Department of Conservation
Te Papa Atawhai

Departmental Memo

To	Minister of Conservation	**Date submitted**	15 July 2024
GS tracking #	24-B-0345	**DocCM**	DOC-7690741
Security Level	**In Confidence**		
From	Ruth Isaac - Deputy Director-General, Policy and Regulatory Services: S9(2)(a)		
Subject	Potential inclusion of highest value conservation areas in the Fast-track Approvals Bill		
Attachments	Attachment A: Maps of high value conservation areas excluded by clause 18(h)		

Purpose – Te aronga

1. We understand that the Minister of Energy (Hon Simeon Brown) is going to propose amendments to the Fast-track Approvals Bill (FTAB) that would allow certain energy infrastructure projects to be eligible for fast track if they occur on high value conservation land.
2. This memo provides context to assist you with these discussions on these proposals.

Background and context – Te horopaki

3. Clause 18(h) of the FTAB excludes projects in the following areas (which are listed in items 1 to 11 or 14 of Schedule 4 of the Crown Minerals Act 1991):
    - National parks
    - Nature reserves
    - Scientific reserves
    - Wilderness areas
    - Sanctuary areas
    - Wildlife sanctuaries
    - Marine reserves
    - Ramsar wetlands
    - Otahu Ecological Area
    - Parakawai Geological Area
    - All conservation land as at 1 October 1991 on some of the islands in the Mercury Islands group
    - Kaikōura Island Scenic Reserve in Auckland City

- Rakitu Island Scenic Reserve.

4. Attachment A provides a map that shows these areas.
5. The excluded types of conservation land have the strictest protections and include areas that are of the most interest to New Zealanders and international tourists (e.g. from October to December 2023, around half of all international tourists visited a national park). It was not considered appropriate for the significantly reduced environmental tests of the fast track process to be applied to higher value conservation land.
6. The Ministry of Business, Innovation and Employment (MBIE) has reviewed the select committee submissions from Meridian and Transpower. In light of those submissions, MBIE has recommended to the Minister of Energy that he seek Cabinet's agreement to allow the following activities to be fast-tracked on the land listed above:
   - maintenance, upgrade, or replacement of existing transmission infrastructure provided the proposal would not materially change the scale or effects of the infrastructure.
   - new transmission infrastructure where that cannot practically or reasonably occur elsewhere.
   - continued, unchanged operations for existing electricity generation provided the proposal does not materially change the scale or effects of the infrastructure.
7. We expect the Minister of Energy to share the MBIE briefing with you and seek your views on the proposals given your role as the Minister responsible for the land concerned.
8. DOC contributed an agency view to the briefing which is also provided below with extra context.

DOC does not recommend removing this protection for high value conservation land

9. We understand that there is a desire from the providers of electricity infrastructure to take advantage of the opportunity for faster approvals through a one-stop shop in the FTAB. But this will need to be balanced with protecting the values of these special areas that are so important to New Zealanders and New Zealand's tourism appeal. Places such as national parks are intentionally designated as such to strictly limit human activities and alteration of these areas.
10. DOC's advice is for activities on the highest value conservation land to be ineligible for the FTAB. The ineligibility of the highest value conservation lands is the most significant remaining safeguard within the Bill for conservation. The constrained consideration of the environmental effects of fast tracked proposals means that the significant conservation and other values attached to these areas could not be appropriately safeguarded by the decisionmaker. We also consider that the high level of public interest in these types of conservation land warrants a more public process for consideration of significant projects than is possible under fast track.
11. Excluding projects from these areas does not prevent electricity infrastructure projects from going ahead under usual processes. For example, DOC has approved a number of electricity transmission lines and other essential infrastructure in national parks under current legislation.
12. Meridian and Transpower already have arrangements that expedite approvals for their existing operations under the status quo. For example:

- S9(2)(b)(ii) [redacted]
- The Manapouri - Te Anau Development Act 1963 is a special Act of Parliament which enables the construction and ongoing operation of the Manapouri Power Scheme (which is in Fiordland National Park). As a result, DOC does not require a concession and Meridian does not need to apply for land use resource consents (only water take consents) for work that is "necessary or requisite" to operate the existing Manapouri Power Station.

If you do wish to make exceptions for electricity infrastructure, we recommend it is only for existing electricity infrastructure

13. Existing infrastructure has already gone through processes to set conditions and assess effects, so exceptions are lower risk than for new infrastructure. In this case, we recommend a defined exception to the ineligibility of high value conservation land for:
    - approvals for maintenance, upgrade and replacement (excluding re-routing) of existing transmission infrastructure; and
    - approvals for continued, unchanged operations for existing electricity generation infrastructure
14. This ensures that smaller-scale maintenance, upgrade and replacement activities on existing infrastructure can take advantage of the one-stop shop when they are on high value conservation land.
15. There is a risk that the renewal of existing permissions under the fast track process will result in more permissive sets of conditions being applied. This may result in less effective mitigations of effects and greater environmental impacts than are currently experienced under the current set of permissions.

We do not recommend exempting new electricity transmission infrastructure due to the unknown impacts and lack of ability for public engagement

16. DOC does not recommend making exceptions to clause 18(h) for new transmission infrastructure. The effects of this type of activity on high value and sensitive public conservation land are likely to be significant and not appropriate to be considered through fast track with reduced conservation considerations and no public notification.
17. However, if you do choose to include new electricity transmission infrastructure, DOC recommends reinstating some of the key requirements under existing legislation. In particular, requiring that the activity:
    - is consistent with the purpose for which the land is held; and
    - could not reasonably be undertaken on less protected conservation land or other land.
18. This provides additional protection that is warranted (although still less than the status quo) given how high value these conservation areas are. These requirements are not considered to be unduly restrictive, and do not prevent critical transmission infrastructure from going ahead on high value and sensitive conservation land under the status quo. Our experience is that this doesn't create an overly high barrier – critical infrastructure gets concessions on sensitive public conservation land with these clauses in place.

DOC agrees with MBIE that applications for new generation or materially changed effects should not be exempted

19. MBIE does not support allowing fast-track applications that materially change the scale or effects of infrastructure, or to establish new generation, on high value and sensitive conservation land. This is due to the high level of public interest, and need for public involvement, and because it is appropriate to apply the standard environmental tests for new generation activities on high value and sensitive conservation land.
20. DOC agrees with MBIE on this point.

Further policy decisions will be required due to intersecting legislation that has not been considered

21. If you decide to make exceptions to clause 18(h) for electricity infrastructure, further policy work and an amendment paper will be required to ensure it is workable. National parks are managed under the National Parks Act 1980 which includes the principles and restrictions that must be applied to them. Officials would need to consider how the National Parks Act will interact with the FTAB as well as other related legislation such as the Manapouri - Te Anau Development Act 1963 and the statutory responsibilities of the Guardians of Lakes Manapouri, Monowai and Te Anau (under the Conservation Act 1987 Part 2B 6X).

Risk assessment – Aronga tūraru

22. Making allowances for electricity infrastructure on high value conservation land is likely to result in requests for other types of projects to be able to be fast-tracked on high value conservation land.
23. The exclusions of the highest value conservation land from the FTAB is one of the few substantive remaining conservation protections in the Bill. Modifying this, even on the basis of a restricted set of activities, is likely to prompt negative public sentiment. Public submissions on the Bill cited the importance of protecting conservation land, and national parks in particular, given the permissive nature of the Bill.

Next steps – Ngā tāwhaitanga

24. We expect the Minister of Energy will contact you about this issue and seek your views.
25. If you agree to make changes, a decision could be sought from Cabinet and included in the Departmental Report, although further policy decisions would need to be sought through an Amendment Paper.

ENDS

Attachment A: Maps of high value conservation areas excluded by clause 18(h)

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

Protected area listed in clauses 1-11 & 14 of Schedule 4

Marine reserve listed in clauses 1-11 & 14 of Schedule 4

Other public conservation land

Whangarei

Auckland

New Plymouth

Napier

Wellington

N

0 50 km

Chatham Islands

0 10 km

Department of Conservation
Te Papa Atawhai

Protected areas listed in clauses 1-11 & 14 of Schedule 4
North Island & Chatham Islands

Te Kāwanatanga o Aotearoa
New Zealand Government

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

Protected area listed in clauses 1-11 & 14 of Schedule 4

Marine reserve listed in clauses 1-11 & 14 of Schedule 4

Other public conservation land

Nelson

Greymouth

Christchurch

Dunedin

Subantarctic Islands

Bounty Islands

Snares Islands

Antipodes Islands

Auckland Islands

0 5 km

Campbell Island

N

0 50 km

Department of Conservation *Te Papa Atawhai*

Protected areas listed in clauses 1-11 & 14 of Schedule 4 South Island & Subantarctic Islands

Te Kāwanatanga o Aotearoa
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Attachment B: 24-B-0339: Broadening the scope of freshwater fish related approvals in the one-stop shop

Department of Conservation
Te Papa Atawhai

Briefing: Broadening the scope of freshwater fish related approvals in the one-stop shop

To	Minister of Conservation	**Date submitted**	19 July 2024
Action sought	Decide whether to propose further freshwater fish approvals in the Fast-track Approvals Bill.	**Priority**	Medium
Reference	24-B-0339	**DocCM**	DOC-7696000
Security Level	In Confidence		

Risk Assessment	Low	**Timeframe**	29 July 2024 so that policy can be developed in time for the Fast-Track Approvals Bill
Attachments	No attachments		

Contacts	
Name and position	**Cell phone**
Angela Bell, Acting Director Policy	S9(2)(a)
Ruth Isaac, Deputy Director-General, Policy and Regulatory Services	S9(2)(a)

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. This briefing recommends broadening the scope of approvals under the Freshwater Fisheries Regulations 1983 and the Conservation Act 1987 included in the Fast-Track Approvals Bill (FTAB) to better align with the policy intent of the one stop shop.
2. The inclusion of more complex and technical freshwater fish related approvals was not considered during the development of the FTAB because the scope and intent of the one-stop shop was unclear.
3. As the FTAB is currently drafted, projects that include permanent large instream structures, like dams, will still require approvals outside of the one stop shop process. This briefing outlines how these approvals could be included in the one stop shop to ensure that these projects are able to obtain all necessary approvals within the fast-track process.

We recommend that you … (Ngā tohutohu)

		Decision
a)	**Note** that the original policy intent for Freshwater Fisheries Regulations' inclusion in the FTAB was to provide for certain common, less technically complex minor activities in freshwater bodies	
b)	**Note** that this will mean large, complex structures like dams will still need to get Freshwater Fisheries Regulations and Conservation Act approvals outside of the Fast-track process.	
c)	**Agree** to recommend to the Minister Responsible for RM Reform and Minister for Regional Development that the following approvals are included in the FTAB: • Any structure that requires authorisation under Freshwater Fisheries Regulations 42 and 43, not limited to those structures to which the New Zealand Fish Passage Guidelines apply; and • Authorisation under the Conservation Act to take and release indigenous freshwater fish in conservation areas	Yes / No Yes / No
d)	**Agree** that DOC is required to provide a report to the expert panel for the above approvals and that the panel must consider this report	Yes / No
e)	**Agree** that information requirements and decision-making considerations (based on existing requirements) for the additional approvals above are included in the Bill	Yes / No
f)	**Note** that further policy decisions will be required through an Amendment Paper to appropriately integrate these approvals	
g)	**Agree** to forward this briefing to the Minister Responsible for RM Reform and Minister for Regional Development for their agreement	Yes / No

g)	**Agree** that DOC officials prepare drafting instructions for an Amendment Paper to implement these changes to the Bill	Yes / No

Date: 19/ 07 /2024

Ruth Isaac
Deputy Director-General, Policy and Regulatory Services

Date: / /

Hon Tama Potaka
Minister of Conservation

Purpose – Te aronga

4. This briefing seeks agreement to broaden the scope of the one stop shop in the Fast-track Approvals Bill (**FTAB**) to include approvals for instream structures such as dams under the Freshwater Fisheries Regulations (**FFR**) and the Conservation Act.

5. It also outlines how these approvals could be incorporated into the one stop shop process.

Background and context – Te horopaki

6. Approvals for the following freshwater fisheries-related activities are currently in scope of the FTAB:

    - the approval of culverts and other structures to which the NZ Fish Passage Guidelines (sometimes described as the NIWA Guidelines) apply, which would otherwise be regulated by FFR 42 and 43;
    - temporary works for infrastructure projects in freshwater bodies that would affect fish passage or local habitat;
    - possessing and killing noxious fish as specified in Schedule 3 of the FFR that are encountered during fish salvage or other operations; and
    - fish salvage, transfer or release of live aquatic life under specific conditions into the same water body under section 26ZM(2)(a) of the Conservation Act.

7. When initially developing the FTAB, the intention was to include common activities that do not require complex technical assessments, such as gravel extraction and vehicle crossings over water bodies as part of larger projects. These activities are often well addressed by the resource consent under the Resource Management Act 1991 (**RMA**) and this approach is a clear efficiency gain.

8. The inclusion of other, more complex and technical, FFR approvals for permanent instream structures[1] or other associated work likely required for fast-track projects was not considered at the time of policy development as the scope and intent of the FTAB was still being developed. This means that FFR approvals that would be required for dams and other structures that permanently obstruct fish passage are not included in the FTAB and would be required to be sought outside of the one-stop shop.

9. Section 26ZHC of the Conservation Act requires that in conservation areas, authorisation from the Director-General is needed to take indigenous freshwater fish during construction and release them upon its completion. Currently, such authorisations would have to be sought outside of the one-stop shop.

10. Since these decisions were made, the one-stop shop policy objective has become clearer. To better align with policy intent to provide all relevant approvals through the one-stop shop process, we now recommend including these more technical approvals under regulations 42 and 43 of the FFR and section 26ZHC of the Conservation Act to provide for projects we expect to be going through the fast-track process. This would bring into scope:

    - Providing fish passage over dams, under regulations 42 and 43 of the FFR
    - Appropriate flow regimes to support fish migration past the dam
    - Screening fish from diversion intakes from any waters diverted by a dam

[1] For the purposes of this briefing, the term ‘instream structures’ only refers to structures covered by regulations 42 and 43 of the Freshwater Fisheries Regulations: dams, diversion structures, culverts, fords and weirs.

- The Director-General of Conservation's authorisation to take indigenous freshwater fish during construction and release them upon its completion in conservation areas.

11. These approvals are generally permissive and focus on how fish passage or fish salvage must be provided for. Their inclusion would make it easier for applicants to ensure that dams and similar structures do not pose risks to freshwater fish within the one-stop shop, rather than needing to do this work separately. However, given the more permissive fast-track framework, the conditions imposed on these permissions through fast-track may be less effective at mitigating impacts on freshwater fish than the status quo.

12. We have outlined below broadly how these approvals could be incorporated, but further detailed policy development is required.

How to include more complex freshwater fish approvals in the FTAB one-stop shop

13. If you agree to include the additional approvals above, we recommend they are processed the same way most other approvals are, as outlined in Figure 1. That is:

    - The referral application must identify that there is an instream structure which requires freshwater fish passage or indigenous freshwater fish take approval. This may require a technical report to be commissioned.
    - The substantive application must include specific information related to the freshwater fish requirements (and this would be specified in the Bill) and provided in the application. This ensures applicants know what is needed for their substantive application to be considered complete and able to be referred to the expert panel.
    - The expert panel considers the FFR and Conservation Act approvals alongside all of the other approvals.
    - DOC is required to provide a report to the panel, which the panel must consider. This reflects the technical nature of the approvals, DOC's existing expertise and statutory function to preserve and protect freshwater fisheries and freshwater fish habitats.
    - The panel decides, regardless of where decisions land on concessions, on the FFR and Conservation Act approvals. Some additional matters the panel must consider (other than the DOC report) may be appropriate for these permissions, but we will advise on this through the Amendment Paper, if necessary.
    - If approved, the project should have the necessary approvals to proceed. As for other conservation approvals in the Bill, approvals under the FFR and Conservation Act would be approved as if under the regulations or Conservation Act.

14. Further policy work and Ministerial decisions will be required to fully incorporate these approvals into the one-stop shop. If you agree in principle to their inclusion, officials will continue work to ensure the processes are appropriately integrated through an Amendment Paper.

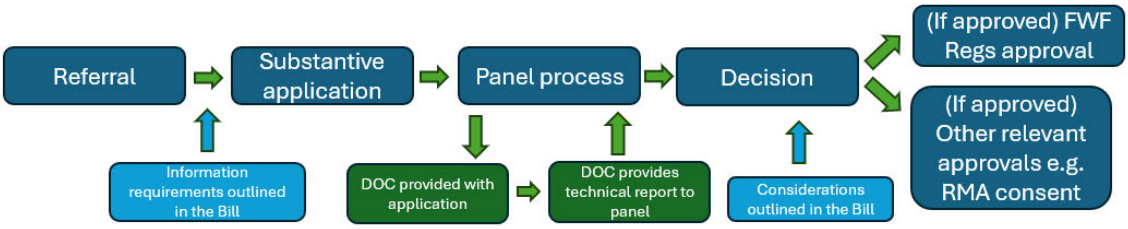


Figure 1: Fast-track approval process diagram

Risk assessment – Aronga tūraru

15. If the additional approvals under the FFR and Conservation Act are not included in the FTAB, then some approvals for fast-track projects that include instream structures will need to be sought outside of the one-stop shop.

16. Including these approvals in the FTAB is low risk.

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

17. There are no significant Treaty implications for including the FFR approvals in the FTAB. These approvals dictate how fish passage must be addressed in projects already eligible for fast-track rather than dictating whether the project goes ahead. Treaty partner engagement for these structures would normally occur through the RMA consent process. In fast-track, this will occur when comments are invited on the substantive application.

Consultation – Kōrero whakawhiti

18. The Ministry for Primary Industries has been consulted in respect of its statutory functions where relevant and was supportive.

Financial implications – Te hīraunga pūtea

19. There are no financial implications for including these approvals in the one-stop shop, as DOC input would be cost recoverable.

Legal implications – Te hīraunga a ture

20. If you agree to include the additional approvals, officials will need to prepare an Amendment Paper to make changes to the scope of the FTAB at this stage of the process.

Next steps – Ngā tāwhaitanga

21. We recommend you share this briefing with the Minister Responsible for RM Reform and Minister for Regional Development as the other delegated decision makers for the Bill and seek their agreement to your preference.

22. If you agree to include the additional proposed approvals in the FTAB, officials will develop policy for an Amendment Paper for the FTAB. Further policy decisions will be required through this process.

ENDS

Attachment C: 24-K-0019: Cabinet paper talking points

Department of Conservation
Te Papa Atawhai

Cabinet Paper Talking Points

To	Minister of Conservation		
Date of meeting	29 July 2024		
Cabinet Paper	**Fast-track Approvals Bill: policy and workability changes for departmental report**		
GS tracking #	24-K-0019	**DocCM**	DOC- 7702918
Minister lead	Minister Responsible for RMA Reform Minister for Regional Development		
Committee	Cabinet Business Committee		
DOC Contact/s	Ruth Isaac, Deputy Director-General, Policy and Regulatory Services, S9(2)(a) Amelia Smith, Principal Policy Advisor, S9(2)(a)		
Security Level	In Confidence		

Key recommendations for the Conservation portfolio

Decision-making

- **Agree** that the Minister for Infrastructure should be solely responsible for making decisions on whether to refer a fast-track application to an expert panel.
- **Agree** that the Minister for Infrastructure should be required to:
    a. follow the process steps that currently apply in the Bill to the referral decision
    b. consult with and take into account comments from relevant portfolio Ministers and the Minister for the Environment on the referral application.
- **Agree** that final substantive decision making on fast-track approvals moves from joint Ministers to the expert panel.
- **Agree** that for land management decisions relating to concessions, Crown Minerals Act 1991 access arrangements, and land exchanges:

  EITHER

    a. decision-making remains with the land-owning Minister

  OR

    b. the expert panel makes decisions unless one of the following two provisions are triggered:
        - the land-owning Minister ‘calls-in’ the decision if the risks for the Crown reach a certain threshold
        - the panel refers the decision to the land-owning Minister responsible for the land if they are not satisfied they have adequate information to assess Crown risk for a particular project or they can adequately mitigate Crown liability in the given case

  OR

    c. the expert panel makes all decisions.

- **Agree** that if the expert panel is making land management decisions:
    a. additional mitigations for the panel's land-management decisions, outlined in Appendix 2, are added to the Bill to reduce the Crown's exposure to risk
    b. delegate further decisions to the Minister of Infrastructure, the Minister of Conservation, and the Minister for Resources to determine how the approach is implemented in practice, including appropriate thresholds for call-in or panel referral, and any procedural matters.

Further policy work

- **Note** that Ministers are considering further policy changes to the Bill relating to:
    a. the issuing of some mining permits under the Crown Minerals Act
    b. allowing fast-track applications for approvals for some electricity generation and transmission activities on high value conservation land
    c. additional processes under the Public Works Act.

Workability changes

- **Agree** that the changes to improve the workability of the Bill as set out in Appendix 3 will be recommended to the Committee in the departmental report.

Key points

- The key issues in this paper for the Conservation portfolio are:
    - the decision-maker for Crown land management decisions
    - the notification that Ministers are considering whether electricity generation and transmission infrastructure can be fast-tracked on the most precious conservation land that is currently excluded from the Fast-track Approvals Bill (FTAB)
    - workability decisions

Decision-maker for Crown land management decisions

- The FTAB creates a process for approvals that will affect Crown property rights, particularly in relation to conservation land. This includes decisions on land exchanges, concessions, and mining access arrangements.
- These decisions have legal, financial and health and safety implications for the Crown, including the following legislative obligations and responsibilities:
    - obligations under the Health and Safety at Work Act 2015, including potential criminal liability for DOC and its officers, to keep workers and the general public safe when undertaking works to remove or remediate projects that are redundant or abandoned.
    - responsibilities under the Occupiers' Liability Act 1962 when projects have finished to ensure people are safe around any remaining structures.
    - responsibilities and potential criminal liability (for DOC) under the Building Act 2004 for any structures from projects. The "Owner" in the Building Act is the owner of the underlying land, so unless the approvals displace that, then the Crown would have Building Act liability during the life of projects.
- The paper seeks a decision on who is the decision-maker for Crown land management decisions and provides the following options:

    - Option 1: land-management decision-making remains with the land-owning Minister (usually the Minister of Conservation)
    - Option 2: the Panel makes land management decisions up to a certain level of risk with the land-owning Minister making decisions only when risks to the Crown are deemed to be significant (with additional provisions included in Appendix 2)
    - Option 3: the Panel makes all land management decisions (with additional provisions included in Appendix 2)
- If expert panels were decision-makers under FTAB, the Minister of Conservation would still be required to execute documents such as leases or licences in order to "perfect" the Panel's decision, even though the Minister might disagree with the decision for good reason.
- DOC recommends Option 1 - that the Minister of Conservation remains the decision-maker under the FTAB for concessions (including leases, licences, and easements), and land exchanges, and that the Minister of Conservation remains the "appropriate Minister" regarding decisions around access arrangements under the Crown Minerals Act 1991.
- This recommendation is particularly important for decision-making for land exchanges because:
    - We think it is inappropriate to have a non-Crown actor (i.e. the Panel) making decisions on divesting and acquiring of Crown land.
    - There are particular process challenges that we might not be able to overcome. If an in-principle decision cannot be made by the Minister ahead of the Panel being convened, we cannot remove the possibility of duplication where an applicant 'hedges' and applies for both an exchange and a concession. This would mean the Panel and DOC (at extra cost to the applicant) would need to process both a land exchange and a concession when only one of them would actually be needed. If the Minister makes an in-principle decision before the Panel is convened, the Panel and DOC will have certainty over whether a land exchange or concession needs processing. Appendix 3 provides a diagram of the differences between these processes.
- If the decision is made to make the Panel the decision-maker, we prefer Option 2 of those options laid out in the Cabinet paper.
- However, we recommend you suggest a better alternative Option 2 that has been discussed between Ministers' offices but did not make it into the Cabinet paper: **new Option 2 – a discretionary Ministerial call-in power with Appendix 2 mitigations for Panel decisions.**
- For this new option, the Ministerial 'call-in' power is at the discretion of the land-owning Minister (rather than on a risk threshold basis) and only for non-environmental matters relating to land ownership and management. This avoids the complexities about how to assess 'certain levels of risks' to the Crown and leaves it as a Ministerial discretion.
- Our preferred recommendations are reflected in Appendix 4 of this memo should you wish to table them at the meeting.

Electricity generation and transmission projects on excluded land

- The paper outlines that the Minister of Energy is working on whether the Bill could allow fast-track applications on high value conservation land for:
    - existing electricity transmission infrastructure, provided the proposal would not materially change the scale or effects of the infrastructure

    - new electricity transmission infrastructure where that cannot practically or reasonably occur elsewhere
    - continued, unchanged operations of existing electricity generation, provided the proposal does not materially change the scale or effects of the infrastructure.
- No decision is being sought from Cabinet but any further work on this requires your input given you are responsible for the land concerned.
- DOC provided advice to you on this on 15 July 2024 (24-B-0345 refers). We recommend you discuss your preferences with the Minister of Energy as soon as possible.
- To advance this work you will need to work with Minister Brown to direct officials in the next few days; policy work on any changes will need to begin immediately to ensure amendment paper timelines are met. The changes are not simple – it requires incorporating consideration of a whole new act into the Bill (the National Parks Act 1980) and developing new thresholds (e.g. defining unchanged operations).

Workability changes in Appendix 3 of Cabinet paper

- Appendix 3 of the paper outlines workability decisions that are being sought from Cabinet. These reflect previous decisions you have made with your fast-track Ministerial colleagues.
- A range of these proposed amendments are important to DOC, and we recommend you support the changes as proposed. The decisions on land exchanges (eligibility, public notification, and alignment with the broader fast-track process) are particularly critical. Because land exchanges are a land transaction (not an approval like other parts of the Bill), they need a bespoke process to make them workable with the framework.
- In particular, a large amount of work will need to occur after the referral decision and before the applicant lodges the substantive application. This allows proper assessment of, and due diligence related to, the land proposed for exchange and for this assessment to inform decision making. These assessments are likely to include:
    - surveying and site visits
    - contamination assessments
    - land valuations
    - consideration of risks, costs and liabilities to the Crown
- The decision-maker (Panel or Minister) would be able to make an in-principle decision through the one-stop shop but final conveyancing and meeting conditions to enact the exchange would have to follow.
- You may get asked to justify why relevant unsettled iwi are proposed to be invited to comment on land exchanges – this is not consistent with the rest of the Bill's process. The reason is that the ownership and management arrangements of conservation land are often the subject of Treaty settlement negotiations; a land exchange could run over the top of that.

Appendix 1: Talking points

Decision-maker for Crown land management decisions

- Concessions, land access arrangements under the Crown Minerals Act 1991 (CMA), and land exchanges, are landowner permissions that reflect the Crown's property rights. These approvals differ in nature from the other approvals in the Bill as introduced.
- These decisions can expose the Crown to legal, financial and health and safety liabilities.
- Decisions on granting and setting conditions on land exchanges, concessions and access arrangements dictate how these risks are resolved or mitigated.
- The current system has tools to manage these risks for the Crown (e.g. health and safety plans, bonds, indemnity, and insurance), but residual risk always remains with the Crown. For example, bonds rarely cover every potential outcome and, if they did, may be prohibitively expensive. If the business fails, the Crown can get left with the remaining costs.
- As decision-maker, the Panel may not have access to adequate expertise and knowledge on issues of Crown risks, may not be incentivised to decline a project the Crown would consider too risky, and/or may not set conditions that the Crown considers are required to protect its interests.

<u>Preferred option</u>

- I recommend that the 'land-owning Minister' (usually the Minister of Conservation but not always for access arrangements) remains the decision-maker on exchanges, concessions, and access arrangements as it provides the greatest likelihood that the Crown's interests as landowner are protected and that substantial potential liabilities are managed appropriately.
- I understand that this is also the recommendation of The Treasury.

<u>Importance of Ministerial decision-making for land exchanges</u>

- If Panel decision-making is the preference, I would still caution against the Panel making decisions on land exchanges because:
    - it is inappropriate to have a non-Crown actor (i.e. the panel) making decisions on divesting and acquiring Crown land.
    - If the panel is decision-maker it may create significant duplication as they will likely need to consider both an exchange and a concession when only one is actually required. Providing for the Minister to make a decision ahead of the Panel being convened removes this issue.

<u>Preference if the Panel must be the decision-maker</u>

- If the Expert Panel must be the decision-maker, I prefer Option 2 of the options in the paper.

- However, I would like to propose a new option that I think is better than Option 2 - **A discretionary Ministerial call-in power with Appendix 2 mitigations for panel decisions.**
- For this new option, the ministerial 'call-in' power would be at the discretion of the land-owning Minister (rather than on a risk threshold basis) and only for non-environmental matters relating to land ownership and management. This avoids the complexities of assessing levels of risks to the Crown and leaves it as a Ministerial discretion.
- If there is interest in this option I can table some proposed recommendations *[see Appendix 4 of this memo].*

Electricity generation and transmission projects on excluded land

- I understand the Minister of Energy is keen to explore this issue. I look forward to working with him to decide whether any changes should be recommended.
- However, I note that we will need to come to agreement on this as soon as possible. The suggested options require assessing interactions with new pieces of legislation (e.g. the National Parks Act 1980) and developing new thresholds for the Bill (e.g. what constitutes unchanged operation).
- If we do not come to a decision on whether to progress this work in the next few days, officials will not have the time to develop the policy for any amendment paper.

Workability changes (Appendix 3 of Cabinet paper)

- I support these changes. I see them as essential for the workability of the Bill.

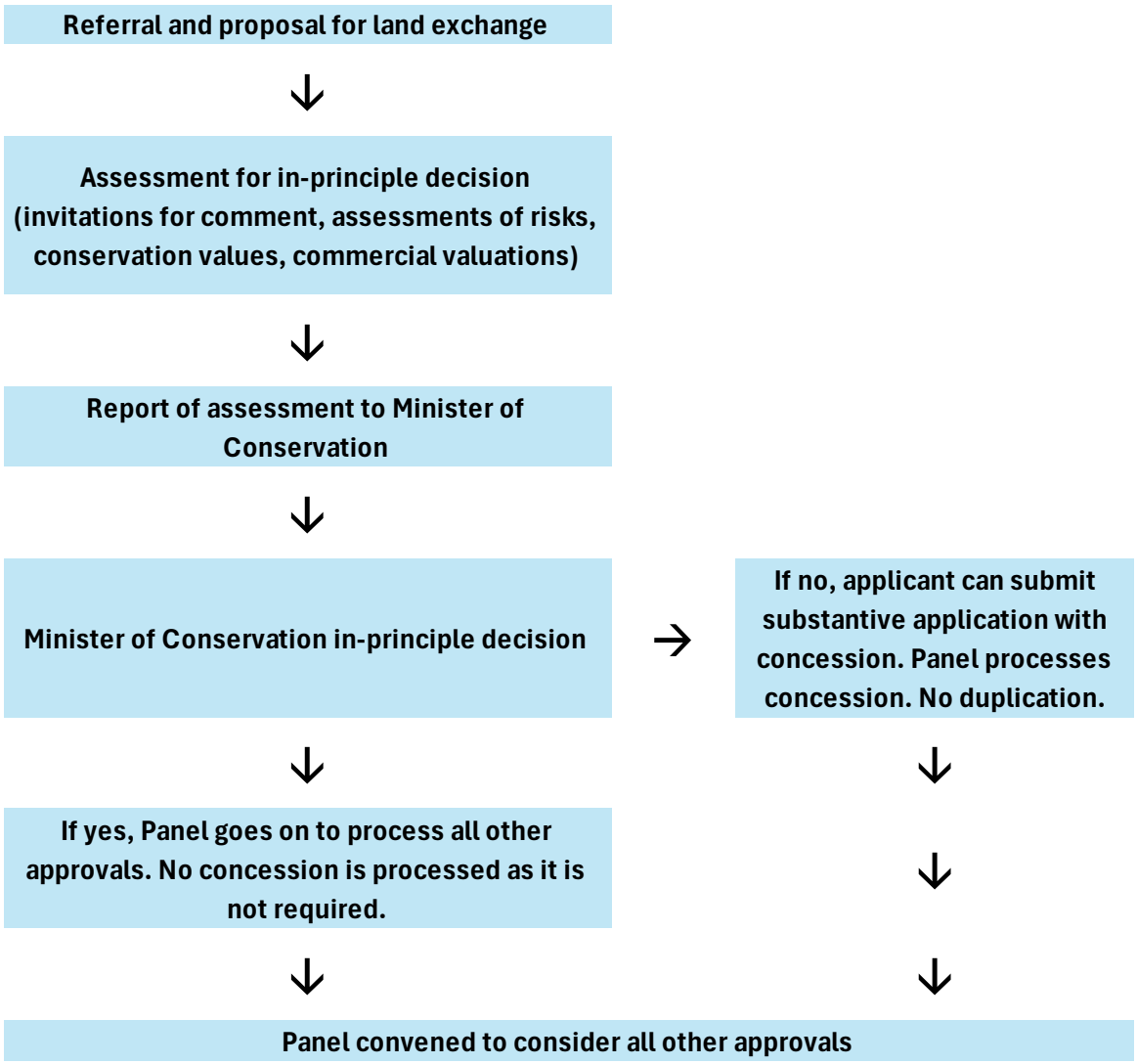
Appendix 2: Questions and Answers

Question 1: What examples are there where the Crown has been left with significant consequences as a result of the use of conservation land?	
Answer	Notable previous examples have arisen where something has gone wrong and the company has folded, leaving the Crown with costs to make things safe and/or deal with existing structures. But the Crown can also hold liabilities where the project is ongoing; the Crown, as landowner, sometimes owns the structures built on the land for the project. Pike River is a well-known example but also: • Annual maintenance and operating expenses for the Chateau Tongariro and ancillary buildings is costing the Department of Conservation around $2m annually until a longer-term option can be identified. • The Tui Mine was abandoned after Norpac Mining Ltd went into liquidation in 1973. Rehabilitation works took 160,000 hours of planning, management, engineering, and construction time and approximately $21 million dollars of investment (as at 2014). Rehabilitation works have been essential to ensure that the Crown complies with its obligations as land manager, and to secure long-term safety and security (communities that reside downstream of the mine face risk from heavy metals leaching into waterways).
Question 2: Why does the in-principle decision on the land exchange need to happen after the project is referred but before the Panel considers the substantive application?	
	A typical land exchange process requires the following steps: • Land status checks on the land involved, confirming status, and identifying if there are any land related issues, e.g. accessibility, survey required, land-locked land etc. • Technical assessment of conservation values on the land involved (both desktop and onsite - particularly in relation to the private land being offered). • Valuations of both parcels of land (to ascertain equality of exchange or if there is a variation one party must pay to the other, whether that be financial or conservation value) • Engagement with iwi and relevant parties • Administrative steps to give effect to the exchange (e.g. sale and purchase agreements). These steps cannot be completed in the panel timeframes.

	Work between DOC and the applicant will need to occur prior to the panel process. This includes assessment of the land to be exchanged, site visits, contamination assessments, land valuations, and a good understanding of what risks, costs and liabilities are being taken on by the Crown with the newly acquired land. Realistically, this could take several months to complete on its own as much of the due diligence work is reliant on the availability of external technical experts and can be impacted by weather, site access, and other external factors. The decision-maker (panel or Minister) would be able to make an in-principle decision through the one-stop shop but final conveyancing and meeting conditions to enact the exchange would have to follow. At that point the exchange would only fail if those conditions of the in-principle decision were not met (e.g. technical and legal issues).
Question 3: Why are unsettled iwi invited to comment on a land exchange?	
	The ownership and management arrangements of conservation land are often the subject of Treaty settlement negotiations. It is important for the decision-maker to understand the implications the exchange of a piece of conservation land could have on the Treaty settlement process.

Appendix 3: Diagrams showing process duplication challenge with panel decision-making on land exchanges

If Minister is decision-maker



If Panel is decision-maker

Referral and proposal for land exchange

↓

Assessment for in-principle decision (invitations for comment, assessments of risks, conservation values, commercial valuations)

↓

Panel convened to consider all approvals and exchange (applicant may apply for concession just in case the exchange fails)

↓

Report of assessment to Panel on exchange. Panel processes exchange and concession where applicants have 'hedged'

↓

Panel in-principle decision on exchange → **If no, applicant may receive approval for concession instead**

↓

If yes, the Panel and DOC have processed a concession when it was not required

Appendix 4: Proposed revised Cabinet paper recommendations for land management decision-making

- **Agree** that for land management decisions relating to concessions and Crown Minerals Act 1991 access arrangements the expert panel makes decisions unless the land-owning minister decides to 'call-in' the decision on the basis of the risks for the Crown in its landowner and manager role
- **Agree** that for any panel decision-making on land management decisions additional mitigations outlined in Appendix 2, are added to the Bill to reduce the Crown's exposure to risk
- **Agree** that for decisions relating to land exchanges, the land-owning Minister remains decision-maker

ENDS

Attachment D: 24-M-0098: Meeting advice for 19 August Fast-track Ministers meeting

Department of Conservation
Te Papa Atawhai

Departmental Memo

To	Minister of Conservation Minister of Infrastructure Minister of Resources	**Date submitted**	15 August 2024
GS tracking #	24-M-0098	**DocCM**	DOC-7721661
Security Level	**In Confidence**		
From	Sam Thomas, Acting Deputy Director-General, Policy and Regulatory Services, S9(2)(a)		
Subject	**Meeting advice for 19 August Fast-track Ministers meeting**		
Attachments	None.		

Purpose – Te aronga

1. This aide memoire provides you detail to inform the joint Ministers meeting on 19 August, particularly where there are changes or clarifications sought for the following via amendment paper:

   i delegated decisions from Cabinet for land management approvals

   ii the approach to dealing with leases and rights of first refusal

2. The meeting agenda includes a recommendations table to guide your discussion. We have outlined where recommendations relating to the above items are in the agenda.

Delegated decisions for land management approvals

3. Cabinet agreed that the panel makes land management decisions but that the Minister of Infrastructure, the Minister of Conservation, and the Minister for Resources will determine how that is implemented, including appropriate mitigation thresholds and initiatives. This is in the context of protecting the Crown from risks and liabilities associated with land exchange, concession, and access arrangement decisions.

4. The options in the table below are recommended by officials to ensure the Crown's interests are protected. They allow the Crown to retain some control where risks are significant. It includes a safeguard for the land-owning Minister to make a decision, potentially in consultation with other Ministers (including the Minister of Finance) or Cabinet where risks are particularly high.

Option	Explanation
The Panel can refer the decision to the land-owning minister responsible for the land in certain circumstances.	• This allows the Panel to refer the decision to the land-owning Minister if: they are not satisfied they have adequate information to assess Crown risk for a particular project, or • are not satisfied that they can adequately mitigate Crown liability in the given case.
The land-owning minister has discretion to 'call-in' the decision <u>if the risks for the Crown reach a certain threshold</u>	The intention is for the Panel to make most of the decisions, but the following criteria provide discretion for Ministers to make the decision where the level of risk is such that a Crown decision is considered most appropriate. We recommend projects requiring concessions and access arrangements can be called in if they satisfy any of the following criteria: • Novel infrastructure projects (i.e. with less understood effects and risks) • Projects with significant potential for public health and safety consequences • Projects with large downstream liabilities (e.g. significant costs for the Crown at the end of its life or if the project fails). We recommend projects seeking land exchanges can be called in if they satisfy any of the following criteria: • Interactions with other processes that could have significant impacts on the land concerned (e.g. a proposed State highway route or in-progress Treaty negotiations) • Where displacing existing users/operators could have significant financial or legal implications (e.g. someone's multi-million-dollar concession is required to cease, and DOC might be liable). • Where the Crown would be accepting a financial loss. • Where land proposed to be acquired by the Crown may result in significant ongoing costs to manage (e.g. subject to known natural hazard risks or contamination issues).

5. The options in the table below ensure that when the Panel makes decisions, they are best positioned to protect the Crown from undue risks by ensuring they:

    i Have access to information on Crown risks

ii Are incentivised to comprehensively consider Crown risks

iii Set conditions that are workable for the Crown and the Crown would consider sufficient to protect its interests.

Option	Explanation
Requirement for pre-application engagement with DOC (cost-recoverable) and specific information requirements relating to Crown risks and liabilities for the substantive application. *[Addressing risk that Panel may not have access to adequate expertise and knowledge on issues of Crown risks]*	Pre-application engagement with DOC and specific information requirements would ensure they have considered significant Crown interests and would enable the applicant to refine their proposal ahead of their substantive application. This will allow the Panel to assess and understand the issues more efficiently. It ensures the best possible application is before the panel, improving efficiency and quality of decision making.
Requirement for DOC (or other relevant agency if not conservation land) to provide a report to the Panel that: 1. describes any relevant issues, risks, liabilities, including a description of the Crown's interest in the land/resources which needs to be protected 2. outlines mitigating conditions that may be applied and whether these adequately address any relevant issues 3. makes a recommendation to the panel on which conditions should be put in place to mitigate Crown risk and liabilities. *[Addressing risk that Panel may not have access to adequate expertise and knowledge on issues of Crown risks]*	A report from DOC (or other relevant agency e.g. LINZ) will ensure that the panel has access to the same project-specific information that DOC would under normal decision-making processes.
Allow the panel to request additional advice from DOC (or other relevant agency) as necessary to understand the Crown risks and liabilities associated with a project, and that this servicing is cost recoverable by the agency. *[Addressing risk that Panel may not have access to adequate expertise and knowledge on issues of Crown risks]*	The Bill currently allows agencies to cost recover for functions, duties, or powers under the Act. The ability to cost recover should go beyond specific requirements under the Act (e.g. providing a report) and cover additional advice that the Panel may request where they need that expertise from agencies.
Require applicants to provide proof of an audited health and safety plan to the panel with their substantive application.	DOC requires proof of an independently audited safety plan as a requirement for approvals. This should also be required by the

Option	Explanation
[Addressing risk that Panel may not have access to adequate expertise and knowledge on issues of Crown risks]	panel to help manage health and safety risks for the Crown.
The Bill could require the Panel to consult the land-owning Minister on its decisions impacting the Crown's interest in land/resources prior to finalising them. *[Addressing risk that Panel may not have access to adequate expertise and knowledge on issues of Crown risks]*	Requiring the Panel to consult with the land-owning Minister will assist in providing the wider Crown context. It may also allow the Minister to consult with their colleagues where risks are particularly high. This is in line with the expectations of Ministers set out in the Cabinet Manual. The information provided through this consultation will help the Panel assess and decide whether that is a *reasonable* risk for the Crown to take on, in the context of what liabilities already exist in relation to public conservation land (including inherited contaminated sites such as abandoned fuel storage sites, landfills, asbestos contamination).
Provide the ability for the Panel to extend timeframes or "stop the clock" to seek independent expert advice on the viability, risks and potential liabilities of a project. *[Addressing risk that Panel may not have access to adequate expertise and knowledge on issues of Crown risks]*	In some instances, the panel may wish to get independent, expert advice on the Crown risks and liabilities of a particularly risky project (as was done at the request of the then Conservation Minister for the Fiordland monorail proposal). However, sourcing expert advice with sufficient robustness to be useful to the panel is unlikely to be possible within the panel's timeframes and may require an extension or for the "clock to be stopped" while such advice is sought. Allowing the Panel to "stop the clock" may prevent the Panel from being forced to decline projects based on a lack of information resulting from timeframe constraints. Allowing sufficient time for further information to be acquired may enable the Panel to approve the project.
Allow the land-owning Minister to set mandatory non-environmental terms and conditions as a matter of policy that would apply to all fast track contracts. This could include fees, terms, and risk management conditions. The Panel would have no discretion to alter these. *[Addressing risk that Panel may set conditions that the Crown considers insufficient to protect its interests]*	This allows the Crown to set standard terms and conditions that should apply across projects, ensuring that frequently occurring risks could be managed as a matter of Government policy. However, there may still be project-specific risks or issues that would need to be addressed through bespoke conditions. As part of the process of developing the standard terms and conditions, an assessment would be made of how proportionate they are

Option	Explanation
	to ensure they protect the Crown's interests but are not prohibitively onerous on applicants. Standard terms and conditions would make the process more efficient, reduce the time the Panel has to spend on non-environmental matters and give applicants certainty about what to expect for their contracts.
Clarify that the Panel may decline a land management approval on the basis that it creates unacceptable risk for the Crown. *[Addressing risk that Panel may not be incentivised to decline a project that would be considered unacceptably risky by the Crown]*	While conditions on an approval will usually appropriately mitigate Crown risks, there may be some proposals where the risks remain unacceptable despite conditions that may be set. In this case the panel should be able to protect the Crown's interests through declining the approval.
The Bill includes an express requirement that the Panel ensures the Crown's interest in the land/resources of the Crown is protected as far as practicable when it makes decisions (including in the setting of conditions) and that the panel must decline the project if this cannot be achieved. *[Addressing risk that Panel may not be incentivised to decline a project that would be considered unacceptably risky by the Crown]*	The incentive for the panel to appropriately address Crown risks and liabilities in its decisions is strengthened by an express requirement in the Bill.

Approach to dealing with leases and rights of first refusal

6. Rights of first refusal in Treaty settlement legislation often apply to PCL. If PCL subject to an RFR is being disposed of to a private party, the RFR is triggered, in which case the Crown needs to offer the land to the Treaty partner on the same terms as the offer being made to the private party.

7. Disposal is defined in most, if not all, Treaty settlement legislation as including the Crown granting a lease if the term of the lease (including rights of renewal or extensions, whether in the lease or granted separately) is, or could be, for 50 years or longer. Concessions for significant infrastructure projects (dams, mines, etc.) could require exclusive possession and so be seeking concessions or access arrangements as leases, and they will presumably for more than 50 years (especially including renewal rights or extensions).

8. These leases would trigger RFRs, meaning the Panel would need to offer leases on the same terms to any RFR holders, both because of the obligation in clause 6 of the Bill as introduced (requirement to "act in a manner that is consistent with the obligations arising under existing Treaty settlements"), and because it would be unlawful not to honour statutory RFRs.

9. If 50+ year leases were granted in spite of RFR obligations and without RFR holder consent, those decisions would be vulnerable to judicial review and voidable.

10. There are two options for this issue, as outlined in the table below.

	Description	**Benefits**	**Disbenefits**
Option 1: No change to the Bill	Under the Bill as drafted, Panels have access to information on rights of first refusal through • Clause 13 "Treaty settlements and other obligations report" • the invited comments • the report from DOC.	This approach may provide Panels with sufficient information to prevent the granting of unlawful concessions without needing an additional step of seeking approval from the holder of the first right of refusal.	The Panel (and DOC) may waste time processing an approval for a lease that may be unlawful. This option carries some risk of judicial review if holders of rights of first refusal consider that their rights have been impinged. This is a different approach than the one taken for Land Exchanges in the Fast Track process. This could create uncertainty about when the approval of holders of first rights of refusal is required in Fast Track.
Recommended Option 2: Require written approval from holder of the right of first refusal	The Bill could be amended to require the applicant to obtain written approval of the RFR holder when applying for leases where the term is likely to (including if any rights of renewal or extension are exercised) extend beyond 50 years. This could take the form of an	This option is consistent with the approach taken for land exchanges in the Bill. It will increase consistency of Fast Track processes across different approval types. This option has lower risk of judicial review.	The holder of the right of first refusal could be perceived to have significant influence over whether a project is ultimately able to proceed.

	information requirement for referral – the applicant would need to provide confirmation of the right holder's consent for their application to be considered complete.		

11. If Option 1 is chosen there is a higher risk that time will be wasted progressing an application that cannot be approved or that the Panel makes a decision that is ultimately unlawful and is judicially reviewed.

12. If the Panel agrees a term that triggers the RFR provision in Treaty settlements but does not offer the RFR rights holder on the same terms, the decision would be inconsistent with the Treaty settlement and vulnerable to judicial review

Next steps – Ngā tāwhaitanga

13. We will incorporate your decisions or direction into the briefing and draft Cabinet paper due to be delivered to you on 22 August, seeking further policy and workability decisions for inclusion in an amendment paper.

14. That draft Cabinet paper seeks Cabinet agreement to issue the Parliamentary Counsel Office with drafting instructions.

ENDS

Attachment E: 24-M-0098: Talking points for 19 August Fast-track Ministers meeting

Talking points – 19 August Ministers' meeting

Land management approvals

- Cabinet agreed that the Panel makes land management decisions but that the Minister of Infrastructure, the Minister of Conservation, and the Minister for Resources will determine how that is implemented, including appropriate mitigation thresholds and initiatives.
- This is to manage the legal, financial, and health and safety risks that can fall to the Crown.
- Proposed mitigations have been developed by DOC in consultation with other agencies.
- The intention is for the Panel to make most of the decisions. Officials recommend that in limited circumstances the Panel can refer the decision to the Minister (e.g. where the Panel considers it cannot mitigate Crown liabilities) or the Minister can 'call-in' the decision (e.g. where the Crown is subject to especially significant financial or legal risks).
- Proposed threshold criteria for 'calling in' concessions and land exchange decisions are set out in the paper. These are intended to limit the use of the call in power to a minority of decisions. For example, if a Panel decision would result in an immediate fiscal impact (loss) for the Crown, this decision should be called in so that the Crown can determine how to manage it.
- As the Panel will still make most of these decisions, officials also recommend that the Bill supports the Panel to manage these risks through a range of additional measures designed to ensure that the Panel has sufficient information and incentives to appropriately address Crown risks and that conditions set by the Panel are workable.

Leases and first right of refusal

- Rights of first refusal (RFR) in Treaty settlement legislation often apply to public conservation land (PCL).
- This is often triggered if the term of a lease (including rights of renewal or extensions, whether in the lease or granted separately) is, or could be, for 50 years or longer. This is likely to apply for some big fast-track projects like dams or mines which require exclusive possession.
- Where this is the case, the Crown needs to offer the land to the Treaty partner on the same terms as the offer being made to the applicant.
- If 50+ year leases were granted in spite of RFR obligations and without RFR holder consent, those decisions would be vulnerable to judicial review and voidable.
- The Bill could be amended to require an applicant to obtain written approval of the RFR holder when applying for a lease where the term is likely to extend beyond 50 years. This would be consistent with the approach taken for land exchanges and RFRs.
- This would reduce inefficiencies by ensuring that engagement with RFR holders is worked through at the outset. It would also reduce the risk that approvals are given that are inconsistent with Treaty settlements, as such approvals would be vulnerable to judicial review.

Attachment F: 24-B-0424: Decisions on land management and rights of first refusal in FTAB

Department of Conservation
Te Papa Atawhai

Briefing: Decisions on land management and rights of first refusal in FTAB

To	Minister of Conservation Minister of Resources	**Date submitted**	21 August 2024
Risk Assessment	High Your decisions will determine your control over managing and mitigating Crown land liabilities in the fast track process.	**Priority**	High
Reference	24-B-0424	**DocCM**	DOC-7727505
Security Level	In Confidence		

Action sought	Agree how to manage Crown liabilities and risks. Agree an approach to Treaty Settlement obligations concerning rights of first refusal.	**Timeframe**	By 27 August to provide time for decisions to be reflected in the Cabinet paper.
Attachments	Appendix A: How each land management option can mitigate Crown risks.		

Contacts	
Name and position	**Cell phone**
Sam Thomas, Policy Director, Policy and Regulatory Services, S9(2)(a) [redacted]	S9(2)(a) [redacted]

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. Fast-track Ministers met on Monday 19 August to make decisions on a range of issues. At that meeting, Ministers delegated decisions on land management mitigations and rights of first refusal to the Minister of Conservation and the Minister of Resources.

2. This briefing provides you with information to support that decision-making.

Land management mitigations

3. Applicants can get approvals for activities on conservation land through fast-track. This includes concessions, mining access arrangements, and land exchanges.

4. The Government manages risk when activities are done on conservation land. This includes legal, financial, and health and safety risk. Some of this can be significant: for instance, big assets that could be left abandoned on conservation land if not managed properly.

5. Cabinet agreed that the panel will make land management decisions in fast track. They also agreed that the Minister of Infrastructure, the Minister of Conservation, and the Minister for Resources will determine how that is implemented, including appropriate mitigation thresholds and initiatives.

6. You have a choice about how much you wish to mitigate potential risks to the Crown. The most basic option is to empower the panel to fully consider Crown risks and to grant them the ability to decline an application if those risks are not mitigated (**recommendations a and b**). You can also provide ways of getting them adequate information on potential Crown risks, to better inform their decisions (**recommendations c to e**). We recommend these at a minimum.

7. You could also grant Ministers the ability to influence or intervene. The least intrusive options would be to allow the responsible Minister to set standard terms and conditions in land contracts (insurance requirements, health and safety obligations, etc), and/or to compel the panel to consult the responsible Minister before making a final decision involving a Crown risk (**recommendations f and g**).

8. Further options would be to allow the panel to refer projects to the Minister responsible for the land if they do not consider they can adequately mitigate Crown risks, and/or to empower that Minister to 'call in' any project that hits certain significant risk thresholds (**recommendations h and i**).

9. We recommend you provide a call-in power to the responsible Minister. This allows the Crown to intervene, if it is likely that Crown risks cannot be appropriately managed. We have proposed criteria to determine when a 'call in' power could be used (**recommendations j and k**). Criteria allowing a call-in relate to the significance of Crown risk, not other things like conservation or environmental issues. Note that officials can revisit this, if you consider any call-in power should be more strictly limited.

Leases and rights of first refusal

10. The Bill requires consistency with Treaty settlement legislation, most of which includes rights of first refusal. This includes the right of first refusal if the Crown grants a lease for 50 years or longer (including renewing a lease – such as subsequently renewing a 49-year lease).

11. For leases likely to go beyond 50 years (like a dam or mine), we recommend the Bill is amended to require an applicant to obtain written approval of the holder of first-right-of-refusal (**recommendations l and m**).

12. There are no options to extinguish the right of first refusal without undermining Treaty settlement legislation.

We recommend that you … (Ngā tohutohu)

		Decision
Land management		
a)	**Agree** that the panel must ensure the Crown's interest in the land/resources of the Crown is protected as far as practicable when it makes decisions (including in the setting of conditions) and that the panel must decline the project if this cannot be achieved.	**Yes / No**
b)	**Agree** that the panel may decline a land management approval on the basis that it creates unacceptable risk for the Crown.	**Yes / No**
c)	**Agree** that the Bill provides for DOC (or other relevant agency if not conservation land) to provide a report that: • Describes any relevant issues, risks, liabilities, including a description of the Crown's interest in the land/resources which needs to be protected • Outlines mitigating conditions that may be applied and whether these adequately address any relevant issues • Makes a recommendation to the panel on which conditions should be put in place to mitigate Crown risk and liabilities.	**Yes / No**
d)	**Agree** that applicants must provide proof of an audited health and safety plan to the panel with their substantive application.	**Yes / No**
e)	**Agree** that the panel is able to extend timeframes or "stop the clock" to seek independent expert advice on the viability, risks and potential liabilities of a project in relation to land management decisions.	**Yes / No**
f)	**Agree** that Bill allows the Minister responsible for the land to set mandatory non-environmental terms and conditions as a matter of policy for contracts.	**Yes / No**
g)	**Agree** that the panel must consult the Minister responsible for the land before making a decision on land management approvals.	**Yes / No**
h)	**Agree** that the panel may refer the approval decision to the Minister responsible for the land if they are not satisfied they have adequate information to assess Crown risk for a particular project or they cannot adequately mitigate Crown liability in the given case	**Yes / No**
i)	**Agree** that the Minister responsible for the land concerned has the discretion to 'call-in' the decision on the approval if the risks for the Crown reach appropriate thresholds.	**Yes / No**

j)	**Agree** that the thresholds for concessions and access arrangements are: • novel infrastructure projects (i.e. with less understood effects and risks) • projects with significant potential for public health and safety consequences • projects with large downstream liabilities (e.g. significant costs for the Crown at the end of its life or if the project fails).	**Yes / No**
k)	**Agree** that the thresholds for land exchanges are: • where displacing existing users/operators could have significant financial or legal implications (e.g. someone's multi-million-dollar concession is required to cease, and DOC might be liable). • where the Crown would be accepting a financial loss. • where land proposed to be acquired by the Crown may result in significant ongoing costs to manage (e.g. subject to known natural hazard risks or contamination issues).	**Yes / No**
Leases and rights of first refusal		
l)	**Agree** that written approval of the holder of a relevant RFR is required for leases to be granted where the term will (or is likely to with subsequent renewals) extend beyond 50 years.	**Yes / No**
m)	**Agree** that written approval of the RFR holder is required as an information requirement at referral and that an application cannot be considered complete and referred to fast-track without this approval.	**Yes / No**

pp

Date: 21 / 08 /24

Sam Thomas on behalf of
Deputy Director-General, Policy and
Regulatory Services

Date: / /

Hon Shane Jones
Minister of Resources

Date: / /

Hon Tama Potaka
Minister of Conservation

Purpose – Te aronga

1. This briefing seeks your decisions on:
    - managing the Crown's land manager risks and liabilities in the fast track process; and
    - the approach to rights of first refusal obligations for fast track leases.
2. These decisions were delegated to you at the Fast-track Ministers meeting on 19 August.

Delegated decisions for land management approvals

3. Cabinet agreed that the panel makes land management decisions but that the Minister of Infrastructure, the Minister of Conservation, and the Minister for Resources will determine how that is implemented, including appropriate mitigation thresholds and initiatives. This is in the context of protecting the Crown from risks and liabilities associated with land exchange, concession, and access arrangement decisions.
4. You have a choice about how much you wish to mitigate potential risks to the Crown. At one end is empowering the panel to fully consider Crown risks and to grant them the ability to decline an application if those risks are not mitigated (**recommendations a and b). Recommendations c to e** provide ways of getting the panel adequate information on potential Crown risks, to better inform their decisions. We recommend these options at a minimum to ensure the panel has what it needs to make a robust decision.
5. You could also grant Ministers the ability to influence or intervene. The least intrusive options would be to allow the responsible Minister to set standard terms and conditions in land contracts (insurance requirements, health and safety obligations, etc), and/or to compel the panel to consult the responsible Minister before making a final decision involving a Crown risk (**recommendations f and g**).
6. Further options would be to allow the panel to refer projects to the Minister responsible for the land if they do not consider they can adequately mitigate Crown risks, and/or to empower that Minister to 'call in' any project that hits certain significant risk thresholds (**recommendations h and i**).
7. We recommend you provide a call-in power to the responsible Minister. This allows the Crown to intervene, if it is likely that Crown risks cannot be appropriately managed. We have provided criteria to determine when a 'call in' power could be used (**recommendations j and k**).
8. Criteria allowing a call-in relate to the significance of Crown risk, not other things like conservation or environmental issues. Note that officials can revisit this, if you consider any call-in power should be more strictly limited.
9. The table in Appendix A summarises how each option available to you can mitigate Crown risks.

Rights of first refusal

3. Rights of first refusal (RFR) in Treaty settlement legislation often apply to conservation land. If conservation land subject to an RFR is being disposed of to a private party, the RFR is triggered, in which case the Crown needs to offer the land to the Treaty partner on the same terms as the offer being made to the private party.

4. Disposal is defined in most, if not all, Treaty settlement legislation as including the Crown granting a lease if the term of the lease (including rights of renewal or extensions, whether in the lease or granted separately) is, or could be, for 50 years or

longer. Concessions for significant infrastructure projects (dams, mines, etc.) could require exclusive possession and so be seeking concessions or access arrangements as leases, and they will presumably for more than 50 years (especially including renewal rights or extensions).

5. These leases would trigger RFRs, meaning the panel would need to offer leases on the same terms to any RFR holders, both because of the obligation in clause 6 of the Bill as introduced (requirement to "act in a manner that is consistent with the obligations arising under existing Treaty settlements"), and because it would be unlawful not to honour statutory RFRs.

6. If 50+ year leases were granted in spite of RFR obligations and without RFR holder consent, those decisions would be vulnerable to judicial review and voidable.

7. There are two options for this issue, as outlined in the table below.

	Description	**Benefits**	**Disbenefits**
Option 1: No change to the Bill	Under the Bill as drafted, panels have access to information on rights of first refusal through • Clause 13 "Treaty settlements and other obligations report" • the invited comments • the report from DOC.	This approach may provide panels with sufficient information to prevent the granting of unlawful concessions without needing an additional step of seeking approval from the holder of the first right of refusal.	The panel (and DOC) may waste time processing an approval for a lease that may be unlawful. This option carries some risk of judicial review if holders of rights of first refusal consider that their rights have been impinged. This is a different approach than was agreed for fast-track land exchanges. This could create uncertainty about when the approval of holders of first rights of refusal is required in fast-track.
Recommended Option 2: Require written approval from holder of the right of first refusal	The Bill could be amended to require the applicant to obtain written approval of the RFR holder when applying for leases where the term is likely to (including if any rights of renewal or extension are	This option is consistent with the approach taken for land exchanges in the Bill. It will increase consistency of fast-track processes across different approval types. This option has lower risk of judicial review.	The holder of the right of first refusal could be perceived to have significant influence over whether a project is ultimately able to proceed.

	exercised) extend beyond 50 years. This could take the form of an information requirement for referral – the applicant would need to provide confirmation of the right holder's consent for their application to be considered complete.		

8. If Option 1 is chosen there is a higher risk that time will be wasted progressing an application that cannot be approved or that the panel makes a decision that is ultimately unlawful and is judicially reviewed.

9. If the panel agrees a term that triggers the RFR provision in Treaty settlements but does not offer the RFR rights holder on the same terms, the decision would be inconsistent with the Treaty settlement and vulnerable to judicial review.

Risk assessment – Aronga tūraru

10. Note that the panel will be making decisions that carry risk and liabilities for the Crown, and that we recommend minimising exposure to this risk with a strictly limited Ministerial call-in power to be used if necessary.

11. Note that there are no options to extinguish the right of first refusal without undermining Treaty Settlement legislation.

Next steps – Ngā tāwhaitanga

12. Officials will incorporate your decisions into the final Cabinet paper to be lodged for ECO on 12 September.

ENDS

Appendix A: How each land management option can mitigate Crown risks

Option	Explanation
Options to support the panel to manage Crown risks	
The Bill includes an express requirement that the panel ensures the Crown's interest in the land/resources of the Crown is protected as far as practicable when it makes decisions (including in the setting of conditions) and that the panel must decline the project if this cannot be achieved.	The incentive for the panel to appropriately address Crown risks and liabilities in its decisions is strengthened by an express requirement in the Bill.
Clarify that the panel may decline a land management approval on the basis that it creates unacceptable risk for the Crown.	While conditions on an approval will usually appropriately mitigate Crown risks, there may be some proposals where the risks remain unacceptable despite conditions that may be set. In this case the panel should be able to protect the Crown's interests through declining the approval.
Options to ensure the panel has adequate information to make an informed decision	
Requirement for DOC (or other relevant agency if not conservation land) to provide a report to the panel that: 1. describes any relevant issues, risks, liabilities, including a description of the Crown's interest in the land/resources which needs to be protected 2. outlines mitigating conditions that may be applied and whether these adequately address any relevant issues 3. makes a recommendation to the panel on which conditions should be put in place to mitigate Crown risk and liabilities.	A report from DOC (or other relevant agency e.g. LINZ) will ensure that the panel has access to the same project-specific information that DOC would under normal decision-making processes.
Require applicants to provide proof of an audited health and safety plan to the panel with their substantive application.	DOC requires proof of an independently audited safety plan as a requirement for approvals. This should also be required by the panel to help manage health and safety risks for the Crown.
Provide the ability for the panel to extend timeframes or "stop the clock" to seek independent expert advice on the viability, risks and potential liabilities of a project.	In some instances, the panel may wish to get independent, expert advice on the Crown risks and liabilities of a particularly risky project (as was done at the request of the then Conservation Minister for the Fiordland monorail proposal).

Option	Explanation
	However, sourcing expert advice with sufficient robustness to be useful to the panel is unlikely to be possible within the panel's timeframes and may require an extension or for the "clock to be stopped" while such advice is sought. Allowing the panel to "stop the clock" may prevent the panel from being forced to decline projects based on a lack of information resulting from timeframe constraints. Allowing sufficient time for further information to be acquired may enable the panel to approve the project.
Options to grant the responsible Minister the ability to influence decisions	
Allow the land-owning Minister to set mandatory non-environmental terms and conditions as a matter of policy that would apply to all fast track contracts. This could include fees, terms, and risk management conditions. The panel would have no discretion to alter these.	This allows the Crown to set standard terms and conditions that should apply across projects, ensuring that frequently occurring risks could be managed as a matter of Government policy. There would still be project-specific risks or issues that would need to be addressed by the panel through bespoke conditions. As part of the process of developing the standard terms and conditions, an assessment would be made of how proportionate they are to ensure they protect the Crown's interests but are not prohibitively onerous on applicants. Standard terms and conditions would make the process more efficient, reduce the time the panel has to spend on non-environmental matters and give applicants certainty about what to expect for their contracts.
The Bill could require the panel to consult the land-owning Minister on its decisions impacting the Crown's interest in land/resources prior to finalising them.	Requiring the panel to consult with the land-owning Minister will assist in providing the wider Crown context. It may also allow the Minister to consult with their colleagues where risks are particularly high. This is in line with the expectations of Ministers set out in the Cabinet Manual. The information provided through this consultation will help the panel assess and decide whether that is a *reasonable* risk for the Crown to take on, in the context of what liabilities already exist in relation to public conservation land (including inherited contaminated sites such as abandoned fuel storage sites, landfills, asbestos contamination).
Options to grant the responsible Minister the ability to intervene for significant risks	
The land-owning minister has discretion to 'call-in' the decision <u>if the risks for the Crown reach a certain threshold</u>	The intention is for the panel to make most of the decisions, but the following criteria provide discretion for Ministers to make the decision

Option	Explanation
	where the level of risk is such that a Crown decision is considered most appropriate. We recommend projects requiring concessions and access arrangements can be called in if they satisfy any of the following criteria: • Novel infrastructure projects (i.e. with less understood effects and risks) • Projects with significant potential for public health and safety consequences • Projects with large downstream liabilities (e.g. significant costs for the Crown at the end of its life or if the project fails). We recommend projects seeking land exchanges can be called in if they satisfy any of the following criteria: • where displacing existing users/operators could have significant financial or legal implications (e.g. someone's multi-million-dollar concession is required to cease, and DOC might be liable). • where the Crown would be accepting a financial loss. • where land proposed to be acquired by the Crown may result in significant ongoing costs to manage (e.g. subject to known natural hazard risks or contamination issues).
Options for the panel if they cannot mitigate Crown risks	
The panel can refer the decision to the land-owning minister responsible for the land in certain circumstances.	This allows the panel to refer the decision to the land-owning Minister if: • they are not satisfied they have adequate information to assess Crown risk for a particular project, or • are not satisfied that they can adequately mitigate Crown liability in the given case.

Attachment G: 24-B-0418: Policy and procedural matters for FTAB land exchanges

Department of Conservation
Te Papa Atawhai

Briefing: Policy and procedural matters for FTAB land exchanges

To	Minister of Conservation Minister of Regional Development	**Date submitted**	22 August 2024
Action sought	Agree to the recommended approach so that an amendment paper can be drafted.	**Priority**	High
Reference	24-B-0418	**DocCM**	DOC-7725886
Security Level	In Confidence		

Risk Assessment	High If an exchange results in financial losses to the Crown in respect of the value of Crown land, then an appropriation to provide Crown funding will be required. The decision of the panel would bind the Crown and require appropriations to be made, constraining the ability of the department to fund its core functions and priorities, or requiring new appropriations to cover the unforeseen costs associated with the exchange.	**Timeframe**	By 28 August so that an amendment paper can be drafted.
Attachments	None.		

Contacts	
Name and position	**Cell phone**
Sam Thomas, Policy Director, Policy and Regulatory Services	S9(2)(a)

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. There are several policy areas where further decisions are necessary to ensure the fast-track land exchange process is clear and workable.

2. This briefing seeks decisions on the following policy and procedural matters for land exchanges:

    - Progressing land exchange versus concessions/access arrangements - we recommend the process allows for either the exchange of land or a concession/access arrangement for the same activity on the same piece of land (but not both). This is to ensure the applicant retains the option to choose and prevents excessive duplication and longer timeframes for the Panel.
    - Alignment with the broader process – further policy decisions are needed to clarify how the necessary land transaction steps can align with the Panel process.
    - Interaction with existing users of conservation land – policy decisions are required to provide for a pathway to navigate through any existing property rights that may exist on land proposed for exchange (e.g. existing lease holders).
    - Approach to differing financial values – we recommend that the Crown is financially no worse off as a result of the exchange. Any alternative approach would require new funding.
    - Consideration of Crown liabilities – the Panel should be able to consider Crown liabilities in deciding and setting conditions on exchanges. Not doing so is problematic as it does not allow for the Crown's interests to be protected.
    - Cost recovery for land exchange processes – land exchanges generally require external experts (e.g. surveyors, engineers). These costs should be recoverable from the applicant.

We recommend that you … (Ngā tohutohu)

		Decision
a)	**Agree** that applicants can apply for either a land exchange or concession/access arrangement for a particular activity on a particular piece of land (not both).	Yes / No
b)	**Agree** that the Panel decision to approve a land exchange through the fast-track process is a 'conditional approval' that outlines legal and technical conditions to be met before the final contracts for the exchange are signed.	Yes / No
c)	**Agree** that the completion of relevant steps following conditional approval is at the applicant's cost.	Yes / No
d)	**Agree** that existing rights holders on the land proposed for exchange are added to the list of people and groups who can comment on an exchange.	Yes / No
e)	**Agree** that the applicant is required to have consulted with existing rights holders before applying for referral and must provide details of their comments in the referral application.	Yes / No
f)	**Agree** that a resolution with existing rights holders does not need to be achieved prior to the conditional decision of the panel, but where resolution is outstanding, this must be included as a	Yes / No

	condition of the approval that must be satisfied before the exchange can occur.	
g)	**Agree** that any reasonable costs incurred by DOC are recoverable from the applicant including: • in the negotiation process with existing rights holders; and • using external experts to undertake activities required to facilitate an exchange.	Yes / No
h)	**Agree** that any reasonable costs incurred in the negotiation process with existing rights holders be recoverable by the rights holder from the applicant**.**	Yes / No
i)	**Agree** that: • if the land offered by the applicant is of lower financial value than the land being sought through the land exchange, the applicant is required to pay the difference to the Crown to offset any Crown losses that would result from the land exchange; and • the Crown will not be required under any circumstances to make payment to the applicant to provide for equity of financial value as part of a land exchange.	Yes / No
j)	**Agree** that Crown liabilities are required to be included in DOC's report	Yes / No
k)	**Agree** that Crown liabilities must be considered by the Panel in their assessment of the proposed exchange.	Yes / No
l)	**Agree** that the Panel may set conditions on the conditional approval of a land exchange to protect the Crown's interests.	Yes / No

pp.

Date: 20 / 08 / 24

Sam Thomas on behalf of
Deputy Director-General, Policy and
Regulatory Services

Date: / /

Hon Shane Jones
Minister of Regional Development

Date: / /

Hon Tama Potaka
Minister of Conservation

Purpose – Te aronga

1. This paper seeks decisions on policy and procedural matters for land exchanges through the Fast-track Approvals Bill (the Bill).

Background and context – Te horopaki

2. Land exchanges allow developers to acquire public conservation land (PCL), while providing alternative land to the Crown, which would then become PCL.
3. Land exchanges are likely to be sought by developers who may want permanency and more autonomy over land use than they would have if they obtained a concession or access arrangement to use PCL.
4. There are several further policy decisions required to ensure the fast-track exchange process is clear and workable:
    - Progressing land exchange versus concessions/access arrangements
    - Alignment with the broader process
    - Interaction with existing users of conservation land
    - Approach to differing financial values
    - Consideration of Crown liabilities
    - Cost recovery for land exchange processes

Progressing land exchange versus concessions/access arrangements

5. Concessions or access arrangements (for mining projects) provide permissions for activities to occur on conservation land while it remains in public ownership. Alternatively, when the land is acquired through a land exchange, a concession or access arrangement is no longer required, as the land is no longer in public ownership.
6. The fast-track approvals one stop shop is intended to provide all the required approvals for a project through an efficient process that avoids unnecessary duplication. To ensure there is no unnecessary duplication and that the Panel process doesn't take longer than necessary, **we recommend that applicants can apply for either a land exchange or concession/access arrangement for a particular activity on a particular piece of land (not both).**
7. If a land exchange failed, and an applicant wished to attempt a concession/access arrangement instead, applicants could submit a further substantive application for the concession/access arrangement and a panel would be convened to consider that. They would not need to be re-referred to the fast track, and would be prioritised under the broader prioritisation approach agreed by Ministers.
8. This reduces duplication and maintains a simple panel process where an exchange can proceed. Some projects would need to go through an additional panel process to exhaust attempts for all the necessary approvals. However, this would only occur where the land exchange fails which would occur less often that if another approach were taken.

Alignment with the broader process

9. Decisions on land exchanges require very different considerations to other decisions in the fast-track process. They are a land transaction which requires appropriate levels of due diligence including site visits, contamination assessments, and a good understanding of what risks, costs and liabilities are being taken on by the Crown with the newly acquired land.
10. Typically, a land exchange process includes the following steps:

a) Land status checks on the land involved and identifying if there are any land related issues, e.g. accessibility, survey required, land-locked land, existing users, contamination, etc.

b) Technical assessment of conservation values on the land involved (both desktop and onsite).

c) Valuations of both parcels of land (to ascertain accounting requirements or if there is a variation in financial or conservation value such that one party must pay to the other).

d) Engagement with relevant parties.

e) Administrative steps to give effect to the exchange (e.g. conveyancing, reclassifying, and contract drafting).

11. These processes do not readily or easily sit within the panel decision-making process set up by the FTAB, in particular the timeframes for the panel to consider and decide on all approvals are unlikely to allow sufficient time for:

a) Due diligence to occur to understand the appropriateness of the proposed land exchange. Adequate due diligence is required to ensure that the land exchange is viable and to understand the full implications of the exchange for the Crown. Due diligence activities could take several months to complete, as much of the work is reliant on the availability of external technical experts (e.g. valuers and engineers) and can be impacted by weather, site access, and other external factors.

b) The administrative and contractual steps required to give effect to the panel decision and complete the exchange process (e.g. survey, or boundary adjustment, sale and purchase process for the land being offered by the applicant, easements or access agreements).

12. Because of this, you previously agreed the following (adapted to reflect that the panel is now the decision-maker):

a) An in-principle decision on a land exchange is made after the project is referred but before the Panel is convened to consider the substantive application; and

b) That the formal administrative and procedural steps of the exchange follow the in-principle decision of the Panel.

13. This means that:

a) The Panel wouldn't be convened to assess the substantive application until the due diligence for the land exchange has been completed and the DOC report is ready to submit to the Panel.

b) DOC works with the applicant to give effect to the Panel's decision and complete the final administrative and technical steps of the exchange – having the Panel convened for these steps would be inefficient as the steps are generally legal and technical (e.g. surveying, boundary adjustments, drafting contracts).

The decision on the land exchange is 'conditional approval'

14. As described above, you previously agreed the exchange decision would be 'in-principle' with administrative steps to follow. We recommend a better term is 'conditional approval'. This reflects that there are additional technical and legal steps to give effect to the exchange that cannot take place during the timeframe of the panel without significant inefficiencies.

15. The conditional approval would give the applicant confidence that the tests in the Bill have been met and, provided all legal and technical issues are resolved, the exchange will go ahead.

16. Following the conditional approval of a land exchange, there are a range of administrative and process steps that are required to give effect to the exchange. This includes conveyancing, reclassifying the land parcels, and drafting and agreeing terms and conditions in relevant paperwork. Usually, any issues that arise at this point can be resolved through extra time or additional expenditure.

17. An exchange could not fail at this point because of relitigation of the considerations in the Bill (e.g. net conservation benefit or financial implications for the Crown) but, in very rare cases it could fail where the applicant chooses not to invest further in the final legal or technical steps necessary to effect the exchange or the ability to meet net conservation benefit is rendered functionally impossible (e.g. by a catastrophic weather event).

18. **We recommend the Panel's conditional approval decision includes conditions that must be met during the final steps of the process (e.g. surveying, conveyancing, any needs for easements).**

19. **We also recommend that the completion of relevant steps following conditional approval are at the applicant's cost.**

Interaction with existing users of conservation land

20. A land exchange may prevent any existing rights holders (e.g. concessionaries or those with easements across the land) from exercising their rights.

21. Given these impacts, we consider it appropriate for existing rights holders to be involved in the exchange process. In keeping with the overall architecture and policy intent of the fast-track process, **our recommended approach is to:**

    a) Include existing rights holders in the list of parties invited to comment on projects that involve land exchanges; and

    b) Require the applicant to consult with existing rights holders prior to applying for referral, and to include their comments as part of their application.

22. Where existing rights holders are impacted by a proposed land exchange, it will be necessary for an agreement to be reached between the parties to the contract (DOC and the rights holder), and the land exchange applicant, or for the matter to be resolved in another way that would enable the exchange to be progressed. **We recommend that any reasonable costs incurred in the negotiation process with existing rights holders be recoverable from the applicant by DOC and the rights holder.**

23. This agreement does not need to be reached prior to applying for an exchange. **We recommend that where resolution is outstanding, this must be included as a condition of the approval that must be satisfied before the exchange can occur.** Failure to do so would expose the Crown to substantial risk of litigation and compensation.

24. Possible resolutions include:

    a) The rights holder agrees to relocate to another site (e.g. a new concession or a variation be required if the new site is on public conservation land);

    b) That the recipient of the exchange provides the rights holder with financial compensation for early termination of the right; or

c) If the right is consistent with the proposed new activity, the right holder might be able to contract privately with the recipient of the land exchange.

Approach to differing financial values

25. Generally, when DOC carries out a land exchange, there is also a financial consideration to ensure equality of exchange – that is, if a developer wants to acquire land worth $500,000, in exchange for a parcel of land worth $300,000, the developer would pay the Crown the difference of $200,000. However, land exchanges are currently rare and controlled by the Crown whereas fast-track exchanges are likely to be more common and driven by the applicant. There is nothing in the Bill to clarify the approach to differing financial values.

26. There are three possible outcomes from a land exchange:

    a) The land being exchanged is of equal financial value (highly unlikely)

    b) The land proposed to be received by DOC is of a lower financial value than the land to be provided to the applicant.

    c) The land proposed to be received by DOC is of a higher financial value than the land to be provided to the applicant.

27. The net conservation benefit test set out in the Bill may be met in any of these situations, as the test solely focuses on the conservation benefit not financial benefit. Where there is a difference in financial value, there may be fiscal implications for the Crown.

28. Where land offered to the Crown in an exchange is of higher financial value than the land being disposed of, this would require the Crown to make a payment of the difference to the applicant. This is particularly challenging if the Panel is the decision-maker, as they would decide whether DOC must pay the developer in order to equalise an exchange.

29. This would have potentially significant impacts on Crown appropriations that would have to be met either through departmental baselines (which would be unsustainable and require reprioritisation that may affect DOC's ability to deliver its core services) or through specific appropriations as part of Budget processes, which may not line up cleanly with exchange decisions and create delays in giving effect to the land exchange.

30. If the Crown accepts a lower valued piece of land as part of the exchange, this loss in value results in a write-down that must still be funded through an appropriation. This would have the same potentially significant impacts on Crown appropriations as noted above and could also result in delays in executing the land exchange.

31. **We recommend that:**

    a) if the land offered by the applicant is of lower financial value than the land being sought through the exchange, the applicant is required to pay the difference to the Crown to offset any Crown losses that would result from the land exchange; and

    b) the Crown will not be required under any circumstances to make payment to the applicant to provide for equity of financial value as part of a land exchange.

32. This is considered appropriate given the applicant has full discretion over whether they apply for an exchange (as opposed to seeking a concession or access arrangement) and over which parcel of land they offer the Crown in exchange. They are therefore able to mitigate any potential financial losses they may incur as a result of the exchange.

Consideration of Crown liabilities

33. The Bill currently requires the decision-maker to consider the financial implications of a land exchange but not non-financial liabilities.

34. Land to be acquired by the Crown through an exchange may have liabilities which will require consideration. For example, the land may have a road or track which the Crown would then have the obligation to maintain, or a derelict building which is a health and safety risk to people in the vicinity. There could also be clean-up obligations if hazardous substances have previously been stored or used on the land.

35. The consideration of these issues should be explicitly provided for in the Bill and supported by DOC's report on the land exchange that is provided to the Panel. It also follows that the Panel should be able to set conditions as part of the conditional approval in relation to those liabilities that protect the Crown's interests.

36. **We recommend that Crown liabilities are required to be included in DOC's report and considered by the Panel. We also recommend that conditions may be applied to the conditional approval of a land exchange that protect the Crown's interests.**

Cost recovery for land exchange processes

37. Some of the processes and expertise required for land exchanges require significant investment on the part of the Crown, including land valuation, survey, boundary fencing, or removing buildings. These activities will often be undertaken by third parties on behalf of the Crown.

38. Clearly allowing for cost recovery of these processes would ensure that the person who benefits from the land exchange (i.e. the applicant) bears the full costs of this transaction.

39. **We recommend that DOC may cost recover from the applicant the costs of using external experts to undertake activities required to facilitate an exchange.**

Risk assessment – Aronga tūraru

40. If Ministers do not agree to the recommended approach for differing financial value, there may be significant impacts on Crown appropriations that the Crown would have no control over. Differences in value of the land would have to be met either through departmental baselines (which would be unsustainable and require reprioritisation that may affect DOC's ability to deliver its core services) or through specific appropriations as part of Budget processes, which may not line up cleanly with exchange decisions and create delays in giving effect to the land exchange.

Treaty settlements

41. There are no significant impacts on Treaty settlements as a result of the options presented in this paper.

Consultation – Kōrero whakawhiti

42. This policy has been informed by discussions with the Ministry for the Environment, and Treasury.

Next steps – Ngā tāwhaitanga

43. Officials will incorporate your decisions into the final Cabinet paper to be lodged for ECO on 12 September.

Attachment H: 24-B-0419: Expanding the scope of freshwater fisheries approvals in FTAB

Department of Conservation
Te Papa Atawhai

Briefing: Expanding the scope of freshwater fisheries approvals in FTAB

To	Minister Responsible for RMA Reform Minister of Conservation Minister of Regional Development	**Date submitted**	22 August 2024
Action sought	Agree to the recommended approach to expanding the scope of the FTAB freshwater fisheries approvals so that an amendment paper can be drafted.	**Priority**	High
Reference	24-B-0419	**DocCM**	DOC-7725895
Security Level	In Confidence		

Risk Assessment	Low	**Timeframe**	By 28 August so that an amendment paper can be drafted.
Attachments	Attachment One – Diagram of proposed approach to freshwater fisheries approvals in the FTAB		

Contacts	
Name and position	**Cell phone**
Sam Thomas, Policy Director, Policy and Regulatory Services	S9(2)(a) [redacted]

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. The Fast-track Approvals Bill (FTAB) provides for freshwater fisheries authorisations that may otherwise be required for such projects under the Freshwater Fisheries Regulations 1983 (FFR) and the Conservation Act 1987.
2. As the FTAB is currently drafted, less technically complex activities that impact on freshwater fish, such as the construction of culverts or fish salvage, would be addressed as part of a fast-track resource consent rather than through separate conservation approvals. However, projects that include permanent, large instream structures, like dams, would still require approvals outside the one stop shop process.
3. This paper seeks decisions to better integrate complex freshwater fisheries approvals into the FTAB, by expanding and clarifying the scope to include dams and other structures that may impede or permanently obstruct fish passage.
4. Standard, less complex activities such as temporary instream works, construction of culverts and fish salvage will be able to be authorised by fast track resource consent. We propose that more complex structures, i.e., dams and diversions (excluding some weirs) and culverts or fords that permanently block fish passage, will be able to be authorised through the one stop shop via a fast track freshwater fisheries approval. Information and decision-making considerations are proposed to support applicants during the application process and the Panel in its decision-making.

We recommend that you … (Ngā tohutohu)

		Decision
a)	**Note** that the original policy intent for Freshwater Fisheries Regulations' inclusion in the FTAB was to provide for certain 'standard', less complex activities as part of a fast-track resource consent	
b)	**Note** that the one stop shop objective is better met by also including more complex and technical approvals, such as those relating to dams and other permanent, large instream structures, in the FTAB	
c)	**Agree** that authorisations for any dams and diversions are deemed to be granted under the Freshwater Fisheries Regulations and have the same force and effect as if granted under those regulations	Yes / No
d)	**Agree** that the following additional 'complex' approvals normally requiring authorisation under Freshwater Fisheries Regulations 42 and 43 are included in the FTAB as a fast-track freshwater fisheries approval: i) any permanent dam or diversion (with the exception of some weirs); and ii) any culvert or ford that permanently blocks fish passage.	Yes / No
e)	**Agree** that 'standard' activities that are dealt with by the fast-track resource consent include:	Yes / No

	i) any culvert or ford that could impede fish passage, with the exception of those that permanently block fish passage; and ii) weirs that comply with the conditions of regulation 72 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 iii) the following 'temporary' works, defined as works: o where active disturbance to the waterbody (e.g. diversions, in-stream operations, removal of gravel) does not persist for more than three months; o that do not occur during the whitebaiting season, where the works are within 500 m of the coast; o that do not occur during the spawning season where the works are in an area known to be used for trout, salmon or native fish spawning; or o 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.	
f)	**Agree** that the referral application for a project related to activities in freshwater must include the following information: i) identification of whether an instream structure is proposed (including formal notification of any dam or diversion structure) and the extent to which this may impede fish passage; and ii) identification of whether any fish salvage activities or other activities within scope of schedule 8 are proposed.	Yes / No
g)	**Agree** that the following information is required in the substantive application to ensure applicants have certainty and the Panel has all the information it needs to make robust decisions: i) in relation to the structure and any fish facility: type, dimensions, design, placement, flows, operating regime; ii) the freshwater species and values of the pathway (with particular focus on threatened, data deficient, and at-risk species as defined in the New Zealand Threat Classification System); iii) quality and quantity of the surrounding habitat (at the proposed structure location, upstream and downstream); iv) how the passage of fish will be provided or impeded.	Yes / No
h)	**Agree** that, consistent with the approach to consents, the applicant must comply with conditions on freshwater fisheries approvals and the Panel may recommend any conditions considered necessary for the purpose of managing effects	Yes / No
i)	**Agree** that the Panel considers the following additional matters (subject to the greater weighting of the purpose of the Bill) when making a decision on consents or approvals relating to activities in freshwater:	Yes / No

	i) alignment with best practice and the NZ Fish Passage Guidelines; ii) management of risks to freshwater values or habitat, including prevention of access to or spread of invasive species; iii) availability and quality of upstream and/or downstream habitat; iv) presence of threatened, data deficient, and at-risk species under the NZ Threat Classification System; and v) advantages of providing fish passage upstream and/or downstream.	
j)	**Agree** that for 'complex' freshwater fisheries approvals, DOC is required to provide a report (including advice on the matters in (i)) to the Panel and the Panel must consider this report	Yes / No
k)	**Agree** that the timeframe for a decision on any requirement for a fish facility under the Freshwater Fisheries Regulations does not apply to approvals under the FTAB given the FTAB has its own timeframes	Yes / No

pp.

Date: 20 / 08 / 24

Sam Thomas on behalf of
Deputy Director-General, Policy and
Regulatory Services

Date: / /

Hon Shane Jones
Minister of Regional Development

Date: / /

Hon Tama Potaka
Minister of Conservation

Purpose – Te aronga

1. This briefing proposes amendments to the freshwater fisheries provisions in the Fast-track Approvals Bill (FTAB) to expand and clarify the scope to include dams and other structures that may impede or permanently obstruct fish passage.

Background and context – Te horopaki

2. The original policy intent for including freshwater fisheries approvals in the FTAB was to streamline less technically complex activities that impact on freshwater fish, such as the construction of culverts or fish salvage. The intent of Schedule 8 in the FTAB is that these 'standard' approvals are covered by the resource consent as the resource consent will often adequately consider these issues.

3. As the FTAB is currently drafted, projects that include permanent, large instream structures, like dams, would still require approvals outside the one stop shop process. To meet the policy intent of the one stop shop, the Minister of Conservation has agreed that these approvals should be integrated into the FTAB [24-B-0339 refers].

4. This paper provides advice on how to give effect to this decision via an amendment paper.

5. Five matters are considered in this paper:

    a) expanding the scope of approvals to meet the one stop shop intent;

    b) how to distinguish between 'standard' activities that can be approved via the resource consent process under the FTAB and 'complex' activities that would require a freshwater fisheries approval under the FTAB;

    c) information requirements for applications relating to both types of authorisation;

    d) process and considerations for freshwater fisheries authorisations; and

    e) consequential technical amendments related to the above.

6. A process diagram outlining authorisations for these activities (Attachment 1) is attached.

Expanding the scope of approvals to meet the one stop shop intent

7. More complex and technical freshwater activities, including permanent, large, instream structures such as dams, were not included within the scope of the FTAB as introduced. Approvals for such activities would need to have been sought outside the FTAB process, using existing legislation (the FFR and the Conservation Act).

8. To better align with the policy intent of the one stop shop, **we recommend that the scope of approvals is expanded, so that more complex activities within freshwater can be included within the FTAB**.

9. Permanent, large structures may have significant effects on freshwater species and habitats. Assessment of these effects and how to mitigate them (such as through construction of a fish facility) is technically complex and best assessed on a case-by-case basis. They are less suited to being dealt with solely through a resource consent. **We therefore recommend that such structures require a separate freshwater fisheries approval under the FTAB, rather than receive authorisation via resource consent.** This will provide consistency with other conservation approvals and provide for the Department to provide a report to the Panel to inform their consideration of whether the structure should provide for fish passage and how that could be done.

Distinguishing between standard and complex activities

10. If you agree to the recommendations above, both standard and complex freshwater fish related activities can be progressed through the one-stop shop; standard activities through the resource consent and complex ones through a fast-track freshwater fisheries approval. This will require further clarity in the Bill regarding what constitutes a standard or complex activity.

11. If you do not agree to the recommendations above, further clarity is still required in the Bill on what types of activities are currently included – the Bill is not clear.

Types of structures

12. Culverts and fords are less complex structures for which there is good best practice guidance available to inform design that provides for fish passage. Temporary obstruction of fish passage through instream works such as culverts or fords is already provided for in the FTAB. **We recommend that culverts and fords that do not permanently block fish passage can be considered 'less complex' and considered through the resource consent process.**

13. Weirs that comply with regulation 72 of the Resource Management (National Environmental Standards for Freshwater) Regulations[1] 2020 present lower risk of adverse impacts and **we recommend that these can also be considered 'less complex' and considered through the resource consent process.**

14. However, where structures will permanently block fish passage, more detailed assessments are required given their long lasting impacts. In addition, permanent and large instream structures such as dams are technically complex to assess in terms of potential impacts on freshwater species and habitats, and providing for fish passage is also technically complex. As such, **we recommend that the following activities require a freshwater fisheries approval under the FTAB (and cannot be approved solely via a resource consent under the FTAB):**

    a) any permanent dam or diversion (other than those weirs identified as 'less complex' above); or

    b) any culvert or ford that permanently blocks fish passage.

Temporary works

15. Temporary works are considered to be less complex activities that can be authorised via a resource consent. However, 'temporary' is not currently defined in the Bill. **We recommend that a definition is provided in the FTAB that includes the following:**

    a) where active disturbance to the waterbody (e.g. diversions, in-stream operations, removal of gravel) does not persist for more than three months;

    b) that do not occur during the whitebaiting season, where the works are within 500 m of the coast;

    c) that do not occur during the spawning season, where the works are in an area known to be used for trout, salmon or native fish spawning; or

    d) 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.

[1] Conditions relating to weirs are included in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020. These conditions were designed to provide direction on the design of weirs such that their construction would be a permitted activity, and the weir would provide unimpeded fish passage.

Information requirements

16. Information requirements for freshwater fisheries authorisations are missing from the FTAB. While some of the statutory tests are different under the FTAB, the information required to make assessments is the same.

17. At the referral stage, the FTAB requires an application to include information about the different approvals for a project. To enable an assessment at that stage of what, if any, consent or freshwater fisheries approvals may be required, **we recommend that the applicant includes the following information in the referral application:**

    a) identification of whether an instream structure is proposed (including formal notification of any dam or diversion structure) and the extent to which this may impede fish passage; and

    b) identification of whether any fish salvage activities or other activities within scope of schedule 8 are proposed.

18. **We recommend the following information requirements are drafted into the FTAB for the substantive application to ensure applicants for both consents and approvals have certainty and the Panel has all the information it needs to make robust decisions**:

    a) in relation to the structure and any fish facility: type, dimensions, design, placement, flows, operating regime.

    b) the freshwater species and values of the pathway (with particular focus on threatened, data deficient, and at-risk species as defined in the New Zealand Threat Classification System).

    c) quality and quantity of the surrounding habitat (at the proposed structure location, upstream and downstream).

    d) how the passage of fish will be provided or impeded.

Process and considerations for consents and freshwater fisheries approvals

19. Decision-making considerations for freshwater fisheries activities are necessary to provide a framework for the Panel's assessment.

20. The FTAB requires that for activities included in a consent, the applicant must comply with conditions and that the panel will consider best practice standards and the New Zealand Freshwater Fish Passage Guidelines in setting conditions. For clarity, **we recommend that the same apply to freshwater fisheries approvals**.

21. **We recommend that the Panel also considers the following when making a decision and setting conditions on freshwater fisheries approvals and consents:**

    a) management of risks to freshwater values or habitat, including prevention of access to or spread of invasive species;

    b) availability and quality of upstream and/or downstream habitat;

    c) presence of threatened, data deficient, and at-risk species under the NZ Threat Classification System; and

    d) advantages of providing fish passage upstream and/or downstream.

22. To ensure the Panel has enough information for its assessment of freshwater fisheries approvals (not consents) **we recommend that DOC is required to provide a report to the Panel, including in relation to the matters above, which the Panel must consider alongside the substantive application.**

Consequential technical amendments to support the above proposals

23. To support ongoing management of dams and diversions authorised under FTAB, **we recommend that authorisations for dams and diversions would be deemed to be granted under regulation 43 of the FFR and have the same force and effect as if granted under the FFR**.

24. Regulation 44(1) of the FFR provides timeframes for decision-making on fish facilities. **We recommend disapplying this for FTAB approvals given that there are already timeframes in the FTAB.**

Risk assessment – Aronga tūraru

25. If the additional approvals under the FFR are not included in the FTAB, then some approvals for fast-track projects that include instream structures will need to be sought outside of the one-stop shop.

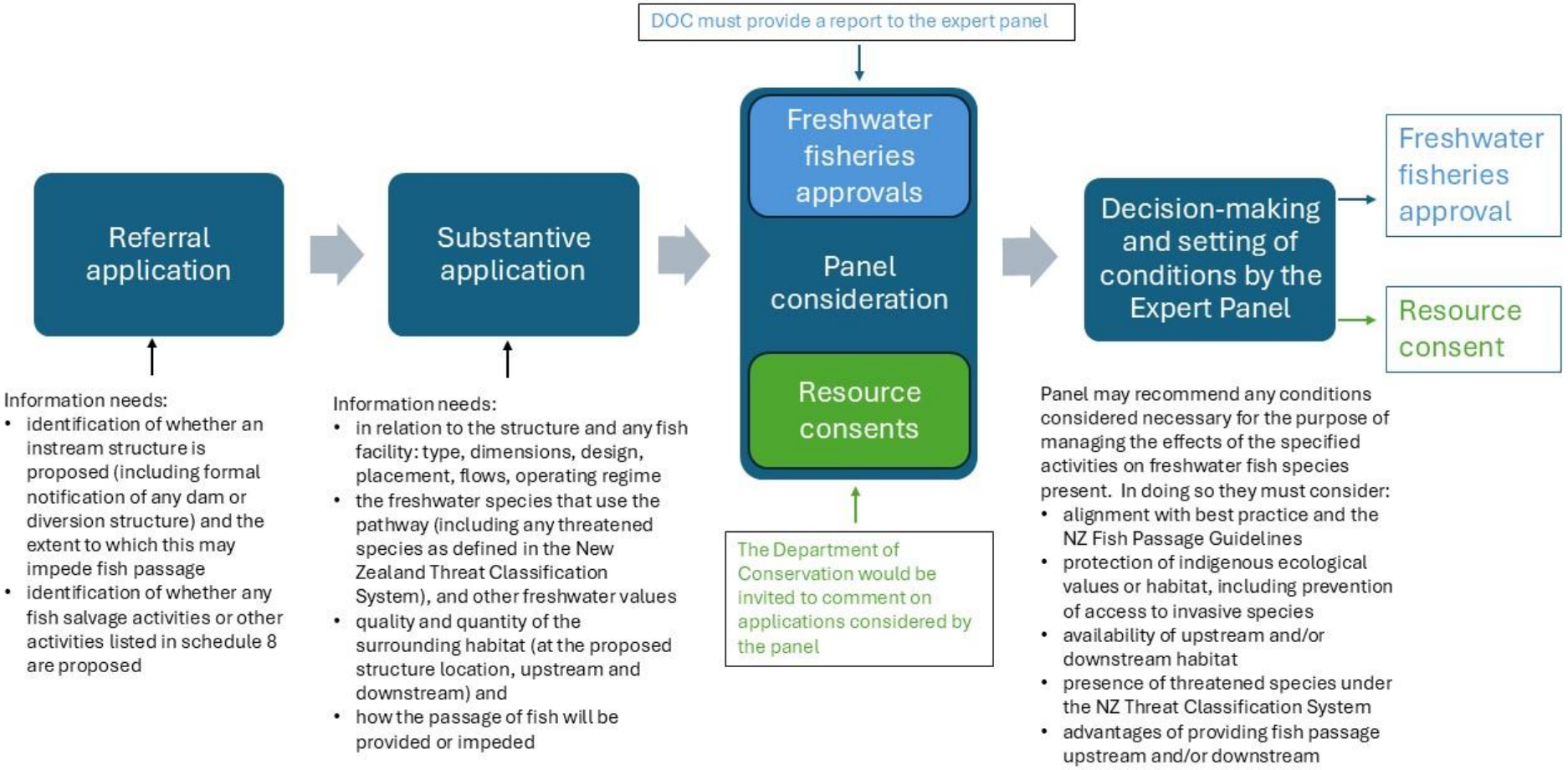
26. Including these approvals in the FTAB is low risk. Appropriate condition-setting and provision of adequate information at the application stage will be important for mitigating potential risks to native freshwater fish species and habitats.

Treaty settlements

27. There are no significant additional Treaty implications related to including FFR approvals in the FTAB.

ENDS

Attachment One – Diagram of proposed approach to freshwater fisheries approvals in the FTAB



Attachment I: 24-B-0434: Fast-track Approvals Bill: Electricity infrastructure on high value conservation land

Department of Conservation
Te Papa Atawhai

Briefing: Fast-track Approvals Bill: Electricity infrastructure on high value conservation land

To	Minister of Conservation Minister Responsible for RMA Reform Minister for Energy	**Date submitted**	12 September 2024
Action sought	Make policy decisions relating to fast-track approvals for electricity work on high value conservation land	**Priority**	High
Reference	24-B-0434	**DocCM**	DOC-7749844
Security Level	In Confidence		

Risk Assessment	Medium Incorporating the additional protections recommended in this briefing (Options One or Two to varying degrees) will mitigate risks associated with fast-tracking on high value conservation land.	**Timeframe**	Decisions required by 17 September
Attachments	Attachment A – Map of areas that are currently ineligible under the Bill Attachment B – Map of areas proposed to continue to be ineligible for fast-track approvals for new electricity transmission under Option Two		

Contacts	
Sam Thomas, Director, Policy	S9(2)(a)
Angela Bell, Manager, Marine Policy	S9(2)(a)

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. The Fast-track Approvals Bill includes categories of high value conservation land that are part of the ineligibility criteria in the Bill. Cabinet has agreed that a limited set of electricity transmission and generation activities should be eligible in these areas.

2. We will instruct the Parliamentary Counsel Office to draft an amendment paper to the Bill based on this decision. However, some further decisions are needed to clarify how Cabinet's decisions will apply practically. The decisions relate to:

    - referral application information requirements from applicants seeking to undertake projects on high value conservation land; and
    - relationships with statutory bodies that have relevant responsibilities.

3. Based on the decisions you have made, the existing concessions framework in the Bill will apply to electricity approvals on high value conservation land. This can be done, but you may wish to implement risk mitigation measures which will not unduly restrict development. We consider there are two viable options for this:

    - the first option is to require that projects on high value conservation land must be consistent with the purpose for which the area is protected; or
    - the second is to apply the same less stringent tests as will be used for fast-track concessions for lower value conservation areas, but exclude new electricity transmission approvals from some of the highest value areas that are also unlikely to be barriers to critical electricity infrastructure, such as nature reserves (like Te Hauturu-o-Toi / Little Barrier Island), and specially protected areas within national parks (like the Takahē Protection Area in Fiordland).

4. In all instances, we recommend marine reserves remain ineligible because:

    - they are not part of the concessions framework and a new permissions framework will need to be developed which would have timeframe implications for the Bill; and
    - marine reserves are small and relatively few so routing infrastructure around them should be relatively easy.

5. We also consider that comments should be sought from the Guardians of Lakes Manapouri, Monowai and Te Anau, for applications relevant to their expertise. This reflects their statutory obligation in relation the existing electricity generation.

6. We consider that these outstanding decisions are needed to ensure workability and are therefore appropriate to be made by joint Ministers, however if you consider engaging with Cabinet is necessary, we will provide content in a paper to Cabinet Legislation Committee.

We recommend that you … (Ngā tohutohu)

		Decision
a)	**Note** that Cabinet agreed that amendments be made to the Bill to allow for fast-track applications to be made for: • existing electricity transmission infrastructure (such as upgrades and maintenance), provided the proposal would not materially change the scale or effects of the infrastructure • new electricity transmission infrastructure where that cannot practically or reasonably occur elsewhere • continued, unchanged operations of existing electricity generation, provided the proposal does not materially change the scale or effects of the infrastructure	Noted
b)	**Agree** that referral applications will need to contain information explaining why the project is not expected to materially change the scale or effects of the infrastructure, or for new projects, why the infrastructure cannot practically or reasonably occur elsewhere	Yes / No
c)	**Agree** that the DOC report on land that is provided at referral covers advice on the issues in recommendation b)	Yes / No
d)	**EITHER** i) Agree that considerations in the Bill for general concessions will apply to concessions for electricity work on high value conservation land **OR** ii) Agree to additional risk mitigation Option 1: a. projects on high value conservation land must be consistent with the purpose for which the area is protected b. decision-makers must have regard to the purpose of the Bill **OR** iii) Agree to additional risk mitigation Option 2: a. considerations in the Bill for general concessions will apply to concessions for electricity work on high value conservation land b. nature reserves, specially protected areas in national parks, Ramsar sites, and wilderness areas will remain ineligible for fast-track approvals for <u>new</u> electricity transmission	Yes / No Yes / No Yes / No
e)	**Agree** that marine reserves will continue to be ineligible for fast-track approvals relating to existing transmission and generation activities, and new electricity transmission (as there is no existing permissions regime that can be incorporated into the one stop shop)	Yes / No

f)	**Agree** that comments should be sought from Guardians of Lakes Manapouri, Monowai and Te Anau on fast-track applications relating to the Manapouri-Te Anau or Lake Monowai hydroelectricity power schemes	Yes / No
g)	**Indicate** whether you would like to take the above decisions to Cabinet	Yes / No

Date: 12/09/24

Ruth Isaac
Deputy Director-General, Policy and Regulatory Services

Date: / /

Hon Tama Potaka
Minister of Conservation

Date: / /

Hon Chris Bishop
Minister Responsible for RMA Reform

Date: / /

Hon Simeon Brown
Minister for Energy

Purpose – Te aronga

1. This briefing seeks detailed policy decisions (delegated by Cabinet) to enable electricity transmission and generation activities on high value conservation land to be considered through the fast-track process.

2. Decisions on these matters will feed into an Amendment Paper to the Fast-track Approvals Bill (the Bill) to be tabled at the Committee of the whole House.

Background and context – Te horopaki

Decisions to date

3. Cabinet agreed that amendments be made to the Bill to allow applications for some electricity generation and transmission activities on high value conservation land [CAB-24-MIN-0272 refers]. They agreed amendments be made for:

    - existing electricity transmission infrastructure (such as upgrades and maintenance), provided the proposal would not materially change the scale or effects of the infrastructure;
    - new electricity transmission infrastructure where that cannot practically or reasonably occur elsewhere;
    - continued, unchanged operations of existing electricity generation, provided the proposal does not materially change the scale or effects of the infrastructure.

4. For the purposes of this briefing, the activities listed above are referred to collectively as “electricity work”. These types of projects, where they occur on public conservation land, will usually require both concessions and resource consents. This means that they will benefit from accessing the one-stop shop.

5. Cabinet authorised the Minister Responsible for RMA Reform, Minister for Energy, and Minister of Conservation to take further decisions on the details and for the Minister for RMA Reform to issue drafting instructions to the Parliamentary Counsel Office to give legislative effect to those decisions.

6. To action the amendments, further policy decisions are required on:

    - information requirements at the referral stage;
    - the role of the Guardians of Lakes Manapouri, Monowai and Te Anau.

7. We consider that these decisions are points of workability, to ensure that a clear process and parameters can be built into the Bill. However, if you consider that this goes beyond the scope of decisions already made, you may consider it appropriate to consult your Cabinet colleagues on the points in this briefing. These can be included as decision points in the next fast-track paper to Cabinet Legislation Committee if desired.

Concessions for electricity work

8. Concessions for electricity work on public conservation land can be, and already have been, granted under status quo policy settings in some circumstances (for example, DOC has approved several electricity transmission lines, and re-routing of existing transmission lines in national parks) under current legislation.

9. Meridian and Transpower have existing arrangements that expedite approvals for their existing operations. These arrangements provide a basis to work from for these policy decisions. For example:

- S9(2)(b)(ii) [redacted]
- the Manapouri - Te Anau Development Act 1963 is a special Act of Parliament which enables the construction and ongoing operation of the Manapouri Power Scheme (in Fiordland National Park). As a result, DOC may not require the operator to hold a concession, and Meridian does not need to apply for land use resource consents (only water take consents) for work that is "necessary or requisite" to operate the existing Manapouri Power Station.

Further policy decisions are required to prepare drafting instructions

Information requirements at referral

10. So that the referral Minister has relevant information regarding the eligibility of electricity projects, we recommend that applicants will be required to provide the following in their referral briefing:
    - for projects on existing electricity infrastructure (e.g., maintenance, upgrades, continued operation of electricity generation), information about the anticipated effects, and whether these are expected to be materially different than those already occurring; or
    - for new electricity transmission projects, an explanation of why it is not reasonable or practical for the project to occur elsewhere.

11. We also recommend that DOC, in its referral report to Ministers on land, provides advice relating to the points above.

12. Regardless of which other options you choose in this briefing, this information will be required to operationalise the decisions Cabinet has already made.

Enabling fast-track development and possible risk mitigation measures

13. Based on Cabinet's decisions, the existing requirements in the Bill for concessions on lower value conservation land will also apply to electricity work on high value conservation land.

14. Allowing maintenance of existing transmission and generation infrastructure is relatively low risk, as the infrastructure is already in place, and the marginal effects of maintenance and upgrades are likely to be small.

15. However, new transmission infrastructure is different, as the impacts will be more significant and on areas that may not already be modified. Given the value of these areas, our view is that this warrants some additional constraints. We consider there are two possible options to enable appropriate development, while mitigating risks for conservation and biodiversity values:
    - Option One: Projects must be consistent with the purpose for which the area is protected
    - Option Two: Conservation considerations in the Bill apply, with some particularly high-value protected area types remaining ineligible

16. For all options, we recommend that marine reserves would remain ineligible for fast-track approvals relating to existing transmission and generation activities. This recommendation reflects that:
    - there are no existing transmission lines in marine reserves; and

- marine reserves are generally small (0.4% of New Zealand's waters) which means that any offshore electricity cabling should be able to easily avoid them.

17. Marine reserves are not subject to the concessions framework (or any other permissions framework), so a new permissions framework would need to be designed which would have timeframe implications for the Bill. Note that activities in marine mammal sanctuaries (which are much bigger and were cited in Transpower's submission) are already able to be fast-tracked in the Bill.

Risk Mitigation Option One: Projects must be consistent with the purpose for which the area is protected

18. The exclusion of high value conservation land was one of the only remaining safeguards for biodiversity values in the Bill. It is appropriate to consider higher thresholds for projects to be approved within areas with the highest values. This allows electricity works to be fast-tracked but requires greater consideration of the conservation values associated with the land.

19. Because of the importance of high value conservation land, we recommend that any projects in these areas must be consistent with the purpose for which the land is held. This would be required regardless of the benefits of the project and would be operationalised by ensuring that the project is consistent with any relevant national park management plan, conservation management plan, or conservation management strategy, as well as the Conservation General Policy and the General Policy for National Parks (where applicable). This is reinstating a test that applies under existing legislation. Additional considerations would align with those for broader concessions as already agreed for the Bill. As this is a threshold test, the purpose of the Bill would remain a consideration for the panel, but would not be weighted above the purpose for which the area is protected.

20. DOC's experience is that small-scale electricity infrastructure can be, and has been, approved in high value conservation areas. Where large-scale electricity work would be inconsistent with the purpose of a high value protected area, the project may not be approved under this option. DOC does not have records of large-scale electricity projects applying for approvals in recent years, so the outcome has not been tested under the status quo.

Risk Mitigation Option Two: Conservation considerations in the Bill apply, with some protected area types excluded

21. In this option, decision-makers would apply the concessions considerations in the Bill, as well as the additional tests already agreed by Cabinet (refer to paragraph 3). It may therefore allow more projects with greater adverse effects to access fast-track, compared to risk mitigation option one. In order to mitigate the risks in this option, we recommend that some sub-categories of land with the very highest values would continue to be excluded from new electricity transmission projects.

22. These sub-categories cover areas where the purpose is for natural values of the land to be preserved and protected, and where there are exceptionally high conservation values present. These areas generally have public access restrictions under current legislation. We also consider that these areas are unlikely to be relevant to critical electricity infrastructure because of their location and remoteness (e.g., many are on offshore islands, or are in areas a day's walk from the closest road), or their size (many are small so could likely be avoided). In this option, the land classifications in Table One would remain out of scope for new electricity transmission projects through

the fast-track process. This is not expected to stymie important electricity infrastructure projects. These areas are highlighted in the map in Attachment B.

23. Some areas are also subject to international legal obligations under the Ramsar Convention on Wetlands. Infrastructure across these sites may be inconsistent with New Zealand's international obligations, unless it can be demonstrated that infrastructure does not negatively change the ecological character of these internationally protected sites. International obligations also apply to World Heritage Areas, although the implications are not expected to substantially change from the proposals in this briefing – fast-track approvals could already occur in World Heritage Areas (e.g. parts of Te Wahipounamu that are not part of national parks).

24. New transmission projects, as well as maintenance and continued operation of transmission and generation activities could still be applied for through fast-track in scientific reserves, sanctuary areas, wildlife sanctuaries, national reserves (except some national reserves which have a dual classification as nature reserves), and most national park areas (other than specially protected areas and wilderness areas within national parks).This is because these areas, although still of high conservation value, are either not quite as high value as those in Table One, or are generally closer to towns and roads and are therefore more likely to be the subject of critical electricity infrastructure.

25. Maintenance or upgrade of existing transmission lines and generation activities would still be able to be fast-tracked on all high value conservation land (except marine reserves as explained earlier) consistent with Cabinet's decisions. Excluding the areas in Table One from new transmission projects does not mean that these projects could never occur; developers will still be able to apply for permission using existing processes and legislative tests.

Table One: Protected area types proposed to be excluded from fast-track for new transmission lines, under Option 2

Classification	Rationale
Specially protected areas (small areas within national parks)	Under current legislation, no person is allowed to enter these areas without a permit from the Minister of Conservation, and no permit shall be issued unless it is for a purpose consistent with the management plan of the national park. They are set apart to preserve intact, with minimum human interference, areas that possess indigenous plant or animal life or ecological, geological or historical features of significance. These areas make up approximately 0.7% of public conservation land, or 0.2% of all of New Zealand's land area. Examples include the Takahē Protection Area in Fiordland.
Nature reserves	Under current legislation, no person is allowed to enter these areas without a permit from the Minister of Conservation. This is because their purpose is to protect and preserve indigenous flora and fauna that are of such rarity, scientific interest or uniqueness that their protection and preservation is in the public interest. The majority of nature reserves are on small offshore islands; examples include Te Hauturu-o-Toi / Little Barrier Island. Altogether they make up approximately 1% of public conservation land, or 0.4% of New Zealand's land area.
Wilderness areas	Under current legislation, no building, road or track can be constructed or maintained in these areas, and no vehicles may be

	taken into the areas. They are managed to preserve their natural condition with minimal human interference, and the majority are very remote. Wilderness areas are approximately 6% of public conservation land, or 1.8% of New Zealand's land area. Examples include the Pembroke Wilderness Area which borders Milford Sound.
Ramsar sites	New Zealand has designated seven sites as wetlands of international importance. Criteria for these include (but are not limited to) that they are rare or unique wetland types, or that they support threatened conservation values. Collectively they make up around 0.7% of conservation land; examples include the Firth of Thames which is one of New Zealand's most important coastal sites for shorebirds.

Additional commenters for electricity works projects

26. You previously agreed to include relevant statutory bodies on those invited to comment on fast-track proposals with conservation approvals (e.g. the New Zealand Conservation Authority). This recommendation is reflected in the Departmental Report.

27. The Guardians of Lakes Manapouri, Monowai and Te Anau is a statutory body appointed to make recommendations to the Minister of Conservation on any matters arising from the environmental, ecological, and social effects of the operation of the Manapouri-Te Anau hydroelectric power scheme on:

    a) the townships of Manapouri and Te Anau;

    b) Lakes Manapouri and Te Anau and their shorelines; and

    c) the rivers flowing in and out of those lakes.

28. The Guardians of Lakes Manapouri, Monowai and Te Anau have the same role with regard to the effects of the Monowai Power Scheme on Lake Monowai.

29. We recommend that for approvals relating to the Manapouri-Te Anau and Monowai hydroelectric power schemes, comments should be sought from this group.

Risk assessment – Aronga tūraru

30. It is likely that the general public, environmental NGOs, hunting and fishing groups, and recreation groups will be opposed to fast-tracking any approvals on high value conservation land. In the Bill as currently drafted, the ineligibility of approvals on high value conservation land is the main safeguard for conservation and biodiversity. Either of the risk mitigation options set out in this briefing would reduce these risks.

31. In relation to Ramsar sites, there are international reputational risks of any reduction in protections for internationally significant wetlands, hence the need to build in safeguards for any electricity work in these areas. If Ramsar sites are developed beyond what is provided for in the Convention, the consequences could include compliance or monitoring processes that are costly to the Government and, if the problems are not resolved, result in a loss of status for those sites.

Treaty settlements

32. Some of the areas that are under the highest levels of conservation protection have those classifications partly because of Treaty settlements. For example, the Te Koroka specially protected area in Mount Aspiring National Park is very significant to Ngāi Tahu. There will be an expectation that protection of this type is not undermined in any way.

33. Because comments on applications must be sought from relevant iwi authorities and relevant Treaty settlement entities, we anticipate that panels will take these comments into consideration.

Consultation – Kōrero whakawhiti

34. This briefing was reviewed by the Ministry of Business, Innovation and Employment.

Financial implications – Te hīraunga pūtea

35. There are no specific financial implications from the proposals in this briefing.

Legislative implications – Te hīraunga a ture

36. Decisions in this briefing will feed into the Amendment Paper process for the Bill, giving effect to previous Cabinet decisions.

Next steps – Ngā tāwhaitanga

37. Following your decisions, we will provide drafting instructions to the Parliamentary Counsel Office. These will be incorporated into a Cabinet paper seeking agreement to the suite of Amendment Papers for the Bill.

38. At the time you receive the draft Cabinet paper, you will also receive a Supplementary Analysis Report on this topic.

ENDS

Attachment A: Maps of areas currently out of scope of fast-track approvals

Attachment B: Maps of areas proposed to be out of scope for new electricity transmission under Option 2

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

Protected area listed in clauses 1-11 & 14 of Schedule 4

Marine reserve listed in clauses 1-11 & 14 of Schedule 4

Other public conservation land

Whangarei

Auckland

New Plymouth

Napier

Wellington

N

0 50 km

Chatham Islands

0 10 km

Department of Conservation
Te Papa Atawhai

Protected areas listed in clauses 1-11 & 14 of Schedule 4
North Island & Chatham Islands

Te Kāwanatanga o Aotearoa
New Zealand Government

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

Protected area listed in clauses 1-11 & 14 of Schedule 4

Marine reserve listed in clauses 1-11 & 14 of Schedule 4

Other public conservation land

Nelson

Greymouth

Christchurch

Dunedin

Subantarctic Islands

Bounty Islands

Snares Islands

Antipodes Islands

Auckland Islands

0 5 km

Campbell Island

N

0 50 km

Department of Conservation *Te Papa Atawhai*

Protected areas listed in clauses 1-11 & 14 of Schedule 4 South Island & Subantarctic Islands

Te Kāwanatanga o Aotearoa
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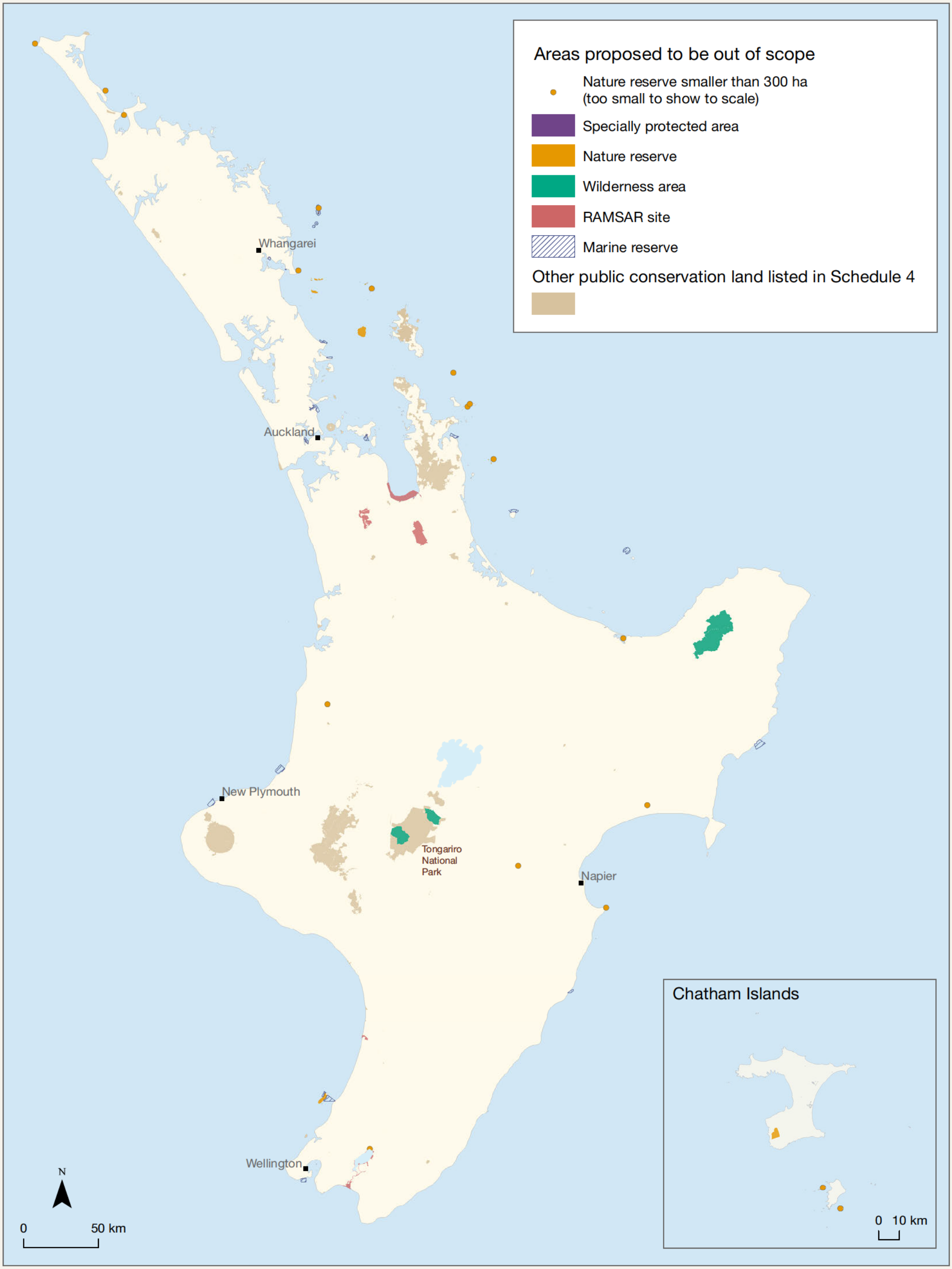

Department of Conservation
Te Papa Atawhai

Areas proposed to remain out of scope from fast-track approvals for new electricity transmission North Island & Chatham Islands

Te Kāwanatanga o Aotearoa
New Zealand Government

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Areas proposed to be out of scope

- Nature reserve smaller than 300 ha (too small to show to scale)
- Specially protected area
- Nature reserve
- Wilderness area
- RAMSAR site
- Marine reserve

Other public conservation land listed in Schedule 4

Nelson
Kahurangi National Park
Paparoa National Park
Greymouth
Westland National Park/ Tai Poutini National Park
Aoraki/Mount Cook National Park
Christchurch
Mount Aspiring National Park
Fiordland National Park
Dunedin

Subantarctic Islands

Bounty Islands
Snares Islands
Antipodes Islands
Auckland Islands
Campbell Island

N
0 50 km
0 5 km

Department of Conservation
Te Papa Atawbai

Areas proposed to remain out of scope from fast-track approvals for new electricity transmission South Island & Subantarctic Islands

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