BEFORE THE DIRECTOR GENERAL OF CONSERVATION

UNDER	An application for land exchange, for the Belmont Quarry Development (a listed project), the FastTrack Approvals Act 2024.
IN THE MATTER	of land exchange application lodged by the Applicant with the Director-General of Conservation
	WINSTONE AGGREGATES (A DIVISION OF FLETCHER CONCRETE & INFRASTRUCTURE LIMITED
	Applicant

LAND EXCHANGE APPLICATION BY WINSTONE AGGREGATES – RESPONSE TO COMMENTS

Dated 5 March 2026

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MAY IT PLEASE THE DIRECTOR GENERAL:

1. This legal memorandum responds to various points raised by the commenting parties regarding the land exchange application (**Application**) lodged by Winstone Aggregates with the Director-General of Conservation (**DOC**) on 10 December 2025. It addresses the comments made by the following parties

    a. Friends of Belmont Regional Park;

    b. Luke Wysocki;

    c. New Zealand Conservation Authority;

    d. Wellington Botanical Society; and

    e. New Zealand Transport Agency.

2. This memorandum focuses on legal topics raised by the various commenting parties. Other memoranda will be filed by Winstone's experts in respect of other disciplines.

3. Winstone notes that several parties have raised opportunities and ideas for ecological, restoration and recreational improvements. Winstone is open to discussing those proposals with those groups and other stakeholders as part of its ongoing engagement on the project.

Friends of Belmont Regional Park (Friends)

4. Winstone's response to the Friends' comments will address the following key topics that the Friends have raised:

    a. Winstone's use of the Fast-track Approvals Act 2024;

    b. The scope of the land exchange application compared with the substantive application;

    c. Which amendment of the Act applies to Winstone's application;

    d. Are the conservation values of the areas subject to QEII covenants to be discounted;

    e. The test for approving land exchanges;

    f. Can Winstone be required to lodge a bond?

g. Winstone's prior "applications" for land exchange;

h. What are the consequences of the land exchange being approved;

i. Proposed conditions on land exchange;

j. Covenants and other instruments on the titles

Use of the Fast-track Approvals Act 2024

5. The Friends' submission explains that they consider the Fast-track Approvals Act creates an unprecedented situation because a land exchange application under the Reserves Act 1977 would be sent out for public submissions, which is not a feature here.

6. The Fast-track Approvals Act allows applicants to apply for land exchanges in accordance with its provisions for projects that have been listed in Schedule 2 of the Act or referred to the fast-track process by the Minister. Applications will only fall into those categories where they relate to an infrastructure or development project that has been assessed as having significant regional or national benefits. In such situations, applicants are afforded the privilege of being able to bypass the usual public submission process.

7. While the Act reduces the usual public participation that would accompany a land exchange application under s 15 of the Reserves Act 1977, it does not remove public involvement. DOC was required to invite certain persons to comment on the proposed land exchange, and Winstone is supportive of these persons having the ability to comment. Winstone has consulted with many of those persons and key Park stakeholders prior to lodging its application, including the Friends. The parties who have been invited to comment, including the Friends, represent sections of the public with significant interests in Belmont Regional Park and bring important perspectives to the discussion. Their participation is valuable.

8. While there may be members of the public who could have provided additional perspectives, Winstone considers that the parties who have been invited to comment are sufficiently representative of the public interest. DOC's approach in issuing invitations to provide comments has struck an appropriate balance between the Act's purpose of facilitating delivery of certain projects while maintaining some degree of public involvement.

Scope of the land exchange application

9. The Application that is being considered by DOC is solely in relation to the proposed exchange of land between Winstone Aggregates and the Crown. As the Application explained in paragraph 11.1, the application is only required to describe anticipated and known adverse effects that are relevant to the land exchange. The effects of the development of the new overburden disposal area and associated works (such as noise, dust and geotechnical effects arising from the OBDA) will be fully assessed at a later stage when the applicant lodges its substantive application for other fast-track approvals, including resource consents, wildlife approvals and archaeological authorities.

10. The only effects that are relevant to the land exchange approval are those that arise from the change in the ownership and status of the land parcels following the exchange. This includes: the ownership changing from the Crown to Winstone Aggregates, or vice versa; the DOC-get areas now being held for conservation purposes to be specified by the Minister of Conservation; and the DOC-give areas no longer being subject to a reserve classification.

11. At various points, the Friends and other commenting parties appear to show a misunderstanding of what topics are relevant to the land exchange application, and what will be relevant at the later stage when Winstone lodges its substantive application for other approval types. For example:

12. Friends' express concern that the "RMA plan rules that currently apply to the land in the park, which strongly protect it against any use for overburden, are not proposed to be changed by a public plan change process before the exchange takes place" and that the "fact this proposal could not get consents under the current plan rules may not be a reason on its own to prevent this proposal from going ahead". This comment overlooks that the applicable resource management planning rules will be relevant but only at the later substantive application stage, when Winstone Aggregates seeks resource consent approvals for the proposed overburden disposal area. It is also noted that the applicable RMA plan rules do not prohibit overburden disposal in the DOC-give area.

    a. Friends' submission expresses concern that certain species of trees including swamp maire would be destroyed. This overlooks that there will be no impact on ecological features including swamp maire as a

consequence of the land exchange. The land exchange is just a change in legal ownership and status of the land. Any proposal to undertake physical works in the proposed overburden area, including to remove ecological features, will be assessed at the substantive application stage.

b. Friends' submission expresses concern about "the destruction of the stream and wetland upstream of the pond in the southeast corner of the POBDA" and the destruction of the ecology of the pond and other ecological values. Any impact on these ecological features of concern will be addressed at the substantive application stage, and does not form part of the current assessment of the land exchange application.

c. The same comments apply to Friends' concerns about significant noise, visual pollution, dust, "spoiled views" from the Buchanan Road tramping track, and burial of a stream in the OBDA. These concerns are noted, but they relate to effects of the proposed development of the new overburden disposal area and so they will fall for consideration at the substantive application stage when Winstone applies for resource consent approvals.

13. Winstone submits these aspects of the Friends' comments will need to be put to one side as DOC and the fast track panel process the Application. It is acknowledged that these concerns will be relevant to the other approval types that will be sought by Winstone under the substantive application.

<u>Which version of the Fast-track Approvals Act applies to Winstone's application?</u>

14. The comments provided by the Friends include reference to the test that is applied by the fast-track panel when deciding a fast-track application. This test is set out in sch 6, cl 29(2).

15. Clause 29(2) was amended in December 2025 by the Fast-track Approvals Amendment Act 2025, with the amendment to cl 29(2) coming into force on 17 December 2025.[1] We refer to this as new cl 29(2).

16. The version of cl 29(2) that is quoted in the Friends' submission is the new cl 29(2). However, Winstone Aggregates' land exchange application was lodged

[1] Fast-track Approvals Amendment Act 2025, s 2(1) and s 55(11).

on 10 December 2025, before the commencement date of the amending legislation. The transitional provisions in the Act require that it be processed on the basis of the provisions in force at the time it was lodged.[2] This is consistent with the usual principle that amendments to legislation do not have retrospective effect.[3]

17. The Amendment Act also inserts a new clause 29(2A), which comes into force on 31 March 2026.[4] The new clause 29(2A) would require discounting of the conservation values of the land to be acquired by the Crown to the extent those conservation values are affected by anything registered or noted for conservation purposes on the title for that land.

18. The new clause 29(2A) does not apply to the processing of Winstone's land exchange application, because it was lodged before the commencement date of the amending legislation. It will only apply to land exchange applications that are lodged on or after 31 March 2026.

Approach to areas subject to QEII covenants

19. A key point in the Friends' submission is that the two DOC-get areas that are subject to QEII covenants cannot be considered to add conservation value because their conservation values are already protected in perpetuity due to their QEII covenant status. The Friends are concerned that including the conservation values of these areas amounts to "double dipping". The Friends argue that the conservation values of these areas were created when they were first protected by the QEII covenants and those values cannot be created a second time. Friends says that the areas are more protected under QEII covenants than they would as DOC-owned land, and is concerned about the transfer of the onus of protection from Winstone to DOC.

20. Winstone does not agree that its approach amounts to impermissible double dipping or that the QEII covenant areas must be discounted. This is because of the following reasons.

21. First, the law as it applies to Winstone's application is the law as it stood at the date the application was made. The subsequent amendment to the Act to

[2] Refer to Schedule 1, Part 2 cl.6(1). Cl 5 (a) includes a land exchange application as "an application" for the purposes of cl.6(1), Part 2 Schedule 1 Fast Track Amendment Act 2025.
[3] Legislation Act 2019, s 12.
[4] Fast-track Approvals Amendment Act 2025, s 2(2)(i) and s 55(12).

include the new clause 29(2A) from 31 March 2026 onwards is not relevant to this land exchange application.

22. Secondly, the relevant provision as it stood in December 2025 was clause 29(2), which said:

> The panel must not grant the approval unless the panel is satisfied that the land exchange (including any money that may be received under clause 30 and any conditions that the panel may impose in accordance with clause 32) *will enhance the conservation values of land managed by the Department of Conservation*.

23. In Winstone's submission, the correct place to focus is on the land that is managed by DOC, and whether, as a result of the proposed land exchange, the conservation values of DOC-managed land is enhanced. DOC provided guidance to Winstone on the treatment of the QEII areas during the pre-lodgement consultation. DOC agreed that the QEII areas could be included in the exchange and that the covenanting was irrelevant for the purposes of cl.29. DOC's view was:[5]

> "We would not expect the current legal protection to carry much weight in terms of the clause 29(2) "enhance conservation values" test, as the test relates to values, which exist independent of the legal protection they currently have (and independent of whether the legal protection has been the cause of the values accruing or persisting)."

24. When correctly assessed against that statutory test, it is irrelevant that the DOC-get land already has a layer of protection by way of QEII covenants. The DOC-get land has certain conservation values on it, including ecological, recreational and other values. When the ownership of the land is transferred to DOC's ownership and management, those conservation values will form part of the conservation values of land that is managed by DOC. In other words, the transfer of the management of the land to DOC means that the conservation values of DOC's land is enhanced.

25. Thirdly, the context of the statutory provisions, as they stood before the Amendment Act, supports this interpretation. For example:

    a. Schedule 6, clauses 23 and 24 require applicants to provide a description or assessment of the conservation values of both pieces of

[5] Memorandum from Emma Fahey (DOC) to Phernne Tancock (Winstone's counsel) dated 4 July 2025 at paragraph 12.1.

land, including an explanation of why the exchange "would benefit the conservation estate". The "conservation estate" is a common expression for the various categories of conservation land that are managed by DOC. The focus of clauses 23 and 24 is therefore on benefits to the DOC-managed conservation estate.

b. Schedule 6, clauses 26(1)(a) and 29(1)(a) require DOC and the panel to address the conservation values of the land concerned, including a comparative assessment of the values that relate to each area of land concerned. There was nothing in this provision to require an assessment or discounting of any existing conservation protections on the land. The focus was purely on the conservation values that relate to each area, not on the extent to which they may have already been protected.

26. Fourth, Winstone's approach in offering the QEII covenanted areas as part of the exchange does not amount to double dipping.

a. The QEII covenants were imposed in 2016 as mitigation for a private plan change (plan change 33) to the Hutt City District Plan that was initiated by Winstone.[6] (They were not mitigation for earlier resource consents, as the Friends suggests at one point in their comments.) The QEII covenants impose some level of protection, with a focus on open space values. The covenants prohibit materially altering the appearance or condition of the areas or prejudicing them as open space areas. The covenants do not provide for public access for recreation purposes, and the covenanted land remains in private ownership.

b. The proposed land exchange for the land (including but not limited to the QEII covenanted areas) provides an additional and greater level of protection and enhancement of conservation values. By transferring the land to DOC ownership, the land will become reserve land that is presumptively available for public access. The land will be held for a wider range of conservation-related purposes, not just protection of open space values. These purposes are set out in paragraphs 9.2 to 9.6 of the land exchange application.

[6] Proposed private plan change 33 — amendments to the extraction activity area provisions of the operative city of Lower Hutt District Plan – Report prepared by hearing subcommittee dated 18 August 2014 at paragraph 7.81.

27. Properly analysed, the land exchange does not involve double dipping. Rather, it provides discrete and additional enhancement to the conservation values of the land, over and above those already conserved by the QEII covenants, and it transfers those conservation values onto land that is owned and managed by DOC. Through doing so, the land exchange will enhance the conservation values of land managed by DOC.

28. Fifthly, the Friends' submission refers to an August 2025 Cabinet paper for the proposition that private land that is already protected by a conservation covenant is not likely to meet the test for land exchange since shifting ownership does not increase the protection for such areas.

29. The reliance on that Cabinet paper is misplaced.

30. The Cabinet paper relates a proposal for development of a new Conservations Acts (Land Management) Amendment Bill, with such a Bil to include more flexible rules for exchanging and disposing of conservation land. No such Bill has yet been introduced to Parliament.

31. Statements in a Cabinet paper about what the law might become in the future are of no relevance to the task before DOC and the expert panel of interpreting the law as it stood when the Application was lodged.[7] Even if the Cabinet paper was about the applicable provisions of the Fast-track Approvals Act (which it is not), caution would be required in using it as an aid to interpretation.[8]

32. For these reasons, the Friends' suggestion that the QEII covenanted areas ought to be discounted from the conservation values assessment is incorrect. Under the law that applies to this application, there is no mandate to discount conservation values on the DOC-get land to the extent they are affected by the QEII covenant protection.

<u>Land exchange test</u>

33. For the land exchange to be approved, the panel must conclude that the test in sch 6, cl 29(2) is satisfied. Under the version of the Act in force at the time the application was lodged, this provision said:

> The panel must not grant the approval unless the panel is satisfied that the land exchange (including any money that may be received under clause 30 and any conditions that the panel may impose in accordance with clause 32) *will*

[7] *Box Property Investments Ltd v The Expert Consenting Panel* [2025] NZHC 1773 at [35] and [39].
[8] *Sky City Auckland Ltd v Gambling Commission* [2007] NZCA 407, [2008] 2 NZLR 182 at [41]

> *enhance the conservation values of land managed by the Department of Conservation*.

34. At various points in their submission, the Friends make comments that, if accepted, could result in DOC or the panel misapplying this test.

35. First, Friends says in relation to recreational values that:

> Belmont Regional Park's core purpose is to provide public recreational access, protect local landscapes and ecosystems, and preserve open spaces between the Hutt Valley and Porirua. It serves as a multi-use area balancing conservation, recreation (walking, biking) and farming, managed by Greater Wellington Regional Council to restore ecosystem health. Therefore, to be considered for exchange, the DoC-Get areas must offer equivalent recreational opportunities as well as a greater ecological value.

36. To the extent that Friends is suggesting that the application must achieve a net benefit for ecological values as well as for recreational values, Winstone disagrees.

37. Clause 29(2) requires an enhancement of the conservation values of land managed by DOC. It does not require there to be enhancement or net gain in every sub-category of conservation values. The assessment by DOC and the fast track panel should be an holistic overall assessment of all conservation values considered together. If that holistic assessment is that the conservation values are, overall, enhanced by the exchange, then the cl 29(2) test is satisfied.

38. It would be open for the decision maker to conclude that the exchange will result in a loss in some types of conservation values but a gain in others. After weighing up those values and forming an overall judgment, the decision maker may conclude that the overall result is an enhancement of the conservation values of land managed by DOC.

39. There is no requirement for Winstone to offer "equivalent recreational opportunities" in order for the exchange to be approved. These were explored by Winstone but were ultimately not pursued following feedback from GWRC in its role of Manager of the Park and DOC staff, who did not support the development of recreational tracks in the DOC-get areas.

40. At a later point in their submission, the Friends say:

> Based on the information presented above, the FoBRP is of the firm belief that the proposed land exchange cannot provide a net gain to conservation lands but would in reality result in a significant net loss in conservation values, and a significant loss in recreation values.

41. Winstone does not agree that its proposed exchange leads to a significant net loss of conservation values and recreation values. For the reasons set out in its technical reports, there will be either a net gain or no change in the various categories of conservation values.

42. Even if the decision maker were to consider that there is a loss in one type of conservation value, that does not mean the exchange cannot proceed. It is the decision-maker's overall assessment of the various conservation values that is required by clause 29(2).

Can Winstone be required to lodge a bond?

43. The Friends contends that "without a very significant financial bond lodged with the department, the possibility that the applicant (or the parent company, Fletcher Challenge) becomes insolvent after overburden work has commenced, would leave the region with an ecological and financial liability."

44. This argument again involves a confusion between the effects of the land exchange (which are limited to a change in ownership and status of land) with the effects of the proposed overburden disposal area (which are to be considered later as part of the substantive application). Any issues as to rehabilitation of the overburden disposal area are to be addressed as part of the conditions that may be imposed on a resource consent approval.

45. Winstone submits that there is no ability for the panel to impose a bond as a condition of the land exchange application. The scope of conditions that may be imposed on a land exchange is set by sch 6, cls 31 and 32. Conditions may include:

    a. Obtaining other approvals necessary for the land exchange to be effected (as a pre-condition);

    b. Obtaining agreements with holders of interests in the land (as a pre-condition);

c. Payment of money to the Crown to offset an inequality in market values (as a pre-condition);

d. Imposing a reservation, classification, interest or encumbrance on the land to be given by the Crown; and

e. Requiring the applicant to undertake or bear the costs of improvement works;

46. There is no ability under these Schedule 6 conditions to require the applicant to post a bond. Such a condition would be more onerous than necessary and contravene s 83 of the Act, because there would be no reason to include it as part of the land exchange proposal.

47. Where legislation allows a decision maker to impose a bond, there is express provision for this. For example, s 108(2)(b) of the Resource Management Act 1991 allows a bond to be required as a condition on a resource consent.[9] A condition requiring a bond may therefore be considered by the panel when it considers resource consent approvals as part of a substantive application.[10]

48. A bond is not within the scope of what may be lawfully imposed as a condition on the land exchange application. This reflects that the land exchange is purely a change in the ownership and status of land.

Winstone's "prior applications" for land exchange

49. Friends states that the proposed land exchange has been "discussed and declined twice by DOC in 2018 and 2022" because the proposed overburden area did not meet the criteria of having "no or low conservation value".

50. The discussions from 2018 and 2022 that the Friends are referring to were informal discussions between Winstone and DOC.[11] No formal application was made at that time, and no statutory decision was made under any legislative framework. Winstone had not at that time received full technical assessment on the conservation values of the land exchange that is currently proposed and the inquiry related to a differently configured proposal.

[9] See also section 63(2)(a)(i) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.
[10] Fast-track Approvals Act 2024, sch 5, cl 18, which states that the provisions that are relevant to setting conditions under the RMA apply to the fast-track panel.
[11] See email from Meredith Lawry (DOC) to Ministry for the Environment dated 10 June 2024, available here.

51. This land exchange application is the first formal land exchange application to DOC relating to Belmont Quarry and is supported by a full suite of technical assessments.

52. The previous informal indications by DOC that it was not supportive of the proposal land exchange were based on the guidance available at that time for exchanges under the Conservation Act and Reserves Act. That guidance is not relevant to land exchange applications under the Fast-track Approvals Act 2024, which are not subject to the criteria that the land to be given has "no or low conservation value".

53. All that these earlier approaches demonstrate is that Winstone has been interested in securing the land via an exchange since as early as 2016. Evidence of earlier informal discussions is not evidence of a previous decision on an application and should be afforded no weight.[12]

Consequences of the land exchange being approved

54. Friends refers to advice from DOC on land exchanges that the "land being acquired will attain the status [of] the land being transferred [or] held, it must therefore be suitable for this purpose".

55. This advice from DOC is on a web page available here. The advice relates to exchanges under the Conservation Act 1987 or the Reserves Act 1977. Neither Act governs the present application for a land exchange under Schedule 6 of the FTTA.

56. The provision that governs the status of the land to be transferred to DOC under the fast-track process is sch 6, cl 34(2). This states that "All land acquired by the Crown under this clause must be held for any conservation purposes that the Minister of Conservation may specify in respect of that land by notice in the *Gazette*."

57. There is no requirement that the land to be acquired by the Crown is to be held for the same conservation purposes as the land that is being transferred to the

[12] The decision-makers in the current fast-track process must reach their own view on factual and evaluative matters and legal topics. In the *TTR* fast track draft decision, the panel said that it used the findings of previous decision-making committees as useful context to inform its own assessment of the facts (*Draft decision of the expert consenting panel under s 87 of the Fast-track Approvals Act 2024 on the Taranaki VTM application* dated 4 February 2026 at [136]). Here, there are no previous formal decision documents and so the weight that can be placed on earlier informal positions taken by DOC is correspondingly reduced.

Crown. The Minister for Conservation may specify "any conservation purposes" when issuing the relevant notice in the *Gazette*.

58. Winstone has prepared its proposal on the basis that, if the exchange is approved, the Minister would specify that the DOC-Get land is to be held for the purposes of a recreation reserve under the Reserves Act 1977. It would however be open for the Minister to specify another conservation purpose or type of reserve.

59. Winstone considers that the DOC-Get land is suitable for the purpose of a recreation reserve. Not all areas of recreation reserve need to be immediately available or suitable for recreational use and access. There are significant areas of Belmont Regional Park and other land within the conservation estate that are not currently used for recreational purposes, including parts that are grazed by livestock or difficult to access — but that does not mean those areas are misclassified. The purposes of a recreation reserve are a balance between public use and environmental protection, as explained in Winstone's land exchange application at paragraphs 9.5–9.6.

<u>Proposed conditions on land exchange</u>

60. Friends proposes that: "If the exchange proceeds, there should be a condition that the applicant seeks a plan change to apply these [General Recreation Activity Area and Natural Open Space Zone] provisions to the DoC-Get land, so that it does not have less protection than the DoC-Give land."

61. Winstone submits that such a condition would not be appropriate and is likely to amount to an ultra vires condition.

62. The Proposed Lower Hutt District Plan 2025, which includes the Natural Open Space Zone provisions was notified in 2025 and is currently going through the Schedule 1 plan making process. Most of the plan was granted a Ministerial exemption from the plan stop requirements, so that the plan-making process can continue. Winstone understands that the next step will be for hearings to be scheduled. No hearing dates are currently available on the Council's website.

63. Winstone is a submitter on that process. Its submission points include a request for certain areas to be rezoned as Natural Open Space Zone with a Quarry Zone Protection Overlay, where those areas are anticipated to be owned by

DOC as a consequence of the proposed land exchange.[13] This submission point effectively seeks the relief that Friends is asking the panel to impose as a condition on the land exchange. We note for completeness that GWRC have also agree to amend its Notice of Requirement over the Park in a corresponding way if all approvals are secured.

64. A condition requiring Winstone to seek a plan change would essentially duplicate the submission that Winstone has already made on the Proposed Lower Hutt District Plan. Such a condition would be more onerous than is necessary, because when the proposal to rezone the DOC-Get area is already a live issue in the plan making process. The panel cannot set conditions if they are more onerous than necessary.[14]

65. This is desirable from a planning perspective but not required under the Fast Track Approval Act 2024. Parliament chose not to include plan changes in the Act, instead providing in s 85(4) of the Act that an application may not be declined solely on the basis that an adverse impact is inconsistent with or contrary to a planning document. This reduces the impact of inconsistent plan provisions for fast-track projects.

66. For completeness, Winstone notes that it does not control the timing of the Hutt City plan making process or its outcomes. It intends to advance the submission points that it has made on the proposed plan as the plan making process advances.

Covenants on the titles

67. Friends notes that there should be a careful check for any other protections for vegetation that exist on the titles of the proposed DOC-Get areas that may originate from conditions of earlier resource consents.

68. That careful check has already been completed, and its results are reported on in the land exchange application at paragraphs 5.12 to 5.34. The land exchange application also includes a report from a surveyor, AdamsonShaw.

69. Other than the QEII covenants, which are addressed above, there was one other vegetation protection instrument on the relevant titles. This was an encumbrance in favour of HCC for the protection of vegetation, in an area that

[13] Winstone Aggregates submission at page 3.
[14] Fast-track Approvals Act 2024, s 83.

overlaps with the QEII covenant. The land exchange application noted at 5.32 that this encumbrance was redundant and in the process of being discharged. That discharge process has now been completed, and the HCC encumbrance is no longer on record of title RT WN31D/969.

Luke Wysocki

70. Mr Wysocki is a neighbouring resident who has provided comments via email.

71. He has raised a query as to why the consultation responses from iwi hapū and Treaty settlements entities have been redacted.

72. Winstone understands that these consultation responses were redacted in the publicly released copy of the land exchange application because the withholding ground in section 9(2)(ba) of the Official Information Act 1982 is likely to apply. That withholding ground is likely to apply because the information provided by mana whenua groups in their consultation response is confidential to those mana whenua and disclosing it would be likely to prejudice supply of similar information.

New Zealand Conservation Authority

73. The New Zealand Conservation Authority (the Authority) has provided comments on the land exchange application.

<u>Legal test to be applied under Fast-track Approvals Act 2024</u>

74. The Authority says that under the Fast-track Approvals Act 2024 the Minister of Conservation must be satisfied that an exchange will result in a net-conservation benefit in order to approve the transaction and must consider (but is not bound by) Chapter 6 of the Conservation General Policy.

75. This is an incorrect summary of the statutory regime because:

    a. The fast-track panel is the decision maker, rather than the Minister of Conservation.

    b. The test that must be met is that set out in cl 29(2), as summarised above, requiring that the exchange will enhance the conservation values of land managed by DOC. This is not the same thing as a “net-conservation benefit” or a “net benefit for conservation”. As explained

above in paragraphs 17–30, where the exchange proposes to bring land into DOC management where that land already has some measure of conservation values and protection, the addition of that land to the conservation estate will give the requisite enhancement.

76. Winstone Agrees that DOC and the fast-track panel must consider the Conservation General Policy, as required by sch 6, cls 26(1)(e) and 29(1)(a)(vi). However, as noted in the land exchange application at 15.12–15.20, the Conservation General Policy does not directly apply to Belmont Regional Park because it is not administered by DOC (it is managed by GWRC). DOC has previously confirmed this interpretation is correct.[15] Nonetheless, the principles of the General Policy have been considered as part of the comparative assessment of conservation values.

77. The Authority's comments refer to policy 6(d) of the Conservation General Policy, which is about when "land disposal" may be considered. Winstone submits that Policy 6(d) has no application here. The concept of "land disposal" relates to a disposal of conservation areas under ss 16 and 26 of the Conservation Act 1986. However, the land under consideration here is reserve land held under the Reserves Act 1977 and is not a conservation area held under the Conservation Act 1986.[16]

Relevance of QEII covenanted areas

78. The Authority describes the exchange proposal as to "exchange 23.86 ha of Public Conservation land for 21.6 ha of private land with an additional 12.5 ha of land already protected through QEII covenants."

79. Winstone does not agree with this characterisation of its proposal, for reasons already addressed above in paragraphs 17–30. The QEII covenanted areas will contribute to the conservation values of land managed DOC if the land exchange is approved.

Focus on recreational values

[15] Memorandum from Emma Fahey (DOC) to Phernne Tancock (Winstone's counsel) dated 4 July 2025 at paragraph 9.1

[16] Conservation Act 1986, s 2(1), definition of "conservation area" as "land or foreshore that is— (a) land or foreshore for the time being held under this Act for conservation purposes; or (b) land in respect of which an interest is held under this Act for conservation purposes".

80. The Authority's comments include a statement that "Given the lands being transferred is currently a Recreation Reserve it is not clear how the exchange will result in a net benefit for conservation and, in particular, for the purposes this land is held. Given the terrain and access issues, NZCA questions the opportunities and costs for enabling recreation on the DoC-Get parcels."

81. To the extent this statement is suggesting that the land exchange must achieve an enhancement of recreational values, Winstone has responded to that point above at paragraphs 31–40.

Wellington Botanical Society

82. Wellington Botanical Society has provided comments on the land exchange application, including by reference to an earlier letter.

83. The Society states that it is opposed to the proposal to "swap ecologically rich DOC land for private land and to use present Belmont Regional Park land as an overburden deposit site." It refers to concerns about the overburden altering the hydrology of the site and killing or destruction of 24 healthy in-situ trees.

84. As we have noted above in paragraphs 7–10, the focus of the land exchange application is on the change in legal ownership and status of the various parcels of land. The proposal to use the DOC-give area as a site for an overburden disposal area is to be assessed at the substantive application stage, when Winstone will be seeking resource consents and other approval types to enable the overburden disposal and associated activities. The overburden disposal use of the site, and any associated impacts on the hydrology of the site or impact on trees, are not relevant for present purposes.

85. The Society's submission also expresses concerns about what it terms an "ecological offset proposal" to plant 200 swamp maire. A response to the substance of that concern will be provided by Winstone's ecology consultants.

86. However, it is important to note that the proposed condition requiring planting of swamp maire is not an example of an "ecological offset" or a "biodiversity offset".

87. The concept of "biodiversity offsetting" is a concept from the National Policy Statement for Indigenous Biodiversity 2023 (with a similar concept of aquatic offset" used in the National Policy Statement for Freshwater Management 2020) – a document prepared under the Resource Management Act 1991 and

relevant to the resource consent application. The technical concept of offsetting is relevant in situations where a proposal has more than minor residual effects on indigenous biodiversity that are required to be managed via the effects management hierarchy.

88. It is not appropriate to refer to the proposal to plant swamp maire as an "offset", because there is no relevant effect of the land exchange on biodiversity that is required to be managed under the effects management hierarchy. As already explained in this document, the land exchange proposal is limited to a change in the ownership and status of the land, and it does not have any effects on ecological values on the land. The correct way of describing the swamp maire planting proposal is as a proposed improvement to "enhance the conservation values of land managed by" DOC as a condition under sch 6, cl 32(1)(b).

New Zealand Transport Agency (Waka Kotahi)

89. Winstone notes that NZTA is currently investigating alternatives to relocate the offset planting that it had previously proposed to undertake within the DOC-give area, and that NZTA is seeking internal sign-off and approval from councils to undertake this offset planting in other areas.

90. Winstone is supportive of NZTA's proposal to undertake offset planting in other areas and expects the informal interest NZTA has noted can be resolved through discussions. Winstone's understanding from Waka Kotahi and GWRC is that the parties have agreed on an alternative offset proposal within the park, which is awaiting the necessary approval. Winstone will continue to engage with Waka Kotahi and GWRC to keep the Director General updated on any developments.

91. In the unlikely event that NZTA is unable to obtain approval to undertake its offset planting at other sites, Winstone submits that this practical difficulty should be given very little weight in the statutory decision-making under the Fast-track Approvals Act because:

    a. NZTA does not appear to have any legal interest in the DOC-give area, only an informal understanding that it may be able to undertake offset planting in the relevant areas of Belmont Regional Park. The land exchange provisions in the Act focus on the interests of those who hold legal interests in the land, including owners and occupiers. If the Act were to extend its focus to include persons with informal plans to use

the exchange area without a legally binding right to do so, then that involve an unmanageable and open-ended extension of the types of interests that need to be factored in.

b. It is not a requirement of NZTA's designation conditions for it to undertake the offset planting in any particular location. If NZTA has not secured legal access to appropriate locations for offset planting within Belmont Regional Park, then it will remain under an obligation to find a location elsewhere.

c. NZTA's position may go to whether the "consequences of the land exchange would be practical to manage on an ongoing basis", which is a criteria under cl 29(1)(a)(iv). However, that factor must be given less weight than the purpose of the Act, especially when NZTA's interest in the site is remote and not legally recognised or binding, particularly given the parties' very clear intention to find an alternative location.

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