

**BEFORE THE STELLA PASSAGE DEVELOPMENT EXPERT
PANEL [FTAA-2512-1163]**

Under	the Fast-Track Approvals Act 2024
In the matter of	The deliberations and final decision of the Expert Panel appointed under section 50 and Schedule 3 of the Fast-Track Approvals Act 2024 to: (a) a suite of resource consents under the regional coastal plan; (b) a land use consent under the district plan for the cranes; and (c) an approval under the Wildlife Act 1953.
Expert Panel	Bronwyn Carruthers (Chair) James Whetu (Member) Hugh Leersnyder (Member)
Comments received under s53 of the FTAA	30 April 2026
Hearing under s57 of the FTAA	27 – 29 July 2026

**RECORD OF DECISIONS OF THE EXPERT PANEL UNDER
SECTION 87 OF THE FAST-TRACK APPROVALS ACT 2024**

Decision 1	Approvals relating to Resource Management Act 1991 are granted subject to the conditions set out in Appendix B, C and D
Decision 2	Approval relating to Wildlife Act 1953 is granted subject to the conditions set out in Appendix A
Date of Decision:	TBC
Date of Issue:	TBC

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PART A: EXECUTIVE SUMMARY

- [1] This is an application by Port of Tauranga Limited (“**Applicant**” or “**POTL**”) for resource consents and a wildlife approval made under sections 42(4)(a) and 42(4)(h) of the Fast-track Approvals Act 2024 (“**FTAA**”) for the Stella Passage Development (“**Project**”). The Project is listed under Schedule 2 (Listed projects with significant regional or national benefits) of the FTAA as:

In stages, extend the Sulphur Point wharf and Mount Maunganui wharves, including associated reclamation and dredging of the seabed.

- [2] The application is for:
- (a) Resource consents under the Resource Management Act 1991 (“**RMA**”) for controlled and restricted discretionary activities¹ under the Bay of Plenty Regional Coastal Environment Plan (**RCEP**);
 - (b) An RMA land use consent for the cranes proposed at Sulphur Point as a restricted discretionary activity² under the Tauranga City Plan (“**TCP**”); and
 - (c) A Wildlife Act 1953 (“**Wildlife Act**”) approval to authorise the capture of penguins, to enable the relocation of any individuals that do not relocate to the new habitat of their own accord;
- [3] The Expert Panel for the Stella Passage Development (“**Panel**”) visited the site and nearby areas on 25 March 2026.
- [4] The Panel received a preliminary briefing from the Applicant on 26 March 2026.
- [5] The Panel then identified the parties that it would invite comment from and issued its invitation to comment on 30 March 2026. Comments were duly received from 65 participants.
- [6] A comprehensive reply to those comments was received from the Applicant on 7 May 2026.
- [7] The Panel issued requests for further information by way of Minute 3 (31 March 2026), Minute 5 (22 May 2026), Minute 7 (29 June 2026), Minute 11 (22 July 2026), and Minute 12 (29 July 2026). Information was duly received from the requested participants.

¹ As clarified in the Applicant’s memorandum of counsel dated 16 April 2026, paragraphs 5 – 7.

² As clarified in the Applicant’s memorandum of counsel dated 16 April 2026, under rule 41.2 / 41.3 on the basis the cranes are being consented prior to some of the land being reclaimed and zoned and 18A.15.4.1 where the land exists and is zoned.

- [8] The Panel also exercised its discretion to accept additional information as recorded in Minute 4 (4 May 2026), Minute 6 (22 June 2026), Minute 10 (20 July 2026, Minute 12 (29 July 2026), and Minute 13 (14 August 2026).
- [9] The Panel issued agendas for expert conferencing on certain matters in dispute in Minute 9 and received Joint Witness Statements on 21 July 2026.
- [10] A hearing was held on Whareroa Marae on 27 – 29 July 2026 to hear oral evidence on the cumulative effects on cultural values.
- [11] The Panel then considered the Project and determined to grant the approvals.
- [12] The draft decision was released on 17 August 2026.
- [13] [Add final steps]

PART B: INTRODUCTION AND PROCEDURE

Listed Project

- [14] The Applicant, as the authorised person for the Stella Passage Development, lodged the substantive application report (“**SAR**”) for approval for the Project under the FTAA. Section 40 of the FTAA specifies that the “process under this Act for obtaining the approval (including any steps under subpart 2) applies instead of the process for obtaining any corresponding approval” under the RMA or the Wildlife Act.

Application

- [15] The Applicant is applying for all the necessary approvals to extend the Sulphur Point and Mount Maunganui wharves, provide for four new cranes, and for capital and maintenance dredging of the bed of Stella Passage (being the southern-most section of the shipping channel³ bordered to the west by Sulphur Point and to the east by the Mount Maunganui wharves⁴). Specifically, the Project involves:⁵
- (a) staged dredging of approximately 1.5Mm³ from 10.55 hectares of the bed of Stella Passage in Te Awanui/Tauranga Harbour to a finished depth of approximately 16m below Chart Datum (“**CD**”) and maintenance dredging to maintain that depth, in two stages:⁶
 - i. approximately 850,000m³ from approximately 6.1ha;
 - ii. approximately 650,000m³ from approximately 4.45ha.
 - (b) staged reclamation of approximately 3.58ha of the coastal marine area to tie the existing land into the back of the wharf extensions,⁷ with approximately 1.81ha on the Sulphur Point side and 1.77ha on the Mount Maunganui side, in two stages:⁸
 - iii. 0.88ha of reclamation behind the Sulphur Point wharf;
 - iv. the balance.
 - (c) a 385m long extension to the south of the existing Sulphur Point wharf, comprising a first extension of 285m and a later extension of 100m;

³ SAR, page 48, section 3.1.

⁴ SAR, page 121, section 1.2.3.

⁵ SAR, page 12, section 1.3.

⁶ SAR, page 106, section 4.2 (noting that the figures are referenced as Mm³ which the Applicant confirmed to be a grammatical error at the hearing on 29 July 2026 and the subsequent RFI response on 30 July 2026).

⁷ SAR, page 120, section 4.5.1.

⁸ SAR, page 106, section 4.2.

- (d) a 315m extension to the south of the existing Mount Maunganui wharves at the Port of Tauranga;
- (e) if necessary, the capture and relocation of kororā/blue penguin from the footprint of the Mount Maunganui extension;
- (f) reconfiguration of existing structures and development of new structures in the Coastal Marine Area (“**CMA**”), such as wharf piles, mooring poles, jetties and other minor structures;
- (g) construction and use of four new cranes on the Sulphur Point wharf extensions for handling shipping containers, two 110m tall and two 78m tall; and
- (h) maintenance dredging, on an as needed basis, to maintain the operational depth of 16m below CD within the sitting basins⁹ and Stella Passage shipping channel.¹⁰

[16] For the dredging, RC62920¹¹ authorises dredging to a depth of 12.9m below CD within the smaller 5.9ha footprint (equating to 800,000m³) shown in Figure 26 of the SAR. The project dredging is to a greater depth (16m below CD), over a greater area. The Application seeks to reconsent any dredging authorised under RC62920 that has not occurred by the date of commencement, with that earlier consent to then be surrendered.¹²

[17] As confirmed in the Applicant’s memorandum of counsel dated 16 April 2026:¹³

- (a) The Project does not involve the disposal of dredged material. That is authorised under RC65807.¹⁴
- (b) The Project does not include reconsenting the existing occupation of the coastal marine area. That remains authorised under 04-0128.¹⁵
- (c) No consent is required or sought in relation to construction noise.¹⁶

[18] In addition, no consent is required or sought for the air discharges associated with shipping operations.¹⁷

[19] The Project will occur:

⁹ Being the term for the location where a vessel resides alongside the wharf.
¹⁰ SAR, page 119, section 4.4.6.
¹¹ SAR, page 57, section 3.5.3
¹² SAR, page 56, section 3.5.2.
¹³ Particularly paragraphs 12 – 14.
¹⁴ SAR, page 61, section 3.5.4.
¹⁵ SAR, page 54, section 3.5.1.
¹⁶ Paragraphs 44 - 50.
¹⁷ SAR, page 146, section 3.11.

- (a) in the Port Zone within the Applicant's consented area of coastal occupation of Te Awanui / Tauranga Harbour that is defined by an Outline Development Plan within the RCEP.¹⁸
- (b) when the cranes move onto or extend over land, in the Port Industry Zone (where the land already exists) and on land to be reclaimed and subsequently (via a separate planning process) zoned Port Industry under the TCP.¹⁹

[20] The Project requires the following approvals:

- (a) RMA resource consents for controlled and restricted discretionary activities²⁰ under the RCEP:²¹
 - i. Maintenance dredging under rule PZ 5;
 - ii. Development of structures in the CMA (including associated disturbance and discharges.) under rule PZ 8 (Note: Occupation is authorised under 04-0128);
 - iii. Development of cranes under rule PZ 9;
 - iv. Dredging (including discharges and disturbance) of the seabed under rule PZ 10; and
 - v. Development of reclamations (including discharges and deposition) under rule PZ 11.
- (b) RMA land use consent for the cranes proposed at Sulphur Point as a restricted discretionary activity²² under the TCP;
- (c) A Wildlife Act approval to authorise the capture of penguins, to enable the relocation of any individuals that do not relocate to the new habitat of their own accord.

[21] As articulated in the Applicant's memorandum of counsel dated 19 January 2026:

POTL's current activities at both the Sulphur Point and Mount Maunganui wharves are constrained in terms of container capacity, vessel congestion and/or age. One of the Project's key drivers is to allow POTL to maximise the efficient use of the existing infrastructure and footprint of the Port of Tauranga

¹⁸ SAR, page 4 and Section 3.6.1 starting on page 62.

¹⁹ SAR, page 67, section 3.6.2.

²⁰ As clarified in the Applicant's memorandum of counsel dated 16 April 2026, paragraphs 5 – 7.

²¹ SAR, page 22, section 1.6.1.

²² As clarified in the Applicant's memorandum of counsel dated 16 April 2026, under rule 41.2 / 41.3 on the basis the cranes are being consented prior to some of the land being reclaimed and zoned and 18A.15.4.1 where the land exists and is zoned.

by removing or easing these constraints. Development of the Project is needed to accommodate current and future growth in vessel sizes and import and export cargo volume. The consequence of inaction is forgoing the additional significant economic activity that would be generated if the Project goes ahead.²³ Failure to realise the development of the Project would mean that New Zealand and the Bay of Plenty incur economic opportunity costs arising from unrealised growth in export and import throughput.

[22] The Applicant acknowledges:²⁴

Te Awanui/Tauranga Harbour is a taonga for the tangata whenua of Tauranga and the wider Bay of Plenty, fundamental to identity, history, and well-being. Te Awanui/Tauranga provides a physical link for the iwi and hapū of Tauranga and the wider Bay of Plenty, with deep rooted historical and spiritual ties. The harbour is of utmost importance to Ngāti Ranginui, Ngāi Te Rangi, and Ngāti Pūkenga, collectively the 'Tauranga Moana Iwi' as described within the Tauranga Moana Iwi Management Plan 2016-2026. The Tauranga Moana Iwi Management Plan provides direction on the cultural setting of Te Awanui/Tauranga Harbour.

In a broader context, for tangata whenua, Te Awanui/Tauranga Harbour provides sustenance, reflects their whakapapa, and connects them to their ancestors. The waters, islands, estuaries, and coastal lands of Te Awanui/Tauranga Harbour are intertwined with traditional knowledge, customs, and spiritual beliefs.

Te Awanui/Tauranga Harbour is integral to Māori traditions and customary practices, serving as a spiritual, cultural, and economic hub. It is a place of wāhi tapu, a food bowl for mahinga kai and historic settlements that have supported the local iwi and hapū for generations

[23] The Project will occur near Te Paritaha o Te Awanui, the largest pipi bed within Te Awanui/Tauranga Harbour. The Applicant acknowledges:²⁵

The bed has been a customary harvesting ground for many generations and is still an important harvesting area today for the whanau and hapū of Ngāti Ranginui, Ngai Te Rangi and Ngāti Pūkenga. Te Paritaha is one of the few remaining sustainable shellfish beds within the harbour.

Te Paritaha is a taonga and a key source of sustenance for whānau, hapū and iwi of Tauranga Moana.

[24] The Project will also occur less than 1km from Whareroa Marae.²⁶

²³ "As at 2033, this is estimated to be between \$792 million to \$1.179 billion at the national economy level. (Section 1.4 of the substantive application report)."

²⁴ SAR, page 94, section 3.16.1.

²⁵ SAR, page 91, section 3.13.

²⁶ SAR, page 95, section 3.16.2.

[25] In relation to this important context:

(a) the Applicant acknowledges:²⁷

The historic Port developments and reclamation activities in Te Awanui/Tauranga Harbour and development of the adjoining Mount Maunganui industrial area contribute to the degraded cultural lens through which the Project is viewed.

(b) the Panel was greatly assisted by:

- i. Annexures F, G and H to the Applicant's memorandum of counsel dated 16 April 2026 to better understand this historical and progressive expansion of the Port of Tauranga;
- ii. The uncontested²⁸ historical evidence of Dr Vincent O'Malley for Ngāti Kuku Hapū Trust and Trustees of Whareroa Marae; and
- iii. The extensive oral evidence it heard at the hearing on 27 – 29 July 2026.

Procedure

[26] The Panel records the following procedural matters.

Meetings/Site visits

[27] The Panel commenced work on 16 March 2026.

[28] The Panel first met on 17 March 2026.

[29] The Panel conducted an initial site visit on 25 March 2025 during which it visited the site and surrounds by land and water.

[30] The Panel received a preliminary briefing from the Applicant on 26 March 2026 that was recorded and made available on the Environmental Protection Authority (“EPA”) website.

[31] Much of the Panel's correspondence, deliberations and decision-making occurred over email. Notwithstanding this, the Panel met on 29 June 2026, 22 July 2026, 29 July, 31 July, and 14 August.

Invitations to comment

²⁷

SAR, page 164, section 6.4.1.

²⁸

As recorded in the legal submissions for Ngāti Kuku hapū and Whareroa Marae dated 8 June, paras 53 – 55.

- [32] As recorded in Minute 2, the Panel issued its invitations to comment on 30 March 2026.
- [33] Sixty-four responses were received by the deadline of 30 April 2026.
- [34] As recorded in Minute 4 on 4 May 2026 and Minute 5 on 22 May 2026, the Panel also accepted late comments and unsolicited correspondence from persons invited to comment.
- [35] The Applicant filed a comprehensive response to the comments on 7 May 2026, and a response to the late comments and unsolicited correspondence on 8 June 2026.
- [36] The comments and correspondence received and the Applicant's responses have all been considered by the Panel.

Reports

- [37] The Ministry for the Environment provided the s18 report on Treaty settlements and other obligations as required under s49 of the FTAA on 23 February 2026.
- [38] The Department of Conservation provided their wildlife approval report in accordance with s51(2)(c) of the FTAA on 15 April 2026.
- [39] Both reports have been considered by the Panel.

Further Information

- [40] As recorded in Minute 3, the Panel requested further information from the Applicant following the Panel's initial review of the SAR. This information was received on 16 April 2026.
- [41] As recorded in Minute 5, the Panel requested further information following the Panel's initial review of the comments and Applicant's response. Information was received from 10 participants by the due date of 8 June 2026.
- [42] As recorded in Minute 6 on 22 June 2026, the Panel accepted further information provided after the due date.
- [43] As recorded in Minute 7, the Panel requested further information. Information was received from seven participants by the due date of 14 July 2026.
- [44] As recorded in Minute 10, the Panel accepted further information from Ngāti Kuku Hapū Trust and Trustees of Whareroa Marae provided after the due date.

- [45] As recorded in Minute 11, the Panel requested further information in relation to the responses provided above. Information was received from the requested participants by 24 July 2026.
- [46] As recorded in Minute 12, the Panel requested further information following the conclusion of the hearing. Information was promptly received from the requested participants.
- [47] As recorded in Minute 13, the Panel accepted a further statement of evidence from Dr Willem de Lange on 13 August 2026.
- [48] All further information has been considered by the Panel.

Expert Conferencing

- [49] Paragraph 5 of Minute 5 stated:

*The Applicant has provided extensive information in response to the comments received, including multiple statements of evidence addressing the “western science” effects. The Panel seeks clarification from the **commenters that raised “western science” matters (other than economics and planning)** as to whether their comments have been satisfactorily addressed by the response or whether matters remain in contention. If the latter, the Panel would be assisted by a list of matters in dispute and the expert’s indication of whether it is material (such that it may benefit from inclusion on an agenda for direct conferencing) or not.*

- [50] Two responses were received.
- [51] Minute 7 recorded the responses and set a process:
- (a) The one outstanding matter raised by the Department of Conservation was the subject of a request for further information to the Applicant.
 - (b) The other “western science” matters remaining in dispute were to be the subject of expert conferencing.
- [52] In relation to the outstanding matter raised by the Department of Conservation:
- (a) The Applicant responded on 14 July 2026.
 - (b) Minute 11 requested confirmation from the Department of Conservation as to whether it agreed with the Applicant’s response.
 - (c) The Department of Conservation responded on 24 July 2026, advising it agreed.

- (d) The conditions imposed on the Wildlife Act approval reflect the agreed position.
- [53] In relation to the “western science” matters identified by participants as remaining outstanding:
- (a) Minute 9 confirmed the agendas and attendees for the expert conferencing.
 - (b) The expert conferencing took place in the period 15 – 20 July 2026.
 - (c) Joint Witness Statements were received on 21 July 2026.
- [54] On 29 July 2026 the Panel issued Minute 12 to address matters arising from the Joint Witness Statements. In particular:
- (a) In relation to Air Quality and Public Health, the Panel accepted the updated version of Professor Simon Hales evidence in which he had corrected a number of material errors and requested Dr Lynette Denison respond to two specific paragraphs. The requested response from Dr Lynette Denison was received on 30 July 2026.
 - (b) In relation to Landscape, the Panel recorded it did not require any further information or assessment in relation to the automated stacking cranes landside of the Project. This matter had been satisfactorily canvassed with the Applicant at the hearing on 27 July 2026.
- [55] The Joint Witness Statements have been considered by the Panel.

Hearing

- [56] Minute 7 indicated that the Panel intended to accept the invitation to convene a Cultural Issues hearing adopting a tikanga-consistent oral process at Whareroa Marae on 27 – 29 July 2026.
- [57] The Panel were supported by the EPA and Whareroa Marae in organising, and in the delivery of, the hearing.
- [58] A total of 10 Tangata Whenua parties presented their views and concerns to the Panel, with the Applicant responding to those matters on the final day.

Conditions

- [59] An invitation to comment on draft conditions went out to commenters on 17 August 2026 (see Minute 14).

PART C: LEGAL FRAMEWORK

Legal Context for Listed Project

- [61] The FTAA provides a one stop shop process for seeking a range of approvals which would otherwise have to be sought under different statutes and by different processes.
- [62] The potential approvals are listed in section 42(4), and the approvals which can be granted include all those sought by the Applicant.
- [63] The Applicant lodged the substantive application on 22 January 2026. The EPA decided that the Application was complete and within scope on 12 February 2026. The EPA made a recommendation on whether there are competing applications or existing resource consents for the same activity on 20 February 2026. The EPA then provided the Application to the panel convenor. The panel convenor held a convenor conference on 5 March 2026 before appointing the Panel on 9 March 2026 with a decision timeframe of 90 working days following receipt of invited comments.

Relevant Matters

- [64] Section 81 provides, relevantly to this Project:²⁹
- (1) *A panel must, for each approval sought in a substantive application, decide whether to—*
 - (a) *grant the approval and set any conditions to be imposed on the approval; or*
 - (a) *decline the approval.*
 - (2) *For the purpose of making the decision, the panel—*
 - ...
 - (a) *must consider the substantive application and any advice, report, comment, or other information received by the panel under section 51, 52, 53, 55, 58, 67, 68, 69, 70, 72, or 90:*
 - (b) *must apply the applicable clauses set out in subsection (3) (see those clauses in relation to the weight to be given to the purpose of this Act when making the decision):*
 - (c) *must comply with section 82, if applicable:*
 - (d) *must comply with section 83 in setting conditions:*
 - (e) *may impose conditions under section 84:*
 - (ea) *may impose conditions under section 84A:*
 - (f) *may decline the approval only in accordance with section 85.*

²⁹

Noting s81(2)(aaa) is not relevant as the Project is listed and s81(2)(aab) is not relevant as there is no relevant Government Policy Statement.

[65] We address each briefly below.

Information

[66] The information received by the Panel is recorded in Part B above.

[67] As required by s81(2)(a), the Panel has considered all of this information in reaching its decisions.

Applicable clauses

[68] Section 81(2)(b) requires the Panel to “apply the applicable clauses set out in subsection (3).”

[69] Subsection (3) refers to the relevant parts of the particular schedules to the FTAA that provide specific criteria to be taken into account in relation to the approvals that may be sought under the FTAA:

(a) For a resource consent, it is clauses 17 – 22 of Schedule 5;

(b) For a wildlife approval, it is clauses 5 and 6 of Schedule 7.

[70] For this Project:

(a) clauses 17 and 18 of Schedule 5 are relevant for the resource consents. They provide:

17 Criteria and other matters for assessment of consent application

(1) *For the purposes of section 81, when considering a consent application, including conditions in accordance with clauses 18 and 19, the panel must take into account, giving the greatest weight to paragraph (a),*

(a) *the purpose of this Act; and*

(b) *the provisions of Parts 2, 3, 6, and 8 to 10 of the Resource Management Act 1991 that direct decision making on an application for a resource consent (but excluding section 104D of that Act); and*

(c) *the relevant provisions of any other legislation that directs decision making under the Resource Management Act 1991.*

(2) *For the purpose of applying any provisions in subclause (1),—*

(a) *a reference in the Resource Management Act 1991 to Part 2 of that Act must be read as a reference to sections 5, 6, and 7 of that Act; and*

...

(3) *Subclause (4) applies to any provision of the Resource Management Act 1991 (including, for example, section 87A(6)) or any other Act referred to in subclause (1)(c) that would require a decision maker to decline an application for a resource consent.*

(4) *For the purposes of subclause (1), the panel must take into account that the provision referred to in subclause (3) would normally require an application to be declined, but must not treat the provision as requiring the panel to decline the Application the panel is considering.*

...

(6) *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.*

(7) *Sections 123 and 123A of the Resource Management Act 1991 apply to a decision of the panel on the consent.*

18 Conditions on resource consent

When setting conditions on a consent, the provisions of Parts 6, 9 and 10 of the Resource Management Act 1991 that are relevant to setting conditions on a resource consent apply to the panel, subject to all necessary modifications, including the following:

(a) *a reference to a consent authority must be read as a reference to a panel; and*

(b) *a reference to services or works must be read as a reference to any activities that are the subject of the consent application.*

(b) clauses 5 and 6 of Schedule 7 are relevant for the wildlife approval. They provide:

5 Criteria for assessment of application for wildlife approval

For the purposes of section 81, when considering an application for a wildlife approval, including conditions under clause 6, the panel must take into account, giving the greatest weight to paragraph (a),—

- (a) *the purpose of this Act; and*
- (b) *the purpose of the Wildlife Act 1953 and the effects of the project on the protected wildlife that is to be covered by the approval; and*
- (c) *information and requirements relating to the protected wildlife that is to be covered by the approval (including, as the case may be, in the New Zealand Threat Classification System or any relevant international conservation agreement).*

6 Conditions

- (1) *A panel may set any conditions on a wildlife approval that the panel considers necessary to manage the effects of the activity on protected wildlife.*
- (2) *In setting any condition under subclause (1), the panel must—*
 - (a) *consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife that is to be covered by the approval; and*
 - (b) *where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied, ensure that they are offset or compensated for where possible and appropriate; and*
 - (c) *take into account, as the case may be, the New Zealand Threat Classification System or any relevant international conservation agreement that may apply in respect of the protected wildlife that is to be covered by the approval.*

Purpose

[71] For each approval,³⁰ the criterion require that the purpose of the FTAA must be taken into account and given the greatest weight.

[72] The purpose of the FTAA is:

...to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

[73] Section 81(4) provides:

When taking the purpose of this Act into account under a clause referred to in subsection (3), the panel must consider the extent of the project's regional or national benefits.

[74] The Panel's consideration of the extent of the Project's benefits is provided in Part F below.

³⁰

Schedule 5, cl 17(1)(a) for the resource consents and Schedule 7, cl 5(a) for the wildlife approval.

RMA Provisions

- [75] In relation to clause 17(1)(b) of Schedule 5, the RMA provisions that direct decision-making on the applications for resource consents are:
- (a) Section 87A(3) and (4);
 - (b) Section 104;
 - (c) Section 104A for the controlled activity consent required under the RCEP;
 - (d) Section 104C for the restricted discretionary consents required under the RCEP and TDP;
 - (e) Sections 108 and 108AA;
- [76] In her submissions on behalf of Ngāti Ranginui Fisheries Trust and Ngāti Ranginui Iwi Society in response to Minute 5,³¹ Ms Lara Burkhardt questioned whether the s104A and s104C limitations which would ordinarily apply to a consent authority exercising a restricted discretionary or controlled activity jurisdiction continue to apply in the same way under the FTAA. This was addressed by the Applicant in its memorandum of counsel dated 14 July 2026.³²
- [77] We agree with the Applicant's submissions. The Panel must apply clause 17 which requires the Panel to take into account sections 104A and 104C. We have done so in our consideration of this matter.

Treaty Settlements

- [78] Section 81(2)(c) requires the Panel to “comply with section 82, if applicable.”
- [79] Section 82 provides:
- (1) *This section applies if a Treaty settlement, the Marine and Coastal Area (Takutai Moana) Act 2011, or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 is relevant to an approval.*
 - (2) *If the settlement or Act provides for the consideration of any document, the panel must give the document the same or equivalent effect through the panel's decision making as it would have under any relevant specified Act.*
 - (3) *The panel must also consider whether granting the approval would comply with section 7.*
 - (4) *In this section, **document**—*

³¹ Dated 8 June 2026, at [61] to [66].
³² See paragraphs 34 – 35.

- a. means any document, arrangement, or other matter; and
- b. includes any statutory planning document amended as a result of the settlement or Act referred to in subsection (1).

[80] In relation to subsection (1), the Section 18 report prepared by the Ministry of the Environment noted the following:

There are three Treaty settlement Acts (Waitaha Claims Settlement Act 2013, Ngāti Pūkenga Claims Settlement Act 2017, Ngā Hapū o Ngāti Ranginui Claims Settlement Act 2025), a signed deed of settlement (Ngāi Te Rangi and Ngā Potiki), and signed collective redress deed (Tauranga Moana Iwi Collective) relevant to the project area. Some of these settlements include Crown acknowledgements that specifically refer to the environmental and cultural impact of the development of the Port of Tauranga.

The Waitaha Claims Settlement Act 2013 includes a conservation protocol that provides for general principles to be followed by the Department of Conservation (DOC) when consulting Waitaha. Under clause 5 of Schedule 3 of the Act, the panel will need to comply with these procedural requirements with regard to its consideration of the Wildlife Act 1953 approval. Conservation relationship agreements with other relevant Treaty settlement entities are less specific or are subject to enactment of the Tauranga Moana Iwi Collective redress legislation.

The Tauranga Moana Framework, provided for in the Tauranga Moana Iwi Collective deed, includes several procedural arrangements regarding resource consent applications – such as information sharing, the appointment of hearing commissioners, and having regard to the Ngā Tai ki Mauao framework document – which would be relevant to the panel's consideration of this application if the collective legislation had been enacted. Nevertheless, in accordance with section 7 of the Act, it may be appropriate for the panel to consider how it might act consistently with the intent of the Tauranga Moana Framework redress, as set out in the signed collective deed.

Similarly, the panel may also want to consider whether statutory acknowledgements (for Waitaha and Ngāi Te Rangi/Ngā Potiki) over the nearby coast, and customary fishing rights provided for under the Fisheries Act 1996 within the project area, may be affected by the approvals being sought by the applicant.

[81] Minute 7 requested parties identify all existing Treaty settlements relevant to any approval. The responses received³³ provided the following list:

³³

From Ngā Tai ki Mauao, Ngāti Kuku hapū and Whareroa Marae, Ngāi Tukairangi Hapū Trust, Ngāti Ranginui Iwi Society, Nga Hapu o Ngāti Ranginui Settlement Trust, Ngāti Ranginui Fisheries Trust, Pirirākau Tribal Authority, and Tauranga Moana Iwi Customary Fisheries Trust.

Treaty settlement Acts

- (a) Treaty of Waitangi (Fisheries Claim) Settlement Act 1992;
- (b) Fisheries Act 1996;
- (c) Maori Fisheries Act 2004;
- (d) Maori Commercial Aquaculture Claims Settlement Act 2004;
- (e) Nga Hapu o Ngāti Ranginui Claims Settlement Act 2025;

Treaty settlement deeds

- (f) Maori Fisheries Deed of Settlement 1992;
- (g) Nga Hapu o Ngāti Ranginui Deed of Settlement dated 21 June 2012;
- (h) Ngāi Te Rangi and Ngā Pōtiki Deed of Settlement dated 14 December 2013; and
- (i) Tauranga Moana Iwi Collective Deed of Settlement dated 21 January 2015.

[82] With the exception of the Fisheries Act 1996, the Panel agrees the above fall within the definition of existing Treaty settlement. The Panel also identified the Waitaha Claims Settlement Act 2013 and the Ngāti Pūkenga Claims Settlement Act 2017 as relevant existing Treaty settlements.

[83] In relation to subsection (2), the parties³⁴ did not identify any “documents” that need to be given the same or equivalent effect through decision-making as they would have under the RMA.

[84] In relation to subsection (3), Section 7 states:

Obligation relating to Treaty settlements and recognised customary rights

- (1) *All persons performing and exercising functions, powers, and duties under this Act must act in a manner that is consistent with—*

³⁴

In the responses to Minute 7 received from Ngā Tai ki Mauao, Ngāti Kuku hapū and Whareroa Marae, Ngāi Tukairangi Hapū Trust, Ngāti Ranginui Iwi Society, Nga Hapu o Ngāti Ranginui Settlement Trust, Ngāti Ranginui Fisheries Trust, Pirirākau Tribal Authority, and Tauranga Moana Iwi Customary Fisheries Trust

- (a) *the obligations arising under existing Treaty settlements; and*
- (b) *customary rights recognised under—*
 - (i) *the Marine and Coastal Area (Takutai Moana) Act 2011;*
 - (ii) *the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.*
- (2) *To avoid doubt, subsection (1) does not apply to a court or a person exercising a judicial power or performing a judicial function or duty.*
- (3) *In this section, existing Treaty settlements means Treaty settlements that exist at the time the relevant function, power, or duty is performed or exercised (rather than only those that exist at the commencement of this Act).*

[85] It is unclear as to whether or not section 7(2) operates to exclude section 7(1) from our consideration:

- (a) The Panel is clearly exercising a “judicial function” in making these decisions, which would indicate that the section 7(1) does not apply.
- (b) However, sections 81(7), 82(3), 84(1) and 85(1)(b) explicitly direct the Panel to consider and apply section 7 in the context of making a decision or imposing a condition.

[86] In light of that ambiguity, the Panel has specifically considered whether:

- (a) granting the approval would “comply with section 7” as required by s82(3) or “breach” section 7 as required by s85(1)(b); and / or
- (b) conditions are required to recognise the relevant Treaty settlements, as enabled by s84(1).

[87] The Panel’s consideration of whether granting the approval would comply with section 7 is set out in Part E.

Conditions

[88] Section 81(2)(d) requires section 83 be complied with. It provides:

Conditions must be no more onerous than necessary

When exercising a discretion to set a condition under this Act, the panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of this Act that confers the discretion.

[89] Section 81(2)(e) empowers the Panel to impose conditions under section 84. It provides:

Conditions relating to Treaty settlements and recognised customary rights

- (1) *For the purposes of section 7, the panel may set conditions to recognise or protect a relevant Treaty settlement and any obligations arising under the Marine and Coastal Area (Takutai Moana) Act 2011 or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.*
- (2) *This section applies in addition to, and does not limit, any other powers to set conditions under this Act.*

[90] As recorded in Part E and Part L:

- (a) the Panel has taken care not to set a condition that is more onerous than necessary to address the reason for which it is set.
- (b) the Panel has set conditions that recognise the relevant Treaty settlements.

Decline

[91] Section 81(2)(f) states the Panel “may decline the approval only in accordance with section 85.”

[92] Section 85 sets out when the Panel must or may decline approvals.

Mandatory Decline

[93] Section 85(1) states, relevantly:

- (1) *The panel must decline an approval if 1 or more of the following apply:*

...

- (b) *panel considers that granting the approval would breach section 7:*

...

[94] Tangata Whenua argued that granting the approval would breach section 7 such that the approvals must be declined. This is addressed in Part E below. For the reasons given there, the Panel has found that granting the approvals would not breach section 7.

Discretion to Decline

[95] The discretion to decline is provided in subsections 85(3) - (5) which state:

- (3) *A panel may decline an approval if, in complying with section 81(2), the panel forms the view that—*
 - (a) *there are 1 or more adverse impacts in relation to the approval sought; and*
 - (b) *those adverse impacts are sufficiently significant to be out of proportion to the projects regional or national benefits that the*

panel has considered under section 81(4), even after taking into account—

- (i) any conditions that the panel may set in relation to those adverse impacts; and*
 - (ii) any conditions or modifications that the Applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.*
- (4) To avoid doubt, a panel may not form the view that an adverse impact meets the threshold in subsection (3)(b) solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with section 81(2).*
- (5) In subsections (3) and (4), adverse impact means any matter considered by the panel in complying with section 81(2) that weighs against granting the approval.*

[96] The Panel has undertaken this assessment in Part M.

Summary

[97] This is the legal framework for our decision which the Panel has followed in reaching this Decision.

PART D: PRINCIPAL ISSUES IN CONTENTION

[98] The principal issues in contention were:

- (a) whether granting the approvals would breach section 7;
- (b) whether the placement of the new cranes on the extended wharf is an effect of allowing the Sulphur Point wharf extension that must be considered;
- (c) the correct approach for assessing cumulative cultural effects where the receiving environment is affected by historic incremental port reclamation, berth expansion, dredging and industrialisation in Tauranga Harbour over time;
- (d) whether the conditions offered by the Applicant on an *Augier* basis are otherwise beyond the jurisdiction of the Panel to impose;
- (e) whether the evidence of Dr Meade as to the compensation required to address the adverse cultural effects of the Project is admissible;
- (f) whether the cumulative cultural effects of allowing the project are an adverse impact as defined in the FTAA;

- (g) whether the cultural effects can be appropriately addressed through a comprehensive package of avoidance, mitigation, remediation, adaptive management, cultural participation, monitoring and environmental enhancement and restoration measures;
- (h) whether the threshold in s85(3)(b) is met such that the Panel has a discretion to decline the approvals.

[99] The Panel's findings on these principal issues in contention are as follows:

- (a) For the reasons set out in Part E, granting the approvals does not breach section 7.
- (b) In the context of this case, the placement of the new cranes on the extended wharf is not an effect of allowing the Sulphur Point wharf extension that must be considered. The Panel agrees with the submissions for the Applicant in its memorandum of counsel dated 16 April 2026,³⁵ 7 May 2026³⁶ and 14 July 2026³⁷ in this regard.
- (c) In approaching the concerns of Tangata Whenua, and assessing the cumulative cultural effects, it is necessary to consider the incremental (new) effects of the Project against the receiving environment as it presently exists, which includes past and present effects, and whether these new effects contribute to an overall cumulative effect. While this is an "extremely difficult"³⁸ task, it cannot be avoided.
- (d) While each individual effect is manageable, the incremental nature of the effect in the context of historical and ongoing modification to Te Awanui/Tauranga Harbour, is a significant cumulative cultural effect. For the reasons set out in Part G, the cumulative cultural effects of allowing the project are an adverse impact as defined in the FTAA.
- (e) The Panel sees no reason why a financial payment to a third party that is specifically required to "address an adverse effect of the activity on the environment" can only be imposed as a condition when an applicant agrees or offers the same. The Panel has amended the conditions proposed by the Applicant, including those it indicated were offered on an *Augier* basis.
- (f) For the reasons put forward in the Applicant's memorandum of counsel dated 7 May 2026,³⁹ the Panel has had no regard to the

³⁵ See paragraphs 52 – 53.

³⁶ See paragraphs 48 – 50.

³⁷ See paragraph 37.

³⁸ To use the phrase of Applicant's counsel in the memorandum dated 7 May 2026, para 125.

³⁹ See paragraphs 180 – 207.

expert evidence of Dr Richard Meade as to the compensation he considers is required to address the adverse cultural effects.

- (g) For the reasons set out in Part M, the Panel has found that the adverse impact can be appropriately addressed through its comprehensive package of avoidance, mitigation, remediation, adaptive management, cultural participation, monitoring and environmental enhancement and restoration measures set out in the conditions.
- (h) The s85(3) threshold for considering decline is not met, and the Panel is confident the approvals can be granted.

PART E: TREATY SETTLEMENTS

[100] The relevant Treaty settlements are:

- (a) Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;
- (b) Māori Fisheries Act 2004;
- (c) Waitaha Claims Settlement Act 2013;
- (d) Ngāti Pūkenga Claims Settlement Act 2017;
- (e) Ngā Hapū o Ngāti Ranginui Claims Settlement Act 2025;
- (f) Signed Ngāi Te Rangi and Ngā Pōtiki Deed of Settlement; and
- (g) Signed Tauranga Moana Iwi Collective Deed of Settlement.

[101] Tangata Whenua participants argued that granting the approvals would breach section 7 such that the approvals must be declined.

[102] The Panel sought further information from the Applicant and those Iwi, Hapū, Whareroa Marae, and Tangata Whenua entities (collectively “**Tangata Whenua**”) regarding section 7 of the FTAA.

[103] The Panel was assisted by:

- (a) written submissions on this issue from:
 - i. The Applicant, by way of memorandum of counsel dated 7 May 2026,⁴⁰ 8 June 2026,⁴¹ and 24 July 2026;⁴²

⁴⁰ See paragraphs 71 – 114.

⁴¹ See paragraphs 4 – 25.

⁴² See paragraphs 14 – 25.

- ii. Ngāti Kuku Hapū Trust and Trustees of Whareroa Marae, in its initial comments and further submissions dated 16 July 2026;
 - iii. Pirirākau Tribal Authority Incorporated, dated 1 July 2026;
 - iv. Ngā Tai ki Mauao, dated 14 July 2026;
 - v. Ngāi Tūkairangi Hapū Trust, dated 14 July 2026;
 - vi. Ngāti Ranginui Iwi Society, Ngā Hapū o Ngāti Ranginui Settlement Trust, and Ngāti Ranginui Fisheries Trust dated 14 July 2026; and
 - vii. Tauranga Moana Iwi Customary Fisheries Trust, dated 14 July 2026.
- (b) The submissions and evidence given at the Cultural Issues hearing on 27 – 29 July 2026, including the Applicant's response provided on 29 July 2026.

[104] All parties in their submissions referred to the draft decision of the Expert Panel on the Taranaki VTM fast-track application. While that decision is not binding on the Panel in any way, the Panel has taken into consideration the approach of that Expert Panel in its draft decision, specifically⁴³ that:

- (a) Treaty settlement obligations may be:
- i. substantive (protecting settlement redress and the values it was intended to secure),
 - ii. procedural (participation, consultation or relationship mechanisms),
 - iii. a mixture of both substantive and procedural,
 - iv. implemented through a range of statutory and deed-based instruments,
 - v. bespoke redress tailored to particular resources or locations;
- (b) Treaty settlements are intended to operate in a practical and enduring way;

⁴³

Draft Decision of the Expert Consenting Panel for the Taranaki VTM application, points 263 and 264, page 70

- (c) Treaty settlements are not limited to compliance with individual clauses but include an obligation on the Crown to ensure that settlement redress is not undermined in practice.

- [105] It is clear to the Panel that the task under section 7 of the FTAA is not to determine whether Tangata Whenua support the Project, nor whether all cultural effects have been eliminated. The task is to identify, understand and determine whether granting approval would be inconsistent with any obligation established through any relevant Treaty settlement legislation in the Tauranga area and Tauranga Moana (includes Te Awanui).
- [106] An individual assessment of each identified Treaty settlement is provided below.

Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

- [107] The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (“**Fisheries Settlement Act**”) resolved nationally the Māori fisheries claims (commercial and non-commercial fisheries).
- [108] The Tauranga Moana Iwi Customary Fisheries Trust (“**TMICF Trust**”) has been appointed to the role of Tangata Kaitiaki/Tiaki across their rohe moana Mai I Ngā Kuri ā Whare ki Wairākei (“**Rohe Moana**”), and for Te Maunga o Mauao Mātaitai Reserve (“**Mātaitai Reserve**”).
- [109] As Tangata Kaitiaki, the TMICF Trust has responsibilities to ensure the health and sustainability of the taonga species and ecosystem within the area of the Mātaitai Reserve, and enable fisheries management of kaimoana for customary purposes⁴⁴.
- [110] Counsel for the TMICF Trust, Ms Tumai, helpfully submits⁴⁵:

9. *The claims were settled on 23 September 1992 with the signing of a Deed of Settlement – Māori Fisheries Settlement or the Sealord Deal.*
10. *The Sealord Deal was given effect through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (“Fisheries Settlement Act”) Accordingly, it is submitted that the Fisheries Settlement Act is an existing Treaty Settlement as defined in the FTAA.*

- [111] Given the location of the Project in Te Awanui, the Project is within the Rohe Moana and is close to the Mātaitai Reserve. On the evidence, the Panel considers that the Fisheries Settlement is directly relevant to its assessment under section 7.
- [112] In explaining to the Panel the obligations of Fisheries Settlement Act, Ms Tumai referred the Panel to section 10 of the Fisheries Settlement Act.

⁴⁴ Tauranga Moana Iwi Customary Fisheries Trust - Response to Minute 7, point 14, page 5
⁴⁵ Tauranga Moana Iwi Customary Fisheries Trust - Response to Minute 7, pages 3 and 4

Section 10 Effect of Settlement on non-commercial Māori fishing rights and interests

It is hereby declared that claims by Māori in respect of non-commercial fishing for species or classes of fish, aquatic life, or seaweed that are subject to the Fisheries Act 1983—

- (a) shall, in accordance with the principles of the Treaty of Waitangi, continue to give rise to Treaty obligations on the Crown; and in pursuance thereto*
- (b) the Minister, acting in accordance with the principles of the Treaty of Waitangi, shall—*
 - (i) consult with tangata whenua about; and*
 - (ii) develop policies to help recognise— use and management practices of Māori in the exercise of non-commercial fishing rights; and*
- (c) the Minister shall recommend to the Governor-General in Council the making of regulations pursuant to section 89 of the Fisheries Act 1983 to recognise and provide for customary food gathering by Māori and the special relationship between tangata whenua and those places which are of customary food gathering importance (including tauranga ika and mahinga mataitai), to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade; but*
- (d) the rights or interests of Māori in non-commercial fishing giving rise to such claims, whether such claims are founded on rights arising by or in common law (including customary law and aboriginal title), the Treaty of Waitangi, statute, or otherwise, shall henceforth have no legal effect, and accordingly—*
 - (i) are not enforceable in civil proceedings; and*
 - (ii) shall not provide a defence to any criminal, regulatory, or other proceeding,—*

except to the extent that such rights or interests are provided for in regulations made under section 89 of the Fisheries Act 1983.

[113] The Panel received and heard evidence from the TMICF Trust. The Panel considers that these obligations are principally with the Crown through fisheries legislation, direct engagement by the Minister with the TMICF Trust, and through regulatory mechanisms.

[114] The Panel is of the view that the Project does not extinguish customary fisheries, nor alter the legal status of the Mātaitai Reserve. It does not affect the ability for the TMICF Trust to access the Mātaitai Reserve or the ability to develop bylaws under the Fisheries (Kaimoana Customary Fishing) Regulations 1998.

- [115] The Applicant recognises⁴⁶ the cultural importance of Mātaitai Reserve and Te Paritaha. It acknowledges that TMICF Trust, alongside iwi and hapū in Tauranga Moana, are actively engaged in the customary fishing in Te Awanui.
- [116] The Panel accepts that there are concerns held by the TMICF Trust (and iwi and hapū) regarding the management of adverse effects regarding customary fisheries (including the exercise of tikanga, special relationship with customary food gathering sites/places, and decline in kaimoana population). Those effects have been considered by the Panel at Part G of this decision.
- [117] Their relevance to the section 7 assessment is whether granting approval would place the Panel in a position where it is acting inconsistently with an obligation in the Fisheries Settlement Act. Having considered the Fisheries Settlement Act, and the evidence presented by the TMICF Trust, the Panel finds that granting approval would not be inconsistent with any obligations arising under the Fisheries Settlement Act.

Māori Fisheries Act 2004 and Māori Commercial Aquaculture Claims Settlement Act 2024

- [118] In the addition to, and extension of, the Fisheries Settlement Act is the Māori Fisheries Act 2004 (“**Māori Fisheries Act**”) and Māori Commercial Aquaculture Claims Settlement Act 2004 (“**Māori Commercial Aquaculture Act**”).
- [119] The Panel received a Cultural Values Assessment (“**CVA**”) report from the Ngāti Ranginui Fisheries Trust (“**NRFT**”) and from the mandated iwi organisations from Ngāi Te Rangi and Ngā Pōtiki, as well as invited comments from Te Ohu Kaimoana.
- [120] The principal mechanisms of the Māori Fisheries Act concern the ownership, allocation and management of settlement assets. The Panel has considered whether the Project would interfere with the operation (and benefit) of those arrangements for those iwi with mandate.
- [121] Based on the evidence before it, the Panel considers the Project does not alter the allocation or ownership of fisheries settlement assets, nor restrict the ability of those identified mandated iwi organisations to participate in fisheries-related activities. Additionally, the Project will not impede aquaculture settlement assets or entitlement of those iwi with mandate.
- [122] While the Panel accepts that the proposal may contribute to the adverse cultural effects associated with customary fisheries (e.g. special relationship with customary food gathering sites/places, and some decline in kaimoana

⁴⁶

SAR, 3.13.5.2 Areas of Significant Cultural Value, page 91.

population), these effects do not automatically establish inconsistency with an obligation in the Māori Fisheries Act.

- [123] Having considered the Māori Fisheries Act, and the evidence from the mandated iwi organisations (including Te Ohu Kaimoana), the Panel concludes that granting approval would not be inconsistent with any obligations arising under the Fisheries Settlement Act.

Waitaha Claims Settlement Act 2013

- [124] The Waitaha Claims Settlement Act 2013 (“**Waitaha Act**”) gives effect to the Deed of Settlement between the Crown and Waitaha and settles the historical Treaty claims of Waitaha. The Waitaha area of interest encompasses all of Mount Maunganui and the Stella Passage footprint. It does not include Sulphur Point.
- [125] Te Kapu o Waitaha Trust represents Waitaha as the Post Settlement Governance Entity.
- [126] The Waitaha Act records the Crown's acknowledgements and apology for historical Treaty breaches and provides a comprehensive package of cultural and commercial redress intended to recognise the enduring relationship of Waitaha with its ancestral lands, waters and taonga.
- [127] The Panel has reviewed the Waitaha Act. While there are no statutory acknowledgements applicable to the Project, statutory acknowledgement OTS-075-15 Coastal Marine Area is close to the Project (it extends along the coastline from Mauao to Maketu). In reading the statement of association, there did not seem to be a direct association with Te Awanui but the Panel acknowledges that the CVA report prepared by Te Kapu o Waitaha refers to the connection and relationship.
- [128] Additionally, there were no conservation areas applicable to the Project, however the section 18 of the FTAA report identifies that there is a conservation protocol in place between Waitaha and the Department of Conservation.
- [129] The Panel therefore invited Waitaha to comment on the Project. Waitaha did not offer any further comment beyond the CVA report included within the SAR.
- [130] The Panel's view is that the Project does not hinder nor compromise the relationship of Waitaha with places identified in the Waitaha Act, while ensuring participation in the statutory processes of the FTAA. The Panel is satisfied that granting approval would not undermine or circumvent the conservation relationship established through the Waitaha Act, nor be inconsistent with any obligation under this Act.

Ngāti Pūkenga Claims Settlement Act 2017

- [131] The Ngāti Pūkenga Claims Settlement Act 2017 (“**Ngāti Pūkenga Act**”) gives effect to the Deed of Settlement between the Crown and Ngāti Pūkenga and provides for the full and final settlement of the historical Treaty claims of Ngāti Pūkenga.
- [132] Representing Ngāti Pūkenga as the Post Settlement Governance Entity is Te Tāwharau o Ngāti Pūkenga Trust and the Ngāti Pūkenga Iwi ki Tauranga Trust as the mandated iwi authority⁴⁷.
- [133] In a joint response to Minute 5, the two Ngāti Pūkenga entities informed the Panel that:

The Ngāti Pūkenga settlement records Crown acknowledgements that:

- *Ngāti Pūkenga were deprived of access to natural resources and opportunities for development within Tauranga Moana;*
- *Crown actions prevented Ngāti Pūkenga from exercising mana and rangatiratanga over lands and resources;*
- *Ngāti Pūkenga were marginalised within Tauranga Moana;*
- *environmental degradation of Tauranga Moana, including impacts on the Waitao catchment and Rangataua arm of the harbour, has caused enduring harm and distress to Ngāti Pūkenga.*

Of particular significance, Parliament expressly preserved matters relating to the management, governance, degradation, health, wellbeing, rangatiratanga and kaitiakitanga of Tauranga Moana from the scope of settled historical claims. This reflects recognition that Tauranga Moana remains a living and ongoing matter of concern rather than a historical issue that has been finally resolved.

- [134] The Panel notes that the Ngāti Pūkenga Act includes references to the importance of Tauranga Moana to Ngāti Pūkenga but does not set any specific statutory obligation.
- [135] Further noted by the Panel are the mechanisms directed towards restoring the Crown and Ngāti Pūkenga relationship by ensuring that Ngāti Pūkenga continue to participate meaningfully in the management of their ancestral environment. This includes Tauranga Moana.
- [136] The Panel notes that the Ngāti Pūkenga Deed of Settlement outlines that the collective redress in Tauranga Moana is distinguished from the Ngāti Pūkenga Act and will be pursued through the Tauranga Moana Iwi Collective Redress settlement process.⁴⁸ This is important to acknowledge as it refers

⁴⁷ Te Tāwharau o Ngāti Pūkenga Trust and the Ngāti Pūkenga Iwi ki Tauranga Trust – Invited Comments, point 5, page 1

⁴⁸ Clause 1.8 of the Ngāti Pūkenga Deed of Settlement of Historical Claims, page 8

to the Tauranga Moana Plan which aims to facilitate an integrated, holistic and co-ordinated approach to the management of Tauranga Moana.

- [137] The Panel accepts that the Project may contribute to the adverse cultural effects associated with values of Ngāti Pūkenga, with those matters separately considered and discussed at Part G of this decision. However, the Panel concludes that granting approval would not be inconsistent with any obligations arising under the Ngāti Pūkenga Claims Settlement Act 2017. Ngāti Pūkenga are still able to continue their enduring relationship with Te Awanui/Tauranga Harbour.

Ngā Hapū o Ngāti Ranginui Claims Settlement Act 2025

- [138] The Ngā Hapū o Ngāti Ranginui Claims Settlement Act 2025 (**“Ngā Hapū o Ngāti Ranginui Act”**) gives legislative effect to the Deed of Settlement between the Crown and the iwi and hapū of Ngāti Ranginui and provides for the full and final settlement of their historical Treaty claims.
- [139] The Ngā Hapū o Ngāti Ranginui Settlement Trust (**“NHNR Settlement Trust”**) represents the collective hapū of Ngāti Ranginui as the Post Settlement Governance Entity.). The Panel understands the hapū of Ngāti Ranginui are:
- (a) Ngāi Tamarāwaho
 - (b) Ngāi Te Ahi
 - (c) Ngāti Hangarau
 - (d) Ngāti Ruahine
 - (e) Ngāti Taka
 - (f) Ngāti Te Wai
 - (g) Pirirākau
 - (h) Wairoa Hapū, including Ngāti Kahu, Ngāti Pango and Ngāti Rangi
- [140] The mandated iwi authority for RMA purposes is the Ngāti Ranginui Iwi Society Incorporated (**“NRIS”**), alongside the NRFT who are the mandated iwi organisation in the Māori Fisheries Act 2004. The Treaty settlement concerns of the NRFT have already been addressed above.
- [141] The Panel acknowledges the receipt of reports, representations and evidence from Ngāi Tamarāwaho Hapū and Ngāi Tamarāwaho Tribal Authority Trust (on behalf of Ngāi Tamarāwaho), Pirirākau Tribal Authority Incorporated (on behalf of Pirirākau), and the Wairoa Hapū Settlement Trust (on behalf of Wairoa Hapū).

- [142] The Panel has considered the position of the NHNR Settlement Trust that the Project is inconsistent with the Ngā Hapū o Ngāti Ranginui Act and the Tauranga Moana Iwi Collective Deed of Settlement (**Tauranga Moana Settlement**), with the NHNR Settlement Trust outlining the following aspects of the two Treaty settlements:

Relevant aspects of the Ngati Ranginui settlement for the purposes of the fast track application include:

- (a) *The acknowledgment by the Crown of the extensive historical and present-day interests of ngā hapū o Ngāti Ranginui in relation to Tauranga Moana;*
- (b) *The establishment of the Tauranga Moana Framework, which:*
 - (i) *Has the purpose of facilitating an integrated, holistic and co-ordinated approach to the management of Tauranga Moana;*
 - (ii) *Provides for the establishment of a Tauranga Moana Governance Group, which includes appointees of the Tauranga Moana iwi, to provide leadership and strategic direction to restore, enhance and protect the health and wellbeing of Tauranga Moana and achieve sustainable management of Tauranga Moana for present and future generations;*
 - (iii) *Commits the Crown and Ngāti Ranginui to ensuring that Tauranga Moana is managed so as to restore, enhance and protect the health and wellbeing of Tauranga Moana and to achieving sustainable management of Tauranga Moana for present and future generations*
 - (iv) *Provides for the development and implementation of Nga Tai ki Mauao (Tauranga Moana framework document);*
 - (v) *Requires the meaningful participation of Ngāti Ranginui in all matters affecting Tauranga Moana; and*
 - (vi) *Provides for the establishment of a register of appropriately qualified people, appointed by the iwi of Tauranga Moana, who must be appointed as a Commissioner to hear resource consent applications relating to, amongst other things, matters set out in section 12 of the RMA, which include reclamations and the erection of structures in the coastal marine area.*

- [143] NRIS informed the Panel of their relationship with Te Awanui/Tauranga Harbour, and the provision for the exercise of their rangatiratanga and kaitiakitanga in the process and decision-making of consent applications.⁴⁹

⁴⁹

- [144] Ngāi Tamarāwaho informed the Panel of their rangatiratanga at Sulphur Point,⁵⁰ and emphasised their enduring relationship with Te Awanui/Tauranga Harbour and their role as kaitiaki.
- [145] Within their evidence, Pirirākau advised the Panel that they are a hapū recognised within the Ngā Hapū o Ngāti Ranginui Act, and seek recognition of hapū rangatiratanga, which requires meaningful involvement at all levels (in governance, cultural monitoring and enforceable cultural thresholds).
- [146] In their Invited Comments, the Wairoa Hapū Settlement Trust presented a 1996 report which informs on their relationship with Te Awanui/Tauranga Harbour, and that there needs to be recognition of their distinct interests that are protected in the Ngā Hapū o Ngāti Ranginui Act.
- [147] The Panel notes that the Ngā Hapū o Ngāti Ranginui Act records the Crown's acknowledgements and apology for historical breaches of Te Tiriti o Waitangi and contains specific references to the Tauranga Moana. There are procedural mechanisms established by the settlement that operate to recognise and provide for the rangatiratanga and kaitiakitanga of Ngāti Ranginui and the hapū of Ngāti Ranginui.
- [148] Of particular relevance to the Project is section 8(17) of the Ngā Hapū o Ngāti Ranginui Act. The Crown expressly acknowledges the significance of the land, forests, harbours and waterways of Tauranga Moana to the hapū of Ngāti Ranginui. It also acknowledges that the development of the Port of Tauranga has resulted in environmental degradation of Tauranga Moana which remains a source of great distress to the hapū of Ngāti Ranginui. The Panel considers this acknowledgement to be directly relevant to the context in which the Project, and the concerns expressed by Ngāti Ranginui and respective hapū regarding its cumulative effects, are to be understood.
- [149] Similarly, the Panel accepts that the Tauranga Moana Settlement will, when legislated, establish a framework that facilitates an integrated, holistic and co-ordinated approach to the management of Tauranga Moana. This is discussed further below.
- [150] The question for the Panel under section 7 of the FTAA is not whether the Project upholds every aspiration, acknowledgement or statement recorded in the Ngā Hapū o Ngāti Ranginui Act, but whether granting approval would be inconsistent with an obligation arising in the Ngā Hapū o Ngāti Ranginui Act.
- [151] The Panel acknowledges the tension between the Project and the historical and restorative context of the Ngā Hapū o Ngāti Ranginui Act which is apparent in the Crown's acknowledgement. However, the Panel considers

that the tension does not establish inconsistency with any obligation arising under the Act.

- [152] The Panel accepts that the Project may contribute to adverse cultural effects on the values and interests of Ngāti Ranginui, and those effects are considered in Part G of this decision. In regard to the assessment of section 7 of the FTAA, the Panel concludes that granting approval would not be inconsistent with any obligations arising under the Ngā Hapū o Ngāti Ranginui Act. It will not extinguish or displace the continuing relationships and settlement redress recognised under the Act but instead will provide mechanisms that allow Ngāti Ranginui and hapū to participate in the Project.

Signed Ngāi Te Rangi and Ngā Pōtiki Deed of Settlement

- [153] The Ngāi Te Rangi and Ngā Pōtiki Deed of Settlement (“**NTR & NP Deed**”) records the agreement reached between the Crown and Ngāi Te Rangi and Ngā Pōtiki for the settlement of their historical Treaty claims.
- [154] Representing Ngāi Te Rangi as the Post Settlement Governance Entity is the Ngāi Te Rangi Settlement Trust (“**NTR Settlement Trust**”). The Panel understands the hapū of Ngāi Te Rangi are:
- (a) Ngāi Tamawhariua
 - (b) Ngāi Tūkairangi
 - (c) Ngāi Tuwhiwhia
 - (d) Ngāti Hē
 - (e) Ngāti Kuku
 - (f) Ngāti Tapu
 - (g) Ngāti Tauaiti
 - (h) Te Ngare
 - (i) Te Whānau a Tauwhao
- [155] The mandated iwi authority for RMA purposes is Te Rūnanga o Ngāi Te Rangi Trust who are also the mandated iwi organisation in the Māori Fisheries Act 2004. The Treaty settlement concerns regarding the fisheries interest of Ngāi Te Rangi have already been addressed above.
- [156] Representing Ngā Pōtiki as both the Post Settlement Governance Entity and mandated iwi authority for RMA purposes is Ngā Pōtiki a Tamapahore Trust (“**Ngā Pōtiki Trust**”).

- [157] The Panel acknowledges the receipt of reports, representations and evidence from Ngāi Tamawhariua puta noa ki Te Rereatūkāhia, Ngāi Tūkairangi, Ngāti Kuku, and Ngāti Tapu.
- [158] The NTR & NP Deed records the Crown's acknowledgements and apology for historical Treaty breaches and the agreement to settlement of those breaches. The NTR & NP Deed also recognise the enduring relationship of Ngāi Te Rangi and Ngā Pōtiki with its ancestral lands, waters and taonga, including Tauranga Moana.
- [159] There are no statutory acknowledgements applicable to the Project in the NTR & NP Deed. However, close to the Project is statutory acknowledgement OTS-078-13 Waiooro ki Maketu which extends along the coastline from Waiooro Stream to Maketu. In reading the statement of association, there does not seem to be a direct association with Te Awanui but the Panel acknowledges the interconnected relationship with Tauranga Moana.
- [160] While the Panel acknowledges the concerns of iwi and hapū of Ngāi Te Rangi and Ngā Pōtiki and the potential and actual adverse effects on their values, in the Panel's view, the Project will not interfere with any of the redress measures, nor the relationship mechanisms provided for in the NTR & NP Deed. The Panel concludes that granting approval would not be inconsistent with any obligations arising under the NTR & NP Deed.

Signed Tauranga Moana Iwi Collective Redress Deed of Settlement

- [161] The Tauranga Moana Iwi Collective Deed of Settlement ("**TMIC Deed**") establishes the collective redress for Tauranga Moana (includes Te Awanui/Tauranga Harbour) which comprises of the three iwi Ngāti Pūkenga, Ngāti Ranginui and Ngāi Te Rangi.
- [162] Clause 2.29 of the TMIC Deed outlines the meaning of Tauranga Moana as:

2.29.1 mean:

- (a) *the waters (including internal waters and tidal lagoons) and other natural resources and the geographic features (including Tauranga Harbour) comprising the coastal marine area marked as "A" on the Tauranga Moana framework plan in the attachments; and*
- (b) *the waters and other natural resources and the geographic features comprising the rivers, streams, creeks and natural watercourses within the catchment that flow into –*
 - (i) *Tauranga Harbour; or*
 - (ii) *the sea at any point within the area marked as "A" on the Tauranga Moana Framework plan in the attachments;*

- (c) *the waters and other natural resources and the geographic features comprising wetlands, swamps and lagoons within the catchment; and*
- (d) *the beds and aquatic margins of the water bodies referred to in clauses (a) to (c); and*
- (e) *the ecosystems associated with the waters and natural features referred to in clauses (a) to (d); but*

2.29.2 do not include-

- (a) *the waters and other natural resources situated on offshore islands for which the Minister of Local Government is the territorial authority pursuant to section 22 of the Local Government Act 2002, including Tuhua (current recorded name "Mayor Island (Tuhua)") and Motiti Island (current recorded name "Motiti Island"); or*
- (b) *the waters and other natural resources and the geographic features comprising the rivers, streams, creeks and natural watercourses within the catchment that do not flow into:*
 - (i) *Tauranga Harbour; or*
 - (ii) *the sea at any point within the area marked as "A" on the Tauranga Moana framework plan in the attachments.*

[163] Key mechanisms identified within the TMIC Deed are the:

- (a) Tauranga Moana Framework:
 - i. Tauranga Moana Governance Group (a statutory committee);
 - ii. Ngā Tai ki Mauao Framework; and
- (b) Te Kūpenga Framework with DOC.

[164] The TMIC Deed outlines the aspirations of Tangata Whenua.⁵¹ Of note is the aspiration to achieve the restoration, protection and maintenance of the health and wellbeing of the Tauranga Moana and the health and wellbeing of the people around the Moana.

[165] The TMIC Deed also outlines that arrangements intended by Tangata Whenua and the Crown are to⁵²:

- (a) operate in accordance with their relationship under the Treaty of Waitangi; and

⁵¹ At Clause 2.8
⁵² At Clause 2.24

- (b) provide for Tauranga Moana iwi and hapu to participate meaningfully in decision-making and the framing of policy related to Tauranga Moana; and
- (c) promote holistic and integrated management of Tauranga Moana; and
- (d) provide for iwi and hapū values and mātauranga Māori in the management of Tauranga Moana; and
- (e) operate within and through existing statutory frameworks; and
- (f) enable Tauranga Moana iwi and hapū, and local authorities and agencies with responsibilities related to Tauranga Moana to establish and maintain positive, co-operative and enduring relationships based on –
 - i. respecting the autonomy of the parties and their individual mandates, roles and responsibilities;
 - ii. actively working together to –
 - share knowledge and expertise; and
 - maintain an effective role for –
 - Tauranga Moana iwi to participate in the governance of Tauranga Moana; and
 - Tauranga Moana iwi and hapū to participate in co-management arrangements for Tauranga Moana; and
 - achieve effective and integrated management of Tauranga Moana for the good of all; and
 - iii. co-operating in partnership with a spirit of good faith, integrity, honesty, transparency and accountability; and
 - iv. engaging early on issues of known interest to either of the parties; and
 - v. understanding that the parties' relationship is evolving.

[166] After reviewing the TMIC Deed, the Panel understands the Tauranga Moana Framework is directed towards facilitating an integrated, holistic and co-ordinated approach to the management of Tauranga Moana (includes Te Awanui/Tauranga Harbour), and to restore, enhance and protect the health and wellbeing of Tauranga Moana for present and future generations. Additionally, the Tauranga Moana Framework will provide for an ongoing and meaningful role for Tangata Whenua in matters affecting the Moana.

- [167] In undertaking the section 7 assessment, the Panel has considered whether the Project would frustrate or undermine the redress contemplated by the TMIC Deed. Further, whether granting approval would impede the existing and future relationship of Tangata Whenua with Te Awanui/Tauranga Harbour, or impede the exercise of rangatiratanga and kaitiakitanga of Tangata Whenua in processes and decisions affecting Tauranga Moana (includes Te Awanui/Tauranga Harbour).
- [168] The Panel is satisfied that in granting approval, the Project will not prevent or hinder the future establishment or operation of the Tauranga Moana Framework, Ngā Tai ki Mauao and/or the Tauranga Moana Governance Group.
- [169] With that said, the Panel has been careful to consider how it could recognise those Tangata Whenua values contained within the TMIC Deed through conditions of consent. Specifically, the Panel considers the conditions should provide meaningful opportunities for Tangata Whenua participation in the Project.
- [170] The Panel has therefore strengthened the proposed conditions of consent to provide more meaningful opportunities for Tangata Whenua participation, including but not limited to through the Stella Passage Development Advisory Group (“**SPDAG**”).
- [171] The Panel considers that the SPDAG should have a stronger mandate rather than merely as a means of receiving information. Its functions should include opportunities to review monitoring results, to identify and respond to Tangata Whenua concerns, and to provide and incorporate mātauranga Māori and cultural indicators/thresholds where appropriate.
- [172] The Panel has also included a condition of consent that enables a conversation to occur between SPDAG and the Applicant regarding the Tauranga Moana Framework over the duration of the consent. This is considered a reciprocal condition to the Applicant’s proposed review condition which provides for consideration of any Act of Parliament.
- [173] The Panel considers that granting approval on these conditions would not be inconsistent with the obligations under the TMIC Deed.

Panel Findings

- [174] The evidence presented to the Panel from Tangata Whenua principally related to the aspirations expressed through their respective Treaty settlements, referring to the Crown acknowledgements of historic degradation of Te Awanui/Tauranga Harbour, and the distress this has caused for Tangata Whenua.

- [175] The Panel accepts that these historical changes form an important part of the environment. However, section 7 does not require the Panel or an applicant to remedy all historical degradation before any further development can occur.
- [176] The Panel has undertaken an in-depth assessment and is satisfied that granting the approvals for the Project is consistent with obligations in all relevant Treaty settlements (even when “obligations” is interpreted very broadly, in the manner argued for by Tangata Whenua).

PART F: EXTENT OF NATIONAL OR REGIONAL BENEFITS

- [177] The Panel must take into account the purpose of the FTAA. In doing so, the panel must “consider the extent of the project’s regional or national benefits.”
- [178] These benefits are for the most part canvassed in the SAR, supplemented by the statement of evidence from Mr Kneebone⁵³ and the memorandum from New Zealand Institute of Economic Research Incorporated (“NZIER”).⁵⁴ The memorandum of counsel for the Applicant dated 16 April 2026 helpfully summarises the benefits in paragraph 3.
- [179] The planning evidence of Ms Vanessa Wilkinson on behalf of Ngāti Kuku Hapū Trust and Trustees of Whareroa Marae⁵⁵ suggest it is the “net extent of these benefits, especially having regard to the adverse impacts to Ngāti Kuku and Whareroa Marae” that are to be taken into account.⁵⁶ This is in reliance on the evidence of Dr Meade that:⁵⁷

“The FTAA requires a clear assessment of whether the Project delivers net benefits to New Zealand’s social welfare once all costs, disbenefits, and adverse impacts are accounted for. In economic terms, this necessitates a cost-benefit analysis (CBA), rather than an economic impact assessment (EIA).”

- [180] The Panel disagrees.
- [181] A cost-benefit analysis (“**CBA**”) is not required:
- (a) For the reasons given in paragraphs 11 – 12 of Mr Peter Clough’s evidence dated 7 May 2026;
 - (b) For the reasons given in paragraphs 27 - 30 of the Applicant’s memorandum of counsel dated 7 May 2026;

⁵³ Statement of Evidence, Daniel Alexander Kneebone, 16 April 2026.

⁵⁴ Annexure B to Applicant’s Response: POTL Stella Passage Development Alignments with Māori Economy, 10 April 2026.

⁵⁵ Dated 1 May 2026.

⁵⁶ See paragraphs 19-20.

⁵⁷ Summarised in paragraph 12.1 of his evidence dated 30 April 2026.

- (c) To the extent not covered in (a) and (b) above, in reliance on the Supreme Court’s analysis in *Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board*⁵⁸ as referenced by the relevant panel determining the Waihi North FTAA project⁵⁹ which has been subsequently followed by panels, including the relevant panels determining the Taranaki VTM⁶⁰ and Southland Wind Farm⁶¹ FTAA projects.
- (d) If the disbenefits to Ngāti Kuku and Whareroa Marae (for example) are monetised and factored into the benefits assessment, those disbenefits would then be double counted in any weighting exercise required by s 85(3). To use the phrase of the relevant panel determining the Ayrburn Screen Hub FTAA project, “that cannot be right.”⁶²

[182] Dr Meade also provides a critique of the NZIER assessment,⁶³ which is addressed in the Applicant’s response to comments on 16 April 2026 referenced above.⁶⁴ The Panel prefers the NZIER assessment and the evidence of Mr Clough over that of Dr Meade.

[183] The Panel finds that the regional and national benefits of the Project are significant.

PART G: EVALUATION OF EFFECTS

[184] Schedule 5 clause 5(4) requires an Applicant to provide an assessment of an activity’s effects on the environment covering the information in clauses 6 and 7.

[185] The Applicant provided a fulsome assessment of these matters in Sections 6 and 7 of the SAR, supplemented by its 16 April 2026 response to Minute 3.

[186] The positive effects are significant, as discussed in Part F above.

[187] Participants who commented raised a range of concerns with the actual and potential adverse effects. The Applicant provided a comprehensive response on 7 May 2026, comprising legal submissions, 12 statements of evidence and nine tables recording the Applicant’s response to specific comments.

⁵⁸ [2021] 1 NZLR 801, at [195] – [196].

⁵⁹ Decision dated 18 December 2025, paras [782] – [787].

⁶⁰ Draft Decision dated 4 February 2026, paras [91] – [92].

⁶¹ Decision dated 2 April 2026, paras [821], [842] – [845].

⁶² Decision dated 13 May 2026, para [160].

⁶³ See section 3 of his evidence dated 30 April 2026.

⁶⁴ Specifically the evidence of Clough, paragraphs 15 – 60 and paragraph 33 of the memorandum of counsel.

- [188] This led to the process set out in paragraphs 49 - 55 of Part B above.
- [189] With the exception of cultural effects, all other adverse effects are assessed as being low, minor, or negligible in nature.⁶⁵ The Panel agrees with and adopts that assessment. The Panel also agrees with the earlier findings of the Environment Court that from a Western science perspective there is no impediment to the grant of consent.⁶⁶ The addition of the cranes to the Project does not alter the relevance of those earlier findings.
- [190] The adverse cultural effects of the Project have been front and centre throughout the Panel's processing and consideration of the Project. These are addressed below, including in relation to the landscape and air quality effects raised by Tangata Whenua.

Cultural Effects

Context

- [191] There is no dispute that effects on "site specific historical or cultural values under ss 6(e) or 7(a) of the RMA" are relevant to our assessment.⁶⁷
- [192] As noted in Mr Faithfull's planning evidence for the Applicant:⁶⁸

While the reference to "site-specific" could be interpreted narrowly, POTL has not adopted a narrow interpretation, either spatially or in terms of the nature of effects considered. This is evidenced by the inclusion in the Application of technical assessments of potential effects such as air quality and landscape impacts, which extend beyond the immediate footprint of works.

- [193] The Applicant accepts that "site" in this context is not confined to the area of the proposed works and that a range of effects can be considered.⁶⁹ The Regional Council, in response to Minute 5, confirmed the matters of control / assessment criteria were included to "enable the Tangata Whenua to specifically identify potential effects relevant to individual proposals through resource consent applications, to enable these identified effects to then be considered through the consenting process." The implementation of the provisions has focused on ensuring "that the resource consent processes have resulted in engagement with Tangata Whenua, to assist in identifying how sections 6(e) and / or 7(a) are specifically relevant to the area subject to the resource consent application."
- [194] As a consequence of this approach, the Panel has not been constrained in any way in its consideration of the cultural effects of the Project.

⁶⁵ See SAR, pages (viii) – (x); But for one landscape effect, which is characterised as moderate in the Statement of Evidence of Stephen Brown dated 7 May 2026, paragraph 22.

⁶⁶ *Port of Tauranga Ltd v Bay of Plenty Regional Council* [2024] NZEnvC 337 at [8](a) and [9].

⁶⁷ Rules PZ 5, PZ 8, PZ 10 and PZ 11 of the RCEP.

⁶⁸ Evidence of Luke Faithfull, 7 May 2026, para 17.

⁶⁹ Applicant's memorandum of counsel 7 May 2026 para 46.

[195] The Applicant has been “sharing its development plans in relation to Stella Passage with Tangata Whenua since 2016.”⁷⁰ It has detailed its attempts to consult in some detail.⁷¹ It has endeavoured to make “substantial project modification to avoid effects (including re-configuration of dredging and berthage to address the concerns of Whareroa Marae)”.⁷² The Applicant’s “cultural mitigation package” retains “key elements that it developed during the direct referral process and that were present in the Environment Court’s first and second interim decisions”,⁷³ retains other “base concepts” that have been “refined”,⁷⁴ proposes “further mitigation proposals specific to Whareroa Marae”,⁷⁵ and establishes a fund “for the purpose of assessing and developing opportunities to enhance avifauna habitat in and around Te Awanui/Tauranga Harbour”.⁷⁶ The offered financial commitment consisted of a number of one-off payments, the establishments of funds, and for one initiative an annual payment⁷⁷ which together exceed \$6M.

[196] The Applicant considers:⁷⁸

... that the proposed mitigation measures (including the wider controls and management measures provided for by the proposed consent conditions) will ensure that any impacts of the Project on Māori cultural values and associations are appropriately managed. POTL considers that the proposed consent conditions provide a number of mechanisms to ensure that tangata whenua have an ongoing role in the Project and wider Port operations and opportunities to fulfil their role as kaitiaki for Te Awanui/ Tauranga Harbour.

[197] Despite this, many participants raised concerns with the adverse cumulative cultural effects of the proposal and the proposed mitigation package.

[198] The Applicant attempted to distil the adverse cumulative cultural effects articulated in the comments in its response on 7 May 2026,⁷⁹ and proposed a way forward.⁸⁰ In Minute 5 the Panel asked the Tangata Whenua participants to comment on both aspects of this response.⁸¹ It was clear from the responses received that there was no agreement.

[199] The Panel agrees with the Applicant’s submission.⁸²

⁷⁰ Applicant’s memorandum of counsel 19 January 2026, para 23.

⁷¹ Applicant’s memorandum of counsel 19 January 2026, paras 23 – 34, and the report *Port of Tauranga Limited Tauranga Moana Tauranga Tāngata Consultation Report* prepared by Mahea NZ Limited at Appendix 18 of the SAR.

⁷² Applicant’s memorandum of counsel 7 May 2026, para 232(a).

⁷³ Applicant’s memorandum of counsel 19 January 2026, paras 35.

⁷⁴ Applicant’s memorandum of counsel 19 January 2026, para 36.

⁷⁵ Applicant’s memorandum of counsel 19 January 2026, para 37.

⁷⁶ Applicant’s memorandum of counsel 19 January 2026, para 38.

⁷⁷ Applicant’s memorandum of counsel 19 January 2026, para 39.

⁷⁸ SAR, page 318, section 12.

⁷⁹ Applicant’s memorandum of counsel 7 May 2026, para 128.

⁸⁰ Applicant’s memorandum of counsel 7 May 2026, para 240 – 245.

⁸¹ See paragraphs 4(a)(i) and 9.

⁸² Applicant’s memorandum of counsel 7 May 2026, paras 170 - 172.

It is now a well accepted principle that impacted tangata whenua parties are best placed to say what cultural effects they would experience from a proposal, where their evidence is credible and reliable and portrays a considered, consistent and genuine view.⁸³ The Courts have held that it is not open to the decision-maker to substitute its view on cultural effects if this is present. However, this does not equate to a “veto” on behalf of the impacted Māori party.⁸⁴

Cultural effects flow from impacted tikanga. The Courts have applied the ‘rule of reason approach’ set out in Ngāti Hōkōpū to identify existing, affected tikanga.⁸⁵

*The McCallum Bros decision built on the approach of Ngāti Hōkōpū and the Tauranga Environmental Protection Society decision, determining that **whether cultural effects are appropriately avoided, remedied or mitigated is also best evidenced by the impacted Māori party, and is unable to be substituted by the Court’s view.**⁸⁶ In McCallum Bros a witness for the Applicant offered views on the legitimacy, scale and methods of mitigating mana whenua effects.⁸⁷ The Environment Court questioned the need for these comments given the witness was not speaking for mana whenua hapū before the Court. The Court instead focused on the “credible and reliable views of mana whenua”.⁸⁸*

(emphasis added)

[200] It is for this reason the Panel scheduled the hearing on 27 – 29 July 2026.

[201] In preparation for the hearing, the Panel:

- (a) read the Cultural Values Reports (“**CVR**”) / Cultural Impact Assessments (“**CIA**”) provided in Appendix 18A of the SAR and the additional CVA / CIA provided through the comments and further information request processes.
- (b) reflected on the Environment Court’s findings in its first Interim Decision:⁸⁹

⁸³ *Tauranga Environmental Protection Society Inc v Tauranga City Council* [2021] NZHC 1201 at [65]; *McCallum Bros Ltd v Auckland Council* [2024] NZEnvC 75, at [164], [256] and [289]

⁸⁴ *I&P Farming Ltd v Hawke’s Bay Regional Council* [2025] NZEnvC 328 at [387].

⁸⁵ *Ngāti Hōkōpū ki Hōkōwhitu v Whakatāne District Council* (2002) 9 ELRNZ 111 (EC), at [49] – [53]. This approach has been cited with approval at the High Court in *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* (2020) 22 ELRNZ 202 (HC) at [106] – [108] and [167] – [168].

⁸⁶ *I&P Farming Ltd v Hawke’s Bay Regional Council* [2025] NZEnvC 328 at [100], citing *Tauranga Environment Protection Soc Inc v Tauranga City Council* [2021] NZRMA 492 at [65].

⁸⁷ *McCallum Bros Ltd v Auckland Council* [2024] NZEnvC 75 at [327].

⁸⁸ *McCallum Bros Ltd v Auckland Council* [2024] NZEnvC 75 at [328].

⁸⁹ At [615].

- (a) *The amended proposal does not adequately provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;*
- (b) *The amended proposal does not adequately provide for kaitiakitanga or appropriately address Policy IW 8 of the RCEP;*
- (c) *The proposed Southern Te Awanui Harbour Health Plan could provide a basis to address tangata whenua concerns relating to Te Awanui but will require to be significantly clearer in terms of detail before that will be known;*
- (d) *Three kaimoana surveys of Te Paritaha must be undertaken before we can make a final decision relating to Sulphur Point Stage 1;*
- (e) *An appropriate ecological baseline survey must be undertaken and all encompassing baseline report describing the condition of the existing environment across the area of Te Awanui affected by Port activities must be provided before we make our final decision on other aspects of this case;*
- (f) *Any cumulative effects on Whareroa Marae, however minor, would be contrary to the purpose of the RMA unless existing effects are remedied, mitigated or otherwise addressed appropriately by way of compensation or offsetting;*
- (g) *Subject to appropriately addressing the above, we consider it likely that consent to proceed with Stage 1 of the Sulphur Point Wharf extension can be granted.*
- (h) *All other parts of the application are unable to be granted until the matters raised in this interim decision are addressed.*

(c) reminded itself that:

- i. The second Interim Decision dated 16 December 2024 granted consent for the Stage 1 Sulphur Point wharf extension subject to the conditions of consent proposed by the Applicant as part of that process and the amendments set out in the second interim decision.
- ii. As a consequence of High Court appeals and the enactment of the FTAA, the amended consent conditions were never filed with the Environment Court and no consent issued.⁹⁰

⁹⁰

SAR, pages 26 - 27, section 1.7.2.

Assessment

[202] The Panel has considered the effects of the Project on the values Tangata Whenua associated with the Project. The Tangata Whenua parties⁹¹ are:

- (a) Iwi
 - i. Ngāi Te Rangi (represented by Te Rūnanga o Ngāi Te Rangi Iwi Trust, Ngāi Te Rangi Settlement Trust)
 - ii. Ngāti Ranginui (represented by Ngāti Ranginui Iwi Society Incorporated, Te Rūnanga o Ngāti Ranginui, Ngā Hapū o Ngāti Ranginui Settlement Trust)
 - iii. Ngāti Pūkenga (represented by Ngāti Pūkenga Iwi ki Tauranga Trust and Te Tāwharau o Ngāti Pūkenga)
 - iv. Waitaha (represented by Te Kapu o Waitaha Trust)
- (b) Hapū
 - v. Ngā Pōtiki (Ngā Pōtiki a Tamapahore Trust)
 - vi. Ngāi Tamarāwaho (Ngāi Tamarāwaho Tribal Authority Trust)
 - vii. Ngāi Te Ahi (Ngāi Te Ahi Settlement Trust)
 - viii. Ngāi Tūkairangi (Ngāi Tūkairangi Hapū Trust)
 - ix. Ngāti Hangarau
 - x. Ngāti Hē (Ngātu Hē Hapū Trust)
 - xi. Ngāti Kaahu ki Mangatawa Representative Groups
 - xii. Ngāti Kuku Hapū Trust
 - xiii. Ngāti Ruahine
 - xiv. Ngāti Taka
 - xv. Ngāti Te Wai
 - xvi. Ngāti Tapu
 - xvii. Pirirākau (Pirirākau Tribal Authority Incorporated)
 - xviii. Wairoa Hapū Settlement Trust
- (c) Tangata Whenua entities
 - xix. Mauao Trust
 - xx. Ngā Hapū o Ngā Moutere Trust
 - xxi. Ngā Tai ki Mauao

⁹¹

The parties that were identified in the section 18 report and who were invited to comment (identified in Minute 2)

- xxii. Tauranga Moana Iwi Collective Limited Partnership
- xxiii. Tauranga Moana Iwi Customary Fisheries Trust
- xxiv. Te Kotahitanga o Te Arawa Waka Fisheries Trust Board (representing Waitaha)
- xxv. Whareroa Marae / Whareroa Marae Reservation Trust / Whareroa Marae Committee

Approach to assessment

- [203] Tangata Whenua expressed to the Panel that the Project must be considered in the historical and cumulative context of port activities in Te Awanui/Tauranga Harbour. In their view, the further dredging, reclamation or physical modification has significance to Tangata Whenua because it creates further change (includes degradation) to Te Awanui.
- [204] The Panel has carefully considered the differing positions advanced by the Applicant and their technical experts, and Tangata Whenua regarding the appropriate characterisation of the receiving environment against which the effects of the proposal should be assessed.
- [205] There was no dispute that the proposal is located within Te Awanui/Tauranga Harbour, nor was there any dispute that Te Awanui/Tauranga Harbour has been subject to extensive physical modification over many decades through reclamation, dredging, navigation improvements, port expansion, urban growth and development and all associated infrastructure.
- [206] The principal difference between the parties is how much should be attributed to the historical development of Te Awanui/Tauranga Harbour, and whether those historical activities form part of the receiving environment for the purpose of assessing the effects of this Project.
- [207] The Applicant submitted⁹² in response to Minute 5 of the Expert Panel that the receiving environment should reflect the environment as it presently exists, including the existing and past port lawful activities. This perspective was not shared by Tangata Whenua.
- [208] The evidence from Tangata Whenua informed, to different degrees, that the receiving environment cannot properly be understood without recognising the adverse cumulative effects on Te Awanui/Tauranga Harbour from the port establishment and successive expansion, and therefore the Project should not be considered as an isolated expansion but as the latest stage in a continuing pattern of environmental and cultural change.
- [209] The Panel considers that both propositions are correct:

⁹²

Memorandum on behalf of the Applicant, Response to Minute 5 of the Stella Passage Development Expert Panel, 8 June 2026, Points 33 to 38, Pages 12 to 14.

- (a) The receiving environment includes the physical, ecological and cultural environment as it exists at the time the application is being assessed. That includes existing port infrastructure, navigation channels, reclaimed land, commercial activities and other lawful modifications that have become part of the harbour environment, and
- (b) The assessment of cumulative effects is necessarily informed by the historical changes that characterise the concerns and the cultural significance of those concerns as expressed by Tangata Whenua throughout their evidence.

[210] The Panel does not accept the proposition that the environment should be viewed as though the existing environment arose independently of the processes that created it. The present condition of Te Awanui/Tauranga Harbour is itself the product of successive human-influenced changes, and natural occurring events over a long period of time.

[211] In considering the views of Tangata Whenua, to understand the cultural values and the adverse effects on those values requires the Panel, and the Applicant, to have an appreciation of those historical processes that have altered the ecological function, customary use, cultural associations and the ability of Tangata Whenua to exercise rangatiratanga and kaitiakitanga in Te Awanui/Tauranga Harbour.

[212] Importantly though, in applying that appreciation in the assessment of this Project, the Panel must put into context that many of these historical changes have resulted from numerous activities undertaken by other parties (both public and private) over many decades. Therefore, the changes to Te Awanui/Tauranga Harbour cannot be solely attributed to the Applicant, nor in any way to the Project before the Panel (that has, obviously, not yet occurred).

[213] The Panel acknowledges the view of Tangata Whenua that historical and ongoing cumulative changes are significant, which together have contributed to the present condition of Te Awanui/Tauranga Harbour, and explain the concern with the potential for any further degradation from this Project.

[214] The Panel accepts that these concerns are genuine and sincerely held. However, the Panel does not accept there is an obligation on the Applicant to remedy historical degradation of the Te Awanui/Tauranga Harbour, or to restore the environment to an earlier state, as a prerequisite for obtaining approval or commencing works. The Panel considers the integrated management approach envisioned as part of the Tauranga Moana Iwi Collective settlement is best placed to address all historical degradation.

- [215] With that said, the Panel accepts there is a need to address the historical and ongoing cumulative effects experienced by Tangata Whenua and that both the Applicant and the Panel can play a role in doing so.
- [216] The Panel has therefore focussed on whether the incremental effects of the Project will result in unacceptable cumulative adverse effects, and whether the Project proposes measures that represent a proportionate response to the historical degradation of Te Awanui/Tauranga Harbour (in order to not be more onerous than necessary).

Effects as expressed by Tangata Whenua

- [217] On the information and evidence before the Panel, it is considered that the overarching and unifying position of Tangata Whenua is that Te Awanui is an ancestral living environment that is enduring and embodies identity and an intergenerational responsibility to protect and restore for current and future generations.
- [218] The values of Tangata Whenua that were expressed to, and identified by, the Panel are considered to fit in one or more of the following interconnected themes:
- (a) Tangata Whenua relationship with Te Awanui, and its significance to their identity, culture, and traditions
 - (b) Mauri of Te Awanui (ecological health and wellbeing of Te Awanui/Tauranga Harbour)
 - (c) Exercise of rangatiratanga and kaitiakitanga (includes mātauranga and kaitiaki monitoring) by Tangata Whenua in Te Awanui/Tauranga Harbour in the Project,
 - (d) Appropriately recognise historic degradation and ongoing cumulative effects
- [219] The Panel understands from the evidence it heard that Te Awanui is not understood simply as a physical environment, or a natural resource, nor a harbour that has a functional purpose. Te Awanui embodies whakapapa, identity, culture and tikanga and connects Tangata Whenua with their past, present and future generations.
- [220] The Panel acknowledges that an effect on any part of Te Awanui is an effect on that whakapapa, identity, culture and tikanga of Tangata Whenua. This interconnected understanding of Te Awanui is an important feature of the evidence from Tangata Whenua.

“The phrase ‘culturally significant’ often lacks meaning and emotional intent. Likewise, ‘customary fishing rights’ tends to diminish the full extent of the nature of our relationship to the sacred places discussed in this report. For the purposes of clarity, when we describe our relationship as culturally significant,

we are referring to relationships of whakapapa. These relationships form part of the fundamental and central features of our identity as Ngāti Ranginui, Ngāi Te Rangi, and Ngāti Pūkenga. Our tūpuna (ancestors) lived and thrived on these lands and within the abundance of the harbour and coastline, following strict sustainability (or ‘customary fishing’) practices.⁹³”

“The cultural values of Ngāti Ranginui are based in tikanga, mana motuhake, taonga, mauri, kaitiakitanga, and mātauranga. The values shape Ngāti Ranginui identity and their responsibilities as kaitiaki of Te Awanui and are manifested in identity, relationships with ancestral sites and natural resources, and in the handing down of sacred knowledge. Protecting cultural values is essential for sustaining the wellbeing of Ngāti Ranginui and future generations.⁹⁴”

“Ngāi Te Rangi consider Te Awanui as a whole being that it is an indivisible tupuna and indivisible from Mauao.⁹⁵”

“Tauranga Moana was and remains a rich source of food which has sustained a substantial population. The region is closely settled, and whānau, hapū and iwi are spread around the entire harbour. Relationships evolved through conflict, peace-making and intermarriage. Ngāti Pūkenga were renowned as warriors and priests. Though we were a mobile people, called upon often to assist other tribal groups with their disputes, Tauranga Moana is our kāinga matua. Ngāti Pūkenga have various pā and kāinga as well as mahinga kai and other significant sites throughout Te Ika ā Maui.”

“The pivotal nature of the relationship between Ngāti Pūkenga and the taonga that is Te Moana o Tauranga, as well as the extent to which we have shared the stewardship of that body of water is reflected in: 1. Whakapapa, 2. tikanga and kawa, 3. its use as a kete kai.⁹⁶”

“Our hapū and whanau have traditions also expressed through manaakitanga, that emphasise a close relationship with the moana, and it is common to see whanau go out to the Moana to fish.”

“The abundance of kaimoana and access to our whenua and our moana in the past, serves as a cultural value, that connects us to Te Awanui | Tauranga Harbour. This relationship is precious and significant to Ngāi Tukairangi not only is the area in our primary traditional area well recognised by other hapū as being in our domain.⁹⁷”

[221] The Tangata Whenua statements referred to above, illustrate that the relationships with Te Awanui are not confined to the immediate waters or

⁹³ Tauranga Moana Iwi Customary Fisheries Trust, Cultural Values Report, Page 10
⁹⁴ Ngā Hapū o Ngāti Ranginui Settlement Trust, Cultural Values Report, dated 11 April 2025, Point 36, Page 10
⁹⁵ Ngāi Te Rangi Settlement Trust, Cultural Values Assessment report, dated April 2025, Point 79, Page 17
⁹⁶ Ngāti Pūkenga Iwi ki Tauranga Trust and Te Tāwharau o Ngāti Pūkenga Trust, Cultural Values Report, Page 3
⁹⁷ Ngāi Tukairangi Hapū Trust, Cultural Values Report 2025 (Final Draft), Page 61

margins of Tauranga Harbour. They extend out into Tauranga Moana, and inwards into Te Tahuna o Rangataua, and connect with the land that surrounds, and waterways that enter into, Te Awanui/Tauranga Harbour. The statements also emphasise that these relationships give rise to responsibilities upon Tangata Whenua to care for Te Awanui, and to maintain and protect their relationship with Te Awanui.

- [222] The Panel understands the exercise of rangatiratanga and kaitiakitanga to be an important expression of those responsibilities. Through rangatiratanga and kaitiakitanga, Tangata Whenua seek to protect, maintain and, where necessary, restore the health and wellbeing of Te Awanui and its mauri. That responsibility is both contemporary and intergenerational and informs the concerns expressed by Tangata Whenua about further physical modification of the harbour.
- [223] The Panel recognises that maintaining and restoring the mauri of Te Awanui is a fundamental concern arising from the Tangata Whenua evidence. Mauri, as expressed in that evidence, is not confined to individual ecological parameters but encompasses the physical and spiritual essence/life force of Te Awanui as an interconnected system. Accordingly, the ecological health of Te Awanui, in the condition of its waters, habitats and biota, and the ability for Tangata Whenua to undertake customary relationships and practices are closely connected with the cultural wellbeing of Tangata Whenua.
- [224] The Panel has considered the evidence of Tangata Whenua alongside the technical evidence addressing hydrodynamics, sedimentation, marine ecology, avifauna, marine mammals, and construction and dredging effects. That technical evidence provides an important basis for assessing the nature and magnitude of the additional physical and ecological effects that are attributed to the Project. It indicates that, subject to compliance with the proposed conditions, many of those effects will be localised, temporary or otherwise capable of being appropriately managed.
- [225] The Panel does not, however, consider that the technical findings displace or determine the assessment of cultural effects. The Panel accepts that a finding that a measurable ecological or physical effect is limited, temporary or appropriately managed does not necessarily mean that the corresponding effect on Tangata Whenua values is insignificant.
- [226] On this basis, the Panel accepts that Tangata Whenua are best placed to qualify and quantify mauri. Additionally, the Panel is of the view that activities to maintain and improve the mauri of Te Awanui may extend beyond the location of the Project.

Conditions

- [227] The Panel has focussed on whether the incremental effects of the Project will result in unacceptable cumulative adverse effects, and whether the Project proposes measures that represent a proportionate response to the

historical degradation of Te Awanui/Tauranga Harbour (in order to not be more onerous than necessary).

- [228] In this regard, the Panel is satisfied, based upon the technical western science evidence, that the *incremental* adverse effects arising from the Project are capable of being appropriately avoided, remedied or mitigated through the conditions of consent conditions proposed by the Applicant, and further enhanced by the Panel.
- [229] The Panel has taken particular care with the conditions proposed to address the *cumulative* adverse cultural effects.
- [230] In considering the Tangata Whenua values regarding their relationship with Te Awanui, the exercise of their rangatiratanga and kaitiakitanga in Te Awanui, and the need to protect and restore the mauri of Te Awanui, the Panel has reviewed the conditions of consent proposed by the Applicant.
- [231] The cultural mitigation package proposed by the Applicant is intended to enable Tangata Whenua involvement in the Project through the SPDAG, the incorporation of mātauranga Māori in monitoring, and the making available of a substantial amount of funding to recognise Tangata Whenua relationships with Te Awanui/Tauranga Harbour. These are considered by the Panel as substantial measures that respond to these Tangata Whenua values.
- [232] While there is a substantial amount of funding included within the Applicant's cultural mitigation package to recognise Tangata Whenua relationship with Te Awanui/Tauranga Harbour, the Panel were informed by Tangata Whenua during the hearing that it is not about the money per se, but more about the state of the existing relationship with the Applicant despite its role as the primary operator in Te Awanui/Tauranga Harbour.
- [233] The Panel acknowledges that the Applicant proposes the development of Relationship Agreements with Tangata Whenua. However, the Panel remain unsure, even with some minor amendments to those conditions, whether the agreements can appropriately and effectively address this adverse effect. This is largely because the agreements have been proposed as a condition of consent, rather than being addressed outside of the consenting process and prior to lodgement of the SAR.
- [234] The Panel has therefore strengthened the other conditions to improve the Project's response to the Tangata Whenua values of rangatiratanga and kaitiakitanga, and the incorporation of mātauranga Māori in monitoring conditions, so that Tangata Whenua can better measure and determine mauri.
- [235] While the revised conditions of consent do not seek to remedy every historical impact experienced within Te Awanui/Tauranga Harbour, it is considered by the Panel that the conditions are appropriately directed

towards ensuring that the Project does not result in unacceptable additional degradation and that opportunities for environmental enhancement/restoration, and Tangata Whenua participation, are strengthened and secured throughout the life of the Project.

Findings

- [236] While the Panel is satisfied that the adverse effects attributable to the Project are significant from the perspective of Tangata Whenua because of the cumulative historical context in which they occur, they can be appropriately addressed through the comprehensive package of avoidance, mitigation, remediation, adaptive management, cultural participation, monitoring and environmental enhancement and restoration measures imposed by the conditions of granting approval, it is cognisant of the judicial guidance that:⁹⁸

“...whether cultural effects are appropriately avoided, remedied or mitigated is also best evidenced by the impacted Māori party, and is unable to be substituted by the [Panel’s] view.”

- [237] Despite the strengthening of conditions, the Panel is cognisant of the view of Tangata Whenua that the Project will still result in adverse cultural effects of concern. The Panel acknowledges that Tangata Whenua remain fundamentally opposed to the Project and the existing activities of the Port of Tauranga, regardless of the mitigation or enhancement measures proposed. For this reason the Panel has proceeded on the basis that the cultural effects would weigh against a grant of consent under the RMA and are therefore an “adverse impact”.

Air Quality

- [238] The Mount Maunganui Airshed was gazetted in November 2019 as “polluted” with respect to PM₁₀ particulate matter in accordance with the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (“**NESAQ**”).
- [239] Air discharges from normal shipping operations are expressly permitted under the Resource Management (Marine Pollution) Regulation 1998 (“**Marine Pollution Regulations**”).⁹⁹ The NESAQ do not apply.¹⁰⁰ The applicable RCEP and TCP rules do not specifically reserve the consent authorities’ discretion over matters related to air discharges.¹⁰¹

⁹⁸ *I&P Farming Ltd v Hawke’s Bay Regional Council* [2025] NZEnvC 328 at [100], citing *Tauranga Environment Protection Soc Inc v Tauranga City Council* [2021] NZRMA 492 at [65].

⁹⁹ SAR, page 81, Section 3.11.

¹⁰⁰ SAR, page 268, section 10.6.3.

¹⁰¹ SAR, page 268, section 10.6.3.

[240] Despite the above, due to the potential breadth¹⁰² of the “site specific historical or cultural values under ss 6(e) or 7(a) of the RMA” the Applicant commissioned an Air Quality assessment.¹⁰³ As summarised in the SAR:

(a) In relation to the existing situation, the assessment concluded:¹⁰⁴

*At Whareroa Marae, the nearest sensitive receiver to the Port, existing air quality meets all of the relevant New Zealand standards and guidelines. While PM₁₀ levels at some locations in the Mount Maunganui Airshed do not meet the 24-hour standard set in the NESAQ and the Airshed was classified as “polluted” with respect to PM₁₀, concentrations of this contaminant at Whareroa Marae are well within the levels set in the NESAQ and the more stringent WHO 2021 guidelines (see section 8.3 of the Air Quality Assessment attached as **Appendix 15**.*

....

PM2.5 concentrations at Whareroa Marae meet the proposed NESAQ and WHO 2021 guidelines for both the 24-hour average and annual average.

...

NO2 levels complied with the NESAQ and AAQG guidelines.

(b) In relation to the potential effects of the Project, the assessment concluded:¹⁰⁵

The effects of discharges to air from Stage 1 of the Project are assessed as negligible with respect to the New Zealand ambient air quality standards and guidelines, with the exception of 1-hour average NO2, where the effects are assessed as low;

Although slightly greater than the effects of Stage 1, the effects of discharges to air from Stage 2 of the Project (including the combined effects with Stage 1) are assessed as negligible or low with respect to the New Zealand ambient air quality standards and guidelines and negligible or low with respect to the more stringent WHO 2021 guidelines, except for 24-hour average SO2; and

Taking into account the scale and likelihood of effects, the effects of discharges to air from Stage 2 (including the combined effects with

¹⁰² SAR, page 268, section 10.6.3.

¹⁰³ Appendix 15 to the SAR.

¹⁰⁴ SAR page 84, sections 3.11.2, 3.11.3 and 3.11.4.

¹⁰⁵ SAR, page 219, section 6.13.3.

Stage 1) on 24-hour average SO₂ concentrations are assessed as low with respect to WHO 2021 guidelines.

- [241] Professor Simon Hales, a research professor in the Department of Public Health at the University of Otago, provided a statement of evidence on 30 April 2026 on behalf of Ngāti Kuku Hapū Trust and Trustees of Whareroa Marae that raised a number of concerns. By memorandum in response to Minute 5, counsel advised that the evidence in response from the Applicant's witnesses had not addressed Professor Hales' concerns¹⁰⁶. As a consequence, witness conferencing was held with a Joint Witness Statement filed on 21 July 2026. Professor Hales subsequently submitted a corrected statement of evidence, to which Dr Denison responded on 30 July 2026.
- [242] The Panel has considered all evidence filed in relation to air quality and public health. The Panel prefers the evidence of the Applicant's witnesses and is satisfied that air quality and public health effects do not weigh against granting the approvals. The adverse cultural effects from air quality and public health have been considered as part of the adverse cultural effects assessment above.

Landscape Effects

- [243] The Applicant's Landscape Effects Assessment¹⁰⁷ was prepared to address the landscape, natural character and amenity effects of the Project on the landscape and natural character values of Tauranga, Mount Maunganui and Te Awanui/Tauranga Harbour.
- [244] Seventeen viewpoint locations were identified.¹⁰⁸
- [245] It is the landscape effects from Viewpoint 1 (Whareroa Marae) that were in contention. These were assessed by the Applicant to be "moderate",¹⁰⁹ resulting from:¹¹⁰
- *The presence of vessels using the expanded wharves, which is an activity permitted by the RCEP in the Port Zone, and furthermore is a transient effect, given ships are only present in this area while berthed; and*
 - *The proposed container cranes on the Sulphur Point wharf extensions - a restricted discretionary activity under the RCEP which is subject only to assessment matters limited to the safe management of flight paths to and from Tauranga Airport.*

¹⁰⁶ Legal Submissions on behalf of Ngāti Kuku hapū and Whareroa Marae in reply to Minute 5, 8 June 2026, paras 47-48.

¹⁰⁷ Appendix 17 to the SAR.

¹⁰⁸ SAR, page 210, section 6.11.2.

¹⁰⁹ SAR, page 210, Table 23 by reference to Table 7A in Appendix 17.

¹¹⁰ SAR, page 212, section 6.11.3.1.

[246] The Applicant acknowledged:¹¹¹

The adverse effects identified in relation to the shipping and cranes that would be visible from Whareroa Marae, would exacerbate the sense of intrusion and encroachment already of concern to marae representatives. In this regard, the pohutukawa trees growing near Te Awanui Drive will continue to offer a degree of screening between the Marae and the southern section of Sulphur Point's development but will not be large enough to screen all of the elements associated with the more southern elements of the Sulphur Point extensions.

[247] The Applicant's response to this effect was:¹¹²

The moderate adverse landscape effect that is predicted to arise in views north-east from Whareroa Marae is driven by enabled activities that are either a permitted activity or subject to a restricted discretionary consent (which focus on airspace impacts) under the RCEP.

[248] The Panel agrees.

[249] Despite the above, "the resulting potential effect on the loss of a culturally important view to the Kaimai Ranges"¹¹³ was of significant concern to the Ngāti Kuku Hapū Trust and Trustees of Whareroa Marae. As a consequence, witness conferencing was held to further explore the effects in relation to Whareroa Marae.

[250] The Panel was assisted by the clear and considered approach taken in the Joint Witness Statement filed on 21 July 2026.

[251] The Panel accepts the evidence of Mr Stephen Brown for the Applicant and Mr Brad Coombs for the Regional Council that the landscape effects of the Project as experienced at Whareroa Marae will be moderate, but also acknowledges that for Whareroa Marae, the incremental change in views that will be experienced from Whareroa Marae is significant to them.

[252] The Panel is satisfied that the landscape effects of the Project will, overall, be low and do not weigh against the granting of approvals. The adverse cultural effects from the changed landscape have been considered as part of the adverse cultural effects assessment above.

Conclusion

[253] The Panel has found that the adverse cumulative cultural effects weigh against the granting of approvals.

¹¹¹ SAR, page 212, section 6.11.3.1.

¹¹² SAR, page 214, section 6.11.4.

¹¹³ Evidence of Ms Wilkinson, dated 1 May 2026, para 139.

PART H: PLANNING INSTRUMENTS

[254] An assessment of the relevant planning documents was included within the SAR as required by Schedule 5, clause 5(1)(h). The Regional Council confirmed this to be “an accurate representation of the relevant planning framework”.¹¹⁴

[255] The Panel has had regard to each of the relevant planning documents, as explained below.

National Environmental Standards

[256] Except to the limited extent that the National Environmental Standard Air Quality may be relevant,¹¹⁵ there are no National Environmental Standards that we must consider in this Decision.¹¹⁶

Other Regulations

[257] No other regulations have been identified as relevant to this application.¹¹⁷

National Policy Statements

[258] The relevant National Policy Statements were identified in section 10.6.5 of the SAR as:

- (a) National Policy Statement for Indigenous Biodiversity 2023 (“**NPSIB**”); and
- (b) National Policy Statement for Infrastructure 2025 (“**NPSINF**”).

[259] No participant identified any further NPS as having relevance.

[260] The NPSIB is relevant to the Project due to the proposed relocation of the gull colony and penguins at the Mount Maunganui wharves. The NPSIB identifies these species as specified highly mobile fauna.

[261] The NPSINF is relevant to the Project as the Port of Tauranga meets the definition of infrastructure in the RMA.

[262] The planning evidence of Ms Wilkinson for Ngāti Kuku Hapū Trust and Trustees of Whareroa Marae¹¹⁸ raised concerns in relation to Policies 1, 6, 7, 9(2), 10 and 11 of the NPSINF.¹¹⁹ The Panel has carefully reviewed these

¹¹⁴ BOP Regional Council comments, section 5.0.

¹¹⁵ Addressed in Part G above.

¹¹⁶ SAR, page 269, section 10.6.3.

¹¹⁷ SAR, page 269, section 10.6.4.

¹¹⁸ Dated 1 May 2026.

¹¹⁹ See paras 99 – 102.

provisions and considers all matters are addressed by the conditions of consent it has imposed.

- [263] For the reasons set out in Sections 10.6.5.1¹²⁰ and 10.6.5.2¹²¹ of the SAR, the Panel finds the Project is consistent with the NPSIB and NPSINF.

New Zealand Coastal Policy Statement

- [264] An assessment of the Project against the relevant provisions of the New Zealand Coastal Policy Statement (“**NZCPS**”) was provided in Section 10.6.6 of the SAR.¹²²
- [265] The planning evidence of Ms Wilkinson for Ngāti Kuku Hapū Trust and Trustees of Whareroa Marae¹²³ opined that the Project is “significantly contrary and potentially repugnant”¹²⁴ to a number of objectives and policies.¹²⁵
- [266] In their invited comments and further information response, Ngā Tai ki Mauao (through Ms Pia Bennett) referred to the NZCPS and the findings of the Environment Court in their interim decisions.
- [267] Additionally, a number of the CVA reports¹²⁶ refer to the NZCPS, specifically Objective 3, and Policies 2, 11, 13, 15 and 25.
- [268] The Panel has carefully reviewed the provisions identified by Tangata Whenua.
- [269] In considering Objective 1 and associated policies¹²⁷ of the NZCPS, the Project will result in the modification of the benthic habitat within the existing Port Zone (a highly modified part of the coastal environment). However, the Panel consider those effects do not translate into a material loss of the integrity, functioning or resilience of Te Awanui/Tauranga Harbour.
- [270] The evidence demonstrates that effects on the high ecological values¹²⁸ can be avoided or appropriately managed, and that dredging-related turbidity and sedimentation will be temporary and confined.
- [271] Contained within the proposed conditions of consent are monitoring requirements limits and trigger-levels, and suspension of works which

¹²⁰ SAR, page 270.

¹²¹ SAR, page 271.

¹²² SAR, page 275.

¹²³ Dated 1 May 2026.

¹²⁴ See para 106.

¹²⁵ See paras 107 – 115: Objectives 1,2, 3 and 6, and Policies 2, 6, 9, 10 and 21.

¹²⁶ Ngāi Tūkairangi, Pirirākau Tribal Authority Incorporated, and Tauranga Moana Iwi Customary Fisheries Trust.

¹²⁷ Policies 1, 3, 4, 11, 12, 21, 22 and 23

¹²⁸ Accepted as such in Boffa Miskell Assessment of Effects on Marine Ecological Values, dated 14 April 2025, page 44.

provide an appropriate response to the management of actual and potential adverse ecological effects.

- [272] The Panel is satisfied that the integrity, ecological functioning, resilience and life-supporting capacity of the wider coastal environment will be safeguarded. Therefore, the Project is consistent with Objective 1 and Policies 1, 3, 4, 11, 12, 21, 22 and 23 of the NZCPS.
- [273] With Objective 2 and associated policies¹²⁹ of the NZCPS, the Project is located within an established Port Zone and operating industrial environment and does not extend into unindustrialised areas. The natural character of the coastal environment is highly modified.
- [274] The Panel accepts the landscape evidence of Mr Brown that effects from most representative viewpoints will be very low to low, and that there are moderate adverse landscape effects arising from the southern Sulphur Point extension as viewed from Whareroa Marae. That effect is material to Whareroa Marae and other Tangata Whenua parties.
- [275] After having regard to the receiving environment as an established Port Zone that is highly modified in landscape character, as well as the absence of direct effects on an outstanding natural feature or landscape, the Panel does not consider it to constitute a significant adverse effect for the purposes of Policies 13 or 15.
- [276] Additionally, the restoration and habitat-enhancement measures proposed by the Applicant, contributes to the rehabilitative outcome contemplated by Policy 14.
- [277] The Panel is therefore satisfied that the natural character of the relevant coastal environment will be preserved and considers that the Project is consistent with Objective 2 and Policies 1, 6, 7, 10, 13, 14 and 15 of the NZCPS.
- [278] With Objective 3 and Policy 2 of the NZCPS, the Panel recognise that the Applicant has made a genuine attempt to be consistent with these provisions.
- [279] The Panel consider the relevant Treaty settlements and the rohe moana Mai I Ngā Kuri ā Whareī ki Wairākei, and for Te Maunga o Mauao Mātaītai Reserve provide context to the relationship of Tangata Whenua with the Te Awanui/Tauranga Harbour.
- [280] The Panel accepts that the historical and cumulative modification of Te Awanui forms part of the cultural context against which this Project is assessed by Tangata Whenua, and their opposition to the Project.

¹²⁹

Policies 1, 6, 7, 10, 13, 14 and 15

- [281] Although consultation and engagement expectations of Tangata Whenua were not met by the Applicant, and that both fatigue and frustration exists, the Panel is of the view that Tangata Whenua engagement has materially influenced the Project when taking into account the engagement and participation of parties in the RMA consenting process. This includes a response to the concerns of Whareroa Marae regarding the Mount Maunganui wharf development which has been reduced. Similarly with the dredging footprint, this has been reduced also.
- [282] Additionally, the proposed package by the Applicant which intends to enable Tangata Whenua involvement in the Project through the SPDAG, and the incorporation of mātauranga Māori in monitoring, while also making available a substantial amount of funding to recognise Tangata Whenua relationship with Te Awanui/Tauranga Harbour, are considered by the Panel as significant measures.
- [283] The Panel accepts that the Project will result in adverse cultural effects and is opposed by Tangata Whenua, however the NZCPS does not require the absence of all cultural effects or agreement before approval can be granted.
- [284] With the Panel's enhancements to the proposed conditions of consent, the Project recognises Tangata Whenua relationships with Te Awanui/Tauranga Harbour, and provides meaningful and continuing opportunities for the exercise of kaitiakitanga and incorporation of mātauranga Māori.
- [285] For the reasons set out in Part G addressing cultural effects and above, the Panel finds that consistency with these provisions is achieved by the conditions of consent it has imposed.

Regional Policy Statement

- [286] The SAR provides an analysis against the relevant provisions of the RPS in Section 10.6.7.¹³⁰
- [287] "Relying on the evidence for Ngāti Kuku Hapū Trust and Trustees of Whareroa Marae", Ms Wilkinson disagreed with that analysis.¹³¹
- [288] The Panel has considered the relevant provisions of the RPS, taking particular care with its consideration of Section 2.6 Iwi Resource Management and Section 2.7 Matters of Importance given the issues raised by Tangata Whenua.

2.6 Iwi Resource Management

- [289] Objective 13 requires that kaitiakitanga is recognised and the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) are taken into account in the practice of resource management, while Objective 17 seeks to safeguard

¹³⁰ SAR, page 282.

¹³¹ Evidence dated 1 May 2026, paras 116 – 131.

and, where appropriate enhance the mauri of water, land and other resources over time. Also, it states that where the mauri may be compromised, the appropriate tikanga Māori and kawa would need to be followed.

[290] Objective 15 requires the Panel to have regard to iwi and hapū iwi resource management planning documents.

[291] There are several policies that support the identified objectives and which are, in the Panel's opinion, of relevance to our assessment. They are:

- (a) Policy IR 4B: Using consultation in the identification and resolution of resource management issues;
- (b) Policy IW 4B: Taking into account iwi and hapū resource management plans;
- (c) Policy IW 5B: Adverse effects on matters of significance to Māori;
- (d) Policy IW 6B: Encouraging tangata whenua to identify measures to avoid, remedy or mitigate adverse cultural effects; and
- (e) Policy IW 2B: Recognising matters of significance to Māori.

[292] These RPS provisions require consultation and recognition of kaitiakitanga and matters significant to Tangata Whenua, as well as regard to iwi and hapū resource management planning documents.

[293] While recognising that the Project remains opposed by Tangata Whenua, the Panel considers the Project to be consistent with Objectives 13, 15 and 17 and Policies IW 2B–IW 6B,

[294] The Panel accepts the evidence that Tangata Whenua relationships with Te Awanui/Tauranga Harbour encompass whakapapa, whanaungatanga, tikanga, traditional/customary practices, mātauranga, and mauri, which are reflective in the rangatiratanga and kaitiakitanga of Tangata Whenua.

[295] The Panel considers that the Project and strengthened conditions of consent regarding the SPDAG and Mātauranga Monitoring Plan, alongside the proposed conditions for the restoration fund and compensation, provide a substantive response to these RPS directions.

[296] Importantly, the Panel does not regard those measures as eliminating the acknowledged adverse cultural effects or resolving historical degradation for which this Project is not solely responsible. Rather, they provide mechanisms through which kaitiakitanga and mātauranga Māori can influence implementation of the approval and management of its effects.

[297] Taken together, the Panel is confident there is sufficient basis to conclude that the Project is consistent with Objectives 13, 15 and 17 and Policies IR 4B, and IW 2B–IW 6B.

2.7 Matters of National Importance

[298] Objectives 19, 21 and 22 are a reflection and acknowledgement of section 6 of the RMA, with specific relevance to this Project are subsections:

- (a) Section 6(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development;
- (b) Section (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna; and
- (c) Section 6(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;

[299] The Panel considers the following policies are directly relevant to the Project:

- (a) Policy MN 1B Recognise and provide for matters of national importance
- (b) Policy MN 4B Encouraging ecological restoration
- (c) Policy MN 8B Managing effects of subdivision, use and development

[300] Objective 21 requires recognition and provision for the relationship of Māori and their culture and traditions with ancestral lands, water, sites, waahi tapu and other taonga.

[301] The evidence from Tangata Whenua outlines their relationship, culture and traditions with Te Awanui/Tauranga Harbour.

[302] The Panel considers the Project, subject to the conditions imposed, to be consistent with Objective 21 and Policies MN 1B, MN 3B, MN 7B, MN 8B, IW 2B and IW 5B.

[303] When taking into account the conditions of consent, the Panel considers that the concerns and effects identified by Tangata Whenua have been recognised and provided for by the Applicant, and the Panel, to the extent that is appropriate for the Project.

[304] The Panel acknowledges that these measures do not eliminate all adverse effects on the values of Tangata Whenua, however, it is the Panel's opinion

that Objective 21 requires those relationships to be recognised and provided for, rather than requiring an absence of effects.

Regional Plan

- [305] The only regional plan of relevance to the Project is the RCEP.¹³²
- [306] Section 10.6.8¹³³ of the SAR provided an assessment against the objectives and policies of the RCEP.
- [307] The Panel agrees with the Applicant's submission in paragraph 6 of the memorandum of counsel dated 16 April 2026 that "the appropriate way for the Panel to approach this is to consider only the matters of discretion (or matters of control as is the case for maintenance dredging) that apply to the relevant activity".
- [308] The relevant activities are:
- (a) Maintenance dredging as a controlled activity pursuant to rule PZ 5;
 - (b) The development of the Sulphur Point and Maunganui wharf extensions as a restricted discretionary activity pursuant to rule PZ 8;
 - (c) The development and use of cranes exceeding the permitted height (2 cranes) and location (2 cranes) as a restricted discretionary activity pursuant to rule PZ 9;
 - (d) Specified dredging as a restricted discretionary activity pursuant to rule PZ 10; and
 - (e) Specified reclamations associated with the Sulphur Point and Maunganui wharf extensions as a restricted discretionary activity pursuant to rule PZ 11.
- [309] The matters over which control is reserved, or discretion is restricted, are set out in Sections 5.1.6¹³⁴ and 5.1.7¹³⁵ of the SAR.
- [310] Attachment D to the Applicant's memorandum of counsel dated 16 April 2026 provided the requisite assessment of each of the controlled and restricted discretionary activities against the relevant matters for each activity.
- [311] For all activities other than the cranes,¹³⁶ the Panel must consider "site specific historical or cultural values under ss 6(e) or 7(a) of the RMA". The site specific historical or cultural values have addressed in Part G above, with

¹³² SAR, page 145, section 5.1.3.1.

¹³³ SAR, page 288.

¹³⁴ SAR, page 156.

¹³⁵ SAR, page 157.

¹³⁶ See Rule PZ 9.

the Panel concluding that the cultural effects weigh against granting the RMA approvals. The Panel acknowledges it likely follows that these criteria also weigh against granting the RMA approvals.

- [312] With the exception of the above, the Panel agrees with and adopts the assessment of each of the controlled and restricted discretionary activities against the relevant matters for each activity in Attachment D to the Applicant's memorandum of counsel dated 16 April 2026.
- [313] To the extent that the objectives and policies may also be considered relevant, as with her analysis against the RPS ("relying on the evidence for Ngāti Kuku Hapū Trust and Trustees of Whareroa Marae"), Ms Wilkinson disagreed with the Applicant's analysis of consistency with the objectives and policies.¹³⁷
- [314] The Panel has carefully reviewed the objectives and policies relevant to iwi resource management. The Panel understands the six relevant objectives¹³⁸ are implemented and achieved by 15 policies, 9 of which are relevant to the Project.¹³⁹ In relation to each of those policies, the Panel records:
- (a) The Panel considers that the Project, with the strengthened conditions of consent, is consistent with the intent and outcomes sought by Policy IW 1.
 - (b) With Policy IW 2, the evidence before the Panel informed that the Project will result in adverse effects on a coastal environment that holds spiritual, historical and cultural significance to Tangata Whenua. Some of which cannot be wholly avoided due to the permanent nature of the reclamation and associated works. However, the Panel is satisfied that the Applicant has sought to avoid adverse effects where practicable, through modifications of their original application that started and proceeded through the RMA consenting process. Additionally, the Panel is satisfied that where avoidance is not practicable, the Applicant has proposed an extensive suite of measures to remedy and mitigate those effects on Tangata Whenua values. While the Project does not eliminate all adverse effects on Tangata Whenua values, the Panel is satisfied that it is consistent with the intent and outcomes sought by Policy IW 2.
 - (c) Policy IW 4 requires the Panel to take into account iwi and hapū resource management plans, Treaty settlement legislation, and the principles of Te Tiriti o Waitangi. The Panel has undertaken a comprehensive assessment of relevant documents, alongside the evidence of Tangata Whenua, and while Tangata Whenua do not

¹³⁷ Evidence dated 1 May 2026, paras 132 – 137.

¹³⁸ Objectives 13, 14, 15, 16, 17 and 18.

¹³⁹ Policy IW 1 - IW 2, and Policy IW 4 to IW 10.

support the Project, through the strengthened conditions of consent imposed by the Panel, the Project is considered consistent with the intent and outcomes sought by Policy IW 4.

- (d) The Panel has placed significant weight on the evidence presented by Tangata Whenua, including the CVA/CIA reports lodged with the SAR, the invited comments, iwi and hapū planning documents, Treaty settlements, and the evidence presented to, and heard by, the Panel during the hearing. While the Panel has ultimately reached its own conclusion on the appropriateness of granting approval, it is satisfied that the assessment process has recognised and respected the evidence from Tangata Whenua as required by Policy IW 5. Accordingly, the proposal is consistent with the intent and outcomes sought by Policy IW 5.
- (e) With Policy IW 6, although consultation and engagement expectations of Tangata Whenua were not met by the Applicant, the Panel is of the view that Tangata Whenua engagement has materially influenced the Project when taking into account the engagement and participation of parties in the RMA consenting process and the process the Panel has adopted under the FTAA. The Panel is satisfied that the consultation process over a long continuum, has enabled Tangata Whenua to articulate their views, influence the development of the Project, and inform both the Applicant's assessment and the Panel's decision-making. Accordingly, the Panel concludes that the application includes sufficient evidence of consultation with Tangata Whenua, and is therefore consistent with the intent and outcomes sought by Policy IW 6.
- (f) The Panel acknowledges that, notwithstanding the extensive avoidance, mitigation and restoration measures proposed by the Applicant, the Project is likely to have adverse effects on the mauri of Te Awanui/Tauranga Harbour. The Applicant has proposed a package aimed at enabling Tangata Whenua involvement in the Project through the SPDAG, and the incorporation of mātauranga Māori in monitoring, while also providing a substantial amount of funding to recognise Tangata Whenua relationship with Te Awanui/Tauranga Harbour. These are considered by the Panel as significant measures. The Panel has strengthened the conditions to better achieve this intent. In the Panel's view, these measures appropriately recognise Tangata Whenua values in monitoring the effects of the Project on the mauri of the Te Awanui. For this reason, it is considered that the Project is consistent with the intent of Policy IW 7.
- (g) Policy IW 8 and Policy IW 9 requires the involvement of Tangata Whenua in establishing appropriate mitigation, remediation and

offsetting options for activities that have an adverse effect on areas of significant cultural value. While Tangata Whenua were opposed to the Project, there were a number of mitigation, remediation and offsetting options presented in their CVA / CIA reports and their evidence to the Panel. The Panel considers that its strengthening of the relevant conditions has resulted in a suite of cultural, ecological and adaptive management measures that have been informed by Tangata Whenua values and perspectives. For this reason, the Panel is satisfied that the Project is consistent with the intent of Policy IW 8 and Policy IW 9.

- (h) With Policy IW 10, despite the comprehensive assessment undertaken by the Panel and the strengthening of consent conditions, the Panel acknowledges that there remains an aspiration to restore and protect Te Awanui/Tauranga Harbour, which, in the Panel's view, is beyond the scope of the Project. The Panel has been mindful of this policy in preparing its strengthened conditions and is satisfied that the proposal is consistent with the intent of Policy IW 10.

[315] In summary the Panel finds that consistency with the provisions identified by Ms Wilkinson is achieved by the conditions of consent it has imposed.

District Plan

[316] The relevant District Plan is the TCP.

[317] Section 10.6.9¹⁴⁰ of the SAR provided an assessment against the objectives and policies of the TCP. Ms Wilkinson agreed with that assessment.¹⁴¹ Tauranga City Council provided additional analysis in its comments.¹⁴²

[318] The development and use of cranes landward of MHWS not complying with the height limits and locational requirements specified in Rule 18A.12.1.3(b) requires consent as a restricted discretionary activity under rule 4I.2 / 4I.3 (on the basis the cranes are being consented prior to some of the land being reclaimed and zoned) and rule 18A.15.4.1 (where the land already exists and is zoned).¹⁴³

[319] The Panel must only consider the:

- (a) Impact on the height restrictions within specified Airport Slopes and Surfaces described in Rule 4I.2 – Permitted Activity Rules; and
- (b) The safe operation of Tauranga City Airport.

¹⁴⁰ SAR, page 294.

¹⁴¹ Evidence dated 1 May 2026, para 139.

¹⁴² Tauranga City Council comments, section 7.

¹⁴³ As clarified in the Applicant's memorandum of counsel dated 16 April 2026.

- [320] The Panel is satisfied, based on the Tauranga Airport Port Crane Aeronautical Study 18 January 2021 from AirBiz Ltd and the Navigable Airspace Determination issued by the Civil Aviation Authority¹⁴⁴ together with the consent conditions proposed by the Applicant, that any impact of the cranes on the airport height restrictions can be appropriately managed.
- [321] On the basis of the letter in support provided by the Tauranga Airport Authority¹⁴⁵ together with the Applicant's acceptance of the requested condition,¹⁴⁶ the Panel is satisfied there is no effect on the safe operation of the airport.

PART I: OTHER MATTERS

- [322] The Panel is required to have regard to any other matter we consider relevant and reasonably necessary to determine the application.
- [323] The following matters were raised by participants as being potential "other matters" under s104(1)(c):
- (a) Interim Decisions of the Environment Court regarding the direct referral of the Stella Passage Development;¹⁴⁷
 - (b) Bay of Plenty Conservation Management Strategies;¹⁴⁸
 - (c) A number of iwi and hapu management plans.
- [324] The Panel has proceeded on that basis and had regard to these matters.

Interim Decisions of Environment Court on Direct Referral

- [325] On (a) above, the Panel agrees with the Applicant's memorandum of counsel that it would be inapt to suggest these decisions are not relevant.¹⁴⁹ We also agree that, legally, the decisions are "persuasive rather than legally binding"¹⁵⁰ on the Panel and that we will need to ascribe the weight to the Environment Court decisions that we consider appropriate, recognising that this decision is made under a different legislative framework.¹⁵¹
- [326] The Panel was assisted by the further information provided by the Applicant in its memorandum of counsel of 16 April 2026 outlining the changes to the

¹⁴⁴ Both provided in Appendix 20 to the SAR

¹⁴⁵ Letter of 25 February 2025 provided in Appendix 20 to the SAR.

¹⁴⁶ SAR, page 256, section 8.3.

¹⁴⁷ *Port of Tauranga Limited v Bay of Plenty Regional Council* [2023] NZEnvC 270 and *Port of Tauranga Ltd v Bay of Plenty Regional Council* [2024] NZEnvC 337

¹⁴⁸ SAR, page 303, Section 10.6.10.2.

¹⁴⁹ Applicant's memorandum of counsel dated 7 May 2026, para 16.

¹⁵⁰ Applicant's memorandum of counsel dated 7 May 2026, para 16.

¹⁵¹ Applicant's memorandum of counsel dated 7 May 2026, para 17.

proposed development prepared through the earlier Environment Court process.¹⁵²

[327] As requested by the parties, the Panel has considered the Interim Decisions of the Environment Court in reaching its decision.

Bay of Plenty Conservation Management Strategies

[328] The Bay of Plenty Conservation Management Strategy 1997-2007 (**BOPCMS**) and the draft Conservation Management Strategy Bay of Plenty 2020 (**draft CMS**) are addressed in Section 10.6.10.2 of the SAR.¹⁵³ The Panel agrees that to the extent that the BOPCMS and Draft CMS are relevant, the Project is aligned.¹⁵⁴

Iwi and hapu management plans

[329] The Panel has accessed the following relevant iwi and hapū planning documents that were available online:¹⁵⁵

- (a) Matakana and Rangiwaia Hapū Management Plan 2017
- (b) Ngā Pōtiki Environmental Management Plan 2019 - 2029
- (c) Ngāi Tamawhariua Hapū Management Plan 2015
- (d) Ngāi Tamarāwaho Hapū Management Plan 2021
- (e) Ngāi Te Ahi Hapū Management Plan 2013
- (f) Ngāi Tūkairangi - Ngāti Tapu Hapū Management Plan 2014
- (g) Ngāti Kahu Hapū Environmental Management Plan 2011
- (h) Ngāti Pūkenga Iwi ki Tauranga Management Plan 2013
- (i) Pirirākau Hapū Environmental Management Plan 2017
- (j) Tauranga Moana Iwi Management Plan 2016
- (k) Waitaha Iwi Management Plan 2014

[330] The Panel's review of these planning documents has informed its decision, including in relation to the setting of conditions.

¹⁵² Paragraphs 15 – 25 and Annexure I.

¹⁵³ SAR, page 303.

¹⁵⁴ SAR, page 305, section 10.6.10.2.

¹⁵⁵ <https://www.boprc.govt.nz/your-council/working-with-iwi/iwi-and-hapu-resource-management-plans/iwi-management-plans/>

PART J: RMA 1991, PART 2

- [331] Clause 17(1) to Schedule 5 of the FTAA requires the Panel to take account of Part 2 of the RMA. Clause 5(1)(g) of Schedule 5 to the FTAA, specifies the requirement to assess an application for resource consent against Part 2 of the RMA is limited to sections 5, 6 and 7, with section 8 of the RMA being excluded.
- [332] The Applicant addressed RMA sections 5, 6 and 7 in Section 10.4 of the SAR.¹⁵⁶
- [333] Sections 6(e) and 7(a) had particular prominence during the Panel's processing, deliberations and determination of the application.
- [334] Section 6(e) of the RMA requires the Panel to recognise and provide for the relationship Māori have with their ancestral lands, water, sites, waahi tapu and other taonga as a matter of national importance.
- [335] It requires the Panel to identify Tangata Whenua relationships with Te Awanui/Tauranga and the surrounding/connected environment, and understand the ways in which that relationship (and exercise of culture and traditions) may be affected by the Project.
- [336] Section 7(a) of the RMA requires the Panel to have particular regard to kaitiakitanga.
- [337] The evidence before the Panel informed that Te Awanui/Tauranga Harbour is of significance to Tangata Whenua. It shapes their identity, their tikanga, and their wellbeing.
- [338] Counsel for the Ngāti Kuku Hapū Trust and Trustees of Whareroa Marae argued that there is a duty¹⁵⁷ on the Panel to assess strength of relationship to determine relative strength and primacy, and opined in the hearing that Ngāti Kuku have the stronger relationship in Te Awanui and therefore are most affected.
- [339] The Panel sought clarity on this matter from Ngāti Kuku and Whareroa Marae at the hearing, due to the fact that Tangata Whenua have pursued and organised within themselves a collective approach to their Treaty settlements (e.g. Ngā Hapū o Ngāti Ranginui Act, NTR & NP Deed, and the TMIC Deed). Similar questions were asked of the other Tangata Whenua parties that participated in the hearing. All had asserted their relative strength in Te Awanui/Tauranga Harbour, as well as the importance of the collective and individual hapū rangatiratanga. However, all had acknowledged that Ngāti Kuku and Whareroa Marae had suffered the most from the historic and

¹⁵⁶

SAR, page 260.

¹⁵⁷

Legal submission in reply to Minute 5, dated 8 June 2026, page 10; and Tabled submission 'Road map for Ngāti Kuku and Whareroa Marae' dated 27 July 2026.

ongoing operations of the Port of Tauranga and the surrounding industrial activities.

- [340] The Panel acknowledges that section 6(e) requires the Panel to evaluate the Project's effects on the relationship that Tangata Whenua have with Te Awanui/Tauranga Harbour, which also means that the Panel must consider the nature, location and intensity of those individual Tangata Whenua relationships.
- [341] On the evidence, it is clear to the Panel that Tangata Whenua themselves have undertaken tikanga based processes, as reflected in Treaty settlements and collective redress arrangements. It is in those arrangements that overlapping interests are acknowledged, including relationships that Tangata Whenua have with Te Awanui/Tauranga, rather than establishing exclusivity to/for one Tangata Whenua party.
- [342] For this reason, the Panel considers it inappropriate, in the context of assessing this Project, to disregard or re-interpret those tikanga based arrangements through this process by determining primacy.
- [343] While the Panel recognises the distinct relationships held by each Tangata Whenua party, it considers that the question for this assessment is whose relationship is most directly affected by the Project.
- [344] Therefore, on the matter of Ngāti Kuku and Whareroa Marae, the Panel does not consider it necessary, or appropriate, to determine whether Ngāti Kuku and Whareroa Marae have a stronger ancestral relationship with Te Awanui than other Tangata Whenua. The matter is whether the Project has different or greater effects on the relationships held by Tangata Whenua because of the location and nature of those relationships.
- [345] As discussed in the Panel's assessment of cultural effects at Part G, the evidence establishes that the Project is close to Whareroa Marae and directly affects their relationship with cultural landscapes and their culture and traditions. As hapū of Whareroa Marae, both Ngāti Kuku and Ngāi Tūkairangi are identified in that assessment.
- [346] The Panel accepts that Whareroa Marae are likely to experience the most immediate and direct effects arising from the Project. However, this finding does not diminish the enduring relationships held by other Tangata Whenua with Te Awanui/Tauranga Harbour.
- [347] The Panel has been mindful of both s6(e) and 7(a) in its preparation of the conditions. Through the pursuit of individual relationship agreements with each Tangata Whenua party, the establishment and ongoing role of SPDAG in the Project, the funding towards restoration of Te Awanui/Tauranga Harbour and for Whareroa Marae, and the review conditions, the Panel has imposed measures that both respond to collective values of Tangata

Whenua in Te Awanui/Tauranga Harbour while also recognising the direct impacts on Whareroa Marae.

- [348] The Panel is satisfied that it has appropriately recognised and provided for the relationships of Tangata Whenua in Te Awanui/Tauranga Harbour and imposed a set of conditions that enable, to the greatest extent possible without being more onerous than necessary, the exercise of kaitiakitanga.
- [349] As a result of the conclusions reached elsewhere in this Decision and above, the Panel finds that the Application meets sections 5, 6 and 7 of the RMA and that further reference to Part 2 of the RMA would not add anything to the evaluative exercise undertaken above.¹⁵⁸

PART K: WILDLIFE ACT 1953

- [350] Tarāpunga/red-billed gulls and kororā/blue penguins are present in the Project footprint.¹⁵⁹ Both are protected species under the Wildlife Act.
- [351] Section 63(1)(b) of the Wildlife Act makes it an offence to - without prior approval - capture, or have in one's possession, any protected wildlife.
- [352] As a precautionary measure,¹⁶⁰ the Applicant has applied pursuant to section 42(4)(h) and Schedule 7 (Approvals relating to Wildlife Act 1953) of the FTAA for a wildlife approval to authorise the capture and possession of absolutely protected wildlife.
- [353] Schedule 7, clause 5 of the FTAA sets out the matters for decision-makers to consider and assess in relation to applications for wildlife approvals, as below.
- (a) the purpose of the FTAA; and
 - (b) the purpose of the Wildlife Act 1953 and the effects of the project on the protected wildlife that is to be covered by the approval; and
 - (c) information and requirements relating to the protected wildlife that is to be covered by the approval (including, as the case may be, in the New Zealand Threat Classification System or any relevant international conservation agreement).
- [354] These matters are assessed in Section 11.2¹⁶¹ of the SAR and the s51(2)(c) report prepared by the Department of Conservation,¹⁶² with recommended conditions provided in that report.

¹⁵⁸ *R J Davidson, supra.*

¹⁵⁹ SAR, page 159, section 5.2.

¹⁶⁰ SAR, page 318, section 12.

¹⁶¹ SAR, page 312.

¹⁶² Dated 15 April 2026.

[355] The Applicant took no issue with the s51(2)(c) report, beyond suggesting amendments to the recommended conditions in Appendix 2 to Mr Faithfull's evidence of 7 May 2026 in response to paragraph 39 of Dr Bennett's evidence of the same date. The Applicant considered the suggested amendments did "not frustrate the intent of the proposed conditions, nor detract from their effectiveness in achieving the statutory purposes of the Wildlife Act."¹⁶³

[356] By letter 8 June 2026 the Department of Conservation advised the suggested amendments were acceptable "other than the proposed change to the term", advising:

The Department's preferred term is 10 years to ensure that the approval keeps up with any changes to species knowledge, threat status, and best practice management and mitigation techniques. Should the Panel decide to grant a 35-year term under the FTAA, we would alternatively seek recertification of the management plan every 10 years to ensure that best practice methods and the current threat status of wildlife is adequately considered over time.

[357] This led to the process set out in paragraph 52 in Part B above.

[358] The Panel agrees with and adopts the assessment undertaken by the Department of Conservation, and in Part L below, adopts the recommended conditions provided in the s51(2)(c) report with the suggested amendments provided by the Applicant on 7 May 2026 and the re-certification condition agreed on 24 July 2026 with some minor drafting improvements.

PART L: CONDITIONS

Project Conditions

[359] An initial set of RMA consent conditions was provided with the SAR as required by Schedule 5, clause 5(1)(k) of the FTAA. Revised sets of conditions were provided by the Applicant on:

- (a) 7 May 2026 as part of its response to comments received;
- (b) 8 June 2026 as part of its response to Minute 5;
- (c) 14 July 2026 as part of its response to Minute 7; and
- (d) 30 July 2026 as part of its response to Minute 12.

Framework

[360] Section 81 provides that the Panel must set any conditions to be imposed on the approval. The statutory requirements on what conditions are set is determined by what approvals are being sought.

[361] For a resource consent the following clause of Schedule 5 applies:

18 Conditions on resource consent

When setting conditions on a consent, the provisions of Parts 6, 9, and 10 of the Resource Management Act 1991 that are relevant to setting conditions on a resource consent apply to the panel, subject to all necessary modifications, including the following:

- (a) a reference to a consent authority must be read as a reference to a panel; and*
- (b) a reference to services or works must be read as a reference to any activities that are the subject of the consent application.*

[362] This includes the requirement in s105 of the RMA to consider whether an esplanade reserve or esplanade strip is appropriate and, if so, impose a condition under section 108(2)(g) on the resource consent for the reclamation.¹⁶⁴

[363] For the grant of a Wildlife Act approval the following clause of Schedule 7 applies:

6 Conditions

- (1) A panel may set any conditions on a wildlife approval that the panel considers necessary to manage the effects of the activity on protected wildlife.*
- (2) In setting any condition under subclause (1), the panel must—*
 - (a) consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife that is to be covered by the approval; and*
 - (b) where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied, ensure that they are offset or compensated for where possible and appropriate; and*
 - (c) take into account, as the case may be, the New Zealand Threat Classification System or any relevant international conservation agreement that may apply in respect of the protected wildlife that is to be covered by the approval.*

[364] In both cases, section 83 must be complied with and provides:

¹⁶⁴

As acknowledged in SAR, page 308, section 10.9.

83 Conditions must be no more onerous than necessary

When exercising a discretion to set a condition under this Act, the panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of this Act that confers the discretion.

- [365] How the Panel has complied with these sections is discussed below in relation to the conditions that have been set.

Esplanade Reserve or Strip

- [366] The Panel agrees with the Applicant's statement¹⁶⁵ that:

It would not be appropriate to impose a consent condition requiring provision of an esplanade reserve or esplanade strip at a working port...

The proposed reclamation is associated with the extension of wharves in an operating Port Zone. Access to the reclamations would necessarily be restricted. Access restrictions of this nature are critical to the security of New Zealand's largest port and the associated landside facilities and infrastructure, including Customs facilities.

- [367] The Panel agrees that it would be inappropriate to require either an esplanade reserve or an esplanade strip in this context, and has not imposed a condition requiring one.

Conditions on Resource Consents

- [368] A key issue for the Panel was the conditions proposed to address the cultural matters.

- [369] The planning evidence of Ms Wilkinson for Ngāti Kuku Hapū Trust and Trustees of Whareroa Marae¹⁶⁶ recommended this as "an appropriate case where direct compensation is merited",¹⁶⁷ "reliant on Dr Meade's recommendations as to the potential quantum and methodology".¹⁶⁸ For the reasons set out in Part D above, the Panel disagrees.

- [370] An interesting issue that arose in our consideration of the Application was whether the Panel had the ability to impose a higher quantum of financial assistance than that offered by the Applicant. We were addressed on this issue by:

¹⁶⁵ SAR, page 308, section 10.9.

¹⁶⁶ Dated 1 May 2026.

¹⁶⁷ See para 23.

¹⁶⁸ See para 23.

- (a) The Applicant, in memorandum of counsel dated 8 June 2026¹⁶⁹ and 24 July 2026;¹⁷⁰
- (b) The Regional Council, in its response to Minute 7;
- (c) Ngāti Kuku hapū and Whareroa Marae in their responses to Minutes 5 and 7;
- (d) Ngā Tai ki Mauao, Ngāti Ranginui Iwi Society, Ngā Hapū o Ngāti Ranginui Settlement Trust, Ngāti Ranginui Fisheries Trust, and Pirirākau Tribal Authority Incorporated in their responses to Minute 7.

[371] The Panel considers:

- (a) It has the ability to impose conditions (including to set the quantum of financial assistance in each) where necessary to avoid, remedy or mitigate the adverse cultural effects of the Project, provided it is no more onerous than necessary.
- (b) For any proposed condition designed to offset or compensate the adverse cultural effects of the Project, the Panel is constrained to the quantum of financial assistance offered by the Applicant.

[372] The Applicant confirmed at the hearing on 29 July 2026 that all conditions involving an element of financial assistance were intended to avoid, remedy or mitigate the adverse cultural effects of the Project. As a consequence, the Panel has not been constrained by the quantum offered in the 30 July 2026 set of conditions. It has, however, at all times been mindful of the constraint imposed by s83 FTAA.

RMA Consent under the TCP

[373] No participant sought changes to the conditions proposed for the Land Use Consent for the cranes in Appendix 5a to the SAR. The Panel has made no changes to those proposed conditions.

RMA Consents under the RCEP

[374] The Panel has prepared a set of draft conditions for the regional consents using the content of the Applicant's 30 July 2026 set as a starting point. It has made a number of changes designed to create clear, effective and enforceable conditions that provide meaningful opportunities for Tangata Whenua participation during the implementation of the Project, that improve the Project's response to the Tangata Whenua values of rangatiratanga and kaitiakitanga, and that better incorporate mātauranga Māori in monitoring. Before making each amendment the Panel has satisfied itself that the

¹⁶⁹ See paras 44 - 52.

¹⁷⁰ See paras 2 – 11.

resultant condition is no more onerous than necessary to sufficiently address the adverse cumulative cultural effects.

Conditions on Wildlife Act Approval

- [375] The Panel has adopted the recommended conditions provided in the s51(2)(c) report with the suggested amendments provided by the Applicant on 7 May 2026 and the re-certification condition agreed on 24 July 2026 with some minor drafting improvements.

Comments on Conditions

- [376] As required by FTAA s70(1), the Panel directed the EPA to provide its draft conditions to the Applicant, every person or group that provided comments in response to our invitation, the Councils and the Department of Conservation on 17 August 2026 with an invitation to provide comments to the EPA by 19 August 2026 (for the Applicant) and 24 August 2026 otherwise.

- [377] [address responses]

PART M: ADVERSE IMPACT ASSESSMENT

- [378] “Adverse impact” is defined as “any matter considered by the panel in complying with section 81(2) that weighs against granting the approval.”¹⁷¹
- [379] As is clear from our assessment in Part G, the Panel identified the adverse cultural effects as a matter that weighs against granting the RMA approvals. As noted in Part H, the only other matter that potentially weighs against granting the RMA approvals is the related matter of discretion / assessment criterion in the RCEP.
- [380] The Panel has set conditions in relation to those adverse impacts. The Panel is satisfied the adverse impact can be appropriately addressed through its comprehensive package of avoidance, mitigation, remediation, adaptive management, cultural participation, monitoring and environmental enhancement and restoration measures set out in the conditions.
- [381] The Panel has formed the view that the adverse impacts do not meet the threshold in s85(3).
- [382] As a consequence, the Panel does not need to consider whether it should exercise its discretion to decline the approvals.

PART N: DECISION

- [383] The Panel has considered the Application, the comments received on it, the further information provided in response to our Minutes, and the oral evidence given at the hearing on cultural effects. We thank all those who participated in this process.
- [384] The Panel is satisfied that:
- (a) Granting the approvals would comply with s7, as required by s82(3);
 - (b) The Panel is not required to decline the approvals under s85(1);
 - (c) The adverse impacts do not meet the threshold in s85(3) such that there is no discretion to decline the approvals;
 - (d) It has considered all relevant material in accordance with s81(2)(a), applied the applicable clauses set out in s81(3) and set conditions in accordance with sections 83 and 84.
- [385] The Panel has determined to grant the approvals sought subject to the Conditions attached as Appendix A (for the Wildlife Approval), Appendix B

¹⁷¹

Section 85(5).

(for the RMA Consent under the TDP), Appendix C (RMA Consent for Dredging) and Appendix D (RMA Consent for Structures) to this Decision.

[386] The Panel has set a lapse date of 10 years for each consent.

Bronwyn Carruthers KC (Chair)

James Whetu (Member)

Hugh Leersnyder (Member)

APPENDIX A

Wildlife Approval Conditions

APPENDIX B

RMA Land Use Consent Conditions

APPENDIX C

RMA Consent for Dredging Conditions

APPENDIX D

RMA Consent for Structures