



Briefing: Principles for delegation of Ministerial powers to DOC officials

To	Minister of Conservation		Date submitted	8 August 2023
Risk Assessment	<p>Medium.</p> <p>There are potential implications for New Zealand's international reputation associated with 9(2)(j) [redacted] 9(2)(i) [redacted] 9(2)(j) [redacted] as well as Government policy considerations.</p>		Priority	Normal
Reference	23-B-0344		DocCM	DOC- 7415322
Security Level	In Confidence			
Action sought	<p>Sign the attached amended preamble to DOC's instrument of delegation</p> <p>Decide the decision-maker for the 9(2)(i) [redacted] 9(2)(j) [redacted]</p>	Timeframe	21 August	
Attachments	<p>Attachment A – 9(2)(j) [redacted]</p> <p>Attachment B – [Draft Version 15] Preamble – Instrument of Delegation</p>			
Contacts				
Name and position				Cell phone
Ruth Isaac, Deputy Director-General, Strategy and Policy				021 814 529
Logan Penniket, Acting Manager, Tourism and Economic Development Policy				9(2)(a) [redacted]
Lars Ivarsson, Policy Advisor, Tourism and Economic Development Policy				9(2)(a) [redacted]
Rosemary Broad, Solicitor, Legal Services				9(2)(a) [redacted]

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Executive summary – Whakarāpopoto ā kaiwhakahaere

1. Department of Conservation (DOC) officials exercise a range of statutory powers that have been delegated from the Minister of Conservation to the Director-General of Conservation, and further subdelegated to the appropriate level within DOC.
2. The Minister of Conservation or the Director-General can at any time reclaim a delegated decision and make it themselves. To ensure effective administration, DOC typically recommends elevation of decision-making to Director-General or Ministerial level only when the matter being considered is deemed particularly sensitive or controversial.
3. The level at which delegated decisions are made within DOC is guided by the preamble to DOC's instruments of delegation, which sets out the matters that may warrant a decision being elevated.
4. The operating approach applied by DOC is that decision-making should be delegated to the lowest appropriate level. This allows decisions to be made by staff with the relevant expertise, helps ensure administrative efficiency, and lessens the workload on the Minister and the Director-General.
5. One of the matters DOC takes into consideration when determining the appropriate level of delegation for a decision is whether there are any implications for New Zealand's international obligations. However, international obligations are not referenced directly in the preamble to the instrument of delegation.
6. To ensure visibility in delegated decision-making, we propose to amend the preamble to the instrument of delegation to add "international obligations" to the list of matters that may warrant escalation 'up the line' for decision-making.
7. Attachment B includes for your signature an updated version of the preamble with "international obligations" inserted in the relevant paragraphs.
8. **9(2)(j)**
9. Due to the sensitive nature of this application, the Director-General of Conservation has decided to elevate the decision so that she or the Minister is the decision-maker.
10. This briefing seeks your decision on whether you wish to make the decision yourself as Minister of Conservation. DOC considers that either the Director-General or the Minister of Conservation would be the appropriate decision-maker for this application, and that a Ministerial decision may be preferable in light of the potential implications for New Zealand as a whole. The principle applied here is, as set out in the instrument of delegation, as follows: if, in the Director-General's opinion, a matter is of national interest or involves such environmental, social, or economic implications as warrant the power only being exercised by the Minister, it shall be referred to the Minister.
11. DOC has also considered upcoming decisions around Ruapehu Alpine Lifts for escalation. In this case, DOC has determined that it is appropriate for decisions to be made by the Deputy Director-General, National Operations and Regulatory Services.

We recommend that you ... (Ngā tohutohu)

		Paragraph reference	Decision
1.	Sign the attached amended preamble to DOC's instrument of delegation, which includes 'international obligations' as a ground for elevating delegated decisions	17	Yes / No
2.	Note that the Minister of Conservation may at any time choose to exercise a power that has been delegated to DOC officials	4	Noted
3.	Note that DOC is considering 9(2)(i) [redacted] 9(2)(j) [redacted]	23	Noted
4.	EITHER i) Note that the Director-General of Conservation will be the decision-maker for 9(2)(i) [redacted] OR ii) Agree that the Minister of Conservation will be the decision-maker for the 9(2)(j) [redacted] 9(2)(j) [redacted]	32	Noted Yes / No



Date: 08/08/2023

Ruth Isaac
Deputy Director-General Strategy and Policy
For Director-General of Conservation



Date: 24/08/2023

Hon Willow-Jean Prime
Minister of Conservation

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Purpose – Te aronga

1. This briefing responds to your request dated 24 July for information about DOC's processes for delegated decision-making, and:
 - Provides for your approval and signature an updated preamble to DOC's instruments of delegation which adds 'international obligations' to the list of matters that may warrant elevation of decision-making;
 - Provides information on two high-profile decisions being processed at DOC currently, including the level of delegation DOC proposes the decisions be made at; and
 - Seeks your decision on whether you wish to be the decision-maker for one of these high-profile decisions which relates to 9(2)(j)

Background and context – Te horopaki

2. DOC is an operational department with many statutory functions. The delegation of powers under legislation is essential for the effective administration of that legislation.
3. The Conservation Act 1987 (s57) provides for the Minister of Conservation to delegate functions or powers to the Director-General of Conservation. The Conservation Act (s58) then provides for the Director-General to further delegate powers to DOC officials (with the Minister's agreement).
4. The Minister of Conservation has the ability to make a decision even if it has been delegated. To make the particular decision themselves, the Minister may simply inform the Director-General that they wish to do so. The Minister also has the ability to revoke delegations at any time.
5. Powers that have been delegated by the Director-General to DOC officials are recorded (as required by the Conservation Act s58(2)) and referred to as DOC's "instrument(s) of delegation".
6. The instruments of delegation include a preamble (signed by the Minister of Conservation) which confirms the delegation of powers and sets out high-level principles for when delegated decision-making should be escalated back 'up the line'. The most recent instrument of delegation is Version 14, dated 8 September 2015.
7. Attachment B provides the full text of the preamble, with suggested amendments to include reference to international obligations. The proposed amendment is discussed further below (see paragraphs 16-18).
8. This briefing is focused on powers that have been delegated from the Minister of Conservation to the Director-General of Conservation. However, there are also many cases where legislation confers decision-making powers directly to the Director-General. Where the legislation allows, such powers may then be delegated within DOC. Examples of this type of delegation includes granting of permits under the Trade in Endangered Species Act 1989, authorisations to catch or kill protected species under the Wildlife Act 1953, and the appointment of warranted officers under the Freedom Camping Act 1991.

Principles for delegations

9. The preamble to the instrument of delegation sets out high-level principles for when a DOC decision maker who is acting on delegation should consider escalating a decision 'up the line'. A highly sensitive matter could be escalated accordingly – e.g., by an Operations Manager to a Director, a Deputy-Director General, or the Director-General.
10. The instrument also states that if, in the Director-General's opinion, a matter is of national interest or involves such environmental, social, or economic implications as

warrant the power only being exercised by the Minister, it shall be referred to the Minister.

11. DOC's operating approach for all delegations is that authority should be delegated to the lowest appropriate level, taking into account the nature of the authority that is being delegated. This allows decisions to be made by staff with the relevant expertise and local context, helps ensure administrative efficiency, and lessens the workload on the Minister and the Director-General.
12. When an application (e.g., a mineral access application) is received for processing, advisors in DOC's Regulatory Services team undertake an initial assessment and assign it to the appropriate level of delegated decision-maker. Complex matters will be subject to oversight by a panel of Directors, and the appropriate assignee may be reassessed over the course of processing an application.
13. Triggers for escalating a decision to a higher tier of decision-making include if:
 - the delegated decision-maker escalates it ('self-nominates');
 - the panel of Directors recommends re-assignment;
 - a member of DOC's Senior Leadership Team decides to take the decision, (e.g., due to a change in context which has increased the sensitivity/risk of the decision);
 - a staff member involved in assessing or advising on the application raises the question of moving the decision due to a change in context which has increased the sensitivity/risk of the decision; or
 - a real or perceived conflict of interest emerges, on the part of the assigned decision-maker.
14. Because of the operating approach that the decision-maker should be delegated to the lowest appropriate level, there are few examples of decisions being escalated by DOC delegated decision-makers up to Ministerial level. Examples of where the Minister of Conservation has been the decision-maker include the Waitaha hydro-electric power scheme, the proposed Milford monorail, and the access arrangement for the proposed Te Kuha coal mine.
15. In some instances, joint decisions across government agencies are required. In those cases, decisions are made by decision-makers of the same tier. This happens with mining access applications that relate to "Tier 1" mineral permits (i.e., permits relating to especially high value or high-volume mining operations). For such applications, decisions are made jointly by DOC and MBIE officials because the Crown Minerals Act 1991 specifies that the Ministers of Conservation and Energy and Resources are joint decision makers in relation to Tier 1 access arrangements. The original access arrangement for exploration by OceanaGold at Wharekirauponga in Coromandel Forest Park is a recent example of such joint decision-making.

Updated preamble for your approval

16. As noted above, the preamble to the instrument of delegation sets out high-level principles that guide how delegated decision-making is allocated within DOC. Currently, the preamble includes a list of matters that may call for the exercise of powers at a higher level, including:
 - sensitive conservation values;
 - political implications;
 - social implications;
 - economic implications; and
 - Treaty of Waitangi implications.

17. We have included for your signature an updated version of the preamble that adds “international obligations” to the list above – see Attachment B (changes marked in blue text).
18. Although DOC decision-makers currently consider international obligations as a subset of the matters listed above when making decisions (i.e., political and economic implications), we consider it warranted to state it separately and explicitly. This will further ensure visibility of international obligations as a matter to take into consideration across all decision-making.

Examples of decisions the Minister may be called upon to make

19. As noted above, DOC’s operating approach is that decisions should be delegated to the lowest appropriate level, to allow decisions to be made by staff with the relevant expertise, ensure administrative efficiency and lessen the workload on the Minister and the Director-General.
20. Matters where the Minister may be called upon to make decisions are likely to:
 - involve high monetary value, where the Minister or Director-General is the only person who has the financial delegation to make the decision, and
 - be particularly sensitive or controversial.
21. The following list provides examples of particular powers to illustrate the types of decisions the Minister may be called upon to make. These include:
 - The power to exchange a stewardship area for any other land (s16A of the Conservation Act) has been delegated to the Director-General and sub-delegated to Directors of Operations. These decisions could be made under delegated authority. Where a large area of land is involved, or where a decision is likely to be controversial, the Minister may be asked to make a decision under this section.
 - Decisions on mineral access arrangements for conservation land (under the Crown Minerals Act 1991) are delegated to the Director-General and generally sub-delegated to DOC Operations Managers or the Operations Director for the region that the application relates to. In cases where an application may be especially sensitive or controversial, the decision may be elevated within DOC or to Ministerial level.
 - The power to impose a reasonable charge for the use of facilities (other than paths or tracks) in conservation areas (s17(2)) has been delegated to the Director-General, and sub-delegated to Directors Operations, Operations Managers, Director Regulatory Services, and Managers or Senior Managers of the Regulatory Services group. These decisions could be made under delegated authority.
22. Some powers have not been delegated, and the Minister would be called upon to make these decisions. For example: the power to approve or revoke general policy statements under the Conservation Act (section 17B(1)) has not been delegated. This power sits with the Minister alone and normally requires Cabinet policy decisions.

Upcoming decisions that have been considered for elevation

9(2)(j)

9(2)(j)

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Decision on concession relating to Ruapehu Alpine Lifts

34. Ruapehu Alpine Lifts Ltd operates the Tūroa and Whakapapa ski-fields on Mt Ruapehu. The company was placed into voluntary administration in October 2022 and subsequently into liquidation in June 2023. MBIE and the liquidators are working through a process to find buyers for the business to be sold as a going concern.
35. The Ruapehu ski-field operation has a high public profile and multiple potential buyers have expressed interest in buying it. Any person or business buying the liquidated business will require a new concession from DOC.
36. DOC has considered the appropriate level for decision-making on new Ruapehu concessions and has determined that the appropriate decision-maker is the Deputy Director-General, National Operations and Regulatory Services.
37. While there are economic, political and Treaty of Waitangi implications to this decision, DOC does not consider these to be of such significance that the decision needs to be escalated further.
38. If you wish to make this decision yourself as Minister of Conservation, you may inform the Director-General of this. DOC officials will then provide you with the relevant decision-support materials.

Risk assessment – Aronga tūraru

9(2)(g)(i)

Legal implications – Te hīraunga a ture

40. There are no immediate legal implications associated with this briefing.

Next steps – Ngā tāwhaitanga

41. We recommend that you sign the attached amended preamble to DOC's instrument of delegation, which includes 'international obligations' as a ground for elevating delegated decisions (Attachment B).
42. When the attached preamble has been signed by you and the Director-General of Conservation, the new version will be made available to provide guidance for DOC decision-makers.
43. If you wish to make the decision on **9(2)(j)** you may indicate this via this briefing. DOC officials will then provide you with the relevant decision-support materials.
44. We will inform you of upcoming decisions where we consider it may be warranted for the decision to be elevated to Ministerial level.

ENDS

9(2)(j)

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9(2)(j)

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Department of
Conservation
Te Papa Atawhai

DRAFT

DEPARTMENT OF CONSERVATION

PREAMBLE - INSTRUMENT OF DELEGATION

VERSION 15, 2023

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DEPARTMENT OF CONSERVATION

PREAMBLE - INSTRUMENT OF DELEGATION

VERSION 15

1. PURSUANT to section 57 of the Conservation Act 1987 I, HONOURABLE WILLOW-JEAN PRIME, Minister of Conservation, DELEGATE to the Director-General of Conservation, such of my powers, functions and duties under the Acts and Regulations and other instruments as are set out in the following Schedules.
2. I CONSENT to the Director-General of Conservation SUB-DELEGATING those powers functions and duties to the holders for the time being of the positions specified in the following Schedules.
3. The exercise of those powers, functions and duties is subject to the following conditions and provisions, and to the "Limitations of Powers" specified in the Schedules:
 - (i) Any matter which, in a delegate's opinion, calls for the exercise of any of the powers, functions or duties referred to in the schedules at a higher level because of the nature of the issues involved, including:
 - (a) sensitive conservation values;
 - (b) political implications;
 - (c) social implications;
 - (d) economic implications;
 - (e) Treaty of Waitangi implications;
 - (f) International obligations.shall refer that matter to a higher level of authority for consideration and/or decision.
 - (ii) Any matter which, in the Director-General's opinion, is either of such national interest, or involves such environmental, social, or economic implications, or international obligations, as warrant the relevant powers in the Schedules only being exercised by the Minister of Conservation, shall be referred to the Minister accordingly.
 - (iii) Every delegate shall ensure that he/she obtains legal advice before exercising a power where in his/her opinion its exercise involves:
 - (a) significant conservation values;
 - (b) political implications;
 - (c) social implications;
 - (d) economic implications;
 - (e) Treaty of Waitangi implications;
 - (f) International obligations.
 - (g) the intended use of a warrant or other authority to enter private land or premises;
 - (h) the intended seizure or release of any aircraft;

- (i) the proposed revocation, suspension or amendment of a permit, licence, concession, consent, authorisation or other similar document, which action has not been requested or agreed to by the affected party.
- (iv) Where a power, function or duty in a Schedule has been delegated to a particular position the holder of any joint position shall be able to exercise the same power, function or duty as if his/her position had been specifically referred to in the relevant Schedule.
- (v) Instruments of delegation listed in the Schedule made by earlier Ministers of Conservation and Directors-General remain in force.
- (vi) The Instrument of Delegation for Territorial Authorities made pursuant to the Reserves Act 1977, dated 12 June 2013 remains in force.
- (vii) The Instrument of Delegation dated 16 December 2010, given by the then Minister of Conservation in relation to section 34A of the Resource Management Act 1991, and in accordance with the powers of a regional council that the Minister has under section 31A of that Act in respect of the Kermadec Islands, the Snares Islands, the Bounty Islands, the Antipodes Islands, the Auckland Islands, Campbell Island and the islands adjacent to Campbell Island), remains in force.

SIGNED at Wellington this 24)
 day of August 2023 by)
HONOURABLE WILLOW-JEAN)
PRIME, Minister of)
 Conservation)


 "W. Prime"

PURSUANT to section 58 of the Conservation Act 1987 and clause 2 Schedule 6 Public Service Act 2020, I, PENNY NELSON, Director-General of Conservation, HEREBY SUB-DELEGATE the powers delegated to the Director-General by the Minister of Conservation which are referred to in the following Schedules and DELEGATE my powers referred to in the following Schedules to the holders of the positions specified in the Schedules and subject to the same conditions as are set by the Minister in this Instrument.

SIGNED at Wellington this Xth)
 day of X 2023 by)
PENNY NELSON,)
 Director-General of Conservation)

"P. Nelson"

SCHEDULES

1. In the following Schedules that set out the Delegations the "X" column shows from whom the power, function or duty originates, that is, either the Minister("M") or the Director-General ("D").

2. The "O" column shows the date on which the respective powers were delegated.

Number of Delegation - the "O" column	Date of Instrument of Delegation
133	9.9.15
134	30.5.16
135	5.8.16
136	17.11.16
137	17.10.16
138	17.11.16
139 (MMPA delegation)	25.7.17
140	15.5.17
141	11.7.17
142	6.7.17
143	22.5.17
144	5.3.18
145	20.2.18
146	15.12.17
147	25.6.18
148	26.7.18
149	9.1.19
150	21.3.19
151 "PPLM" delegation	7.7.19
152 "PPLM" RMA delegation	7.7.19

Number of Delegation - the "O" column	Date of Instrument of Delegation
153 EEZ & CS(EE)Act	6.11.19
154 TIES Amending delegation	21.11.19
155 CabNet Access	3.12.19
156 Delegations across 8 Acts to authorise warranted officers to issue infringement notices.	20.4.20
157 RMA Amdt.	10.10.19
158 Walking Access Act 2008	27.8.20
159 Covid -19 Recovery	20.8.20
160 Trade in Endangered Species Act	17.8.20
161 Conservation Act -reconsidering decisions	3.11.20

162 Conservation Act - firearms	24.8.20
163 Official information Act	15.12.20
164 Public Service Act	20.12.20
165 National Parks Act	21.12.20
166 Crown Entities Act	01.04.21 (Minister to DG) and 04.05.21 (DG sub-delegated)
167 Whitebait Fishing Regulations 2021	16.08.21
168 Wildlife Regulations 1955	27.09.21
169 Conservation Act 1987	27.09.21
170 Wildlife Act 1953, National Parks Act 1980, Conservation Act 1987	11.11.21
171 Conservation Act 1987 s53(1) re specific lease	6.12.21
172 Conservation Act 1987, Reserves Act 1977, Harbour Boards Dry Land Endowment Revesting Act 1991	21.12.21
173 Conservation Act (indigenous freshwater fish updates)	15.03.22
174 Conservation Act (firearms)	13.05.22
175 Conservation Act (management plans)	29.08.22
176 Revised role definitions due to organisational reset	25.11.22
177 Wildlife Act 1953 section 71 (joint consent with Minister of Transport)	13.07.23

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DEPARTMENT OF CONSERVATION

PREAMBLE - INSTRUMENT OF DELEGATION

VERSION 15

Freedom Camping Act 2011

DOC-2583754

Freshwater Fisheries Regulations 1983

DOC-2583755

Harbour Boards Dry Land Endowment Revesting Act 1991.

DOC-2583756
Hauraki Gulf Marine Park Act 2000
DOC-2586035
Impounding Act 1955
DOC-2583757
Land Act 1948
DOC-2583758
Land Act Regulations 1949
DOC-2583760
Local Government Act 1974
DOC-2583761
Local Government Act 2002
DOC-2583762
Marine and Coastal Area Act 2011
DOC-2586045
Marine Farming Act 1971
DOC-2583763
Marine Mammals Protection Act 1978
DOC-2583766
Marine Mammals Protection Regulations 1992
DOC-2583767
Marine Reserves Act 1971
DOC-2583769
Marine Reserves Regulations 1993
DOC-2583771
Maungahuru-Tangitu Hapu Claims Settlement Act 2014
DOC-2586044
Mining Act 1971
DOC-2586046
National Parks Act 1980
DOC-2583791
National Parks Bylaws
DOC-2583793
Ngai Tahu Claims Settlement Act 1998
DOC-2583794
Official Information Act 1982
DOC-2583795
Personal Property Securities Act 1999
DOC-2583796
Petroleum Act 1937

DOC-2583799
Public Works Act 1981
DOC-2583802
Reserves Act 1977
DOC-2583804
Reserves Amendment Act 1996
DOC-2583805
Reserves & Other Lands Disposal Act 1956
DOC-2583806
Reserves & Other Lands Disposal Act 1982
DOC-2583810
Residential Tenancies Act 1986
DOC-2585459
Resource Management Act 1991
DOC-2585520
Ship Registration Act 1992
DOC-2585533
State Sector Act 1988
DOC-2585543
Summary Proceedings Act 1957
DOC-2585554
Taupo Fishery Regulations 2004
DOC-2585583
Titi (Mutton Bird) Islands Regulations 1978
DOC-2585590
Trade in Endangered Species Act 1989
DOC-2585596
Trespass Act 1980
DOC-2585600
Walking Access Act 2008
DOC-2585608
Wanganui River, Ongarue River and Retaruke River Water Control Order 1982
DOC-2585612
West Coast Wind-Blown Timber (Conservation Lands) Act 2014
DOC-2586073
Whitebait Fishing Regulations 1994/1965
DOC-2586078
Whitebait Fishing (West Coast) Regulations 1944/1966
DOC-2586086
Wild Animal Control Act 1977
DOC-2585619

[Wildlife Act 1953](#)

DOC-2585621

Wildlife (Chatham Islands) Notice 2015

DOC-2586213

[Wildlife \(Farming of Unprotected Wildlife\) Regulations 1985](#)

DOC-2585627

Wildlife Regulations 1955

DOC-2585624

ENDS

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