

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 IN RESPONSE TO MINUTE 7 OF THE
STELLA PASSAGE DEVELOPMENT EXPERT PANEL
[FTAA-2512-1163]
14 JULY 2026**


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Introduction

1. This memorandum is filed on behalf of Port of Tauranga Limited (**POTL**) in response to Minute 7 (**Minute**)¹ of the Stella Passage Development (**Project**) Expert Panel (**Panel**).
2. The Minute and the RFI request a number of responses from POTL and counsel address each in turn.²

Avifauna management plan

3. The Panel has requested:³

Confirmation of whether the Applicant agrees to the request from the Department of Conservation that recertification of the avifauna management plan occurs every 10 years to ensure that best practice methods and the current threat status of wildlife is adequately considered over time or considers direct conferencing or some alternate process is necessary to discuss this remaining issue.

4. In its response to the Panel's fifth Minute, the Department of Conservation (**DOC**) requested inclusion of the following condition in the Wildlife Approval:⁴

The Approval Holder must review the Avifauna Management Plan as it relates to the wildlife approval and resubmit it to the DOC Tauranga Operations Manager for certification every ten years from the date of approval to ensure it reflects current species knowledge and best practice penguin management and mitigation techniques.

¹ Minute 7 of the Expert Panel (Stella Passage Development FTAA-2512-1163) dated 29 June 2026.

² Noting that responses to paragraph [2](a) and (c) of the Minute are directed at *any participant other than the Applicant* and as such we have not responded to these.

³ Minute at [2](b).

⁴ Department of Conservation response to Minute 5, undated.

5. The Wildlife Approval is sought for penguin handling associated with construction of the Mount Maunganui wharf extension. Only Section 2 of the Avifauna Management Plan (**AMP**) relates to the penguin handling that is the subject of the Wildlife Approval. As such, any condition requiring periodic recertification of the AMP must be specific to Section 2 of the AMP. The other parts of the AMP relate to matters outside the scope of the Wildlife Approval and are therefore not subject to recertification.
6. As such, POTL proposes that recertification of Section 2 of the AMP should be required 10 years after the date of issue of the Wildlife Approval. Following that recertification, further recertification should only be required where POTL proposes penguin handling more than 10 years after the last recertification. This ensures that the AMP is reviewed and updated when required for future penguin handling activities, without imposing recurring recertification obligations at times when no penguin handling is proposed.
7. POTL proposes an additional condition to address the above and this is attached and marked Appendix One to this memorandum.

Amendments to draft conditions

8. The Panel has requested:⁵

*Confirmation of whether the **Applicant** wishes to propose any amendments to its draft conditions at this time, either in response to the initial comments provided by Ms Burkhardt on behalf of Ngāti Ranginui Fisheries Trust and Ngāti Ranginui Iwi Society (in paragraphs 30 - 43), the response from Te Tāwharau o Ngāti Pūkenga Trust and Ngāti Pūkenga Iwi ki Tauranga Trust (Part V), paragraph 52 of Pia Bennett's evidence on behalf of Ngā Tai ki Mauao, the conditions proposed by the Tauranga Moana Iwi Customary Fisheries Trust referenced in paragraph 7 of its 8 June 2026 response, or more generally.*

⁵ Minute at [2](d).

9. Broadly, the comments referenced at [2](d) of the Minute query the following matters:
- (a) Is the Stella Passage Development Advisory Group (**SDPAG**) an appropriate vehicle to address effects?
 - (b) How will the SPDAG be established and managed?
 - (c) Will the SPDAG have adequate financial and technical resources to discharge its role?
 - (d) Will the SPDAG have meaningful influence on the implementation of the consents?

The appropriateness of the SPDAG

10. Some participants have raised concerns with the 'homogenised' approach to addressing cultural effects of the Project via the SPDAG rather than dealing with the effects on all affected groups individually in accordance with the different ways in which the Project may adversely affect them.⁶
11. The SPDAG was developed through refinement of the advisory group concept in the draft conditions put forward in the Environment Court direct referral process. The development of the group responded to the articulation of cultural effects by tangata whenua through engagement and consultation, and in POTL's view is a reasonable, proportionate, and substantive response to the consistent theme raised by tangata whenua that ongoing participation on a basis determined by tangata whenua, rather than one-off consultation in a format dictated by consent conditions, is required. The

⁶ Ngāi Tukairangi Hapū Trust Response to Minute 5 (undated) at [5] and Tauranga Moana Iwi Customary Fisheries Trust Response to Minute 5 (undated) at [5].

SPDAG achieves this by providing a meaningful and stalwart mechanism for ongoing iwi and hapū involvement in consent implementation.

12. There are various reasons why POTL considers the SPDAG to be the appropriate vehicle, which include:
 - (a) The development of the SPDAG is designed to be autonomous and is able to accommodate the varying interests of its constituent members;
 - (b) There is benefit to having a clearly defined collective established for participation both for POTL, as the consent holder, and tangata whenua, to ensure that no group is unintentionally left out from participating in consenting matters (there is also a mechanism whereby the SPDAG can self-review its membership to invite further parties to join⁷);
 - (c) It provides a unified entity to provide deliverables including the Mātauranga Monitoring Plan, cultural ceremonies, and review of management plans and Te Paritaha monitoring;
 - (d) POTL's intent is that allocation of funding will be left to tangata whenua through it being a function of the SPDAG. This ensures POTL does not and is not seen to influence in any way the use of the funding provided, or to be unreasonably prioritising one group over another; and
 - (e) The SPDAG is intended to be complementary of the Tauranga Moana Framework and take a holistic harbour approach to management rather than an approach which has piecemeal input from tangata whenua parties.

⁷

Draft Regional Council reclamation and structures conditions, RM26-0055-LC (**Reclamation and Structures Conditions**) at 3.3(j) and draft Regional Council dredging conditions, RM260055-DC (**Dredging Conditions**) at 3.3(j).

SPDAG establishment and operation

13. The process to constitute the SPDAG is specified in the Reclamation and Structures Conditions and Dredging Conditions (together referred to as the **Conditions**).⁸ POTL will invite the parties to form the SPDAG, but if it does not form after six months, POTL will implement the consents, while repeating the invitations to form the SPDAG annually for a further four years.⁹ Thereafter, no further invitations will be issued and as requested by the Bay of Plenty Regional Council (**Regional Council**),¹⁰ the funds set aside for the SPDAG will instead be transferred to the Regional Council to use for harbour restoration.¹¹
14. The Conditions enable the SPDAG to review and alter its membership at its own initiative, and as such, the group is not exclusive.¹² They deliberately aim for the group's structure, priorities, activities, and allocation of resources to be determined autonomously by its members. As noted at [166] and [168](b) of POTL's response to the s 53 comments¹³, the SPDAG's funding *"... has been devised so that mana whenua have control over how those funds are allocated consistent with the principle of rangatiratanga, which also enables the use of the funds for kaitiakitanga projects if that is what mana whenua determine"*.¹⁴
15. No viable alternate mechanism to the collective SPDAG approach was identified in responses to the Panel's fifth minute. However, the SPDAG is not the sole mechanism for engagement between POTL and tangata whenua. The proposed conditions require POTL to invite iwi and hapū to form relationship agreements. This mechanism is proposed to complement the SPDAG but also go further by providing a long-term structure for one-to-one engagement with scope beyond the Project.¹⁵

⁸ Condition 3 of the Reclamation and Structures Conditions and the Dredging Conditions.

⁹ Condition 3.6 of the Reclamation and Structures Conditions and the Dredging Conditions.

¹⁰ Bay of Plenty Regional Council s 53 Comments, p 12.

¹¹ Dredging Conditions, at 18.8 and Reclamation and Structures Conditions at 15.7.

¹² Condition 3.3(j) of the Reclamation and Structures Conditions and the Dredging Conditions.

¹³ Legal Submissions for the Applicant in Response to Comments (7 May 2026).

¹⁴ e.g. see Dredging Conditions, at 18.1(d) and Reclamation and Structures Conditions at 15.1(d).

¹⁵ Condition 2 of the Reclamation and Structures Conditions and the Dredging Conditions..

16. The SPDAG's role is to advise on the implementation of the Project consents.¹⁶ Environmental effects attributable to the Project will be distinguished by the extensive monitoring, including a Mātauranga Monitoring Plan and Mātauranga Māori State of the Environment report prepared and overseen by the SPDAG, required by the Conditions.^{17 18} For matters beyond the scope of these consents (e.g. wider harbour environmental management matters or historic matters), the relationship agreements provide a mechanism through which groups can raise broader harbour wide matters.
17. A resource consent cannot override other statutory rights and obligations and the SPDAG is not intended to displace Treaty of Waitangi settlements, statutory acknowledgements, relationship agreements, or other arrangements that any party may have. No amendments to the Conditions are necessary in this regard.

SPDAG funding and technical support

18. The proposed conditions require POTL to provide administrative support and funding to the SPDAG.¹⁹
19. The quantum of funding proposed was informed by reference to mitigation packages relating to other comparable coastal consents.²⁰
20. POTL considers it unlikely that additional funding of technical advisors will typically be necessary for the SPDAG to discharge its role. POTL understands that interpreting data deriving from the Mātauranga Māori State of the Environment report, the Mātauranga Monitoring Plan, and Māori cultural monitoring of the dredging would be inherently within the SPDAG's expertise (the State of the Environment Report and the

¹⁶ Condition 3.3 of the Reclamation and Structures Conditions and the Dredging Conditions..

¹⁷ Condition 15 of the Dredging Conditions and condition 14 of the Reclamations and Structures Consent.

¹⁸ Condition 12 of the Dredging Consent.

¹⁹ Condition 3.4 and the various conditions of the Reclamation and Structures Conditions and the Dredging Conditions. specifying funds for SPDAG allocation.

²⁰ Statement of Evidence of Daniel Alexander Kneebone dated 7 May 2026, at [38].

Monitoring Plan are to be designed and implemented under the direction of the SPDAG).

21. Furthermore, data/reporting that derives from turbidity monitoring, marine mammal observations, avifauna surveys, bathymetric surveys, and monitoring of Te Paritaha is unlikely to be complex. POTL will make the authors of monitoring reports available to discuss the monitoring results at the SPDAG meetings or otherwise as needed.
22. POTL considers the Conditions provide appropriate funding, and that such funding will ensure adequate administrative and/or technical support can be available to the SPDAG, if required.

SPDAG Recommendations and Influence

23. POTL's understanding of the comments referenced at [2](d) of the Minute is that the comments raise concerns that the SPDAG has no avenue to seek relief if POTL does not adopt its recommendations.
24. The Conditions provide for the following measures to inform the SPDAG's decision-making and any recommendations it may make to POTL:
 - (a) Design and commissioning of a Mātauranga Māori State of the Environment Report to clarify baseline environmental conditions;²¹
 - (b) Design and commissioning of a Mātauranga Monitoring Plan;²²
 - (c) Cultural monitoring of dredging;²³

²¹ Condition 12 of the Dredging Consent.

²² Condition 15 of the Dredging Consent and condition 14 of the Reclamation and Structures Consent.

²³ Condition 14 of the Dredging Consent.

- (d) Assessment and development of opportunities to enhance local avifauna habitat;²⁴ and
 - (e) Requirements for POTL to provide the SPDAG with a month to review and comment on management plans before they are submitted to the Regional Council for certification or re-certification, and for POTL to specify in the management plans whether any SPDAG recommendations have not been adopted and the reasons why not.
25. The Conditions expressly enable the Regional Council to initiate a review of the consent conditions to address effects on cultural values identified by the SPDAG in the course of cultural monitoring of dredging and/or in the implementation of the Mātauranga Monitoring Plan.²⁵
26. This provides an appropriate method for the SPDAG to seek relief if it considers unforeseen adverse effects on Māori cultural values are being caused by the implementation of the consents and the SPDAG's recommendations for mitigation are not adopted by POTL.

Customary Fisheries Proposed Conditions

27. POTL concurs with the appraisal presented in the Statement of Evidence of Luke Christopher James Faithfull²⁶ regarding the additional conditions proposed by the Tauranga Moana Iwi Customary Fisheries Trust in its response to the Panel's fifth minute.²⁷ As such, no amendments are proposed in response.

²⁴ Condition 13.4 of the Reclamation and Structures Consent.

²⁵ Condition 24.1 of the Dredging Consent and condition 21.1 of the Reclamation and Structures Consent.

²⁶ Statement of Evidence of Luke Christopher James Faithfull dated 7 May 2026, at [102].

²⁷ Tauranga Moana Iwi Customary Fisheries Trust s 53 comments dated 30 April 2026 at paragraphs 56 to 56.8.

Amendments to Proposed Regional Consent Conditions

28. POTL has prepared amendments to the Dredging Conditions and the Reclamation and Structures Conditions, shown in the tracked-change versions attached to this memorandum. The reasoning for the changes to the Conditions is set out in comments (which reference “Minute 7 response”) in the documents and broadly address:
- (a) Correction of inconsistencies;
 - (b) Affording the SPDAG an opportunity to review and provide feedback on amendments to the Dredge, Reclamation and Construction, Marine Mammal, and Avifauna Management Plans prior to re-certification.²⁸ This may include a process through which POTL considers any feedback received and, where appropriate, provides commentary on the extent to which recommendations have not been incorporated; and
 - (c) Clarifying the scope of the review condition.
29. The previous amendments to conditions shown in POTL’s response to the Expert Panel’s fifth Minute are retained. The new amendments are also tracked and highlighted in green. The amendments are summarised below.
30. Dredging Conditions:
- (a) Condition 2.3. Amended to replace “shall” with “must” for consistent wording across the conditions of both regional consents;
 - (b) Condition 6.5. Amended to correct a minor error by deleting the word “Act”;

²⁸ Previously the SPDAG was limited to review and provide feedback on the first-instance versions of the Dredge and Reclamation and Structures Management Plans.

- (c) Condition 8.3. Amended to provide the SPDAG with 20 working days (increased from 15) to review the Dredge Management Plan. This timeframe is consistent with that specified for SPDAG review of the Reclamation and Construction Management Plan at condition 11.4 of the Reclamation and Structures Conditions;
- (d) Condition 8.7. Amended to require the consent holder's compliance with any future version of the Dredge Management Plan, consistent with the wording used in condition 13.1 of the Dredging Conditions and conditions 12.1 and 13.1 of the Reclamation and Structures Conditions;
- (e) Condition 8.8. Amended to cross-refer to condition 8.3, such that any amended Dredge Management Plan is subject to SPDAG review prior to submission for re-certification by the Regional Council;
- (f) Condition 15.3. Amended to replace 'shall' with 'must, as a minimum' to ensure consistent terminology is used; and
- (g) Condition 24.1(b). Amended to:
 - (i) Widen the scope by reference to effects identified by the mātauranga monitoring in addition to effects identified by cultural monitoring of dredging; and
 - (ii) Replace the words "Have not yet been identified" in 24.1(b)(i) with "Became evident after the date of issue", to make it clear that the threshold for review relates to an adverse effect(s) that emerges after the date the consent was issued.

31. Reclamations and Structures Conditions:

- (a) Conditions 1.3, 2.3, 4.3, 6.3, 12.10, 12.12, 12.15, 14.5, 18.1 to 18.4 and 18.6. Amended to replace “shall” with “must” for consistent language between the Dredge Conditions and the Reclamations and Structures Conditions;
- (b) Condition 7.9. Amended to replace reference to the “Port” to the “consent holder”, consistent with the naming convention throughout the Conditions;
- (c) Condition 10.4. Deleted entirely as it duplicates some of the requirements of condition 11.4. Conditions 10.5 and 10.6 have been re-numbered accordingly;
- (d) The re-numbered condition 10.4 (previously condition 10.5). Amended to require the consent holder’s compliance with any future amended versions of the management plans consistent with the wording used in conditions 12.1 and 13.1 of the Reclamations and Structures Conditions and condition 8.7 of the Dredging Conditions;
- (e) Condition 11.4. Amended to align its wording with that of condition 8.3 of Dredging Conditions, being the similar condition relating to first-instance certification of the Dredge Management Plan;
- (f) Condition 12.3. Amended to include a clause requiring a SPDAG review and feedback loop where the Marine Mammal Management Plan is proposed to be recertified;
- (g) Conditions 12.4 and 12.6. Amended to replace “will” and “shall” with “must” for consistency with the terminology used across the Conditions;
- (h) Condition 13.3. Amended to include a clause requiring a SPDAG review and feedback loop where the Avifauna Management Plan is proposed to be recertified; and

- (i) Condition 21.1(b)(i). Amended to replace the words “Have not yet been identified” with “Became evident after the date of issue”, to make it clear that the threshold for review relates to an adverse effect(s) that emerges after the date the consent was issued. This is identical to POTL’s proposed amendment to sub-clause (b)(i) of Condition 24.1 of the Dredging Conditions.

Other comments

32. The Panel has requested:²⁹

From the Applicant, any other comment, submissions or evidence it wishes to provide in response to the further information provided by the other participants in response to Minute 5.

33. Counsel’s submissions in response to two matters raised by tangata whenua parties is set out below.

Matters of discretion

34. In response to the Panel’s fifth minute, counsel for the Ngāti Ranginui Fisheries Trust (**NRFT**) and the Ngāti Ranginui Iwi Society (**NRIS**) submitted that the Panel’s consideration of effects under the Fast-track Approvals Act 2024 (**FTAA**) is not confined by the matters of control and discretion identified in relevant planning instruments.³⁰ We disagree.
35. We previously provided submissions on the matters of control and discretion at [43] – [47] of our submissions in response to the s 53 comments.³¹ However, in response to NRFT’s and NRIS’s submissions on the Panel’s fifth minute, we submit as follows:

²⁹ Minute at [2](e).

³⁰ Submissions on behalf of Ngāti Ranginui Fisheries Trust and Ngāti Ranginui Iwi Society in response to Minute 5 of the Expert Panel (8 June 2026) at [61] to [66].

³¹ Legal Submissions for the Application in Response to Comments (7 May 2026).

- (a) The power to approve or decline a substantive application derives from the FTAA and not the Resource Management Act 1991 (**RMA**).³² We agree that this reflects a deliberate legislative choice by Parliament, as submitted by Counsel for NRFT and NRIS.³³
- (b) However, that decision-making power is qualified by the requirement that the Panel consider the FTAA provisions applicable to the category of approvals sought. For RMA approvals those provisions are clauses 17 to 22 of Schedule 5 of the FTAA.³⁴ Clause 17 provides that, for the purposes of s 81, when considering an application a panel must take into account the following:
 - (i) The FTAA's purpose (with a direction that this must be given the greatest weight);
 - (ii) The provisions of **Parts 2, 3, 6, and 8 to 10 of the RMA that direct decision making on an application for a resource consent** (but excluding section 104D of the RMA); and
 - (iii) The relevant provisions of any other legislation that directs decision making under the RMA.

[emphasis added]

- (c) The RMA provisions that direct decision making for controlled (s 104A RMA) and restricted discretionary (s 104C RMA) activities are, in our submission, plainly within the scope of the Panel's consideration.³⁵ We understand that NRFT and NRIS do not seek to challenge this proposition. The point of

³² FTAA, s 81(1).

³³ Submissions on behalf of Ngāti Ranginui Fisheries Trust and Ngāti Ranginui Iwi Society in response to Minute 5 of the Expert Panel (8 June 2026) at [63].

³⁴ FTAA, s 81(2)(b) and (3)(a).

³⁵ FTAA, Schedule 5, cl 17(1)(b) – via reference to *'the provisions of Parts ... 6 ... of the [RMA] that direct decision making...'*

disagreement is whether those matters impose a jurisdictional limit on a fast-track panel in the same way that they constrain decision-makers under the RMA.

- (d) It is our submission that Parliament clearly intended FTAA panels to be bound by those RMA jurisdictional limits attaching to activity status and where it has decided to depart from the RMA framework it has done so expressly. That is apparent from:
 - (i) Section 42(5)(a), which allows applicants to seek approval for prohibited RMA activities.
 - (ii) Clause 17(1)(b) which provides that s 104D RMA is excluded from a Panel's consideration under s 81 FTAA.
 - (iii) Clauses 17(3) and (4) which provide that any RMA or other legislative provision considered that would otherwise require an application to be declined must not be treated as mandating a decline.
- (e) Those provisions would be difficult to reconcile with an interpretation under which RMA activity-status constraints imported by cl 17 have no limiting effect. They demonstrate that Parliament addressed specific departures from the RMA regime expressly, rather than by implication.
- (f) Furthermore, cl 17 expressly recognises that the RMA decision-making requirements are imported into the decision-making assessment. Clause 17(6) provides:

For the purposes of subclause (1), the provisions referred to in that subclause must be read with all necessary modifications, including that a reference to a consent authority must be read as a reference to a panel.

- (g) In our submission, the effect of that wording is that the Panel is subject to the same statutory constraints and requirements under ss 104A and 104C of the RMA as apply to RMA decision-makers. That includes the limits imposed by the matters over which control or discretion is reserved in the relevant planning instruments.
- (h) In the absence of any express provision in the FTAA modifying or disapplying ss 104A and 104C RMA, the provisions of those sections that confine the scope of adverse effects able to be considered apply equally to a fast-track panel's decision-making process.
- (i) We disagree with the submission for NRFT and NRIS that POTL's approach is incorrect because it creates a risk of 'asymmetry' in the FTAA framework.³⁶ Parliament has chosen to expressly import certain parts of the RMA into the FTAA decision-making framework. Where Parliament intended to modify or exclude aspects of the RMA framework, it did so expressly. Whether any asymmetry may arise is therefore beside the point.
- (j) In our submission the proposition advanced by NRFT and NRIS that those matters of control and discretion do not constrain the scope of effects that may be considered, is wrong.

Cranes

- 36. Counsel for Ngāti Kuku hapū and Whareroa Marae submit that the impact(s) of the establishment of cranes on the Sulphur Point wharf extensions is a consequential effect of granting the approvals sought.³⁷

³⁶ Submissions on behalf of Ngāti Ranginui Fisheries Trust and Ngāti Ranginui Iwi Society in response to Minute 5 of the Expert Panel (8 June 2026) at [65].

³⁷ Ngāti Kuku Hapū and Whareroa Marae response to Minute 5, at [17].

37. We have previously addressed this issue at [52] – [54] of our response to the first request for further information and respectfully direct the Panel to those submissions.³⁸ However, we make the following further submissions in response:

- (a) In the context of the Project, the cranes' placement is not an effect given the restricted discretionary activity rule framework applying to both structures and cranes in the Bay of Plenty Regional Coastal Environment Plan.
- (b) The Supreme Court in *Sustainable Ōtākiri* held that the objectives, policies, and *rules* influence the relevance of effects.³⁹ The submissions for Ngāti Kuku hapū and Whareroa Marae do not acknowledge or engage with that framework.⁴⁰
- (c) The relevant planning rule relating to the wharf extensions explicitly excludes cranes⁴¹ and they are separately dealt with under a specific 'crane' rule which restricts discretion to Tauranga Airport related matters.⁴² Consideration of any effect(s) arising from the cranes' placement is therefore limited accordingly.
- (d) While the placement of cranes may be a factual consequence of the wharf extension, any effects associated with that placement fall outside the matters of discretion and are outside of scope.

DATED at Tauranga this 14th day of July 2026



Vanessa Hamm / Laura Murphy / Cory Lipinski
Counsel for Port of Tauranga Limited

³⁸ Port of Tauranga Limited response to Minute Three (16 April 2026).

³⁹ *Sustainable Ōtākiri Inc v Whakatāne District Council* [2025] NZSC 158 at [59].

⁴⁰ Initial Legal Submissions for Ngāti Kuku Hapū and Whareroa Marae in response to Minute 3 (30 April 2026) at [78].

⁴¹ PZ 8, Bay of Plenty Regional Coastal Environment Plan.

⁴² PZ 9, Bay of Plenty Regional Coastal Environment Plan.

Appendix One***AMP review condition for the Wildlife Approval*****Avifauna Management Plan review**

WA18 If the approved activity is proposed to be undertaken more than ten (10) years after the grant of resource consent RM26-0055-LC, or more than ten (10) years since the Avifauna Management Plan was last recertified in accordance with this condition, then, prior to commencing the approved activity, the approval holder must:

- (a) Engage a suitably qualified and experienced ecologist to review Section 2 of the Avifauna Management Plan and prepare written advice confirming that Section 2 reflects current penguin knowledge and best practice penguin management techniques, or specifying any amendments to ensure that it does so;
- (b) Provide a copy of the ecologist's written advice and the Avifauna Management Plan (with any proposed amendments) to the Department of Conservation Tauranga Operations Manager for recertification;
- (c) The recertification process must be confined to confirming that Section 2 of the Avifauna Management Plan continues to give effect to the purpose of minimising effects on, and achieving no net loss of, kororā/blue penguin populations within the existing rock wall and surrounding Mount Maunganui wharf extension construction site;
- (d) If the Department of Conservation determines that the documentation supplied in accordance with (a) above achieves the requirements of (c) above, the Department of Conservation must issue a written confirmation of recertification to the approval holder;
- (e) If the Department of Conservation determines that it is unable to recertify the Avifauna Management Plan, it must provide the approval holder with reasons

and recommendations for changes to the plan in writing. The approval holder must consider any reasons and recommendations of the Department of Conservation and resubmit an amended Avifauna Management Plan for recertification;

- (f) The Avifauna Management Plan cannot be subject to a third-party approval. However, in deciding whether to recertify the Avifauna Management Plan, the Department of Conservation may obtain advice from other qualified person(s); and
- (g) The recertification process is not required after the Mount Maunganui wharf extension is completed.