

Independent Review Into Complaints About Kiwi Deaths

Department of Conservation July 2023

David Shanks Independent Reviewer

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1. Introduction

This report provides Te Papa Atawhai, the Department of Conservation, with an independent review into complaints of alleged mishandling and mismanagement of kiwi at Cape Sanctuary (the Sanctuary) on Cape Kidnappers peninsular in Hawke's Bay, and the causes of kiwi deaths over the summer period of 2016/17. The Review considers whether there are systemic failings in the way the Department administers and monitors Wildlife Act authorisations and responds when adverse events are drawn to its attention, and makes findings and recommendations so that the Department's systems and processes can be improved.

2. Summary

1. Under the Terms of Reference (ToR), the purpose of this Review is to:
 - a) investigate the complaints of alleged mishandling and mismanagement of kiwi at Cape Sanctuary, and the causes of kiwi deaths over the summer period of 2016/2017;
 - b) determine whether there are systemic failings in the way DOC administers and monitors Wildlife Act authorisations and responds when adverse events are drawn to its attention; and
 - c) in light of investigating the above, make findings and recommendations so that DOC's systems and processes can be improved.
2. In summary, the Review found the following:
3. Regarding the kiwi deaths and the Sanctuary's practices the Review found:
 - Over the summer season of 2016/17, 25 kiwi at the Sanctuary died. For a variety of reasons discussed in greater detail in the body of the Review, it is not possible to single out a cause of death for most of the kiwi. The Review ultimately finds that the key factors that led to an elevated number of deaths were a particularly dry season coupled with a transition of key staff and a period of inadequate monitoring at a time when monitoring practices needed to be at their best due to the drought.
 - The Sanctuary had a practice of offering 'kiwi tours' to paying visitors. This offered visitors the opportunity to handle kiwi, which the Review found was unlawful and unnecessary handling of kiwi at the Sanctuary over the 2016/17 summer. The Review concluded that while this handling gave rise to legitimate concerns, it did not contribute to the kiwi deaths.
 - In the 2016/17 summer the Sanctuary operated without an Authority to handle North Island brown kiwi. It did not receive notification from DOC that its 2006 Authority had expired, and both the Sanctuary and DOC (particularly its Napier office, which was responsible for monitoring compliance with conditions of Authorities) were confused about the status of the Sanctuary's brown kiwi authorisation until DOC started investigating the issue when the Sanctuary made inquiries about this in late 2016. The Sanctuary took steps to remedy this situation when it became apparent that the Authority had expired, and that handling was not authorised under the Operation Nest Egg (ONE) kiwi conservation programme, as had previously been believed by the Sanctuary and DOC Napier staff. The Sanctuary applied for, and was granted,

- a fresh Authority to handle North Island brown kiwi in 2018 (Original Authority).
- The Sanctuary did not comply with all applicable legal requirements / obligations in relation to the handling and monitoring of kiwi chicks and the reporting of kiwi chick deaths at the Sanctuary in the summer of 2016/2017. This non-compliance was related to confusion around the Authorities in place at the Sanctuary, and in particular a lack of awareness on the part of both the Sanctuary and DOC that the 2006 Authority had expired.
 - With the exception of the (very difficult) 2016/17 summer, the Sanctuary did, and still does, achieve excellent outcomes for kiwi. Ongoing survival rate numbers evidence a focus on kiwi wellbeing and a readiness to invest in specialist expertise to support its kiwi conservation work.
4. In 2019, DOC and the Sanctuary agreed on a variation (2019 Variation) to the Original Authority, in relation to this the Review found:
- The circumstances leading to the 2019 Variation of the Original Authority were marked by confusion and misunderstandings between the Sanctuary and DOC, following the grant of the Original Authority.
 - The difficulties arising for both DOC and the Sanctuary in the period between the granting of the Original Authority and the issue of the 2019 Variation were likely avoidable with better communication by DOC about the effect of the conditions initially imposed, improved engagement on the real issues being raised by the Sanctuary, and better decision-making around when it was necessary and appropriate for DOC to move from fact-finding to regulatory enforcement.
5. The Review found a number of failings in DOC's internal practices and documentation, in particular:
- DOC failed to put in place documentation that would provide both DOC and the Sanctuary with a clear and effective foundation for kiwi care and management, and which would have allowed for proper regulatory oversight by DOC.
 - As a result, DOC did not impose adequate and enforceable handling, reporting and monitoring requirements on the Sanctuary that would enable DOC to intervene and/or take enforcement action in a timely manner if problems were identified.
 - The Review concluded that these issues persist with the little spotted kiwi Authority and the 2019 Variation that remain in effect. This is addressed in the Review's recommendations.
6. Regarding complaints made about DOC's response to concerns raised by various informants about the kiwi deaths:
- The Review found that DOC did not respond in a timely and appropriate manner when valid concerns were raised with the department about kiwi deaths in 2016/17. In addition, the relevant DOC managers who received the complaints did not appear to have any clear, organisational expectations or guidance to help inform their response.
 - The evidence available to the reviewer indicates that issues with the department's response in the present case may be connected with an organisational lack of resourcing, training and prioritisation of timely and effective responses to complaints.

7. Regarding DOC's support to the Minister to assist her in accurately responding to a complainant:
 - DOC did not provide appropriate support to the Minister to assist her in accurately responding to a complainant who communicated concerns around kiwi deaths and handling to her. DOC's advice to the Minister contained a number of errors and in particular it significantly understated the actual numbers of kiwi chicks that had died, with this error being carried through into the Minister's response to the complainant. This would have been highly frustrating for the individual concerned, who had been trying for several months to get a substantive response to the concerns he was raising.
8. Regarding DOC's management of conflict-of-interest matters:
 - In relation to concerns about a possible conflict of interest between the (then) Director-General of DOC (D-G)¹ and the Sanctuary, the review concluded that there is no evidence that the D-G and the Founder of the Sanctuary were close personal friends, or that the D-G sought to directly influence decisions relating to the Sanctuary. However, the D-G and the Founder did have a business relationship, and the regulatory responsibilities that DOC held meant that contacts between the D-G and the Founder needed to be managed and documented carefully.
 - While DOC did appear to have in place adequate policies and requirements in relation to identifying, disclosing and managing conflicts of interest and gifts and hospitality, there is evidence that these policies and expectations were not met in one instance of the D-G accepting, but failing to disclose, hospitality from the Sanctuary in 2017
9. Regarding other relevant DOC systems and processes:
 - The review has identified that inaccurate and misleading statements contained in a 2018 media statement issued by DOC had the effect of dismissing concerns that had been raised with the department, which risked compromising DOC's ability to engage robustly with the issues raised.

3. The review process and acknowledgements

10. The review process was undertaken by the independent reviewer who undertook a desktop exercise reviewing information previously collated by DOC, including material detailed at paragraph 24 of the ToR.
11. In addition to this, and in accordance with paragraph 26 of the ToR, the reviewer undertook interviews or re-interviews with persons considered to have information relevant to the review. A list of interviewees identified by role is at Appendix 2 of this report. Further input was obtained from all of the parties set out in paragraph 27 of the ToR, and the Sanctuary also furnished additional affidavit evidence from some individuals who had not previously been interviewed in relation to these matters.
12. The independent reviewer acknowledges the open, patient and constructive engagement that was provided by all parties engaged with in the course of this review. It was evident that all parties had a genuine commitment to assist the

¹ In this report (excluding Appendix 1) 'D-G' is used to signify the former Director-General of DOC who held the position over most of the relevant periods, while 'Director-General' is used to generally refer to the role or to the current position-holder.

review and had a shared interest in ensuring that any insights and recommendations made were able to advance effective, robust and collaborative wildlife management systems and processes.

13. The patience and willingness of a number of interviewees to be spoken to by the reviewer, and/or to spend significant amounts of their time collating and providing additional evidence and documentation, is particularly appreciated given that many had provided their time previously in the course of earlier reviews or inquiries (in particular the reports referenced in paragraphs 18 and 19 of the ToR), and there was some inevitable duplication in the process of this review.

4. Context

14. DOC is the department having responsibility for the protection and control of wildlife in New Zealand under the Wildlife Act 1953 (the Wildlife Act or Act). Under the Act, all wildlife is absolutely protected unless the Act specifies some other level of protection.² Kiwi are absolutely protected under the Act.
15. The Director-General has power under the Act to issue Authorities to specified persons to obtain live protected wildlife to be held for specific purposes.³ Without an Authority, such activities would be unlawful. Authorities usually include conditions that require reporting on the health (including death) of wildlife to which they apply; and monitoring the wellbeing and safety of protected wildlife. DOC maintains a permissions database and works with sanctuaries to ensure they have the appropriate permissions in place.
16. Private organisations operating wildlife reserves and sanctuaries under appropriate Authorities granted by DOC form a significant part of Aotearoa's wildlife management system. This is the case for the conservation and management of our kiwi population. Without conservation management, fewer than 5% of kiwi chicks on the mainland of New Zealand survive to adulthood, mainly because of predation by stoats and cats in the first six months of life.
17. The Sanctuary, located on Cape Kidnappers peninsula, Hawke's Bay, is one of New Zealand's largest privately owned and managed wildlife sanctuaries. It protects 2,500 hectares via a 10.5-kilometre predator fence.⁴ Several native species have been translocated into the Sanctuary, including little spotted kiwi and Eastern North Island brown kiwi.
18. The Sanctuary became active in kiwi conservation after it engaged with DOC in 2006, expressing its interest in becoming involved in kiwi management and protection under the ONE kiwi conservation programme. In 2006 DOC issued an Authority to a number of sites in Hawke's Bay including the Sanctuary, allowing for brown kiwi chicks to be translocated there. This Authority (the 2006 Authority) had an expiry date of July 2011.
19. From 2007 onwards, the Sanctuary commenced the creching of brown kiwi chicks, which involved releasing kiwi chicks (that had been hand-reared at a captive management facility until 3-4 weeks old) into the Sanctuary's low-predator wild environment and monitoring them with transmitters to measure

² Wildlife Act 1953, s 3.

³ Section 53.

⁴ The predator fence at the Sanctuary is not predator proof, but serves to inhibit predator access, with additional trapping and predator control measures being conducted within the Sanctuary to protect wildlife.

their health and survival outcomes, until they reached a certain size which meant they could be released elsewhere.

20. In 2014, the Sanctuary engaged with DOC on the possibility of expanding its conservation operations to include little spotted kiwi. On 24 June 2014 DOC issued the Sanctuary with an Authority to hold, mark and release little spotted kiwi (the little spotted kiwi Authority). The little spotted kiwi Authority remains in force, expiring on 30 May 2024. The little spotted kiwi at the Sanctuary were originally adult birds kept in a separate enclosure with the aim of establishing breeding pairs. The Sanctuary's little spotted kiwi population now includes adults and offspring (chicks and juveniles).
21. In the summer of 2016/2017, the Sanctuary recorded its highest number of kiwi deaths. As noted in the ToR⁵, some variation between the number of kiwi deaths at kiwi sanctuaries from season to season is to be expected. However survival rates for kiwi at the Sanctuary are usually very good, and the death rate experienced over this period has not been repeated.
22. Between 2016 and 2018 DOC received complaints from several sources about the deaths of kiwi and kiwi handling practices at the Sanctuary.

These alleged that:

- Kiwi were being handled by individuals not trained in kiwi handling as part of a tourism business operation involving the payment of fees in return for access to and handling of kiwi. Such handling was in breach of the *Kiwi Best Practice Manual* and the Act.
 - DOC was aware of the handling of kiwi at the Sanctuary.
 - An authorisation from the Director-General is required to receive, keep, use and handle kiwi and DOC was aware that there was no permit authorising the handling of kiwi at the Sanctuary.
 - The deaths of half of the brown kiwi chicks being creched at the Sanctuary in 2016/2017 season were due to inadequate monitoring by the Sanctuary.
 - The deaths of almost 50% of the little spotted kiwi being held at the Sanctuary were due to a failure to monitor and respond to mortality signals by the Sanctuary.
 - There was a failure by (i) the Sanctuary and/or (ii) DOC to report these kiwi deaths appropriately to DOC and to iwi that had provided the kiwi chicks to the Sanctuary.
23. Subsequently DOC engaged with advice to the Minister when one of the complainants escalated their concerns to her, while also engaging with the need to issue a fresh Authority to the Sanctuary for brown kiwi.⁶ DOC also subsequently received information requests and concerns from the Royal Forest & Bird Society of New Zealand Inc (Forest & Bird).⁷
 24. Following the issue of a fresh Authority for brown kiwi to the Sanctuary in 2018 (the Original Authority), DOC also issued a Breach Notice to the Sanctuary on 29 August 2019, advising that the Sanctuary was in breach of the Original Authority for exposing kiwi chicks to health checks more regularly than permitted by the

⁵ ToR paragraph 6

⁶ ToR paragraphs 8 and 10

⁷ ToR paragraphs 9, 15 and 17

conditions of the Authority.⁸ DOC subsequently withdrew this Breach Notice and apologised to the Sanctuary as discussed in detail below.

25. On 8 November 2019, a meeting took place between DOC and Sanctuary staff which led to the grant of a variation to the Original Authority (2019 Variation). On that date the DOC Operations Manager, Napier District Office, acknowledged to the Sanctuary that DOC had not provided the Sanctuary with clear support tailored to the qualities and environment of the Sanctuary and apologised for the stress this had caused.⁹ The 2019 Variation is still in place and is valid until 19 August 2028.¹⁰
26. Following on from these events, and in response to continued concerns raised with it, DOC commissioned a number of investigations, the results of which the reviewer has not seen due to natural justice concerns raised in respect of these reports. The independent reviewer is not aware of the nature of those concerns, nor of the conclusions of those reports.¹¹ This review has been commissioned to address the substance of the original complaints and rectify the natural justice shortcomings of the previous reports into those issues.

5. Analysis

5.1 What led to kiwi deaths?

22(a) What led to the deaths of brown and little spotted kiwi at the Sanctuary in the summer of 2016/17, including whether a lack of monitoring and response to mortality signals by the Sanctuary caused or contributed to the deaths.

27. Over the summer season of 2016/17 (in this context broadly defined as spanning the period November 2016 to May 2017) some 25 kiwi (18 brown kiwi chicks and 7 little spotted kiwi) died. This represented the highest mortality rate for kiwi ever recorded at the Sanctuary (before or since), with 18 deaths out of 43 brown kiwi chicks and 7 deaths out of 30¹² founder little spotted kiwi.¹³
28. Of the 7 little spotted kiwi that died over this period, 6 decomposed bodies or body parts were recovered in a period around early May 2017, with another little spotted kiwi found in May with a serious leg infection due to a constricted transmitter strap. This kiwi was sent to Massey University's Wildbase centre for treatment but died there in May 2017.¹⁴
29. A report was produced by the Sanctuary on little spotted kiwi management for the 2016/17 year in December 2017. This report noted that 3 of the little spotted kiwi deaths over this period were believed to be caused by stoat predation (on the basis of canine dentition patterns on the skulls). The cause of death could not

⁸ ToR paragraph 12

⁹ ToR paragraph 13.

¹⁰ ToR paragraph 14.

¹¹ ToR paragraphs 18-20.

¹² There were 31 little spotted kiwi in the original founder group provided to the Sanctuary, but one of these was found dead in July 2016.

¹³ An interviewee told the reviewer that they believed that little spotted kiwi mortality may have been higher than this because only male little spotted kiwi were tagged with radio transmitters, meaning that additional female little spotted kiwi may have died over this period and not been found. While acknowledging this may be a possibility, there is no direct evidence of this, and subsequent little spotted kiwi number counts show a strong recovery in little spotted kiwi numbers at the Sanctuary.

¹⁴ Evidence from Sanctuary LSK report Dec 2017 and FLRT 2019 data provided to DOC.

be determined for the other little spotted kiwi remains found.¹⁵ The report noted in relation to this that *"the level of predator control at this site was not to the high standard expected within a site holding a range of critically endangered species and therefore did not provide adequate protection for little spotted kiwi."* The report further stated that *"this situation was rectified immediately"*, detailing extensive new rabbit and predator-control measures put in place at the Sanctuary in mid-2017.

30. Of the 18 brown kiwi that died, 16 chick remains were found at the Sanctuary over the period February 2017 to June 2017. Most of the brown chick remains were found during February and March 2017, after the Sanctuary initiated an extensive search when the first brown kiwi chick was found dead on 13 February. All of the remains found were highly decomposed and no post-mortem examination was able to be undertaken. In most cases there was no evidence of cause of death. In one case the brown kiwi remains were found at the foot of a cliff, potentially indicating a fall. Another brown kiwi chick death was believed to be caused by predation. One brown kiwi chick was never located and was presumed dead. The cause of death is only known for certain for one brown kiwi chick, which was found in May 2017 with a serious foot infection and was sent to Wildbase at Massey, where it was euthanased.
31. Evidence provided to the independent reviewer by the Sanctuary regarding the cause of kiwi deaths over the 2016/17 summer noted that it may not be possible to determine exact causes of death so many years after the event, when cause of death was not able to be ascertained at the time. However the Sanctuary's evidence was that the likely causes of kiwi deaths over this period was drought, together with some degree of predation.
32. The Sanctuary is in an area known to be prone to dry summers, and during the summer of 2016/17 it experienced a drought, with very low rainfall in the early part of the season.¹⁶
33. Very dry conditions can impact kiwi survival rates in several ways. Dry conditions reduce the quantity of invertebrates that kiwi feed on, and the hard ground can make foraging very difficult. This can cause weight loss and loss of condition, and potentially increase susceptibility to disease. At the Sanctuary, dry conditions can also cause the brown kiwi chicks in particular to roam over larger distances in search of food.¹⁷ This can increase their risk of falls and accidents, particularly in a site such as the Sanctuary, which has a number of cliffs and gullies. Furthermore, dry conditions can also contribute to increased pest numbers (such as rabbits) which in turn can attract increased numbers of predators, providing another potential risk factor for kiwi.
34. Evidence provided to the independent reviewer by the Sanctuary noted that the dry conditions over the 2016/17 summer caused the brown kiwi chicks to disperse rapidly throughout the 2500-hectare Sanctuary in search of cooler, wetter areas, particularly ravines and gullies, making it more difficult to find them.
35. The dry conditions at the start of the season appear to have contributed to lower kiwi chick survival rates in other sites, notably at another fenced conservation area

¹⁵ The Dec 2017 LSK report indicates that 5 little spotted kiwi remains were found over the relevant period, but subsequent evidence shows that in fact the remains of 6 little spotted kiwi were found, with the 7th little spotted kiwi being sent to the Wildbase centre.

¹⁶ Niwa records that Napier experienced its 3rd driest January in January 2017 since records began in 1870.

¹⁷ As outlined above, at the Sanctuary, the brown kiwi birds held were chicks, which were released into a larger roaming area than the adult little spotted kiwi, which were kept in a separate fenced area.

in Northern Hawke's Bay which lost 17 out of 31 kiwi chicks over the summer season.

36. In dry seasons, high demands are placed on Sanctuary staff to do all that is possible to protect kiwi chicks from risks such as dehydration, foraging pressure, predators, mishaps and disease. This was acknowledged by the Sanctuary in documentation provided to DOC in 2019 which noted that during drought events in 2012-13 and 2016-17 supplementary feeding of chicks and on occasion providing water is common and during these periods it was noted that "*considerable effort was required by staff to get chicks through to release weight.*"¹⁸
37. It is evident that experienced staff and effective monitoring of chicks, together with good predator control will be particularly important for reducing risks to kiwi at the Sanctuary during droughts.
38. However, at the start of the 2016/17 summer period the Sanctuary had experienced a significant loss of experienced staff. In 2015 the Sanctuary's Ecological Advisor (a very experienced kiwi expert) had left after a decade of developing and implementing species restoration programmes at the Sanctuary. In November 2016 the Sanctuary's manager, who was highly experienced and who had been with the Sanctuary for 10 years, also departed. Other staff and contractors with experience of the Sanctuary's wildlife management systems and environment left in late 2016 and early 2017.
39. This transition of staff at the Sanctuary likely impacted the Sanctuary's predator control and monitoring systems for kiwi from late 2016. As noted above, the Sanctuary's little spotted kiwi 2016/17 report contained comment on the problems with predator control experienced at the Sanctuary over this period, and in addition to this it noted that there had been issues with the transmitter monitoring of little spotted kiwi. With the introduction of little spotted kiwi at the Sanctuary in 2014, the Sanctuary had maintained a practice of monitoring little spotted kiwi fitted with transmitters at least once a week to determine their location and status (the transmitters fitted to little spotted kiwi would issue a 'mortality signal' if the transmitter had not moved for 24 hours, which could indicate that the bird was in trouble or the transmitter had been dropped). The little spotted kiwi 2016/17 report stated that this monitoring became irregular during late 2016 and into early 2017.
40. The Sanctuary also experienced significant problems with its monitoring of brown kiwi chicks over this period. Most of the brown kiwi chicks that were identified as missing by the Sanctuary in February 2017 (and later found dead) had only recently been fitted with transmitters and released into the Sanctuary in November/December 2016 and January 2017. The fact that these birds could not be found in February 2017 indicates that problems with monitoring and tracking arose very quickly, as does the fact that several of the brown kiwi chicks were found in advanced states of decomposition only a couple of months after release.
41. Further evidence on the issue of monitoring brown kiwi chicks at the Sanctuary over this period was provided by a complainant, 'Informant 4', who was involved in the search for lost brown kiwi chicks at the Sanctuary from February 2017 and who had previous experience of kiwi management practice at the Sanctuary under the original manager at the Sanctuary. Informant 4's evidence was that brown kiwi chicks were normally tracked every couple of days at the Sanctuary (by 'pinging' the transmitter) to keep track of their location. In Informant 4's previous experience, if even one brown kiwi chick was missing this was a major

¹⁸ 2019 Sanctuary documentation in support of Authority review.
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issue at the Sanctuary, particularly as if a transmitter stays on a growing kiwi chick for too long it can cause an infection and kill the chick. Losing track of 18 kiwi chicks was unprecedented in his experience. Informant 4's evidence was that he observed that some of the brown kiwi chicks had travelled long distances and into difficult to access areas, and also in his opinion the new staff at the Sanctuary lacked the necessary experience and familiarity with the Sanctuary conditions to be able to keep track of the chicks. About the time he became involved with the search for kiwi in February, the Sanctuary had temporarily suspended kiwi tours, but Informant 4 held concerns that staff time and resources had previously been expended on kiwi tours at the Sanctuary, rather than being prioritised for tracking and monitoring the brown kiwi chicks, and he was similarly concerned about this when kiwi tours resumed (around March 2017).¹⁹

42. The new Sanctuary manager who arrived in January 2017 described the experience arriving during a bad drought mixed with inexperienced staff as having walked into a crisis. Soon after arriving at the Sanctuary, the new manager had concerns that predator trap boxes were not being serviced adequately, and the dry conditions meant that the brown kiwi chicks were travelling large distances to find food, putting them at risk from the steep terrain that exists at the Sanctuary. The new manager soon acted to shut down the kiwi tours at the Sanctuary, as in his view the kiwi tours took too much time and lots of staff resources to do them, and he needed to ensure the kiwi's survivability.²⁰
43. Soon after becoming involved in the search for brown kiwi chicks at the Sanctuary, in March 2017 Informant 4 was working in the area where little spotted kiwi were held, and he decided to try checking little spotted kiwi transmitter signals. He soon detected about 6 little spotted kiwi transmitter 'mortality signals' indicating that the transmitters had not moved for more than 24 hours. Informant 4 ensured that Sanctuary management was informed of this, and continued to raise his concerns subsequently, including at a Sanctuary staff meeting on 17 April 2017, when he says he was told that once the issues with the brown kiwi chicks were resolved the little spotted kiwi would be investigated. Informant 4 decided to search for little spotted kiwi himself, finding 3 dead on 1 May 2017 and another 2 dead on 3 May. Informant 4 was upset and frustrated by this, feeling that if the little spotted kiwi had been checked when he first detected mortality signals in March, the Sanctuary may have had a chance to prevent some of the little spotted kiwi deaths.
44. Accordingly, while it is impossible to determine definitively the cause of death of most of the kiwi lost at the Sanctuary over the summer of 2016/17, the available evidence indicates that some succumbed to predators, while others quite possibly died from falls, infections, dehydration or starvation. It may be noted that all of these factors can result in the death of kiwi at the Sanctuary (and other kiwi reserves in New Zealand) in any given season, but that risks from these factors are elevated during droughts, as occurred during this summer. However the Sanctuary has an established track record of managing such risks to kiwi very effectively over nearly 15 years of caring for kiwi, as evidenced by typically very good to excellent rates of kiwi survival. The key factors leading to the relatively high levels of kiwi deaths in 2016/17 at the Sanctuary was the drought experienced at the time, combined with the loss of experienced staff going into that summer. The transition of staff meant that the Sanctuary experienced

¹⁹ Informant 4 subsequently raised his concerns with DOC, which is discussed further below.

²⁰ The Sanctuary provided evidence that kiwi tours were suspended at the Sanctuary from late February 2017 to mid-March 2017.

problems with its kiwi monitoring, care and predator control systems at a time when the dry, hot conditions placed a critical demand on those systems.

45. While it cannot be concluded that a lack of monitoring and response to mortality signals by the Sanctuary caused any specific kiwi death, it is reasonable to conclude that issues with monitoring and timely response to mortality signals were likely contributing factors in some of the deaths. It is possible that the Sanctuary would have experienced a higher-than-normal rate of kiwi mortality during such a dry summer, even if its systems were operating at its usual high standard. However close, effective monitoring and oversight of kiwi during this period would have placed the Sanctuary in a much better position to be able to intervene and act to prevent some of the deaths.

5.2 Was there unnecessary handling, and did this contribute to deaths?

22(b) Whether there was any unnecessary and/or unlawful handling of kiwi for commercial and tourism purposes at the Sanctuary before or during the summer of 2016/17. If so, did those activities contribute to, or cause, the deaths of the brown or little spotted kiwi at the Sanctuary during the summer of 2016/2017.²¹

46. For part of the summer of 2016/17, the Sanctuary operated 'kiwi tours'- as noted above, the new incoming Sanctuary manager decided to suspend kiwi tours at the Sanctuary for a period in February/March 2017.
47. Kiwi tours at this time were offered to guests at 'the Lodge' which is luxury guest accommodation at the site. Guests of the Lodge were able to pay an additional fee to accompany Sanctuary kiwi handlers on checks on brown kiwi chicks and would have the opportunity to see the kiwi up close and also to hold the birds and be photographed with them. The Sanctuary commenced kiwi tours in the 2009/10 season, and these tours had become steadily more popular over subsequent years.²² The Ecological Advisor to the Sanctuary from 2005-2015 provided evidence of the protocols the Sanctuary had in place to avoid harm to kiwi from having guests accompany Sanctuary staff or contractors for health checks on the chicks. According to these protocols, only brown kiwi chicks scheduled for a health check would be involved in such tours, the numbers of guests were limited to a maximum of 7, and guests were closely supervised when holding kiwi, only holding them when seated on the ground.
48. Kiwi tours provided guests with a unique opportunity to see first-hand the kiwi conservation work undertaken at the Sanctuary, and this opportunity also attracted guests to the Lodge. kiwi tours also generated income which was used to defray the costs of the Sanctuary's kiwi monitoring programme.
49. Kiwi tours took place at the Sanctuary over the summer of 2016/17, until the incoming new Sanctuary manager decided to suspend them in February 2017. There is no record available of the total number of kiwi tours conducted over this period, but the evidence of increasing numbers of kiwi tours occurring over

²¹ Submissions were made to the reviewer that 22(b) of the Terms of Reference required inquiry into evidence of possible unnecessary and/or unlawful handling of kiwi for commercial and tourism purposes at the Sanctuary in periods well before the 2016/17 season, with particular reference to video/photographs of kiwi being used during a wedding event that occurred at the Sanctuary sometime around 2012. The Independent Reviewer considers that the Terms of Reference requires assessment of prior handling that could potentially have contributed to the deaths, and does not encompass handling that may have occurred several years earlier.

²² Evidence provided by the Ecological Advisor to the Sanctuary (2005-15) indicates that the number of kiwi tours at the Sanctuary increased year on year from 2009/10 (57 tours) to 2015/16 (151 tours).

previous years, and the evidence from the new, incoming Sanctuary manager indicate that there would have been a significant number of tours, and that they occupied time and resources of Sanctuary staff until they were suspended.

50. Given the nature of the kiwi tours, and the fees paid by guests to attend them, it is noted that while they had a real wildlife advocacy aspect, for the purposes of this review they can be regarded as being for tourism purposes. It is also reasonable to conclude that during the kiwi tours over the 2016/17 period brown kiwi chicks were handled by Sanctuary staff, and also on at least some occasions were held by guests.
51. Over the 2016/17 period the Sanctuary did not hold a valid Authority allowing it to handle brown kiwi chicks for welfare purposes, as the 2006 Authority had expired in 2011.²³ This effectively made any handling of brown kiwi at the Sanctuary unlawful, which in turn meant that any handling of kiwi during kiwi tours (whether by Sanctuary staff or guests) over this period was unlawful.
52. Nonetheless, there is an important distinction to be made between handling of kiwi in order to monitor their health and provide them with any necessary care, and any holding or handling of kiwi by guests during kiwi tours. Such handling by guests was not necessary to ensure the health and wellbeing of the kiwi involved. Such handling may accordingly be regarded as unnecessary as well as unlawful, and is a feature of kiwi tours that the Sanctuary has subsequently discontinued.
53. Relevant to the question of whether there was unnecessary handling of brown kiwi chicks over the relevant period is the fact that there is evidence suggesting that in late 2016 and early 2017 there was an ongoing demand to deliver kiwi tours at the Sanctuary, at a time when new staff had lost track of a significant number of kiwi chicks early in the season. This meant that there was a smaller number of chicks that could be used for kiwi tours than would normally be the case.
54. While at the Sanctuary in early 2017, Informant 4 grew concerned that the need to provide kiwi tours for guests, together with the relatively low number of brown kiwi chicks whose whereabouts were known by Sanctuary staff, created pressure to conduct additional health checks on those kiwi (with associated kiwi tours). In relation to this, Informant 4 referred to notes he took of contemporaneous Sanctuary Kiwi Tour records which were written on a staff whiteboard over this time. These notes indicate that in some cases there were frequent health checks and kiwi tours involving the same kiwi chick - in one case, the notes indicate that over an 11-day period between 20 and 31 December 2016, one kiwi chick was the subject of a health check/Kiwi Tour on 6 occasions.
55. The Sanctuary does not accept that kiwi chicks were subject to unnecessary health checks to allow the continuance of kiwi tours over this period, and maintains that the chicks were only subject to health checks (and associated kiwi tours) when scheduled to be subject to a necessary health check. It is also noted that there could arise situations where higher frequencies of health checks for individual chicks could be warranted, for example if there was a particular concern or health issue arising.
56. According to the Sanctuary's protocols for kiwi tours, a brown kiwi chick that had a higher than routine number of health checks scheduled for a health/welfare

²³ The confusion on the part of both the Sanctuary and DOC around the required Authority for handling brown kiwi chicks is discussed under part 6.1 below.

reason could also be subject to additional kiwi tours during such checks – depending on the professional judgement of Sanctuary staff.

57. While the evidence around the frequency of (and justification for) kiwi tours at the Sanctuary over the relevant period is disputed, it is evident that there was both unlawful handling of kiwi chicks (as the Sanctuary did not have an Authority to allow it to handle), as well as unnecessary handling (in that all handling by guests in the course of kiwi tours was unnecessary). In addition to this, the circumstances at the Sanctuary in late 2016 and early 2017, with new staff in place dealing with the need to meet an ongoing demand to deliver kiwi tours with a significant number of kiwi chicks lost or inaccessible would likely have put pressure on the Sanctuary's existing protocol that only kiwi chicks scheduled for a health check were to be subject to a kiwi tour. While there is evidence that indicates that some brown kiwi chicks may have been subjected to unnecessary health checks (with associated kiwi tours) as a result, this is disputed by the Sanctuary and there is insufficient evidence to make a determination on this aspect.²⁴
58. In considering whether any of these factors caused or contributed to the deaths of kiwi at the Sanctuary over this period, the most direct harm that might be caused by unnecessary or inexperienced handling would be a physical injury to the chicks. However there is no evidence of or suggestion that any of the brown kiwi chicks that died over this summer had been injured through unnecessary or inexperienced handling.
59. The other potential harm that could come to kiwi from unnecessary or inexperienced handling is stress-induced effects that could manifest in weight loss or other impacts. Informant 4 commented that he held a concern that moving brown kiwi chicks from their chosen area to an area that was better for kiwi tours could raise a risk to their welfare indirectly by causing them to run, making tracking more difficult until they resettled.²⁵
60. While acknowledging that these are genuine concerns, there is no clear evidence supporting a conclusion that stress or other adverse impacts due to unnecessary handling and/or kiwi tours caused or contributed to the deaths of any of the brown kiwi chicks that died. While a complete, detailed record of brown kiwi health checks and kiwi tours over this period is not available, such records as are available do not indicate that any of the kiwi that died had been subject to a high number of health checks and/or kiwi tours. On the contrary, the brown kiwi chicks that died appear to have been lost at an early stage, and not subject to health checks or kiwi tours at all. The brown kiwi chicks whose location was known by the Sanctuary (and which were used for kiwi tours) appear to have survived.
61. Finally, the other possible impact that kiwi tours might have had in relation to the death of kiwi at the Sanctuary over this period was that noted previously, namely that the delivery of kiwi tours may have consumed staff time that would have been better utilised in finding and monitoring kiwi. This consideration appears to

²⁴ Several submissions were made to the Independent Reviewer that the evidence available was sufficient for the Independent Reviewer to conclude that kiwi chicks had in fact been subject to unnecessary health checks as a pretext to facilitate kiwi tours. However the Sanctuary is emphatic that this did not occur and it is noted that there could have been a number of factors underlying the decisions around health checks and tours. The potential for kiwi handling decisions to be influenced by demand to deliver kiwi tours is a concern which has been factored into the recommendations made by the Independent Reviewer.

²⁵ The Sanctuary disputes that Brown kiwi chicks were moved from their chosen area to an area that was better for kiwi tours and says that chicks that were not thriving were shifted to wet accessible gullies for ease of monitoring and daily feeding when required.

have informed the new Sanctuary manager's decision to suspend kiwi tours in February 2017, shortly after his arrival there.

62. While it is possible that an earlier decision to suspend kiwi tours and dedicate staff to finding and monitoring kiwi might have led to a different outcome for some of the kiwi that died, there is insufficient evidence to conclude that this would have been the case. It is relevant to note that the Sanctuary had successfully balanced its time and resources in previous seasons (including dry seasons) to deliver kiwi tours, as well as monitoring and managing kiwi successfully.
63. Accordingly, while it is found that there was unlawful and unnecessary handling of kiwi at the Sanctuary over the 2016/17 summer, and this handling gives rise to legitimate concerns, it cannot be concluded that such handling directly contributed to kiwi deaths. As set out above, the main factors in the deaths of kiwi chicks over this time appear to have been the combined effects of a very dry start of the season, together with a loss of experienced staff, which in turn led to a period of inadequate monitoring and pest control measures – just at the point that these measures needed to be at their most effective.

5.3 Did the Sanctuary comply with all legal requirements relating to handling/monitoring/reporting deaths?

22(c) Whether the Sanctuary complied with all applicable legal requirements / obligations in relation to the handling and monitoring of kiwi chicks, as well as the reporting of kiwi chick deaths at the Sanctuary in the summer of 2016/2017.

64. The relevant legal requirements imposed on reserves such as the Sanctuary which hold and manage protected wildlife such as kiwi are contained in the Wildlife Act 1953 ('the Act'). The Act focuses on protecting and controlling wildlife and game. Anyone wishing to catch, hold and deal with protected wildlife such as kiwi must have a permit or Authority to do so issued by DOC. The Act sets out high-level requirements for such activity, but the legal framework set out in the Act anticipates that detailed conditions and requirements applying in any particular case will be contained in the relevant Authority.²⁶ Possessing and handling kiwi without an Authority is unlawful under the Act.²⁷
65. During the summer of 2016/17 the 2006 Authority that DOC had granted to the Sanctuary had expired (in 2011). Accordingly, the Sanctuary's possession and handling of brown kiwi (whether as part of normal health checks or in the conduct of kiwi tours) over the period from August 2011 until it received a fresh authorisation for brown kiwi from DOC in August 2018 was in breach of the Act.²⁸
66. The Sanctuary does not appear to have advised DOC of the deaths of brown kiwi chicks over the 2016/17 summer until early 2018 (when confirmation of these deaths was provided as part of the Sanctuary's response to DOC regarding complaints that had been raised with the Minister). This was not a breach of any

²⁶ See generally section 53 Wildlife Act 1953

²⁷ See sections 63 and 67A of the Act. The Independent Reviewer also considered a submission that the relevant provisions of the Animal Welfare Act 1999 applied in these circumstances so as to oblige the Sanctuary to comply with Kiwi Best Practice Manual requirements even in the absence of an Authority. The Independent Reviewer considers that the Sanctuary did hold general obligations to the kiwi in their care under the Animal Welfare Act but that it is not evident that those obligations have the effect proposed in this submission. The key legal obligations to be assessed here in the Independent Reviewer's view are contained in the Wildlife Act (and associated Authorities).

²⁸ The circumstances of the expiry of the brown kiwi Authority and the reasons why it was not renewed are discussed in detail below.

Authority condition however, as no Authority was in place. Nor was the Sanctuary in breach of the Act by not informing DOC of the deaths at the time. The Act does not contain a general duty to report such deaths in the absence of an Authority.

67. The Sanctuary did hold an Authority for little spotted kiwi over the summer of 2016/17. DOC granted the Sanctuary a separate Authority to hold little spotted kiwi in June 2014, which remains in effect (expiring May 2024).²⁹ The little spotted kiwi Authority contains specific reporting and handling conditions for little spotted kiwi. In particular, the little spotted kiwi Authority requires the Sanctuary to handle little spotted kiwi using the methods identified in the Kiwi Best Practice Manual³⁰ and contains particular specification on frequency of handling of little spotted kiwi, stating that *"birds shall be caught, checked and weighed after 3 months to determine how they are faring, they shall then be left undisturbed for 9 months if all continues to appear well"*.³¹ This Authority also requires the Sanctuary to deliver dead little spotted kiwi to Massey University, and inform DOC of little spotted kiwi deaths to allow the parties *"to discuss whether it is necessary to halt all further handling, transfers or other management activities until full investigations of death(s) occur"*.³²
68. The little spotted kiwi Authority did not contain specific conditions regarding the transmitter monitoring of these kiwi, and the Sanctuary appears to have developed its own practice in relation to this, so no legal or Authority compliance issues arise in relation to this aspect.
69. The question of compliance with applicable conditions does arise in relation to the treatment of dead little spotted kiwi and reporting of deaths, however. While one little spotted kiwi found with a badly infected leg in May 2017 was delivered to Massey University, other little spotted kiwi remains were not sent there. This is potentially a breach of special condition 6 of the little spotted kiwi Authority by the Sanctuary, which required the Sanctuary to send little spotted kiwi bodies to Massey University for necropsy. However, it could also reasonably be argued that this condition only properly applied to kiwi bodies found that could be subject to a proper necropsy, not highly decomposed bodies or partial remains (as was the case for most of the little spotted kiwi remains found). Given the available evidence as to the state of little spotted kiwi remains recovered, on balance the failure to send them to Massey is likely not a breach of the little spotted kiwi Authority condition.
70. The little spotted kiwi Authority also required the Sanctuary to inform DOC of any deaths of little spotted kiwi. There is no time-frame specified in the little spotted kiwi Authority for the Sanctuary to inform DOC of little spotted kiwi deaths, however this condition also references a discussion on whether management activities be halted pending a full investigation of the death(s). It is reasonable therefore to read this condition as requiring the Sanctuary to inform DOC of little spotted kiwi deaths promptly, and certainly within a timeframe that would make such a discussion useful. DOC was informed of the little spotted kiwi deaths when the Sanctuary provided DOC with a copy of its 2016/17 little spotted kiwi report in early December 2017, some 7 months after remains were found. Therefore, while the Sanctuary did ultimately comply with the Authority condition to notify DOC of the little spotted kiwi deaths, on balance the significant delay before it did so

²⁹ Permit 38883.

³⁰ Permit 3883 Schedule 3 cl.20.

³¹ Permit 3883 Schedule 3 cl. 21.

³² Permit 3883 Schedule 3 cl. 6(c).

would likely be regarded as amounting to a breach of this little spotted kiwi Authority condition.

71. One of the little spotted kiwi died having been found with a serious leg infection due to a constricted transmitter strap. The conditions of the little spotted kiwi Authority required the Sanctuary to provide a full report of the details of any injury caused by a transmitter or band to DOC within one month of observing damage.³³ No such report was provided by the Sanctuary to DOC which is a breach of this little spotted kiwi Authority condition.³⁴
72. It is noted that the reasons for the delay in reporting little spotted kiwi deaths to DOC appear to be connected with the reasons why the Sanctuary did not realise that it did not have a valid Authority for brown kiwi – there was profound confusion around the relevant Authorities in place, and their requirements. This confusion existed both within the Sanctuary and within DOC. The former manager at the Sanctuary (who left in November 2016) provided evidence that she would routinely inform the local DOC office of kiwi deaths at the Sanctuary, and for the most part this appears to have been conversational updates, facilitated by the close relationship that manager had with key staff at the local office.
73. The incoming manager at the Sanctuary, who arrived in January 2017, described the difficulties he faced in coming to grips with the Authorities applying to kiwi at the Sanctuary, and does not appear to have realised that the little spotted kiwi Authority had a deaths-notification condition. This and other evidence available indicates that the transition in staff at the Sanctuary over this period contributed to an interruption in discussions and notifications between the Sanctuary and DOC over the critical 2016/17 period.
74. For completeness, it may be noted that on 29 August 2019, following site audit checks of the Sanctuary, DOC issued a breach letter (the Breach Notice) to the Sanctuary advising that the Sanctuary was in breach of the Original Authority (issued by DOC to cover the Sanctuary's brown kiwi activities in August 2018) for exposing brown kiwi chicks to health checks more regularly than permitted by the conditions of the Authority.³⁵ The Breach Notice was subsequently withdrawn by DOC and DOC apologised to the Sanctuary.³⁶ The circumstances surrounding these events is discussed in detail below. It is sufficient to note at this stage that while the Sanctuary was likely technically in breach of the conditions imposed on health-check frequency in the Original Authority at this time, this breach was substantially caused or contributed to by the ambiguity of the relevant conditions, and confusion between DOC and the Sanctuary as to what was expected of the Sanctuary in relation to them.
75. Accordingly, the Sanctuary did not comply with all applicable legal requirements / obligations in relation to the handling and monitoring of kiwi chicks and the reporting of kiwi chick deaths at the Sanctuary in the summer of 2016/2017. This non-compliance is related to confusion around the Authorities in place at the Sanctuary, and in particular a lack of awareness on the part of both the Sanctuary and DOC that the 2006 Authority had expired. The implications of this and recommendations to address these issues are discussed further below.

³³ Little spotted kiwi Authority Schedule 3 para 30.

³⁴ The little spotted kiwi Authority contains a further requirement that any injuries or deaths resulting from implementation of banding of birds is to be reported within 48 hours. 'Implementation of banding' in this context appears to relate to the actual attachment (or removal) of bands (as distinct from transmitters).

³⁵ ToR paragraph 12.

³⁶ ToR paragraph 13.

5.4 Did the Department provide appropriate support to the Minister to assist her in accurately responding to the complainant?

Paragraph 8 ToR: In February 2018, one of the complainants escalated their concerns to the Minister of Conservation about the lack of, or any, progress by DOC in investigating the complaints previously made. In responding to the complaint, the Minister's response referred to the deaths of 9 little spotted kiwi and made no reference to the deaths of brown kiwi. Poor process in dealing with this complaint led DOC to be found to have breached the Protected Disclosures Act 2000 and the Privacy Act 1993 and resulted in the Minister's response to the Complainant being inaccurate.

22(d) Regarding paragraph 8 above, did the Department provide appropriate support to the Minister to assist her in accurately responding to the complainant?

76. On 14 February 2018, frustrated by the apparent lack of progress by DOC in responding to the issues he had raised previously, the complainant referred to in paragraph 8 of the ToR (who is referred to as Informant 4 in this report) wrote to the Minister of Conservation at the time ('the Minister') outlining his concerns, including concerns around the deaths of kiwi chicks at the Sanctuary, the use of kiwi chicks for commercial tourism purposes, and the lack of any Authority held by the Sanctuary to authorise such activity. The letter from Informant 4 to the Minister raised significant concerns that merited swift, accurate and comprehensive advice from DOC in order to inform the Minister's reply.
77. In response, DOC carried out internal inquiries and also engaged with the Sanctuary to inform its response. As is noted at paragraph 8 of the ToR, poor process in dealing with this complaint led DOC to be found to have breached the Protected Disclosures Act 2000 and the Privacy Act 1993.³⁷
78. On 10 April 2018 DOC provided the Minister with a memo providing background and context for the Minister's reply to Informant 4. This memo acknowledged the loss of kiwi chicks, but stated that there had been 9 kiwi lost at the Sanctuary since 33 birds were released there in 2014. This was not correct, and the DOC memo only referenced the little spotted kiwi deaths (and little spotted kiwi released) that had been set out in the Sanctuary's 2016/17 little spotted kiwi report. However, at this time officials within DOC knew about the deaths of brown kiwi chicks at the Sanctuary over the relevant period. Informant 4 had previously told DOC staff about the deaths of brown kiwi, and the Sanctuary had also recently confirmed to DOC (when responding to DOC queries about the complaint to the Minister) that brown kiwi chicks had died as well as little spotted kiwi. By this time the Forest Lifeorce Restoration Trust (which was involved in kiwi conservation work at the Sanctuary) had also published an annual report which referenced the deaths of brown kiwi chicks at the Sanctuary.³⁸
79. The reference to only little spotted kiwi deaths at the Sanctuary was a significant error, and would have likely misled the Minister into thinking that Informant 4's concerns were overstated.
80. DOC's response to the Minister was inaccurate and potentially misleading in other respects. For example, DOC's April 2018 memo referenced the fact that Informant 4 had met with the Hawke's Bay Operations Manager to raise his concerns directly

³⁷ The independent review that found those breaches to have occurred has not been made available to the Reviewer due to natural justice considerations, and this review does not engage with those aspects of DOC's process.

³⁸ Forest Lifeorce Restoration Trust 2016/17 Annual report, published February 2018.

and that "*[t]he Hawke's Bay district office have investigated his concerns, and the actions they have taken as a result are described below.*" This comment could likely be read as implying that there had been a substantive and concluded investigation into Informant 4's concerns, whereas this was not the case (as evidenced by DOC's basic error around the number of kiwi that had died).³⁹

81. In the April 2018 memo DOC also advised the Minister that DOC was satisfied that improvements made by the Sanctuary meant that best-practice systems and processes were in place at the Sanctuary. This was inaccurate (or at best overstated), as while as at this time DOC had received some information from the Sanctuary about improvements, the reality was that DOC was continuing to engage with the Sanctuary and finding out more about the detail of the systems and processes operating there.
82. DOC further advised the Minister that the Sanctuary did not have an Authority to hold kiwi. This was misleading to the extent that it further confused the situation with respect to brown kiwi and little spotted kiwi – the Sanctuary did hold a little spotted kiwi Authority.
83. While not recorded in the April 2018 memo, DOC appears to have provided further advice to the Minister (possibly verbal) that led her to respond to Informant 4's concerns around whether relevant iwi had been informed of matters, stating that DOC was actively involved in confirming that consultation with relevant iwi is thorough and ongoing. There appears to be no evidence or documentation available to support that statement.
84. Accordingly it is concluded that DOC did not provide appropriate support to the Minister to assist her in accurately responding to Informant 4's letter. A key responsibility for Departments and Ministries in providing advice and support to Ministers in situations such as this is to be informative and accurate. DOC's advice to the Minister contained a number of errors and in particular it significantly understated the actual numbers of kiwi dead, with this error being carried through into the Minister's response to Informant 4. This would have been highly frustrating for Informant 4, who (as is discussed below) had by this stage been trying for several months to get a substantive response to the concerns he was raising.

5.5 Events leading to the 2019 Variation

22(e) What were the circumstances leading to the issuing of the 2019 Variation?

85. As is set out in the ToR, the 2019 Variation was issued by DOC to the Sanctuary in November 2019, and was a variation to the Original Authority that had been issued by DOC to the Sanctuary in August 2018 to cover the Sanctuary's holding and management of brown kiwi. The 2019 Variation remains in effect, expiring in August 2028.⁴⁰
86. In order to capture the relevant context of the issue of the 2019 Variation, it is necessary to also cover the relevant circumstances leading to the Original Authority.
87. In October 2016 the then Sanctuary manager emailed DOC at the Napier District Office, advising that she was checking on the status of the Sanctuary's

³⁹ Informant 4 advises that in contrast to what was stated in the April 2018 memo, he met with the Hawke's Bay Operations Manager only once (not twice). The issues around DOC's response to concerns raised by Informant 4 and others are discussed further below.

⁴⁰ ToR paragraphs 10 – 14.

authorisation for the brown kiwi creching activities the Sanctuary had been undertaking under the ONE programme since 2007, saying that she assumed that the Sanctuary was operating under the 'blanket ONE permit'.⁴¹

88. In following up on this inquiry from the Sanctuary, in December 2016 DOC staff at the Napier District Office located the 2006 Authority and realised that it had expired. After receiving a further enquiry from the Sanctuary, DOC wrote to the Sanctuary in January 2017 advising it that a new Authority for brown kiwi was required.
89. In July 2017 DOC followed up with the Sanctuary on the need for the Sanctuary to apply for a fresh brown kiwi Authority, noting that DOC's permissions database is set up to issue reminders to Authority holders when their Authorities are due to expire, but that many Hawke's Bay Authorities did not seem to have been transitioned to the new system. DOC also provided the Sanctuary with the necessary forms to make an application for a new Authority, noting that *"technically it is the permittee's responsibility to ensure they have all the permits required and are up to date but we are here to help."*
90. In September 2017 there were further exchanges on this matter, with the Sanctuary making inquiries of the DOC Permissions team and also updating the DOC Napier District Office on progress. In February 2018 the Sanctuary provided DOC with its application for the new brown kiwi Authority.
91. There followed some confusion around the Sanctuary's application at the DOC end – the application was temporarily lost in DOC's systems, and on 26 March 2018 DOC advised the Sanctuary that they could continue with kiwi tours while DOC arranged a temporary Authority – however DOC subsequently realised that it had no ability to issue a temporary Authority. DOC also went back and requested that the Sanctuary resubmit its Authority application to list all the kiwi activities being undertaken at the Sanctuary so that they could be covered in one Authority. The Sanctuary resubmitted its application for a brown kiwi Authority on 21 May 2018.
92. On 31 May 2018 DOC produced an internal 'Task Assignment' document recording consideration of the Sanctuary's application for the Authority. This document noted concerns around the level of health checking and handling of brown kiwi chicks at the Sanctuary, and records a recommendation that DOC develop a monitoring plan, for agreement by both parties, that could be changed on review after each season, allowing flexibility and learning to be incorporated into it.
93. In early August 2018 the Sanctuary followed up with DOC, expressing frustration at the delay in responding to the application for an Authority that had originally been provided to DOC in February. DOC subsequently granted the Sanctuary with the Original Authority for brown kiwi in August 2018, with a term of 10 years. The Original Authority did not contain a condition providing for a flexible monitoring plan as suggested in the May 2018 Task Assignment, but it did contain a number of detailed special conditions, including a requirement that the Sanctuary handle and monitor brown kiwi in accordance with practice specified in the Kiwi Best Practice Manual (the Manual),⁴² an obligation to follow the Advocacy Guidelines

⁴¹ The circumstances of, and confusion around the ONE Permit that had been produced by DOC is discussed further below.

⁴² Original Authority Schedule 3 Condition 1.

contained in the Manual,⁴³ as well as a condition specifying the frequency of health checks on kiwi chicks at the Sanctuary.⁴⁴

94. At the same time that it was finalising the Original Authority for the Sanctuary, DOC was also dealing with media OIA requests relating to kiwi deaths at the Sanctuary. Following the delivery of responses to these enquiries, a news media report was published on 1 October 2018, reporting in part that "*It/the country's largest privately-owned conservation project has been allowed to show off kiwi to wealthy tourists without a permit, despite welfare concerns about the birds.*"⁴⁵ The report also referenced the video that had been posted by Sir Paul McCartney of him holding a kiwi chick at the Sanctuary in December 2017.
95. In response to the media reports, DOC issued a media release on 3 October 2018,⁴⁶ which included statements that:
- *DOC was confident that kiwi handling practices at the Sanctuary are of a very high standard.*
 - *DOC had been working closely on a programme of education in kiwi management with the Sanctuary since February 2018.*
 - *Claims that kiwi interaction was guided by convenience rather than health requirements of the birds, that paying kiwi tour guests took precedence over kiwi management, and kiwi died as a result of neglect are unfounded and based on opinion rather than evidence.*
 - *All permits have a standard condition that Kiwi Best Practice must be upheld, otherwise they will be in breach of their permit.*
 - *There are specific frequencies for welfare checks stated, and permit holders are not allowed to exceed these.*
 - *Kiwi permits are monitored as part of each district's compliance plan.*
 - *DOC has been working with the Sanctuary on their permit since February 2018. While the formal part of the permit has only just come through recently, the local office was comfortable to work through the process of consolidating the various kiwi permits for the Sanctuary, hence why it took longer.*
 - *In relation to Sir Paul's handling of the kiwi chick while the handling of the kiwi at Cape Sanctuary was not permitted at the time the picture was taken, it is now.*⁴⁷
96. Despite the statement issued by DOC, the detail of the operation of the Original Authority and in particular the detail of the requirements around frequency of welfare checks on kiwi chicks was not at all clear between DOC and the Sanctuary at this point. In the Sanctuary's application material provided to DOC in May 2018, the Sanctuary had stated that it was proposed that the Sanctuary operate "*chick and juvenile advocacy tours undertaken during health screening as outlined within the kiwi best practice manual. Refer attached Cape Sanctuary Kiwi SOP.*" The Sanctuary Kiwi Standard Operating Procedure (KSOP) that was attached provided extensive detail around proposed processes for monitoring and caring

⁴³ Original Authority Schedule 3 Condition 10.

⁴⁴ Original Authority Schedule 3 Condition 8.

⁴⁵ <https://www.rnz.co.nz/news/national/367629/kiwi-birds-died-from-neglect-at-cape-sanctuary-in-hawke-s-bay-report>.

⁴⁶ <https://www.doc.govt.nz/news/media-releases/2018/doc-rejects-claim-of-kiwi-neglect-at-cape-sanctuary/>.

⁴⁷ As discussed in section 5.2 below, handling of kiwi by guests attending kiwi tours was not in fact permitted at this time.

for kiwi chicks. For example, the KSOP specified that chicks within the Sanctuary's enclosed creches would receive a physical health check every 2-5 days. After 7 days in the creche (and having shown suitable weight gain), chicks would be released into the larger (2,500 ha) Sanctuary habitat. Chicks would then have a physical health check 4 days post-release, and then every 7-10 days until attaining 700 grams in weight, when health checks would occur every 15-20 days (unless there were indications of weight loss).

97. The application material provided by the Sanctuary had also contained information around the kiwi tours operating at the Sanctuary, noting that *"these tours are non-invasive for kiwi and are undertaken at the same time a physical health check is undertaken on kiwi chicks therefore advocacy tours are not a specific or intrusive event purely for the pleasure of Cape Lodge guests."*
98. However both the frequency of health-checking of brown kiwi chicks, and the proposal that brown kiwi under the age of six months could be subject to kiwi tours set out in the KSOP were at odds with the requirements contained in the Original Authority. The Original Authority specifically required the Sanctuary to adhere to the Advocacy Guidelines that had recently been added to the Manual in August 2017. The Advocacy Guidelines in the Manual acknowledged that providing an opportunity for the public to see a live wild kiwi is increasingly acknowledged as an effective mechanism for supporting kiwi, while also stating that the welfare of the birds must be paramount when kiwi are being handled for any reason. The Advocacy Guidelines further specified that only adult or sub-adult birds (over 6 months old) are to be used as *'advocacy birds'*. It further specified that kiwi were not to be regularly taken out of their burrows just for the purposes of allowing people to see and touch them, and that birds are to be handled no more frequently than was normally required for health checks. The normal health-check frequency specified in the Manual's Advocacy Guidelines was 2-3 times per year for adults, 6-weekly for sub-adults weighing 800-1200g, and quarterly if over 1200g.
99. The Original Authority contained a further condition around health-check frequency for brown kiwi chicks, specifying that *"health and transmitter checks should be weekly in the first month after release, fortnightly for the next two months and then monthly thereafter, as per the current Kiwi Best Practice Manual."*⁴⁸ This condition did not in fact precisely reflect the health-check frequency specified in the Manual, as it reflected the health-check frequencies for chicks released into a new creche site, whereas the Sanctuary was an established creche.
100. The Original Authority's requirements that the Sanctuary adhere to the Advocacy Guidelines and also only check brown kiwi chicks at the frequency specified required major changes to the Sanctuary's existing brown kiwi health-check processes, and its kiwi tours operations. The allowable frequency for health checks for chicks was significantly lower than the Sanctuary had been undertaking, and the requirement that only adult or sub-adult brown kiwi could be subject to a kiwi tour meant that most of the brown kiwi held at the Sanctuary would be too young to be the subject of a kiwi tour. The impact of these conditions does not appear to have been explained to the Sanctuary by DOC, nor does the Sanctuary appear to have fully understood their implications, at least initially.
101. Differences of opinion between the Sanctuary and DOC about the desirable frequency of health checks and kiwi tours emerged after DOC requested

⁴⁸ Schedule 3, Special Condition 8.

information on the frequency of chick handling from the Sanctuary in December 2018. That month, DOC initiated a review of the Original Authority, seeking to amend special condition 8 in the Original Authority to align it to a monthly health-check frequency for brown kiwi chicks under 800g in weight. The Sanctuary was very concerned to learn of this, as it felt that this health-check frequency was insufficient to allow it to properly check and care for kiwi chicks given the conditions at the Sanctuary. On 11 December 2018 the Sanctuary emailed DOC setting out the concerns, saying *"if we are required to release 375g kiwi chicks from indoor brooders at Rainbow Springs directly into [the Sanctuary] and leave them for a month ... then we will see a heap of dead kiwi chicks."*

102. Later in December 2018 DOC advised the Sanctuary that if it wished to increase the health-check frequency for kiwi chicks it would need to make a formal request to the Kiwi Recovery Group – Best Practice Committee ('the KRG Committee') to consider.
103. During this time, on 20 December 2018, further media reports were published stating that the Minister had ordered a report from DOC into the deaths of 21 kiwi at the Sanctuary.
104. On 24 January 2019 DOC provided the Minister with a memo in relation to the additional kiwi chick deaths that had been reported by the media in December 2018. In this memo DOC advised the Minister that during a period of staff and management change at the Sanctuary between November 2016 and early 2017 several kiwi deaths occurred at the Sanctuary, and that the deaths of 21 brown kiwi chicks *"was only confirmed by Cape Sanctuary recently"*. DOC further advised that requests for information about the deaths *"have not revealed much detail"* and that some of the bodies were dried out when found, preventing the ability to carry out necropsy. DOC noted that *"this highlighted the poor management practices in place at the Sanctuary at that time"*, going on to advise the Minister that DOC officials *"are confident that wildlife are being managed appropriately at Cape Sanctuary"*. The memo outlined a number of improvements in management practice that had been initiated by the Sanctuary since the deaths and responses by DOC, including that *"clear rules regarding the regularity of tours have been established."*
105. However the frequency of health checks and associated kiwi tours continued to be a difficult area between the Sanctuary and DOC at this time. Following the advice from DOC in December 2018, that it would need to formally apply for a variation if it wished to conduct health checks more frequently than specified in the Original Authority, the Sanctuary submitted a 45-page application for a variation on 19 February 2019. The principal basis for the Sanctuary's application was that the conditions at the Sanctuary (in particular its susceptibility to drought or dry seasons) meant that kiwi chicks needed to be checked more frequently than was specified in special condition 8 of the Original Authority.
106. Another key concern held by the Sanctuary is that the Original Authority appeared to provide them with no flexibility to respond to emergencies. In evidence provided to the Reviewer, the Sanctuary summarised how it saw its position at this time:

"In essence, special condition 8 conflicted with our fundamental duty of care to kiwi because it prevented staff from handling a chick in imminent danger, if that chick's handling quota according to best practice had already been met. There was no flexibility for handling chicks in emergency situations which left the [Sanctuary] in an impossible position. We would either be criticised by DOC for failing to protect kiwi (if we complied) or for breaching the permit (if we intervened)."

107. In accordance with its usual practice, DOC referred the Sanctuary's application for variation to the KRG Committee, which provided an assessment of the Sanctuary's application to DOC on 6 June 2019. This assessment highlighted the KRG Committee's concerns around potential adverse impacts on kiwi welfare from the level of health checks, handling and kiwi tours proposed by the Sanctuary. The KRG Committee's assessment referenced data supplied by the Sanctuary on health check and kiwi tour frequency and noted:

"Between October 2017 and July 2018, in the first 3 weeks one chick (Diva) was handled on average every 2.6 days, and in the first 3 weeks a third of the birds were handled on average every 3.5 days (i.e. twice per week), which did not seem justified. Some birds had a particularly high frequency of advocacy handlings; with between 65 to 75% of their handlings being part of the advocacy walks. We find it difficult to believe these handlings were for welfare reason as there doesn't seem corresponding data to justify it."

108. The KRG Committee accordingly recommended in its assessment that health checks at the Sanctuary continue at the rate prescribed in special condition 8 of the Original Authority for three years, during which additional data on kiwi health and growth could be gathered, after which DOC would be in a more informed position to assess a further application for a variation of the Original Authority by the Sanctuary. The KRG Committee also recommended that no kiwi chicks be subject to a kiwi tour at the Sanctuary until their health checks were due to be scheduled monthly (i.e. the chick had been at the Sanctuary for at least 3 months).
109. DOC provided the Committee's assessment of the variation application to the Sanctuary for feedback. In email correspondence over June and July 2019 the Sanctuary set out its disagreement with the approach to health checks and kiwi tours proposed by DOC as informed by the KRG Committee.
110. Leading up to these events DOC staff had also been conducting site visits at the Sanctuary (in November 2018, January 2019 and April 2019), and there was also a meeting of a range of organisations involved with kiwi conservation in Hawke's Bay and DOC staff in January 2019 which was attended by the Sanctuary.⁴⁹ It is evident from notes of the site visits that the Sanctuary staff involved were engaged and informative, and allowed DOC to take pictures of the whiteboard that captured health-check and kiwi-tour information. During the November 2018 visit DOC staff were able to attend a kiwi tour conducted for guests, and observed a health check and kiwi tour for a brown kiwi chick that was having its first health check since being released into the Sanctuary.⁵⁰
111. Notes from the site visits to the Sanctuary and from a meeting between groups involved in kiwi conservation in Hawke's Bay in January 2019 show that over this time discussions were occurring around the use of kiwi chicks in advocacy activities. They also indicate the misunderstandings that had arisen around the permissible health-check frequency specified under the Original Authority. Notes from the Hawke's Bay kiwi meeting show that the use of kiwi chicks for advocacy was raised by another Hawke's Bay kiwi conservation organisation (not the Sanctuary) and discussed at the meeting, with the notes including comment that "*chick advocacy a gap in the [Manual]*", and "*discussion required*". Notes of the April

⁴⁹ The ToR at paragraph 12 refer to these meetings as 'audit site checks'.

⁵⁰ Submission was made to the Independent Reviewer that this Kiwi Tour observed by DOC was likely itself in breach of the Authority conditions that the Sanctuary was operating under at the time, as any brown kiwi chick receiving its first health check after release would have been under 6 months old. The Independent Reviewer notes that the circumstances indicate a younger chick was involved in the check but is not able to make a conclusive finding on this point.

2019 site visit to the Sanctuary included comment that the parties *“discussed the confusion around handling regularity and how it came about (for both sides); Cape Sanctuary had been including management from the Captive Best Practice document. With the current information review underway it will help dictate appropriate management for this site to ensure adequate welfare and good survival rates”* and recorded a number of actions, including: *“DOC to review data and come back with clear instruction on how kiwi need to be managed at this site.”*

112. On 29 August 2019, DOC sent two letters to the Sanctuary. The first advised the Sanctuary that following site audits carried out by DOC it had been found that the Sanctuary had been conducting health checks on kiwi chicks more regularly than was permitted by the Original Authority, stating that *“this breach of your permit also amounts to an offence under the Wildlife Act 1953.”* It further stated that *“we acknowledge increasing health-check regularity is the subject of your current application to vary your permit. This application is currently under consideration and you can expect a letter addressing this shortly.”*
113. The second letter was titled 'Permit variation' and stated that *“condition 8 of your current permit will remain unchanged”*. This letter referenced advice from the KRG Committee that young kiwi chicks not be exposed to tours until they are on a monthly checking regime, and proposed a change to the Authority that *“kiwi chicks shall not be exposed to tours until they are proven to be regularly gaining weight and health”*.
114. Management at the Sanctuary were very concerned to receive the breach notice from DOC, as well as being informed on the same day that the application for an Authority variation would not be progressed. The Sanctuary sought a meeting. The meeting took place on 1 November 2019 between senior people at the Sanctuary and senior DOC managers, including the new manager of the Napier District Office, who had issued the letters sent by DOC on 29 August. At this meeting the Sanctuary set out its concerns and the reasons why it felt that the conditions in the Original Authority and its restrictions on handling brown kiwi chicks, created a risk to kiwi chicks in the Sanctuary's care.
115. The manager of DOC's Napier office was the key decision-maker for DOC on any variation to the Original Authority. Her evidence was that after hearing from the Sanctuary and looking into the issues raised she came to consider the Original Authority to be poorly drafted, and that it failed to take the Sanctuary's particular circumstances sufficiently into account. She also came to realise at this point that the KRG Committee operated in a strictly advisory capacity to DOC, and that the decision-making responsibility around any variation lay with her (something that had not been clear to her earlier, when she had signed the letter advising the Sanctuary that condition 8 would remain unchanged). In light of this she decided to agree to a further meeting with the Sanctuary to consider potential variations to Authority conditions to address the issues.
116. The meeting between DOC and the Sanctuary to discuss a potential variation to the Original Authority took place on 8 November 2019. On that day, ahead of the meeting, the manager of the Napier District Office sent an email to the Sanctuary apologising for DOC's failure to provide clear support to the Sanctuary and for the stress this had caused.
117. During the 8 November meeting, DOC and Sanctuary representatives met to discuss proposed variations to the Original Authority, ultimately agreeing to significantly reduce the number and scope of special conditions in the Original Authority, creating the '2019 Variation' which remains in effect and is valid until 19 August 2028. The changes made resulting in the 2019 Variation and the suitability

of the variation for ensuring brown kiwi wellbeing and outcomes is discussed in detail under section 6.4 below.

118. During the 8 November meeting at which the 2019 Variation was created, none of the DOC kiwi lead officers or technical advisors who had previously been engaged with the Sanctuary's kiwi management work or who had been involved in advice on relevant Authority applications were invited to attend. A number of the decisions around the 2019 Variation directly contradicted the previous advice of the KRG Committee, but no reasons for these departures were documented as part of the variation process.
119. In summary, the circumstances leading to the 2019 Variation of the Original Authority were marked by confusion and misunderstandings between the Sanctuary and DOC, following the granting of the Original Authority. Throughout late 2018 and early 2019 there was a dawning awareness on the part of the Sanctuary that the Original Authority did not allow it to conduct the number of health checks on brown kiwi chicks that it considered necessary, nor did it allow kiwi tours to be conducted on brown kiwi chicks (only sub-adults). Over the same period DOC came to similar realisations, as it conducted visits to the Sanctuary, and gained further insights into the Sanctuary's health-check and kiwi-tour routines.
120. These misunderstandings were unfortunate for both DOC and the Sanctuary, and may well have been avoidable if there had been a meeting between the parties at the time the Original Authority was being finalised, to ensure that everyone was clear on the special conditions imposed, and their effect. Even failing this, there was opportunity for DOC to move to reset the relationship and expectations after the April 2019 site visit, where DOC acknowledged the confusion and undertook to come back to the Sanctuary with clear instruction on how kiwi need to be managed at the Sanctuary. A meeting at this stage could have allowed DOC and the Sanctuary to discuss and work through in a measured and informed way the remaining issues around health check frequency, use of brown kiwi chicks in kiwi tours, and the handling of kiwi chicks needing urgent intervention.
121. However, DOC's decision to issue the Sanctuary with a Breach Letter precipitated something of a crisis in the relationship between DOC and the Sanctuary, with potentially very real adverse implications for the continuation of the kiwi conservation programme at the Sanctuary.
122. In deciding to agree to a variation of the Original Authority, and in moving swiftly to meeting with the Sanctuary to discuss and agree the terms of that variation, the manager of the Napier District Office was responding to what she felt was a high-risk situation. In making the decisions she did, she was responding to the difficult challenge of finding a way through the significant issues while endeavouring to rebuild the relationship between DOC and the Sanctuary. These concerns needed to be balanced with the need to ensure that the decision making on the variation was informed and robust, and that the variation supported DOC's regulatory oversight responsibilities. The lack of input from DOC kiwi officers and technical experts on the variation, and the failure to document reasons for departures from previously provided advice undermined the robustness of decisions on the variation.
123. The difficulties arising for both DOC and the Sanctuary in the period between the granting of the Original Authority and the issue of the 2019 Variation were likely avoidable with better communication by DOC of the effect of the conditions initially imposed, improved engagement on the real issues being raised by the Sanctuary, and better decision making around when it was necessary and

appropriate for DOC to move from fact-finding to regulatory enforcement. These findings inform some of the recommendations relating to this area below.

6. DOC's systems and processes

6.1 Did DOC use appropriate documentation to authorise the kiwi handling and management activities undertaken by the Sanctuary?

124. The documentation used by DOC to authorise kiwi handling and management activities undertaken by the Sanctuary did not provide an effective basis for a clear regulatory oversight system. The documentation used by DOC was absent or inadequate in key respects, was not managed well, and tended to generate confusion between the parties rather than clarity.
125. As has been discussed above, over the 2016/17 summer no authorisation was in place for the Sanctuary to handle and manage brown kiwi, with the original translocation Authority for brown kiwi having expired in 2011. This was obviously a failure to have in place appropriate documentation to authorise the Sanctuary's handling and management of brown kiwi from 2011 and throughout the critical period over 2016/17. The absence of a valid Authority meant that the Sanctuary had no legal basis for its handling and keeping of brown kiwi, and no reporting obligations to DOC concerning this activity. The Sanctuary also had no legal obligation to report brown kiwi deaths to DOC over this period. The circumstances leading to this failure are discussed further under part 6.5 below.
126. The 2006 Authority that expired in July 2011 was issued by DOC to a number of approved sites in Hawke's Bay, of which the Sanctuary was one. It allowed for the translocation of up to 50 brown kiwi chicks (per year) to approved enclosures at the Sanctuary and other sites. The 2006 Authority contains few of the detailed conditions relating to kiwi handling and management that appear in subsequent Authorities – in particular, there is no condition obliging the Authority holder to comply with the Manual, and there were no conditions specifying handling and health-check methods or frequency. While it is apparent that both the Sanctuary and DOC anticipated that kiwi would be handled for health checks while at the Sanctuary, the 2006 Authority was silent on this point, meaning that the Sanctuary was potentially vulnerable to allegations that such handling of kiwi was unauthorised,⁵¹ and it did not have any guidance or requirements applying to such handling. The absence of any specific authorisation and conditions applying to handling also meant that the 2006 Authority could not provide DOC with any basis for assurance that kiwi were being handled correctly or at appropriate frequencies.
127. The Sanctuary commenced kiwi tours in 2009 while operating under the 2006 Authority. Because the 2006 Authority contained no conditions around health checks and handling, the Sanctuary had no conditions applicable to these tours, nor was there any specific condition that required the Sanctuary to inform DOC about such activity.
128. The 2006 Authority did contain a requirement that the Sanctuary (or the named permittees) forward to DOC by 30 June of each year a report providing an update of the kiwi management that had occurred at the site.⁵² No further details were contained in the 2006 Authority about what was to be contained in any such

⁵¹ Whether such handling required authorisation would depend on an assessment of whether health check (or any other) handling of kiwi fell within the definition of 'hunt or kill' (s 63 Wildlife Act)

⁵² Paragraph 22 clause 1 2006 Authority [ECHB-19026 and 18990]

report, presumably leaving the details of such reporting to be agreed between the Sanctuary and DOC. However no such reports have been able to be provided by either the Sanctuary or DOC, nor is there any evidence that DOC followed up on this reporting requirement with the Sanctuary. On the evidence available, it appears that this reporting requirement may have been forgotten about by both parties.

129. When the Sanctuary started receiving brown kiwi chicks it was also a participant in DOC's Operation Nest Egg (ONE) programme. ONE is an important kiwi management and recovery programme that involves tagging adult male kiwi with radio transmitters, locating kiwi nests, harvesting eggs and hatching them in a captive facility, raising young kiwi to a size where they are less vulnerable to predators and returning them to the wild.
130. From 2007, the Sanctuary commenced creching kiwi chicks hatched in other facilities as part of the ONE programme. Prior to this, in 2006 (at about the same time that it approved the 2006 Authority), DOC also approved a ONE Translocation SOP for the translocation of ONE kiwi chicks to the Sanctuary. Subsequently DOC also produced a ONE National Translocation Proposal 2010-2019 document ('ONE national proposal'). The Sanctuary's evidence is that they considered their care and management activities with brown kiwi were authorised under these ONE documents up until they were advised otherwise by DOC in early 2017.
131. While it is accepted that the Sanctuary held this belief, it was incorrect. As a subsequent DOC review of the ONE national proposal makes clear, the ONE national proposal was developed to streamline translocation SOP approvals and reduce administration.⁵³ Neither the ONE Translocation SOP nor the ONE national proposal constituted an Authority under the Act for participants in the ONE programme such as the Sanctuary, rather, these documents were intended by DOC to stand alongside specific Authorities issued to such participants.
132. However it is understandable that the Sanctuary became confused about the status of the ONE documents for their activities – others appear to have been similarly confused. The DOC review of the ONE national proposal noted that as at June 2019 there were 12 other individuals or groups known to be operating with ONE kiwi without a valid Authority. The DOC review notes that there exists confusion amongst practitioners and DOC staff alike about the approvals process for such activity, going on to note *"it is unclear how this proposal operates within the requirements to have a Wildlife Act Authority – groups would need to have a Wildlife Act authorisation to handle, put transmitters on and move them, but there is a general misconception that this authorisation covers it all."*⁵⁴
133. There is evidence that some officials in DOC also wrongly believed that the Sanctuary was continuing to manage kiwi under the ONE documentation – potentially partially explaining why DOC did not raise any queries or concerns with the Sanctuary until early 2017 (after an initial inquiry from the Sanctuary), despite the 2006 Authority having been expired for well over four years at that stage.
134. From a documentation suitability perspective, the ONE documents which were intended by DOC to streamline approvals administration appear to have generated confusion both among kiwi practitioners and within DOC. Improved,

⁵³ Explore Task Report National Translocation Proposal 6 June 2019.

⁵⁴ Explore Task Report National Translocation Proposal 6 June 2019 page 2.

clearer documentation and an overarching guide as to how the various documents and Authorities fit together may have helped dispel this confusion.

135. Following the successful establishment of brown kiwi creching activity at the Sanctuary, DOC granted the Sanctuary with the little spotted kiwi Authority on 24 June 2014. The little spotted kiwi Authority contained much more detailed conditions than the 2006 Authority, including requiring little spotted kiwi to be handled using the methods identified in the Manual, and conditions relating to health-check frequency, treatment of dead kiwi bodies and reporting of deaths to DOC.
136. One difficulty with the little spotted kiwi Authority, however, is that unlike the Authorities relating to brown kiwi granted by DOC to the Sanctuary, the little spotted kiwi Authority had no regular or annual requirement to report on the outcomes for little spotted kiwi, specifying only that upon completion of the research/translocation or termination of the Authority, the Sanctuary is to *"forward a copy of the research findings, reports and/or publications to the local DOC office and the Kiwi Recovery Group within one month of the final report being completed"*.⁵⁵
137. Detail of when exactly the 'research/translocation' is deemed to be completed is not made clear in the little spotted kiwi Authority. The Sanctuary advised that *"no final research report has been completed because the little spotted kiwi Authority does not end until 2024."*
138. An Authority condition that only requires the Sanctuary to provide a single final report after 10 years of operation is not adequate in the circumstances. The proposition that little spotted kiwi be translocated to the Sanctuary had been the subject of advice from the KRG at the time that it considered the relevant Authority application from the Sanctuary, and it had noted some concerns including the fact that the Sanctuary was located outside of the natural range of little spotted kiwi, and there was uncertainty around how little spotted kiwi would cope with the dry conditions at the Sanctuary.
139. Given this background, and also taking into account that the brown kiwi Authorities issued to the Sanctuary required an annual report on kiwi outcomes to be provided by the Sanctuary, it would have been reasonable for DOC to have required at least annual reporting from the Sanctuary on little spotted kiwi outcomes. Relevant to this is the fact that DOC only obtained information from the Sanctuary on little spotted kiwi deaths over the 2016/17 summer when the Sanctuary sent DOC the 2016/17 little spotted kiwi report. While this was an important report for DOC to receive, there was no requirement under the little spotted kiwi Authority for the Sanctuary to provide DOC with a copy of it.
140. The difficulties with the Original Authority for brown kiwi that DOC granted to the Sanctuary in 2018 have been canvassed above. In summary, this Authority appeared to impose unreasonably restrictive conditions around the handling of the chicks (particularly in the face of emergencies or immediate threats to the chick) and also required major changes by the Sanctuary to its health-check regime and kiwi tours programme, without any direct engagement by DOC with the Sanctuary on the implications of this when the conditions were finalised.

⁵⁵ LSK Authority Schedule 3 paragraph 17.
David Shanks Independent Reviewer

141. The problems with the Original Authority and the circumstances leading to the agreement by DOC to the 2019 Variation led to that varied Authority also being inadequate, as is discussed under part 6.4 below.
142. In summary, DOC did not use appropriate documentation to authorise kiwi handling and management activities undertaken by the Sanctuary. The relevant Authorities issued to the Sanctuary by DOC were variously absent, missing important aspects, ambiguous, or failed to engage sufficiently with information provided by the Sanctuary about its activities and requirements. DOC accordingly failed to put in place documentation that would provide both DOC and the Sanctuary with a clear and effective foundation for kiwi care and management, and which allowed for proper regulatory oversight by DOC.

6.2 Did DOC have a system for checking that the Sanctuary held the correct documentation/authorisations to undertake its kiwi handling activities? And (f)(v) Where authorisations or permissions were issued to the Sanctuary, how did DOC keep records of those and how did it monitor if the Sanctuary was complying with any conditions?

143. DOC did have a system to check on whether authorisations issued by the department were due to expire. As DOC advised the Sanctuary in July 2017, DOC's permissions database was set up to issue reminders to Authority holders when their Authorities were due to expire. However, DOC also advised the Sanctuary at this time that many Hawke's Bay Authorities did not seem to have been transitioned to the new permissions system. Accordingly the system that DOC had in place to notify Authority holders of a pending expiry of a permit was not activated and DOC failed to notify the Sanctuary that the Original Authority was due to expire in 2011.
144. When DOC received an inquiry from the Sanctuary manager in November 2016 to check that the ONE permit allowed the brown kiwi creching activities (as the Sanctuary then believed), a search was undertaken and the expired 2006 Authority was found in hard copy in early December 2016, having apparently never been entered into the DOC electronic permissions database.
145. The new permissions system that DOC referred to in their communication with the Sanctuary had been established by the department in 2009. At this time, DOC operated a conservancy organisational model, with each region being relatively self-contained and having their own permitting teams, so each regional office was responsible for deciding on and issuing Authorities, as well as managing the monitoring and compliance requirements for Authorities issued in the district. Regional offices were also responsible for entering current Authorities into DOC's new electronic permissions system.
146. A further significant change occurred in 2012 when DOC moved away from the conservancy organisational model and created the national shared service centres, including a National Permissions team who were responsible for issuing Authorities across New Zealand. The intended benefits of this change included improved efficiency and consistency in the administration of permits and Authorities. Under this new model, the key decision-making responsibilities (for example, whether to issue an Authority and what conditions should be imposed) remained with the manager of the relevant regional office, who also retained responsibility for monitoring and ensuring compliance with Authorities issued within their region.
147. Taken together, the changes in 2009 and 2012 by DOC appear to have offered potential advantages in reducing manual document handling and administrative

overhead for regional offices, while leaving key responsibilities around monitoring and compliance with the regional offices that had the closest engagement with Authority holders.

148. However, in order for these changes to work effectively there was firstly a requirement that all the pre-existing Authorities are loaded into the new centralised system. This did not occur for the 2006 Authority (and at least some other Authorities) issued in Hawke's Bay.
149. Secondly, the split responsibilities that the changes introduced meant there was a requirement that DOC have in place effective systems and processes to ensure that the regional offices had clear visibility of the Authorities issued in their area, and the monitoring and management requirements that went along with them.
150. The need for this appears to have been raised at an early stage by at least one DOC official in the Napier District Office, who provided comment that *"when in 2009 the permissions system was centralised to National Office, I raised the issue about how local offices would know what permits and conditions were in their area and who was responsible for monitoring?"*
151. There does not seem to have been a system put in place by DOC to adequately address the requirement for DOC regional offices to have visibility of permits/Authorities and the associated obligations on Authority holders. This in turn appears to have contributed to the lack of communication and follow-up on compliance with Authority conditions for the 2006 Authority held by the Sanctuary, even before its expiry. For example, the 2006 Authority required the Sanctuary to provide DOC with annual reporting of its care and management of brown kiwi chicks, and this reporting should have commenced in 2007 or 2008. No such reports appear to have been provided by the Sanctuary pursuant to the Authority, and there is no record of any follow-up from DOC with the Sanctuary about this requirement. On the information available, it appears that the Napier District Office was simply unaware of this requirement on the Sanctuary.
152. A broader issue around understanding responsibility and accountability for monitoring and checking compliance with Authority conditions appears to have emerged after the 2012 organisational changes, with one DOC senior manager providing comment that *"After the [2012] restructure it wasn't anyone's real job, the local office lost all visibility after that, permit processing got centralised in service centres and the monitoring of the permits fell through the cracks."*⁵⁶
153. Systemic issues with the monitoring and compliance of Authorities issued for Hawke's Bay kiwi programmes were also noted by an internal DOC review of these programmes in 2019, which stated *"DOC involvement has been minimal and variable across the programmes due to higher priorities, staff changes and knowledge. Limited support and compliance monitoring have led to poor practice arising in aspects of programmes."*⁵⁷
154. Recent information provided by DOC indicates that monitoring of Authority conditions continues to be ad hoc due to resourcing pressures and the fact that there is no single point of contact within DOC with responsibility for monitoring compliance with Authority conditions. These factors mean that checking on compliance with Authority conditions is often precipitated by external events or

⁵⁶ s 9(2)(a) privacy evidence

⁵⁷ DOC Task Assignment: Review the Nominated Kiwi Programmes 30 August 2019

when DOC is assessing an application for an Authority renewal, rather than according to a regular timetable of checks and audits established by DOC.

155. In summary, while DOC did have in place a system to notify both DOC and Authority holders of the pending expiry of authorisations, this system failed in the case of the 2006 Authority issued to the Sanctuary, as that Authority was never entered into the appropriate system. The monitoring of compliance with conditions of Authorities issued to the Sanctuary fell to the DOC Napier District Office to oversee and document, but the Office appears to have been largely unaware of the relevant kiwi Authorities issued to the Sanctuary, and their conditions, until queries started to be made about these. This is not an isolated problem for DOC. The need for DOC to strengthen its systems to provide clear visibility of Authorities issued, and ensure proper monitoring and compliance is discussed under recommendations below.

6.3 Did DOC impose adequate and enforceable handling, reporting and monitoring requirements on the Sanctuary that would enable DOC to intervene and/or take enforcement action in a timely manner if problems were identified?

156. During the summer of 2016/17, DOC had not imposed adequate and enforceable handling, reporting and monitoring requirements on the Sanctuary in relation to brown kiwi as the 2006 Authority had long since expired at that stage. Even if the 2006 Authority had remained in force at this time, this Authority did not impose adequate handling and monitoring requirements on the Sanctuary – the 2006 Authority was largely silent on those points.
157. The 2006 Authority did impose an annual reporting requirement on the Sanctuary in relation to brown kiwi, although this was not adequate as it contained no detail about what information the Sanctuary was required to include in such reporting. While this reporting requirement was technically enforceable by DOC, at least until the Authority expired, the lack of detail meant that any enforcement action would likely be problematic.
158. The little spotted kiwi Authority was valid for the Sanctuary during the summer of 2016/17, and remains so. As also has been discussed previously, the little spotted kiwi Authority did impose a reporting requirement, however this is inadequate in that it only requires a single report to be provided for the entire 10-year term of the Authority. Clearly a single report covering a decade of operation would not provide DOC with an effective basis for intervention and/or enforcement action if problems were identified. This is particularly so given the challenges and risks that were initially identified by DOC when considering the proposal to translocate little spotted kiwi to a dry environment such as the Sanctuary.
159. The little spotted kiwi Authority further imposed a requirement on the Sanctuary to report little spotted kiwi deaths to DOC. As discussed above, this is an important requirement that could potentially serve as an early warning to DOC of problems, and this condition should have included a time limit requiring prompt notifications to DOC.⁵⁸ However this condition does not appear to have been treated as a formal requirement by either the Sanctuary or DOC in the years leading up to 2017, and DOC was not advised of the deaths of little spotted kiwi over that summer until December 2017.

⁵⁸ Such as the requirement to notify DOC of death or discovery of remains within 48 hours as was specified in the Original Authority (schedule 3 paragraph 19).

160. The little spotted kiwi Authority specifies that little spotted kiwi are to be handled using the methods identified in the (then current) version of the Manual⁵⁹ and further specifies the frequency of handling of these birds, stating that they should be caught, checked and weighed after 3 months to determine how they are faring, and that they are to be left undisturbed for the next nine months if all continues to appear well.⁶⁰ While these appear to be appropriate, clear and enforceable conditions, a major issue arises as to how DOC would expect to be informed of any problems or breaches of these conditions, in the absence of regular reporting on little spotted kiwi management from the Sanctuary.
161. Conventional good regulatory practice around monitoring and confirming adherence to the handling frequency of little spotted kiwi as well as adherence to the expectations contained in the Manual would require DOC to carry out regular inspections and/or audits of Sanctuary facilities and records to provide assurance of compliance. However the little spotted kiwi Authority did not contain any special condition providing for any such inspections or audits.
162. Accordingly the little spotted kiwi Authority, while generally an improvement over the 2006 Authority, did not impose sufficiently clear and robust reporting and monitoring requirements on the Sanctuary to enable DOC to be alerted to potential issues or problems at an early enough stage to be able to take effective action.
163. The Original Authority produced for brown kiwi management at the Sanctuary in 2018 did provide for inspections by DOC.⁶¹ However this and several other conditions applying to the handling, reporting and monitoring requirements for brown kiwi were deleted or amended in the 2019 Variation which had the effect of significantly undermining DOC's oversight and intervention options, as is discussed in the following section.
164. It is therefore concluded that DOC did not impose adequate and enforceable handling, reporting and monitoring requirements on the Sanctuary that would enable DOC to intervene and/or take enforcement action in a timely manner if problems were identified, and that these issues persist with the little spotted kiwi Authority and the 2019 Variation that remain in effect. This conclusion is reflected in recommendations below for DOC to address these deficiencies going forward.

6.4 Does the current authorisation (the 2019 Variation) contain sufficient controls to protect kiwi from harm or are further amendments required?

165. It is evident that any Authority issued by DOC to an individual or organisation that is entrusted to hold and manage kiwi needs to include effective and enforceable handling, reporting and monitoring requirements on the Authority holder to ensure that kiwi are managed safely, and to ensure the animals' care and wellbeing is the primary consideration. Obligations around notification of deaths, significant or unusual injury or disease, or other major problems are also necessary in order to provide DOC with timely warning and awareness of potentially significant issues.
166. Alongside this, in most cases DOC will need to have in place clear and reasonable conditions that allow DOC to undertake site and/or animal inspections, specify

⁵⁹ LSK Authority Schedule 3 paragraph 20.

⁶⁰ LSK Authority Schedule 3 paragraph 21.

⁶¹ Original Authority Schedule 3 paragraph 12.

- any appropriate remedial actions required to be taken by the Authority holder, and to suspend activities relating to protected wildlife if necessary.
167. In addition to these fundamental requirements, if necessary any Authority conditions should take into account and be responsive to the particular circumstances to which the Authority will apply, and whether there are any specific activities being undertaken by the Authority holder to which special conditions should apply (the Sanctuary's operation of kiwi tours being an example of this).
168. Authorities should also be clear and well understood by both the Authority holder and DOC, should not unduly restrict the Authority holder from taking urgent action that may be required to protect kiwi from harm, and both DOC and the Authority holder should be clear on the steps that can be taken by DOC to enforce the conditions if necessary.
169. As discussed above, there were various factors leading up to the decision on the content of the 2019 Variation, including confusion around the effect of the Original Authority, concerns that this Authority failed to take into account the Sanctuary's circumstances, and concerns that the restrictions on handling that it imposed could pose a risk to kiwi.
170. The 2019 Variation had 16 conditions applying to the Sanctuary, compared with the 26 conditions that had been contained in the Original Authority. One entirely new condition was included in the 2019 Variation, and five conditions were amended. Twelve conditions from the Original Authority were deleted entirely, with a remaining 10 conditions carrying over unchanged or with minor edits.
171. Several important conditions were retained in the 2019 Variation. For example, the importance of early notification of kiwi deaths had been underlined by the experience of the 2016/17 kiwi deaths at the Sanctuary, and the 2019 Variation retains a requirement that the Sanctuary notify DOC about brown kiwi deaths within 48 hours of the event or discovery of remains.⁶² In the event of a notified death, under this condition DOC is able to require the Sanctuary to cease brown kiwi activities for a period determined by DOC.
172. A requirement that the Sanctuary provide DOC with an annual report, containing information about matters including the number of chicks creched, deaths, disease issues and the number of kiwi tours undertaken was also carried over into the 2019 Variation.⁶³
173. Other requirements were removed or significantly changed. As has been discussed above, issues around health-check frequency and the related conditions imposed on kiwi tours had been some of the most difficult areas between the Sanctuary and DOC (as well as the KRG). The 2019 Variation now states that the Sanctuary is to "*be advised*" on kiwi management by the Manual,⁶⁴ The 2019 Variation also deleted any reference to health check/handling frequency and also removed the previous condition requiring the Sanctuary to adhere to the new advocacy guidelines that had been incorporated into the 2017 update of the Manual.⁶⁵

⁶² 2019 Variation Schedule 3 paragraph 10.

⁶³ 2019 Variation Schedule 3 paragraph 14 (this condition amended the Original Authority reporting requirement by changing the due date for reporting and deleting a requirement that the report contain information about any other detail requested by DOC).

⁶⁴ 2019 Variation Schedule 3 paragraph 1.

⁶⁵ New Authority Schedule 3 paragraph 10

174. As a result of these changes, the 2019 Variation contains no clear or enforceable conditions concerning health-check frequency or kiwi tour frequency. The only condition relating to kiwi tours contained in the 2019 Variation is a condition restricting the number of observers of *"kiwi welfare activities"* to a maximum of 10.
175. This has the effect of leaving the determination of the appropriate handling frequency and methods largely up to the Sanctuary under the 2019 Variation. Relevant to this is the wording of the only entirely new condition in the variation, which states that *"this Authority permits the Authority Holder to determine and undertake kiwi management that is responsive to the unique nature of the [Sanctuary] environment and ensures a high standard of care."*⁶⁶ The wording of this new condition is permissive only – it does not specifically impose a requirement on the Sanctuary to ensure a high standard of care for kiwi.
176. The removal of conditions contained in the Original Authority relating to pest management also has the effect of providing the Sanctuary with wide discretion around how it controls pests. The Original Authority contained a condition requiring the Sanctuary to comply with the actions contained in the Sanctuary's own Pest Management Strategy,⁶⁷ and there was also a specific condition that the Sanctuary must make improvements to its fence and/or predator control measures if required by DOC. These were removed in the 2019 Variation, leaving no specific obligations under the current Authority relating to pest management.
177. Detailed conditions in the 2019 Variation relating to disease management and prevention were also deleted or significantly rewritten as compared with the Original Authority. The amended condition remaining in the 2019 variation relating to disease management states that *"to manage risk from disease, kiwi management will be informed by specialist advice."*⁶⁸
178. Significantly, a condition in the Original Authority permitting DOC to terminate the Authority or at any time review and/or vary the conditions of the Authority if conditions are breached (or for any other reason) was deleted in the 2019 Variation.⁶⁹ The 2019 Variation contains no express provision allowing for DOC to terminate it, or review or vary its conditions.
179. Accordingly, the 2019 Variation imposes relatively few detailed or prescriptive conditions upon the Sanctuary, particularly in the areas of health-check frequency and process, the operation of kiwi tours and predator/disease control, largely leaving the Sanctuary to adopt its own approach in these areas – informed by the Manual (and specialist advice, in the case of disease management).
180. It is relevant to note that the change in the 2019 Variation that specifies that the Sanctuary is to be *"advised by"* the Manual in the conduct of its kiwi-management activities rather than adhering to it, and the removal of any health-check frequency requirements is at odds with the public statements that DOC made in October 2018, including that *"all permits have a standard condition that Kiwi Best Practice must be upheld, otherwise they will be in breach of their permit"* and *"[t]here are specific frequencies for welfare checks stated, and permit holders are not allowed to exceed these."* The information available to the reviewer indicates that adherence to the Manual is a standard condition that is included in other Authorities relating to kiwi issued by DOC. The 2019 Variation is an exception.

⁶⁶ 2019 Variation Schedule 3 paragraph 2.

⁶⁷ New Authority Schedule 3 paragraph 13

⁶⁸ 2019 Variation Schedule 3 paragraph 9.

⁶⁹ New Authority Schedule 3 paragraph 23

181. The 2019 Variation does continue to impose important obligations on the Sanctuary to make brown kiwi and the enclosure available to DOC for inspection at all reasonable times, and the Sanctuary is also required to make improvements to kiwi management techniques and take other steps as directed by DOC to ensure the welfare of the birds. It is also possible that DOC could be deemed to have overarching rights to require information from the Sanctuary or to request other inspections as regulator in the absence of express conditions providing for this in the 2019 Variation. However, the 2019 Variation's removal of express conditions allowing DOC to terminate, review and/or vary the Authority means that DOC's available responses to a breach of conditions or a risk event at the Sanctuary are limited, or at least are less clear than they should be.
182. The omission of enforceable, fit-for-purpose conditions around handling frequency, kiwi tours, predator and disease control, and the absence of any clear mechanism for DOC to act on breaches by termination, review, or variation of conditions means that the 2019 Variation does not contain sufficient controls to protect kiwi from harm.
183. It is important to note that these flaws in the 2019 Variation have not resulted in any evident harm to kiwi at the Sanctuary over the term that it has been operating. On the contrary, the available information shows that the results achieved for kiwi at the Sanctuary in the subsequent period have been very good, as is discussed below under part 6.8. The Sanctuary points to these strong results as evidence that the 2019 Variation strikes the right balance between prescribing proper process and allowing scope for Sanctuary staff to apply judgement to ensure kiwi welfare. The Independent Reviewer notes this submission but also considers that the robustness of the 2019 Variation has not been tested with a combination of adverse factors (such as occurred in the 2016/17 season).
184. The Independent Reviewer also recognises that there is scope for DOC to take a less prescriptive approach to Authorities where the Authority holder is a known quantity, and has demonstrated capability and preparedness to engage expert support (as is the case with the Sanctuary). The Sanctuary and DOC have subsequently gone on to develop their relationship with reporting protocols and regular engagements to enhance transparency, which is also discussed under part 6.8 below.
185. However, in order to protect kiwi DOC needs to take reasonable steps to ensure that any Authority is not only appropriate for the existing circumstances – it should also contain baseline conditions that allow DOC the flexibility to address changes in circumstances, and to respond to any new risks emerging. This is particularly true given the 10-year term of such Authorities, during which time key personnel and activities at the Sanctuary may be subject to change. The 2019 Variation is not sufficiently robust to preserve DOC's regulatory oversight responsibilities and requires further amendments in order to ensure that DOC is able to meet these obligations to ensure kiwi safety into the future.

6.5 Did DOC respond in a timely and appropriate manner when concerns about unnecessary and/or unlawful handling of kiwi for commercial or tourism purposes at the Sanctuary and the kiwi deaths in 2016/2017 were raised with the Department by staff and/or stakeholders?

186. The specific obligations upon DOC when dealing with concerns or complaints received from staff or external parties will vary according to the circumstances, but certain basic requirements will usually apply:

- DOC should assess the information and act in a timely manner to carry out such further inquiries, investigations or action as the circumstances require;
 - Any individual raising a concern or complaint should be treated with dignity and requests that they make (for example, confidentiality) should be respected as far as possible;
 - An accurate record should be kept of any such concerns or complaints (keeping in mind any confidentiality or other requirements);
 - The individual raising the concern should be informed of the outcome and DOC's response to the information provided;

 - DOC should review its response to the concerns or complaints raised, to assess whether the response was appropriate and effective, and whether there are any lessons to be learned.
187. DOC first received information raising concerns about kiwi tours operating at the Sanctuary and possible overhandling of brown kiwi chicks from a third-party organisation in November 2016, who passed on information provided to them by an (unnamed) informant. Following this, in December 2016 a DOC manager from the Napier District Office met with an informant who wished to remain anonymous ("Informant 1"). No record of that meeting was taken, but the DOC manager's evidence was that Informant 1 raised concerns including that kiwi were not being tracked properly at the Sanctuary. The DOC manager also recalled asking Informant 1 for evidence to support the claims being made, but did not hear back from them. No follow up action was taken by DOC.
188. DOC then received communication from another person ("Informant 2") on 9 March 2017, who advised that they had heard from a volunteer at the Sanctuary that 10 kiwi had recently died there, and noted that it would be good for DOC to be more closely involved. This information appears to have been escalated within DOC by the DOC staff member who received it, but there is no evidence of any follow up inquiries being made by DOC of either Informant 2 or of the Sanctuary on the basis of this information.
189. In August 2017 a DOC staff member ("Informant 3") received information that raised concerns that the Sanctuary might not hold a valid Authority for brown kiwi, and that the procedure of handling kiwi only for health checks might have been compromised at the Sanctuary due to the demand to deliver kiwi tours. Informant 3 checked DOC records, and found that a question about whether the Sanctuary held a valid Authority for brown kiwi had already been raised by DOC staff at the Napier District Office. Informant 3 also checked the Lodge website, and saw that the Lodge was at that time advertising kiwi tours at the Sanctuary for guests for a fee, stating that "*guests will have the opportunity to hold the kiwi*". Informant 3 then raised their concerns with their direct manager and other relevant managers within DOC, noting that they felt it relevant to follow up on these matters given the directive given DOC staff along with the release of the DOC National Compliance Strategy earlier that same month, which advised DOC staff that if they observed non-compliant activity they should gather as much evidence as possible and then contact their manager.
190. At the end of August 2017 a member of DOC's Permissions Team looked into issues raised by Informant 3 concerning kiwi Authorities held by the Sanctuary, and responded with advice that the Sanctuary did not appear to hold a current Authorisation for brown kiwi, and while it did hold an Authority for little spotted kiwi, that Authority did not authorise public display. The Permissions Team member noted the detailed conditions that had recently been applied by DOC in

an Authority granted for another site where it was proposed to charge the public fees to observe health checks of kiwi, and further commented that *"any catching and conducting of health checks must be approved, any display to the public must be approved and the charging of any fees to the public must be authorised. Cape Sanctuary should not be letting the public hold the birds and the Kiwi Recovery Group should be notified of this."*

191. In September 2017 DOC staff from the Napier District Office met with an individual who had been involved with kiwi management at the Sanctuary and who had also been involved with the search for and recovery of kiwi remains earlier that year ("Informant 4"). At that meeting Informant 4 raised with DOC the concerns they held about kiwi deaths at the Sanctuary, failures to monitor kiwi effectively, the handling of kiwi by the public during tours, and also their concerns that the kiwi tours had been distracting Sanctuary staff from monitoring and tracking kiwi. Informant 4 further raised with DOC their concerns that kiwi tours at the Sanctuary had been focused on the kiwi that the Sanctuary had located and could reach, meaning that those chicks were subject to frequent and unnecessary handling.
192. Following this meeting Informant 4 followed up regularly with DOC Hawke's Bay management, calling them a number of times to check on whether there had been any progress in relation to the complaints they had made. As has been discussed previously, ultimately Informant 4 became frustrated with what they saw as a lack of any tangible progress, and they decided to escalate their concerns, writing to the Minister in February 2018.
193. At this time, DOC was already on notice that at least one of the areas of concern being raised by some informants (the apparent lack of a valid brown kiwi Authority) had substance. Staff at the Napier District Office had already emailed the Sanctuary in January 2017, responding to the Sanctuary's query about the status of Authorities for brown kiwi and advising that they needed to apply for a new Authority.
194. Despite this, DOC does not appear to have made any specific inquiry of the Sanctuary about kiwi deaths, monitoring of kiwi or kiwi health-check/kiwi tour frequency as a result of the concerns that had been raised until Informant 4 raised their concerns with the Minister. In the course of preparing its advice to the Minister, DOC forwarded detail of Informant 4's February 2018 letter of complaint to the Minister to the Sanctuary for response. The Sanctuary responded to DOC on the complaint in detail on 20 March 2018, in the course of which it provided DOC with the first recorded confirmation from the Sanctuary to DOC about the brown kiwi chick deaths.⁷⁰
195. Accordingly, the first advice that DOC had from the Sanctuary about brown kiwi chick deaths at the Sanctuary over the summer of 2016/17 was in March 2018, a year after it first received concerns that a significant number of kiwi deaths may have occurred, and only after concerns had been escalated to the Minister.
196. A key issue for the Department to engage with as soon as it received that information in March 2017 was whether there had in fact been a significant number of kiwi deaths at the Sanctuary, and if so to understand what had caused the deaths. As further disclosures came to light in 2017 DOC faced a critical need to understand whether concerns around inadequate tracking of kiwi, resource

⁷⁰As has been discussed above, this information was not captured accurately in DOC's subsequent advice to the Minister in relation to the complaint.

allocation to kiwi tours, and overhandling of kiwi had any substance, and whether any such factors might have contributed to deaths, or might pose an ongoing risk to kiwi welfare at the Sanctuary.

197. One clear avenue for inquiry open to DOC when it initially received concerns about deaths of kiwi at the Sanctuary in March 2017 would have been to promptly ask the Sanctuary about whether they had had any deaths, and if so what were the circumstances of death. This would have been a reasonable and proper inquiry to make in the circumstances, and early engagement might have provided DOC with real-time information about the issues that the Sanctuary was then still grappling with in locating missing kiwi. At this stage there remained the possibility for DOC to both provide assistance to the Sanctuary, and to understand the issues as they unfolded.
198. The importance of engaging with the Sanctuary directly on these issues became more pressing when DOC received further detailed information about kiwi deaths at the Sanctuary from Informant 4 in September 2017. This was not done, and as noted above DOC only received confirmation of brown kiwi chick deaths from the Sanctuary by the circuitous route of referring Informant 4's complaint to the Minister to the Sanctuary for response several months later.
199. By this time it was too late for DOC to provide any support or direction to the Sanctuary that could make a difference for the brown kiwi chicks who were lost and which had died. Nevertheless, even by this stage there remained unresolved questions arising from the complaints received by DOC, such as whether there had been problems with monitoring of kiwi, and whether there had been any unnecessary handling of kiwi. Despite this, DOC does not appear to have conducted any formal investigation into those matters.
200. The fact that the Sanctuary did not hold a valid brown kiwi Authority over the 2016/17 summer only heightened the importance to DOC of engaging with and understanding the issues. DOC was aware from an early stage in 2017 that the Sanctuary's 2006 Authority had expired, and that it would be needing to engage urgently on a new Authority. In these circumstances, DOC needed to be as informed as possible about what had occurred at the Sanctuary in order to be able make decisions about any new Authority, and any conditions required to address the Sanctuary's environment and activities, and keep kiwi safe.
201. The failure by DOC to properly pursue inquiries and to fully investigate the concerns raised, meant that DOC was not as informed as it should have been when it was later required to brief the Minister, and when it responded to media reporting on the kiwi deaths. This also meant that individuals who had raised concerns did not receive any communication or feedback to provide them with assurance that the issues they had raised were being dealt with. As noted above, Informant 4 decided to raise their concerns with the Minister after becoming frustrated at the lack of any evident progress by DOC on the complaints.
202. Similarly, Informant 3 became concerned when they saw DOC's comments to the media about kiwi deaths at the Sanctuary made in October 2018, believing there were inconsistencies between DOC's public statements and the issues they had raised over a year earlier. Informant 3 accordingly wrote to the (then) D-G of DOC in early October 2018, citing the 'Speak Up' initiative that had just been launched by the D-G to encourage staff to raise concerns within DOC. The D-G replied to Informant 3 on 26 October 2018, confirming that Informant 3 was right in believing that there had been no brown kiwi Authority held by the Sanctuary (at the relevant times). The D-G's reply went on to attribute the loss of kiwi over the 2016/17 summer to changes of staff and management at the Sanctuary, with new

staff not appropriately briefed to deal with the number of kiwi and the complexities of work at the site, together with a very dry summer. The D-G further noted that alongside these factors, *"DOC did not have a hands-on approach at the time to management at the [Sanctuary] which is necessary to ensuring conditions are met and risks are minimised"* further noting *"as you highlighted, a dedicated approach in this case of closer monitoring and compliance is critical."*

203. The reply from the D-G in October 2018 indicates that at this time DOC had formed a view around the likely factors contributing to the 2016/17 kiwi deaths, and that DOC was now focused on closer monitoring and compliance at the Sanctuary. However, at this stage DOC does not appear to have made a direct, formal request of the Sanctuary for details of kiwi deaths over this period, nor had it pursued formal inquiries or any investigation into concerns of unnecessary handling of kiwi chicks that had been raised by a number of informants over a year earlier.
204. There is some evidence indicating that DOC staff may have found the complaints difficult to deal with because the informants for the most part wanted to remain anonymous. A number of the informants provided DOC with information under the protection of the Protected Disclosures Act. DOC's handling of Protected Disclosures by one of the informants has been the subject of a separate independent review and this aspect falls outside the terms of reference for this review. It is sufficient to note here that many of the informants sought to have their identity protected or to make Protected Disclosures for entirely understandable and legitimate reasons, and that such requests should not have impeded DOC from acting on the concerns raised in a way that both safeguarded informants while properly informing the department of the issues.
205. It is clear that DOC (in particular staff at the Napier District Office) had multiple meetings and discussions with Sanctuary staff about issues relating to kiwi Authorities and kiwi care and management generally over 2017, 2018 and into 2019. The focus of these discussions appear to have been on the need to put in place a valid Authority for brown kiwi at the Sanctuary, and DOC's requirement to understand current kiwi management practice at the site. While it is possible that the concerns and issues raised by the various informants were put to Sanctuary staff at some point in these engagements, if that was done the discussions were not recorded (or if they were DOC can no longer find the records). This contributed to a highly unsatisfactory situation where at least one of the informants is looking to the outcome of this review for an answer to concerns that they first raised with DOC in 2017.
206. Accordingly, DOC did not respond in a timely and appropriate manner when concerns were raised with the department about kiwi deaths in 2016/17 (and related concerns), as is evidenced by the department's lack of understanding of the detail and circumstances of kiwi deaths at the Sanctuary over the 2016/17 period when DOC was required to brief the Minister on the matter in February 2018. Such discussions as may have been had between DOC and the Sanctuary were not clearly recorded, and informants were generally not advised of any outcomes. The relevant DOC managers who received the complaints did not appear to have any clear, organisational expectations or guidance to help inform their response.

6.6 Were there systemic failings in DOC processes and the way it administered and monitored Wildlife Act authorisations and responded when adverse events were drawn to its attention?

207. The Independent Review is defined by the ToR and necessarily is focussed on the relevant history and engagements between DOC and the Sanctuary, particularly in relation to events surrounding the kiwi deaths over the summer of 2016/17 and subsequent engagements. Accordingly, the review provides a necessarily constrained view of DOC's overall administration and monitoring of Wildlife Act authorisations, and of its response when adverse events were drawn to its attention. Nevertheless, evidence has been gathered that indicates there are or may be systemic problems in these areas.
208. This review has found that the Sanctuary managed and handled brown kiwi without a valid Authority between the expiry of the 2006 Authority in 2011 and the issue of the Original Authority in 2018. No notification was issued to the Sanctuary about the pending expiry of the 2006 Authority, and both the Sanctuary and DOC were confused about the status of the Sanctuary's brown kiwi authorisation until DOC started investigating the issue when the Sanctuary made inquiries about this in late 2016.
209. As discussed under part 6.2 above, changes introduced by DOC to the permitting system were intended to provide Authority holders with notice that their Authority was due to expire. This did not work in this case, as the 2006 Authority was not entered into the new permissions system. There is evidence that this was also the case for other Authorities issued in Hawke's Bay (and potentially may be the case in other regions). This is a system issue that needs to be reviewed and addressed by DOC.
210. Associated with this issue is the fact that DOC staff in the Napier District Office did not have clear visibility of the requirements and conditions applying to the Authorities issued to the Sanctuary relating to kiwi. A clear indication of this is the fact that the 2006 Authority required the Sanctuary to provide DOC with an annual report on brown kiwi management at the site – such reports were not furnished by the Sanctuary (or if they were, neither DOC nor the Sanctuary can provide copies of them). There is no record of DOC following up with the Sanctuary on their obligation to provide reports under the 2006 Authority, indicating that staff at the Napier District Office were unaware of this requirement. This is significant, as a routine cycle of reporting from the Sanctuary to DOC would likely have placed DOC in a much more informed position in relation to brown kiwi management at the site.
211. Also, as discussed under part 6.2, the split responsibilities between administering Authorities (held by the Permissions Team within DOC) and the responsibility for monitoring and enforcing Authorities (held by the relevant DOC regional office) meant that DOC needed to pay particular attention to ensuring that regional offices had full visibility of the Authorities issued in their area, and the conditions adhering to them. This did not occur in the case of the Sanctuary's 2006 Authority, and information provided to the Independent Reviewer indicates that this remains as a system issue for DOC's administration and monitoring of Authorities generally. This needs to be addressed by DOC.
212. Associated with the issues around lack of clear visibility of the relevant Authorities issued to the Sanctuary at the regional office level was an evident lack of proactive monitoring and oversight of the Authorities. DOC does not appear to have reviewed the 2006 Authority issued to the Sanctuary and whether the Sanctuary was complying with the conditions it imposed at any stage between its

issue in 2006 and DOC's realisation in 2017 that it had already expired in 2011. Any substantive checking by DOC as to whether the Sanctuary was compliant would have identified that the Sanctuary had not provided annual reports and/or picked up that the Authority had expired.

213. This does not appear to be an isolated issue. Supporting documentation for an internal review of Hawke's Bay kiwi management programmes undertaken in 2020 noted generally in relation to this that *"DOC involvement has been minimal and variable across the programmes due to higher priorities, staff changes and knowledge. Limited support and compliance monitoring have led to poor practice arising in aspects of programmes."*⁷¹
214. Based on discussion with relevant DOC staff during the course of the review, the Independent Reviewer believes that this area continues to be a significant and systemic issue, with Authority monitoring and compliance activity typically occurring on a reactive basis, often initiated by DOC in response to notification of a problem or issue. The findings in this review highlight the fact that there is little use in imposing conditions in Authorities that are not clearly understood by both DOC and the Authority holder, and are not monitored or complied with. Rectifying these systemic issues, and ensuring that Authority holders are supported to be able to meet the conditions of Authorities (and are sanctioned in cases where Authority holders are unwilling or unable to meet reasonable conditions) needs to be a priority for DOC.
215. In terms of DOC's response when adverse events were drawn to its attention, this Review has found that there were significant problems with the department's response when various informants raised issues, including failures to engage in a timely and effective manner and undertake appropriate inquiries and investigations, failures to document relevant engagements and responses, and inadequate engagement and follow up to provide informant's with confidence that their concerns were being taken seriously and were being responded to.⁷²
216. There has not been scope in this review to consider other situations where DOC had cause to respond to concerns or complaints that may have been raised in circumstances other than in the case of the Sanctuary's management of kiwi. However, the available evidence does indicate that issues with DOC's response in the present case may be connected with an organisational lack of resourcing, training and prioritisation of timely and effective responses to complaints. Addressing these issues needs to form part of an organisation-wide set of changes to improve DOC's regulatory capability.

6.7 Has DOC taken steps to improve its administration, monitoring and enforcement of Wildlife Act authorisations? If so, what are those changes and what additional steps (if any) required to give the Director-General confidence that the Department is exercising its power to issue, monitor and enforce Wildlife Act authorisations prudently?

217. This Review has found significant failures and systemic issues with DOC's regulatory processes for authorising and managing Wildlife Act authorisations, including its responses when compliance issues are raised. This section of the

⁷¹ DOC Task Assignment: Review the nominated kiwi programmes (30 August 2019)

⁷² As previously noted, there also appears to have been issues with DOC's handling of matters under the Protected Disclosures Act, however these issues have been addressed in a separate report and are not covered in this Review.

Review Report considers steps that have been taken by DOC to improve its administration, monitoring and enforcement of Wildlife Act authorisations, and makes recommendations on additional steps required to give the Director-General confidence that the Department is exercising its power to issue, monitor and enforce Wildlife Act authorisations prudently. This section also contains recommendations that arise from the findings of the Review generally.

218. DOC has commenced work to ensure a robust regulatory process in these areas. DOC has completed an internal review of its regulatory capability and gaps ('Role of the Regulator Report'), which drew on lessons learnt from regulatory failures in other organisations in Aotearoa, assessments by DOC directors and staff, and the expected standards of regulatory stewardship as set down by Treasury. The Role of the Regulator Report also drew on the advice and recommendations by an expert panel of senior regulators and auditors convened by the G-Reg (Government Regulator) network.⁷³

The Role of the Regulator Report contains the following recommendations:

- The accountability for regulatory decision-making and process is vested in a Chief Regulator that reports directly to the Director-General. Some decision-making is retained at place, but the Chief Regulator holds discretion for this, as well as overall accountability.
 - The new Chief Regulator has a specific role to assure that DOC itself is conforming to regulatory rules and requirements.
 - DOC adopts a value statement about the role of the regulator that gives effect to the Kaupapa 'we are a regulator'.
 - A programme to improve regulatory culture and capability is rolled out across the organisation to relevant roles.
 - A regulatory strategy on the outcomes and use of regulatory tools is finalised by the accountable role.
219. Following on from this work, DOC has undertaken an 'organisational reset' which has established a new Office of Regulatory Services ('ORS') (which includes a new Director and senior managers), which is implementing recommendations from the Role of the Regulator Report.
220. The Reviewer considers the Role of the Regulator Report to be a robust report, drawing on key expertise and relevant guidance. The key recommendations in the report are sound, and the establishment of the ORS within DOC with a Director holding key regulatory oversight accountabilities is a meaningful step forward for DOC. However, the Role of the Regulator Report is also necessarily at a high level, with significant detail still to be worked through.
221. Alongside this, DOC has also commenced work in a number of specific areas with the intention of improving its administration, monitoring and enforcement of Wildlife Act authorisations. The following analysis discusses both work proposed to implement the Role of the Regulator Report as well as other steps already undertaken or proposed by DOC that will likely affect matters that have been considered in this Review.

Recommendations: Improve transparency and accessibility of Wildlife Act Authority information

⁷³ DOC 'Improving DOC's Regulatory Stewardship' Report 14 December 2020
David Shanks Independent Reviewer

222. Key information around Authorities should be easily accessible, both by accountable DOC staff (including regional office staff) and the Authority-holders themselves. This review has found that a lack of visibility of relevant Authorities, their conditions and their expiry dates significantly contributed to confusion and problems both on the part of the Sanctuary and with DOC.
223. In order to address this deficit, DOC needs to replace its existing Permissions Database with a fit-for-purpose system that reliably captures all Authorities and provides the necessary access and reporting functionality. DOC has been undertaking work since 2021 to ready the Permissions business for a full database replacement and migration, and advises that work on streamlining Permissions processes to ensure there is a 'single source of truth' for Authorities and permissions generally is well-progressed. Work was also completed in 2022 to restore existing out of date workflow processes within the existing Permissions database, which should aid migration to a new platform.
224. However, DOC also advises that any project to replace the Permissions database will be contingent upon funding and a completion date for this work is uncertain.

Recommendation 1: DOC prioritises the replacement of its Permissions database with a fit-for-purpose system.

225. Given the criticality to DOC (and Authority holders) in having a robust Permissions system, and the importance of making information about Authorities both accurate and accessible, it is recommended that DOC prioritise the Permissions database replacement. The database replacement project should take into account the findings of this Review and feedback from staff and stakeholders to ensure that it meets both DOC's needs, and the reasonable requirements of Authority holders and stakeholders. One obvious example of an essential outcome of implementing a fit-for-purpose system would be that all Authority holders get clear and early notification that their Authorities are due to expire.

Recommendation 2: DOC undertakes a risk-based review of existing Authorities and Authority holders.

226. Given that the Permissions database replacement project will likely take further time to complete, DOC should undertake a risk-based review now of existing Authorities and Authority holders, to determine if there are any current or emerging issues with Authorities involving significant numbers of kiwi or other protected wildlife where the Authority may have expired, or is about to expire. The work already undertaken in the Permissions area could provide the basis for such a review, supplemented as required from information that could be gathered from district offices on key activities subject to Authorities occurring in their areas.
227. A planned, well-managed review of current or pending risk areas should serve to identify key issues that may require proactive steps to be taken by DOC whilst work on the Permissions database replacement and associated system improvements is progressed.
228. For completeness it is noted that DOC has identified an issue with the fact that it operates two systems that can capture potential offences – the Compliance team operates a software tool ('CLEWorks') which is used to log general compliance incidents relating to potential offences (such as fishing in marine reserves), whereas breaches of terms and conditions of concessions and authorisations are recorded in the Permissions database run by the Permissions team. This has led to compliance staff having a lack of visibility over authorisation breaches. DOC

advises that a project to integrate these databases and improve visibility is currently underway.

229. While there is no evidence that this system issue was a material factor in the issues that are the subject of this review, it is clear that any steps that DOC can make to significantly improve visibility of issues and co-ordination across the system will be beneficial.

Recommendations: Improve Wildlife Act Authority conditions monitoring, audit and compliance capability

230. DOC needs to ensure that Authority conditions are clear and understood, both by relevant DOC staff and by Authority holders, and that it takes appropriate steps to monitor compliance with all conditions, and to audit compliance where appropriate. This Review has highlighted significant shortcomings in DOC's engagement with the Sanctuary in these areas, and there is evidence that these shortcomings may be systemic within DOC.
231. One of the key issues identified is the lack of visibility of active (or expired) Authorities, and their associated conditions, on the part of both DOC and the Sanctuary. Accordingly, the recommendations under 6.7(a) above to address transparency and accessibility of Authority information (including relevant conditions) will likely go some way towards improving DOC's awareness of relevant Authority conditions.
232. In addition to this, DOC also needs to undertake monitoring and auditing of Authority conditions on a regular basis, according to a well-understood and transparent framework. As this review has found, monitoring and auditing of Authority conditions are often conducted by DOC on an ad-hoc or reactive basis.
233. The Role of the Regulator Report contains a recommendation that ORS finalises a regulatory strategy on the outcomes and use of regulatory tools. DOC has advised that recent investment into the national compliance team capability has already improved the ability of the team to respond to compliance-related complaints, and assisted with the development of related training and systems. Monitoring, auditing and (if necessary) enforcing Wildlife Authority conditions are some of the most important regulatory tools at DOC's disposal.

Recommendation 3: DOC establishes a robust, fit-for-purpose framework for its approach to monitoring and auditing of Authority conditions.

234. Developing a Wildlife Authority monitoring and audit framework, together with guidance around use of regulatory tools/enforcement will be key to successfully rolling out a programme to improve regulatory culture and capability, as envisaged by DOC's Role of the Regulator Report.
235. The development of a Wildlife Authority monitoring and audit framework would best be undertaken in tandem with the development of the overarching regulatory strategy on the outcomes and use of regulatory tools recommended in the Role of the Regulator Report. The approaches contained in the regulatory strategy and the Wildlife Authority framework should be complimentary and mutually reinforcing. This will provide DOC with a clear basis upon which it can confidently move to proactive and routine monitoring of Authorities and their conditions.

Recommendation 4: DOC to develop procedures, guidance and training support for DOC staff tasked with carrying out the monitoring role, along with appropriate resourcing.

236. Clear guidance to staff on expectations, and practical training modules will be needed to ensure that responsible staff understand what is expected of them in this area, are trained, and have guidance available. Staff should also have clear pathways to access specialist advice on complex matters – which will likely be able to be provided by the Compliance team within ORS.
237. Appropriate resourcing for monitoring responsibilities will also need to be considered alongside guidance and training. Relevant to this, DOC has suggested that it may give consideration to transferring the responsibility for monitoring Authorities from district staff to the Compliance team, if the latter were able to be resourced to undertake this work. DOC will be in a better place to make a final decision around such a potential transfer of responsibilities once the current regulatory review work is completed by ORS. However, the Reviewer notes that if such a change were to be made, this would require careful consideration of how monitoring work conducted by the Compliance team would be transparently communicated to and coordinated with district staff, who would continue to be responsible for relationships and day-to-day engagement with Authority holders in their region.
238. Ensuring that adequate time and resources are dedicated to monitoring responsibilities will be an important consideration for DOC, whether these responsibilities are transferred to the Compliance team, or if they remain with district staff.

Recommendation 5: DOC to strengthen its internal assurance capability to ensure that this framework is working as it should.

239. In order to ensure that the Wildlife Authority monitoring and auditing framework is an adaptive and learning system, and in order for the Director General to have confidence that the system is operating as it should, DOC will need to ensure that its internal assurance capability is effective in allowing DOC to capture lessons learned and identifies any emerging issues or problems. DOC has advised that ORS is presently reviewing DOC's internal assurance capability and is currently developing recommendations for a long-term assurance development programme, which is intended to improve oversight of all permit holders and permit processes, including Wildlife Act Authorities. In April 2023 a Senior Manager Regulatory Assurance was appointed within ORS who is responsible for establishing and administering regulatory assurance processes and procedures (including those associated with Wildlife Act Authorities). This work will form an important component of DOC's overall systems-improvements work in this area, and should be developed and implemented as a priority.

Recommendations: Strengthen DOC's systems and practices for dealing with complaints and disclosures

240. This review has found that DOC's response to various complaints and disclosures made about Authorities held by the Sanctuary and kiwi wellbeing was inadequate. There was a failure to engage with individuals raising concerns appropriately, a lack of timely and effective follow up, and issues with connecting the various issues raised into an integrated picture.
241. DOC acknowledges that it needs to improve its processes and practices in this area. Based on an internal review conducted in December 2021 it has concluded that it needs to establish a formal centralised complaints-management system for the public to raise concerns, establish a single point of accountability for the handling of complaints made by external stakeholders, and to create policies to support these changes.

242. Funding has not yet been committed to these changes by DOC. Work is underway on an indicative business case for the new complaints-management system to seek funding, and this business case is not expected to be completed before June 2023.
243. A new fit-for-purpose complaints-management system would likely provide very useful support for the improvements DOC needs to make in these areas. However, establishing a new system will not by itself address the issues identified in this review. Just as important will be the associated policies and guidance for DOC staff who may be required to deal with complaints and disclosures. The findings of this Review, and lessons from other experiences in dealing with complaints to DOC could be used as resources to test the functioning of any proposed new system, and the fitness for purpose of associated policies.
244. Questions that could be used to assess the functionality of the new systems and policies would include:
- What are the expectations on DOC staff who are contacted by members of the public to enter details of complaints or concerns into the new complaints management system?
 - What appropriate policies and guidance can be put in place to ensure that appropriate records are taken of such contacts?
 - What support can be provided to both staff and complainants in circumstances where the complainant wishes to remain anonymous?
 - Additionally, what steps can DOC reasonably take to assure itself that complaints are acted on in a timely and effective manner, and that complainants are made aware that their concerns are being taken seriously?
245. Testing any new system and associated policies and guidance against the lessons from this review and scenarios from other complaints experiences will help provide DOC with confidence that the changes will actually deliver the improvements in this area that need to be made.
246. Relevant to this area is DOC's management of Protected Disclosures. Certain informants in the course of their engagement with DOC on matters relevant to this review made Protected Disclosures. DOC's handling of those Protected Disclosures has been the subject of a separate review and has not been addressed in this Review. However, ensuring that DOC responds effectively and lawfully to Protected Disclosures will form an important part of DOC's integrated approach to improving its systems and procedures around complaints and disclosures generally. Key to this will be ensuring that DOC staff are able to identify and effectively manage Protected Disclosures according to DOC policy.
247. DOC has recently reviewed and updated its Protected Disclosures policy and supporting SOP to ensure that it addresses recent changes in the Protected Disclosures (Protection of Whistleblowers) Act 2022. DOC has advised that the updated policy explains how to identify and manage Protected Disclosures, and that additional information on this has been posted on DOC's intranet to raise awareness and understanding of the expectations.
248. However, targeted training for all operational staff around the identification and management of Protected Disclosures has been identified by DOC as a significant undertaking which has not been budgeted for. In light of the complexity around Protected Disclosures (and the significant impacts if handled incorrectly), DOC will need to develop and deliver training on Protected Disclosures for relevant staff,

potentially in conjunction with training on management of complaints and disclosures generally, as discussed above.

Recommendation 6: DOC to prioritise development and implementation of a new centralised complaint management system, with associated policies and guidance to ensure DOC responds effectively to internal and external complaints.

Recommendation 7: DOC to develop and implement training for staff to ensure DOC identifies and responds to Protected Disclosures lawfully and appropriately.

Recommendations: Improve Policies and frameworks for engagement with proposals involving advocacy and commercialisation of protected wildlife

249. DOC does not have a clear, overarching policy in relation to Authorities where advocacy and commercial activities are occurring, and lacks guidance to decision-makers who may be considering the granting of Authorities where such activities may be occurring. Such policy and guidance would have benefitted DOC staff who were responsible for engaging with issues raised in relation to the Sanctuary, and would have supported decision making around the issue of appropriate Authorities.
250. DOC has advised that the development of a formal policy on advocacy and the commercialisation of protected wildlife is seen as forming part of the current legislative review of the Wildlife Act, which spans a broad range of issues related to species management (including commercialisation and advocacy). The Wildlife Act review will consider whether there should be a SOP for authorisations to hold wildlife for advocacy, and the potential to charge an activity fee on authorisation holders.⁷⁴
251. Current DOC practice is not to impose an activity fee on Authority holders, even where there may be commercial activities present, such as at the Sanctuary where guests paid a fee to attend a kiwi tour.
252. It is noted that the key issues around advocacy and commercial activity highlighted by this Review are not whether or not DOC chose to impose an activity fee on the Sanctuary, or whether the Sanctuary was making significant profit from the kiwi tours programme. Evidence provided in the course of this review shows that earnings from kiwi tours were significantly less than the cost of the kiwi conservation programme run at the Sanctuary as a whole. The concerns raised with DOC relevant to this area meant that the department was required to engage with the possibility that the kiwi tours at the Sanctuary might have created incentives to handle kiwi more than necessary. It was also DOC's responsibility to consider how to put in place effective and clear Authority conditions that both recognised the value of non-invasive advocacy encounters, while mitigating any risk to kiwi and ensuring appropriate oversight of this activity. A clear policy on advocacy and commercial activity, with appropriate guidance, would have supported a confident and effective response by DOC to these issues.

Recommendation 8: Develop policy on advocacy and commercialisation of protected wildlife alongside broader review of the Wildlife Act.

⁷⁴ DOC currently has the legislative power to charge an activity fee for commercial activity by Authority holders under ss 60A and 60D of the Conservation Act 1987 – however an SOP would provide a transparent framework for decisions around whether or not to impose such a fee.

253. The question of how to appropriately address and regulate advocacy and commercial activity involving protected wildlife is a complex issue, and the Reviewer supports DOC's approach of developing a formal policy in this area alongside the broader review of the Wildlife Act, while noting that DOC will need to ensure that it maintains a focus on this aspect as the review progresses.
254. The risk however for DOC pending the progress of this broader review work (which is likely to take many months, possibly even longer) is that there may already exist other situations where there are advocacy and/or commercial activities occurring involving protected wildlife, where Authority conditions are inadequate. Any such situations represent a risk to DOC's regulatory efficacy, and ultimately represent a risk to the wildlife, and this risk informs the following recommendation.

Recommendation g: DOC carry out an analysis of how many Authorities are in place where advocacy and/or commercial activity is taking place involving protected wildlife, and conduct a risk-based review to determine whether there are any existing cases where further inquiry and action may be required by DOC ahead of the development of the overarching policy and guidance.

255. Risk factors that could be taken into account by DOC as highlighted by this Review include cases where advocacy and/or commercial activity is taking place, alongside very old (or expired) Authorities, or where there have been concerns/disclosures made in relation to the activity.

Recommendations: Review and strengthen processes for iwi consultation on authorisations

256. During the course of this Review, issues have been noted with DOC's consultation with iwi when making decisions on authorisation applications. While there appears to have been discussions between DOC and relevant hapū relating to Sanctuary kiwi Authorities, documentation around this is lacking. When DOC was considering the Sanctuary's application for the Original Authority, it appears to have sent four letters to relevant hapū notifying them of the application, however DOC does not appear to have informed hapū about the deaths of kiwi that had occurred at the Sanctuary, either then or at an earlier stage.
257. Conversely, the Sanctuary provided extensive evidence of its close engagement with relevant iwi, including supporting evidence from its cultural advisor. The Sanctuary provided evidence that it did speak with the iwi cultural advisor about the 2016/17 deaths, and the evidence from the cultural advisor was that her practice was to pass on such information to the tangata whenua for the area.⁷⁵
258. While it is positive that the Sanctuary has committed to engaging with and building relationships with iwi and hapū, and has taken steps to keep them informed, DOC for its part cannot be reliant on Authority holders to take such steps, and DOC needs to ensure that it too is properly engaged with iwi and takes appropriate steps to keep them informed. One participant in this review said in their view the failure by DOC to advise hapū of the kiwi deaths in this case was a serious breach of DOC's responsibility to give effect to the principles of the Treaty of Waitangi.⁷⁶ Whether or not such a breach could be established in law, it would have been good practice and consistent with DOC's responsibilities for the

⁷⁵ This regularly occurred at the regular committee meetings for the Waipuka 3B ICI Incorporation 1997

⁷⁶ Conservation Act 1987 s 4.

department to have directly advised relevant hapū of the deaths and taken clear records about this.

259. DOC has identified that there are inconsistencies in its process in areas related to this issue. In the area of translocation of protected species, DOC has undertaken a review of its Translocation Standard Operating Procedure and has commenced work to provide additional guidance in the Translocation SOP and make other changes intended to improve clarity and support available for translocations, including engagement with iwi.

DOC has further identified that work is required in two other key relevant workstreams:

1. Undertaking consultation with iwi, hapū and whānau to understand their interests (and considering how to deal with their interests consistently with the principles of the Treaty of Waitangi when making decisions on authorisation applications), and
2. Ensuring ongoing engagement with iwi, hapū and whānau once the Authority is active.

Recommendation 10: DOC prioritise progress on iwi consultation and engagement workstreams, together with consideration of guidance and support to be provided to responsible DOC staff to develop and maintain effective relationships with relevant iwi and hapū.

Recommendations: Improve communication and clarity around roles and expectations for Wildlife Act Authorities

260. Lack of clear communications and clarity around the role and function that DOC was carrying out at various times during its engagement with the Sanctuary contributed to confusion between the parties.
261. Similarly, there was a lack of clarity between the parties around the role and responsibilities of the KRG as the key advisory group to DOC on kiwi management. Accordingly, it is recommended that DOC apply the findings of this review to improve its communications and materials for Authority holders to establish a clearer basis for engagement with Authority holders in future.
262. Significant work has already been completed in this area by the KRG, which completed a communication plan in 2021 to ensure that the KRG's identity, mandate and role are clearly identified through the KRG's communications. The intended audience of the plan's key messages includes DOC internally, kiwi practitioners, community groups, kiwi handlers, creche sites, captive facilities, research institutes and iwi/hapū/whānau. The plan includes an expectation that the communication plan is reviewed annually to ensure that it remains fit for purpose.
263. The utility of this communication plan will be reflected in real improvements in communications from the KRG and improved understanding on the part of stakeholders. It is relevant to note in this regard that the Sanctuary advises that it was not aware of the KRG's communications plan or any changes/advances in communications about the KRG's identity, mandate and role that have been made as a result of it until it was informed of this work by the Independent Reviewer.

Recommendation 11: DOC develop a communications strategy and plan to ensure that Authority holders are clear about DOC's role and responsibilities in issuing and overseeing Authorities, and the associated expectations upon the Authority holder.

264. DOC processes historically appear to have relied on Authority holders reading and interpreting the Authorities correctly themselves. The findings of this review

indicate that there would be real advantages in providing Authority holders with associated guidance on DOC's role, reference material and key contact details within DOC for addressing any questions from the outset. Alongside this DOC needs to consider how it can ensure that it maintains regular contact with Authority holders on developments or changes that affect them, and that it ensures that communication channels are open (particularly with Authority holders who are managing significant numbers and varieties of protected wildlife, and who hold multiple Authorities, such as the Sanctuary).

265. The importance of a clear communications plan relating to Wildlife Act Authorities and ensuring that lines of communication remain open are only likely to become more critical as DOC implements the recommendations of the Role of the Regulator report, and as it rolls out its regulatory strategy and programme to improve regulatory culture and capability across the department.

6.8 Has DOC worked with the Sanctuary to develop robust management and operational systems to ensure the welfare of kiwi held at the Sanctuary?

266. The Sanctuary has made significant improvements in its management and operational systems to ensure the welfare of kiwi held at the Sanctuary since 2017. Many of these were supported by consultation with DOC and kiwi experts.

267. In May 2018 the Sanctuary completed its Cape Sanctuary Kiwi Management Standard Operating Procedure ('the Kiwi Management SOP'). This drew together in one place the protocols and procedures that had been established for safe handling and management of kiwi, as well as related areas such as the reporting of kiwi deaths.

268. Since then, the Sanctuary has continued to amend and update its kiwi management guidance and protocols for staff. For example, in 2020 the Sanctuary expanded its tour offering to guests to include 'night tours' which involve taking guests on a site tour at night with the goal of spotting a wild kiwi. The Sanctuary updated its SOP for kiwi tours to incorporate guidance around the safe conduct of night tours, and alongside this the KRG identified this an area where best practice contained in the Manual needed to be updated, which was subsequently done to include protocols around such tours.

269. The Sanctuary has also significantly enhanced its operational processes around important areas such as notification of kiwi deaths to DOC. Evidence from the current Sanctuary manager detailed the thorough processes in place to ensure that the Sanctuary meets the requirement contained in the 2019 Variation on the Sanctuary to report kiwi deaths to DOC within 48 hours.

270. Alongside this, the Sanctuary has engaged with DOC to establish regular monthly meetings to enhance collaboration and communication, and to ensure that DOC is kept up to date.

271. The efficacy of the management and operational systems put in place by the Sanctuary (both in consultation with DOC and on its own initiative) is evidenced by the very strong overall results that the Sanctuary has achieved in raising kiwi. A 2021 report on North Island brown kiwi found that since 2010 416 Operation Nest Egg (ONE) kiwi chicks have been creched at the Sanctuary, with a survival rate of 81.25%, while a population survey in July 2020 found the Sanctuary wild kiwi population to be close to 75 pairs.⁷⁷ Evidence from the current Sanctuary manager

⁷⁷ North Island brown Kiwi Report – January 2021 – Jacinda Amey
David Shanks Independent Reviewer

indicates that the assessment of 75 wild pairs is likely an underestimate, and the Sanctuary has now met the requirements to begin sustainably translocating North Island brown kiwi from the Sanctuary to other kiwi projects as a 'Kōhanga Kiwi' source site.⁷⁸

272. These results are a very significant achievement for the Sanctuary, evidencing a focus on kiwi wellbeing and a readiness to invest in specialist expertise to support its kiwi conservation work. The establishment of effective reporting protocols and regular engagement meetings with DOC staff also means that DOC is now much better informed than it was in 2016/17, and is able to play a more constructive and supportive role in the Sanctuary's kiwi conservation programme.
273. This progress has been made despite the issues with the existing 2019 Variation, which as has been discussed above lacks enforceable, fit for purpose conditions around handling frequency, kiwi tours, predator and disease control, and does not contain any clear mechanism for DOC to act in response to breaches. The significant progress that has been made, and the very good results achieved by the Sanctuary in caring for kiwi, does not obviate the need for DOC to have in place clear and effective Authority conditions, in order for it to have confidence that it can address any issues, challenges or changes arising in the future.
274. It is noted that the Sanctuary's Authority for little spotted kiwi expires in 2024, and is itself a decade-old Authority that will likely benefit from significant updating reflecting the improved understanding that both the Sanctuary and DOC now have about what an effective little spotted kiwi care regime looks like and, accordingly, what it is appropriate to include in any Authority issued by DOC for little spotted kiwi.
275. The independent reviewer understands that the Sanctuary has been working with DOC (including the Lower North Island manager) to develop the framework for an overarching Wildlife Act Authority, such as the one held by Zealandia Wildlife Sanctuary, to replace the separate Wildlife Act Authorities held by the Sanctuary. This work has been put on hold pending the completion of this review, and the Sanctuary advises that it is hopeful that this work will start again as soon as this report is completed.

Recommendation 12: DOC now commences work with the Sanctuary to review and update both the brown and little spotted kiwi Authorities currently held by the Sanctuary.

276. The aim of this work would be to have both kiwi Authorities updated and ready for issue by DOC well ahead of the expiry of the little spotted kiwi Authority on 30 May 2024. It may be anticipated that the improved communication between the Sanctuary and DOC will provide a good basis to establish new, fit-for-purpose kiwi Authorities that provide clear and robust conditions that will benefit both parties.⁷⁹

6.9 Was there an adequate system within DOC for identifying and responding to conflicts of interest and did that system work

⁷⁸ DOC has authorised the Sanctuary to translocate 80 ENIBK to the Ruahine Ranges over five years, with the first 10 kiwi being translocated on 12 December 2022.

⁷⁹ As has been discussed in the analysis of the 2019 Variation above DOC does not have the power to unilaterally vary or amend that Authority, therefore any changes to be made in light of the findings of this report will need to be agreed between DOC and the Sanctuary.

effectively regarding DOC staff and the Sanctuary, and in how DOC handled the complaints?

277. Information was provided to the Reviewer concerning potential conflict of interest issues arising on the part of KRG members and relevant DOC staff.
278. The concerns relating to potential conflicts on the part of KRG members was raised by the Sanctuary, which noted that confidential information that had been provided by the Sanctuary to the KRG for the purpose of its advisory functions was subsequently requested by a member of the KRG acting in a different capacity.
279. The evidence of the KRG member to whom this concern appears to relate is that he was aware of the obligations on him to ensure that Sanctuary information provided to him as a KRG member was kept confidential. However, a significant change occurred in early 2018 when in the course of making inquiries of the Napier District Office about the kiwi deaths that had occurred in the summer of 2016/17 on behalf of the KRG, he emailed that office from his private organisation email address (non-DOC KRG members are not given a DOC email address). DOC interpreted the information request as an Official Information Act request made by the organisation that the KRG member belonged to, and replied accordingly.
280. The KRG member was surprised by DOC's response as he felt that the context of the email had made it clear that his inquiries were made in his role as a KRG member, not as a representative of his private organisation. Considering that DOC's response meant that his organisation was now involved, he briefed his Chief Executive on the background to the OIA response. He also informed other KRG members that he would be pursuing further inquiries in his capacity as employee of his organisation, not as KRG member.
281. This sequence of events was both unfortunate and avoidable. If DOC believed that a KRG member was using information gained in their capacity as a KRG member to make formal inquiries on behalf of their organisation, then this should have raised an immediate question about whether that raised a conflict-of-interest issue in relation to that member. The appropriate response from DOC in the circumstances would have been to check back with the KRG member to confirm in what capacity they were pursuing the inquires, and also to confirm that the member was managing any potential conflicts of interest appropriately.
282. There is evidence that confusion arises in other situations around the capacity that KRG members are acting in, particularly in the case of email communications that may originate from a KRG members business email (as in this case) or from DOC officers who may be acting in their capacity as a KRG member but who will send emails from their DOC email. This confusion is understandable, given that many KRG members who are not DOC employees hold positions in organisations related to conservation, while DOC KRG members can hold technical advisory positions within the department.

Recommendation 13: DOC to provide KRG (and other advisory group members) with clear email signature block forms to use in all cases where they are communicating in their capacity as advisory group members, along with training to support them in identifying and managing the potentially complex conflict of interest issues that can arise for these groups. Conflicts of interest registers should be maintained and regularly updated for the membership of all advisory groups.

283. A separate perceived or potential conflict of interest was identified as arising from the nature of the relationship between the (then) D-G and the founder of the Sanctuary ('the Founder').
284. Several interviewees were recorded in notes of interview as expressing a belief that the D-G and the Founder were friends or had a close personal relationship. There was also evidence that the Founder would from time to time contact the D-G directly to discuss issues relating to the Sanctuary with him, and also that the D-G had received hospitality from the Sanctuary.
285. The (then) D-G provided information about his interactions with the Sanctuary and his relationship with the Founder. The D-G visited the Sanctuary with members of the KRG not long after he was appointed in 2013. In April 2014 a Sanctuary tour was offered as one of the prizes in a charity auction held by the Capital Kiwi project, and the winner of that prize (another public sector chief executive) invited the former D-G to accompany them on that tour, when he had the opportunity to meet Sanctuary staff and community workers and see the conservation work being undertaken there. At the conclusion of the tour the other chief executive hosted a barbeque, which the Founder also attended.
286. Subsequently the Founder invited the D-G and his wife to attend the April 2017 Mission Estate concert, which they attended. At this dinner and concert event, the founder introduced the D-G to a number of other philanthropists who were interested in contributing to conservation projects. The Founder and the D-G subsequently met at a number of conservation events, for example when the D-G opened the Sanctuary's Kotahi Aviary for Shore Plover in March 2018.
287. The D-G also provided contextual information that from an early stage when appointed to the role that it was made clear to him that it was a priority for the then Minister of Conservation and the State Services Commissioner that he continue work that had commenced under the prior D-G to change DOC's approach to working with others and to improve its engagement with the commercial and philanthropic sectors. He noted that the Founder was a very significant donor to conservation and was active in engaging other potential donors to conservation interests. The 2017 Mission Estate event was significant in this regard, as the D-G noted that when extending the invitation to this event the Founder advised the D-G that he intended to also invite other potential donors to conservation. While at the event the D-G did indeed meet a number of business leaders and philanthropists, some of whom went on to make significant contributions to conservation.
288. The D-G further confirmed that the Founder would contact the D-G from time to time to discuss various issues arising in relation to the Sanctuary. The D-G recalled that this occurred approximately 2 or 3 times a year, although in some years there was no contact. The D-G further recalled that he made it clear to the Founder that as D-G it would be inappropriate to discuss Authorities relating to the Sanctuary with him and he did not do so, although the Founder did raise from time to time his frustration at how slow it was working with DOC. The D-G recalled asking DOC staff to look into what was driving that frustration, but there appears to be no record of any such follow up or any record of the discussions between the D-G and the Founder
289. While the D-G was in Hawke's Bay and met with the Founder at the Mission Estate Concert in April 2017, the issue of missing kiwi or kiwi deaths does not appear to have been discussed. The D-G recalled that he only became aware of kiwi deaths at the Sanctuary and the expiry of the Sanctuary's 2006 Authority when DOC was

tasked with briefing the Minister on the complaints that had been raised with her in 2018.

290. At the time the D-G accepted the Sanctuary's invitation to the Mission Estate concert event, he was subject to departmental policy obligations relating to the disclosure and management of conflicts of interest as well as obligations relating to gifts and hospitality.⁸⁰ The DOC Conflicts of Interest policy was informed by relevant guidance and expectations for public servants issued by the (then) State Services Commission and the Office of the Auditor-General, and detailed expectations on all staff around the identification, disclosure and management of conflicts of interest.
291. The Conflicts of Interest policy requires DOC staff to disclose (and if appropriate, manage) interests that may give rise to a potential conflict of interest in the course of their duties. Examples of 'other interests' that could lead to a conflict include *"having received a gift, hospitality, or other benefit from someone in connection with your work as a DOC employee"* and *"being a relative or close friend of someone who has one of the above interests (or who could otherwise be personally affected by a decision of the Department's)"*. For the purposes of the policy a friend is defined as *"an individual who has a close personal connection with a DOC employee"*.
292. On the information provided by both the Founder and the D-G, it is reasonable to characterise their relationship as a significant or important one for both of them, but it cannot be said that they were close friends. As the Founder said of his relationship: *"I met him through my passion for conservation, and the work I have done with him has always been to foster conservation, and not to pursue a personal friendship."*
293. DOC's Gifts and Hospitality Received Policy in effect at the relevant time required offers of any significant hospitality or gifts to be disclosed in the relevant electronic gifts register ('significant' being defined in this policy as hospitality or gifts which are likely to be more than \$30 total). The D-G as Chief Executive also had obligations to comply with the (then) State Services Commission policies around Chief Executive expenses and hospitality disclosure. In accordance with these requirements, details of the D-G's expenses, including details of gifts and hospitality offered, have been published on the DOC website.⁸¹
294. In addition to requirements around disclosure, DOC's Gifts and Hospitality Received Policy includes requirements that:
- "Hospitality should not be accepted at any time when the company concerned is seeking or may soon be seeking to expand or confirm its business relationship with the department or even with the government, for example through a tender or contract."*
- and
- "Conspicuous, lavish, excessive or over-generous gifts or hospitality should be avoided at all times. As a guide, gifts or hospitality which might include travel and accommodation to an event or resort, an invitation to a high-profile event or*

⁸⁰ The D-G was not a DOC staff member, being employed by the (then) State Services Commissioner as D-G and Chief Executive of DOC. However, in such a position the D-G had obligations to identify and manage conflicts and deal with gifts and hospitality to a high standard, and compliance with relevant guidance and expectations from the State Services Commission and the Office of the Auditor General, as well as compliance with DOC's own policies is expected of whoever holds the position of Director-General of DOC (see <https://www.publicservice.govt.nz/assets/DirectoryFile/Model-Standards-Chief-executive-gifts-benefits-and-expenses.pdf>).

⁸¹ See <https://www.doc.govt.nz/about-us/our-structure/director-general/expenses-gifts-and-hospitality/>.

hospitality which might have a monetary value in excess of \$200.00 would be considered over-generous."

295. The value of the 2017 Mission Estate concert and dinner tickets paid for by the Sanctuary for the D-G (the D-G paid for his wife's attendance) was likely in the region of \$300. This was not recorded in the D-G's Gifts and Hospitality register. The D-G's evidence is that this failure to record the hospitality was an oversight on his part.
296. The Founder also invited the D-G to a subsequent Mission Estate event, but this invitation was declined – this offer was recorded in the appropriate Chief Executive Gifts and Benefits disclosure form, noted as declined on 6 October 2018, with an estimated value of \$100-\$500. Recording this hospitality offered, but declined, was in accordance with the policy requirements expected of the D-G in this area.
297. However the failure to record the earlier acceptance of hospitality from the Sanctuary was a breach of the expectations of the D-G as Chief Executive. This is compounded by the nature and value of the hospitality from the Sanctuary that was accepted. The value of the hospitality provided to the D-G was in excess of the value indicated as being over-generous in DOC's Gifts and Hospitality Policy, and the Mission Estate concert might reasonably be considered a high-profile event.
298. In addition to this, while the D-G was not aware in accepting the hospitality that the Sanctuary at the time had an expired Authority for brown kiwi, he had visited the Sanctuary and was aware that they held a number of Authorities relating to a range of protected species. It was therefore foreseeable for the D-G that the Sanctuary would likely in future engage with DOC in seeking to obtain or renew an Authority.
299. This combination of factors strongly indicate that in order to maintain the high standards of public service Chief Executives in this area, as well as to comply with DOC's own policy, the D-G should not have accepted the hospitality offered by the Sanctuary in this case.
300. It is noted that the D-G's interest in attending the 2017 Mission Estate event is understandable, given his focus on building relationships with the corporate and philanthropic sectors. As noted by the D-G some of the connections made by the D-G at the event helped lead to some very significant donations that were subsequently made to conservation initiatives.
301. Nonetheless, the primary obligation on the D-G in this situation was to comply with relevant policies and expectations in this area, and to ensure that he managed the risk of being seen as benefitting from and being influenced by the hospitality provided by the Sanctuary. Attendance at the event itself was not the issue, it was acceptance of payment for the event that created this risk. If the D-G considered this an important event to attend in his conservation role (which from his evidence he did), there were likely alternative options available to the D-G to both attend the event but to ensure that the Sanctuary did not pay for him, for example it would appear to have been an available option open to the D-G on these facts to treat his attendance at the Mission Estate event as a legitimate business expense with the cost of his attendance being covered by DOC.
302. The D-G recognised during later processes involving the Sanctuary that there existed perceptions that he might have a conflict of interest in matters relating to the Sanctuary. DOC records show that in April 2021 the D-G chose to reassign a task issued to him under the Protected Disclosures and Privacy Acts by the Chief

Security Officer to establish the causes of any failures in process and management that led to the deaths of kiwi at the Sanctuary in 2017 to avoid any perceptions of future report readers that he might be conflicted.⁸²

303. Later in 2021 the D-G completed a 'Declaration of Interests' form relating to a 'Jobs for Nature' application for funding that had been submitted by the Sanctuary to DOC, where the D-G removed himself from the decision-making process around the Sanctuary's application because he was included as part of an investigation into kiwi deaths at the Sanctuary, meaning there was potential for a perceived conflict of interest.
304. It is noted that the steps taken by the D-G in 2021 appear to be appropriate, but these occurred well after DOC responded to the complaints and disclosures relating to the Sanctuary, and DOC's engagements with the Sanctuary to put in place the Original Authority and the 2019 Variation.
305. The D-G's evidence was that he did not make operational decisions himself relating to the Sanctuary, nor did he seek to intervene in such decision making. Rather, in response to queries or complaints from the Sanctuary he would endeavour to find out from within DOC what was being done to address the issues. The evidence from other DOC staff involved with the Sanctuary spoken to by the Independent Reviewer indicated that that this was the approach adopted by the D-G on occasions when he was contacted by the Sanctuary. However, as noted above, records of such contacts between the Sanctuary and the D-G, and of subsequent inquiries by the D-G appear to be lacking.
306. It is noted that there is nothing inappropriate with the Sanctuary seeking to engage with the D-G as Chief Executive about concerns that they may have had around their engagement with DOC. The Sanctuary was entitled to escalate concerns as they saw fit. In receiving such communications, it was also reasonable for the D-G to do what he recalls doing in response, which was to make inquiries within DOC about the concerns. However any direct engagement by an organisation with the Chief Executive of a department who has regulatory oversight of them carries inherent risks, particularly if there are any perceptions of a personal relationship between the parties.
307. Such perceptions existed in this case. A number of DOC advisors and decision makers involved with the Sanctuary's kiwi management believed that the Founder and the D-G were friends. While as discussed above it was not the case that the Founder and the D-G were close personal friends, it is understandable that these perceptions arose, as they did have a relationship that was an important one for each of them. DOC staff were also well aware that the Founder could and would escalate issues from time to time with the D-G.
308. There is no direct evidence that perceptions of the D-G's relationship with the Founder and the Sanctuary had any influence on how DOC engaged with complaints about the Sanctuary's management of kiwi, or decisions around the relevant Authority review and approval process through the critical 2017-2019 period. However it may be noted that any such influence would not necessarily be easy to discern. The influence of perceptions around such matters can be subtle rather than overt.
309. Given the nature of the relationship between the D-G and the Founder, these perception risks and ongoing contacts between the Founder and the D-G

⁸² This was a report commissioned before the present Review, that for process reasons was not concluded and was not made available to the Reviewer.

became increasingly fraught as DOC engaged with both the complaints about the Sanctuary and dealt with issue and review of Authorities issued to the Sanctuary. The issues were likely sufficient to merit the D-G formally noting a conflict of interest once he became aware of details around kiwi deaths at the Sanctuary and the need to issue a new Authority in 2018. Recording a conflict of interest would have provided an opportunity to review how to manage ongoing risks arising in this area. Risk mitigation steps that could have been taken at this stage include clear messaging to DOC decision makers dealing with the Sanctuary and protocols around direct approaches to the D-G by the Sanctuary, including careful record-keeping.

310. Transparent and careful record-keeping is also an important element in addressing the risk of influence, or being perceived to be influenced by inducements such as gifts and hospitality. As has been discussed above, given the circumstances the D-G likely should not have accepted the invitation and payment for the Mission Estate event for him, but having done so, it was important that this be documented in the relevant register. While this was not done at the time, there was opportunity to rectify this omission subsequently. A comprehensive look at conflict-of-interest risks in 2018 could have provided a good opportunity to review and address this omission.
311. There is ample evidence to suggest that issues around balancing the need to continue to build effective relationships with commercial and philanthropic interests, while effectively managing potential conflicts and perceptions of influence, is likely to be an ongoing challenge for senior DOC managers, including (and perhaps especially) the Director-General.
312. DOC will likely wish to continue to make good progress in partnering with private sector interests and 'teaming up' around conservation projects. However, it will need to carefully consider how to ensure that progress in this area does not compromise its regulatory oversight responsibilities. At least part of the solution to balancing these considerations is to pay close attention to ensuring that current guidance and best practice around management of conflicts of interest, as well as gifts and hospitality, are understood and imbedded in the culture of the organisation.
313. The guidance and expectations in this area continue to evolve, and it is noted that the current (2022) guidance from the Public Service Commission to Chief Executives provides the following relevant comment:

There will always be a public perception of influence or personal benefit if secretaries and chief executives accept gifts, benefits, or hospitality. It is critical to maintaining public confidence that the integrity and motivations of all secretaries and chief executives are not called into question.

The opportunity to 'network' is not a sufficient reason for accepting or offering hospitality that is unrelated to a core role.⁸³

314. Accordingly, while DOC did appear to have in place adequate policies and requirements in relation to identifying, disclosing and managing conflicts of interest and gifts and hospitality, there is evidence that these policies and

⁸³ Public Service Commission Model Standards Chief Executive Gifts, Benefits and Expenses (2022) <https://www.publicservice.govt.nz/assets/DirectoryFile/Model-Standards-Chief-executive-gifts-benefits-and-expenses.pdf>

expectations were not met when the D-G decided to accept hospitality from the Sanctuary in 2017, and failed to disclose this hospitality.

Recommendation 14: DOC develops and implements a training programme to ensure that all staff (including senior management) are fully aware of and up to date on the expectations of them in relation to disclosure and management of conflicts of interest and gifts and hospitality.

Recommendation 15: DOC review its audit and assurance processes to ensure that it can be confident that staff and senior management are complying with policy expectations in this area to the high standard required.

6.10 Are there any recommendations for the Director-General regarding DOC's systems and processes which are additional to those addressed above?

315. In the course of outlining the circumstances leading to the issue of the 2019 Variation, it has been noted that on 3 October 2018 DOC issued a media statement in response to media reporting about deaths of kiwi at the Sanctuary.⁸⁴
316. Various aspects of this media statement are of concern in light of the findings of this Review. For example, in the statement DOC asserted that it "*was confident that kiwi handling practices at the Sanctuary are of a very high standard.*" At this time DOC had not substantively investigated the various disclosures and concerns raised in relation to this, and had not yet started its site visits to the Sanctuary. The media statement further said that "*DOC had been working closely on a programme of education in kiwi management with the Sanctuary since February 2018*" but there appears to be no documentation or records to support such a statement. The reason given by DOC in the statement for the issue of the Original Authority to the Sanctuary was that "*the local office was comfortable to work through the process of consolidating the various kiwi permits for the Sanctuary.*" However, while DOC had communicated with the Sanctuary about consolidation of kiwi authorisations (and had requested a resubmission of the Sanctuary's application for an Authority on this basis) no such consolidation appears to have occurred. The only other active kiwi Authority held by the Sanctuary was the little spotted kiwi Authority, and this was not consolidated.
317. DOC's media statement said further in relation to the Facebook footage of Sir Paul McCartney holding a brown kiwi chick posted in December 2017 "*while the handling of the kiwi at Cape Sanctuary was not permitted at the time the picture was taken, it is now.*" This was wrong; as discussed earlier at no time did the Sanctuary hold an Authority that provided permission for guests on kiwi tours to hold kiwi.
318. The apparent inaccuracies and misleading statements contained in DOC's media statement at this time have a number of significant implications for DOC's systems and processes. A number of the statements made had the effect of dismissing concerns that had been raised over a year earlier with DOC – and which still had not been robustly investigated. This would have been distressing to some of those who had raised concerns with DOC, and meant that DOC compromised its ability to engage seriously with some of those issues. Inaccuracies over what was now allowable in terms of members of the public handling kiwi risked sending the wrong message to the Sanctuary, other kiwi Authority holders, and the public at large. In addition to this, assurances in the statement that all kiwi Authorities had a standard condition that the Manual best-practice procedures must be upheld,

⁸⁴ See Part 5.5 para 11

and contained specific frequencies for welfare checks on kiwi were departed from by DOC in the 2019 Variation.

319. DOC as a public service department is required to ensure that its public communications are accurate. Beyond this, in light of the findings of this Review, it is further obliged to take care to ensure that its public statements do not compromise its role as a regulator or its ability to carry out further investigations or inquiries that may be needed. Poorly informed, inaccurate or misleading public statements have the potential to seriously impact on the impartiality that DOC is expected to maintain in order to conduct its regulatory functions properly.

Recommendation 16: DOC to include its public communications assurance processes in its suite of regulatory improvement processes to address the risk of inaccurate or misleading public statements adversely impacting its regulation of Wildlife Authorities or its ability to impartially investigate complaints.

7. Recommendations summary

Improve transparency and accessibility of Wildlife Act Authority information

Recommendation 1: DOC prioritises the replacement of its Permissions Database with a fit-for-purpose system.

Recommendation 2: DOC undertakes a risk-based review of existing Authorities and Authority holders.

Improve Wildlife Act Authority conditions monitoring, audit and compliance capability

Recommendation 3: DOC establishes a robust, fit-for-purpose framework for its approach to monitoring and auditing of Authority conditions.

Recommendation 4: DOC to develop procedures, guidance and training support for DOC staff tasked with carrying out the monitoring role, along with appropriate resourcing.

Recommendation 5: DOC to strengthen its internal assurance capability to ensure that this framework is working as it should.

Strengthen DOC's systems and practices for dealing with complaints and disclosures

Recommendation 6: DOC to prioritise development and implementation of a new centralised complaint management system, with associated policies and guidance to ensure DOC responds effectively to complaints.

Recommendation 7: DOC to develop and implement training for staff to ensure DOC identifies and responds to Protected Disclosures lawfully and appropriately.

Improve policies and frameworks for engagement with proposals involving advocacy and commercialisation of protected wildlife

Recommendation 8: Develop policy on advocacy and commercialisation of protected wildlife alongside a broader review of the Wildlife Act.

Recommendation 9: DOC carry out an analysis of how many Authorities are in place where advocacy and/or commercial activity is taking place involving protected wildlife, and conduct a risk-based review to determine whether there are any existing cases where further inquiry and action may be required by DOC ahead of the development of the overarching policy and guidance.

Review and strengthen processes for iwi consultation on authorisations

Recommendation 10: DOC prioritises progress on iwi consultation and engagement workstreams, together with consideration of guidance and support to be provided to responsible DOC staff to develop and maintain effective relationships with relevant iwi and hapū .

Improve communication and clarity around roles and expectations for Wildlife Act Authorities

Recommendation 11: DOC develop a communications strategy and plan to ensure that Authority holders are clear about DOC's role and responsibilities in issuing and overseeing Authorities, and the associated expectations upon the Authority holder.

Establish clear and fit-for-purpose Authorities for kiwi care and management at the Sanctuary

Recommendation 12: DOC now commences work with the Sanctuary to review and update both the brown and little Spotted Kiwi Authorities currently held by the Sanctuary.

Address conflict-of-interest and perception issues identified

Recommendation 13: DOC to provide KRG (and other advisory group members) with clear email signature block forms to use in all cases where they are communicating in their capacity as advisory group members, along with training to support them in identifying and managing the potentially complex conflict of interest issues that can arise for these groups. Conflicts of interest registers should be maintained and regularly updated for the membership of all advisory groups.

Recommendation 14: DOC develops and implements a training programme to ensure that all staff (including senior management) are fully aware of and up to date on the expectations of them in relation to disclosure and management of conflicts of interest and gifts and hospitality.

Recommendation 15: DOC review its audit and assurance processes to ensure that it can be confident that staff and senior management are complying with policy expectations in this area to the high standard required.

Act to ensure media statements are accurate and not misleading

Recommendation 16: DOC to include its public communications assurance processes in its suite of regulatory improvement processes to address the risk of inaccurate or misleading public statements adversely impacting its regulation of Wildlife Authorities or its ability to impartially investigate complaints.

Appendix 1 – Terms of Reference

DOC-7176796

19 October 2022

Terms of Reference

Independent Review by David Shanks into complaints about

a) Kiwi deaths at Cape Sanctuary in summer 2016/2017; and

b) Department of Conservation systems and processes

Context

1. Cape Sanctuary (the **Sanctuary**), located on Cape Kidnappers Peninsula, Hawkes Bay, is one of New Zealand's largest privately owned and managed wildlife sanctuaries. It protects 2,500 hectares from predators via a 10.5-kilometre largely predator-proof fence. Several native species have been translocated into the Sanctuary, including little spotted kiwi and North Island brown kiwi.
2. Without conservation management, less than 5% of kiwi chicks on the mainland of New Zealand survive to adulthood, mainly because of predation by stoats and cats in the first six months of life. To increase kiwi chick survival rates, the 'Operation Nest Egg' Programme (ONE) was developed by kiwi experts as a conservation management tool. From 2007 onwards, the Sanctuary commenced the crèching of ONE kiwi chicks, which involved releasing kiwi chicks (that had been hand-reared at a captive management facility until 3-4 weeks old) into the Sanctuary's predator-free wild environment and monitoring them with transmitters to measure their health and survival outcomes, until they reached a certain size which meant they could be released elsewhere.
3. The Department of Conservation/Te Papa Atawhai (**DOC**) has responsibility for the protection and control of wildlife in New Zealand under the Wildlife Act 1953 (the **Act**). Under the Act, all wildlife is absolutely protected unless the Act specifies some other level of protection.¹ Kiwi are absolutely protected under the Act.
4. The Director-General of DOC (**DG**) has power under the Act to issue authorities to specified persons to obtain live protected wildlife to be held for specific purposes.² Without an authority, such activities would contravene the Act. Authorities usually include conditions that require reporting on the health (including death) of wildlife to which they apply; and monitoring the wellbeing and safety of protected wildlife. DOC maintains a permissions database and works with sanctuaries to ensure they have the appropriate permissions in place.

¹ Wildlife Act 1953, s 3.

² Section 53.

Department of Conservation Te Papa Atawhai

National Office

PO Box 10420, Wellington 6143

www.doc.govt.nz

5. DOC has had a relationship with the Sanctuary since 2006, especially through DOC's District Office in Napier. This includes ensuring compliance with the Act and with relevant authorisations for holding and/or handling protected species.
6. In the summer of 2016/2017 (**summer of 2016/17**), the Sanctuary recorded its highest number of kiwi deaths. Statistically, as in most conservation contexts, some variation between the number of kiwi deaths at kiwi sanctuaries from season to season is to be expected.
7. Between 2016 and 2018, DOC received complaints from several sources about the deaths of kiwi and kiwi handling practices at the Sanctuary. These alleged that:
 - Kiwi were being handled by individuals not trained in kiwi handling as part of a tourism business operation involving the payment of fees in return for access to and handling of kiwi. Such handling was in breach of the *Kiwi Best Practice Manual* and the Act.
 - DOC was aware of the handling of kiwi at the sanctuary.
 - An authorisation from the DG is required to receive, keep, use and handle kiwi and DOC was aware that there was no permit authorising the handling of kiwi at the Sanctuary.
 - The deaths of half of the North Island Brown Kiwi chicks being creched at the Sanctuary in 2016/2017 season were due to inadequate monitoring by the Sanctuary.
 - The deaths of almost 50% of the Little Spotted Kiwi being held at the Sanctuary were due to a failure to monitor and respond to mortality signals by the Sanctuary.
 - There was a failure by (i) the Sanctuary and/or (ii) DOC to report these kiwi deaths appropriately to DOC and to iwi that had provided the kiwi chicks to the Sanctuary.
8. In February 2018, one of the complainants escalated their concerns to the Minister of Conservation about the lack of, or any, progress by DOC in investigating the complaints previously made. In responding to the complaint, the Minister's response referred to the deaths of 9 Little Spotted Kiwi and made no reference to the deaths of Brown Kiwi. Poor process in dealing with this complaint led DOC to be found to have breached the Protected Disclosures Act 2000 and the Privacy Act 1993 and resulted in the Minister's response to the Complainant being inaccurate.
9. In early 2018, the Royal Forest & Bird Society of New Zealand Ltd (**Forest & Bird**) also became involved through its representative (the **Representative**) on the Kiwi Recovery Group (**KRG**). The KRG is an advisory group established by DOC in 1991 to provide high-quality technical advice to people working to save kiwi. The Representative had become aware of Little Spotted Kiwi deaths at Cape Sanctuary and wanted to understand what had happened and whether there were any learnings for the future. In light of this, the Representative sought responses to a number of questions from DOC. DOC treated these matters as an Official Information Act request from Forest & Bird.

10. On 30 August 2018, the DG granted the Sanctuary an authority under the Act for North Island Brown Kiwi (**Original Authority**).
11. On 18 February 2019, the Sanctuary applied to vary the conditions relating to health check frequency for kiwi chicks contained in the Original Authority. The application was assessed by the KRG – Best Practice Committee which then provided advice to DOC.
12. On 29 August 2019, following four site audit checks of the Sanctuary, DOC's Hawkes Bay Operations Manager issued a breach letter to s 9(2)(a) advising that the Sanctuary was in breach of the Original Authority (the **Breach Notice**). The Breach Notice advised s 9(2)(a) that kiwi chicks were being exposed to health checks more regularly than permitted by the conditions of the Authority thereby constituting a breach of the Act. Following receipt of the Breach Notice, s 9(2)(a) met with DOC to discuss matters.
13. On 8 November 2019, a meeting took place between DOC and Sanctuary staff which led to the grant of a variation to Original Authority (**2019 Variation**). That same day, the Operations Manager acknowledged to s 9(2)(a) that DOC had not provided the Sanctuary with clear support tailored to the qualities and environment of the Sanctuary and apologised for the stress this had caused.
14. The 2019 Variation is still in place and is valid until 19 August 2028.
15. DOC's response to Forest & Bird's OIA request led to a number of new requests by Forest & Bird. These covered matters similar to the complaints above, including issues relating to the 2019 Variation. Subsequent Forest & Bird OIA requests focused on kiwi chick welfare issues associated with the Sanctuary's allegedly high chick handling regime and DOC's handling of multiple complaints about kiwi deaths at the Sanctuary.
16. For completeness, the Sanctuary has one other active kiwi authority to hold, release, transfer, take samples from and mark Little Spotted Kiwi which the DG granted to the Sanctuary on 24 June 2014, and which is valid until 24 June 2024.
17. From early 2018 to late 2019 Forest & Bird raised a series of concerns with DOC about the handling and management of kiwi at the Sanctuary, the deaths of kiwi over the 2016/2017 summer and DOC's processes before and after it learned of those deaths. In October 2019 these concerns were formally conveyed to the DG of DOC and DOC made a commitment to investigate and respond to the concerns.
18. As a result of these matters, DOC commissioned two investigations. The first focused on DOC's management of one of the complainants within the context of the Protected Disclosures Act and the Privacy Act. It did not extend to any investigation of the substance of the complaints. The second investigation was internal and focused solely on whether the 2019 Variation was fit for purpose.

19. As neither of these reports addressed the substance of the original complaints made between 2016 and 2019, the Director-General commissioned an internal investigation to undertake this work. This led to a final report dated 21 June 2021 which DOC has since treated as a confidential draft (**draft report**) due to a range of natural justice issues affecting the Sanctuary and **s 9(2)(a)**.
20. The current review and resulting report are intended to rectify the natural justice shortcomings in the draft report.

Purpose

21. The purpose of this independent review is:
 - (a) to investigate the complaints of alleged mishandling and mismanagement of kiwi at Cape Sanctuary, and the causes of kiwi deaths over the summer period of 2016/2017;
 - (b) to determine whether there are systemic failings in the way DOC administers and monitors Wildlife Act authorisations and responds when adverse events are drawn to its attention; and
 - (c) In light of investigating the above, make findings and recommendations so that DOC's systems and processes can be improved.

Clause 31(b) will apply in the event of any potential adverse findings against individuals.

Scope and focus of review

22. The scope and focus of this review are to establish:
 - (a) What led to the deaths of brown and little spotted kiwi at the Sanctuary in the summer of 2016/17, including whether a lack of monitoring and response to mortality signals by the Sanctuary caused or contributed to the deaths;
 - (b) Whether there was any unnecessary and/or unlawful handling of kiwi for commercial and tourism purposes at the Sanctuary before or during the summer of 2016/2017. If so, did those activities contribute to, or cause, the deaths of the brown or little spotted kiwi at the Sanctuary during the summer of 2016/2017;
 - (c) Whether the Sanctuary complied with all applicable legal requirements / obligations in relation to the handling and monitoring of kiwi chicks, as well as the reporting of kiwi chick deaths at the Sanctuary in the summer of 2016/2017.
 - (d) Regarding paragraph 8 above, did the Department provide appropriate support to the Minister to assist her in accurately responding to the complainant?
 - (e) The circumstances leading to the issuing of the 2019 Variation.

- (f) The adequacy of DOC's systems and processes and DOC's compliance with them. In particular,
- i. Did DOC use appropriate documentation to authorise the kiwi handling and management activities undertaken by the Sanctuary?
 - ii. Did DOC have a system for checking that the Sanctuary held the correct documentation/authorisations to undertake its kiwi handling activities?
 - iii. Did DOC impose adequate and enforceable handling, reporting and monitoring requirements on the Sanctuary that would enable DOC to intervene and/or take enforcement action in a timely manner if problems were identified?
 - iv. Does the current authorisation (the 2019 Variation) contain sufficient controls to protect kiwi from harm or are further amendments required?
 - v. Where authorisations or permissions were issued to the Sanctuary, how did DOC keep records of those and how did it monitor if the Sanctuary was complying with any conditions?
 - vi. Did DOC respond in a timely and appropriate manner when concerns about unnecessary and/or unlawful handling of kiwi for commercial or tourism purposes at the Sanctuary and the kiwi deaths in 2016/2017 were raised with the Department by staff and/or stakeholders?
 - vii. Were there systemic failings in DOC processes and the way it administered and monitored Wildlife Act authorisations and responded when adverse events were drawn to its attention?
 - viii. Has DOC taken steps to improve its administration, monitoring and enforcement of Wildlife Act authorisations? If so, what are those changes and what additional steps (if any) required to give the DG confidence that the Department is exercising its power to issue, monitor and enforce Wildlife Act authorisations prudently?
 - ix. Has DOC worked with the Sanctuary to develop robust management and operational systems to ensure the welfare of kiwi held at the Sanctuary?
 - x. Was there an adequate system within DOC for identifying and responding to conflicts of interest and did that system work effectively regarding DOC staff and the Sanctuary, and in how DOC handled the complaints?
- (g) Are there any recommendations for the DG regarding DOC's systems and processes which are additional to those addressed in the course of investigating and responding to item 22(f) above?

Reviewer

23. The investigation will be undertaken by David Shanks.

Process to be followed

24. The reviewer will largely undertake a desktop exercise reviewing all information previously collated, including:

- (a) Notes of all interviews previously undertaken for the purposes of the draft report.
- (b) Relevant legislation.
- (c) Kiwi Best Practice Manual (2003 version).
- (d) Brown Kiwi Husbandry Manual 2015.
- (e) Public Services Commission Standards of Integrity and Conduct
- (f) DOC's Conflicts of Interest Policy and Gifts and Hospitality Received Policy
- (g) DOC's Compliance and prosecution policy.
- (h) Any other documents that are relevant to the review.

25. The reviewer may, at their discretion, taking into account the questions/issues to be addressed in the review, re-interview any person if:

- (a) There is a conflict of evidence apparent from the notes of interview that the reviewer is unable to reconcile.
- (b) After reviewing any notes of interview, the reviewer is not satisfied that all necessary or appropriate questions have been asked of any of the individual interviewees.
- (c) The reviewer considers that a re-interview is necessary or appropriate.

26. The reviewer may, in his discretion, interview such other person or persons if they consider them likely to have information relevant to the review that has not previously been obtained, including iwi and accessing independent subject matter advice on the care of kiwi chicks in wild crèche facilities from an expert or experts relevant in this area such as:

- s 9(2)(a)
- s 9(2)(a)
- s 9(2)(a)

27. The reviewer may, in his discretion, seek further input from the complainant, Forest & Bird, Kevin Hackwell, and/or Cape Sanctuary's authorised representatives/s 9(2)(a).
28. Any interviews or re-interviews will be conducted electronically (e.g., via Teams or Zoom) wherever possible.
29. The interviews will be recorded, transcribed and signed by each interviewee.
30. Interviewees may be accompanied by support person or lawyer.

Natural justice

31. The reviewer will:
 - (a) Complete a thorough, unbiased, and procedurally fair review, including conducting the review in accordance with the principles of natural justice.
 - (b) Give any person against whom they are minded to make an adverse finding or comment in their report an opportunity to comment on it in draft.
 - (c) Provide the complainants and those the subject of the complaints with a copy of the draft report (with appropriate redactions) and a reasonable opportunity to comment on it.
 - (d) Consider all comments received before making findings and recommendations consistent with the purpose of the investigation set out in these terms of reference.

The report is to contain the following:

32. The report will:
 - (a) Address each complaint/issue/question noted above.
 - (b) Address any other issue that becomes relevant during the course of the review provided affected people are put on notice and so long as the issue is relevant to the issues/questions set out in these Terms.
 - (c) Make a high-level summary of findings on the complaints after a careful assessment of all relevant information.
 - (d) Set out the thinking/reasons for the findings; and
 - (e) Make recommendations that address the purpose of the review;
 - (f) Make any other comments and/or recommendations that are appropriate and directly relevant to the review.

With the Sponsor's approval, the reviewer may elect to produce the report in parts or instalments. For example, where certain matters require additional

time to investigate or resolve they may be dealt with in a later report(s). If it transpires that those subsequent instalment(s) cannot be completed at all, or within a reasonable timeframe, the Director-General may instruct the reviewer to cease the investigation and produce a closing report.

Matters relevant to report

33. The reviewer will provide a final report to the DG, via the Sponsor.
34. The DG will determine who receives a copy of the final report, the adoption and implementation of any recommendation in the final report, and any further action that may be needed following receipt of the final report.
35. For the avoidance of doubt, the Protected Disclosures Act complainant, s 9(2)(a) for Forest & Bird, Kevin Hackwell, and s 9(2)(a) /Cape Sanctuary will receive a copy of the final report, subject to any necessary redactions made at the DG's discretion consistent with relevant withholding grounds under the Official Information Act 1982 (OIA). The DG also anticipates making the report public, subject to appropriate redactions (if any).

Confidentiality

36. The purpose of the information gathered during the review process including the reviewer's report is to enable and inform the DG in relation to matters the subject of the review.
37. All information considered by the reviewer, including all notes of interview will remain confidential to the extent consistent with the OIA.
38. Persons interviewed for purposes of the review will be requested by the reviewer to keep the contents of the interview confidential and that, unless advised otherwise, they should not discuss the contents of the interview with any person other than to assist the conduct of the review or to give effect to recommendations of the review. This is to encourage free and frank discussions between the interviewees and the reviewer. It is not intended to permanently preclude interviewees from discussing the contents of the interview in other fora.

Reporting & Timeframe

39. The reviewer will provide the Sponsor with a report (or part one of the report, if it is to be produced in instalments) as specified above by 31 December 2022 or, should an extension(s) be necessary, within such other timeframe as may be agreed by the Sponsor.
40. The Sponsor will advise the relevant parties of any such extension

Sponsor

41. The Sponsor is:

Mike Tully Deputy Director-General, Organisation Support
Wellington, mtully@doc.govt.nz

Appendix 2 – People interviewed

In accordance with the ToR (paragraphs 24-30) the Reviewer conducted interviews and re-interviews of the following individuals/organisations:

- Informant 4
- Forest & Bird
- Forest & Bird's (former) representative on the KRG
- Recognised Kiwi care expert
- Former Manager, Sanctuary
- Former Ecological Advisor, Sanctuary
- Former D-G, DOC
- Former Acting KRG Leader, DOC
- Former Manager, DOC Napier District Office (from 2019)
- Former DOC Director of Operations, Lower North Island

In addition to the above, new affidavit evidence was furnished to the Reviewer on behalf of the Sanctuary, including (but not limited to) evidence from the Founder, current Manager and the Sanctuary's Iwi Cultural Liaison.

Context and information on DOC's current systems and processes was provided by DOC on request of the reviewer, including from DOC Legal and the Permissions Team.