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## MINUTE OF THE PANEL CONVENER

### Request for Section 51 report for POTL - Stella Passage Development [FTAA-2504-1042] Wildlife Approval under the Wildlife Act 1953 (29 May 2025)

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[1] This Minute directs the EPA to obtain advice and a report from the Director-General of Conservation pursuant to section 51 of the Fast-Track Approvals Act 2024 ("the Act"). Associate Convener Jennifer Caldwell is assigned to this application; however, as she is currently on leave, I will manage the project until her return in June.

[2] I have read the following documents:

- (a) Stella Passage Development Fast-track Approvals application
- (b) Appendix 2: Wildlands Assessment of Potential Effects on Birds of the Proposed Stella Passage Development for Port of Tauranga
- (c) Appendix 2a: Avifauna Management Plan for the Port of Tauranga Sand Storage Site, Wharf Extensions, and Wider Port Environs
- (d) Appendix 5: Proposed consent conditions – Regional dredging and Regional Structures
- (e) Appendix 11: Wildlands Wildlife Act Authority Application Assessment

[3] Tarāpunga/red-billed gulls and kororā/blue penguins are absolutely protected wildlife under the Wildlife Act. Under section 63(1)(b) of the Wildlife Act 1953 it is an offence to capture and/or be in possession of absolutely protected wildlife, without appropriate approval.

[4] Both bird species utilise a constructed rock wall located in the footprint of Request for s 51 report for Stella Passage Development [FTAA-2504-1042]

the proposed Mount Maunganui wharf extension. The applicant, Port of Tauranga Ltd, wishes to dismantle the rock wall and encourage the birds to relocate to replacement habitat. A wildlife approval is required to physically remove and relocate any penguins that remain in the rock wall before it is dismantled. Pursuant to section 42(4)(h) of the Act and schedule 7 (Approvals relating to Wildlife Act 1953), the applicant applies for a wildlife approval to capture and possess kororā/blue penguins.

### **Directions**

[5] Pursuant to section 51(1) of the Act, the Director-General of Conservation is to file a report advising how the weighting of matters set out in Schedule 7, clause 3 of the Act should be approached, having regard to relevant senior court decisions. Secondly, comment on the advice note that appears in Appendix 5: Proposed consent conditions – Regional dredging and Regional Structures that reads:

Advice Note: The Marine Mammal Management Plan and the Avifauna Management Plan submitted with the application have been deemed to be certified at the commencement of this consent.

[6] I am not familiar with this deeming technique, but this may be intended to record that a management plan has been filed, and its contents are to be approved by the panel.

[7] Pursuant to section 51(2)(c) of the Act, if the Director-General of Conservation does not agree with, or wishes to amplify, the expert and planning assessment lodged in support of the wildlife approval, it must file a report in accordance with Schedule 7, clause 3.

[8] For the avoidance of doubt, the Director-General of Conservation:

(a) may confirm and append advice previously given in response to a

- panel convener's directions under s 51(1) on another project; and
- (b) does not need to provide an assessment of the approval pursuant to s 51(2)(c) if it concurs with the expert and planning assessments filed by the applicant.

[9] The Director-General of Conservation is to respond to the draft conditions, including any management plan attached to the application, recommending track-changed amendments (if any).

[10] Any advice or report received will be provided by the EPA to the persons listed in section 51(5).

[11] Finally, it would assist the panel convener if the Director-General of Conservation is able to indicate their views on the application at the convener's conference, tentatively scheduled for **12 June 2025 at 10am**.

A handwritten signature in black ink that reads "Jane". The letter "J" is large and stylized, with a long vertical stroke that curves at the bottom. The name "Jane" is written in a cursive script.

Jane Borthwick

Panel convener for the purpose of the Fast-track Approvals Act 2024