Conservation talking points for Fast-track Approval Bill second reading

Overview

- I support this Bill - the approval process for major projects takes too long and costs too much.
- The 'one-stop shop' approach where approvals can be sought through one efficient process will provide a smoother, more streamlined process for applicants.
- I have supported the inclusion of the following conservation approvals in this 'one-stop shop':
    - Specific freshwater fisheries permissions (incorporated into the resource consent)
    - Concessions and Reserves Act approvals
    - Land exchanges
    - Amending or revoking some types of conservation covenants
    - Wildlife approvals
    - Mining access arrangements

Conservation safeguards

- My colleagues and I have ensured that the development focus of the Bill has been balanced with a range of critical safeguards to manage risks to conservation values, uphold Treaty settlements, and manage Crown risks and liabilities relating to use of Crown land, including:
    - approximately 40% of conservation land remains ineligible due to its high values
    - mining still has the usual restrictions on land and waters as laid out in Schedule 4 of the Crown Minerals Act
    - DOC will provide reports to inform the panel's decisions on conservation approvals
    - DOC provides a report on relevant conservation land to the referral Minister
    - land exchanges can only be approved if they provide net conservation benefit
    - the New Zealand Conservation Authority, relevant conservation boards, New Zealand Fish and Game Council, and the New Zealand Game Animal Council have been added to the list of those invited to comment on the substantive fast-track applications, where projects include relevant conservation approvals
    - the inclusion of decision-making considerations related to Crown risks and liabilities for conservation land
    - a process that allows for appropriate assessment of, and due diligence on, land exchange proposals
    - persons exercising functions must do so in a manner that is consistent with existing Treaty settlement obligations and customary rights recognised in relevant legislation.

Treaty-related conservation provisions

- Importantly, the Bill requires consistency with Treaty settlement obligations and there are specific requirements throughout for Māori groups to be engaged in the process at application, referral and expert panel stage.
- The Minister of Infrastructure considers a report on Treaty settlements and other obligations when making a referral decision. DOC will be contributing to this report to ensure conservation-related matters in settlements are covered.
- There are a few provisions in the Bill specific to conservation permissions that reflect the importance of Māori rights and interests, including:
    - the panel must consider conservation management strategies or conservation management plans that have been co-authored, authored, or approved by a Treaty settlement entity.
    - a project is ineligible for referral if it includes a reserve that is vested in or managed by an iwi group and the applicant does not have their agreement in writing.
    - if a land exchange would trigger a right of first refusal or a gift-back the applicant must get written permission from the holder of that right.
    - for land exchanges, DOC will seek comments from the usual parties listed in the bill and unsettled iwi in the area of the proposed land exchange.

Department of Conservation
Te Papa Atawhai

Briefing: Fast-track land exchanges and reserves

To	Minister Responsible for RMA Reform Minister of Conservation Minister for Regional Development	**Date submitted**	13 November 2024
Action sought	Decide whether to direct officials to make changes to the land exchange provisions in the Fast-track Approvals Bill	**Priority**	Very High
Reference	24-B-0577	**DocCM**	DOC-7810703
Security Level	In Confidence		

Risk Assessment	Medium This advice has been developed on short timeframes without consultation with relevant management bodies which may result in unintended consequences from changing ineligibility provisions. PCO capacity may limit the changes that can be achieved on current timeframes.	**Timeframe**	18 November 2024 so that any changes can be actioned in time for the LEG paper
Attachments	Attachment A – Paper outlining concerns with fast-track land exchange provisions		

Contacts	
Name and position	**Phone**
Sam Thomas, Policy Director, Policy and Regulatory Services	[redacted]
Angela Bell, Policy Manager, Policy and Regulatory Services	[redacted]

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. This briefing responds to a paper provided to DOC by Minister Bishop's office that outlines concerns with the land exchanges provisions in the Fast-track Approvals Bill (the Bill).
2. The core concern is the ineligibility of non-Crown owned reserves and reserves managed by non-Crown parties.
3. The paper specifically references the expansion of the Belmont Quarry which is a listed project and would be seeking an exchange of Crown-owned, council managed land. The proposed Belmont Quarry exchange would be ineligible under current policy settings.
4. Other issues raised include the provisions around requiring management body agreement to the exchange, the ineligibility of reserves owned by non-Crown entities, the lack of timeframes on the DOC land exchange report, and the lack of the ability for the applicant to comment on the DOC report.
5. There are some changes that could be made to address the issues being raised, however timeframes to do so are incredibly short for changes to eligibility and applicable parts of the Bill. Officials will need direction from Ministers as soon as possible to enable further policy development and drafting for the amendment paper.

We recommend that you … (Ngā tohutohu)

		Decision
a)	**Note** that the issue raised around all reserves being excluded by Schedule 3A in the Bill is incorrect and no changes are required.	
b)	**Note** that land exchanges of Crown reserves with management bodies are not possible in the Bill under current policy settings, and that this impacts the Belmont Quarry listed project.	
c)	**Note** that changing the ineligibility provisions on current timeframes can be achieved through the LEG Cabinet paper but may result in unintended consequences given the complexity of the issues to work through.	
d)	**EITHER** i) **Agree** to leave the ineligibility provisions for land exchanges as they are now (only Crown-owned, DOC-managed reserves are eligible) **OR** ii) **Agree** to provide a land exchange pathway in the Bill for Crown-owned reserves with management bodies, which: a. includes a requirement for the applicant to provide written agreement of the management body in the land exchange proposal after referral b. provides for the panel to consider impacts on the management body; and c. enables the panel to set conditions that address the impact of the exchange on the management body	Yes / No Yes / No

e)	**Note** that agreeing to option two in recommendation d would mean the Belmont Quarry listed project is no longer ineligible.	
f)	**Note** that creating a Ministerial determination to override the need for management body agreement does not reduce judicial review risk for a land exchange.	
g)	**Note** that officials do not recommend making non-Crown owned reserves eligible at this time, as the short timeframes to work through the issues, risks, and potential unintended consequences related to private property rights, Treaty settlements and the Crown's reversionary interest in some types of reserves.	
h)	**Note** that the time it takes to do the necessary due diligence for the DOC report varies depending on the proposal and the availability of external technical experts.	
i)	**EITHER** i) **Agree** not to add a provision for timeframes on the DOC report for land exchanges (recommended) **OR** ii) **Agree** that the panel convenor sets a timeframe for the report that reflects the specific requirements of the proposal	Yes / No Yes / No
j)	**Agree** that the applicant is provided the opportunity to comment on the DOC land exchange report before it is provided to the panel.	Yes / No
k)	**Agree** that those invited to comment on the land exchanges proposal are also invited to comment on the DOC land exchange report.	Yes / No

[redacted] Date: 13/11/2024

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 Shane Jones
Minister of Regional Development

Purpose – Te aronga

1. This advice responds to a paper provided by Minister Bishop's office outlining concerns with land exchange provisions in the Fast-track Approvals Bill, with specific reference to the Belmont Quarry listed project.

Background and context – Te horopaki

2. On 30 October, Minister Bishop's office requested officials' advice on a paper outlining concerns with the Bill's land exchange provisions (amongst other issues).
3. The paper is provided in Appendix A.
4. This briefing provides advice on the key issues raised and seeks Ministerial decisions on changes that may be possible for the amendment paper.

Concerns raised in the paper

Ineligibility of exchanges for land in Schedule 3A of the Bill

Issue raised and fix suggested by the author

5. The author considers the current Bill excludes all reserve land held under the Reserves Act from fast track through Schedule 3A, clause 11(a). They suggest changing the drafting to reflect it is only certain named reserve types that are excluded (those listed in clauses 1-4).

Rationale for current drafting

6. The drafting does not exclude all reserves as the author considers. Clause 11(a) in Schedule 3A excludes the following from the Bill:

> *11 All land—*
>
> *(a) held, managed, or administered under the Conservation Act 1987, or under any enactment set out in Schedule 1 of that Act, as at 1 October 1991;* ***and***
>
> *(b) situated on any island in the area bounded by latitude 35°50'S and latitude 37°10'S, and longitude 177°E and longitude 174°35'E, other than the following islands in the Mercury Islands group:*
>
> *(i) Red Mercury Island (Whakau):*
>
> *(ii) Ātiu or Middle Island:*
>
> *(iii) Green Island:*
>
> *(iv) Korapuki Island.*

7. Clause 11(a) must be read together with clause 11(b) which confines (a) to areas around the Mercury Islands group. This is consistent with the status quo under Schedule 4 of the Crown Minerals Act.

Officials' recommendation

8. The author has misread the drafting and the issue they raise does not exist. No change to the drafting is necessary.

Crown-owned reserves managed by non-Crown entities (hereafter referred to as 'management bodies')

Issue raised and fix suggested by the author

Ineligibility of Crown-owned reserves with management bodies

9. The author asserts that the inability to exchange reserves that are owned by the Crown but managed by non-Crown entities (e.g. local authorities) is an inappropriate barrier to projects such as the expansion of the Belmont Quarry.

Requirement for agreement of the management body

10. The author identifies that, even if these types of reserves become eligible for exchange, a management body can effectively veto a fast-track project by not consenting to it. This could be the case even if the Crown, as landowner, would agree to it. They have proposed a Ministerial "override" where the referral Minister can determine a project may be eligible for and progress through fast-track regardless of whether the management body has agreed to the exchange. They also propose that instead of the requirement for agreement, the management body has its views considered as part of the comments process.

Rationale for current drafting

Ineligibility of Crown-owned reserves with management bodies

11. The author is correct that Crown-owned reserves that are managed by other parties are not eligible for exchange in the current drafting of the Bill. Management bodies may be appointed to control and manage a Crown-owned reserve - the day-to-day administration and some decision-making is the responsibility of the entity appointed; however, the land remains the Crown's asset.

12. The majority of Crown-owned reserves that have management bodies are managed by local authorities. These types of reserves often provide for specific local values – including recreation, stormwater management, biodiversity protection, and contributing to the network of public green spaces in urban areas.

13. Other management bodies are private groups; commonly iwi groups and trusts, but could also be incorporated societies, associations, or a range of other types of groups.

14. The land being offered to the Crown would go to the Crown not the management body. Arrangements could then be made to set-up the management body to manage the new parcel of land. However, depending on the land being offered, it may not be appropriate and may not even be in the same location as the management body. This means the management body would not get the use of new land in return.

15. An exchange involving a management body may also result in an increase in the Crown's land management costs if the Crown takes on management of the received piece of land, where the land given to the applicant in the exchange was managed by a management body.

16. Further policy decisions would be required to ensure these issues are appropriately addressed in the Bill.

Requirement for agreement of the management body

17. A land exchange will permanently impact on a management body. For example, the management body may get benefits from the use of the reserve (e.g. access or stormwater management) that they would lose through a land exchange. The management body will also have invested time and money on the reserve.

18. Management bodies may use the reserves they manage in ways that would otherwise require them to obtain property rights (e.g. leases).

19. For this reason, the management body's agreement is required for land exchanges under the Reserves Act.

20. For concessions and access arrangements in the Bill, management body agreement is required at referral (for reserves managed by private bodies) and substantive application (for councils).

Officials' recommendation

21. If Ministers wish to make a broader range of Crown-owned reserves eligible for land exchange through the one-stop shop, and provide a pathway for the Belmont Quarry expansion project, further policy decisions would be required on:

    a) Seeking the agreement of the management body - we recommend the Reserves Act requirement for agreement is maintained in the FTAB for the reasons outlined above. Agreement could be required at the point of lodging the land exchange proposal, after the referral step. This enables applicants to get confidence that their project has been referred before committing resources to negotiating with management bodies for their approval. This reflects the investment management bodies have made, the significance of the impact on them of no longer having the reserve, and that the Crown has given them responsibilities under existing legislation.

    b) How to incorporate consideration of impacts on the management body including any condition-setting provisions that allow for addressing impacts on the management body (even if they have agreed to it).

22. Cabinet decisions would need to be sought through the LEG paper. This option is dependent on PCO capacity to draft additional changes into the amendment paper on current timeframes.

23. By providing for Crown-owned reserves with management bodies to be included by agreement in fast track through the AP process, the Belmont Quarry expansion project would no longer be ineligible for a land exchange under fast track. This resolves the immediate issue of a listed project not meeting the eligibility criteria for an exchange and we consider that it comes with very little legal risk, provided the agreement of the management body is required.

24. Note that officials have not identified any risks with the proposed approach of including these control and managed type reserves in the Bill. However, the short timeframes officials have had on this issue combined with the complexity of the different possible management arrangements means the analysis had not been as comprehensive as is desirable.

Requirement that the agreement of the management body of the reserve must not be unreasonably withheld

Issue raised and fix suggested by the author

25. The author suggests the requirement for reserve administering bodies not to 'unreasonably withhold' their consent is ambiguous and presents a judicial review risk.

Rationale for current drafting

26. The requirement for consent not to be unreasonably withheld was requested by Ministers Jones and Potaka as it recognises there are valid reasons to provide for consent to be withheld but ensures if consent is withheld, this must be for a legitimate reason.

Officials' recommendation

27. Officials don't think that a Ministerial determination resolves any judicial review risk as the Minister's decision will also be subject to review and, absent any further criteria to support this decision, it will be ambiguous. This option simply transfers any risk to the Minister. The criteria proposed by the author do not address this issue.

28. Allowing Ministers to override the responsibilities the Crown has given to a management body appointed under existing legislation is also likely to increase perceptions of inappropriate use of power.

Reserves owned by non-Crown entities (including those vested in non-Crown entities)

Issue raised and fix suggested by the author

29. The author suggested that reserves owned by entities other than the Crown should be eligible for exchange with the entity's agreement. They outline that there is no pathway in the Bill for exchange of reserves owned by others like there is under the Reserves Act.

Rationale for current drafting

30. The drafting of the Fast Track Bill was designed to overcome the specific barriers to land exchanges occurring for Crown conservation land. However, reserves managed under the Reserves Act can be owned by other entities. Often this is councils but may also be private entities such iwi groups or societies. There are a few different types of configurations:

    a) Privately owned land, subject to reserve status. The Crown may have no interest in other than the fact that they have reserve status, If the reserve status was removed, the land would be held by the land owner.

    b) Crown-derived reserves that have been vested in other parties, for the better administration of the land, e.g. urban reserves, recreation or local purposes reserves. The other party holds the principle land interest in the reserve, but the Crown holds a reversionary interest. In this case the Crown would receive the land back (including any associated liabilities and risks) if the vesting arrangement ceases.

31. Also, many privately held reserves are such because they were awarded as part of Treaty settlements with the condition that they maintain their reserve status.

32. The land exchange process in the Bill assumes the Crown has ownership of the land being exchanged. For example, DOC provides advice to the panel on the relevant issues and considerations. This won't be appropriate for exchanges of non-Crown owned land.

33. It's unclear what the role of the panel should be in what is essentially a private negotiation between parties and how that relates to the requirements under the Reserves Act. The Crown would want a role in advising on Crown-derived reserves but not for others (being non-Crown derived).

Officials' recommendation

34. Officials recommend leaving non-Crown owned reserves out of the Bill for exchanges at this stage – the complexity of the issues and how they relate to private property rights, Treaty settlements and the Crown's reversionary interest mean providing for these types of reserves on current timeframes risks unintended consequences.

35. If Ministers wanted to expand eligibility for exchanges to include non-Crown owned reserves, officials could investigate the decisions that would be required to create a

regime for these transactions in a possible amendment bill when more time is available to work through these issues.

DOC report on land exchange - timeframe

Issue raised and fix suggested by the author

36. The author identifies that there is no timeframe on DOC's land exchange report, which is produced in between the referral and substantive applications. They propose implementing a similar timeframe to other reports provided by DOC in the Bill.

Rationale for current drafting

37. Timeframes in the Bill for reports on other approvals are not feasible for a report advising on a land transaction. Ministers agreed that a conditional decision on a land exchange would be made after the project is referred but before a panel is convened to ensure that:

    a) The necessary due diligence on the land exchange (including site visits and procuring technical reports) could be undertaken; and

    b) The panel could have confidence the land exchange was feasible and appropriate when considering the package of project approvals.

38. The time it takes to do this due diligence varies depending on the circumstances. Assessment of the land to be exchanged will require site visits, land valuations, possible contamination assessments, and a good understanding of what risks, costs and liabilities are being taken on by the Crown with the newly acquired land. Realistically, this takes 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.

Officials' recommendation

39. Officials' advice is not to put timeframes on this report. The variables noted above could create significant constraints on the consideration of some exchanges. The broad directive in the Bill to undertake functions efficiently (clause 9) will ensure that there are no unnecessary delays.

40. A timeframe in the Bill that does not allow for appropriate assessment of the most complex proposals puts the Crown at risk of being compelled to take on land with unknown levels of risk and liability.

41. However, if Ministers would like there to be a timeframe on this report, we recommend a similar approach to that used for the Crown minerals permitting regime where the panel convenor can set the timeframe. The timeframe would need to reflect the kind of work required for due diligence on a land transaction for two parcels of land. Given the external experts that may need to be contracted (e.g. engineers, valuers) the existing timeframes for other reports in the Bill are not sufficient.

DOC report on land exchange – applicant ability to comment

Issue raised and fix suggested by the author

42. The author raises that the applicant has no ability to comment on DOC's land exchange report and suggests that this should be provided for.

Rationale for current drafting

43. No policy decision was sought on whether the applicant should be able to comment on DOC's report.

Officials' recommendation

44. Officials agree that the applicant should be able to comment on DOC's land exchange report. We suggest, rather than the drafting suggested by the author, the best way to provide for this is for DOC to share the draft report with the applicant prior to submitting it to the panel.

45. DOC would then be able to incorporate any comments into the report itself as well as providing the comments themselves to the panel, attached to the report. This would support robust decision-making by the panel.

46. If Ministers wish to incorporate this step into the Bill (and we recommend you do), please direct us to and we can instruct PCO as part of workability changes in the amendment paper.

47. Officials also recommend that those invited to comment on the land exchange may be invited to comment on the DOC report.

Risk assessment – Aronga tūraru

48. This advice has been developed on short timeframes, without consultation with relevant management bodies. This risks unintended consequences if eligibility provisions are changed, however requiring the agreement of the management body in the Bill mitigates this.

49. PCO capacity constraints may limit the changes that can be achieved on current timeframes.

Treaty settlements

50. Management body arrangements and vesting of Crown-derived reserves are often implemented through Treaty settlements. Many privately held reserves are such because they were awarded as part of Treaty settlements with the condition that they maintain their reserve status.

51. Any risks associated with being inconsistent with Treaty settlements are mitigated by:

    a) Keeping non-Crown owned reserves ineligible and, if changes are desired, taking more time to work through the implications of that for a possible amendment bill.

    b) If making Crown-owned reserves with management bodies eligible, requiring the agreement of the management body.

Consultation – Kōrero whakawhiti

52. This paper was shared with the Ministry for the Environment given their responsibility for the overall architecture of the Bill. No other agencies have been consulted on this paper. Nor have those with reserve management responsibilities outside of DOC.

Financial implications – Te hīraunga pūtea

53. Land exchanges for Crown-owned reserves with management bodies may result in an increase in the Crown's land management costs if the Crown takes on management of the received piece of land, where the land given to the applicant in the exchange was managed by a management body.

Next steps – Ngā tāwhaitanga

54. Any changes you wish to make that fit within Cabinet delegations will be provided in instructions to PCO on the amendment paper (e.g. allowing the applicant to comment on the DOC report).

55. Changes to the types of reserves that are eligible will need to be approved by Cabinet and will be included in the LEG Cabinet paper and amendment paper when it is lodged.

ENDS

Attachment A – Paper outlining concerns with fast-track land exchange provisions

This paper seeks to detail difficulties with the drafting of the Bill, an explanation of the practical consenting difficulties it suggests recommended fixes for those provisions.

A key concern the inability to utilise the exchange process in the Fast track, as the Bill contains provisions that render projects as an ineligible activity.

- No provision for exchange of Reserve land owned by the Crown *and managed by* others. (this has been removed).
- Exchanges are not permitted, where the land falls within land contained in schedule 3A – "non-mining" activities. This schedule reference has inadvertently excluded all land subject to the Reserves Act 1977, making it ineligible for fast track.
- Exchanges for mining activities should be permitted in some circumstances especially for quarrying but are ineligible.
- There is now no pathway in Schedule 3 for exchanges of reserves owned by the Crown and managed by others, or reserves owned by others (even where those have been agreed to by the owners/ managers of the reserve). This link where these activities have been consented has been lost from Schedule 5. Not having these permissions included in the bill jeopardises many infrastructure projects – for example where these take or cross Council land.

As an example, the Bill currently operates to mean no fast-track pathway is available for Belmont Quarry (Wellington's largest quarry) but has wider implications for infrastructure projects and use of reserves more generally in the Bill.

Major concerns relate to these four issues, but to understand the impact of these you need to trace through to see how they interact with the other provisions and definitions also addressed below.

I will describe how the recommended amendments combine to do that below and how they can be fixed. These should be read in conjunction with the proposed amendments.

Schedule 3A Land on which non- mining activities are ineligible

1. This schedule prescribes land upon which fast track activities are ineligible, and which cannot be subject to a land exchange, and the Panel must decline the application (see cl. 4A(h), cl. 24W(c), and Schedule 5, Part 3 cl. 17A(e)and (i).

2. Schedule 3A includes reference at (11):

   'to all land held managed or administered under the Conservation Act 1987 or under any enactment set out under schedule 1 of that Act, as at 1 October 1991.'

3. If you look at the Schedule 1 of the Conservation Act, it includes *all of the land* under the Reserves Act 1977. The bulk of New Zealand's Reserve land was acquired before 1991.

4. The reference to this would make all fast-track applications for non-mining activities and all applications for exchange (whether for mining activities or not) and any other activities on Reserve land ineligible activities that could not be granted on Reserve land (even where this is of little value, for example local purpose or recreational reserves). It would disqualify

huge tracks of land from fast track entirely and seems to be contrary to Schedule 5 intent. There is no effects basis for doing this.

5. This appears to be inconsistent with items 1-4 of Schedule 3A in the Schedule that aim to protect high value reserves under the Reserves Act 1977. This needs to be amended or Belmont land exchange cannot go ahead but has wider implications for the Bill if Reserve land is entirely ineligible.

Recommended Fix:

6. Schedule 3A, (11) should be amended to add:

> 'except land owned under the Reserves Act 1977 (which is referred in that Schedule other than the land described above in subsections 1-4).

Schedule 5, Part 3 – Land Exchanges

7. **Crown - owned Reserve**" has been given the meaning in cl. 17 of Sch 5. That Sch is in Part 3 Land Exchanges, is:

> 'Crown owned reserve means land that is –
> (a) Vested in and managed by the Crown; and
> (b) Either-
> a. Classified under the Reserve Act 1977 as a scenic reserve, recreational reserve, historic reserve, government purpose reserve, or local purpose reserve. [..]'

8. The consequence of the addition is that there is no Fast Track process available in the Act for exchanges of land owned by the Crown and administered by a local authority (s15 Reserves Act 1977) or for reserves owned by local authorities. As a result, there is no pathway for projects like Belmont Quarry where Crown land is managed by others (regardless of whether they agree or not).

9. The amendments have gone further than the Select Committee report, which contemplate providing for these activities as Part of the Fast Track Bill (including exchanges) where the party managing the reserve agreed to the activity. (See for example the ineligible activities in cl.4A, (1)(j) and(k)), but drafting changes have meant that there is no corresponding pathway in the Bill in Schedule 5, Part 3.

10. **Recommended action:** The addition of '~~and managed by'~~ must be deleted. This addition significantly reduces the scope of the type of exchanges that qualify for Fasttrack approval under the Act. The Crown should ultimately have the say over the use of its own land, deletion will allow for the exchange of Crown land managed by others.

11. The meaning of "land exchange" in Sch. 5, cl17, refers to section 24C(3)(d) which refers to a broader pathway for land exchange than is currently provided for in the schedule 5:

> (c) The exchange of one of the following for land specified by the Applicant that would otherwise be done under the Conservation Act 1987 or the Reserves Act 1977.
> a. A conservation area or part of a conservation area.
> b. A Crown owed reserve, or part of a Crown owned reserve.

12. Changes are required to Sch 5 to bring it into line with this broader permission. Government may also wish to create a pathway for exchange of reserves where the land is

owned and managed by others (with their approval, as hinted at in section 4A(1)(k) but for which there is no pathway that aligns for an exchange of land under s15 and 15A Reserves Act). This could be fixed by adding 'or reserves owned by others with their agreement,' to both section 24C(3)(d) and Schedule 5, cl.17 (c).

13. Minor amendments are required to the following wording to properly refer to Reserve Values and Reserves, not just conservation values and land, to provide for situations where the Reserve is owned by the Crown but managed by another person under the Reserves Act. For example:

    a. Addition of words 'or reserve' to Cl. 17A(c);
    b. Addition of "or Crown owned Reserve" to Cl. 17A(c.)
    c. Addition of words "or reserve" to Cl. 17B(a).
    d. Addition of words 'if relevant' to Cl.17B(e) as the General Policy does not apply to all reserves managed or control by others but owned by the Crown.
    e. Addition of new cl. 17 (f) confirming the need for the Department of Conservation to consult persons who manage a Crown reserve about the exchange when preparing that report.
    f. References to also make it clear how the Criteria that the Panel consider work in respect of a Crown own reserve can be considered in s17C and 17D.
    g. Addition of a new cl. 17C(1)(g) which provides for matters that the Panel may consider when granting an exchange proposal, including the management plan for the reserve and the views of the persons who manage the reserve on behalf of the Crown.

14. These suites of amendments are necessary to provide for the following situations:

    (a) Where land is owned by the Crown but managed by others.
    (b) Where land is owned by the Crown and managed by others, and they agree to the exchange (*further amendment may be needed if it is Governments intent to provide for this situation*)
    (c) Where the reserve is owned by others but has their agreement (reference back to section 4A(1)(k) but the Bill currently has no pathway to facilitate this option).
    (d) Necessary to provide for Reserves Act exchanges under s15 and 15A Reserves Act. (The most common and frequent form of exchanges required to facilitate a range of projects are Reserves exchanges at the lower end of the scale).

    As drafted the exchange process is extremely narrow and limits its usefulness for the sorts of projects that will be fast tracked. Leaving this out of the fast-track process will create a flash point for local body politics which become a referendum on the fast-track proposals themselves.

Ineligible Activities – unable to qualify for exchange

15. Part A listed activities still need to demonstrate that they are not for ineligible activities,

16. If a project includes 'ineligible activities' s24WD requires that the Panel must be decline the proposal (i.e. it is mandatory).

> When approval must be declined:
> (a)The approval is for an "ineligible activity;" or
> [..]

(a) In the case of an approval described in section 24C3(d) (land exchange) the approval must be declined under clause 17D(2) or (4) of Schedule 5.'

17. Cl. 17(4) provides circumstances in which the Panel cannot grant an exchange proposal, it currently lists land listed in Schedule 3A as being land that the Panel "must not grant."

18. As discussed above, the inclusion of the reference to all land under the Reserves Act 1977 in Schedule 3A means that very few Reserve proposals at all will qualify for exchange. Reserve land could only be exchanged if it was acquired after 1991.

19. Furthermore, quarrying and overburden disposal is a "mining activity" for the purposes of the Crown Minerals Act, and may be permitted under schedule 3A. However, Cl 17(4)(a) currently does not provide for an exchange for a mining activity, it prevents an exchange altogether. The following amendment is proposed:

(a) Land listed in schedule 3A unless it is for a mining activity.

20. Without the amendment (or the change to the reference in Schedule 3A(11)) Belmont Quarry Development project will be unlikely to obtain the necessary approval and will be disqualified from the fast-track process. The Reserve land in question was acquired by the Crown pre-1991.

Exclusion of land owned by the Crown but administered by others from the Fast Track

21. The Select Committee in response to submissions from Local Government has recommended the following:[1]

> 'Clause 2 of Schedule 5 would enable Council reserves to be eligible for the fast-track approvals process.
>
> Some submissions from local government expressed concern about this because decisionmakers would be able to grant property rights over Council-owned reserves without Council's consent. We acknowledge that local authorities must be able to decide how their reserves are managed, given that they bear the costs and risks associated with a reserve and their use.
>
> **We recommend inserting a clause 4A(1)(j) and (k) so that an activity on land owned or managed by a local authority, or any reserve owned by someone other than the Crown or managed by someone other than the Department of Conservation would not be eligible for the fast track approvals process if the activity has not been agreed to in writing by the relevant owner or manager.** We recommend also inserting a clause 4A (2) so that the agreement referred to in paragraphs (j)-(k) must not be withheld unreasonably.'

22. The Select Committee Report, goes on to discuss the approvals set out in cl. 24C(3) (based on a redraft of cl. 10(1) these include:[2]

a. **'Schedule 5** – Concessions under the Conservation Act 1987 and Reserves Act approvals under the Reserves Act (Part 1), **exchanges of some types of conservation land held under the Conservation Act and Reserves Act** (Part 3) and covenants (Part 4).'

[1] Select Committee Report page 7.
[2] Select Committee Report page 13.

23. The 1st version of the Bill Cl. 10(1)(c) encompassed *all exchanges under the Conservation and Reserve Act.* Now it only provides very narrowly for the exchange of Crown Land owned by the Crown.

24. The consequence of this is that the most frequent and most useful way of exchanging reserve land, is excluded from the Fast Track Bill.

    a. Land *owned by the Crown* but *managed by others* (i.e. local authorities) are excluded from the Bill (s15 Reserves Act 1977).

    b. Schedule 5 of the Bill provides no exchange process for reserves in vested in local authorities (s15A Reserves Act currently allows exchange of reserves owned by local authorities to be considered at the same time as a resource consent) even where they consent to that exchange.

25. Excluding this category of exchange from the fast-track process will mean that the fast-track Bill is unavailable for several quarrying projects and all other developments dependent upon exchanges of Reserve land not held and managed by the Crown.

Implications for aggregate and quarrying projects

26. At Belmont Quarry, Wellingtons largest source of aggregate, an overburden extension is proposed on land currently within Belmont Regional Park. That land is owned by DoC (but managed and controlled by GWRC), the project is dependent on the exchange to unlock this land for overburden disposal, to allow it to continue to operate and ensure a secure supply of aggregate for the Wellington region. If enacted in its current form, there is unlikely to be a pathway to advance this project (or similar projects) under the Fast Track Approval Bill.

Ineligible activity – 'consent of party managing the Reserve'

27. The Committee have amended the definition of "**ineligible activity**," in s4A to include the following:

> 4A Meaning of ineligible activity
> (1) In this Act, ineligible activity means any of the following:
> [..]
> (j). an activity that –
>
> (i) would occur on a Reserve held under the Reserves Act 1977 that is vested in someone other than the Crown.
> (ii) has not agreed to in writing by the persons in whom the reserve is vested.
>
> (k). **An activity that –**
>
> **(i) would occur on a Reserve held under the Reserves Act 1977 that is managed by someone other than the Department of Conservation; and**
> **(iii) has not been agreed to in writing by the persons responsible for managing it.**

28. This affords the right of "veto" to parties that are not the owner of the land but also has not provided for a situation where these projects can progress where there is agreement. This is not sensible because:

(a) Cl 4A(1)(k) gives local authorities who manage Crown land, for example Crown land held as Regional Parks the right of veto over fast-tracks projects, irrespective of the Crown's view as owner of that land. Failing to get their approval of the manager of the land means that the Fast Track Bill is not available.

(b) Cl4A(1)(j) means that local councils - owners of local purpose reserves etc. could withhold agreement to infrastructure projects over these areas making the fast-track process unavailable and rendering them ineligible for fast-track approval.

29. Both situations are academic in terms of exchanges, because regardless of whether or not there is the necessary agreement there is no link between how this is framed and an application for exchange of reserve land, for example Schedule 5 does not even provide a fast-track pathway for exchange of land under (j) and (k) where the persons i.e. local authorities managing it or other owners, agree to the exchange.

30. The definition of exchange under cl. 24C(d) would require broadening to include this as a category. There is concern that if this remains about the cost of getting agreement from a managing party if they have a power of veto. Cl.4A (2) seeks to temper this power of veto, but does a bad job:

'The agreement referred to in subsection 1(j) or (k) must not be unreasonably withheld.'

31. This does not resolve the issue, and the ambiguity created provides a high judicial review risk. I note:

    a. This provides no criteria against which the decision to make the land available should be assessed, caselaw suggests that decisions would need to be made in a manner that is consistent with the protective purpose of Reserves Act 1977 (unless the Bill provides otherwise).

    b. In the absence of this there is a risk that the party that managed the reserves would seek to make that decision based on the management plan (despite the direction in Schedule.5 to ignore that). For instance, if the activity requires a hearing under the management plan (see for example exchanges under s15(2) Reserves Act), a local authority may consider that they need a publicly notified hearing to reach that decision therefore having a defacto referendum on the ability to access fast track.

    c. It is unclear who makes the decision as to whether this is reasonable or on what criteria this is based.

32. There is no further guidance provided in the Bill in relation to "unreasonably withheld," as it applies to parties that administer reserves.

Recommended fix:

33. The following text in s4A(1)(k) should be deleted in its entirety. The rest of the provisions should be modified in the manner suggested below, to provide for a determination process.

> [..]
> (j). an activity that –
>
> (i) would occur on a Reserve held under the Reserves Act 1977 that is vested in someone other than the Crown.

(ii) has not agreed to in writing by the persons in whom the reserve is vested.
(iii) or has been the subject of a determination under section 22DA.

~~(k). **An activity that –**~~
~~(i) **would occur on a Reserve held under the Reserves Act 1977 that is managed by someone other than the Department of Conservation; and**~~
~~**(ii) has not been agreed to in writing by the persons responsible for managing it.**~~
(iii) [if not deleted] has been the subject of a determination under section 22DA.

(2) 'The agreement referred to in subsection 1(j) or (k) must not be unreasonably withheld' and may be subject to a determination by the Minister in section 22DA'

Ineligible activities - New "override" provision where consent withheld

34. These provisions should be removed, in the event that they remain, at an absolute minimum there needs to be a process like the suite of provisions provided for in cl. 22D where the Minister may determine that linear infrastructure on certain identified Māori land (described in section 4A(1)(a) where the owners have not consented to that activity) is not an ineligible activity.

35. A similar approach could be taken to approvals by adding the following new provisions (the amendments set out above to cl. 4A(1)(k)(iii) and (j)(ii) and (iiii):

a. In 4A(1)(i)(ii) and (k)(ii) 'or been the subject of a determination under section 22DA.'
b. New wording to provide for a determination process in section 4A(2, deleting (~~k~~) and may be subject to a determination by the Minister in section 22DA [new].'

c. A new 22DA:

Minister may determine that projects on Crown owned Reserve managed by someone other than the Department of Conservation, without that person's approval is not an ineligible activity.

'(1) in making a decision under section 22A, the Minister may determine that, the for the purposes of the project an activity described in section 4A(1)(k) and is not an ineligible activity if it-
i. Would occur on a reserve held under the Reserve Act 1977 that is managed by someone other than the Department of Conservation.
ii. Has not been agreed to in writing by the person or persons responsible for managing it.
(2.) Before making a determination, the Minister must take into account the effects of the activity on the land and the rights and interests of the persons managing the land and basis for the agreement being withheld.

(3.) The Minister may decline to make a determination –
(a) if the Minister considers that the activity would have adverse effects on that land or those rights and interests; or
(b) for any other reason.

d. A corresponding reference in cl. 15(1B) is needed to make it clear that an activity described in clause 4A(1)(j) and (k) subject to a determination in cl. 22DA is not an ineligible activity.

Input of person managing Crown owned reserves

36. Local authorities managing reserves on Crown land should not be given a power of veto, allowing them to choose which projects can access the fast-track process, in cl. 4A(1)(k) where they are not the owner of the land.

37. Not being able to obtain regional council consent as the manager of the reserve would render a project "ineligible" and not capable of obtaining approval, for example, the Minister must decline a referral application if satisfied it contains an ineligible activity in cl.22A(3)(b), or new cl.24WD(1)(a) which says that the Panel must decline approvals for ineligible activities.

38. It is recognised that the party managing reserve should have their views /comments considered as part of the Department of Conservation on the land exchange under Subpart 2A – Preliminary Steps for land Exchange and Schedule 5, Part3.

39. The Department of Conservation already seeks written comments on the exchange proposal from any party who manages the reserve (these parties are captured in the parties to be consulted via the reference to cl. 24M(2)(a), or occupiers of the land (f) or relevant administering authorities) (i).

40. The party managing the reserve should have the opportunity to comment on and have their views considered in Sch 5, Part 3 as part of the Report by Department of Conservation on the land. Amendments are proposed to this section to provide for:

    - Sch. 5, Part 3 cl. 17B(f) consultation with the person that manages the crown owned reserve on behalf of the Crown when the Department of Conservation is preparing the Exchange Report.
    - Sch 5, Part 3 (1) add a new subsection to confirm that the Panel, may take into account the management plan for the Reserve and the views of the persons managing the reserve.

41. The views of persons that manage reserves, are already provided for as a factor in decision-making in respect of activities on reserves (concessions, leases, licence and permits) in Part 2, Schedule 5, cl3, cl5 (vii) and (x).[3] Similar corresponding amendments are suggested to make the same provision in the exchange process in Schedule 5 Part 3.

Subpart 2A – Preliminary Steps for Land Exchange

42. Before lodging a substantive application for a listed project with the EPA in cl.24C, where a project requires an exchange, the authorised person must lodge an application containing the information specified in Schedule 5, Part 2 and the information required in respect of 24D(2).

43. The Department have 5 working days to invite written comments from the parties identified in cl.24M.[4] These have the same timeframes as the substantive application (20 working days from date of invitation),[5] the Department must then forward responses provided to the Applicant for the exchange and they have 5 working days to comment.

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[3] For example, Sch.5 requires DoC to consult with owners or administrators of the land when preparing a report on concessions.

[4] These are the same parties consulted on the substantive application, relevant local authorities, iwi, customary rights holders, tangata whenua, owners of land and owners of adjacent land, occupiers of the land, Minister for the Environment and other Ministers, relevant administering authorities, and anyone else specified by the Minister. (they are not reconsulted on the exchange proposal when the substantive comments are issued).

[5] S24N(1)

44. However, cl. 24AC fails to specify a timeframe for the Department to provide its report to the Panel convenor covering the matters in cl. 17B, Schedule 5, a copy of this report should also be sent to the Applicant (the timeframe is specified in cl. 24FB(2)(b) – but for other reports, not the exchange report).

45. **Recommended fix: add further wording to cl.24C(3):**

> The Department of Conservation must provide a report to the Panel convenor **and the authorised person** containing the matters specified in clause 17B of schedule 5 **within 10 working days of the receipt of the response from the authorised person.'**

Ability for authorised person to comment on Exchange Report

46. Because exchanges are exempt from further consideration under the substantive application, there is no ability for the Applicant to comment on the Department's Report on the exchange, and an amendment should be provided to allow the Applicant the opportunity to comment on this Report at the same time as comments on other responses, under cl.24(O)(2). The amendment should read:

> The authorised person may provide the EPA with a response to the comments and **if applicable, its response to a Report received under s.24C(3)** not later than 5 working days…'

Hearing of Panel

47. The timeframe if a hearing is held in cl. 24O(4) is 5 working days' notice to hold a hearing and hear evidence is too tight, this should be amended to 10 working days to allow for an exchange of evidence and to provide for the efficient running of a hearing.

Draft conditions on approvals

48. At present in cl. 24UA the draft conditions are circulated by the Panel for comment and the authorised person and parties are all invited to comment, all provide feedback within 5 working days. Exchanging comments at the same time, means the Panel does not have the benefit of the authorised person commenting on what it means for workability of the project and is left to reconcile comments on conditions. The process is immediately undermined if the Panel imposes unworkable conditions. An Applicant would have to immediately apply to amend the conditions with the Council.

49. The comments on the draft conditions would work better if the comments were staggered with the authorised person providing comments and responses 5 working days after the comments on draft conditions are received from the other parties. This provides for better quality conditions and decision-making as it enables the authorised person to take on board the suggestions of commenting parties (or explain why they are unworkable). In complex projects workability of the conditions is key to ensuring a buildable project, as appeals are limited to points of law, there is no ability to appeal a factual finding or unworkable condition.

50. The process from cl. 24O can be adopted here, the suggested amendment is to section 24UA(4):

> Response to comments provided on draft conditions under section 24 UA

(1) The EPA must forward copies of any comments received on draft conditions under section 24UA to the authorised person who lodged the substantive application.

(2) The authorised person may provide the EPA with a response to the comments received on the draft conditions along with the authorised persons response to the draft conditions no later than 5 working days after the date specified by the Panel in clause 24UA.

(3) The Panel-

a. Must consider the comments received within this timeframe.

b. Is not required to consider any response received after that timeframe but may do so, in its discretion.

Response from DOC

Context

It is correct that a management body has a veto power over the reserve that they manage for all land management permissions. This was recommended in the Departmental Report and further decisions were made on the requirement for council agreement by Cabinet in September. They agreed that the following be achieved through the amendment paper:

Ineligibility criteria on local authority-owned reserves and certain customary fisheries management areas

12 **agreed** that written consent of a local authority reserve owner or managing body be removed as an ineligibility criterion at the referral stage;

13 **agreed** that, if the project covers a reserve owned or managed by a local authority, the written consent of that local authority must be included in the substantive application for it to be considered complete, and the local authority may not unreasonably withhold their agreement;

The above Cabinet decision maintains the requirement for a council management body to agree to a project but enables the project to be eligible for referral without it. So, the veto power of a council management body remains in place.

Requirement for agreement of management body

Removing this requirement entirely risks significant impacts on those bodies and is likely to create perceptions of central government removing existing decision-making rights of private bodies and councils. This is especially the case where these decision-making rights have allowed those bodies to use the reserves and undertake activities in ways that would otherwise have required them to obtain property rights through a concession (e.g. leases).

Examples of submissions on this issue

Auckland Council submitted through the Select Committee process that the agreement of council management bodies should be required for fast-track projects.

Local Government Professionals Aotearoa and Local Government New Zealand recommended that council-administered reserves are excluded from the Bill entirely and, if included, protections and compensation for this need to be included - particularly if there is an option for a land exchange.

Recommended approach

Officers' recommended option remains to require the agreement of the management body for the reasons outlined above.

If Ministers wish to remove the requirement for agreement of a management body this would require a Cabinet decision, and we suggest it is restricted in the following ways to avoid unintended consequences:

- Only disapply the requirement for the agreement of the management body where the land is managed by a council - management bodies are sometimes established through

Treaty settlements and not requiring the agreement of that entity would undermine the Treaty settlement. This approach also prevents the removal of existing decision-making rights of other private bodies that manage reserves; and

- Only disapply the requirement to have management body agreement in respect to land exchanges - for concessions, the management body would be forced to take on risks and liabilities with no decision-making power because they retain responsibilities for the land. It would also not be practical to change the reserve to DOC management given it would increase costs and responsibilities for DOC; and
- Only disapply the requirement in relation to listed projects - this means any unintended consequences are limited.

We agree that if agreement of the management body is not required, the referral Minister should have to consider the impact on the management body as part of the referral decision (as proposed by Minister Jones' office).

Added requirement for the panel to consider impacts on the management body

Without a criterion to explicitly require the panel to consider impacts on the management body, information the management body provides on impacts through comments may not be given appropriate consideration.

Any criterion included on this basis would still have the purpose of the Bill weighted above it.

Talking points for Minister of Conservation

Importance of requirement for management body agreement

- Requiring the agreement of the management body is important to ensure they are not subject to significant impacts and their existing decision-making rights are not removed.
- Under existing legislation, their agreement is required for a land exchange to occur and removing this right at this point of the process will create a perception that the Government is unilaterally removing the existing rights of private bodies and councils.
- Council representatives submitted during Select Committee that council reserves should be excluded from the Bill and compensation should be available if council-administered reserves are included.
- For reserves managed by private bodies:
    - some management bodies are set up through Treaty settlements and removing the need for their agreement undermines those settlements.
    - not requiring agreement of other private bodies that manage reserves is removing existing decision-making rights they have under legislation

Requirement for panel to consider impacts on the management body

- Without a criterion to explicitly require the panel to consider impacts on the management body, information the management body provides on impacts through comments may not be given appropriate consideration.
- Any criterion included on this basis would still have the purpose of the Bill weighted above it.
- It is even more critical to include this if management body agreement is not required.

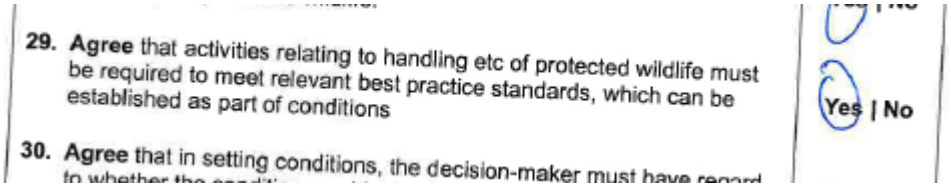
Potential way forward if Ministers want to remove the need for management body agreement

- If you still want to remove the requirement for the management body to agree for the purposes for this listed project, the best way to mitigate any unintended consequences is to limit it to:
    - Instances where a council is the management body – this mitigates issues around Treaty settlements and private rights where it is a private body managing the reserve; and
    - Land exchanges - for concessions, the management body would be forced to take on risks and liabilities with no decision-making power because they retain responsibilities for the land; and
    - Listed projects - this means any unintended consequences are limited to listed projects and not all possible projects.
- The following changes should also be instituted to help protect the management bodies' interests:
    - Require the referral Minister to consider impacts on the management body as part of the referral decision.
    - Require the panel to consider impacts on the management body (within the hierarchy of the purpose of the Bill)
- Cabinet would need to agree to this approach to change the earlier explicit decisions on this matter.

Query about Schedule 6 clause 1D(2)(a) – best practice standard on wildlife approvals

Original decision

The original Ministerial decision was in February through BRF-4203.



29. **Agree** that activities relating to handling etc of protected wildlife must be required to meet relevant best practice standards, which can be established as part of conditions

Yes | No

30. **Agree** that in setting conditions, the decision-maker must have regard

The decision reflects that if best practice protocols for handling and other procedures with wildlife are not followed, the wildlife may not survive which would mean the condition would not achieve what it sets out to.

Proposal to address Ministerial office feedback

We understand that Ministerial advisors for Minister Jones' and Minister Bishop's office have requested that this decision is amended to make best practice standards something the panel 'may' require the applicant to meet, not 'must'.

We propose that this is achieved through the following drafting:

1D Conditions

(1) A panel—

(a) **may** set conditions on a wildlife approval that it considers appropriate to ensure that best practice standards are met

(b) may set any other conditions on a wildlife approval that the panel considers necessary to manage the effects of the activity on protected wildlife

(2) In setting any condition under **subclause (1)**, the panel must—

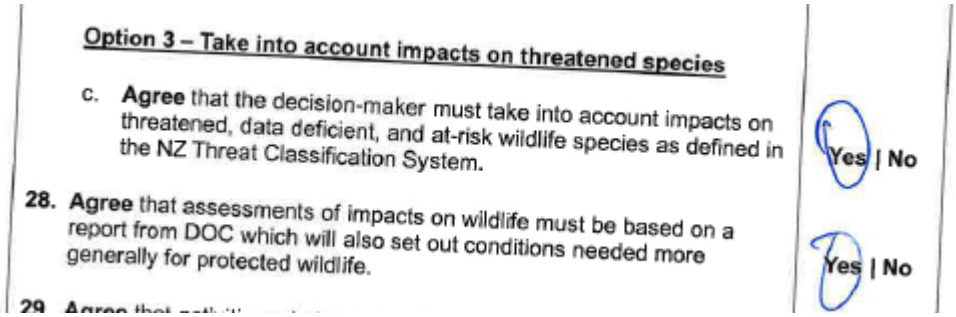
(a) consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife that is to be covered by the approval; and

(b) where more than minor.....

Query about Schedule 6 clause 1C(d)(i) and (ii) – greater weighting of some species

Original decision

The original Ministerial decisions for threatened species were in February through BRF-4203.



Option 3 – Take into account impacts on threatened species

c. **Agree** that the decision-maker must take into account impacts on threatened, data deficient, and at-risk wildlife species as defined in the NZ Threat Classification System. Yes | No

28. **Agree** that assessments of impacts on wildlife must be based on a report from DOC which will also set out conditions needed more generally for protected wildlife. Yes | No

29. Agree that ...

The intent from this collection of decisions is that the panel can consider and set conditions on all protected wildlife but that the greater consideration will be given to those classified as threatened, data deficient, and at-risk. This reflects that many species of protected wildlife are considered 'common' and less at-risk than other species.

This was reflected in the introduced version of the Bill through:

> b) have particular regard to any report by the Director-General of Conservation on the risks to wildlife; and
>
> (c) take into account impacts on threatened, data deficient, and at-risk wildlife species (as defined in the New Zealand Threat Classification System);

But this intent got inadvertently lost through other changes at Select Committee, so we've been working with PCO to get it reflected it the AP.

The recommendation in the Departmental report to include consideration of species that are the subject of international agreements given that they may not be assessed under the Threat Classification System reference above (paras 1198-1200 of the Departmental Report explain). The Select Committee report makes a recommendation consistent with the Departmental Report.

Proposal to address Ministerial office feedback

We understand that Ministerial advisors for Minister Jones' and Minister Bishop's office have queried the rationale for the current drafting of this clause giving 'greater weighting' to species that meet the tests above. An alternative way of expressing this intent is proposed below, noting that the purpose of the Bill being weighted more highly means this clause does not elevate protection of any species to the level it would get under the status quo.

1C Criteria for assessment of application for wildlife approval

> For the purposes of section 24W, when considering an application for a wildlife approval, including conditions under clause 1D, the panel must take into account, giving the greatest weight to paragraph (a),—
>
> (a) the purpose of this Act; and
>
> (b) the purpose of the Wildlife Act 1953 and the effects of the project on the protected wildlife that is to be covered by the approval; and

(c) ~~the report by the Director-General of Conservation prepared in accordance with clause 1B; and~~

(d) ~~information and requirements relating to the protected wildlife that is to be covered by the approval (including, as the case may be, in the New Zealand Threat Classification System or any relevant international conservation agreement).~~

(d) information and requirements relating to the protected wildlife that is to be covered by the approval, giving **less weight to** ~~greater weight to requirements to protect~~ those species that are **not**—

(i) classified as threatened, data deficient, or at risk under the New Zealand Threat Classification System; or

(ii) the subject of international conservation agreements.

Context

The highlighted words below were in the Bill from before the eligibility was expanded to non-DOC managed reserves and was meant to enable the panel to require the agreement in circumstances like if a concessionaire (who may have a permit rather than a lease or other interest in land) might go out of business as a result of the exchange, or removal of iwi access to a wahi tapu site.

> *17DA Pre-conditions for land exchange*
>
> (1) For the purpose of sections 24W and 24WE—
>
> (a) a panel may impose a condition that the applicant—
>
> (i) obtain any resource consent or other matter necessary to enable the land exchange to be effected:
>
> (ii) obtain any agreement with the holder of an interest in land or other person:

Problem with removing the words

If these words are removed, those who use the PCL for access (e.g. the wahi tapu example) may be able to have their interests considered and protected by the panel if the panel puts a condition on that sets up an easement under cl 17E(1)(a). However, there would be no way for the panel to provide any conditions or address the impacts on a concessionaire that does not hold a lease or other interest in the land (e.g. many tourism operators). These concessionaires (permit holders) still have a binding agreement with the Crown giving them a right to use the property, but do not have an "interest in land". Removing these words without addressing that elsewhere (e.g. by providing for impacts on these rights holders to be addressed) raises litigation risks.

While the Ministerial call-in can be triggered if there are major risks to the Crown the Minister:

a) Can only set conditions the same way the panel would, and

b) May not be able to decline given changes to the decline criteria

Proposed solution

We recommend that, if these words are removed, a new clause is provided that 'the panel *may* set a condition to address impacts on any other person who has rights to use the land, but the panel may not require their agreement for the exchange.'

Without this addition we think there is a risk the exchange would expropriate rights that others have to use the land with no compensation, creating legal risk. And we think this solves the issue raised by Minister Jones' office.

Department of Conservation
Te Papa Atawhai

Cabinet Paper Talking Points

To	Minister of Conservation		
Date of meeting	9 December 2024		
Cabinet Paper	**Fast-track Approvals Bill: Approval for Amendment Paper**		
GS tracking #	24-K-0032	**DocCM**	DOC-7782439
Minister lead	Minister Responsible for RMA Reform Minister for Regional Development		
Committee	Cabinet		
DOC Contact/s	Ruth Isaac, Deputy Director-General, Policy and Regulatory Services, [redacted] Sam Thomas, Policy Director, [redacted] Amelia Smith, Principal Policy Advisor, [redacted]		
Security Level	In Confidence		

Conservation-related recommendations

- **note** the Amendment Paper implements the improvements recommended by Assurance Panel and delegated decisions to ensure the Bill provides a clearer high bar for decline, condition setting to be no more onerous than necessary, deliver streamlined and efficient processes, and minimises litigation risks;
- **note** that Ministers and officials will closely monitor the implementation of the Fast-Track scheme, and that an Amendment Bill to address any issues arising from implementation may be required in the next 12 – 24 months;
- **note** delegated Ministers made decisions on enabling specified electricity projects on high value conservation land with some exclusions (including marine reserves) to allow specific electricity activities to use the Fast-Track approval process on more than 90% of public conservation land;
- **note** delegated Ministers made decisions on clarifying how ineligible criteria apply to subsurface mining of Crown-owned minerals, eligible reserves for land exchanges and other decisions to improve workability (in Appendix One);
- **confirm** the decisions made by delegated Ministers in accordance with CAB-24-MIN-0272, CAB-24-MIN-0381 and CAB-24-MIN-0362, and as outlined in Appendix One;
- **agree** that the Amendment Paper includes the decisions made by Cabinet and delegated Ministers;
- **approve** the Amendment Paper (subject to minor changes) for release.

Key points

- This paper seeks Cabinet approval for a Fast-track Approvals Bill amendment paper. The amendment paper includes a range of critical changes to the Bill for conservation approvals that have been previously agreed by Cabinet, recently agreed by Ministers, and workability fixes that did not require further policy decisions.

Implementing Cabinet's decisions

- The amendment paper includes a range of changes to reflect decisions made by Cabinet previously (CAB-24-MIN-0362):
    - Broadening the scope of freshwater fisheries approvals
    - Land management decisions mitigations
    - Process and policy for land exchanges
    - Rights of first refusal for concessions
    - Changes to where in the process the permission of council reserve owners and managers is required
- We recommend you support these changes.

Recent Ministerial decisions

- This paper also seeks Cabinet confirmation of additional decisions made by Ministers including the following of relevance to conservation:
    - Inclusion of electricity infrastructure projects on high value conservation land
    - Expanding the eligibility of reserves for land exchanges
    - Changes to the decision-making framework for wildlife approvals

Inclusion of electricity infrastructure on high value conservation land

- Cabinet previously 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; and
    - continued, unchanged operations of existing electricity generation, provided the proposal does not materially change the scale or effects of the infrastructure.
- Cabinet authorised you, the Minister Responsible for RMA Reform, and Minister for Energy to take further decisions on the details. The amendment paper drafting reflects the decisions made by you, Minister Brown and Minister Bishop on briefing 24-B-0434.
- The Cabinet paper includes a Supplementary Analysis Paper on the changes drafted by DOC.
- You, Minister Bishop and Minister Brown agreed to continue to exclude, for new transmission projects, some of the small and remote areas such as nature reserves, marine reserves, and specially protected areas inside national parks, Ramsar sites, and wilderness areas. This reflects their

special status and the impacts that can come from a new transmission project. These areas are also unlikely to be needed for new electricity transmission projects.

- We recommend you support the changes for enabling electricity projects.

Expanding the eligibility of reserves for land exchanges

- You, Minister Jones, and Minister Bishop made decisions to make Crown-owned reserves with non-Crown management bodies eligible for land exchange in the Bill [24-B-0577 refers].
- You jointly agreed not to require management body agreement unless the management body was in place as a result of a Treaty settlement. The referral Minister will be required to consider the impact of the exchange on the management body when making their decision.
- We recommend you support these changes as they reflect the decisions jointly made by Ministers.

Change to the decision-making framework for wildlife approvals

- An Independent Assurance Review Panel was established to provide advice on whether the Bill meets the Government's policy intent.
- The Review Panel noted that some improvements could be made including reviewing how the Panel must set conditions related to the wildlife approvals.
- As a result, Ministers Bishop and Jones (under delegated authority from Cabinet) agreed to change the wildlife approvals condition-setting provisions so that they do not reference best practice standards.
- This change revisits an earlier decision you were a part of where Ministers agreed that the decision-maker must ensure best practice standards are met.
- This does weaken the requirements for wildlife approvals but is consistent with broader policy intent and does not prevent the panel from requiring best practice standards are met if they choose to do so.

DOC-related workability issues

- There are a range of workability changes and corrections in the amendment paper for conservation approvals. We recommend you support them all.
- They include Select Committee recommendations that were not appropriately incorporated into the Bill. Key topics of this nature in the amendment paper are:
    - adding the New Zealand Conservation Authority, relevant conservation boards, NZ Fish and Game, and Game Animal Council to the list of parties that must be invited to comment on conservation covenants and land exchanges. This change had already been incorporated for other conservation approvals;

- providing for the panel to charge royalties, rents, fees and other charges on approvals in the same way DOC normally could, to allow for fair return on the use of public land;
- clarifying that DOC reports to the panel will cover all relevant considerations and recommend conditions for the panel to consider; and
- removing the ability for an applicant to apply for reconsideration of concession decisions and relying on the general processes of the Bill for the applicant to comment on proposed conditions.

- Additional workability changes to ensure the Bill works as intended include ensuring that wildlife refuges and wildlife management reserves held under the Wildlife Act are not inadvertently excluded from the scope of fast-track.
- We recommend you support these workability changes as they are consistent with previous decisions.

Appendix 1: Talking points

- This amendment paper includes a range of changes to ensure that conservation approvals operate as intended. I support approving the paper in full.
- Changes such as expanding the freshwater fisheries approvals, refining the process for land exchanges and provisions to support dealing with Crown risks in Crown land approvals simply reflect what Cabinet has previously agreed.
- I also support other changes to conservation approvals to better enable development. This includes:
    - Inclusion of electricity infrastructure projects on high value conservation land, noting that new electricity lines continue to be ineligible for the most precious and remote areas.
    - Enabling land exchange for Crown-owned reserves that have non-Crown management bodies – the most critical thing here is to ensure that the agreement of a management body that is the result of a Treaty settlement is still required.
    - Changes to the condition-setting framework for wildlife approvals.
- Other changes for conservation approvals include tweaks to make the Bill workable and ensure Select Committee recommendations are appropriately incorporated (some were missed or only partially reflected in the Bill).
- The amendment paper also includes changes to ensure the Bill works as intended. This includes ensuring that wildlife refuges and wildlife management reserves held under the Wildlife Act are not inadvertently excluded from the scope of fast-track.
- All these changes reflect Government policy intent.

Appendix 2: Questions and Answers

Question 1: ***Why are some high value conservation lands continuing to be ineligible for fast-tracking new electricity transmission projects?***	
Answer	Ministers Bishop, Brown and I agreed to keep marine reserves, nature reserves, specially protected areas within national parks, Ramsar sites and wilderness areas out of scope of fast-track for new electricity transmission projects. This reflects that new transmission projects can have substantial environmental impacts, and that these areas are generally small and remote making them less likely to be significant for electricity infrastructure. Marine reserves also don't have an approvals process that can be incorporated into fast-track; they are not covered by the concessions framework and do not normally allow development activities so a whole new approval would need to be established.
Question 2: ***Why is the ability for an applicant to apply for reconsideration being removed for concessions?***	
Answer	Select Committee agreed to a recommendation in the Departmental Report to disapply the section of the Conservation Act that allows the applicant to apply to the Minister to reconsider the concession decision. There are no similar provisions made for similar conditions placed on resource consents under the fast-track process (the objection and appeals processes available under the standard RMA process have not been provided for). We do not consider that there is a sufficiently unique requirement for environmental concession conditions to have a specific reconsideration provision available to the applicant only, and this would not align with the other permissions being granted under the Bill. Instead, the applicant will be invited to comment on the expert panel's draft conditions for all approvals. This enables the expert panel to consider the applicant's views before making a final decision.
Question 3: ***Why weren't wildlife refuges and wildlife management reserves excluded in previous versions of the Bill?***	
Answer	Wildlife refuges and wildlife management reserves are established under the Wildlife Act unlike other conservation land that is covered by the Conservation Act and Reserves Act. These areas were not identified by Ministers as part of the high value conservation land excluded from fast-track. However, they were not drafted into the Bill given they are covered by a different Act than other conservation land.

	This amendment corrects that and allows fast-track projects to progress in these areas where appropriate.
Question 4: ***Why are the New Zealand Conservation Authority, relevant conservation boards, NZ Fish and Game, and Game Animal Council being added to commenters for conservation covenants and land exchanges?***	
Answer	In July, Cabinet agreed to include the New Zealand Conservation Authority, relevant conservation boards, NZ Fish and Game, and Game Animal Council as commenters on substantive fast-track applications. This is intended to apply across all conservation approvals as per the recommendation in the Select Committee report, but it was erroneously missed from two of them – covenants and land exchanges.

ENDS

Conservation talking points for Fast-Track Approvals Bill – Committee of the Whole House

Overview:

- I support this Bill and the proposed amendment paper – the approval process for major projects takes too long and costs too much.
- The 'one-stop shop' approach where approvals can be sought through one efficient process will provide a smoother, more streamlined process for applicants.
- I have supported the inclusion of the following conservation approvals in this 'one-stop shop':
    - Concessions and Reserves Act approvals
    - Land exchanges
    - Amending or revoking some types of conservation covenants
    - Wildlife approvals
    - Freshwater fisheries permissions
    - Mining access arrangements
- Changes to the Bill have been proposed through the amendment paper to ensure the policy intent of the one-stop-shop is reflected and that conservation approvals operate as intended. I support approving the paper in full.

I support amendments to the Bill to allow for specified electricity projects on high value conservation land

- Amendments have been made to the Bill to allow applications for some electricity generation and transmission activities on high value conservation land (i.e. national reserves and areas listed in Schedule 3A of the Bill). This effectively means that fast-tracking of these specific activities could occur on more than 90% of public conservation land.
- We have made decisions that ensure conservation safeguards remain in place:
    - The projects that can progress are limited to maintenance of existing electricity lines without significant changes to effects, new electricity lines where that cannot reasonably occur elsewhere, and continued, unchanged operations of existing electricity generation.
    - Marine reserves, nature reserves, specially protected areas within national parks, Ramsar sites and wilderness areas continue to be out of scope of fast-track for new electricity lines given that new transmission projects can have large environmental impacts.

I support amendments to the Bill to expand the scope of freshwater fisheries approvals

- To meet the policy intent of the one-stop-shop, the scope of freshwater fisheries approvals under the Bill has been broadened, to provide for projects involving more complex freshwater fisheries activities.

- Without this amendment, projects such as dams would require a freshwater fisheries approval outside of the one-stop-shop.
- Schedule 8 of the Bill includes provisions for the newly included complex freshwater fisheries activities.
- The Panel's ability to make robust decisions on these matters is supported by the inclusion of information requirements for applicants, the requirement for the Director General of Conservation to provide a report to the Panel, and clear decision-making criteria consistent with other approvals in the Bill.

I support amendments to the Bill to manage Crown risks and liabilities associated with land management decisions

- Concessions, land exchanges and access arrangements are landowner permissions that reflect the Crown's property rights. These types of approvals are included in the one-stop-shop, which means the Panel will make the final decisions about them rather than Ministers. However, these approvals differ in nature from the other approvals in the Bill and expose the Crown to potential legal, financial and health and safety risks.
- We have made changes to the Bill for concessions, access arrangement and land exchanges that ensure these risks are appropriately dealt with including:
    - enabling the Minister responsible for the land concerned to 'call-in' the decision on the approval if the risks for the Crown reach a particular threshold.
    - enabling the panel to transfer the 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.
    - enabling the suspension of timeframes and processing for the panel to seek independent expert advice on the viability, risks and potential liabilities.

I support amendments to the Bill to honour Treaty settlements and statutory rights of first refusal

- We have made changes to the Bill to protect rights of first refusal in Treaty settlements and enable the holder of those rights to agree to a project if they wish to; the holder of such a right must agree to waive that right before an applicant's substantive application can progress.

I support amendments in the Bill that relate to changes to land exchanges

- We have made changes to the land exchange provisions in the Bill to remove undue barriers for projects and ensure the process is clear and workable.
- The land exchanges process is necessarily different to other approvals given that a land transaction is very different to a typical regulatory approval.
- The process we have designed allows the panel to make an efficient decision alongside other approvals while also providing for the unique requirements of a land exchange including:
    - Providing an appropriate process to complete relevant assessments of the land (e.g. valuations, technical and conservation assessments) and provide comprehensive advice to the panel when it is convened.

    - Allowing the panel to set ‘pre-conditions’ if they grant the approval, which ensures final legal and technical steps are followed.

- We have also provided for the exchange of reserves that are Crown-owned but managed by other entities, which will enable more development. Where a management entity is on account of a Treaty settlement, their agreement will be required for the exchange to progress. Impacts on other management bodies will be considered by the referral Minister.