UNDER THE FAST-TRACK APPROVALS ACT 2024

FTAA-308

UNDER	the Fast-track Approvals Act 2024
AND	
IN THE MATTER	of approvals for land exchange, resource consents, wildlife approvals, and archaeological authority approvals under the FTAA by Winstone Aggregates for the **Belmont Quarry Development Project.**

JOINT MEMORANDUM ON BEHALF OF WINSTONE AGGREGATES AND THE DIRECTOR GENERAL OF CONSERVATION IN REGARD TO PRELIMINARY LEGAL ISSUES ARISING ON THE LAND EXCHANGE APPLICATION

19 August 2026

BAL MATHESON KC
PHERNNE TANCOCK
Barristers
[redacted]

MAY IT PLEASE THE PANEL CONVENOR:

1. This joint memorandum is filed on behalf of Winstone Aggregates (**Winstone**) and the Director-General of Conservation (**The Director-General**) (together the **Parties**).

2. Winstone is the authorised person for the Belmont Quarry Fast Track Project, a Schedule 2-listed Project under the Fast Track Approvals Act 2024 (**FTAA**).

3. The project seeks the following approvals:

    a. all necessary approvals needed to construct and operate a proposed overburden disposal area, in accordance with section 42(4) and Schedule 5, 7 and 9 of the FTAA, being approvals that would otherwise be applied for under the Resource Management Act 1991, the Wildlife Act 1953, and the Heritage New Zealand Pouhere Taonga Act 2014 and concessions under the Reserves Act 1977. This new overburden disposal area will enable the continued operation of the existing regionally significant Belmont Quarry; and

    b. a land exchange under Schedule 6 of the FTAA to exchange land owned by Winstone with Crown land that is classified as recreational reserve land under the Reserves Act 1977, managed by Greater Wellington Regional Council and which forms part of Belmont Regional Park. The purpose of the land exchange is to provide land for the overburden disposal area described in (a) above.

4. The Director-General is the administrative head of the Department of Conservation and is the administering agency for the purposes of the land exchange application under the FTAA. The Director-General has prepared a report on the land exchange application pursuant to section 35 of the Act.

Purpose of this memorandum

5. This memorandum alerts the Panel Convener to a number of legal issues identified by the Parties regarding the land exchange, which the Parties propose are to be determined by the Panel as preliminary matters.

6. This information is being provided to the Convener at substantive application lodgement because it has some bearing on matters to be considered by the Panel Convener – such as the appropriate expertise of the Panel members, timeframes for a decision, legal complexity, etc.

7. Counsel for the Parties have conferred and offer a suggested way forward to address the matters requiring the Panel's determination.

8. A key benefit of having the Panel determine the legal issues early in the process is that it would avoid the need for the participants to address different scenarios based on the Parties' differing views on:

    a. what version of the Act applies to the Panel, and

    b. the effect of the amendments to the Act on the Panel's assessment of the land exchange (if the Panel considers the amended Act applies).

9. These matters will also have a considerable bearing on the information that needs to be provided to the Panel and the outcome of the Panel's consideration of the exchange application (and any directions it may make to that effect).

10. The Parties acknowledge that determining procedural matters is the role of a Panel (once appointed).[1] The decision whether to decide these matters as preliminary legal issues, and if so, how, is up to the Panel to determine.

[1] FTAA Panel Convenors Practice and Procedure Guidance (22 July 2025) at 18.1, 18.2, 18.4.

Background

11. On 10 December 2025, Winstone lodged a land exchange application with the Director-General for a land exchange of Crown-owned reserve land under section 33(1) and Schedule 6 of the FTAA. Winstone's proposed land exchange was applied for prior to the 17 December 2025 amendments (i.e. under the **original law)**.

12. Applicants for land exchange under the FTAA must first lodge the exchange application with the Director-General of Conservation.[2] The Director-General processes the application and invites comments on the proposal and a draft report prepared by them, after which the Director-General issues a land exchange report.[3]

13. On 17 December 2025, amendments were passed into the FTAA (Amendment Act). These amendments changed the criteria to be applied by an Expert Panel when considering whether to grant a substantive application for land exchange (**amended law**).

14. Winstone's land exchange application was processed by the Department under the original law, and on 7 July 2026 the Director-General provided a Land Exchange Report to Winstone under section 35(3), in accordance with the timeframe set by the Panel Convenor.[4]

15. Applicants for land exchange must obtain a land exchange report before any application for the remaining substantive approvals can be lodged with the Environmental Protection Authority (**EPA**).[5]

16. Now that it has the Land Exchange Report, Winstone has lodged its substantive fast-track application with the EPA for its Belmont Quarry Development in Wellington, which is a Schedule 2-listed Project.

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[2] Section 33(1), 35(9) FTAA and Section 42(4)(f) and (8).
[3] Section 35 FTAA.
[4] Section 35(7), Panel Convenor's Minute 1 at: FTAA-2511-L001 Minute 1 of Panel convener.
[5] As footnote 1 above.

Panel consideration

17. The Fast Track Panel appointed to consider the application will need to determine both Winstone's land exchange application and the other necessary approvals required to construct and operate a new overburden disposal area as part of the Belmont Quarry Development Project.

18. This will be the first land exchange application to be made or processed under the FTAA and the first time the exchange provisions in Schedule 6 of the FTAA have been considered by a Panel.

19. A complicating factor in this application is that the amendments to the FTAA that were made between the lodgement of the land exchange application with the Director-General on 10 December 2025 and the lodgement of the substantive application, as described above in paragraphs 11–13. Winstone and the Director-General agree that the Land Exchange Report had to be prepared and completed under the original law but disagree as to which version of the law the Panel must apply to the Panel's consideration of the substantive application for the land exchange.

Summary of disputed issues

20. The following paragraphs provide a summary of the issues in dispute between the Parties.

<u>Which version of the law applies to this land exchange application</u>

21. Under the **original law**, there was no requirement to discount conservation values affected by matters registered or noted on the title (including QEII covenants) under clause 29 of Schedule 6 to the Act.

22. Under the **amended** law the Panel is directed to discount the extent to which the conservation values of the land to be acquired by the Crown are

affected by matters registered or noted on the title (including QEII covenants) for conservation purposes.[6]

23. Winstone considers that the **original law** applies to the Panel's substantive consideration of the land exchange application, while the Director-General considers that the Panel must apply the **amended law**.

Land Areas to be considered:

24. The **original law** provided that the conservation values that were required to be enhanced were those "of land managed by the Department of Conservation[7]". Under the **amended law**, the conservation values required to be enhanced under clause 29(2) are broader, being "the conservation values of conservation areas and Crown-owned reserves considered as a whole."

25. Winstone considers that (if the **amended law** applies) this permits consideration of off-site enhancements or benefits in conservation values across the broader conservation estate. It has provided an alternative improvement package ("Package B") which offers improvements to enhance conservation values on land which is immediately adjacent to the land that will be acquired by the Crown under the proposed land exchange (should the **amended law** apply). The Director General considers that any improvements need to relate directly to the land to be acquired by the Crown under the Land Exchange, as the Panel cannot require works or money to be paid for works to be undertaken on any other part of the conservation estate.

26. There is also disagreement between the parties over how the Panel should approach the "discounting" exercise, if the **amended law** applies.

Request for preliminary determination

27. The Director-General and Winstone share the view that (once appointed) the Panel's decision on the legal issues will have a considerable bearing

[6] Clause 29(2A) inserted by the Amendment Act.
[7] Pre-amendment version of cl. 29(2) of Schedule 6.

on the information that will need to be provided to it, and the outcome of the Panel's consideration of the Land exchange application.

28. Winstone intends to request a preliminary hearing of these matters to allow them to be determined by the Panel (once appointed) as preliminary legal issues, as a first step in the Panel's processing of the land exchange application, and to be heard on those issues. The Director-General reserves his position on whether a hearing is needed.

Agreed list of issues

29. A list of the agreed issues for which a preliminary determination is requested is set out at **Schedule 1.**

Impact on panel processing timeframes and sequencing

30. The Parties propose that the preliminary legal issues could be addressed efficiently in the following manner:

a. Winstone filing an application for a hearing and determination of the preliminary legal issues once a Panel is appointed.

b. The Panel could make a procedural decision on whether it wishes to determine the legal issues as a preliminary matter; hold a hearing on the preliminary issues, and the timing of that.

c. The Panel could issue a separate determination on those issues in a manner that helps achieve a timely and efficient determination of the preliminary issues, consistent with the procedural principles in section 10 of the Act.



B Matheson KC/ P Tancock
Counsel for Winstone Aggregates
Dated the 19th day of August 2026



Jeremy Prebble/ Shona Bradley
Counsel on behalf of the Director General of Conservation
Dated the 19th day of August 2026

Schedule 1: List of issues

Primary Issue

1. When preparing the Land Exchange Report, the Director-General was required to prepare that report in accordance with the law as it existed prior to 17 December 2025, including the criteria as they existed at that time (**Original law**). On 17 December 2025, the assessment criteria were amended, most notably by excluding, from any values calculation, the values of the land to be exchanged that are affected by the QEII covenant- refer in particular new clause 29(2A);

   > "*When considering the conservation values of the land to be acquired by the Crown, for the purpose of forming its view under subclause (2), the panel must discount the extent to which the conservation values of that land are affected by anything registered or noted for conservation purposes on the record of title for that land.*" (**Amended law**).

2. Without prejudice to either party's position on the questions that follow, Winstone accepts that other, non-material, procedural requirements of the Amended law may apply to the consideration of any substantive application. The Director-General considers that the Amended law must apply to the Panel's consideration of the land exchange.

   Question 1: When considering the Director-General's Land Exchange Report as part of the substantive land exchange application, is the Panel required to apply the Original law or is it required to apply the Amended law?

If the Amended Law applies, then the further 2 questions arise:

3. The Amended law cl 29(2) provides:

   > *"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 conservation areas and Crown-owned reserves considered as a whole.*"

4. Because this is a threshold requirement - i.e. the Panel cannot grant an approval unless this statutory test is met - it is essential to understand at a preliminary stage what land areas are caught by the phrase "conservation areas and Crown-owned reserves considered as a whole" and whether for the purposes of cl 29(2), the Panel may:

   (a) consider enhancements to conservation values that would result from a proposal by the applicant to undertake or pay for improvements to Crown-owned reserves or conservation areas that are not to be acquired by the Crown under the exchange; and

(b) impose conditions under cl 30 or 32 requiring the applicant to undertake or pay for improvements to land that is not to be acquired by the Crown under the exchange.

5. The Applicant is proposing to undertake works both on the land which is to be exchanged with the Crown and on land that is immediately adjacent to that which is to be exchanged with the Crown but is not being acquired by the Crown. DOC's position is that any enhancement of values through improvements proposed by the Applicant can only be taken into account if the improvements are to be undertaken on the land to be acquired by the Crown under the land exchange.

Question 2:

(a) When considering whether clause 29(2) is satisfied, may the Panel consider enhancement works undertaken to enhance the values of conservation areas or Crown-owned reserves that are not to be acquired by the Crown as part of the proposed land exchange?

(b) When considering whether clause 29(2) is satisfied, may the Panel require the applicant to undertake or pay money to the Crown for improvements to enhance conservation areas or Crown-owned reserves that are not to be acquired by the Crown as part of the proposed land exchange?

6. The Amended Criteria include clause 29(2A):

> "*When considering the conservation values of the land to be acquired by the Crown, for the purpose of forming its view under subclause (2), the panel must discount the extent to which the conservation values of that land are affected by anything registered or noted for conservation purposes on the record of title for that land.*"

7. The Applicant says that it is only those conservation values secured by anything noted or registered on the record of title area to be discounted (the Applicant has accordingly not discounted historic, cultural or recreational values because they are not referenced in the QEII covenant).

8. DOC's position is that:

(a) if there is a conservation instrument registered on the land, then all conservation values of the land affected by that instrument must be discounted; and

(b) whether or not specific values are referred to in the QEII covenant, the covenant affects all the relevant conservation values.

9. The issue in this case is whether or not the Panel can have regard to any or all of the historic, cultural, and recreational values of the land subject to the conservation QEII covenant on the land to be exchanged.

10. The meaning of clause 29(2A) and interpretation of the QEII covenant are discrete legal issues that could significantly affect the exercise of the Panel's judgment under cl 29(2), Schedule 6, FTAA. It is therefore appropriate that this issue be dealt with as a preliminary issue.

Question 3: When undertaking the discounting required by clause 29(2A):

(a) What are the values of land "affected by" the QEII covenant?

(b) Is the Panel required to discount all such values for the purpose of clause 29(2)?