



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

To	Minister of Conservation	Date submitted	17 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) [REDACTED] - the time available for progressing the policy. 	Priority	High
Reference	23-B-0204	DocCM	DOC-7346618
Security Level	In Confidence		

Action sought	Agree to provide feedback on the attached draft Cabinet paper	Timeframe	22 May
Attachments	<p>Attachment A – Draft Cabinet paper: Decisions on approach to pounamu and next steps to progress the Bill</p> <p>Attachment B – Summary of wider minerals related issues raised by Ngāi Tahu during engagement</p>		

Contacts	
Name and position	Cell phone
Logan Penniket, Acting Manager – Tourism & Economic Development	s9(2)(a) [REDACTED]
Rawiri Tamihana-Milne, Graduate Policy Advisor	[REDACTED]

Executive summary – Whakarāpopoto ā kaiwhakahaere

We seek your feedback on the draft Cabinet paper

1. This briefing provides you with a draft Cabinet paper which seeks decisions on an approach to providing for Ngāi Tahu's access to pounamu under No New Mines policy and next steps to progress the Crown Minerals (Restricting Access for Mining on Conservation Land) Amendment Bill 2023 (the Bill).
2. No New Mines would not have an impact on Ngāi Tahu's ownership rights of pounamu, or their ability to obtain access to PCL for extraction of pounamu in its own right, but it would have a secondary impact on Ngāi Tahu's ability to obtain large quantities of pounamu as a by-product of third-party alluvial mining.
3. On 7 March 2023, the Cabinet Priorities Committee (CPC) invited you to return to Cabinet Environment, Energy and Climate Committee (ENV) following the conclusion of engagement with Ngāi Tahu to seek further policy decisions to finalise the Bill, including any measures to provide for access to pounamu [CPC-23-MIN-0003].
4. Engagement with Ngāi Tahu remains ongoing since December 2022, with DOC meeting with Ngāi Tahu in April and on 8, 11 and 16 May to discuss further matters they have raised. We have now held discussions on all substantive matters, but are continuing to look into further issues that Ngāi Tahu have raised through our discussions.
5. The draft Cabinet paper (Attachment A of this briefing) sets out:
 - three options to provide for Ngāi Tahu's on-going access to large quantities of pounamu for Cabinet to consider; and
 - three pathways to progress the Bill.
6. We recommend you provide us with feedback on the draft Cabinet paper by 22 May, in order consult with agencies and your ministerial colleagues between 31 May and 12 June. We will provide you with a final version of the Cabinet paper for lodgement on 15 June and consideration by ENV on 22 June.

Managing economic impacts of No New Mines

7. CPC also noted that you are seeking further advice on opportunities to support regions and their communities, such as the West Coast of the South Island, that may be impacted by the No New Mines policy.
8. DOC has engaged with the Just Transition Partnerships team at the Ministry of Business, Innovation and Employment (MBIE) to discuss potential options that could be used to address the regional impacts of the No New Mines policy and to understand in what circumstance Government support might be warranted under the current policy.
9. You are meeting with Ministers Hon Megan Woods, Minister of Energy and Resources (and Minister responsible for Just Transitions), and Hon Kiritapu Allan, Minister of Regional Development, on Wednesday 7 June to discuss opportunities to address any economic impacts that may result from the implementation of No New Mines. We will provide you with advice by 6 June to support you at this meeting.
10. Following consultation and your meeting with Ministers Woods and Allan, we will revise the Cabinet paper to reflect your agreed approach.
11. We consider that the draft Cabinet paper should support clear communications on this issue for the announcement without pre-empting further analysis and decisions on this issue. The Department of the Prime Minister and Cabinet support this approach.

Summary of engagement with Ngāi Tahu

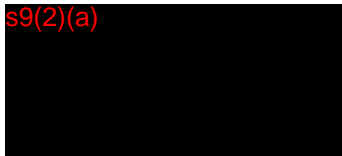
12. Poutini Ngāi Tahu have stated that while providing for ongoing access to pounamu is critical to them, that this alone would not be sufficient to address all of their concerns relating to the No New Mines policy. Overall, Ngāi Tahu does not support the policy.
13. Ngāi Tahu have raised a number of other issues relating to mineral access on PCL. They consider that these issues are relevant to the rights and interests provided by their Treaty settlement.
14. Attachment B of this briefing covers these issues in detail. While these issues are not directly related to No New Mines, Ngāi Tahu have stated that they see them as part of a broader package of measures they consider should be progressed.
15. As noted, engagement with Ngāi Tahu remains ongoing, and they have raised further matters in recent meetings. We will report back to you on these matters and seek any decisions for matters to be covered in the Cabinet paper.

We recommend that you ... (Ngā tohutohu)

		Decision
1.	<p>Note that on 12 December 2022 Cabinet agreed to:</p> <ul style="list-style-type: none"> • amend Schedule 4 of the Crown Minerals Act 1991 (CMA) (and associated provisions in section 61 as required) to add 12 public conservation land (PCL) classifications, meaning that access cannot be granted for most new mining operations on that land; and • invite the Minister of Conservation to engage with Ngāi Tahu on approaches that could provide for continued access to pounamu. 	Noted
2.	<p>Note that through engagement to date with Ngāi Tahu they have raised:</p> <ul style="list-style-type: none"> • that despite having a preferred option for providing access to pounamu, they are opposed to the No New Mines policy as a whole; and • a number of issues that go beyond the immediate question of providing for access to pounamu and the No New Mines policy. 	Noted
3.	<p>Note that most of the Bill which would implement No New Mines policy has been drafted, with the exception of provisions relating to Ngāi Tahu's access to pounamu.</p>	Noted
4.	<p>Note that DOC officials have prepared a draft Cabinet paper which seeks decisions on the approach to providing for access to pounamu under No New Mines, as well as the preferred approach to progressing the Bill.</p>	Noted
5.	<p>Agree to provide feedback on the attached draft Cabinet paper.</p>	Agree / Disagree / Discuss
6.	<p>Note that we will report back to you on further matters Ngāi Tahu has raised in meetings with DOC on 8, 11, and 16 May</p>	Noted

7.	Note you advised Cabinet that you would be seeking further advice on opportunities to support regions that may be impacted by the No New Mines policy.	Noted
8.	Note that you are meeting with Hon Megan Woods (Minister of Energy and Resources and responsible for Just Transitions) and Hon Kiritapu Allan (Minister of Regional Development) on Wednesday 7 June to discuss the approach to measures to address the regional impacts of No New Mines in the Cabinet paper.	Noted

s9(2)(a)



Date: 17/05/2023

Date: / /

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

Hon Willow-Jean Prime
Minister of Conservation

Purpose – Te aronga

1. This briefing seeks your feedback on the attached draft Cabinet paper on the approach to providing for access to pounamu under No New Mines policy, and next steps for progressing the Bill which would implement the policy. The Cabinet paper is scheduled for consideration at Cabinet Environment, Energy and Climate Committee (ENV) on 22 June 2023.

Background and context – Te horopaki

2. The Government announced a policy of ‘no new mines on conservation land’ (No New Mines) in the Speech from the Throne in 2017. The policy was not progressed in that term due to lack of cross-party agreement.
3. On 12 December 2022, Cabinet [CAB-22-MIN-0568 refers]:
 - agreed to amend Schedule 4 of the Crown Minerals Act 1991 (CMA) (and associated provisions in section 61 as required) to add 12 named public conservation land (PCL) classifications, meaning that access cannot be granted for most new mining operations on that land;
 - agreed to specify that mineral access rights provided in Treaty of Waitangi settlement acts will not be impacted by the addition of the recommended land classifications to Schedule 4 of the CMA; and
 - invited the Minister of Conservation to engage with Ngāi Tahu on approaches that could provide for continued access to pounamu.
4. On 7 March 2023, the Cabinet Priorities Committee invited you to return to ENV following the conclusion of engagement with Ngāi Tahu to seek further policy decisions to finalise the Bill, including measures to provide for Ngāi Tahu’s access to pounamu [CPC-22-MIN-0003 refers].
5. Most of the Bill has now been drafted, with the exception of provisions relating to Ngāi Tahu’s access to pounamu.

6. The Bill would add most categories of public conservation land to Schedule 4 of the CMA, meaning that access for most mining activities may not be granted on that land. Stewardship land would not be added to Schedule 4 as it is yet to be reclassified. This means that mining access could continue to be approved on stewardship land.
7. No New Mines would not impact on Ngāi Tahu's ownership or rights to pounamu. However, the addition of further land classifications to Schedule 4 of the CMA would cause an indirect impact to Ngāi Tahu's ability to obtain large quantities of pounamu as a by-product of alluvial mining carried out by third-party mining operators.
8. DOC has been engaging with Te Rūnanga o Ngāi Tahu and Poutini Ngāi Tahu since the beginning of this year.

The draft Cabinet paper

9. DOC has prepared a draft Cabinet paper provided in Attachment A. We seek your feedback on this draft paper.
10. The Cabinet paper is still in draft form, with some sections yet to be finalised. DOC officials are continuing to refine the content of the draft paper, in particular to reflect ongoing discussions with Ngāi Tahu.
11. As discussed below, we seek your decisions on the approach to covering the wider matters raised by Ngāi Tahu in the Cabinet paper. We are continuing to look into further matters raised by Ngāi Tahu in our meetings with them in April and May and will report back to you and seek any decisions for matters to be covered in the Cabinet paper.
12. However, we are providing the draft Cabinet paper to you at this stage, so that we can receive your feedback to inform the paper as it progresses. You will have further opportunities to comment on revised versions of the Cabinet paper during the Ministerial consultation stage, and prior to the paper being finalised for lodgement.
13. The proposed timeline for progressing the Cabinet paper is provided later in this paper.

Summary of the content in the draft Cabinet paper

14. The draft Cabinet paper:
 - seeks decisions on the approach to provide for Ngāi Tahu's on-going access to large quantities of pounamu, if at all;
 - seeks decisions on progressing the Bill;
 - informs Ministers on other issues raised by Ngāi Tahu throughout the engagement process and provides potential pathways to address these issues; and
 - provides an update on the Stewardship Land Reclassification Project.
15. The following sections provide more detail on this content.

Providing for Ngāi Tahu's on-going access to large quantities of pounamu

16. DOC has developed three options to provide for Ngāi Tahu's on-going access to large quantities of pounamu for Cabinet to consider. Those options are:
 - **Option 1** (counterfactual) – No specific carve out for pounamu access obtained as a by-product of alluvial mining;
 - **Option 2** – Allow all alluvial mining in pounamu areas (option developed to reflect feedback from Ngāi Tahu); and

- **Option 3** – Allow all alluvial mining in pounamu areas and allow all low impact mining on the South Island (in the Ngāi Tahu takiwā) (option developed to reflect feedback from Ngāi Tahu).
17. The draft Cabinet paper provides analysis on how the feedback received from Ngāi Tahu has been considered alongside the options to provide for access to pounamu.

Progressing the Crown Minerals (Restricting access for mining on conservation land) Amendment Bill

18. DOC has identified three pathways to progress the Bill:
- **Path A** - Cabinet decides on the preferred approach to provide for access to pounamu, Parliamentary Counsel Office (PCO) redrafts the Bill accordingly, Cabinet agrees to introduce the redrafted Bill to the House and refer it to Select Committee before the election.
 - **Path B** - Cabinet decides on the preferred pounamu option, PCO redrafts the Bill, then Cabinet agrees to release an exposure draft for public consultation after the election. Alternatively, Cabinet could choose to release the draft Bill for the public's information prior to the election. Introduction would follow next term.
 - **Path C** - Cabinet decides on the preferred pounamu option. Cabinet also agrees to release the existing draft Bill as an exposure draft, together with extra material summarising the pounamu provisions. DOC then undertakes consultation on the draft Bill and pounamu option material during the pre-election period. Introduction would follow next term.
19. The draft Cabinet paper provides analysis relating to the timing implications of progressing each of these pathways noted above.

If Cabinet decides either Path B or C above, PCO will prepare an exposure draft of the Bill

20. A proposal to release an exposure draft outside the Crown must be referred to the Crown Law Office and needs the approval of the Attorney-General.
21. If agreed by the Attorney-General, PCO will prepare the exposure draft for public consultation.

If Cabinet decides Path C, Cabinet will also need to approve consultation materials

22. In the case that Cabinet decides to progress No New Mines using Path C, Cabinet will also need to approve the consultation material that will support engagement on an exposure draft.
23. DOC will provide you with draft consultation material for your comment in the next two weeks. This would then be attached as an appendix to the Cabinet paper, for Cabinet's approach if Cabinet chooses Path C.
24. The Cabinet paper also seeks agreement for final decisions on consultation materials to be delegated to the Ministers of Conservation and Energy and Resources.

Progressing the Cabinet paper

25. The following table summarises the relevant steps and key dates for progressing the draft Cabinet paper provided in Attachment A.

Table 1: Key dates for progressing the Cabinet paper

Relevant Steps	Key Dates
Receive feedback from the Minister of Conservation on the draft Cabinet Paper	22 May
Agency consultation on the draft Cabinet paper	24-26 May
Ministerial consultation	31 May – 12 June
Date of lodgement	15 June
Consideration at Cabinet ENV Committee	22 June
Consideration by Cabinet	26 June

Describing Pounamu Management Areas in the draft Bill

26. To provide a carveout for access to pounamu, the areas that the carveout will apply to need to be defined in some way in the legislation. In our engagement, Ngāi Tahu have expressed a preference that this carveout be based on their Pounamu Management Areas (PMAs).
27. DOC have requested that Ngāi Tahu provide maps and geographical information for their PMAs so that these areas can be correctly identified in the Bill. DOC has not yet received this information, and there is a risk that we will not be able to obtain the detailed information needed (for the legislative purposes) in time for Cabinet’s consideration of the Bill.
28. To avoid this risk, DOC initially proposed to include a provision in the Bill that would allow the pounamu carveout areas to be defined via Order in Council. However, Ngāi Tahu expressed a strong preference to have the areas be defined in the primary legislation, and expressed concerns around certainty that implementation would follow.
29. Given this, DOC is developing an alternative approach that would allow more time for Ngāi Tahu to provide the geographic information on PMAs, and for this information to be assessed and then included without delaying the Bill.
30. Ngāi Tahu have indicated that they support this approach. They are working to prepare geographic information and are keen to work with DOC’s geospatial information teams to progress this work.

Engagement with Ngāi Tahu on options to provide for access to pounamu

31. Cabinet invited the Minister of Conservation to engage with Ngāi Tahu on approaches that could provide for continued access to pounamu under the No New Mines policy.
32. Engagement with Te Rūnanga o Ngāi Tahu was initiated by the then-Minister of Conservation, Hon Poto Williams. Subsequent discussions have largely been led by DOC officials on behalf of the Minister of Conservation.
33. In March 2023, Poutini Ngāi Tahu (two hapū of Ngāi Tahu) noted broad concerns with the No New Mines policy, advising that they do not support any of the options to provide for access to pounamu or the wider policy.
34. On 3 April 2023, DOC officials met with Poutini Ngāi Tahu alongside Te Runanga o Ngāi Tahu in Hokitika. Poutini Ngāi Tahu emphasised that providing for ongoing access to pounamu is critical for them, although this alone would not be sufficient to address all of their concerns relating to the policy.

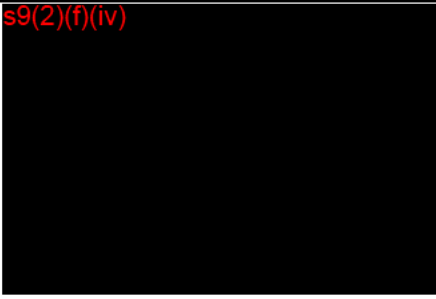
35. Ngāi Tahu’s preferred option for providing ongoing access to pounamu is to provide for alluvial mining to occur within Pounamu Management Areas, and for all low impact mining to be allowed to continue as a means of reducing the wider economic and wellbeing impacts of the policy for Te Tai Poutini.
36. While engagement with Ngāi Tahu was expected to conclude in early May, DOC has met with Ngāi Tahu on 8, 11 and 16 May. We will continue to engage with Ngāi Tahu as the work progresses.

Ngāi Tahu have also raised matters that are not directly related to pounamu access

37. In addition to the concerns relating to continued access to pounamu, Ngāi Tahu have also raised a number of other matters that they consider to be intertwined with the No New Mines policy. Ngāi Tahu’s view is that these issues constitute a ‘package’ of measures and issues that should be addressed as part of (or prior to, or even instead of) No New Mines implementation.
38. Although these issues go beyond the scope of Cabinet’s direction to engage with Ngāi Tahu on approaches that could provide for continued access to pounamu, DOC has been looking into these wider issues as they were raised through engagement with a Treaty partner.
39. The issues raised are summarised in the table below. Attachment B contains more detailed information.
40. We will report back to you with more analysis on some of these wider issues before the draft Cabinet paper is finalised for lodgement.

Issue raised	Key context	Comment
Exclusive Ngāi Tahu access to aotea stone	Aotea stone is considered a sister stone to pounamu Kāti Māhaki ki Makaawhio (a hapū of Ngāi Tahu). In contrast to pounamu, aotea has not been vested in Ngāi Tahu.	s9(2)(f)(iv)
Access to pounamu in National Parks	There is a widespread misconception that all mining is banned in National Parks. However, it is only mining for Crown-owned minerals that is banned in National Parks, which means that if a mineral is privately owned (like pounamu is) access for mining of that mineral in National Parks is allowable.	DOC has communicated to Ngāi Tahu that they are able to apply for access to extract pounamu from National Parks. In addition, Ngāi Tahu and DOC signed a Tribal Access Arrangement in 2013 for minimal impact removal of pounamu from PCL. This agreement is still in operation but is due to be reviewed. DOC will work with Ngāi Tahu to ensure that the Tribal Access Arrangement is updated and fit-for-purpose.

Issue raised	Key context	Comment
Formal role for Ngāi Tahu in the approval, monitoring, and enforcement of CMA access arrangements	Under the Crown Minerals Act, decisions on access arrangements for Crown-owned land must be taken by the responsible Minister(s), as representatives of the Crown. When DOC officials make decisions on access arrangements, this is on delegation from the Minister(s).	DOC has conveyed to Ngāi Tahu that legislative change would be required to provide them with a formal role in approval, monitoring, and enforcement of CMA access arrangements, and that significant policy and legal issues would need to be considered. This work is beyond the scope of this Bill.
Community wellbeing and economic development impacts	Ngāi Tahu have expressed concerns that the No New Mines policy may have significant adverse effects on the regional economy and community wellbeing of the West Coast region.	Potential approaches to addressing the economic impacts of No New Mines are discussed later in this paper.
Impacts on future unrealised clean-tech minerals opportunities	<p>Ngāi Tahu have conveyed that they would like to retain the ability to potentially mine for clean-tech minerals on PCL in the future, as a way to provide for the economic wellbeing of their communities.</p> <p>There is no agreed definition for what constitutes a 'clean tech' mineral, but prominent examples include copper, nickel, cobalt, rare earth elements and lithium.</p>	<p>DOC has conveyed to Ngāi Tahu that all Crown-owned minerals will be treated the same under the No New Mines policy, including minerals that may be used in clean tech products.</p> <p>DOC does not consider there is a strong rationale for treating such minerals differently under No New Mines policy. Cabinet endorsed this in its previous decisions.</p>
s9(2)(f)(iv)		
Implications for the Stewardship Land Reclassification Project	Ngāi Tahu have sought clarity on the interactions of No New Mines and the Stewardship Land Reclassification project.	s9(2)(f)(iv)

Issue raised	Key context	Comment
		<p>s9(2)(f)(iv)</p>  <p>The draft Cabinet paper includes an update on the Stewardship Land Reclassification project.</p>

Ngāi Tahu has recently raised further matters which we are still looking into

41. As part of our ongoing engagement on No New Mines policy, Ngāi Tahu continues to provide further feedback on aspects of the proposed approach to pounamu, as well as other issues which they see as related.
42. These include the potential for the policy to also include a carve out for aotea; and how the proposed Order in Council process to add or remove land from pounamu areas will be triggered.
43. We are continuing to look into these issues and consider any implications for the proposals in the Cabinet paper. We will provide further advice and seek any further decisions as required.

Analysis relating to access to pounamu under the No New Mines policy

44. DOC is currently preparing the first draft of the regulatory impact statement (the RIS) associated with the options outlined in the draft Cabinet paper to provide for Ngāi Tahu’s ongoing access to pounamu as a by-product of alluvial mining.
45. This document is different to the Supplementary Analysis Report used to analyse the addition of land classifications to Schedule 4 of the CMA.
46. The RIS provides a high-level summary of the problem, the impact analysis, information relating to the engagement with Ngāi Tahu, and the proposed arrangements for implementation and review.
47. The panel process associated with reviewing the RIS began on 17 May. DOC is anticipating that a final version of the RIS will be ready in time for the lodgement of the Cabinet paper on 15 June.
48. We will provide you with a more complete version of the RIS at a later date.

Managing the economic impacts of the No New Mines policy

49. In March, you advised Cabinet that you are seeking further advice on opportunities to support regions and their communities, such as the West Coast of the South Island, that may be impacted by No New Mines policy [CPC-23-MIN-0003 refers].
50. As you will be aware, around three quarters of mining on PCL occurs in the West Coast region. Mining (both on and off PCL) currently provides significant economic benefit to the West Coast community. In 2021, mining contributed \$183 million to the West Coast’s economy (roughly 8.4% of their GDP). We do not have data on the

contribution of mining from PCL to the West Coast economy. However, only 6% of the total national direct output from coal and gold mining in 2021 came from PCL.

The Government may wish to consider measures to manage these impacts

51. To mitigate any impacts, the Government may wish to consider support to such regions. For example, Just Transitions has supported the Taranaki region following the introduction of the Crown Minerals (Petroleum) Amendment Act 2018 and more recently supported Southland following the announcement of the impending closure of the New Zealand Aluminium Smelter.
52. DOC has engaged with the Just Transition Partnerships team at MBIE to discuss potential options. We understand that there are a range of tools that could be used to address the regional impacts of the No New Mines policy. For example, Just Transitions, Kānoa - Regional Economic Development & Investment Unit, or supporting the region to lead change via other government mechanisms available.
53. At the time of the announcement, the Government should be clear on its response regarding any regional economic impacts.

You are meeting with Ministers Wood and Allan

54. You are meeting with Hon Megan Woods, as the Minister responsible for Just Transitions, and Hon Kiritapu Allan, as the Minister of Regional Development, on Wednesday 7 June to discuss the approach to measures to address the regional impacts of No New Mines in the Cabinet paper.
55. We will work with MBIE to provide you with advice and talking points by 6 June to support you in this meeting.

Risk assessment – Aronga tūraru

56. 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.
57. The risks and trade-offs associated with the decisions Cabinet are being asked to make have been described throughout the draft Cabinet paper.

There are risks associated with the feedback received from Ngāi Tahu

58. As discussed earlier, 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.
59. 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.

60. We have also prioritised work to look into the wider issues raised by Ngāi Tahu. These issues are summarised in the table earlier in this paper, and covered in greater detail in Attachment B.
61. However, it was not possible for DOC to address all of the feedback from Ngāi Tahu in the time available to prepare the attached draft Cabinet paper. In some cases, there are not immediate next steps for these issues, legislative change may be required, or there are broader policy matters that would need to be weighed in considering any changes.

62. s9(2)(g)(i)



63.

s9(2)(h)



68. 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

69. 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.
70. The limited time available also has implications on DOC's ability to undertake further analysis on outstanding or unknown issues that require investigation.

The first reading of the Hon. Sage's Member's Bill has not taken place

71. Hon Eugenie Sage's Members Bill - the Crown Minerals (Prohibition of Mining) Amendment Bill – was drawn from the ballot on 11 August 2022.
72. The main focus of the Member's Bill is on preventing mineral permits from being applied for or granted for Crown-owned minerals on all public conservation land. This

Member's Bill would go further than the Government's policy of 'no new mines on conservation land'.

73. s9(2)(g)(i)

74. To mitigate this risk, DOC has provided your office with relevant talking points.

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

75. 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.

76. As mentioned above, 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.

77. 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.

78. Kāti Māhaki ki Makaawhio's ability to obtain access arrangements relating to aotea stone may be impacted. s9(2)(f)(iv)

79. 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

80. 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.

81. s9(2)(g)(i)

82.

Consultation – Kōrero whakawhiti

83. DOC has consulted with MBIE in developing the draft Cabinet paper attached.

Legal implications – Te hiraunga a ture

84. As outlined above, Cabinet agreed to progress No New Mines through a Government Bill that would amend Schedule 4 of the CMA, as well as section 61 of the CMA. Most of this Bill has now been drafted, with the exception of provisions relating to access to pounamu.

Next steps – Ngā tāwhaitanga

85. We seek your feedback on the draft Cabinet paper in Attachment A.
86. If you agree to progress the Cabinet paper, agency consultation on that paper will take place from 24 – 26 May. This will be followed by ministerial consultation from 31 May – 12 June.
87. You are meeting with Ministers Woods and Allan on 7 June to discuss the approach to measures to address the regional impacts of No New Mines in the Cabinet paper. We will provide you with advice by 6 June to support you in this meeting.
88. In the next two weeks, DOC will provide you with material for your comment to support possible consultation on an exposure draft of the Bill, if Cabinet agrees to do so. Consultation on an exposure draft will be subject to Cabinet decisions.
89. DOC will also provide you with a Cabinet paper memo including talking points ahead of the Cabinet paper's consideration at Cabinet ENV Committee on 22 June. The Cabinet paper will then be considered by Cabinet on 26 June.

ENDS

Attachment A – Draft Cabinet paper: Decisions on approach to pounamu and next steps to progress the Bill

In Confidence

Office of the Minister of Conservation
Cabinet Environment Committee

No New Mines on Conservation Land: Decisions on approach to pounamu and next steps to progress the Bill

Proposal

- 1 This paper seeks further decisions to implement the Government’s policy of ‘No New Mines on Conservation Land’, including:
 - 1.1 decisions on the approach to pounamu obtained as a by-product of alluvial mining; and
 - 1.2 next steps to progress the Crown Minerals (Restricting Access for Mining on Conservation Land) Amendment Bill (the Bill).

[Exec summary to come]

Background

Cabinet has made decisions on key elements of No New Mines policy

- 2 The Government committed to a policy of ‘no new mines on conservation land’ (No New Mines) in the Speech from the Throne in 2017.
- 3 On 12 December 2022 Cabinet made decisions [CAB-22-MIN-0568 refers] to progress the policy of No New Mines, including the following. Cabinet:
 - 3.1 agreed to progress No New Mines by adding further classifications of public conservation land (PCL) to Schedule 4 of the Crown Minerals Act 1991 (CMA) through a parliamentary legislative process;
 - 3.2 agreed to amend Schedule 4 of the CMA (and to amend associated provisions in section 61 as required) to add 12 PCL classifications, meaning that access cannot be granted for most new mining operations on that land;
 - 3.3 agreed that stewardship land will not be added to Schedule 4 of the CMA, as this will be assessed over time through the Stewardship Land Reclassification project;
 - 3.4 agreed to specify that mineral access rights provided in Treaty of Waitangi settlement acts will not be impacted by the addition of the recommended land classifications to Schedule 4 of the CMA; and

3.5 invited the Minister of Conservation to engage with Ngāi Tahu on approaches that could provide for continued access to pounamu, either prior to introduction of the Bill or following its introduction.

4 The *Crown Minerals (Restricting Access for Mining on Conservation Land) Amendment Bill* has been drafted since December 2022 to give effect to the decisions that Cabinet has made to date.

5 On 7 March 2023, the Cabinet Priorities Committee invited me to return to the Cabinet Environment, Energy and Climate Committee (ENV) following the conclusion of engagement with Ngāi Tahu to seek further policy decisions to finalise the Bill, including measures to provide for access to pounamu.

No New Mines would impact on Ngāi Tahu's ability to obtain large quantities of pounamu as a by-product of alluvial mining

6 No New Mines will not impact the ability of Ngāi Tahu to be granted access arrangements for mining operations specifically to obtain pounamu on PCL, since pounamu is privately-owned by Ngāi Tahu. (No New Mines policy does not apply to privately-owned minerals).

7 However, Ngāi Tahu currently obtains most of their pounamu through finder's fee arrangements with third-party alluvial goldmining operators that uncover pounamu as an incidental by-product of their mining operations.

s9(2)(b)(i)

8 Since the Bill will reduce the number of new alluvial mining operations on PCL, over time it would become more expensive and difficult for Ngāi Tahu to obtain commercial quantities of pounamu.

9 s9(2)(h)

10

11 s9(2)(h) the Department of Conservation has conducted significant engagement with Ngāi Tahu on No New Mines policy and related issues which they have raised. The outcomes of engagement with Ngāi Tahu are outlined later in this paper.

- 12 On 13 March 2023, Cabinet invited the Minister of Conservation to return to the Cabinet Environment, Energy and Climate Committee (ENV) following the conclusion of engagement with Ngāi Tahu to seek further policy decisions to finalise the Bill, including the measures to provide for access to pounamu [[CAB-23-MIN-0073 refers].
- 13 Engagement with Ngāi Tahu on the pounamu policy options has concluded and I am now seeking Cabinet's decisions on the approach to pounamu access, for inclusion in the draft Bill. I am also seeking decisions on next steps to progress this Bill this parliamentary term.

Summary of engagement with Ngāi Tahu

- 14 Engagement with Ngāi Tahu was initiated by the then-Minister of Conservation in December 2022. Subsequent discussions have largely led by DOC officials on behalf of the Minister of Conservation.
- 15 DOC has met [seven times] between December 2022 and May 2023 with representatives from Te Rūnanga o Ngāi Tahu and representatives from Poutini Ngāi Tahu (two hapū of Ngāi Tahu). Prior to each hui, officials provided Ngāi Tahu with material for discussion.
- 16 Engagement with Ngāi Tahu provided valuable feedback to support the policy development process and has informed the development of policy options.
- 17 Ngāi Tahu have noted broad concerns with the No New Mines policy, including concerns about the wider impacts and implications of No New Mines, including on their commercial interests and the regional economy in Tai Poutini.
- 18 However, Ngai Tahu have indicated their preferred option for providing ongoing access to pounamu if No New Mines progresses. This approach is discussed along with other options in the following sections.
- 19 Ngāi Tahu have also raised a number of broader issues that they consider should be progressed alongside the No New Mines policy. These issues are summarised later in this paper. [*Subject to Minister of Conservation's decisions on approach to covering wider issues raised by Ngāi Tahu*].
- 20 Engagement with Ngāi Tahu on policy options has concluded and I am now seeking Cabinet's decisions on an option that supports Ngāi Tahu's ongoing access to pounamu for inclusion in the draft Bill.

Options to support Ngāi Tahu's ongoing access to large quantities of pounamu

- 21 Following engagement with Ngāi Tahu, I have developed three options for Cabinet to consider. The three options relate to 'carving out' alluvial mining¹

¹ Alluvium is a type of soil (clay, silt, sand, or gravel) that has been deposited by running water in a stream bed, on a floodplain, in an alluvial fan, or in similar settings. The alluvial mining that occurs on PCL typically involves stripping the top-soil and vegetation to get to the deposit underneath and then processing the clay, sand, silt or gravel to separate out the mineral (over 90% of alluvial mining on PCL targets gold).

from No New Mines policy. This would mean that such mining can continue under the policy and Ngāi Tahu can continue to obtain pounamu uncovered as a by-product of this mining.

- 22 The main difference between the options is the extent of the carve out to allow alluvial mining to continue on conservation land under the No New Mines policy. In general, the greater the carve out, the lower the impact on Ngāi Tahu’s ability to obtain pounamu as a by-product of third-party alluvial mining. Conversely, a larger carve out would reduce the environmental benefits of the No New Mines policy.
- 23 The three options are:
- **Option 1** – No specific carve out for pounamu obtained as a by-product of alluvial mining;
 - **Option 2** – Allow all alluvial mining in pounamu areas;
 - **Option 3** – Allow all alluvial mining in pounamu areas, and allow all low impact² mining on the South Island (in the Ngāi Tahu takiwā).
- 24 To provide a carveout for ongoing access to pounamu via alluvial mining in a No New Mines Bill (options 2 and 3), DOC has advised that the areas that the carveout will apply to need to be defined in some way in the legislation.
- 25 I propose to define “pounamu areas” using Ngāi Tahu’s “Pounamu Management Areas”, by reproducing those geographic descriptions in the Bill. Appendix 2 includes a map of Ngāi Tahu’s “Pounamu Management Areas”. This is discussed further later in this paper.

Option 1 – No specific carve out for pounamu access obtained as a by-product of alluvial mining

- 26 Under this option, there would be no particular provision made in the Bill for Ngāi Tahu to access pounamu as a by-product of alluvial mining operations.
- 27 Ngāi Tahu could still obtain access arrangements for pounamu in its own right (as pounamu is privately owned by Ngāi Tahu). However, as mining operator access arrangements expire over time, there would be fewer opportunities for Ngāi Tahu to obtain pounamu through third-party mining operators. As a result, it would become much more expensive and difficult for Ngāi Tahu to obtain commercial quantities of pounamu.
- 28 If this option is preferred, the Government could consider other avenues to support Ngāi Tahu’s sourcing of pounamu.

² In evaluating applications for access to PCL for mining operations, DOC assesses whether the proposed operations can be classed as low, medium or high impact, depending on a range of factors. This process is an internal tool currently and would need to be further developed if it was to be referenced in legislation/regulations.

Option 2: Allow all alluvial mining in pounamu areas

- 29 Option 2 would provide a carve out in the No New Mines Bill to allow alluvial mining operations on the new PCL classifications added to Schedule 4 in pounamu areas (see paragraphs x-x for how these will be defined).
- 30 A mechanism would be included in the Bill to allow new areas to be added to the carveout (e.g., through Order in Council) if/when new pounamu deposits are discovered.
- 31 This option was informed by engagement with Ngāi Tahu. In particular, the mechanism to allow new areas to be added to the carveout was included in response to their feedback. The decision to base the carveout area on Ngāi Tahu's Pounamu Management Areas (discussed later) also responds to feedback from Ngāi Tahu. This option would prioritise access to large quantities of pounamu and would mean their economic aspirations are prioritised.

Option 3: Allow all alluvial mining in pounamu areas, and allow all low impact mining on the South Island (in the Ngāi Tahu takiwā)

- 32 As with Option 2, Option 3 would enable new alluvial mining to continue under No New Mines policy, if/where these fall within pounamu areas.
- 33 In addition, this option would allow all low impact mining on the South Island (in the Ngāi Tahu takiwā), even outside of pounamu areas.
- 34 This option would include a mechanism to allow new areas to be added to the carveout (e.g., through Order in Council) if/when new pounamu deposits are discovered.
- 35 This option goes beyond the scope of the problem definition, as it provides for broader mineral access and is not focussed just on pounamu as a by-product of alluvial mining.
- 36 Ngāi Tahu have indicated that this is their preferred option if No New Mines is progressed. This would provide for access to pounamu, as well as Ngāi Tahu's broader economic aspirations in relation to mining. It would also enable others to continue mining.
- 37 Ngāi Tahu have emphasised that this option (or any option) should not be progressed in isolation, but should be coupled with work to progress a number of other mineral-related issues they have raised, discussed later in this paper.

Analysis of the three options

The options vary in terms of how much mining would continue to be allowed on conservation land

- 38 Option 1 is most closely aligned with the environmental objectives of No New Mines, as it would ensure that most new mining is prevented on the conservation land classifications added to Schedule 4 of the CMA. However this option would have the highest impact on Ngāi Tahu's ability to source pounamu as a by-product of alluvial mining, as it would prevent new alluvial mining on those land classifications.

- 39 In contrast, the carveouts for alluvial mining in Pounamu Management Areas under options 2 and 3 would mean that a significant amount of mining will be able to continue under the No New Mines policy.
- 40 Using current access arrangements for alluvial mining for illustrative purposes, DOC has estimated that 19 of 26 current alluvial mining operations would be allowed under Option 2, and 22 of 26 current operations would be allowed under Option 3. Put another way, both options would allow around a quarter of all current mining on PCL to be approved.
- 41 This would be in addition to the fact that more than 30% of public conservation land is already exempted from the policy since Cabinet has decided that stewardship land will not be covered.
- 42 Appendix 2 provides a map of the Pounamu Management Areas which would be carved out from No New Mines policy under Options 2 and 3. These areas are primarily located in the West Coast region, but also extend into Southland and Otago.
- 43 As noted earlier, Options 2 and 3 were informed by engagement with Ngāi Tahu. Option 2 addresses Ngāi Tahu’s concerns and interests related to access to pounamu and would prevent most new mining activities outside of pounamu areas.
- 44 Option 3 goes beyond the scope of No New Mines and addresses Ngāi Tahu’s wider economic interests (beyond pounamu). s9(2)(g)(i)
[REDACTED]
[REDACTED] It would expand mining opportunities for other operators in the South Island under the policy.
- 45 Both options 2 and 3 are indirect ways of supporting Ngāi Tahu’s interests in obtaining pounamu. In effect, the carveout options would be supporting the alluvial goldmining sector (to varying degrees) because this provides Ngāi Tahu with a cost-effective way of obtaining pounamu. Currently, alluvial goldmining operations on PCL are undertaken by a range of actors, ranging from small-scale operators to large multinational companies.
- 46 Table 1 below provides more detailed comparison between the three options.

Table 1: Comparison of options to provide for pounamu access in the Bill

Option	Option 1 - No carveout for alluvial mining	Option 2 - Allow all alluvial mining in pounamu areas	Option 3 - Allow all alluvial mining in pounamu areas, and allow all low impact mining on the South Island (in the Ngāi Tahu takiwā)
Comment	<ul style="list-style-type: none"> This option is most in line with the policy commitment of No 	<ul style="list-style-type: none"> This option was developed based on feedback from Te 	<ul style="list-style-type: none"> This option was developed based on feedback received

Option	Option 1 - No carveout for alluvial mining	Option 2 - Allow all alluvial mining in pounamu areas	Option 3 - Allow all alluvial mining in pounamu areas, and allow all low impact mining on the South Island (in the Ngāi Tahu takiwā)
	<p>New Mines – but it would have the highest impact on Ngāi Tahu’s ability to source pounamu.</p> <ul style="list-style-type: none"> • If the Government wished to progress with this option, other avenues to support Ngāi Tahu’s sourcing of pounamu could be explored. • Roughly 53% of current mining operations on PCL would be allowed under this option (these operations are on stewardship land, which is not covered by No New Mines policy). • This figure is likely to decrease through the reclassification of Stewardship Land. 	<p>Rūnanga o Ngāi Tahu.</p> <ul style="list-style-type: none"> • We understand that this approach would address Ngāi Tahu’s concerns and interests related to pounamu. • However, Ngāi Tahu have stated that they have wider concerns and interests (beyond pounamu) relating to impacts on the regional economy of the West Coast and Ngāi Tahu’s economic aspirations. • 73% of current mining operations on PCL would be allowed under this option. 	<p>from Poutini Ngāi Tahu and Te Rūnanga o Ngāi Tahu.</p> <ul style="list-style-type: none"> • We understand that this option would go some way towards addressing Ngāi Tahu’s wider concerns and interests (beyond pounamu) relating to impacts on regional economies and Ngāi Tahu’s economic aspirations. • 84% of current mining operations on PCL would be allowed under this option.

47 I seek Cabinet’s decision on an approach to providing for access to pounamu, for inclusion in the draft Bill.

48 If Cabinet wishes to prioritise the environmental objectives of the No New Mines policy, then I recommend Option 1 (no carve out). If Cabinet wishes to implement No New Mines in a way that addresses the potential impacts on Ngāi Tahu’s pounamu supply, then I recommend Option 2 (allow all alluvial mining in pounamu areas).

Defining areas where there is a reasonable expectation that pounamu is likely to be found

49 Implementing Options 2-3 would require further work to identify and specify areas where there is a reasonable expectation that pounamu is likely to be found. This is needed so that mining in those areas could be carved out from the No New Mines policy in the Bill.

- 50 Ngāi Tahu has suggested that the Bill could refer to Ngāi Tahu's already established Pounamu Management Areas (PMAs). PMAs are geographic categorisations developed by Ngāi Tahu at the regional Papatipu Rūnanga level. The PMAs are not statutory instruments under the CMA, but New Zealand Petroleum and Minerals does provide contact information for the relevant Papatipu Rūnanga to mining operators with permits within PMAs.
- 51 DOC agrees that PMAs would provide an appropriate basis for a carve out. This is because they relate to known areas where pounamu may be found through alluvial mining, and are already used by alluvial mining operators.

Mechanism to identify Pounamu Management Areas in legislation

- 52 The pounamu carveout areas could be defined in legislation either–
- 52.1 In regulations/secondary legislation via Order in Council; or
- 52.2 Directly in the Act (e.g., in a new Schedule).
- 53 The two approaches would have the same net effect once implemented, as they would both mean that a geographic description of Pounamu Management Areas would be specified, for reference in making decisions on alluvial mining on conservation land.
- 54 Ngāi Tahu have indicated that they have a strong preference for the pounamu carveout areas to be defined in primary legislation. Ngāi Tahu expressed concerns that if the carveout areas are not set in the Bill, there would be no guarantee that the carveout will be defined through Order in Council in a timely fashion.
- 55 To define the carveout directly in the Act, it is necessary to obtain maps and geographic data of sufficient quality. Ngāi Tahu have indicated that they will provide maps and descriptions for Pounamu Management Areas that can be used for this purpose.
- 56 If maps and geospatial data of sufficient quality are not available by the time the draft Bill is to be considered by Cabinet in August, I propose to include provisional maps and descriptions in the draft Bill as a placeholder that would then be further refined during the Select Committee process.

Defining (additional) areas in secondary legislation via Order in Council

- 57 During engagement, Ngāi Tahu expressed the view that there should be a mechanism available to add new parcels of land to the pounamu carveout area if new pounamu deposits are discovered.
- 58 For this reason, I propose the draft Bill specify that proposals to add or remove land from the pounamu carveout areas may be designated by an Order in Council.
- 59 This Order in Council would be made on the recommendation of the Minister of Conservation and the Minister of Energy and Resources and with the agreement of Ngāi Tahu. This would ensure a central role for Ngāi Tahu in

the process and ensure that an Order in Council could not be made without the agreement of Ngāi Tahu.

- 60 Both of the pounamu carveout options (Options 2 and 3) are proposed to include an Order in Council mechanism that would allow amendments to the pounamu areas carved out from No New Mines.
- 61 However, I understand that this approach of using an Order in Council mechanism to amend pounamu areas that are set in primary legislation is not in line with good legislative practice. This is because 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).
- 62 If Cabinet prefers to avoid creating a Henry VIII clause, then instead we could choose not to include this Order in Council mechanism in the Bill. Instead, the pounamu areas could be amended through a parliamentary legislative process. This would take longer and would require the government of the day to prioritise a Bill to amend the pounamu areas set in legislation.
- 63 In addition, Ngāi Tahu have advised that it would prefer a mechanism that provides certainty that an Order in Council process will be progressed if new pounamu finds are uncovered. *[Note that officials are still considering this issue and will add information on a proposed approach in a subsequent draft of this Cabinet paper].*

Next steps for progressing the Bill

- 64 This paper also seeks Cabinet's decisions on next steps for progressing the Bill. It presents three pathways, namely:
- 64.1 **Path A:** The Bill is finalised and introduced to the House this term.
- 64.2 **Path B:** The Bill is revised this term, with public consultation on an exposure draft of the revised Bill next term. Introduction would also take place next term.
- 64.3 **Path C:** Public consultation this term on exposure draft of the Bill (as currently drafted), accompanied by a summary of any pounamu approach decided by Cabinet today. The introduction of the Bill would take place next term.
- 65 The implications of each timing pathway are provided in Table 2 below.

Table 2: Assessment of pathways to progress the No New Mines Bill

Option	Path A – Bill finalised and introduced this term	Path B – Bill revised, public consultation on exposure draft	Path C – Public consultation on exposure draft with summary of pounamu provisions
Summary	<ul style="list-style-type: none"> • Cabinet makes decisions on approach to provide access to pounamu. • Potential to announce policy decisions in early July. • The Bill is revised to reflect agreed approach. • Cabinet approves the revised Bill. • The Bill is introduced to House in August. 	<ul style="list-style-type: none"> • Cabinet makes decisions on approach to provide access to pounamu. • Potential to announce policy decisions in early July. • The Bill is revised to reflect agreed approach. • Cabinet approves the revised Bill and approves consultation material in August. • Prepare for public consultation on exposure draft. 	<ul style="list-style-type: none"> • Cabinet makes decisions on approach to provide access to pounamu. • Cabinet approves draft consultation materials at the same time. • Decisions on final consultation materials delegated to Ministers of Conservation and Energy and Resources. • Exposure draft of Bill released as drafted, along with a summary document on the pounamu approach agreed by Cabinet. • Public consultation beginning end of July
Comment	<ul style="list-style-type: none"> • Would enable a Bill to be introduced this term. • Would not allow for public consultation prior to the Bill being introduced (but the public could still input through select committee process). • Would require the Government to prioritise the Bill for House time in August. 	<ul style="list-style-type: none"> • Would allow for public consultation on an exposure draft. • Consultation in the following parliamentary term. • The Government could choose to release a draft of the Bill for the public's information after Cabinet has approved the revised Bill in August. • A Bill would not be introduced to parliament this term. 	<ul style="list-style-type: none"> • Would allow for public consultation on an exposure draft. • Consultation would be in pre-election period. • Not possible to have consultation and subsequent analysis completed in time for the Government to make final policy decisions this term. • A Bill would not be introduced to parliament this term.

- 66 If Cabinet agrees to Path A or B, officials will revise the draft Bill and I will return to Cabinet in August to seek approval of the finalised Bill and agreement to either:
- 66.1 introduce the Bill to the House,
 - 66.2 release the Bill at that point for the public’s information, or
 - 66.3 prepare for public consultation in the following term.
- 67 If the Cabinet agrees to Path C, I seek your approval of the attached draft consultation materials. I also seek your agreement to delegate final decisions on approval of consultation materials to the Ministers of Conservation and Energy and Resources.
- 68 Paths B and C would provide an opportunity for the public, stakeholders, and tangata whenua to provide their views on the exposure draft of the Bill, prior to it being introduced to the House. The Bill would then be amended to incorporate any changes following public consultation.

Wider issues raised by Ngāi Tahu during engagement

- 69 During DOC’s engagement with Ngāi Tahu on options to provide for pounamu access, Ngāi Tahu raised a number of issues they consider connected to the No New Mines policy, and that they wish to see addressed as part of this policy work.
- 70 Table 3 below provides an overview of the issues raised and associated responses.

Table 3: Wider issues raised by Ngāi Tahu during engagement

Issue raised	Key context	Response
Exclusive Ngāi Tahu access to aotea stone	Aotea stone is considered a sister stone to pounamu Kāti Māhaki ki Makaawhio (a hapū of Ngāi Tahu). In contrast to pounamu, aotea has not been vested in Ngāi Tahu.	<p>s9(2)(f)(iv)</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>DOC officials have relayed the views on aotea expressed during engagement to MBIE.</p>
Access to pounamu in National Parks	There is a widespread misconception that all mining is banned in National Parks. However, it is only mining for Crown-owned minerals that	DOC has communicated to Ngāi Tahu that they are able to apply for access to extract

Issue raised	Key context	Response
	<p>is banned in National Parks, which means that if a mineral is privately owned (like pounamu is) access for mining of that mineral in National Parks is allowable.</p>	<p>pounamu from National Parks.</p> <p>DOC will also work with Ngāi Tahu to update the existing Tribal Access arrangement for pounamu.</p>
<p>Formal role for Ngāi Tahu in the approval, monitoring, and enforcement of CMA access arrangements</p>	<p>Under the Crown Minerals Act, decisions on access arrangements for Crown-owned land must be taken by the responsible Minister(s), as representatives of the Crown. When DOC officials make decisions on access arrangements, this is on delegation from the Minister(s).</p>	<p>DOC has conveyed to Ngāi Tahu that legislative change would be required to provide them with a formal role in approval, monitoring, and enforcement of CMA access arrangements, and that are significant policy and legal issues that would need to be analysed if such legislative changes were to be considered.</p> <p>[Further analysis to come]</p>
<p>s9(2)(f)(iv)</p>		
<p>Community wellbeing and economic development impacts</p>	<p>Ngāi Tahu have expressed concerns that the No New Mines policy may have significant adverse effects on the regional economy and community wellbeing of the West Coast region.</p>	<p>[Placeholder – you are meeting with Hon Megan Woods (Minister of Energy and Resources and responsible for Just Transitions) and Hon Kiritapu Allan (Minister of Regional Development) on Wednesday 7 June to discuss the approach to measures to address the regional impacts of No New Mines in the Cabinet paper.]</p>
<p>Clean-tech minerals</p>	<p>Ngāi Tahu would like to retain the ability to potentially mine for ‘clean-tech minerals’ on PCL in the future, as a way to provide for the</p>	<p>DOC has conveyed to Ngāi Tahu that all Crown-owned minerals will be treated the same under the No New Mines policy, including</p>

Issue raised	Key context	Response
	<p>economic wellbeing of their communities.</p> <p>There is no agreed definition for what constitutes a 'clean tech' mineral, but prominent examples include copper, nickel, cobalt, rare earth elements and lithium.</p>	<p>minerals that may be used in clean tech products.</p> <p>DOC does not consider there is a strong rationale for treating such minerals differently under No New Mines policy. Cabinet endorsed this in its previous decisions.</p>
<p>Implications for the Stewardship Land Reclassification Project</p>	<p>Ngāi Tahu have sought clarity on the interactions of No New Mines and the Stewardship Land Reclassification project.</p>	<p>See section below on the Stewardship Land Reclassification project.</p>

Potential approaches to manage any economic impacts of No New Mines

- 71 The economic impact of No New Mines was considered as part of analysis to support Cabinet’s earlier decisions on the policy. Analysis shows that the West Coast region would likely be particularly impacted by No New Mines, as around three quarters of mining on PCL occurs in this region.
- 72 There is a range of potential tools for supporting communities that Ministers may wish to consider in the implementation of No New Mines.
- 73 *[This section to be finalised. As noted in the cover briefing, officials recommend that the Ministers of Conservation, Energy and Resources (Minister responsible for just transitions) and Regional Development meet to discuss the preferred approach to addressing this topic in the Cabinet paper.]*

Update on the Stewardship Land Reclassification work programme

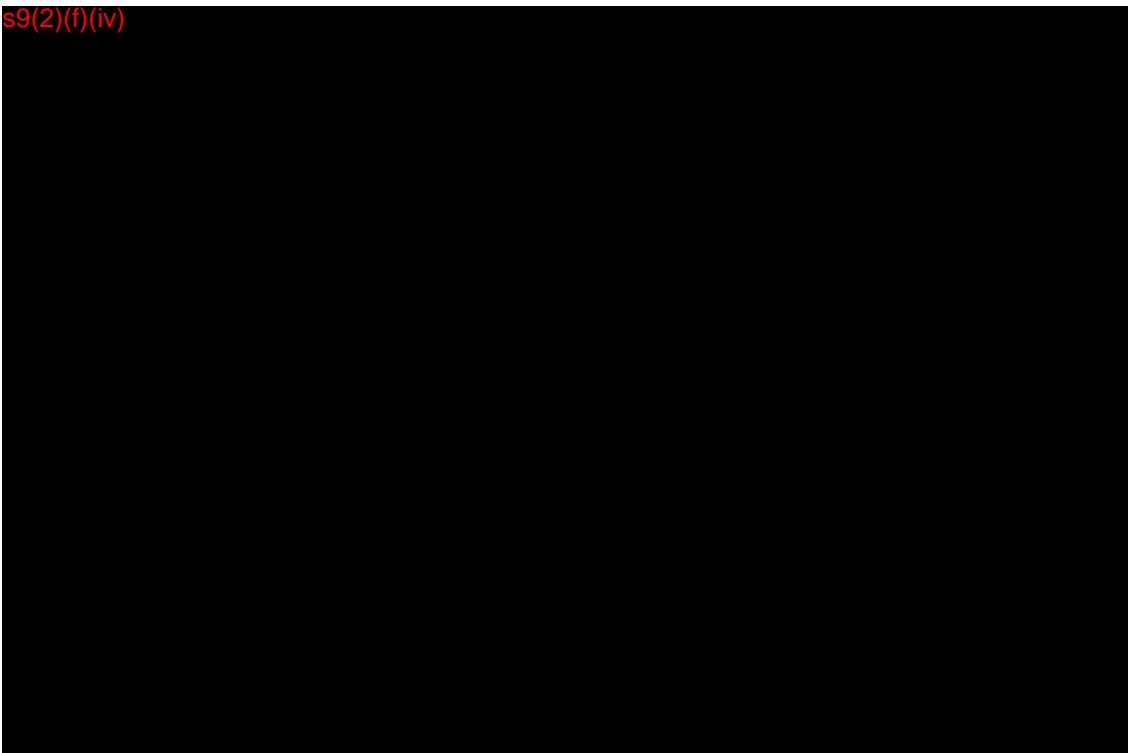
- 74 ‘Stewardship’ is a classification of public conservation land which is applied to land that is not specifically protected through other classifications. Under the Conservation Act 1987, stewardship land is managed so that ‘its natural and historic resources are protected’.
- 75 There are over 2.7 million hectares of stewardship land, making up over one third of all public conservation land.
- 76 Cabinet has agreed that No New Mines policy would not apply to stewardship land, as this will be assessed over time through the Stewardship Land Reclassification Project [CAB-22-MIN-0568 refers]. If stewardship land is subsequently reclassified into one of the classifications covered by No New Mines policy, that land would then be subject to the restrictions on mining.

77 In April 2021 the Cabinet Business Committee agreed to a two-part programme of work to reclassify stewardship land by appointing two National Panels to provide recommendations to the Minister of Conservation about how to reclassify stewardship land, as well as legislative amendments to streamline the process [CBC-21-MIN-0045 refers].

78 A Ngāi Tahu-appointed Mana Whenua Panel was also established to provide information on mahika kai (natural resources practices), mātauranga Māori and Ngāi Tahu interests in relation to stewardship land within its takiwā.

79 The Western South Island reclassification process has advanced significantly, with draft recommendations being made on 504 pieces of stewardship land. These were publicly notified in May 2022, followed by hearings in September 2022.

80 s9(2)(f)(iv)



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82

83

Financial Implications

84 [To come]

Legislative Implications

85 Amendments to Schedule 4 and section 61 of the CMA are needed to implement the proposals recommended in this paper. Amendments to associated sections of the body of the Act may also be necessary.

86 If Cabinet decides to progress Option 2 or 3, I will issue drafting instructions to the Parliamentary Counsel Office giving effect to the policy decisions in this paper. To ensure the drafting process is managed efficiently in the short time available, I seek approval to make decisions on any issues that arise during the drafting process, consistent with the policy framework agreed upon.

- 87 I will be working with the Minister of Energy and Resources to progress the proposed amendments.
- 88 Amendments to the CMA will be binding on the Crown.

Population Implications

- 89 As noted earlier, the No New Mines policy will have a particular impact on Ngāi Tahu's ability to access commercial quantities of pounamu. This is why this Cabinet paper provides options for potential carveouts that would mitigate these impacts.
- 90 Officials have advised that No New Mines proposals do not present any inconsistencies with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Impact analysis

- 91 Cabinet's impact analysis requirements apply to the proposals to provide for Ngāi Tahu's ongoing access to pounamu.
- 92 *[Regulatory Impact Statement to come]*

Consultation

[to be updated]

- 93 DOC has worked with MBIE throughout the No New Mines policy development process. MBIE officials were consulted on this paper and the Crown Minerals (Restricting Access for Mining on Conservation Land) Amendment Bill.
- 94 The following agencies were also consulted on this paper and the draft Bill: Te Arawhiti; the Treasury; the Ministry of Justice; the Ministry of Foreign Affairs and Trade; the Ministry for the Environment; Land Information New Zealand; Te Puni Kōkiri; and the Parliamentary Counsel Office. The Department of the Prime Minister and Cabinet was informed.
- 95 Following Cabinet's direction on 12 December 2022, targeted engagement with Ngāi Tahu has taken place from late December 2022 – May 2023 (described further above).

Communications

- 96 Communications will be led by the Minister of Conservation, in consultation with the Minister of Energy and Resources and the Prime Minister.
- 97 There is the potential for us to announce our policy decisions on No New Mines in early July, following Cabinet's decisions on the matters outlined in this Cabinet paper. This announcement would include outlining our preferred pathway for progressing the Bill.
- 98 The approach to subsequent communications will depend on the pathway Cabinet chooses to progress the Bill.

- 99 If Cabinet agrees to Path A, subsequent communications would be timed to align with the introduction of the Bill to the House in August.
- 100 If Cabinet agrees to Path B, we could choose to release the revised Bill once it has been approved in August, for the public's information. Alternatively, we choose to wait until we commence public consultation in the following parliamentary term.
- 101 If Cabinet agrees to Path C, consultation on an exposure draft will occur in the pre-election period. If Cabinet agrees to Path C, I seek your approval of the materials to support public consultation which are attached to this Cabinet paper. I also seek Cabinet approval for further decisions on communications materials and approach to be delegated to the Minister of Conservation, in consultation with the Minister of Energy and Resources and the Prime Minister.

Proactive release

- 102 This Cabinet paper follows on from two previous Cabinet papers that were considered in March 2023 [CAB-23-MIN-0073 refers] and December 2022 [CAB-22-MIN-0568 refers], as well as an oral item taken by the previous Minister of Conservation [CPC-22-MIN-0038 refers].
- 103 Accordingly, I recommend that these three Cabinet papers and the minutes from the four Cabinet items be released together as a package once announcements are made, with information withheld consistent with the Official Information Act 1982.

Recommendations

I recommend that the Cabinet Environment Committee

- 1 **note** that on 12 December 2022, to give effect to the No New Mines policy, Cabinet [CAB-22-MIN-0568]:
 - 1.1 agreed to amend Schedule 4 of the Crown Minerals Act 1991 (CMA) (and associated provisions in section 61 as required) to add 12 named public conservation land (PCL) classifications, meaning that access cannot be granted for most new mining operations on that land;
 - 1.2 agreed to specify that mineral access rights provided in Treaty of Waitangi settlement acts will not be impacted by the addition of the recommended land classifications to Schedule 4 of the CMA;
 - 1.3 noted that that No New Mines would not impact the ability of Ngāi Tahu to be granted access arrangements to obtain pounamu on PCL, as pounamu is privately-owned by Ngāi Tahu;
 - 1.4 note that adding further land classifications to Schedule 4 would have a significant secondary impact on Ngāi Tahu's ability to obtain commercial quantities of pounamu as a by-product of alluvial mining;
 - 1.5 invited the Minister of Conservation to engage with Ngāi Tahu on approaches that could provide for continued access to pounamu;

- 2 **note** that *The Crown Minerals (Restricting Access for Mining on Conservation Land) Amendment Bill* (the Bill) has been drafted since December 2022 to give effect to the decisions that Cabinet has made to date;
- 3 **note** that on 13 March 2023, Cabinet invited the Minister of Conservation to return to the Cabinet Environment, Energy and Climate Committee following the conclusion of engagement with Ngāi Tahu to seek further policy decisions to finalise the Bill, including the measures to provide for access to pounamu [CAB-23-MIN-0073];
- 4 **note** that engagement with Ngāi Tahu concluded in May 2023 and has informed the development of policy options;

Options to provide for Ngāi Tahu's ongoing access to pounamu

EITHER

Option 1:

- 5 **agree** that the Bill will not include a specific carve out for pounamu obtained as a by-product of alluvial mining; or

Option 2:

- 6 **agree** that the Bill will include a carve out to allow all new alluvial mining in pounamu areas; or

Option 3:

- 7 **agree** that the Bill will include a carve out to allow all new alluvial mining in pounamu areas, and allow low impact mining in the rest of the South Island (in the Ngāi Tahu takiwā);

Defining pounamu areas in legislation

If Cabinet agrees to Option 2 or 3 above:

- 8 **agree** that the draft Bill includes a geographical definition (maps and geospatial descriptions) of the pounamu carveout areas, to be inserted directly into the legislation (e.g. in a new schedule); and
- 9 **agree** that the pounamu carveout areas will be based on the existing Pounamu Management Areas from Ngāi Tahu;

If maps and geospatial data of sufficient quality are not available by the time the draft Bill is to be considered by Cabinet in August 2023

- 10 **agree** that the draft Bill includes a placeholder provision, using current maps and descriptions of existing Pounamu Management Areas from Ngāi Tahu;
- 11 **note** that the placeholder maps and geographic information will be further refined in the Select Committee process;

Defining (additional) areas in secondary legislation via Order in Council

If Cabinet agrees to Option 2 or 3 above:

- 12 **agree** that the Bill provides for areas of land to be added or removed from the pounamu carve out by including a provision in the Bill stating that proposals to add or remove land from the schedule may be:
 - 12.1 designated by an Order in Council made on the recommendation of the Minister of Conservation and the Minister of Energy and Resources;
and
 - 12.2 with the agreement of Ngāi Tahu;
- 13 [*potential further rec to come about trigger for decisions*]

Options for progressing the Bill

- 14 **agree** the preferred option for progressing the Bill:

EITHER

Path A – Finalise the Bill and aim to introduce the Bill to the House this term

- 14.1 **agree** to progress the Bill with the aim of introduction to the House this parliamentary term;
- 14.2 **invite** the Minister of Conservation to issue drafting instructions to Parliamentary Counsel Office consistent with decisions made through this Cabinet paper;
- 14.3 **agree** to delegate detailed decisions on the drafting of provisions, consistent with the policy agreed by Cabinet, to the Ministers of Conservation and Energy and Resources;
- 14.4 **note** that the legislation drafted to give effect to the decisions in this paper will bind the Crown;
- 14.5 **invite** the Minister of Conservation to report to Cabinet Legislation Committee in August with the revised Bill to implement No New Mines, for approval for introduction to the House;

OR

Path B – Finalise the Bill with the aim of releasing an exposure draft of the revised Bill for public consultation next parliamentary term

- 14.6 **agree** to progress the Bill with the aim of releasing an exposure draft of the revised Bill for public consultation in the next parliamentary term;
- 14.7 **invite** the Minister of Conservation to issue drafting instructions to PCO consistent with decisions made through this Cabinet paper;

- 14.8 **agree** to delegate detailed decisions on the drafting of provisions, consistent with the policy agreed by Cabinet, to the Ministers of Conservation and Energy and Resources;
- 14.9 **note** that the legislation drafted to give effect to the decisions in this paper will bind the Crown;
- 14.10 **invite** the Minister of Conservation to report to Cabinet Legislation Committee in August with the revised Bill to implement No New Mines, and to seek approval to either release the Bill at that point for the public's information, or prepare for public consultation in the following term;

OR

Path C – Public consultation on exposure draft (with summary of pounamu provisions) prior to end of parliamentary term

- 14.11 **agree** to release:
- 14.11.1 an exposure draft of the Bill as currently drafted (but excluding pounamu provisions, which have not yet been drafted) for public consultation prior to the end of the parliamentary term;
 - 14.11.2 a summary document explaining any provisions agreed by Cabinet to provide for pounamu access;
- 14.12 **approve** the attached draft consultation materials for release (Appendix 3 refers);
- 14.13 **agree** to delegate decisions on the final consultation materials to the Ministers of Conservation and Energy and Resources;
- 14.14 **note** that the timeline for this option only allows for six weeks public consultation prior to the end of the parliamentary term;

Announcement of policy decisions

- 15 **agree** to delegate decisions on timing and approach to policy announcement to the Minister of Conservation, in consultation with the Minister of Energy and Resources and the Prime Minister;

Other issues raised by Ngāi Tahu

- 16 **note** that during the engagement process, Ngāi Tahu raised a number of issues that they consider should be addressed alongside No New Mines;

17 s9(2)(f)(iv)

Potential approaches to manage any economic impacts of No New Mines

- 18 [rec to come]

Authorised for lodgement

Hon Willow-Jean Prime

Minister of Conservation

Appendices

Appendix 1 – Draft Bill considered by Cabinet in March 2023 (excluding provisions relating to approach to provide for pounamu access)

Appendix 2 – Map of Ngāi Tahu’s Pounamu Management Areas

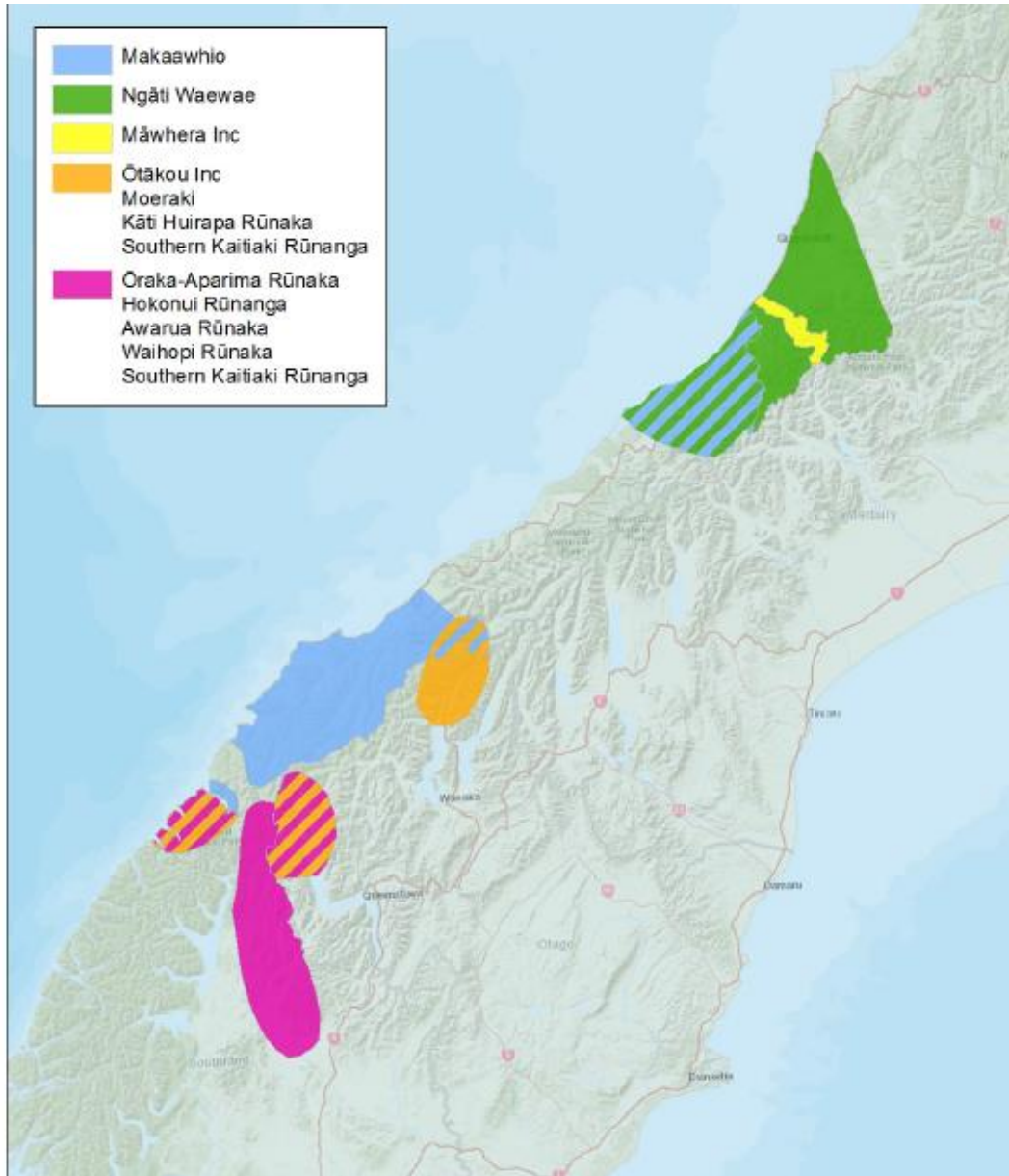
Appendix 3 – Draft consultation materials.

Appendix 1 – Draft Bill considered by Cabinet in March 2023 (excluding provisions relating to approach to provide for pounamu access)

Appendix 2 – Pounamu Management Areas

On their website, New Zealand Petroleum and Minerals (NZP&M) refer mineral permit applicants to a guidance document developed by Ngāi Tahu which includes the below map of their Pounamu Management Areas.

[More detailed maps to be included once provided by Ngāi Tahu]



Appendix 3 – Draft consultation materials

[To come]

Attachment B – Summary of wider minerals related issues raised by Ngāi Tahu during engagement

Ensuring Ngāi Tahu’s ongoing and exclusive access to aotea stone

- 1 Aotea stone on PCL is currently a Crown-owned mineral. This means that, under No New Mines, access to PCL for aotea mining operations could not be granted after 2044 (when the current aotea permit held by Ngāi Tahu expires).
- 2 In DOC’s engagement with Ngāi Tahu, they have emphasised the need to address issues relating to aotea, which is considered a sister stone of pounamu.
- 3 s9(2)(ba)(i) [redacted]
[redacted]
[redacted] Ngāi Tahu would also like to see a carveout for aotea in the No New Mines Bill.
- 4 MBIE holds the agency-level relationship with Te Rūnanga o Makaawhio (a hapū of Ngāi Tahu) in respect of minerals. s9(2)(g)(i) [redacted]
[redacted]
[redacted]
[redacted]
- 5 To support mana whenua access to aotea while the longer-term work is underway, Makaawhio holds a mining permit which grants exclusive mining rights for aotea within the permit area until 2044. In addition, DOC has been working with Te Rūnanga o Makaawhio to finalise a new access arrangement that would align with the existing mineral permit until it expires.
- 6 s9(2)(f)(iv) [redacted]
- 7 s9(2)(j) [redacted]
[redacted] s9(2)(f)(iv) [redacted]
[redacted]
[redacted]
- 8 s9(2)(j) [redacted]
[redacted] *We will consult with Parliamentary Counsel Office and MBIE and provide an update on this as soon as possible.*

Providing for access to pounamu in National Parks

- 9 Ngāi Tahu has also raised a concern regarding access to National Parks for the purposes of pounamu extraction.
- 10 There is a widespread misconception that all mining is banned in National Parks. However, it is only mining for Crown-owned minerals that is banned in National Parks, which means that if a mineral is privately owned (e.g., pounamu) access for mining of that mineral in National Parks is allowable.
- 11 DOC have communicated to Ngāi Tahu that they are able to apply for access for pounamu extraction in National Parks. This is because the provisions in the CMA that prevent the Minister from considering access arrangements for lands listed in Schedule 4 of the Act (like National Park land) do not apply when the mineral is privately owned, as pounamu is (See s61B of the CMA).

- 12 Some areas of National Parks have an additional classification overlay called Wilderness Area. Wilderness Areas may be considered the strongest conservation land classification, since the Conservation Act specifies that roads, tracks, buildings or machinery may not be built there and that no motorised vehicles may be used there except for authorised conservation purposes. If a parcel of a National Park has the Wilderness Area classification overlay, then mining access likely won't be granted for that area.
- 13 For areas of National Parks that are not Wilderness Areas, DOC will work with Ngāi Tahu to support the development of access arrangement applications for pounamu, to ensure that the application is fit-for-purpose and includes appropriate safeguards tailored to the land classification. Working together and having discussions early in the process helps ensure that the application can be processed promptly.
- 14 In addition, Ngāi Tahu and DOC signed a Tribal Access Arrangement for Removal of Pounamu from Public Conservation Land in 2013. This agreement is still in operation but is due to be reviewed. DOC will work with Ngāi Tahu to ensure that the Tribal Access Arrangement is updated and fit-for-purpose.

Access to Arawhata conservation areas

- 15 Ngāi Tahu raised the issue of access to pounamu in and around the Arawhata river valley, south of Jackson Bay. s9(2)(ba)(i)
[REDACTED]
- 16 The Arawhata Conservation Area (which stretches from Big Bay and the Pyke Forest conservation area to Jackson Bay and the Okuru-Waiatoto conservation area) is currently classified as Stewardship Area (102,274 hectares), with a small parcel (123 hectares) having the additional overlay of Wildlife Refuge. The whole area falls within the Te Waipounamu World Heritage Area.³
- 17 DOC has not been able to identify any barrier in legislation or regulations that would prevent Ngāi Tahu from applying for access to extract pounamu in the Arawhata Conservation Area.
- 18 DOC will work with Ngāi Tahu to better understand the potential issues involved with pounamu extraction in the Arawhata Conservation Area or nearby.

A formal role for Ngāi Tahu in the approval, monitoring, and enforcement of access arrangements

- 19 Ngāi Tahu has indicated that they wish to have a formal role in the approval, monitoring and enforcement of access arrangements relating to pounamu and aotea.
- 20 Under the Crown Minerals Act, decisions on access arrangements for Crown-owned land must be taken by the responsible Minister(s), as representatives of the Crown. Similarly, monitoring and enforcement of access arrangement conditions must be undertaken by enforcement officers appointed under Section 99A of the CMA. Section 99A specifies that enforcement officers must be employees of a government department, a Crown entity, or a local authority.

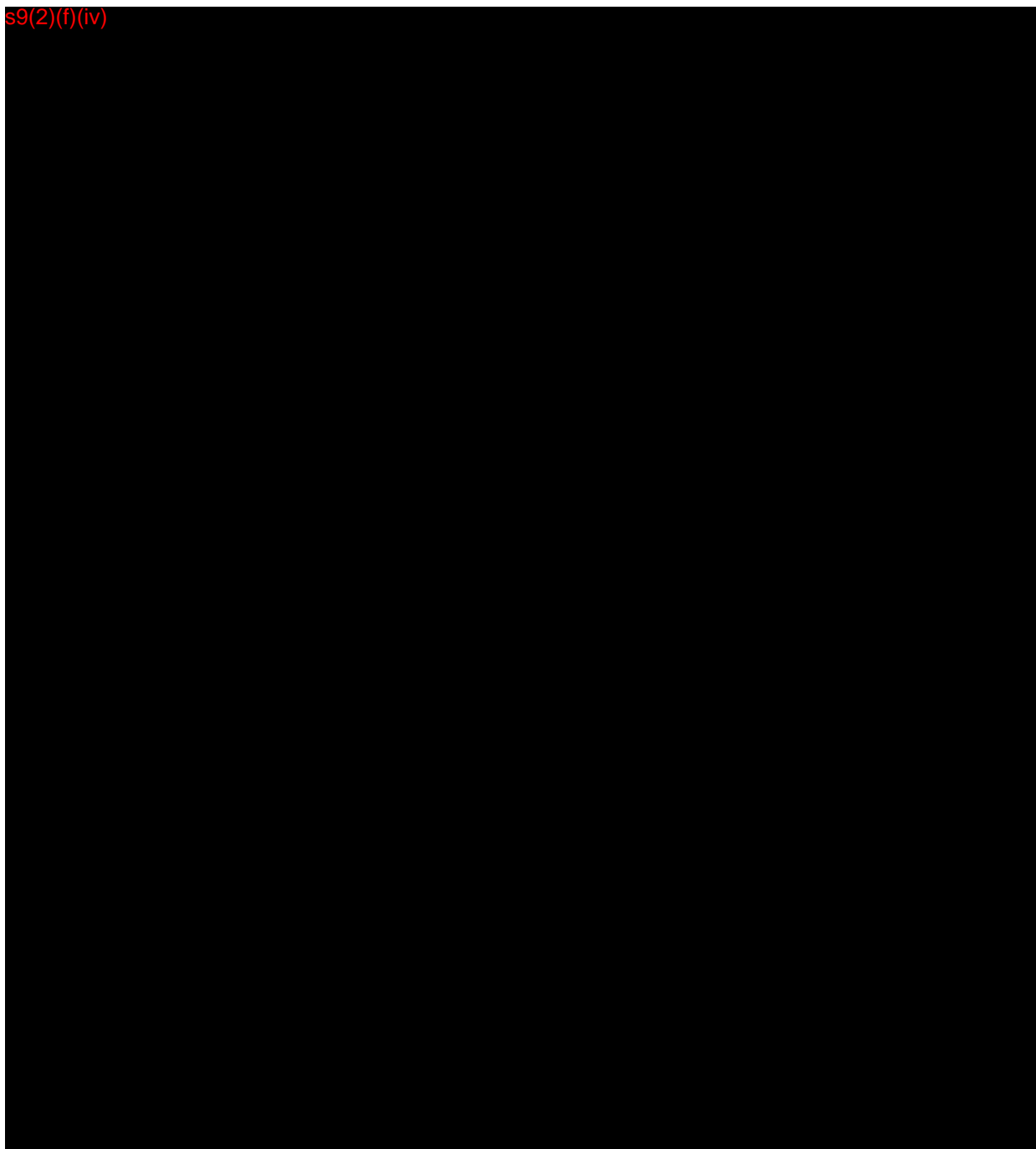
³ The World Heritage Area classification does not prevent access for mining related activities – but it is a relevant consideration for decision-makers when considering applications and may inform what safeguards and rehabilitation measures are appropriate to include in an access arrangement.

- 21 DOC advises that legislative change would be required to give a formal role to other parties in both these processes, and that there are significant policy and legal issues that would need to be analysed if such legislative changes were to be considered including how delegation would work with a third party in terms of legal liability, managing conflicts of interest, precedent implications, and determining in what circumstances this approach would best be applied.
- 22 DOC have conveyed this to Ngāi Tahu, along with an invitation to work together to see/ascertain whether/how Ngāi Tahu's role could be strengthened under the current legislative framework – e.g., in the consideration of how Treaty principles are applied and the expression of Ngāi Tahu's interests.

How No New Mines will be considered in the Stewardship Land Reclassification Project

- 23 Ngāi Tahu has requested clarity on how the No New Mines policy, once finalised, will be considered and addressed in the Stewardship Land Reclassification Project. An update on the Stewardship Land Reclassification Project is provided in the Cabinet paper.

s9(2)(f)(iv)



Wider wellbeing and economic development impacts

- 31 Ngāi Tahu has expressed concerns that the No New Mines policy may have significant adverse effect on the regional economy and community wellbeing of the West Coast region in particular.
- 32 Potential measures to address the economic impacts of No New Mines policy are covered in the body of this paper. [To be updated following Ministerial discussions]

Clean-tech minerals

- 33 Ngāi Tahu has raised the issue of 'clean tech' minerals (e.g., lithium, cobalt, nickel, rare earth minerals) that are used in the manufacturing of products such as solar panels, batteries, wind turbines etc. Ngāi Tahu has stated that they wish to retain the ability to mine for such minerals in future, and that it views this as a way of providing for employment and community wellbeing.
- 34 Under the No New Mines policy, access for extraction of any Crown-owned mineral will be restricted on land classifications included on Schedule 4 of the CMA. This means that minerals such as lithium, cobalt and nickel will be treated the same as gold and silver (metals that are also used in some clean tech manufacturing).
- 35 DOC officials have advised that they do not consider there is a strong rationale for treating such minerals differently under No New Mines policy. Although it is likely that there are deposits of certain 'clean tech' minerals on PCL, there is no evidence to suggest that mining of these minerals would contribute in a significant way to New Zealand's energy security or ability to transition to a low-carbon (renewable energy) future.
- 36 If these minerals were mined in New Zealand, they would likely need to be exported offshore for refinement and subsequent use in manufacturing. Refinement tends to be energy-intensive, and it is unclear whether New Zealand would readily be able to develop adequate and cost-effective refinement capacity domestically.