



## Briefing: Fast-track Approvals – Approving conditions to manage Crown liabilities

<b>To</b>	Minister of Conservation	<b>Date submitted</b>	13 June 2025
<b>Action sought</b>	Approval of mandatory conditions that manage Crown risks and liabilities under section 78 of the Fast-track Approvals Act 2024	<b>Priority</b>	Normal
<b>Reference</b>	25-B-0187	<b>DocCM</b>	DOC-10282917
<b>Security Level</b>	In Confidence		

<b>Risk Assessment</b>	Medium If proposed section 78 conditions are not approved, decisions on how Crown liabilities are managed, and the level of risk undertaken by the Crown, will be left to Fast-track Approval panels.	<b>Timeframe</b>	27 June 2025 To enable mandatory Section 78 conditions to be finalised and considered for the first Fast-track land management approvals.
<b>Attachments</b>	Attachment A – Proposed list of mandatory section 78 conditions		

Contacts	
Name and position	Phone
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## Executive summary – Whakarāpopoto ā kaiwhakahaere

1. Land management approvals under the Fast-track Approvals Act 2024 (FTAA) expose the Crown to potentially significant financial and legal liabilities. One of the mitigations agreed by Cabinet to manage these liabilities is the use of pre-approved mandatory conditions that must be implemented by panels [ECO-24-MIN-0200 refers].
2. Section 78 of the FTAA enables you (as the land-owning Minister) to specify conditions necessary to manage potential risks and liabilities to the Crown, which cannot be declined or amended by panels. Your approval of the proposed section 78 conditions in this briefing indicates that they are appropriate for this purpose outlined in the legislation.
3. The proposed section 78 conditions have largely been drawn from the Department of Conservation's (DOC) existing contract templates. The complete list of proposed section 78 conditions, along with their policy rationale, is provided in Attachment A for your consideration.
4. Once you have approved section 78 conditions in this briefing, DOC may require panels to include them on individual Fast-track Approvals without additional ministerial approval. Not all section 78 conditions will be applied to every land management approval. DOC will only impose those that are deemed necessary to manage potential risks and liabilities of individual projects.
5. Panels will not be able to amend or reject section 78 conditions put forward by DOC. This is different to environmental conditions for Fast-track projects, where DOC recommends conditions to the panel who then have full discretion to approve, amend or reject the conditions proposed.
6. Some of the proposed section 78 conditions require values to be set, e.g. to determine the appropriate level of bond taken, insurance requirements, and fees. We recommend that the section 78 conditions specify independent valuation rather than by DOC or the panel. This is a simplified version of DOC's existing processes that reduces risk of disputes and delays, and enables more accurate estimates to manage the risk of financial losses and shortfalls.
7. Until the proposed section 78 conditions are approved, DOC will not be able to require the panel to include these conditions for relevant fast-track projects. This leaves the management of Crown risk up to the panel, who may not have sufficient information to appropriately size or manage the risk. DOC would still be able to recommend these conditions, but the panel does not need to follow these recommendations. No project with land management approvals has yet required a panel to be set up, however there are several listed (and non-listed) projects that will involve these types of permissions and the timing of their applications is unknown.

## We recommend that you ... (Ngā tohutohu)

		Decision
1.	<b>Note</b> that once you have approved final section 78 conditions (proposed in Attachment A), the Director-General of Conservation has discretion to require the panel to impose the relevant conditions on Fast-track land management approvals without panel and Ministerial approval	

2.	<b>Note</b> that your agreement of proposed section 78 conditions (Attachment A) indicates that they are appropriate to manage risks to, and potential liabilities of, the Crown.	
3.	<b>Agree</b> to “Health and safety” conditions described in Attachment A	<input checked="" type="radio"/> Yes / No
4.	<b>Agree</b> to “Bonds and guarantees” conditions described in Attachment A	<input checked="" type="radio"/> Yes / No
5.	<b>Agree</b> to “Structures, Building Act, and restoration” conditions described in Attachment A	<input checked="" type="radio"/> Yes / No
6.	<b>Agree</b> to “Fees” conditions described in Attachment A	<input checked="" type="radio"/> Yes / No
7.	<b>Agree</b> to “Liability and insurance” conditions described in Attachment A	<input checked="" type="radio"/> Yes / No
8.	<b>Agree</b> to “Compliance” conditions described in Attachment A	<input checked="" type="radio"/> Yes / No
9.	<b>Agree</b> to “Miscellaneous” conditions described in Attachment A	<input checked="" type="radio"/> Yes / No
10.	<b>Agree</b> to “Access arrangements only” conditions described in Attachment A	<input checked="" type="radio"/> Yes / No
11.	<b>Agree</b> to “Land exchanges only” conditions described in Attachment A	<input checked="" type="radio"/> Yes / No
12.	<b>Agree</b> that section 78 conditions specify that values for bonds, insurance, and fees are set using independent valuation	<input checked="" type="radio"/> Yes / No
13.	<b>Agree</b> to share this briefing with the Minister for Land Information, to assist with their own set of mandatory section 78 conditions.	<input checked="" type="radio"/> Yes / No

s 9 (2)(a)

Date: 12/06/2025

Ruth Isaac  
Deputy Director-General Policy and  
Regulatory Services

s 9 (2)(a)

Date: 8 / 7 / 25

Hon Tama Potaka  
**Minister of Conservation**

### Purpose – Te aronga

1. This briefing seeks your approval of the suite of conditions that will be used to manage Crown risks and liabilities arising from Fast-track land management approvals, as provided for under section 78 of the Fast-track Approvals Act 2024 (FTAA).
2. Your approval of these conditions gives effect to section 78 of the FTAA and Cabinet’s direction to manage Crown liabilities with pre-approved mandatory conditions that

must be implemented by panels [ECO-24-MIN-0200 refers]. It will enable the Director-General of Conservation to require panels to include them in land management approvals without amendment.

## Background and context – Te horopaki

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### ***DOC maintains landowner obligations and responsibilities when granting land management approvals under the FTAA***

3. The FTAA includes land management approvals that impact Crown liabilities and property rights on conservation land.
4. These approvals are an authority from the landowner to carry out an activity on Crown land and can result in substantial risks and liabilities that need to be appropriately considered and, where possible, mitigated.
5. The 'landowning' Minister (usually the Minister of Conservation but can also be other Ministers such as the Minister for Land Information) has statutory responsibility for financial, health and safety, and legal risks related to Crown land. These responsibilities include:
  - **Financial liabilities:** DOC continues to have landowner responsibilities during projects and once projects conclude on PCL. DOC may be responsible for rehabilitating the sites in accordance with our statutory obligations, particularly if the concessionaire abandons the site leaving unsafe structures in place. Tui Mine and Chateau Tongariro are notable examples of significant costs being borne by the Crown and taxpayers;
  - **Obligations under the Health and Safety at Work Act 2015:** to keep workers and the general public safe related to work on public conservation land (including potential criminal liability for the Department and its officers);
  - **Responsibilities under the Occupiers' Liability Act 1962:** to ensure people are safe around structures, for example buildings left behind when projects have finished; and
  - **Responsibilities and liabilities under the Building Act 2004:** for any structures from projects. It is an offence under the Building Act to use or knowingly permit another person to use a building which is likely to cause injury/death to persons or damage to property.

### **About section 78 conditions**

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6. Under the FTAA, independent panels will make land management decisions that may expose the Crown to significant risks and liabilities that the Minister of Conservation will often be ultimately responsible for.
7. To mitigate these risks, Cabinet agreed a suite of policy settings to mitigate Crown risks and liabilities resulting from land management decisions under the FTAA [ECO-24-MIN-0200 refers]. These decisions included the development of a set of "mandatory conditions" that would be pre-approved by the landowning Minister and which must be included without alteration in the final set of conditions issued by the panel.
8. This policy was given effect to in the FTAA in section 78 so these conditions are now referred to as section 78 conditions. Section 78 conditions:
  - enable you to manage the level of risk and liability that the Crown may be exposed to resulting from Fast-track project approvals; and
  - do not manage other effects of the activity (e.g. environmental effects).

9. Before approving a section 78 condition, you must be satisfied that it is appropriate to manage risks to, and potential liabilities of, the Crown arising from the granting of an approval of that kind.
10. Section 78 conditions are a subset of conditions that will be applied to land management and land exchange approvals. They will be accompanied by the following sets of conditions and clauses to form the complete Fast-track Approval conditions set:
  - **Approval conditions:** approved by the panel, which specify the activity approved and the boundaries of the approval based on the panel's decision;
  - **Special conditions:** recommended by DOC in section 51 reports or section 53 comments and approved by panels to manage environmental impacts of the approved activities; and
  - **Mechanical clauses:** which are standard terms imposed by DOC in issuing a concession document, and are required to enable the effective legal functioning of contracts.
11. Not all section 78 conditions will be applied to every land management approval. Under the FTAA, you are provided with the power to specify section 78 conditions. DOC will then have the discretion to direct panels to apply only the relevant section 78 conditions that are considered necessary to manage liabilities for each specific project and approval. In practice, DOC will inform the panel of the relevant section 78 conditions that must be applied alongside recommended special conditions provided as part of reporting and commentary processes.
12. Based on your approval that these conditions are appropriate for managing Crown risks and liabilities, DOC will not seek your approval on the specific section 78 conditions being applied to individual Fast-track approvals. However, we will seek your approval if it is necessary to deviate substantively from any approved section 78 conditions for a particular approval, or if it is necessary to update the section 78 conditions.
13. If you do not approve some proposed section 78 conditions as part of this briefing, DOC will still be able to include them as part of 'special conditions' recommended to panels where they are necessary to manage risk. Final approval for conditions recommended to panels through this channel will be at panels' discretion.

### **Proposed section 78 conditions**

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14. The proposed section 78 conditions for concessions and access arrangements are based on existing templates and practices; and therefore, have been tested in various forms with existing concessionaires. The complete list of proposed section 78 conditions is provided in Attachment A.
15. Some proposed section 78 conditions may require applicants to provide documentation that is also required under other legislation. For example, as part of our duty as the landowner, we must ensure that an audited health and safety plan is in place for activities that occur on PCL. This condition is important because the Minister could be found to be liable as landowner for allowing the activity to occur on PCL without ensuring the correct plan was in place (even though the Panel was the decision maker).
16. Attachment A also outlines the policy rationale and advice for section 78 conditions that fall under the following broad categories:
  - Health and Safety;

- Bonds and Guarantees;
- Structures, Building Act, Restoration;
- Fees;
- Liability and Insurance;
- Compliance;
- Miscellaneous;
- Access Arrangements only; and
- Land Exchanges only.

### ***Section 78 conditions relating to bonds, insurance and fees***

17. The applicant is responsible for costs relating to bonds, insurance and fees. There are further policy decisions to make for the section 78 conditions relating to who sets these values. The value of bonds and insurance are critical to ensuring sufficient funds are available to address Crown liabilities, and often specialist knowledge is required to set these at an appropriate level.

We recommend that section 78 conditions specify that initial bond, insurance, and fee values are set following independent valuation at applicant's cost

18. This ensures that adequate resource and expertise are assigned to assess values. This manages the main risk that values may be set too low so that the Crown must cover additional costs for remediation. This option also ensures impartiality and mitigates risks of dispute between parties over the valuation of bonds, insurance, and concession fees.
19. This also reflects existing practices where bond, insurance, and fee values (including periodic reviews) for large and complex projects are often assessed by an independent provider.
20. The actual values will be set in the mechanical conditions following the panel's approval of the project and the independent valuation.

### Other options

21. Other options include either DOC or the panel setting initial bonds, insurance, and fees. We do not recommend these options.
22. DOC valuations could create perception that bonds and insurance are set unfairly, and conditions become too onerous on applicants. This increases the risk of disputes, which would further slow the contracting and approval processes.
23. Panels are not set up to have sufficient resources and expertise to quickly and accurately assess what the value of bonds, insurance, or fees should be. This creates high risk that the bond and insurance amounts do not accurately reflect financial risks like the cost of potential remediation, and that fees do not provide fair return for the use of Crown land.

### **Risk assessment – Aronga tūraru**

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24. If section 78 conditions aren't approved and implemented in FTAA approval processes, critical decisions about taking on and managing Crown liabilities fall to Fast-track Approvals panels. This could result in ongoing costs, responsibilities, or liabilities being assumed by the Crown.

25. While DOC will be able to recommend any non-approved section 78 conditions as 'special conditions' to panels, it will be at the panel's discretion to include them. Therefore, there will still be a significant risk that Crown liabilities will not be adequately managed.
26. Because section 78 conditions are imposed without panel approval, there may be perception that they enable DOC to unnecessarily restrict activity under the FTAA. However, the FTAA provides for these conditions because it is essential to manage risks to, and potential liabilities of, the Crown. DOC has assessed the proposed suite of section 78 conditions to be proportionate to the significant risks and liabilities the Crown may be exposed to.

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### **Consultation – Kōrero whakawhiti**

27. We have not consulted other agencies on the content of this briefing, as it is largely a matter for DOC, and the decision making has been delegated to you.

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### **Financial implications – Te hīraunga pūtea**

28. There are no direct financial implications resulting from this briefing. However, the proposed section 78 conditions seek to mitigate and/or minimise future liabilities and financial risks that may otherwise fall on the Crown.

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### **Legal implications – Te hīraunga a ture**

29. Approval or decline of section 78 conditions does not carry legal risk directly. However, these mandatory section 78 conditions are proposed to address the multitude of legal risks associated with Crown land impacted by fast-track projects.
30. The proposed conditions have been designed to align with the scope of section 78 for the FTAA. Your approval of section 78 conditions must be based on whether they are appropriate in order to manage risks to, and potential liabilities of, the Crown arising from the granting of an approval of that kind, as stated in section 78(2) of the FTAA.

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### **Next steps – Ngā tāwhaitanga**

31. Following your approval of final section 78 conditions, we will begin to incorporate these into Fast-track land management approvals.
32. We will share our approach and final list of section 78 conditions with LINZ, as the Minister for Land Information may also have similar risks and liabilities arising from Fast-track projects. You may also wish to share this briefing with the Minister for Land Information's office. Note that the Minister for Land Information would need to approve their own set of mandatory section 78 conditions.

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**ENDS**

**Attachment A – Proposed list of mandatory section 78 conditions**

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## MANDATORY SECTION 78 CONDITIONS

<b>Note to reader:</b>
<p>To approve section 78 conditions in line with the Fast-track Approvals Act 2024, the Minister must be satisfied that they are appropriate in order to manage risks to, and potential liabilities of, the Crown arising from the granting of an approval of that kind.</p> <p>The Department of Conservation (DOC) is proposing this suite of section 78 conditions in this document for Ministerial approval because we have assessed that they meet this statutory test across a broad range of land management approvals expected under the Fast-track Approvals Act.</p> <p>Not all section 78 conditions will be applied to every land management approval. DOC will advise the panel to apply only those section 78 conditions that are necessary to manage liabilities for each specific project and approval. The panel may not decline or amend section 78 conditions.</p> <p>Special conditions that manage environmental impacts of Fast-track Approval projects will be recommended by DOC in section 51 reports or section 53 comments. The panel has discretion to approve, amend, or decline these conditions.</p>

## Concessions and access arrangements

### *Health and safety*

Policy Rationale for Health and Safety Conditions
<p>The following conditions are considered essential for DOC to be able to manage the Health and Safety risks and liabilities that occur when we give permission for activities on public conservation land (PCL). We do not consider these conditions to be particularly onerous, as operators are generally already required to prepare health and safety plans under their own Health and Safety at Work Act 2015 obligations. This includes audit requirements that are included in standard DOC permissions which recognise that DOC does not have expertise to assess the adequacy of H&amp;S plans for various activities. However, failing to require these conditions would leave DOC exposed to significant legal risk. This risk remains notwithstanding the recently announced proposals to amend health and safety legislation.</p> <p>The proposed requirements for the concessionaire to comply with any safety directions of the Minister of Conservation are intended to cover specific low likelihood circumstances that could have significant health and safety consequences. For example, a H&amp;S plan might direct an operation near a volcano to monitor conditions and follow a plan, but DOC needs to be able to direct the operator to evacuate immediately if H&amp;S risks became apparent.</p> <p>Conditions around reporting and notifying of events enable DOC to manage its H&amp;S liabilities and reputation if reporting shows that the H&amp;S plan and practices are proving ineffective and unsafe.</p> <p>The public notification and safety requirements manage DOC's H&amp;S responsibilities for the public on adjacent land and ensure that the concessionaire is responsible for putting in place all reasonable measures to maintain safety.</p> <p>The conditions also place responsibility on the operator to be satisfied with any facilities or equipment (e.g. a bridge) provided by the Minister. This recognises that the Crown doesn't have specialised knowledge to assess the suitability of facilities for the operator's use. Therefore, the Crown is not liable for those facilities meeting the operators H&amp;S standards or responsible for costs to bring them up to those standards.</p>

#### **1. Health and safety plan**

- 1.1. The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety at Work Act 2015 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession.
- 1.2. The Concessionaire must create a comprehensive and suitable health and safety management plan (**Safety Plan**) to address all aspects of the Concession Activity and must provide a copy of it to the Minister prior to commencing the Concession Activity.
- 1.3. Prior to any Concession Activity taking place, the Concessionaire must:
  - 1.3.1. Have its Safety Plan audited by a suitably qualified person approved by the Minister and forward to the Minister a certificate from the auditor certifying that the plan is suitable for the Concession Activity.

## **Attachment A – Proposed list of mandatory section 78 conditions**

- 1.3.2. The Concessionaire must obtain from the auditor details as to when the Safety Plan is to be re-audited. The Concessionaire must comply with any such requirement to re-audit and forward a copy of the re-audit certificate to the Minister within 5 working days of the certificate being issued.
- 1.4. For any Concession Activity that is subject to the Health and Safety at Work (Adventure Activities) Regulations 2016, proof of registration with WorkSafe New Zealand will satisfy the audit requirements under this clause.
- 1.5. If the Concessionaire amends or replaces the audited Safety Plan then, before the amendment or replacement Safety Plan takes effect, the Concessionaire must comply with the audit requirements of this clause.
- 1.6. The Minister may request the Concessionaire to provide the Minister with a copy of the current Safety Plan at any time, in which case the Concessionaire must provide the copy within 10 working days of receiving the request.
- 1.7. The Minister's receipt of a Safety Plan does not in any way limit the obligations of the Concessionaire related to health and safety or otherwise and is not to be construed as implying any responsibility or liability on the part of the Minister.
- 1.8. The Concessionaire must comply with the Safety Plan, and with any safety directions of the Minister.

## **2. Health and safety obligations**

- 2.1. The Concessionaire must:
  - 2.1.1. Notify the Minister of any natural events or activities on the Land or the surrounding area that may endanger the public or the environment.
  - 2.1.2. Take all reasonably practicable steps to protect the safety of all persons present on the Land affected by the Concession Activity.
  - 2.1.3. Where necessary, erect signposts warning the public of any dangers they may encounter because of the Concessionaire's operations.
  - 2.1.4. Take all reasonably practicable steps to eliminate any dangers to the public arising from the Concession Activity and clearly and permanently mark any that remain and of which the Concessionaire is aware.
  - 2.1.5. Report to the Minister all accidents involving a notifiable event reportable to WorkSafe in accordance with the Safety Plan and applicable legislation, within 24 hours of their occurrence, and must forward an investigation report to the Minister within 3 days of the event occurring.
  - 2.1.6. Provide to the Minister a complete copy of the internal investigation report resulting from notifiable health or safety events within 60 days of the event's occurrence.
  - 2.1.7. Provide to the Minister, at the Minister's request, any weekly or monthly reports generated by the Concessionaire and derived from the Concessionaire's accident reporting database.
  - 2.1.8. Ensure that all contracts between the Concessionaire and any contractors contain, at a minimum, the same health and safety requirements as this Concession.

## Attachment A – Proposed list of mandatory section 78 conditions

- 2.1.9. Be satisfied that facilities or equipment provided by the Minister to enable the Concession Activity to be carried out meets the safety requirements of the Concessionaire.
- 2.1.10. Not bring onto the Land or any land administered by the Department of Conservation any dangerous or hazardous material or equipment that is not required for purposes of the Concession Activity; and if such material or equipment is required and approved as part of the Concession Activity, the Concessionaire must take all practicable steps to ensure that the material or equipment is treated with due and proper care.

### ***Bonds and guarantees***

<b>Policy Rationale for Bonds and Guarantees</b>
<p>These conditions provide essential contractual frameworks that allow the Crown to mitigate financial liabilities through bonds, sureties, and guarantees. They will be required for land management approvals where DOC would be responsible for significant costs if operators do not meet their contractual obligations – usually for high impact activities where rehabilitation may be required.</p> <p>Bonds and sureties ensure the operator is financially accountable and encourages responsible behaviour and compliance with the concession activities and special conditions. Similarly, guarantees allow the Crown to manage potential liabilities by enabling an alternative party to be held accountable even if the original approval holder has gone bankrupt or otherwise cannot be forced to resolve the issue. Guarantees may be used and exercised alongside bond conditions (to provide additional cover) or if the applicant is not able to satisfy bond condition requirements.</p>

### **3. Bond**

- 3.1. Before commencing the Concession Activity, the Concessionaire must provide either in cash; or as a surety from a trading bank, insurance company or bond guarantor, a bond set in accordance with this clause.
- 3.2. If a surety is the Concessionaire's preferred option, the surety must execute in favour of, and on terms acceptable to, the Minister, a bond for performance by the Concessionaire to the obligations under the Concession.
- 3.3. The Minister will set the bond or surety amount following an independent risk assessment using a methodology set by the Minister.
- 3.4. The bond or surety amount may be reviewed at the discretion of the Minister at any time. Such review is to follow an independent risk assessment using a methodology set by the Minister.
- 3.5. The cost of any independent risk assessment or review must be paid by the Concessionaire within 10 working days of being given a notice by the Minister.
- 3.6. Notwithstanding the variation (including as to term), expiry, surrender, or termination of the Concession, the bond is to remain in full force and effect until such time as all the Concessionaire's obligations under the Concession have been complied with to the satisfaction of the Minister.

## Attachment A – Proposed list of mandatory section 78 conditions

- 3.7. If the Concessionaire breaches or fails to carry out any condition of the Concession, or in carrying out the Concession Activity there arise adverse effects not authorised or reasonably foreseen in the Concession, the Minister may call on the bond under this Concession or any portion of it to ensure compliance with the conditions or to remedy or mitigate those adverse effects.

### 4. Guarantee

- 4.1. In consideration of the Minister entering into this Concession at the Guarantor's request the Guarantor:
- 4.1.1. Guarantees payment of the Concession Fee and the performance by the Concessionaire of the covenants in this Concession.
  - 4.1.2. Indemnifies the Minister against any loss the Minister might suffer should the Concession be lawfully disclaimed or abandoned by any liquidator, receiver or other persons.
- 4.2. The Guarantor covenants with the Minister that:
- 4.2.1. No release, delay, or other indulgence given by the Minister to the Concessionaire, to the Concessionaire's successors or assigns, or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety, is to release, prejudice, or affect the liability of the Guarantor as a Guarantor or as indemnifier.
  - 4.2.2. As between the Guarantor and Minister the Guarantor may, for all purposes, be treated as the Concessionaire and the Minister is under no obligation to take proceedings against the Concessionaire before taking proceedings against the Guarantor.
  - 4.2.3. The guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the Concession Fee.
  - 4.2.4. Any assignment or other variation (including amendments to the term) of this Concession and any Concession Fee review in accordance with this Concession, are not to release the Guarantor from liability.
  - 4.2.5. Should there be more than one Guarantor the liability of each Guarantor under this Guarantee is to be joint and several.

### ***Structures, Building Act, and restoration***

<b>Policy Rationale for Structures, Building Act, Restoration</b>
These conditions ensure that the Crown's financial risks and legal liabilities are managed relating to structures on the land. They both ensure that structures on the land do not create safety hazards during the duration or after the permitted operation, and allow the Crown to set clear requirements around the removal of structures once an operation has ceased. They also require that damage a fast-track operator does to Crown structures (e.g. tracks or bridges) is to be repaired by the operator. These provisions around removal/rehabilitation are supported by the ability to set bonds and guarantees discussed above.

## **Attachment A – Proposed list of mandatory section 78 conditions**

Note: While building warrants of fitness are required under the Building Act, requiring Building Act compliance through conditions enables DOC to act directly if the operator has dangerous buildings, rather than relying on another agency to manage DOC's liability.

### **5. New structures and land alterations**

The Concessionaire must not erect, alter, or bring onto the Land any structure, or alter the land in any way that is not specifically authorised by this Concession, without the prior approval of the Minister, and may be given subject to any reasonable terms and conditions, as the Minister considers appropriate in the Minister's sole discretion under this clause.

- 5.1. The Concessionaire must, on request of the Minister, submit written engineering or building plans and details to the Minister for approval before:
  - 5.1.1. Erecting a new structure or altering any structure on the Land.
  - 5.1.2. Altering the Land in any way.

### **6. Removal of structures or other improvements**

- 6.1. On expiry or termination of this Concession either as to all or part of the Land, the Concessionaire may with the Minister's written consent, or must if the Minister gives written notice, remove any specified structures and other improvements on the Land.
- 6.2. Removal under this clause must occur within a time specified by the Minister.
- 6.3. The Concessionaire is to make good any damage done as part of the removal and must leave the Land and any other public conservation land affected by the removal in the same condition as it was at the beginning of the Term.
- 6.4. The Concessionaire is not entitled to compensation from the Minister for any structures or other improvements placed or carried out by the Concessionaire on the Land.

### **7. Building Act compliance**

- 7.1. Where a building warrant of fitness under the Building Act 2004 is required, the Concessionaire must display a copy of the relevant certificate showing the location of the compliance schedule in each building on the Land, in a place to which users of the building have ready access.
- 7.2. The Concessionaire must keep and maintain all building systems and any structures on the Land in accordance with the requirements of any compliance schedule.
- 7.3. The Concessionaire must retain and make available to any territorial authority and any other person with a right to inspect any structures on the Land under the Building Act 2004 a copy of the compliance schedule, together with the written reports relating to compliance with the compliance schedule over the previous two-year period.

## **Attachment A – Proposed list of mandatory section 78 conditions**

### **8. Rehabilitation and Closure Plan**

- 8.1. The Concessionaire must prepare, implement, and comply with a Rehabilitation and Closure Plan approved by the Minister.
- 8.2. The Rehabilitation and Closure Plan must:
  - 8.2.1. Be prepared by suitably qualified persons and in consultation with the Minister.
  - 8.2.2. Integrate with any other plans required under this Concession.
  - 8.2.3. Describe how the Concessionaire will manage rehabilitation on the Land during the Term.
  - 8.2.4. Be approved by the Minister prior to the commencement of the Concession.
- 8.3. As a minimum, the Rehabilitation and Closure Plan must address the following:
  - 8.3.1. Areas of the Land requiring rehabilitation (being all disturbed areas, accessways and overburden/vegetation storage areas).
  - 8.3.2. Rehabilitation objectives, timeframes, and methods.
  - 8.3.3. Contouring, maximum slope angles, and stability of all final engineered landforms.
  - 8.3.4. Biosecurity responses (e.g. pest plant and animal control).
  - 8.3.5. Protection of slope stability, water, and soils from the effects of erosion.
  - 8.3.6. Water quality limits for discharges from the Land following removal of active water treatment.
  - 8.3.7. Removal of buildings, structures, tracks, and equipment from the Land.
- 8.4. The Minister may request a review of the Rehabilitation and Closure Plan and may require the Concessionaire to amend the plan at any time. The Concessionaire will implement and comply with any amendments to the plan approved by the Minister. The Minister may, at the cost of the Concessionaire, seek advice from an appropriate expert as part of any such approval.

### **9. Property of the Minister**

- 9.1. The Concessionaire must take reasonable and proper care not to damage any property of the Minister and must promptly repair any such damage.

## **Fees**

<b>Policy Rationale for Fees</b>
<p>These conditions are required to ensure that the appropriate fees, costs and other charges can be set and applied to the permissions under fast track and with the appropriate legal framework to support them, ensuring that the Crown is fairly compensated for its time and the use of its land/assets.</p> <p>Payment terms, provisions for debt recovery and associated costs, and review terms are also covered, along with requirements to ensure the operator pays the costs associated with the use of the land (such as rates and utilities) while in operation. This includes costs like</p>

## **Attachment A – Proposed list of mandatory section 78 conditions**

utilities/infrastructure that may be used, damaged, or require reconnection by the concessionaire during the term.

### **10. Concession Fee**

- 10.1. The fee for the Concession (Concession Fee), made up of any combination of rents, fees, and royalties, is to be set by the Minister after obtaining advice of a registered valuer appointed by the Minister. The registered valuer will determine the market value of the Concession Activity carried out on the Land having regard to the matters in section 17Y of the Conservation Act 1987.
- 10.2. The Concessionaire must pay the Concession Fee to the Minister, in the manner directed by the Minister, on or before the Concession Fee Payment Date, which is annually on the anniversary of the Term, with the first payment due at the start of the Term.
- 10.3. If the Concessionaire fails to pay within 14 days of the Concession Fee Payment Date, then the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at a penalty interest rate of 15%.
- 10.4. The Concession Fee excludes any payments required by the Minister in accordance with section 17ZH of the Conservation Act 1987, which are to be paid from time to time in accordance with the Minister's instructions.

### **11. Concession Fee review**

- 11.1. The Minister will commence a review of the Concession Fee at intervals in accordance with section 17Y of the Conservation Act.
- 11.2. The new Concession Fee, made up of any combination of rents, fees, and royalties, will be determined by the Minister after obtaining advice of a registered valuer appointed by the Minister. The registered valuer must determine the market value of the Concession Activity carried out on the Land, having regard to the matters in section 17Y of the Conservation Act 1987.

### **12. Other charges**

- 12.1. The Concessionaire must pay all levies, rates, and other charges, including utility charges payable in respect of the Land or for the services provided to the Land that relate to the Concessionaire's use of the Land or the carrying on of the Concession Activity.
- 12.2. The Minister is not liable for any cost incurred in reestablishing the supply of any utilities to the Land in the event it becomes unavailable for any reason.
- 12.3. Where the Minister pays any such levies, rates, or other charges, the Concessionaire must on receipt of an invoice from the Minister pay such sum to the Minister within 14 days of receiving the invoice. If payment is not made within the 14 days, then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at a penalty interest rate of 15%.



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### 13. Costs

- 13.1. The Concessionaire must pay the Minister's legal costs and expenses of and incidental to preparing and signing this Concession or any extension or variation of it, other than those costs already recovered by the Minister under the Fast-track Approvals Act 2024.
- 13.2. The Concessionaire must pay to the Minister all costs associated with applications for approvals under this Concession determined at the standard rates then applying in the Department of Conservation for cost recovery.
- 13.3. The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and fees of debt collecting agencies engaged by the Minister) arising out of and associated with steps taken by the Minister to enforce or attempt to enforce the Minister's rights and powers under this Concession including the right to recover outstanding money owed to the Minister.

### ***Liability and insurance***

Policy Rationale for Liability and insurance
These conditions mitigate financial and legal risks to the Crown arising from their position as landowner by: <ol style="list-style-type: none"><li>a. ensuring that liabilities lie with the operator,</li><li>b. limiting Ministerial liabilities where those may exist,</li><li>c. imposing minimum insurance requirements to protect against losses that would otherwise accrue to the Crown, and</li><li>d. allowing the Crown to maximise its financial interests by determining whether to terminate an agreement or allow it to continue in bankruptcy or insolvency situations.</li></ol>

### 14. Liabilities

- 14.1. The Concessionaire agrees to use the Land at the Concessionaire's own risk and releases to the full extent permitted by law the Minister and the Minister's employees and agents from all claims and demands of any kind and from all liability that may arise in respect of any accident, damage, or injury occurring to any person or property on or about the Land.
- 14.2. The Concessionaire indemnifies the Minister against all claims, actions, losses, and expenses of any nature that the Minister may suffer or incur or for which the Minister may become liable arising from the Concessionaire's performance of the Concession Activity.
- 14.3. This indemnity continues after the expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its expiry or termination.
- 14.4. The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Land).
- 14.5. The Minister is not liable and does not accept any responsibility for damage to or interference with the Land, the Concession Activity, or to any structures, equipment, or facilities on the Land or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except

## **Attachment A – Proposed list of mandatory section 78 conditions**

where such damage or interference is caused by any wilful act or omission of the Minister, the Minister's employees, agents, or contractors.

- 14.6. Where the Minister is found to be liable in accordance with this clause, the total extent of the Minister's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment, and facilities.
- 14.7. Despite anything else in this clause, neither the Minister nor the Concessionaire are liable for any indirect or consequential damage or loss howsoever caused.

### **15. Insurance**

- 15.1. Without prejudice to or in any way limiting its liability under this Concession, the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance with a substantial and reputable insurer in the types and amounts determined in accordance with this clause.
- 15.2. The Minister will set the initial types and amounts of insurance required following an independent assessment using a methodology set by the Minister.
- 15.3. After every three year period of the Term the Minister may, on giving 10 working days' notice to the Concessionaire, alter the types and amounts of insurance required, following an independent assessment using a methodology set by the Minister. On receiving such notice, the Concessionaire must within 10 working days take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.
- 15.4. The Concessionaire must provide to the Minister within 5 working days of the Minister so requesting:
  - 15.4.1. Details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term.
  - 15.4.2. A copy of the current certificate of such policies.

### **16. Bankruptcy or insolvency**

- 16.1. If the Concessionaire becomes bankrupt, insolvent, has a receiving order made against it, is wound up, or otherwise ceases to function, or carries on its business under a receiver for the benefit of creditors, the Minister may either:
  - 16.1.1. Terminate this Concession by notice in writing to the Concessionaire or to the receiver, liquidator, or any person in whom the Concession may become vested. Any such notice does not release the Concessionaire from liability in respect of any breach of this Concession prior to termination or that survives termination.
  - 16.1.2. Give such receiver, liquidator, or other person the option of continuing the Concession subject to the provision of a guarantee by one or more guarantors of any bond given on terms acceptable to the Minister for the due and faithful performance of the Concession.

## **Compliance**

<b>Policy Rationale for Compliance</b>
<p>These conditions provide the Crown with the ability to monitor compliance and to act where non-compliance is identified. These conditions are essential to allow the Crown to identify and investigate situations that may create Crown risks and liabilities, require issues to be remedied as quickly as possible, and/or terminate the concession, while minimising the costs that may otherwise accrue to the Crown. They are also essential to incentivise the operator to ensure they operate within the bounds of the permission conditions.</p> <p>These conditions also allow the Crown to manage impacts that may occur on adjoining PCL that create Crown risk/liability. They require the operator to remedy these impacts at their own cost. This is an important condition because these offsite impacts are unlikely to be covered by the special conditions that are applied to the permission by the Panel, but they may still create significant risks and liabilities for the Crown.</p>

### **17. Minister's right to remedy defaults**

- 17.1. The Minister may at any time elect to remedy any default by the Concessionaire under this Concession.
- 17.2. Before electing to remedy any default in accordance with this clause, the Minister must, if practicable, first give the Concessionaire notice of the default and a reasonable opportunity to remedy the default.
- 17.3. The Concessionaire must pay to the Minister immediately on demand all reasonable costs and expenses incurred by the Minister, including legal costs and expenses as between solicitor and client, in remedying such default. The Concessionaire is to pay interest on such costs and expenses if payment is not made within 14 days of the Minister's demand, from the date of the demand until the date of payment, at a penalty interest rate of 15%.

### **18. Compensation for unauthorised disturbance**

- 18.1. The Minister may require the Concessionaire to pay additional compensation for any breaches of this Concession that impact adjoining or proximate land administered by the Department of Conservation. Such additional compensation will be for an amount solely determined by the Minister acting reasonably and must be paid by the Concessionaire immediately on demand.

### **19. Suspension of the Concession**

- 19.1. If, in the Minister's opinion, there is a temporary risk to public safety arising from natural events such as earthquake, land slip, volcanic activity, flood, or in any other way, whether or not from any breach of the terms of this Concession on the part of the Concessionaire, then the Minister may suspend this Concession.
- 19.2. Where the Concessionaire has breached any terms of this Concession, the Minister may suspend the Concession for such period as the Minister determines.
- 19.3. The Minister may suspend this Concession while the Minister investigates any of the circumstances contemplated in this clause. Investigation referred to in this clause includes the laying of charges and awaiting the decision of the Court.

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- 19.4. During any period of temporary suspension, the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use of the Land by the Concessionaire.
- 19.5. The Minister is not liable to the Concessionaire for any loss sustained by the Concessionaire because of the suspension of the Concession under this clause, including loss of profits.

### **20. Termination of the Concession**

- 20.1. The Minister may terminate this Concession either in whole or in part:
  - 20.1.1. By 14 days' notice to the Concessionaire if the Concession Fee or any other money payable to the Minister under this Concession is in arrears and unpaid for 14 days after any of the days appointed for payment whether it has been lawfully demanded or not.
  - 20.1.2. By 14 days' notice to the Concessionaire or such sooner period as it appears necessary and reasonable to the Minister if:
    - a. The Concessionaire breaches any terms of this Concession, or any plan or other agreement associated with this concession, and in the Minister's sole opinion the breach can be rectified; and
    - b. The Minister has notified the Concessionaire of the breach; and
    - c. The Concessionaire does not rectify the breach within 7 days of receiving notification.
  - 20.1.3. By notice in writing to the Concessionaire where the Concessionaire breaches any term of this Concession, or any plan or other agreement associated with this concession, and in the sole opinion of the Minister the breach is not capable of being rectified.
  - 20.1.4. By notice in writing to the Concessionaire if the Concessionaire ceases to conduct the Concession Activity or, in the reasonable opinion of the Minister, the conduct of the Concession Activity is manifestly inadequate; or
  - 20.1.5. By notice in writing to the Concessionaire if the Concessionaire is convicted of an offence under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act or any statute, ordinance, regulation, bylaw, or other enactment affecting or relating to the Land or which in the Minister's sole opinion affects or relates to the Concession Activity; or
  - 20.1.6. By notice in writing to the Concessionaire if the Concessionaire or the Guarantor is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company, has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject to a Writ of Sale or charging order; or the Concessionaire ceases to function or operate; or
  - 20.1.7. Immediately and without notice if there is, in the opinion of the Minister, a permanent risk to public safety whether arising from the conduct of the Concession Activity or from natural causes such as earthquake, land slip,

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volcanic activity, flood, or arising in any other way, whether or not from any breach of the terms of this Concession on the part of the Concessionaire.

- 20.2. The Minister may exercise the Minister's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to act by the Minister or any indulgence granted by the Minister for any matter or default.
- 20.3. Termination of the Concession does not prejudice or affect the accrued rights or claims and liabilities of the parties.

### **21. Monitoring**

- 21.1. Provided reasonable notice has been given to the Concessionaire, the Minister, its employees, and contractors may enter the Land to:
  - 21.1.1. Inspect the Land and facilities on or within the Land and to monitor compliance with this Concession. Monitoring may include the taking of samples and photographs.
  - 21.1.2. Do any work necessary for the exercise of the Minister of Conservation's functions and powers in respect of the Land, provided that such work will not unnecessarily interfere with the Concessionaire's rights under this Concession.

## **Miscellaneous**

<b>Policy Rationale for Miscellaneous provisions</b>
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These conditions provide protection for the Crown against additional liabilities that may arise, and provide some of the essential conditions that allow these permissions to function after they have been agreed by providing for variations and allowing continued operation by agreement after a permission has come to an end.
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### **22. Heritage**

- 22.1. The Concessionaire must take reasonable care to comply with the Heritage New Zealand Pouhere Taonga Act 2014.

### **23. Supply of services**

- 23.1. Nothing contained or implied in this Concession requires the Minister or the Concessionaire to supply services on or under the Land or entitles the Concessionaire to interfere with the services of any other user of the Land.

### **24. Variations**

- 24.1. The Minister, after first consulting with the Concessionaire, may on each Concession Fee Review Date, delete, add, or vary any condition of this Concession to make the condition more effective in addressing potential liability of the Minister resulting from the Concession Activity. Nothing in this clause affects the Minister's rights to vary the Concession under section 17ZC of the Conservation Act 1987.

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### **25. Occupation beyond the Term**

- 25.1. If the Minister permits the Concessionaire to remain in occupation of the Land after the expiry or earlier termination of the Term, the occupation is to be on the basis:
  - 25.1.1. Of a month-to-month arrangement only, terminable at one month's notice by either party.
  - 25.1.2. At the Concession Fee then payable.
  - 25.1.3. Otherwise on the same terms and conditions as expressed or implied in this Concession.

***Access arrangements only***

<b>Policy Rationale for Access Arrangement only provisions</b>
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<p>This clause provides for the existing Annual Work Plan process established under the Crown Minerals Act. Under this process operators mining on PCL usually seek DOC's approval of plans for the upcoming year's work. This allows DOC to ensure the planned operations will be within the permitted scope of the access arrangement and that the various forms of insurance, bond, etc. are set at appropriate levels for each stage of mining operations.</p>
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<p>This clause is an amalgamation of several from our standard access arrangement template and would not be unduly onerous on mining operators. It does not enable DOC to reassess the ecological impacts of the mining project or otherwise revisit the fast-track expert panel's decision.</p>
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**26. Preconditions before entry to Land for Mining Activity**

26.1. The Permit Holder must not enter the Land for the Mining Activity until:

26.1.1. The Minister has approved an Annual Work Programme submitted by the Permit Holder, which must not be unreasonably withheld, provided the Annual Work Programme:

- a. Addresses each element of the proposed Mining Activity.
- b. Includes all relevant information for the period covered by that Annual Work Programme.
- c. Is consistent with the description of the Mining Activity in this Access Arrangement.

26.1.2. The Minister has issued the Permit Holder an Authority to Enter and Operate, which must not be unreasonably withheld provided the Permit Holder has:

- a. Supplied a copy of all insurance policies, premium payment receipts, and guarantees or bonds as required by this Access Arrangement,
- b. Supplied a copy of the relevant mining permit granted pursuant to section 25 of the Crown Minerals Act 1991
- c. Supplied a copy of all relevant resource consents for the Mining Activity, as well as any reports submitted to the consent authority as a requirement of any resource consent relating to the Mining Activity.
- d. Paid all payments that are due and owing under this Access Arrangement.

26.2. During the term of this Access Arrangement, the Permit Holder must apply to the Minister at least annually for approval of a subsequent Annual Work Programme and Authority to Enter and Operate. Such application must be made at least two months prior to expiry of the current documents.

## Land exchanges only

Policy Rationale for land exchange provisions
<p>These clauses provide essential contractual structures to allow for a land transaction to take place and limit specific risks and liabilities that may fall on the Crown as a result of these transactions. The conditions ensure:</p> <ul style="list-style-type: none"><li>a. the costs of the transaction are borne by the operator</li><li>b. the land being exchanged is clearly identified</li><li>c. the agreement will lapse after five years if not executed and provides an avenue to otherwise withdraw from the exchange by mutual agreement</li><li>d. the Crown can require the operator to specify how structures on either parcel of land will be dealt with and protects against liabilities related to contamination and the Biosecurity Act</li><li>e. the land will be surveyed prior to the transaction taking place</li><li>f. rights of first refusal have been waived.</li></ul> <p>Note: because land exchanges are incredibly project/land specific, most matters will be dealt with through the special conditions recommended by DOC in its land exchange report and ultimately agreed by the Panel.</p>



### ***Miscellaneous and technical***

#### **27. Costs**

- 27.1. The Applicant must pay the Minister's costs and expenses of and incidental to preparing and signing this Exchange Agreement or any extension or variation of it, including surveying, conveyancing, and legal costs.
- 27.2. The Applicant must pay to the Minister all costs associated with the Minister's work to give effect to this Exchange Agreement, determined at the standard rates then applying in the Department of Conservation for cost recovery.
- 27.3. The Applicant must pay in full immediately and on demand all costs and fees (including solicitor's costs and fees of debt collecting agencies engaged by the Minister) arising out of and associated with steps taken by the Minister to enforce or attempt to enforce the Minister's rights and powers under this Exchange Agreement including the right to recover outstanding money owed to the Minister.

#### **28. Areas to be exchanged approximate**

- 28.1. The Parties acknowledge that the areas to be exchanged under this agreement are approximate and may be altered by mutual agreement as part of or on completion of survey work.
- 28.2. The Parties agree that any minor adjustment in area will not affect the implementation of this Agreement.



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### **29. Rates**

- 29.1. There shall be no apportionment of rates or other outgoings paid by the Parties.

### **30. Continuance of rights**

- 30.1. The rights and obligations of the parties under this agreement continue beyond settlement of this agreement and accordingly those rights and obligations will not merge in the settlement but will continue thereafter with full force and effect.

## ***Reasons to withdraw from the transfer***

### **31. Lapse period**

- 31.1. If this exchange has not been given effect to within 5 years of execution, this Agreement is void and of no effect.

### **32. Withdrawal by agreement**

- 32.1. Up until the Settlement Date, both parties may mutually agree in writing that they no longer wish to proceed with the exchange, in which case the Minister is no longer obliged to give effect to the exchange, and this agreement otherwise becomes void and of no effect.

## ***Conveyancing***

### **33. Encumbrances on [new PCL]**

- 33.1. The applicant will transfer its estate and interest in the First Land to the Minister free from all leases and tenancies and discharged from all mortgages, charges, and other encumbrances other than [insert any encumbrances agreed between DOC and the applicant].

## ***Structures and improvements, condition of land***

### **34. Existing structures on land going away**

- 34.1. The land being acquired by the Applicant, including any structures or improvements thereon, is transferred and accepted by the Applicant on an “as is, where is” basis.
- 34.2. The Minister accepts no liability (financial or otherwise) in relation to any structure or other improvement on the land being acquired by the Applicant, including for any remedial, removal, or maintenance costs associated with any structure or improvement.
- 34.3. The Minister provides no surety and accepts no liability for any structure or other improvement on the land being acquired by the Applicant.

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### **35. Existing structures on incoming land**

- 35.1. Unless otherwise instructed by the Minister, the Applicant will at its cost remove any structures and improvements from the land to be transferred to the Minister and will reinstate any land impacted by removal works.
- 35.2. The Applicant will, at its cost, ensure that any structures and improvements remaining on the land to be transferred to the Minister are safe and lawful.

### **36. Fencing**

- 36.1. The Applicant will, at its cost and to the Minister's satisfaction, construct any boundary fencing required around the land being received.

### **37. Ongoing public access to surrounding PCL**

- 37.1. The Applicant agrees to take the PCL subject to an easement providing for safe public access to public conservation land that is currently accessed through the land to be transferred.
- 37.2. Where necessary to ensure safe use of the easement, the Applicant will, at its cost, construct appropriate fencing along the boundaries of the easement.

### **38. Contaminated land**

- 38.1. If, within 12 months of the Settlement Date, the land being received by the Minister is found to be contaminated with a previously undisclosed organic or inorganic substance that poses a risk to public health or to the environment, the Applicant will immediately remedy the situation to the satisfaction of the Minister.

### **39. Biosecurity Act 1993**

- 39.1. The Applicant will at its cost ensure that the land to be transferred to the Minister is compliant with any applicable "good neighbour" rules under the Biosecurity Act, to the Minister's satisfaction, prior to the Settlement Date.

## ***Other requirements before a transfer can happen***

### **40. Survey**

- 40.1. The Applicant, at its cost, will prepare a survey plan for the required land that is sufficient for the purposes of this agreement.
- 40.2. The Applicant will submit the survey plan to DOC for approval (which will not be unreasonably withheld or delayed). Once approved, the Applicant will submit the plan to Land Information New Zealand for approval.
- 40.3. The Parties will, within one month of Land Information New Zealand's approval of the survey plan, make available all documents necessary to enable title for the fee simple estate in the land to be issued.

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### **41. Rights of first refusal**

- 41.1. The Applicant confirms that any rights of first refusal or similar obligations that may otherwise be triggered by this land exchange have been waived.