

In Confidence

Office of the Minister of Conservation

Cabinet Priorities Committee

Implementing No New Mines on Conservation Land

Proposal

- 1 This paper seeks agreement to implement the Government's policy of 'No New Mines on Conservation Land' (No New Mines) by adding further classifications of public conservation land to Schedule 4 of the Crown Minerals Act 1991. This would have the effect of preventing access being granted for most new mining activities on those land classifications.
- 2 This paper seeks decisions on the preferred approach and on key policy design features for No New Mines.

Relation to government priorities

- 3 The commitment to 'no new mines on conservation land' was announced in the Speech from the Throne in 2017. It relates to the Government's direction on the protection of biodiversity and mineral extraction – in particular:
 - 3.1 the Labour Party manifesto commitment to "protect, preserve and restore our natural heritage and biodiversity, and promote the recovery of threatened species";
 - 3.2 the implementation of *Te Mana o Te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020*;
 - 3.3 the implementation of *Responsibly Delivering Value – A Minerals and Petroleum Resource Strategy for Aotearoa New Zealand: 2019–2029*, which envisions a world-leading environmentally and socially responsible minerals and petroleum sector; and
 - 3.4 the Government's declaration of a climate change emergency and subsequent work to enable a just transition to a low-emissions, climate resilient future.

Executive Summary

- 4 The overarching objective of 'no new mines on conservation land' (No New Mines) is to prevent mining activities that are inconsistent with biodiversity, cultural, historical and scientific values of public conservation land (PCL), in a way which is consistent with rights provided for in Treaty settlements.
- 5 While mining brings a range of benefits to New Zealand, it can also have a range of direct and indirect negative impacts on PCL. Despite rehabilitation,

many impacts can last long after a mine has closed and involve permanent loss of values that PCL was set aside to protect.

- 6 On 18 October 2022, Cabinet Priorities Committee invited me to submit a paper seeking agreement to amend Schedule 4 of the Crown Minerals Act 1991 (CMA) to implement the Government's commitment of No New Mines [CPC-22-MIN-0038 refers].

Recommended implementation option

- 7 My recommended option to implement No New Mines (Option A) involves amending Schedule 4 of the CMA through a parliamentary legislative process to add further classifications of PCL.
- 8 Schedule 4 of the CMA lists land where access for most surface mining activities cannot be granted for Crown-owned minerals. Adding further PCL classifications to Schedule 4 would mean that most new access arrangements could not be granted for mining on that land.
- 9 This mechanism would prevent most, but not all, mining activities on those land categories. Schedule 4 does not apply to privately-owned minerals, to mining underneath PCL that begins off PCL, or to specified mining activities which are generally lower impact. It also does not apply to conservation land that is owned by or vested in other parties, such as councils or iwi, hapū, or post settlement governance entities.
- 10 Notwithstanding these exceptions, my recommended option would increase the area of PCL covered by Schedule 4 from approximately one third to over two thirds of total Crown-owned PCL. This is an increase of approximately 30,000 km² –doubling the area of PCL that is protected from most surface mining activities.
- 11 I seek your agreement to the additional classifications of PCL to be added to Schedule 4 (as listed in the recommendations and Appendix A). All of these land classifications hold values which could be negatively impacted by surface mining activities.
- 12 I propose that the addition of these further land classifications not apply for the purposes of mineral access rights provided in Treaty Settlement Acts. This is to ensure No New Mines does not alter the intent of Treaty Settlement Acts when they were enacted. This carve out would also apply to any future Settlement Acts that provide similar mineral access rights.
- 13 I have not included the PCL classification 'stewardship land' on the list of areas I recommend adding to Schedule 4. This is to reflect the ongoing work of the Stewardship Land Reclassification project. I have also not recommended adding a small number of other classifications of land under the Conservation Act 1987 and Reserves Act 1977.

Progressing No New Mines through a Bill this parliamentary term

- 14 My recommended option could be progressed through a Government Bill, aiming to have the Bill passed within the current parliamentary term. An indicative timeline could involve introduction of the Bill in February 2023, followed by a four-month Select Committee process.

- 15 Policy decisions would be needed by Cabinet today in order to progress drafting immediately and aim for completion of the legislative process in August 2023.
- 16 The Ministry of Business, Innovation and Employment (MBIE) has a series of protocols, accords and relationship agreements with iwi and hapū under the Crown Minerals Act. Similarly, the Department of Conservation (DOC) holds a range of relationship agreements with different iwi and hapū.
- 17 To uphold these agreements, officials generally need to work closely with iwi and hapū in policy development, which is not possible to undertake prior to a Bill being introduced on the proposed timeframes. s9(2)(g)(i)

Other implementation options for No New Mines

- 18 In addition to my recommended option (Option A), this paper outlines three other options for implementing No New Mines. These are:
- 18.1 Option B: A parliamentary legislative process to amend the CMA to clarify that it is possible to add entire classifications of PCL to Schedule 4 via Order in Council. At the same time, there would be a parallel process to prepare and consult on an Order in Council to add a list of PCL classifications to Schedule 4.
- 18.2 Option C: Add specified geographic areas to Schedule 4 through Order in Council. DOC officials have identified the potential to add Te Wahipounamu World Heritage Area to Schedule 4.
- 18.3 Option D: A longer-term legislative process, aiming for introduction of a Bill in mid-2023 or 2024.

Impacts of No New Mines on tangata whenua mineral access

- 19 In making our decision, there are a number of potential impacts to be considered. This includes potentially impacting the ability of Kāti Māhaki ki Makaawhio (a hapū of Ngāi Tahu) to access aotea stone, which they consider a sister stone of pounamu. While proposed arrangements will ensure access to aotea for the foreseeable future, there is still a risk of damage to the relationship with Makaawhio if they are not engaged in the design of No New Mines.
- 20 I propose to return with further advice on options to ensure access to aotea over the longer term. This approach would allow time to work with Makaawhio to understand potential impacts and consider ways forward. I seek Cabinet's agreement for me to engage directly with Makaawhio on this matter. In doing so, I will seek support from MBIE, who holds the agency-level relationship with Makaawhio in respect of minerals.
- 21 No New Mines policy would not impact Ngāi Tahu's ownership or rights to pounamu. However, it would have a significant secondary impact on their ability to obtain commercial quantities of pounamu at a lower cost. This is

because Ngāi Tahu generally obtains this pounamu as a by-product of alluvial mining operations run by other operators.

- 22 Providing for continued supply of pounamu as a by-product of alluvial mining would likely involve some form of legal carve out from the land added to Schedule 4. If Cabinet agrees to my recommended option (Option A) or to Option B, I see four main approaches to consider at this point:
- 22.1 Option 1 – No specific carve out for pounamu accessed as a by-product of alluvial mining. Ngāi Tahu would still be able to obtain access arrangements to access pounamu in its own right.
 - 22.2 Option 2 – Allow alluvial mining on the West Coast for the new PCL classifications added to Schedule 4 where there is a reasonable expectation pounamu may be found.
 - 22.3 Option 3 – Allow alluvial mining on the West Coast for the new PCL classifications added to Schedule 4, for applications assessed by DOC as 'low impact'. This would mitigate the environmental impact of this carve out from No New Mines.
 - 22.4 Option 4 – Cabinet could direct me to engage with Ngāi Tahu on approaches that could provide for continued access to pounamu as a by-product of alluvial mining. This engagement could take place either prior to the introduction of the Bill, or, alternatively, after it has been introduced, with an agreed approach progressed as a supplementary order paper to the Bill after it has been introduced. This option would be likely to impact on timelines for progressing No New Mines.

23 s9(2)(h)



24 If we progress with Option A (a Bill this term), I would recommend we select Option 2 or 3 (providing a carve out for pounamu in the Bill). Both options would provide for Ngāi Tahu's continued access to pounamu as a by-product of alluvial mining.

25 I note that including such provisions in the Bill when it is introduced would mean the approach would not be developed through engagement with Ngāi Tahu. To mitigate this, I propose to meet with Ngāi Tahu and to signal our desire to engage with them on this matter. If we can jointly agree an alternative option, then this could be introduced to the Bill subsequently via supplementary order paper.

26 s9(2)(g)(i)



9(2)(g)(i)

27

s9(2)(h)

Other impacts of No New Mines

- 28 Enacting No New Mines would signal that we are taking decisive action to address the biodiversity crisis. My policy proposals would provide significantly increased protection for the unique species and ecosystems that public conservation lands are set aside to protect.
- 29 No New Mines would also impact on:
- 29.1 *Regions where mining on PCL makes up a higher proportion of the regional economy and local employment.* The West Coast of the South Island would be particularly impacted, as around three-quarters of mining on PCL occurs in this region.
- 29.2 *Mining operators on PCL.* The degree of impact will vary depending on what stage of operations the operator is in at the time of implementation.
- 29.3 *Future mineral supply.* Preventing new mining activities on PCL would impact the future ability to access minerals on PCL that could help meet our future mineral and energy needs.

Background

Past decisions on No New Mines

- 30 In November 2017, the Government announced in the Speech from the Throne that there would be “no new mines on conservation land”. DOC led work in that term of government to identify the key policy issues and prepared a draft discussion document. However, this policy was not progressed due to a lack of cross-party agreement.
- 31 On 18 October 2022, I presented an oral item to Cabinet Priorities Committee (CPC) on options to implement No New Mines. CPC invited me to submit a paper seeking agreement to amend Schedule 4 of the Crown Minerals Act 1991 (CMA) to implement No New Mines [CPC-22-MIN-0038 refers].
- 32 CPC also instructed me to include consideration of options to provide for continued access to pounamu for Ngāi Tahu, and legislative options which allow for a timely amendment.
- 33 Existing government work programmes to advance the objectives of No New Mines include the Stewardship Land Reclassification Project. This will reclassify 2.5 million ha of stewardship land (9% of New Zealand’s land area and almost 30% of public conservation land). It will add further protections to preserve conservation and cultural values from the adverse effects of activities on conservation land, such as mining.

Problem definition

While mining brings benefits to New Zealand...

- 34 As outlined in *Responsibly Delivering Value – A Minerals and Petroleum Resource Strategy for Aotearoa New Zealand: 2019–2029*, mining of resources brings a range of benefits to Aotearoa.
- 35 The benefits of mining include:
- 35.1 Providing economic activity – in 2021, mining contributed \$2.6 billion to New Zealand's GDP;
 - 35.2 Providing employment, particularly in the regions – the average salary in the petroleum and minerals sector is twice the New Zealand average;
 - 35.3 Helping meet our current and future mineral and energy needs; and
 - 35.4 Providing royalties to the Crown – in the 2021 fiscal year the mining sector contributed to \$176.6 million in royalties, in addition to contributing to tax revenue.

... it can have significant negative environmental impacts

- 36 Mining-related activities can cause significant harm to biodiversity, cultural, historical and scientific values. The extent of the impact depends on the type of mining activity, its scale, location and how it is managed.
- 37 Direct environmental impacts of mining, in particular surface mining, include modification of landscapes and habitats through vegetation and soil clearance, and diversion of waterways. Indirect impacts, if not properly managed, can include sedimentation of waterways, acid mine drainage or leaching of chemicals into the ground and water. Some indirect impacts can last long after a mine has closed.
- 38 Open pit mining, coal mines, quarries and alluvial mining can all result in permanent changes to landforms and landscapes, including a permanent loss of natural heritage values. This is because mining on the surface of the land results in changes to landform, hydrology, and ecology.
- 39 Managing mining activities appropriately can help minimise negative impacts. Modern regulations coupled with improved processes and technology have led to a reduction in adverse effects. New practices have been introduced (such as how vegetation and rock overburden is removed and reinstated, or reduction in chemicals used in processing), which reduce the ecological impact of mining.
- 40 However, even if the landscape can be re-worked to resemble its shape prior to the mining operations, the interconnected biodiversity systems would not be recreated. Many ecosystems depend on delicate balances between soil-types, hydrological features (e.g. how water is dispersed in the soil) and the flora and fauna on the surface. Surface mining in particular can impact these balances.

The impacts of mining sensitive conservation areas can be significant and cannot be reversed by compensation paid by mining companies

- 41 The Bathurst Escarpment Mine on the Denniston Plateau is an example of significant, large-scale negative impacts in a sensitive conservation area, as well as the shortcomings of the current system of compensation for addressing conservation impacts.
- 42 The conservation value of the proposed mining site was noted by DOC in the 2013 access arrangement report: "The Stockton and Denniston plateau are the only elevated Brunner coal measure ecosystems in New Zealand. Elevated Brunner coal measure ecosystems support a unique association of native vegetation that is different from anywhere else in New Zealand."
- 43 Despite the sensitivity of this environment, the access arrangement for the Bathurst Escarpment Mine was granted by the then-Minister of Conservation. In the following years, the mining operations subsequently resulted in the permanent loss of large areas of this unique ecosystem.
- 44 It is worth noting that although the Denniston plateau held the unique and vulnerable ecosystems described above, it is classified as stewardship land and is subject to the reclassification work on the West Coast. This highlights the importance of the Stewardship Land Reclassification Project to appropriately reclassify stewardship land in accordance with the conservation values present, in combination with the protections that will come through the No New Mines proposals.

The cumulative impact of smaller operations in less sensitive areas can also be significant

- 45 Smaller-scale mining operations on PCL can have a significant cumulative impact over time, particularly when the same conservation area is mined repeatedly, and the flora and fauna do not get the chance to recover. The cycle can look like this:
 - 45.1 An operator applies for an access arrangement to an area of PCL that is considered to have moderate-to-low conservation values because that land was used for some commercial activity in the past (usually logging or mining).
 - 45.2 The access arrangement is granted because the conservation values are considered relatively low (e.g. there is no old-growth forest or well-established habitats of threatened species).
 - 45.3 When the mining operations end, the area is rehabilitated by replanting vegetation, and the area begins to regenerate.
 - 45.4 After some time, another operator applies for an access arrangement to the area (either for a different mineral or with a new mining technique) and the cycle starts over.
- 46 This cycle of repeated mining and interrupted regeneration is relatively common in some areas, particularly where DOC took over management of

lands previously held by the New Zealand Forest Service or the Department of Lands and Survey.

The impacts of repeated mining operations can grow over time due to environmental creep

- 47 It is common for access arrangements to be varied and extended after the initial access has been granted. This is mostly because the scale and nature of an operation must be adapted to the location of a given mineral deposit.
- 48 The result is that separate decisions have a cumulative environmental impact which can be significantly larger than the impact of any individual decision. This can mean a large mining operation which would not be approved if applied for in full, can instead be approved in stages over time.
- 49 The example below illustrates both the impacts of interrupted regeneration and the compounding effect of environmental creep:
- 49.1 In 2013, Phoenix Mining Limited was granted an access arrangement for alluvial mining in the Woods Creek Amenity Area on the West Coast. The original access arrangement was for 10.3 ha of conservation land, but the arrangement was varied four times to expand the boundary, bringing the total area to 23.8 ha.
- 49.2 In the original access arrangement decision report, DOC noted the impacts of previous mining and the area showed signs of “approximately 30 years of natural revegetation.” The report noted that through rehabilitation planting, the area should be able to be returned to its (then) current state within 30 years.
- 49.3 Phoenix Mining Limited applied for and was granted a new access arrangement for the site in June of 2022. This means that the original timeframes for generation estimated in 2013 were pushed out by a further 9 years, and the site remains in a similar state to it was before it started regenerating in the 1980s.
- 50 Similar dynamics play out in many other places and different classifications of PCL, especially on land that was mined or logged at some point in the past, such as on the West Coast.
- 51 Examples such as this illustrate how the current regulatory system for mining on PCL is failing to deliver appropriate protection for conservation values, and allows mining operations to cause cumulative and repeated long-term negative impacts.

Objectives for No New Mines

- 52 In my view, the overarching objective for No New Mines is to prevent mining activities that are inconsistent with biodiversity, cultural, historical and scientific values of PCL, in a way which is consistent with rights provided for in Treaty settlements.

- 53 This objective aims to ensure mining does not negatively impact on PCL in ways that are inconsistent with the values that land was set aside to protect.

The regulatory system for mining

The regulatory system distinguishes Crown-owned minerals and privately-owned minerals

- 54 Mining rights and access on PCL are regulated under the CMA. There are two primary categories of mineral ownership covered: Crown-owned minerals and privately-owned minerals. These categories are regulated differently, with Crown-owned minerals being the primary focus of the CMA.
- 55 Crown-owned minerals include all minerals found on Crown land that are not explicitly owned by someone else – and all gold, silver, uranium and petroleum, regardless of the ownership of the land in which they are found (these are often referred to as ‘statute minerals’).
- 56 Privately-owned minerals refer to all non-statute minerals found on private land, non-statute minerals on Crown land that someone holds a private ownership deed for, and certain mineral classes that have been vested in someone other than the Crown, e.g. pounamu within the Ngai Tāhu takiwā.
- 57 A common reason why there are privately-owned minerals under PCL is that at some point in the past the land was privately-owned, and mineral ownership in relation to that land was held (and sometimes traded) independently of the land ownership.

Permissions are required to mine Crown-owned minerals

- 58 The CMA requires someone who wants to prospect, explore or mine a Crown-owned mineral to obtain:
- 58.1 a mineral permit from the Crown to prospect, explore, or mine for minerals (administered by MBIE);
 - 58.2 an access arrangement from the landowner, which gives them permission to access the land to conduct mining activities (administered by DOC in the case of PCL); and
 - 58.3 a resource consent under the Resource Management Act 1991.
- 59 Mineral permits are not required for privately-owned minerals. If they are to be accessed on Crown land, an access arrangement is still required under the CMA.

The current regulatory system for mining allows for mining on approximately two thirds of all public conservation land

- 60 Access arrangements for most mining activities cannot be granted on approximately a third of the land area of PCL, as it is listed in Schedule 4 of the CMA (for reasons that are explained further later). Access for mining may still be granted for the remaining two thirds of PCL.

- 61 As of 7 November 2022, DOC administered 83 active access arrangements for mining activities on PCL. Of these, 60 were located on the West Coast of the South Island, compared to 23 for the rest of New Zealand.
- 62 As of 27 September 2022, mineral permits overlapped with 4.6% (0.4 million hectares) of PCL. This figure comprises prospecting permits (3.2% of PCL), exploration permits (1.0%) and mining permits/licenses (0.23%).

The regulatory system for mining on PCL does not prioritise environmental outcomes

- 63 The current regulatory framework for mining means that access can be approved for mining on some classifications of PCL, even if it is inconsistent with conservation outcomes.
- 64 In considering access arrangements on land held for conservation purposes, the CMA (s61(2)) states that decision-makers must have regard to a range of matters, including the objectives of any Act under which the land is administered, safeguards against potential adverse effects, as well as the direct net economic and other benefits of the proposed activity.
- 65 These considerations are not weighted under the CMA and there is no hierarchy for which outcomes should be prioritised in decision-making. This means that for a given application, economic benefits can outweigh conservation outcomes, even when the land is held for conservation purposes. This decision approach was introduced as part of reforms to the CMA in 2013.
- 66 The approach for making decisions on mining access under the Crown Minerals Act differs from the requirements for decisions on most other commercial activities on PCL (such as grazing and tourism), which are made under the Conservation Act 1987. Approvals under the Conservation Act can only be granted if, among other relevant considerations, they are consistent with the “purpose for which the land is held.” This means that economic benefits cannot be prioritised over conservation outcomes in the decision-making process.
- 67 As a result of the current regulatory framework for mining, some past operations have been approved that would likely not have been approved if conservation values were prioritised in decision-making. Examples include:
- 67.1 The former Globe Progress Mine, which commenced operations in 2007 in the Victoria Forest Park on the West Coast. Over 100 hectares were authorised for open-cast mining, with approximately 23 million tonnes of material being moved each year.
- 67.2 The Bathurst Escarpment open-cast coal-mining operation authorised in 2013 on the Denniston Plateau, as described earlier.

Schedule 4 of the Crown Minerals Act

Schedule 4 of the Crown Minerals Act prevents most access to mine on specified land classifications

- 68 Schedule 4 of the CMA lists land where access arrangements for most surface mining activities cannot be granted for Crown-owned minerals.
- 69 Six PCL classifications are currently listed on Schedule 4, meaning that most access cannot be granted for mining on land in those classifications. These include national parks, nature reserves, scientific reserves, wilderness areas, sanctuary areas, and wildlife sanctuaries. Schedule 4 also includes marine reserves, Ramsar wetlands, and a number of specific places and islands.
- 70 The classifications currently listed on Schedule 4 make up around one third of the land area of PCL. The remaining two thirds of PCL is not listed on Schedule 4. This means access arrangements to mine Crown-owned minerals may be granted on those land classifications.
- 71 Examples of areas not covered by Schedule 4 include the Coromandel Forest Park below State Highway 25A, the Heaphy Ecological Area, and the Invincible Mine Historic Reserve.
- 72 These areas are not covered in part due to the history of how land classifications came to be added to Schedule 4.¹

There are some exceptions to Schedule 4

- 73 There are some exceptions that are not covered by Schedule 4:
- 73.1 *Access arrangements can still be granted for access to privately-owned minerals on land classifications listed on Schedule 4.* Privately-owned minerals make up a relatively small proportion of mining activities on PCL. Except for Ngai Tāhu, there have been no applications for an access arrangement to mine privately-owned minerals on PCL in the last 10 years.
- 73.2 *Schedule 4 only applies where access is required to the surface of PCL.* Mining operations underneath PCL (but which are accessed outside of PCL) are still possible for land classifications listed on Schedule 4. For instance, the proposed OceanaGold mining operation on the Coromandel Peninsula would mine under PCL but access the mine from outside of PCL. However, adding further land to Schedule 4 would reduce the level of underground mining over the longer term as it would prevent surface drilling for mineral discovery.
- 73.3 *Access arrangements may still be granted to Schedule 4 land for certain activities specified in CMA section 61(1A).* These activities include the construction of emergency or service shafts to support

¹ The Schedule was created following the combination of two Bills in 1997 – a government bill (introduced in 1990) that sought to ban mining in national parks and a private member's bill (introduced in 1995) that sought to ban mining on the Coromandel Peninsula.

underground mining and 'minimum impact activities', such as geological surveying and collection of mineral samples by hand or hand-held methods. This means that it is permitted to seek access to construct shafts to support underground mining under Schedule 4 land, provided access for that mining is located off PCL.

- 74 These exceptions reduce the effectiveness of Schedule 4 in preventing negative impacts of mining activities on PCL. This could be considered as part of longer-term legislative reform proposed later in this paper.

Adding further PCL to Schedule 4 is a mechanism to implement No New Mines

- 75 Adding further PCL to Schedule 4 of the CMA would prevent access for most new surface mining on that land. As such, this approach provides a possible mechanism to implement No New Mines.
- 76 Section 61(4) of the CMA provides for Schedule 4 to be amended through an Order in Council. It can also be amended through a parliamentary legislative process.

Options to progress No New Mines

- 77 The options for amending Schedule 4 to add further PCL are:
- 77.1 Option A – Add further classifications of PCL Schedule 4 through a parliamentary legislative process [DOC's recommended option to implement No New Mines this term];
- 77.2 Option B – Amend the CMA to specify that entire classifications of PCL may be added to Schedule 4 through Order in Council, and subsequently amend Schedule 4 through Order in Council to add further land classifications [MBIE's recommended option if No New Mines is to be implemented this term]; or
- 77.3 Option C – Amend Schedule 4 by Order in Council to add specified individual parcels of PCL.
- 78 Alternatively, No New Mines could be progressed through Option D, a longer-term legislative process, which would provide the opportunity to consider and engage on other potential ways to implement the policy. If this option were progressed, a Bill could be introduced mid-2023 or in 2024. This is DOC and MBIE's recommended option if the Government wishes to implement No New Mines over the longer term.
- 79 These four options are analysed in the following sections, and compared in the table in Appendix B.

Option A – Amend Schedule 4 through a parliamentary legislative process to add further classifications of PCL

- 80 The most straightforward way to implement No New Mines would be through a parliamentary legislative process to amend Schedule 4 of the CMA to list further land classifications.

- 81 An indicative timeline could involve introduction of the Bill in February 2023, followed by a four-month Select Committee process. Policy decisions would be needed by Cabinet today in order to progress drafting immediately and aim for completion of the legislative process in August 2023.
- 82 This option would require Cabinet to make further decisions on which classifications of PCL to add to Schedule 4 and related implementation questions. These matters are covered later in this paper and associated recommendations are provided for decision.
- 83 Option A is preferred by DOC as it would not require parallel processes and would therefore take less time to progress than Option B. This means there is a greater likelihood that it could be progressed within this parliamentary term.
- 84 Consulting with tangata whenua, stakeholders and the public will be an important part of the process. s9(2)(g)(i) [REDACTED]
- 85 MBIE has a series of protocols, accords and relationship agreements with iwi and hapū under the CMA. Similarly, DOC holds a range of relationship agreements with different iwi and hapū. s9(2)(g)(i) [REDACTED]

Option B – Amend the CMA through a parliamentary legislative process and then add further classifications to Schedule 4 through Order in Council

- 86 This option would involve running two processes in parallel:
- 86.1 First, a parliamentary legislative process would be progressed to amend the CMA to specify that entire classifications of PCL (not just individual parcels) may be added to Schedule 4 through Order in Council.
- 86.2 Second, while the Bill is progressing through Parliament, an Order in Council would be prepared to amend Schedule 4 to add further land classifications. This would involve consulting on which land classifications to add to Schedule 4, and any exemptions, and then drafting the Order in Council.
- 87 Once the parliamentary process is completed and the Bill is enacted, the Executive Council would approve the Order in Council adding the agreed land classifications to Schedule 4.
- 88 The timeline for this option would have an Order in Council being made around September 2023, following the intended completion of the legislative process in August 2023. DOC considers that there would be high risk of delays that would push out the timing for the Order in Council past the end of the current term of government.

89 This option would allow dedicated consultation on the proposed Order in Council. This would partially mitigate concerns around lack of prior engagement on proposals; however, it could still pose risks with Treaty partners.

Option C – Adding individual parcels of PCL to Schedule 4 via Order in Council

90 This option would involve using the Order in Council process to add specified geographic areas to Schedule 4. This would involve a decision by the Executive Council alone, as opposed to a parliamentary legislative process.

91 s9(2)(h)



92 s9(2)(h) the Order in Council option could only provide for a limited implementation of No New Mines by adding specific geographically-defined areas to Schedule 4.

93 If the Government wishes to proceed with this option, DOC and MBIE officials consider there could be a case to add the World Heritage Area 'Te Wahipounamu' on the western South Island to Schedule 4. If mining were to happen in an area designated as being internationally significant, it would create a risk to New Zealand's international reputation, as well as the ecology of the area.

94 If we wish to progress this option, then I would recommend engagement with Ngāi Tahu on the proposal in the first instance.

95 Apart from Te Wahipounamu, it would be challenging to identify further appropriate geographic areas in the time available. A significant programme of work would be required to identify priority areas, as possible relevant parcels of land number in the thousands.

Option D – Progressing No New Mines through a longer-term legislative process

96 An alternative approach would be to progress No New Mines through a longer-term legislative process, with a Bill potentially being introduced mid-2023, and being passed in the following parliamentary term.

97 This approach would allow time for engagement with tangata whenua, stakeholders and the public in preparing the proposals for the Bill. It would also allow more time for policy development and Select Committee consideration.

98 This option could enable alternative approaches to the policy to be developed. For example, this could include amending the factors that are considered in decisions on access arrangements to give priority to conservation outcomes.

99 Option D could be progressed subsequently to the other options, as we monitor the impacts of adding further land classifications to Schedule 4 on the impacts of mining on PCL.

100 Option D is DOC and MBIE’s recommended option if the Government wishes to implement No New Mines over a longer time period.

Comparison of potential risks

101 The following table describes the key potential risks associated with Options A, B and C.

102 Option D is not included in the table, as the risks of this option will depend on policy design. In general, Option D would provide the greatest opportunity to avoid risks.

Option	Option A – Add further classifications of PCL to Schedule 4 through a parliamentary legislative process	Option B – Amend the CMA through a parliamentary legislative process and then amend Schedule 4 by Order in Council	Option C – Amend Schedule 4 by Order in Council to add specified individual parcels of PCL
Key risks	<p>Tangata whenua, stakeholders and the public may challenge limited prior engagement on the policy.</p> <p>This could have implications for protocols, accords and relationship agreements held by MBIE under the CMA.</p> <p>s9(2)(h)</p>	<p>Tangata whenua, stakeholders and the public may challenge limited prior engagement on the policy.</p> <p>DOC considers that there would be high risk of delays that would push out the timing for the Order in Council past the election period.</p> <p>s9(2)(h)</p>	<p>Would only provide for a limited implementation of No New Mines.</p> <p>s9(2)(h)</p>

Option	Option A – Add further classifications of PCL to Schedule 4 through a parliamentary legislative process	Option B – Amend the CMA through a parliamentary legislative process and then amend Schedule 4 by Order in Council	Option C – Amend Schedule 4 by Order in Council to add specified individual parcels of PCL
Associated mitigations	9(2)(g)(i)		Communicating that full implementation of No New Mines will be progressed at a later date.

103 Further risks related to specific choices within these options are described in the section on impacts on access to commercial quantities of pounamu (paragraphs 155-207).

Agency comment on options for implementing No New Mines

104 9(2)(g)(i)

105

Bills to progress No New Mines

- 106 Options A and B could be progressed through a Government Bill, aiming to have the Bill passed within the current parliamentary term.
- 107 An indicative timeline for this option includes introduction of a ‘No New Mines’ Bill in February, a four-month Select Committee process, the third reading in August 2023, and enactment in August to September 2023.
- 108 This timeline involves a four-month Select Committee process, instead of the usual six months. If the Select Committee period is any shorter than four months, there would have to be a time-unlimited debate on that in the House.
- 109 This approach would allow for some, limited discussions with tangata whenua over December and January, prior to the introduction of the Bill. This would take place in parallel with drafting the Bill.
- 110 The No New Mines Bill would be progressing through the House at the same time as the Crown Minerals Amendment Bill, a Government Bill led by the

Minister of Energy and Resources (Hon Dr Megan Woods). Any confusion between the two Bills could be addressed through clear communications and potentially by joining the Bills as cognate after they are introduced into the House.

- 111 If Cabinet wishes to progress No New Mines through a Government Bill, policy decisions would be needed by Cabinet today in order to progress drafting and aim for completion in August. A Regulatory Impact Statement would be drafted and provided alongside Cabinet Legislation Committee decisions for the introduction of the Bill.

Decisions on which land classifications to add to Schedule 4

- 112 If we wish to progress No New Mines through Options A or B, then we will need to make further decisions on which land classifications to add to Schedule 4. As noted earlier, this would prevent new access arrangements being granted for most mining activities for Crown-owned minerals on land in those classifications. In the case of Option B, this list would form the basis of public consultation as part of an Order in Council process.
- 113 The table below shows the classifications of PCL that I propose to add to Schedule 4, and illustrates the values present on these land classifications. A larger table is attached in Appendix A, with maps illustrating these areas in Appendix C.
- 114 The values referenced in the table are:
- 114.1 Intrinsic – indicating essential natural, geological, historical or other features of the area;
 - 114.2 Recreational – indicating areas valued for appreciation and recreational enjoyment by the public;
 - 114.3 Scientific – indicating features (biological, geological, archaeological etc.) of scientific interest; and
 - 114.4 Special purpose / cultural – indicating particular cultural or local purpose values specific to that place.
- 115 The table does not include natural/ environmental values, which are present on all land classifications.
- 116 Note that some of the land classifications in the table overlap (for example, some Wildlife Refuges overlays different types of reserves). As such, the total figures for land area are approximate.

IN CONFIDENCE

Classification	Area (Ha)	Examples of sites in that classification	Values present			
			Intrinsic	Recreational	Scientific	Special purpose / cultural
Conservation Park	2,069,673	Coromandel Forest Park below State Highway 25A, the Tararua Forest Park, the Mount Richmond Forest Park, the Victoria Forest Park, and the Timber Trail Pureroa - Ongarue.	✓✓	✓		✓✓
Ecological Area	130,391	Heaphy Ecological Area, Pureora Mountain Ecological Area, and Karamea Bluff Ecological Area.	✓	✓	✓✓	
Watercourse Areas	-	<i>This classification is not currently in use; however, we recommend that it be added to Schedule 4 to provide for future protection.</i>	✓✓	✓✓		
Amenity Area	9,326	Blue Lake Amenity Area, Lake Rotoroa Amenity Area, and the Forest Pools Amenity Area.	✓✓	✓		✓
Wildlife Management Area	21,069	Larrys Wildlife Management Area, Coal Creek Wildlife Management Area, and Te Wharau Wildlife Management Area.	✓✓	✓✓	✓	
Recreation Reserve	236,799	Hot Water Beach Recreation Reserve, Matamata Domain Recreation Reserve, Raglan Golf Course, and Bastion Point Recreation Reserve.	✓	✓✓	✓	
Historic Reserve	7,786	Ruapekapeka Pā Site, Kawau Island Historic Reserve, and Invincible Mine Historic Reserve.	✓	✓	✓	✓✓
Scenic Reserve A	411,745	Cape Brett Lighthouse, Castlepoint Scenic Reserve, and the Whanganui Scenic Reserve.	✓✓	✓	✓	
Scenic Reserve B	2,987	Kaikōura North Bay Scenic Reserve, Uretiti Scenic Reserve, and Lietze (Blue Mountains).	✓✓	✓	✓	

Classification	Area (Ha)	Examples of sites in that classification	Values present			
			Intrinsic	Recreational	Scientific	Special purpose / cultural
Government Purpose Reserves	40,458	Wairau Boulder Bank, Hewlett Point Sand Islands, and Coopers Lagoon/Muriwai Government Purpose Reserve.	✓✓	✓✓	✓✓	✓
Wildlife Refuge	931	Mokoia Island Wildlife Refuge, Ruakaka Wildlife Refuge, and the Sugar Loaf Island Wildlife Refuge.	✓✓		✓	
Wildlife Management Reserve	2,081	Lake Waiholā Wildlife Management Reserve and the Westhaven (Whanganui Inlet) Wildlife Management Reserve.	✓✓	✓✓	✓	

Impact of the proposed additions on the amount of PCL protected from mining

117 The total area of PCL classifications I propose to add to Schedule 4 of the Crown Minerals Act is approximately 2,933,247 ha. This would be added to land classifications currently covered by Schedule 4 (sections 1-7²), which total approximately 3,192,947 ha.

118 As a result, the area of Crown-owned PCL³ protected by Schedule 4 would nearly double, increasing from 36% currently, to approximately 70%.⁴

119 The protected area would increase further once stewardship land on the West Coast is reclassified per the Stewardship Land Reclassification Project.

120 Of the 12 land classifications proposed to be added to Schedule 4, around half are recorded as having current access arrangements, as shown in the following table. This table likely only captures some of the access arrangements relating to these land classifications, as many access arrangements do not record specific land classifications.

² Schedule 4 of the Crown Minerals Act also includes section 8 about Ramsar wetlands, and sections 9-14 about specific islands and places, that have not been included in this total figure.

³ Classifications of conservation land are also used to protect council-owned reserves and privately-owned land.

⁴ Note that some classifications of PCL overlap due to the nature of protections required for a specific place. This means that the total hectares calculated are approximate.

Name of classification	Number of current access arrangements relating to that land classification
Conservation Park	12
Ecological Area	10
Amenity Area	7
Wildlife Management Area	4
Recreation Reserve	2
Scenic Reserve (combined)	4

Listing land classifications in their entirety

- 121 All of the land classifications listed proposed to be added to Schedule 4 hold values which could be negatively impacted by inappropriate mining activities. Although there may be individual parcels in some locations that hold lower conservation values, these are rare.
- 122 It is difficult to identify which classifications of PCL generally hold higher conservation values. This is because many of these classifications pre-date the formation of DOC, and the agencies and local authorities that used the classifications previously did not always apply them consistently or with clear parameters.
- 123 DOC now uses some classifications to indicate that an area has particularly high conservation values, such as ecological areas and scientific reserve – but there will be parcels that were given those classifications prior to DOC’s formation, and the conservation values may not fully line up with the consistent approach DOC now strives to employ.
- 124 Including the proposed classifications in their entirety will mean that some sites will be captured where it is unlikely that mining would ever be contemplated. For example, the historic reserve classification includes sites with historical buildings in urban environments (which wouldn’t be vulnerable to mining) but also include historical goldmining sites, which may be of interest for current mining operators while also containing high historical and ecological values.
- 125 Assessing each parcel of land within each classification would be extremely resource intensive, and would likely take several years of dedicated work. Therefore for the time being, I consider that it is better to protect the classifications in their entirety, even if some parcels in each classification may not be vulnerable to mining.

Providing protection for watercourse areas in future

- 126 I have recommended that the classification of ‘watercourse area’ be added to Schedule 4. This classification is set out in the Conservation Act for an area of land adjoining a river, lake, or stream, to protect the wild, scenic, and other natural or recreational characteristics of that area.

- 127 While the classification of watercourse area is not currently in use, its description in legislation indicates that any PCL in this classification is likely to hold values that could be negatively impacted by mining activities. For this reason, and to preserve the ability for DOC to utilise this classification in the future, I recommend adding this classification to Schedule 4 to provide for its future protection.

Providing appropriate protection for ecological areas

- 128 Under the current regulatory system it is more difficult to protect ecological areas from mining by adding them to Schedule 4. CMA s 61(6) requires the additional step of assessing the scientific value of each ecological area, as well as the value of any Crown-owned minerals on the land.
- 129 This requirement was created when Schedule 4 was introduced through an Amendment Bill in 1997. At that time, some submitters to the Select Committee argued that the ecological areas should not be added to Schedule 4 because research was needed to determine whether those areas were appropriately classified.
- 130 The reason why some ecological areas would have appeared to have lower conservation values in 1997 is that the classification was originally used by departments preceding DOC, when the distinction between productive and conservation land was more fluid.
- 131 Today DOC uses the classification ecological areas as one of its strongest PCL overlays, and seeks to apply it when there are particularly sensitive ecological values in an area that needs protecting. For this reason, I have recommended adding ecological areas to Schedule 4.

PCL classifications not recommended to be added to Schedule 4

- 132 I have not included the PCL classification 'stewardship land' on the list of areas I recommend adding to Schedule 4.
- 133 Stewardship land includes land that was allocated to DOC when it was first formed. DOC records indicate there are currently 44 access arrangements relating to stewardship land (out of 83 total active access arrangements).
- 134 The Stewardship Land Reclassification project aims to ensure that this land is managed and protected according to its conservation values so that high conservation value land can be better protected and land with no or low conservation value may be freed up for other uses.
- 135 The Stewardship Land Reclassification Project has commenced work on the West Coast of the South Island. Their work to date has demonstrated the high conservation values of stewardship land. The initial recommendations of the reclassification National Panel recommended investigating disposal of only 0.01% (66 ha) of stewardship land, due to that land having been deemed to hold "no or very low" conservation values.
- 136 The Stewardship Land Reclassification Project intends to present the final recommendations on the West Coast stewardship land to the Minister of

Conservation in December 2022. Timeframes have not yet been set for reclassification of stewardship land outside of the West Coast.

- 137 Other PCL classifications that I have not recommended adding to Schedule 4 are:
- 137.1 Marginal Strip – not included because they are often on private land deeds;
 - 137.2 Specially Protected Area – not included because the subclassifications of this category are included;
 - 137.3 Land Held for Conservation Purposes – not included because it would capture stewardship land which is intended to be reclassified in the Stewardship Land Reclassification Project;
 - 137.4 Local Purpose Reserve – not included because they are typically owned by local councils; and
 - 137.5 Waitangi Endowment Act land – not included because it is a relatively small area with a particular function; and there is no expectation that mining would happen there.

Classifications added to Schedule 4 which are overlays

- 138 Some of the 12 classifications I propose to add to Schedule 4 are overlays to other classifications, including classifications that I am not proposing to add to Schedule 4.
- 139 I propose that where there is such overlap, the classifications added to Schedule take precedence over any underlying classification for the purposes of No New Mines. For example, should there be a wildlife management area or an ecological area overlaying an area not recommended for Schedule 4, the overlay classification would mean an access arrangement could not be granted.

Land that is not owned by the Crown will not be covered by No New Mines

- 140 Schedule 4 (and the associated sections of the CMA) only applies to Crown-owned land. This means that areas that are owned by other parties, such as councils, or iwi entities, will not be captured by this policy even if that land is in a classification proposed to be included on Schedule 4.
- 141 It also means, for instance, that No New Mines will not apply to Te Urewera, as it is not owned by the Crown.

Tangata whenua mineral interests

- 142 The following sections describe the potential interactions of adding further land classifications to Schedule 4 of the CMA with tangata whenua mineral interests.
- 143 The three potential interactions described are:
- 143.1 Mineral access rights in Treaty settlement agreements;

143.2 Access by Kāti Māhaki ki Makaawhio to aotea; and

143.3 The ability for Ngāi Tahu to acquire larger quantities of pounamu as a by-product of alluvial mining.

Providing for mineral access rights in Treaty settlement agreements

144 I propose that the addition of further land classifications to Schedule 4 not apply for the purposes of mineral access rights provided in Treaty Settlement Acts. This is to ensure the intent of these Treaty Settlement Acts when they were enacted is not altered, and mineral access rights provided in these Acts will not be impacted by the addition of further PCL to Schedule 4.

145 This carve out would be drafted to also apply to any future Settlement Acts that provide similar mineral access rights.

146 Carving out these Treaty settlement mineral access rights will have a minimal effect on the impact of No New Mines. This because most existing rights provide for traditional hand-collection of materials, which is unlikely to have a significant impact on conservation values.

Impacts on access to aotea by Kāti Māhaki ki Makaawhio

147 Aotea is considered a sister stone of pounamu by of Kāti Māhaki ki Makaawhio (a hapū of Ngāi Tahu). 9(2)(ba)(i)

148 Adding further classifications of PCL to Schedule 4 could impact the ability of Makaawhio to access aotea on that land. This is because aotea on PCL is owned by the Crown, meaning that Makaawhio would not be able to seek access arrangements for larger mining operations relating to aotea once No New Mines come into effect.

149 Makaawhio currently holds a mining permit which grants exclusive mining rights for aotea within the permit area. 9(2)(g)(i)

150 Makaawhio's mining permit for aotea will last until 2044. In addition, DOC is considering granting an extended access arrangement to Makaawhio to provide for ongoing access to aotea in the area covered by that mining permit. This would ensure that they have ongoing ability to access aotea stone once No New Mines comes into effect, until the expiry of arrangements in 2044.

151 9(2)(g)(i)

152 I propose to return to Cabinet with further advice on options to ensure access to aotea over the longer term. These could include further legislative change via supplementary order paper (SOP) or subsequently. This would allow time to work with Makaawhio to understand potential impacts and consider ways forward.

- 153 If Cabinet agrees to Options B or C, then some engagement with Makaawhio could take place as part of the Order in Council process.
- 154 I also seek agreement for me to engage directly with Makaawhio to support the engagement with them on these concerns. DOC and MBIE will work together to support a coordinated approach to engagement.

Impacts on access to commercial quantities of pounamu

- 155 Following the passing of the Ngāi Tahu (Pounamu Vesting) Act 1997, all pounamu found within Ngāi Tahu's takiwā (tribal territory) that was property of the Crown prior to the Act's passing became vested in Ngāi Tahu.
- 156 No New Mines as proposed would not impact on Ngāi Tahu's ownership or rights to pounamu. Because Schedule 4 of the CMA does not apply to privately-owned minerals, No New Mines will also not impact Ngāi Tahu's ability to obtain access arrangements for pounamu on PCL.
- 157 However, No New Mines would have a significant secondary impact on their ability to obtain commercial quantities of pounamu at a lower cost. This is because Ngāi Tahu obtains most of their pounamu through arrangements with alluvial mining operators (both companies and hobby operators) on the West Coast of the South Island.
- 158 Adding further classifications of PCL to Schedule 4 would mean the number of alluvial mining operations on PCL would decrease over time (as current access arrangements expire and new arrangements are not granted). This means that over time there would be fewer alluvial mining operations that Ngāi Tahu could acquire pounamu from.
- 159 As a result, it would become much more expensive and difficult for Ngāi Tahu to obtain commercial quantities of pounamu, as they would have to undertake their own operations directly targeting pounamu, rather than obtaining it as a by-product of alluvial operations led by other operators.
- 160 Any operations led by Ngāi Tahu (as opposed to other alluvial mining operators) would likely also have negative environmental impacts.

Options to provide for continued access to commercial quantities of pounamu under implementation Options A and B

- 161 CPC directed me to provide options to provide for continued access to pounamu for Ngāi Tahu [CPC-22-MIN-0038 refers].
- 162 This section sets out four options for us to consider. These options apply to Options A and B for implementing No New Mines (both of which involve a parliamentary legislative process in this term).
- 163 The pounamu options below do not apply to Option C (adding specified geographic parcels to Schedule 4 via Order in Council). Instead, if Cabinet prefers this option, I propose that we engage with Ngāi Tahu as part of the Order in Council process to understand how we could provide for their interests in pounamu.
- 164 The pounamu options also do not apply to implementation Option D (longer-term legislative reform). Instead, the longer timeframe for Option D would

allow for early engagement with Ngāi Tahu to inform the development of alternative approaches to implement No New Mines.

165 If Cabinet wishes to progress with Options A or B, I see four main approaches to consider for providing for Ngāi Tahu's ability to continue to obtain pounamu as a by-product of other mining. These options are:

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

165.2 Option 2 – Carve out alluvial mining on the West Coast for operations where there is a reasonable expectation pounamu may be found;

165.3 Option 3 – Carve out alluvial mining on the West Coast, for access arrangements that are assessed as 'low impact'; or

165.4 Option 4 – Engage with Ngāi Tahu on other possible approaches.

166 These options are described in the following sections. s9(2)(h) risks and my recommended approach are provided subsequently.

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

167 Option 1 would be to make no particular provision for Ngāi Tahu to access pounamu as a by-product of alluvial mining operations. They could still obtain access arrangements for pounamu in its own right (as pounamu is privately owned by Ngāi Tahu).

168 This option would mean that as mining operator access arrangements expire over time, there would be fewer opportunities for Ngāi Tahu to obtain pounamu through this avenue. As a result, it would become much more expensive and difficult for Ngāi Tahu to obtain commercial quantities of pounamu.

169 This option would have the least impact on the effectiveness of No New Mines, as it would mean there would be no carve outs to allow the continuation of alluvial mining operations on land added to Schedule 4.

Option 2 – Carve out alluvial mining on the West Coast for operations where pounamu may be found

170 Option 2 would involve providing a carve out in the draft Bill to allow alluvial mining on the West Coast for the new PCL classifications added to Schedule 4. This carve out would only apply to operations where there is a reasonable expectation that pounamu may be found.

171 A range of different forms of evidence could be used to demonstrate likelihood that pounamu may be uncovered during the mining operations. This includes a history of pounamu being found in that location, geological surveys, or tangata whenua oral histories. This evidence would be used by DOC in assessing applications for access arrangements. DOC would need to develop guidelines around appropriate evidence for mining operators.

- 172 This option would mean that Ngāi Tahu would still be able to obtain pounamu that is uncovered by alluvial mining operators on the West Coast. It may have a minor impact if it meant that pounamu wasn't uncovered in new areas where it isn't already known to be present.
- 173 The proposed carve out would run counter to the policy of No New Mines by allowing some new alluvial mining on the West Coast. One quarter of current access arrangements on PCL (across all land classifications) are for alluvial mining operations on the West Coast – some of which would be allowed under this option.
- 174 It is difficult to say what proportion of alluvial mining operations on the West Coast currently uncover pounamu. Neither DOC nor MBIE hold this data. However, DOC notes that most of the current access arrangements for alluvial goldmining (22 out of 25) overlap with areas that Ngāi Tahu identifies as pounamu management areas.

175 9(2)(g)(i)



- 176 There is also a risk this option could lead to an increase in alluvial mining on the West Coast in areas where pounamu may be found because operators would no longer be able to mine in other areas.
- 177 If Cabinet wished to mitigate the impact of this carve out on No New Mines, we could decide for this carve out apply for a 10-year transition period. This transition period would provide time for Ngāi Tahu to gradually shift to alternative ways of obtaining large quantities of pounamu. Any access arrangements granted during the 10-year period would continue to apply after the period has expired, extending the length of the transition period.

Option 3 – Carve out alluvial mining on the West Coast, for access arrangements that are assessed as 'low impact'

- 178 Option 3 would be to provide a carve out in the draft Bill to allow alluvial mining on the West Coast for the new PCL classifications added to Schedule 4, only for access arrangements that are assessed by DOC as 'low impact'.
- 179 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. This includes assessment of impacts on flora, fauna, freshwater ecology, the landform, and on historic, recreation, enjoyment and scenic values.
- 180 Only allowing alluvial mining operations assessed as 'low impact' would mean that operations likely to have greater negative impact on PCL would not be allowed. This would help mitigate the impact of carving out alluvial mining on

the West Coast, while still allowing lower-impact operations so that Ngāi Tahu may continue to obtain pounamu as a by-product of those operations.

181 Of current DOC access arrangements for alluvial mining on the West Coast, 24% were assessed as low impact, meaning that they would be able to obtain access under this option. The remaining 76% were classed as medium impact.

182 There does not appear to be a strong correlation between the assessed impact (e.g., low or medium) and the size of the operator (i.e., a hobby operator vs a larger mining company).

183 s9(2)(g)(i)

184 This option would have some impact on Ngāi Tahu's access to pounamu obtained via alluvial mining, however the impact may diminish over time. This is because the number of low-impact alluvial mining operations on the West Coast would likely grow over time, as operators are incentivised to develop low-impact proposals rather than medium-impact ones.

185 The option of a 10-year transition period could also apply to Option 3 if we wish to mitigate impacts on the effectiveness No New Mines.

Option 4 – Engage with Ngāi Tahu on other possible approaches

186 Option 4 is to work with Ngāi Tahu on approaches that could provide for continued access to pounamu as a by-product of alluvial mining. The preferred approach could then be introduced into the Bill by SOP after its introduction.

187 This option depends on being able to work with Ngāi Tahu to identify a suitable solution in the limited time available while the Bill is progressing through the House. At most, there would be six months to agree and draft provisions for the preferred approach. There is a greater risk that it would not be possible to implement No New Mines in this term under this option.

188 Alternatively, we could work with Ngāi Tahu prior to the introduction of the No New Mines Bill. This would signal the Government's commitment to engaging with Ngāi Tahu on this matter. However it would also mean there wouldn't be enough time to implement No New Mines within the current parliamentary term. Instead we could develop a Bill for introduction in this term, to be passed in the following term.

189 The extent of impact of this option on Ngāi Tahu's access to pounamu and on No New Mines will depend on the approach developed. However, any approach would mean at least some alluvial mining would continue that would otherwise be prevented.

s9(2)(h)

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s9(2)(h)

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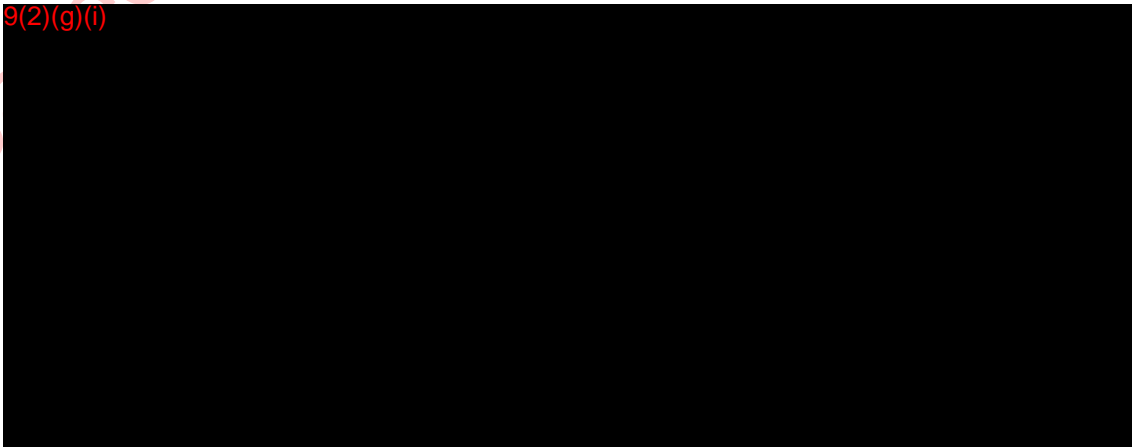


s9(2)(g)(i)



196 s9(2)(g)(i)

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198 s9(2)(g)(i)

Recommended approach regarding access to pounamu obtained as a by-product of alluvial mining

199 I seek Cabinet's decision on the approach to Ngāi Tahu's access to commercial quantities of pounamu obtained as a by-product of alluvial mining.

200 This decision involves balancing the impacts on the intent of No New Mines (due to enabling continued mining on PCL) against Ngāi Tahu's ability to access to larger quantities of pounamu at a lower cost. Other factors to consider are the extent of engagement possible and potential impacts on timelines for implementing No New Mines.

201 If Cabinet agrees to my preferred implementation option (Option A - Adding further classifications of PCL to Schedule 4 through a parliamentary process) and wishes to implement this option in the current parliamentary term, then I would recommend we select pounamu Option 2 or 3 (providing a carve out for pounamu in the Bill).

202 Both Options 2 and 3 would provide for Ngāi Tahu's access to pounamu as a by-product of alluvial mining, while also being less likely to impact on the timeline for implementing this policy.

203 Including carve outs for pounamu in the Bill when it is introduced would mean that Select Committee and submitters would be aware of the intention to include provision for pounamu, and to prepare their submissions accordingly.

204 However, including the provisions in the Bill at this point would also mean that these provisions would not be developed through engagement with Ngāi Tahu. To mitigate this, I propose to undertake some limited discussions with Ngāi Tahu prior to introduction in February 2023.

205 In my discussions with Ngāi Tahu, I would acknowledge the importance of alluvial mining as a source of pounamu and convey that this is why the Government has chosen to include carve outs in the Bill to provide for it. At the same time, I would signal our desire to engage with Ngāi Tahu on access to pounamu via alluvial mining after the Bill's introduction. If we can jointly agree an alternative option through this engagement, then this new option could be introduced to the Bill via SOP.

206 s9(2)(h)

207 Alternatively, if we wished to engage with Ngāi Tahu prior to the introduction of the No New Mines Bill, then I would recommend implementation Option D (a longer-term legislative approach).

Other impacts of adding further land classifications to Schedule 4 of the CMA

208 The following sections outline other potential impacts of adding further land classifications to Schedule 4 of the CMA. These impacts would apply to Options A and B, and to a lesser extent Option C. The impacts of Option D will depend on policy approaches developed through that process.

Adding further classifications would strengthen protection for biodiversity on PCL

209 Adding the land classifications I have proposed to Schedule 4 would roughly double the area of PCL where access may not be granted for most surface mining. This would reduce the threat to species and ecosystems posed by modification of landscapes and habitats by mining activities.

210 Providing this protection would signal that we are taking decisive action to address the biodiversity crisis and give effect to *Te Mana o Te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020*.

211 It is possible that further restricting mining on PCL will result in increased mining activities on private land. It is not clear how likely this scenario is, since it will depend on where and how mineral deposits are found on private land.

Impacts on regions

212 Regions where mining on PCL makes up a higher proportion of the regional economy and local employment will be more impacted by No New Mines compared to other regions.

213 The West Coast region would likely be particularly impacted, as around three quarters of mining on PCL occurs in this 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 regional economy (8.4% of their GDP).

214 Minerals West Coast (an industry advocacy organisation) has estimated the West Coast minerals sector employs about 600 people directly. Most, but not all of this mining activity will be on PCL. In 2020, mining jobs in the region paid about double (\$86,230) the region's median annual salary (\$42,900).

215 Implementing No New Mines would not result in the immediate shut-down of active mining operations, as existing permits and access arrangements would remain in effect. However, it would likely mean that in certain regions there would be a gradual decrease in new employment opportunities in the mining sector, as existing operations on PCL reach the end of their current arrangements. It would also mean that mining companies would be less likely to invest in new prospecting and exploration activities.

216 MBIE notes that the Waikato region, in particular the Hauraki District, is also likely to be impacted by No New Mines, with mineral permits overlapping with 3.2% of PCL in the region. However, DOC holds only three active access

arrangements in the Hauraki district, one of which is for exploration drilling for OceanaGold Corporation's proposed underground mine under Coromandel Forest Park (which would not be prevented by this policy).

- 217 To mitigate any impacts, the Government may wish to progress No New Mines alongside support to such regions in line with the equitable transitions work programme, which aims to support regions to transition to a low-carbon future. MBIE and MSD are leading work to develop an Equitable Transitions Strategy to support transitions that maximise opportunities and minimise disruption and inequities.
- 218 Support for regions could draw on the learnings from the "Just Transitions for Taranaki" partnership that was developed following the announcement that there would be no new offshore oil and gas exploration permits in New Zealand.

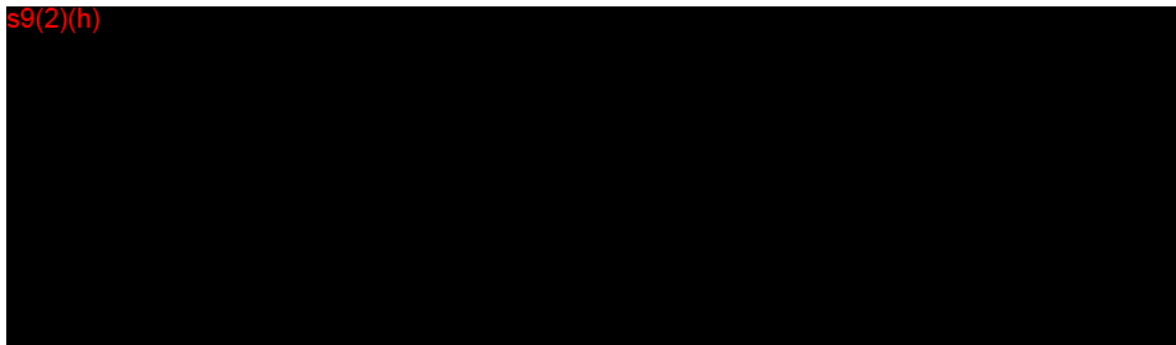
Impacts on operators

- 219 Implementing No New Mines will have impact mining operators (both companies and hobby operators) that intend to start new mining operations on PCL, or who intend to apply for variations or extensions to existing access arrangements.
- 220 MBIE has identified 508 minerals permits overlapping PCL (of any classification). Of this, 44% (222 permits) overlap with the land classifications that this paper proposes be added to Schedule 4. This proportion is likely to increase significantly following the completion of the Stewardship Land Reclassification Project on the West Coast. However, not all of these permits will be active or have an associated access arrangement.
- 221 The degree of impact on operators will vary depending on what stage the operator is in at the time of policy implementation. Mining can be described in three phases: prospecting (to understand whether a mineral is present in an area); exploration (to understand how much of the mineral is present); and mining (to extract a known mineral resource).
- 222 Operators most likely to be significantly impacted are those who have made significant capital investments in the exploration stage who will then be unable to apply for subsequent access arrangements to undertake mining activities on PCL.
- 223 The following table shows the number of active exploration and mining access arrangements administered by DOC as of 7 November 2022. These figures relate to all of PCL, so also include operations on stewardship land and privately-owned minerals.
- 224 There are a total of 83 exploration and mining access arrangements relating to PCL. 72% of these access arrangements are on the West Coast, and 12% are for exploration.

Location	Exploration access arrangements	Mining access arrangements	Total
West Coast	7	53	60
Rest of NZ	3	20	23
Total	10	73	83

- 225 Of the 83 active access arrangements, 72% related to permits for gold, 13% to coal, and the remainder were for quarries for limestone, aggregate, dolomite and sandstone. DOC's records indicate half of these were assessed as being low impact, 41% as being medium impact, and 8% as being high impact.
- 226 93% of these access arrangements will expire before 2033, and 60% will expire between 2023 and 2027. These operators would be particularly impacted by No New Mines if they had invested in exploration and mining activities in anticipation of being able to renew their access arrangements.
- 227 It is not possible to say how many operators would otherwise have sought to renew their current access arrangements, as these will be commercial decisions informed by factors such as the level of mineral present and current market prices for the minerals targeted.
- 228 I note that any operators who have obtained their access arrangements since 2017 will have been aware that the Government had committed to No New Mines on conservation land, and would have factored this into their business decisions.
- 229 All the access arrangements are recorded as belonging to individuals or New Zealand-registered companies. Of these, four could be identified as being controlled by overseas-owned companies, and a further four could be identified as having both New Zealand and overseas shareholders.

230 s9(2)(h)



Impacts on future mineral supply

- 231 The Government's Minerals and Petroleum Strategy for 2019-2029 includes an action area of securing affordable resources to meet our mineral and energy needs. Preventing new mining activities on PCL would impact the future ability to access minerals on PCL that could help meet these needs.

- 232 The large majority of mining on PCL at present does not target minerals that would help our transition to a low-carbon economy or meet other essential mineral needs. Most mineral permits on PCL target gold (429 permits and licences), followed by coal (32) and aggregate / non-metallic products (21). However, many permits also list additional minerals such as silver, tungsten and heavy mineral sands.
- 233 MBIE is currently preparing a critical minerals list, which will provide information on the minerals important to New Zealand, and the nature of the risks to their supply. This list aims to inform conversations across government on how to secure the supply of minerals to meet our needs.
- 234 Securing our supply of minerals does not necessarily mean a need for more mining domestically. However, if mining is restricted either on PCL or offshore (via the proposals relating to seabed mining [CAB-22-MIN-0449]), then the impacts of these decisions should be considered in the context of alternative options to meet our future mineral needs.

Financial Implications

- 235 If further PCL were added to Schedule 4, this could reduce the economic contribution of mining to New Zealand over time. In 2021, mining contributed \$2.6 billion dollars to New Zealand's GDP. Currently, around 17% of approximately 2.1 million ha of total permitted acreage for active mining permits is on PCL.
- 236 Preventing mining on PCL would impact the royalties the Crown receives from mining. Mining provided \$176.6m in royalties to the Crown in 2021, as well as tax revenue.
- 237 Reducing new mining on PCL would mean a reduction in the compensation fees that DOC receives for loss and/or damage to conservation values caused by mining activities. In 2020/2021, DOC received \$1.2m in compensation payments associated with mining access arrangements. For comparison, DOC's concession revenue (mostly from tourism operators) in 2018/2019 (prior to COVID-19) was \$27.3m.
- 238 Progressing No New Mines would have resourcing implications for DOC, due to additional policy work required in order to implement the commitment this term. Approximate costs that are additional to existing policy resourcing are \$700,000. This will require reprioritisation which will have impacts on work across DOC.

Legislative Implications

- 239 Amendments to Schedule 4 and/or s 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.
- 240 If Cabinet decides to progress Option A or B, 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.

- 241 In line with Ministerial responsibilities under the CMA and the Conservation Act, I will be working closely with the Minister of Energy and Resources to progress the proposed amendments. CMA regime implications relating to introducing the new proposed amendments before consultation have not been fully assessed at this point.
- 242 Amendments to the CMA will be binding on the Crown.

Impact Analysis

Regulatory Impact Statement

- 243 Cabinet's impact analysis requirements apply to the No New Mines proposal, but there is no accompanying regulatory impact statement and the Treasury has not exempted the proposal from the impact analysis requirements. Therefore, it does not meet Cabinet's requirements for regulatory proposals.
- 244 If Cabinet seeks to progress legislation, a regulatory impact statement will be drafted and provided alongside a paper for LEG committee to approve the introduction of a separate Bill.

Population Implications

- 245 I am aware through recent engagement on work to reclassify stewardship land that West Coast communities have highlighted the importance of finding the right balance between protecting the environment and ensuring that there is no further decline in economic, social, or cultural wellbeing.
- 246 More information on potential regional impacts of No New Mines is provided in the body of the paper.
- 247 Whānau, hapū, and iwi have varying levels of formal interests in minerals through settlement redress. As noted earlier, there would be a particular impact on Ngāi Tahu's ability to access commercial quantities of pounamu and on access to aotea by Kāti Māhaki ki Makaawhio.
- 248 Limited engagement on No New Mines with whānau, hapū, and iwi has the potential to impact the relationship between the Crown and tangata whenua.

Human Rights

- 249 Officials have advised that No New Mines does not present any inconsistencies with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Consultation

- 250 The following departments have been consulted in preparation of this paper: MBIE; Te Arawhiti; the Treasury; MFAT; the Ministry for the Environment; Land Information New Zealand; Te Puni Kōkiri; Ministry of Transport; and the Parliamentary Counsel Office. The Department of the Prime Minister and Cabinet was informed.

- 251 9(2)(g)(i)

Communications

- 252 Communications on the proposals in this paper will be led by the Minister of Conservation and Minister of Energy and Resources, in consultation with the Office of the Prime Minister.
- 253 I propose that decisions on the approach to implementing No New Mines be communicated after Cabinet agreement on the preferred implementation and legislative approach.

Proactive Release

- 254 I intend to proactively release this paper and the Cabinet minute within 30 business days of the final decisions being taken Cabinet.

Recommendations

The Minister of Conservation recommends that the Committee:

- 1 note that the Government committed to a policy of 'no new mines on conservation land' (No New Mines) in the Speech from the Throne in 2017;
- 2 note that mining on public conservation land (PCL) is regulated under the Crown Minerals Act 1991 (CMA), and that Schedule 4 of the CMA lists areas of PCL where access cannot be granted for most mining activities relating to Crown-owned minerals;
- 3 note that on 18 October 2022, Cabinet Priorities Committee invited the Minister of Conservation to submit a paper which seeks agreement to amend Schedule 4 of the CMA to implement No New Mines [CPC-22-MIN-0038 refers];
- 4 agree to the proposed objective for No New Mines being to prevent mining activities that are inconsistent with biodiversity, cultural, historical and scientific values of PCL, in a way which is consistent with rights provided for in Treaty settlements;

Preferred policy option to progress No New Mines

- 5 agree to progress No New Mines through either:
 - 5.1 Option A – Add further classifications of PCL to Schedule 4 of the CMA through a parliamentary legislative process (recommended option);
 - 5.2 Option B – Amend the CMA to specify that entire classifications of PCL may be added to Schedule 4 through Order in Council, and subsequently amend Schedule 4 through Order in Council to add further land classifications;
 - 5.3 Option C – Amend Schedule 4 by Order in Council to add specified individual parcels of PCL; or

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- 5.4 Option D, a longer-term legislative process, which would provide the opportunity to consider and engage on other potential ways to implement the policy;

Decisions on land classifications to add to Schedule 4 of the CMA, if Cabinet agrees to Option A or B

- 6 if Cabinet agrees to Option A or Option B, agree to amend Schedule 4 of the CMA (and to associated provisions in section 61 as required) to add the following PCL classifications, meaning that access cannot be granted for most new mining operations on that land:
 - 6.1 Conservation Park – as defined by section 2(2) of the Conservation Act 1987;
 - 6.2 Ecological Area – as defined by section 2(2) of the Conservation Act;
 - 6.3 Watercourse Area – as defined by section 2(1) of the Conservation Act;
 - 6.4 Amenity Area – subject to section 23B of the Conservation Act
 - 6.5 Wildlife Management Area – subject to section 23B of the Conservation Act;
 - 6.6 Recreation Reserve – reserves classified as recreation reserve subject to section 17 of the Reserves Act 1977;
 - 6.7 Historic Reserve – reserves classified as a historic reserve subject to section 18 of the Reserves Act;
 - 6.8 Scenic Reserve A – reserves classified as scenic reserves subject to section 19(1)(a) of the Reserves Act;
 - 6.9 Scenic Reserve B – reserves classified as scenic reserves subject to section 19(1)(b) of the Reserves Act;
 - 6.10 Government Purpose Reserve – reserves classified as a government purpose reserve subject to section 22 of the Reserves Act;
 - 6.11 Wildlife Refuge – as defined by section 2 of the Wildlife Act 1953;
 - 6.12 Wildlife Management Reserve – as defined by section 2 of the Wildlife Act;
- 7 agree that stewardship areas will not be added to Schedule 4, as these will be assessed over time through the stewardship land reclassification project;
- 8 agree that some further PCL classifications also be excluded, for example Local Purpose Reserves, because they are generally not owned by the Crown;

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- 9 note that Schedule 4, and the associated sections of the CMA, only applies to Crown-owned land, which means that areas that are owned by other parties (e.g. councils or iwi entities) will not be captured by this policy even if that land is in a classification proposed to be included on Schedule 4;

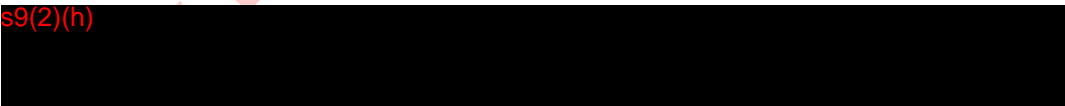
Decisions relating to tangata whenua mineral access, if Cabinet agrees to Option A or B

- 10 if Cabinet agrees to Option A or Option B, agree to specify that mineral access rights provided in Treaty settlement acts will not be impacted by the addition of the recommended land classifications to Schedule 4 of the CMA;
- 11 invite the Minister of Conservation and Minister of Energy and Resources to return with options that could provide for Makaawhio to have ongoing access to aotea stone beyond the period and footprint of their current mining permit (which runs until 2044);
- 12 agree that the Minister of Conservation will engage directly with Makaawhio once No New Mines has been announced;
- 13 note 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;
- 14 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;
- 15 indicate your preferred option of the following:
- Option 1:
- 15.1 agree that No New Mines will not include a specific carve out for pounamu accessed as a by-product of alluvial mining; or
- Option 2:
- 15.2 agree to amend Schedule 4 of the CMA to provide that access may still be granted for alluvial mining on the West Coast for the PCL classifications added to Schedule 4 through this Cabinet paper, for operations where there is a reasonable expectation that pounamu may be found; and
- 15.3 note that DOC would develop guidance on what constitutes appropriate evidence that pounamu may be found; or

Option 3:

- 15.4 agree to amend Schedule 4 of the CMA to provide that access may still be granted for alluvial mining on the West Coast for the PCL classifications added to Schedule 4 through this Cabinet paper, for access arrangements that are assessed by DOC as 'low impact'; and
- 15.5 note that DOC would develop guidance for applicants on how it assesses the impacts of proposed alluvial mining operations; or

Option 4:

- 15.6 invite the Minister of Conservation to engage with Ngāi Tahu on approaches that could provide for continued access to pounamu as a by-product of alluvial mining, either prior to introduction of the Bill or following its introduction, with the preferred approach to be progressed as a supplementary order paper to the Bill after it has been introduced; and
 - 15.7 note that this option may have implications for the timeline for implementation for No New Mines;
- 16 note that I recommend Options 2 or 3, as these would provide for Ngāi Tahu's access to pounamu as a by-product of alluvial mining and would mean that the provisions would be included in the Bill at the point of introduction, providing a clear signal of the intention to provide for pounamu access;
- 17 note my intention to engage with Ngāi Tahu following the introduction of the Bill regarding options to provide for access to pounamu as a by-product of alluvial mining, and that any alternative option agreed through this engagement could subsequently be introduced to the Bill via supplementary order paper;
- 18 s9(2)(h) 

Progressing No New Mines through a parliamentary legislative process

- 19 note that legislative change will be required to implement No New Mines within the current parliamentary term;
- 20 agree to progress No New Mines through a Government Bill to be introduced to the House in February 2023;
- 21 invite the Minister of Conservation to issue drafting instructions to PCO consistent with decisions made through this Cabinet paper;
- 22 delegate detailed decisions on the drafting of provisions, consistent with the policy agreed by Cabinet, to the Ministers of Conservation and Energy and Resources;

IN CONFIDENCE

- 23 invite the Minister of Conservation to report to Cabinet Legislation Committee in February with a separate Bill that would implement No New Mines, for approval for introduction to the House;
- 24 note that the legislation drafted to give effect to the decisions in this paper will bind the Crown;
- 25 note that progressing No New Mines will require reprioritisation of resourcing within DOC, with implications for the progression of some work programmes.

Authorised for lodgement

Hon Poto Williams

Minister of Conservation

Released by the Minister of Conservation

Appendix A – Further information on PCL classifications proposed to be added to Schedule 4

Act	Reference in legislation	Name of classification	Land area (Ha)	Number of access arrangements ¹	Description	Management objectives	Examples of sites in that land classification	Values present			
								Intrinsic	Recreational	Scientific	Special purpose / cultural
Conservation Act	s.19	Conservation Park	2,069,673	12	An area containing natural systems, managed to ensure long-term protection and maintenance of biological diversity while providing for recreational opportunities.	Primary objective: Protect its natural and historic resources. Secondary objective: Facilitate public recreation and enjoyment.	Coromandel Forest Park below State Highway 25A, the Tararua Forest Park, the Mount Richmond Forest Park, the Victoria Forest Park, and the Timber Trail Pureroa - Ongarue (Historic Icon site).	✓✓	✓		✓✓
	s.21	Ecological Area	130,391	10	An area of land protected primarily for its scientific, particularly ecological, value.	Protect natural processes, genetic pools, and to increase public awareness and appreciation of natural ecosystems and species.	Heaphy Ecological Area (overlying Conservation Park), Pureora Mountain Ecological Area, and Karamea Bluff Ecological Area.	✓	✓	✓✓	
	s.23	Watercourse Areas	-		An area of land adjoining a river, lake, or stream.	Protect the wild, scenic, and other natural or recreational characteristics.	<i>This classification is currently not in use; however, we recommend that it be added to Schedule 4 to provide for future protection.</i>	✓✓	✓✓		
	s.23A	Amenity Area	9,326	7	An area which facilitates people's appreciation of its natural resources.	Protect indigenous, natural, and historic resource. Foster the recreational attributes of the area.	Blue Lake Amenity Area, Lake Rotoroa Amenity Area, and the Forest Pools Amenity Area.	✓✓	✓		✓
	s.23B	Wildlife Management Area	21,069	4	Area protected for the conservation and appreciation of wildlife.	Protect the area's wildlife and wildlife habitat values.	Larrys Wildlife Management Area, Coal Creek Wildlife Management Area, and Te Wharau Wildlife Management Area.	✓✓	✓✓	✓	
Reserves Act	s.17	Recreation Reserve	236,799	2	An area possessing open space and outdoor recreational values.	Allow public access subject to conditions to protect the wellbeing of the reserve.	Hot Water Beach Recreation Reserve, Matamata Domain Recreation Reserve, Raglan Golf Course, and Bastion Point Recreation Reserve.	✓	✓✓	✓	
	s.18	Historic Reserve	7,785		An area possessing places, objects, and natural	Manage structures, objects, and sites, allow public	Ruapekapeka pā Site (a Tohu Whenua site), Kawau Island	✓	✓	✓	✓✓

¹ Note that some access arrangements relate to multiple land classifications. Many access arrangements are also not included in this table, as the specific land classifications are not recorded for those access arrangements.

Act	Reference in legislation	Name of classification	Land area (Ha)	Number of access arrangements ¹	Description	Management objectives	Examples of sites in that land classification	Values present			
								Intrinsic	Recreational	Scientific	Special purpose / cultural
					features that are of historic / cultural value.	access, and preserve the natural environment.	Historic Reserve, and Invincible Mine Historic Reserve.				
	s.19(1)(a)	Scenic Reserve A	411,745	4	Area possessing significant qualities of scenic interest or beauty or significant natural landscapes.	Manage the intrinsic worth and preserve the biological associations and the natural environment.	Cape Brett Lighthouse (a Tohu whenua site), Castlepoint Scenic Reserve, and the Whanganui Scenic Reserve.	✓✓	✓	✓	
	s.19(1)(b)	Scenic Reserve B	2,987		An area of significant scenic beauty.	To preserve the flora and fauna, biological associations, and natural environment.	Kaikōura North Bay (former limestone quarry) Scenic Reserve, Uretiti Scenic Reserve, and Lietze (Blue Mountains).	✓✓	✓	✓	
	s.22	Government Purpose Reserves	40,458		An area suitable for specific government purpose.	Determined by the purpose.	Wairau Boulder Bank (a Historic Icon site), Hewlett Point Sand Islands, and Coopers Lagoon/Muriwai Government Purpose Reserve.	✓✓	✓✓	✓✓	✓
Wildlife Act	s.14	Wildlife Refuge	930		Area which provides a haven for any classes of wildlife.	Secure and maintain wildlife habitat conditions necessary to protect the specified classes of wildlife.	Mokoia Island Wildlife Refuge, Ruakaka Wildlife Refuge, and the Sugar Loaf Island Wildlife Refuge.	✓✓		✓	
	s.14A	Wildlife Management Reserve	2,081		Area protected for the conservation, management, and public appreciation of wildlife.	Develop limited areas for public education and appreciation of wildlife and habitats.	Lake Waihola Wildlife Management Reserve and the Westhaven (Whanganui Inlet) Wildlife Management Reserve.	✓✓	✓✓	✓	

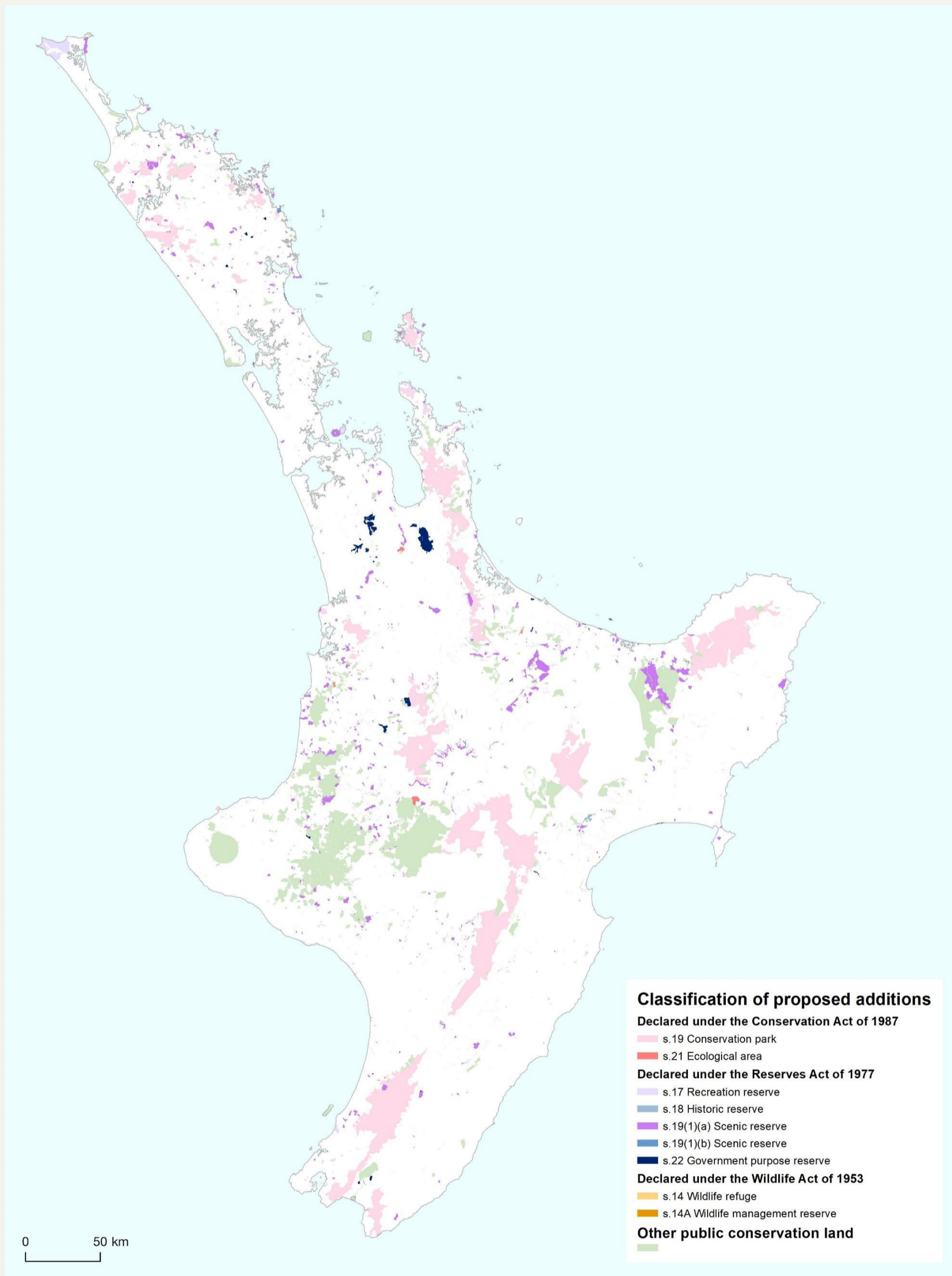
Released by the Minister of Conservation

Appendix B – Comparison of options to implement No New Mines

Option	Option A – Amend Schedule 4 through a parliamentary legislative process to add further classifications of PCL	Option B – Amend CMA through a parliamentary legislative process to enable entire classifications of PCL to be added to Schedule 4, and run separate Order in Council process to then add land classifications to Schedule 4	Option C – Amend Schedule 4 by Order in Council to add specified individual parcels of PCL	Option D – Undertake a longer-term legislative process
What would this option involve	A parliamentary legislative process to amend Schedule 4 of the Crown Minerals Act (CMA) to add further classifications of public conservation land (PCL). This would mean access cannot be granted for most mining activities on that land.	<p>A parliamentary legislative process to amend the CMA to specify that entire classifications of PCL may be added to Schedule 4 through Order in Council.</p> <p>While the Bill is progressing through Parliament, a separate process would be undertaken to consult on which land classifications to add to Schedule 4, and any exemptions.</p> <p>Following consultation, an Order in Council would be prepared. Once the Bill is passed and is enacted, the Executive Council would approve the Order in Council, adding the agreed land classifications to Schedule 4.</p>	<p>Draft and consult on an Order in Council to add specified individual area(s) of PCL to Schedule 4 of the CMA. This would mean access cannot be granted for most mining activities on that land.</p> <p>s9(2)(h)</p> <p>Order in Councils can be made by Cabinet decision, but there are specific consultation requirements which must be met.</p>	<p>Undertake a longer-term legislative process, with work commencing and a Bill potentially introduced this parliamentary term, being passed in the following term.</p> <p>This approach would allow further time for engagement with tangata whenua, stakeholders and the public in preparing the proposals for the Bill. It would also allow more time for policy development and Select Committee consideration.</p> <p>This option could enable alternative approaches to the policy. This could include giving priority to conservation outcomes in decisions on access arrangements. This would bring the tests for mining on PCL in line with the tests for other commercial activities on PCL (e.g. tourism, agriculture etc).</p>
Scope	<p>Would prevent most new mining for Crown-owned minerals on the classifications of PCL added to Schedule 4.</p> <p>Access for some mining activities may still be granted to Schedule 4 land for certain activities specified in CMA section 61(1A). These activities include the construction of emergency or service shafts to support underground mining and 'minimum impact activities', such as geological surveying.</p> <p>Access for mining of privately-owned minerals may still be granted, as Schedule 4 only applies to Crown-owned minerals. This means Ngāi Tahu will continue to be able to apply for access to mine pounamu on Schedule 4 land since they own that mineral.</p>	<p>Would prevent most new mining for Crown-owned minerals on the classifications of PCL added to Schedule 4.</p> <p>Access for some mining activities may still be granted to Schedule 4 land for certain activities specified in CMA section 61(1A). These activities include the construction of emergency or service shafts to support underground mining and 'minimum impact activities', such as geological surveying.</p> <p>Access for mining of privately-owned minerals may still be granted, as Schedule 4 only applies to Crown-owned minerals. This means Ngāi Tahu will continue to be able to apply for access to mine pounamu on Schedule 4 land since they own that mineral.</p>	<p>Potential to add the World Heritage Area "Te Wahipounamu" on the western South Island to Schedule 4 of the CMA.</p> <p>Apart from Te Wahipounamu, it would be challenging to identify further appropriate geographic areas in the time available.</p>	Can be decided in policy design.

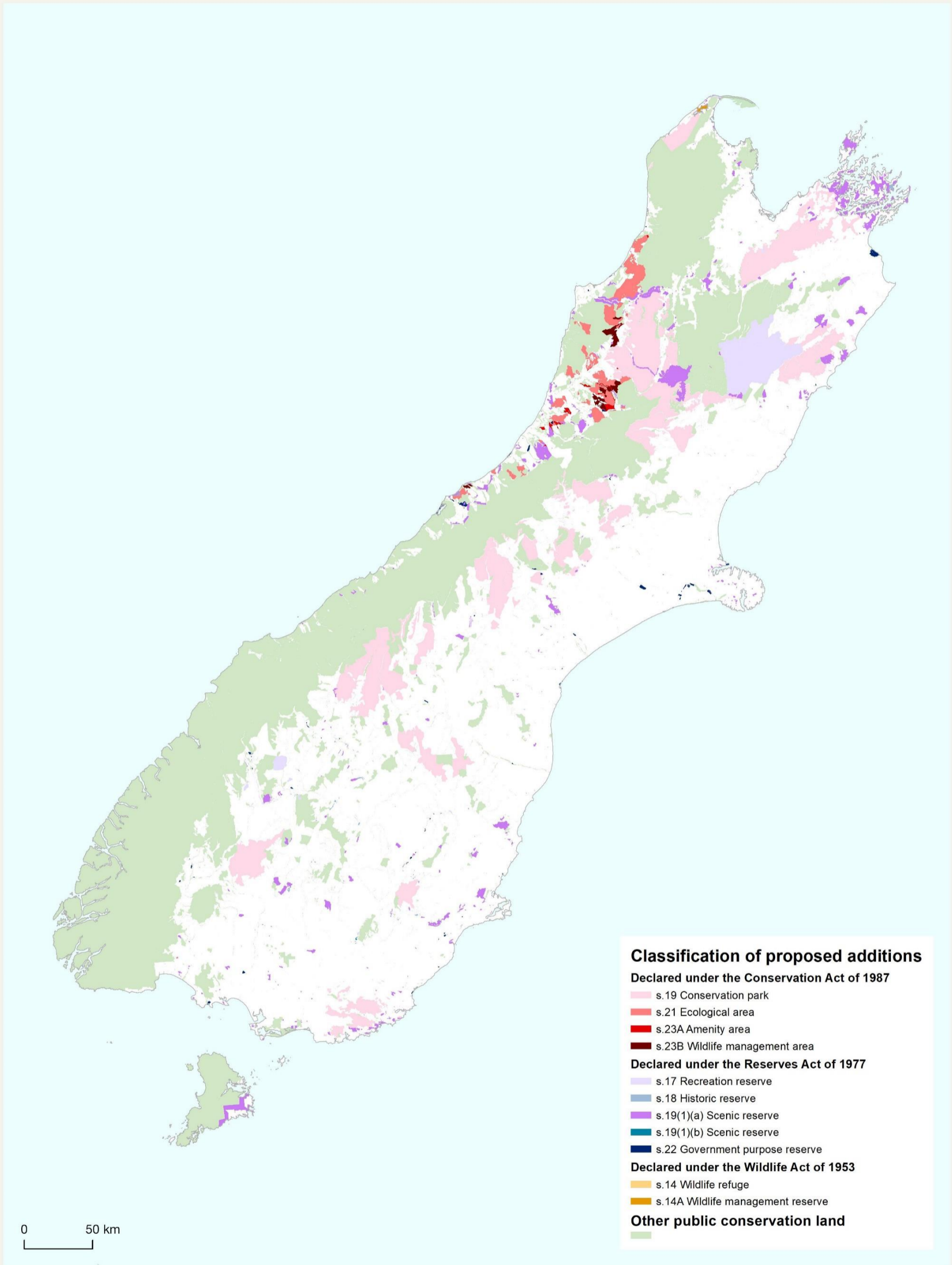
Option	Option A – Amend Schedule 4 through a parliamentary legislative process to add further classifications of PCL	Option B – Amend CMA through a parliamentary legislative process to enable entire classifications of PCL to be added to Schedule 4, and run separate Order in Council process to then add land classifications to Schedule 4	Option C – Amend Schedule 4 by Order in Council to add specified individual parcels of PCL	Option D – Undertake a longer-term legislative process
Indicative timeline	<p>Introduction of Bill - February 2023</p> <p>Four months Select Committee process</p> <p>Third Reading - August 2023</p> <p>Enactment August -September 2023</p>	<p>Introduction of Bill - February 2023</p> <p>Four months Select Committee process for the Bill</p> <p>Parallel consultation on Order in Council in anticipation of the Bill being passed and enacted</p> <p>Third Reading - August 2023</p> <p>Enactment August -September 2023</p> <p>Order in Council September 2023 <i>(subject to timing of the election and whether Cabinet will make decisions in the pre-election period.)</i></p> <p>Enactment October 2023</p>	<p>Drafting of Order in Council for consultation – starting December 2022</p> <p>Public consultation on draft Order in Council – starting end of February 2023</p> <p>Cabinet makes final policy decisions following consultation May 2023</p> <p>Enactment July - August 2023</p>	<p>Public consultation on policy options Q2 2022</p> <p>Potential to introduce a Bill by the end of this parliamentary term</p> <p>Likely to be able to be implemented early 2025</p>
Engagement requirements	<p>MBIE has a series of protocols, accords and relationship agreements with relevant iwi and hapū under the Crown Minerals Act. Similarly, DOC holds a range of relationship agreements with different iwi and hapū. These agreements include general and specific consultation and engagement obligations.</p> <p>s9(2)(g)(i)</p>	<p>The CMA (section 61(5)) specifies consultation requirements for the Order in Council process. Ministers must consult “to the extent that is reasonably practicable” those likely to be substantially affected by the addition of land to Schedule 4, as well as those who are “representative of some aspect of the public interest.”</p> <p>Consultation must also be in line with Section 4 of the CMA, having regard to the principles of the Treaty of Waitangi. This means whānau, hapū and iwi who are likely to be substantially affected by, or who have significant mining/quarrying interests relating to PCL, should be engaged.</p>	<p>The CMA (section 61(5)) specifies consultation requirements for the Order in Council process. Ministers must consult “to the extent that is reasonably practicable” those likely to be substantially affected by the addition of land to Schedule 4, as well as those who are “representative of some aspect of the public interest.”</p> <p>Consultation must also be in line with Section 4 of the CMA, having regard to the principles of the Treaty of Waitangi.</p>	<p>Depends on preferred approach.</p>
Engagement possible in time available	<p>Some limited engagement prior to introduction, and substantial engagement during Select Committee stage (four-month process).</p>	<p>All engagement on legislative provisions would happen at Select Committee stage (four-month process planned).</p> <p>Parallel consultation/ engagement on Order in Council.</p>	<p>Public consultation and targeted engagement on Order in Council for 8 weeks.</p>	<p>Good practice would involve pre-engagement with relevant iwi and hapū, as well as other key stakeholders, and then public engagement on policy proposals developed in the pre-engagement phase.</p> <p>Engagement would also occur during Select Committee stage.</p>

Option	Option A – Amend Schedule 4 through a parliamentary legislative process to add further classifications of PCL	Option B – Amend CMA through a parliamentary legislative process to enable entire classifications of PCL to be added to Schedule 4, and run separate Order in Council process to then add land classifications to Schedule 4	Option C – Amend Schedule 4 by Order in Council to add specified individual parcels of PCL	Option D – Undertake a longer-term legislative process
Ability to provide for Treaty settlements and avoid unintended impacts	<p>Using a parliamentary process to amend Schedule 4 directly would make it easier to tailor the changes to avoid impacting on mineral rights granted under Treaty Settlements.</p> <p>This option would also give the greatest flexibility to be able to provide for Ngāi Tahu's access to commercial quantities of pounamu.</p> <p>s9(2)(h)</p>	<p>Using an Order in Council process would make it harder to provide for exemptions and bespoke arrangements relating to Schedule 4. This means it would be harder to provide for Ngāi Tahu's access to commercial quantities of pounamu.</p> <p>s9(2)(h)</p>	<p>Using Order in Council process would make it harder to provide for exemptions and bespoke arrangements relating to Schedule 4.</p> <p>s9(2)(h)</p>	<p>Carveouts and other bespoke arrangements could be decided on during the policy development process.</p>
Resourcing requirements	<p>Drafting and introducing a new Bill would require some reprioritisation or additional resources for DOC and MBIE.</p>	<p>There would be additional resourcing requirements associated with conducting public consultation and preparing the Order in Council in parallel to the parliamentary legislative process. Additional drafting would be required – drafting provisions for the Bill and drafting the Order in Council.</p>	<p>This option will require some additional resources to enable effective consultation.</p>	<p>N/A</p>
Recommendation	<p>DOC's recommended option if the Government wishes to implement No New Mines in the short-medium term.</p>	<p>MBIE's recommended option if the Government wishes to implement No New Mines in the short-medium term.</p>		<p>This is DOC and MBIE's recommended option if the Government wishes to implement No New Mines over the longer term.</p>



Proposed additions to
Schedule 4
of the Crown Minerals Act

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Proposed additions to Schedule 4 of the Crown Minerals Act



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New Zealand Government



Classification of proposed additions

Declared under the Conservation Act of 1987

- s.19 Conservation park
- s.21 Ecological area
- s.23A Amenity area
- s.23B Wildlife management area

Declared under the Reserves Act of 1977

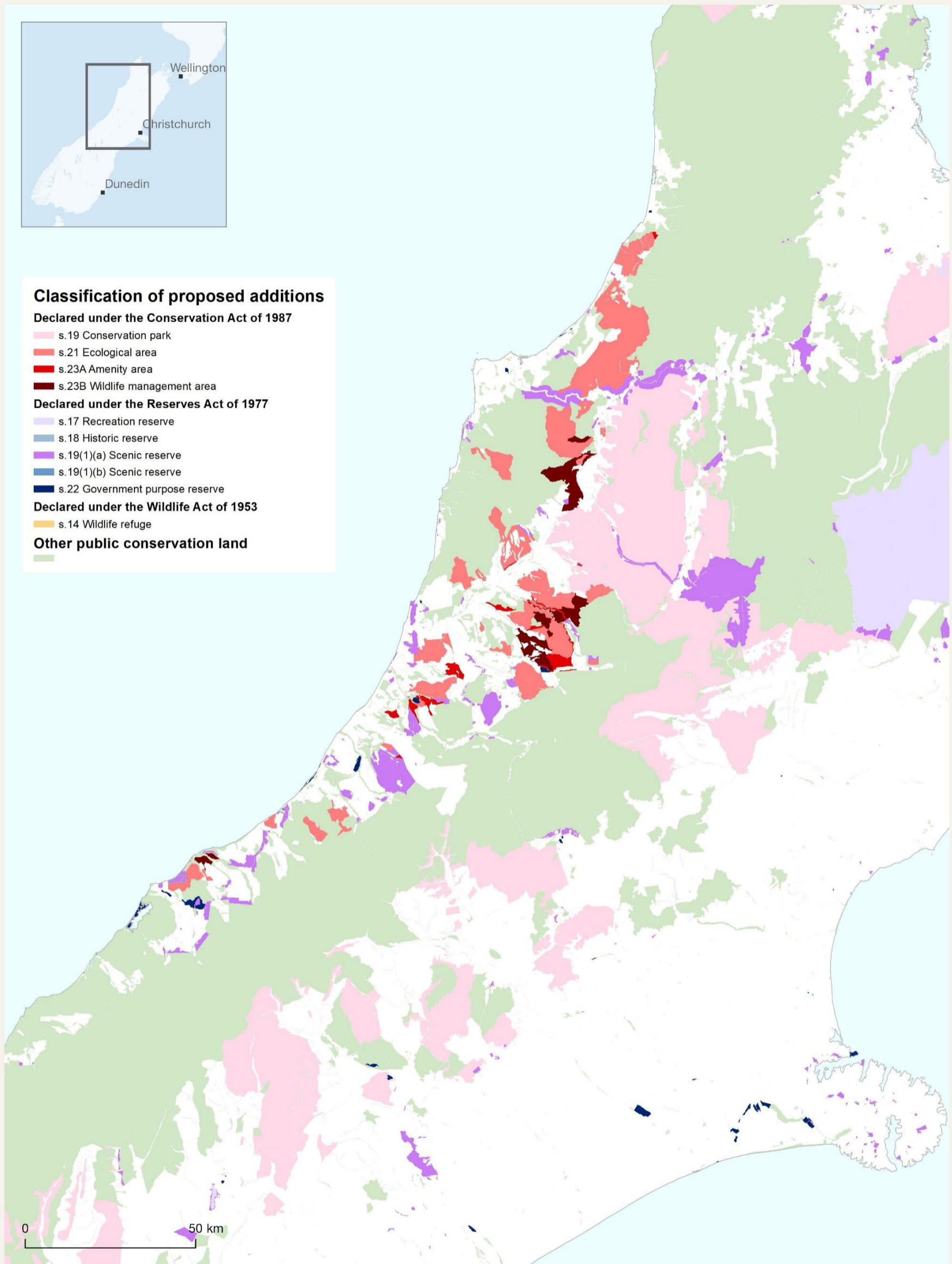
- s.17 Recreation reserve
- s.18 Historic reserve
- s.19(1)(a) Scenic reserve
- s.19(1)(b) Scenic reserve
- s.22 Government purpose reserve

Declared under the Wildlife Act of 1953

- s.14 Wildlife refuge

Other public conservation land

-



**Proposed additions to
Schedule 4
of the Crown Minerals Act**



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New Zealand Government



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Implementing No New Mines on Conservation Land

Portfolio Conservation

On 12 December 2022, following reference from the Cabinet Priorities Committee (CPC), Cabinet:

Background

- 1 **noted** that the Government committed to a policy of ‘no new mines on conservation land’ (No New Mines) in the Speech from the Throne in 2017;
- 2 **noted** that mining on public conservation land (PCL) is regulated under the Crown Minerals Act 1991 (CMA), and that Schedule 4 of the CMA lists areas of PCL where access cannot be granted for most mining activities relating to Crown-owned minerals;
- 3 **noted** that in October 2022, CPC invited the Minister of Conservation to submit a paper which seeks agreement to amend Schedule 4 of the CMA to implement No New Mines [CPC-22-MIN-0038];
- 4 **agreed** to the objective for No New Mines being to prevent mining activities that are inconsistent with biodiversity, cultural, historical, and scientific values of PCL, in a way which is consistent with rights provided for in Treaty of Waitangi settlements;

Preferred policy option to progress No New Mines

- 5 **agreed** to progress No New Mines through adding further classifications of PCL to Schedule 4 of the CMA through a parliamentary legislative process;

Decisions on land classifications to add to Schedule 4 of the CMA

- 6 **agreed** to amend Schedule 4 of the CMA (and to associated provisions in section 61 as required) to add the following PCL classifications, meaning that access cannot be granted for most new mining operations on that land:
 - 6.1 Conservation Park – as defined by section 2(2) of the Conservation Act 1987;
 - 6.2 Ecological Area – as defined by section 2(2) of the Conservation Act;
 - 6.3 Watercourse Area – as defined by section 2(1) of the Conservation Act;
 - 6.4 Amenity Area – subject to section 23B of the Conservation Act;
 - 6.5 Wildlife Management Area – subject to section 23B of the Conservation Act;

- 6.6 Recreation Reserve – reserves classified as recreation reserve subject to section 17 of the Reserves Act 1977;
- 6.7 Historic Reserve – reserves classified as a historic reserve subject to section 18 of the Reserves Act;
- 6.8 Scenic Reserve A – reserves classified as scenic reserves subject to section 19(1)(a) of the Reserves Act;
- 6.9 Scenic Reserve B – reserves classified as scenic reserves subject to section 19(1)(b) of the Reserves Act;
- 6.10 Government Purpose Reserve – reserves classified as a government purpose reserve subject to section 22 of the Reserves Act;
- 6.11 Wildlife Refuge – as defined by section 2 of the Wildlife Act 1953;
- 6.12 Wildlife Management Reserve – as defined by section 2 of the Wildlife Act;
- 7 **agreed** that stewardship areas will not be added to Schedule 4 of the CMA, as these will be assessed over time through the stewardship land reclassification project;
- 8 **agreed** that some further PCL classifications also be excluded, for example Local Purpose Reserves, because they are generally not owned by the Crown;
- 9 **noted** that Schedule 4, and the associated sections of the CMA, only applies to Crown-owned land, which means that areas that are owned by other parties (e.g. councils or iwi entities) will not be captured by this policy even if that land is in a classification proposed to be included on Schedule 4;

Decisions relating to tangata whenua mineral access

- 10 **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;
- 11 **invited** the Minister of Conservation and Minister of Energy and Resources to report back to Cabinet with options that could provide for Kāti Māhaki ki Makaawhio (Makaawhio) to have ongoing access to aotea stone beyond the period and footprint of their current mining permit (which runs until 2044);
- 12 **agreed** that the Minister of Conservation will engage directly with Makaawhio once No New Mines has been announced;
- 13 **noted** 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;
- 14 **noted** 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;
- 15 **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, with the preferred approach to be progressed as a supplementary order paper to the Bill after it has been introduced;

- 16 **noted** that this option may have implications for the timeline for implementation for No New Mines;
- 17 **noted** that the Minister of Conservation intends to engage with Ngāi Tahu following the introduction of the Bill regarding options to provide for access to pounamu, and that any alternative option agreed through this engagement could subsequently be introduced to the Bill via supplementary order paper;
- 18 s9(2)(h)

Progressing No New Mines through a parliamentary legislative process

- 19 **noted** that legislative change will be required to implement No New Mines within the current parliamentary term;
- 20 **agreed** to progress No New Mines through a Government Bill to be introduced to the House in February 2023;
- 21 **invited** the Minister of Conservation to issue drafting instructions to the Parliamentary Counsel Office consistent with decisions made through the paper under CAB-22-SUB-0568;
- 22 **authorised** the Ministers of Conservation and Energy and Resources to take further detailed decisions on the drafting of provisions, consistent with the policy agreed by Cabinet;
- 23 **invited** the Minister to report to the Cabinet Legislation Committee in February 2023 with a separate Bill that would implement No New Mines, for approval for introduction to the House;
- 24 **noted** that the legislation drafted to give effect to the decisions in the paper under CAB-22-SUB-0568 will bind the Crown;
- 25 **noted** that progressing No New Mines will require reprioritisation of resourcing within the Department of Conservation, with implications for the progression of some work programmes.

Rachel Hayward
Secretary of the Cabinet