

Project Planning Legal Checklist

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Change Log

Date	Editor	Status	Description
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Introduction

Purpose

To assist in the planning stage of the Capital Programme Delivery Framework. This checklist aims to create an efficient system, capture and preserve expertise, lower project cost and lower project risk. It does this by providing a brief set of questions to help in identifying any legal requirements when planning a project. Additionally, this checklist provides guidance as to what a consultant may be considering in their recommendations.

Current Scope

The checklist and charts only cover a selection of acts. They do not consider emergencies, financing or organisational regulations, anything pre-decision or post-planning, external non-mandatory guidance, issues around trusts and Maori freehold land, unit-specific regulations or internal policy considerations.

Some next steps will be to include some important unit-specific regulations and internal policy considerations.

Disclaimer

Although care has been taken in the writing of this checklist, mistakes may have been made. Additionally, the law changes over time and it's, therefore, possible that parts of this checklist will be rendered incorrect. Accordingly, this checklist cannot be definitively relied upon. If you find what could be a mistake, consult a colleague, expert or do some research.

Suggestions

If you have found something out of place, a mistake or want to suggest a helpful inclusion you can file your suggestion at forms.office.com/r/wFMzCC1Nkw.



Printing and binding instructions

We recommend that the checklist and the flowcharts are bound separately for ease of reference. If you encounter errors while printing, please follow Programme Delivery's Capital Programme Delivery Framework Printing Guide.

If you do not know the answer, look to the footnotes or check the flowchart.

Question	Direction		Considered?
Does the project need to be constructed on, under or through private property?	YES	Consider Flow Chart 1 (page 7)	<input type="checkbox"/>
	NO	Continue	
Could the project affect Crown land? ¹	YES	Consider Flow Chart 2 (page 8)	<input type="checkbox"/>
	NO	Continue	
Was the project's site associated with human activity that occurred before 1900?	YES	Consider Flow Chart 3 (page 9)	<input type="checkbox"/>
	NO	Continue	
Does the Council need to purchase land, lease land or buy an easement on land for the project?	YES	Consider Flow Chart 4 (page 10)	<input type="checkbox"/>
	NO	Continue	
Does the project require surveying or investigation of (or by going through) private property?	YES	Consider Flow Chart 5 (page 11)	<input type="checkbox"/>
	NO	Continue	
Does the project require the cutting down of a private tree or hedge?	YES	Consider Flow Chart 6 (page 12)	<input type="checkbox"/>
	NO	Continue	
Does the project require the removal of an encroaching structure? ²	YES	Consider Flow Chart 7 (page 13)	<input type="checkbox"/>
	NO	Continue	
Does the project include the construction, alteration or removal of a structure? ³	YES	Consider Flow Chart 8 (page 14)	<input type="checkbox"/>
	NO	Continue	

¹ Issues with Crown land usually arise when dealing with rivers or train tracks.

² An 'encroaching structure' is a structure illegally encroaching on the Council's land.

³ This question leads into whether a building consent or exemption is necessary.

May the project require a consent under Environment Canterbury's Regional Plans? ⁴	YES	Consider Flow Chart 9 (page 15)	<input type="checkbox"/>
	NO	Continue	
May the project require a consent under the relevant District Plan?	YES	Consider Flow Chart 10 (page 16)	<input type="checkbox"/>
	NO	Continue	
May the project require a consent under the National Environment Standards? ⁵	YES	Consider Flow Chart 11 (page 17)	<input type="checkbox"/>
	NO	Continue	
May the be project nationally significant? ⁶	YES	Consider Flow Chart 12 (page 18)	<input type="checkbox"/>
	NO	Continue	
Is the project on, above or below a reserve?	YES	Consider Flow Chart 13 (page 19)	<input type="checkbox"/>
	NO	Continue	
Is the project on, above or below a declared wildlife area?	YES	Consider Flow Chart 14 (page 20)	<input type="checkbox"/>
	NO	Continue	
Is the project on, above or below a conservation area?	YES	Consider Flow Chart 15 (page 21)	<input type="checkbox"/>
	NO	Continue	
Is there evidence of a wildlife habitat on the site?	YES	Consider Flow Chart 16 (page 22)	<input type="checkbox"/>
	NO	Continue	

⁴ These are usually needed in cases where the environment effects are obvious. For instance, in building or altering significant structures, discharging contaminants, using a significant amount of water or occupying a coastal marine area.

⁵ This is something that is usually covered by Environment Canterbury's resource consent process.

⁶ 'proposals of national significance' are exceptionally large and complex proposals with regional or national impacts.

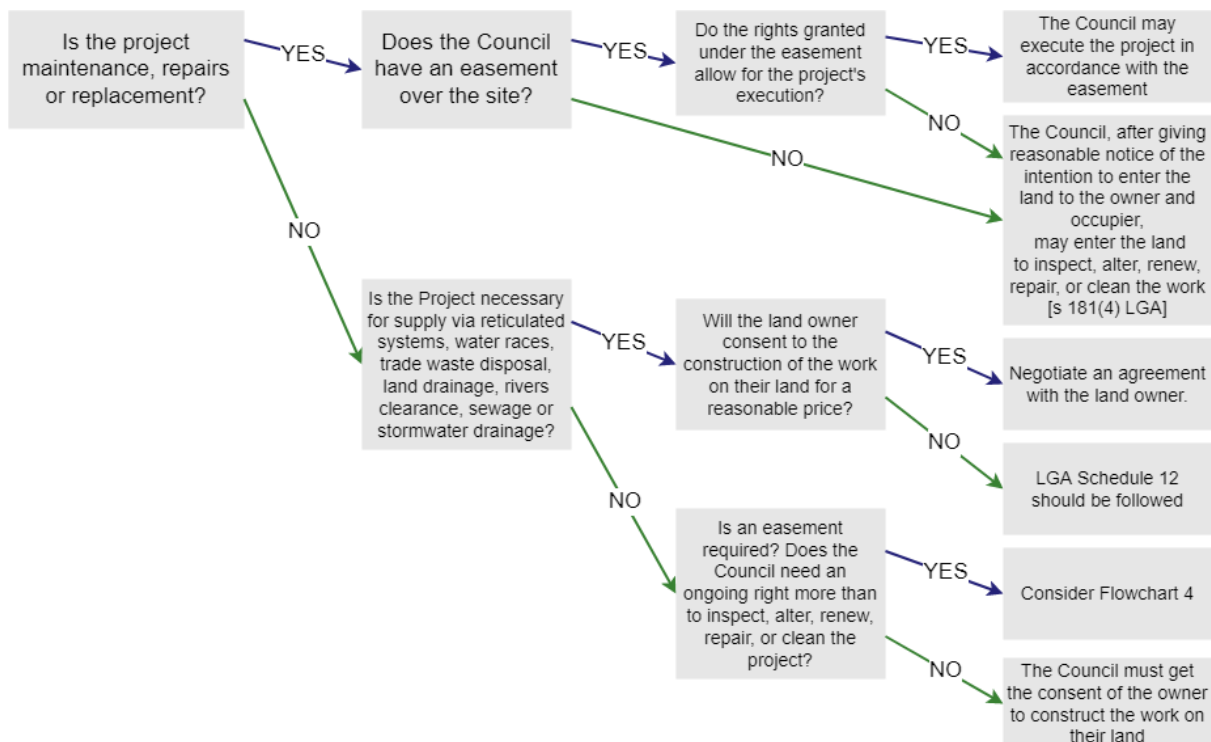
Flowcharts

Flowchart 1 — Construction on private property

If you answered YES to:

Does the project need to be constructed on, under or through private property?

The Council has special powers and duties in building on private property.



Relevant law:

Section 181 of the Local Governments Act 2002 outlines a local authority's power to construct and repair works on private land. Sections 3, 4 and 11 Trespass Act 1980 outlines possible offence where the council lacks authority. Sections 60(1)(c)(ii) and 63 PWA outlines that the land owner has an ability to claim compensation where "substantial injurious affection" is caused to the landowner's land. The Council has no duty to notify to land owner of this right (*Grange v Far North District Council* [2017] NZHC 152 at [35]). Common law also covers similar injury, via the torts of negligence, trespass and conversion. If an agreement is negotiated with the owner that gives exclusive possession of land to the council, then PWA rules apply (flowchart 4), as the negotiated 'licence' will be deemed a lease (*Fatac Limited (in liquidation) v IRD*, CA227/01).

Helpful information and links:

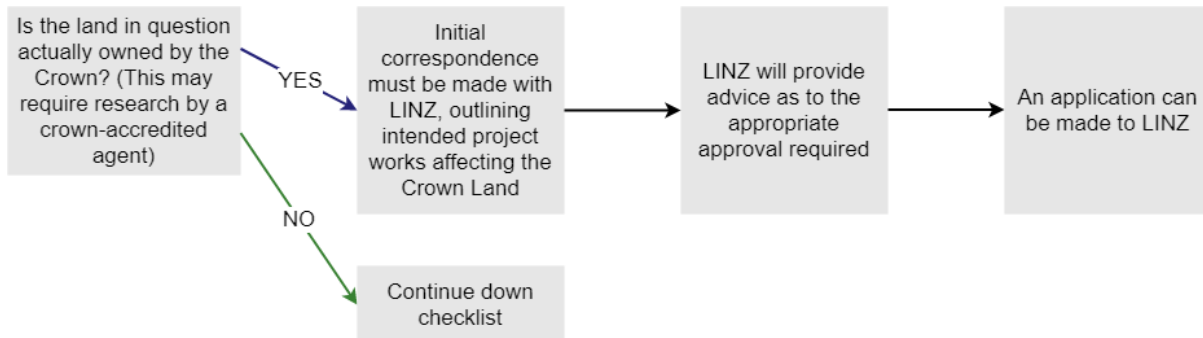
- [Local Governments Act 2002](#)
- [TDC Delegations Manual](#)

Flowchart 2 — Use of Crown land

If you answered YES to:

Could the project affect Crown land?

The Council may need special permission to use the land.



Relevant law:

Section 176 of the Lands Act 1948 outlines the offence for trespass on or damage to Crown land. Part 4 covers the classification and purchasing of easements on Crown land. Part 5 covers the issuing of leases and licences on Crown land.

Helpful information and links:

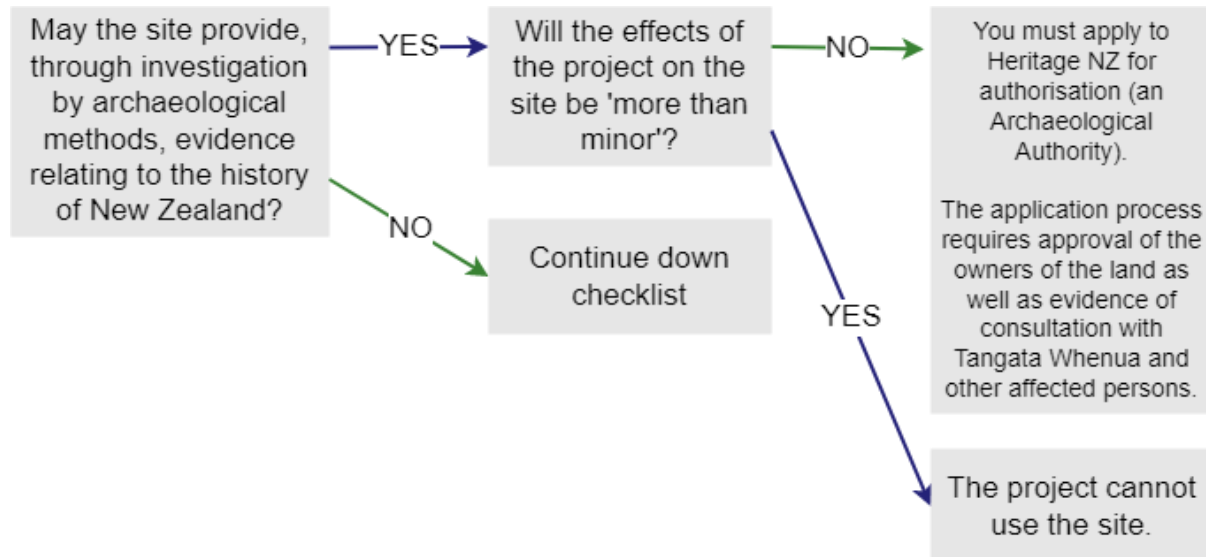
- [Lands Act 1948](#)
- [LINZ Data Service – Crown Property Data](#)
- [TDC Delegations Manual](#)

Flowchart 3 — Archaeological Authority

If you answered YES to:

Was the project's site associated with human activity that occurred before 1900?

The Council may need to apply for an archaeological authority.



Relevant law:

Subpart 2 of the Heritage New Zealand Pouhere Taonga Act 2014 outlines the law concerning 'archaeological sites'. Section 2 defines 'archaeological site' as any place that was associated with human activity that occurred before 1900 and may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand. Section 44 concerns applications for authority. The Section outlines that an application can be made for authority to undertake an activity that will or may modify or destroy the whole or any part of any archaeological site, if the effects of that activity on the site will be no more than minor. In finding whether an activity's effect will be no more than minor, HNZ must consider the significance of the site in relation to evidence of the historical and cultural heritage of New Zealand and the extent to which the proposed activity will modify or destroy the site (s 47(5)). Section 87 outlines that it is an offence to cause the modification or destruction of an archaeological site where an authority was required [by s 42] and the Council ought to have suspected that the site is an archaeological site [as defined in s 2].

Helpful information and links:

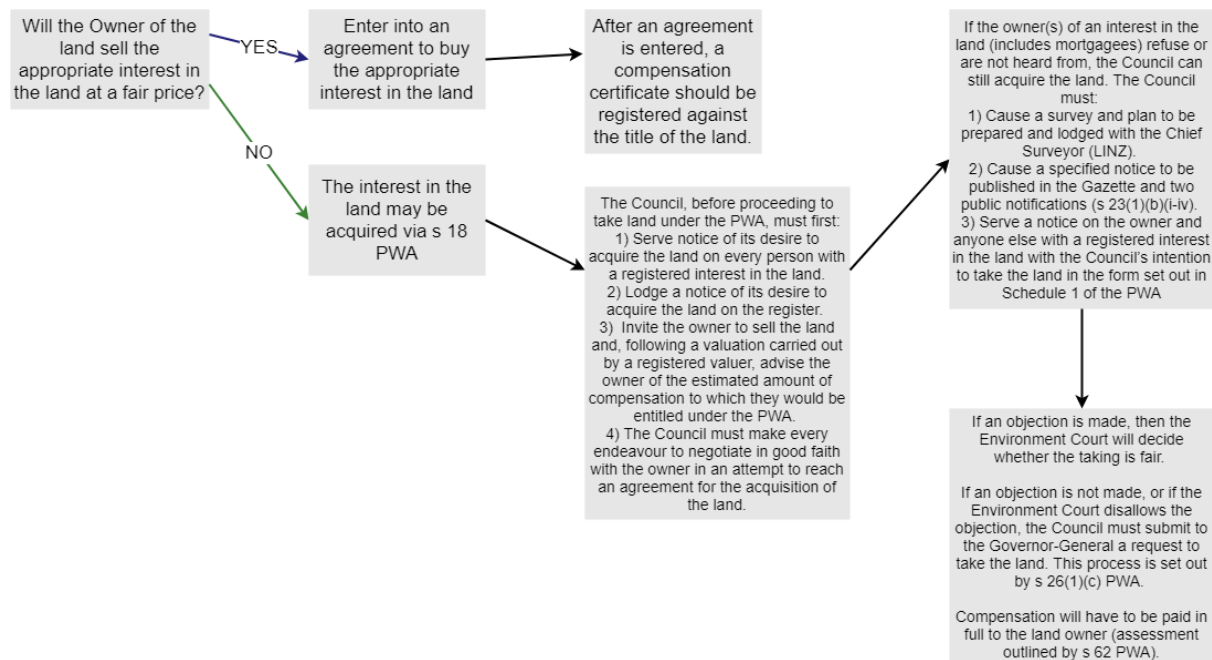
- [Heritage New Zealand Pouhere Taonga Act 2014](#)
- [TDC Delegations Manual](#)

Flowchart 4 — Purchasing an interest in land

If you answered YES to:

Does the Council need to purchase land, lease land or buy an easement on land for the project?

The Council has special rights and duties in acquiring interests in land.



Relevant law:

Part 2 of the Public Works Act 1981 outlines the rules around the acquisition of land for public works, while part 5 outlines the rules around compensation. Section 16 empowers the Council to acquire land for a local work. Section 17 outlines the rules around an acquisition by agreement with the owner(s) of the land. Section 18 outlines the requirement of putting the owner on notice and attempting to negotiate. Subsection (2) gives the council the power to take the land without agreement. Section 19 outlines the Council's ability to register a compensation certificate. Section 23(1) outlines the process of compulsory acquisition of land. Section 23(3) outlines that every person having any estate or interest in the land intended to be taken may object to the taking of the land to the Environment Court in accordance with the provisions of the notice. *Fatac Limited (in Liquidations) v IRD, CA227/01* outlines that if a licence gives a person exclusion possession of the land by allowing the occupier to use and enjoy the property to the exclusion of strangers, the licence will be deemed a lease.

Helpful information and links:

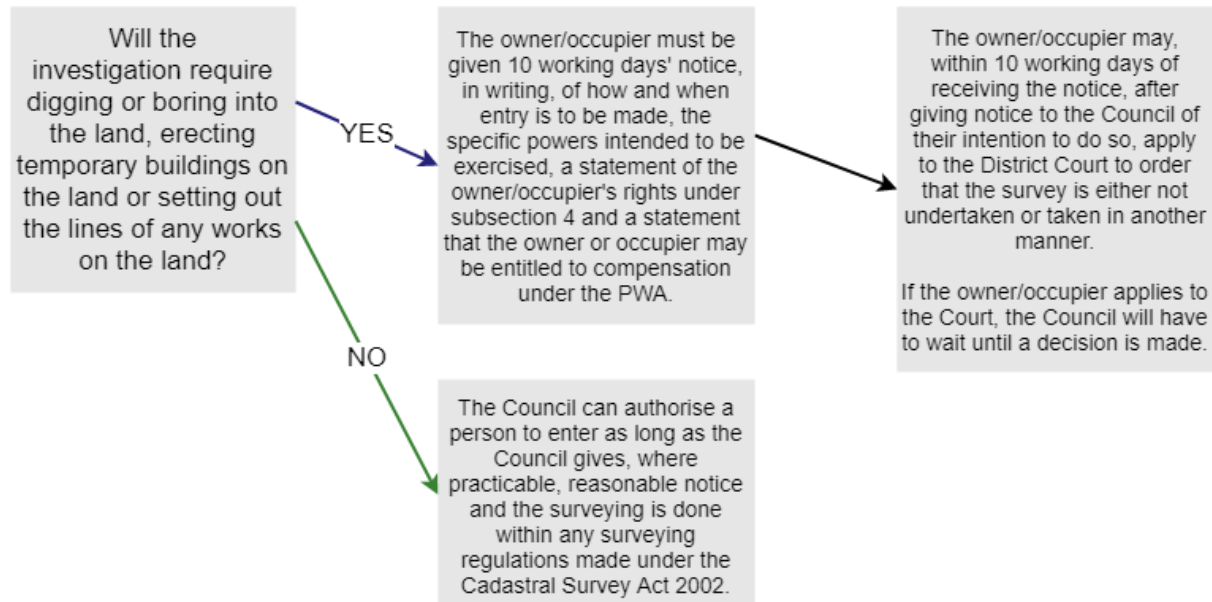
- [Public Works Act 1981](#)
- [TDC Delegations Manual](#)

Flowchart 5 — Surveying private property

If you answered YES to:

Does the project require surveying or investigation of (or by going through) private property?

The Council has powers that allow for surveying and investigating on private land.



Relevant law:

Section 110 of the Public Works Act 1981 outlines the Council's powers of entry while surveying within any surveying regulations made under the Cadastral Survey Act 2002. Section 111 outlines the Council's powers entry for other survey and investigation purposes. *Gibbs v New Plymouth District Council* [2010] NZCA provides some details around this.

Helpful information and links:

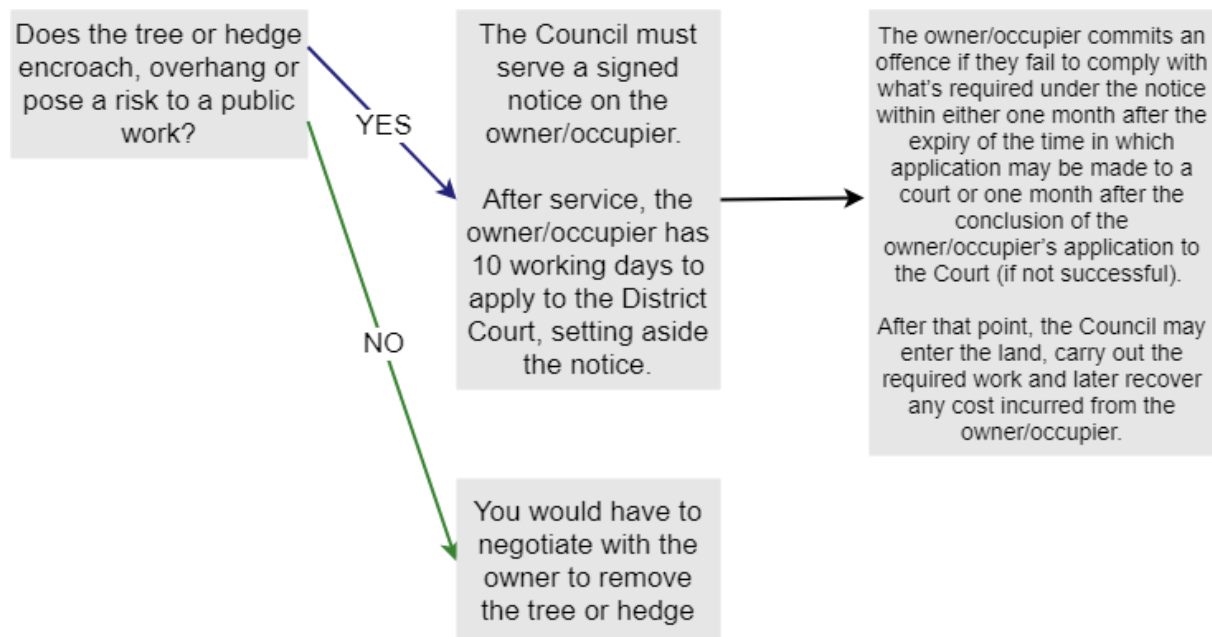
- [Public Works Act 1981](#)
- [Cadastral Survey Act 2002](#)
- [TDC Delegations Manual](#)

Flowchart 6 — Cutting down a private tree

If you answered YES to:

Does the project require the cutting down of a private tree or hedge? (when the Council does not have an easement or lease)

The Council has powers in causing private trees or hedges to be removed.



Relevant law:

Section 133 of the Public Works Act covers the criteria in which trees can be removed. Section 134 outlines that the notice must be in writing and signed by a person with authority. Section 355 of LGA 1974 provides an alternative route, although seems to be primarily directed at maintenance. Another alternative route would be threatening to sue in trespass, conversion or specific provisions of the Property Law Act 2007 that relate to encroachment, namely ss 322-325.

Helpful information and links:

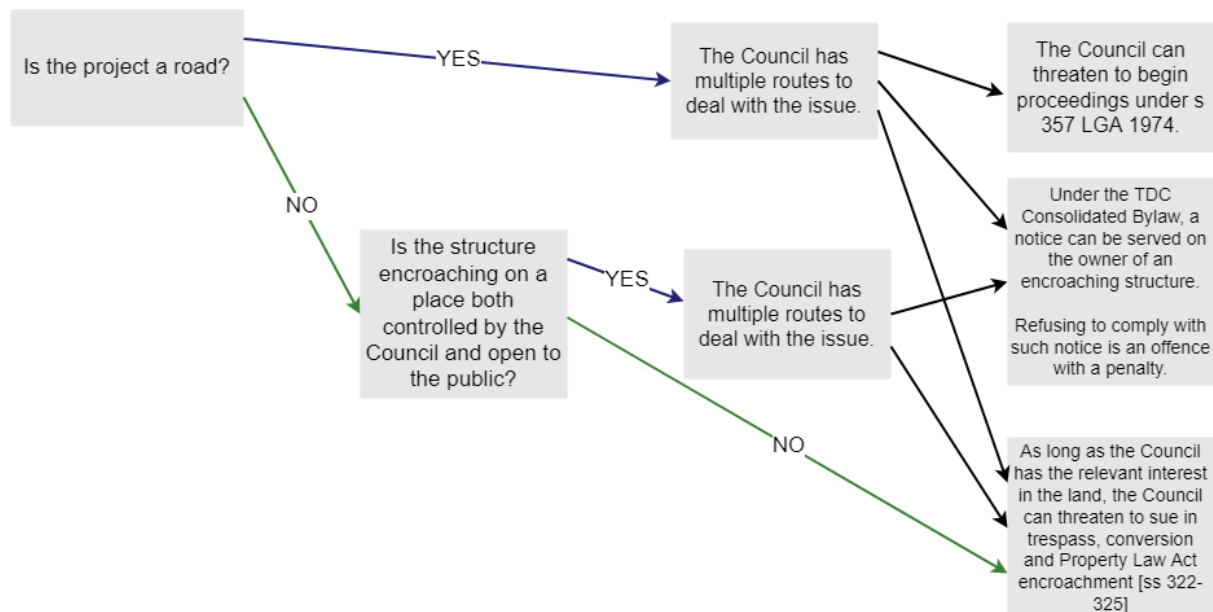
- [Public Works Act 1981](#)
- [Local Government Act 1974](#)
- [Property Law Act 2007](#)
- [TDC Delegations Manual](#)

Flowchart 7 — Encroaching structures

If you answered YES to:

Does the project require the removal of a private structure encroaching on Council land?

The Council has powers in removing encroaching structures.



Relevant law:

Clause 222 (chapter 2) sets out that if a building or structure has been erected or placed upon, under or over a public place, the Council may by notice require the owner to remove that part. Specifics serving of notice covered by clause 102. Definition of 'public place' provided by clause 100.1 as to include any place under control of the council and open to the public (whether or not there is a charge for admission). Refusing to comply with a notice is a breach and covered by cl 105.3(e). Offence in respect of breach to bylaw covered by s 239 LGA 2002. Penalty for offence covered by s 242(4). Section 316 of LGA 1974 outlines that all roads (with some exceptions) are held in fee simple of the Council. Section 357(1) outlines the offence of an unauthorised encroachment on a road. Section 15 of the Bylaws Act 1910 may mean that the bylaw penalty for encroachment on roads is capped at that prescribed by s 357(1) of the LGA 1974. PLA 2007 section 322(1)(a) enables the Council to apply for relief for a wrongfully placed structure. Section 323(1) outlines the Court's ability to grant relief, while s 324 outlines some factors the court may consider and s 325 outlines the orders the court may make. Trespass and conversion are torts in common law.

Helpful information and links:

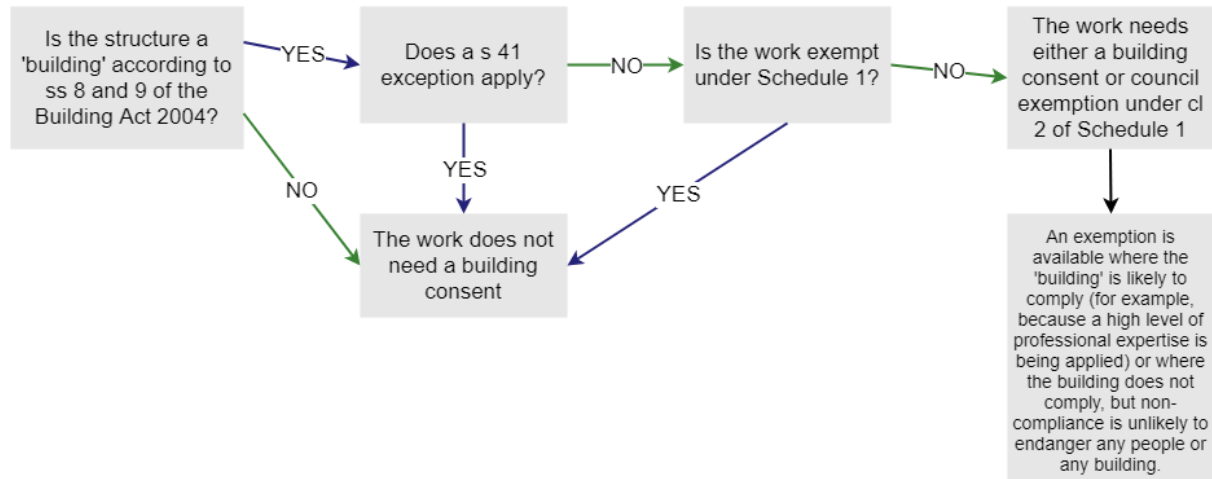
- [Local Government Act 1974](#)
- [TDC Consolidated Bylaw](#)
- [Property Law Act 2007](#)
- [TDC Delegations Manual](#)

Flowchart 8 — Building Consent

If you answered YES to:

Does the project include the construction, alteration or removal of a structure?

The project may require a building consent or an exemption.



Relevant law:

Section 40 stipulates that 'building work' must not be carried out, except in accordance with a building consent. 'Building work' is defined in s 7 as to include any construction, alteration or removal of a building, as well as sitework and design work. 'Sitework' is defined in s 7, 'building' is defined in ss 8-9 and 'design work' is defined in the 'Building (Definition of Restricted Building Work) Order 2011' under ss 6-7. Sections 8 and 9 of the Building Act 2004 define 'building' as to include any temporary or permanent movable or immovable structure, as well as any systems attached to it and required by the building code. [12]-[15] *Thames-Coromandel District Council v Te Puru Holiday Park Ltd* [2011] NZRMA 287 makes it clear that ss 8 and 9 must be read together when finding whether s 8's wide phrasing is intended to catch the thing in question. Section 41 of the Building Act 2004 outlines the cases where a building consent is not required. This includes central government building work, emergencies, territorial authorities fixing non-complying buildings, gasfitting, prescribed electrical work and anything described in Schedule 1. Schedule 1 of the Building Act 2004 sets out the bulk of exceptions. Importantly, Schedule 1 (part 1) cl 2 includes the ability to apply to the relevant territorial authority for an exemption from needing a consent. There is available where the building is likely to comply (for example, because a high level of professional expertise is being applied) or where the building does not comply, but non-compliance is unlikely to endanger any people or any building.

Helpful information and links:

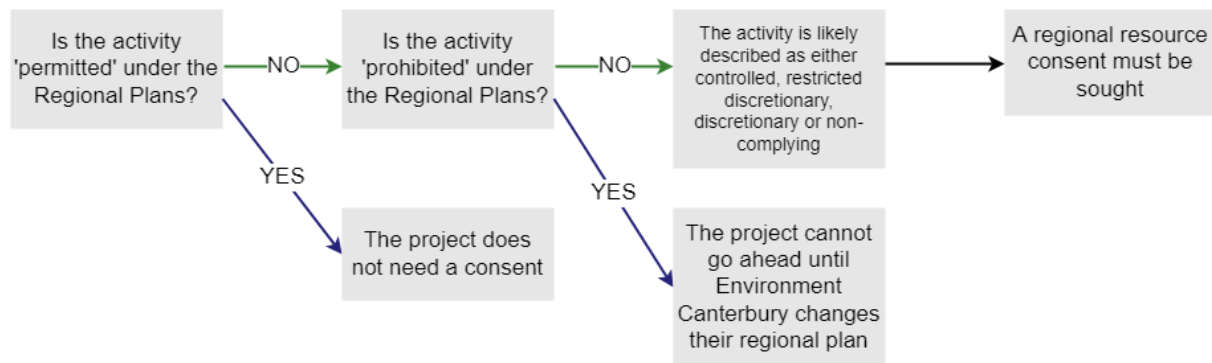
- [Section 8 of the Building Act 2004](#)
- [Section 9 of the Building Act 2004](#)
- [Section 41 of the Building Act 2004](#)
- [Schedule 1 of the Building Act 2004](#)
- [Building Regulations 1992](#) (Schedule 1 contains the Building Code)
- [TDC Delegations Manual](#)

Flowchart 9 — Regional Resource Consent

If you answered YES to:

May the project require a consent under Environment Canterbury's Regional Plans?

The project may require a resource consent or a few resource consents from Environment Canterbury.



Relevant law:

Section 87A of the Resource Management Act 1991 (RMA) outlines which activities require a resource consent. This includes any activities described as either controlled, restricted discretionary, discretionary or non-complying in either the RMA, regulations, a plan or proposed plan. Schedule 4 outlines the information required in application for resource consent. Section 338 outlines that offences under the Act, while s 339 outlines the penalties for those offences.

Helpful information and links:

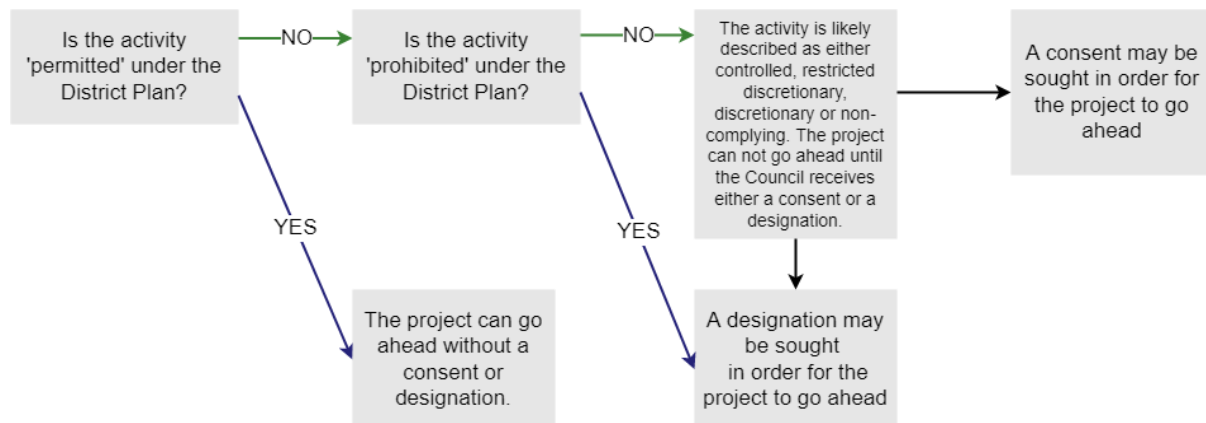
- [Resource Management Act 1991](#)
- [Environment Canterbury's Plans](#)
- [TDC Delegations Manual](#)

Flowchart 10 — District Resource Consent

If you answered YES to:

May the project require a consent under the relevant District Plan?

The project may require a resource consent or a designation from the relevant local authority. (likely TDC)



Relevant law:

Section 87A of the Resource Management Act 1991 (RMA) outlines which activities require a resource consent. This includes any activities described as either controlled, restricted discretionary, discretionary or non-complying in either the RMA, regulations, a plan or proposed plan. Schedule 4 outlines the information required in application for resource consent. Section 338 outlines that offences under the Act, while s 339 outlines the penalties for those offences.

Helpful information and links:

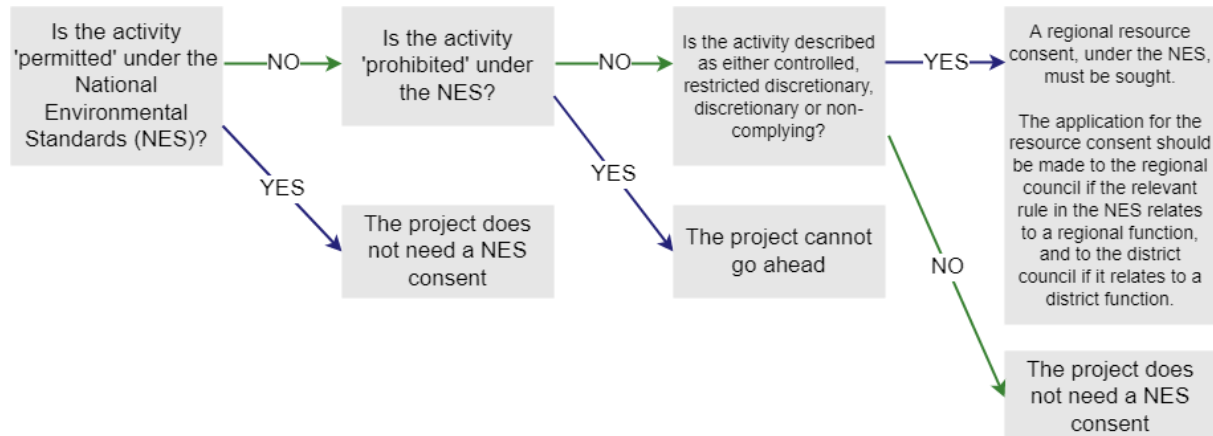
- [Resource Management Act 1991](#)
- [Timaru District Plan](#)
- [Timaru District Plan Map](#)
- [TDC Delegations Manual](#)

Flowchart 11 — NES Resource Consent

If you answered YES to:

May the project require a consent under the National Environment Standards?

The project may require a resource consent.



Relevant law:

Section 87A of the Resource Management Act 1991 (RMA) outlines which activities require a resource consent. This includes any activities described as either controlled, restricted discretionary, discretionary or non-complying in either the RMA, regulations, a plan or proposed plan. Schedule 4 outlines the information required in application for resource consent. Section 338 outlines that offences under the Act, while s 339 outlines the penalties for those offences.

Helpful information and links:

The NES also prescribes rules around standards as to whether a regional or district plan can impose more strict, lenient or cannot change certain standards.

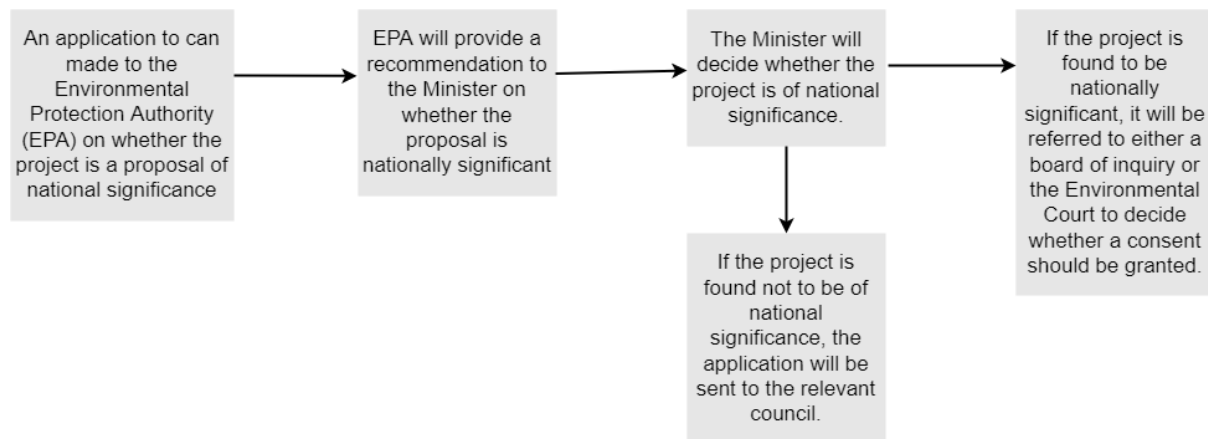
- [Resource Management Act 1991](#)
- [National Environmental Standards](#)
- [TDC Delegations Manual](#)

Flowchart 12 — Nationally significant projects

If you answered YES to:

May the project be nationally significant?

Proposals of national significance may require a resource consent from the Environmental Protection Agency.



Relevant law:

Part 6AA of the Resource Management Act 1991 (RMA) describes the rules around nationally significant proposals. Section 87A outlines which activities require a resource consent. This includes any activities described as either controlled, restricted discretionary, discretionary or non-complying in either the RMA, regulations, a plan or proposed plan. Schedule 4 outlines the information required in application for resource consent. Section 338 outlines that offences under the Act, while s 339 outlines the penalties for those offences.

Helpful information and links:

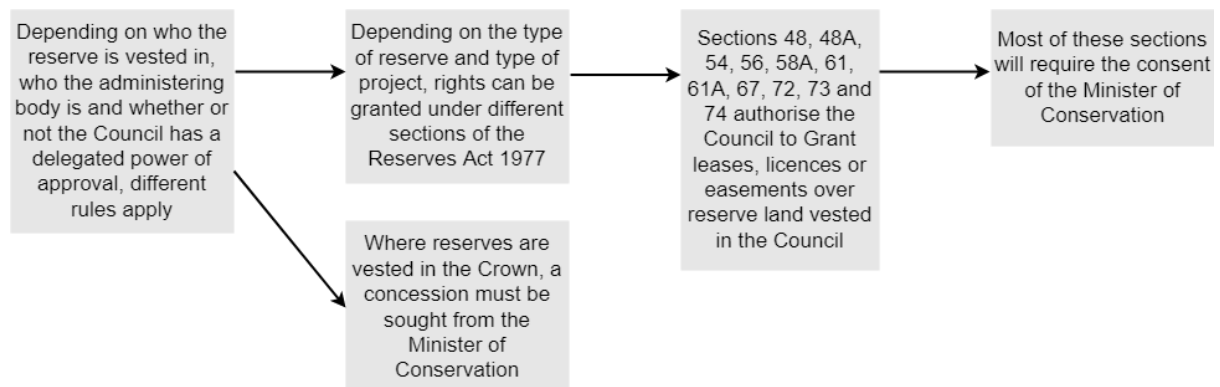
- [Resource Management Act 1991](#)
- [Environment Protection Authority – Proposals of national significance](#)
- [TDC Delegations Manual](#)

Flowchart 13 — Work on reserves

If you answered YES to:

Is the project on, above or below a reserve?

The project may require the consent of the Minister of Conservation and the body administering the reserve may have limitations as to what they can do with the land.



Relevant law:

Section 59A of the Reserves Act 1977 deals with the granting by the Minister of Conservation of any concession over a reserve. Sections 48 and 48A outline the rules in granting some rights to any type of reserve. Sections 53-64 outline the rules in granting rights to particular types of reserves.

Helpful information and links:

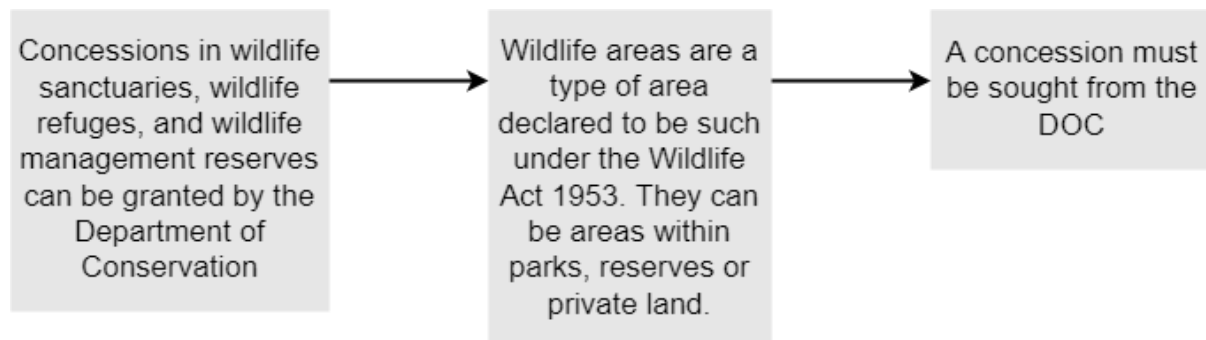
- [Reserves Act 1997](#)
- [LINZ Data Service – Protected Areas Data](#)
- [TDC Delegations Manual](#)

Flowchart 14 — Work on wildlife areas

If you answered YES to:

Is the project on, above or below a declared wildlife area?

A project affecting a wildlife sanctuary, refuge or management reserve may require permission from the Department of Conservation to go ahead.



Relevant law:

Section 14AA of the Wildlife Act 1953 gives the Minister of Conservation the power to grant concessions in respect of any wildlife sanctuary, wildlife refuge, or wildlife reserve. Part 3B of the Conservation Act 1987 outlines the rules around the granting of concessions by the Minister.

Helpful information and links:

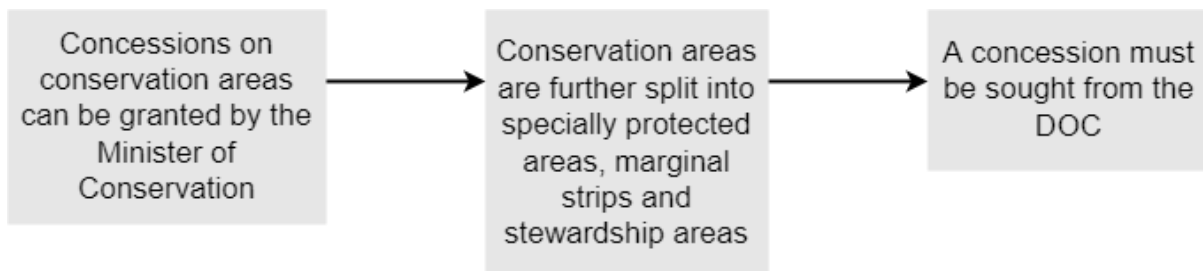
- [Wildlife Act 1953](#)
- [LINZ Data Service – Protected Areas Data](#)
- [TDC Delegations Manual](#)

Flowchart 15 — Work on conservation areas

If you answered YES to:

Is the project on, above or below a conservation area?

A project affecting conservation land may require permission from the Department of Conservation to go ahead.



Relevant law:

Part 3B of the Conservation Act 1987 outlines the rules around the granting of concessions by the Minister.

Helpful information and links:

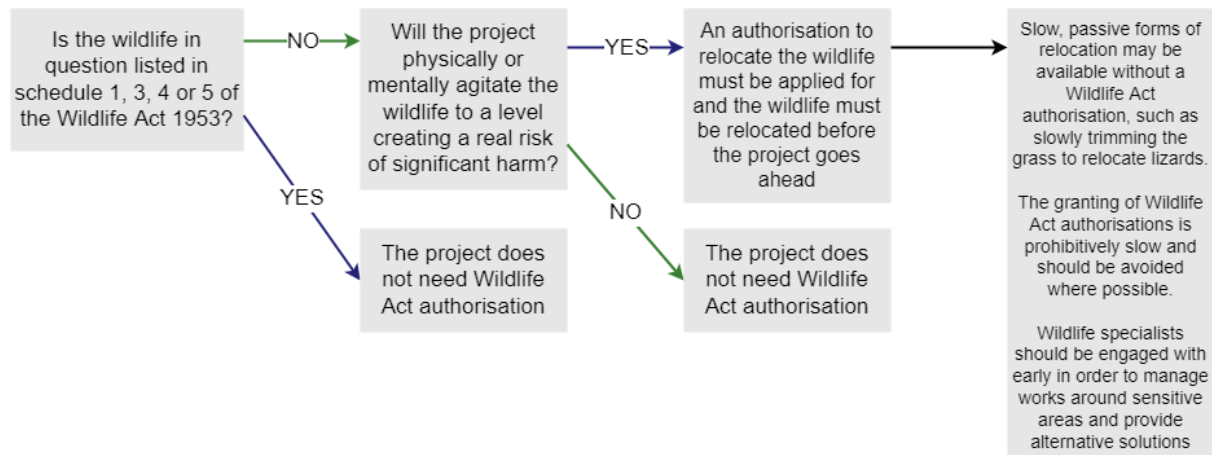
- [Conservation Act 1987](#)
- [LINZ Data Service – Protected Areas Data](#)
- [TDC Delegations Manual](#)

Flowchart 16 — Wildlife Act Authorisations

If you answered YES to:

Is there evidence of a wildlife habit on the site?

The project may require an authorisation to relocate wildlife. This issue may also come about if identified as an issue by Environment Canterbury and adherence to the Wildlife Act 1953 may become the only route to receive a regional resource consent.



Relevant law:

Any wildlife not listed in Schedules 1, 3-5 is absolutely protected and wildlife in schedule 2 is partially protected as per s 3. It is an offence to hunt or kill any absolutely or partially protected wildlife in NZ under s 63. Section 2 outlines that 'wildlife' includes an animal living in a wild state. 'Hunt or kill' includes capturing or disturbing wildlife whether this results in killing or capturing or not. 'Disturbing wildlife' means an action which physical or mentally agitate the protected animal to a level creating a real risk of significant harm (Shark Experience Limited v PausaMAC5). The offences are set out in ss 76A and 67C. Body corporates (TDC is a body corporate as outlined by s 12 LGA), can be liable to be fine of up to \$200,000. Therefore, if the council is required to relocate the wildlife, they must apply to DOC for authorisation. Under s 53(1), the Director-General of Conservation may authorise a person to 'catch alive or kill' protected wildlife. 'Catch alive or kill' has not been statutorily defined and has been interpreted by the Courts, including the Supreme Court in Shark Experience Limited v PausaMAC5 at [80], as to include intent. This means that the DOC cannot authorise the accidental or incidental killing of wildlife.

Helpful information and links:

- [Wildlife Act 1953](#)
- [TDC Delegations Manual](#)