

11. APPROVALS RELATING TO THE WILDLIFE ACT 1953

11.1 INFORMATION REQUIREMENTS FOR WILDLIFE PERMITS

The following section sets out the information requirements for wildlife approval in accordance with Schedule 7 (Clause 2) of the Act.

Specify the purpose of the proposed activity:⁵⁸⁰

The Project is fully described in Section 3 of this report, with detailed plans contained in **Part C**. Approvals are required under the Wildlife Act for the following activities within the Project's vegetation clearance and earthworks disturbance footprint:

- > To capture, relocate and, as a last resort, destroy nests (to force re-nesting within the same breeding season) of Eastern Falcon and New Zealand Pipit; and,
- > To disturb, injure and/or kill the Not Threatened McCann's skink within the Project's vegetation and earthworks footprint.

E3s provide further details on the Wildlife Act approval requirements in the Terrestrial Ecology Assessment, the Ecology Memorandum and the Lizard Management Plan provided in **Part B** and **Part G**, respectively.

A 15 year term is sought for the wildlife permits. This duration is necessary to align with the resource consent conditions (ten year lapse period), a four year construction period with contingency. It is proposed that the Lizard Management Plan will be reviewed every five years to ensure it remains effective at achieving its purpose.

For completeness, a separate lizard management plan and associated wildlife permit will be required for the construction works associated with the Lower Car Park Transit Hub and the works occurring within Car Park 3 in the Rastus Burn. These will be sought separately to this FTAA application process.

Identify the actions the applicant wishes to carry out involving protected wildlife and where they will be carried out (whether on or off public conservation land):⁵⁸¹

As discussed in Sections 3 and 6 of this report and in the Terrestrial Ecology Assessment, the Ecology Memorandum and the Lizard Management Plan, NZSki is proposing to

⁵⁸⁰ Schedule 7, Clause 2(1)(a) of the Act.

⁵⁸¹ Schedule 7, Clause 2(1)(b) of the Act.

undertake activities that will affect habitat which supports, or potentially supports, a number of animals protected under the Wildlife Act. Actions which may involve protected wildlife include:

- > Vegetation clearance and earthworks associated with construction of the ski trail and access roads, building platforms, lift towers and all associated infrastructure; and
- > Construction of the access roads, building platforms, lift towers and associated infrastructure, including noise (and vibration) and disturbance from construction activities such as heavy vehicles and machinery.

While NZSki proposes to undertake best practice approaches to avoid disturbance of protected species, a wildlife approval is sought to authorise the activities described earlier in this section, and in Section 4.

The vegetation clearance and earthworks disturbance footprint is identified in the relevant cut and fill plans attached in **Part C** of the application documents.

The activities will be carried out on land held by DOC for recreation reserve or conservation purposes. The nature of the land classification is described in detail in Section 2.4.1.1.

Include an assessment of the activity and its impacts against the purpose of the Wildlife Act.⁵⁸²

Section 3 of this report provides a description of the Project, Section 6 and the associated technical reports (contained in **Parts B** and **G**) present an assessment of the effects of the Project on biodiversity (including wildlife), and Section 7 sets out the measures proposed by NZSki to manage the effects of the Project on native fauna.

The Wildlife Act protects native and introduced species of mammals, birds, reptiles, and amphibians, and regulates many human interactions with these species. It establishes a tiered system of protection for different species, with some species receiving absolute protection and others receiving partial protection.

The Project proposes vegetation clearance and earthwork activities that provide nesting habitat to protected avifauna species, specifically New Zealand Pipit and Eastern Falcon. These species may be disturbed if found to be nesting within, or immediately adjacent to, the vegetation clearance or earthworks disturbance footprint during construction. No other

⁵⁸² Schedule 7, Clause 2(1)(c) of the Act.

protected indigenous avifauna are expected to be harmed or disturbed as a result of works associated with the Project.

As described in Sections 6 and 7, the potential effects associated with avifauna habitat loss (particularly nesting habitat) is addressed by the following management measures:

- > Where works are proposed to take place within the breeding season of Eastern Falcon (August-May) or New Zealand Pipit (August-February), nesting habitat within the disturbance footprint for both species are to be surveyed ahead of time (no longer than 8-days prior to disturbance) and any nests identified;
- > Where construction activities could cause direct disturbance to a nesting individual, the following actions will be undertaken:
 - > Where practicable, works will establish exclusion zones and avoid the area until chicks have fledged (200m for falcon and 50m for pipit, or as otherwise instructed by the Project ornithologist);
 - > Where this is not practicable, the nest and/or chick(s) is to be moved to a suitable alternative location and monitored to ensure nest is not abandoned. If abandoned, chick(s) will be immediately delivered to a local rehabilitation facility capable of caring for the birds;
 - > If the nest cannot be moved and if construction activities may cause harm to the adult birds, the nest (and eggs if present) is to be destroyed, and the area disturbed as early in the season as possible to disperse the adults and allow for re-nesting elsewhere (only to be undertaken as a last resort); and
 - > All associated work will be undertaken and managed by a suitably qualified and experienced ornithologist and undertaken in accordance with best practice capture.

All of the above are reflected in the draft wildlife permit, included in **Part H** of the application documents. With these measures in place, e3s considers that the effects of the Project on nesting avifauna will be low. It should also be noted that a very small number of nesting sites (if any) are anticipated to be found within the vegetation clearance or earthwork disturbance area, with breeding pairs estimated to be less than five.

The Project also proposes vegetation clearance and earthworks activities that provides habitat for native lizards, specifically McCann's Skink. McCann's skink may be subject to displacement, social disturbance, minor injury, serious injury or death as a result of the Project's construction activities.

As described in Sections 6 and 7, the potential effects of lizard habitat loss are being addressed through the following management measures:

- > The vegetation and earthworks clearance footprint that provides habitat for McCann's skink will be delineated, with a one metre buffer. The area is identified in the Lizard Management Plan;
- > Vegetation within the delineated McCann's Skink habitat will be progressively trimmed, in more than 20cm increments, to a height of 40cm, to gradually discourage habitation of these areas at least four weeks prior to the vegetation clearance and earthwork activities commencing; and
- > Vegetation trimming, vegetation clearance and earthworks will not commence until temperatures have reached at least 14 degrees, such that the McCann's skink will be active and mobile and able to move to alternative locations.

Compensation for the residual loss of McCann's skink is proposed through an \$80,000 research grant to investigate alpine lizards (such as orange spotted gecko) within the Remarkables / Hectors area. The purpose of the research project is to better understand the overall distribution and abundance of cryptic alpine lizard species, thus greatly assisting their longer-term conservation management.

Annual reporting will also be undertaken each year, including documentation of the habitat disturbance minimisation measures, any incidental lizard discoveries and the compensation package actions.

All of the above recommendations are reflected in the Lizard Management Plan, which forms a requirement of the wildlife permit. With these measures in place, e3s considers any residential effects will be appropriately compensated for.

With the aforementioned management measures in place, it is considered that the proposed capture, relocation and destroying of nests associated with New Zealand pipit and Eastern Falcon and the proposed disturbance, injury and/or killing of McCanns Skink is consistent with the intent of the Wildlife Act.

List protected wildlife species known or predicted to be in the area and, where possible, the numbers of wildlife present and numbers likely to be impacted:⁵⁸³

This information is contained in the e3s Terrestrial Ecology Assessment and Lizard Management Plan (provided in **Part B** and **Part G** of the application documents) and is summarised below:

- > New Zealand pipit (*Anthus novaeseelandiae* subsp. *novaeseelandiae*) – < 5 pairs affected.
- > Eastern falcon (*Falco novaeseelandiae* subsp. *novaeseelandiae*) – < 1pair affected.
- > McCanns Skink (*Oligosoma maccanni*) – 300 to 600 affected.

Outline impacts on threatened, data deficient, and at-risk wildlife species (as defined in the New Zealand Threat Classification System):⁵⁸⁴

Section 6 of this report contains an assessment of effects on native fauna/wildlife species subject to this wildlife approval application, based on the information contained in the e3s Terrestrial Ecology Assessment and Ecology Memorandum (contained in **Part B**) and the Lizard Management Plan (contained in **Part F**).

New Zealand pipit are classified as At Risk - Declining. In summary, impacts on New Zealand pipit include:

- > Disturbance of nesting habitat; and
- > Loss of foraging habitat (primarily with the Doolans Basin).

With mitigation measures in place, e3s consider the residual effect to be low for nesting below an elevation of 1700m in the Doolans and high for the loss of foraging within the Doolans.

Eastern falcon / kārearea New Zealand pipit are classified as Threatened – Regionally Vulnerable. In summary, impacts on Eastern falcon / kārearea include:

- > Disturbance of nesting habitat; and,
- > Loss of foraging habitat,

⁵⁸³ Schedule 7, Clause 2(1)(d) of the Act.

⁵⁸⁴ Schedule 7, Clause 2(1)(e) of the Act.

With mitigation measures in place, e3s consider the level of to be low for nesting and moderate for high quality foraging habitat.

With respect to lizards, no threatened or data deficient herpetofauna species are expected to occur within the Project area. In the summary, impacts on Not Threatened McCann's skink (which is detailed further in Section 6 of the application documents) include:

- > Vegetation clearance and soil disturbance;
- > Noise and vibration from construction and maintenance machinery and vehicles;
- > Temporary and permanent habit loss or modification;
- > Displacement and social disturbance of lizards;
- > Sediment runoff affecting microhabitats and prey;
- > Creation of exposed areas increasing predator risk;
- > Injury or death resulting from construction activities;
- > Habitat fragmentation and edge effects;
- > Light/noise pollution altering behaviour; and
- > Increased predator movement due to roading and disturbed areas.

Notwithstanding the above, e3s consider that the residual effects are being appropriately compensated through the proposed funding of a research project, as described earlier.

State how the methods proposed to be used to carry out the actions the applicant described above will ensure that best practice standards are met:⁵⁸⁵

Activities involving fauna are to occur in accordance with the methods and procedures described in the Terrestrial Ecology Assessment and Lizard Management Plan, which have been developed by technical experts in accordance with relevant best practice guidelines.

The methods proposed to avoid, remedy or mitigate effects, including minimising and avoiding disturbing, capturing or harming or killing any wildlife as far as possible can be found in:

- > Sections 6 and 7 of this report, and table 18 of the Terrestrial Ecology Assessment; and

⁵⁸⁵ Schedule 7, Clause 2(1)(f) of the Act.

- > Section 4.4 (mitigation), Section 4.5 (incidental discovery protocol), Section 4.6 (contingency) and Section 4.7 (residential effects assessment) of the Lizard Management Plan.

Describe the methods to be used to safely, efficiently, and humanely catch, hold, or kill the animals and identify relevant animal ethics processes:⁵⁸⁶

This information is contained in Terrestrial Ecology Assessment (**Part B**) and the Lizard Management Plan (**Part F**):

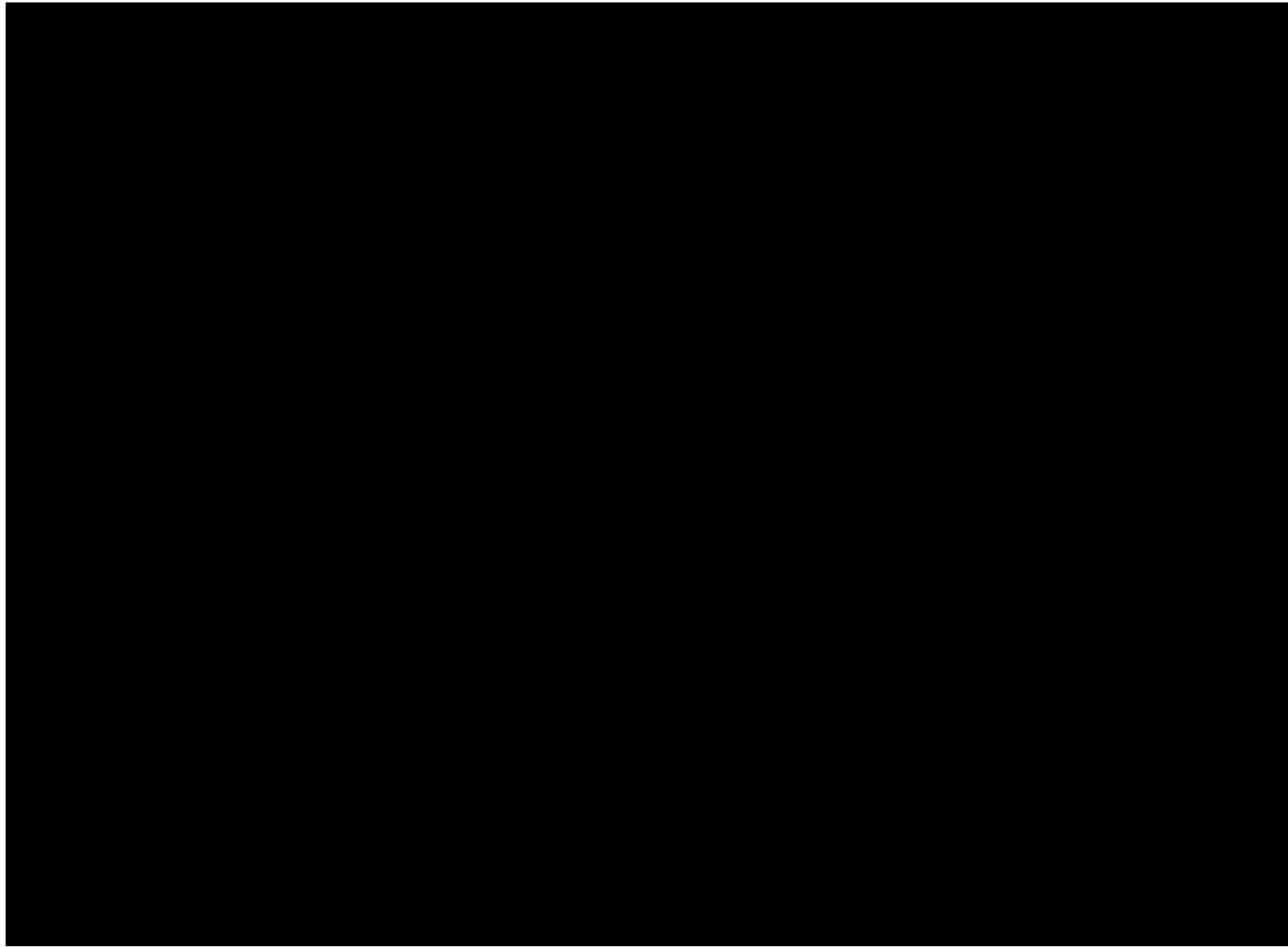
- > With respect to avifauna, Section 7 (Table 18) and Section 8 (recommendation 23) of the Terrestrial Ecology Assessment describe the measures to be implemented in the event of a nest discovery within the vegetation clearance and earthworks footprint. All such, measures will be undertaken and managed by a suitably qualified and experienced Ornithologist and undertaken in accordance with best practice capture, handling and release measures set out in the Department of Conservation’s New Zealand National Bird Banding Scheme bird bander’s manual; and
- > Section 4 of the Lizard Management Plan outlines steps to be taken to minimise the injury or loss of McCann’s skinks and the subsequent compensatory measures to address such losses. Notably, proposed compensatory research fund is to be overseen by the University of Otago Zoology Department, with supervision and assistance from an experience and suitably qualified herpotologist.

State the location or locations in which the activity will be carried out, including a map (and GPS co-ordinates if available):⁵⁸⁷

The wildlife permits apply to the Terrestrial Ecology Assessment survey footprint, as shown in **Figure 11-1** below. Note the area of disturbance also covers the Curvey Basin trenching area in the Rastus Burn.

⁵⁸⁶ Schedule 7, Clause 2(1)(g) of the Act.

⁵⁸⁷ Schedule 7, Clause 2(1)(h) of the Act.



State whether authorisation is sought to temporarily hold or relocate wildlife.⁵⁸⁸

Authorisation is sought to relocate nesting Eastern Falcon and New Zealand Pipit to another adjacent or nearby site, as approved and authorised by the suitably qualified and experienced ornithologist.

While holding of wildlife is not anticipated due to the prioritisation of avoidance measures and the few breeding pairs observed on site, if fledglings are abandoned within a relocated nest, holding will be required to transport them to an appropriate sanctuary.

List all actual and potential wildlife effects (adverse or positive) of the proposed activity, including effects on the target species, other indigenous species, and the ecosystems at the site.⁵⁸⁹

Section 6.4 of this application contains a detailed description of the actual and potential effects of the Project on wildlife (and their habitats). This is based on the information contained in the e3s Terrestrial Ecology Assessment (**Part B**) and Lizard Management Plan (**Part F**).

Where adverse effects are identified, state what methods will be used to avoid and minimise those effects, and any offsetting or compensation proposed to address unmitigated adverse effects (including steps taken before the project begins, such as surveying, salvaging, and relocating protected wildlife).⁵⁹⁰

Sections 6 and 7 of this report, as well as the proposed conditions contained in **Part H** of these application documents, detail how NZSki is proposing to manage the actual and potential effects of the Project on wildlife.

The methods proposed to avoid, remedy or mitigate effects, including minimising and avoiding disturbing, capturing or harming or killing any wildlife (as far as practicable) and compensating for losses when they will occur can also be found in Section 7 of the Terrestrial Ecology Assessment and Section 4 of the Lizard Management Plan.

⁵⁸⁸ Schedule 7, Clause 2(1)(i) of the Act.

⁵⁸⁹ Schedule 7, Clause 2(1)(j) of the Act.

⁵⁹⁰ Schedule 7, Clause 2(1)(k) of the Act.

State whether the applicant or any company director, trustee, partner, or anyone else involved with the application has been convicted of any offence under the Wildlife Act:⁵⁹¹

Neither the applicant nor any company director, trustee, partner, or anyone else involved with the application has been convicted of any offence under the Wildlife Act.

State whether the applicant or any of the company director, trustee, partner, or anyone else involved with the application has any current criminal charges under the Wildlife Act pending before a court:⁵⁹²

The applicant, (including the company director, trustees, partners, or anyone else involved with the application) does not have any current criminal charges pending under the Wildlife Act.

Provide proof and details of all consultation, including with hapū or iwi, on the application specific to wildlife impacts:⁵⁹³

Section 5 of this report contains details of the consultation undertaken in relation to the Project. In summary:

- > Preliminary engagement has occurred with Kā Rūnaka regarding the Project;
- > NZSki has provided DOC, CODC, QLDC and ORC with early project briefings and invitations to visit the site with NZSki;
- > NZSki has also provided copies of the draft terrestrial ecology (sans lizards) assessment to DOC and CODC for comment and review, and has hosted a workshop where the high-level findings of the terrestrial ecology assessment were presented. NZSki has since received feedback from CODC and DOC regarding the Terrestrial Ecology Assessment and will continue to collaborate with these agencies regarding the management of terrestrial ecology; and
- > NZSki has hosted a workshop with CODC and DOC regarding the original lizard assessment. It should be noted that since that workshop, the scope of the lizard management approach has been refined from site wide and holistic management response to a more focussed response that addresses the effects of the Project only. A copy of the updated lizard assessment was provided to DOC and CODC, albeit only

⁵⁹¹ Schedule 7, Clause 2(1)(l) of the Act.

⁵⁹² Schedule 7, Clause 2(1)(m) of the Act.

⁵⁹³ Schedule 7, Clause 2(1)(n) of the Act.

shortly before lodgement. NZSki will continue to collaborate with these agencies regarding the appropriate management of lizards.

Provide any additional written expert views, advice, or opinions the applicant has obtained concerning their proposal:⁵⁹⁴

NZSki has commissioned several expert reports to assess the effects of the Project and to set out measures to manage the effects on wildlife, including the e3s Terrestrial Ecology Assessment, Ecology Memorandum and Lizard Management Plan. These documents can be found in **Part B** and **Part F** of the application documents respectively.

11.2 PURPOSE OF THE WILDLIFE ACT

Clause 5(b) of Schedule 7 of the FTAA requires the Panel to take into account 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.

The Wildlife Act does not contain a standalone purpose section. The long title states:

An Act to consolidate and amend the law relating to the protection and control of wild animals and birds, the regulation of game shooting seasons, and the constitution and powers of acclimatisation societies.

The Court of Appeal and Supreme Court have confirmed that the Wildlife Act has a protective purpose (although protection of wildlife is not the sole purpose of the Act).⁵⁹⁵ What types of activity fall within the 'protective purpose' of the Act for the purposes of section 53 will be fact and circumstance dependent.⁵⁹⁶ Protection is a part of the Wildlife Act's overarching purpose of regulating human interactions with wildlife. That protective purpose is not absolute; it requires consistency with protection at a species level, not solely at an individual animal level. Recent legislative amendments have clarified that a section 53 authority may, in certain circumstances, be granted for killing of wildlife that is incidental to carrying out an otherwise lawful activity. Those circumstances are where the overall effect of the authority would be consistent with the protection of populations of wildlife and individual wildlife. The focus is on protecting individual wildlife and the viability of populations of wildlife as far as practicable.⁵⁹⁷

⁵⁹⁴ Schedule 7, Clause 2(1)(o) of the Act.

⁵⁹⁵ *PauaMAC5 Inc v Director-General of Conservation* [2018] NZCA 348, [2019] 2 NZLR 1 at [42]–[43], [47], [52] and [58]; and *Shark Experience Ltd v PauaMAC5 Inc* [2019] NZSC 111, [2019] 1 NZLR 791 at [44] and [66].

⁵⁹⁶ *PauaMAC5 Inc v Director-General of Conservation* [2018] NZCA 348, [2019] 2 NZLR 1 at [52]–[53].

⁵⁹⁷ Wildlife Act, ss 53A–53C.

As has been explained in earlier sections of this report, the Project has a functional and operational need to locate in an alpine environment, and as a result, will impact on the habitats of wildlife. Provided the resource consent, concession and wildlife approval conditions proposed by NZSki are implemented, and activities are undertaken in accordance with the conditions of consent, concession the wildlife permit, and associated management plans, the Project will not affect the viability of the population of protected wildlife.

While the wildlife permit relating to Eastern Falcon and New Zealand Pipit seeks to address the effects of construction on nesting, given the populations present and the locations where they have been observed during site surveys, it is considered unlikely that nests for either species will be found. The wildlife permit is therefore being sought out of an abundance of caution.

With respect to McCann's skink, there are two distinct areas within the alpine project area where they are present within the vegetation clearance and earthworks disturbance footprint. The vegetation trimming and minimum temperature requirements will ensure that any skink on site will have the opportunity to remove themselves from the disturbance footprint before works commence. While it is acknowledged that these steps alone will not prevent loss of the non-threatened McCann's skink, the compensation proposed will contribute to wider conservation efforts in the area by developing an understanding of cryptic alpine lizard species in the Remarkables and Hectors area.

The activities sought to be covered by the wildlife approvals are therefore consistent with the 'protective purpose' of the Wildlife Act, although individual acts of incidental harm or killing (if they were to occur) may not be consistent with, or occurring for the purpose of, protection. The management plans and conditions proposed will ensure the careful regulation of human interaction with the species protected under the Wildlife Act.

As discussed in Section 11.1 above, human interaction with wildlife will be carefully managed via resource consent and wildlife approval conditions, and the associated lizard and terrestrial ecology management plans (once certified).

11.3 DECISION-MAKING CONSIDERATIONS FOR WILDLIFE PERMITS

Section 81 of the Act, and Clause 5 of Schedule 7, set out the matters for consideration by the panel in respect of a wildlife approval. These matters are summarised below:

- > A panel must, for each approval sought in a substantive application, decide whether to grant the approval (and set conditions) or decline the approval;⁵⁹⁸
- > The panel must consider the substantive application, and any advice, report comment or other information received by the panel,⁵⁹⁹ including advice from administering agencies, local authorities, iwi authorities, treaty settlement entities, DOC and HNZPT;
- > A panel may only decline the approval in accordance with section 85 of the Act, which set out where panels must decline approvals (not applicable in the case of this Project) and where panels may decline an approval – if the panel forms the view that:
 - > There are 1 or more adverse impacts in relation to the approval sought; and⁶⁰⁰
 - > Those adverse impacts are sufficiently significant to be out of proportion to the project’s regional or national benefits that the panel has considered, even after taking into account:⁶⁰¹
 - > any conditions that the panel may set in relation to those adverse impacts; and⁶⁰²
 - > any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.⁶⁰³
- > A panel may not form the view that an adverse impact of a project is sufficiently significant to be out of proportion to the regional or national benefits solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider;
- > In its decision, the Panel must take into account, the following matters of relevance to the wildlife approval sought as part of the Project (giving greatest weight to the purpose of the Act);⁶⁰⁴
 - > The purpose of this Act; and
 - > The purpose of the Wildlife Act and the effects of the project on the protected wildlife that is to be covered by the approval; and

⁵⁹⁸ Section 81 (1) of the Act.

⁵⁹⁹ Section 81 (2) of the Act.

⁶⁰⁰ Section 85 (3)(a) of the Act.

⁶⁰¹ Section 85 (3)(b) of the Act.

⁶⁰² Section 85 (3)(b)(i) of the Act.

⁶⁰³ Section 85 (3)(b)(ii) of the Act.

⁶⁰⁴ Clause 5, Schedule 7 of the Act.

- > 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).

In respect to these matters:

- > Sections 1 and 6.2 of this report addresses how the Project demonstrably achieves the purpose of the Act;
- > The purpose of the Wildlife Act is addressed earlier in this report, in Section 11.2, and the effects of the Project on protected wildlife is addressed in Section 6 and the e3s Terrestrial Ecology Assessment and Lizard Management Plan (included in **Part B and F** of the application documents respectively); and
- > The information and requirements relating to protected wildlife are addressed in Section 11.1 above, with reference to other sections of this report and the e3s Terrestrial Assessment and Lizard Management Plan (included in **Part B and F** of the application documents respectively).

11.4 SUMMARY

In summary, the information provided in the preceding sections satisfies the information requirements for approvals required under the Wildlife Act, in accordance with Schedule 7 (Clause 2) of the Act.