Conservation House
PO Box 10420
Wellington 6011

doc.govt.nz

17 June 2026

Fast-track Team
Environmental Protection Agency

substantive@fasttrack.govt.nz

Kia ora

**FTAA 2509-1100 THE POINT SOLAR FARM – UPDATED ECOLOGICAL INFORMATION - COMMENTS FROM DIRECTOR-GENERAL OF CONSERVATION**

1.1. In its Requests for Further Information 5 and 10 the Expert Panel sought further information from the applicant under section 67 of the Fast-track Approvals Act 2024 (the Act) in regard to ecological matters relevant to the application. This information has now been provided, and at the direction of the Panel, the EPA has sought further information (Request for Information 12) from the Department of Conservation (DOC) regarding the updated ecology information provided by the applicant.

1.2. This letter responds to that request.

1.3. Although the Panel initially sought DOC's response by Friday 12 June, we were not able to meet that date – mainly due to staff availability conflicts with other Fast-track processes. The Panel agreed to an extension to Wednesday 17June, which is appreciated.

1.4. In summary, DOC's responses to the two questions asked by the Panel are as follows:

(a) whether the updated ecology information satisfies (in whole or in part) any concerns previously expressed:
**The information has partially addressed some concerns expressed in DOC's s 53 comments, but significant concerns remain.**

(b) whether you consider there are material deficiencies in the information now before the Panel:
**DOC considers there are a number of material deficiencies remaining, which are outlined below.**

(c) What further amendments you consider are required to the updated condition sets, as to any ecology matters:

**DOC considers that a number of amendments to conditions would be required, which are addressed in more detail below.**

1.5. In preparing this response, DOC has sought advice from the technical advisors who inputted into the original DOC section 53 comments dated 19 February 2026.

**Limitations on DOC's ability to respond on ecological information and conditions**

2.1. We note, as outlined in our Memorandum of Counsel of 22 April, that DOC had no input into the updated condition sets of 21 April, and was not given an opportunity to comment on those updated ecological conditions[1]. We understand that the Panel's Minute 7 directed the expert condition writers to consult with those s 53 parties who requested further input into conditions – we confirm that this did not occur for DOC.

2.2. We have also had no involvement in the subsequent revision of conditions leading to the updated set as provided by the applicant on 29 May 2026 (RFI 10).

2.3. The timing of the further information from the applicant meant that DOC's lizard expert, Dr Tocher, was travelling overseas and unable to provide a stand-alone report. However, she has been able to review the relevant documents and provide input into DOC's comments, which is reflected below.

2.4. We also note that, even with the extension, the available time to review the updated material and prepare these comments was limited given the quantity and complexity of the information. This has been exacerbated by the fact that there are now multiple versions and iterations of the application documents, with the 'current state' of the application distributed unevenly across them. These comments should therefore be taken as an indicative response and not a complete statement of DOC's position.

**General comments on approach**

3.1. In its original comments, DOC noted that the site has significant biodiversity values, with Threatened and At-Risk species of plants, invertebrates and lizards within the development footprint and around its edges.

3.2. We also noted that the site has very high bird activity, including for three Threatened - Nationally Critical bird species, and the Nationally Endangered black-fronted tern.

3.3. In those comments we set out that, if consent was granted, compensation would be required to address residual adverse effects on terrestrial and avifauna values. We

[1] Memorandum-from-Counsel-for-the-Director-General-of-Conservation-to-the-Joint-Panels-for-Haldon-Solar-Farm-and-The-Point-Solar-Farm-22.04.26_A.pdf

were in principle supportive of the applicant's original proposals for enhancement and compensation but considered that further work was required.

3.4. We also stated that, given the uncertainty that remained about effects, especially for avifauna, these measures would still need to sit within a wider consent framework of management plans, monitoring and reporting, intervention triggers, and review conditions as part of overall effects management.

3.5. We had significant concerns about the assessment of values, and management of effects, around and outside the perimeter of the development site.

3.6. The additional information has provided some further detail on site values and proposed effects management but to a large extent has re-presented earlier material. While this may assist in providing explanations of the applicant's approach for the Panel, most of DOC's original comments and concerns still apply.

**Vegetation**

4.1. A report from Mr Richard Ewans dated 16 June 2026 is attached as Appendix A, and assesses the updated information on vegetation.

4.2. Mr Ewans considers that the updated information largely does not address the concerns raised in his original comment on the application.

4.3. There are some improvements, such as using dripline irrigation for new plantings instead of spray irrigation, and updating the landscape mitigation planting palette.

4.4. However, his key concerns have not been resolved, particularly relating to management and monitoring of edge effects. Given that, DOC considers that the following further amendments to the application are required:

- Landscape screening plantings are located a minimum of 50 m away from the property boundary fence at all locations and not irrigated.
- If the Panel choose to allow irrigation, irrigation is via a dripline system, used minimally e.g., a maximum of once per month for no longer than 6 hours at a time, between November and April for a maximum of 3 years starting when planted.
- Plantings for landscape screening are restricted via consent conditions to those listed in Appendix 3 of Mr Ewans' initial comments dated 11 February 2026.
- Plantings for lizard and terrestrial invertebrate habitat enhancement are restricted via consent conditions to those listed in Appendix 2 and Appendix 3 of Mr Ewans' initial comments dated 11 February 2026 and are not irrigated.

- Scientifically robust monitoring of potential edge effects on the vegetation community and Threatened and At-Risk plants on the terrace adjacent to the property where landscape screening planting is proposed is specified in consent conditions and undertaken using an independent expert public science provider.
- Russell lupin is included as a compulsory weed search and control target.

4.5. We provide comments below on the latest condition sets generally but consider that the above specific points should also be incorporated into the conditions.

**Invertebrates**

5.1. Technical advice from Mr Warren Chinn dated 15 June 2026 is attached as Appendix B. While he has no concerns with the applicant's Invertebrate Management Plan, the main point raised by Mr Chinn is that the proposed location of two silt ponds as set out in the Erosion Sediment Control Plan would potentially conflict with the proposed enhancement areas for invertebrates and lizards.

5.2. This is shown in figures in his report, with the silt ponds located directly adjacent to the invertebrate reserve fence and the edge of the lizard and revegetation area. This creates risks of conflict between the different areas in terms of construction activities, location and design of structures, and the management of sediment and run-off. Of particular concern is that the silt ponds would appear to discharge into a deep gully which would also be a challenging point for predator fence design, and is high quality habitat for the robust grasshopper.

5.3. Based on Mr Chinn's review, DOC considers that further work is required on how these different areas and uses will be integrated.

**Avifauna**

6.1. Dr Colin O'Donnell has reviewed the RFI response for avifauna. His advice, dated 17 June 2026, is attached as Appendix C.

6.2. In summary, Dr O'Donnell remains concerned about the collision risk to avifauna, particularly for Threatened and At-Risk species. Dr O'Donnell explains why the proposed compensation measures and approach cannot be assumed to outweigh potential residual effects. In particular, without a Population Viability Analysis for potentially-affected species it is unknown what the impact of collisions would be on their populations. This information was capable of collation and should have been made available to the Panel. DOC's view is that the absence of this information means that a strictly precautionary approach to risk is required, particularly when dealing with Nationally Critical species where any additional mortality moves the species closer to extinction. There is also considerable uncertainty about the effectiveness of proposed mitigation measures (panel spacing, coatings etc).

6.3. Dr O'Donnell outlines a range of information requests from the Panel which have not been addressed. He also points out some inconsistencies between different parts of the applicant's response and cross-references, which appear to be incorrect (unless other updated information has been provided which DOC has not seen).

6.4. Given those uncertainties, if the project is consented, effective monitoring for collisions will be critical to understanding whether the mitigation and compensation measures are adequate, and what the resulting effects on avifauna populations are. Dr O'Donnell considers that further work on this issue is necessary, and that the consent conditions need to more specific about the monitoring programme.

6.5. Based on Dr O'Donnell's review, DOC considers that there remains significant uncertainty about what the actual effects on avifauna will be, and substantial improvement to the conditions for monitoring and response are required. We address those monitoring and response conditions further below.

**Lizards**

7.1. As noted above, Dr Tocher was unable to provide a stand-alone report but has provided comments for DOC's consideration.

7.2. The further information of direct relevance to lizards includes *Section 3.4 Lizards* of the applicant's second response to RFI 5 dated 29 May 2026, and *Attachment 6 Predator Proof Reserve and Lizard Habitat* and *Attachment 9B – MDC conditions* in the applicant's response to Request for Information 10 also dated 29 May 2026.

7.3. As a general comment, we note that there is a risk of adverse interactions between different elements of the proposed ecological responses. For example, the edge of the proposed grasshopper reserve is very close to the cobble site which is important lizard habitat. This may require more separation to ensure that the lizard habitat is not impacted by fence construction and subsequent maintenance work.

***Lizard Effects Assessment for southern grass skink***

7.4. RFI 5 sought a range of specific information about effects on southern grass skinks. The applicant's response of 29 May 2026 has responded to the specific questions but also relies on detail having been provided in the Lizard Management Plan (LMP). However, the LMP provides few details which are specific to southern grass skinks, as its effects assessment and proposed responses are directed at lizards generally rather than for particular species.

7.5. RFI 5 also sought information on uncertainties surrounding salvage and relocation success. The applicant's response does not address how lizards relocated into the gullies and enhancement area will be prevented from moving back into the construction area.

7.6. DOC disagrees with the applicant's statement that "*these measures reduce residual effects on lizards (including southern grass skink) to less than minor or negligible levels, representing a net positive outcome relative to the current modified agricultural baseline*". A net positive outcome would require that all adverse effects are fully addressed, including residual effects, and that additional benefits are then provided. That is not the case here.

***Lizard Management Plan***

7.7. The RFI responses place significant weight on the LMP, but do not propose any changes or updates to it. There are a number of matters currently missing from the LMP, including monitoring of mice; triggers for response; and response measures.

7.8. The LMP frequently references the invertebrate management plan. However, the LMP needs to be able to stand alone and clearly articulate the actions to be undertaken for lizards, so relevant information needs to be brought directly into the LMP. Only then can the LMP and its supporting material be aligned with the information requirements of Schedule 7 of the Act, and the lizard-specific conditions drafted clearly and unambiguously.

***Proposed conditions relating to lizards***

7.9. The applicant's response to RFI 10 included updated condition sets. The Mackenzie District Council consents address effects on lizards.

7.10. General points for those conditions are addressed below, but we also have some concerns specifically as the conditions relate to lizards:

- The purpose of the LMP is uncertain, as it is unknown what level of effects would constitute 'minimising' effects. It would be more effective and certain to state an explicit outcome to be achieved, e.g. "*The purpose of the Lizard Management Plan is to minimise any potential effects on indigenous skinks / geckos from construction, and to manage onsite populations to achieve no net loss of lizard individuals, populations and habitats over the duration of consents*".

- Amendments to the LMP should require prior consultation with DOC. Any amendments to the LMP under the resource consent will require separate approval by DOC for the Wildlife Approval, so that consultation with DOC will help retain alignment across the separate approvals;
- There is no requirement for long-term protection of lizard habitat enhancement areas (noting that this will not be addressed by the Wildlife Approval, as protection under the Wildlife Act applies to the wildlife and not their habitat);
- There are no protocols for accidental or incidental discoveries of lizards.

7.11. We note that the general comments on conditions below are also relevant to lizard-specific conditions.

**Conditions**

8.1. As noted above, DOC has not been engaged in the development and updating of conditions. However, we have undertaken an initial review from a planning and legal perspective, focussing on conditions relating to ecological effects in the proposed Mackenzie District Council condition set. Based on that, DOC considers that what we understand to be the latest condition set (Attachment 9B Standalone Mackenzie District Council – Land Use Conditions dated 29th May 2026) requires significant further work to address adverse effects and provide a clearer basis for implementation and enforcement.

8.2. General comments are provided below. These comments are not comprehensive, but address DOC's main concerns. All the references are to the new numbering (i.e. as of 29th May 2026).

***Lack of clear conditions and performance standards***

8.3. Ecological conditions C 68, C 79, and C 86 as presently drafted are inadequate because they contain few, if any, performance standards to be met, or time horizons for management actions, and are unclear on the location of where things may or may not occur. Rather, they rely on purpose statements that are very broad and qualitative. As a result, the conditions leave the mitigation of many effects to the discretion of the applicant, to be achieved through management plans, with those management plans being produced post-consent.

8.4. Condition 68 provides a clear example of the problem this approach to conditioning causes. The stated "purpose" of the condition is to:

- "minimise weeds" (which provides no certainty as to what level of weeds will actually be achieved) and;

- "manage indigenous vegetation on site" (which is a contestable concept, and provides no certainty on how indigenous vegetation will be managed or what the outcome will be)

8.5. In respect of C 68 (b), it is unclear whether the applicant is intending to avoid the destruction of Threatened and At-risk (TAR) vegetation, or proposing to offset and compensate for this loss. It is not clear how the effects management hierarchy will be applied (if at all).

8.6. Rather, the proposed management of TAR vegetation relies on the creation of a future Vegetation Management Plan (VMP) which is not therefore available to the Panel at the point of decision-making. Condition C 68 subparagraphs i-viii set out what the VMP must contain, but again none of these subparagraphs contain any standards to be met.

8.7. Further, there appears to be a liberal approach taken to amending management plans. It is unclear whether the subparagraphs in C 70 are intended to be conjunctive. If not, the VMP can be "amended at any time" for "the purpose of applying best practicable measures". It is not clear what this best practicable test requires as it is not tied to any consent condition objective. Best practicable measures can connote a cost benefit analysis (see RMA s 2 for example), which would imply that management of indigenous vegetation will be subject to a cost benefit analysis. If so, the result is that management of indigenous vegetation will be at the discretion of the applicant, to be determined at a later date, on the basis of presently unknown (possibly financial) factors.

8.8. In accordance with the case law that has developed in the context of management plans under the RMA, an FTAA panel can delegate the *administrative function of ensuring the appropriate standards are met* to a third party (most likely an officer of a consent authority i.e. a power of certification) via a condition. However, it is not lawful for a Panel to delegate substantive decision-making to a third party – i.e. decisions that are sufficiently important to have a bearing on whether the consent should be granted or not. As the Environment Court said in *Royal Forest and Bird Protection Soc v Gisborne DC*[2]:

> *"A condition must also be certain. It can leave the certifying of detail to a delegate, using that person's skill and experience, but cannot delegate the making of substantive decisions*."

[2] [2] (W26/2009), [2013] NZRMA 336, [2009] ELHNZ 109.

*Recommendations*

8.9. DOC considers that the following key principles should be applied to conditions and the making of management plans.

*There should be no unlawful delegation:*

- Plans cannot delegate substantive decision making concerning the acceptability of effects to later plans or 3rd parties;
- Management plans should only address "how" to comply with objectives and performance standards, not what the standard should be.

*Conditions should be clear, certain and enforceable:*

- Conditions must include objective standards or parameters;
- Plans must implement these standards, not define them.

*Proper certification:*

- Certification is for technical detail only, not substantive judgment;
- No "deemed approval" should be provided for or vague amendment process;

*Structural Clarity*

- Avoid "labyrinthine" cross- referencing and unclear outcomes which can lead to uncertainty in interpretation arising across multiple plans.

8.10. DOC's recommendation is that all ecological conditions be modified to be consistent with the above principles. Conditions should have clear objectives and associated conditions, containing sufficient technical detail of quantifiable ecological specifications/ performance standards, time horizons, and locations.

8.11. The 'best practicable measure' approach (which is used in all the ecological conditions to justify amendment of relevant management plans) should be removed, made explicitly conjunctive, and / or tied directly to a specified outcome (which would be DOC's preference - for example, in C74(b) "practicable measures to manage pest mammals to achieve the outcome set out in condition 73").

8.12. ***Conditions addressing avifauna collision risk, including objectives, monitoring, threshold triggers, management and compensation, are inadequate***

8.13. The proposed conditions addressing avifauna collision appear to be based on the conditions for the Helios solar farm in Naseby[3]. The risk profile for avifauna collision at that solar farm was much smaller than in the present context and thus the permissive approach taken to those Helios conditions (i.e. relying mainly on management planning) is not appropriate to the present scenario. The Point site is used by, and in close proximity to, large numbers of birds from a range of threatened species.

8.14. In respect of objectives for avifauna management, the conditions should contain clear standards on their face. At present, there is a purpose statement that informs the drafting of an Avifauna Management Plan (AMP) (see C 91) but not a duty placed directly on the consent holder. The condition as presently drafted defers key decisions that inform whether the consent should be granted or not to future management planning.

8.15. Further, in respect of the stated purpose in C 91, it is not clear what 'no net loss' of avifauna means. This would require precise knowledge of population trends that may not be known for some species. It is also not clear which standard of management applies ('avoid, minimise, remedy, offset, compensate') – noting, as outlined above, the standard or outcomes to be met should be a decision for the Panel, not left to a management plan.

8.16. In respect of monitoring, the draft conditions propose that monitoring be set out in the AMP. It is not clear from the conditions whether ongoing monitoring will be statistically robust, and problematically, a baseline will not be set prior to monitoring.

*Recommendation*

8.17. Given the criticality of an avifauna monitoring programme, robust standards and contextual parameters must be established in conditions, not be left to be determined in an AMP to be prepared at a future date.

8.18. DOC notes that the approach to monitoring set out in the Proteus Report for the Haldon solar farm application provides a good foundation for a monitoring programme, albeit with some limitations and required additions.

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[3] https://www.codc.govt.nz/services/planning/b-notified-consents/current-publicly-notified-consents/rc240065-helios-ota-op-lp-decision-notified

8.19. DOC's statistician's advice is that there are two key limitations with the Proteus approach that need to be addressed in The Point's monitoring programme:

a) There should be a Before-After-Control-Impact (BACI) study of avifauna use. Without a control and a baseline, it is not possible to attribute additional bird deaths to the effects of the solar farm. DOC is strongly of the view that conditions should require at least 12 months of baseline bird use surveys (seasonal point counts or line transects) at the proposed site and *at least* one comparable reference area that will not have a solar farm constructed (but is in relatively close proximity and similar in terms of habitat, environmental characteristics etc). The exact methods and quality control of data should be specified in the AMP.

b) The parameterisation of searcher efficiency and carcass persistence should be tailored to actual Mackenzie Basin conditions (as opposed to the international data that Proteus relies upon). Proteus explicitly acknowledges this limitation in their report and recommends (pre-construction and later) trials to obtain local rates. Gathering these data and re-running the simulations to inform the local monitoring design should be a requirement of consent conditions (and methods should be further detailed in the AMP). International software exists to calculate uncertainty from searcher efficiency, carcass persistence, and unsearched areas (such as the USGS GenEst) and its use, or an equivalent, would be a significant improvement on the Proteus intuitive approach.

c) In particular, the following aspects should be required in conditions:

   i. Searcher-efficiency trials: as described in the Proteus report, blinded trials for whichever method may be used in the actual surveys (e.g. by humans, dogs, or perhaps drone-based) using locally sourced carcasses or suitable (domestic) analogues. Efficiency of detection should be separately assessed for different size-classes of local avifauna (small, medium, big birds); repeated at least once pre-construction and thereafter annually for the first two operational years.

   ii. Carcass-persistence trials: Size-class-specific trials with daily to 3-day early revisit intervals to reduce bias, then the frequency of revisits can taper off.

   iii. For both i) and ii), the sample size should be set to achieve a target coefficient of variation (CV) of the response variable (searcher efficiency and carcass decay estimate, respectively) of $\leq 0.3$ (this means that if this target is not met because of noisy/variable data collection, or for any other reason, more data will need to be collected to appropriately reduce the CV to an acceptable statistical threshold).

8.20. Additionally, monitoring should also encompass the wider solar farm infrastructure such as fences and overhead wires etc, not just the solar arrays. Experimental design should include these structures as an infrastructure stratum, in surveys and modelling.

***Threshold trigger***

8.21. In respect of threshold triggers, we note that this is not a 'compensation' trigger (as stated in C 95). Rather, it triggers the need for an effective adaptive management response to stop the adverse effect continuing. Of note, it should also be explicitly stated that the period in the threshold table is a 'rolling 12-month period'.

***Management measures***

8.22. If collisions occur, the proposed conditions leave actual management to be determined in a future Bird Collision Management Plan (BCMP) to be certified within 40 working days after a threshold is exceeded (noting this should be 'reached' not 'exceeded'). The delay of 40 working days for a BCMP being presented for certification, and then presumably another unspecified delay until measures are implemented, is inappropriate. If collisions with nationally critical species are occurring (for example, kakī) this delay could lead to additional mortalities, and the compounding effect could be serious for the population. Once again, this approach enables a delegation of substantive decision-making.

8.23. Further, there are open-ended "adaptive management" conditions proposed (see e.g. C 103 (b)). Adaptive management, as properly understood, requires the activity to cease before effects become irreversible (see *Sustain Our Sounds Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 40). While C 103 gives some suggestions as to the types of measures that could be employed to prevent future collision (again taken from the Helios conditions), those suggestions were pragmatic suggestions to be trialled in a relatively low risk context.

8.24. In the Helios matter, all parties accepted that those suggestions were unproven and experimental. The current international literature is unable to state with any certainty what measures *would* be effective to prevent collisions from re-occurring (other than removing the solar farm infrastructure). DOC's view is that The Point site is entirely different from the Helios context and at the very high end of risk to threatened riverbed birds, as outlined in Dr O'Donnell's previous comments (see Appendix C to DOC s 53 Comments dated 19th February 2026).

***Compensation***

8.25. In respect of compensation, any compensation offered by the applicant must be clearly stated and provided for in the conditions. A reliance on unspecified future compensation is unlikely to be legally enforceable[4].

8.26. DOC would invite the Panel to consider the adequacy of monetary compensation by comparing it to the cost of conservation activities for the impacted species in the area. It is important context that the cost of protecting and increasing the population of a species like kakī are substantial – currently in the order of half-a-million dollars per year for the breeding programme, and a third- to half-million dollars per year for each area of catchment-scale predator and habitat management to support survival and recovery in the wild. In the medium to long term, ensuring the species' survival (especially with the scale of potential solar development in the Mackenzie Basin) may require even more major works to protect the species in current locations or establish new populations elsewhere.

## Conclusions

9.1. The further ecological information has provided some additional detail on ecological values and effects management but does not fundamentally alter DOC's original comments.

9.2. In summary, DOC considers that:

- A range of further measures are required to adequately manage the risk of edge effects beyond the development footprint, particularly in relation to the proposed landscape screening plantings;
- Further work is required on the design of the invertebrate enhancement area to avoid conflict with adjoining activities;
- There remains significant uncertainty about the effects on avifauna. There are still many unanswered questions from the Panel's requests for information, and the proposed conditions for avifauna monitoring and response regime need to be significantly more detailed and certain;

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[4] see Haldon solar farm application – RFI 4 - Department of Conservation Comments – Appendix D Legal Memorandum from Counsel for the Director-General of Conservation, 29th April 2026, paras [13-18]

- It is unclear whether effects on lizards will be fully addressed by the proposed measures, and we consider that further amendments to the LMP and conditions are still required;
- We make a range of recommendations for the condition set, to address issues with certainty, effectiveness and enforceability. The extent of those recommendations reflects the fact that DOC has not been able to engage in the development of conditions to date.

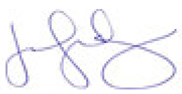
9.3. We are also concerned that, given the various updates to the proposal, the time pressures, and the disjointed nature of the process, the result is that the current version of the application is not well resolved or integrated. This is partly reflected in the difficulty that DOC (and, we understand, other parties) have had understanding the full proposal across multiple updates and versions of different documents. It is also indicated by the lack of integration between elements of the proposal for sediment control, invertebrate enhancement and lizard habitat, as outlined above.

9.4. Given that, we consider that the applicant should now be required to provide a consolidated and updated version of the application, assessment of effects and proposed conditions. This would enable all parties to understand what is now proposed, would assist in identifying any further gaps and conflicts between the different elements of the proposal, and would give the Panel a clear basis for it to make its decision upon which we consider is currently lacking. (For consistency, although there has not been a juncture for DOC to request the same for the Haldon Solar Farm application, we consider that the same consideration applies there).

9.5. However, DOC remains open to continuing to work through the issues raised. In particular, we suggest that it could be helpful to bring together the ecological experts from the different parties, either in expert conferencing or to respond directly to the Panel. We also consider there would still be value in cross-party engagement on the condition sets.

9.6. We hope the Panel finds these comments helpful. If you have any questions regarding these comments, please contact Murray Brass on [redacted] [redacted]

Yours sincerely



Jenni Fitzgerald
**Fast-Track Applications Manager**

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

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