joint Management Agreements (where relevant to the proposed activity) (ix) in respect of any Māori land in the proposed area of activity: a. any Māori land administering entity (trusts under Part 12 of Te Ture Whenua Māori Act and Māori incorporations), and b. agents appointed by the Māori Land Court for the owners of a Māori land block that doesn't have an administering entity.	**Yes | No**
Minister may request information on a referred application	If authorisations under other legislation are applied for in addition to those under the RMA, this process should empower the relevant Minister to request further information from the statutory agencies relevant to the process.	2. **Agree** the Minister may request further information from the applicant or the relevant local authorities <u>or statutory bodies</u> and this must be provided within the timeframe specified in the request.	**Yes | No**

Proposal	Advice and analysis	Recommendations	Decisions
Report on Treaty obligations	Recommendations should acknowledge the appropriate obligations in relation to each statutory decision being made.	3. **Agree** that a report on obligations arising from the Treaty, Treaty settlement and other arrangements in respect of each statutory decision must be obtained and considered by the Minister. 4. **Agree** that the report must be prepared by the responsible agency and identify: (i) the relevant iwi authorities and relevant Treaty settlement entities (ii) the Treaty settlements that relate to the project area and the statutory decisions sought (iii) the relevant principles and provisions in those Treaty settlements (including those that relate to the composition of a decision-making body for the purposes of the RMA) (iv) any recognised mandates for current negotiations for Treaty settlements that relate to the project area (v) any customary marine title or protected customary rights area in the proposed area of the activity (vi) any applicant groups under sections of the Marine and Coastal Area (Takutai Moana) Act 2011 (vii) any part of the proposed area of the activity that is within Ngā Rohe Moana o Ngā Hapū o Ngāti Porou (and if so, the relevant provisions of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, including those that relate to decisions about resource consents) (viii) the relevant iwi or hapū that are parties to Mana Whakahono ā Rohe and joint management agreements under the RMA in the proposed area of the activity (ix) the relevant principles and provisions in those Mana Whakahono ā Rohe and joint management agreements (x) relevant other Māori groups with interests.	**Yes | No** **Yes | No**
Notice of decisions on application for referral	If applications include those beyond the RMA, the relevant statutory authorisations sought should be specified and notice given to the relevant statutory bodies to enable their involvement in the process as appropriate.	5. **Agree** to make the underlined adjustments to the previously agreed recommendations: If the decision is to accept all or part of a referral application, the responsible agency must also give notice to: (i) the authorised persons (other than the applicant); and (ii) the panel convenor; and (iii) the relevant statutory authorities; and (iv) the relevant iwi authorities, Treaty settlement and other entities identified in the Ministers report on obligations arising under the Treaty, Treaty settlements and other arrangements and (v) any other iwi authorities or Treaty settlement entities that the Minister considers have an interest in the matter; and (vi) any group that is a party to a joint management agreement or Mana Whakahono ā Rohe that relates to the area of the activity.	**Yes | No**
Interpretation	Where relevant conservation legislation terms should also be included. Some terms (e.g. of the seaward extent of freshwater) differ between the RMA and the Conservation Act/Freshwater Fisheries Regulations as they are applied to the management of different resources (freshwater fish vs the water itself). We recommend that consideration is given to applying the appropriate interpretation given the context in which the statutory permission is sought.	6. **Agree** that where the bill uses a term that is not defined it will have the same meaning as in the parent legislation in respect of the statutory decision being made.	**Yes | No**

Proposal	Advice and analysis	Recommendations	Decisions
Agency support for panels	With the addition of conservation and other legislation, it is important that the panel is fully supported by any other relevant agencies (including DOC) in the form of technical or other advice as necessary.	7. **Agree** the EPA and, where appropriate, any other relevant statutory agency must provide advice and secretariat support to: a. the person convening the panel and appointing the panel chair; and b. members of the panel when carrying out their functions and duties under this bill; and c. the panel in its role of deciding any matters before it. agree relevant local authorities and statutory authorities must assist the panel by providing advice within the knowledge of the authority.	**Yes | No**
Functions of agencies	This recommendation should be adapted to accommodate other statutory consents or permissions within scope of the new legislation for a listed or referred project. The recovery of reasonable costs also needs to be provided for agencies as well as the Minister, local authorities and the EPA.	8. **Agree** to rollover the provisions in section 28 of the FTCA (with modifications as required to acknowledge the additional statutory decisions) to provide the EPA and any other statutory bodies with the ability to exercise powers, be provided with cost recovery and carry out the functions and duties, conferred on or required of ~~it~~ them by or under the bill.	**Yes | No**
How expert panels consider projects	These recommendations should be adapted to accommodate other statutory consents or permissions within scope of the new legislation for a listed or referred project, in respect of the RMA or that relevant legislation.	9. **Agree** authorised persons for a listed project or a referred project may apply under this bill rather than under the RMA (or other relevant legislation) for: a. a resource consent; or b. if the person is a requiring authority, may lodge a notice of requirement for a designation or to alter a designation, or c. lawful authority to do something otherwise prohibited by the Wildlife Act, a concession on an eligible reserve or public conservation land, or fish facility or fish passage approval, or access arrangement. 10. **Agree** the provisions of this bill will set out: (i) the requirements for consent or other permission applications to be made to, and for notices of requirement to be lodged with, the EPA; and (ii) how the EPA or the other relevant authority provides applications and notices of requirement to the panel; and (iii) how the panel makes decisions.	**Yes | No** **Yes | No**
Appointment of panel convenor	Cabinet agreed that the Minister for Infrastructure will appoint the panel convenor. Noting that applications may include a wide range of statutory permissions, the Minister should consult with relevant colleagues in considering such appointments, given the range of skills now required with multiple statutes under consideration.	11. **Agree** that the Minister for Infrastructure will appoint the panel convenor, in consultation with other Ministers whose portfolios are in consideration in the application.	**Yes | No**
Chairperson of the panel	With a broadening of the scope of consideration beyond just resource management law, the scope of consideration for expertise should be similarly broadened to relevant environmental law. The breadth and complexity of the applications under consideration will be broader, requiring both consideration in appointments by a wider range of Ministers, and drawing experts from a wider pool of expertise.	12. **Agree** the panel convenor, in consultation with the Minister for Infrastructure, must appoint a suitably qualified person to an expert panel, to be the chairperson of a panel. a. A suitably qualified lawyer or appropriate expert with experience in ~~RM~~ environmental law 13. **Agree** that if the circumstances require it, the panel convenor, in consultation with the Minister for Infrastructure, may appoint as chairperson of a panel: a. a suitably qualified lawyer with experience in environmental ~~resource management~~ law; or b. a person holding chairperson accreditation under RMA section 39A or equivalent relevant environmental qualification.	**Yes | No** **Yes | No**

Proposal	Advice and analysis	Recommendations	Decisions
Membership of the Panel	The breadth and complexity of the applications under consideration will be broader, requiring both consideration in appointments by a wider range of Ministers, and drawing experts from a wider pool of expertise.	14. **Agree** to apply FTCA Schedule 5, clause 3 with any necessary modifications, to provide for the composition of expert panels, noting the appointment of panels will be undertaken in consultation with the Minister for Infrastructure and other Ministers whose portfolios are in consideration in the application	**Yes | No**
Skills and experience of members of Panel	As above, this scope of consideration and expertise should be broadened.	15. **Agree** that members of an expert panel must, collectively, have: (i) the knowledge, skills and expertise relevant to the issues for which statutory authorisations are being sought; and (ii) the technical expertise relevant to the activity that is being considered; and (iii) an understanding of Te Tiriti o Waitangi and its principles.	**Yes | No**
Appointment of replacement Panel member	We recommend that the Minister of Conservation be involved in any replacement decision for any statutory decisions made under Conservation legislation.	16. **Agree** the panel convenor, in consultation with the Minister for Infrastructure and any relevant other Minister with responsibility for the relevant statutory decisions may, at any time, appoint a new member to replace a member who resigns, dies or is removed	**Yes | No**
The Minister may direct a delay in processing an application	The Minister with responsibility for the underlying statutory function, or whose agency will administer the outcome of the decision-making process, should also have opportunity, where required, to exercise the function to suspend application processing.	17. **Agree** to apply FTCA Schedule 6, clause 22 with any necessary modifications to enable any relevant Minister to direct a delay in the panel processing an application under any relevant legislation, resource consent application or notice of requirement.	**Yes | No**
Further information	The expert panel may need to direct the relevant statutory authority to request or provide further information for any relevant statutory permission application.	18. **Agree** to apply FTCA Schedule 6 Clause 26 with any necessary modifications to enable the panel processing a resource consent application, ~~or~~ notice of requirement or application under other legislation to require that further information is provided.	**Yes | No**
Duration of permissions	Given conservation legislation is included in the fast track regime, reference should also be included to permissions under other relevant legislation	19. **Agree** to apply FTCA Schedule 6 Clause 36(4), which allows the panel to apply the same duration periods of permissions as those specified in the RMA or other relevant legislation.	**Yes | No**
Final decision	Timeframes should be long enough to enable the panel to consider and make recommendations, taking into account the range, scale and nature of the permissions being sought which may traverse several Acts. The timeframes in Clause 37 of Schedule 6 to the FTCA related to resource consents and notices of requirement only. Panels require sufficient time to make recommendations on multiple applications under multiple Acts.	20. **Agree** to apply FTCA Schedule 6, Clause 37 with any necessary modifications, which prescribes timeframes and contents of the panel's decision reports and the commencement of resource consents or other authorisations recommended by the Panel.	**Yes | No**
Changes to decisions from BRF-4239 Policy Decisions Tranche 2B			
Referral process – Applicants must consult on applications	Recommendation 13 in BRF-4239 Policy Decisions Tranche 2B is: **Agree** applicants must undertake engagement with the following groups prior to lodging a referral application: a. relevant iwi, hapū and Treaty settlement / related entities b. any relevant applicant groups with applications for customary marine titles under the Marine and Coastal Area (Takutai Moana Act) 2011	21. **Agree** applicants must undertake engagement with the following groups prior to lodging a referral application: a. relevant iwi, hapū and Treaty settlement / related entities b. any relevant applicant groups with applications for customary marine titles under the Marine and Coastal Area (Takutai Moana Act) 2011 c. where relevant, ngā hapū o Ngāti Porou d. relevant local authorities	**Yes/No**

Proposal	Advice and analysis	Recommendations	Decisions
	c. where relevant, ngā hapū o Ngāti Porou d. relevant local authorities. This recommendation needs to be adapted to reflect that other statutory permissions are within scope of the new legislation for a listed or referred project. As such, applicants also need to engage with statutory agencies that administer legislation under which permissions are sought.	e. statutory agencies that administer legislation under which permissions are sought …..	
Referral process – information requirements	Recommendation 15 in BRF-4239 Policy Decisions Tranche 2B is: **Agree** that applications for a project to be referred must include the same information as required by s20 of the FTCA with the following additions: …. This recommendation should be adapted to reflect that other statutory permissions are within scope of the Bill. As such, applicants also need to provide the information required to be provided under legislation in respect of which permissions are sought. This includes s 17S of the Conservation Act. S20 of the FTCA requires a general assessment of the project in relation to RMA national policy statements and national environmental standards and conservation planning documents are the equivalent for conservation approvals.	22. **Agree** that applications for a project to be referred must include the same information as required by s20 of the FTCA, and where relevant, s17S of the Conservation Act, with the following additions: a. a general assessment of the project in relation to any relevant conservation planning documents including any the conservation general policy, conservation management strategy, conservation management plan or reserve management plan. …	**Yes/No**
Information required in [resource consent] applications	Recommendation 31 in BRF-4239 Policy Decisions Tranche 2B is: **Agree** to apply the provisions in FTCA Schedule 6, clause 9, with necessary modifications as required for drafting for this legislation, which sets out the information an applicant must provide. This recommendation should be adapted to reflect that other statutory permissions are within scope of the Bill. As such, applicants also need to provide the information required to be provided under legislation in respect of which permissions are sought. This includes s 17S of the Conservation Act.	23. **Agree** to apply the provisions in FTCA Schedule 6, clause 9, and where relevant, s17S of the Conservation Act with necessary modifications as required for drafting for this legislation, which sets out the information an applicant must provide.	**Yes/No**
Assessment of effects	Recommendation 32 in BRF-4239 Table 2B is: **Agree** to apply the provisions in FTCA Schedule 6, clauses 10, and 11 with necessary modifications, which sets out the information an applicant must provide to assess environmental effects. This recommendation should be adapted to reflect that other statutory permissions are within scope of the Bill. As such, applicants should also provide the information required to be provided under legislation in respect of which permissions are sought. This includes s 17S of the Conservation Act.	24. **Agree** to apply the provisions in FTCA Schedule 6, clauses 10, and 11 and where relevant, s17S of the Conservation Act, with necessary modifications, which sets out the information an applicant must provide to assess environmental effects.	**Yes/No**

Department of Conservation
Te Papa Atawhai

Departmental Memo

To	Minister of Conservation	**Date submitted**	27 February 2024
GS tracking #	24-B-0116	**DocCM**	DOC-7578488
Security Level	**In Confidence**		
From	Ruth Isaac, DDG Policy and Regulatory Services – s 9(2)(a)		
Subject	**Fast Track Consenting Bill - delegated decisions meeting 27 February**		
Attachments	Attachment A – Listed projects of particular concern for the Conservation portfolio		

Purpose – Te aronga

1. This memo provides you with conservation portfolio advice to support your consideration of the following briefings and your discussion of the recommendations with other Ministers:
    - BRF-4307 – Fast Track Consenting Delegated Decisions
    - BRF-4306 – Fast Track Consenting Bill – inclusion of listed projects

Background and context – Te horopaki

2. You will be agreeing your preferred options on the following briefings with other delegated Fast Track Ministers on Tuesday 27 February:
    - A range of final policy decisions (BRF-4307)
    - Decisions on listed projects (BRF-4306)

Final policy decisions (BRF-4307)

3. This briefing covers additional decisions on conservation approvals as well as some recommendations of interest to regarding wider approvals.

<u>Conservation approvals</u>

Recommendations 9 and 10 *(Scope of land classifications covered)*

4. Whether ecological areas (section 21 of the Conservation Act 1987) and national reserves (section 13 of the Reserves Act 1977) are excluded from the Fast Track regime is an outstanding decision from a previous Joint Ministers meeting. Joint Ministers did not decide whether to include ecological areas and national reserves as areas ineligible and wished to put this to Cabinet. This will not be possible for the introduction of the bill and decisions are therefore now sought on these matters.

5. DOC recommends excluding them given they have a significant value equivalent with other conservation land being excluded from Fast Track. They are unique: ecological areas collectively cover less than 3% of public conservation land. They cover areas primarily for scientific, particularly ecological, value. These areas protect natural

processes and genetic pools for indigenous plants and animals. They perform an important function: in addition to protection, they are used as areas for natural benchmarks for assessing changes associated with various forms of development within a region. Allowing development within ecological areas will therefore impact the Government's ability to select appropriate conservation interventions within certain regions, and to monitor success.

6. These recommendations also seek agreement that the Coromandel Peninsula-specific elements of Schedule 4 for Crown Minerals Act continue to apply for Crown Minerals Act permissions considered under the Fast Track Consenting bill. Ministers previously agreed to exclude the Coromandel Peninsula-specific elements of Schedule 4 exclusions "for the purposes of the Fast Track Bill" (i.e. they are covered by the Fast-Track regime).

7. This decision was not intended to impact the protection of the Coromandel Peninsula currently built in specifically for Crown Minerals Act access permissions but rather enable Fast Track projects more generally on the Peninsula. For avoidance of doubt, this would mean the FTC process would be unable to consider s61 CMA approvals relating to specific parts of the Coromandel Peninsula (and its inland waters) per current s61 rules. The issue of mining on the Coromandel is highly contentious, and agreeing to this recommendation will help prevent significant public opposition through select committee.

Recommendation 11 *(Presumption that use of conservation land should only be possible where lower impact options are not available)*

8. DOC recommends that Ministers reconsider a previous decision on this issue given that little analysis was provided at the time. DOC recommends retaining the existing provision that a concession could not be granted on public conservation land where the activity could reasonably be undertaken in another location either:

    - off PCL; or
    - in a conservation area where the potential adverse effects would be less.

9. This is an existing provision for concessions that:

    - does not stop projects from going ahead where the location is critical;
    - ensures that lower impact locations – including lower impact conservation locations - are required to be discounted first by the developer/applicant;
    - avoids unnecessary negative impacts on conservation land;
    - avoids adverse incentives (where it may be cheaper/easier to lease PCL than purchase private land); and
    - will help to reduce opposition to the conservation aspects of the Bill.

10. DOC considers this is a very important safeguard to add to the mix of safeguards agreed already. It will reduce the extent of applications that go for higher value conservation land unnecessarily and ensure they are in the right locations. This is the intent, rather than being about limiting approvals of projects. In doing so, it will also support the efficiency of the regime and faster processing times.

11. Any signal that this is no longer the policy will have the effect of encouraging developers to propose activities on PCL more widely. This does not seem consistent with the policy rationale for holding conservation land in general, even if it is also true that:

- some conservation land may be surplus to requirements and
- freeing up critical development where it is necessary on PCL is desirable (as per the Fast Track objectives and regime).

12. There is a significant risk that, without this provision, the system will be skewed to incentivise development on land with high conservation values, when the optimum location for both economic and wider social outcomes would have been on alternative, lower-conservation-value land.

Recommendation 13 *(Minister of Conservation involvement in decision-making on wildlife approvals)*

13. Ministers previously agreed that you would remain the decision maker on concessions and s61 CMA approvals. No decision has been recorded on your role in decision making on authorities to do anything otherwise prohibited under the Wildlife Act 1953.

14. DOC recommends that you should be included in any final decisions on wildlife approvals. This is consistent with the statutory responsibilities you hold to enhance the quality of the final decision, and the wider framework for conservation related approvals in the Bill. There are two options – either the Minister of Conservation is a joint decision-maker when these approvals are required, or the Minister of Conservation is the sole decision maker.

Recommendations 14 and 15 *(Concessions report at referral)*

15. Ministers previously agreed that, for Reserves Act permissions, Ministers should consider the ownership and management arrangements of any reserve as part of the referral decision, and that this consideration shall be informed by a report provided by DOC (recs 45-46 of BRF-4203 Table A refer).

16. These matters are also relevant to concessions applications under the Conservation Act (i.e. applications on public conservation land beyond reserves). Existing arrangements such as those granted through existing concessions, may create complexity that Ministers may wish to consider when deciding whether an application is appropriate for (and likely to benefit from) referral to the FTC process. DOC therefore recommends that we provide a report to Ministers on these matters to consider as part of their referral decision in relation to concessions.

<u>Other approvals</u>

Recommendation 18 *(Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 permissions - Applications and information)*

17. You, as Minister of Conservation, have responsibilities, duties, and powers under the RMA over the subantarctic and offshore islands that a regional council would normally have. Because of this, you have been included in the list of affected persons for EEZ projects alongside regional councils. It reflects that you have responsibilities in the coastal marine area, which can be affected by activities in the EEZ. The rationale for your inclusion is not included in the advice on the recommendation.

s 9(2)(f)(iv) [redacted]

19. s 9(2)(f)(iv) [redacted]

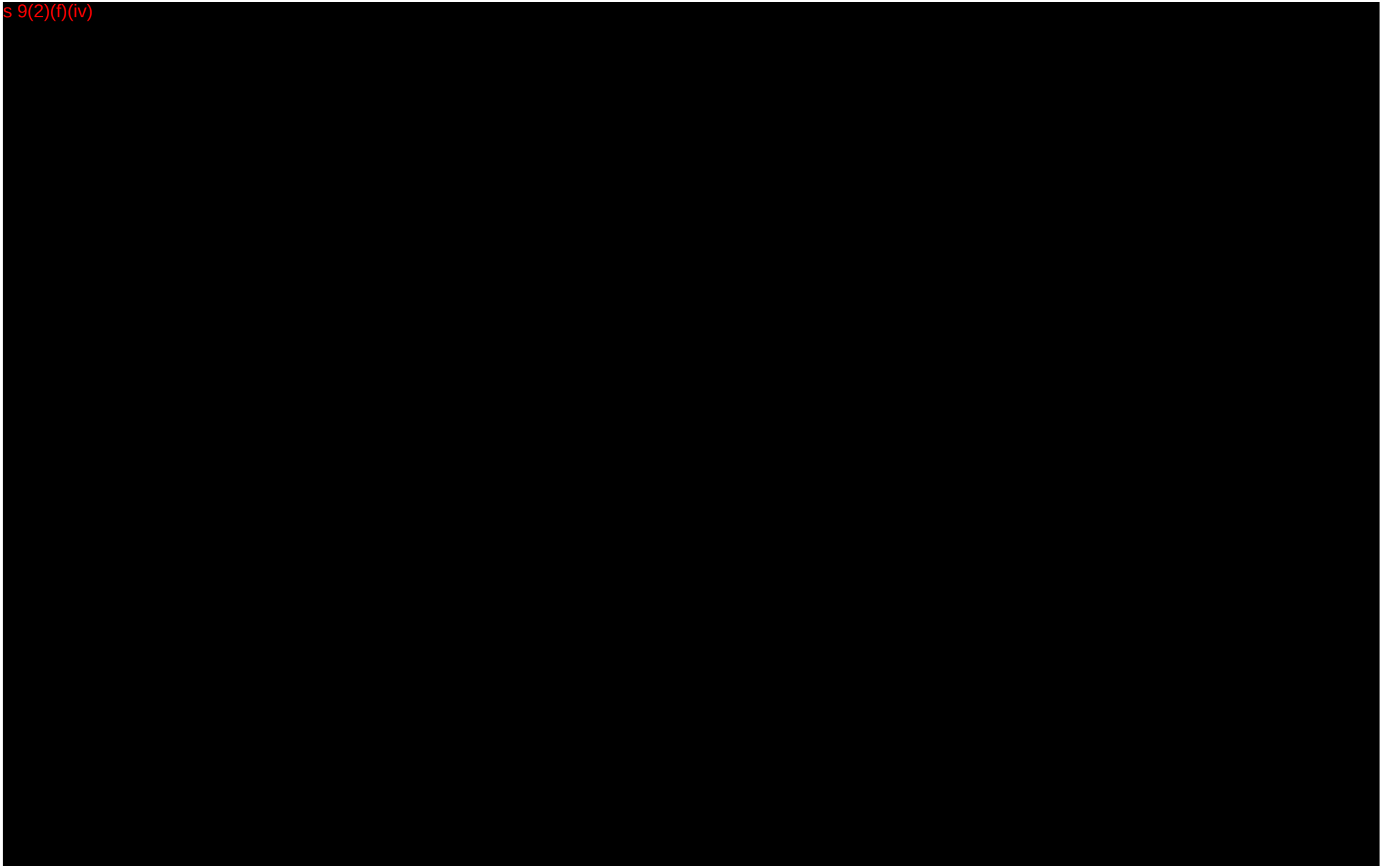
Next steps – Ngā tāwhaitanga

27. Cabinet is considering the Fast Track Bill on 4 March 2024. We will provide you with advice for this meeting.

28. First Reading of the Bill is planned for 7 March 2024. We will provide you with an information package to support this.

29. DOC is commencing planning to support the select committee process and implementation for when the Bill comes into force.

ENDS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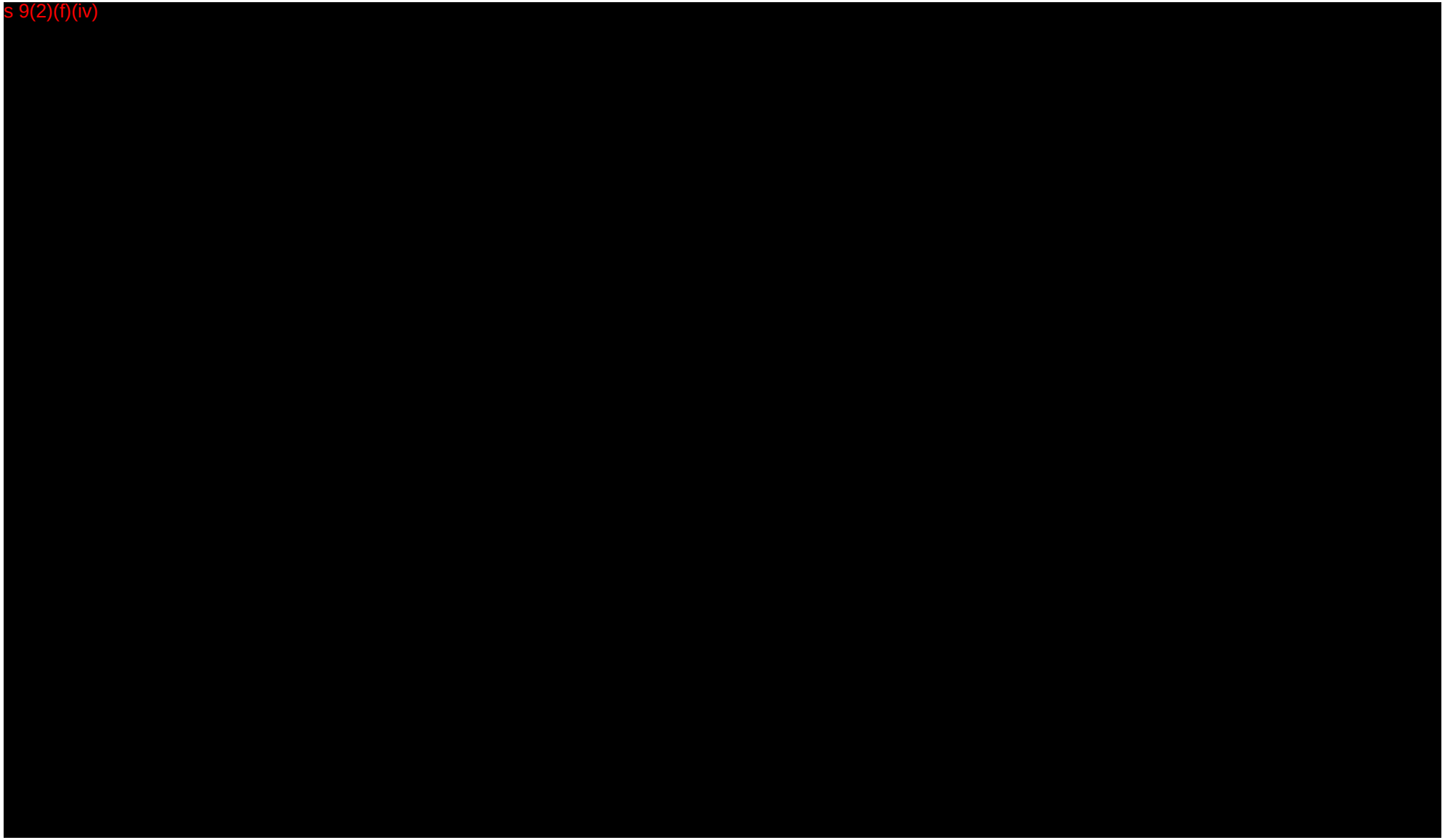
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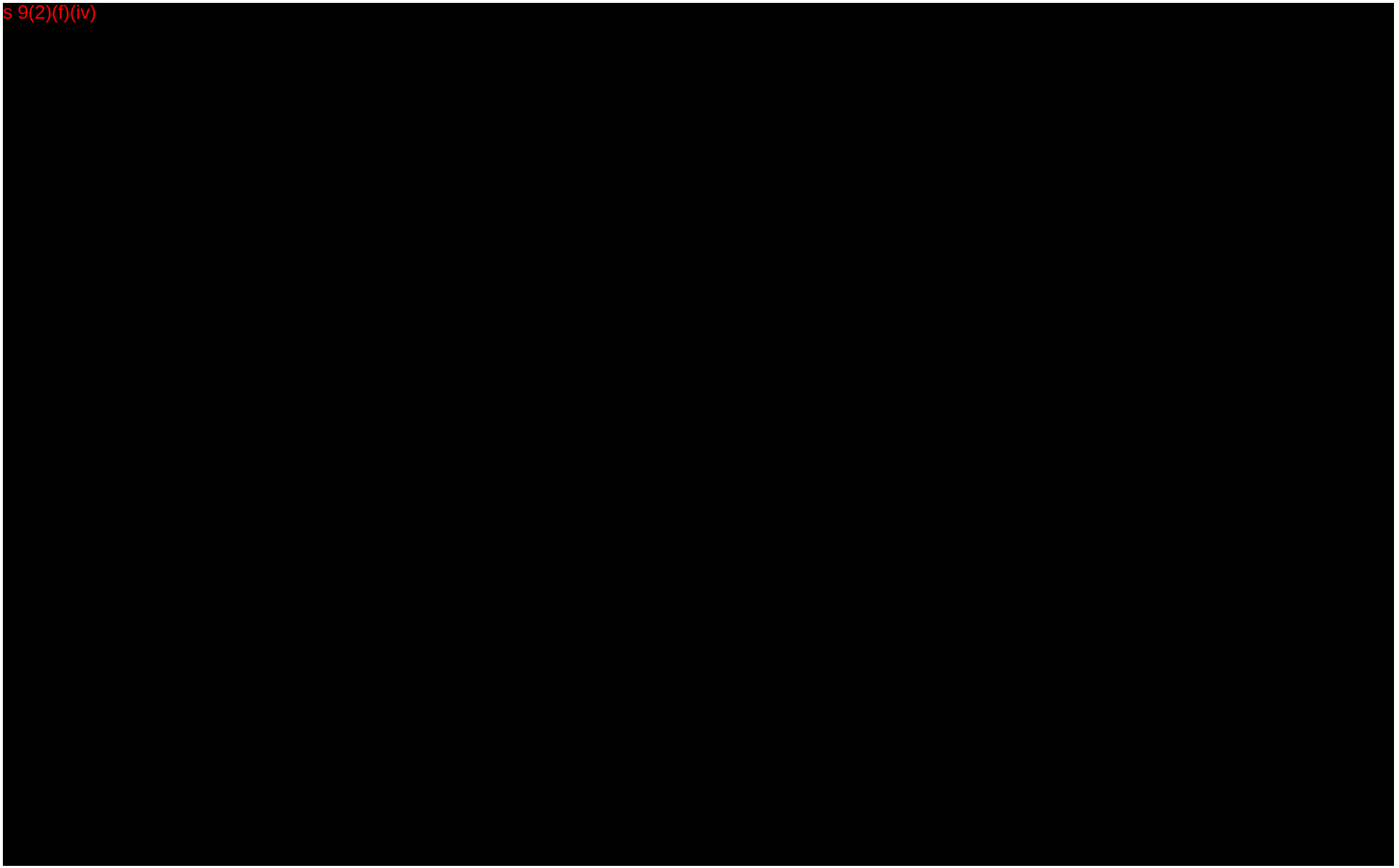

s 9(2)(f)(iv)

Department of Conservation
Te Papa Atawhai

Cabinet Paper Talking Points

To	Minister of Conservation		
Date of meeting	4 March 2024		
Cabinet Paper	**Fast Track Approvals Bill – Approval for Introduction**		
GS tracking #	24-K-0002	**DocCM**	DOC-7581239
Minister lead	Hon Chris Bishop, Minister for Resource Management Reform		
Committee	Cabinet		
DOC Contact/s	Ruth Isaac, Deputy Director-General Policy and Regulatory Services Sam Thomas, Director Policy		
Security Level	In Confidence		

Recommendations

- **endorse** the decisions made by delegated ministers for the design of the legislation, with the key elements being:
    - the referral by Ministers of applications for approvals (across a range of regulatory systems) of projects of regional and national significance to Expert Panels,
    - Expert Panels to recommend any appropriate conditions, and
    - Ministers to make final approvals on fast track applications.
- **endorse** the decisions made by delegated ministers.
- **agree** that listed projects will be considered by an independent governance panel (supported by a joint agency secretariat), which will report to delegated Ministers on listed projects to be taken to Cabinet.
- **agree** that listed projects will be proposed for inclusion into the Bill through the Departmental Report or Amendment Paper.
- **approve** the Fast-track Approvals Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives.
- **agree** that the Bill be introduced on 7 March 2024 and have its first reading the same day under urgency.
- **agree** that the Government propose that the Bill be:
    - referred to the Environment Committee
    - enacted by the end of 2024.
- **agree** to authorise Parliamentary Counsel Office to make changes to the Bill (aligned with the policy direction set by Cabinet and delegated Ministers) up to its introduction.
- **agree** to authorise the Parliamentary Counsel Office to continue drafting the Bill until its introduction.

Key points

- As part of its consideration of the draft Fast Track Approvals Bill, Cabinet is approving the large number of policy decisions previously made by a delegated Ministers group including you.
- You and the other delegated Ministers made decisions related to the inclusion of conservation approvals in the Fast Track Approvals (FTA) 'one stop shop'. These approvals relate to the following legislation:
    - The Conservation Act 1987
    - The Wildlife Act 1953
    - The Reserves Act 1977
    - The Crown Minerals Act 1991
    - The Freshwater Fisheries Regulations 1983.
- Note that the Cabinet Paper omits many key decisions that delegated Ministers have made across conservation legislation.
- A summary of these decisions is outlined below.

Scope Matters

- Permissions over the Public Conservation Land (PCL) types listed in clause 1-11 and 14 of Schedule 4 of the Crown Minerals Act are ineligible for the FTA process. These land types include:
    - Any national park
    - Any reserve classified as a nature reserve
    - Any reserve classified as a scientific reserve
    - Any part of a reserve set apart as a wilderness area
    - Any conservation area declared as a wilderness area or sanctuary area
    - Any area declared a wildlife sanctuary
    - Any area declared a marine reserve under the Marine Reserves Act 1971
    - Any land within a wetland notified to the Ramsar Secretariat.
- [Note that the above ineligibility criteria were omitted from the Cabinet paper in error]
- In addition to the land listed above in Schedule 4, projects will be ineligible for the fast track process if they require permissions over ecological areas and national reserves.
- The specific exclusions within Schedule 4 of the Crown Minerals Act relating the Coromandel Peninsula and its internal waters (clauses 12 & 13) will not apply to fast track applications, other than where they relate to permissions under the Crown Minerals Act.

- The Minister of Conservation will be consulted on the referral of any proposals involving World Heritage Areas.

Architectural Design Matters

- Conservation expertise will be included on expert panels where appropriate.
- In line with the overall architecture of the Fast Track process, there will be no public notification of conservation permissions relating to fast track projects. Instead, certain parties will be invited to comment as established in the Bill. There is also no requirement to hold a hearing.

Wildlife Act approvals

- The Wildlife Act involves permissions to hold, catch alive, handle or release, and in some cases to kill, absolutely protected wildlife.
- Under the FTA one stop shop, Wildlife Act approvals will no longer be required. Instead, consideration of the effects on wildlife will occur through the resource consent process.
- DOC will provide a report on wildlife effects to the expert panel. This report will also set out the conditions needed for all protected wildlife. The panel can recommend conditions be imposed on the resource consent to manage these effects.
- The decision on the resource consent (and associated conditions) will be made by Joint Ministers and the Minister of Conservation following recommendations from the expert panel.
- In their decision-making, Ministers must take into account the purpose of the Wildlife Act, and impacts on threatened, data deficient and at-risk wildlife species.

Conservation Act concessions

- The Conservation Act includes processes for granting permissions (concessions) relating to activities over Crown conservation land. Concessions take the form of a lease, licence, permit, or easement.
- The expert panel will make recommendations to the Minister of Conservation, who remains the final decision maker on all concessions matters.
- This decision-making structure ensures that matters relating to Crown risks and liabilities (as the landowner) can be taken into account and managed by the risk-holder.
- The Minister of Conservation must still consider key aspects of the Conservation Act (including purpose for which the land is held, and effects, as well as ongoing Crown risks and liabilities).
- Ministers must consider administration and any other existing arrangements over conservation land at the referral and final decision points of the process and this will be informed by a report from DOC.

- However, the role of conservation policies and planning documents is altered – under existing approvals processes, these must be complied with. For Fast Track, the Minister and Panel may have regard to any relevant conservation general policy, conservation management strategy (CMS), conservation management plan (CMP) or reserve management plan. But they must consider CMS/CMPs in making decisions where these have been co-authored, authored, or jointly approved by iwi and seek the views of the relevant iwi before granting approvals.

Reserve Act concessions/permissions

- The Reserves Act encompasses a wide range of reserves, held for many different purposes and with varied ownership and administration structures.
- Under standard processes, DOC reserves are managed through the concessions regime, while similar activities on other reserve types are managed through a range of Reserve Act permissions.
- Fast tracked projects will be able to include permissions relating to reserves owned/administered by DOC and local authorities. [Note: this has not yet been discussed with local government].
- Projects that interact with reserves with other ownership/administration arrangements (e.g. those owned/administered by iwi or trusts) can be included in the Fast Track process by agreement of the owner and administrator.
- To simplify fast track processes, ALL Reserve Act permissions for referred projects will be made under the concessions regime, including those relating to council-owned/administered reserves.
- As with concessions under the Conservation Act, the expert panel will make recommendations to the Minister of Conservation, who remains the final decision maker on all concessions matters.

Freshwater Fisheries (FWF) Regulations approvals

- The legislative regime relating to freshwater fisheries is complex and spread across the Conservation Act, Fisheries Act, Biosecurity Act and two sets of regulations.
- Permissions for four specific activities under the FWF regulations have been included in the FTA process, as they do not require complex technical assessments:
    1. the approval of culverts and other structures to which the NIWA guidelines apply, and
    2. the approval of fish rescue activities where the fish are moved to an alternative location *in the same waterbody*, and
    3. the approval of temporary works for infrastructure projects that would affect fish passage or local habitat, and
    4. the killing of noxious fish that are encountered during fish rescue or other operations.

- Under the FTA one stop shop, FWF approvals for these four activities will no longer be required. Instead, consideration of these matters will occur through the resource consent process. The panel can recommend conditions be imposed on the resource consent to manage these effects.
- The decision on the resource consent (and associated conditions) will be made by Joint Ministers following recommendations from the expert panel.

Crown Minerals Act approvals

- The Crown Minerals Act provides a regime for access arrangements to allow landowners to agree (or decline) access to their land.
- Land access arrangements for public conservation land in section 61 of the Act are covered by the Fast Track regime.
- The FULL Schedule 4 of the CMA will apply to CMA applications (i.e. Coromandel exclusions referred to above still apply for these matters).
- An expert panel will make recommendations to the existing decision makers specified in the Crown Minerals Act (usually Minister of Conservation together with the Minister for Resources). These Ministers will make final decisions on all Crown Minerals Act approvals under the fast track process. [Note that this decision-making framework was not accurately reflected in the Cabinet paper due to an error]
- Ministers **must** still consider the following for access to public conservation land:
    1. the objectives of any Act under which the land is administered
    2. any purpose for which the land is held by the Crown
    3. safeguards against any potential adverse effects of carrying out the proposed programme of work
    4. the direct net economic and other benefits of the proposed activity in relation to which the access arrangement is sought
    5. any other matters that the Minister(s) consider relevant.
- Ministers **may** also consider relevant policy statements or management plans of the Crown (unless otherwise required by Treaty Settlements). This is a change – it is currently a 'must consider'.

Land exchanges and covenants

- The Bill enables the exchange of public conservation land with a Fast Track project where the exchange will result in a net benefit for conservation.
- Land exchanges will only be considered for eligible projects. The applicant can only request that the Minister considers a land exchange after the project has been referred. The expert panel will not have a role in any consideration of a land exchange.

- The Fast Track process will provide for the extinguishing of Conservation interests (including conservation covenants) on land relating to a Fast Track project by mutual consent of the landowner and the Minister of Conservation. These provisions will be analogous to those provided for under the Urban Development Act.

Treaty obligations

- All conservation legislation is subject to a strong Treaty clause (section 4 of the Conservation Act that requires giving effect to the Treaty principles) and is frequently tied to commitments in Treaty settlements (both for consultation, but also for joint planning and decision-making over some matters).
- Section 4 of the Conservation Act applies to all conservation laws and creates a responsibility that is broader than the commitments contained in Treaty settlements, including for non-settled iwi.
- Specific provisions in the Bill provide for Māori rights and interests in fast-track approvals, including:
    - An overarching clause requiring that persons exercising powers and functions under this Act must act in a manner consistent with Treaty settlements, Takutai Moana and NHNP Act.
    - Information, engagement and other procedural requirements on applicants, Ministers and the Expert Panel for particular Māori groups or interests (including Treaty settlement entities and Takutai Moana rights and title holders) at various application and decision-making points in the fast-track process.
    - Membership and expertise requirements for Expert Panels.
- There will be no overarching Treaty clause in the Bill, and Treaty clauses in existing legislation are not referred to in the Bill.

Appendix 1: Talking points

Fast track for conservation approvals

- I have agreed to significant departures from the current conservation regime to ensure more and faster development for eligible projects.
- Through the inclusion of the conservation approvals, we are facilitating responsible development by:
    - Providing for the ability to get Fast Track approvals on approximately 60% of public conservation land.
    - Clarifying the need to prioritise protecting the most threatened species
    - Allowing for land swaps for Fast Track eligible projects. This can enable a development that would otherwise not be able to go ahead.
    - The ability to extinguish conservation interests (including conservation covenants) on land relating to a Fast Track project by mutual consent of the landowner and the Minister of Conservation.
    - Providing for some Freshwater Fisheries Regulations approvals through a resource management consent.

Key protections are retained for conservation and Crown liabilities

- The Bill includes a range of critical safeguards that represent minimum standards to protect against risks to conservation values, uphold Treaty settlements, and manage Crown risks and liabilities relating to use of Crown land.
- To ensure that development accelerates, but also proceeds responsibly, we should not depart further from these.

Crown risks and liabilities

- Some concession types confer property rights, including the right to erect structures on public conservation land, which create liabilities during the term of the concession. They also involve property contracts.
- To ensure Crown risks and liabilities are appropriately managed:
    - the Minister of Conservation will remain the decision-maker for any approval on conservation land;
    - existing Ministerial decision makers remain the same for land access arraignments under the Crown Minerals Act (usually the Minister of Conservation and Minister for Resources); and
    - the Panel and Ministers must consider legal and financial liabilities associated with decisions on leases, licences to occupy, and easements.

Conservation safeguards

- We are also ensuring the integrity of the conservation system and protection of important conservation values through:

- the exclusion of the most important conservation land (e.g. national parks, wilderness areas, and nature reserves);
- requiring consideration of the purpose for which the land is held and potential adverse effects;
- requiring that compensation or offsetting for adverse effects on public conservation land can only be used on public conservation land;
- an ability to consider whether an activity could reasonably be undertaken in another location either off public conservation land or in a conservation area where the potential adverse effects would be less;
- ensuring land swaps can only occur for conservation land covered by the Fast Track process and when there is a net conservation benefit; and
- requiring Ministers and Panels to take into account any impact on threatened, at-risk or data-deficient species.

Appendix 2: Questions and Answers

Question 1: Why is it important to retain the Minister of Conservation as decision maker for activities on Public Conservation Land?	
Answer	• Major projects seeking to use and occupy public conservation land will often require concessions in the form of leases, licences to occupy, and/or easements. • These concession types confer property rights, including the right to erect structures on public conservation land, which create liabilities during the term of the concession. They also involve property contracts. • The Crown will continue to be the landowner regardless of how the concession is provided for so these liabilities would fall to the Minister of Conservation and/or the Crown. • The Crown also risks assuming significant legal liabilities regarding health and safety as the landowner. • Retaining decision making for concessions with the Minister of Conservation aligns decision-making with risk ownership. This creates the most appropriate framework for considering the ongoing risks and implications for the Crown as landowner resulting from fast track projects. • EXAMPLE: the Crown may be left with a significant financial liability to remove redundant infrastructure should a company fail and is unable to satisfy any make good provisions in their concession agreement.
Question 2: Why are we excluding land listed in Schedule 4 of the Crown Minerals Act?	
Answer	• Permissions over all Public Conservation Land (PCL) types listed in Schedule 4 of the Crown Minerals Act are ineligible for the FTA process. This includes: ▪ National parks ▪ Nature reserves ▪ Scientific reserves ▪ Wilderness areas ▪ Sanctuary areas / Wildlife sanctuaries ▪ Marine reserves ▪ Any land within a wetland notified to the Ramsar Secretariat.

	• Additional exclusions are also in place for ecological areas and national reserves, as these are of similar value to some of the land types listed in Schedule 4. • The exclusions cover the types of conservation land with the highest conservation values. • The conservation estate is large, and it is important that we apply the most stringent protections only to the most highly valued land. • After the exclusions, approximately 60% of public conservation land remains available to fast track projects. • Projects that require permissions over non-excluded types of PCL will be eligible for the fast track process. • For these eligible projects, there are a number of environmental safeguards within the fast track process that will ensure that the impacts on PCL are appropriately considered. (see Talking Points above) ADDITIONAL NOTE RE THE COROMANDEL: • The specific exclusions within Schedule 4 of the Crown Minerals Act relating to the Coromandel Peninsula and its internal waters (clauses 12 & 13) will not apply to fast track applications, *except where the application requires permissions under the Crown Minerals Act* (i.e. they will still apply to Crown Minerals Act approvals). • These exclusions are specific to mining activities, and there is no justification for applying them more broadly to the fast track process. • Excluding these areas from the fast track process could prevent the Coromandel from benefitting from expedited nationally and regionally significant developments.
Question 3: Will this Bill deal with the Ruataniwha issue? (i.e. allowing land swaps)	
Answer	• Yes. The Bill provides for land swaps for conservation land included in the Fast Track process by: ▪ disapplying the requirement to protect specific conservation values which prevent land exchange ▪ instead requiring that the Minister of Conservation is satisfied the transaction would result in overall conservation benefit. ADDITIONAL INFORMATION ON RUATANIWHA: • In the Ruataniwha case (2017), the Supreme Court held that the conservation park status of the land proposed for exchange could not be revoked unless the conservation

	values of the resources on the subject land no longer justified that protection. • The decision maker could not take into account the fact that revocation was to enable an exchange that would result in overall conservation benefit.
Question 5: How will this process impact on the conservation matters contained in Treaty settlements?	
Answer	• Cabinet has already agreed that the FTA process will uphold Treaty of Waitangi settlements and other legislative arrangements. • Many Treaty settlements include arrangements that provide increased roles for iwi in approval processes under Conservation legislation, which will interact with the FTA Bill. • Protections have been drafted into the Bill to support Treaty settlements and other specified arrangements being upheld at all stages of the fast track process. • Of particular relevance to conservation permissions: ▪ Where a Treaty settlement / specified arrangement provides for procedural matters, the Ministers must comply with those requirements where relevant. ▪ Ministers must consider conservation plans and strategies in making decisions on conservation-related approvals where these have been co-authored, authored, or jointly approved by iwi **and** seek the views of the relevant iwi before granting approvals. ▪ Applicants will not be able to apply for a Crown Minerals Act access arrangement in an area excluded through the Minerals Programme at the request of iwi and hapū.

ENDS

Attachment O

Department of Conservation
Te Papa Atawhai

Briefing: Status of ecological areas in Fast Track Approvals Bill

To	Hon Tama Potaka, Minister of Conservation Hon Chris Bishop, Minister Responsible for RMA Reform Hon Shane Jones, Minister for Regional Development	**Date submitted**	5 March 2024
Action sought	Agree the status of ecological areas in the Fast Track Approvals Bill	**Priority**	High
Reference	xx-B-xxxx	**DocCM**	DOC-xxxxxxx
Security Level	In Confidence		

Risk Assessment	Low	**Timeframe**	ASAP to ensure any changes to drafting can be achieved prior to Introduction of the Bill.
Attachments	None.		

Contacts	
Name and position	**Cell phone**
Ruth Isaac, Deputy Director-General, Policy and Regulatory Services	s 9(2)(a) [redacted]
Sam Thomas, Director, Policy	

Purpose – Te aronga

1. This briefing seeks a decision on the status of ecological areas within the Fast Track Approvals Bill.

Background and context – Te horopaki

2. On 27 February 2024, you agreed that a project will be ineligible for the Fast-Track process if it requires permissions on ecological areas held under the Conservation Act 1987. This decision is reflected in the current drafting of the Fast Track Approvals Bill.
3. We understand that you wish to revisit this decision.
4. The Parliamentary Counsel Office (PCO) will not make changes to their drafting without a clear Ministerial decision.

Ecological areas

5. DOC recommends excluding ecological areas from the Fast Track regime given they have a significant value equivalent with other conservation land being excluded from Fast Track (BRF-4307 refers).
6. They cover areas primarily for scientific, particularly ecological, value. These areas protect natural processes and genetic pools for indigenous plants and animals. They perform an important function: in addition to protection, they are used as areas for natural benchmarks for assessing changes associated with various forms of development within a region.

Next steps – Ngā tāwhaitanga

7. If you decide to change your decision on ecological areas, we will ensure PCO has revised drafting instructions.

ENDS

We recommend that you … (Ngā tohutohu)

		Decision
a)	**Note** that you previously agreed to exclude ecological areas from the Fast Track process in the Fast Track Approvals Bill.	
b)	**EITHER** i) **Agree** that a project will be ineligible for the Fast-Track process if it requires permissions on ecological areas held under the Conservation Act 1987. **OR** ii) **Agree** that a project will be eligible for the Fast-Track process if it requires permissions on ecological areas held under the Conservation Act 1987.	Yes / No Yes / No

Date: 05 /03 / 2024

pp Sam Thomas

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

Date: 05/03/2024

Hon Tama Potaka
Minister of Conservation

Date: 5/3/2024

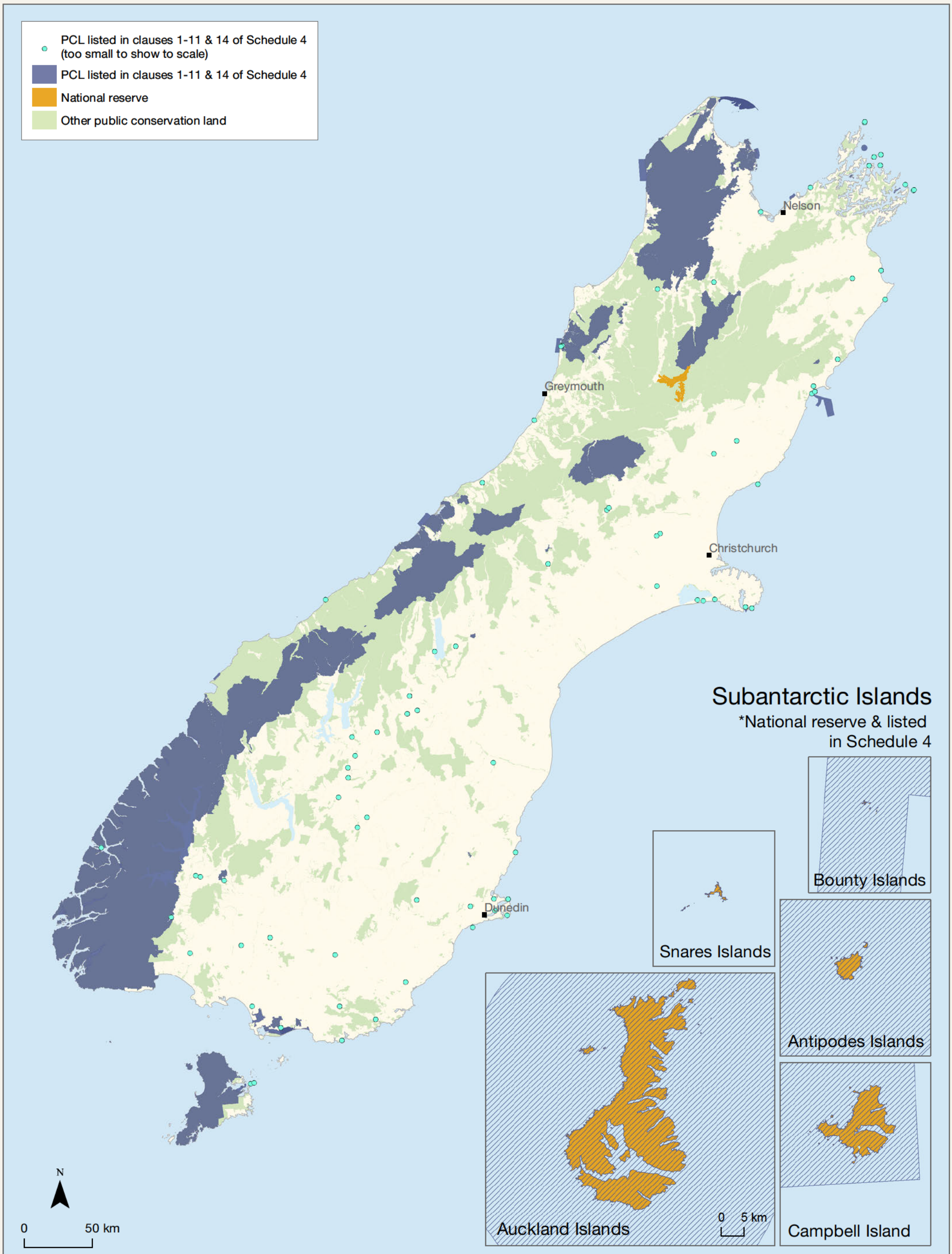
Hon Chris Bishop
Minister Responsible for RMA Reform

05 03- 24

Date: / /

Hon Shane Jones
Minister for Regional Development

Attachment P



National Reserves & PCL listed in clauses 1-11 & 14 of Schedule 4 South Island & Subantarctic Islands

Department of Conservation *Te Papa Atawhai*

Te Kāwanatanga o Aotearoa
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PCL listed in clauses 1-14 of Schedule 4 < 300 ha
(too small to show to scale)

PCL listed in clauses 1-14 of Schedule 4

National reserve < 40 ha
(too small to show to scale)

National reserve

Other public conservation land

Whangarei

Auckland

New Plymouth

Napier

Wellington

0 1 km

See inset map above

0 50 km

N

Chatham Islands

0 10 km

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National Reserves &
PCL listed in clauses 1-14 of Schedule 4
North Island & Chatham Islands

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PCL listed in clauses 1- 11 & 14 of Schedule 4 (too small to show to scale)

PCL listed in clauses 1-11 & 14 of Schedule 4

National reserve < 40 ha (too small to show to scale)

National reserve

Other public conservation land

Whangarei

Auckland

New Plymouth

Napier

Wellington

See inset map above

0 1 km

0 50 km

N

Chatham Islands

0 10 km

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National Reserves & PCL listed in clauses 1-11 & 14 of Schedule 4 North Island & Chatham Islands

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- There are two maps for the North Island. Map 1 shows the status of PCL under standard exclusions for Fast track processes (which will apply for all projects unless they include mining access applications under the Crown Minerals Act). Map 2 Shows the status of PCL for Crown Minerals Act permissions only, which include additional areas that are out of scope in the Coromandel, as per the existing Schedule 4 of the Crown Minerals Act (clauses 12 and 13).