

June 2025

Fast-track Approvals Act wildlife approval report

Section 51(2)(c) wildlife approval report for –
FTA-0053-SUB Bledisloe North Wharf and Fergusson North Berth
Extension



Department of
Conservation
Te Papa Atawhai

**Te Kāwanatanga
o Aotearoa**
New Zealand Government

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1.0 Introduction

1.1 On 12th March the Environmental Protection Authority (EPA) determined that the Port of Auckland Limited substantive application for the Bledisloe North Wharf and Fergusson Extension was complete and complied with the requirements of section 46(2) of the Fast-track Approvals Act 2024 (the Act).

1.2 The project requires a wildlife approval for the capture, handling and relocation of little penguin (kororā). On 11th April 2025 the panel convener directed the EPA to obtain a report prepared by the Director-General of Conservation, in accordance with section 51(2)(c) of the Act. This report is due to the EPA on the 12th of June.

1.3 This report provides information relating to proposed activities for which the applicant is seeking a wildlife approval.

2.0 Purpose of the report

2.1 This report provides further commentary on information provided by the applicant which may influence the consideration of an approval. The report is provided to the expert panel (the panel) as per section 51 of the Act. DOC understands that this report can support the panel's assessment of the application for a wildlife approval in alignment with the criteria set out in Schedule 7 clause 5.

2.2 The Act outlines at Schedule 7, clause 3 that this report must address the following matters:

Matters in Schedule 7 clause 5(b) to (c):

- (b) 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; and*
- (c) 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)*

2.3 Any conditions that should be imposed in accordance with clause 6 of Schedule 7 or section 84.

Under clause 6:

‘A panel may set any conditions on a wildlife approval that the panel considers necessary to manage the effects of the activity on protected wildlife’.

- In setting any condition under clause 6(1), the panel must:

(a) consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife that is to be covered by the approval; and

(b) where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied, ensure that they are offset or compensated for where possible and appropriate; and

(c) take into account, as the case may be, the New Zealand Threat Classification System or any relevant international conservation agreement that may apply in respect of the protected wildlife that is to be covered by the approval.

2.4 Section 84 states:

- (1) *For the purposes of section 7, the panel may set conditions to recognise or protect a relevant Treaty settlement and any obligations arising under the Marine and Coastal Area (Takutai Moana) Act 2011 or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.*
- (2) *Section 84 applies in addition to, and does not limit, any other powers to set conditions under the Fast-track Approvals Act 2024.*

3.0 Sources

3.1 This report is informed by the application documents provided via the EPA through the Fast-track portal, with the exception of the LPMP as outlined below.

3.2 During the drafting of this report the applicant provided an updated version of the Little Penguin Management Plan (LPMP) which DOC understands has been provided to the panel. DOC has based this report on the updated version of the LPMP, which is appended to this report (Appendix A).

Bibliographic Reference *KEL, 2025 KEL 2025. Little Penguin Management Plan for BN & FN Wharf Project (final draft). Prepared by Kennedy Environmental Limited for Port of Auckland, May 2025.*

3.3 DOC was advised by the applicant on the 10th June 2025 that the revised LPMP would be provided to the panel with an accompanying memorandum (as per Appendix D).

4.0 Context and background

4.1 Project overview

4.1.1 Port of Auckland Limited (POAL) is seeking resource consent and a wildlife approval under the Act to authorise the construction and operation of a new 330m long and 27.5m wide wharf to the northern end of the existing Bledisloe Terminal and a 45m x 34m extension to the existing Fergusson North Berth to accommodate larger container ships (the Project). In part, the Project involves the reshaping and partial replacement of an existing rock revetment – the wildlife approval is sought in relation to this component.

4.2 Summary of wildlife approval sought

4.2.1 Pursuant to s42(4)(h) of the Act, POAL is seeking a wildlife approval for the activities of capture, handling and relocating of little penguins, should it be required during construction of the Project.

4.2.2 The POAL application set out that:

...while no little penguin have been found within the rock revetments in the Port, there is a possibility that penguin may be present. Out of an abundance of caution, POAL seeks a wildlife approval authorising the capture, handling and relocation of little penguin, should they be found and need to be relocated during construction of the Project (PART 2 – SUBSTANTIVE APPLICATION FOR WILDLIFE APPROVAL: POAL pg 135 March 2025).

4.2.3 Little penguin (*Eudyptula minor*), also known as kororā, are an absolutely protected species under the Wildlife Act. They are classified nationally as At Risk: Declining and regionally as Threatened: Regionally Vulnerable under the New Zealand Threat Classification System.

4.2.4 The POAL application states that:

The proposed works involve reshaping and upgrading the rock revetment at Bledisloe North Wharf, as well as works within the vicinity of the Fergusson revetment, which could affect existing or potential penguin habitat (PART 2 – SUBSTANTIVE APPLICATION FOR WILDLIFE APPROVAL: POAL para 16.15 pg 141 March 2025).

4.2.5 It is also noted in the application that noise and physical alterations have the potential to disturb penguins using nearby habitats.

4.2.6 The application sets out a process by which POAL proposes to catch, handle and relocate little penguins if they are found during pre-construction surveys or during construction works, which is further detailed in the draft Little Penguin Management Plan (LPMP) as included at Appendix A.

4.3 Consultation

Pre-lodgement 2024

4.3.1 The applicant engaged with DOC in 2024, prior to the enactment of the Act and lodgement of their application. DOC provided the applicant a letter in August 2024 (Attachment 34 provided by the applicant).

4.3.2 In summary, DOC advised that:

- Kororā/little penguin live throughout the Hauraki Gulf and utilise natural habitats and manmade structures adjacent the coast that offer sheltered burrows for roosting and/or breeding. This includes rock walls or breakwaters similar to those DOC understood the port had at both the ends of Bledisloe North and Fergusson North wharves.
- If rock walls are to be disturbed during construction there is potential for either habitat loss, death or injury to native seabirds.
- The rock structures should be inspected thoroughly for evidence of occupation by these seabirds. This should be undertaken at various times as the species can be transient at times or alternatively, during breeding, permanently occupying burrows over a four-to-six-month period (e.g. July/August to November/December). Again, during January/February little penguin will be landbound for three weeks as they moult.
- If evidence is found of little penguin utilising the wharves a penguin management plan should be prepared. As mitigation the applicant could proactively propose installing artificial burrows to mitigate any loss or simply to enhance.
- Similar consideration should be given to plans for marine mammals that frequent the inner harbour including seals and dolphins, with regard to keeping them from potentially harmful works or exposure to loud underwater sound which can be disorienting.
- Any ecological assessment of the rock revetments should also assess the presence of protected skinks which could potentially require a wildlife approval if present.
- As a Treaty Partner DOC strongly advises that the applicant proactively engage with mana whenua iwi regarding the proposed application.

4.3.3 In relation to the points consulted on, DOC has observed through the application that the applicant:

- Is applying for a wildlife approval for the capture, handling and relocating of little penguin should it be required, i.e. if they are identified in the rock revetment/construction area for the Project.
- Has provided a draft LPMP to support the activities of the potential handling, capture and relocation of little penguin. The information in the draft LPMP provides information in relation to Schedule 7, clause 2.
- Has provided consideration of effects on marine mammals and prepared an Underwater Construction Noise Management Plan to address the effects of underwater noise on marine mammals.
- Has identified that no lizards have been identified on site and therefore has not sought a wildlife approval in relation to lizards.
- DOC has provided further commentary on engagement with mana whenua iwi in part 8.0 of this report.

Post-lodgement 2025

4.3.4 Post-lodgement of the substantive application, DOC and the applicant have engaged collaboratively to discuss issues as encouraged by the panel convener. A meeting held between DOC and the applicant on 8 May 2025 resulted in the provision of a revised LPMP as per Appendix A (see

Section 3.0). Details of this discussion and amendments proposed are provided in Appendix B and summarised below.

4.3.5 In contrast to the LPMP initially submitted, the revised LPMP includes:

- Habitat loss mitigation (provision for nesting boxes to be established)
- Identification of a specific relocation location
- Clarification that breeding or moulting birds will not be relocated
- A change from permanent to temporary marking.

5.0 Matters considered in relation to the criteria for a wildlife approval

5.1 Statutory context

5.1.1 Schedule 7 clause 1 defines “wildlife approval” as meaning *a lawful authority for an act or omission that would otherwise be an offence under any of sections 58(1), 63(1), 63A, 64, 65(1)(f), 70G(1), 70P, and 70T(2) of the Wildlife Act 1953.*

5.1.2 The capture of little penguins to relocate them without lawful authority would constitute an offence under sections 63(1) and 70G(1) of the Wildlife Act, which provide that it would be an offence to “hunt or kill” (the definition of which includes related activities such as “taking”, “capturing”, and “disturbing”) protected wildlife without lawful authority.

5.1.3 The activity of temporary marking the little penguins is regulated under the Wildlife Regulations 1955, created pursuant to the Wildlife Act. Clause 38 of the Regulations provides that a person must not mark any protected wildlife, except with prior written authority of the Director-General of Conservation. Marking of wildlife without authority would constitute an offence under s65(1)(f) of the Wildlife Act which provides that it is an offence to do any act for which authority is required under the Wildlife Act or any regulations under the Wildlife Act.

5.1.4 The activity of liberating (e.g. relocating) the wildlife at a new location without lawful authority would amount to an offence under s65(1)(f) and s70P as authorisation is usually required under s53 or s56.

5.1.5 The activities applied for of capturing, marking, and liberating can be considered for wildlife approval under the Fast-track process. A wildlife approval granted under the Act is treated as if it were granted under the Wildlife Act (Schedule 7, clause 7(1)).

5.2 Purpose of the Wildlife Act

5.2.1 The relevant purpose of the Wildlife Act is to protect wildlife.

5.2.2 The Wildlife Act creates a tiered system, with different levels of protection required for different species. Most native wildlife is absolutely protected – meaning that it cannot be lawfully hunted, killed, harassed, or possessed without specific authorisation. Some species may be hunted or killed in certain circumstances, such as in set hunting seasons, or to prevent damage to property. Finally, the Wildlife Act also identifies wildlife that is not protected and not controlled for hunting purposes.

5.3 Summary of DOC’s report

5.3.1 Having reflected on the criteria for assessment of an application for the wildlife approval, DOC summarises its comments below.

- The purpose of the Wildlife Act is to protect wildlife; this is the rationale, as outlined by the applicant, for the wildlife approval sought and associated activities. In DOC’s view the activities proposed are consistent with the purpose of the Wildlife Act.
- DOC has considered the purpose of the Wildlife Act and the effects of the project on little penguin (protected wildlife) that is to be covered by the approval.
- The potential effects of the project on little penguin include injury, death and habitat loss.

- In DOC's view if the appropriate conditions are adopted in relation to the wildlife approval, any actual and proposed adverse effects will be avoided, minimised or remedied.
- If the proposed conditions in this report (or other appropriate conditions) are not adopted, then DOC's view is that the potential effects on little penguin may be adverse and accordingly the granting of a wildlife approval may not be consistent with the purpose of the Wildlife Act.
- The applicant has provided a LPMP (as per an anticipated condition of the wildlife approval) which outlines the methods (related to best practice and avoiding/minimising/remediating effects) which it proposes to adopt when undertaking the activities set out in the approval. Again, the LPMP which this report has considered is described in Section 3.0 of this report and included as Appendix A.
- Assessing the content of the LPMP is key to DOC's consideration of potential and actual effects and the management of those effects.
- DOC's review of the LPMP has been undertaken by an expert technical advisor with specialist knowledge and expertise relating to little penguin.
- DOC's specialist highlighted the importance of these issues in particular:
- The appropriate handling and extraction of little penguin if they are found (and experience of handlers which influences the success of these activities)
- Best practice in relation to remediation for potential habitat loss
- Best practice if breeding or moulting birds are found (e.g. that they are not disturbed).
- Overall, DOC is satisfied with the provisions in the LPMP attached as Appendix A to this report.
- If the LPMP is amended further during the current process (i.e. prior to the panel issuing its decision) DOC would recommend further review of any changes by its experts prior to finalisation. DOC also supports a condition being imposed on the wildlife approval that enables future amendment of an approved LPMP and supports a certification process.

5.4 The role of species management plans

5.4.1 Although DOC supports a certification process for the LPMP, this differs from DOC's usual process for Wildlife Act authorisations. For wildlife salvage approvals issued outside of the fast-track process, the standard process is that a species management plan is approved as part of the process. That is, an applicant provides a species management plan with their application, detailing proposed actions to manage effects. The detail in the species management plan forms part of the assessment against the purpose of the Wildlife Act and, if the application is approved, the Wildlife Act authorisation is conditional on compliance with the approved plan.

5.4.2 Post-approval certification, as is suggested for this application, will require further assessment at a later stage but provides practical flexibility and a more efficient process in the context of the fast-track process.

6.0 DOC further commentary

6.1 Information provided in the application

6.1.1 DOC has used the information requirements set out at clause 2(1) of Schedule 7 of the Act as a framework for providing further commentary on the application as it considers relevant.

6.2 Commentary on information required for a wildlife approval

(a) The purpose of the proposed activity

The purpose of the wildlife approval application is to protect little penguins from potential impacts of the Project should they be detected at the work site.

Little penguins live throughout the Hauraki Gulf and are known to inhabit not only natural habitats but also manmade structures such as rock walls that offer sheltered burrows for roosting and/or breeding.

Surveys undertaken by the applicant with a DOC-approved penguin detector dog detected evidence of little penguins within ~120 m of the rock revetment where the works are proposed. Although penguins were not detected at the immediate project area (Bledisloe North Wharf), it is reasonable to assume that they could be present.

DOC notes that the presence of penguins would be known with more certainty if surveys were undertaken during January and February when penguins would be landbound, as recommended in correspondence to the applicant (August 2024).

The proposed works on the rock revetment involve the removal of surface rocks, reshaping of the upper section, and placement of heavier rock on the seaward face. Through these activities there is the potential for little penguin habitat loss, injury or death (e.g. being struck by machinery or trapped/crushed under debris).

The activities of capture, handling and relocation of penguins requires wildlife approval, if encountered before or during construction, to minimise the likelihood of potential or actual adverse effects e.g. injury or death.

The applicant notes:

With respect to the activities sought to be authorised under the wildlife approval for little penguin, these are proposed with the sole purpose of protecting little penguin from harm during the proposed construction works. The purpose of the Wildlife Act is therefore considered to be achieved (PART 2 – SUBSTANTIVE APPLICATION FOR WILDLIFE APPROVAL: POAL pg 144 March 2025).

(b) Identification of the actions that the applicant wishes to carry out involving protected wildlife and where they will be carried out:

The applicant has requested wildlife approval for the capture, handling and relocating of little penguins should this be required during construction of the project. The project site is not public conservation land.

The actions proposed in the wildlife approval application and the LPMP which relate to protected wildlife can be summarised as follows:

- a) **Pre-construction surveys:** At least two little penguin surveys will be undertaken in the three months prior to commencement of work. If detected, the LPMP suggests that specialists will be on site for rock removal and suitable tools will be used to assist with the identification of burrow contents.

DOC advises that this work will be undertaken by suitably qualified ecologists and using approved detector dogs as set out in the LPMP.

- b) **Recording of information from surveys, including:**

- (i) The location of dog detection(s) or detection by specialists/dog handlers.
- (ii) The GPS location of the nest.
- (iii) The identification of any penguin sign/any little penguin within the burrow and whether they are moulting.
- (iv) The number of any eggs or chicks seen in the burrow.
- (v) Photographs to confirm location.

- c) **Preconstruction/construction communication and worksite staff training:** Prior to construction, training will be provided to worksite staff involved in the revetment. The training will be run by a suitably qualified and experienced ecologist and will involve identification of little penguins and signs of their habitation (e.g. moulted feathers and guano), where they could be found, and what to do if one is seen within a work zone.

- d) **Engagement of little penguin handlers:** The LPMP outlines that a minimum of two DOC-approved little penguin handlers will be identified ahead of works, and at least one handler will be available at any time.

- e) **Construction surveys:** Little penguin surveys will be conducted at least every three months during works.

- f) **Providing protocols for if/when little penguin are discovered:** The application states that both pre- and during construction (refer to the SOP for capture and handling methods and for overall safety and stress reduction measures):

- I. **Exclusion zones:** If little penguins are detected during pre-construction surveys, a 10 m exclusion zone will be implemented until the penguin can be captured and relocated.
- II. **Stopping work:** If little penguins are sighted during works, a 10 m exclusion zone will be implemented until the penguin can be captured and relocated.
- III. **Exception – Breeding or moulting birds:** Breeding or moulting birds will not be disturbed and site work within the exclusion zone will not resume until the little penguin has left the area.
- IV. **Exception – injured or ill birds:** Little penguins found ill or injured will be taken to an identified veterinary facility. If a little penguin is injured by the works or the relocation

process, the bird will be taken to an identified veterinary facility, and DOC will immediately be contacted for advice.

- V. Marking:** Any little penguin relocated from the work site shall be temporarily marked using twink on the back of the head to allow easy identification should it return to the work site.

g) **Capture, handling, and relocation methods, including:**

I. Capture, handling, and relocation methods, including:

- i. **Who will conduct the relocation** – handlers as described in the LPMP and noted above (d).
- ii. **The capture techniques to be employed to ensure minimal stress to the penguins** – as specified in the SOP attachment to the LPMP. Little penguins will be captured by an approved handler using appropriate techniques. Little penguins will be grabbed gently from behind with both hands while flippers are held against its side. The little penguin will be placed in a carrier box lined with a towel.
- iii. **The selection and confirmation of suitable relocation sites** – noting that the LPMP identifies appropriate relocation sites for little penguin. Little penguins will be taken to the relocation site located on the existing eastern container terminal revetment in Judges Bay. Three wooden penguin boxes will be located within the area, separated from the adjacent roadway by a temporary fence.
- iv. **Transport** – Little penguins will be transported to the relocation site within two hours, or to an agreed holding facility if same day relocation cannot happen.

- h) **Longer term mitigation:** Although the rock revetment will be replaced so no long-term habitat loss is envisioned, to address the potential impacts on little penguin (in particular whilst the project is on-going) the LPMP proposes that up to 10 little penguin nest boxes be installed within the Port at the Fergusson Container Terminal reclamation surface adjacent to the revetment. The nest boxes will be separated from adjacent port activity by a suitable fence.

In DOC's view the actions as listed above are consistent with the purpose of the approval sought.

(c) Assessment of the activity and its impacts against the purpose of the Wildlife Act

The purpose of the Wildlife Act is to protect wildlife as per section 5.2 of this report. The applicant has assessed the proposed activity and its impacts against the purpose of the Wildlife Act and notes the following:

"The proposed reshaping and upgrading of the rock revetment at Bledisloe North Wharf involves the removal of existing rocks and the placement of larger rocks. This work has the potential to impact potential little penguin and their habitat, as these species are known to burrow and nest within rock revetments. Although initial surveys for this Project have not detected little penguin at the Port, their presence at Bledisloe North Berth and the Fergusson reclamation revetment cannot be ruled out."

Ecological advice is for POAL to have management processes in place through a LPMP to ensure little penguin and their habitat are protected during construction of the Project. The management processes, including the capture, handling and relocation procedures, are detailed in a draft LPMP and supported by the relevant SOP. These measures will be implemented to ensure that little penguin and their habitat are protected, consistent with the purpose of the Wildlife Act". (PART 2 – SUBSTANTIVE APPLICATION FOR WILDLIFE APPROVAL: POAL pg 140 March 2025).

The LPMP has been reviewed by a DOC Technical Advisor with expertise in penguins, and their comments are reflected throughout this report.

The LPMP sets out the actions that will be undertaken to mitigate harm and risk to little penguin. The conditions that DOC proposes (e.g. that DOC certifies the LPMP) will ensure that the activities involving wildlife will be undertaken in an appropriate manner consistent with the purpose of the Wildlife Act.

These include:

- Pre-construction surveys and during construction surveys which will reduce the risk of incidental harm to little penguins. Staff training on penguin sign identification and procedures mean early identification is likely, reducing the chances of harm to penguins during construction.
- Ensuring that handlers will be suitably qualified and experienced and approved by DOC. The extraction of penguins from burrows is specialised work and requires a high level of skill.
- Ensuring that the capture and handling of penguins will be conducted safely and humanely by experienced handlers, minimising stress to the penguins and reducing the risk of injury. Best practice for little penguin relocation is limited, although DOC supports the LPMP's inclusion of matters from little penguin monitoring protocols published by New Zealand Penguin Initiative. No animal ethics approvals are required.
- Clarification that breeding or moulting birds will not be captured and relocated. Moving moulting penguins could result in harm. Moving breeding birds would result in the abandonment of eggs or chicks.
- That any little penguin found will be relocated within two hours where possible, minimising the time spent in captivity. The release location identified is appropriate and will have nest boxes installed. The Port has an extensive pest control system, so predation is not considered a high risk at the release location.
- Marking little penguin with twink is a technique recommended by DOC that has no lasting effects. This form of temporary marking is preferred over permanent marking by band or transponder as there is no ongoing monitoring planned or any other penguin monitoring known in the harbour, so there would be no knowledge gained from permanent marking that outweighs any impacts of permanent marking.
- Addressing the temporary loss of habitat. As the rock revetment will be replaced no long-term habitat loss is envisaged. However, to address the impacts of moving penguins and the temporary loss of habitat, the LPMP proposes the establishment of up to ten little penguin nest boxes adjacent to the revetment. This contributes to an overall net protective benefit to little

penguins. Again, this is a revision made to the draft LPMP through engagement during this process.

In general, DOC thinks the processes and methods are appropriate as they are proposed to ensure the protection of wildlife and therefore consistent with the purpose of the Wildlife Act. As set out in the commentary above, appropriate conditions as proposed by DOC will minimise potential adverse effects of the Project on little penguin.

(H) Location where activity will be carried out

The applicant has provided maps and GPS coordinates to show that the proposed development site is the land and coastal marine area located at Fergusson and Bledisloe North Wharfs, Port of Auckland, 1-19 Quay Street, Auckland.

DOC notes that the land at the Project site and adjacent to the Project site is owned by Port of Auckland Limited. The land has been heavily modified for port infrastructure for many decades, with reclamation, wharfs, and rock armouring the coastline.

The release site is located on the existing eastern container terminal revetment in Judges Bay, within the Port.

The water is part of the Hauraki Gulf Marine Park. The Hauraki Gulf Marine Park Act 2000 therefore applies.

(J) 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

The applicant has provided a summary of actual and potential effects of the activity on wildlife as per Attachment 31 of the application.

DOC concludes the potential and actual effects on little penguin are habitat loss (temporary), potential death or injury of this protected and 'at risk declining' (national), 'threatened regionally vulnerable' (regionally) species. Although the applicant has noted that this wildlife approval is sought out of an abundance of caution, it will provide for activities relating to little penguins and therefore appropriate mechanisms need to be in place to manage any potential and actual adverse effects in the event it is exercised.

In relation to little penguins, DOC has proposed conditions to ensure the management of actual and potential effects on this species as part of the wildlife approval as per Appendix D of this report.

DOC may provide further commentary on broader potential wildlife effects and potential management strategies as part of Section 53 comments.

(N) Consultation on the application specific to wildlife impacts, including with hapū or iwi

Based on the information available in the application, it appears that engagement was generally high level in relation to the wider project. It is unclear whether the relocation of penguins was discussed.

The Cultural Values Assessment prepared by Te Ākitai Waiohū sets out key cultural concepts including kaitiakitanga (role of hapū and whānau as guardians over the area which they hold mana whenua), mauri (the life force present in all living things and ecosystems), and wairuatanga (spiritual connection to the lands and waters). The Waitematā Harbour is seen as a taonga of great cultural and spiritual significance to Te Ākitai Waiohū. Concerns relating to the Project include disturbance to the foreshore and seabed, and potential impacts on water quality, marine life, and spiritual values. The assessment recommends that Te Ākitai Waiohū be directly involved in the project as kaitiaki of the environment and natural resources. Specifically, cultural inductions and iwi monitoring are recommended. The assessment is quite general to the Project and does not appear to be written with an understanding that approval will be sought to relocate penguins. We recommend the panel considers this and could request further information as appropriate.

The Cultural Impacts Assessment prepared by Ngaati Te Ata Waiohū describes the immense spiritual and ancestral importance of the harbour to Ngaati Te Ata Waiohū. In relation to wildlife, Ngaati Te Ata Waiohū are concerned about the potential disruption of the Project to feeding and breeding practices of coastal birds near the site due to noise and vibrations from the proposed piling works. The assessment includes recommendations that the applicant uphold and enhance Te Mauri o Te Waitematā and surrounding taiao (environment), prevent further reclamation, seabed structures, and disturbances to Te Waitematā, waahi tapu and sites of significance to Ngaati Te Ata Waiohū, protect taonga and customary rights, and establish a genuine Te Tiriti o Waitangi-based partnership, ensuring Ngaati Te Ata Waiohū are full partners throughout all project stages. The assessment is quite general to the Project and does not appear to be written with an understanding that approval will be sought to relocate penguins.

Treaty Principles

Without specific feedback from Treaty partners on the proposed wildlife approval, it is difficult to assess whether the approval would be consistent with Treaty principles, particularly active protection.

DOC is aware from engagement on a previous Wildlife Act application in the Auckland region that at least some iwi view little penguins as a taonga species and consider that tikanga Māori and mātauranga Māori principles are necessary to consider in their management.

(O) Additional written expert views, or options the applicant has obtained

The application is supported by expert views as outlined below.

- Little Penguin Management Plan (LPMP) prepared by Kennedy Environmental Limited. The LPMP references:
 - NZPI 2024. Kororā monitoring protocols. New Zealand Penguin Initiative. Version 5 April 2024. Website: www.nzpi.nz.
 - NZPI 2024. Penguin monitoring: health and safety awareness. New Zealand Penguin Initiative. Version 1 August 2024. Website: www.nzpi.nz.
 - NZPI 2024. Kororā/little penguins (*Eudyptula minor*) Avian Influenza. New Zealand Penguin Initiative. October 2024. Website: www.nzpi.nz.
 - Wasiak P 2020. Fieldwork procedures for working with little penguins. Phillip Island Nature Parks, Conservation Department. Issue 1, June 2020.

- The Assessment of effects on the ecological environment prepared by Kennedy Environmental Limited. The report incorporates expert views on ecological impacts including on wildlife and contains various relevant references.
- The applicant has engaged with DOC pre- and post- lodgement and DOC has provided its advice informed by an internal little penguin expert as set out in this application.

7.0 Further information

7.1 International Conservation Agreements

7.1.1. Schedule 7, clause 5(c) states that the panel must take into account information and requirements relating to protected wildlife that is to be covered by the approval (e.g. any relevant international conservation agreement).

7.1.2 DOC is not aware of any relevant international conservation agreements that are relevant to the proposed project.

7.2 Consistency with statutory planning documents and policy

7.2.1 DOC has also provided commentary on how the proposed activities relate to DOC's relevant statutory planning documents and policy. Although DOC acknowledges consideration of these documents is not part of the explicit matters to be taken into account in clauses 5 and 6 of Schedule 7, we consider commentary on the proposals consistency with these statutory mechanisms may be helpful context for consideration of this wildlife approval.

Conservation General Policy 2005

7.2.2 The Conservation General Policy 2005 (CGP) provides guidance for the administration and management of lands and waters and natural and historic resources managed under conservation legislation including the Wildlife Act.

7.2.3 Policy 4.4. of the CGP relates to marine species, habitats and ecosystems, setting out that marine protected species should be managed for their long-term viability and recovery throughout their natural range and that human interactions with marine mammals and other marine protected species should be managed to avoid or minimise adverse effects on populations and individuals.

7.2.4 If little penguins are handled, captured and relocated as part of progressing the proposed project then the LPMP and associated conditions which will minimise and remediate potential and actual effects are considered consistent with this policy.

Auckland Conservation Management Strategy 2014

7.2.5 The Auckland Conservation Management Strategy (CMS) provides a framework for the management of natural and historic resources in the Auckland region. Although the CMS is more relevant to public conservation land, it does apply also to wildlife located off conservation land.

7.2.6 The CMS advocates the protection of coastal and marine habitats of native species, and lists little penguins as an at-risk species. The CMS's focus on mitigating threats to biodiversity is directly relevant to managing the impacts of construction activities at the port. Measures such as noise reduction, exclusion zones, and careful handling and relocation of penguins are consistent with the CMS's guidelines for minimising human disturbance and protecting wildlife.

7.2.7 The CMS emphasises the importance of monitoring and reporting to track the effectiveness of conservation measures. The LPMP includes a reporting requirement. DOC supports the inclusion of

reporting conditions. If the LPMP and proposed conditions are adopted, the wildlife approval sought is considered to be consistent with the intent of the management plan.

Hauraki Gulf Marine Park Act 2000

7.2.8 The Hauraki Gulf Marine Park Act 2000 (HGMPA) aims to protect and enhance the natural and historic features of the Hauraki Gulf, including its islands and marine environment.

7.2.9 Section 11 of the HGMPA provides that sections 7 and 8 have the same effect as general policy approved under the conservation legislation (i.e., those sections apply as though they are part of the Conservation General Policy).

7.2.10 The Project's proposed construction activities could have an impact on natural values of the Hauraki Gulf if little penguins are impacted (e.g. death, injury or habitat loss), although it is anticipated that effects would be low given that the port is a highly modified area already and the application includes actions to avoid harming penguins and to mitigate for any habitat loss. If the LPMP and associated conditions are adopted then it is considered there are provisions in place to ensure the approval is not inconsistent with the HGMPA.

8.0 DOC Treaty of Waitangi settlement considerations and obligations

8.1 Under Section 7 of the Act the panel must act in a manner that is consistent with the obligations arising under existing Treaty Settlements.

8.2 MFE provided a report as per section 49 of the Act which sets out section 18 matters it considered relevant to the application. DOC was not consulted on this report by MFE.

8.3 DOC has identified and summarised in Appendix E potential high-level considerations in relation to Treaty settlement claims which may be relevant for a panel to consider in relation to the wildlife approval sought in conjunction with the MFE report provided.

8.4 Many of the obligations identified in Appendix E are procedural requirements for DOC. Due to the statutory timeframes and consideration of DOC’s ability to share application information prior to it being made publicly available as part of this process, DOC advised the iwi entities of the application as listed in Table 1.

8.5 In the panel’s capacity as a decision maker DOC has also included a summary of obligations that may be relevant to that role.

8.6 DOC can provide further commentary on the high-level information provided in Appendix E if required.

Table 1 Iwi entities DOC sent Bledisloe North Wharf and Fergusson North Berth Extension application notification to.

Iwi Entities
Ngāi Tai ki Tāmaki
Ngāti Maru
Ngāti Tamaoho
Ngāti Tamaterā
Ngāti Te Ata
Ngāti Whanaunga
Ngāti Whātua Ōrākei
Te Rūnunga o Ngāti Whātua
Te Ākitai Waiohū
Te Kawerau ā Maki
Te Patukirikiri
Ngāti Pāoa

9.0 Appendices

Appendix A: KEL, 2025 KEL 2025. Little Penguin Management Plan for BN & FN Wharf Project (final draft). Prepared by Kennedy Environmental Limited for Port of Auckland, May 2025.

Appendix B: *DOC and POAL Meeting 08/05/2025 DOC Summary of Actions and proposed amendments to the LPMP.*

Appendix C: Wildlife Approval Query – FT POAL Application (09/06/2025)

Appendix D: Revised condition set for wildlife approval – Bledisloe North Wharf and Fergusson North Berth Extension

Appendix E: DOC Treaty Settlement Obligation Considerations