



Permission Decision Support Document

Application Details

Decision Maker	Natasha Ryburn, Director - Planning Permissions Land Was Andrew Baucke (9 June 2021 - 16 November 2021)
Applicant	Kennedy Point Marina Development Limited
Permission Number	94649-FAU
Permission Type	Wildlife Act Authorisation

Key Dates

Application received	28 May 2021
Task Assignment assigned	9 June 2021
Context Meeting	10 June 2021
Check-In Meeting	12 July 2021
Decision due	7 July 2021

Document Links

Application	DOC-6674534, monitoring plan DOC-6767752
Task Assignment	DOC-6674556

Resources

Permissions Advisor	With-held from public notification copy
Auckland District Office	With-held from public notification copy
Science and Policy	With-held from public notification copy
Legal	With-held from public notification copy
Operations Director	With-held from public notification copy

Cost Recovery

Function	Time (minutes)	Date complete
Capture	35	28/5/21
Summary	30	31/5/21
Assign	15	4/6/21
Pre-application advice*	N/A	N/A

*Up to four hours of pre-application advice is provided free of charge - record all time in the table, but do not charge the Applicant for the first four hours.

1. Task Register

Tasks as set by the Decision Maker:

No.	Task description	Accountability	Estimated time req'd to complete task (minutes)	Timeframe (date due)	Date complete	Time taken to complete task (minutes)
1	Prepare and attend context meeting	Team			10/6/21	30 mins x 4 people
2	Post context meeting tasks, acknowledgement letter to the Applicant, clarifying term and monitoring, arrange check-in meeting	Permissions Advisor		17/6/21	17/6/21	30 mins
3	Provide Technical advice	Technical Advisor		24/6/21	28/3/2022	2400 mins
4	Undertake iwi consultation with all relevant iwi	Community Ranger	120 mins	8/7/21	9/7/21	180 mins
5	Attend check-in meeting	Team		12/7/21		30 mins x 4
6	Undertake statutory analysis	Permissions Advisor			9/11/21	180 mins
7	Assist media team	Permissions Advisor			15/3/22	120 mins
8	Draft memo to DG	Permissions Advisor			3/11/21	300 mins
9	Context meeting - transfer DM from Andrew to Tash	Team			16/11/21	30 mins x 5

10	Additional iwi consultation with Ngāti Paoa Iwi Trust and Ngāti Paoa Trust Board plus prep	District Office/Operations Director			4/2/22 and 16/2/22	120 mins x 4 Prep: 90 mins
11	Provide district office context	District Office			29/3/22	300 mins
12	Legal review	Legal			16/3/22 and 29/3/22	300 mins
13	Undertake peer review (Permissions)	Permissions			28/3/22	30 mins
14	Finalise application	Permissions			29/3/22	180 mins

2. Purpose

To make a decision on the application.

3. Context

Kennedy Point Marina Development Limited is contracted by Kennedy Point Boatharbour Limited (KPBL) to construct a marina at Kennedy Point, at the mouth to Putiki Bay on the south-western side of Waiheke Island. KPBL holds coastal permit CST60082321-B enabling it to construct the marina. The marina will provide permanent berthage for approximately 180 recreational boats.

The existing seawall and breakwater at Kennedy Point, on to which part of the marina will be attached to enable access to the land, provides habitat for little penguin/ kororā (nesting and moulting).

The Applicants are applying for an authority to capture, handle and relocate kororā encountered during construction on the breakwater to safe areas outside of the construction zone. The area impacted by the earthworks is approximately 5% of the breakwater for 2-3 weeks and is estimated to affect no more than 14 kororā.

Several monitoring measures will be used to assist with informing the likelihood of birds present during construction. If it is determined that a bird may be present, works will proceed with caution under the advice and supervision of (names removed), who have extensive experience handling kororā.

After each boulder is removed, the penguin expert will check to see if a kororā can be seen, and advice on how boulder removal should proceed. When it is safe to do so, the penguin expert shall extract the kororā from the breakwater. Any kororā to be relocated will immediately be placed into a ventilated carrier box and released into the water further along (approximately 150 m) the breakwater, away from the construction works.

The marina is a highly contentious venture and there is strong opposition to it. Initial advice provided to the Applicant was no authority was required as there was not planned to be any direct handling or killing wildlife. However, due to court proceedings, the Applicant has now applied for a permit to move kororā should this be required.

The Applicant provided an updated Monitoring and Management Plan on 15 June 2021. Additional information was sought from the Applicant on 16 June 2021. The Applicant confirmed a term end date of August 2023 and the application indicates no on-going monitoring is required. The final Monitoring and Management Plan is dated 31 August 2021 and has been certified as part of the Resource consent process - DOC-6767752.

Location

The activity has been applied for at Kennedy Point, Waiheke Island. See maps below:



Fig 1. Red point showing proposed marina location

Map 1: Site context

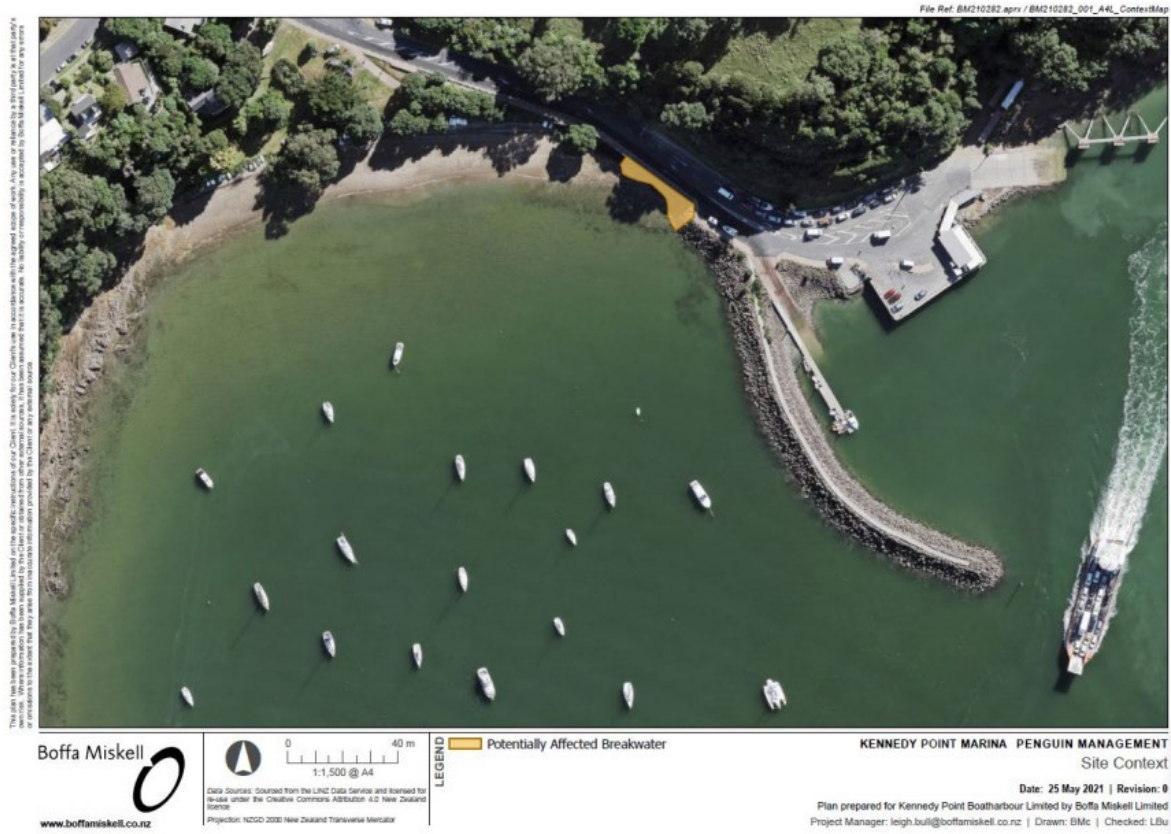


Fig 2. Showing location of affected breakwater

Relevant details about the Applicant

Credit check result	No credit check required
Compliance with previous permission conditions	No previous permission held
Relevant convictions	The Department is not aware of any convictions related to conservation legislation. However, there have been Court proceedings under the Resource Management Act by various groups to prevent the marina works from occurring. These include Save Kennedy Point and Ngāti Paoa Trust Board. Save Kennedy Point have reached settlement with Kennedy Point Boatharbour Limited (the parent company to the Applicant) after various court actions were unsuccessful. Auckland Council and the Department were served with judicial review proceedings and an application for interim orders in relation to the Kennedy point Marina on 19 April 2021 but these proceedings were later abandoned by Save Kennedy Point. Ngāti Paoa have taken Kennedy Point Boatharbour Ltd (KPBL) to court seeking an Interim Enforcement Order to prevent works from occurring on site.

4. Critical Issues

1. How to determine if the Management Plan is fit for purpose
Technical Advisor to provide advice on this
2. How to determine if the handlers are experienced
Considered yes, Technical Advisor to answer in advice
3. How to determine if the term is appropriate
Permissions Advisor to confirm with applicant whether to extend term to August 2023 – yes
4. How to ensure protective benefit
Considered yes, Technical Advisor to answer in advice
5. How to ensure application is processed in time (and what happens if not)
Permissions Advisor to contact applicant and provide up to date timeframe
6. How to understand if long term monitoring is part of the application
Permissions Advisor to confirm with Applicant – no long term monitoring included in this application.
7. How to ensure iwi are consulted

Community Ranger to complete iwi consultation

8. How to understand if Ngāti Paoa Trust Board are to be consulted as part of this application
Yes, to include as part of consultation
9. What if there are conflicting iwi responses
To consider once iwi consultation have been completed

5. Consultation with Treaty Partners

Auckland District Office – Withheld, Community Ranger

SECTION A: Treaty Settlement implications

1. Is any site subject to the application due to be transferred to whānau, hapū, or iwi?

No.

2. Has a Treaty settlement disclosure form been completed for the site? Were any existing encumbrances noted on that form?

N/A

3. Who is leading the negotiations process for DOC in the Policy Negotiations Team?

N/A

4. If your Treaty Partners have settlement legislation in place already, are there any specific post-settlement implementation obligations that relate to the site or proposed activity?

The Ngā Mana Whenua o Tāmaki Makaurau Conservation Relationship Agreement states:

Under Clause 11 that the “Nga Mana Whenua and the Department will identify, and keep under review, categories of statutory authorisations that may have high impact on the spiritual, ancestral, cultural, customary, and historic values of Nga Mana Whenua.”

In practice, all categories of statutory authorisations in Auckland region (excepting some specifically agreed minor activities) are considered to meet the threshold for engagement with mana whenua, due to potential high impacts.

Under Clause 8.4 that “Nga Mana Whenua and the Department will work together on issues relating to conservation of Tikapa Moana, Waitemata and Manukau Harbours and other marine areas (including marine mammal issues) that may be identified within the partnership strategic objectives or business planning discussions.”

Under Clause 18.1 “Both parties recognise that there are wahi tapu and area of significance to iwi/hapu on lands managed under Conservation Legislation”.

Clause 18.2 “Iwi/hapu and the Department share aspirations for protecting wahi tapu, areas of significance and other historic places. The Department and iwi/hapu will work together to conserve, as far as practicable, areas of significance on land managed under Conservation Legislation within the Tamaki Makaurau Region. This will be done according to iwi/hapu tikanga and professional standards for conservation of historic places.”

Clause 18.3 “The Department and iwi/hapu will develop a process for advising one another of areas of significance and wahi tapu. Information relating to areas of significance to iwi/hapu will be treated in strictest confidence by the Department in order to preserve the wahi tapu nature of places, unless otherwise agreed by iwi/hapu.”

Clause 18.4 “The parties will consult each other in relation to recommendations for public conservation lands containing areas of significance that are to be named in the Tamaki Makaurau Region.”

The Ngāti Paoa Deed of Settlement states:

“Ngāti Paoa currently own 2000 acres of farmland north of Te Matuku, as a result of an earlier Treaty settlement process that recognized Ngāti Paoa’s interests at Waiheke.

Te Matuku Bay Scenic Reserve is of historical, spiritual, cultural, traditional and holistic significance for the people of Ngāti Paoa.”

Identified Ngāti Paoa cultural redress sites on Waiheke Island include:

- Te Matakū bay scenic reserve (statutory acknowledgement)
- Matietie Historic reserve (statutory acknowledgement)
- Pokai wawahi ika (vested as recreation reserve)
- Te Waero Awe Houkura (vested as recreation reserve)
- Māwhitipana (Vested as recreation reserve)

Identified Ngāti Maru sites on Waiheke include: Pohutukawa property (Vested as recreation reserve).

These redress sites are not located within the intended activity location and are noted here to provide context of mana whenua interests in the wider Waiheke area.

SECTION B: Marine and Coastal (Takutai Moana) Area Act 2011

- Is the location subject to any applications or approvals for customary marine title or protected marine rights under the Marine and Coastal (Takutai Moana) Act 2011? If yes, identify the Treaty Partners who have either applied for or had approved customary marine title or protected marine rights at the location.

n/a – activity location is above mean high water springs and the Act does not apply

- If yes, has the Applicant provided evidence of consultation with these Treaty Partners? *The Applicant has a requirement to consult with anyone who has an application under the Act that is additional to DOC’s consultation with Treaty Partners. See the Concessions Guidance Document for more information).*

n/a

SECTION C: Whānau, hapū, and iwi consulted

Consultation Summary			
Treaty Partner consulted with	Ngai Tai ki Tamaki	Ngati Paoa Iwi Trust	Ngati Paoa Trust Board
Date consultation was sent out	13/6/2021 DOC-6717446; Reminder sent DOC-6717448 Additional consultation sent 10/9/2021 DOC-6807036	13/6/2021 DOC-6717449; Reminder sent DOC-6717450 Additional consultation sent 10/9/2021 DOC-6807776 Reminder sent 1/10/2021 DOC-6807850 Further Reminder sent 14/10/2021 DOC-6810003	13/6/2021 DOC-6717451; Reminder sent DOC-6717452 Additional consultation sent 10/9/2021 DOC-6807791 Reminder sent 1/10/2021 DOC-6807921
Consultation time frame end date	9/7/2021 Additional consultation end date 8/10/2021	9/7/2021 Additional consultation end date 8/10/2021	9/7/2021 Additional consultation end date 8/10/2021
Consultation method (email, phone, face to face etc)	Email	Email	Email
How many attempts made to consult?	Three	Five	Four

DOC-CM link to any consultation emails received	DOC-6807028	DOC-6818718	DOC-6730971 DOC-6807787 DOC-6807786
Treaty Partner consulted with	Ngati Whanaunga	Ngati Tamaoho	Ngati Maru
Date consultation was sent out	13/6/2021 DOC-6717453; Reminder sent DOC-6717454 Additional consultation sent 10/9/2021 DOC-6807816 Reminder sent 1/10/2021 DOC-6807934	13/6/2021 DOC-6717455; Reminder sent DOC-6717456 Additional consultation sent 10/9/2021 DOC-6807796 Reminder sent 1/10/2021 DOC-6807922	13/6/2021 DOC-6717458; Reminder sent DOC-6717460 Additional consultation sent 10/9/2021 DOC-6807048 Reminder sent 1/10/2021 DOC-6807848
Consultation time frame end date	9/7/2021 Additional consultation end date 8/10/2021	9/7/2021 Additional consultation end date 8/10/2021	9/7/2021 Additional consultation end date 8/10/2021
Consultation method (email, phone, face to face etc)	Email	Email	Email
How many attempts made to consult?	Four	Four	Four
DOC-CM link to any consultation emails received	N/A	N/A	N/A
Treaty Partner consulted with	Te Patukirikiri	Ngati Tamatera	Ngati Te Ata
Date consultation was sent out	13/6/2021 DOC-6717461; Reminder sent DOC-6717462 Additional consultation sent	13/6/2021 DOC-6717463 Additional consultation sent 10/9/2021 DOC-6807802	13/6/2021 DOC-6717466; Reminder sent DOC-6717467 Additional consultation sent

	10/9/2021 DOC-6807823 Reminder sent 1/10/2021 DOC-6807941	Reminder sent 1/10/2021 DOC-6807924	10/9/2021 DOC-6807815 Reminder sent 1/10/2021 DOC-6807929
Consultation time frame end date	9/7/2021 Additional consultation end date 8/10/2021	9/7/2021 Additional consultation end date 8/10/2021	9/7/2021 Additional consultation end date 8/10/2021
Consultation method (email, phone, face to face etc)	Email	Email	Email
How many attempts made to consult?	Four	Four	Four
DOC-CM link to any consultation emails received	N/A	DOC-6717464 DOC-6718212	N/A

Treaty Partner consulted with	Te Runanga o Ngati Whatua	Ngati Whatua Orakei
Date consultation was sent out	13/6/2021 DOC-6717469; Reminder sent DOC-6717470 Additional consultation sent 10/9/2021 DOC-6807829 Reminder sent 1/10/2021 DOC-6807943	13/6/2021 DOC-6717472; Reminder sent DOC-6717474 Additional consultation sent 10/9/2021 DOC-6807819 Reminder sent 1/10/2021 DOC-6807939
Consultation time frame end date	9/7/2021 Additional consultation end date 8/10/2021	9/7/2021 Additional consultation end date 8/10/2021
Consultation method (email, phone, face to face etc)	Email	Email

How many attempts made to consult?	Four	Four
DOC-CM link to any consultation emails received	DOC-6807828	N/A

SECTION D: Consultation with iwi

- Does this application activate any agreed triggers for consultation with Treaty Partners?

Yes

- Did the whānau, hapū, or iwi engage in consultation on this application? If not, ensure attempts to engage are detailed in Section C.

Five iwi responded in total across the two consultation periods conducted in June 2021 and September 2021.

- What is the interest of the whānau, hapū, or iwi in the site or activity?

The activity is proposed to take place within their rohe and/or they have expressed an interest in similar activities through the development of the Tamaki Makaurau Iwi Engagement Framework.

- What are their views on the activity (taking place at the specified site)?

During the first iwi consultation conducted in June 2021, the following responses were received:

Ngāti Tamaterā advised they are opposed to the application.

A phone conversation with (name removed) on behalf of Ngāti Tamaterā advised on the 12 July 2021, that the comments provided were in support of Mana Whenua interests and their stance on the Wildlife Act Application for Kennedy Point.

Ngati Paoa Trust Board advised

“Ngāti Pāoa Trust Board is in the Environment Court over this application, and their management plan which includes the kororā and the breakwater.

Ngāti Pāoa Trust Board as the iwi mandated representative of the people of Ngāti Pāoa, does NOT support this application for a Wildlife Act Authority by KPBL.

Their management plan that accompanies this application is void of tikanga Māori principles

and excludes Ngāti Pāoa as kaitiaki within Pūtiki Bay.

Until the management plan gives due consideration to our tikanga and mātauranga Māori, it is a monocultural interpretation of what is best for the kororā. Furthermore, it does not align with the tikanga Māori protocols of Ngāti Pāoa in relation to how we manage and protect our taonga species.

This opportunity to merge our cultural values with the management plan commissioned by the developers was denied to us. We requested time to put our recommendations forward in a constructive and conciliatory manner.

Ngāti Pāoa does NOT endorse this application for a Wildlife Act Authority by KPBL Ltd.”

Updated documents were provided by the applicant in August 2021, and therefore additional iwi consultation was undertaken in September 2021. Responses received from iwi during this consultation are detailed below:

Ngai Tai ki Tamaki advised that they are “*neither supporting nor opposing this application.*”

Te Runanga o Ngati Whatua advised “*Te Rūnanga o Ngāti Whātua recognises the primary interest of Ngāti Paoa in this area which will restrict any engagement on this matter unless specifically requested by Ngāti Paoa.*”

Ngati Paoa Trust Board provided a letter on the 8th October 2021: DOC-6810044

The letter states the following:

“Tino rangatiratanga is that as Māori we are in charge of our land, our resources, and our aspirations.

Tino rangatiratanga is more closely related to the concept of sovereignty, in that it means that there is no entity superior to the group of people who have it.

For me to enact tino rangatiratanga my concerns must be in response to issues rooted in Te Tiriti.

The principles of Te Tiriti o Waitangi, as articulated by the Courts and the Waitangi Tribunal, provide the framework for how the Crown will meet it’s obligations under Te Tiriti.

The Ngati Paoa Trust Board therefore states Crown must meet its obligations under Te Tiriti and acknowledge Ngati Paoa tino Rangatiratanga as kaitiaki of our taonga kororā at Putiki Bay.

Tino rangatiratanga: *The guarantee of tino rangatiratanga, which provides for Māori self-determination and mana motuhake in the design and delivery of a monitoring plan that minimises the effects to the kororā during construction.*

Equity: *The principle of equity, which requires the Crown to commit to achieving equitable outcomes for Māori and the protection of their taonga kororā.*

Active protection: *The principle of active protection, which requires the Crown to act, to the fullest extent practicable, to achieve equitable outcomes for Māori. This includes ensuring that it, its agents, and its treaty partner are well informed on the extent, and nature, of both Māori outcomes and efforts to achieve Māori protection of its taonga kororā.*

Options: *The principle of options, which requires the Crown to provide for and properly ensure that kaupapa Māori is observed. Furthermore DOC is obliged to ensure that all monitoring plans are provided in a culturally appropriate way that recognises and supports the expression of kaitiakitanga, tikanga and kawa of Paoa.*

Partnership: *The principle of partnership, which requires KPBL to work in partnership with Paoa in the production, design, delivery, and monitoring of our taonga.*

The Ngati Paoa Trust Board commissioned 2 expert reports on the effects to the kororā that contradicts the KPBL monitoring plan and its effect on the kororā.

Ngati Paoa accept those reports as they align more adequately with our aspiration to protect our taonga kororā and keep them from harm as kaitiaki.

Boffa Miskell have a relationship with Council that may relate as a conflict of interest and Ngati Paoa give no weight to their monitoring plan because ultimately it does not consider the tikanga and kawa of Ngati Paoa as kaitiaki.

Boffa Miskell contracts to Council who approves the management plan, which may in itself be enough to portray a conflict of interest.

KPBL's application for a wildlife permit to handle and remove the kororā from their natural habitat does not sit well with Ngati Paoa tikanga, because it is based on a management plan that does not take into account or give effect to the principles of Tiriti o Waitangi.

First and foremost a management plan must take into consideration the tikanga and whanaungatanga of the kaitiaki of the taonga.

The management plan devised by Boffa Miskell does not do that. Why, because it was not constructed in conjunction with kaitiaki, but rather developed on the needs and requirements of the developer. An example of this is the proposal to apply twink to the head of the kororā, which is against our tikanga as the head of our taonga is tapu.

The management plan adopted by KPBL doesn't give a holistic approach to environmental management by focusing on the removal of the kororā rather than providing an optimum habitat for the nesting wildlife and long-term, to encourage the kororā to return to their habitat on the breakwater.

Ngati Paoa requests that DOC rejects the wildlife permit application until the developers accept that the Tiriti o Waitangi gives protection rights to kaitiaki of their taonga and develops a management plan in conjunction with Ngati Paoa Trust Board that reflects the tikanga, rangatiratanga and whanaungatanga that Ngati Paoa has with the kororā.

The management plan also needs to ensure tangata whenua monitoring and handling of kororā is vital in our capacity as kaitiaki of our threatened taonga.

Should DOC not take heed of our objection to non kaitiaki handling the kororā for the making of profit against Ngati Paoa handling the kororā for protective reasons then they will not be giving effect to the Tiriti o Waitangi.

We again reiterate, we are kaitiaki of our taonga kororā, Council and the developers are NOT.

DOC's claim that discussions with Council and the developers will ensure the safety of the kororā, is not acceptable to us as kaitiaki, because of the above.

We hope that the Crown (DOC) will observe the principles of Tiriti o Waitangi in this instance and realise once and for all their obligations to Maori, and respect those obligations."

Ngati Paoa Iwi Trust replied on the 21st October 2021, asking whether the Kororā Management Plan had been sent to Professor [name removed], and if so, had any response been received.

Ngati Paoa Iwi Trust were informed that the Kororā Management Plan had not been sent to Professor [name removed], as the Department does not use [name removed] as a consultant.

(Name removed) stated on the 21st October 2021, that no response had been received from the Ngati Paoa Iwi Trust board members.

- What sort of adverse effects do the whānau, hapū, or iwi believe the activity will have on their interests (at the specified site)?

No further information provided.

- Have the whānau, hapū, or iwi identified any methods to avoid, remedy, or mitigate these effects?

Ngati Paoa specifically oppose using twink on the heads of kororā. The requirement not to mark the heads of korora is recommended as a special condition.

- Summarise any other information provided by the whānau, hapū, or iwi.

No further information was provided.

Additional iwi consultation

The Department undertook further iwi consultation in early 2022 to ensure iwi views were fully understood. An email was sent to all relevant iwi entities (linked here [DOC-6903879](#)), inviting them to an additional hui on 4 February 2022.

Te Rūnanga o Ngāti Whātua responded that they recognise the primary interest of Ngāti Paoa in this area and restrict any engagement on this matter unless specifically requested by Ngāti Paoa. No other iwi responded to the invitation for additional consultation.

The Department met with Ngāti Paoa Iwi Trust on 4 February 2022 and Ngāti Paoa Trust Board on 17 February 2022.

Ngāti Paoa Iwi Trust - notes saved to DOC-6911494

This hui was attended by (name removed) from Ngāti Paoa Iwi Trust. The hui gave an opportunity for both the Department and iwi to discuss their views and rationale behind it. The main points raised by Ngāti Paoa Iwi Trust were:

- A critical issue of resourcing by Ngāti Paoa Iwi Trust to review both the Applicant's resource consent management plan and their own independent reports. They have therefore been unable to provide formal feedback on the application.
- They have concerns over the welfare of kororā, both because of the marina development, alleged breaches of resource consent but also wider issues concerning kororā.
- Ngāti Paoa Iwi Trust see a connection to displacement of kororā to a displacement of their people from Waiheke.
- They are also aware of the strong community concern of the marina and perceived impact on the kororā. They feel the Department is missing in action.
- Ngāti Paoa Iwi Trust are still to meet to discuss the application formally with whanau.

It was suggested by (name removed) (Director of Cultural Awareness and Capability for the Department) and agreed by Ngāti Paoa Iwi Trust at the hui that the Department should consider disturbance from a cultural perspective i.e. both physical and spiritual.

There were no direct outcomes from this hui recommended or discussed to give effect to their concerns with the application.

Ngāti Paoa Trust Board - notes saved to DOC-6925195

This hui was attended by (name removed) and (name removed) from Ngāti Paoa Trust Board. It followed a similar format to the hui with Ngāti Paoa Iwi Trust and was an opportunity to discuss the application and understand the views of both parties. The main points raised by Ngāti Paoa Trust Board were:

- Ngāti Paoa Trust Board have already expressed their position, issues and concerns on the application to the Department via letter.
- They oppose the development of the marina in totality but in this hui their focus is on the absolute protection of the Kororā as a taonga as their right as kaitiaki under the Treaty of Waitangi.
- Object to Kororā being handled, marked or moved at all.
- Understands the Department's statutory obligations but does not recognise their authority to give permission to developer to interfere with Kororā. This is a Ngāti Paoa right under the treaty.
- They are prepared to contend permit via the rule of contra proferentem as applied to the Treaty of Waitangi.
- Ngāti Paoa Trust Board are frustrated with this process, ask the Department to do the correct thing and note they have the support of the community.

Based on the discussion Ngāti Paoa Trust Board objects to the application in full but specifically handling and using twink on the birds.

Analysis of the Principles of the Treaty of Waitangi

Name removed, Senior Permissions Advisor

Section 4 of the Conservation Act 1987 states ‘This Act shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi’.

The key [principles](#) of the Treaty of Waitangi that apply to DOC’s work are:

1. Partnership – mutual good faith and reasonableness: The Crown and Māori must act towards each other reasonably and in good faith;
2. Informed decision-making: Both the Crown and Māori need to be well informed of the other’s interests and views;
3. Active protection: The Crown must actively protect Māori interests retained under the Treaty as part of the promises made in the Treaty for the right to govern;
4. Redress and reconciliation: The Treaty relationship should include processes to address differences of view between the Crown and Māori.

Discussion:

As stated above formal iwi consultation started on 13 June 2021 and closed on 15 October 2021. Responses were received from Te Runanga o Ngati Whatua, Ngāti Tamaterā, Ngai Tai ki Tamaki and Ngāti Paoa Trust Board. Ngāti Paoa Iwi Trust contacted the Department on 21 October requesting further time to provide comments. Te Runanga o Ngati Whatua and Ngāti Tamaterā defer to and support Ngāti Paoa views.

Ngati Paoa Trust Board does not support the application. Little penguins/kororā are considered a taonga species to Ngāti Paoa. Ngati Paoa Trust Board states the Applicant’s Management Plan is void of tikanga Māori principles and excludes Ngāti Pāoa as kaitiaki. Ngati Paoa states “Until the management plan gives due consideration to our tikanga and mātauranga Māori, it is a monocultural interpretation of what is best for the kororā. Furthermore, it does not align with the tikanga Māori protocols of Ngāti Pāoa in relation to how we manage and protect our taonga species.” The Ngati Paoa Trust Board states the “Crown must meet its obligations under Te Tiriti and acknowledge Ngati Paoa tino Rangatiratanga as kaitiaki of our taonga kororā at Putiki Bay.”

Ngati Paoa requests that DOC rejects the wildlife permit application until the developers accept that the Tiriti o Waitangi gives protection rights to kaitiaki of their taonga and develops a management plan in conjunction with Ngati Paoa Trust Board that reflects the tikanga, tino rangatiratanga and whanaungatanga that Ngati Paoa has with the kororā.

Ngāti Paoa concludes “The management plan also needs to ensure tangata whenua monitoring and handling of kororā is vital in our capacity as kaitiaki of our threatened taonga...Should DOC not take heed of our objection to non kaitiaki handling the kororā for the making of profit against Ngati Paoa handling the kororā for protective reasons then they will

not be giving effect to the Tiriti o Waitangi.”

Because of the strong opposition from Ngāti Paoa Trust Board and the lack of formal response from Ngāti Paoa Iwi Trust, the Department offered additional hui with iwi. Additional hui were undertaken via video-conferencing with Ngāti Paoa Iwi Trust and Ngāti Paoa Trust Board. The purpose was to discuss the proposed recommendation and discuss the application from both the Department and iwi perspectives. The hui provided iwi opportunities to discuss their views but did not result in agreement on the way forward.

The views from iwi differ from that which will be recommended for approval and as such an analysis of the principles of the Treaty of Waitangi is required.

The two most relevant principles that apply to the application are ‘informed decision-making’ and ‘active protection.’ These are discussed in more detail below:

Informed decision-making:

Both the Crown and Māori need to be well informed of the other’s interests and views. There has been open communication and consultation on this application. All affected iwi have been given the opportunity to provide comments and timeframes were extended to over four months on request of some iwi groups to allow full consideration of the proposal. Consultation has been by email, phone conversations and video-conferencing. A response has been received from five of the 11 iwi groups. It is noted that Ngāti Paoa Iwi Trust have not yet provided a formal written response, but they have communicated their views verbally. The Department is fully aware of the views of iwi who responded. The comments which have been received have been in an open and constructive manner. As part of informed decision-making, the Department has further discussed the application with Ngāti Paoa Iwi Trust and Ngāti Paoa Trust Board prior to the decision being made in an attempt to understand viewpoints and resolve differences.

Active protection:

The Crown must actively protect Māori interests retained under the Treaty as part of the promises made in the Treaty for the right to govern. The Ngāti Paoa Trust Board consider themselves kaitiaki of the little penguins/kororā. At the Ngāti Paoa Iwi Trust hui it was suggested the Department should consider disturbance to the kororā from a cultural perspective (physical and spiritual). The opportunity for members of Ngāti Paoa Iwi Trust and Ngāti Paoa Trust Board to be present at the site at the start, during and at the end of the construction works to perform cultural/spiritual rituals such as karakia has been offered to iwi. It is considered that this approach goes some way toward actively protecting iwi spiritual connection with the kororā.

Many of the comments received were about wider governance, particularly under the Resource Management Act, of kororā, unrelated to this application. The Ngāti Paoa Trust Board suggested measures which would acknowledge these views. Firstly, they requested the application be declined (requested a right of veto) and that a management plan is developed under which acknowledges their views. The Department cannot require amendments to the

Kororā Construction Monitoring and Management Plan, which forms part of the resource consent granted by Auckland City Council. Any decision to decline the wildlife authority application will not prevent the development from occurring. Under the Whales Case¹ iwi cannot claim a right of veto and this has been later confirmed by the Ngai Tai ki Tamaki supreme court decision².

However, the Department can require a management plan or impose specific conditions under the Wildlife Act authority which can incorporate views of iwi. Any management plan or special conditions should be consistent with the resource consent management plan to have any meaningful effect given the construction of the marina development is already fully consented to under the Resource Management Act. However, other factors, not captured under the resource consent and specific to the Wildlife Act, may be considered.

It has been determined for this application, special conditions can be used to incorporate iwi views and concerns (without requiring a standalone management plan). The Department has only received limited input from iwi but have recommended the following conditions to take into account iwi concerns. The conditions are to: prevent any marking of kororā; allow for observers from Ngāti Paoa Iwi Trust and Ngāti Paoa Trust Board; and for some involvement with the release of kororā where this is safe to do so. This could potentially include opening carrier doors for release or closely observing. For this application it is not suitable for iwi to handle the penguins themselves due to the health and safety considerations at site (an active construction site which has a small land footprint on an existing seawall).

Summary:

In summary, the Principles of the Treaty of Waitangi that are specifically relevant to this application have been given effect to. While the Ngati Paoa Trust Board and Ngāti Paoa Iwi Trust do not support the application, their views (along with the other iwi who provided a response) have been considered and given effect to as far as possible in making the recommendation outlined in this report. The Department has listened to iwi concerns and has considered these alongside other advice received while processing the application. The Department has addressed their concerns to the extent possible by recommending special conditions to take into account their views.

6. Contributions

Technical Advice – (name removed)

¹ *Ngai Tahu Trust Board v Director-General of Conservation* [1995] 3 NZLR 553. CA

² *Ngai Tai Ki Tamaki Tribal Trust v Minister of Conservation* [2018] NZSC 122 [14 December 2018]

I am a Technical Advisor in the Terrestrial Science Unit of the Department of Conservation, a role I have held since 2012. I have held other technical and field roles with the Department since 1987. I hold a Diploma of Parks and Recreation Management from Lincoln University. I am a member of Birds New Zealand.

I have more than 30 years of experience in the research and management of New Zealand penguins, including yellow-eyed, Fiordland crested, Snares crested, erect-crested and kororā (little penguins). I was instrumental in the creation of the Oamaru Blue Penguin Colony and set up the long-term monitoring of the penguin population there to monitor the potential impacts of site development and tourism. I have co-authored publications in peer-reviewed journals reporting on monitoring results. I also developed the nest box widely used around New Zealand to provide supplementary or replacement nest sites.

I have experience in the identification of kororā nests in structures such as rock walls, and in the rescue and rehoming of kororā when construction activities or natural events have threatened or destroyed nest sites.

I am one of the founders of and regular contributors to the biennial Oamaru Penguin Symposium, a forum developed to discuss the research and management of kororā.

The plan

The Applicant provided a draft “Kororā Construction Monitoring & Management Plan” (the Plan) with their application. This document was provided to meet a condition of the Resource Consent of the Auckland Council, and to provide detail on how kororā in the breakwater would be identified and moved with respect to their Wildlife Act application.

It is the Council-certified version of the Plan (dated 31st August 2021) that I have assessed.

Outline of work

The Applicant proposes to place up to 10 piles in a breakwater and rock wall that kororā are known to occupy. Rocks at each pile location will be moved by digger, the pile placed then the rocks returned. The Applicant proposes to search the rocks for kororā within 20m of each pile before and during the work, capturing and moving any kororā found to a safe place. After pile installation, the rock will be replaced in a manner that provides kororā habitat.

The Applicant seeks authority under the Wildlife Act 1953 to catch alive and move any kororā found in the pile sites. Section 53 of the Wildlife Act enables the Director General to grant such an authority subject to conditions.

Kororā monitoring

Monitoring undertaken by the developer in the last year (described in 6.1 of the Plan) has shown the presence of 4 active kororā burrows (having breeding or moulting occurring) within 20m of the proposed pile locations. Two of these are on the breakwater and two under the boardwalk adjacent to the road. Non-breeding birds are also likely to visit the area and may not leave significant sign (e.g., guano). The number of active burrows in the breakwater

reported by the developer is consistent with my own observations of security camera footage, live access to which was provided by the developer.

Before rock disturbance works commence each day, the developer will undertake “site area monitoring” as described in 6.2.2 of the Plan to detect the presence of kororā. This includes a dog and visual check for penguin sign, and burrowscope inspection of all known and potential burrows. In my experience, this is all that can practically be done to detect kororā in the work area.

If active burrows (containing eggs/chicks or moulters) are found within 20m of the pile location, then work is deferred. The likelihood of finding an active burrow is low as the work is scheduled to occur outside of the breeding and moulting seasons.

Rock works

Section 5.1 of the Plan outlines the rock removal and replacement methodology. Rocks will be moved by a claw-equipped digger, operated by an experienced driver and in the presence of a suitably experienced ecologist (SQEP). Rocks will be removed individually, and the site reinspected for penguins before the next rock is moved. This is good practice.

The mechanical removal of rocks in the close proximity of kororā does present some risk, in that undetected birds may be injured by rock movement. The risk is mitigated as much as possible by carrying out the activity in the non-breeding/moulting period, the site area monitoring and reinspection of the work area after each rock is removed.

If removed rocks are stockpiled overnight, they will be inspected for penguin presence before being returned.

Penguin capture

The penguin capture techniques described in 5.1.2 of the Plan (by hand and transferred to a carrier box) are good and minimise risk of injury to both the kororā and the handler.

Marking

Temporary marking using a dab of twink to the head is requested to help detect recaptures. While it is commonly used technique for seabirds and presents no risks to the kororā, the Ngati Paoa Trust Board have objected to the marking on the grounds that the head is tapu.

While other marking techniques are potentially available, marking is not essential to the activity, and I recommend it not be approved.

Release

Captured kororā will be released within 2 hours into an empty rock crevice further down the breakwater. The release area is outside the active construction zone and contains crevices suitable for kororā. Releasing the birds into a crevice minimises the risk of injury by preventing the bird fleeing down the rock wall.

It is not expected that the kororā will take up permanent residence in their release crevice and are likely to return to the vicinity of their original burrow at night or in subsequent days, hence the need for daily inspections at the active construction area.

How to determine if the handlers are suitably experienced

[Name Removed] is a professional ecologist who holds a PhD in Ecology and Biodiversity and completed a Masters of Science in kororā breeding biology. She has extensive experience in searching for, and handling kororā.

[Name removed] is a professional ecologist who completed a Masters of Ecology degree on the post-release survival of oiled kororā. She has extensive experience in searching for and handling kororā.

Both ecologists have previous experience in kororā relocations in similar environments and I have no doubts about their ability to undertake the work safely and effectively.

How to ensure protective benefit

The Court of Appeal in *PauaMac5 Incorporated v Director-General of Conservation* [2018] NZCA 348 [4 September 2018] held that, in order to grant a wildlife authority under s 53, there must be an intent to catch alive [or obtain alive] the wildlife and while authorisations can be granted “for any purpose”, the purpose for catching alive, must be one which is consistent with the wider purpose of the Act, which is protection of wildlife i.e. it must have protective benefits.

In this case, the capture is to enable local relocation to reduce the risk of kororā being crushed by moving rocks or machinery. This is a protective benefit.

Not issuing an authority means the developer will undertake the work in the same manner, but if a penguin is detected it will be passively encouraged to leave the site via the removal of any barriers between the bird and the water. If the bird does not leave, work at that pile site will cease until the next day or until any kororā are out of harm’s way .

The loss of ~4 kororā burrows in the works will be mitigated by the creation of new breeding spaces in the rebuilt sea wall, as well as by the placement of nest boxes under the reconstructed boardwalk. This will increase the number of nest sites available to kororā.



Site plan showing pile locations and recently active kororā burrows

Post construction monitoring

Regular monitoring of penguin presence and breeding activity will continue across the wider construction area until all works are complete (April 2023). This will be sufficient to detect reoccupation of the area.

A post-construction monitoring plan is required by Auckland Council but this has not yet been completed. At the minimum it should include an annual survey of nest numbers. Breeding success monitoring would be ideal, however is difficult to undertake in rock walls, sample size is low and there is no pre-development data with which to compare. It is considered appropriate that post-construction monitoring of kororā forms part of the resource consent conditions given the proposed term of any wildlife authority granted would only be under April 2023. The resource consents have a longer term and is therefore better able to deal with post-construction monitoring requirements.

How to determine if the Management Plan is fit for purpose

The Plan aims to minimise the risk of kororā injury or death during the placement of piles. In my opinion and that of my peers (names removed), both technical advisors with experience similar to or greater than my own), the actions in the plan are sufficient to achieve this. There are no additional actions that we would recommend.

Suggested conditions

- Methods as described in the Auckland Council Certified Kororā Construction Monitoring & Management Plan, dated 31st August 2021.
- That the rock movement works only be carried out in the non-breeding and non-moulting period between April 1st and June 30th.
- DOC to be informed at least 48 hrs ahead of scheduled rock works so that DOC observers can be deployed
- On each day of work requiring rock movement, the work area shall be visually inspected by a suitably experienced ecologist (SQEP) for the presence of kororā, including burrowscope inspection of previously active burrows.
- If an active burrow is detected (viable eggs, chicks or moulting bird), no work is to be carried out within 20m of the active burrow.
- Rocks shall be moved one at a time using a claw-equipped digger in the presence of a SQEP.
- After each rock is moved, the space shall be reinspected for kororā presence by the SQEP before work continues.
- Kororā requiring moving shall be caught by hand by the SQEP and placed in a cloth bag before being transferred to a pet-carrier box for relocation.
- Captured kororā must be released into a suitable crevice in an undisturbed part of the breakwater within 2 hours of capture.
- The number of kororā moved must be reported to local DOC office on day of movement.
- Should any kororā be injured, then the Applicant is required to hold the bird in a pet carrier in a cool place and contact the local DOC office immediately for advice.
- Any kororā mortality observed must be reported to the local DOC office immediately, along with details of the circumstances surrounding the mortality. Photographs of the carcass and location must be taken the carcass retained for examination.

Statutory Analysis: Authorisation under the Wildlife Act 1953

Name removed, Senior Permissions Advisor

Consistency with conservation legislation

Assess the application against the relevant legislation conservation legislation and consider if the activity is consistent with that legislation. If the assessment is that the activity is not consistent with the relevant legislation, or if it is unclear, discuss the reasons for this.

Conservation legislation assessed:

Wildlife Act 1953

Criteria for decision:

- Is the activity consistent with the relevant conservation legislation?

Yes

Discussion:

Section 53(2)(a) & (5) of the Wildlife Act 1953 (“WA”) states:

- (2) The Director-General may from time to time in writing authorise any specified person—
(a) to catch alive or otherwise obtain alive any absolutely protected or partially protected wildlife or any game or any other species of wildlife the taking of which is not for the time being permitted;

and may in any such authority authorise the holder to have any such wildlife or game or eggs or progeny in his or her or its possession for any of the purposes specified in this subsection and may in any such authority authorise the holder to liberate any such wildlife or game or progeny in such area and during such period as may be specified in the authority

- (5) Any authority granted under any of the foregoing provisions of this section may contain such conditions as the Director-General may impose.

As stated by the Technical Advisor, there must be an intent to catch alive wildlife and it must be for any purpose but also have protective benefits.

The Applicant is applying to catch kororā and relocate them further down the break wall to protect this species while they undertake construction works on a small portion of the break wall.

Section 53(2) of the Wildlife Act 1953 allows the Director-General to authorise any specified person to obtain alive any absolutely protected wildlife and may in any such authority have any such wildlife in his or her possession for any purpose approved by the Director-General [emphasis added].

In relation to the first stage of the Pauamac5 test the Applicant is intending to obtain the species alive for the purposes stated above. Therefore, the activity is consistent with the first stage of the test.

In relation to the second stage of the test, the purpose of the activity must be one that is consistent with the wider purpose of the Act, which means that there must be a protective benefit to the species from the activity being carried out. The Technical Advisor has confirmed there is protective benefit to the application as *“In this case, the capture is to enable*

local relocation to reduce the risk of kororā being crushed by moving rocks or machinery. This is a protective benefit.” And “the loss of ~4 kororā burrows in the works will be mitigated by the creation of new breeding spaces in the rebuilt sea wall, as well as by the placement of nest boxes under the reconstructed boardwalk. This will increase the number of nest sites available to kororā.”

The Technical Advisor has also confirmed the handlers are suitably experienced. The handlers *“Both ecologists have previous experience in kororā relocations in similar environments and I have no doubts about their ability to undertake the work safely and effectively.”*

Therefore, the application is consistent with the Wildlife Act 1953.

Wildlife Regulations 1955 clause 38 – marking absolutely protected wildlife

Marking falls under the Wildlife Regulations 1955. Clause 37 of the Regulations defines marking as *“the term mark includes any band, ring, clip, tag, or paint, or any other thing or method affixed or applied to any wildlife for the purpose of distinguishing any wildlife; and marked and marking have corresponding meanings”*.

Under clause 38 *“no person, society, or organisation shall mark any wildlife, other than unprotected wildlife (being wildlife included in [Schedule 5](#) of the Act), except with the prior written authority of the Director-General: provided that a society or organisation so authorised may delegate that authority to members of the society or organisation”*.

No specific criteria exist for the Director-General to consider when authorising an application to mark protected wildlife, and the general purpose of regulation 37 is used as a guide. The purpose for marking under clause 37 is *‘for the purpose of distinguishing any wildlife’*. The Applicant is intending to mark kororā with twink as a method to identify any kororā that may return to the project site after previously been relocated.

The Wildlife Regulations 1955 must be considered in light of section 4 Conservation Act to give effect to the principles of the Treaty of Waitangi. Ngāti Paoa Trust Board have advised that they are opposed to marking heads of kororā. The Technical Advisor has responded to this concern from Ngāti Paoa Trust Board by noting that any marking of the kororā is not essential for the activity and therefore considers it appropriate for no twink or other marking to be used for this activity. Due to the extent of the opposition to the application by Ngāti Paoa Trust Board and Ngāti Paoa Iwi Trust, it is not considered appropriate for any type of marking on kororā as they are a taonga species.

It is recommended marking of kororā under section 38 of the Wildlife Regulations is declined.

Consistency with statutory planning documents

Assess the application against the Conservation General Policy, the General Policy for National Parks (if applicable), all relevant Conservation Management Strategies and Plans,

and any other relevant statutory planning documents. If the assessment is that the activity is not consistent with the relevant statutory planning documents, or it is unclear, discuss the reasons for this.

Statutory planning documents assessed:

Conservation General Policy

Criteria for decision:

- Is the activity consistent with the relevant statutory planning documents including the Conservation General Policy?

Yes

Discussion:

Conservation General Policy 2005

The following sections of the Conservation General Policy are relevant to consider:

Section 2 Treaty of Waitangi Responsibilities:

2 (a) Relationships will be sought and maintained with tangata whenua to enhance conservation. These relationships should be based on mutual good faith, cooperation, and respect.

2 (e) Tangata whenua will be consulted on specific proposals that involve places or resources of spiritual or historical and cultural significance to them.

The Department has consulted with tangata whenua to understand iwi viewpoint on the application. Please refer to the section 4 consideration section above for full discussion on how the Department is meeting its Treaty of Waitangi responsibilities.

Section 4.4 Marine species, habitats and ecosystems

4.4 (f) Marine protected species should be managed for their long-term viability and recovery throughout their natural range.

4.4 (h) Tangata whenua, as kaitiaki, will be:

i) invited to participate in the protection of marine species of cultural importance to them;

4.4 (j) Human interactions with marine mammals and other marine protected species should be managed to avoid or minimise adverse effects on populations and individuals.

These policies identify the importance of marine species and that they should be protected to ensure their viability and recovery. Ngāti Paoa Trust Board and Ngāti Paoa Iwi Trust have

both identified kororā as a taonga and have expressed a desire to exercise katitaki. The Department is recommending special conditions to allow for iwi observers and to assist with the release as far as it is safe to so. Human interactions will be minimal and are only recommended as it is the best interest of the kororā to be removed safely. It is considered the application is consistent with section 4.4 of the Conservation General Policy.

Section 11 ‘Activities requiring specific authorisation (not covered elsewhere)’ states:

Policy 11.1(a) Any application for a concession or other authorisations will comply with, or be consistent with, the objectives of the relevant Act, the statutory purposes for which the place is held, and any conservation management strategy or plan”.

As discussed earlier in this report, this application is consistent with the Wildlife Act 1953. There is no consideration of the statutory purposes for land or the management strategy for the land as the activity is not occurring on public conservation land.

It is considered the application is consistent with the Conservation General Policy 2005.

Auckland Conservation Management Strategy 2014 (Auckland CMS)

The Auckland CMS is relevant to consider generally. Even though Kennedy Point is not on public conservation land, the Auckland CMS provides general guidance to the Department.

Section 4.2 A diverse and rich marine environment under pressure – Te makurutanga o Tangaroa, Te pukukai a Te Manuhauturuki recognises the connection between land and sea around Auckland. The Hauraki Gulf Marine Park Act 2000 recognises the natural and historic features of the Gulf are of national and international importance. Despite a high degree of urbanisation and modification of the coastal environment in the Auckland region, a great deal of its natural character remains. However, some areas are severely degraded with declining water quality and ecological health.

Section 5 covers Treaty of Waitangi partnerships. The Department recognises the roles of tangata whenua as kaitiaki and acknowledges their mana whenua, the special relationship they have with the land and its resources. Objective 5.1.1.1 is to “*maintain and strengthen relationships with tangata whenua to enhance conservation and recognise mana. These relationships should be based on mutual good faith, cooperation and respect*”. Objective 5.1.1.3 is to “*Actively consult and work with tangata whenua, ensuring consultation is early, ongoing, informed and effective.*” As set out in the Treaty of Waitangi section above, the Department acknowledges the view of iwi and has addressed their concerns to the extent possible.

Part Two and Three are not relevant to consider as the application is not on public conservation land.

Purpose for which the land is held

Assess the application against the purpose for which the land is held. If the assessment is that the activity is contrary to the purpose for which the land is held, or it is unclear, discuss the

reasons for this.

Criteria for decision:

- Is the activity consistent with s17U(3) of the Conservation Act? (That is, not contrary to the purpose for which the land is held).

N/A

Discussion:

The activity will not occur on public conservation land so this section is not relevant to the application.

Consistency with Departmental operational policy

Assess the application against any relevant operational policy documents – for example, SOPs. Do not discuss statutory policy documents in this section such as Conservation Management Strategies.

Note that operational policies are not statutory documents, and there is no legal requirement that the application be consistent with operational policy.

Criteria for decision:

- Is the activity consistent with relevant operational policy documents?

N/A

Discussion:

There is no specific Operational Policy for penguins.

7. Proposed Operating Conditions

Conditions

Standard conditions applicable to the proposed activity:

See draft authority saved to DOC-6818892

Special conditions relevant to this application:

1. This Authorisation gives the Authority Holder the right to hold absolutely protected wildlife in accordance with the terms and conditions of the Authorisation, however the wildlife remains the property of the Crown. This includes any dead wildlife, live

wildlife, any parts thereof, any eggs or progeny of the wildlife, genetic material and any replicated genetic material.

2. Unless expressly authorised by the Grantor in writing, the Authority Holder must not donate, sell or otherwise transfer to any third party any wildlife, material, including any genetic material, or any material propagated or cloned from such material, collected under this Authority.
3. The activity of capturing, handling, and relocating kororā must be undertaken in accordance with the Authority Holder's Auckland Council Certified Penguin Management Plan dated August 31st 2021 which is attached in Appendix 1. Any amendments to the August 31 2021 Penguin Management Plan approved by Auckland Council will not apply to or have any effect under this Authorisation unless or until such amendments are approved by the Grantor.
4. The Authority Holder must inform the Department at least 48 hours prior to scheduled rock removal so Departmental observers can attend to ensure kororā are not harmed.
5. The Authority Holder must provide a live-stream (and recording) of the Authorised Activity to the Department of Conservation, Terrestrial Science Unit - Northern Advice Team to monitor the activity.
6. The Authority Holder must advise Ngati Paoa Trust Board and Ngati Paoa Iwi Trust at least 48 hours prior to scheduled rock removal so observers can attend. Contact details can be obtained from the Grantor.
7. The Authority Holder must invite Ngati Paoa Trust Board and Ngati Paoa Iwi Trust representatives to be involved in the release of any kororā, provided it is safe to do so.
8. The Activity must only be carried out in the kororā non-breeding and non-moulting period between April 1st and June 30th.
9. On each day of work requiring rock movement, the work area shall be visually inspected by the Authority Holder for the presence of kororā, including burrowscope inspection of previously active burrows.
10. If an active burrow is detected (viable eggs, chicks or moulting bird), the area around the kororā's nest must be cordoned off and no work is to be carried out within 20m of the active burrow. Temporary signs must also be established to inform the public that a penguin is present and not to be disturbed.
11. Rocks shall be moved one at a time using a claw-equipped digger in the presence of the Authority Holder.
12. After each rock is moved, the space shall be reinspected for kororā presence by the

Authority Holder before work continues.

Capture and Handling of kororā

13. Kororā must only be handled by Authorised Personnel listed in Schedule 1 Clause 3.
14. Kororā can only be captured, handled, and relocated if they are not nesting and/or moulting. Any kororā that is nesting and/or moulting must not be captured, handled, and relocated until the nesting and/or moulting is complete.
15. Kororā shall be caught by hand by the Authorised Personnel and placed in a cloth bag before being transferred to a pet-carrier box for relocation.
16. Captured kororā must be released into a suitable crevice in an undisturbed part of the breakwater within 2 hours of capture.
17. The Authority Holder must keep a record of all kororā encountered, captured and or relocated before or during construction. For kororā which are moved, these records are to be provided to the Grantor on the day of movement. Records must be emailed to Aucklandpermissions@doc.govt.nz and permissionshamilton@doc.govt.nz and include the Authority Number and Authority Holder's name.
18. The Authority Holder must not mark the heads of kororā, apply any other mark or band while undertaking the Activity.

Injury and/or Death of kororā

19. If any kororā are injured as part of the Authorised Activity, the Authority Holder must hold the bird in a pet carrier in a cool place and contact the Auckland Inner Islands District Office immediately for advice.
20. If any kororā mortality is observed, it must be reported to the Auckland Inner Islands District Office immediately. Photographs of the carcass and location must be taken the carcass retained for examination. If any information around the circumstances of the mortality is available, it must be also forwarded.

Monitoring

Monitoring will be undertaken by the Department when any kororā are being handled to ensure compliance with the Authority. To help ensure the safety of Departmental staff, as well as other persons present on the site, it has been determined that it is not appropriate for Departmental staff to physically be on site. However, the Department will require and work with the Applicant to ensure all activities are live-streamed (and recorded) to the Department.

Term

The Applicant has requested the authority until 31 August 2023 as construction is expected to be completed by this date. This term is considered appropriate by the Department. A term of 1

year, 4 months from 1 April 2022 – 31 August 2023 is recommended.

Fees

Removed from public notification copy

8. Decision Making

Recommendations

The Application is consistent with the Wildlife Act 1953 and is supported by the Technical Advisor and Auckland Inner Islands District Office.

The recommendation is that the application be **approved**, subject to stringent conditions and with a provision that the Department will be monitoring the activity onsite (via live stream/recording) to ensure kororā are not harmed. This is considered the best outcome for the kororā as the Department is able to impose conditions to ensure the welfare of the kororā.

Ngāti Paoa Iwi Trust and Ngāti Paoa Trust Board oppose the application and development and consider kororā a taonga species. The Department has provided several opportunities for consultation and understand the views of iwi. While the Department is unable to mitigate the wider concerns raised, some measures have been recommended as special conditions. The Department has explained the recommendation and rationale to Ngāti Paoa Iwi Trust and Ngāti Paoa Trust Board. The Department has incorporated their views as far as practicable. It is not considered appropriate for iwi to directly handle kororā at this location for health and safety reasons, but it is recommended they are involved to the extent possible with any release. The Applicant will be encouraged to contact Ngāti Paoa Iwi Trust and Ngāti Paoa Trust Board to undertake cultural practises such as a karakia prior to works occurring. It is considered the Department has given effect to the principles of the Treaty of Waitangi.

If the application is declined, it would not prevent the development from occurring. This marina development was consented to by the Auckland Council when the resource consent was granted, and this decision to grant was confirmed by the Environment Court. As the development is going ahead, the Department's responsibility is to ensure the protection of the kororā.

The Department did not participate in the resource consent process for the development, and we do not have a formal position on the development itself. The recommendation to approve the application is based solely on considerations required under the Wildlife Act to consider the welfare of the kororā.

Decision: Authorisation under the Wildlife Act 1953

1. Approve the granting of a Wildlife Act Authority to Kennedy Point Marina Development Limited subject to the standard authorisation document and the special conditions listed below:

Approve / ~~Decline~~

Special conditions to be included:

Decision Maker to list the condition numbers to be included, as per section 7 (Proposed Operating Conditions) of this report.



Signed by Natasha Ryburn, Director - Planning Permissions and Land
Pursuant to the delegation dated 9 September 2015

30/03/2022

Date

Decision Maker comments

In making this decision I have considered two key matters, these being the protective benefits for the kororā, and concerns expressed by iwi.

It is my view this authority with the proposed conditions will ensure the estimated 14 kororā that use a small part of the area at certain times (breeding and moulting) are protected pre, during and post construction. It is important to note the marina has been authorised by a resource consent therefore approval of this authorisation is the right outcome for the species as opposed to no permit and therefore no protective management of this taonga species.

It is also my view the concerns and views of iwi have been well considered and are understood and that special conditions have been applied to take account of those matters raised that can be addressed in this wildlife protection authorisation.