

From: s 9(2)(a)
To: s 9(2)(a)
Cc: [Fast Track Consenting](#)
Subject: RE: Confirmation of process
Date: Tuesday, 2 March 2021 2:52:33 pm
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[Advice re Whakatane Boat Harbour - DOC-6563733 \(2 March 2021\).pdf](#)

Kia ora Rebecca

It gives me great pleasure to attach the guidance advice just received from DoC which we have been waiting for.

It outlines the process as we had understood it, and nothing within this guidance advice differs from our own advice received last year.

Specifically the timeframes are as expected and when considered alongside DoC's earlier confirmation email, the Fast Track and the DoC processes can run in parallel with no compromise of the overarching intent of the Act.

Accordingly on behalf of the project I ask that our Fast Track application be taken off hold, now that the DoC guidance and advice has been received.

As per your note below, we'd appreciate any update in terms of expected timeframes when available.

Ngā mihi,

Phil.

From: Rebecca Perrett s 9(2)(a) >
Sent: Wednesday, 10 February 2021 2:27 pm
To: Phil Wardale s 9(2)(a)
Cc: Fast Track Consenting <fasttrackconsenting@mfe.govt.nz>
Subject: RE: Confirmation of process

Kia ora Phil,

Thank you for our phone discussion just now.

I acknowledge that the application will remain on hold until DOC have finalised their advice to the applicant, particularly in relation to the potential licence to occupy. Once the application comes off-hold we will be able to provide you an expected timeframe of our joint briefing to the Ministers.

Kind regards
Rebecca

Rebecca Perrett
Senior Policy Analyst | Kaitātari Kaupapa Here Matua
Fast-track Consenting

Ministry for the Environment | Manatū Mō Te Taiao
s 9(2)(a) | mfe.govt.nz

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From: Phil Wardale s 9(2)(a)
Sent: Wednesday, 10 February 2021 1:52 pm
To: Rebecca Perrett s 9(2)(a)
Cc: Fast Track Consenting <fasttrackconsenting@mfe.govt.nz>
Subject: RE: Confirmation of process

Hi Rebecca

Many thanks for the confirmation.

When possible, receiving some timeline guidance for a few of the next steps within your process would be most helpful when you have some insight.

Many thanks,
Phil.

From: Rebecca Perrett s 9(2)(a)
Sent: Tuesday, 9 February 2021 1:31 pm
To: Phil Wardale s 9(2)(a)
Cc: Fast Track Consenting <fasttrackconsenting@mfe.govt.nz>
Subject: RE: Confirmation of process

Kia ora Phil,

Happy new year to you also.

Thank you we are in receipt of your email below, including the email correspondence from Mike Jones at DOC. As requested we will take the application off hold and continue our joint analysis with DOC and recommendation briefing note to the Ministers for decision.

Once I have communicated with DOC's analysts I will be able to give you an update and a date of when the Ministers will receive the briefing note.

Kind regards
Rebecca

Rebecca Perrett
*Senior Policy Analyst | Kaitātari Kaupapa Here Matua
Fast-track Consenting*

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s 9(2)(a) mfe.govt.nz

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From: Phil Wardale s 9(2)(a)
Sent: Tuesday, 9 February 2021 10:13 am
To: Rebecca Perrett s 9(2)(a)
Subject: FW: Confirmation of process
Importance: High

MFE CYBER SECURITY WARNING

This email originated from outside our organisation. Please take extra care when clicking on any links or opening any attachments.

Dear Rebecca

Happy New Year, in February!

Please find below an email received from DoC this morning.

I can confirm that since you and I last spoke in late 2020 we have had several very constructive meetings with DoC regarding their process to approve the creation and use of the northern access channel to the boat harbour.

They are well aware of the MfE process underway and have drafted the below email with the sole purpose of providing MfE with comfort that whilst a process must be followed, and without predetermining the outcome of that process, they support the proposal that the boat harbour uses the existing man made access channel to cross from the Keepa Rd property to the Whakatane River, and accordingly they will work collaboratively to guide the project team on the most logical process to seek a licence or concession, both to build the channel, and to use the channel post construction.

They are aware that I'm forwarding the below email today, the 9th Feb, which was the latest agreed date to report back to MfE.

I can report that at short notice during late December and early 2021, Doc has assembled a cross agency team to support the process which has included recognition that to be effective the timing of that process needs to recognise the consenting process and the overarching intentions of the COVID Fast Track legislation.

It is our expectation that the email below will allow MfE to recommend that the Boat Harbour project is advanced for referral to use the Fast Track legislation.

We will naturally keep you in the loop as the process advances and will look forward to MfE's positive confirmation.

Kind regards,
Phil.

P.S. Due to the importance of this email, can I please request confirmation of receipt. P.

Phil Wardale
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Ph: +64 9 360 9355
Mob: s 9(2)(a)

Email: s 9(2)(a)



From: Mike Jones s 9(2)(a)
Sent: Tuesday, 9 February 2021 8:06 am
To: Philip Wardale s 9(2)(a)
Cc: Jade King-hazel s 9(2)(a); Nikora Heitia s 9(2)(a); Manu Graham s 9(2)(a)
Subject: Confirmation of process

Kia Ora Phil,

Thank you for your time and discussion last week, 28 January 2021, regarding the very exciting opportunity regarding a marina boat harbour for Whakatāne.

On behalf of the Department I can confirm that we are very comfortable to work alongside your project as it looks to put forward the development to the Covid-19 Recovery (Fast-track Consenting) Act 2020. At this stage we believe there are solutions for river access across Keepa Road Scenic Reserve through a concessions process. We will continue to work with your team over the coming weeks to confirm these requirements and associated application processes.

We cannot confirm the exact timeline for this process, but we are confident that it can run in parallel with the fast-track consenting process within timeframes that will not impact on that process. For clarity the Department does not require that a concession is granted prior to the resource consent application being considered.

Please note however, in no way does this indication of a likely solution predetermine the outcome of the concession decision making process.

We look forward to working with your team.

Nga mihi, nui

Mike

Mike Jones

Senior Ranger, Community | Kaitiaki Matua, Āo Hāpori

Department of Conservation | Te Papa Atawhai

DDI: s 9(2)(a) | MOB: s 9(2)(a)

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Released under the provisions of
the Official Information Act 1982



2 March 2021

s 9(2)(a)

Dear Phil

Re: Whakatane Marina Development – 91796-OTH

Purpose

1. The following document has been drafted to provide guidance on applying for a concession over the Keepa Road Scenic Reserve for the Whakatāne Marina following various discussions with Department staff over the last couple of months.

Proposed Activity

2. To develop a boat harbour/marina adjacent to the Whakatāne River.
3. The marina is situated over Māori freehold land, however, access between the Whakatāne river and the marina passes through the Keepa Road Scenic Reserve (administered by the Department of Conservation).
4. As a result a concession will be required for the following activities:
 - a. the construction and ongoing maintenance of a channel cut; and
 - b. ongoing use/passage of the channel cut by commercial boat operators.
5. Note: The requirement for a concession will no longer apply if the land is acquired by way of Public Works Act or if the Reserves classification is revoked and purchased. At this stage the Department believes the best course of action is through a concession process. However, please refer to Appendix A for further statutory processes options which you may wish to consider.

Aerial photograph – Highlighting the footprint of the proposed marine access



Pre-application support

6. We are presently in pre-application phase. During pre-application the Department will assist the Applicant to understand the concession process with the end goal of the Applicant either applying for a concession or withdrawing their interest.
7. An Applicant's attention may be brought to statutory tests which may impact approval likelihood of a concession application. However, a definitive decision on the outcome of the application cannot be given until a formal assessment of the application has been undertaken.

Cost recovery

8. The Department offers 4 hours of pre-application advice to Applicants without cost. Additional time will be cost recoverable at standard cost recovery rates for all resources involved. Please ask if you have any queries about this aspect.

Recommend process for your application submission

9. A concession may take form as an easement, permit, licence, or lease.
10. It is recommended that either a licence or lease will best suit your proposal, as permanent structures will be constructed, and on-going maintenance of the land and channel will be required.
11. When submitting your application, please consider the level of interest in the Land you require to undertake your activity.
12. Note that a lease provides greater interest in the Land as it grants the Concessionaire exclusive use, and the right to prohibit other users accessing or using the land. While a licence provides an interest in the land, it is not exclusive and may be occupied by the general public.
13. If exclusive use is required, please request a lease and explain why exclusive use is necessary.
14. A lease must be publicly notified (regardless of the term) whereas a licence is only publicly notified if the term exceeds 10 years or if the Decision Maker, having regard to the effects of the licence, considers it appropriate to do so.
15. Public notification timeframes will likely extend the processing of an application as additional tasks are required. Please see a rough estimation of timeframes for each step of a publicly notified concession.

Process for a notified concession (lease)

Receipt of application

- a. A concession application is first processed by the Statutory Process Team. They will assign the process to the permissions team. Timeframe: estimated 4 weeks.

Step One

- b. The permissions team will receive and assess the concession application to determine whether sufficient information has been provided for public notification. A member of the public must be able to understand the proposed activity to submit during public notification. Timeframe: estimated 2 weeks, unless further information is required.

Step two

- c. The concession application will be publicly notified. Submissions/objections will be received, and a hearing may be requested. A hearing report may be drafted to summarize all written and verbal submissions. Timeframe: estimated 6-10 weeks depending on volume of submissions and whether a hearing is held.

Step three

- d. The Department will undertake its substantial assessment of the concession application. No substantial assessment of activity effects and details is undertaken until this stage of the process. Further information may be requested, a site check may occur and other associated activities required for the assessment of the concession application will be undertaken. Timeframe: estimated 8 weeks and will vary depending on the scale and complexity of the application.

16. A non-notified licence will not require step one and two. Timeframes will be shorter.

Concession Application

17. Applying for a concession of this nature will require submission of three forms.
 - Form 1a – Applicant details – [Linked here](#)
 - Form 3b – Activity details – commercial facility/structure – [Linked here](#)
 - Form 4b – Activity details – Watercraft – [Linked here](#)

Concession consideration

18. Every concession application is considered against the relevant statutory tests and a decision is made by the Ministers delegate. These tests are set out in Part 3B of the Conservation Act 1987.
19. Part of this assessment includes an assessment of the application against the relevant planning documents to determine whether its granting is consistent with a strategy or plan. This includes the Bay of Plenty Conservation Management Strategy 1997 and Conservation General Policy 2005.
 - a. This will include an assessment of watercraft use on the Land.
20. This assessment also looks at the effects of the proposed activity on the Land. An Applicant must demonstrate how the effects of the activity have been avoided, remedied and mitigated. Please ensure all effects are spoken to in your application forms. All supporting reports (Effects Impact Assessments (EIA)) and documents should be attached to the submitted concession application.
21. Lastly, another key consideration to bring to your attention is the purpose for which the land is held. The Keepa Road Scenic Reserve is managed subject to section 19(1)(a) of the Reserves Act 1977.

Other context

22. Please note that any use of the constructed channel by boat operators accessing the marina will also require authorisation under a concession as they are undertaking an activity on public conservation land.
23. Instead of each boat user requiring an individual concession, it is possible that the main concession for the channel construction includes an authorised list of boat operators. The authorised list could function as a live document through which new

operators can be added as new boat users use the marina and removed as they stop using the marina. Note that this is a potential solution, and specifics on this would need to be considered by the Department during the concession process.

I hope that this advice is useful as you consider all options associated with your Whakatane Marina development. Please continue to work through Mike Jones, Senior Community Ranger, as you continue to explore this project.

Best wishes,

Jade King-Hazel
Operations Manager

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the Official Information Act 1982

Statutory Land Management (SLM) potential options for the Whakatāne Marina Development Project

Explore Task 268

The below table is a selection of potential SLM options to progress the Whakatāne Marina Development Project in relation to the Keepa Road Scenic Reserve. Please note, all options indicated in the table below are subject to several factors, including (but not limited to) the outcome of a values assessment and the results of consultation and public notification (if required).

Land Status

Name: Scenic Reserve - Keepa Road

Legislation: Reserves Act 1977

Section: s.19(1)(a) – Scenic Reserve

Area: 7.3016ha

NaPALIS ID: 3096911

The reserve is a Scenic Reserve held under s.19(1)(a), the description of which can be found in Appendix A below. It is important to note the wording in s.19(1)(a), modification of such a reserve must meet this high threshold.

OPTION:	REVOCATION / DISPOSAL	PUBLIC WORKS ACT (PWA)	RECLASSIFICATION AND CHANGE OF ADMINISTRATION
Overview	Revoke the Reserve status which would render the land subject to the Land Act 1948 and Land Information New Zealand's (LINZ) legislative and policy criteria. At this stage it could be made available for sale.	The council could apply to take the land for public work under section 52 of the Public Works Act.	Reclassification of the Reserve from a Scenic Reserve to a more appropriate classification (if that is the case) and change the administration at the same time. e.g. control managed or vested in council, board or iwi subject to criteria.
Outline of the process (additional steps may be)	- On receipt of an application DOC would confirm land status, District Office opinion and any treaty settlement factors to be considered	- On receipt of an application DOC would confirm land status, District Office opinion and any treaty settlement factors to be considered	- Full assessment of the values of the area - Consultation with iwi and other interested parties, e.g. conservation boards

Appendix A

OPTION:	REVOCATION / DISPOSAL	PUBLIC WORKS ACT (PWA)	RECLASSIFICATION AND CHANGE OF ADMINISTRATION
required depending on the application)	<ul style="list-style-type: none"> - Confirm the land is surplus and can be disposed of, this includes confirming the land has very low or no conservation values - Establish the history of ownership and whether there are any obligations to offer the land back to any former owners - Clearance is also required from other agencies such as Heritage New Zealand - Consultation with iwi and other interested parties, e.g. conservation boards, Fish and Game - Public notification which may result in a hearing - Survey - Valuation 	<ul style="list-style-type: none"> - The Conservation General Policy would be considered - An environmental impact assessment is required and this is likely to be reviewed by a DOC Technical Advisor - Consultation with iwi and other interested parties, e.g. conservation boards, Fish and Game - Whilst public notification is not mandatory under the PWA it is DOC's policy to publicly notify applications with significant effects - Survey - Valuation 	<ul style="list-style-type: none"> - Public notification which may result in a hearing
Potential issues (identified at this early stage)	<ul style="list-style-type: none"> - DOC cannot dispose of land unless it has very low or no conservation values, this is a high test. - There are have been some conservation values identified, which may mean a proposal would not meet relevant criteria. - Unknown what issues will be raised during the consultation phases which may have an impact on timeframe / cost - There may be marginal strip requirements to consider, subject to confirmation of boundaries? 	<ul style="list-style-type: none"> - S52 is to set apart land for public work – can the proposal be considered a public work? - An application may not meet statutory requirements or policies and therefore may not be approved. - DOC may not consent to a PWA application if the adverse effects are high - Unknown what issues will be raised during the consultation phases which may have an impact on timeframe / cost 	<ul style="list-style-type: none"> - DOC would need to consider the values for which the land was classified are no longer present, noting the area was only recently classified as a Scenic Reserve (2015) - If the land is vested, DOC will no longer hold the book value of the land, consequently DOC may need to approach Treasury for additional funds – this may affect the timeline

Appendix A

OPTION:	REVOCATION / DISPOSAL	PUBLIC WORKS ACT (PWA)	RECLASSIFICATION AND CHANGE OF ADMINISTRATION
Cost	<ul style="list-style-type: none"> - Cost of the land - Survey and valuation costs - DOC consenting (estimate will be provided as outside of standard process) - Public notification costs 	<ul style="list-style-type: none"> - Cost of the land - Survey and valuation costs - DOC consenting fees (estimate will be provided as outside of standard process) - Public notification costs 	<ul style="list-style-type: none"> - Survey costs
Timeframe (subject to process)	Approx. 12 months depending on the results of consultation and public notification	Approx. 6 months depending on the results of consultation and public notification	Approx. 6 months depending on the results of consultation and public notification

Appendix B: Part Section 19 of the Reserves Act 1977

19 Scenic reserves

- (1) It is hereby declared that the appropriate provisions of this Act shall have effect, in relation to reserves classified as scenic reserves—
- (a) for the purpose of protecting and preserving in perpetuity for their intrinsic worth and for the benefit, enjoyment, and use of the public, suitable areas possessing such qualities of scenic interest, beauty, or natural features or landscape that their protection and preservation are desirable in the public interest;
 - (b) for the purpose of providing, in appropriate circumstances, suitable areas which by development and the introduction of flora, whether indigenous or exotic, will become of such scenic interest or beauty that their development, protection, and preservation are desirable in the public interest.
- (2) It is hereby further declared that every scenic reserve classified for the purposes specified in subsection (1)(a) shall be so administered and maintained under the appropriate provisions of this Act that—
- (a) except where the Minister otherwise determines, the indigenous flora and fauna, ecological associations, and natural environment and beauty shall as far as possible be preserved, and for this purpose, except where the Minister otherwise determines, exotic flora and fauna shall as far as possible be exterminated;
 - (b) the public shall have freedom of entry and access to the reserve, subject to the specific powers conferred on administering bodies by [sections 55 and 56](#), to any bylaws under this Act applying to the reserve, and to such conditions and restrictions as the administering body considers to be necessary for the protection and well-being of the reserve and for the protection and control of the public using it;
 - (c) to the extent compatible with the principal or primary purposes of the retention and preservation of the natural or scenic values, open portions of the reserve may be developed for amenities and facilities where these are necessary to enable the public to obtain benefit and enjoyment from the reserve;
 - (d) where historic, archaeological, geological, biological, or other scientific features are present in the reserve, those features shall be managed and protected to the extent compatible with the principal or primary purpose of the reserve:
provided that nothing in this paragraph shall authorise the doing of anything with respect to fauna that would contravene any provision of the [Wildlife Act 1953](#) or any regulations or Proclamation or notification under that Act, or the doing of anything with respect to archaeological features in any reserve that would contravene any provision of the [Heritage New Zealand Pouhere Taonga Act 2014](#);
 - (e) to the extent compatible with the principal or primary purpose of the reserve, its value as a soil, water, and forest conservation area shall be maintained.