

5 March 2024

Sec 9(2)(a)

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Tēnā koe ^{Sec} 9(2)(a)

This letter is our response to your email of 11 January 2024, regarding our response to your previous official information request (reference OIAD-3478), and additional information about the decision-making process for the Southeast Marine Protection (SEMP) network of marine reserves. To recap prior interactions and conversations with DOC staff:

- On 1 February 2024, we advised you that some of the questions you posed in your email of 11 January 2024 were requests for new information, which would be processed as a new OIA request (OIAD-3745).
- On 13 February 2024, we advised you that we were extending the 20-working day period to respond, as allowed under section 15A(1) of the OIA, and would send you a response no later than 5 March 2024.

Thank you for the additional context you have provided on this matter. Understanding the rationale behind your request has aided us in providing you with a fulsome response.

OIAD-3478 and OIAD-3745

Table 1 below outlines documents relevant to your requests, OIAD-3478 and OIAD-3745.

After undertaking further research, we have identified additional Cabinet-related information in scope of your expanded OIA request (OIAD-3478). While some of this information is publicly available, we have reconsidered this information for release. I apologise that we did not previously include this information in our original response to you on 21 December 2023.

On 1 February 2024, we transferred an in-scope document, *23-K-0001 – Attachment one – AM20-0066*, to the Ministry for Primary Industries (MPI) for response, pursuant to section 14 of the OIA.

I have decided to release the relevant parts of the documents listed in *Table 1*, subject to information being withheld under one or more of the following sections of the OIA, as applicable:

- section 9(2)(a) – to protect the privacy of natural persons;
- section 9(2)(h) – to maintain legal professional privilege.

Please note that some information in *Item 6, Table 1*, is outside the scope of your request, and so, is not released to you. As noted above, we have also transferred part of your request to MPI. It is listed as *Item 3* in *Table 1*; however, not provided to you in our response.



In making my decision, I have considered the public interest considerations in section 9(1) of the OIA and determined there are no public interests that outweigh the grounds for withholding.

Further information

Our comments regarding the timeline you outlined in your email of 11 January 2024, are provided in *Table 2*. Our responses to your additional comments are provided in *Table 3*.

You are entitled to seek an investigation and review of my decision by writing to an Ombudsman as provided by section 28(3) of the OIA.

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

If you would like to discuss this response with us, please contact Sanjay Thakur, Marine Protection Advisor, by email to sathakur@doc.govt.nz.

Nāku noa, nā

A handwritten signature in grey ink that reads "Anna Cameron".

Anna Cameron
Senior Manager, Regulatory Strategy and Design
Department of Conservation
Te Papa Atawhai

Table 1 - Schedule of documents relating to OIAD-3478 and OIAD-3745

Item	Date	Document description	Decision	Decision detail
1	18 December 2019	South-East Marine Protection - Memo to DG re notification of 6 Applications for marine reserves	Released in part	Redactions under 9(2)(a)
2*	5 February 2020	Cabinet Paper Memo 20-K-0001 - Proposed package of marine protection measures in the south east of the South Island	Released in part	Redactions under 9(2)(a), 9(2)(h)
3*	5 February 2020	Cabinet Paper Memo 20-K-0001 - Attachment one - AM20-0066 - Proposed package of marine protection measures in the south east of the South Island	We have transferred this part of your request to Fisheries New Zealand	
4*	12 February 2020	Cabinet Economic Development Committee Minute of Decision DEV-20-MIN-0006 - Oral Item: Options for New Marine Protection Along the South-East Coast of the South Island: Public Consultation	Released in full	
5	13 February 2020	South-East Marine Protection - Memo to DG re public notification update	Released in part	Redactions under 9(2)(a)
6*	17 February 2020	CAB-20-MIN-0031 - Minute of Decision - Report of the Cabinet Economic Development Committee: Period Ended 14 February 2020	Released in part	Withheld out of scope information
7	27 March 2020	Departmental Memo - Decision on withdrawing public consultation on southeast marine protection	Released in part	Redactions under 9(2)(a), 9(2)(h)
8	8 May 2020	DOC and FNZ Briefing to MOC and MFOF - 20-B-0285 B20-0215 - South-East Marine Protection: resuming public consultation	Released in part	Redactions under 9(2)(a), 9(2)(h)
9	18 May 2020	SEMP restarting consultation in June 2020 DG Decision Paper	Released in full	
10	18 May 2020	Email: SEMP notification – DG approval required	Released in part	Redactions under 9(2)(h)
11	4 October 2023	Updated Q&A and Talking Points	Released in full	

Note: Items marked with a "*" (i.e., Items 2, 3, 4 and 6) were in scope of your expanded OIA request (OIAD-3478) for *'Cabinet papers and minutes associated with the Ministers' intention to declare the marine reserves i.e. those leading up to the section 5 notice, as well as any up to and following the close of consultation in August 2020'*. As such, these Items should have been considered for release as part of our previous response to you on 21 December 2023.

Table 2 – DOC comments regarding your timeline

Date you provided	Event as you described	Our comment
19 October 2018	Officials jointly brief both the Minister of Conservation and Minister of Fisheries	Correct, see 'Joint (DOC and Fisheries New Zealand) advice to the Ministers on the Forum's recommendations' (18-B-0998) linked here: South-East Marine Protection Forum (doc.govt.nz)
24 October 2018	DOC officials brief the Minister of Conservation	Correct, see 'Memo with additional information to the Minister of Conservation only' (18-B-1142) linked here: South-East Marine Protection Forum (doc.govt.nz)
26 October 2018	Fisheries NZ officials brief the Minister of Fisheries	Correct, see 'Fisheries New Zealand-only advice to Minister of Fisheries: Memo' (B18-0853) linked here: South-East Marine Protection Forum (doc.govt.nz)
4 December 2018	DOC officials brief the Minister of Conservation	Correct, see 'Memo to Minister of Conservation for meeting with Minister of Fisheries' (18-B-1420) linked here: South-East Marine Protection Forum (doc.govt.nz)
11 December 2018	Both Ministers meet and decide the progress Network 1 from the Forum Report	The meeting between the Minister of Conservation and the Minister of Fisheries scheduled for 11 December 2018 (18-B-1420 refers) was rescheduled and took place on 19 December 2018. Ministers decided at this meeting to progress with Network 1 from the Forum Report.
14 March 2019	<p>Cabinet Environment, Energy and Climate Committee <u>notes</u> that the Ministers intend to consult on progressing Network 1.</p> <p>Ordinarily ahead a draft Cabinet paper would be circulated to other interested Departments so that they can review and brief their respective Ministers, contain a regulatory impact statement quantifying the impact, contain a fulsome discussion about Treaty issues and recommend that Cabinet,</p>	<p>See the Cabinet paper submitted to ENV and the Cabinet minute from that ENV meeting linked here: South-East Marine Protection Forum (doc.govt.nz)</p> <p>This Cabinet paper simply updated Cabinet Environment, Energy and Climate Committee for their noting of the Ministers of Conservation and Fisheries' decision to instruct agencies to progress the Forum's Network 1 recommendation under the existing legislative frameworks, which would include inter-agency, stakeholder and Treaty partner consultation. A regulatory impact statement was not required when this went to Cabinet on 14 March 2019 because there was no Cabinet decision – Cabinet was merely being informed about decisions that Ministers had made about how the Forum recommendations would be progressed. It prompted the beginning of the statutory process under the Marine Reserves Act and did not represent a decision to declare marine reserves. It therefore did not require a Cabinet decision.</p>

	having considered relevant discussion in the Cabinet paper, agree to commencing the regulatory process under the Marine Reserves Act.	
11 May 2019	Joint Ministerial announcement to progress Network 1	Correct
17 February 2020	Statutory Notice is given of intention to declare a marine reserve	Correct
17 February 2020	Cabinet Environment, Energy and Climate Committee meet	DEV-20-MIN-0006 is the Minute of Decision of the Cabinet Economic Development Committee (not the Environment, Energy and Climate Committee) meeting on 12 February 2020. Cabinet confirmed this at a meeting on 17 Feb 2020 (CAB-20-MIN-0031).
9 April 2020	Consultation is withdrawn due to New Zealand's Covid 19 Alert 4 restrictions	Correct
3 June 2020	Consultation recommences and a further round of Notices are publicised	Correct
26 June 2023	Ministers meet to discuss SEMP	Correct, noting that SEMP was just one of the items for discussion at the Oceans and Marine Ministers Group meeting scheduled for 26 June 2023.
10 July 2023	Briefing to Minister of Conservation re Decision on six marine reserves. This briefing suggests that the Minister met with officials "to discuss any aspect of the substantive advice" (see para ppp)	Correct, see our response to your query about this in the last row of Table 3.
16 August 2023	Minister of Conservation signs recommendations in briefing making decisions	Correct
(Date to be identified)	Briefing to Minister of Oceans and Fisheries on marine reserves	Fisheries New Zealand has advised that their concurrence advice B23-0024 to MFOF is dated 4 September 2023 and that they have released a copy of this advice to you under the OIA.
(Date to be identified)	Decision of the Minister of Oceans and Fisheries on marine reserves	On 16 August 2023, the former Minister of Conservation requested concurrence from the Minister for Oceans and Fisheries and the Minister of Transport with her decisions to create six marine reserves on the East Coast of South Island. On 31

		August and 15 September 2023 respectively, the former Minister of Transport and former Minister for Oceans and Fisheries concurred with those decisions.
5 October 2023	Ministers publicly announce decision	Correct
17 November 2023	<p>Sec 9(2)(a) receive email from Ruth Isaac <i>Minister of Conservation Decisions - southeast South Island marine reserves</i>. It's not clear whether this is intended to be a formal notification to objectors as required under section 5(8) of the Act.</p>	<p>The email sent to the Sec 9(2)(a) (and other submitters) on 17 November 2023 noted the following: <i>'Given the large number of submissions received on the proposals, it is pragmatic that the grounds for the Minister's decisions, including the decisions to not uphold any objections to the marine reserves, be made available through the public release of a package of information comprising the Department's advice, Ministerial decisions and supporting documentation. I anticipate this package will be released on the Department of Conservation website in December 2023. Should you wish to access this more detailed information, you will be able to find the package using this link:</i></p> <p>https://www.doc.govt.nz/our-work/marine-reserves-for-the-southeast-of-the-south-island/</p> <p>This 17 November 2023 email, is the formal notification to objectors as required under section 5(8) of the Marine Reserves Act, supplemented with the package of information that was published on DOC's 2023 OIA responses webpage on 8 January 2024 and linked to the webpage identified in the email.</p>

Table 3 – DOC response to your additional comments

Your comment	Our response
<p>Ordinarily and under the Cabinet Manual, Cabinet approval is required prior to Ministers commencing a regulatory process such as the one under the Marine Reserves Act. Then, and as you identified, Ministers are only required to notify their colleagues when they make a decision. To cut to the chase, my understanding is that a number of decisions were effectively made without proper Cabinet consultation and the information I've requested seeks to test this and if they weren't made in the usual manner, seeks to understand how they were made.</p>	<p>Regarding the Cabinet meeting on 14 March 2019 (notification of Ministers' decision on progressing Network 1 option) - No regulatory impact statement was required for the Marine Reserves Act process. See notes in Table 2 regarding the 14 March 2019 Cabinet documentation (i.e., the Cabinet paper submitted to ENV and the Cabinet minute from that ENV meeting). Cabinet approval is not required or appropriate for this step.</p> <p>Regarding the Cabinet meeting on 17 February 2020 (notification of intention to start statutory consultation) - The process under section 5 of the Marine Reserves Act is initiated by an applicant for a marine reserve. In this case, it was the Director-General of Conservation following a decision by Ministers to instruct agencies to progress Network 1 as recommended by the Forum. Cabinet approval is not required or appropriate for this step under the Marine Reserves Act.</p>
<p>So far DOC has provided a range of briefings to the Minister and helpfully you've pointed me to the 14 March 2019 Cabinet paper and minutes on the website. However, the Department hasn't provided any other Cabinet papers or Cabinet minutes, nor has it provided minutes of meetings with the Minister or anything to indicate that the Minister has turned her mind to the considerations in the statutory framework, other than that she has signed off the briefing to make the decision.</p>	<p>We have now provided the additional Cabinet material listed in <i>Table 1</i>. We have made reasonable efforts to locate and provide, either as attachments or links to previously released information, all Cabinet material in scope of your request for '<i>Cabinet papers and minutes associated with the Ministers' intention to declare the marine reserves I.e. those leading up to the section 5 notice, as well as any up to and following the close of consultation in August 2020</i>'. </p> <p>Minutes of officials' meetings with the previous Minister of Conservation were not in scope of your original request. Furthermore, this information does not exist or, despite reasonable efforts to locate it, cannot be found because it is not a requirement or standard practice for DOC officials to record minutes of meetings with our Minister (s18(e) OIA refers).</p>
<p>In the Cabinet Minute from 14 March 2019, the Minister was invited to</p>	<p>DEV-20-MIN-0006 (<i>Item 4 in Table 1</i>) records that:</p>

<p>provide the consultation document to Cabinet prior to its release. It's not clear to me whether this happened but if it did, I would have expected an additional Cabinet paper and/or minute.</p>	<p><i>'On 12 February 2020, the Cabinet Economic Development Committee: [...]</i> 2 noted the advice of the Ministers on the content of a consultation document on the proposed network of marine protected areas;'</p>
<p>Likewise, it appears as though Cabinet met on 17 February 2020 to discuss SEMP, even though this would have been after the public notification of the process and release of the consultation document, but again there is no Cabinet paper or minutes. Nor is there any briefing materials.</p>	<p>Cabinet met on 17 February 2020 and public consultation (i.e. release of the consultation document, website submission portal, media release etc) did not begin until after that meeting. The DOC Director-General publicly notified his intention to apply for Orders in Council for the marine reserves in relevant newspapers on the morning of 17 February 2020. As outlined above, this notification under the Marine Reserves Act was not subject to the prior approval of Cabinet. Please refer to the additional Cabinet material we are releasing:</p> <ul style="list-style-type: none"> • Cabinet Paper Memo 20-K-0001 • Cabinet Economic Development Committee Minute of Decision DEV-20-MIN-0006 <p>Please note that we have transferred your request for the attachment to 20-K-0001 to MPI.</p>
<p>Similarly, did the Minister agree to withdraw the Notice on 9 April 2020. If she did where is the advice and decision. If she didn't and the power was delegated down into the Department (which you have suggested in your email below), is there evidence of the decision and accompanying advice.</p>	<p>The Marine Reserves Act requires the applicant (in this case, the DOC Director-General), not the Minister, to publicly notify intention to apply for an Order in Council. The decision to withdraw the statutory consultation process was made by the Director-General in consultation with the Minister of Conservation and Fisheries New Zealand. There is evidence of the Director-General's decision and accompanying advice. This information was not in scope of your previous OIA request. We have therefore processed your question as a new request under the OIA and released the relevant information listed in Table 1:</p> <ul style="list-style-type: none"> • Departmental Memo - Decision on withdrawing public consultation on southeast marine protection
<p>Did the Minister and/or Cabinet agree to commence the consultation that was notified on 3 June 2020? If so, where is the advice and/or Cabinet paper and minute. If officials were delegated that power, is there evidence of the decision and accompanying advice.</p>	<p>As noted above, under the Marine Reserves Act the applicant (in this case, the DOC Director-General), not the Minister, must meet the specified public notification requirements. The decision to recommence the statutory consultation process on 3 June 2020 was made by the DOC Director-General in consultation with the Minister of Conservation and Fisheries New Zealand. There is evidence of the Director-General's</p>

	<p>decision and accompanying advice. This information was not in scope of your previous OIA request. We have therefore processed your question as a new request under the OIA and released the relevant information listed in Table 1:</p> <ul style="list-style-type: none"> • DOC and FNZ Briefing to MOC and MFOF - 20-B-0285 B20-0215 - South-East Marine Protection: resuming public consultation • SEMP restarting consultation in June 2020 DG Decision Paper • Email: SEMP notification – DG approval required
<p>Prior to the public announcement on 5 October 2023, did the Minister notify her Cabinet colleagues of her decision as she is supposed to do in accordance with the Cabinet Manual. If so, where is the Cabinet paper and if there wasn't a Cabinet paper, the briefing to the Minister that presumably contains talking points for the public announcement or something similar. Also where is the Cabinet minute.</p>	<p>Ministers and agencies followed the Cabinet Manual, in particular paras 5.34-5.37 Principles of Cabinet decision-making Department of the Prime Minister and Cabinet (DPMC). In this instance, DOC records show that the Prime Minister's Office determined that the step to notify Cabinet of the Ministers' decisions on the marine reserves was not necessary.</p>
<p>From my perspective, this information all came within the scope of the original request as did any advice outside of the briefing papers that have been provided. For example, when the Minister signed off on the decision on 16 August, she requested a meeting with officials - are their minutes from that meeting that show what was discussed and/or information that would assist with understanding her reasons for the decision. Similarly, there are no briefing papers on the Ministerial announcement, which took place on 5 October 2023. Did the Department provide her with talking points or were no briefing provided. The information you have provided below is helpful but as noted above, I'm looking for the primary source documents to understand the process and the Minister's reasons.</p>	<p>DOC officials met with the former Minister on 31 July 2023 to discuss the Departmental advice provided to her office on 10 July 2023. There are no minutes from this meeting. The meeting was primarily to help orientate the former Minister to how the ~1300-page advice package was structured, to assist her consideration of the information.</p> <p>DOC provided an events memo to the Minister of Conservation's Office to support her attendance at the planned announcement event at St Clair. However, it is our understanding that the memo was not provided to the Minister because the planned event at St Clair was cancelled. DOC subsequently provided a document titled 'Updated Q&A and Talking Points' to the Minister to support her attendance at the media announcement of Ministers' decisions on 5 October 2023. We are releasing this document to you under the OIA (<i>Item 11 in Table 1 above</i>).</p>