

BEFORE THE EXPERT PANEL UNDER THE FAST-TRACK APPROVALS ACT 2024

IN THE MATTER of a substantive application by Port of Tauranga Limited for resource consents and a wildlife approval for the Stella Passage Development project, being a listed project in Schedule 2 of the Fast-track Approvals Act 2024

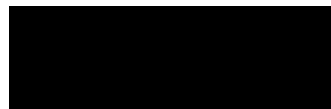
**MEMORANDUM ON BEHALF OF THE APPLICANT
[FTAA-2512-1163]
19 AUGUST 2026**


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Introduction

1. This memorandum is filed on behalf of Port of Tauranga Limited (**POTL**). In accordance with Minute 14 of the Expert Panel, this memorandum, together with the conditions attached containing comments, provide the Applicant's comments on the draft conditions under s 70 of the Fast-Track Approvals Act 2024 (**FTAA**).
2. POTL thanks the Expert Panel for the draft decision (the **Draft Decision**) and draft conditions.
3. Attached, and marked 'A' and 'B', to this memorandum are the Draft Regional Dredging Conditions (**Dredging Conditions**) and Draft Regional Structures and Reclamation Conditions (**Structures and Reclamation Conditions**) (together referred to as the **Conditions**) that were provided by the Expert Panel. The Conditions use comment boxes which contain POTL's comments on the Conditions. The comment boxes indicate where POTL agrees with the changes proposed, and where POTL disagrees and the reason for that disagreement. In some places, alternative wording is proposed within the comment boxes.
4. POTL has no comments on the Draft Wildlife Approval Conditions and the Draft Territorial Land Use Conditions.
5. POTL acknowledges that the Expert Panel has requested that any suggested amendments to the draft conditions be recorded as tracked changes using the word documents provided by the Expert Panel. It has been difficult to achieve a tracked change version of conditions in the two working days within which POTL has been directed to provide comments. POTL intends to provide tracked changes versions once it has considered the comments provided by those who provided comments under s 53 of the FTAA, and all relevant local authorities or statutory bodies, and responds to those comments pursuant to s 70(4) of the FTAA on 31 August 2026.

6. This memorandum is focused on the key changes within the Conditions that POTL does not agree with and explains why this is the case.

POTL comments on the Conditions

7. The Panel states that it has made a number of changes to the Conditions that are designed to create clear, effective, and enforceable conditions that provide meaningful opportunities for tangata whenua to participate in the project's implementation, improve the response to the values of rangatiratanga and kaitiakitanga, and better incorporate mātauranga Māori in monitoring.¹
8. POTL acknowledges the importance of tangata whenua participation as kaitiaki and rangatira for Te Awanui. POTL considers that its draft conditions, as amended through this process, and most recently filed with the Environmental Protection Agency on 30 July 2026 in response to the Panel's Minute 12 (**POTL's Conditions**) adequately provide for participation.² This includes:
 - (a) Regular meetings between the Stella Passage Development Advisory Group (**SPDAG**) and POTL for the purposes of discussing implementation of the consents and receiving feedback on any iwi and hapū concerns;³
 - (b) Annual strategic meetings between the SPDAG and POTL's Chief Executive and Chair of the Board of Directors;⁴
 - (c) Preparation by the SPDAG of a Mātauranga Māori State of the Environment report (**SOE Report**);⁵

¹ Draft Decision at [374].

² Memorandum of Counsel on Behalf of the Applicant in Response to Minute 12 of the Stella Passage Development Expert Panel [FTAA-2512-1163] dated 30 July 2026, Appendix A – D.

³ Condition 1.1(b) of the Structures and Reclamation Conditions.

⁴ Condition 1.3 of the Structures and Reclamation Conditions.

⁵ Condition 12.1 of the Dredging Conditions.

- (d) Preparation by the SPDAG of a mātauranga monitoring plan, ongoing delivery of monitoring under the plan, evaluation of monitoring data, and the making of recommendations relating to findings of the monitoring to POTL and Bay of Plenty Regional Council (**BOPRC**);⁶
 - (e) Review by the SPDAG of various management plans prior to certification or re-certification;⁷
 - (f) Provision for the SPDAG to undertake ceremonies prior to capital dredging and wharf extension works;⁸
 - (g) Appointment by the SPDAG of a marine mammal observation auditor to conduct periodic reviews of pile driving operations to ensure Marine Mammal Observers are acting in compliance with the Marine Mammal Management Plan;⁹
 - (h) Attendance by the SPDAG at a wānanga with POTL prior to pile driving being undertaken for the purposes of sharing knowledge and exchanging information regarding marine mammals in the area;¹⁰ and
 - (i) The opportunity to undertake cultural monitoring by the Tauranga Moana Iwi Customary Fisheries Trust of all capital dredging operations.¹¹
9. In POTL's view the mechanisms set out above already appropriately provide for the participation of tangata whenua in the implementation of the project. The Environment Court, in the direct referral proceedings, agreed that POTL's conditions were sufficient (subject to certain amendments) for the grant of Stage One of the

⁶ Conditions 14.1 and 14.5 of the Structures and Reclamation Conditions.

⁷ Conditions 11.4, 12.4, and 13.3 of the Structures and Reclamation Conditions and 8.3 of the Dredging Conditions.

⁸ Condition 3.3(c) of the Structures and Reclamation Conditions.

⁹ Condition 3.3(h) of the Structures and Reclamation Conditions.

¹⁰ Condition 12.4 of the Structures and Reclamation Conditions.

¹¹ Condition 14.1 of the Dredging Conditions.

project.¹² While the Panel has sought to further strengthen tangata whenua participation through amendments to the Conditions, POTL considers that those additional amendments are not necessary to achieve that objective. Moreover, several of the amendments introduce uncertainty as to the scope of the consent holder's obligations and the means by which compliance is to be assessed. As a result, POTL has concerns regarding the certainty, clarity and enforceability of a number of the amended conditions. The key areas of concern are discussed below.

Tikanga-based approach

10. The Panel has made amendments to the Conditions to provide that the consent holder must undertake a 'tikanga-based approach' to the implementation of certain conditions which require tangata whenua input and / or engagement.¹³ The Conditions do not define what constitutes a tikanga-based approach, nor do they specify the steps required of the consent holder to comply with that requirement.
11. The conditions of consent should be clear, enforceable, and be capable of being understood on their face. As presently framed, the amendments do not provide sufficient certainty as to how compliance is to be achieved in practice. In particular:
 - (a) It is unclear the steps POTL is required to take to achieve a tikanga-based approach. Tikanga is a 'system comprised of interwoven principles that guides action and relationships'.¹⁴ However, what those principles are is neither established nor uniform. The Courts have found that relevant tangata whenua groups are to determine and articulate their own tikanga-based standard.¹⁵ It can differ according to the whakapapa, kaitiakitanga, mana whenua / moana, and rangatiratanga of each group.

¹² *Port of Tauranga Ltd v Bay of Plenty Regional Council* [2024] NZEnvC 337 at [111].

¹³ See 2.1, 3.1, and 3.3(a) of the Dredging Conditions and 2.1, 3.1, 3.3(a), and 12.4 of the Structures and Reclamation Conditions.

¹⁴ *Ngāti Whātua Ōrākei Trust v Attorney-General (No 4)* [2022] NZHC 601 at [306].

¹⁵ *Ngāti Whātua Ōrākei Trust v Attorney-General (No 4)* at [31] and [310].

- (b) The Conditions do not address how conflicting tikanga of parties (16, as per conditions 3.1 of the Conditions) is to be resolved, with respect to the SPDAG. POTL should not be tasked with reconciling or prioritising the various groups' tikanga. However, as drafted, the Conditions contemplate this by requiring the consent holder to undertake a tikanga-based approach, particularly with regards to the SPDAG.
 - (c) From an enforcement perspective, it is unclear what standard BOPRC is to hold the consent holder to, and in what circumstances it will be able to certify that POTL is compliant with the requirement to adopt a tikanga-based approach, where this term is used in the Conditions.¹⁶
 - (d) Tikanga is important. However, tikanga should inform the operation of the conditions through participation and engagement, rather than constituting an indeterminate standard against which compliance is assessed. POTL's proposed conditions provide the framework within which tikanga can be recognised, expressed and exercised by tangata whenua. They do so by creating processes and opportunities for engagement, allowing tangata whenua to bring their own tikanga to their interactions with POTL, while ensuring that the obligations imposed on the consent holder remain clear, certain and capable of enforcement.
12. The Conditions must be sufficiently clear to enable the consent holder to understand what is required of it, and for BOPRC to determine compliance with that requirement. There is a danger that, as amended by the Panel, the Conditions do not achieve this. As such, POTL suggests the Panel's amendments that reference the use of a 'tikanga-based approach' are removed throughout the Conditions.

¹⁶ For example, see conditions 2.1 of the Dredging Conditions and the Structures and Reclamation Conditions for the relationship agreements, conditions 3.3 of the Dredging Conditions and the Structures and Reclamation Conditions for the SPDAG, condition 12.4 of the Structures and Reclamation Conditions in relation to the requirement to hold a wānanga.

13. For the avoidance of doubt, POTL is not opposed to tikanga. Its concern rests with the certainty and enforceability of conditions, particularly where the Conditions provide for an undefined process. Counsel records that under the guidance of its cultural advisors, POTL has endeavoured to engage with tangata whenua throughout the fast-track process in a manner consistent with tikanga. This has been set out in detail in the Mahea Report¹⁷ and the Substantive Application. As outlined during the Cultural Effects Hearing, POTL is committed to continuing to obtain and follow such guidance from its cultural advisors, irrespective of whether this is required by a condition of consent.

SPDAG Terms of Reference

14. The Panel has proposed that a 'Terms of Reference' be developed with and for the SPDAG (**Terms of Reference**).¹⁸
15. POTL is unable to determine how the proposed Terms of Reference process will materially change the operation of the Conditions, in particular the SPDAG and its functions, compared to POTL's Conditions. A majority of the matters the Terms of Reference intended to address were already dealt with through the substantive requirements contained in POTL's Conditions, including provisions that have now been deleted.¹⁹ There is no commentary in the Draft Decision as to why the Panel considered that this change was necessary, nor does counsel recall any tangata whenua party indicating during the Cultural Effects hearing that a Terms of Reference should be developed.
16. The amendments replace clearly articulated obligations on POTL in relation to the SPDAG with a future process that will determine the content of those obligations at a later date. While POTL acknowledges the intent of providing flexibility and facilitating engagement with the SPDAG, the approach introduces a level of uncertainty that is

¹⁷ Appendix 18 of the Stella Passage Development Substantive Application.

¹⁸ Condition 3.4 of the Structures and Reclamation Conditions.

¹⁹ See deleted conditions 3.3 of the Dredging Conditions and the Structures and Reclamation Conditions.

not present in POTL's Conditions. It is submitted that this uncertainty creates difficulties for both POTL and BOPRC.

17. The Conditions should provide a clear and certain framework against which compliance can be measured and enforced. Deferring key aspects of the SPDAG to a future process risks creating ambiguity as to the scope and content of the consent holder's responsibilities. For example, POTL's Conditions provide for the appointment of the marine mammal observation auditor and set out its functions, while the Panel's amendments provide that the Terms of Reference are to set out the process for the consent holder and the SPDAG to discuss and confirm appointments (including the marine mammal observation auditor). POTL's Conditions achieve substantively the same outcome as the Terms of Reference, while providing the level of certainty and clarity necessary for compliance and enforcement purposes. As such, it is respectfully suggested that POTL's Conditions should be reinstated in the final version of the Conditions.
18. POTL is also concerned that there is no mechanism to address the situation where the Terms of Reference cannot be finalised, and / or agreed between POTL and the SPDAG, within a specified period. As drafted, if the Terms of Reference are not finalised, it appears that POTL would be unable to lodge management plans with BOPRC for certification, given that reviewing the management plans is a function of the SPDAG. In these circumstances, POTL would be prevented from implementing its consents.
19. Further, POTL is concerned that the proposed Terms of Reference may be practically unworkable. POTL has sought to consent the project through various processes for approximately six years, during which strongly differing views on the project and its effects have been expressed. While those perspectives have been canvassed through those consenting processes, differences of view remain. Against that background, it may not be realistic to assume that agreement will be reached on all matters required to be addressed through the Terms of Reference process. Where consensus cannot be achieved due to the inability to resolve those differing views, there is potential for

uncertainty as to how POTL is to comply with this requirement and the form that the Terms of Reference are to ultimately take.

20. The above paragraphs indicate POTL's concerns with the Conditions relating to the SPDAG Terms of Reference. POTL's preference would be to retain its proposed condition set for the reasons set out above.

Mātauranga Māori State of the Environment Report

21. The amendments provide that the preparation of the SOE Report by the SPDAG is to now be 'facilitated' by the consent holder.²⁰ In POTL's view, the amendments to this condition should not be incorporated as:
 - (a) It is for tangata whenua, not for POTL, to say what the SOE Report entails. POTL is not able to express, by way of words in a consent condition, what the SOE Report should contain. In lieu of POTL 'facilitating' the SOE Report, which can be interpreted as including determination of the detail and direction of that report, funding for tangata whenua to prepare the report is the appropriate mechanism for fulfilment of the conditions.
 - (b) The deletion of the \$100,000 contribution removes a safeguard against disproportionate cost exposure and creates an uncapped funding obligation. While POTL accepts that it should contribute to the preparation of the SOE Report, there is no apparent basis for imposing an uncapped financial obligation, particularly where the condition does not contain any criteria for assessing the reasonableness of costs.
 - (c) POTL does not possess the cultural expertise necessary to prepare the SOE Report and would rely on input from tangata whenua. The conditions are silent on what occurs if tangata whenua are unable or unwilling to assist POTL

²⁰ Condition 12.1 of the Dredging Conditions.

with this process, potentially rendering the condition unable to be complied with.

22. For these reasons, POTL does not agree with the amendments that have been made to condition 12.1 of the Dredging Conditions and respectfully requests that the Panel reinstate POTL's Conditions.

Mātauranga Monitoring Plan

23. The Panel's amendments provide that the consent holder must facilitate the preparation of an Initial Mātauranga Monitoring Plan that is consistent with the Te Pā Pātiki conceptual framework (**Te Pā Pātiki**).²¹ POTL has several concerns with these amendments. POTL considers that the amendments relating to the Initial Mātauranga Monitoring Plan should be deleted and POTL's Conditions reinstated. POTL's concerns are as follows:

- (a) The design and effectiveness of an Initial Mātauranga Monitoring Plan will depend on an understanding of the baseline existing environmental and cultural conditions derived from the SOE Report.²² The Conditions contemplate that the preparation of the SOE Report will commence once the SPDAG is established.²³ In POTL's view, it is premature to require preparation of a monitoring plan, even on an interim basis, before that baseline information has been developed and thus available to inform the development of any monitoring plan.
- (b) POTL does not possess the cultural expertise necessary to prepare the Initial Mātauranga Monitoring Plan, or undertake the monitoring, and would rely on input from tangata whenua (as is alluded to in the advice note). As with the SOE Report, the Conditions are silent on what would occur if tangata whenua

²¹ Conditions 14.1 of the Structures and Reclamation Conditions and 15.1 of the Dredging Conditions.

²² Condition 12.1 of the Dredging Conditions.

²³ As above.

are unable or unwilling to assist POTL with this process, potentially rendering the condition unable to be complied with.

- (c) POTL's Conditions were deliberately designed so as to not pre-determine the form of the Mātauranga Monitoring Plan, recognising that this was for tangata whenua to lead the development of these matters, rather than require POTL to prepare them with input from tangata whenua. POTL considers that it is inappropriate for the Conditions to specify that one framework (Te Pā Pātiki) must be adopted; rather, it considers it appropriate that it should remain open for the SPDAG to adopt the framework it sees fit. Counsel notes that it is entirely open to the SPDAG to adopt Te Pā Pātiki in developing the Mātauranga Monitoring Plan, if all members are in agreement, as proposed in POTL's Conditions.
- (d) Since being advised during the Environment Court direct referral process that Te Pā Pātiki did not have the support of all tangata whenua parties,²⁴ POTL has not subsequently been advised that the parties who previously opposed the framework now support it.

²⁴ See the Memorandum of Counsel on Behalf of Port of Tauranga Limited dated 30 September 2024 at 19, filed in the Environment Court direct referral proceedings and provided to the Panel as part of POTL's response to the Panel's 3rd Minute (Annexure I) and Transcript of the Cultural Effects Hearing, 29 July 2026, Session 2, p 10.

Other matters*SPDAG quorum*

24. The Panel has proposed to require a quorum of eight nominees to form the SPDAG. This is instead of inviting all parties listed in condition 3.1 of the Conditions to nominate a representative. The SPDAG was designed to be autonomous and self-regulated. As such, POTL would like to understand the views of tangata whenua before it provides comments on this change. POTL will revisit these Conditions and provide a marked up set of conditions, once it has considered the feedback that is provided by other parties on 24 August 2026.
25. Counsel notes that the approach adopted in the Conditions creates uncertainty as to what would occur in the event that the Ngā Matarae Trust nominates a number of representatives, and then the parties listed in condition 3.1 of the Conditions subsequently all nominate representatives. In that event, there is no clarity as to whether representatives nominated by the Ngā Matarae Trust would then step down, or if all nominated members would remain on the SPDAG.
26. Counsel also notes that the approach adopted in the Panel's amendments to the Conditions creates uncertainty as to whether the Terms of Reference would need to be amended to reflect the views of SPDAG members who join post-establishment, whether those members are parties identified in condition 3.1 of the Conditions or groups subsequently invited by SPDAG.

Dredging volume

27. As advised during the project overview conference and in POTL's response to the Panel's Minute 12, 5.9 ha of the area proposed to be dredged as part of the project (approximately 800,000m³ to a depth of 12.9m chart datum) is already authorised under POTL's existing consent RC62920, which will be surrendered upon the grant of these approvals.
28. POTL is currently undertaking dredging pursuant to RC62920 and intended to provide the Panel with an updated volume to include in the Dredging Conditions. However, the volume dredged to date under that consent is not material so as to warrant a corresponding reduction to the volume in the Dredging Conditions. Any reduction may not accurately reflect the volume of dredging required for the project and as such POTL does not propose that the 1.5Mm³ volume in condition D.1 is varied.

DATED at Tauranga this 19th day of August 2026



Vanessa Hamm / Laura Murphy / Cory Lipinski
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