



BRIEFING

Te Kuha access arrangement application

Date:	9 February 2018	Priority:	High
Security classification:	In Confidence	Tracking number:	3731 16-17

DOC Ref 13-B-0114

Action sought:		
	Action sought	Deadline
Hon Dr Megan Woods Minister of Energy and Resources	Decision required whether or not to approve (subject to conditions satisfactory to you and the Minister of Conservation) or decline an application for an access arrangement for 12 hectares of public conservation land for a proposed opencast coal mine.	
Hon Eugenie Sage Minister of Conservation	Decision required whether or not to approve (subject to conditions satisfactory to you and the Minister of Energy and Resources) or decline an application for an access arrangement for 12 hectares of public conservation land for a proposed opencast coal mine.	

Contact for telephone discussion (if required):				
Name	Position	Telephone	1st contact	
Ministry of Business, Innovation & Employment				
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Department of Conservation				
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Jonty Somers	Chief Legal Advisor		0278893761	

The following departments/agencies have been consulted:					
<input type="checkbox"/> Treasury	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> TPK	<input type="checkbox"/> MoH
		<input type="checkbox"/> Other:	N/A		

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments:



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Purpose

This briefing seeks a joint decision from the Minister of Energy and Resources and the Minister of Conservation on whether to approve (subject to conditions satisfactory to ministers) or decline the application of an access arrangement by Rangitira Developments Limited (RDL) under the Crown Minerals Act 1991 (CMA). The application is for access to 12 hectares (ha) of public conservation land near Te Kuha in the Buller District in order to undertake opencast coal mining activities.

Executive summary

RDL has applied for an access arrangement under the CMA for 12 ha of public conservation land near Te Kuha as part of a larger project to develop and operate an opencast coal mine (a map of the access arrangement area is at Annex 1). The mining project would cover a total of about 144 ha of land, most of which (about 130 hectares) is within the Westport Water Conservation Reserve vested in and managed by the Buller District Council.

The decision on whether to grant access to public conservation land for this proposal is made under the CMA and, as the mining permit is classified as Tier 1 (higher value operation) under the Act, must be made jointly by the Minister of Energy and Resources and the Minister of Conservation. If agreed, the decision would be subject to conditions satisfactory to ministers.

The 12 ha of public conservation land is considered to have some very high conservation values including unique coal measure ecosystems, threatened plants including ferns and mosses, threatened fauna including invertebrates of interest to science, and landscape and scenic values. RDL is proposing a range of safeguards and mitigations to help address the potential adverse effects of the proposal on these values. However, despite these measures, the proposal would lead to residual adverse effects and a permanent loss of conservation values.

RDL has proposed a compensation package to address the residual losses from the project as a whole (144 ha). The package includes funding a mining heritage project at Charming Creek (north Buller) and a 25 year ecosystem management project over 5,000 ha of the Orikaka forest (near the mine site). In addition, RDL has agreed to the formation of the 497 ha Te Kuha Biodiversity Management Area including and surrounding the mine footprint. This requires RDL to undertake predator and pest control, and species relocation and management within this area.

While RDL has proposed this package, ministers will need to consider whether to require an appropriate compensation package for the effects directly associated with the 12 ha of public conservation land.

Due to the scale and permanency of some of the effects, the application was determined to be 'significant' under s 61(1AAB) and s 61C(2) of the CMA and was publicly notified. Seventy six submissions were received – 64 were in favour and 12 opposed. The recommendations of the Director-General of Conservation stemming from the notification process have been incorporated into the analysis of the attached report '*Access Arrangement Decision Report Under 61C(2) of the Crown Minerals Act 1991*' (Annex 2) and the information within this briefing.

The review of the application by Department of Conservation (DOC) officials and external experts indicates that the proposal would have significant adverse effects on high conservation values that cannot be fully mitigated or safeguarded, and that some of the adverse effects would be irreversible and permanent. As such it is considered that the proposal is inconsistent with the

purpose of the Conservation Act 1987, the purpose for which the land is held (as a stewardship area), the Conservation General Policy and the West Coast *Tai Poutini* Management Strategy.

The project will likely bring significant economic benefits to the Buller District and the wider West Coast. These benefits include:

- an average of 50 jobs over 19 years in the Buller District, and an additional \$24.6 million of economic activity in the district
- an estimated added value of \$68 million to operating mines on the Buller Plateau via the optimisation of coal blends
- an estimated \$9 million of royalties to the Crown over the life of the project.

These benefits are considered to be significant, particularly given the current economic downturn in the Buller District. RDL has indicated that if access to the public conservation land is declined, the project would not proceed in its entirety as it would not be economically viable.

DOC and RDL have independently consulted with the appropriate iwi and hapu. During consultation Te Rūnanga o Ngāti Waewae raised one matter (Te Taiao) that would require mitigation from RDL. RDL has indicated that it will work with Te Rūnanga o Ngāti Waewae to address this matter.

Ministers are required to have regard to the matters set out in s 61(2) of the CMA before making a decision. Ministers are also required to have regard to the principles of the Treaty of Waitangi under section 4 of the CMA. What weight is given to each of these matters (both s 61(2) and s 4) is for ministers to determine.

Having considered the information provided in this briefing and the Decision Report, and having weighed the relevant matters set out in sections 4 and 61(2) of the CMA, ministers are asked either to agree to the grant of an access arrangement, subject to conditions satisfactory to ministers, or to decline the application.

Recommended action

The Ministry of Business, Innovation and Employment, and the Department of Conservation identify the following options for your decision:

- a **Agree** to grant the application for an access arrangement to Rangitira Developments Limited subject to conditions satisfactory to ministers.

Agree / Disagree

OR

- b **Decline** to grant an access arrangement to Rangitira Developments Limited.

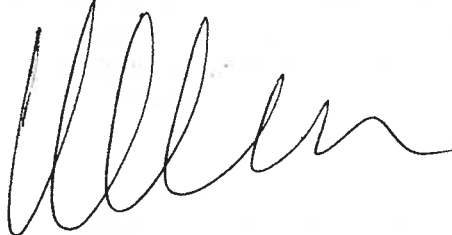
Agree / Disagree



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Hon Dr Megan Woods
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Hon Eugenie Sage
Minister of Conservation
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Background

1. RDL has applied for an access arrangement under the CMA for 12 ha of public conservation land within Mining Permit 41289 to develop and operate an opencast coal mine near Te Kuha, 12 km east of Westport in Buller District. The project area would be about 144 ha, including about 30 hectares of roading for mine access. About 130 ha of this land is within the Westport Water Conservation Reserve vested in and managed by the Buller District Council.
2. RDL is fully owned by the Te Kuha Limited Partnership, a joint venture between Stevenson Group Limited and Wi Pere Holdings Limited. The project itself is led by Stevenson Mining Limited, an experienced operator in opencast coal mining in New Zealand.
3. Mining Permit 41289 was granted to RDL in 1994 for a period of 25 years, over an area of 884 ha. RDL (then 100 per cent owned by Wi Pere Trust) previously applied for an access arrangement from DOC between 1996 and 2002. It withdrew the application after withdrawing an appeal to the Environment Court on the refusal of the Buller District Council to grant resource consents (due to the level of adverse effects of the proposal and uncertainty around potential rehabilitation methods).
4. This current application was determined to be significant by the Minister of Conservation under s 61C(2) of the CMA. That decision was informed by a Significance Assessment Report (Appendix 3 of the Decision Report), and triggered public consultation on the application, entailing submissions and a hearing, as per s 49 of the Conservation Act 1987.
5. The decision on whether to grant access to public conservation land for this proposal is made under the CMA and, as the mining permit is a Tier 1 permit, must be made jointly by the Minister of Energy and Resources and the Minister of Conservation under s 61(1AA), having regard to the matters set out in s 61(2) and s 4 of the Act.
6. If agreed, the decision would be subject to conditions satisfactory to ministers.
7. These conditions may address mitigation of adverse effects on the land and associated flora and fauna, and include a formal financial agreement to secure delivery of funding for pest control and restoration work. In doing so, DOC would work with RDL, and where possible, in consultation with the Buller District Council and West Coast Regional Council to achieve consistency between the access arrangement and relevant resource consent conditions.

Other statutory processes

8. RDL was granted an access agreement from Buller District Council to access the necessary 104 ha of the Westport Water Conservation Reserve in late 2016. However, that decision was rescinded by the Council after Forest & Bird sought judicial review of its decision in April 2017. RDL has lodged declaratory judgment proceedings in the High Court but the Crown is not a party to them. The High Court is understood to have heard this case on 17 October 2017. The Court's decision has been reserved.
9. On 21 November 2017 the West Coast Regional Council and Buller District Council granted the necessary resource consents for the mining project under the Resource Management Act 1991 subject to 186 conditions.
10. MBIE and DOC made a joint submission on the project's resource consent application. The submission identified the likely effects of the proposal on conservation values and proposed measures that the councils should consider to mitigate the impact on biodiversity values, and to maintain habitat through progressive rehabilitation of the site. The submission also estimated the economic benefits of the project in terms of coal production, returns to the company, added economic activity to the region from the blending of Te Kuha coal with those from elsewhere on the Buller Plateau, and employment.

Matters to have regard to when making a decision

11. When making a decision on the application ministers should have regard to the purpose of the CMA and the matters set out in s 4 and s 61(2) of the Act. Section 4 relates to the principles of the Treaty of Waitangi; while s 61(2) to various conservation, economic and other relevant matters. Ministers must give genuine attention and thought to each of these matters but do not necessarily have to accept them. What weight is given to each of these matters (both s 61(2) and s 4) is for ministers to determine.
12. The purpose of the CMA is set out in s1A:

The purpose of this Act is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand.
13. Under s 61(2) of the CMA, in considering whether to agree to an access arrangement in respect of Crown land, the ministers shall have regard to the following matters:

Section 61(2)(a) The objectives of any Act under which the land is administered

14. The land in question is 'stewardship area' administered under section 25 of the Conservation Act 1987. The objective of the Conservation Act is to promote the conservation of New Zealand's natural and historic resources. The term 'conservation' means "*the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations*" (s 2 of the Conservation Act). 'Natural resource' means "*plants and animals of all kinds; and the air, water and soil in or on which any plant or animal lives or may live; and landscape and landform; and geological features; and systems of interacting organisms and their environment, and includes any interest in a natural resource.*" (s 2 of the Conservation Act).
15. The conservation values of the 12 ha access arrangement area are considered to be high and in some cases unique and nationally significant. They include unique coal measure ecosystems, threatened plants including bryophytes (ferns, mosses etc), threatened fauna including invertebrates of interest to science, and scenic and landscape values.
16. The proposal would result in a residual loss of these values that could not be avoided or fully mitigated. In the case of coal measure ecosystems, geodiversity, landscape, and fauna, some of the adverse effects would be significant and permanent. The proposal would therefore not meet the purpose of the Conservation Act because the natural resources could not be protected or preserved.
17. The proposal would also adversely affect an area of the Lower Buller Gorge Scenic Reserve, administered under the Reserves Act 1977. The general objective of the Reserves Act includes providing "*for the preservation and management for the benefit and enjoyment of the public areas of New Zealand possessing wildlife; indigenous flora and fauna; landscape amenity or interest; or natural, scenic, cultural*" and other special features or values (s 3 of the Reserves Act). More specifically, the purpose of scenic reserves is to "*protect and preserve for their intrinsic worth and for the benefit, enjoyment and use of the public suitable areas possessing such qualities of scenic interest, beauty, or natural features or landscape that their protection and preservation are desirable in the public interest*" (s 19 of the Reserves Act). The proposal, by altering the existing topography and ridgeline, would generate visual and landscape effects for the reserve that could not be avoided or fully mitigated. This objective could not, therefore, be achieved because the values of the reserve would not be protected or preserved.

Section 61(2)(b) Any purpose for which the land is held by the Crown

18. A 'stewardship area' must be managed such that "*its natural and historic resources are protected*" (s 25 of the Conservation Act). The proposal would be inconsistent with this purpose for the same reasons noted in paragraphs 14-17 above.

Section 61(2)(c) Any policy statement or management plan of the Crown in relation to the land

19. The Conservation General Policy and the West Coast *Tai Poutini* Conservation Management Strategy are applicable. The proposal is not compatible with a number of objectives and policies set out in these statutory instruments for the same reasons noted in paragraphs 14-17 above.

Section 61(2)(d) The safeguards against any potential adverse effects of carrying out the proposed programme of work

20. RDL's mitigation and rehabilitation approach includes active water quality management, creating a stable and erosion resistant landform, re-contouring disturbed land to blend with the surrounding landscape, direct vegetation transfer of two ha of high value ecosystems, ongoing weed control and replanting the final landform with indigenous species. Of locally-endemic plants, some will be transplanted and cared for and returned to the final landform. Some habitat for threatened ferns and mosses would be recreated. Other flora would recolonise the area from adjacent habitat.
21. Individual fauna such as great spotted kiwi (roroa) and landsnails would be translocated from the mine site into adjacent habitat. Lizards (skinks and geckos) are likely to be killed during mining operations but are expected, to some degree, to recolonise the final landform over time. It is expected that some large-bodied invertebrate species of particular interest to science (e.g. beetles, butterfly, moth, spider) would not survive mining operations and/or recolonise the area post-mining.
22. Over time the final landform is expected to become a fully-functioning ecosystem again. However, it would be ecologically different, having lost much of its significant intact and unique characteristics.
23. Site rehabilitation would, over a long period of time, reduce the visual and landscape effects of the proposal to very low levels. The access/haul road and mine site would become revegetated and largely blend with the surrounding landscape. However, the topography and ridgeline of the site would be more homogenous and remain permanently altered. The potential adverse effects are not therefore able to be fully safeguarded against with the consequences described in paragraphs 16 and 17 above. Administrative and financial safeguards such as bonds and insurances would be applied through conditions to ensure the rehabilitation and closure plans would be delivered to standard.

Section 61(2)(da) The direct net economic and other benefits of the proposed activity in relation to which the access arrangement is sought

24. The project would deliver significant direct economic benefits for the Buller Region. It would require an average of 50 full time equivalent jobs during the 12 month construction period, 16 years of production and two years of post-closure site rehabilitation work. External reviewers estimate the proposed mine would deliver direct and indirect economic activity to the Buller District economy of \$24.6 million over the life of the proposed mine.
25. MBIE estimates that the mine would add a further \$68 million to the value of operating mines on the Buller Plateau by providing high-quality blending coals that could be used with lower-quality coals from elsewhere on the Plateau to achieve an export-quality coal.
26. On current estimates by the applicant, the project is expected to pay royalties of approximately \$0.5 million per annum to the Crown each year during the mine's 16 year operating life. Total royalty payments over the life of the project are estimated to be approximately \$9 million.
27. An independent external reviewer has assessed the commercial viability of the project, finding it commercially viable at a plausible range of commercial risks (e.g. coal price and production costs). While the reviewer described the project to be poorly placed to survive a "perfect storm" of specific risks, MBIE consider that such factors are unlikely to last for

prolonged periods and RDL would have the ability to reduce or suspend mining operations, pending a return to more favourable conditions. MBIE's assessment has had input from the Ministry for the Environment in relation to matters regulated under the Climate Change Response Act 2002.

Section 61(2)(db) If section 61C (3) applies, the recommendation of the Director-General of Conservation and summary referred to in that subsection

28. The access arrangement application was deemed to be 'significant' and therefore publicly notified. Seventy-six submissions were received, 64 were in favour, and 12 opposed. Six submitters were heard at a public hearing in Westport in April 2016.
29. Of the 64 submissions in favour, 58 were from individuals (53 of which were identical), four from companies and one from the industry group Minerals West Coast. In summary, they argued for the economic benefits of the project including sustainability of employment in the Buller region, and in support of the proposed management of adverse effects.
30. The 12 opposing submitters included eight individuals and four NGOs: Forest and Bird, Coal Action Network Aotearoa, Environment and Conservation Organisations of Aotearoa New Zealand, and West Coast Environment Network. Their key concerns included: the very high conservation values of the site; the adverse effects of mining on those values and the inadequacy of proposed management of those effects; inconsistency with the Conservation Act; the economics of the project and the uncertain future of coal mining generally; and the project's impact on climate change.
31. In summarising the submissions and the hearing, the Director-General of Conservation made several recommendations in the Hearing Report. They were mainly focussed on seeking further information to help clarify and address matters raised by submitters. This information, relating primarily to climate change and 'economic externalities', has been included in the Decision Report (Annex 2), being the full report to ministers on the access arrangement application and which forms the basis of this briefing paper.

Section 61(2)(e) Such other matters as the Minister and the appropriate Minister consider relevant

Compensation

32. RDL has confirmed that its proposed compensation package to address residual significant adverse effects and permanent losses of conservation value is for the project as a whole. The package includes the funding of 25 years of ecosystem management over 5,000 ha of the nearby Orikaka forest, and a mining heritage project at Charming Creek, northern Buller. While RDL has proposed this package, ministers will need to consider whether to require an appropriate compensation package for the effects directly associated with the 12 ha of public conservation land.
33. The compensation package in the Orikaka forest would most likely include a comprehensive monitoring programme, regular aerial 1080 application and targeted species management via trapping programmes (where most beneficial). DOC officials consider such an approach would have tangible benefits for the habitat and species being managed over the 25 year period. To achieve permanent results it is likely that ongoing funding beyond the 25 year period would be required.
34. RDL is offering to fund restoration and interpretation work at the historic Charming Creek coal mine, located on the Charming Creek Walkway between Ngakawau and the Mokihinui River. The West Coast Conservation Management Strategy describes it as an important heritage site in Kawatiri place. It is currently an actively managed heritage site indicating its high heritage values.
35. A formal financial agreement to secure delivery of funding for these projects would form part of an access arrangement should the application be approved.

36. As part of the resource consent conditions (conditions 162 to 179) RDL is required to set up the Te Kuha Biodiversity Management area, which includes 497 hectares of land comprising the mine footprint and the land surrounding the mine footprint generally comprising the Brunner Coal Measure areas within MP 41289. This biodiversity area is proposed as a mitigating measure to address the adverse effects of habitat removal and allows for enhancement of and monitoring of particular species of ecological concern such as:
- a. birds of conservation concern (kiwi, fernbird, robin and pipit)
 - b. lizards
 - c. bryophytes
 - d. weeds
 - e. predators
 - f. Forest Ringlet Butterfly
 - g. undescribed leaf-veined slug
 - h. Helm's Stag Beetle.
37. RDL has accepted a condition (160A) to not apply for any consent for earthworks or mining-related activities within the Te Kuha Biodiversity Management Area during the life of the consent.

Climate change

38. The contribution of the application to the effects of Climate Change on ecosystems and ecosystem services on public conservation lands is a relevant matter to consider. However, the small scale of coal volumes from the access arrangement Area mean the contribution would be very small.

Treaty of Waitangi

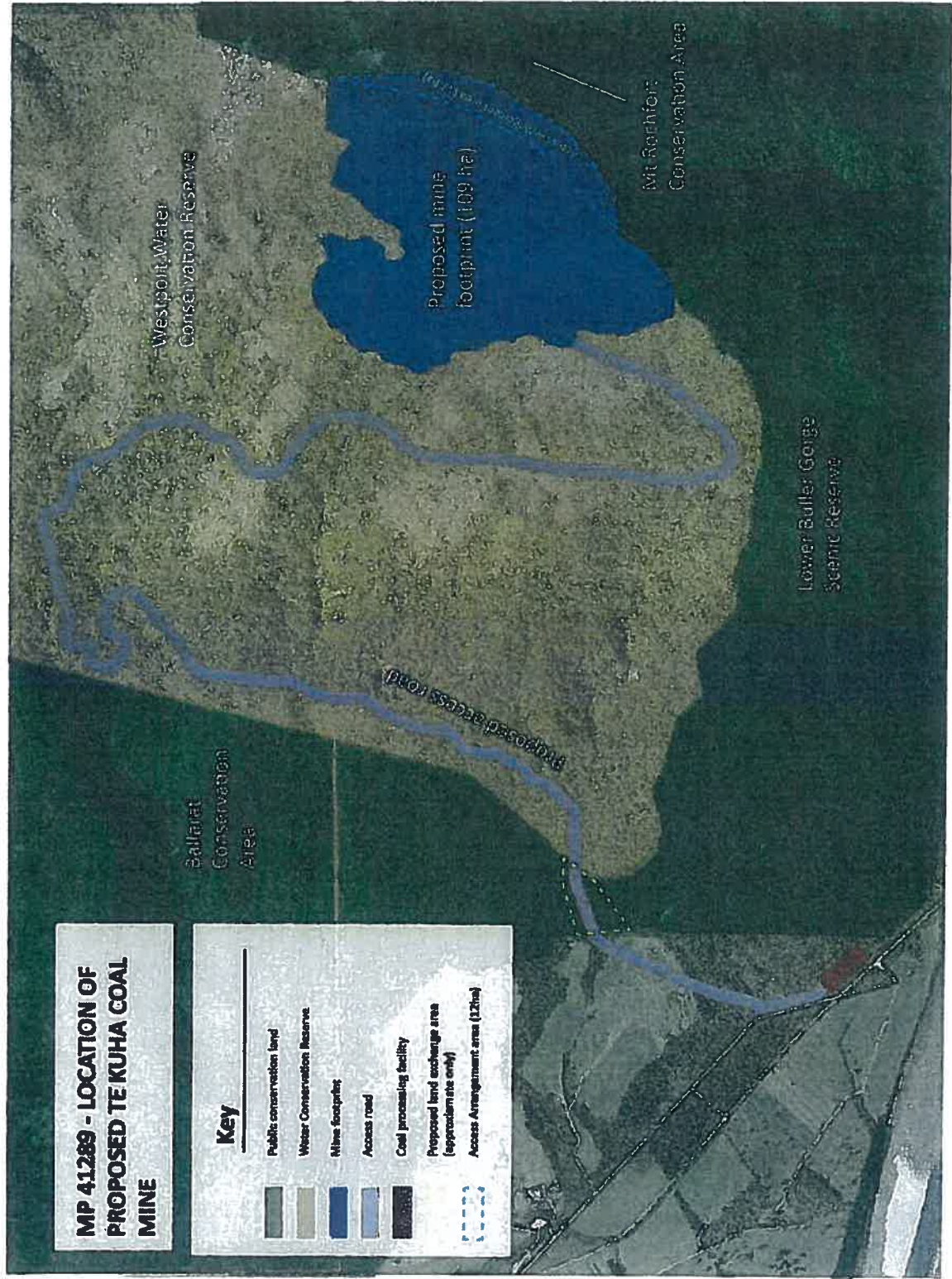
39. All persons exercising functions and powers under the CMA are required to have regard to the principles of the Treaty of Waitangi. In general, the most relevant Treaty principles relevant in a context such as this are: partnership (mutual good faith and reasonableness); informed decision making; active protection; and redress and reconciliation. Any sites/values relating to Māori culture, traditions, ancestral lands, water, waahi tapu or taonga should therefore be acknowledged accordingly.
40. As part of consultation with local iwi Te Rūnanga o Ngāti Waewae (Ngāti Waewae), DOC provided copies of RDL's access arrangement application and supporting information, and maintained contact regarding ongoing consultation between Ngāti Waewae and RDL. A draft copy of this report was also forwarded to Ngāti Waewae for their review and feedback.
41. No ancestral lands, waahi tapu or taonga have been identified within the proposed mine footprint or the access arrangement area. However, Ngāti Waewae has indicated that mitigation for the mine regarding the Te Taiao tradition is appropriate. RDL has indicated that it will work with Ngāti Waewae to address this matter.

Annexes

Annex 1: Map of Te Kuha Mine access arrangement area (12 ha)

Annex 2: Te Kuha Decision Report

Annex 1: Map of Te Kuha Mine access arrangement area



**Annex 2: Access Arrangement Decision Report Under 61C(2) of the
Crown Minerals Act 1991**

