

Forest & Bird’s comments on the Bream Bay Sand Extraction Project

Please include all the contact details listed below with your comments and indicate whether you can receive further communications from us by email to substantive@fasttrack.govt.nz.

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| 1. Contact Details | | | |
| Please ensure that you have authority to comment on the application on behalf of those named on this form. | | | |
| Organisation name (if relevant) | Royal Forest and Bird Protection Society of New Zealand Inc. | | |
| First name | Dean | | |
| Last name | Baigent-Mercer | | |
| Postal address | | | |
| Home phone / Mobile phone | | Work phone | ██████████ |
| Email (a valid email address enables us to communicate efficiently with you) | ██ ██ | | |

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|---|--|--------------------------|--|
| 2. We will email you draft conditions of consent for your comment | | | |
| <input checked="" type="checkbox"/> | I can receive emails and my email address is correct | <input type="checkbox"/> | I cannot receive emails and my postal address is correct |

1. Forest & Bird is New Zealand’s largest and longest-serving independent conservation organisation. Its mission is to be a voice for nature. Its constitutional purpose is to “take all reasonable steps within the power of the Society for the preservation and protection of the indigenous flora and fauna and the natural features of New Zealand”. Forest & Bird’s advocacy and legal teams help achieve that purpose by participating in consenting processes for projects that are likely to have significant adverse impacts on the natural environment.
2. Forest & Bird submitted on McCallum Bros Limited’s previous applications to extract sand within the Mangawhai – Pākiri embayment. Forest & Bird appeared at the first instance hearings on each separate application to mine sand from inshore, midshore, and offshore areas of the embayment. It is disappointed to see many of the problems the Environment Court identified in that process has not been rectified under the current application.
3. Forest & Bird opposes the Bream Bay Sand Extraction Project application in its entirety. The application fails to effectively consider effects on important areas and species. From what Forest

& Bird can see, the material provided by McCallum Bros in support of its application is far from adequate to identify potential effects and its conditions are insufficient to manage them.

4. Forest & Bird supports the comments provided by the Bream Bay Guardians and Patuharakeke Te Iwi Trust Board. The information they have provided shows that important ecological values exist in Bream Bay, including within the application area, and that if the project goes ahead, those values will be put at significant risk.
5. Accompanying this comment is a brief set of legal submissions prepared by Forest & Bird's legal counsel.
6. Forest & Bird's key concerns addressed in these comments relate to:
 - a. the rigour of marine ecological monitoring and effects management response, particularly in relation to effects on coral species protected under the Wildlife Act 1953 and impacts on benthic communities;
 - b. effects on shore birds, seabirds and marine mammals; and
 - c. the certainty and adequacy of proposed conditions.

Ecological monitoring and effects management response

7. A key concern is the impacts of the sand mining activity on the benthic environment, the ecosystem services that the environment provides, and the wider ecosystem functions that it supports. Justifying adverse effects on the basis that there are more fish (or habitat) in the sea, does not mean that the values within the proposed sand mining site are not important to the ecosystem of Bream Bay.
8. The quantum of information on the benthic environment within the site available now, compared with what will be available after monitoring, highlights this issue. As set out in Condition 16, the monitoring programme outlined in the EMMP will provide baseline ecological and bathymetric information to assess the impacts of the project. This approach can be acceptable for assessing the impacts of a project. However, in this case, the information necessary to determine the extent of adverse effects on the benthic environment has not yet been provided and instead relies on information to be gathered under Condition 16. This means that the panel will not have the information before it on the site-specific values and the extent of adverse effects on them.
9. Critically, the baseline monitoring will survey values on which there is little to no current information. Information provided by Bream Bay Guardians shows that important reef habitat and benthic values exist within the proposed sandmining site. A better understanding of these values is important for assessing the scale of adverse impacts when deciding whether to grant or decline the application.
10. A key problem is that leaving such surveys and monitoring until after the grant of consent as part of future monitoring conditions, is that there is significant uncertainty on the extent of effects. This uncertainty is left to be addressed through conditions of consent. Uncertainty can sometimes

be addressed through adaptive management conditions. However, baseline information is critical to designing effective adaptive management conditions.

11. The absence of baseline information and the uncertainty on adverse effects makes monitoring and response conditions problematic. This is because it is not clear at the time of decision making whether effective measures can be taken to appropriately avoid, mitigate or remedy adverse effects that may arise.
12. In this case, the applicant has included monitoring conditions but these do not connect well to any specific response(s). For example, Condition 16 relates to the EMMP and sets objectives for the management plan. However, these objectives are more process focused rather than outcome focused. The consequence of this focus is that it is uncertain if any responses made to minimise effects under Condition 16 will be undertaken, and if they are, whether the response will address adverse effects to an appropriate extent.
13. The applicant's staged approach also creates uncertainty as to whether adverse effects will be addressed in a timely manner. This is due to the heavy reliance on recommendations in reporting, which means there is no certainty about whether the applicant will implement them.
14. As a result, there is significant reliance on the review of consent conditions to make any changes necessary to address adverse effects arising after the grant of consent. Relying on a discretionary review condition is not an appropriate way to prevent or avoid adverse effects from occurring. In addition, any changes to conditions imposed through a review will be limited, as conditions cannot frustrate the grant of the consent.
15. It is not appropriate to leave a decision on how to respond to that information until after the grant of consent. Particularly where important values remain unknown, the effects and recovery remain uncertain.
16. The applicant has considered environmental improvement and recovery in response to the Panels minute 4 (question 4). This response suggests that there is significant uncertainty as to benthic improvement recovery with the current ban on scallop dredging in Bream Bay. Mr West has said that recovery will be "influenced by recruitment variability, sediment movement, storms, water quality, disease, predation, fishing pressure outside the closed area, and other natural and anthropogenic factors, such as sea temperature increases and ocean acidification."¹
17. This being the case, it will be difficult to detect any ecologically significant statistical adverse impacts relative to natural processes. This makes it difficult to attribute adverse impacts to sand mining. Such attribution is required to trigger recommendations for management responses.² These conditions do not meet the requirements of adaptive management.

¹ Evidence of Mr West dated 14 May 2026 at [54]

² See Conditions 23, 37; Evidence of Mr West dated 14 May 2026 at [23]

18. It also suggests greater uncertainty than has been expressed by the applicant for recovery from the proposed sand extraction activity.³ This is particularly concerning for recovering scallop beds, stone corals and other crustaceans which take a long time to recover. If any high value areas are not excluded from the approved sand extraction areas (ASEA) or are accidentally mined or damaged by the suction dredge despite being excluded, on the applicant's evidence there is significant uncertainty that there will be an adequate response.
19. Forest & Bird has viewed draft comments and evidence of Bream Bay Guardians and Patuharakeke Te Iwi Trust Board. This additional information identifies important marine values within the proposed sand mining site. It further demonstrates a significant gap in the applicant's baseline information. There is no adequate understanding of the potential adverse effects of the proposal.
20. Forest & Bird supports the concerns raised by the Department of Conservation⁴ on the effects on, and recovery of, cup corals. As set out in that report, there is "substantial uncertainty remains regarding the distribution, abundance, recovery, and wider population-level effects on the two endemic protected species affected by the proposal."⁵ These uncertainties are not resolved with a longer interval between repeat extractions at the same location and a 10-year wildlife authority. These effects and uncertainties need to be considered in terms of the NZCPS (particularly Policy 3) and the inadequacy of the proposed condition to address them.

Effects on seabirds and marine mammals

21. Kororā / Northern Blue Penguins generally forage between 5 – 30m depths and can easily feed from the seafloor within the proposed sand mining areas. The applicant's information on kororā fails to adequately consider the vulnerability of this species to effects during breeding periods when foraging is within a more limited range and the importance of benthic foraging on the seafloor to supplement pelagic foraging during that time.
22. The applicant's consideration of potential for adverse effects on tara iti relies on information relating to flight distances within which tara iti are considered to forage. That information is not based on electronic tracking and carries a degree of uncertainty, as acknowledged by the applicant's expert. Based on this information, the site is not that far outside the observed foraging distance.
23. While there may not be direct effects on foraging for tara iti, there remains a potential for adverse effects to extend beyond the area of sand extraction as a result of noise, sediment and benthic disturbance effects to the wider bay ecosystem functions for both tara iti and kororā. While we accept that for some species such as fairy tern this information is not available and would be very difficult to collect, this does not mean that the potential for adverse effects on fairy tern should be ignored/set aside. As set out above, Forest & Bird considers that such an effect

³ Evidence of Mr West dated 14 May 2026 at [24] –[40]

⁴ Section 51(2)(c) wildlife approval report for – FTAA-2511-1150 Bream Bay Sand Extraction

⁵ Section 51(2)(c) wildlife approval report for – FTAA-2511-1150 Bream Bay Sand Extraction at 3.1

should be considered in terms of the NZCPS Policy 3 Precautionary approach and Policy 11 indigenous biological diversity.

Benefits

24. Forest & Bird relies on the economic evidence of Dr Richard Meade that the applicant has materially overstated the benefits and understated its costs. The key flaws in the approach are the assumption of a business-as-usual level of concrete consumption in Auckland, downplaying the viability of alternatives, and applying an inappropriate discount rate that alone inflates benefits by more than 100%.
25. The ability to decline consent on the basis that the impacts outweigh the benefits is available. The regional benefits of the application are “vanishingly small”, amounting to only cents per Auckland household per week. They are not regionally significant. These trivial benefits are outweighed by the potentially significant environmental, amenity, and cultural impacts.

Comments on conditions

26. Forest & Bird comments on the proposed conditions are limited to matters which are particularly uncertain and inadequate. These comments refer to the applicant’s 11 May 2026 version but are also applicable to the 18 May 2026 version (Mr McMahan’s review) commissioned by the expert panel. This is on the basis that Forest & Bird will have a further opportunity to comment on conditions.
27. **Condition 17:** Despite the objective including “to avoid” there are no requirements that identify the adverse effects that are to be avoided. In addition, “minimise” is set out as an alternative to “avoiding” adverse effects. As such, the condition is uncertain on what is required and the extent to which any adverse effects will be addressed by the applicant. Similar issues arise with other conditions to “avoid or minimise” adverse effects.
28. Best practice in terms of management plans, includes that:⁶
 - a. “Certainty is essential both in terms of the level of adverse effects authorised and exactly what the conditions require of the consent holder” and:
 - b. “Management plans can be used to clarify how compliance will be achieved but they should not be relied upon as the sole mechanism to provide reassurance that a critical performance or environmental standard will be achieved.”
29. **Conditions 20 and 21:** Condition 21 refers to approved sand extraction cells (ASEA) as shown on Attachment Two and would allow for extraction within those cells without a PSEAR so long as extraction commences before 1 April 2027. This is problematic for at least two reasons.

⁶ Conditions relating to existing and future management plans, <https://qualityplanning.org.nz/index.php/node/917>

30. Firstly, there do not appear to be any ASEA identified on Attachment Two. Secondly, it would be inappropriate to extract from cells that have not been assessed as required for PSEAR. Nor is it clear how areas/cells that do not meet a PSEAR are to be identified and mapped for compliance purposes. Condition 20 appears to presume that a PSEAR may approve extraction in cells that include areas with values that must not be included in an ASEA under those conditions. These conditions create uncertainty regarding the requirements in condition 20 (a) to (e) and are not consistent with a precautionary approach.
31. **Condition 22:** It is not clear from the condition wording what the purpose of the PSEAR is and whether the PSEAR will ensure that defined ASEA's meet the condition 20 requirements (a) to (e). While the condition includes a requirement for certification of a final PSEAR which includes proposed ASEAs, there are no clear criteria or objectives on which the council could determine certification. Condition 16, relating to the EMMP, includes a requirement and methodology for a PSEAR, but again lacks any detail on what the PSEAR is to achieve. It is not appropriate for certification and compliance with respect to PSEAR requirements to be assessed solely on what is included in the EMMP.
32. **Condition 23:** This condition provides for the staging of extraction volumes by restricting an increase in extraction under clause (b) of the condition, where there is an "identified ecologically significant statistical adverse change." However, this would only be triggered if that change occurred for each of the previous three years.
33. Under the previous wording, proposed with the substantive application, the restriction on an increase in extraction would have been triggered if the adverse change was monitored "in the previous three years". Clauses (a) and (b) are also open to interpretation on whether both the cubic metre exceedance and monitoring requirements are to be met, or if exceeding the cubic metres is sufficient to enable an increase to the maximum sand extraction rate.
34. We were concerned with an earlier iteration of conditions, which provided that extraction can continue even if significant adverse impacts are identified. The latest wording is more uncertain and is less precautionary.

Conclusion

35. The application should be declined. The adverse impacts are significant. Of particular concern is the spatial scale and duration of the impact, and the uncertainty around the recovery of the impacted benthic ecosystem is significant. A much higher level of confidence in the effectiveness of the consent condition to identify and properly manage adverse effects would be needed to ensure that any adverse effects resulting from the activity are within acceptable limits
36. Consent can and should be declined when these impacts are considered in light of the trivial regional benefits of the activity, most of which arise in Auckland, remote from the location of the adverse impacts.

Thank you for receiving these comments