

# **New Zealand Conservation Authority – Comments under the Fast-track Approvals Act 2024**

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## **Bledisloe North Wharf and Fergusson North Berth Extension**

### **1. Introduction**

The New Zealand Conservation Authority (NZCA) acknowledges and appreciates the opportunity given by the Expert Consenting Panel (Panel) to comment on this application, pursuant to section 53(2)(m) of the Fast-track Approvals Act 2024 (FTAA). The NZCA offers these comments in line with its statutory role as an independent body established under the Conservation Act 1987. The Authority's responsibilities include advising on matters of national conservation importance, overseeing the development and implementation of conservation strategies and plans, and ensuring the management of natural and cultural resources aligns with the principles of the Treaty of Waitangi.

These comments are based on the application and material required under section 18 of the FTAA, which identifies relevant iwi authorities, Treaty settlement entities, and MACA applicants, as well as the Crown's statutory obligations in relation to existing Treaty settlements and customary rights. The NZCA's views also take into account the Director-General of Conservation's technical advice prepared under section 51(2)(c) of the FTAA regarding the wildlife approval sought for kororā (little penguin), a taonga and protected species.

In doing so, the NZCA offers a national conservation perspective to help the Panel ensure the application is assessed in a way that protects the environment, statutes, and mana whenua rights. The Authority acknowledges the significance of infrastructure development at a national level but stresses that such development must not compromise Aotearoa's conservation duties or the Crown's responsibilities under Te Tiriti o Waitangi.

## 2. Application Summary Relevant to NZCA Functions

The Port of Auckland has submitted an application under the FTAA to build a new wharf at Bledisloe Terminal and extend the Fergusson North Berth. The project includes substantial in-water works, such as piling, dredging, and rock revetment activities within the Waitematā Harbour.

As part of this proposal, the applicant seeks approvals under the Wildlife Act 1953 to disturb, handle, and relocate kororā, a taonga and protected species known to inhabit the affected area. A Little Penguin Management Plan (LPMP) has been submitted to support the wildlife approval.

The proposal also engages the Conservation Act 1987, particularly section 4, which requires that all conservation decisions give effect to the principles of the Treaty of Waitangi. The project area overlaps with multiple Treaty settlement areas and MACA claims, invoking considerations under sections 7 and 18 of the FTAA, including statutory acknowledgements, customary rights, and Crown–iwi partnership obligations.

These matters fall within the NZCA’s statutory functions to:

- Provide oversight of conservation and wildlife management
- Ensure consistency with DOC’s statutory responsibilities and best practice standards
- Uphold Treaty principles in conservation-related decision-making; and
- Advise on matters of national conservation importance, including protecting taonga species and the integrity of coastal and marine ecosystems.

The NZCA’s comments support the Auckland Conservation Board’s submission, which reinforces the need for robust environmental safeguards, culturally grounded engagement, and appropriate recognition of statutory and Treaty responsibilities in the coastal marine environment.

## 3. Assessment Against the Conservation Management Framework

The NZCA has evaluated this proposal against its statutory conservation oversight role, including under the following legislation:

- Conservation Act 1987
- Wildlife Act 1953
- National Parks Act 1980
- Reserves Act 1977
- Marine Reserves Act 1971
- Resource Management Act 1991 (and relevant national direction)

The proposal is also assessed against:

- General Policy for Conservation (2005)
- General Policy for National Parks (2005)
- Relevant regional Conservation Management Strategies (CMSs) or Plans

- Current Department of Conservation (DOC) operational standards and guidelines.

**Comments:**

The proposal is broadly consistent with the statutory conservation management framework. Key concerns include possible gaps in iwi engagement, lack of Treaty settlement (including Marine and Coastal Area Act 2011 (MACA)) assessment, species management measures for kororā, and limited integration of biodiversity policy and public amenity considerations. The proposal requires further alignment with conservation planning documents, DOC's statutory mandate and the New Zealand Coastal Policy Statement (NZCPS).

**Recommendation:**

The NZCA recommends that any FTAA approval granted by the Panel incorporate enforceable conditions to uphold the purpose of the Conservation Act, the principles of the General Policy for Conservation, the protection of ecological and cultural values under the Wildlife and Marine Reserves Acts and the NZCPS.

#### **4. Treaty Responsibilities under Section 4 of the Conservation Act**

Section 4 of the Conservation Act 1987 requires that the Act (and all Acts referred to in Schedule 1 including the Reserves Act and Wildlife Act) be interpreted and administered to give effect to the principles of the Treaty of Waitangi. This principle is integral across all aspects of conservation governance.

The NZCA assesses whether the project:

- Recognises mana whenua and their enduring relationship to the affected area
- Demonstrates alignment with Treaty settlement instruments, including statutory acknowledgements
- Involves early, genuine, and culturally grounded engagement with iwi and hapū
- Protects and upholds Māori customary rights and decision-making roles.

**Comment:**

Section 4 of the Conservation Act 1987 requires that the Act be interpreted and administered to give effect to the principles of the Treaty of Waitangi. This requirement places an active obligation on the Crown and its agents to engage meaningfully with Māori, uphold their rights and interests, and ensure that Māori perspectives and values are fully integrated into conservation-related decision-making.

In this case, the application acknowledges engagement with iwi and hapū and includes Cultural Values Assessments from Te Ākitai Waiohū and Ngāti Te Ata. However, the material provided does not demonstrate how engagement has occurred with all relevant mana whenua entities, particularly Ngāti Whātua Ōrākei. The absence of evidence of

formal input from Ngāti Whātua Ōrākei raises concerns about the completeness and integrity of the consultation process.

Furthermore, the application does not clearly identify or acknowledge whether other iwi and hapū with overlapping or adjacent interests in the Waitematā Harbour, such as Ngāti Maru, Ngāti Paoa, and others, were engaged in a manner consistent with section 4 obligations. A comprehensive and transparent engagement record is essential to demonstrate good faith, active protection, partnership, and mutual respect, which are fundamental Treaty principles.

Additionally, while the application mentions the existence of Cultural Impact Assessments, significant portions of the cultural assessment material have been redacted, making it impossible for the NZCA to evaluate the extent of cultural effects or the adequacy of the proposed responses. This lack of transparency limits the Authority's ability to assess whether the project has appropriately considered or responded to Māori environmental values, cultural landscapes, or taonga species within a Treaty-aligned framework.

While the applicant is not required to propose final conditions at this stage, the complete absence of draft conditions addressing cultural mitigation or partnership mechanisms raises significant concerns. Given the known cultural significance of Waitematā Harbour, the presence of taonga species kororā, and the history of grievances related to land and harbour reclamation, it is crucial for the applicant to clearly explain how cultural impacts will be avoided, remedied, or mitigated, and how affected iwi will be engaged in ongoing governance and monitoring.

***Recommendation:***

The NZCA recommends that the Panel seek assurance that engagement with mana whenua was early, genuine, and culturally grounded. The project must demonstrate alignment with Treaty settlement instruments, particularly those that include cultural redress in the Auckland waterfront area, and ensure that iwi and hapū with acknowledged customary interests have had a meaningful opportunity to shape the project's design, ecological mitigation, and implementation. Without clear evidence of such engagement or inclusion of cultural mitigation pathways, the application does not sufficiently demonstrate compliance with the Treaty obligations embedded in section 4 of the Conservation Act 1987.

## **5. FTAA Section 7 – Treaty Settlement Obligations and Customary Rights**

Section 7 of the FTAA prohibits project approval if it would be inconsistent with a Treaty settlement or recognised customary right.

***Comment:***

Section 7 of the FTAA establishes a high legal threshold for fast-track approval for any project inconsistent with a Treaty settlement or a recognised customary right. This

provision is crucial for ensuring that the FTAA process does not override or undermine existing legal remedies and Crown obligations under Te Tiriti o Waitangi and related settlement legislation.

The application asserts that the project area does not fall within any statutory acknowledgement area. However, this claim is not supported by a comprehensive legal mapping or assessment of relevant settlement instruments, redress areas, or customary marine title applications. Notably, the Port of Auckland is located within the rohe of several iwi and hapū with active interests in the Waitematā Harbour, including Ngāti Whātua Ōrākei, Ngāti Maru, Te Ākitai Waiohua, Ngāti Te Ata, Ngāti Pāoa, and others. Several of these groups either hold or are pursuing Treaty settlements and MACA (Marine and Coastal Area – Takutai Moana Act 2011) claims that may intersect with the harbour and its seabed.

While the applicant mentions consultation with a broad range of iwi authorities, the application lacks a systematic evaluation of whether the proposed works align with the redress offered through existing Treaty settlements, particularly mechanisms such as:

- Statutory acknowledgements and deeds of recognition (which may require notification or consideration in decision-making processes)
- Cultural redress over coastal or seabed areas
- Memoranda of Understanding or Relationship Agreements with the Crown or relevant agencies
- Joint governance or co-management arrangements (such as those relevant to the Waitematā Harbour or maunga in Tāmaki Makaurau)
- Customary marine title and protected customary rights applications under the MACA Act.

Given the significant disturbance to the seabed, including dredging and piling, potential adverse effects on taonga species, and the project's location in a culturally significant coastal environment, the NZCA deems it essential that the Panel receive authoritative advice on the following:

- Whether any part of the project area overlaps with a MACA application or area under inquiry before the High Court or Crown engagement pathway
- Whether the works would be inconsistent with any Treaty settlement statute, redress area, or post-settlement governance entity (PSGE) mandate
- Whether engagement to date has addressed iwi rights and interests recognised through settlements or Crown acknowledgements.

#### ***Recommendation:***

The NZCA recommends that the Panel seek confirmation from the Crown, preferably Te Tari Whakatau or the Ministry for the Environment, that the proposed project does not compromise, conflict with, or undermine any current Treaty settlements, redress mechanisms, or MACA interests. In the absence of such assurance, the application may

contravene section 7 of the FTAA. It should not proceed until these matters are resolved to the satisfaction of the Crown and affected iwi and hapū.

## 6. Ecological, Species, and Landscape Protection

The NZCA's interests include the protection of Indigenous species and habitats, including those on or adjacent to public conservation lands, marine reserves, or protected ecosystems.

This includes assessment against:

- DOC best practice guidelines (e.g., species recovery plans)
- The Wildlife Act 1953 (protection of absolutely and partially protected species)
- The Marine Reserves Act 1971

### **Comment:**

The NZCA recognises the importance of protecting indigenous species and habitats in coastal areas, especially where nationally and culturally significant species like kororā may be found. Kororā are classified as *At Risk: Declining* under the New Zealand Threat Classification System and are fully protected under the Wildlife Act 1953. They are also regarded as a taonga species by iwi and hapū throughout Tāmaki Makaurau and Aotearoa.

The proposed development at Bledisloe North Wharf and the Fergusson North Berth Extension could affect kororā through disturbance, habitat change, and construction activities, especially around the rock revetment areas. The application recognises these risks and includes an LPMP that details methods for surveying, managing, and relocating kororā if encountered during pre-construction and construction stages.

The NZCA has reviewed the updated position of the DOC and endorses its support for the LPMP as outlined in DOC's Section 51(2)(c) wildlife report. DOC has confirmed that the LPMP aligns with best practice standards, includes appropriate mitigation and management protocols, and provides a strong framework for avoiding, minimising, and remedying adverse effects on kororā. Notably, DOC supports key provisions in the LPMP such as exclusion zones around active burrows, the avoidance of relocating breeding or moulting penguins, temporary marking using non-invasive methods (e.g., twink), and the installation of nest boxes to offset temporary habitat loss.

The NZCA agrees that the LPMP, once certified by DOC and implemented according to the conditions outlined in DOC's wildlife report, provides adequate ecological protection for kororā. Moreover, the NZCA encourages the applicant to include cultural monitoring practices and support mana whenua participation in all aspects of kororā management, including the relocation process and post-construction habitat monitoring.

### ***Recommendation***

The NZCA recommends that the Panel:

- Require the certified LPMP to be an enforceable condition of any wildlife approval and ensure it is fully implemented according to the recommendations outlined in the DOC's section 51(2)(c) report.
- Maintain DOC's certification and recertification responsibilities for any amendments to the LPMP to safeguard ecological integrity and ensure compliance with the Wildlife Act 1953 and DOC operational standards.
- Guide the applicant to collaborate with mana whenua to integrate tikanga-based practices and mātauranga Māori into the implementation of the LPMP, ensuring meaningful opportunities for iwi involvement in penguin relocation, habitat monitoring, and kaitiaki roles.
- Ensure all ecological monitoring data and incident reports related to kororā are shared transparently with both DOC and relevant mana whenua entities to uphold the principles of partnership, active protection, and shared environmental stewardship.

This approach shows NZCA's confidence in DOC's technical oversight and confirms the importance of aligning ecological protection with cultural values and legal responsibilities.

## **7. Alignment with National Policy Statements (NPS)**

The NZCA considers the application's alignment with the following national instruments, which guide effects management and values integration:

- NPS for Indigenous Biodiversity (2023)
- NPS for Freshwater Management (2020)
- New Zealand Coastal Policy Statement (2010)

### ***Comment:***

The proposal demonstrates partial alignment with the New Zealand Coastal Policy Statement 2010 (NZCPS), particularly Policy 6 and Policy 10, which recognise the importance of ports, and that certain activities have a functional need to be situated within the coastal marine area (CMA). The development of additional wharf infrastructure to support freight handling and berth availability aligns with the NZCPS objectives that aim to facilitate regionally and nationally significant infrastructure, provided that adverse effects are appropriately managed or mitigated.

In the coastal environment landward of the CMA, both the NZCPS and the National Policy Statement for Indigenous Biodiversity 2023 (NPS-IB) are relevant and the NZCPS prevails in the event of conflict. Alignment with Policy 11 NZCPS and the NPS-IB requires clearer and more rigorous detail. The application involves works that could directly impact taonga species, especially the kororā, an at-risk species protected under the Wildlife Act and which holds cultural significance to mana whenua. Under Policy 11 NZCPS, adverse effects

on this species must be avoided. The ecological assessment in the application identifies adverse effects linked to disturbance, displacement, and possible habitat degradation but suggests management and mitigation measures (e.g., visual monitoring, noise controls, exclusion zones).

Under the NPS-IB, decision-makers must apply the effects management hierarchy and give particular attention to avoiding adverse effects on significant indigenous biodiversity and habitats of taonga species, especially where these are recognised by tangata whenua. Where residual adverse effects are unavoidable, appropriate biodiversity offsetting or environmental compensation should be required. Currently, the proposal lacks sufficient detail on long-term ecological enhancement measures or offsetting initiatives that would fulfil the expectations of the NPS-IB (noting that the NZCPS requires an “avoid” approach).

The works’ marine location does not significantly trigger the NPS-Freshwater Management 2020; however, the broader catchment context, including stormwater discharge, sedimentation risk during construction, and cumulative coastal ecosystem effects, requires further consideration, particularly if temporary discharges are proposed during piling or dredging.

### ***Recommendation***

While the proposal meets the functional need test under Policy 6 of the NZCPS and is supported by Policy 10 NZCPS, further work is required to demonstrate compliance with Policy 11 NZCPS and the NPS-IB. The NZCA recommends that the Panel:

- Require the implementation of the DOC-certified LPMP as a binding condition of approval, ensuring that residual impacts on kororā are properly avoided (NZCPS Policy 11), and that any temporary habitat loss is managed through the proposed nest box provisions.
- Officially include mana whenua input in identifying taonga species and their habitats, and ensure this knowledge guides the ongoing development and adjustment of biodiversity management measures, in accordance with NPS-IB requirements.
- Require long-term ecological monitoring and transparent reporting, with monitoring results shared with DOC and relevant mana whenua entities to support shared stewardship and adaptive management.
- Ensure that any residual adverse effects on indigenous biodiversity that are not required to be avoided are managed through ecologically suitable and culturally sensitive compensation or enhancement measures.

This approach supports statutory biodiversity objectives and the integration of mātauranga Māori, consistent with the outcomes sought by the NPS-IB and the values of Treaty partnership.



## 8. Public and Stewardship Land Status

The NZCA expects applications involving public conservation land to demonstrate that:

- Legal processes under section 16A, 17 or 26 of the Conservation Act or equivalent Reserves Act provisions are followed
- The project does not cut across the stewardship land reclassification process
- Any land disposal, exchange, or concession aligns with public interest and Treaty settlements.

### ***Comment:***

While the application does not involve public conservation land managed under the Conservation Act 1987, the project occupies and transforms part of Auckland's central waterfront, a highly visible and publicly accessible coastal environment of significant recreational, cultural, and civic value. The location directly adjoins Queens Wharf and is close to heritage and public spaces such as the Ferry Terminal, Britomart Precinct, and the Waitematā waterfront promenade.

Although the FTAA streamlines statutory approval pathways, it does not lessen the need to consider the broader public interest in using and developing Crown coastal assets, including the cumulative erosion of public access, views, and natural character values. The visual encroachment of new port infrastructure into the harbour and its impact on public perception of the working waterfront is particularly significant in terms of conservation values, especially where opportunities for restoring natural character, soft edge design, or integrating public access could be realised.

Given the NZCA's role in overseeing conservation policy development and upholding the public interest in marine and coastal environments, the Authority emphasises the importance of ensuring that the proposed infrastructure does not compromise existing or future public access, coastal resilience objectives, or the amenity value of this iconic national waterfront gateway.

### ***Recommendation***

The NZCA recommends that the Panel impose conditions requiring the applicant to:

- Minimise visual dominance of the proposed infrastructure when viewed from Queens Wharf, Quay Street, and the ferry terminal area
- Incorporate design elements that soften the interface between built port structures and the coastal environment, such as public viewing platforms, green infrastructure, or integrated pedestrian access where feasible
- Demonstrate that the proposed works do not impede current or future opportunities for public engagement with the Waitematā Harbour
- Assess and report on potential effects on natural character and amenity as part of any landscape and visual impact assessment required by the Panel.

The NZCA also encourages the Panel to assess the potential cumulative loss of public amenity resulting from successive approvals along Auckland's waterfront and to ensure that suitable design responses are incorporated into the project to safeguard the public conservation interest in the marine and coastal environment, even when conservation land is not directly involved.

## 9. NZCA Position and Recommendations to the Expert Panel

The NZCA **conditionally supports** this application under the FTAA. This position reflects a balanced consideration of the proposal's potential benefits, its engagement with statutory conservation responsibilities, and its implications for Treaty relationships and taonga species.

The Authority's conditional support is contingent upon the project meeting the following critical expectations:

- **Strengthening Protection of Taonga Species**

The proposal directly impacts kororā, a protected and culturally important species under the Wildlife Act 1953. The application includes an LPMP that details mitigation measures to address potential impacts on kororā during construction. DOC has reviewed the LPMP and confirmed that it aligns with current best practice, incorporates suitable handling protocols, relocation procedures, and habitat mitigation measures, and complies with statutory requirements.

To maintain the integrity of species protections and reduce ecological risk, the NZCA supports certifying and implementing the LPMP as a condition for wildlife approval. The NZCA also endorses DOC's role in managing plan amendments through a recertification process, ensuring that kororā management remains responsive and compliant with the Wildlife Act at all project stages.

- **Integration of Treaty of Waitangi Principles**

Section 4 of the Conservation Act 1987 obliges the NZCA and other Crown entities to adhere to the principles of the Treaty of Waitangi. The current application includes Cultural Values Assessments from two iwi, but it is unclear whether engagement with all iwi having statutory interests in the project area, particularly Ngāti Whātua Ōrākei, has taken place in a way that upholds Treaty principles. Full integration of those principles requires:

- Recognition of mana whenua relationships with the site
- Acknowledgement and protection of cultural values associated with affected marine species and habitats
- Co-development or endorsement of any ecological management plan by relevant iwi or hapū
- A pathway for continued iwi involvement during construction and operational phases, particularly regarding kaitiaki roles.

- **Avoidance of Undermining DOC's Statutory Role**

The Wildlife Act 1953, the Marine Reserves Act 1971, and the Conservation Act 1987 assign responsibility for protecting wildlife and maintaining ecological integrity to the DOC. An approval granted under the FTAA should not bypass or weaken DOC's legal oversight, especially when taonga species like kororā are involved. DOC's technical and regulatory role in approving and monitoring species management plans remains vital to safeguarding environmental protection under current law.

The NZCA endorses DOC's position on the LPMP, as outlined in its Section 51(2)(c) wildlife report. DOC has confirmed that the LPMP aligns with best practice, appropriately manages potential ecological impacts on kororā, and should be certified as a condition of the wildlife approval. The NZCA supports this certification approach and recognises that it provides adequate oversight to fulfil statutory and ecological obligations.

The Authority remains clear, however, that the urgency of delivering major infrastructure projects must not be used to justify shortfalls in environmental protection or the marginalisation of Treaty obligations. The LPMP must be implemented in accordance with the DOC-certified version, and the Authority strongly supports the ability for future amendments to be subject to DOC review and recertification.

In this context, the NZCA's conditional support for the project rests on the following guarantees:

- Protection of kororā during all project stages through the implementation of a DOC-certified LPMP
- Genuine and ongoing iwi involvement in environmental decision-making, including kororā relocation and monitoring
- Respect for statutory obligations under the Wildlife Act 1953 and relevant Treaty settlement legislation
- Transparent monitoring and adaptive management, with clear reporting processes involving DOC and mana whenua.

The NZCA may revise its position if these protections are not upheld or further developments undermine DOC's statutory role or the conservation and cultural values at stake.

## **10. Concluding Statement**

The NZCA thanks the Panel for the opportunity to comment on this application under the FTAA. The Authority acknowledges the strategic importance of nationally significant infrastructure, such as ports, and recognises the role of the FTAA in facilitating the timely delivery of such projects. However, it also emphasises that this should not come at the expense of Aotearoa New Zealand's conservation responsibilities, the protection of taonga species, or the Crown's obligations under Te Tiriti o Waitangi.

This application raises issues of national conservation significance, particularly concerning the protection of kororā, ecological resilience in Waitematā Harbour, and the necessity to uphold the rights and interests of mana whenua under Treaty settlement legislation and customary law. The presence of a taonga species within an active construction zone, the cultural importance of the harbour, and deficiencies in Treaty partner engagement and ecological plan certification are of considerable concern.

The NZCA's conditional support for the proposal reflects a pragmatic yet principled stance. It urges the Panel to implement strict, enforceable conditions that protect ecological and cultural values, ensure appropriate oversight by the DOC, and uphold the Treaty principles outlined in section 4 of the Conservation Act 1987 and section 7 of the FTAA.

The NZCA remains available to engage with the Panel on matters relating to conservation policy and statutory responsibilities. In particular, the Authority welcomes the opportunity to provide additional input as project conditions are developed, including the adequacy of environmental and cultural mitigation measures, to help ensure that the implementation of this proposal is consistent with New Zealand's conservation framework and Treaty obligations.