

Forest & Bird's Comment on proposed conditions

Re the Kōpū Marine Precinct 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 & Bird Protection Society of New Zealand Inc.		
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2. *We will email you draft conditions of consent for your comment

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 this application

If you need more space, please attach additional pages. Please include your name, page numbers and the project name on the additional pages

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.

DRAFT CONSENT CONDITIONS

3. Overall Forest & Bird is pleased to see an overall improvement in the conditions with respect to banded rail. However, we consider that further improvements could be made.
4. 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.
5. Comments on the proposed conditions is as follows:

Conditions	Comment and suggested amendments
A12	<p>Referring to the purpose of management plans is clearer than previous wording referring to objectives and standards. Forest & Bird still has concerns that the purpose stated in the Banded Rail Management Plan is different to that stated in Condition F12 and that the former is inadequate as it does not capture operational effects, ie following completion of construction.</p> <p>This can be clarified by condition A12 referring to the purpose in F12</p>
A15	<p>It is unclear over which consent term(s) the Banded Rail Management Plan would be applied. However, given the wetland association it appears that the plan would be implemented over an unlimited term in relation to RC3.</p> <p>We also note that the panel has asked the regional council to confirm the area of CMA and the question of reclamation, however we have not seen a response to date on those matters. It may be that any operational requirements of management plans would also be relevant to any consent requirements under s12 of the RMA.</p> <p>Forest & Bird considers that any operational effects managed in accordance with the banded rail management plan will need to be in perpetuity given the permanence of the structure and proposed activities.</p> <p>It may be helpful to specify the term or consents relevant to each management plan.</p>
D12	<p>It is not clear that the Banded Rail Management Plan should be considered in the pre-start meeting as there are no references to this plan in the Part D conditions. It is important that all relevant parties understand the requirements with respect to Banded Rail. We therefore suggest that this is clarified by reference to the Banded Rail Management Plan in condition D12. Also see comment on condition F17 below.</p> <p>It is important that parties for both district and regional council consents understand the requirements of the Banded Rail Management Plan. For example, birds may be present in the Borrow Pit area even though it is not considered as natural wetland and the measures to avoid adverse effects in the Banded Rail Management Plan will need to be applied.</p>
F12	<p>Please to see inclusion of peer review requirement as added by the applicant.</p> <p>There are other aspects of this condition which require clarification and improvement.</p> <p>The timing requirements for submitting the Banded Rail Plan could be clearer to ensure the plan is certified before the pre-start meeting and before start of construction activities.</p> <p>Forest & Bird is pleased to see the purpose of the BRMP extended to include the avoidance of adverse effects following completion of construction. This allows appropriately for ecological advice of relevant measures. The absence of information on bird populations in the surrounding area is not a reason to exclude provision for addressing adverse effects. Birds being present near the completed structure does not mean that operational activities have no adverse effects or that measures to avoid them could not be taken¹. For example, people or dogs accesses adjacent wetland/mangrove from the car parking area could be restricted or managed by physical barriers or by restrictions on dogs on the site. These are matters that can appropriately be considered and addressed through the BRMP. Clear direction in the conditions will ensure this occurs.</p>

¹ Applicants' response on post construction monitoring and effects no.50, page 5 FURTHER INFORMATION RESPONSE – 2 (21-Feb_4_Sight_Consulting_FTC34_Further_information_and_advice_Redacted).

	<p>It is also not clear in the Part G conditions that the BRMP is a relevant consideration post construction.</p> <p>The following amendments to F12 are suggested to address these matters:</p> <p>F12. Prior to the commencement of construction, the Consent Holder shall submit to Waikato Regional Council, for certification, a Banded Rail Management Plan (BRMP). <u>The timing of submission should be sufficient to allow for certification ahead of the pre-start meetings under conditions D12 and F17.</u> The purpose of the BRMP is to avoid adverse effects on Banded Rail during construction and removal of vegetation, and following completion of construction (<u>post construction</u>). The BRMP shall include the measures set out in the Draft BRMP prepared by 4Sight Consulting dated September 2021, <u>measures to ensure compliance with relevant conditions and any further measures to achieve its purpose.</u> The BRMP must be peer reviewed by a Suitably Qualified Person, prior to Waikato Regional Council for Certification. The plan shall include, but not be limited to:</p> <ol style="list-style-type: none"> a. Methodology for identification of Banded Rail and their nests to ensure compliance with Condition <u>F19</u>. b. Actions required in the event in-situ birds or nests are identified in accordance with the requirements of Condition <u>F20</u>. <u>x. identification of potential adverse effects post construction, including from use of the recreational facilities and operation of the commercial facilities and include appropriate measures to address them.</u> c. Incorporation of the changes, recommendations or deletions arising from the peer review; and d. A detailed response as to why any requests, recommendations or deletions from the peer review have not been incorporated. ”
F17	<p>Similar issue as with condition D12 above. It is not clear that the pre-start meeting would include consideration of the requirements of the Banded Rail Management Plan.</p>
F19	<p>Forest & Bird supports this condition for the identification of both in-situ banded rail and nest prior to any wetland vegetation removal. As set out under F20 comments we also consider that a similar condition is required ahead of earthworks activities. This is because active nest may be present within vegetation adjacent to earthworks activities.</p> <p>We also suggest clarifying condition F20 for requirements relating to in-situ, ie banded rail on site to ensure that adverse effects are avoided as required by Policy 11 of the NZCPS and that disturbance is not contrary to the Wild Life Act.</p>
F20	<p>Forest & Bird is pleased to see the specific inclusion of the 30m set back in the condition.</p> <p>We note that this is limited to vegetation clearance activities and for nests within the site. However, ecological assessment and 4sight advice also considers effects of earthworks. It is our understanding that earthworks are likely to overlap with the breeding season given regional council constraints on this over the winter months. We therefore recommend that a nest check is undertaken extending at least 30m from any area of earthworks where adjacent mangroves have not yet been removed and including checking beyond the site to protect nearby nesting banded rail.</p> <p>Given the applicants response to Forest & Birds comments regarding the inclusion of the 30m setback, that this means adverse effects as a result of construction are unlikely</p>

	<p>to affect banded rail nests². We want to clarify that this may not be the only measure necessary to avoid adverse effects on nesting birds, for example this condition does not currently apply to earthworks activities. We also understand that the provision of the banded rail management plan will enable the identification of further measures as appropriate.</p> <p>Forest & Bird also considers that conditions are needed to ensure that the management plan specifically considers measures to avoid adverse effects while young birds are cared for by their parents, ie within two months of hatching. Provision to identify such birds appears to already captured in condition F19, however there is no clear action required where “insitu banded rail” rather than “nests” are found. This can be addressed by amending Condition F20 to provide for both situations and ensure that an ecologist is on site and that their advice is followed to avoid adverse effects during vegetation clearance. It would also be helpful for the consent to clarify that the ecologist is someone with banded rail expertise</p> <p>Further direction for the management plan to provide guidance on further measures and actions this would be helpful.</p> <p>Suggested amendments to conditions:</p> <p>F20. In the event <u>in-situ and/or</u> active banded rail nest(s) are identified:</p> <ol style="list-style-type: none"> a. There shall be no removal of vegetation within 30m proximity to the nest(s). Vegetation may be removed up to 30m. b. An ecologist <u>with banded rail experience</u> shall be on site during vegetation clearance and <u>their advice on measures to protect banded rail from adverse effects of mangrove removal activities, including any ancillary activities, shall be followed.</u> <p><u>Earthworks</u></p> <p><u>F24A. Where earthworks are undertaken between 1 September and 30 March. No more than 2 days prior to any earthwork’s activities within 30m of mangroves (including those adjacent to the site or within the site yet to be removed under condition F22) a suitably qualified person shall undertake a survey of the adjacent mangroves for the purposes of identifying any banded rail nests. Where any identified nest are active:</u></p> <ol style="list-style-type: none"> <u>a. There shall be no earthworks activities within 30m proximity to the nest(s); and</u> <u>b. Ecological advice shall be followed to avoid adverse effects on breeding such as halting works during key feeding periods.</u>
F22	<p>Given that mangrove removal is to occur by hand it is not clear why the conditions could not also stipulate that is to occur outside of the breeding period for banded rail.</p> <p>The description for best practise for seedling removal and manual removal in the Guidelines suggests that no “earthworks” would be involved given that seedlings are pulled out by hand and for larger trees stumps are left visible. The Guidelines also suggest that May or June is a preferable time for seeding removal.</p> <p>Unlike for earthworks there does not seem to be any basis or need for mangrove removal activities to overlap with the bird breeding period.</p> <p>If this were the case then it is likely that the preceding condition requirements regarding active nest would not be triggered. However, a survey to identify whether</p>

² Page 3, Applicants Response to Comments Received, 4SIGHT Consulting 10 February 2022

	<p>birds are present and the requirement for an ecologist to be present during works would still be relevant. Conditions F19 and F20 should be retained regardless.</p> <p>Suggested amendment to conditions:</p> <p><u>F22A. Wetland vegetation, including mangroves must not be removed during the banded rail breeding period of 1 September to 31 March.</u></p>
Banded rail management plan	<p>Forest & Bird still has concerns the BRMP approach to usher birds away. 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 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 that an ecological expert needs to be on site at all times for the period of vegetation removal and any wetland drainage activities. This can be addressed by amendments sought to F20 above.</p> <p>However, whether a permit can be obtained by DOC or not, we remain concerned that "ushering" birds away could be inconsistent with Policy 11 (a) of the NZCPS.</p> <p>We are particularly concerned where young birds are involved. Given the ability of banded rail chicks to leave the nest earlier than many other birds, in-situ birds on the site may include both chicks and parent birds during a time when they are particularly vulnerable.</p> <p>In our view any ushering should wait until chicks have naturally vacated the area. That during the period that chicks are present all vegetation removal and any machinery should maintain at least a 30m distance from the banded rail and to be advised by the appropriate ecological expert.</p> <p>Amendments suggested at F20 above which include the presence of an ecologist with banded rail experience on site and that their advice is followed will go some way to address these concerns. However, this is dependent on the birds first being identified in the survey under F19 rather than any ongoing surveillance. Further measures in this regard could be addressed in the BRMP we hope.</p>
G4	<p>Forest & Bird is concerned that pest management measures are not provided for during the period of construction or during vegetation removal. Pests can be introduced via people and machinery. These activities will also open the area to pests for up to 3 years before the APCMP would need to be applied.</p> <p>We accept that the APCMP focuses on mammalian pests and does not address domestic animals. However, we are concerned that there are no conditions with respect to dogs. Dogs are a threat to native birds and their presence close to remaining mangrove which would have previously been less accessible is concerning.</p> <p>These effects could be avoided by a condition requiring signage stating that dogs are not allowed within the parking or wharf/ramp commercial and recreational areas. However, this would need to be supported by measures to monitor compliance with dog restrictions.</p> <p>At the very least we consider that the BRMP should include measures to ensure adverse effects of use relating to the potential presence of dogs is avoided on banded rail adjacent to the facility.</p>
G6	<p>This should include reference to the Banded Rail Management Plan as one of the documents to be referred to in the Operational Site Management Plan.</p> <p>Add a new clause:</p> <p><u>h. reference to the Banded Rail Management Plan required by condition F12.</u></p>

D22	<p>In response to Forest & Bird’s comments the applicant agreed that there is the potential for lighting from the new development to have adverse effects on animals, and in particular birds. Response then identified management principles to help mitigate the adverse effects artificial lighting may have on birds at the site, and recommended the developer considers as many of these as practicable. However, there is no provision in the conditions of consent or draft BRMP to consider these measures.</p> <p>Recommended amendment to conditions:</p> <p><u>D22A. Lighting design will follow best practice principles³ to reduce light pollution and minimise adverse effects on birds, including by applying the following:</u></p> <ul style="list-style-type: none"> <u>a. Start with natural darkness and only add light for specific purposes.</u> <u>b. Use adaptive light controls to manage light timing, intensity and colour.</u> <u>c. Light only the object or area intended – keep lights close to the ground, directed and shielded to avoid light spill.</u> <u>d. Use the lowest intensity lighting appropriate for the task.</u> <u>e. Use non-reflective, dark-coloured surfaces.</u> <u>f. Use lights with reduced or filtered blue, violet and ultra-violet wavelengths.</u>
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3 March 2022

Lissy Fehnker-Heather

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 Royal Forest & Bird Protection Society

³ Commonwealth of Australia. 2020. National Light Pollution Guidelines for Wildlife Including Marine Turtles, Seabirds and Migratory Shorebirds