

Your Comment on the Waihi North draft conditions

Please include all the contact details listed below with your comments and indicate whether you can receive further communications from us by email to Substantive@fasttrack.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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Please provide your comments below, include additional pages as needed.

(see attached)

Thank you for your comments



COMMENTS BY THE ROYAL FOREST & BIRD PROTECTION SOCIETY OF NEW ZEALAND INC ON DRAFT CONDITIONS (Waihi North FTAA-2504-1046)

Introduction

1. The Panel has released a draft decision and draft consent conditions for the Waihi North project. The consent conditions relate to the Hauraki District Council (HDC); Waikato Regional Council (WRC) and Thames Coromandel District Council (TCDC) consents; as well as the various Department of Conservation (DOC) approvals.
2. The Royal Forest & Bird Protection Society of New Zealand Incorporated's (**Forest and Bird**) comments on draft conditions are set out below.
3. The timeframe is short for providing comments and the extent to which Forest and Bird has been able to review and comment on the conditions reflects that timeframe.
4. In light of the time limitations Forest and Bird's comments focus on:
 - a. The Combined HDC and WRC draft consent conditions;
 - b. The HDC draft consent conditions;
 - c. The WRC draft consent conditions;
 - d. The Northern Area Concession draft conditions;
 - e. The Wharekirauponga Access Arrangement draft conditions;
 - f. The Wildlife Act Authority draft conditions.
5. Forest and Bird firstly makes some general comments with respect to conditions, before commenting on individual conditions.

General comments with respect to Management Plans

6. Management plans are relied on extensively in the draft conditions and form an important part of the package of mitigation. Forest and Bird therefore reiterate the key principles from case law relating to management plans.
7. When setting conditions the panel can delegate the administrative task of ensuring standards are met to a third party. However, conditions must be sufficiently certain and must not unlawfully delegate the making of substantive decisions. This principle applies to management plans.

8. Conditions must identify the performance standards and limits that are to be met and the management plan then identifies how those standards are to be achieved.¹ The objectives and standards set for management plans in conditions must ensure that it is possible to certify that the management plans (including subsequent revisions of the management plans) achieve the specified standards.
9. In order to avoid an unlawful delegation the question of how effects are to be managed must be addressed as part of the consent decision, not by officials certifying a plan. This is supported by recent authority in *Remediation (NZ) Limited v Taranaki Regional Council*, which emphasised the importance of being vigilant against inappropriate deferral of decisions which safeguard the environment.²
10. Forest and Bird is concerned that there is a lack of specificity in some of the conditions relating to management plans (which is addressed further in the context of specific conditions below). In some instances (for example conditions C47A and C47B) the conditions impermissibly defer a discretion to the consent authority that will be responsible for certifying the plan, because the conditions:
 - a. do not provide the standards to be achieved and instead allow standards to be set in management plans; and
 - b. do not provide clear environmental objectives that must be met.

Draft Management Plans

11. The Applicant has developed a suite of draft management plans. It is understood the applicant had initially proposed that several management plans be approved by the Panel rather than being submitted to the Council for approval.³ The Panel preferred the orthodox approach that the plans are submitted to the relevant council for certification.
12. While significant changes have been made to the management plans through the process leading up to the Panel's draft decision, there is currently no requirement for the current management plan content to be included in the plans that are eventually submitted to the relevant council for certification. As a result there is now no reassurance that what is currently set out in the draft management plans will be retained. Condition C2 provides that activities authorised by the consent must be undertaken in general accordance with information contained in the AEE and supporting

¹ *Re Canterbury Cricket Association Inc* [2013] NZEnvC 184 at [125]. See also *Wellington Fish and Game Council v Manawatu-Wanganui Regional Council* [2017] NZEnvC 37 at [175].

² *Remediation (NZ) Limited v Taranaki Regional Council* [2024] NZEnvC 213 at 27, and 466-467.

³ These management plans are set out at paragraph [6] Part E Panel Decision.

technical documents, but this does not provide a mechanism for reference back to the (current) draft management plans.

13. Forest & Bird therefore recommends that a condition be added to state that the final management plans submitted to the relevant council for certification shall be in general accordance with the draft management plans that have been submitted, except where changes are necessary:
 - a. to provide a more stringent management approach;
 - b. to align the management plans with the final consent conditions; or
 - c. to incorporate comments made by Council and DOC on the draft management plans.

General comments with respect to state of the environment reporting

14. In relation to the requirement in s 83 of the Fast-track Approvals Act that conditions must not be more onerous than necessary we consider it relevant to refer the Ministry for the Environment Report released this year entitled Our Environment 2025 (published April 2025).
15. There are many aspects of that report that are relevant to consider but we draw particular attention to the reporting on terrestrial habitats and native species. This records that New Zealand's unique biodiversity has a high proportion of threatened or at risk species – one of the highest amid the global biodiversity crisis.⁴ The statistics set out include:
 - a. In 2021, 94 percent (116 of 124) of indigenous reptile species were threatened with extinction or at risk of becoming threatened. Estimated population trends show 72 percent of species have decreasing populations and 5 percent have increasing populations
 - b. In 2024, 93 percent (13 of 14) of indigenous frog species were threatened with extinction or at risk of becoming threatened. Estimated population trends show 12 species have decreasing populations and one stable (Burns et al, 2025).
16. The report also discusses freshwater habitats and records that New Zealand has lost an estimated 90% of historic wetlands, and that the small fraction that remains is vital for survival of many threatened plant and animal species.⁵
17. These statistics are alarming and provide helpful context for why conditions that take a precautionary approach are not unduly onerous.

⁴ New Zealand's Reporting Series, Our Environment 2025, page 23.

⁵ Page 34.

Combined HDC and WRC Conditions

Management Plans

18. **Condition 5AA** relates to the Wharekirauponga Pest Animal Management Plan (**WPAMP**) and the Coromandel Forest Park Kauri Dieback Management Plan, and requires that these management plans be provided to DOC. The condition requires that the consent holder take into account all comments and suggested amendments and additions received from DOC.
19. It is understood that DOC have already recommended several improvements to the WPAMP through technical workshops with the applicant. Forest and Bird consider that a requirement should be added to the conditions that the plan must incorporate the recommendations that have been made by DOC as part of this process.
20. Whilst the process envisaged by condition 5AA may be appropriate for management plans that solely implement regional or district council consents, where the management plan is also required to implement a condition in (including by cross reference) an approval under a specified Act that is administered by DOC,⁶ then DOC should also be a certifier. Approvals under the FTAA have the same force and effect as if they were granted under a specified Act, and should therefore provide for the same post-consent processes and oversight that the specified Act would provide. This also means the process can benefit from the expertise that DOC holds when the management plan implements a condition of an approval under a DOC-administered Act.
21. **Condition 8A:** This condition relates to amendments to management plans and states that if amendments relating to works or effects on conservation land are proposed to the management plans listed then the consent holder must invite DOC to participate in a collaborative workshop.
22. Forest & Bird submits that this condition has the same shortcoming as condition 5AA. Where management plans implement a condition of an approval under a specified Act administered by DOC, it is appropriate (and important) that DOC retains a certification role in these plans' initial certification and subsequent certification of amendments, not merely that it is invited to a collaborative workshop.
23. It is unclear why condition 5AA provides for DOC input on the two management plans referred to in that condition (prior to initial certification) but does not include the other management plans referred to in conditions 8A (which lists 6 management plans where DOC are to have input at the time of amendments). All management plans referred to in condition 8A should also be included in condition 5AA.

⁶ Conservation Act 1987, Reserves Act 1977, Wildlife Act 1953

The Biodiversity Project

24. **Condition 30:** The advice note refers to the *Augier* principle. Forest and Bird understands that the intended implication of this is that the conditions cannot be changed by the Panel. The Biodiversity Project conditions are able to be imposed by the Panel as they meet the legal requirements for conditions (they do not need to be volunteered in order to become lawful) and are relied on by the Panel to address the effects of mining. On that basis Forest and Bird submits that these are not *Augier* conditions and the Panel is entitled to make changes to the conditions.
25. **Condition C31:** This sets out the objectives of the Biodiversity Project as being:
 - a. To provide long term (inter-generational) ecological benefits to the wider CFP area, over and above the management of mining effects; and
 - b. To assist tangata whenua in their exercise of kaitiakitanga.
26. These objectives are helpful, but Forest and Bird considers they should go further. The application has referred to various benefits of the Biodiversity Project. Forest and Bird considers these should be incorporated into the objectives of the Project. Relevant extracts from the application are:

... the Waihi North Biodiversity Project ... will result in a **significant enhancement** in indigenous biodiversity **beyond that which is required to avoid, remedy, mitigate, offset or compensate** for the potential adverse effects of the project.⁷

...

... The Waihi North Biodiversity Project ... will deliver inter-generational biodiversity benefits **at a significant scale.**⁸

...

The Waihi North Biodiversity Project is proposed as a way to ensure **habitats and species are maintained and enhanced** in the vicinity of WNP for at least the foreseeable future and ideally in perpetuity.⁹
27. We also refer to the benefits referred to at paragraph [109] of the draft decision:
 - (a) Social and economic benefits such as training, development, and long-term job opportunities for local residents including iwi. And more generally, **advance the NZ Government's Predator Free 2050 goal**

⁷ Part A – Waihi North Project – Substantive Application; Page 566

⁸ Page 566.

⁹ Page 601

which can be considered and incorporated into the project. In the future, the increase in wildlife may also provide tourism opportunities, with associated increases in visitor numbers to the area. And

(b) Cultural benefits include increased opportunities for tangata whenua to practice traditional cultural uses of the forest, **increases in numbers of taonga species**, the possibility to reintroduce taonga species to the area that are not currently present, and to create a kaitiakitanga legacy for the area.

28. Incorporating these matters into the objectives of the Biodiversity Project will assist with ensuring these claimed outcomes are delivered.
29. **Condition C33:** This sets out funding for the Biodiversity Project Fund for a period that is the later of ten years from the date of the initial payment or the completion of stoping. As this fund is relied on to address the ecological and cultural effects of the project¹⁰, it should be continued for the long term so that any benefits from predator control are maintained in the long term.
30. **Condition C34.** This states that:

The monies paid into the fund account in accordance with Condition C33 must be allocated to the extent necessary to finance:

- a. The ongoing operation of the Biodiversity Project Group in accordance with Conditions C36 to C38;
- b. The implementation of the Biodiversity Project Plan in accordance with Conditions C39 to C40; and
- c. The ongoing review and updating of the Biodiversity Project Plan.

31. It is uncertain what is meant by “to the extent necessary”. All monies paid should be used to finance the Biodiversity Project. The reference to “to the extent necessary” should be deleted.
32. **Condition C39:** This sets out what the Biodiversity Project Plan must specify. This includes amongst other matters:

b. The specific management and enhancement objectives for the Biodiversity Project.

...

e. Measurable and time bound performance indicators which demonstrate how the management and enhancement objectives in (b) are achieved.

¹⁰ Panel decision at [110]-[111]

33. The specific management and enhancement objectives and the performance indicators must be set out in the conditions.¹¹ The conditions could include a link back to achieving the objective of the Biodiversity Project as set out in Condition 31.
34. **Condition C41** states that the Biodiversity Plan may be reviewed and updated by the Consent Holder at any time, after consultation with the Biodiversity Project Group. This should be amended to require this to be done in partnership with the Biodiversity Project Group (which would be consistent with the requirement in Condition C39 for the Biodiversity Project Plan to be prepared in partnership with the Biodiversity Project Group).

Dewatering and Settlement Monitoring Plan

35. The Panel found that:
 - a. additional resource consent conditions are required to ensure that adequate monitoring is undertaken of potential adverse effects from the dual access tunnels on groundwater and surface water flows (the Waiharakeke Stream); and
 - b. the most appropriate place for this monitoring to be captured is within the proposed dewatering and settlement monitoring plan in Conditions C43 to C46.
36. However this finding is not consistently carried through in all conditions relating to the dewatering and settlement monitoring plan.
37. **Condition C44:** This sets out the purpose of the Dewatering and Settlement Monitoring Plan which is to:
 - a. Ensure that tunnelling and mining activities do not cause surface instability or differential settlement that could damage infrastructure or buildings on land not owned by the Consent Holder; and
 - b. Prevent dewatering from adversely affecting any existing authorised groundwater abstraction.
38. This purpose is too narrow, and should be broadened to include preventing dewatering that affects surface waterbodies. Consequential changes are required for consistency (for example to condition D45).
39. Condition C44 goes on to outline the objectives of the Dewatering and Settlement Monitoring Plan. This includes identifying trigger limits that will indicate when contingency mitigation and/or monitoring may be necessary. The trigger limits should be specified in the consent conditions, not deferred to the management plan.

¹¹ See discussion of *Remediation NZ* and related case law above.

40. Clause c is to “*identify what contingency mitigation and/or monitoring would be undertaken in the event that the trigger levels are exceeded, in order to ensure that adverse environmental effects are avoided, remedied or mitigated.*” This should be amended to align with an objective of preventing dewatering from having adverse effects i.e. the standard should be focused on avoiding adverse effects.
41. **Condition C45** sets out what the Monitoring Plan must include. This should include monitoring the effects of dewatering on surface water bodies.
42. This states that the Monitoring Plan must include a Trigger-Action Response Plan for the area, which sets out trigger levels and management responses to be used if groundwater or surface settlement trigger levels are exceeded. The trigger levels and management responses should be set out in conditions, and should also relate to surface water bodies.
43. **Condition C46** relates to reporting. This includes a requirement (amongst other matters) that if there is “*a significant variance from the predicted loss in stream flow in that plan*” then within 20 working days the consent holder must provide a written report which includes amongst other matters proposed contingency measures to remedy or mitigate the adverse effect, including the timing for implementation of those measures.
44. It is unclear how ‘predicted loss in stream flow in that plan’ will be interpreted, or what a significant variance from that predicted loss looks like. It should not be up to the management plan to define what level of loss of stream flow is acceptable before contingency measures are triggered. This should be amended to ‘if there is any loss in stream flow’. The potential contingency measures should also be specified.
45. Condition C46 sets out a requirement for a written report. A requirement should be added that the written report must be prepared by a suitably qualified and experienced professional approved by the Waikato Regional Council. This would be consistent with the requirements for the report under condition UG.10 of the WRC conditions.

Ecology and Landscape Management Plans

46. **Condition C47A:** This states that the objective of the approved certified WUG Ecology and Landscape Management Plan (**ELMP – WUG**) is to “*identify how the potential adverse effects of the Waihi North Project on the ecological, landscape and biodiversity values within the WUG Area and its surrounds will be appropriately managed*”. That objective is entirely too vague. It does not include any environmental outcomes or objectives. Whether there are methods available to appropriately manage adverse effects on ecological, landscape and biodiversity values is a question for the Panel, and the Panel’s decision will be incomplete (in the sense that relevant

decision-making criteria have not been considered and addressed) if it does not make findings on:

- a. how those effects will be managed; and
- b. whether the proposed approach to managing effects will be effective in managing those effects to an acceptable level;

and then impose conditions to secure that outcome.

- 47. At present, this condition does not ensure that there are measurable outcomes that must be achieved and as such involves an unlawful delegation of decision-making.
- 48. Condition C47A then lists what the ELMP-WUG must include. This includes;
 - a. Details of the location, extent, and type of mitigation works, including lead-in times, implementation timeframes, and duration of maintenance;
 - b. Monitoring, reporting, and review procedures, including triggers for remedial action if performance standards are not met; and
 - c. Detailed contents and performance indicators in relation to the following...
- 49. The relevant trigger levels and performance standards should be included as conditions of consent for the reasons set out above.
- 50. At c. the condition then lists various sub-plans with one sentence on what each plan seeks to do. It is noted that the DOC approvals previously set out the objectives for some of these sub-plans and a description of what they must include. This material has been removed from the conditions.
- 51. As a result condition 47Ac. as currently worded unlawfully delegates decision-making powers. For each of these sub-plans it is necessary for the conditions to set out the relevant objectives and performance standards that must be met.
- 52. **Condition 47B** takes a similar approach to condition 47A but relates to the ELMP-WA. This condition also involves an unlawful delegation of powers and the comments above on condition C47A also apply equally to Condition 47B.
- 53. **Condition C48** relates to amendments to the Ecology and Landscape Management Plan (entire plan: ELMP-WA and ELMP-WUG). This includes a requirement that any amended version of an ELMP must remain consistent with the objectives of the ELMP as set out in Condition C47A and C47B. However because those conditions do not set out measurable outcomes that must be achieved, then this condition has little practical effect. This reinforces the importance of the management plan conditions having clear objectives and standards that must be met.

HDC Conditions

Blasting and Vibration

54. **Condition 30** states that for all blasting within Area 1 the peak particle velocity (vector sum) at the surface must be no more than 15 mm/s for 95% of blast events.
55. It is of significant concern that vibration greater than 2 mm/s is considered to have a low but unknown likelihood of impacts on native frogs, yet for Area 1 (i.e. the underground mine and dual tunnel) the limit proposed in draft conditions is significantly higher at 15 mm/s for 95% of blast events.
56. The vibration limit should be reduced given the uncertainty as to what impact this will have on frogs. Provision should also be made for the limit to be changed should monitoring show that there are adverse effects on frogs.
57. **Conditions 44 – 45** states that the objective of the Blasting and Vibration Management Plan (**BVMP**) is that “the impacts of blasting vibrations on the community in accordance with Condition 32 as well as ecological habitat values within Area 1, are minimised to the extent practicable”. “Minimise to the extent practicable” is uncertain and not a standard against which a management plan can be certified.
58. Blasting and vibration will need to cease entirely if effects on frogs arise (because no wildlife permit or access arrangement authorises these effects), and this requirement should be added to the conditions.
59. Despite the stated objective of the BVMP addressing both the community and ecological habitat values, the measures to be adopted to ensure that the objective is met (as set out in Condition 45) do not contain any measures relating specifically to ecological habitat values. As recognised in the draft decision:

[175] Bioresarches (2025b) ... accepted that there was uncertainty for vibration effects on leiopelmatid frogs at vibration levels between 2-15 mm/s, which is expected to occur over an area of approximately 315 ha.
60. Given this recognised uncertainty, it is important that the conditions relating to the BVMP address the measures required should adverse effects on frogs arise. This must include provision for the peak particle velocity (as set out in condition 30) to be reduced (or to cease until a wildlife permit is obtained)¹².

Lighting

61. Condition 54A sets out what the Lighting Management Plan must contain. This includes “set out the Plan’s purpose”. This is not sufficiently certain – refer to comments on management plans above. The plan’s purpose must

¹² Or to cease altogether unless a wildlife permit is obtained as addressed below.

be specified in the conditions. This must include objectives relating to effects on fauna, including frogs and bats.

62. The application states that:

Boffa Miskell (2025a) concludes that, with mitigations including **careful lighting selection, location and luminaire orientation, controls for lighting and timing of activities**, the magnitude of lighting effects will be Low – Moderate. As the ecological value of fauna is Very High, the overall level of effect is assessed as Moderate.

63. The conditions should either require these specific mitigations, or ensure that these mitigations are all included in the list of matters that must be included in the management plan in order to meet specified, measurable objectives which must be set out in the conditions themselves.

Ecology and Landscape – Area 1 specific

64. **Condition 115:** Amongst other matters this requires application of the requirements of the Waihi North Project Site Selection Protocol annexed as Attachment 6 to the consent.

65. Forest and Bird refers to the concerns raised in DOC's s 51 reports and s 53 comments regarding the site selection protocol¹³ - it is important to ensure the Protocol aligns with DOC's recommendations.

66. **Conditions 124; 126; 157; 159:** These conditions refer to a 3 m buffer from frogs, lizards or northern striped geckos. This should be amended to a 6m buffer in line with the advice from DOC.¹⁴

67. **Conditions 132; 144; 163:** These refer to the need to salvage and move frogs and lizards to the Native Fauna Release Area. Conditions 144 and 166 state that this must be done in accordance with the procedures in the ELMP-WUG. The ELMP does not appear to include a requirement for a Native Frog Salvage and Release Plan and therefore this should be added to the conditions relating to the ELMP (with the conditions outlining the relevant objectives of the plan and the standards that need to be met). We note that in its s 51 reports, DOC gave advice regarding the insufficiency of the salvage protocols contained on the ELMP-WUG – the conditions added should be consistent with DOC's advice.

Leiopelmatid Frog Specific Conditions

68. As a general comment Forest and Bird considers that a very prescriptive adaptive management approach is required to manage effects of frogs, given the uncertainty that exists. Mining should only be allowed in stages with mining only able to progress to the next stage if effects are shown to be

¹³ See for example page 37 of DOC's comments.

¹⁴ Section 53 comments from DOC, paragraph 173.

acceptable. An adaptive management approach must be capable of ensuring that adverse effects do not eventuate.

69. The comments below relate to more specific matters in the conditions.
70. Condition 167 requires pest management over an area of at least 632 ha in the Wharekirauponga Animal Pest Management Area ("WAMPA"). Forest & Bird understands this to mean that pest management covers the 314 ha vibration footprint area and a 318 ha offset area, but could not locate a condition specifically requiring the applicant to provide a 318 ha offset area, and neither is this clear from Attachment 8 (referred to in the condition). Forest & Bird submits that:
 - a. A condition should clearly and expressly require an offset area of a specified size.
 - b. However, 318ha is insufficient and should be increased. DOC's expert advice is that a one to one ratio (i.e. offset area 318 ha and vibration area 314 ha) is too low and likely to be insufficient to offset effects based on current and emerging best practice. Forest & Bird agrees. Offset areas are always larger than impact areas, because of the uncertain nature of potential biodiversity gains. Consequential changes should be made to the conditions of consent as necessary to achieve this.
71. **Condition 169** states that "The pest management required by Condition 167 must **seek to meet** the management targets and adhere to the thresholds for initiating additional control and monitoring frequency for each target species as set out in the following table."
72. The phrase "seek to meet" is uncertain and unenforceable. It also fails to ensure that effects on frogs are offset in the manner claimed by the applicant. This should be amended by removing the words "seek to".
73. **Condition 171C** sets out what the WPAMP must do and include. This is a critical condition but requires further clarification:
 - a. The relationship between i. and k. is unclear as both refer to further pest control actions where frog population increases are not achieved.
 - b. Condition 171C.i refers to the population increase "as set out in Condition 171C" – should this refer to the 3x frog increase in 15 years referred to in 171C.k, and if so does 171C.i simply repeat 171C.l?
 - c. If pest control is not effective at increasing the frog population, what is the outcome? Given the reliance on pest control to offset effects on frogs, if the specified increase is not achieved this should require mining activities to cease.

- d. Condition 171C.k requires a 3x increase in frogs within the "animal pest control area" but this phrase is not defined – should it refer to the Wharekirauponga Animal Pest Management Area ("WAPMA")?

74. **Condition 173** provides:

The Consent Holder must continue pest control within the WAPMA in accordance with the certified WPAMP until the later of:

- a. Two years after the completion of stoping activities within the WUG; or
- b. Monitoring undertaken in accordance with Native Frog Monitoring Plan required by Condition 174 shows **leiopelmatid frog numbers within the WAPMA are no lower than would be expected in this area had the mining activity not occurred considering frog numbers in nearby habitat which was unaffected by blasting vibration**

75. This should be amended to require the 3x net gain specified in condition 171C.k.

76. **Condition 175** states:

The objective of the Native Frog Monitoring Plan is to ensure appropriate monitoring of potential vibration, potential dewatering, animal pest control and response of native frogs, and to determine whether pest control measures are achieving a net gain in native frogs within the WAPMA, and set out:

- a. The actions and methods required to adaptively manage adverse vibration, dewatering, and pest control effects on native frogs;
- b. The monitoring programmes and trigger levels required to ensure the best practicable options are being utilised to manage adverse effects on native frogs; and
- c. To confirm to Hauraki District Council that the effects management measures will generate stated net gain outcomes for native frogs.

77. This condition does not provide sufficient certainty:

- a. In accordance with the case law regarding management plans as set out above the conditions should specify the objectives and standards that must be achieved. An objective that refers to ensuring appropriate monitoring and to determine whether the pest control measures are having a net gain does not include an environmental outcome that must be achieved. The objective of the plan should be to achieve a 3x net gain for native frogs and to avoid adverse effects including from vibration and dewatering.

- b. It is unclear what adaptive management would look like and what would trigger it. The conditions should set out what adaptive management would entail and the conditions need to include clearer action to reduce or cease having effects should that be necessary. The trigger levels should be included in the conditions. Forest and Bird refers to its comments on adaptive management from paragraph 98 of its s 53 comments, and its submissions on management plan conditions above.
- c. The conditions must ensure that adverse effects do not eventuate, rather than simply manage adverse effects on frogs.
- d. The need to ensure the best practicable options are being utilised does not go far enough. In some circumstances it will be necessary that mining cease in the areas that frogs are present, for example if vibrations are having an adverse effect.
- e. These conditions (or conditions relating to a native frog salvage release plan) should identify contingency actions should monitoring show that the salvage translocation is not successful. As stated in DOC's s 51 report this is essential especially considering the use of experimental release pens and lack of evidence generally in support for salvage translocations as an effective mitigation tool.

78. DOC has provided detailed feedback on the proposed Native Frog Monitoring Plan as submitted. The conditions should require that the Monitoring Plan that is submitted for certification is consistent with the feedback received from DOC.

79. We have addressed this Condition further in the context of the Wildlife Act approval.

80. **Condition 176** requires that the Native Frog Monitoring Plan include a minimum of 2 years of baseline monitoring. This should specify that baseline monitoring should be undertaken in accordance with best practice for frog monitoring, and in the same manner as subsequent monitoring of frog numbers (during the period of mining and pest control) as inadequate baseline monitoring or a change in monitoring methods will skew the subsequent data and conclusions drawn from it, including whether a 3x net gain in frogs is achieved.

81. The **Condition 177** reference to a 318 ha offset area should be amended to be consistent with the larger offset area required as discussed above.

Review of Conditions

82. **Condition 210** states at clause 1d:

For the purposes of amending the vibration limits in Condition 27, and/or the Wharekirauponga Pest Animal Management Plan, to ensure

mining activity in combination with pest management activity is having a neutral or net positive effect on Archey's Frog.

83. Forest & Bird submits that:

- a. This review condition should apply where the mining activity in combination with pest management activity is not having a net positive effect (3x increase) on Archey's Frog. Reference to a neutral effect should be removed.
- b. Clause 1d. should also be amended to add a cross-reference to any other conditions that have may be relevant to effects on Archey's Frog. Reference to only vibration limits and the WPAMP is too narrow.
- c. This review condition is insufficient on its own to address the uncertainties in the magnitude of effect on Archey's Frogs. As discussed above, the conditions should set out an adaptive management framework.

WRC Conditions

- 84. **Condition G19:** This sets out the ecological offset works. Amongst other matters this requires the development of new stream channel with ecological functionality. Forest and Bird supports the advice from DOC in its section 53 comments that the term "ecological functionality" should be clearly defined in the condition. Forest and Bird also supports DOC's comment that the offsets referred to in this condition should be protected in perpetuity in a covenant or other legal form of protection.
- 85. **Condition G30:** This sets out the objective of the Waihi Area Water Quality Management Plan as follows:

The objective of the Waihi Area Water Quality Management Plan is to identify all sources of discharges to water in Areas 2,3,5,6 and 7 and set out:

- a. The actions and methods required to minimise and mitigate adverse effects on the receiving water, water users, or aquatic biota;
- b. The monitoring programmes and trigger levels required to ensure the best practicable options are being utilised to minimise and mitigate adverse effects on the receiving water, water users, or aquatic biota; and
- c. To describe how the Waikato Regional Council is able to determine that the activity is being undertaken in a manner which appropriately avoids or remedies any more than minor effects on the receiving water, water users, or aquatic biota.

86. The objectives in condition 30 are uncertain – there is no certainty around the environmental outcomes that are to be achieved. Forest and Bird agrees with the expert advice from DOC in its s 53 comments that the objectives of the plan should be to ensure that trigger levels specified in conditions are not exceeded, and to confirm any adverse effects are not greater than anticipated.
87. Limits and trigger levels should be set out in consent conditions to ensure the conditions are sufficiently certain and do not defer essential matters to the management plan certification process.

Conditions relating to Natural State Waterbodies and Natural Wetlands

88. Forest & Bird reiterates the comments made in its s 53 comments that:
 - a. Conditions should ensure that information gaps are addressed; a precautionary approach is taken and that areas with higher risk are avoided.
 - b. Trigger levels must be set at levels which seek to avoid adverse effects, rather than being reactive to effects after they arise.
 - c. The conditions must include a more stringent limit which if reached would require mining to cease until the effects have been successfully remediated.
89. Amendments are required to conditions to achieve these outcomes. In addition Forest and Bird makes the following specific comments on conditions.
90. **Condition UG.4** (pre-mining activities groundwater management) refers to:

Ensuring that grouting or alternative methods to control groundwater ingress within the Access Tunnels and ventilation shafts are adapted where necessary to address any deviations from expected conditions and to avoid measurable effects on shallow groundwater which **will or are likely** to adversely affect any surface water body.
91. A precautionary approach is necessary given the risks to shallow groundwater. The phrase “will or are likely” should be changed to “may”.
92. **Condition UG7** (compliance limits) states:

Other than for flows associated with the warm spring located nominally at NZTM E1850258, N5868719, and the EG vein discharge point the mining activities authorised by this consent must not cause the natural flows of any surface water body identified as a Natural State Water Body in the Waikato Regional Plan and identified as being potentially affected by mining activities in the Wharekirauponga Hydrology Modelling report prepared by GHD Limited (WAI-985-000-REP-LC0063)

dated January 2025 to fall below the relevant Respond Trigger Levels set out in Condition UG.10.

93. The reference to “cause” should be amended to “contribute to...” to cover the scenario where the mining activity is not the sole reason that the Natural State Water Bodies fall below Respond Trigger Levels.
94. The heading above UG7 is entitled *“Compliance Limits – Natural State Water Bodies and Natural Inland Wetlands Potentially Affected by Mining Activities.”* However condition UG8 which follows only refers to natural state water bodies. Natural Inland wetlands should also be added to this condition (as Natural State Waterbodies do not include wetlands).
95. In its response to comments the Applicant stated:

WRC had recommended inclusion of “or a natural inland wetland as defined in the National Policy Statement for Freshwater Management” be included in this condition, presumably in order to subject the wetlands to compliance against the triggers.

This does not work as the triggers are specific to the natural state waterways and any changes to wetlands are not suited to the establishment of triggers - rather a more qualitative assessment is appropriate. This qualitative assessment of any change is required by the management plan.

96. Should the Panel agree with the above comment then the conditions should also include a response trigger for wetlands based on a qualitative description. It is not sufficient to include this only in a management plan.
97. **Condition UG10 Table 1** sets out the alert and respond trigger levels. The Panel decided to add a requirement for monitoring of surface water flows in Waiharakeke Stream in accordance with new WRC condition UG.18A. Alert and respond trigger levels should therefore be added for the Waiharakeke Stream.

98. **Condition UG10.3** states:

If monitoring identifies that the flow in those Natural State Water Body locations identified in Table UG.9.T is less than the Respond Trigger Level for that Natural State Water Body calculated in accordance with Table UG.10.T, the Consent Holder must immediately cease any upstream surface water abstraction and commission a suitably qualified and experienced professional approved by the Waikato Regional Council to investigate the cause of the Respond Trigger Level exceedance, and provide a report which summarises the findings of that investigation as set out in Condition UG.27. If the investigation finds it to be necessary, the Consent Holder must implement mitigation measures in accordance with the Wharekirauponga Underground Mine

Water Management Plan referred to in Condition C5, and as detailed in the Trigger Action Response specified in Condition UG.19(b).

99. It is unclear what is meant by “cease upstream surface water takes”, and how this will address the effects of dewatering (which arises from the abstraction of groundwater/dewatering of the underground mine and not from a surface water abstraction). The condition should also require that mining cease in order to avoid further dewatering.
100. The condition is also uncertain in that the condition does not explain what is meant by “If the investigation finds it to be necessary”. What is the investigation assessing and on what basis would mitigation measures be necessary? Could the investigation conclude that mitigation is not necessary even though the consented activity is causing an effect beyond a Respond Trigger Level? If so the condition requires amendment to clarify that a response is required.
101. **Condition UG.14** refers to Alert Trigger Levels for Natural State Water Bodies but the condition relates to wetlands. In addition to the Trigger Level for Natural State Water Bodies the condition should also include Alert Trigger Levels specifically for Wetlands.
102. This is an issue raised in the expert advice of Karen Denyer (principal ecologist, Parawera - report submitted as part of the Waikato Regional Council comments). It is understood that this recommendation was to cater for the event of de-watering of wetlands that are not directly hydrologically linked to streams. This, and other issues raised in that report, have not been addressed.
103. In order to provide certainty it is important that the Alert Trigger Levels be provided in conditions rather than management plans.
104. As with condition UG10.3 this condition should provide for mining to cease to avoid further dewatering.
105. **Condition UG.19c** requires actions to control groundwater ingress into the area being mined in a manner that ensures compliance with the UG.7 limits. The methods defer a whole sequence of assessments and decisions to the Wharekirauponga Underground Mine Water Management Plan, where these matters should be in consent conditions. In particular the words in bold in clause c below:

Adhering to the Trigger Action Response measures set out in the Wharekirauponga Underground Mine Water Management Plan referred to in Condition C4 C5 during mining activities so that **methods of mitigation** to control effects on Natural State Water Bodies and/or Natural Inland Wetlands are **suitably adapted** to address any deviations from the expected natural parameters of the Natural State Water Bodies and/or Natural Inland Wetlands which have been

identified as being potentially affected by mining activities, where, **having regard to** the Alert or a Respond Trigger Levels set out in Table UG.10.T, those deviations **have the potential to give rise to** more than minor adverse changes in the flow regimes and/or water levels of Natural State Water Bodies and/or Natural Inland Wetlands which are inconsistent with achieving Condition UG.7; and

106. **Condition UG.21** lists the objectives of the Wharekirauponga Underground Mine Water Management Plan which includes at c:

c. To describe how the Waikato Regional Council and the Department of Conservation are able to determine that the activity is being undertaken in a manner which appropriately avoids or remedies any more than minor reductions in the expected natural flows within the Natural State Water Bodies and/or natural water levels within the Natural Inland Wetlands which have been identified as being potentially affected by mining activities.

107. The reference to “more than minor reductions” should be changed to “measurable reductions” in line with the change the Panel made to condition UG22b.iii.

108. Condition UG.21 should include an objective requiring that there be no loss in the extent or values of the wetlands. That would be consistent with:

a. the Application, which recorded that:

There are 50 natural wetlands located within the Coromandel Forest Park above the proposed subsurface mining activities, the Matarua Wetland located within Area 2, the Gladstone Wetland located within Area 5. ... the activities within these areas are being managed in such a way as to ensure dewatering effects associated with the proposed works will be monitored and managed to ensure that there is no loss in the extent or values of these wetlands

b. The NPSFM natural inland wetland policies requiring no loss of extent or values of wetlands.

109. This should also be incorporated into UG.22.

110. **Condition UG.22** sets out what the Wharekirauponga Underground Mine Water Management Plan must include. Clause e includes:

Identification of potential adaptive management and mitigation measures to be implemented in circumstances where dewatering activities result in flows/levels reaching the Respond Trigger Levels for Natural State Water Bodies in Condition UG.10.

111. The adaptive management measures should be specified in consent conditions.

112. The matters in clause b. of this condition are outcomes that need to be achieved. Therefore biii. should be reworded as an outcome, so that rather than referring to what needs to be described it states "To avoid any measurable reductions in the expected natural flows ...".

113. **Condition UG.29** provides for changes to the trigger levels set in conditions by way of certification by Council of an adjustment report. This is ultra vires. A change in the conditions can only be achieved by changing the conditions.

114. **Condition UG.41** is the review condition and includes in a:

To review the effectiveness of the conditions of this consent to avoid, remedy or mitigate the effects of dewatering within the access and development tunnels and during mining activities on the expected natural flows of the Natural State Water Bodies and/or the natural water levels in Natural Inland Wetlands which have been identified as being potentially affected by tunnelling and mining activities, **where those effects are likely to give rise to more than minor adverse changes in these flows / levels, and if necessary to avoid, remedy or mitigate such effects by way of further or amended conditions**

115. This review condition should apply where there are any measurable changes in flows/levels (not just more than minor) changes. This change is consistent with the change made by the Panel to UG.22biii (which removed the reference to "more than minor reductions" in the expected flow and replaced it with measurable).

116. The application in discussing the potential for dewatering of deep groundwater to affect the shallow groundwater system had stated:¹⁵

Until dewatering activities commence, it will not be known if this link between the deep, shallow, and surface waters is small-negligible (which will see dewatering effects constrained to the deep groundwater system), or more substantial (resulting in measurable surface water effects).

117. Therefore at the point that there are measurable surface water effects the link between deep, shallow and surface waters is substantial which justifies a review of conditions.

118. Further the evidence of Mr Simpson stated that in his opinion the "hierarchy of monitoring would allow the detection of an effect developing well before damage occurring, which I assume to mean a reduction in surface water

¹⁵ Part A – Waihi North Project – Substantive Application, page 392.

flows".¹⁶ As such if there are measurable changes in flows/levels then the monitoring regime is not operating as intended.

Conditions relating to the Gladstone Wetland

119. Condition SC5.D.5 provides:

1. At five yearly intervals after the commencement of activities authorised by this consent, the Consent Holder must monitor the condition of the Gladstone Wetland vegetation and the hydrological conditions that sustain it.
2. Where there have been significant changes in the existing wetland flora or soil moisture levels such that the ecological value or extent of the wetland has been adversely affected, the Consent Holder must:
 - a. Characterise and assess the source of the change; and
 - b. Take all necessary measures to ensure that the ecological health and extent of the Gladstone Wetland is restored to preconstruction baseline conditions.
3. The results of this monitoring and any actions taken to ensure compliance with 2(b) must be provided to the Waikato Regional Council.

120. This condition is not sufficiently protective of the wetland. The consent holder should not wait until there have been significant changes such that the wetland is adversely affected before taking the action described. The word "significant" should be deleted, and the assessment required by a. should be triggered when a wetland "may" be affected with the restoration required by b. to be put in place if the wetland "has been adversely affected".

Conditions relating to the Matarua Wetland

121. **Condition SC2.F.29** relates to a Matarua Wetland Restoration and Monitoring Plan. The conditions should include a clear environmental objective of what the plan must achieve.
122. **Condition SC2.F.30** is similar to condition SC5.D.5 discussed above and the same comments apply.
123. **Condition SC2.F.31** includes an advice note that "as part of the integrated mitigation package, the Matarua Wetland will be restored by stock fencing, weed and pest control and ecologically appropriate planting." This should be included as a condition - an advice note is not legally binding and is insufficient to ensure this occurs. The conditions must set out the detail of what is required.

¹⁶ Statement of evidence by Chris Simpson dated 1 September 2025; paragraph 28.

DOC APPROVALS

Wildlife Authority

Scope of authority

124. The decision summarises the approvals sought as follows:

- (a) to undertake monitoring of leiopelmatid frogs within the vibration impact area, Wharekirauponga Pest Management Area and a control area, all of which are located within the Coromandel Forest Park;
- (b) to undertake monitoring of leiopelmatid frogs in waterways within and outside the area potentially affected by the dewatering of the WUG, all of which are located within the Coromandel Forest Park;
- (c) to handle, salvage and relocate leiopelmatid frogs and lizards in order to enable vegetation clearance at TSF3, NRS, GOP and Willows SFA, all of which are located on OceanaGold owned land. and
- (d) to handle, salvage and relocate leiopelmatid frogs and lizards in order to enable vegetation clearance for drill sites and pumping test / ventilation shaft sites located within the Coromandel Forest Park.

125. The decision records that in the course of the process, OGNZL also sought an additional approval not covered by the four approvals listed as (a) to (c). The additional approval was:

To ... harm... wildlife that could arise from any of its other activities.

126. However, the decision goes on to state:

As a result of comments from DOC (and perhaps from Forest and Bird), OGNZL has elected to proceed only in relation to the first four approvals sought.

127. This election not to proceed with an approval to harm wildlife “that could arise from any of its other activities” has not been reflected in the draft conditions.

128. The draft conditions include the following:

c) **To take or destroy the eggs of the following wildlife species when unavoidable:**

- i. Piwakawaka / New Zealand fantail
(Rhipidura fuliginosa);
- ii. Kāhu / Australasian harrier (Circus approximans);
- iii. Korimako / Bellbird (Anthornis melanura);
- iv. Riroriro / Grey warbler (Gerygone igata);

- v. Keruru / NZ pigeon (*Hemiphaga novaeseelandiae*);
- vi. Kotare / Kingfisher (*Todiramphus sanctus*);
- vii. Tauhou / Silvereye (*Todiramphus sanctus*);
- viii. Miromiro /Tomtit (*Petroica macrocephala*);
- ix. Tūī (*Prosthemadera novaeseelandiae*);
- x. Warou /Welcome swallow (*Hirundo neoxena*);
- xi. Pōpokotea / Whitehead (*Mohoua albicilla*);
- xii. Kākāriki/ Yellow-crowned parakeet (*Cyanoramphus auriceps*);
- xiii. Ruru / Morepork (*Ninox novaeseelandiae*);
- xiv. Kākā (*Nestor meridionalis*);
- xv. Pīpīwharauroa / Shining cuckoo (*Chrysococcyx lucidus*); and
- xvi. Stag beetle (*Geodorus auriculatus* sp).

d) To kill the wildlife species listed in A(c)(i – xv) above, and / or long-tailed bats (*Chalinolobus tuberculatus*) when unavoidable

129. These conditions purport to authorise harming and killing wildlife that does not relate to one of the activities for which approval is sought. This is therefore beyond scope and should be deleted. No approvals are sought to take or destroy the eggs of the wildlife listed or to kill the species listed.

130. The conditions also retain the following:

e) Any accidental / unintentional harm to wildlife that could arise from any of the activities undertaken in relation to the Waihi North Project.

131. This purports to authorise killing of wildlife (including native frogs and lizards), when the substantive application does not seek approval for this, and in circumstances where OGNZL has elected to only proceed with the activities listed at paragraph 124 above.

132. The legal submissions on behalf of the Applicant dated 1 September 2025 state:

66. The applicant has no intention to harm wildlife and proposes realistic management measures to minimise the risk of incidental harm occurring as it goes about the various activities that need to be undertaken as part of the WNP. Those measures are appropriately conditioned via the resource consents and DOC approvals.

67. If in the future DOC is able to substantiate that activities proposed as part of the WNP in addition to those listed in the application are properly subject to the wildlife approval regime in the Wildlife Act the applicant will look to make a subsequent application.

133. The comments in Forest and Bird's comments under s 53 are reiterated:

... the wildlife approval only seeks approval to **handle, salvage and relocate frogs in the areas where vegetation clearance will occur**. Otherwise, within the vibration area and waterways that may be affected by de-watering, approval is only sought for **monitoring**. Under the Wildlife Act it is an offence to 'hunt or kill' wildlife without a permit. "Hunt or kill" is defined in s 2 as: "in relation to any wildlife, includes the hunting, killing, taking, trapping, or capturing of any wildlife by any means; and also includes pursuing, disturbing, or molesting any wildlife, taking or using a firearm, dog, or like method to hunt or kill wildlife, whether this results in killing or capturing or not...". There is significant uncertainty as to the effect of vibration on frogs. **Vibration is likely to at least amount to "disturbing" wildlife. Approval has not been sought for disturbing frogs by vibration** and accordingly there is no scope to grant a wildlife approval for this activity....

134. Should effects on frogs due to vibration arise, a wildlife permit will be required.

135. The Panel should therefore ensure that in granting consent:

- a. Disturbance to frogs does not eventuate from activities for which wildlife approval has not been sought.
- b. The conditions do not purport to authorise such disturbance.
- c. It includes as a condition of the wildlife permit a clause clarifying that it does not authorise any disturbance of frogs from vibration (so that this is clear and so that there is no argument that authorisation is implied through the reference in the wildlife permit to conditions in resource consents that contemplate the potential for adverse effects).

Management Plan approach

136. The conditions include a requirement that all activities be undertaken in accordance with the listed management and monitoring plans.

137. Within the Coromandel Forest Park this includes:

- a. The Terrestrial Ecology Management Plan as included in the ELMP-WUG that has been certified under condition 5C of the combined conditions.
- b. The Native Frog Monitoring Plan.

- c. The Native Frog Salvage Release Plan as included in the ELMP-WUG.

138. The conditions also refer to management plans applying outside of the Coromandel Forest Park, including the Lizard Management Plan (as included in the ELMP WA).

139. Forest and Bird can see several issues arising out of this:

- a. Condition 2a.iv refers to a native frog salvage release plan as included in the ELMP-WUG. There does not however appear to be any reference to a native frog salvage release plan in the conditions relating to the ELMP-WUG. DOC made several recommendations as to what the Native Frog Release Plan needs to include and the objectives that need to be defined.¹⁷ These recommendations should be incorporated into the conditions governing that management plan.
- b. The conditions of the Wildlife Approval previously detailed the objectives and requirements for a number of management plans (the Terrestrial Ecology Management Plan; the Native Frog Salvage Release Plan; the Willows Site section of the Wharekirauponga Underground Mine Ecology and Landscape Management Plan; the Lizard Management Plan). Those conditions have been deleted and reference is made to the plans as included in the ELMP-WUG and ELMP – WA certified under condition C5 of the combined conditions. However conditions 47A and 47B only contain one line relating to each of these subplans, with no information about the objectives and standards that must be met. This has been commented on above in the section on management plans.
- c. The management plans contain mitigation that is highly relevant to the Wildlife Act approvals, yet DOC do not have a certification role. As these management plans are included as conditions in the Wildlife Act approval then DOC must retain a certification role in relation to these management plans.
- d. The management plans referred to are inconsistent with the Wildlife Permit. By way of example, Condition 175 of the HDC conditions states what must be set out in the Native Frog Monitoring Plan. This includes:
 - a. The actions and methods required to **adaptively manage adverse vibration, dewatering, and pest control effects** on native frogs;

¹⁷ S 51 Wildlife Approval Report, paragraph 140. See also Access Arrangement Report, Appendix 1 DOC tracked changes and comments on conditions (page 29 of Proposed Wharekirauponga Access Arrangement Conditions).

- b. The monitoring programmes and trigger levels required to ensure the **best practicable options are being utilised to manage adverse effects on native frogs**; and
- c. To confirm to Hauraki District Council that the effects management measures will generate net gain outcomes for native frogs.

The conditions therefore envisage that there may be adverse effects that arise that may need to be adaptively management, or which may need to have the best practicable option approach applied; yet the Wildlife approvals do not authorise disturbing frogs from activities such as vibration or pest control. This issue has been commented on above in the section regarding scope.

140. It is submitted that:

- a. The important standard-setting content of the management plans should be brought up into conditions; and cross-referencing should be made to the HDC consent conditions, so that the Wildlife Authority is not so heavily reliant on management plans.
- b. The management plan conditions should be amended to be more prescriptive of the objectives and standards that need to be met.
- c. DOC should retain a certification role.

Conditions relating to frog capture and handling

- 141. The wildlife permit previously included a number of conditions relating to frog capture and handling. DOC had also suggested the addition of a number of new conditions in its comments which were accepted by the applicant in their response to comments. These are no longer in the draft Wildlife Permit (except for the references to protocols in condition 3).
- 142. It appears that the intention is that this issue is now intended to be dealt with simply through the management plans, yet there are no conditions relating to a Frog Salvage Release Plan.
- 143. The conditions previously recommended by DOC should be reinserted.

Wharekirauponga Access Arrangement

Management Plans

- 144. Where management plans are relied on for the purposes of the Access Arrangement, DOC should retain the certification role for these management plans.
- 145. The original conditions required activities be undertaken in accordance with the:

- a. WUG Ecology and Landscape Management Plan
- b. Wharekirauponga Pest Animal Management Plan
- c. Coromandel Forest Park Kauri Dieback Management Plan
- d. Native Frog Monitoring Plan.

146. The conditions no longer refer to the WUG Ecology and Landscape Management Plan. It is unclear why this is the case.

147. The conditions include the following:

Native Frog Monitoring Plan

2.46 All Activities authorised by this Access Arrangement must be undertaken in accordance with the Native Frog Monitoring Plan certified under condition 174 of the Hauraki District Council landuse consent.

2.47 The certified Native Frog Monitoring Plan must be provided to the Department of Conservation no later than 4 years prior to the commencement of WUG stoping activities.

2.48 If as a result of the Annual Leiopelmatid Frog Monitoring Report provided to the Department under condition 177.3 of the Hauraki District landuse consent the Department is not satisfied that the actions taken by the Permit holder are achieving the objective of the Native Frog Monitoring Plan, the Permit holder must invite the Department to participate in a collaborative workshop to discuss the levels of achievement, and to identify any measures that are required to be implemented to address any agreed failure to achieve the objective and any amendments necessary to the management plan. In the instance that there is disagreement between the Permit holder and the Department at the conclusion of the collaborative workshop, the process in Conditions 50 and 51 (Dispute Resolution) is to be implemented.

148. Forest and Bird objects to the use of a dispute resolution process for resolving matters that are ultimately about consent compliance. DOC is the entity with enforcement functions and powers over access arrangements. Where conditions set out in the access arrangement are not being achieved, that becomes a compliance issue, and the conditions should not provide for a process which derogates from DOC's enforcement powers.

Scope of Access Arrangement

149. In Forest and Bird's section 53 comments Forest and Bird set out raised the issue that the application does not include an application for an access

arrangement for activities carried out below the surface. Underground mining that adversely affects frogs would require an access arrangement.¹⁸

150. The conditions should make clear that if frogs are affected by vibrations then the underground mining activities will require an access arrangement and that this is not authorised.

Cross-referencing to council consent conditions

151. The access arrangement cross references extensively to the resource consent conditions, generally the cross-reference is just to a condition number. Forest and Bird is concerned that this creates uncertainty should the resource consent conditions change, either through a variation or a s 128 RMA review process. It could result in the situation where resource consent conditions that are important to the access arrangement are changed or removed, or even just have a numbering change, and thus are no longer validly referenced in the access arrangement.

152. There is currently no statutory mechanism for a change in the conditions of one approval to automatically flow through to the other related approvals. While the current process is effectively “a one stop shop”; there is no statutory process for a “one stop shop” after authorisation are given. Schedule 7, clause 7 of the Fast Track Approvals Act makes it clear that a wildlife approval granted under the Fast-track Approvals Act has force and effect as a lawful authority for the purposes of Part 5 of the Wildlife Act and that the Director-General (not the panel, nor the Councils) may vary or replace a wildlife permit on application by the consent holder.

153. One way of addressing this issue would be to include in a schedule to the access arrangement a copy of the relevant resource consent conditions (as issued by the panel). The access arrangement could then cross-refer to the resource consent conditions set out in the schedule. This gives more certainty, as someone reading the conditions will be able to readily ascertain what those conditions say, and should there be any change to those conditions, a change to the access arrangement (namely an update to the schedule of conditions) would also be required in order to take effect for the purpose of the access arrangement. That will ensure that DOC retain a decision-making function over changes to the access arrangement.

Northern Area Concession

154. Forest and Bird repeats its comments above in relation to:

- a. Cross referencing of consent conditions.
- b. Retention of a certification role for DOC of the management plans; and reliance on management plans that are uncertain.

¹⁸ Comments from paragraph 46.

155. It is also noted that:

- a. The conditions no longer refer to the Ecology and Landscape Management Plan. It is unclear why this is the case.
- b. The conditions refer to the actions described in the Native Frog Salvage Release Plan but the requirement for such a plan appears to be missing from the conditions.