

Forest & Bird - Comment on proposed conditions

Re the Waitohi Picton Ferry Precinct Redevelopment Fast Track Application

All sections of this form with an asterisk (*) are mandatory.

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	Debs		
*Last name	Martin		
Postal address	PO Box 266 / Nelson 7040		
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*Email (a valid email address enables us to communicate efficiently with you)	d.martin@forestandbird.org.nz		

2. *We will email you draft conditions of consent for your comment about this application

yes	I can receive emails and my email address is correct	<input type="checkbox"/>	I cannot receive emails and my postal address is correct
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3. Please provide your comments on the Waitohi Picton Ferry Precinct Redevelopment Application

INTRODUCTION

1. Forest & Bird provided comment of the application. This included some specific comments on the draft conditions in that application.
2. Forest & Bird appreciates the opportunity to provide comment on the proposed conditions.

PROPOSED CONDITIONS

3. Overall Forest & Bird is pleased to see that the proposed conditions include clear conditions that management plans must meet for certification and compliance. Forest and Bird is also pleased to see the incorporation of conditions and wording sought by Forest & Bird which addresses much of the concerns set out in previous comment on the application.
4. However we are disappointed to find that there is no clear condition for environmental enhancement measures in the PB conditions. Forest & Bird recognises and supports the measure for enhancement in relation to the Kiwi rail retaining wall in PC conditions.

5. Forest & Bird has also identified some gaps and uncertainties in the proposed conditions which we consider require amendments to remove ambiguity and potential for adverse effects which would be inconsistent with the NZCPS.
6. Comments on the proposed conditions is as follows:

Conditions	Comment and suggested amendments
PB 2.4	<p>Having considered the advice note with general condition PA 1.1 that 'construction' does not include 'enabling works' we have some concern with the adequacy of condition PB 2.4 to provide an accurate pre-activity survey if it is not carried out before enabling works. There is no detail in the application of what enabling works may entail. However any additional activity on the site could have adverse effects on avian fauna which should be considered as part of the effects of the proposal.</p> <p>For an accurate pre activity survey, the condition needs to ensure that it is carried out before any new activities which could disrupt birds and change their behaviour.</p>
PB 2.7	<p>Forest & Bird is pleased to see that the ESCDSMP requirements include conditions PB 2.7 which now addresses Forest & Bird's concerns raised at paragraph 17 of our earlier comments on the application.</p>
PB 3.1.1 (c)	<p>For the reasons set out above in relation to PB 2.4, Forest & Bird also has concerns that adverse effects on avian fauna from enabling works is not adequately captured by condition PB 3.1.1.</p> <p>In addition Forest & Bird considers that the exclusion of "minor or transitory adverse effects" within this condition or any consent condition is inappropriate. This is because:</p> <ul style="list-style-type: none"> • Whether any 'minor or transitory' effect should be considered as adverse or not should be determined through the consent process. • It allows for a secondary assessment later on by the person who implements the conditions. • Excluding minor or transitory effects that are "adverse effects" could result in inconsistency with the NZCPS. • The wording adds subjectivity/uncertainty to the condition which may result in the condition being unenforceable. <p>It is the decision makers' responsibility to determine whether adverse effects are to be avoided, remedied or mitigated. The appeal version of the pMEP does not include any policy direction to ignore such adverse effects on indigenous biodiversity. In respect of Natural Character, Policy 6.2.3 [RPS, R, C, D] includes: "(c) recognise that minor or transitory adverse effects may not need to be avoided". While the Coastal environment chapter includes: Policy 13.13.4 "Where disturbance of the foreshore and seabed will occur as a result of structures being fixed to the seabed (for example, during the construction of jetties, boatsheds or retaining walls, or when placing moorings on the seabed), this shall be regarded as appropriate where the effects are short-term, reversible and/or minor."</p>

	<p>In any respect, Forest & Bird considers that it is the decision-makers' role to consider effects of an application, including any minor or transitory effects, and determined if they needed to be avoided, remedied or mitigated. Condition require specificity and accuracy of expression, leading to a certain measure of certainty, before it can be enforceable (Ferguson v Far North District Council A84/98) and that it is important that consent holders know the true nature and extent of any resource consent allowed. A condition to a resource consent is no place for some sort of puzzle (Gillies Waiheke Ltd v Auckland City Council CA286/03 at [24])</p>
PB 3.1.2	<p>Forest & Bird is generally satisfied with this conditions which now provides certainty for replacement nesting should nesting sites be lost due to the proposal.</p> <p>However, we note that if a permit is granted by the Department of Conservation for relocation this does not mean that adverse effects have been or can be entirely avoided on the bird or its habitat.</p>
PB 3.1.3	<p>Forest & Bird has significant concerns with this conditions and the approach to discourage/disturb birds from their breeding habitat. It is our understanding that such disturbance would be in breach of the Wildlife Act and that a permit from DOC would need to be obtained. However we also understand that wildlife permits can only authorise 'capture' and 'kill' and not disturbance.</p> <p>In terms of the condition proposed if a permit from DOC can be obtained for such disturbance, Forest & Bird accepts that it may not be practical to have an ecological expert on site at all times or for the period needed to discourage nesting. However, we consider that the training of representatives of the consent holder to undertake such a role comes with some risks. Particularly if the representatives do not have the same empathy or understanding of the habitats and needs of avian fauna. For this reason Forest & Bird's preference is for a suitably qualified expert to undertake any deterrent measures. However if that is not accepted additional requirements for training of the representatives should include:</p> <ul style="list-style-type: none"> • Being trained to ensure any deterrence measures do not cause harm to caspian tern and torea tai or • How to avoid adverse effects on other birds that may be within the vicinity when deterrence measures are carried out. <p>Forest & Bird is also concerned with the clause (c) of the condition allowing the applicant to determine if it is not practicable to allow nesting to continue. If the birds are breeding the only option in Forest & Bird's view is to establish appropriate measures to work around them for remainder of the breeding/nesting period. The destruction of eggs, whether a permit can be obtained by DOC or not, would be inconsistent with Policy 11 (a) of the NZCPS.</p>

Date 21 April 2021

Debs Martin for Forest & Bird

Forest and Bird
Waitohi Picton Ferry Precinct Redevelopment