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Office of the Minister of Conservation

Cabinet

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

Proposal

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

Executive Summary

- 2 On 12 December 2022 Cabinet agreed to progress the policy of No New Mines on Conservation Land (No New Mines) by adding 12 further classifications of public conservation land (PCL) to Schedule 4 of the Crown Minerals Act 1991 (CMA) through a parliamentary legislative process [CAB-22-MIN-0568 refers]. This would have the effect of preventing access being granted for most mining activities on these land classifications.
- 3 The *Crown Minerals (Restricting Access for Mining on Conservation Land) Amendment Bill* has been drafted since December 2022 to give effect to the decisions that Cabinet has made to date.
- 4 As No New Mines would cause an indirect impact to Ngāi Tahu's ability to obtain sizeable quantities of pounamu as a by-product of alluvial mining carried out by third-party operators, Cabinet invited me to engage with Ngāi Tahu on approaches that could provide for their continued access to sizeable quantities of pounamu.
- 5 In our engagement, Te Rūnanga o Ngāi Tahu raised a range of issues related to the No New Mines policy (discussed later in this paper) and emphasised the need for the policy to expressly provide for the rights and interests of Ngāi Tahu, including their rights and interest in pounamu and aotea.
- 6 Te Rūnanga o Ngāi Tahu have identified their preferred approach for ensuring continued access to pounamu and aotea should the policy proceed. This is discussed further in the body of the paper.

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- 7 The wider economic impacts of No New Mines policy are of matter of particular concern for Poutini Ngāi Tahu as mana whenua for the West Coast (Te Tai Poutini). Poutini Ngāi Tahu are opposed to the No New Mines policy as a whole.
- 8 Engagement with Ngāi Tahu has concluded and I am now seeking Cabinet's decisions on the approach to pounamu access, for inclusion in the draft Bill. I am also seeking decisions on next steps to progress the Bill this parliamentary term.

Proposal to support Ngāi Tahu's ongoing access to sizeable quantities of pounamu

- 9 Following engagement with Ngāi Tahu, I have developed the following proposal for Cabinet to consider. The proposal relates to 'carving out' alluvial mining from No New Mines policy.
- 10 The proposal is to include a carve out in the No New Mines Bill to allow access arrangements for alluvial mining operations on the new PCL classifications added to Schedule 4, where those operations sit within pounamu areas.
- 11 Appendix 2 provides maps which illustrate the impact of the proposal, as well as the status quo. The maps show current mineral access arrangements which would have been allowed under the proposal. Note that current access arrangements are used for illustrative purposes only – No New Mines policy will not apply to existing operators on PCL, except if they seek to extend or amend their current conditions of access.
- 12 I recommend that Cabinet agree to include the proposed approach in the No New Mines Bill. The proposal strikes a balance between the objective of ensuring that No New Mines does not have a significant impact on Ngāi Tahu's ability to source pounamu and maintaining the wider environmental benefits of the policy.

Defining pounamu areas in legislation

- 13 Implementing the pounamu proposal would require further work to define pounamu areas in legislation.
- 14 I propose that the Bill refer to Ngāi Tahu's already established Pounamu Management Areas (PMAs). Ngāi Tahu have provided maps and descriptions for PMAs that can be used for this purpose. I propose that the draft Bill include a geographical definition of the pounamu carveout areas, to be inserted directly into the legislation.

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

- 15 During engagement, Ngāi Tahu expressed the view that there should be a mechanism available to add new parcels of land to the pounamu carveout area if new pounamu deposits are discovered.

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- 16 I recommend that the Bill provide for an Order in Council mechanism that gives the ability to add or remove land areas to/from the carveout. This approach would be consistent with existing Order in Council provisions for Schedule 4 in the CMA.

Recommended approach to progressing the Bill

- 17 I also seek Cabinet's decisions on next steps for progressing the Bill. I propose the four options below:
- 17.1 **Path A:** The Bill is revised (to reflect Cabinet's decisions today on the pounamu carveout) with the aim of introduction to the House this parliamentary term.
- 17.2 **Path B:** The Bill is revised (to reflect Cabinet's decisions today on the pounamu carveout) followed by engagement with Ngāi Tahu on the draft Bill to inform them of the Government's policy decisions. I will then return to Cabinet in due course to seek decisions on next steps to progress the Bill.
- 17.3 **Path C:** The Bill is revised (to reflect Cabinet's decisions today on the pounamu carveout) and then it is released for public consultation before the election – with decisions on consultation delegated to Ministers of Conservation and Energy and Resources, and the Prime Minister.
- 17.4 **Path D:** The Bill is revised (to reflect Cabinet's decisions today on the pounamu carveout) and consultation materials are prepared, and then I will return to Cabinet in due course to seek decisions on timing of consultation.
- 18 Path A would enable a Bill to be introduced to the House this parliamentary term. However, there is not sufficient time remaining for the Bill to proceed to its first reading before the House rises.
- 19 Path B would enable engagement with Ngāi Tahu on the draft Bill to inform them of the Government's policy decisions. I note that Ngāi Tahu have already identified their preferred options for ensuring continued access to pounamu should the policy proceed.
- 20 If Cabinet agrees to Path B, the proposed release of the Bill to Ngāi Tahu may need to be referred to the Attorney-General's office for approval. Subject to the Attorney-General's decision, I will engage with Ngāi Tahu on the draft Bill and return to Cabinet in due course to seek approval of the finalised Bill and agreement to next steps.
- 21 Paths C and D (and potentially Path B, depending on decisions) would provide an opportunity for the public, stakeholders, iwi, hapū and Māori organisations to provide their views on the exposure draft of the Bill prior to it being introduced to the House.

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- 22 If Cabinet agrees to Path C, I will work with the Minister of Energy and Resources and the Prime Minister to prepare consultation materials for release in late August. If Cabinet agrees to Path D, I will return to Cabinet committee in due course with the revised Bill and consultation materials, and seek decisions on the timing for consultation.
- 23 Following public consultation, I would return to Cabinet to seek any further policy decisions. The Bill would then be amended to incorporate any changes.

Other issues raised by Ngāi Tahu

24 During the Department of Conservation (DOC)'s engagement with Ngāi Tahu on options to provide for pounamu access, Ngāi Tahu raised a number of issues they consider connected to the No New Mines policy, and that they wish to see addressed as part of this policy work. The issues are:

- Exclusive Ngāi Tahu access to aotea stone;
- Access to pounamu in National Parks;
- Formal role for Ngāi Tahu in the approval, monitoring, and enforcement of CMA access arrangements;
- s9(2)(f)(iv)
- Community wellbeing and economic development impacts;
- Clean-tech minerals; and
- Implications for the Stewardship Land Reclassification Project.

25 A summary of the issues and a proposed approach to responding to each issue is detailed in this paper.

Regional economic impacts of No New Mines

26 I do not anticipate any immediate economic impacts of No New Mines policy, because existing mining operations will be able to continue on present conditions for their duration. Cabinet's decisions to exclude stewardship land from No New Mines policy will also mitigate economic impacts in the shorter term, and so will any carveouts to provide for pounamu access.

27 In the longer term, the implementation of No New Mines will have economic impacts on regions where mining on PCL makes up a greater proportion of the regional economy. The West Coast of the South Island would likely be particularly impacted.

28 There is a range of tools that could support regional communities in the longer term following the implementation of No New Mines. These include government funds such as those administered through Kānoa – Regional

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Economic Development and Investment Unit (Kānoa) and work programmes such as Just Transitions.

- 29 Kānoa will continue to support the West Coast to realise its priorities for regional economic development. However, the Regional Strategic Partnership Fund, Kānoa's current fund, is on track to be fully allocated in the next couple of months and a funding source does not exist beyond that point. The Just Transitions programme and its resourcing is currently fully committed to progressing Just Transitions in Southland and Taranaki.
- 30 I recommend that DOC and Ministry of Business, Innovation and Employment (MBIE) officials progress work over the next year to assess future regional impacts of No New Mines policy and provide advice on potential mitigation options.

Background

Mining activities cause harm to conservation values

- 31 Public conservation land (PCL) is held under the Conservation Act 1987 (and associated conservation legislation) for the purposes of protecting and preserving the intrinsic values of that land (such as biodiversity or historical values), and to ensure that the public (including future generations) can experience and enjoy them.¹
- 32 All mining on PCL causes harm to the intrinsic values of the land and typically involves closure of that land to the public for health and safety reasons. Environmental impacts of mining (especially 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.
- 33 The extent of the negative impact depends on the type and scale of operations, the location of the site, and how well the operations are managed. However, even when impacts are well mitigated, mining does still cause harm to the intrinsic values of the land and is therefore incompatible with the purpose for which the land is held.
- 34 Large-scale mining operations on PCL (such as large open-cast coal mines) can have dramatic impacts on landscapes and ecosystems and tend to draw the most attention from the public and media. However, the cumulative impacts of medium and small-scale mining operations can be just as detrimental to conservation values over time, as they may result in an ongoing cycle of negative impacts.

¹ The Conservation Act 1987 determines that DOC shall manage land for conservation purposes and defines conservation as “the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations” (cf s(6)(a) and s(2)).

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- 35 If an area of PCL was used for mining in the past, it often means that access for mining is more likely to be approved on that site again. This is because the conservation values on that site will have been degraded by previous operations, and the site will therefore be less likely to hold high enough conservation values to justify denying a new application for mining access. This creates a cycle of negative impacts where some areas of PCL do not get the chance to fully recover.

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

- 36 The Government committed to a policy of 'no new mines on conservation land' (No New Mines) in the Speech from the Throne in 2017.
- 37 On 12 December 2022 Cabinet made decisions [CAB-22-MIN-0568 refers] to progress the policy of No New Mines, including the following. Cabinet:
- 37.1 agreed to progress No New Mines by adding further classifications of public conservation land (PCL) to Schedule 4 of the Crown Minerals Act 1991 (CMA) through a parliamentary legislative process;
 - 37.2 agreed to amend Schedule 4 of the CMA (and associated provisions in section 61 as required) to add 12 PCL classifications, meaning that access cannot be granted for most new mining operations on that land;
 - 37.3 agreed that stewardship land will not be added to Schedule 4 of the CMA, as this will be assessed over time through the Stewardship Land Reclassification project;
 - 37.4 agreed to specify that mineral access rights provided in Treaty of Waitangi settlement acts will not be impacted by the addition of the recommended land classifications to Schedule 4 of the CMA; and
 - 37.5 invited the Minister of Conservation to engage with Ngāi Tahu on approaches that could provide for continued access to pounamu.
- 38 The addition of the 12 PCL classifications to Schedule 4 via the No New Mines Bill will nearly double the area of Crown-owned PCL that is protected from mining – increasing from 36% currently, to approximately 70%. This is a significant step forward in ensuring that the biodiversity, cultural, historical, and scientific values on PCL are appropriately protected.
- 39 No New Mines will not terminate existing mineral access arrangements on PCL. However, once No New Mines is implemented, existing mineral access arrangements in areas covered by the policy will not be able to be renewed and their conditions will not be able to be varied. Around 60% of current mineral access arrangements will expire between 2023 and 2027, and around 90% will expire by 2033. These will not be able to be renewed where they are located on land areas covered by No New Mines.
- 40 The *Crown Minerals (Restricting Access for Mining on Conservation Land) Amendment Bill* has been drafted since December 2022 to give effect to the decisions that Cabinet has made to date.

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

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

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

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

s9(2)(b)(i)

44 Compared to sourcing pounamu via finder's fee arrangements with third-party alluvial goldmining operators, it would be significantly more expensive for Ngāi Tahu to undertake their own mining operations aimed at pounamu.

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

46 s9(2)(h)

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48 DOC has now conducted significant engagement with Ngāi Tahu on No New Mines policy and related issues that they have raised. The outcomes of engagement with Ngāi Tahu are outlined later in this paper.

49 On 13 March 2023, Cabinet invited the Minister of Conservation to return to the ENV following the conclusion of engagement with Ngāi Tahu to seek further policy decisions to finalise the Bill, specifically the measures to provide for access to pounamu [CAB-23-MIN-0073 refers].

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- 50 Engagement with Ngāi Tahu on the pounamu policy approach has concluded and I am now seeking Cabinet's decision on the approach to pounamu access, for inclusion in the draft Bill. I am also seeking decisions on next steps to progress this Bill this parliamentary term.

Summary of engagement with Ngāi Tahu

- 51 Engagement with Ngāi Tahu was initiated by the then-Minister of Conservation in December 2022.
- 52 I met with representatives from Te Rūnanga o Ngāi Tahu on 24 February 2023 and we agreed to work together over the next two months on approaches to provide for access to pounamu. In March 2023, I had a further phone conversation with a representative from Te Rūnanga o Ngāi Tahu, which included discussion of this work.
- 53 On 14 April, I attended a hui with directors from within the Ngāi Tahu takiwā to hear the key priorities and current issues for each rūnanga. As a result of this hui, DOC and Ngāi Tahu are continuing to work together to roadmap their mutual priorities.
- 54 DOC has met eight times between December 2022 and June 2023 with representatives from Te Rūnanga o Ngāi Tahu and representatives from Poutini Ngāi Tahu (two hapū of Ngāi Tahu that are mana whenua for the West Coast, Te Tai Poutini). Prior to each hui, officials provided Ngāi Tahu with material for discussion.
- 55 Engagement with Ngāi Tahu provided valuable feedback to support the policy development process and has informed the development of policy options.
- 56 Te Rūnanga o Ngāi Tahu raised a range of issues related to the No New Mines policy (discussed later in this paper) and emphasised the need for the policy to expressly provide for the rights and interests of Ngāi Tahu, including their rights and interest in pounamu and aotea.
- 57 Poutini Ngāi Tahu have stated that they are opposed to No New Mines as a whole. They have noted concerns about the wider impacts and implications of No New Mines, including on their commercial and cultural interests and the regional economy in Te Tai Poutini.
- 58 However, Ngāi Tahu have indicated their preferred option for providing ongoing access to pounamu if No New Mines progresses. This approach is discussed in the following sections.
- 59 Ngāi Tahu have also raised a number of broader issues that they consider should be progressed alongside the No New Mines policy. These issues are summarised later in this paper.

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- 60 Engagement with Ngāi Tahu on policy options has concluded and I am now seeking Cabinet's decision on an option that supports Ngāi Tahu's ongoing access to pounamu for inclusion in the draft Bill.

Proposal to support Ngāi Tahu's ongoing access to sizeable quantities of pounamu

- 61 Following engagement with Ngāi Tahu, I have developed a proposal for Cabinet to consider.
- 62 The proposal relates to 'carving out' alluvial mining² from No New Mines policy in particular areas. This would mean that access arrangements for alluvial mining operations on the new PCL classifications added to Schedule 4 can continue to be granted under the policy so that Ngāi Tahu can continue to obtain pounamu uncovered as a by-product of this mining.
- 63 Note that because the carveout would be for alluvial mining (rather than pounamu extraction in its own right), this approach would enable third-party alluvial mining even though no pounamu may be found. Pounamu is more likely to be uncovered as a by-product in pounamu management areas (Appendix 2 refers), but it is not guaranteed that all alluvial mining operations in those areas will uncover pounamu.
- 64 The proposal is to include a carve out in the No New Mines Bill to allow access arrangements to continue to be sought for alluvial mining operations on the new PCL classifications added to Schedule 4, where those operations sit within pounamu areas.
- 65 To provide a carveout for ongoing access to pounamu via alluvial mining in a No New Mines Bill, officials have advised that the areas that the carveout will apply to need to be defined in some way in the legislation.
- 66 I propose to define "pounamu areas" using Ngāi Tahu's "Pounamu Management Areas", by reproducing those geographic descriptions in the Bill. The extent of Ngāi Tahu's "Pounamu Management Areas" are shown in Appendix 2. This is discussed further later in this paper.
- 67 Below I outline the proposal; in the subsequent section I provide further analysis. Maps illustrating the proposal and the status quo are provided as Appendix 2.
- 68 Note that the proposal would not change the decision-making framework for mining operations on PCL. In line with current requirements, approvals to mine within a pounamu area on PCL would require a mineral permit (decisions are based on section 29A of the CMA) and a resource consent

² Alluvium is loose clay, silt, sand, or gravel that has been deposited by running water in a stream bed, on a floodplain, in an alluvial fan, or in similar settings. Alluvium is not only found near existing waterways, as much of it will have been deposited tens of thousands of years ago. The alluvial mining that occurs on PCL typically involves stripping the vegetation (including trees) and top-soil to get to the deposit underneath and then processing the clay, sand, silt or gravel to separate out the mineral (over 90% of alluvial mining on PCL targets gold).

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(decisions are based on Resource Management Act 1991 planning documents).

- 69 In considering applications for an access arrangement on Crown land, decision-makers must have regard to the conditions set out in section 61(2) of the CMA, including safeguards against any potential adverse effects and the direct net economic and other benefits of the proposed activity.

Proposal: Include a carve out in the No New Mines Bill to allow access arrangements for alluvial mining operations on the new PCL classifications added to Schedule 4, where those operations sit within pounamu areas

- 70 Schedule 4 of the CMA specifies certain areas where mining is restricted on PCL. The Minister of Conservation and the Minister of Energy and Resources must not accept most³ applications for access arrangements, or most variations to current access arrangements, relating to any Crown-owned minerals in land described in Schedule 4 of the CMA.
- 71 The proposal would provide a carve out in the No New Mines Bill to allow access arrangements to be considered for alluvial mining operations on the new PCL classifications added to Schedule 4, where the proposed operation sits within a pounamu area (the matter of how to define a pounamu area is discussed later in this paper).
- 72 A mechanism could potentially be included in the Bill to allow new areas to be added to the carveout (e.g., through Order in Council) if/when new pounamu deposits are discovered.
- 73 This proposal was informed by engagement with Ngāi Tahu. In particular, the mechanism to allow new areas to be added to the carveout was included in response to their feedback. The decision to base the carveout area on Ngāi Tahu's Pounamu Management Areas (discussed later) also responds to feedback from Ngāi Tahu.
- 74 This proposal would prioritise Ngāi Tahu's continued ability to access sizeable quantities of pounamu.
- 75 Appendix 2 illustrates the impact of the proposal by showing what current mining operations would have been allowed under the proposal.

Analysis of the proposal

How much mining would continue to be allowed on conservation land

- 76 A carveout for alluvial mining in pounamu areas would mean some new alluvial mining operations could continue to be granted access. Existing safeguards would continue to apply, including DOC setting conditions to manage environmental impacts.

³ Some applications can still be accepted, including those for privately owned minerals (e.g., pounamu) and minimum impact activities as specified in Section 61(1A) of the CMA.

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- 77 For illustrative purposes, I will explain how many current alluvial mining operations would have been approved under the proposal, if the operators were to apply under the new regulatory system it sets out. However, I would stress that that current mining operations will not be stopped by No New Mines policy and will be able to continue until current access arrangements expire.
- 78 Under the proposal, 52 out of 88 current mineral access arrangements would have been allowed. This comprises 10 access arrangements for alluvial mining in pounamu areas, as well as 42 access arrangements for mining operations on stewardship land, which is not included in the No New Mines policy.
- 79 Appendix 2 illustrates the Pounamu Management Areas which would be carved out from No New Mines policy under the proposal. These areas are primarily located in the West Coast region, but also extend into Southland and Otago.
- 80 The maps in Appendix 2 illustrate the number and location of current mining operations that DOC estimates would be allowed if considered under the proposal, as well as the status quo without No New Mines policy.
- 81 As noted, these maps use current access arrangements to illustrate the impact of the proposal. In practice, the policy would not prevent current mining operations, which would be able to continue on the basis of current conditions until they expire. The main impact on current operations would be for those that had planned to apply for extensions or new access arrangements for existing operations.
- 82 As described earlier, the proposal was informed by engagement with Ngāi Tahu. The proposal addresses Ngāi Tahu's concerns and interests related to access to pounamu and would prevent most new mining activities outside of pounamu areas.
- 83 The proposal is an indirect way of supporting Ngāi Tahu's interests in obtaining pounamu. In effect, the carveout proposal would be supporting the alluvial goldmining sector (to varying degrees) because this provides Ngāi Tahu with a cost-effective way of obtaining pounamu. Currently, alluvial goldmining operations on PCL are undertaken by a range of actors, ranging from small-scale to larger operators.

Ngāi Tahu have proposed an additional carve out to allow low impact mining on the South Island

- 84 In addition to the carve out for alluvial mining in pounamu areas, Ngāi Tahu have proposed including a further carve out for all low impact mining operations on the South Island (in the Ngāi Tahu takiwā), even outside of pounamu areas.

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- 85 I understand that this proposal would go some way towards addressing Ngāi Tahu's wider concerns and interests (beyond pounamu) relating to impacts on regional economies and Ngāi Tahu's economic aspirations.
- 86 This additional carve out would go wider than providing for access to pounamu as a by-product of alluvial mining, as it also provides for broader mineral access across most of the South Island. Because of this, there may be equity concerns raised around benefitting only one iwi.
- 87 Depending on applications received, this option would allow the consideration of applications to access PCL for mining operations targeting minerals such as coal, gold or aggregates.
- 88 I do not recommend including this additional proposal in the Bill, as it goes further than providing for pounamu access, and could raise equity concerns around benefitting only one iwi.

Some mining would continue to be allowed in a World Heritage Area under the proposal

- 89 Currently, mining access is allowed to be granted in some parts of Te Wāhipounamu - South West New Zealand World Heritage Area (WHA). Te Wāhipounamu WHA extends from the southwestern tip of the South Island up past Franz Josef and Whataroa on the West Coast.
- 90 The proposed approach to No New Mines and the pounamu carveout proposal will not relax or tighten regulatory settings for mining in Te Wāhipounamu WHA. However, the pounamu carveout proposal does mean that mining will not be completely banned in the WHA, since some alluvial mining will be allowed.
- 91 In addition, because Te Wāhipounamu includes sizeable parcels of stewardship land, and because stewardship land is not included in the No New Mines policy, mining access will continue to be possible in those areas until the relevant stewardship land is reclassified.
- 92 The map in Appendix 3 illustrates the boundaries of the WHA relative to PCL, as well as current mining access arrangements that would be allowed if considered under No New Mines policy and the pounamu carveout proposal.
- 93 Continuing to allow mining activities in Te Wāhipounamu WHA is incompatible with the World Heritage Committee's position that such activities should not be undertaken within a WHA. For example, World Heritage Committee Decision 37 Com 7 urges parties to not permit extractive industries in World Heritage properties.
- 94 DOC does take World Heritage status into account when assessing access arrangement applications relating to Te Wāhipounamu. This is considered under section 61(2)(e) of the CMA which enables decision-makers to take into account "other matters that [...] Ministers consider relevant". I am of the

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view that the World Heritage status is highly relevant in this context, and I expect that officials acting on my behalf will give it due consideration as well.

- 95 In addition, the Government is progressing legislation that will amend the CMA to change its purpose from “promoting” to “managing” mining activities. Once the change comes into effect, it is my expectation that DOC will consider this amendment in making future decisions on access arrangements relating to PCL. This may lead to DOC giving greater weight to considerations such as environmental impacts or World Heritage status in its decision-making under CMA section 61(2).
- 96 I also note that the issue of potential mining access in Te Wāhipounamu WHA will be principally addressed through the Stewardship Land Reclassification Project, as it aims to ensure that all land is appropriately classified and have protections in place to reflect the values of the land.

Recommended option for pounamu approach

- 97 I recommend that Cabinet agree to include the pounamu carve out proposal in the No New Mines Bill.
- 98 I consider that the proposal strikes a balance between the objective of ensuring that No New Mines does not have a significant impact on Ngāi Tahu’s ability to source pounamu on the one hand, and maintaining the wider environmental benefits of No New Mines policy.

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

- 99 Implementing the pounamu carve out proposal would require work to identify and specify areas where there is a reasonable expectation that pounamu is likely to be found. This is needed so that mining in those areas could be carved out from the No New Mines policy in the Bill.
- 100 Ngāi Tahu has suggested that the Bill could refer to Ngāi Tahu’s already established Pounamu Management Areas (PMAs). PMAs are geographic categorisations developed by Ngāi Tahu at the regional Papatipu Rūnanga level. The PMAs are not statutory instruments under the CMA, but New Zealand Petroleum and Minerals does provide contact information for the relevant Papatipu Rūnanga to mining operators with permits within PMAs.⁴
- 101 DOC agrees that PMAs would provide an appropriate basis for a carve out. This is because they relate to known areas where pounamu may be found through alluvial mining, and are already used by alluvial mining operators.

⁴ New Zealand Petroleum and Minerals notifies affected permit holders of their obligations around pounamu, and encourage affected permit holders to engage with Ngāi Tahu, declare finds and reach agreement on how incidental discoveries of pounamu will be dealt with (e.g., via finder’s fee agreement).

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Mechanism to identify Pounamu Management Areas in legislation

- 102 The pounamu carveout areas could be defined in legislation either–
- 102.1 In regulations/secondary legislation via Order in Council; or
 - 102.2 Directly in the Act (e.g., in a new Schedule).
- 103 The two approaches would have the same net effect once implemented, as they would both mean that a geographic description of Pounamu Management Areas would be specified, for reference in making decisions on alluvial mining on conservation land.
- 104 Ngāi Tahu have indicated that they have a strong preference for the pounamu carveout areas to be defined in primary legislation. Ngāi Tahu expressed concerns that if the carveout areas are not set in the Bill, there would be no guarantee that the carveout will be defined through Order in Council in a timely fashion.
- 105 To define the carveout directly in the Act, it is necessary to obtain maps and geographic data of sufficient quality. Ngāi Tahu have provided maps and descriptions for PMAs that can be adapted and used for this purpose.

Making subsequent amendments to the pounamu carveout area

- 106 During engagement, Ngāi Tahu expressed the view that there should be a mechanism available to add new parcels of land to the pounamu carveout area if new pounamu deposits are discovered.
- 107 I agree that it would be good to have the ability to amend the pounamu carveout to extend or reduce its area. This would ensure that the carveout accurately reflects areas where pounamu may be found.
- 108 The pounamu carveout areas could be amended by either:
- 108.1 Including an Order in Council mechanism in the Bill that gives the ability to add or remove land areas to/from the carveout; or
 - 108.2 Amending the carveout areas through a further parliamentary legislative process.
- 109 The benefit of an Order in Council mechanism is that it would provide a faster approach to amend the carveout areas, and would not require the government of the day to prioritise a Bill for House time.
- 110 A potential Order in Council mechanism could be written to ensure a central role for Ngāi Tahu in the process and ensure that an Order in Council could not be made without the agreement of Ngāi Tahu.
- 111 Alternatively, pounamu areas could be amended through a parliamentary legislative process. This would take longer than an Order in Council process,

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however it would ensure that Parliament is able to approve changes to the pounamu areas set in legislation.

- 112 Using an Order in Council mechanism to update pounamu carveout areas would mean the government of the day would not have to prioritise a Bill for House time. However, using this mechanism would create a 'Henry VIII clause,' meaning that Cabinet could amend part of the primary legislation without the agreement of Parliament (by adding or removing areas to/from the carveout). However, in this case, the risk posed would be low as the Orders in Council would be restricted to a narrow area and would not undermine the intent of that section of the Act. There is already such a power in the CMA in respect of adding areas to Schedule 4.
- 113 During engagement, Ngāi Tahu also expressed the view that there should be clear 'trigger' for the process to amend the pounamu carveout area. This would give Ngāi Tahu certainty that the pounamu carveout areas can be amended if or when new pounamu deposits are discovered.
- 114 I agree that it would be useful to include a mechanism to ensure that the pounamu carveout areas remain up to date and fit for purpose. I propose that the Bill specify that there be a regular review of the pounamu areas every five years to determine whether the current pounamu areas remain relevant and whether parcels of land need to be added or removed.

Next steps for progressing the Bill

- 115 This paper also seeks Cabinet's decisions on next steps for progressing the Bill. It presents the following pathways:
- 115.1 **Path A:** The Bill is revised (to reflect Cabinet's decisions today on the pounamu carveout) with the aim of introduction to the House this parliamentary term;
- 115.2 **Path B:** The Bill is revised (to reflect Cabinet's decisions today on the pounamu carveout) followed by engagement with Ngāi Tahu on the draft Bill, and I will then return to Cabinet in due course to seek decisions on next steps to progress the Bill;
- 115.3 **Path C:** The Bill is revised (to reflect Cabinet's decisions today on the pounamu carveout) and then is released for public consultation before the election, with decisions on consultation delegated to Ministers of Conservation and Energy and Resources, and the Prime Minister;
- 115.4 **Path D:** The Bill is revised (to reflect Cabinet's decisions today on the pounamu carveout) and consultation materials are prepared, and then I will return to Cabinet in due course to seek decisions on timing of consultation.
- 116 The implications of each timing pathway are provided in Table 1.

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Table 1: Assessment of pathways to progress the No New Mines Bill

Path A – Introduce Bill this term	Path B – Engage with Ngāi Tahu on revised Bill, then Cabinet decides on next steps	Path C – Public consultation on exposure draft of Bill before the election	Path D – Prepare consultation materials, then Cabinet decides on timing of public consultation
Summary			
<ul style="list-style-type: none"> • Cabinet makes decisions on approach to provide access to pounamu. • The Bill is revised to reflect agreed approach. • Cabinet approves the revised Bill. • The Bill is introduced to House in late August. 	<ul style="list-style-type: none"> • Cabinet makes decisions on approach to provide access to pounamu. • The Bill is revised to reflect agreed approach. • Engagement with Ngāi Tahu on the draft Bill to inform them of the Government’s policy decisions. • Cabinet makes decisions on next steps to progress the Bill. 	<ul style="list-style-type: none"> • Cabinet makes decisions on approach to provide access to pounamu. • Decisions on consultation delegated to Ministers of Conservation and Energy and Resources, and the Prime Minister. • The Bill is revised to reflect agreed approach and consultation materials prepared. • An exposure draft of Bill is released for public consultation late August. 	<ul style="list-style-type: none"> • Cabinet makes decisions on approach to provide access to pounamu. • The Bill is revised to reflect agreed approach and consultation materials prepared. • Cabinet makes decisions on timing of consultation.
Comment			
<ul style="list-style-type: none"> • Would enable a Bill to be introduced this term. • Only allows for introduction – the Bill would not have its first reading or 	<ul style="list-style-type: none"> • A Bill would not be introduced to parliament this term. • This path could mean further pressure for Treaty partners to participate in 	<ul style="list-style-type: none"> • A Bill would not be introduced to parliament this term. • Would allow for public consultation on 	<ul style="list-style-type: none"> • A Bill would not be introduced to parliament this term. • Would allow for public consultation on

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Path A – Introduce Bill this term	Path B – Engage with Ngāi Tahu on revised Bill, then Cabinet decides on next steps	Path C – Public consultation on exposure draft of Bill before the election	Path D – Prepare consultation materials, then Cabinet decides on timing of public consultation
<p>referred to select committee.</p> <ul style="list-style-type: none"> • Timing would be very tight and would not allow contingency for unexpected issues or delays in drafting. • Would not allow for public consultation prior to the Bill being introduced (but the public could still input through select committee process). 	<p>engagement, at the same time as engagement on other significant work programmes.</p> <ul style="list-style-type: none"> • Depending on further decisions, consultation may begin in pre-election period, running at the same time as the general election, or would take place in following parliamentary term. 	<p>an exposure draft.</p> <ul style="list-style-type: none"> • Consultation would begin in the pre-election period, running at the same time as the general election. • Following consultation, Cabinet would make any further policy decisions, then the Bill would be finalised. 	<p>an exposure draft.</p> <ul style="list-style-type: none"> • Cabinet would decide subsequently on timing for consultation. • Following consultation, Cabinet would make any further policy decisions, then the Bill would be finalised.

117 Path A would enable a Bill to be introduced this parliamentary term, However, there is not sufficient time remaining to allow the Bill to proceed to its first reading before the House rises.

118 Path B would allow engagement with Ngāi Tahu on the draft Bill prior to any further decisions to progress the Bill. This would provide an opportunity to inform them of the Government’s policy decisions. I note that Ngāi Tahu have already provided input that informed the development of policy proposals and have identified their preferred options for ensuring continued access to pounamu should the policy proceed.

119 If Cabinet agrees to Path B, officials will revise the draft Bill and assess whether the proposed release of the Bill to Ngāi Tahu needs to be referred to the Crown Law Office for reference to the Attorney-General’s office (to approve release)⁵.

120 Subject to the Attorney-General’s decision, I will engage with Ngāi Tahu on the draft Bill and return to Cabinet in due course, to seek approval of the finalised Bill and agreement to next steps. Note that if the pounamu

⁵ Draft Government legislation prepared by or on behalf of the Parliamentary Counsel Office is subject to legal professional privilege (Legislation Act 2012, section 61). It is for the Attorney-General to determine whether to release draft legislation outside the Crown and, as a consequence, potentially waive legal professional privilege (CO (19) 2).

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provisions in the Bill are not what Ngāi Tahu envisaged, then it could take longer to work through any issues raised.

- 121 Paths C and D (and potentially Path B, depending on subsequent decisions) would provide an opportunity for the public, stakeholders, iwi, hapū and Māori organisations to provide their views on the exposure draft of the Bill prior to it being introduced to the House.
- 122 If Cabinet agrees to Path C, I will work with the Minister of Energy and Resources and the Prime Minister to prepare consultation materials for release in late August. If Cabinet agrees to Path D, I will return to Cabinet committee in due course with the revised Bill and consultation materials, and seek decisions on the timing for consultation.
- 123 Following public consultation, I would return to Cabinet to seek any further policy decisions. The Bill would then be amended to incorporate any changes.

Wider issues raised by Ngāi Tahu during engagement

- 124 During DOC's engagement with Ngāi Tahu on options to provide for pounamu access, Ngāi Tahu raised a number of issues they consider connected to the No New Mines policy, and that they wish to see addressed as part of this policy work.
- 125 Table 2 on the following page provides an overview of the issues raised and associated responses.

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Table 2: Wider issues raised by Ngāi Tahu during engagement

Issue raised	Key context	Response
<p>Exclusive Ngāi Tahu access to aotea stone</p>	<p>Aotea stone is considered a taonga and a sister stone to pounamu by Ngāti Māhaki ki Makaawhio (a hapū of Ngāi Tahu). In contrast to pounamu, aotea has not been vested, meaning that it is still owned by the Crown.</p> <p>s9(2)(g)(i)</p> <p>████████████████████ ████████████████████ ████████████████████</p> <p>██████████ An associated access arrangement was signed by DOC and Makaawhio on 8 June this year. These arrangements will be in effect until 2044.</p> <p>s9(2)(ba)(i)</p> <p>████████████████████ ████████████████████ ████████████████████</p>	<p>s9(2)(f)(iv)</p> <p>████████████████████ ████████████████████ ████████████████████</p> <p>The existing permit and access arrangement mean that Te Rūnanga o Makaawhio will have exclusive access to aotea until 2044.</p> <p>s9(2)(f)(iv)</p> <p>████████████████████ ████████████████████ ████████████████████</p>
<p>Access to pounamu in National Parks</p>	<p>There is a widespread misconception that all mining is banned in National Parks. However, it is only mining for Crown-owned minerals that is banned in National Parks, which means that if a mineral is privately owned (like pounamu is) access for mining of that mineral in National Parks is allowed (with appropriate conditions).</p>	<p>DOC has communicated to Ngāi Tahu that they are able to apply for access to extract pounamu from National Parks.</p> <p>DOC will also work with Ngāi Tahu to update their existing Tribal Access arrangement for minimum impact removal of pounamu.</p>
<p>Formal role for Ngāi Tahu in the approval, monitoring, and enforcement of CMA access arrangements</p>	<p>Under the Crown Minerals Act, decisions on access arrangements for Crown-owned land must be taken by the responsible Minister(s), as representatives of the Crown. When DOC officials make decisions on access arrangements, this is on delegation from the Minister(s).</p>	<p>The issue of potential roles in statutory decision-making, monitoring and enforcement under the CMA goes beyond the scope of No New Mines and would be an issue of relevance for mana whenua throughout the country.</p> <p>There are significant legal and policy issues that would need to be worked through if the Government wished to undertake further analysis of this proposal. This includes consideration of how delegation would work with a third party in terms of legal liability; how</p>

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Issue raised	Key context	Response
		<p>conflicts of interest would be managed; how changes would impact conservation objectives; and any precedent implications in the Treaty space.</p> <p>Officials advise that work on this matter could be undertaken should Ministers wish, but that it would require reprioritisation of resources both for DOC and MBIE, and would not be possible within the current timeframes for progressing the No New Mines Bill.</p> <p>MBIE is the agency responsible for administering the CMA and wider work on this would be led by them.</p>
s9(2)(f)(iv)		
Community wellbeing and economic development impacts	Ngāi Tahu have expressed concerns that the No New Mines policy may have significant adverse effects on the regional economy and community wellbeing of the West Coast region.	Potential measures to address regional economic impacts of No New Mines are discussed in the following section.
Clean-tech minerals	<p>Ngāi Tahu would like to retain the ability to potentially mine for 'clean-tech minerals' on PCL in the future, as a way to provide for the economic wellbeing of their communities.</p> <p>There is no widely-agreed definition for what constitutes a 'clean-tech' mineral, but prominent examples include copper, nickel, cobalt, rare earth elements and lithium.</p>	<p>DOC has conveyed to Ngāi Tahu that all Crown-owned minerals will be treated the same under the No New Mines policy, including minerals that may be used in clean-tech products.</p> <p>DOC does not consider there is a strong rationale for treating such minerals differently under No New Mines policy.</p>

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Issue raised	Key context	Response
Implications for the Stewardship Land Reclassification Project	Ngāi Tahu have sought clarity on the interactions of No New Mines and the Stewardship Land Reclassification project.	See section below on the Stewardship Land Reclassification project.

Potential approaches to manage regional economic impacts of No New Mines

Impacts on the West Coast region

- 126 I do not anticipate any immediate economic impacts of No New Mines policy, because existing mining operations will be able to continue to access PCL on present conditions. Cabinet’s decisions to exclude stewardship land from No New Mines policy will mitigate impacts in the shorter term, and so will any carveouts to provide for pounamu access.
- 127 In the medium to long term, the West Coast region would likely be particularly impacted by No New Mines, as around three-quarters of mining on PCL occurs in this region.
- 128 The scale of impacts on the West Coast are still unclear. As of March 2022, mining directly employed approximately 660 people (or 3.96 percent) out of a total 16,647 filled jobs on the West Coast. Not all of these jobs will relate to PCL or to the land classifications proposed to be protected under No New Mines.

Potential tools for managing impacts

- 129 There is a range of potential tools for supporting communities that Ministers may wish to consider in the implementation of No New Mines.
- 130 For example, using funds and tools available through Just Transitions, Kānoa - Regional Economic Development and Investment Unit (Kānoa), or supporting the region to lead change via other government mechanisms.
- 131 Government has previously utilised just transitions where regions face major economic shocks that would have significant social, environmental, cultural and economic impacts. The scale and breadth of the impacts in these regions have informed the level of intervention and resourcing.
- 132 Potential transition opportunities for the West Coast region are unclear. Current programmes may be suitable to work with the region to understand and manage the impacts of this policy.
- 133 The Just Transitions programme and its resourcing is fully committed to progressing just transitions in Southland and Taranaki.

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- 134 Kānoa has worked in partnership with the West Coast to identify local priorities for regional economic development, to provide a strategic view of how government investment may best be used to develop the regional economy.
- 135 Through Kānoa managed funds, the Government has invested over \$243 million into 114 projects on the West Coast since 2017, mostly through the Provincial Growth Fund (PGF). Two of these PGF-funded projects were mining projects – the Blackwater Gold Mine Exploration Project (a \$15.0 million loan) and Ngāti Waewae Direct Sourcing and Management of Pounamu Project (a \$995,500 grant).
- 136 The \$200.0 million Regional Strategic Partnership Fund, administered by Kānoa, is expected to be fully allocated by September this year. Given this, Kānoa is not currently able to support targeted investment into the region to mitigate any potential impacts of the No New Mines policy unless new funding is allocated for this purpose.
- 137 I recommend that DOC and MBIE officials progress work over the next year to assess future regional impacts of No New Mines policy and provide advice on potential mitigation options to the Ministers of Energy and Resources, Regional Development, and Conservation.

Update on the Stewardship Land Reclassification work programme

- 138 ‘Stewardship’ is a classification of public conservation land which is applied to land that is not specifically protected through other classifications. Under the Conservation Act 1987, stewardship land is managed so that ‘its natural and historic resources are protected’.
- 139 There are over 2.7 million hectares of stewardship land, making up over one third of all public conservation land.
- 140 In April 2021 the Cabinet Business Committee agreed to a two-part programme of work to reclassify stewardship land by appointing two National Panels to provide recommendations to the Minister of Conservation about how to reclassify stewardship land, as well as legislative amendments to streamline the process [CBC-21-MIN-0045 refers].
- 141 Cabinet has agreed that No New Mines policy would not apply to stewardship land, as this will be assessed over time through the Stewardship Land Reclassification Project [CAB-22-MIN-0568 refers]. If stewardship land is subsequently reclassified into one of the classifications covered by No New Mines policy, that land would then be subject to the restrictions on mining.
- 142 DOC has designed a regional approach to delivering this work rather than considering all stewardship land at once. This approach was designed to allow the panels to focus on one region and build the relationships required to successfully progress reclassification of stewardship land. The work started on the West Coast given the large volume of stewardship land there.

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- 143 A Ngāi Tahu-appointed Mana Whenua Panel was also established to provide information on mahika kai (natural resources practices), mātauranga Māori and Ngāi Tahu interests in relation to stewardship land within its takiwā.
- 144 The Western South Island reclassification process has advanced significantly, with draft recommendations being made on 504 pieces of stewardship land. These were publicly notified in May 2022, followed by hearings in September 2022.
- 145 The initial draft recommendations, if progressed, would mean the vast majority of stewardship land would be reclassified into a classification that is either currently listed on Schedule 4 or proposed to be added under No New Mines policy. This would mean that most access for mining activities would not be granted.

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s9(2)(f)(iv)

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Agency comments

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s9(2)(h)

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s9(2)(h)

Financial Implications

- 153 As noted in the December 2022 Cabinet paper, preventing mining on PCL would impact the royalties the Crown receives from mining on PCL.
- 154 DOC has identified that 13 of the 88 current access arrangements on PCL relate to mining operations which would not be able renew their access under No New Mines (and would therefore stop paying royalties and Energy Resources Levies once their present arrangements expire). By 2032, the last of these access arrangements will have expired.
- 155 MBIE has calculated that the royalties associated with these 13 mining operations averaged \$300,000 per annum over 2021 and 2022. 95% of these royalties were from coal, s9(2)(b)(ii)
- 156 In addition, the mining operations for coal also pay Energy Resources Levies. These generated an average of \$460,000 per year for the financial years ending 30 June 2021 and 30 June 2022. s9(2)(b)(ii)
- 157 As these 13 mining operations cease to operate over time, the Crown will no longer receive the associated royalties and Energy Resource Levy payments. When all these operations have ceased operation by 2032, No New Mines will therefore have reduced total revenue by \$760,000 per annum, with a corresponding impact on OBEGAL.
- 158 Reducing new mining on PCL would also mean a reduction in the compensation fees that DOC receives for loss and/or damage to conservation values caused by mining activities.
- 159 In 2020/2021, DOC received \$1.2m in compensation payments associated with mining access arrangements. However, of this, the majority (\$950,000) was compensation payments related to the Bathurst Escarpment Mine on the Denniston Plateau, which will not be impacted by No New Mines.
- 160 Note that compensation payments to DOC are intended to fund conservation work to 'offset' the negative impacts of mining activities on PCL. If future mining activities are prevented by No New Mines, then there will also be no need for associated compensation payments.
- 161 The pounamu carveout proposal covered in this paper would not have any additional financial implications, but would mean a lower reduction in royalties, Energy Resource Levy, and compensation payments since more mining operations would be able to occur.

Legislative Implications

- 162 Amendments to Schedule 4 and section 61 of the CMA are needed to implement the proposal recommended in this paper. Amendments to associated sections of the body of the Act may also be necessary.
- 163 If Cabinet decides to progress the proposal, 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.
- 164 I will be working with the Minister of Energy and Resources to progress the proposed amendments.
- 165 Amendments to the CMA will be binding on the Crown.

Population Implications

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

Impact analysis

- 168 The DOC Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Assessment "Regulatory Impact Statement: Ensuring ongoing access to pounamu under the No New Mines policy" produced by the DOC and dated 14 June 2023. The review team considers that it partially meets the quality assurance criteria.
- 169 The Regulatory Impact Statement (RIS) sets out the scope, problem definition, and options for approaches that provide Ngāi Tahu with continued access to sizeable quantities of pounamu as a by-product of alluvial mining carried out by third-party operators. It complements the Supplementary Analysis Paper which supported the December Cabinet decisions on how to implement the No New Mines on public conservation land policy.

170 9(2)(g)(i)

- 171 The RIS is attached as Appendix 4.

Consultation

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

Communications

- 175 Communications will be led by the Minister of Conservation, in consultation with the Minister of Energy and Resources and the Prime Minister.
- 176 There is the potential for us to announce our policy decisions on No New Mines in late July, following Cabinet's decisions on the matters outlined in this Cabinet paper. This announcement would include outlining our preferred pathway for progressing the Bill.
- 177 The approach to subsequent communications will depend on the pathway Cabinet chooses to progress the Bill.
- 178 If Cabinet agrees to Path A, subsequent communications would be timed to align with the introduction of the Bill to the House in August.
- 179 If Cabinet agrees to Path B, I will engage with Ngāi Tahu on the draft Bill. Subsequent communications will depend on Cabinet's further decisions on a preferred pathway to progress the Bill.
- 180 If Cabinet agrees to Path C, I seek your agreement to delegate decisions on approach to public consultation and consultation materials to the Ministers of Conservation and Energy and Resources, and the Prime Minister.
- 181 If Cabinet agrees to Path D, I will return to Cabinet committee in due course to seek decisions on timing for public consultation and the approach to associated communications.
- 182 I will continue to inform Ngāi Tahu on progress on this policy.

Proactive release

- 183 This Cabinet paper follows on from two previous Cabinet papers that were considered in March 2023 [CAB-23-MIN-0073 refers] and December 2022

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[CAB-22-MIN-0568 refers], as well as an oral item taken by the previous Minister of Conservation [CPC-22-MIN-0038 refers].

- 184 Accordingly, I recommend that these three Cabinet papers and the minutes from the four Cabinet items be released together as a package once announcements are made, with information withheld consistent with the Official Information Act 1982.

Recommendations

I recommend that the Cabinet Environment Committee

- 1 **note** that on 12 December 2022, to give effect to the No New Mines policy, Cabinet [CAB-22-MIN-0568]:
 - 1.1 agreed to amend Schedule 4 of the Crown Minerals Act 1991 (CMA) (and associated provisions in section 61 as required) to add 12 named public conservation land (PCL) classifications, meaning that access cannot be granted for most new mining operations on that land;
 - 1.2 agreed to specify that mineral access rights provided in Treaty of Waitangi settlement acts will not be impacted by the addition of the recommended land classifications to Schedule 4 of the CMA;
 - 1.3 noted that that No New Mines would not impact the ability of Ngāi Tahu to be granted access arrangements to obtain pounamu on PCL, as pounamu is privately-owned by Ngāi Tahu;
 - 1.4 noted that adding further land classifications to Schedule 4 would have a significant secondary impact on Ngāi Tahu's ability to obtain sizeable quantities of pounamu as a by-product of alluvial mining;
 - 1.5 invited the Minister of Conservation to engage with Ngāi Tahu on approaches that could provide for continued access to pounamu;
- 2 **note** that *The Crown Minerals (Restricting Access for Mining on Conservation Land) Amendment Bill* (the Bill) has been drafted since December 2022 to give effect to the decisions that Cabinet has made to date;
- 3 **note** that on 13 March 2023, Cabinet invited the Minister of Conservation to return to the Cabinet Environment, Energy and Climate Committee (ENV) following the conclusion of engagement with Ngāi Tahu to seek further policy decisions to finalise the Bill, including the measures to provide for access to pounamu [CAB-23-MIN-0073];
- 4 **note** that engagement with Ngāi Tahu concluded in June 2023 and has informed the development of policy options;
- 5 **note** that on 27 June 2023, ENV deferred consideration of the No New Mines Cabinet paper [ENV-23-MIN-0029];

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Providing for Ngāi Tahu's ongoing access to pounamu

- 6 **agree** that the Bill will include a carve out to allow access arrangements for alluvial mining operations on the new PCL classifications added to Schedule 4, where those operations sit within pounamu carveout areas;

World Heritage Area impacts

- 7 **note** that in signing the World Heritage Convention, New Zealand committed to protect its World Heritage Sites (including Te Wāhipounamu World Heritage Area), and that the World Heritage Committee has expressed its clear position that mineral, oil and gas exploration or exploitation is incompatible with World Heritage status;
- 8 **note** that because stewardship land is not included in the No New Mines policy, it will continue to be possible to seek access to mine in those parts of Te Wāhipounamu World Heritage Area that are stewardship land;
- 9 **note** that the pounamu area carveout proposed in this paper would allow some new alluvial mining to be approved in Te Wāhipounamu World Heritage Area even after the stewardship land within the World Heritage Area is reclassified;

Defining pounamu areas in legislation

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

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

- 12 **agree** that the Bill provides for areas of land to be added or removed from the pounamu carve out by including a provision in the Bill stating that proposals to add or remove land from a pounamu carveout area may be:
- 12.1 designated by an Order in Council made on the recommendation of the Minister of Conservation and the Minister of Energy and Resources; and
- 12.2 with the agreement of Ngāi Tahu;
- 13 **agree** that the Bill will include a requirement for a review of the pounamu carveout areas every five years to determine whether the current pounamu carveout areas remain relevant and whether parcels of land need to be added or removed;

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Drafting the Bill

- 14 **invite** the Minister of Conservation to issue drafting instructions to Parliamentary Counsel Office consistent with decisions made through this Cabinet paper;
- 15 **agree** to delegate detailed decisions on the drafting of provisions, consistent with the policy agreed by Cabinet, to the Ministers of Conservation and Energy and Resources;
- 16 **note** that the legislation drafted to give effect to the decisions in this paper will bind the Crown;

Options for progressing the Bill

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

EITHER

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

- 17.1 **agree** to progress the Bill with the aim of introduction to the House this parliamentary term;
- 17.2 **invite** the Minister of Conservation to report to Cabinet Legislation Committee in August with the revised Bill to implement No New Mines, for approval for introduction to the House;
- 17.3 **agree** to delegate decisions on timing and approach to policy announcement to the Minister of Conservation, in consultation with the Minister of Energy and Resources and the Prime Minister;

OR

Path B – Engage with Ngāi Tahu on the draft Bill and then make further decisions on next steps to progress the Bill

- 17.4 **note** that officials will assess the draft Bill to ascertain whether the proposed release to Ngāi Tahu needs to be referred to the Crown Law Office for reference to the Attorney-General's office (to approve release);
- 17.5 **invite** the Minister of Conservation to engage with Ngāi Tahu on the revised Bill to implement No New Mines (subject to the outcome of the assessment to release the draft legislation outside the Crown);
- 17.6 **invite** the Minister of Conservation to report to an appropriate Cabinet Committee in due course to seek further decisions on the approach to progressing the Bill;

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OR

Path C – Release Bill for public consultation before the election

- 17.7 **agree** to release an exposure draft of the Bill to commence public consultation prior to the end of the parliamentary term;
- 17.8 **agree** to delegate decisions on the approach to policy announcement and public consultation and consultation materials to the Ministers of Conservation, the Minister of Energy and Resources, and the Prime Minister;

OR

Path D – Prepare consultation materials, then make further decisions on timing of public consultation

- 17.9 **invite** the Minister of Conservation to report to an appropriate Cabinet Committee in due course with the revised Bill and consultation materials, and to seek decisions on the timing of public consultation;

Other issues raised by Ngāi Tahu

- 18 **note** that during the engagement process, Ngāi Tahu raised a number of issues that they consider should be addressed alongside No New Mines;
- 19 **note** that Ngāi Tahu has an existing tribal access arrangement for minimum impact removal of pounamu from PCL which is currently rolling over on a month-by-month basis;
- 20 **note** that DOC and Ngāi Tahu have agreed to work together to update this Tribal Access arrangement to provide greater long-term certainty for Ngāi Tahu;
- 21 **s9(f)(iv)**

Regional economic impacts of No New Mines

- 22 **note** that Kānoa – Regional Economic Development and Investment Unit will continue to work with the West Coast region to support its regional economic development priorities;
- 23 **note** that DOC officials and MBIE Energy and Resources and Regional Development officials will progress work over the next year to assess future regional impacts of No New Mines policy and provide advice on potential mitigation options to the Ministers of Energy and Resources, Regional Development, and Conservation.

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Financial implications

- 24 **note** that, when fully implemented, No New Mines would reduce revenue by \$760,000 per annum (FY 2032/33), with a corresponding impact on OBEGAL, relating to forecast royalties and Energy Resources Levies paid by mining operations which would cease operation once their current access arrangements on PCL expire.

Authorised for lodgement

Hon Willow-Jean Prime

Minister of Conservation

Released by the Minister of Conservation

Appendices

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

Appendix 2 – Maps illustrating estimated impact of proposal

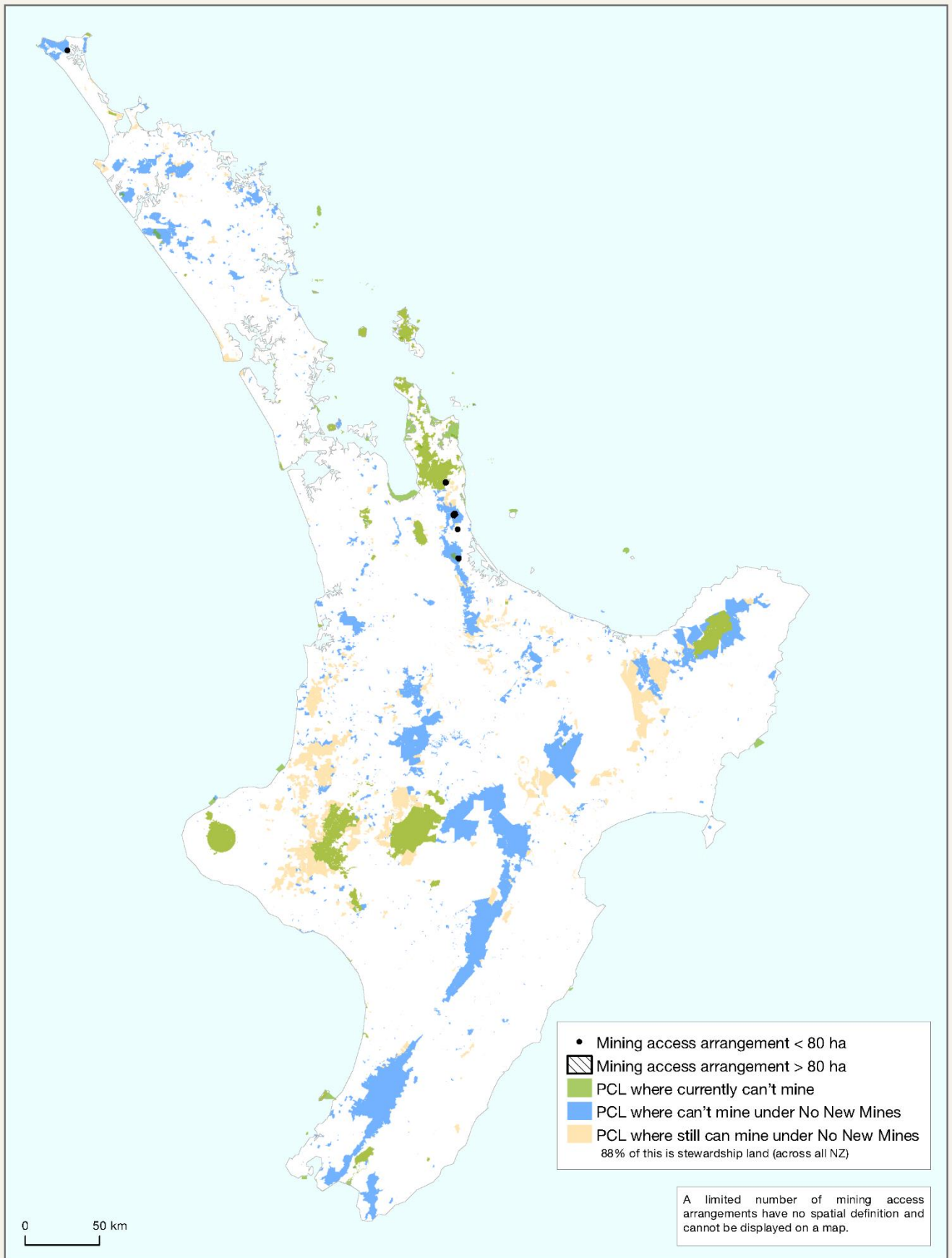
Appendix 3 – Map showing Te Wāhipounamu World Heritage Area

Appendix 4 – Regulatory Impact Statement.

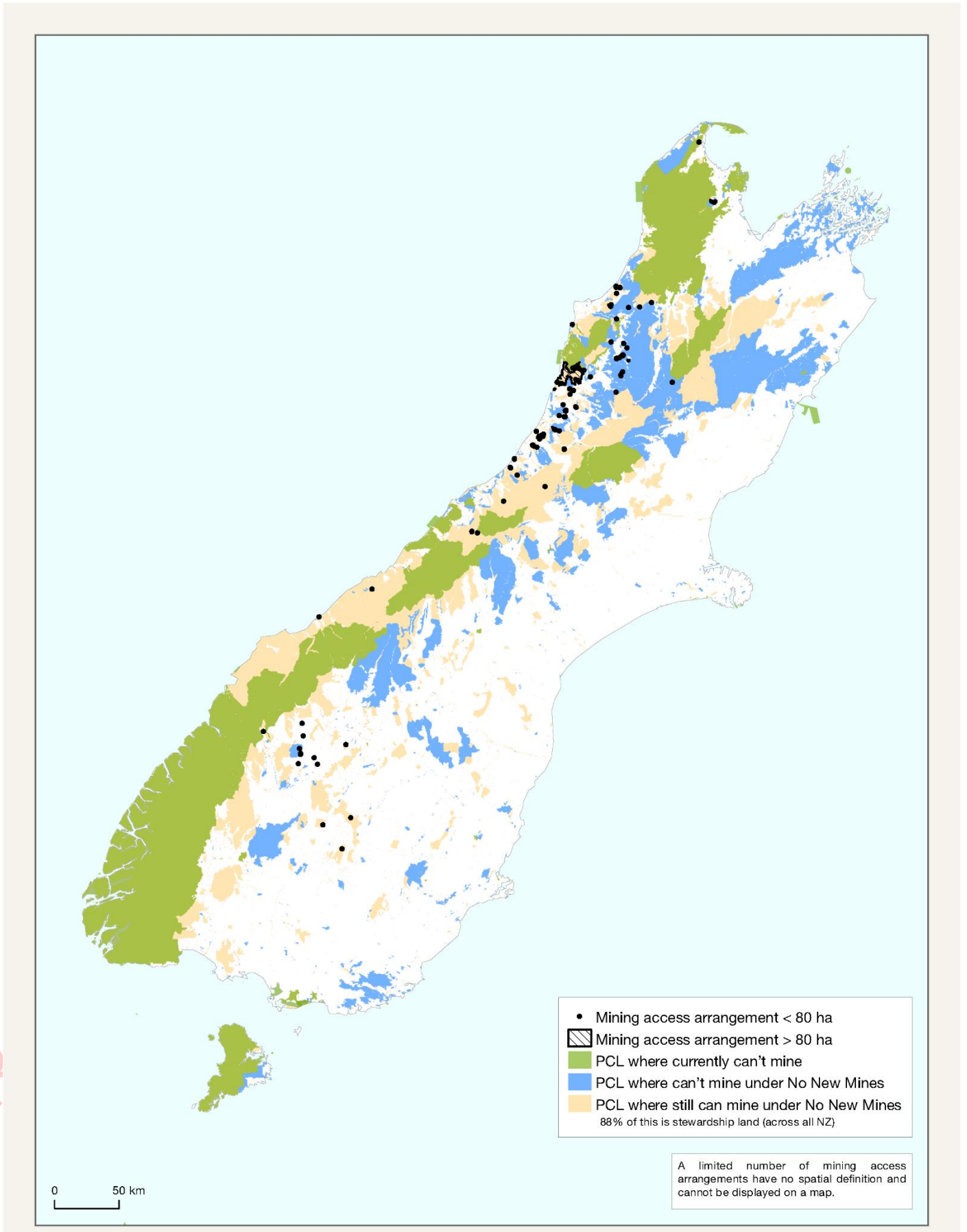
Released by the Minister of Conservation

Appendix 2 - Maps illustrating estimated impact of proposal

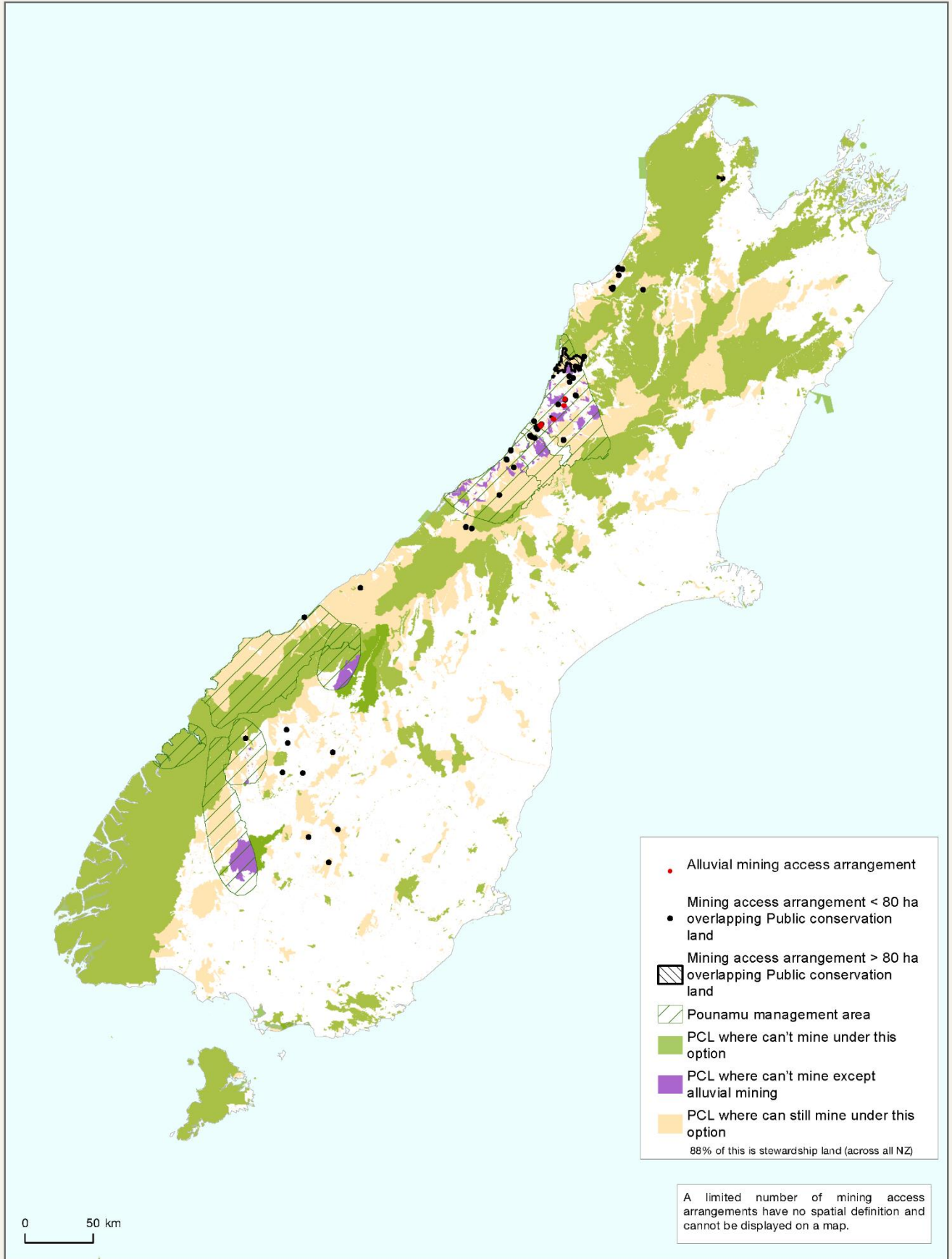
Map A – Illustration of how No New Mines (without a carveout aimed at pounamu) would impact new PCL mining operations on the North Island (assuming that current mining operations are illustrative of potential new operations)



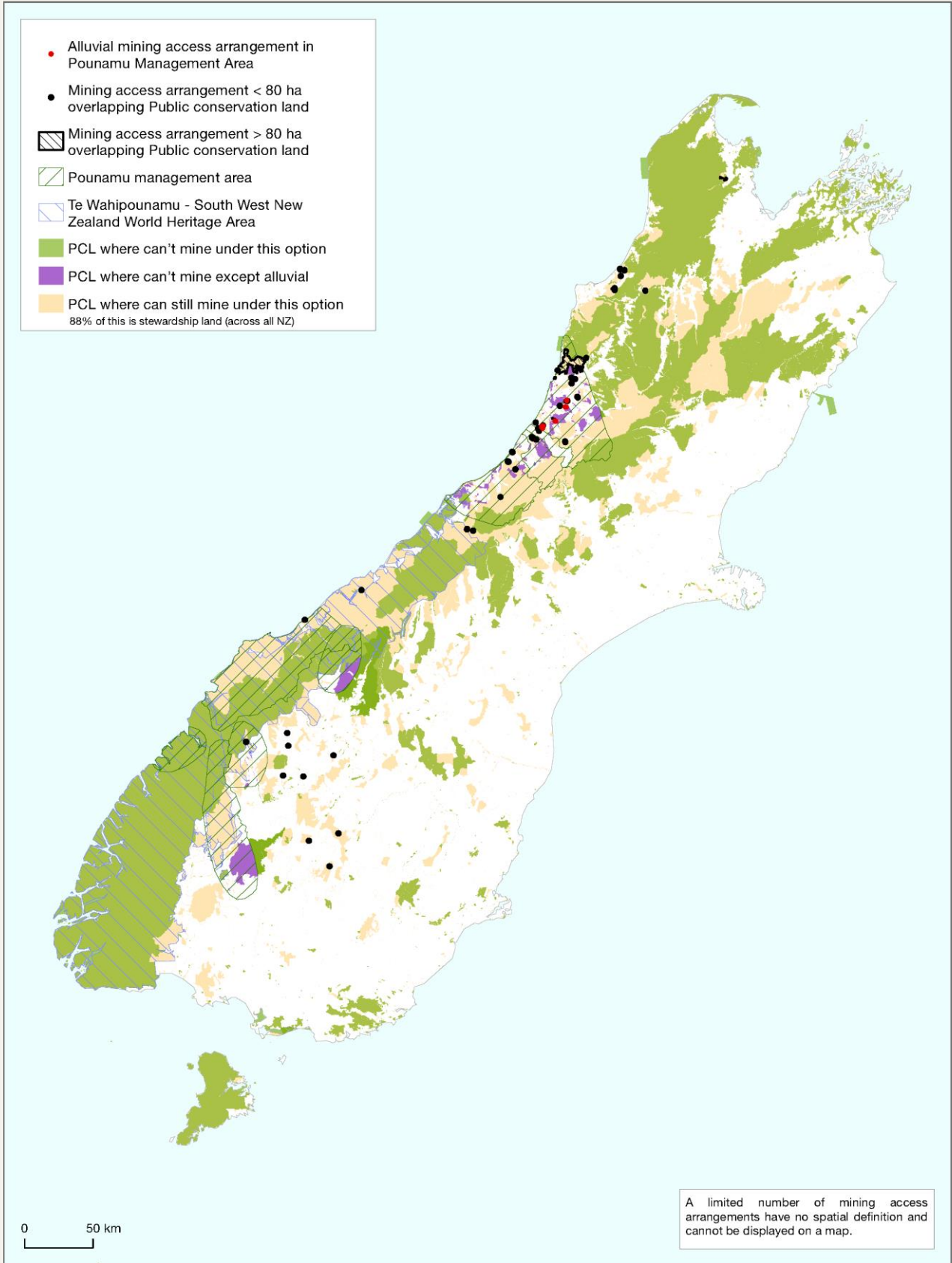
Map B – Illustration of how No New Mines (without a carveout aimed at pounamu) would impact new PCL mining operations on the South Island (assuming that current mining operations are illustrative of potential new operations)



Map C – This map shows what areas could and couldn't be mined under the proposed carveout, as well as current access arrangements that could be approved under the proposed approach



Appendix 3 – Map showing Te Wāhipounamu World Heritage Area





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.

No New Mines on Conservation Land: Decisions on Approach to Pounamu and Next Steps to Progress the Bill

Portfolio Conservation

On 24 July 2023, following reference from Cabinet Environment, Energy and Climate Committee (ENV), Cabinet:

Background

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

[CAB-22-MIN-0548]

- 2 **noted** that the Crown Minerals (Restricting Access for Mining on Conservation Land) Amendment Bill (the Bill) has been drafted since December 2022 to give effect to the decisions that Cabinet has made to date;
- 3 **noted** that on 13 March 2023, the Cabinet Priorities Committee invited the Minister of Conservation to return to ENV following the conclusion of engagement with Ngāi Tahu to seek further policy decisions to finalise the Bill, including the measures to provide for access to pounamu [CPC-23-MIN-0003];

- 4 **noted** that engagement with Ngāi Tahu concluded in June 2023 and has informed the development of policy options;
- 5 **noted** that on 27 June 2023, ENV deferred consideration of the No New Mines Cabinet paper [ENV-23-MIN-0029];

Providing for Ngāi Tahu's ongoing access to pounamu

- 6 **agreed** that the Bill will include a carveout to allow access arrangements for alluvial mining operations on the new PCL classifications added to Schedule 4, where those operations sit within pounamu carveout areas;

World Heritage Area impacts

- 7 **noted** that in signing the World Heritage Convention, New Zealand committed to protect its World Heritage Sites (including Te Wāhipounamu World Heritage Area), and that the World Heritage Committee has expressed its clear position that mineral, oil and gas exploration or exploitation is incompatible with World Heritage status;
- 8 **noted** that because stewardship land is not included in the No New Mines policy, it will continue to be possible to seek access to mine in those parts of Te Wāhipounamu World Heritage Area that are stewardship land;
- 9 **noted** that the pounamu area carveout proposed in paragraph 6 above would allow some new alluvial mining to be approved in Te Wāhipounamu World Heritage Area even after the stewardship land within the World Heritage Area is reclassified;

Defining pounamu areas in legislation

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

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

- 12 **agreed** that the Bill provide for areas of land to be added or removed from the pounamu carveout by including a provision in the Bill stating that proposals to add or remove land from a pounamu carveout area may be:
- 12.1 designated by an Order in Council made on the recommendation of the Minister of Conservation and the Minister of Energy and Resources; and
 - 12.2 with the agreement of Ngāi Tahu;
- 13 **agreed** that the Bill will include a requirement for a review of the pounamu carveout areas every five years to determine whether the current pounamu carveout areas remain relevant and whether parcels of land need to be added or removed;

Drafting the Bill

- 14 **invited** the Minister of Conservation to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 15 **authorised** the Minister of Conservation and the Minister of Energy and Resources to make detailed decisions on the drafting of the provisions, consistent with the policy agreed by Cabinet;
- 16 **noted** that the legislation drafted to give effect to the above decisions will bind the Crown;
- 17 **invited** the Minister of Conservation to report to an appropriate Cabinet Committee in due course with the revised Bill and consultation materials, and to seek decisions on the timing of public consultation;

Other issues raised by Ngāi Tahu

- 18 **noted** that during the engagement process, Ngāi Tahu raised a number of issues that they consider should be addressed alongside No New Mines;
- 19 **noted** that Ngāi Tahu has an existing tribal access arrangement for minimum impact removal of pounamu from PCL, which is currently rolling over on a month-by-month basis;
- 20 **noted** that DOC and Ngāi Tahu have agreed to work together to update this tribal access arrangement to provide greater long-term certainty for Ngāi Tahu;

21 s9(f)(iv)

Regional economic impacts of No New Mines

- 22 **noted** that Kānoa – Regional Economic Development and Investment Unit will continue to work with the West Coast region to support its regional economic development priorities;
- 23 **noted** that DOC officials and MBIE’s Energy and Resources and Regional Development officials will progress work over the next year to assess future regional impacts of No New Mines policy and provide advice on potential mitigation options to the Ministers of Energy and Resources, Regional Development, and Conservation;

Financial implications

- 24 **noted** that, when fully implemented, No New Mines would reduce revenue by \$760,000 per annum (FY 2032/33), with a corresponding impact on OBEGAL, relating to forecast royalties and Energy Resources Levies paid by mining operations, which would cease operation once their current access arrangements on PCL expire.

Rachel Hayward
Secretary of the Cabinet