

Your Comment on the Wellington International Airport Southern Seawall Renewal project

Please include all the contact details listed below with your comments and indicate whether you can receive further communications from us by email at substantive@fastrack.govt.nz

1. Contact Details			
Please ensure that you have authority to comment on the application on behalf of those named on this form.			
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<input checked="" type="checkbox"/>	I can receive emails and my email address is correct	<input type="checkbox"/>	I cannot receive emails and my postal address is correct
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Please provide your comments below, include additional pages as needed.

Please find comments attached

Jenni Fitzgerald
 Fast-Track Applications Manager

Acting pursuant to delegated authority on behalf of the Director-General of Conservation.

Date: 05/05/2025

Note: A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House Whare Kaupapa Atawhai, 18/32 Manners Street, Wellington 6011

Comments on draft conditions for a fast-track consenting application

Fast-track Approvals Act 2024 section 70

To: The Expert Panel

From: Department of Conservation

Regarding fast-track project: Wellington International Airport Southern Seawall Renewal

Fast track Reference: FTAA-2510-1118

Comments on draft conditions of Wildlife Act approval

Condition #	Draft condition with track-changed suggestions	Comments and reasoning
Lizards - Schedule 1, clause 1	<p>The activities authorised are:</p> <ul style="list-style-type: none"> a) To catch, handle, salvage and relocate absolutely protected wildlife (lizards) listed in Schedule 4 from the Stage 1 Kororā Colony, Southern Seawall, Moa Point Yard and MGC Yard <u>and into the WIAL Release and Moa Point Reserve</u> footprints. b) To incidentally harm or kill absolutely protected wildlife (lizards) listed in Schedule 4. <p><u>Methodology:</u></p> <ul style="list-style-type: none"> a) <u>a) As set out in the Lizard Management Plan (LMP) (prepared by BioResearches Ltd and dated 30 January</u> 	Amendments recommended to clarify authorised activity and ensure the approval is exercised in accordance with relevant Lizard Management Plan (Schedule 3, clause 1).

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2026) or an amended LMP certified through the conditions below.

Lizards – Schedule 1, clause 3	<p>a) <u>Chris Wedding</u></p> <p>b) <u>Suitably qualified personnel under the direct supervision of Chris Wedding</u></p> <p>c) A suitably qualified and experienced practitioner (SQEP) approved <u>in writing</u> by the Department of Conservation with expertise relevant to the protected wildlife species concerned and other person(s) under the direct supervision of the suitably qualified and experienced practitioner.</p>	Suggest named Authorised Personnel are included here to avoid the need for any additional approval from DOC in the first instance.
Lizards – Schedule 2, clause 1 NEW 1.3	<u>The Wildlife Approval Holder is responsible for the acts and omissions of its employees, contractors or agents. The Wildlife Approval Holder is liable under this Approval for any breach of the terms of the Approval by its employees, contractors or agents as if the breach had been committed by the Wildlife Approval Holder.</u>	New subclause recommended in accordance with standard approvals granted under the Wildlife Act 1953.
Lizards – Schedule 2, clause 2 NEW 2.7	<u>The Wildlife Approval Holder must comply with any reasonable request from the Director-General for access to any wildlife.</u>	New subclause recommended in accordance with standard approvals granted under the Wildlife Act 1953.
Lizards – Schedule 2, clause 6.1	The Wildlife Approval Holder must comply with all statutes, bylaws and regulations, <u>directions and requisitions of the Director-General and any competent authority relating to the conduct of the Authorised Activity and other statutory instruments associated with the Land.</u> Without limitation, this includes the Conservation Act 1987 and the Acts listed in the First Schedule of that Act and all applicable health and safety legislation and regulation.	Amendment recommended in accordance with standard approvals granted under the Wildlife Act 1953 to address the Authorised Activity rather than the land.

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Kororā - Schedule 1, clause	A suitably qualified and experienced practitioner (SQEP) expert approved <u>in writing</u> by the Department of Conservation with expertise relevant to the protected wildlife species concerned and others persons who have been suitably trained to handle the protected wildlife species concerned.	As above, Authorised Personnel may be listed here to avoid any further DOC approval.
Kororā - Schedule 2, clause 1 NEW 1.3	<u>The Wildlife Approval Holder is responsible for the acts and omissions of its employees, contractors or agents. The Wildlife Approval Holder is liable under this Approval for any breach of the terms of the Approval by its employees, contractors or agents as if the breach had been committed by the Wildlife Approval Holder.</u>	As above.
Kororā - Schedule 2, clause 2 NEW 2.7	<u>The Wildlife Approval Holder must comply with any reasonable request from the Director-General for access to any wildlife.</u>	As above.
Kororā - Schedule, clause 5.1	The Wildlife Approval Holder agrees to exercise the approval at the <u>its</u> own risk and releases, to the full extent permitted by law, the Director-General and the Director-General's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage, or injury occurring to any person or property arising from the Approval Holder's exercise of the Approval.	
Kororā - Schedule, clause 6.1	The Wildlife Approval Holder must comply with all statutes, bylaws and regulations, <u>directions and requisitions of the Director-General and any competent authority relating to the conduct of the Authorised Activity and other statutory instruments associated with the Land.</u> Without limitation, this includes the Conservation Act 1987 and the Acts listed in the First Schedule of that Act and all applicable health and safety legislation and regulation.	As above.

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Kororā -
Schedule 3,
clause 3.2

Penguins can only be captured, handled, and relocated if they are not at a nest containing viable eggs or chicks. Any penguin that is at a nest containing viable eggs or chicks must not be captured, handled, and relocated until the ~~nest no longer contains viable eggs or live chicks, or the~~ breeding attempt is complete or has been abandoned. If a penguin is located during construction at a nest containing viable eggs or chicks, a 10 m setback around the penguin's nest must be established and no construction activities may occur in this area. Temporary signs must also be established providing information that a penguin is present and not to be disturbed.

Amendment suggested to clarify that the activity applies to the presence of viable eggs and does not apply to older (previous season) eggs that may be present in a burrow.

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Comments on draft conditions of resource consent

Condition #	Draft condition with track-changed suggestions	Comments and reasoning
ECO.20	<p><u>Advice note:</u> <u>It is an offence under the Wildlife Act 1953 to capture, liberate, mark, hunt or kill or be in possession of protected species, or to rob, disturb, destroy, or to be in possession of the nest of any protected species without lawful authority. The consent holder will need to obtain authority under the Wildlife Act prior to undertaking any such activities.</u></p>	<p>This advice note is recommended given that additional Wildlife Act approvals may need to be sought outside of the Fast Track approval process for activities such as the handling of (non-kororā) avifauna chicks or nests.</p>
ECO.68	<p>If a marine mammal is observed within the Marine Mammal Observation Zone (as defined in the MMMP) during rock milling on the Southern Seawall, rock milling will<u>must immediately</u> cease and will<u>must</u> not recommence until the SQEP (marine ecology) identified in ECO.66(a) has confirmed rock milling can recommence.</p>	<p>Less equivocal wording is recommended to ensure rock milling stops as soon as a marine mammal is observed within the MMOZ.</p>
ECO.66	<p>To achieve the objective set out in Condition ECO.65, the MMMP must include:</p> <ul style="list-style-type: none"> (a) Identification of the SQEP (marine ecologist) who will be responsible for overseeing implementation of the MMMP; (b) A summary of the affected habitats and species covered by the MMMP; (c) Management actions and protocols to mitigate adverse construction noise effects on marine mammals <u>including a requirement that during rock milling operations the marine mammal observer must maintain a constant visual watch of the MMOZ;</u> (d) Details of timing for when actions and protocols set out in the MMMP are to be implemented <u>including a requirement to commence in situ verification of underwater noise levels concurrently with the beginning of works;</u> and (e) Observation, survey and monitoring protocols and associated reporting requirements, <u>including a</u> 	<p>These amendments build on comments provided by DOC under section 53 of the Fast-track Approvals Act 2024, as well as recent updates made to the MMMP in response to these comments. While it is noted that these objectives are at least partially addressed within the MMMP, the following changes are intended to provide greater clarity and enforceability and to ensure that these measures are included in any future iterations of the MMMP.</p>

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requirement to notify the Manager GWRC of the results of in situ noise verification and any subsequent adjustments made to management measures (if necessary), and a requirement to provide the Manager GWRC and the Department of Conservation Operations Manager for Wellington (wellington@doc.govt.nz) with an annual summary report of marine mammal sightings and mitigation measures undertaken.

ECO.69 - ECO.72	<u>Rocky reef Biota growth</u> survey	Discussed below.
ECO.69	The Consent Holder must undertake marine ecology surveys of the Southern Seawall for 3 years following completion of construction works at the Southern Seawall. The survey must be undertaken by or under the direction of a SQEP (marine ecologist) in accordance with the Subtidal <u>Ecological Habitat</u> Monitoring Plan (<u>SEHMP</u>) prepared in accordance with Condition ECO.70	<p>As drafted, the condition appears to only captures monitoring of species that will grow on the Cubipods (e.g. the likes of seaweed, sponges and tubeworms).</p> <p>It is DOC's view that these conditions should not be limited to habitats. The following changes are therefore recommended to ensure the conditions also apply to any animals that live directly on or may be associated with the Cubipods, including species like pāua and lobster / kōura.</p> <p>All other references to the "SHMP" in conditions ECO. 70 – ECO.72 should be replaced with "SEMP".</p>
ECO.71	The objective of the <u>SEHMP</u> is to: (a) Detail how the Project proposes to monitor the rate of recolonisation of biota at the Southern Seawall and its toe; (b) Assess the rate of recolonisation of biota to contribute to understanding of biota colonisation on <u>of</u> artificial structures; and (c) Assess whether subsequent monitoring is required.	Amendment to further support changes discussed above.

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Comments on Reserves Act Approval Conditions - Appendix C

DOC notes that the reserves subject to this application are vested in and administered by the Wellington City Council. DOC acknowledges that the application of Schedule 6 (Part 1 Concessions) of the Act to non-Crown concessions is not straightforward. However, DOC is concerned that some of the limits and requirements in Schedule 6 have been overlooked in the draft decision and conditions for the Reserves Act approvals. In order to assist the Panel, and ultimately all parties who have an interest in these approvals being legally robust, DOC respectfully suggests that the empowering provisions in Schedule 6 for the Reserves Act approval are more closely considered on the specific points raised below.

Condition #	Draft condition with track-changed suggestions	Comments and reasoning
Occupation Licence (Appendix C to draft decision, schedule 2) Term Expiry Date Renewal Terms	49 years 49 years following the Commencement Date In perpetuity for 49-year terms... [no track-changed suggestions – please see comments]	The draft license is proposed to be for 49 years with perpetual renewal rights of 49 years. However, FTAA Schedule 6 clause 13 applies s 17Z of the Conservation Act 1987 which limits lease and license duration to 30 years (plus one 30 year renewal in exceptional circumstances). DOC respectfully suggests that Schedule 7 clause 13 is more explicitly considered in relation to the proposed term.
Fee / Annual Rental (Lease and Licences in Appendix C to draft decision)	\$1.00 per annum, plus GST [no track-changed suggestions – please see comments]	The proposed fee of \$1.00 plus GST per annum appears to be presented as the assessed fee under sections 17X(c) and 17Y of the Conservation Act 1987. Sch 6 clause 8(1) of the FTAA imports section 17 X of the Conservation Act 1987 in relation to conditions (including fees). Section 17X in turn imports s 17Y(2) of the Conservation Act which enables a rent, fee or royalty to be fixed at market value. It appears that the fee/rental of \$1.00 plus GST is not a market fee for these activities. Section 17X(f) enables the waiver or reduction of rent, but only in specified circumstances. It is not clear from the draft decision whether there has been explicit consideration for reducing or

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waiving the fee under section 17X(f). While the circumstances may meet the tests for a reduction or waiver, this is not clearly set out.

We suggest that the decision documentation more clearly records whether section 17X(f) has been considered and, if so, the rationale for applying a nominal fee. This would help improve transparency around applying the statutory criteria for this commercial element of the concession.

Fee / Annual
Rental
(Lease and
Licences in
Appendix C
to draft
decision)

Clarification suggested around rent review conditions.
[no track-changed suggestions – please see comments]

Review provisions are addressed in FTAA sch 6 clause 20 and s 17Y(3) of the Conservation Act. The lease and licences have different review provisions and give no detail on how or when that review would occur, or who would be responsible for it. These matters would usually be set out more clearly in a concession agreement.

We suggest that instruments clearly set out whether fees will be reviewed, and if so, how, when (and by whom).

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