



No New Mines on Conservation Land: Updated Cabinet paper for your feedback

To	Minister of Conservation	Date submitted	26 May 2023
Risk Assessment	<p>High</p> <p>The risks involved relate to:</p> <ul style="list-style-type: none"> - the feedback received from Ngāi Tahu; - s9(2)(h) - the time available for progressing the policy. 	Priority	Very High
Reference	23-B-0233	DocCM	DOC-7353463
Security Level	In Confidence		
Action sought	Agree to provide feedback on the attached draft Cabinet paper	Timeframe	29 May
Attachments	<u>Attachment A</u> – Draft Cabinet paper – <i>No New Mines on Conservation Land: Decisions on approach to pounamu and next steps to progress the Bill</i>		
Contacts			
Name and position			Cell phone
Sam Thomas, Director Policy			s9(2)(a)
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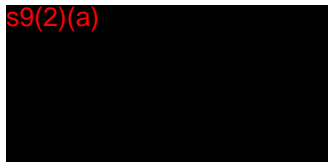
Executive summary – Whakarāpopoto ā kaiwhakahaere

1. This briefing provides an updated version of the draft No New Mines Cabinet paper for your feedback [Attachment A]. The Cabinet paper seeks decisions on an approach to providing for Ngāi Tahu's access to pounamu and next steps to progress the Crown Minerals (Restricting Access for Mining on Conservation Land) Amendment Bill 2023 (the Bill).
2. We seek your feedback on the attached draft Cabinet paper by Monday 29 May. We will then provide you with an updated version on Tuesday 30 May to be sent for wider Ministerial consultation.
3. Note that we are still working on some elements of the draft Cabinet paper. This includes preparing the maps which you have requested, which are being produced by our Geospatial Services Team and will be included in the version we provide to you on Tuesday for wider Ministerial consultation.
4. The Cabinet paper also includes a placeholder for the section on economic impacts, which you will be discussing with Ministers Allan and Woods on 7 June. We are working with officials at Ministry of Business, Innovation and Employment (MBIE) to provide advice for this meeting [23-M-0068 refers].
5. This briefing also provides updates on the remaining issues raised by Ngāi Tahu during engagement that we did not cover in our previous briefing of 17 May [23-B-0204 refers].
6. This briefing provides further advice on these issues, namely:
 - Updating the current Tribal Access Arrangement for pounamu;
 - Ngāi Tahu / mana whenua formal role(s) in the approval, monitoring, and enforcement of mineral access arrangements;
 - s9(2)(f)(iv)
 - Investigating the potential for a trigger mechanism for an Order in Council provision.
7. A further outstanding issue is Ngāi Tahu's proposal to have a carveout for aotea stone included in the No New Mines Bill. We have undertaken further analysis on this issue and propose not to include such a carveout in the Bill.
8. Ngāi Tahu currently holds a permit that grants them exclusive access to aotea until 2044, s9(2)(f)(iv)
9. DOC's advice is that it would be preferable to progress work on aotea s9(2)(f)(iv) separate from the No New Mines Bill, and that including a carveout for a particular mineral (that is not privately owned) would undermine the coherence of the policy and potentially raise questions from other iwi and stakeholders who would like to see other minerals exempted.
10. DOC is developing a draft consultation document for your review and subsequent circulation to Ministerial colleagues. We will provide this to your office by Wednesday 31 May for your comment and circulation to wider Ministers should you wish to do so.
11. The intention is for this consultation document to be attached to the Cabinet paper for Cabinet's approval if Cabinet chooses to progress with consultation on the draft Bill beginning in July.

We recommend that you ... (Ngā tohutohu)

		Decision
a)	Agree that the Cabinet paper will not include a proposed carveout for aotea stone (kyanite)	Yes / No
b)	Agree to provide further feedback on the draft Cabinet paper [Attachment A]	Yes / No
c)	Note that we will provide a further revised version on Tuesday 30 May for Ministerial consultation, including the maps you have requested	Noted
d)	Note that we will provide draft consultation material by Wednesday 31 May for your review and circulation to wider Ministers should you wish to do so	Noted

s9(2)(a)



Date: 26 / 05 / 2023

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

Date: / /

Hon Willow-Jean Prime
Minister of Conservation

Purpose – Te aronga

1. This briefing
 - Seeks your feedback on the attached revised Cabinet paper titled *No New Mines on Conservation Land: Decisions on approach to pounamu and next steps to progress the Bill* [Attachment A]; and
 - Provides further advice on issues raised during consultation by Ngāi Tahu and the approach we propose to take to these matters in the Cabinet paper.

This briefing provides the revised Cabinet paper for your feedback

2. We provided your office with a draft Cabinet paper for No New Mines on 17 May [22-B-0204 refers] and received your feedback on 22 May. We have now prepared a revised Cabinet paper for your feedback.
3. We seek your feedback by Monday 29 May. We will then make any further amendments to the Cabinet paper and provide your office with a revised paper for Ministerial consultation on Tuesday 30 May. Ministerial consultation will run from 30 May to 13 June.
4. Table 1 below shows the current timelines for the Cabinet paper:

Table 1 – Timelines for No New Mines Cabinet paper and related matters

Stage	Timeline
Feedback from Minister of Conservation on draft Cabinet paper	Monday 29 May
Revised Cabinet paper to Minister	Tuesday 30 May
Cabinet paper sent out for wider Ministerial and agency consultation	Tuesday 30 May
Minister of Conservation and Minister O'Connor meet to discuss No New Mines	Wednesday 31 May
Draft consultation materials to Minister for comment	Wednesday 31 May
Minister of Conservation meets Ministers Allan and Woods meet to discuss economic impacts of No New Mines	7 June
Receive feedback from wider Ministerial consultation on Cabinet paper	13 June
Lodge Cabinet paper	15 June
Consideration by Cabinet Environment, Energy and Climate Committee (ENV)	22 June
Consideration by Cabinet	26 June

Changes relative to the last version of the Cabinet paper you reviewed

5. The revised version of the Cabinet paper [Attachment A] includes a number of changes made in response to your feedback on the previous version. These changes include:
 - Adding paragraphs (22-26) highlighting the conservation argument for the policy.
 - Clarifying that the pounamu carveout options do not mean that access will automatically be granted for mining operations, but that operators would still be able to apply for access in certain areas.

- Providing further commentary on pounamu carveout Option 3.
 - Clarifying and adding information on the illustrative number of access arrangements impacted under each option.
 - Amending the section and associated recommendation on potentially including an Order in Council mechanism to add or remove carveout areas.
 - Swapping Path B and Path C for progressing the Bill (so that the order is about the timeframe to progress the work).
 - Adding further content on the wider issues raised by Ngāi Tahu in table 3.
 - Including information on the number of mining operations on stewardship land.
6. We have also included additional paragraphs noting the interaction of No New Mines with Te Wāhipounamu - South West New Zealand World Heritage Area (WHA). We have included paragraphs on this to highlight to Ministers the ongoing risks with the status quo, as well as the implications of carveouts to allow continued mining in pounamu areas.
7. Our Geospatial Services Team are preparing the maps you requested. While they have not been able to be produced in time for this draft of the Cabinet paper, they will be included in the next version of the Cabinet paper we provide to you on Tuesday.
8. The section in the Cabinet paper on managing the economic impacts of No New Mines has placeholder text currently, as this content will be determined in your meeting with Hon Megan Woods (Minister of Energy and Resources and responsible for Just Transitions) and Hon Kiritapu Allan (Minister of Regional Development) on 7 June. We are providing joint advice with MBIE on 6 June and will also provide talking points to support your attendance at this meeting. Officials will be available to support you in this meeting if required.

Wider issues raised by Ngāi Tahu during engagement

9. We have continued to look into issues raised by Ngāi Tahu through engagement. Ngāi Tahu have stated that they see the wider issues they have raised as part of a broader package of measures they consider should be progressed as part of No New Mines. As previously advised, we consider that some parts can be progressed in the Bill, some can be progressed as a commitment to further work, and others should not be progressed.
10. Our briefing of 17 May included information on most of the issues raised by Ngāi Tahu and how they have been addressed. These were:
- Ensuring Ngāi Tahu's ongoing and exclusive access to aotea stone;
 - Providing for access to pounamu in National Parks and the Arawhata conservation areas;
 - How No New Mines will be considered in the Stewardship Land Reclassification Project;
 - Wellbeing and economic development impacts; and
 - Clean-tech minerals.
11. This briefing covers the remaining matters raised by Ngāi Tahu in meetings with DOC on 8, 11, and 16 May. These are:
- Updating the current Tribal Access Arrangement for pounamu;
 - A potential carveout for aotea stone in the No New Mines Bill;

- Ngāi Tahu / mana whenua formal role(s) in the approval, monitoring, and enforcement of mineral access arrangements;
 - s9(2)(f)(iv)
 - Investigating the potential for a trigger mechanism for a possible Order in Council provision.
12. We have updated the draft Cabinet paper to reflect the additional analysis we have undertaken (see *Table 3: Wider issues raised by Ngāi Tahu during engagement* in the Cabinet paper).

Updating the existing Tribal Access Arrangement for pounamu

13. During engagement with DOC on 16 May, Ngāi Tahu sought clarity on the status of a Tribal Access Arrangement for minimal impact removal of pounamu that DOC and Ngāi Tahu signed in 2013.
14. This arrangement allows for members of the Ngāi Tahu Whānui to enter and remove pounamu from most classifications of public conservation land (PCL), provided that the activities do not result in impacts on conservation values of greater than minimum scale.
15. DOC confirmed that we consider this access arrangement is still in effect, rolling over on a monthly basis until either party cancels it or it is updated. This agreement will not be impacted by No New Mines since it pertains to a privately owned mineral.
16. We agree with Ngāi Tahu that this access arrangement should be reviewed and updated and have let them know that we are happy to work with them to ensure that the access arrangement is fit-for-purpose. This is referenced in the draft Cabinet paper (*Table 3: Wider issues raised by Ngāi Tahu during engagement*).
17. Further context on how this issue has been addressed is provided in Attachment B of the 17 May briefing [22-B-0204 refers].

Ngāi Tahu would like to see a carveout for aotea in the No New Mines Bill

18. During engagement with DOC on 11 May, Ngāi Tahu raised concerns that No New Mines might impact their access to aotea stone after their current permit for aotea lapses in 2044. To address this, Ngāi Tahu noted that they wish to see a carveout for aotea in the No New Mines Bill, meaning that the policy would not apply to aotea.
s9(2)(ba)(i)
19. Aotea stone (kyanite) is a distinctive, rare, blue and green rock found only in the catchment of the Makaawhio River. Aotea is considered a sister stone to pounamu by Te Rūnanga o Makaawhio (a hapū of Ngāi Tahu). In contrast to pounamu, aotea has not been vested in Ngāi Tahu, and is therefore classified as a Crown-owned mineral when found on Crown land.
20. s9(2)(g)(i)
21. In 2004 Te Rūnanga o Makaawhio applied for and was granted a 40-year mineral permit for aotea over the Makaawhio River and headwaters. The permit grants Te Rūnanga o Makaawhio exclusive rights to aotea within the permit area for the duration. DOC has also been working with Te Rūnanga o Makaawhio to develop an updated access arrangement that will run until the permit lapses in 2044.

22. Because Te Rūnanga o Makaawhio holds a mineral permit and an accompanying access arrangement for aotea, the implementation of No New Mines would not impact on their ability to access aotea until the permit and access arrangement lapse in 2044.

23. s9(2)(f)(iv)

24. Because Te Rūnanga o Makaawhio holds a mineral permit and an accompanying access arrangement for aotea, the implementation of No New Mines would not impact on their ability to access aotea until the permit and access arrangement lapse in 2044.

DOC does not recommend including a carveout for aotea in the No New Mines Bill

25. As noted earlier, Ngāi Tahu have stated that they wish to see a carveout for aotea in the No New Mines Bill.

26. Should Ministers wish to progress this, we consider that it would be possible to use the No New Mines Bill to create a carveout for aotea.

27. One mechanism to achieve this would be to add aotea to section 61(1A) of the Crown Minerals Act 1991 (CMA), which lists exceptions for which access arrangements may be granted for land that is included on Schedule 4.

28. If the exception was written to be for hand collection of aotea, it would not have any significant impacts on conservation values. We do not recommend providing a carveout for larger mining operations aimed at aotea since this would have more significant potential impacts on conservation values, and (as noted above) Te Rūnanga o Makaawhio has not indicated that they wish to undertake such mining operations.

29. s9(2)(g)(i)

30.

31. DOC's view is that it would be preferable to progress work on aotea (including on the issue of vesting) separately from the No New Mines Bill. s9(2)(f)(iv)

[Redacted]

32. The draft Cabinet paper does not include a proposal for an aotea carveout. s9(2)(f)(iv)

33. We have consulted with MBIE on this issue. s9(2)(f)(iv)

Ngāi Tahu would like to have a formal role in the approval, monitoring, and enforcement of CMA access arrangements

34. Ngāi Tahu have indicated that they wish to have a formal role in the approval, monitoring and enforcement of mineral access arrangements within their takiwā.

35. DOC has previously advised that the current legislative regime does not allow for such a statutory role:
- Under the CMA, decisions on access arrangements for Crown owned land must be made by the responsible Minister(s), as representatives of the Crown.
 - For compliance, section 99A of the CMA specifies that enforcement officers must be employees of a government department, a Crown entity, or a local authority.
36. The issue of potential roles in statutory decision-making, monitoring and enforcement under the CMA goes beyond the scope of the No New Mines and would be an issue of relevance for mana whenua throughout the country, not just for Ngāi Tahu.
37. There are several policy and legal issues that would need to be analysed if the Government wished to consider legislative changes to address this issue of potential formal roles for mana whenua in the approval, monitoring, and enforcement of access arrangements. For example, analysis would be needed around:
- how delegation would work with a third party in terms of legal liability;
 - how conflicts of interest would be managed;
 - s9(2)(g)(i)
 - determining in what circumstances this approach would best be applied.
38. MBIE is the agency responsible for administering the CMA and therefore any work on this would be led by them, with decisions being made by the Minister of Energy and Resources. MBIE would require DOC's expertise and support for this work.
39. s9(2)(f)(iv)
40. We have undertaken some preliminary analysis in regards to the approval and monitoring aspects of Ngāi Tahu's request, to provide you with an estimate of the resourcing and time that would be required if that work were to be progressed.
41. In line with agency responsibilities, an initial scoping phase of work would be undertaken by MBIE in collaboration with DOC. This initial phase would involve the following elements:
- Defining policy objectives;
 - Understanding tangata whenua interests and views;
 - Considering context of Treaty and Treaty Settlement Acts;
 - Examining potential roles within system;
 - Analysing implications and potential challenges;
 - Comparing opportunities according to criteria; and
 - Making recommendations for potential options to be developed further.
42. This work programme would have significant resourcing requirements and would require MBIE and DOC to reprioritise resources, which could mean that some other work programmes would have to be postponed. Ministers would have to agree to this reprioritisation.
43. DOC does not recommend that this work be prioritised for the time being. MBIE has advised that if work on this were to progress, it should be led by them with support from DOC, and that the Minister of Energy and Resources would need to approve reprioritisations of MBIE resourcing.

s9(2)(f)(iv)

Review date for Order in Council to add land to the carveout

50. The Cabinet paper includes an option to include an Order in Council mechanism in the Bill that would allow the addition or removal of parcels of PCL to the pounamu carveout area.
51. This proposal was included in response to feedback from Ngāi Tahu, though we note in the Cabinet paper that including an Order in Council mechanism to amend the primary legislation is not in line with good legislative practice as it would create a so-called 'Henry VIII clause', meaning that it would be possible for Cabinet to amend part of the primary legislation without the agreement of Parliament (by adding or removing areas to/from the carveout).
52. During our engagement on 11 and 16 May, Ngāi Tahu expressed the view that there should also be a 'trigger' mechanism to ensure that an Order in Council process will be initiated if/when new deposits of pounamu are found.
53. DOC supports this idea in principle if an Order in Council mechanism is to be included in the Bill, as it would give Ngāi Tahu greater certainty that the pounamu carveout areas would be amended as required.
54. DOC told Ngāi Tahu that we would consult with Parliamentary Counsel Office (PCO) on whether a trigger mechanism could be included for the Order in Council process. Ngāi Tahu accepts that this approach may be ruled out as unsuitable.

55. The Cabinet paper does not include content on this issue currently. We expect to receive advice from PCO in time to be reflected in the revised Cabinet paper when we provide it to you on Tuesday 30 May.

Draft consultation materials

56. The draft Cabinet paper sets out three pathways for progressing the Bill which would implement No New Mines policy.
57. Path B would involve commencing public consultation in July, shortly after deciding the preferred approach to pounamu under the Bill. This would allow public consultation to be undertaken within this term of government, and the introduction of the Bill to take place next term.
58. Path B would involve public consultation on an exposure draft of the Bill as currently drafted, accompanied by a summary description of any pounamu approach decided by Cabinet.
59. We are developing a draft consultation document for your review and subsequent circulation to Ministerial colleagues. The intention is for this consultation document to be attached to the Cabinet paper for Cabinet's approval if Cabinet chooses to progress No New Mines through Path B.
60. We will provide the draft consultation document to your office by Wednesday 31 May for your comment and for circulation to wider Ministers, should you wish to do so.
61. We have included a recommendation in the draft Cabinet paper to seek agreement from Cabinet to delegate further decisions to finalise the material for public consultation to the Prime Minister, Minister of Conservation, and the Minister of Energy and Resources.

Risk assessment – Aronga tūrarū

62. The potential risks associated with progressing No New Mines will vary depending on Cabinet's decisions on:
- whether and how to provide for Ngāi Tahu's continued access to pounamu; and
 - which pathway to progress the Crown Minerals (Restricting Access for Mining on Conservation Land) Amendment Bill.
63. The risks and trade-offs associated with the decisions Cabinet are being asked to make are described throughout the draft Cabinet paper.

There are risks associated with the feedback received from Ngāi Tahu

64. As discussed in our briefing of 17 May [23-B-0204 refers], Ngāi Tahu have raised:
- That they do not support No New Mines policy, despite having a preferred option for providing access to pounamu; and
 - A number of issues that are not directly associated with providing access to pounamu. It is Ngāi Tahu's view that these issues are a package and need to be considered during the progression of No New Mines.
65. DOC has worked with Ngāi Tahu to amend the proposed approach to provide for access to pounamu in response to their feedback. This includes:
- Basing the carveouts on Ngāi Tahu's Pounamu Management Areas;
 - Incorporating the maps for the pounamu carveout into the legislation (rather than establishing them separately through Order in Council); and
 - Introducing a mechanism to allow further land to be added to the pounamu carveout areas.

66. We have also prioritised work to look into the wider issues raised by Ngāi Tahu. In some cases, there are not immediate next steps for these issues because wider legislative change may be required, or there are broader policy matters that would need to be analysed which would require reprioritisation of resources for DOC and MBIE.

67. s9(2)(g)(i)



68.

Continued mining in Te Wāhipounamu - South West New Zealand World Heritage Area (WHA)

69. The proposed carveout aimed at pounamu will not allow any additional mining within Te Wāhipounamu - South West New Zealand World Heritage Area (WHA) compared to the status quo. However, options 2 and 3 would mean that some of the mining that happens in the area currently would continue to be allowable in the future as well (i.e., alluvial goldmining). This runs counter to the World Heritage Committee's position that mineral, oil and gas exploration or exploitation is incompatible with World Heritage status.

70. Mining is currently allowed in large parts of PCL in the World Heritage Area – primarily on stewardship land in the West Coast region.

71. The draft Cabinet paper now incorporates content on how the pounamu options relate to the WHA and highlights the risks associated with continuing to allow mining activities within the WHA.

s9(2)(h)



76. The outcomes of engagement with Ngāi Tahu are outlined in the Cabinet paper.

There are risks associated with the time available for progressing the policy

- 77. The time available to progress No New Mines means that there are limited opportunities to seek further decisions from Cabinet within this term. If Cabinet cannot agree on options to finalise the Bill, there will not be enough time available to complete the drafting of the Bill for introduction this term.
- 78. The limited time available also has implications for DOC’s ability to undertake further analysis on outstanding or unknown issues that require investigation.

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

- 79. The Ngāi Tahu (Pounamu Vesting) Act 1997 confirms that Te Rūnanga o Ngāi Tahu are the rightful owners of all pounamu (existing in its natural condition within the takiwā of Ngāi Tahu Whānui) that was previously owned by the Crown.
- 80. No New Mines would not impact on Ngāi Tahu’s ownership of pounamu. However, it does cause an indirect impact on Ngāi Tahu’s ability to obtain large quantities of pounamu as a by-product of alluvial mining.
- 81. To mitigate this, the draft Cabinet paper seeks decisions on the approach to provide for Ngāi Tahu’s on-going access to large quantities of pounamu.
- 82. Kāti Māhaki ki Makaawhio’s ability to obtain access arrangements relating to aotea stone may be impacted in the long-term. s9(2)(f)(iv)
- 83. Ngāi Tahu consider that their rights and interests are wider than pounamu, such as their economic, commercial and cultural interests.

Other whanau, hapū and iwi will also have an interest in this policy

- 84. Whānau, hapū, and iwi have varying levels of formal interests in mineral activities through settlement redress. Many groups without mineral-related redress will also have an interest in this policy.
- 85. Whānau, hapū and iwi may have concerns that any changes will impact their ability to access and extract minerals on public conservation land. There may also be criticism that No New Mines will prevent whānau, hapū and iwi from undertaking commercial mining activities on public conservation land in the future. There may also be whānau, hapū and iwi that would like to see stronger restrictions on mining than what is proposed through the No New Mines policy.

86. s9(2)(g)(i)

87.

Consultation – Kōrero whakawhiti

- 88. DOC has consulted with MBIE in developing the draft Cabinet paper attached, as well as the advice in this briefing.

Next steps – Ngā tāwhaitanga

89. We seek your feedback on the updated draft Cabinet paper by Monday 29 May.
90. We will provide you with a revised paper on Tuesday 30 May for wider Ministerial consultation. This will include maps and any further changes made to reflect your feedback. Wider Ministerial consultation is planned between 30 May and 13 June.
91. On Wednesday 31 May, we will provide you with draft consultation material for your comment and for circulation to wider Ministers if you wish to do so. We recommend that this material be appended to the Cabinet paper for approval if Cabinet agrees to commence public consultation on the Bill in July.
92. You are meeting with Minister O'Connor (Minister of Agriculture and Land Information) on Wednesday 31 May to discuss No New Mines.
93. You are meeting Minister Woods (Minister of Energy and Resources and responsible for Just Transitions) and Minister Allan (Minister of Regional Development) on 7 June to discuss managing economic impacts related to No New Mines. We will provide advice and talking points for this meeting.

ENDS
