13 July 2026

Fast-track Approvals Act wildlife approval report

Section 51(2)(c) wildlife approval report for –
FTAA-2603-1194 Waikanae North Development

Department of Conservation
Te Papa Atawhai

Te Kāwanatanga o Aotearoa
New Zealand Government

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1.0 Introduction

1.1 On 30 March 2026, Waikanae North Developments Limited ("the Applicant") lodged a substantive application with the Environmental Protection Authority (EPA) for the Waikanae North Development (the Project).

1.2 The Project is a large-scale residential subdivision, of 1000 homes in the Kapiti District.

1.3 As part of the application, the Applicant sought a Wildlife Approval for the Project, including for the implementation of certain lizard management measures.

1.4 The application is made in respect of lizard species expected to be present at the location.

1.5 On 22 April 2026, the EPA determined that the application was complete and complied with section 46(2) of the Fast-track Approvals Act 2024 (FTAA/the Act).

1.6 On 29 June 2026, in accordance with section 51(2)(c) of the Act, the Panel Convener directed the EPA to obtain a report prepared by the Director-General of Conservation in accordance with clause 3 of Schedule 7. This report is due on 14 July 2026, 10 days after request.

2.0 Purpose of the report

2.1 This report provides commentary to support the Panel's assessment of the application for a Wildlife Approval. The content of this report has been informed by DOC's technical experts and from information from Treaty partners where available.

2.2 In n accordance with clause 3 of Schedule 7, this report must address the following matters:

- *The purpose of the Wildlife Act 1953 and the effects of the Project on the protected wildlife that is to be covered by the approval.*
- *Information and requirements relating to the protected wildlife that is to be covered by the approval (including, as the case may be, in the New Zealand Threat Classification System or any relevant international conservation agreement).*
- *Any conditions that should be imposed to manage the effects of the activity on protected wildlife.*
- *Any conditions that should be imposed to recognise or protect a relevant Treaty settlement and any obligations arising under the Marine and Coastal Area (Takutai Moana) Act 2011 or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019*

2.3 The Panel Convener has also requested a report pursuant to s 51(1) of the Act advising how the weighting of matters set out in Schedule 7, clause 3 of the Act should be approached, having regard to relevant senior court decisions (attached to this report at Appendix D).

3.0 Overview of DOC's report

3.1 The Project will inevitably impact certain absolutely protected lizards present at the location.

3.2 The Applicant proposes a lizard management programme, which is contained in a Lizard Management Plan (LMP). This includes salvage and relocation aimed at minimising and mitigating adverse effects on the lizards. Accordingly, the Applicant requests lawful authority to catch alive and liberate certain lizards.

3.3 Lawful authority to incidentally kill lizards (notwithstanding best efforts to prevent mortality) is also sought.

3.4 It is expected that the Applicant will provide an updated LMP for consideration, before any decision is made on the application. DOC staff have discussed the content of potential updates with the Applicant, who has indicated the changes will be forthcoming.

3.5 While it is acknowledged that there are other considerations for the Panel to balance, and DOC is largely comfortable with the proposal (following discussions with the applicant); these residual matters should be addressed to better align the proposal with the purpose of the Wildlife Act 1953:

a. The requested term should be reduced from 15 years to 10 years;

b. The release area should be enhanced to provide suitable habitat and micro-habitat for all species applied for by the Applicant, the LMP should be updated to do this and given that the successful lizard relocation relies on restoration planting, the proposed planting plan should be included within the LMP;

c. Ideally post-release monitoring would be undertaken to determine the success of the salvage, however, DOC and the applicant have discussed this matter and determined a financial contribution to lizard management may be more appropriate. The applicant has offered this. However, greater clarity should be provided regarding the Applicant's proposal of a financial contribution to either a Society for Research of Amphibians and Reptiles in New Zealand (SRARNZ) mitigation fund or a university-led programme, with funding to be used for lizard management mitigation research, habitat enhancements, and/or monitoring programme.

d. It is DOC's expectation that an updated LMP will be provided to ensure the matters raised in this report are addressed prior to the decision on this application, and that the updated conditions (Appendix C), as provided by the Applicant to DOC on 1 July 2026, would then only need to address the standard conditions without the need for bespoke conditions that address each of DOCs comments.

4.0 Sources

4.1 This report draws on information from the substantive application documents including in particular:

a. Substantive application under the Fast-Track Approvals Act for a Residential Subdivision – Application for Resource Consents and Wildlife Approval

b. Appendix 25: Waikanae North Development Fast Track Application Lizard Management Plan dated March 2026 (version date 19 March 2026) (“LMP”)

c. Appendix 34: Wildlife Approval Memo dated 20 March 2026

d. Ecological Impact Assessment

e. Ecological Restoration Management Plan

f. Waikanae North Development Limited Memo dated 1 July 2026 “Wildlife Approval Conditions – Wildlife Approval under section 42(4)(h) FTAA (Appendix A) to this report.

4.2 This report is informed by expert advice from Lynn Adams in relation to lizard management. Lynn’s credentials and relevant experience are provided in Appendix B.

5.0 Context and background

Project overview

5.1 The wildlife approval sought relates to an urban subdivision at 169-171 Peka Peka Road, Peka Peka. The project comprises an area of 139.86 hectares. Proposed earthworks will result in the removal of 24.98 ha of lizard habitat across the site.

Summary of wildlife approval sought

5.2 A Wildlife Approval to catch alive and liberate lizards is sought for the salvage and relocation of these lizards: Northern Grass Skink, Glossy Brown Skink, Copper Skink, Ornate Skink, Raukawa Gecko.

5.3 Approval for incidental killing of these five species is also sought.

5.4 The applicant proposes to catch alive and relocate the abovementioned lizard species prior to earthworks.

<u>Lizard presence</u>

5.5 A site survey was conducted. Thirty-one northern grass skinks (*Oligosoma polychroma*) were recorded. No other species of lizard were caught, seen or observed.

5.6 The northern grass skink was assessed as being most likely to be present.

5.7 Notwithstanding the survey results, a desktop assessment supplied by the Applicant found that other protected species of lizard might be present based on range overlap and habitat preference. Key information from the Applicant is summarised here:

Common name	Scientific name	Threat classification	Likelihood of presence[1]	Subject of application?[2]
Barking gecko	*Naultinus punctatus*	At Risk - Declining	Very low	**No**
Ngahere gecko	*Mokopirirakau "southern North Island"*	At Risk - Declining	Very low	**No**
Raukawa gecko	*Woodworthia maculata*	Not Threatened	Low	Yes
Ornate skink	*Oligosoma ornatum*	At Risk - Declining	Low	Yes
Copper skink	Oligosoma aeneum	At Risk - Declining	Low	Yes
Glossy brown skink	*Oligosoma zelandicum*	At Risk - Declining	Moderate	Yes
Northern grass skink	*Oligosoma polychroma*	Not Threatened	High	Yes

5.8 The Applicant identified that potential impacts on lizards are death and injury.

5.9 The Applicant's proposed approach to lizard management includes pre-works systematic searches, trapping and machine salvage at the point of vegetation clearance works. The suite of techniques that will be applied to each area will be adjusted based on the habitat classification.

5.10 Lizard salvage is proposed during the active season for lizards (between October and April).

5.11 The Applicant proposes that captured lizards will be relocated within a 5.8 ha area on site.[3] This area includes 1.4 ha of high-quality habitat and 4.4 ha of moderate quality habitat. It is owned by the developer. The Applicant says it will be encumbered by a consent notice to ensure that the release site will be physically protected in perpetuity. Also proposed are pest control measures and habitat enhancement.[4] This will include revegetation, stock exclusion through fencing, and log stacks.

5.12 No post release lizard monitoring was proposed because the applicant regards the number of lizards anticipated for release to be low. However, in post lodgement discussions with the Applicant, the possibility of an alternative to monitoring was discussed with DOC. In this instance, DOC staff suggested that instead of monitoring, an alternative option is the funding for another

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[1] Based on Desktop assessment supplied by the Applicant (Appendix 2 of LMP).

[2] Based on Draft Wildlife Approval Conditions document dated 9 June 2026 supplied by the Applicant.

[3] See page 19 of LMP.

[4] See page 24 LMP.

entity to undertake more general research on lizard enhancement and monitoring. This matter is outlined in the memorandum provided by the Applicant (Appendix A) and in a draft condition I17 as provided in updated conditions. While the memorandum and updated conditions do not currently form part of the substantive application, the Applicant has indicated that it will work with the Panel to identify these proposed changes.

5.13 The Applicant proposes to provide a report to the Kapiti District Council and Department of Conservation within three months of the end of the lizard salvage.

6.0 Matters considered in relation to the criteria for a wildlife approval

Statutory context

6.1 Schedule 7 clause 1 defines "wildlife approval" as meaning a lawful authority for an act or omission that would otherwise be an offence under any sections 58(1), 63(1), 63A, 64, 65(1)(f), 70G(1), 70P, 70T(2) of the Wildlife Act 1953.

6.2 Without a wildlife approval, the Project may otherwise give rise to an offence under 63(1)(a) the Wildlife Act 1953.

6.3 The protected lizards that may be adversely affected impacted by the Project are:

Raukawa gecko	*Woodworthia maculata*	Not Threatened
Ornate skink	*Oligosoma ornatum*	At Risk -Declining
Copper skink	Oligosoma aeneum	At Risk - Declining
Glossy brown skink	*Oligosoma zelandicum*	At Risk -Declining
Northern grass skink	*Oligosoma polychroma*	Not Threatened

Purpose of the Wildlife Act and the effects of the Project on the protected wildlife that is to be covered by the Approval if granted

6.4 The relevant purpose of the Wildlife Act 1953 is to protect wildlife.

6.5 The Wildlife Act 1953 creates a tiered system with different levels of protection required for different species including absolutely protected, partially protected and game.

6.6 This application is about the absolutely protected wildlife referred to above.

6.7 In summary, DOC would be satisfied that the proposal is consistent with the purpose of the Wildlife Act 1953 if the following matters are addressed:

- **Term of Approval:** The duration of the Approval if granted should be no longer than 10 years. The conservation status of lizards is reviewed approximately every five years using the New Zealand Threat Classification Series (NZTCS). The most recent 5-yearly review was published in 2025. Changes recorded in that publication demonstrate an ongoing trend in the decline of New Zealand lizard species, worsening threat status and ongoing loss of range, as well as increasing recognition of new taxa. In the circumstances, DOC prefers a shorter term to provide a higher level of confidence of ongoing lizard protection against this background.
- **Release area/specific habitat requirements of species applied for:** That habitat and microhabitat in the release area need to be designed to meet the specific requirements of each species applied for, rather than focusing solely on the Northern Grass Skink.

  At present, DOC considers the LMP does not adequately address the habitat and microclimate needs of the Copper, Ornate and Glossy Brown skinks nor the Raukawa gecko. Additionally, as the suitability of the release area relies heavily on the restoration of the dune area, the LMP is not sufficient in this regard. The LMP not only needs to better address the range of species applied for but should also include details of the restoration planting proposed.

  Lizard habitat in restored ecosystems normally take 1-2 years to fully develop, the microclimate under artificial refuges takes time to become suitable. It also takes several lifecycles for lizard food (invertebrates) to recover from disturbance, and the trampling from replanting efforts takes many months to recover. The restoration planting and plan within the LMP should address how these matters will be addressed.

  In summary, DOC considers that the current LMP[5] does not suitably address the habitat needs of all species applied for and will need to be updated to ensure that it does so.

- **Post-release monitoring/financial contribution:** No post-release monitoring is proposed and the Applicant states it would be difficult to undertake the monitoring given the staging of the Project. DOC does not necessarily agree that monitoring would not be possible and would ordinarily prefer to work collaboratively with the applicant towards a suitable on-site monitoring approach. However, in this instance, with the project staging and the relatively low numbers present, it is not opposed to the Applicant's proposal to instead make a financial contribution. The principle of the draft condition I17 of the Applicant's recent memorandum (1 July see Appendix A) is therefore welcomed.

  However, DOC suggests some amendments to I17, to ensure it provides the best outcomes for Wildlife. DOC's preference is that contribution be made to the Society for Research of Amphibians and Reptiles in New Zealand (SRARNZ) mitigation fund, or a certain University and

[5] version date 19 March 2026

is available for lizard mitigation research. The Applicant has proposed a contribution of a value of up to $3,000.00 for every 20 lizards relocated as part of the proposed salvage works up to a maximum value of $40,000.00. DOC believes the amount of the contribution to be acceptable, however, given the long-term nature and staging of the proposal, the contribution must be CPI adjusted, to ensure the contribution is meaningful and remains adequate into the future.

6.8 It is DOC's preference that an updated LMP reflect the above comments around term, habitat restoration and that the substantive conditions reflect an amended mitigation funding condition. The proposal is otherwise appropriate.

6.9 The role of lizard management plans

6.10 A Lizard management plan typically provides a specific framework for managing and protecting lizards during activities that may adversely impact them. In this case, it details the proposed context and approach for undertaking lizard salvage activities, albeit it needs to be updated by the Applicant to reflect the matters/changes referred to above.

6.11 Conditions to manage effects on protected wildlife

6.12 This recommendation includes consideration of section 83 of the Act – DOC considers that each condition would not be more onerous than necessary to address the reason for which it is set.

6.13 DOC recommends the conditions attached in Appendix C if the wildlife approval is granted.

7.0 Consultation

Pre-lodgement

7.1 The Applicant requested pre-lodgement engagement with the DOC on 3 March 2026. At that time, DOC staff set about establishing the key considerations of the Project, undertaking an assessment to establish what approvals the Applicant was actually seeking and pulling together a project team. DOC made a request for a copy of the Assessment of Environmental Effects to help better understand the context of the Application and DOC's input into future processes.

7.2 DOC had indicated at this time they sought to better understand matters pertaining to freshwater fisheries and the specifics of what Wildlife Approvals were being sought.

7.3 By the time DOC project team was being established and the context of the Application was starting to be understood by DOC, the substantive application had been lodged. DOC did not provide any formal response to pre-lodgement engagement as realistically there was insufficient time provided by the applicant for this to occur.

Post-lodgement

7.4 After the Application was lodged, DOC provided input into the Completeness Assessment at the request of the EPA and highlighted the following matters of interest to DOC on the 10 April 2026: clarification as to whether there are any qualifying water bodies for marginal strips; the LMP only dealt with northern grass skink; the need to provide details of restoration planting within the LMP; the lack of post-salvage monitoring; the impacts of changes of water level on any mudfish present and whether complex freshwater fisheries activity approval would be required under the FTAA.

7.5 The Applicant and DOC met on 15 May 2026 to introduce the proposal to DOC and discuss emerging matters for the Wildlife Approval and more general environmental effects to be considered. The Applicant and the Project Ecologist provided a briefing of the proposal and the matters of interest to DOC.

7.6 Subsequently, an additional more detailed meeting on lizards was held and subsequently, a further note and proposed conditions on the Wildlife Approval, were provided by the Applicant on 1 July 2026.

7.7 Post lodgement the consultation between DOC and the Applicant has been efficient and targeted and DOC welcomes the cooperation shown by the Applicant.

8.0 Additional information

International Conservation Agreements

8.1 The table below outlines the international agreements that may be relevant to the approval being sought.

Table 1: International conservation agreements

Relevant Agreement	Signatory date
United Nations Convention on Biological Diversity	1992
International Union for Conservation of Nature (IUCN)	New Zealand became a member in 1948

8.2 The United Nations Convention on Biological Diversity is an international agreement that promotes development of global targets, national strategies and action plans by countries for the protection, restoration and sustainable use of biodiversity.

8.3 The application from the Applicant relates to impacts on biodiversity and ecosystems and a LMP is proposed by the Applicant to manage this.

8.4 The International Union for Conservation of Nature (ICUN) is a globally recognised conservation body and New Zealand's membership reflects its commitment to biodiversity and ecosystem protection. While the IUCN is not a treaty-level agreement, New Zealand's contributions to the ICUN's Contributions for Nature Platform and its alignment with global biodiversity targets reflect a public commitment to species recovery and habitat protection.

Consistency with statutory planning documents and policy

8.5 The following statutory planning documents and associated policies are relevant to DOC's assessment of the wildlife approval sought for this Project.

- Conservation General Policy 2005

  The Conservation General Policy (CGP) says:

  11.1(a) Any application for a concession or other authorisation will comply with, or be consistent with, the objectives of the relevant Act, the statutory purposes for which the place is held, and any conservation management strategy or plan.

- Conservation management strategies

  The Wellington Conservation Management Strategy ("the CMS") contains the following objective:

  3.1.1.1b) "conserving threatened species to ensure persistence, with an emphasis on[6] *those species listed in Appendix 5."*

9.0 Treaty of Waitangi settlement considerations and obligations

Treaty of Waitangi settlement obligations

9.1 Under section 7 of the Act the Panel must act in a manner that is consistent with obligations arising under existing Treaty Settlements.

9.2 Ministry for the Environment (MFE) provided a report which sets out the section 18 matters it considered relevant to the application. DOC was not consulted by MFE on this report.

9.3 DOC has read the report and agrees that the Treaty settlement relevant to this Project are the Ngāti Toa Settlement Act 2014 as the project is situated within Ngāti Toa's Area of Interest as outlined in the Deed of Settlement.

Treaty of Waitangi principles

9.4 DOC's work in preparing this report has been carried out in a manner that, as far as possible, gives effect to the principles of the Treaty of Waitangi (arising from the obligation on DOC from section 4 of the Conservation Act). The principles most applicable to DOC's role are:

- **Partnership** – mutual good faith and reasonableness.
- **Informed decision-making** - Both the Crown and Māori need to be well informed of the other's interests and views. Consultation is a means to achieve informed decision-making.
- **Active protection** - requires informed decision-making and judgement as to what is reasonable in the circumstances.

[6] Species listed in Appendix 5 include Glossy brown skink *Oligosoma zelandicum*, Ornate skink *Oligosoma ornatum*.

- **Redress –** requires recognition of existing rights and interests.

9.5 For this application, this has included:

- DOC engagement with Treaty partners on the application. We note this has occurred within the context of the fast-track process with prescribed timeframes, and where the applicant has an obligation to consult and Treaty partners have a right to be invited to comment. The scope of engagement also recognised DOC's role to provide reports and comments on the application, and not in its usual role as decision-maker.
- identifying for the Panel any relevant information from Protocols or relationship agreements prepared in accordance with Settlements (eg taonga species);
- ensuring that the information in this report is fully informed by any information from Treaty partners and the impact the activity would have on their interests.

9.6 In summary, DOC received information from Treaty partners on the following:

- Ngāti Toa has deferred engagement to Ātiawa ki Whakarongotai and will not be actively involved in the project.
- The District has notified Ātiawa ki Whakarongotai of the application and provided subsequent updates. No response to engagement has been received, however it is noted that in the Panel Convenor Responses, Ātiawa ki Whakarongotai have stated that the application doesn't reflect their values and interests.

10.0 Appendices

Appendix A: Memo provided by the Applicant with updated conditions

Appendix B: Technical expert credentials

Appendix C: Marked-up conditions

Appendix D: Weighting of relevant matters to be taken into account

Appendix A: Memo provided by the Applicant with updated conditions

WAIKANAE NORTH DEVELOPMENTS LIMITED

169-171 Peka Peka Road, Waikanae | FTAA-2603-1194

To:	Loren Brown, Fast Track Consents Advisor DOC Te Papa Atawhai [redacted] Dean van Mierlo, Counsel for the Director-General of Conservation [redacted]
From:	Mitch Lewandowski, Building Block Planning Limited (for Waikanae North Developments Limited) Dr Graham Ussher, Principal Ecologist, RMA Ecology Ltd
Date:	1 July 2026
Subject:	**Wildlife Approval Conditions - Wildlife Approval under section 42(4)(h) FTAA**

Introduction

1. Further to our memorandum of 9 June, and our subsequent meeting of 15 June, updated conditions proposed for the Wildlife Approval sought by Waikanae North Developments Limited (**WNDL**) as part of its application under the Fast-track Approvals Act 2024 (FTAA-2603-1194) are detailed below.

2. Changes proposed from the earlier version address:

   a. Specifying a term / duration for the Wildlife Approval;

   b. Monitoring; and

   c. Minor tweaks to terminology (replacing 'grantor' with 'authorising agency').

3. The conditions are based on the standard Wildlife Act Authority template used by DOC for lizard translocations on non-public land. Schedule 2 (Standard Terms and Conditions) and Schedule 3 (Special Conditions) follow this memorandum. The proposed Schedule 1 particulars are set out in the table at paragraph 12 below.

4. This memorandum has been prepared by Mitch Lewandowski (Building Block Planning Limited) and Dr Graham Ussher (Principal Ecologist, RMA Ecology Ltd). Dr Ussher is the herpetologist responsible for the preparation of the Lizard Management Plan (Appendix 25 - **LMP**) and the Wildlife Approval information memorandum (Appendix 34 - **WAA Memo**).

Duration / Term

5. The term sought for the Wildlife Approval is a period of 15 years. This term aligns the Wildlife Approval with the duration of the earthworks consent sought and aligns with the staging of the application as detailed in the application documents – see for example, the proposed consent conditions (Appendix 33), Engineering and Infrastructure Report (Appendix 14) and the substantive application document.

6. Such an approach aligns the anticipated roll-out of the proposal with the Wildlife Approval, the resource consent duration for bulk earthworks, is consistent with the intent of the Act, and avoids the need for the approval to be re-certified part-way through the proposed works.

Species

7. While northern grass skink was the only species found during site surveys, the approval seeks to include the species specified below on a precautionary basis. While they have not been found, and the likelihood of their being present is low, they are included in case they are found during works. This approach is sound as it avoids the need for a further approval to be sought should any of these species be located, notwithstanding the low probability of that occurring.

8. The proposed relocation area provides suitable habitat for any potential lizard that might be found on the site. It caters for all species that are known or could reasonably be present by providing dry grassland areas and deep cover for northern grass skink, moisture dune gullies for copper, ornate or glossy brown skink, and deep complex ground cover and rotten logs for Raukawa gecko. There is no viable habitat or likelihood given the past history of the site for arboreal geckos to be present.

9. The only lizards found on the site have been within the dune system. Most of the rest of the site supports no lizard habitat at all, and the remaining parts that support potential lizard habitat not on dunes:

   a. have been extensively surveyed for lizards and no species other than northern grass skink have been found; and

   b. are not proposed to be impacted by the works.

Post-release Monitoring

10. WNDL is agreeable to the inclusion of a monitoring condition and proposes one below. Rather than proposing monitoring to occur on-site, WNDL proposes to make a financial contribution to off-site research through a DOC approved lizard enhancement monitoring programme.

Updated Lizard Management Plan

11. An updated Lizard Management Plan is currently being prepared and will be provided to DOC as soon as possible.

Proposed Schedule 1 Particulars

12. The proposed Schedule 1 particulars for the WNDL Wildlife Approval are as follows:

1. Authorised activity (including species, approved quantities and collection methods) *(Schedule 2, clause 2)*	a) **Activities authorised for a certain purpose:** i. catch alive and liberate the protected wildlife (lizards) listed below, in accordance with the LMP ii. incidental killing of species specified in Schedule 4, despite best efforts to prevent deaths b) **Species covered:** i. northern grass skink (*Oligosoma polychroma*, Not Threatened)
	ii. glossy brown skink (*O. zelandicum*, At Risk — Declining) iii. copper skink (*O. aeneum*, At Risk — Declining) iv. ornate skink (*O. ornatum*, At Risk — Declining) v. Raukawa gecko (*Woodworthia maculata*, Not Threatened) c) **Purpose of authorisation:** i. to protect lizards by way of salvage prior to and during vegetation clearance d) **Methodology:** i. in accordance with the Lizard Management Plan attached as Schedule 4
2. The Land *(Schedule 2, clause 2)*	a) catch alive at the development site at 169–171 Peka Peka Road, Waikanae, Kāpiti Coast, as outlined in Schedule 4 b) liberate at the lizard release site described in Schedule 4
3. Personnel authorised to undertake the Authorised Activity *(Schedule 2, clause 3)*	a) Dr Graham Ussher, Principal Ecologist, RMA Ecology Ltd b) Suitably qualified personnel under the direct supervision of Dr Graham Ussher
4. Term *(Schedule 2, clause 4)*	For a period of 15 years commencing on the date of grant of the Wildlife Approval under section 42(4)(h) FTAA.
5. Authority Holder's address for notices *(Schedule 2, clause 8)*	Waikanae North Developments Limited PO Box 370 Waikanae 5250 Email: [redacted]

6. Administering Authority's address for notices	Permissions Team Level 4 73 Rostrevor Street Hamilton 3200 [redacted]

Mitch Lewandowski
Building Block Planning Limited
For Waikanae North Developments Limited
[redacted]

Dr Graham Ussher
Principal Ecologist RMA
Ecology Ltd
[redacted]

1 July 2026

1 July 2026

SCHEDULE 2

STANDARD TERMS AND CONDITIONS OF THE AUTHORITY

1. **Interpretation**

   1.1 The Authority Holder is responsible for the acts and omissions of its employees, contractors or agents. The Authority Holder is liable under this Authority for any breach of the terms of the Authority by its employees, contractors or agents as if the breach had been committed by the Authority Holder.

   1.2 Where obligations bind more than one person, those obligations bind those persons jointly and separately.

2. **What is being authorised?**

   2.1 The Authority Holder is only allowed to carry out the Authorised Activity in the Land described in Schedule 1, Item 2.

   2.2 The Authority Holder must advise the Department of Conservation's local Operations Manager(s) one week prior to carrying out the Authorised Activity in the District, when the Authority Holder intends to carry out the Authorised Activity.

   2.3 Any arrangements necessary for access over private land or leased land are the responsibility of the Authority Holder. In granting this authorisation the Authorising Agency does not warrant that such access can be obtained.

   2.4 The Authority Holder and Authorised Personnel must carry a copy of this Authority with them at all times while carrying out the Authorised Activity.

   2.5 The Authority Holder may publish authorised research results.

   2.6 The Authority Holder must immediately notify the Authorising Agency of any taxa found which are new to science. In addition, the Authority Holder must lodge holotype specimens and a voucher specimen of any new taxa with a recognised national collection.

3. Who is authorised?

3.1 Only the Authority Holder and the Authorised Personnel described in Schedule 1, Item 3 are authorised to carry out the Authorised Activity, unless otherwise agreed in writing by the Authorising Agency.

4. How long is the Authority for — the Term?

4.1 This Authority commences and ends on the dates set out in Schedule 1, Item 4.

5. What are the liabilities?

5.1 The Authority Holder agrees to exercise the Authority at the Authority Holder's own risk and releases to the full extent permitted by law the Authorising Agency and the Authorising Agency's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property arising from the Authority Holder's exercise of the Authorised Activity.

5.2 The Authority Holder must indemnify the Authorising Agency against all claims, actions, losses and expenses of any nature which the Authorising Agency may suffer or incur or for which the Authorising Agency may become liable arising from the Authority Holder's exercise of the Authorised Activity.

5.3 This indemnity is to continue after the expiry or termination of this Authority in

respect of any acts or omissions occurring or arising before its expiry or termination.

6. What about compliance with legislation and Authorising Agency's notices and directions?

6.1 The Authority Holder must comply with all statutes, bylaws and regulations, and all

notices, directions and requisitions of the Authorising Agency and any competent Authority relating to the conduct of the Authorised Activity. Without limitation, this includes the Conservation Act 1987 and the Acts listed in the First Schedule of that Act and all applicable health and safety legislation and regulation.

7. When can the Authority be terminated?

7.1 The Authorising Agency may terminate this Authority at any time in respect of the whole or any part of Authorised Activity if:

(a) the Authority Holder breaches any of the conditions of this Authority; or

(b) in the Authorising Agency's opinion, the carrying out of the Authorised Activity causes or is likely to cause any unforeseen or unacceptable effects.

7.2 If the Authorising Agency intends to terminate this Authority in whole or in part, the Authorising Agency must give the Authority Holder such prior notice as, in the sole opinion of the Authorising Agency, appears reasonable and necessary in the circumstances.

8. How are notices sent and when are they received?

8.1 Any notice to be given under this Authority by the Authorising Agency is to be in writing and made by personal delivery, by pre-paid post or email to the Authority Holder at the address or email address specified in Schedule 1, Item 5. Any such notice is to be deemed to have been received:

(a) in the case of personal delivery, on the date of delivery;

(b) in the case of post, on the 3rd working day after posting;

(c) in the case of email, on the date receipt of the email is acknowledged by the addressee by return email or otherwise in writing.

8.2 If the Authority Holder's details specified in Schedule 1, Item 5 change then the Authority Holder must notify the Authorising Agency within 5 working days of such change.

9. What about the payment of costs?

9.1 The Authority Holder must pay the standard Department of Conservation charge-out rates for any staff time and mileage required to monitor compliance with this Authority and to investigate any alleged breaches of the terms and conditions of it.

10. Are there any Special Conditions?

10.1 Special conditions are specified in Schedule 3. If there is a conflict between this Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions will prevail.

11. Can the Authority be varied?

11.1 The Authority Holder may apply to the Authorising Agency for variations to this Authority.

Schedule 3 — Special Conditions

I1	**Adhere to approved application** The Authorised Activity must be undertaken in accordance with the Lizard Management Plan (**LMP**) attached as Schedule 4 of this Authority.
I2	The Authority Holder is responsible for the acts and omissions of its employees, contractors, or agents. The Authority Holder is liable under this Authority for any breach of the terms of the Authority by its employees, contractors or agents as if the breach had been committed by the Authority Holder.

I3	**Salvage relocation and habitat enhancement** The Authority Holder must perform actions as set out in the contingencies/adaptive management sections of the LMP to ensure adequate mitigation of effects has been achieved.
I4	The DOC Operations Manager for Kāpiti (wellington@doc.govt.nz) is to be contacted immediately for further advice if wildlife other than those listed in Schedule 1 are located within the Site or within the release site. A separate application to take non-authorised species will be required.
I5	**Lizard capture and handling** Lizards must only be handled by Authorised Personnel listed in Schedule 1 Item 3, or under the direct supervision of the Authorised Personnel.
I6	Lizard capture, handling and relocation should be undertaken at a suitable time of year, October – April, when the temperature is between 12–22 degrees Celsius, as advised by a suitably qualified and experienced herpetologist.
I7	Capture and handling of lizards must involve only techniques that minimise the risk of infection or injury to the animal.
I8	Capture and handling methods shall follow those described in the Herpetofauna inventory and monitoring toolbox http://www.doc.govt.nz/our-work/biodiversityinventory-and-monitoring/herpetofauna/
I9	The Authority Holder must ensure all live capture traps are covered to protect lizards from exposure and minimise stress. Damp leaf litter or other material must be provided to reduce desiccation risk and the bottom of the pit-fall trap must be perforated to allow drainage of water.
I10	The Authority Holder must ensure all live capture traps, (e.g., pitfall traps and Gminnow traps), are checked at least every 24 hours.
I11	The Authority Holder must sterilise any instruments that come in contact with the lizards and/or are used to collect or measure lizards between each location. A separate holding bag must be used for each animal. All gear should be thoroughly cleaned and dried between sites.
I12	The Authority Holder must ensure lizards are temporarily held individually in a suitable container (e.g., breathable cloth bag) and held out of direct sunlight to minimise the risk of overheating, stress and death.
I13	The Authority Holder is strongly encouraged to adhere to current best practice hygiene protocols when visiting sites of known native frog populations to avoid the spread of pest organisms such as chytrid fungus.
I14	If required in writing by the Authorising Agency, the Authority Holder must make such improvements to techniques (including catching, handling, releasing, preserving and storing), and take such other steps as directed by the Grantor.

I15	**Lizard Salvage Reporting** A report summarising the outcomes of lizard salvaging must be submitted in writing to the DOC Operations Manager for Kāpiti ([TBC]@doc.govt.nz) and [TBC — DOC Wellington/Kāpiti permissions email] within three months of the salvage being completed. Each report must include: (a) The permission number; (b) The species and number of any animals collected and released; (c) The GPS location (or a detailed map) of the collection point(s) and release point(s); (d) The results of all surveys, monitoring or research; and (e) A description of how the LMP was implemented, including: (i) Any difficulties encountered with capture and handling; (ii) How release sites were assessed; (iii) Post-release monitoring (if any was undertaken); and (iv) What contingency actions (if any) were required.
I16	Completed Amphibian and Reptile Distribution System (ARDS) cards for all herpetofauna sightings and captures must be sent to Herpetofauna, Department of Conservation, National Office, PO Box 10420 Wellington 6143 or herpetofauna@doc.govt.nz.
I17	**Monitoring** At the conclusion of each stage of the salvage works authorised by this approval, the Authority Holder shall make a financial contribution to a lizard enhancement and/or monitoring programme approved by the Department of Conservation. The contribution shall be of a value of $3,000 for every 20 lizards located as part of the salvage works, up to a maximum value of $40,000.

Appendix B: Technical expert credentials

DOC has relied on the advice of technical expert Lynn Adams (Herpetology)

Her credentials are set out below.

> My full name is Lynn Karen Adams. I hold a BSc in Zoology and Botany from Otago University, and MSc in Science, from Canterbury University. I am currently a Senior Technical Advisor in the Biodiversity Team in the Department of Conservation. I have held this position for 14 years and prior to that worked in various biodiversity roles in DOC for an additional 16 years. The work has primarily focused on species recovery, translocation, adaptive management and survey with particular focus on herpetology and ornithology. I lead the Lizard Technical Advisory Group (for the last 16 years), the Tuatara Recovery Group (11 years) and the Hihi Recovery Group (10 years) in DOC.

Appendix C: Marked-up conditions

	Conditions proposed by Applicant in memo dated 1 July	DOC Comments
SCHEDULE 1		
1. Authorised ~~a~~Activity (including species, approved quantities and collection methods) *(Schedule 1 ~~2~~, clause ~~2~~ 1)*	a) Activities authorised for a certain purpose: i. catch alive and liberate the protected wildlife (lizards) listed below~~, in accordance with the LMP~~ . ii. incidental killing of species ~~specified in Schedule 4~~ listed below, despite best efforts to prevent deaths. b) The Authorised activity applies to the following absolutely protected ~~S~~species ~~covered~~: i. N~~n~~orthern G~~g~~rass S~~s~~kink (*Oligosoma polychroma*, Not Threatened) ii. G~~g~~lossy B~~b~~rown S~~s~~kink (*Oligosoma. zelandicum*, At Risk — Declining) iii. C~~c~~opper S~~s~~kink (*Oligosoma. aeneum*, At Risk — Declining)	The tracked changes are not substantial in terms of content, however the tracked changes are suggestions to bring the wording and format to an approach more consistent with other Wildlife Approvals and as outlined in the Wildlife Act.

	iv. ~~O~~Ornate ~~S~~Skink (*Oligosoma*. *ornatum*, At Risk — Declining) v. Raukawa gecko (*Woodworthia maculata*, Not Threatened) c) Purpose of authorisation: i. to protect lizards by way of salvage prior to and during vegetation clearance d) Methodology: i. in accordance with the Lizard Management Plan dated [...] attached as Schedule ~~4~~ XX	At this stage Schedule 4 has not been provided, however, this will be the updated Lizard Management Plan when available. This will require further review by DOC.
2. The Land *(Schedule 1~~2~~, clause 2)*	a) 169–171 Peka Peka Road, Waikanae, Kāpiti Coast, as depicted ~~outlined~~ in Schedule 4. ~~b) liberate at the lizard release site described in Schedule~~	As above, Schedule 4 has to be provided, but additionally wording in b) is unnecessary.
3. Authorised Personnel ~~Personnel authorised to undertake the Authorised Activity~~	a) Dr Graham Ussher, Principal Ecologist, RMA Ecology Ltd b) Suitably qualified personnel under the direct supervision of Dr Graham Ussher	Lizards must only be handled by Authorised Personnel [person named in schedule 1(3)], or under the direct supervision of the Authorised Personnel.

(Schedule ~~2~~ 1 clause 3)		
4. Term *(Schedule ~~2~~ 1 clause 4)*	For a period of ~~15 years~~ 10 years commencing and including [inset date] and ending on and including [insert date] ~~on the date of grant of the Wildlife Approval under section 42(4)(h) FTAA~~.	DOC's recommends a term of no longer than 10 years, being a period that more reasonably provides a balance between the requirements of developers to have certainty on lizard management, with the rapidly changing methods used for salvage and 5 yearly NZ Threat Classification System revisions. For example, the methods used to protect lizards impacted by developments 10 years ago, have rapidly improved, and a number of Not Threatened species have changed threat status over the last 5 years. An end date is necessary for consistency with Schedule 2 clause 4.1.
5. Authority Holder's address for notices *(Schedule ~~2~~ 1 , clause 8)*	Waikanae North Developments Limited PO Box 370 Waikanae 5250 Email: andrew@beatson.com	
6. ~~Administering Authority's~~	Permissions Team Level 4 73 Rostrevor Street	If granted by the Panel, for clarity to all users of this Approval, it is the Department of Conservation that will be the Administering Authority. While the draft condition is not incorrect, for simplicity the

Department of Conservation's address for notices	Hamilton 3200 askpermissions@doc.govt.nz	term Administering Authority is altered to the Department of Conservation.

NOTE:

References in this Approval to the "Director-General" is the Director-General of Conservation.

References in this Approval to the "Department" are to the Department of Conservation.

SCHEDULE 2

STANDARD TERMS AND CONDITIONS OF THE AUTHORITY

1. Interpretation

1.1 The Authority Holder is responsible for the acts and omissions of its employees, contractors or agents. The Authority Holder is liable under this Authority for any breach of the terms of the Approval by its employees, contractors or agents as if the breach had been committed by the Authority Holder.

1.2 Where obligations bind more than one person, those obligations bind those persons jointly and separately.

2. What is being authorised?

2.1 The Authority Holder is only allowed to carry out the Authorised Activity in the Land described in Schedule 1, Clause ~~Item~~ 2.

2.2 The Authority Holder must advise the Department of Conservation's local Operations Manager(s) one week prior to carrying out the Authorised Activity ~~in the District~~, when the Authority Holder intends to carry out the Authorised Activity.

DOC COMMENT: These words are unnecessary in this context and have not been defined.

2.3 Any arrangements necessary for access over private land or leased land are the responsibility of the Authority Holder. ~~In granting this authorisation the~~ The ~~Authorising Agency~~ Department of Conservation does not warrant that such access can be obtained.

DOC COMMENT: As DOC is not granting this Approval, the proposed amendments to wording are tidier and more appropriate.

2.4 The ~~Authority Holder and~~ Authorised Personnel must carry a copy of this Authority with them at all times while carrying out the Authorised Activity.

DOC COMMENT: The Authority Holder in this instance, is a company, this condition is more appropriate if assigned to the Authorised Personnel.

2.5 The Authority Holder may publish authorised research results.

2.6 The Authority Holder must immediately notify the ~~Authorising Agency~~ Department of Conservation of any taxa found which are new to science. In addition, the Authority Holder must lodge holotype specimens and a voucher specimen of any new taxa with a recognised national collection.

3. Who is authorised?

3.1 Only the Authority Holder and the Authorised Personnel described in Schedule 1, Clause ~~Item~~ 3 are authorised to carry out the Authorised Activity, unless otherwise agreed in writing by the ~~Authorising Agency~~ Director-General of Conservation.

4. How long is the Authority for — the Term?

4.1 This Authority commences and ends on the dates set out in Schedule 1, Clause ~~Item~~ 4.

5. What are the liabilities?

5.1 The Authority Holder agrees to exercise the Authority at the Authority Holder's own risk and releases and indemnifies to the full extent permitted by law the ~~Authorising Agency and the Authorising Agency's~~ Department of Conservation and it's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property arising from the Authority Holder's exercise of the Authorised Activity.

5.2 ~~The Authority Holder must indemnify the Authorising Agency against all claims, actions, losses and expenses of any nature which the Authorising Agency may suffer or incur or for which the Authorising Agency may become liable arising from the Authority Holder's exercise of the Authorised Activity.~~

DOC COMMENT: This appears to be a double of condition 5.1. Subsequent numbering to be updated.

5.3 This indemnity is to continue after the expiry or termination of this Authority in respect of any acts or omissions occurring or arising before its expiry or termination.

6. What about compliance with legislation and ~~Authorising Agency's~~ Director-General of Conservation's notices and directions?

6.1 The Authority Holder must comply with all statutes, bylaws and regulations, and all notices, directions and requisitions of the Director-General of Conservation ~~Authorising Agency~~ and any competent Authority relating to the conduct of the Authorised Activity. Without limitation, this includes the Conservation Act 1987 and the Acts listed in the First Schedule of that Act and all applicable health and safety legislation and regulation.

7. When can the Authority be terminated?

7.1 The ~~Authorising Agency~~ Director-General of Conservation may terminate this Authority at any time in respect of the whole or any part of Authorised Activity if:

(a) the Authority Holder breaches any of the conditions of this Authority; or

(b) in the Director-General's ~~Authorising Agency's~~ opinion, the carrying out of the Authorised Activity causes or is likely to cause any unforeseen or unacceptable effects.

7.2 If the ~~Authorising Agency~~ Director-General of Conservation intends to terminate this Authority in whole or in part, the ~~Authorising Agency~~ Director-General of Conservation must give the Authority Holder such prior notice as, in the sole opinion of the ~~Authorising Agency~~ Director-General of Conservation, appears reasonable and necessary in the circumstances.

8. How are notices sent and when are they received?

8.1 Any notice to be given under this Authority by the ~~Authorising Agency~~ Director-General of Conservation is to be in writing and made by personal delivery, by pre-paid post or email to the Authority Holder at the address or email address specified in Schedule 1, Clause ~~Item~~ ~~5~~ 6. Any such notice is to be deemed to have been received:

(a) in the case of personal delivery, on the date of delivery;

(b) in the case of post, on the 3rd working day after posting;

(c) in the case of email, on the date receipt of the email is acknowledged by the addressee by return email or otherwise in writing.

8.2 If the Authority Holder's details specified in Schedule 1, Clause ~~Item~~ 5 change then the Authority Holder must notify the ~~Authorising Agency~~ Department of Conservation within 5 working days of such change.

9. What about the payment of costs?

9.1 The Authority Holder must pay the standard Department of Conservation charge-out rates for any staff time and mileage required to monitor compliance with this Authority and to investigate any alleged breaches of the terms and conditions of it.

10. Are there any Special Conditions?

10.1 Special conditions are specified in Schedule 3. If there is a conflict between this Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions will prevail.

11. Can the Authority be varied?

11.1 The Authority Holder may apply to the ~~Authorising Agency~~ Director-General of Conservation for variations to this Authority.

Schedule 3

Special Conditions

	Applicants conditions, with DOC's tracked changes	**DOC Comments**
I1	Adhere to approved application The Authorised Activity must be undertaken in accordance with the Lizard Management Plan (LMP) attached as *[Schedule 4]* of this Authority. A breach of the LMP is a breach of this Authority.	Schedule 4 has not yet been attached to the conditions, and as it stands, does require amendment to address DOC's comments on its appropriateness.

I2	~~The Authority Holder is responsible for the acts and omissions of its employees, contractors, or agents. The Authority Holder is liable under this Authority for any breach of the terms of the Authority by its employees, contractors or agents as if the breach had been committed by the Authority Holder.~~	This condition is unnecessary, as it is already a matter addressed in Schedule 2.
I3	~~Salvage relocation and habitat enhancement~~ ~~The Authority Holder must perform actions as set out in the contingencies/adaptive management sections of the LMP to ensure adequate mitigation of effects has been achieved.~~	The LMP does not appear to contain a section on the contingency/adaptive management section in which case the condition is not accurate. However, even if the LMP does contain such information, the proposed condition is unnecessary as the matters it addresses are actually integrated into the wider approach of proceeding only in accordance with the LMP as required by condition I1.
I4	The DOC Operations Manager for Kāpiti (wellington@doc.govt.nz) is to be contacted immediately for further directions ~~advice~~ if wildlife other than those listed in Schedule 1 are located within the Site or within the release site. A separate application to take non-authorised species will be required.	No comment.
I5	Lizard capture and handling Lizards must only be handled by Authorised Personnel listed in Schedule 1 Clause ~~Item~~ 3, or under the direct supervision of the Authorised Personnel.	No comment.
I6	Lizard capture, handling and relocation must ~~should~~ be undertaken between ~~at a suitable time of year~~ October – April inclusive, and when the temperature is between 12–22 degrees Celsius, as advised by a suitably qualified and experienced herpetologist.	The suggested wording provides clarity and certainty on the time period when the salvage and relocation must take place, being the time when the lizards are most active.

I7	Capture and handling of lizards must involve only techniques that minimise the risk of infection or injury to the animal.	No comment.
I8	Capture and handling methods shall follow those described in the Herpetofauna inventory and monitoring toolbox http://www.doc.govt.nz/our-work/biodiversity-inventory-and-monitoring/herpetofauna/	No comment.
I9	The Authority Holder must ensure all live capture traps are covered to protect lizards from exposure and minimise stress. Damp leaf litter or other material must be provided to reduce desiccation risk and the bottom of the pit-fall trap must be perforated to allow drainage of water.	No comment.
I10	The Authority Holder must ensure all live capture traps, (e.g., pitfall traps and G-minnow traps), are checked at least every 24 hours.	No comment.
I11	The Authority Holder must sterilise any instruments that come in contact with the lizards and/or are used to collect or measure lizards between each location. A separate holding bag must be used for each animal. All gear should be thoroughly cleaned and dried between sites.	No comment.
I12	The Authority Holder must ensure lizards are temporarily held individually in a suitable container (e.g., breathable cloth bag) and held out of direct sunlight to minimise the risk of overheating, stress and death.	No comment.
I13	The Authority Holder is strongly encouraged to adhere to current best practice hygiene protocols when visiting sites of known native frog populations to avoid the spread of pest organisms such as chytrid fungus.	No comment.

I14	If <u>directed</u> ~~required~~ in writing by the <u>Director-General of Conservation</u> ~~Authorising Agency~~, the Authority Holder must make such improvements to techniques (including catching, handling, releasing, preserving and storing), and take such other steps as directed. ~~by the Grantor~~.	No comment.
I15	Lizard Salvage Reporting A report summarising the outcomes of lizard salvaging must be submitted in writing to the DOC Operations Manager for Kāpiti ([TBC]@doc.govt.nz) and [TBC — DOC Wellington/Kāpiti permissions email] ~~within three months of the salvage being completed~~ <u>annually on the 30 June each year in which salvage is undertaken, for the life of this approval</u>. Each report must include: (a) The <u>Authority</u> permission number; (b) The species and number of any animals collected and released; (c) The GPS location (or a detailed map) of the collection point(s) and release point(s); (d) The results of all surveys, monitoring or research; and (e) A description of how the LMP was implemented, including: (i) Any difficulties encountered with capture and handling; (ii) How release sites were assessed; (iii) Post-release monitoring (if any was undertaken); ~~and~~ (iv) What contingency actions (if any) were required<u>; and</u> <u>v) Confirmation of details of payment amount, date and number of lizards relocated, as provided to the Society for Research of Amphibians and Reptiles in New</u>	In general, this condition on reporting is welcomed, however, it is noted that the Application in general is taking a staged approach over a long time period, in which case it may be that several salvages may be required. The proposed amendment will allow for ongoing reporting for the life of the Approval.

	Zealand (SRARNZ) or appropriate university, in accordance with condition I17 below.	
I16	Completed Amphibian and Reptile Distribution System (ARDS) cards for all herpetofauna sightings and captures (http://www.doc.govt.nz/conservation/native-animals/reptiles-and-frogs/species-information/herpetofauna-data-collection/ards-card/) must be sent to Herpetofauna, Department of Conservation, National Office, PO Box 10420 Wellington 6143 or herpetofauna@doc.govt.nz, annually on the 30 June each year for the life of this authority.	Added the web link for clarity.
I17	Monitoring At the conclusion of each stage of the salvage works authorised by this Authority ~~approval~~, the Authority Holder will: a) ~~shall~~ make a financial contribution to the Society for Research of Amphibians and Reptiles in New Zealand (SRARNZ) Mitigation Fund or [state university] undertaking lizard mitigation research; and b) ~~a lizard enhancement and/or monitoring programme approved by the Department of Conservation.~~ report in accordance with condition I15 above. The contribution shall be of a value of $3,000 for every 20 lizards relocated as part of the salvage works, up to a maximum value of $40,000 and shall be annually reviewed for changes in Consumer Price Index (CPI) and adjusted on a compounding basis, from the date of grant of this Authority to the date of payment, accordingly.	The addition of the monitoring condition at the request of DOC is welcomed, although not yet part of the substantive application as lodged by the Applicant, it has been included the Applicant's memorandum on 1 July 2026. DOC suggests the wording be amended to provide more flexibility to the organisation receiving the funding to use the funds where they would be best utilised. SRARNZ is the Society for Research of Amphibians and Reptiles in New Zealand and Project Herpetologist, Dr Ussher was familiar with the Mitigation Fund and its purpose.

Appendix D: Weighting of relevant matters to be taken into account

Introduction

1. This report responds to the Panel Convener's Minute dated 7 May 2026, directing the Director-General to "file a report advising how weighting of matters set out in Schedule 7, clause 3 of the Fast-track Approvals Act 2024 should be approached, having regard to relevant senior court decisions".

2. The Minute refers to the matters set out in Schedule 7, clause 3 of the FTAA (wildlife approval) which the FTAA directs must be addressed by the Director-General's s 51(2) reports.[7]

Weighting generally

3. Generally, the weighting to be accorded to relevant considerations by a statutory decision maker is for that decision maker to determine,[8] however where a statute directs the weight to be given to a matter, that direction must be given effect to[9].

4. The senior courts have recognised that apparently disproportionate, inadequate or undue weight attached to a relevant factor can lead to judicial consideration of whether the weighting applied was within the limits of reason, and hence, whether the ultimate decision was unreasonable in an administrative law sense. A court may set aside an administrative decision which has failed to give adequate weight to a relevant factor of great importance, or which has given excessive weight to a relevant factor of no great importance.[10]

5. Accordingly, mandatory relevant considerations must be given genuine consideration and weighting by statutory decision makers.

Weighting under the Fast-track Approvals Act 2024

6. The Schedules to the FTAA list mandatory considerations that decision-making Panels must take into account, when determining applications for the various approvals that can be granted under the Act.[11]

8. The only directive regarding weighting contained in the FTAA, is that the "greatest weight" is to be given to the purpose of the FTAA.[12]

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[7] The schedule clauses referenced in the Minutes exclude consideration of the purpose of the FTAA from the ambit of the request. However, in order to respond to the Panel Convener's request in relation to consideration of weighting, it is necessary to refer to the purpose of the FTAA given the statutory directive that this consideration be given "the greatest weight" relative to other mandatory considerations (i.e. relative to the matters that must be addressed by the Director General's s 51 reports). This advice has therefore been prepared on that basis.

[8] See, for example *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR (HC) 188 at 223: The weight to be given to the evidence in the balancing exercise … is a matter for the primary tribunal and the Planning Tribunal on appeal.

[9] Quarantine Waste (New Zealand) Ltd v Waste Resources Ltd [1994] NZRMA 529 (HC) at 540: "Unless the statute otherwise directs, the weight to be given to particular relevant matters is one for the consent authority, not the Court, to determine."

[10] See, for example *Thames Valley Electric Power Board v NZFP Pulp and Paper Ltd* [1994] LGHNZ 17 (CA).

[11] See Schedule 7, clause 5 (wildlife approval)

[12] This directive occurs multiple times in the FTAA, including at Schedule 7, clause 5 (wildlife approval).

9. While described in the FTAA as “criteria”,[13] the mandatory matters to be taken into account can be described as “factors”, in the sense that they are matters to be assessed on the basis of their qualities, rather than quantities. They establish the foundation for assessment rather than the outcome of it.[14] Accordingly, the criteria, or factors, are not tick-boxes to be crossed off a list but are matters that must be qualitatively assessed.

- The FTAA does not direct how much relative weight should be given to, or between, relevant matters other than the purpose of the FTAA. Nor does the FTAA specify how much greater weight should be accorded to its purpose relative to other mandatory considerations. It may be the case that some of the factors listed in the relevant clauses may be found to have no relevance. Consequently, that factor will have no weight accorded to it in the balancing exercise.

10. While the purpose of the FTAA is to be given the greatest weight, the purpose of the FTAA does not automatically outweigh all other considerations. By listing other considerations besides the purpose of the FTAA, it is implicit that weight be attached to them, and that they should receive genuine consideration where relevant.[15]

11. Accordingly, while the greatest weight is to be accorded to the purpose of the FTAA, it does not follow that when qualitatively assessed, the regional or national benefits of a project must necessarily outweigh other considerations, in combination or in isolation, such as the adverse environmental effects of a project. The extent of regional or national benefits will vary between projects. Also, adverse effects will vary between projects in nature and severity. Each factor must be qualitatively assessed and those assessments weighed. Where they pull in different directions, they must be weighed against each other.

12. The issue of legislatively directed weighting was considered by the Court of Appeal in *Enterprise Miramar Peninsula Inc v Wellington City Council*,[16] when considering the application of s 34 the Housing Accords and Special Housing Areas Act 2013 (HASHAA). Section 34 provides:

> *34 Consideration of applications*
>
> *(1) An authorised agency, when considering an application for a resource consent under this Act and any submissions received on that application, must have regard to the following matters, giving weight to them (greater to lesser) in the order listed:*
>
> *(a) the purpose of this Act:*
>
> *(b) the matters in Part 2 of the Resource Management Act 1991:*
>
> *(c) any relevant proposed plan:*
>
> *(d) the other matters that would arise for consideration under—*

[13] This is the terminology used in the titles for each of the relevant clauses listed in fn 5.

[14] *Western Bay of Plenty District Council v Bay of Plenty Regional Council* [2017] NZEnvC 147, at [117]-[118].

[15] See also s 85(3)(b)of the FTAA which provides for the decline of a FTAA application if the adverse impacts are sufficiently significant to be out of proportion to the project’s regional or national benefits that the Panel has considered

[16] *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541.

(i) sections 104 to 104F of the Resource Management Act 1991, were the application being assessed under that Act:

(ii) any other relevant enactment (such as the Waitakere Ranges Heritage Area Act 2008):

(e) the key urban design qualities expressed in the Ministry for the Environment's New Zealand Urban Design Protocol (2005) and any subsequent editions of that document.

12. The Court held that all the listed matters must first be individually assessed prior to the exercise of weighing them in accordance with the prescribed hierarchy (in that case, the listed matters in subsection (1)(b)–(e) could not properly be weighed alongside the purpose of HASHAA under subs (1)(a) if that purpose has first been used to effectively neutralise the matters listed in subs (1)(b)–(e)).[17]

13. Applying that approach to the FTAA, the relevant matters should first be individually assessed, uninfluenced by the purpose of the FTAA, "before standing back and conducting an overall balancing" where the purpose of the FTAA is to be given greatest weight.[18] It would be an error of law to use the purpose of the FTAA to eliminate or reduce individual assessment of the other specified mandatory relevant considerations.[19]

[17] *Enterprise Miramar Peninsula Inc*, at [53].

[18] *Enterprise Miramar Peninsula Inc*, at [52]. Note that the FTTA does not take the same cascading hierarchy of "greater to lesser" weight, but only that the "greatest weight" be given to the purpose.

[19] *Enterprise Miramar Peninsula Inc*, at [55]-[59]