

Attachment 36

Legal considerations

IN THE MATTER

of the Fast-track Approvals Act 2024 ("**FTAA**")

AND

IN THE MATTER OF

an application for approvals by Port of Auckland Limited to construct and operate a new wharf structure at the Bledisloe Terminal, an extension to the existing Fergusson North Berth, and a cruise passenger terminal ("**Project**")

**LEGAL CONSIDERATIONS ON BEHALF
OF PORT OF AUCKLAND LIMITED**

7 FEBRUARY 2025

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1. SUMMARY

- 1.1 Port of Auckland Limited ("**POAL**") owns and operates key infrastructure in the North Island of New Zealand, including the Port of Auckland ("**Port**"). The Port is one of New Zealand's largest ports. It is the most direct route for goods into and out of the Auckland market and is a critical part of the regional and national freight network.
- 1.2 The Port provides vital public benefits in both its commercial and social role. Efficient port function is integral to the movement of freight both in terms of imports and exports and the movement of goods around New Zealand. This movement of freight underpins the New Zealand economy. The Port also facilitates tourism through the cruise industry. The cruise industry is a major economic driver for the tourism and service sectors in New Zealand and the Port is the most visited port by cruise ships in the country. With imports and exports set to grow, the port sector is destined to become even more important for the economy.
- 1.3 Through this Project, POAL is seeking to improve the efficiency and capacity of port operations in Auckland by extending the existing Fergusson North Berth and constructing a new wharf at the existing Bledisloe Terminal. Delivery of this new wharf infrastructure will enable POAL to consolidate its operations, enabling the transfer of Captain Cook and Marsden Wharves to Auckland Council for public use in due course.

Fergusson North Extension

- 1.4 International shipping lines are currently proposing to reduce the number of smaller <4,000 twenty-foot unit equivalent ("**teu**") container ships calling in New Zealand in favour for larger ships up to 10,000 teu in size. As New Zealand's largest destination for imported goods, it is critical that the Port can accommodate these larger container ships efficiently.
- 1.5 While 10,000 teu container ships could technically berth at the existing Fergusson North Berth, it is operationally inefficient for them to do so. This is because the quay cranes cannot access the full length of the ship for unloading/loading purposes meaning the ships need to reposition mid-call (losing 2-3 hours) or be subject to loading restrictions which are often unworkable in the context of international shipping. For these reasons, a 10,000 teu container ship has not yet called in Auckland.

- 1.6 The proposed 45m long x 34m wide extension to Fergusson North Berth will ensure the Port has fit for purpose infrastructure to accommodate larger container ships up to 10,000 teu in size.

New Bledisloe North Wharf

- 1.7 The existing Bledisloe Terminal and Captain Cook and Marsden Wharves currently handle POAL's considerable roll-on roll-off ("**RORO**") throughput. Cruise ships are handled at Queens Wharf and Princes Wharf, with the largest cruise ships berthing at Princes Wharf.
- 1.8 As part of the Auckland Council's 2024-2034 Long Term Plan proposals, Mayor Brown has proposed to transfer Captain Cook and Marsden Wharves to Auckland Council for public use within the next 2-3 years. POAL supports this vision but needs to reconfigure its operational footprint to ensure RORO vessels currently calling at Captain Cook and Marsden Wharves can be accommodated elsewhere at the Port.
- 1.9 POAL is also observing a growing trend towards cruise companies seeking to deploy larger cruise ships (over 300m in length) to New Zealand. Auckland is New Zealand's premier cruise port, but it does not have fit for purpose infrastructure to accommodate these larger cruise ships. Currently, larger cruise ships are either berthed under tight wind conditions at Princes Wharf, or within the harbour for passengers to tender ashore. Large cruise ships at Princes Wharf also conflict with passenger ferries in the Princes / Queens basin leading to ferry delays.
- 1.10 For the above reasons, POAL is proposing to construct a new 330m x 27.5m wharf structure at the northern edge of the existing Bledisloe Terminal to accommodate RORO vessels and large cruise ships over 300m in length. A new cruise passenger terminal within the ground floor of the existing vehicle handling facility at the Bledisloe Terminal is also proposed. The delivery of this new wharf will provide certainty to the cruise industry that Auckland has fit for purpose infrastructure to accommodate large cruise ships and will enable the transfer of Captain Cook and Marsden Wharves to Auckland Council for public use in due course.

Approvals required

- 1.11 POAL is seeking all necessary approvals required to construct and operate the Project under the FTAA. This includes all necessary resource consents (which would otherwise be applied for under the Resource Management Act 1991

("RMA") and a wildlife approval (which would otherwise be applied for under the Wildlife Act 1953 ("**Wildlife Act**").

- 1.12 Overall, resource consent is sought for the Project as a discretionary activity.

Other matters

- 1.13 POAL has engaged with Mana Whenua and other key stakeholders in relation to the Project and has greatly valued the input from these groups. POAL has worked hard with its consultant team to design the new wharf infrastructure so that it is fit for purpose while ensuring effects are appropriately managed.
- 1.14 The Project seeks to balance all the competing interests that inevitably come to the fore in any infrastructure project. The application for resource consent before the Panel includes a comprehensive effects mitigation programme which, in our submission, appropriately addresses the actual and potential effects of the Project.
- 1.15 These legal considerations are intended to assist the Panel by setting out and discussing the legal framework against which the application for resource consents and wildlife approval (collectively referred to as the "**Application**") is to be assessed. POAL has provided detailed information in the Application and accompanying technical reports.
- 1.16 POAL respectfully seeks the resource consents and wildlife approval for the Project be granted by the Panel, subject to the conditions set out at **Attachment 15** (resource consent) and section 17 of the Application (wildlife approval).

2. PROJECT OVERVIEW

Project details

- 2.1 A detailed description of the Project is included in the Application at section 5 and not repeated here. In summary, the Project involves the construction and operation of:
- (a) a new 330m long and 27.5m wide wharf to the existing Bledisloe Terminal for RORO and large cruise ships over 300m in length;
 - (b) a 45m long and 34m wide extension to the existing Fergusson North Berth to accommodate larger container ships; and

- (c) a new cruise passenger terminal within the ground floor of the existing vehicle handling facility at the Bledisloe Terminal.

Approvals required

- 2.2 In order to authorise the construction and operation of the Project summarised above, POAL requires resource consent as a discretionary activity and a wildlife approval for the capture, handling and relocation of Little Penguin/kororā (if required). The wildlife approval is being sought as a precautionary measure in the event Little Penguin/kororā are identified during construction of the proposed works. POAL is applying for all necessary resource consents and the wildlife approval under the FTAA (as opposed to under the RMA or Wildlife Act).

Project benefits

- 2.3 The Port provides a crucial economic service by facilitating imports and exports and the movement of goods around New Zealand. The Port also supports tourism through the cruise ship industry and is the most visited port by cruise ships in the country.
- 2.4 The Project represents a significant investment in critical infrastructure and delivery of the new wharf infrastructure will have significant wide-ranging benefits, including:
 - (a) improving the efficiency of the existing Fergusson North Berth to service larger container ships up to 10,000 teu forecast to come to New Zealand;
 - (b) catering for growth in RORO trade on a reduced footprint, enabling Captain Cook and Marsden Wharves to be transferred to Auckland Council for public use;
 - (c) providing certainty to the cruise industry that Auckland has fit for purpose infrastructure to accommodate larger cruise ships over 300m in length;
 - (d) relocating large cruise ships from Princes Wharf thereby reducing conflicts between passenger ferries and cruise ships and resulting passenger ferry delays and cancellations;

- (e) improving cruise passenger safety and experience by reducing the need for ships to berth within the harbour requiring passengers to tender on-shore; and
- (f) reducing the number of cruise ships that are required to berth at Fergusson North Berth which causes conflicts with container operations.

2.5 The Project will benefit both the Auckland and New Zealand economies and will contribute between \$1.8 – \$5.4 billion of value added to the economy over the next 30 years.¹ The Project will also provide an additional 9,000 person years of employment in the 2024 – 2053 period.² Overall, the Project will enhance the Port's national and international role as a key player in facilitating the import and export of trade and the cruise industry.

3. PRE-LODGEEMENT REQUIREMENTS

Pre-lodgement consultation requirements

- 3.1 Section 29 of the FTAA requires POAL to have consulted with the persons and groups referred to in section 11 about the Project prior to lodgement.
- 3.2 Identification of the persons and groups required to be consulted before lodgement in relation to both the resource consent application and wildlife approval is included in section 2.6 of the Application. Details of the consultation undertaken with each group is set out in the consultation log (refer to **Attachment 3** of the Application). POAL has valued the input from persons and groups consulted and will continue to work closely with these groups as the Project progresses through its delivery phase.
- 3.3 In our submission POAL has satisfied the pre-consultation requirements in section 11 of the FTAA for the Application.

Existing resource consent for the same activity

- 3.4 Pursuant to section 30 of the FTAA, POAL has received written confirmation from Auckland Council that there are no existing resource consents held for the same activity using some or all of the same natural resource (refer to **Attachment 4** of the Application).

¹ Economic Impact Assessment at section 5.4.

² Economic Impact Assessment at section 5.3.

- 3.5 However, POAL holds a suite of resource consents for its existing operations at the Port of Auckland. Relevant to the Project area, POAL is the holder of coastal permits to occupy the coastal marine area, including the part that is subject to this application, and to manage and operate port-related activities to the extent necessary to undertake its port related commercial undertakings.

4. LEGAL FRAMEWORK

Listed projects

- 4.1 The FTAA sets out the legal framework for obtaining approvals for a listed project.
- 4.2 Pursuant to section 42 of the FTAA, a substantive application for a listed project can seek (amongst other things):
- (a) a resource consent that would otherwise be applied for under the RMA;³ and
 - (b) a wildlife approval as defined in clause 1 of schedule 7.⁴
- 4.3 As set out above POAL is seeking all necessary resource consents required to construct and operate the Project and is seeking a wildlife approval to authorise the capture, handling and relocation of Little Penguin/kororā if required.
- 4.4 The FTAA prescribes the specific form, manner and information requirements for applications submitted for approval. It provides that the process under the FTAA for obtaining the approval applies instead of the process for obtaining any corresponding approval under a specified Act.⁵

Consideration of resource consent applications

- 4.5 Under section 81 of the FTAA, the Panel needs to decide whether to grant or decline POAL's resource consent for the Project in accordance with the process set out in clauses 17 to 22 of Schedule 5.⁶

³ FTAA, section 42(4)(a).

⁴ FTAA, section 42(4)(h).

⁵ FTAA, section 40.

⁶ FTAA, section 81.

4.6 Clause 17(1) of schedule 5 provides that when considering a consent application and setting conditions (in accordance with clause 18), the Panel must take into account, giving the greatest weight to paragraph (a), -

- (a) the purpose of the FTAA; and
- (b) the provisions of Parts 2, 3, 6 and 8 – 10 of the RMA that direct decision making on an application for a resource consent (but excluding section 104D); and
- (c) the relevant provisions of any other legislation that directs decision making under the RMA.

4.7 In the context of the RMA, the Court of Appeal has held that the direction to "take into account" matters means there is an obligation to consider the particular factor in making a decision, to weigh it with other relevant factors, and to give it whatever weight is appropriate in all the circumstances.⁷

4.8 However, clause 17(1) expressly directs greatest weight be given to sub-clause (a) when considering a consent application and setting conditions.

4.9 The express hierarchy of considerations is different to the RMA framework but not without precedent. For example, section 34(1) of the Housing Accords and Special Housing Areas Act 2013 ("**HASHAA**") provided that:

An authorised agency, when considering an application for a resource consent under this Act and any submissions received on that application, must have regard to the following matters, **giving weight to them (greater to lesser) in the order listed:**

- (a) the purpose of this Act:
- (b) the matters in Part 2 of the Resource Management Act 1991:
- (c) – (e) [*Excluded for brevity*]

(Our emphasis added).

⁷ *Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2024] NZCA 134 at [15].

4.10 When applying section 34 of HASHAA, the Court of Appeal considered that an assessment of the listed factors must be undertaken prior to the exercise of weighing them through an overall balancing exercise in accordance with the prescribed hierarchy.⁸

4.11 In this regard, under clause 17 of schedule 5 the Panel is required to consider the matters in (a) to (c) and then weigh those factors in an overall balancing exercise which gives the greatest weight to the purpose of the FTAA.

Clause 17(1)(a) – purpose of the FTAA

4.12 The purpose of the FTAA is to "facilitate the delivery of infrastructure and development projects with significant regional or national benefits".⁹ This is a firm directive to "facilitate" projects with such benefits and is distinct from the purpose of the RMA in section 5 which focuses on sustainable management and the balancing of competing interests.

4.13 An assessment of the Project against this purpose is provided in paragraphs 5.4 to 5.7 of these legal considerations. However, it is important to note that the Project has been included as a listed project under the FTAA by virtue of its strong alignment with the purpose of the FTAA.

Clause 17(1)(b) – RMA decision making framework

4.14 Clause 17(1)(b) imports the decision-making framework from the RMA into the FTAA with some modifications. It requires the Panel to take into account the provisions of Parts 2, 3, 6 and 8-10 of the RMA that "direct decision making on an application for a resource consent (but excluding section 104D of the RMA)".

4.15 In our submission, the requirement to consider those parts of the RMA is limited to the extent that they "direct decision making on an application for resource consent".

4.16 For the purpose of this Project, the parts of the RMA referred to in clause 17(1)(b) of schedule 5 which direct decision making on an application for a discretionary activity resource consent are:

- (a) Sections 104 and 104B which set out the decision-making framework for discretionary activity consent applications.

⁸ *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541 at [52] - [53].

⁹ FTAA, section 3.

- (b) Sections 105 and 107 which relate to consent applications for discharge permits.
- (c) Sections 108 to 108AA which set the framework for conditions of resource consents.

4.17 These provisions are discussed below in more detail.

Sections 104 and 104B RMA – consideration and decisions on consent applications

4.18 For discretionary activities, section 104B RMA provides that the Panel may grant or refuse consent. If consent is granted, conditions may be imposed under sections 108 and 108AA RMA. As a discretionary activity, an assessment under section 104 RMA is required and the Panel's discretion is not limited by any matters of discretion or assessment criteria under the Auckland Unitary Plan ("**AUP**").

4.19 Section 104 RMA then sets out the matters that the Panel must, subject to Part 2, have regard to:

- (a) the actual and potential effects on the environment of allowing the activity (section 104(1)(a));
- (b) any measure proposed or agreed by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity (section 104(1)(ab));
- (c) relevant provisions of planning documents (section 104(1)(b)); and
- (d) any other matters relevant and reasonably necessary to determine the application (section 104(1)(c)).

4.20 The Court of Appeal in *RJ Davidson Family Trust v Marlborough District Council* has considered the words "subject to Part 2" in section 104(1) of the RMA in a resource consent context. The Court held a decision-maker must have regard to the provisions of Part 2 when appropriate and necessary.¹⁰ It is both appropriate and necessary to have regard to Part 2 where the decision

¹⁰ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [71] – [76].

maker cannot be assured that recourse to Part 2 will add nothing to the evaluative exercise.¹¹

- 4.21 In our submission, while there is nothing to suggest the relevant AUP provisions are incomplete, regard to Part 2 RMA for completeness would be appropriate. However, the FTAA modifies what may be considered in a Part 2 assessment, directing that "a reference in the Resource Management Act to Part 2 of that Act must be read as a reference to sections 5, 6 and 7 of that Act".¹² The Panel cannot consider section 8 in its Part 2 RMA assessment.
- 4.22 When considering the actual and potential effects on the environment under section 104(1)(a), the starting point is to consider the effects of allowing the activity against the environment of the proposed location. The "environment" against which effects are to be assessed includes permitted activities that can occur as of right and any lawfully established activities that have already been developed. It also includes activities which have been granted resource consent at the time the application is being considered, provided that consent is likely to be implemented by the consent holder.¹³
- 4.23 When considering the actual and potential effects, the Panel may also disregard an adverse effect of the activity on the environment if a national environmental standard or plan permits an activity with that effect.¹⁴

Sections 105 and 107 RMA – applications for discharge permits

- 4.24 For an application for a discharge permit or coastal permit, section 105 RMA provides that the Panel must, in addition to the matters in section 104(1) have regard to:
- (a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects;
 - (b) the applicant's reasons for the proposed choice; and
 - (c) any possible alternative methods of discharge, including discharge into any other receiving environment.

¹¹ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [75].

¹² FTAA, clause 17(2)(a) of schedule 5.

¹³ *Queenstown-Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 at [84].

¹⁴ RMA, section 104(2).

- 4.25 In accordance with section 107 RMA, the Panel cannot grant a discharge permit to authorise the discharge of a contaminant or water into water if after reasonable mixing, the water discharged is likely to give rise to all or any of the following effects in the receiving water:
- (a) the production of any conscious oil or grease films, scums or foams, or floatable;
 - (b) any conspicuous change in the colour or visual clarity;
 - (c) any emission of objection odour;
 - (d) the rendering of fresh water unsuitable for consumption by farm animals;
 - (e) any significant adverse effects on aquatic life.
- 4.26 As is set out in the Ecological Assessment, and in the Application at 10.112 to 10.149, the Project will not give rise to any of the above effects in the receiving water.

Sections 108 and 108AA – conditions of consent

- 4.27 For a discretionary activity the Panel may grant or refuse consent for a discretionary activity and if consent is granted, conditions may be imposed under sections 108 and 108AA RMA.¹⁵ However the discretion to impose conditions is limited by the directive in section 83 FTAA which states that conditions set under the FTAA must be no more onerous than necessary.

Parts 8-10 RMA

- 4.28 For completeness it is noted that Part 8 of the RMA relates to designations and heritage orders, Part 9 relates to water conservation orders and Part 10 to subdivision and reclamations – all which are not relevant to this Project.

Clause 17(1)(c) – any other provisions that direct decision making under the RMA

- 4.29 With respect to clause 17(1)(c) there are no provisions of other legislation that direct decision making under the RMA relevant to the assessment of this Project.

¹⁵ RMA, section 104B.

Consideration of wildlife approval applications

- 4.30 Under section 81 of the FTAA, the Panel needs to decide whether to grant or decline POAL's wildlife approval for the Project in accordance with the process set out in clauses 5 and 6 of schedule 7.¹⁶
- 4.31 Under clause 5 of schedule 7, when considering an application for a wildlife approval, including conditions, the panel must take into account, giving the greatest weight to paragraph (a):
- (a) the purpose of the FTAA;
 - (b) the purpose of the Wildlife Act 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 related international conservation agreement).
- 4.32 As set out above, the direction to “take into account” the matters in (a) to (c) means to consider the particular factor in making a decision, to weigh it with other relevant factors, and to give it whatever weight is appropriate in all the circumstances.¹⁷ Clause 5 makes it clear that the greatest weight is to be given to the purpose of the FTAA in the overall balancing exercise.
- 4.33 Clause 6 of Schedule 7 outlines 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.¹⁸ When considering a condition, the Panel must:¹⁹
- (a) consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife that is to be covered by the approval;
 - (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

¹⁶ FTAA, section 81.

¹⁷ *Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2024] NZCA 134 at [15].

¹⁸ FTAA, sch7, cl6.

¹⁹ FTAA, sch7, cl6(2).

- (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.

4.34 The Panel's discretion to set conditions is not unlimited. The FTAA makes clear that a condition imposed must be no more onerous than necessary to address the reason for which it is set.²⁰

Obligations relating to Treaty Settlements and recognised customary rights

4.35 Finally, when making a decision, the Panel must consider whether granting the approval would comply with section 7.²¹ Section 7 requires that all persons performing and exercising functions, powers, and duties under the FTAA must act in a manner that is consistent with:

- (a) the obligations arising under existing Treaty settlements; and
- (b) customary rights recognised under the Marine and Coastal Area (Taukuta Moana) Act 2011.

4.36 A summary of existing treaty settlements and customary rights relevant to this Project is set out in the Application at section 12.

5. APPLICATION OF THE LEGAL FRAMEWORK TO THE PROJECT – RESOURCE CONSENT

5.1 As outlined in the Application, POAL seeks a range of consents under the FTAA to authorise the construction and operation of the Project. Overall, resource consent is sought from the Panel for a discretionary activity. In accordance with section 81 and clauses 17-22 of schedule 5 to the FTAA, the Panel may grant or refuse the Application, and if it grants the Application may impose any conditions under clause 18 of schedule 5 of the FTAA.

²⁰ FTAA, section 83.

²¹ FTAA, section 82.

5.2 As set out in in the Application:

- (a) The Project will result in significant regional and national benefits and is consistent with the purpose of the FTAA.
- (b) There will be significant positive effects from the Project, and any potential adverse effects arising from construction or operation of the Project can be adequately avoided, remedied, mitigated, offset or compensated.
- (c) The Project meets or assists with meeting the relevant provisions of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011, National Policy Statement for Urban Development 2020, New Zealand Coastal Policy Statement 2010, Hauraki Gulf Marine Park Act 2000, and the AUP.

5.3 These matters are discussed further below.

Purpose of the FTAA – clause 17(1)(a) of schedule 5

5.4 When considering POAL's application for resource consent, the FTAA requires the Panel give the greatest weight to the purpose of the FTAA in the overall balancing exercise.

5.5 The purpose of the FTAA is to:²²

[...] facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

5.6 The Project meets the purpose and intent of the FTAA and has been listed as a Project eligible for use of the fast-track in schedule 2 eligible by virtue of the significant benefits it will deliver and strong alignment with the FTAA's purpose.

5.7 The Application provides an analysis of the Project against the purpose of the FTAA and concludes that the Project is consistent with this purpose and will provide significant regional and national benefits.²³ These significant benefits are also set out in paragraphs 2.3 to 2.4 of these legal considerations.

²² FTAA, section 3.

²³ Application at 9.3 to 9.17.

Decision making framework under the RMA – clause 17(1)(b) of schedule 5

Actual and potential effects of the Project on the environment – section 104(1)(a) RMA

- 5.8 As set out above, the starting point for the assessment of effects under section 104(1)(a) is to consider the effects of allowing the activity against the environment of the proposed location.

Environment

- 5.9 For the purposes of the Panel's assessment, the environment against which effects are to be assessed has been heavily modified for port infrastructure for many decades with reclamation, wharfs, and rock armouring along the coastline. POAL holds a suite of resource consents and approvals for its existing operations at the Port. These are summarised at 10.2 to 10.3 of the Application.
- 5.10 In relation to the existing Bledisloe Terminal, this currently handles POAL's considerable RORO and has a five-level car handling facility on the southern portion of the wharf. The car handling facility has capacity for approximately 1,100 to 1,700 vehicles (depending on the type of vehicle).
- 5.11 With respect to the Fergusson North Terminal, this is POAL's main container terminal and comprises an area of approximately 30 ha. It is POAL's deepest and largest berth for the loading and unloading of container ships. While it can accommodate container ships up to a size of 10,000 teu (length of up to 360m) by using the existing mooring dolphins, the existing wharf is only operationally efficient for container ships up to 5,500 teu. Operational inefficiencies arise for container ships greater than 5,500 teu during the unloading/loading of the vessel as the quay cranes cannot access the full length of the ships. Fergusson North Berth has also, in the past, accommodated the largest cruise ships currently visiting New Zealand such as the Ovation of the Seas at 348m in length.
- 5.12 For the purposes of assessing the effects of the Project:
- (a) The environment against which effects are to be assessed at the Fergusson North Berth includes a container ship up to 10,000 teu in size. This is because a 10,000 teu container ship can berth at the Fergusson Terminal currently (albeit sub-optimally). Further, POAL

has accommodated a cruise ship equivalent to 10,000 teu at the Fergusson North Berth.

- (b) Conservatively, all relevant technical specialists have also considered the effects of 10,000 teu ships (or an increase in 10,000 teu ships) berthing at Fergusson North Berth when compared to the current scenario (being that the average size container ships visiting Fergusson North Berth are typically 4,100 teu - 4,300 teu in size).
- (c) The adverse effects associated with forecast growth at the Port (which could occur now under POAL's existing consents, and which would occur regardless of the Project) have not been discounted from the respective effects assessments (ie they have not assumed that ongoing organic growth would otherwise occur).
- (d) Conversely, the economic assessment considering the benefits of the Project has only attributed a small proportion of growth forecast at the Port to be attributable to the Project.

Permitted activities

- 5.13 As set out above, when assessing the effects of the Project, the Panel may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.
- 5.14 With respect to the alterations to the vehicle handling building to establish the cruise passenger terminal and associated layout of the public area/taxi and coach drop-off and pick up, these are provided for as a permitted activity under the provisions of the Auckland Unitary Plan. The effects of this activity are largely internalised within the Port of Auckland, and on that basis are not addressed in the technical assessments. The only external effects are the traffic effects associated with the operation of the new cruise facility, which have been assessed as these extend beyond the boundary of the Port.

Assessment of effects

5.15 The Project has been assessed by various technical specialists, with their assessments set out in the technical reports submitted as part of the Application. The findings of these reports are summarised in the Application at section 10.

5.16 In terms of the key findings reached by the experts, the effects assessments conclude:

- (a) **Transport:** The key transport effects of the Project relate to the new wharf at the Bledisloe Terminal where cruise ships passengers will embark / disembark ships.

With respect to the new Bledisloe North Wharf and ferry terminal, the Transport Assessment concludes that:

- (i) Any transport effects of the construction of the proposed new wharf can be accommodated through conditions of consent without adverse impact on its safe operation, including at the Tinley Street/Quay Street intersection and along Quay Street.²⁴
- (ii) Any operational transport effects of the proposed use of the wharf for unloading cruise ship passengers through the new cruise ship facility on the adjacent transport network can be accommodated through a traffic management plan without adverse impact on its safe operation, including at the Tinley Street / Quay Street intersection and along Quay Street.²⁵

With respect to the proposed Fergusson North extension, the Transport Assessment concludes that there are unlikely to be discernible adverse transport effects caused by the construction or operation of the Fergusson North extension, and that any construction traffic effects can be managed through conditions of consent.²⁶

²⁴ Transport Assessment at section 5.1.

²⁵ Transport Assessment at section 5.1.

²⁶ Transport Assessment at section 5.1.

- (b) **Navigation and safety:** The Project presents no new or unique risks to navigation and the safety of water users within the Waitematā Harbour. In fact, the Navigation and Safety report considers that overall, the navigational risk profile will be lowered due to the reduction in potential risks of an adverse interaction between a cruise ship and ferry traffic in the downtown ferry basin and the reduction of cruise ships having the moor within the harbour.²⁷ The impact of wind shadowing when the largest vessels are berthed at the new Bledisloe North Wharf and extension to Fergusson North Berth will also be limited.²⁸
- (c) **Economics:** The Project will enhance the Port's ability to support the Auckland and New Zealand economies through its role facilitating import trade and activity by the cruise sector which sustains both business activity and employment. The Project will contribute between \$1.8 – 5.4 billion of value added to the Auckland economy, and \$2.5 – 6.6 billion to the total New Zealand economy, over the next 30 years.²⁹
- (d) **Air quality:** The Fergusson North extension will enable a reduction in air pollution emissions intensity from increased efficiency in cargo handling associated with large container ships. Subject to growth in container cargo volumes over time, the Project is expected to reduce emissions of contaminants to air.³⁰ The new Bledisloe North Wharf will relocate emissions from large cruise ships, which will materially improve air quality at Princes Wharf.³¹
- (e) **Landscape and visual:** The existing environment at the Port is highly modified and influenced by the Waitematā Harbour both physically and visually. The Project will have very low to low adverse effects on the natural character, and landscape characteristics, attributes and values. The visual effects of the Project vary based on viewpoints, however the most notable impacts will be to visitors on Queen's wharf, where the new Bledisloe North Wharf may partially obscure the view of the harbour. This will be more noticeable when vessels are docked and has been assessed as a periodic

²⁷ Navigation and Safety Assessment at section 1.6.

²⁸ Navigation and Safety Assessment at section 1.6.

²⁹ Economic Impact Assessment at section 5.4.

³⁰ Air Quality Assessment at section 9.

³¹ Air Quality Assessment at section 9.

moderately adverse effect. Other viewers will experience minimal impacts from the proposed extensions.³²

- (f) **Stormwater:** No additional stormwater will be discharged as a result of the new Bledisloe North Wharf and the extension to the Fergusson North Berth. At the new Bledisloe North Wharf, stormwater will be collected and treated before being discharged into the Waitematā harbour. To manage the quality of stormwater the best practicable option management regime that applies to the balance of the Port under its industrial trade activity consent will be implemented. This includes a suite of standard operating procedures, an environmental management plan, and a spill response plan (reflecting the conditions of the current resource consent).³³ No additional stormwater treatment is proposed for the Fergusson North extension as the existing storm filter on the wharf has sufficient capacity to treat discharges from the extension.³⁴
- (g) **Ecology:** With respect to the potential ecological effects of the Project the level of effects are generally expected to be negligible to low with mitigation.³⁵ With respect to the effects attributable to each stage of construction:
 - (i) The demolition of the deck structure at the western end of the Bledisloe Terminal will cause minor underwater noise and turbidity, and loss of marine growth from the removal of piles. These effects are localised and temporary in nature, and overall assessed to be low.
 - (ii) The construction of the Bledisloe North Wharf and Fergusson North Berth revetment will result in the loss of subtidal and intertidal habitat (which is assessed as having a low to high effect. Mitigation is proposed to provide ecological benefit for this habitat loss. The Fergusson North extension will also create some disturbance in the form of noise for Little Penguin/ kororā, but this has been assessed as a low effect given its short duration. Finally, the discharges arising from the proposed revetment works

³² Landscape and Visual Assessment at section 10.

³³ Stormwater Assessment at section 3.

³⁴ Stormwater Assessment at section 3.

³⁵ Ecology Assessment at section 9.2.

are expected to achieve compliance with the water quality standards.

- (iii) The excavation of the Bledisloe North toe trench will result in the temporary loss of soft-bottom habitat within the toe trench footprint. Given the seabed will stabilise naturally and that biological communities are expected to recover over time, this is assessed as having a negligible to low effect. There will be negligible biosecurity effects associated with increases in non-indigenous species and any effects on water quality due to elevated turbidity levels, contaminants released, and sedimentation will be localised and temporary.
- (iv) The effects of piling will have negligible effects on the potential for suspension of marine sediment and changes in water quality. However, for marine mammals (seals and cetaceans) the level of potential effects associated with impact piling (with noise mitigation) will be low to moderate. Further mitigation using marine mammal observers will be implemented in accordance with the underwater construction noise management plan ("**UCNMP**").
- (h) **Construction noise:** The construction activities for the Project are predicted to readily comply with construction noise limits for people.³⁶ A range of measures, including an UNCMP, have been proposed to control underwater noise effects on marine fauna as far as practicable.³⁷
- (i) **Coastal effects:** Overall the coastal effects of the Project are negligible / minor as the scale of the Project is small compared with the immediate coastal area. The Project will not cause changes to the primary tidal regime and there will be a minimal impact on sediment processes. The new wharf structures may cause localised wave reflection and wake pattern changes however these are expected to be no more than minor impacts on wave and wake conditions, and will have negligible effects on the broader harbour wave climate.³⁸

³⁶ Construction noise assessment at section 1.2.

³⁷ Construction noise assessment at section 6.

³⁸ Coastal effects assessment at section 6.

Consistency with planning documents – section 104(1)(b) RMA

- 5.17 For the purpose of the Panel's assessment under clause 17(1)(b) of Schedule 5, which refers to the decision making framework under section 104 RMA, the Project has been considered against the relevant provisions of the AUP, New Zealand Coastal Policy Statement 2010, Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011, National Policy Statement for Urban Development 2020, Hauraki Gulf Marine Park Act 2000. The Project is strongly aligned with a number of the key planning provisions of those documents for the reasons set out in the Application.³⁹

Any other matters relevant and reasonably necessary to determine the application – section 104(1)(c)

- 5.18 The Project has been considered against any other matter considered relevant and reasonably necessary to determine the application, including the following strategic documents: Future Connect, City Centre Masterplan, City Centre Bus Plan and Freight Network Plan. The Project aligns with these strategic planning documents as set out in the Application at section 9.⁴⁰

Proposed discharge – sections 105 and 107

- 5.19 With respect to the proposed stormwater discharge permit being sought, the Application has considered the nature of the discharge and the sensitivity of the receiving environment to adverse effects and any possible alternative methods of discharge at section 10. In summary:
- (a) the effects of the discharge will be less than minor and the receiving environment, which is characterised by commercial port operations is not sensitive to the nature of the discharges proposed; and
 - (b) alternative methods have been considered and discounted given the proposed approach represents the best practicable option and is considered the most appropriate in the circumstances of the receiving environment.
- 5.20 The proposed discharge will not result in any of the effects on the environment that section 107 RMA is concerned with, therefore the Panel can feel confident in granting the discharge permit as proposed by POAL.

³⁹ Application, section 11.

⁴⁰ Application at 9.46 - 9.47.

Part 2, RMA

5.21 The Project has been assessed against Part 2 of the RMA for completeness and the Application concludes that the Project is consistent with sections 5-7.⁴¹ In summary:

- (a) The Application is consistent with the purpose of the RMA (the sustainable management of natural and physical resources) as the Project provides essential transport infrastructure and safeguards POAL's ability to support the economic and social well-being of the regional and nation. The Project is appropriately located at the existing port and is an efficient and effective use of this resource.
- (b) The Project does not adversely affect section 6 RMA matters.
- (c) The Project has had regard to section 7 RMA matters such as kaitiakitanga and the ethic of stewardship through POAL's consultation with various groups. The Project is also an efficient use of natural and physical resources given it will more efficiently facilitate the cruise and import trade industries.

Conditions

5.22 POAL has prepared an extensive set of proposed resource consent conditions, as set out in Attachment 15 to the Application. These conditions have been drafted and developed over time, with input and engagement from POAL's technical experts. These conditions will adequately avoid, remedy and mitigate the adverse effects of the Project on the environment and are, in our submission, no more onerous than necessary.

6. APPLICATION OF THE LEGAL FRAMEWORK TO THE PROJECT - WILDLIFE APPROVAL

- 6.1 As outlined in the Application, POAL seeks a wildlife approval under the Wildlife Act for the capture, handling and relocation of Little Penguin/kororā if required.
- 6.2 In accordance with section 81 and clauses 5-6 of schedule 7 to the FTAA, the Panel may grant or refuse the approval, and if it grants the approval may impose any conditions under clause 6 of schedule 7 FTAA.

⁴¹ Application at 9.18 – 9.38.

- 6.3 As set out in these legal considerations and in the Application:
- (a) The Project will result in significant regional and national benefits and is consistent with the purpose of the FTAA.
 - (b) The primary purpose of the wildlife approval is to protect Little Penguin/kororā during the construction of the Project, consistent with the purpose of the Wildlife Act.
 - (c) The Application contains all the necessary information and requirements prescribed by the FTAA.⁴²
- 6.4 These matters are discussed further below.

Purpose of the FTAA – clause 5(a) of schedule 7

- 6.5 For the reasons set out above at paragraphs 5.4 to 5.7, the Project is strongly aligned with the purpose of the FTAA.

Purpose of the Wildlife Act 1953 and the effects on Little Penguin/kororā – clause 5(b) of schedule 7

- 6.6 The purpose of the Wildlife Act is to protect animals classed as wildlife and manage game and bird hunting in New Zealand. Little Penguin/kororā are a protected species under the Wildlife Act and therefore need to be protected.
- 6.7 Although the Ecological Assessment concludes that Little Penguin/kororā have not been located within the rock revetments in the Port, there is a possibility that Little Penguin/kororā may be present. Out of an abundance of caution, POAL is seeking a wildlife approval authorising the capture, handling and relocation of Little Penguin/kororā should they be found and need to be relocated during the Project. In this regard, the wildlife approval being sought is for the primary purpose of protecting this species. The Project is therefore aligned with the purpose of the Wildlife Act.

7. SUMMARY

- 7.1 Through the development of the Project, POAL has sought to engage with key stakeholders and other parties to ensure a well-considered application has been developed.

⁴² FTAA, schedule 7, clause 2.

- 7.2 We submit that the Panel can have confidence that the adverse effects of the Project will be appropriately managed through the proposed conditions, and the Project will achieve the purpose of the FTAA.
- 7.3 POAL respectfully requests the Panel grant the resource consents and wildlife approval subject to the conditions proposed by POAL.

DATED 7 February 2025

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