



Wildlife Act Authority for wildlife on non-public conservation land

Authorisation Number: 94649-FAU

THIS AUTHORITY is made this 30th day of March 2022

PARTIES:

The Director-General of Conservation and where required the Minister of Conservation (the Grantor)

AND

Kennedy Point Marina Development Limited (the Authority Holder)

BACKGROUND

- A. The Director-General of Conservation is empowered to issue authorisations under the Wildlife Act 1953.
- B. The Authority Holder wishes to exercise the authorisation issued under the Wildlife Act 1953 subject to the terms and conditions of this Authority.

OPERATIVE PARTS

In exercise of the Grantor's powers the Grantor **AUTHORISES** the Authority Holder under Section 53 of the Wildlife Act 1953, subject to the terms and conditions contained in this Authority and its Schedules.

SIGNED on behalf of the Grantor by Natasha Ryburn, Director Planning, Permisisions and Land acting under delegated authority
in the presence of:

Witness Signature

A copy of the Instrument of Delegation may be inspected at the Director-General's office at 18-32 Manners Street, Wellington.

SCHEDULE 1

1.	Authorised activity (including the species, any approved quantities and collection methods). (Schedule 2, clause 2)	<p>a) Activity – to catch alive, have in possession, and liberate absolutely protected wildlife under the Wildlife Act 1953</p> <p>b) Species – Little penguin (<i>Eudyptula minor</i>)</p> <p>c) Quantity – as required</p> <p>d) Method – Penguins will be caught by hand, placed into a ventilated carrier box and immediately released into a crevice further along the breakwater (approximately 150 metres)</p>
2.	The Land (Schedule 2, clause 2)	Kennedy Point Breakwater, Waiheke Island
3.	Personnel authorised to undertake the Authorised Activity (Schedule 2, clause 3)	Removed from public notification copy
4.	Term (Schedule 2, clause 4)	Commencing on and including 1 April 2022 and ending on and including 31 August 2023
5.	Authority Holder's address for notices (Schedule 2, clause 8)	<p>The Authority Holders address in New Zealand is: 5 Auburn Street, Level 1 Takapuna Auckland 0622 New Zealand</p> <p>Phone: removed from public notification copy Email: removed from public notification copy</p>
6.	Grantor's address for notices	<p>The Grantor's address for all correspondence is:</p> <p>Permissions Team Level 4 73 Rostrevor Street Hamilton, 3204</p> <p>Email: permissionshamilton@doc.govt.nz</p>

SCHEDULE 2

STANDARD TERMS AND CONDITIONS OF THE AUTHORITY

1. Interpretation

- 1.1 The Authority Holder is responsible for the acts and omissions of its employees, contractors or, agents. The Authority Holder is liable under this Authority for any breach of the terms of the Authority by its employees, contractors or agents as if the breach had been committed by the Authority Holder.
- 1.2 Where obligations bind more than one person, those obligations bind those persons jointly and separately.

2. What is being authorised?

- 2.1 The Authority Holder is only allowed to carry out the Authorised Activity in the Land described in Schedule 1, Item 2.
- 2.2 The Authority Holder must advise the Department of Conservation's local Operations Manager(s) one week prior to carrying out the Authorised Activity in the District, when the Authority Holder intends to carry out the Authorised Activity.
- 2.3 Any arrangements necessary for access over private land or leased land are the responsibility of the Authority Holder. In granting this authorisation the Grantor does not warrant that such access can be obtained.
- 2.4 The Authority Holder and Authorised Personnel must carry a copy of this Authority with them at all times while carrying out the Authorised Activity.
- 2.5 The Authority Holder may publish authorised research results.
- 2.6 The Authority Holder must immediately notify the Grantor of any taxa found which are new to science. In addition, the Authority Holder must lodge holotype specimens and a voucher specimen of any new taxa with a recognised national collection.

3. Who is authorised?

- 3.1 Only the Authority Holder and the Authorised Personnel described in Schedule 1, Item 3 are authorised to carry out the Authorised Activity, unless otherwise agreed in writing by the Grantor.

4. How long is the Authority for - the Term?

- 4.1 This Authority commences and ends on the dates set out in Schedule 1, Item 4.

5. What are the liabilities?

- 5.1 The Authority Holder agrees to exercise the Authority at the Authority Holder's own risk and releases to the full extent permitted by law the Grantor and the Grantor'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 the Authority Holder's exercise of the Authorised Activity.

5.2 The Authority Holder must indemnify the Grantor against all claims, actions, losses and expenses of any nature which the Grantor may suffer or incur or for which the Grantor may become liable arising from the Authority Holder's exercise of the Authorised Activity.

5.3 This indemnity is to continue after the expiry or termination of this Authority in respect of any acts or omissions occurring or arising before its expiry or termination.

6. What about compliance with legislation and Grantor's notices and directions?

6.1 The Authority Holder must comply with all statutes, bylaws and regulations, and all notices, directions and requisitions of the Grantor and any competent Authority relating to the conduct of the Authorised Activity. Without limitation, this includes the Conservation Act 1987 and the Acts listed in the First Schedule of that Act and all applicable health and safety legislation and regulation.

7. When can the Authority be terminated?

7.1 The Grantor may terminate this Authority at any time in respect of the whole or any part of Authorised Activity if:

- (a) the Authority Holder breaches any of the conditions of this Authority; or
- (b) in the Grantor's opinion, the carrying out of the Authorised Activity causes or is likely to cause any unforeseen or unacceptable effects.

7.2 If the Grantor intends to terminate this Authority in whole or in part, the Grantor must give the Authority Holder such prior notice as, in the sole opinion of the Grantor, appears reasonable and necessary in the circumstances.

8. How are notices sent and when are they received?

8.1 Any notice to be given under this Authority by the Grantor is to be in writing and made by personal delivery, by pre-paid post or email to the Authority Holder at the address, fax number or email address specified in Schedule 1, Item 5. Any such notice is to be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of post, on the 3rd working day after posting;
- (c) in the case of email, on the date receipt of the email is acknowledged by the addressee by return email or otherwise in writing.

8.2 If the Authority Holder's details specified in Schedule 1, Item 5 change then the Authority Holder must notify the Grantor within 5 working days of such change.

9. What about the payment of costs?

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

10. Are there any Special Conditions?

10.1 Special conditions are specified in Schedule 3. If there is a conflict between this Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions will prevail.

11. Can the Authority be varied?

11.1 The Authority Holder may apply to the Grantor for variations to this Authority.

SCHEDULE 3

SPECIAL CONDITIONS

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. 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.