

The Department of Conservation ("**DOC**") was required to provide a report under s51 of the FTAA to support the Panel's assessment of the wildlife approval. This report includes DOC's proposed conditions to attach to the wildlife approval. POAL has provided its proposed changes to these below.

Given the revised Little Penguin Management Plan supplied by the Applicant (Appendix A of DOC's Section 51 Wildlife Report), the Director-General considers it would be appropriate for the Panel to condition the wildlife approval based on that management plan, rather than requiring further D-G certification post-approval. We consider this option would most align with the procedural principles in section 10 of the FTAA. POAL agree with this approach and have provided proposed changes to the conditions below.

**1. Little Penguin Management Plan**

- 1.1. Port of Auckland Limited (POAL) will comply with the Little Penguin Management Plan (LPMP) that is annexed to this Approval, or any certified amendment to that LPMP, throughout the Project.
- 1.2. The LPMP may be amended consistently with the process set out in the LPMP. Any proposed amendment to the LPMP must be prepared by a suitably qualified and experienced person with expertise in penguin management and must be submitted to the local Operations Manager of the Department of Conservation, on behalf of the Director-General of Conservation, for certification in accordance with condition 1.3.
- 1.3. The Director-General will certify amendments to the LPMP if they meet the objective in condition 1.4 and contain the processes in 1.5
- 1.4. The objective of the LPMP (including any amendment) is to ensure that actions regarding little penguins/kororā are carried out in a manner that is appropriately managed, by avoiding, remediating and mitigating the effects of the Approval on little penguins.
- 1.5. The Director-General will certify an amendment to the LPMP if it includes processes for the following, in a manner that will achieve the LPMP objective:
  - (i) Surveying and monitoring for little penguin both pre-construction and during construction.
  - (ii) Training construction staff in the identification and detection of little penguins.
  - (iii) Training construction staff for what to do in the event a little penguin is found during construction.
  - (iv) Reporting and communicating to relevant persons the presence of little penguin within the Project area.
  - (v) Responding to a little penguin sighting within or near to the Project area.
  - (vi) The safe management and, if appropriate, relocation of little penguin if found within or near to the Project area, including identification of appropriate relocation sites and mitigation for impacts like habitat loss.

- (vii) Procedures to ensure penguins are only relocated if they are neither moulting nor nesting penguins, including establishment of cordons around any penguins located that are moulting or nesting, and signage preventing disturbance of nesting and moulting penguins once cordoned off.
- (viii) Feedback mechanisms for any adaptive management, including circumstances in which a material change to the management plan would be required and how that change would be certified following the same process as in this condition.
- (ix) Reporting procedures and format for providing the results of any monitoring or surveying required by the LPMP.

If, however, the Panel is still minded to set a condition requiring D-G certification of the LPMP, we recommend the LPMP condition is edited with the following replacing condition 1.1 of the above, and adjusting cross-references accordingly:

## **1. Little Penguin Management Plan**

- 1.1. Port of Auckland Limited (POAL), in conjunction with a suitably qualified and experienced person, will prepare a Little Penguin Management Plan (LPMP) and submit it to the local Operations Manager of the Department of Conservation for certification on behalf of the Director-General.
- 1.2. POAL will not start works unless the LPMP has been certified, and will comply with the LPMP or any certified amendment throughout the Project.
- 1.3. The Director-General will certify the LPMP if it meets the objective in 1.X and contains at least the processes in 1.X.

## **Other conditions**

The following conditions are essentially “mechanical” conditions that DOC would normally include as part of a wildlife approval. We have included these for context and consideration by the Panel as part of their decision-making. We note the importance of ensuring the future workability of the approval, given that it is to be administered by the Director-General. They also rely on “defined terms” that will potentially need amendment depending on other terms used in the decision document.

## **2. Employees, contractors, or agents of POAL**

- 2.1. POAL is responsible for the acts and omissions of its employees, contractors, or agents.
- 2.2. POAL is liable under this Approval for any breach of the terms of the Approval by its employees, contractors, or agents as if the breach had been committed by POAL.
- 2.3. Where obligations bind more than one person, those obligations bind those persons jointly and separately.

## **3. Authorised Activity**

3.1. POAL is only allowed to exercise the approval as specified in this Decision Document.

3.2. Any arrangements necessary for access over private land or leased land are the responsibility of POAL.

**4. Authorised Person**

4.1. Only POAL is authorised to exercise the approval.

**5. Term**

5.1. This Approval commences and ends on the dates set out in the Decision Document.

**6. Liabilities**

6.1. POAL agrees to exercise the Approval at POAL's own risk and releases to the full extent permitted by law the Director-General and the Director-General's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property arising from POAL's exercise of the Approval.

**7. Compliance with legislation and Director-General's notices and directions**

7.1. POAL must comply with all statutes, bylaws, and regulations, and all notices, directions, and requisitions of the Director-General and any competent authority relating to the exercise of the Approval.

**8. Revocation**

8.1. The Director-General may revoke this Approval at any time (pursuant to clause 7(4) of Schedule 7 of the Fast-track Approvals Act 2024) in respect of the whole or any part of Approval if:

8.1.1. POAL breaches any of the conditions of this Approval.

8.1.2. In the Director-General's opinion, the exercise of this Approval causes or is likely to cause any unforeseen or unacceptable effects.

8.2. If the Director-General intends to revoke this Approval in whole or in part, the Director-General must give POAL such prior notice as appears reasonable and necessary in the circumstances.

**9. Costs**

9.1. POAL must pay the standard Department of Conservation charge-out rates for any staff time and mileage required to monitor compliance with this Approval and to investigate any alleged breaches of the terms and conditions of it.

**10. Variations**

10.1. POAL may apply to the Director-General for variations to this Approval in line with clause 7(2) of Schedule 7 of the Fast-track Approvals Act 2024.