

# Departmental Disclosure Statement

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## West Coast Wind-blown Timber (Conservation Lands) Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Conservation.

The Department of Conservation certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

Jeff Flavell

Director Policy

[Finalised 25<sup>th</sup> June 2014].

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## Part One: General Policy Statement

### General policy statement

This Bill allows the removal of timber from trees that were irreversibly damaged by Cyclone Ita from some public conservation lands on the West Coast of the South Island. However, only timber that will be processed into finished or manufactured indigenous timber products, sawn or cut wood (excluding firewood and wood chips), or other products specified by the Director General in the authorisation, may be removed.

Because of the special values present on land with some particular classifications of protection, the Bill does not allow timber recovery from them. These areas are ecological areas, national parks, the white heron breeding area near Whataroa, and land covered by the South-West New Zealand World Heritage area. For other public conservation lands on the West Coast, the Bill provides that the Director-General of Conservation may authorise recovery of wood from trees irreversibly damaged by Cyclone Ita, with recovery to be completed within a five-year period, or earlier as may be specified in an authorisation.

### Background

On 17th April 2014, Cyclone Ita caused significant windfall damage to forests on the West Coast of the South Island. Areas of public conservation land have had trees blown down or irreversibly damaged by this event.

An event of this scale provides the potential for the recovery of a proportion of trees that have been blown down or irreversibly damaged, because the forests have already been very significantly impacted by the storm, and because there is a lot of dead or dying tree material that will remain in situ to contribute to the ecological cycling that forest ecosystems in New Zealand rely upon. There is a degree of urgency surrounding recovery of timber because of sap-staining in beech wood, and because pinhole borer can be expected to affect beech trees, especially once spring begins.

The current legislation is very restrictive with regards to removal of wood from land administered under the Conservation Act 1987 when there is gain or reward from the wood (s.30 Conservation Act 1987). Under current legislation, recovery of wood may be authorised in some circumstances, and taking of wood for traditional Maori purposes may also be authorised.

The restrictive nature of the current legislation would prevent the timely recovery of wood from wind-blown trees. This Bill seeks to allow for a limited recovery to be authorised within the short timeframes available before beech wood is adversely affected by sap-staining and borer, while providing that impacts of the activities must be minimised. The Bill provides for royalties to be charged for the timber. These payments would go into the Crown bank account, but it is expected that they would be appropriated to Vote:Conservation to allow them to be used for conservation purposes.

In determining the policy behind this Bill, the Minister of Conservation has consulted with Te Rūnanga o Ngāi Tahu, and particular regard was had to their views.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	[YES]
<p>Richardson SJ, Smale MC, Hurst JM, Fitzgerald NB, Peltzer DA, Allen RB, Bellingham PJ, McKelvey PJ,. 2009. Large-tree growth and mortality rates in forests of the central North Island, New Zealand. Published on-line: 10 July 2009</p> <p>Allen RB, Bellingham PJ, Holdaway RJ, Wiser SK 2013. New Zealand's indigenous forests and shrublands. In Dymond JR ed. Ecosystem services in New Zealand – conditions and trends. Manaaki Whenua Press, Lincoln, New Zealand.</p> <p>Evans, AM, Clinton PW, Allen RB, Frampton CM. 2003. The influence of logs on the spatial distribution of litter-dwelling invertebrates and forest floor processes in New Zealand forests. <i>Forest Ecology and Management</i> 184 (1-3), 251 – 262.</p> <p>Jane GT. 1986. Wind damage as an ecological process in mountain beech forests of Canterbury, New Zealand. <i>New Zealand Journal of Ecology</i> 9:25–39.</p> <p>Martin TJ, Ogden J. 2006. Wind damage and response in New Zealand forests: a review. <i>New Zealand Journal of Ecology</i> 30(3): 295-310.</p> <p>Richardson SJ, Peltzer DA, Hurst JM, Allen RB, Bellingham PJ, Carswell FE, Clinton PW, Griffiths AD, Wiser SK, Wright EF. 2009. Deadwood in New Zealand's indigenous forests. <i>Forest Ecology and Management</i> 258: 2456–2466.</p> <p>Glenn H. Stewart, Larry E. Burrows 1994. Coarse woody debris in old-growth temperate beech (<i>Nothofagus</i>) forests of New Zealand. <i>Canadian Journal of Forest Research</i>, 1994, 24(10): 1989-1996.</p> <p>Elliott, G.P.; Dilks, P.J.; O'Donnell, C.F.J. 1996. Nest site selection by mohua and yellow-crowned parakeets in beech forest in Fiordland, New Zealand. <i>NZ Journal of Zoology</i> 23: 267-278.</p> <p>O'Donnell, C.F.J.; Dilks, P.J. 1994. Foods and foraging of forest birds in temperate rainforest, South Westland, New Zealand. <i>NZ Journal of Ecology</i> 18: 87-107.</p> <p>Sedgeley, J.A. 2003. Roost site selection and roosting behaviour in lesser short-tailed bats (<i>Mystacina tuberculata</i>) and comparisons with long-tailed bats (<i>Chalinolobus tuberculatus</i>) in <i>Nothofagus</i> forest, Fiordland. . <i>New Zealand Journal of Zoology</i> 30: 227-241.</p> <p>Sedgeley, J.A.; O'Donnell, C.F.J. 1999a. Roost selection by the long-tailed bat, <i>Chalinolobus tuberculatus</i>, in temperate New Zealand rainforest and its implications for the conservation of bats in managed forests. <i>Biological Conservation</i> 88: 261–276.</p> <p>Sedgeley, J.A.; O'Donnell, C.F.J. 1999b. Factors influencing the selection of roost cavities by a temperate rainforest bat (<i>Vespertilionidae</i>: <i>Chalinolobus tuberculatus</i>) in New Zealand. <i>Journal of Zoology (London)</i> 249: 437–446.</p>	

## Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>[NO]</b>
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## Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>[YES]</b>
<p><i>Legislation to allow recovery of indigenous timber from some protected areas affected by West Coast (South Island) cyclone event</i></p> <p>The RIS has been withheld given the commercial confidentiality of the proposal, and will be published prior to the introduction of the Bill on the Department of Conservation website: <a href="http://www.doc.govt.nz">www.doc.govt.nz</a>.</p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>[NO]</b>
<p>The proposed regulatory options were not considered likely to have significant impacts or risks. Therefore, the RIS did not meet the threshold for RIA Team assessment.</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>[NO]</b>
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## Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>[NO]</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>[YES]</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>[NO]</b>
<p>There some limited information on revenue benefits for conservation, and wider economic benefits set out in the RIS.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>[NO]</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>[NO]</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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Te Wāhipounamu - South West New Zealand World Heritage Area is internationally recognised UNESCO World Heritage site, and has been specifically excluded from the Bill
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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Te Rūnanga o Ngāi Tahu have been consulted as part of the development of the policy, and in regard to operational processes, and taonga species. This is considered to be consistent with the Department's responsibilities under the Ngāi Tahu Claims Settlement Act. The Bill will be included in Schedule 1 of the Conservation Act and therefore must be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi (section 4, Conservation Act 1987).
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>
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[YES]
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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <a href="http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/">http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/</a>
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## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>[YES]</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>[NO]</b>
<p>There are no offence provisions in the Bill.</p> <p><b>Resource Management Act 1991:</b> Clause 19 states that sections 9,13,14, and 15 of the Resource Management Act 1991(RMA) do not apply to activities permitted by an authorisation.</p> <p>The intention is for authorisations to be given without requiring resource consents under the RMA. Clause 10(3) provides conditions that the Director General must be satisfied of before an authorisation will be granted. Those conditions include ensuring: (iii) adverse effects on the environment are kept to a minimum, (v) the activities do not cause significant soil disturbance, (vi) the effects of the activities within the specified site on the environment outside of the specified site are not contrary to the purpose of the RMA, and (vii) the activities permitted within the specified site do not breach and National environmental standard prescribed under s42 RMA.</p> <p>The drafting in relation to the Resource Management Act 1991 (RMA) has the following features:</p> <ul style="list-style-type: none"> <li>a. It only disallows specific sections of the RMA that require consents to be sought for particular types of activities. All other aspects of the RMA will still apply. For example if an activity was causing significant adverse effects on the environment, the relevant council could use enforcement powers to address that issue.</li> <li>b. The Director-General is required to ensure that any off-site effects are consistent with the purpose of the RMA. The sort of off-site effects that might be caused by timber recovery include downstream pollution from discharges to streams, noise affecting neighbours, and air emissions from machinery.</li> <li>c. The Director-General may set any conditions that are necessary to ensure that effects of the activities are minimised.</li> <li>d. Activities undertaken outside the protected area (e.g. processing the timber) is not covered by the Bill, and would be subject to normal RMA controls.</li> </ul> <p><b>Forests Act 1949:</b> Clause 11 states that despite 67C(1) of the Forests Act indigenous timber removed in accordance with an authorisation may be exported from NZ if the timber is sawn beech, sawn rimu, a stump, a root or a tree fern trunk or part thereof. The intention is that the export limitations of the Forests Act apply as if the timber were taken from an area subject to a sustainable forestry management plan registered under the Forests Act.</p> <p><b>Conservation Act, Wildlife Act, Reserves Act:</b> Clause 17 provides that a person who carries out an activity in accordance with an authorisation does not commit an offence against the Conservation Act, Reserves Act or Wildlife Act. This is to ensure authorised timber removal activities do not unintentionally trigger offence provisions under those Acts.</p>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>[YES]</b>
<p>The Ministry of Justice was consulted regarding the possibility of including offence provisions in the Bill (which were eventually not included) and in the drafting of Clause 17 in the Bill (permitted activity not an offence).</p>	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>[NO]</b>
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## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>[YES]</b>
<p>Representatives of Forest and Bird were consulted by the Director-General of Conservation, who was seeking to understand what the likely reaction of the conservation movement would be to timber recovery. Their view is the windthrown trees should not be salvage-logged for ecological and other reasons.</p> <p>Te Rūnanga o Ngāi Tahu have been consulted as part of the development of the policy, in regard to operational processes, and taonga species and this is considered to be consistent with responsibilities under the Ngāi Tahu Claims Settlement Act. Particular regard has been had to their views by the Minister of Conservation in the final determination of the policy being implemented through the Bill.</p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>[YES]</b>
<p>The Department has worked collaboratively with the Ministry for Primary Industries, the Ministry of Justice and the Ministry for the Environment in order to ensure that the provisions of the Bill achieve the policy intent that Cabinet had.</p>	



## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	[NO]
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### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	[NO]
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### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	[NO]
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### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	[NO]
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	[NO]

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	[NO]
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### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	[NO]
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### Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	[NO]
4.8. Does this Bill create or amend any other powers to make delegated legislation?	[NO]

#### Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	[YES]
<p>The intention is that authorisation will replace the need for resource consents under the Resource Management Act (RMA) for any timber recovery on public conservation land. Related activity off public conservation land will still be subject to the RMA. This is necessary to prevent delays in authorising removal of timber, particularly beech which will be damaged by sap staining and borer if left for too long, and if multiple consents are required under different legislation.</p>	

