

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

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

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


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Introduction

1. This memorandum is filed on behalf of Port of Tauranga Limited (**POTL**) in response to the Stella Passage Development (**Project**) Expert Panel's (**Panel**) invitation in Minute 14¹ to provide responses to the participants' comments in accordance with s 70(4) of the Fast-track Approvals Act 2024 (**FTAA**).
2. POTL acknowledges the efforts of all parties who have provided comments on the conditions. As previously acknowledged, POTL recognises the position of parties who are fundamentally opposed to the Project.
3. The purpose of this memorandum is to respond to issues raised through participants' comments on the Panel's draft conditions. As requested by the Panel, attached to this memorandum, and marked Appendices 'A', 'B', and 'C' respectively are tracked change versions of the Draft Regional Dredging Conditions (**Dredging Conditions**), the Draft Regional Structures and Reclamations Conditions (**Structures and Reclamations Conditions**) (together referred to as the **Conditions**), and the Draft Wildlife Permit conditions. The Conditions accept the Panel's amendments included in the draft conditions that the Panel issued on 17 August 2026, and track POTL's proposed further amendments. POTL has also prepared a table which contains specific responses to the amendments to conditions that are sought by commenting parties (**Response Table**). This is marked as Appendix 'D'.
4. POTL has focused its response on specific comments received on the conditions. POTL has not sought to respond to every comment made in the responses received, particularly where those responses do not relate to specific feedback on the draft conditions or do not relate to consent conditions. As POTL has already responded to the Panel's draft conditions in its memorandum dated 19 August 2026 (**Condition Comment Memorandum**), this memorandum focuses on comments that POTL has on the feedback received from other parties and how that changes or affirms POTL's

¹ Dated 17 August 2026.

position, or where POTL considers that the feedback warrants further amendments to the Conditions.

5. POTL notes the Panel’s Minute 15, received on 21 August 2026, in which the Panel strongly encouraged the Applicant to “consider whether a s 64 suspension of processing might enable it time to prepare and submit a more considered response to conditions”. POTL has considered the Panel’s suggestion carefully, but has reached the conclusion that a pause will not materially alter the positions of any of the parties either generally or in relation to conditions. POTL also remains able to provide comments on the draft conditions, in response to other parties’ comments, within the statutory timeframe. As such, POTL is not seeking a suspension.

Tikanga-based approach

6. We reiterate that POTL is not opposed to tikanga – rather it is concerned with the practical operation of its consents and the ability for it to achieve compliance with the conditions in those consents.
7. POTL’s concerns with the requirement that it adopt a “tikanga-based approach” to implementation of conditions which require tangata whenua input or engagement are set out in its Condition Comment Memorandum.² These concerns are not POTL’s alone. The Bay of Plenty Regional Council (**BOPRC**) has similarly expressed concern that the requirements lack sufficient certainty to provide a clear compliance framework and could give rise to enforceability issues.³
8. Two tangata whenua participants express support for the inclusion of this requirement and consider that there is no sufficient basis on which it should be

² At 10 – 13.

³ Comments by the Bay of Plenty Regional Council on Draft Conditions in Accordance with Section 70 Fast-track Approvals Act 2024, Stella Passage Development [FTAA-2512-1163] (**BOPRC Comments**) at 7.

removed.⁴ POTL disagrees for the reasons set out in the Condition Comment Memorandum. In addition, we submit that:

- (a) POTL's concern is not that the conditions would be 'onerous', as suggested by the Ngāti Ranginui Iwi Society Incorporated, Ngā Hapū o Ngāti Ranginui Settlement Trust and Ngāti Ranginui Fisheries Trust (**Ngāti Ranginui**).⁵ Rather, it is that the conditions impose an undefined obligation to undertake a "tikanga-based approach" without identifying the minimum procedural requirements by which compliance is to be assessed. As a result, the nature and extent of the obligations imposed on the consent holder are uncertain. While this uncertainty does make it difficult to determine whether the conditions are no more onerous than necessary to address the relevant effects, it also creates practical difficulties in implementing the conditions, and for BOPRC in determining compliance.
- (b) It is inappropriate for the conditions to state what such a tikanga-based approach would look like. As stated by Pirirākau Tribal Authority Incorporated (**PTAI**), pre-determination of what such a process would encompass by POTL is not tikanga.⁶
- (c) To the extent that the Panel considers it appropriate to recognise the role of tikanga in the implementation of the consents, that objective is more appropriately reflected in the purpose or explanatory provisions of the conditions than through the imposition of obligations of uncertain content.

- 9. BOPRC has suggested an alternative approach whereby the conditions instead provide in the purpose and objective provisions that they are intended to provide for a tikanga-based approach. POTL supports this alternative. In our submission, this avoids the

⁴ Joint Memorandum of Counsel on Behalf of Ngāti Ranginui Iwi Society, Ngā Hapū o Ngāti Ranginui Settlement Trust, and Ngāti Ranginui Fisheries Trust in Response to Expert Panel's Minute 14 dated 24 August 2026 (**Ngāti Ranginui Comments**) at 11 and Memorandum of Pirirākau Tribal Authority Incorporated dated 24 August 2026 (**PTAI Comments**) at 2.4(b).

⁵ Ngāti Ranginui Comments at 11.

⁶ PTAI Comments at 2.4(b).

uncertainty associated with imposing a requirement that lacks a clear and objectively measurable compliance standard, recognises that the conditions already provide a framework that allows tikanga to be expressed, recognised, and exercised, and ensures that the Panel's apparent intent of recognising tikanga in the processes is retained. The Conditions have been marked up to reflect this alternative approach.

SPDAG Quorum

10. POTL indicated in the Condition Comment Memorandum that it wanted to understand the views of tangata whenua on the quorum required to form the Stella Passage Development Advisory Group (**SPDAG**) proposed by the Panel before commenting further. While no parties have commented in support of the quorum, concerns have been raised by Ngāti Ranginui who oppose the fallback position involving the Ngā Mātarae Charitable Trust being responsible for nominating members to make up the quorum.⁷ Placing a requirement on the Ngā Mātarae Charitable Trust to nominate members to form that quorum of eight could also be considered *ultra vires* by putting an obligation on a party that is not the consent holder.
11. POTL has proposed an amendment to the Panel's draft conditions where the SPDAG can form if *any* party nominates a representative – this can be one party, noting that under POTL's drafting in the Conditions, other parties can join the SPDAG after it is established.⁸ This approach removes the need for an arbitrary minimum number of members before the SPDAG can be established. POTL considers that this is appropriate as it would be unreasonable to prevent the SPDAG being established where there are willing participants, albeit less than eight. It also avoids any *ultra vires* requirement for representation nominations from Ngā Mātarae Charitable Trust as a precondition to establishment, and addresses concerns raised by submitters that the SPDAG may otherwise be unable to be formed.

⁷ Ngāti Ranginui Comments, p. 2, Attachment A.

⁸ Dredging Conditions and Structures and Reclamations Conditions at 3.2 and 3.4(b)(i).

12. POTL is optimistic that the named parties will participate in the SPDAG process, given the role that the SPDAG plays in the implementation of the resource consents.

SPDAG Scope

13. Commenters have sought amendments that would substantially expand the SPDAG's role beyond that of an advisory body, conferring functions that are quasi-decision-making in character and which, in practice, could go as far as to frustrate the ability of POTL to ever implement the resource consents, or determine outcomes to an extent inconsistent with the SPDAG's intended primarily advisory role.⁹
14. The SPDAG was designed to have a primarily advisory role in the implementation of the Conditions and to be one of the platforms for ongoing engagement with POTL. Additionally, it was intended to be the recipient of funds to be targeted towards restoration projects, which it would then be responsible for allocating at its discretion, enabling practical expression of rangatiratanga over restoration funding. POTL has addressed how the Conditions provide for this in its previous memorandum that responded to Minute 7 of the Panel (**Minute 7 Response**).¹⁰ We do not repeat those matters here and refer the Panel to that memorandum.
15. The Conditions contain an appropriate mechanism to address adverse effects identified through the SPDAG undertaking its functions, referred to in the Minute 7 Response. Provided that the SPDAG is established, and the Terms of Reference (**TOR**) agreed, the conditions expressly empower BOPRC to initiate a review of the consent conditions where cultural monitoring undertaken by the SPDAG, or implementation of the Mātauranga Monitoring Plan, identifies such effects.¹¹ Accordingly, the SPDAG is not without recourse if it considers that adverse cultural effects are occurring and its recommendations are not adopted by POTL. The Panel's SPDAG TOR provide that

⁹ PTAI Comments at 2.2 and Ngāti Ranginui Comments, p. 2, Attachment A.

¹⁰ Memorandum of Behalf of the Applicant in Response to Minute 7 of the Stella Passage Development Expert Panel [FTAA-2512-1163] dated 14 July 2026 at 23 – 26.

¹¹ Dredging Conditions at 24.1(b) and Structures and Reclamations Conditions at 21.1(b).

the SPDAG has a role in supporting a review of the consents.¹² In those circumstances, the review process provides an avenue through which those concerns can be addressed, if appropriate. Additionally, the feedback loop on management plans provides an opportunity for adverse effects identified by the SPDAG to be addressed.

Terms of Reference (TOR)

16. While POTL remains concerned with the TOR conditions for the reasons set out in the Condition Comment Memorandum, it recognises the Panel's observations in Minute 15 and the support expressed by a number of commenters for the inclusion of TOR provisions in some form. In principle therefore, it accepts the inclusion of a TOR process in the Conditions, but respectfully suggests that amendments are required.¹³
17. These submissions and the amendments proposed to the Conditions are directed at ensuring that the TOR conditions operate in a manner that is lawful, certain, workable and capable of being complied with:
 - (a) The Conditions track changes to the TOR conditions. These changes are made to remove uncertainty and ambiguity with the terms of the TOR and the process to be used for its development, whilst retaining the Panel's apparent intention for its inclusion.
 - (b) POTL understands the intent is that the TOR is agreed between it and the SPDAG – this understanding is shared with several commenters.¹⁴ BOPRC has advanced a different interpretation, namely that POTL's role is limited to commencing preparation of the TOR and thereafter observing its outcomes.¹⁵ BOPRC has proposed amendments to reflect that approach, which POTL does

¹² Dredging Conditions and Structures and Reclamations Conditions at 3.4(b)(i).

¹³ BOPRC Comments at 10, Ngāti Ranginui Comments – Attachment A, p. 3, PTAI Comments at 2.4, and Memorandum of Counsel on Behalf of Ngāi Tukairangi Hapū Trust dated 24 August 2026 (Ngāi Tukairangi Comments) at 23.

¹⁴ Ngāti Ranginui Comments at 12 and p. 3, Appendix A and PTAI Comments at 2.4(d).

¹⁵ BOPRC Comments at 10.

not support. Accordingly, changes have been tracked to the Conditions to clarify that the TOR are to be agreed between the SPDAG and POTL.

- (c) Respectfully, the fact that these differing interpretations have emerged illustrates the ambiguity of the Panel's draft conditions. Either of these interpretations, which involves either a third party outcome that the consent holder must comply with, or agreement with a third party, would ordinarily be *ultra vires*, and so the following changes to the Conditions are essential to remedy that.
- (d) The TOR conditions must include a 'sunset' mechanism and the Conditions have been updated to incorporate one. POTL must be able to implement its consent if, following the establishment of the SPDAG, the TOR cannot be agreed within a reasonable timeframe. In this regard:
 - (i) BOPRC concurs with POTL's suggestion, but has not suggested amendments given POTL confirmed that it would respond post-receipt of tangata whenua comments.¹⁶
 - (ii) Ngāti Ranginui opposes the inclusion of a sunset mechanism, purporting that its inclusion renders the condition meaningless if agreement on the TOR cannot be achieved.¹⁷ However, in our submission the converse is true and carries greater weight – a consent cannot be capable of being frustrated in these circumstances because of the non-achievement of a future process dependent upon the actions and agreement of third parties, despite the best efforts of the consent holder to undertake and complete that process. Indeed, such conditions would be *ultra vires*.¹⁸

¹⁶ BOPRC Comments at 11.

¹⁷ Ngāti Ranginui Comments at 12.

¹⁸ *Dart River Safaris Ltd v Kemp* [2000] NZRMA 440 at [18] citing *Robert Holt & Sons Ltd v Napier City Council* (1977) NZTPA 132.

- (iii) PTAI also takes issue with POTL's concerns stating that 'this is the concern of a party that wishes to proceed without tangata whenua involvement' and that it is associated 'not with workability but with the obligation to engage meaningfully before proceeding'.¹⁹ POTL rejects that characterisation. Its concern lies with the likelihood of the reconciliation of long-standing differing views, and that as drafted, this would act as an impediment to the exercise of the consent if those views were unable to be aligned.
- (e) Because the Conditions were not originally drafted to operate through a TOR process, and a number of obligations require the TOR to establish procedural arrangements between the parties, POTL has proposed a mechanism to address circumstances where a TOR is not finalised.²⁰ The amendment is intended to avoid a situation where the inability to finalise a TOR prevents the operation of the Conditions. Where a TOR has not been established, the Conditions are to be implemented without requiring the procedural steps that would otherwise be governed by the TOR, thereby preserving certainty for all parties and avoiding an outcome where the exercise of the consent is contingent on a process that has not been concluded.
- (f) POTL notes for completeness that it has endeavoured to develop a TOR process that provides a meaningful opportunity for the SPDAG to participate in the development of the TOR, including providing an opportunity to meet with POTL to discuss content and inform the preparation of the draft TOR by POTL, reviewing and providing feedback on draft TOR provisions, and ideally reaching agreement on the TOR before the certification of management plans and commencement of physical works. Providing for this to occur means that it will be at least 6 months before POTL is able to have management plans certified. This is considered a reasonable timeframe, particularly given the purpose of the Act which is to **facilitate the delivery** of infrastructure, and the

¹⁹ PTAI Comments at 2.4(d).

²⁰ Dredging Conditions and Structures and Reclamations Conditions at 3.6 to 3.8.

Act's requirement for conditions to be no more onerous than necessary to address the reason for which it is set.²¹

18. Whilst maintaining its concerns with the TOR conditions, POTL has endeavoured to provide productive feedback by way of amended conditions to address its concerns in light of the participants' comments. In our submission the extensive changes required to the TOR condition illustrate the difficulties with ensuring that the TOR approach provides for both meaningful participation of the SPDAG in the Conditions and that the Conditions are certain, workable and enforceable. We submit that the amendments proposed are appropriate and result in Conditions that are clear, capable of compliance and enforcement, and unable to be frustrated.

Mātauranga Māori State of the Environment Report

Facilitation of the Mātauranga Māori State of the Environment Report

19. POTL raised concerns in its Condition Comment Memorandum regarding the amended Mātauranga Māori State of the Environment Report (**SOE Report**) condition proposed in the draft conditions. BOPRC has raised similar concerns regarding the *vires* of the Panel's amendments to condition 12.1 of the Dredging Conditions, as it is not clear what the obligation to 'facilitate' entails.²² BOPRC's position is that the former provision proposed by POTL is preferable from a certainty and enforceability perspective, consistent with POTL's views as set out in the Condition Comment Memorandum.²³
20. Ngāti Ranginui also consider that 'facilitate' is not an appropriate description of what POTL's role should be in relation to the SOE Report.²⁴ While their view differs as to whether a funding 'cap' should be included in the Conditions, it is clear that Ngāti

²¹ FTAA, s 83.

²² BOPRC Comments at 12.

²³ Condition Comment Memorandum at 21.

²⁴ Ngāti Ranginui Comments at 13.

Ranginui, POTL, and BOPRC are aligned in that requiring POTL to ‘facilitate’ the SOE Report is not appropriate.

Funding for SOE Report

21. Counsel has already responded to the Ngāti Ranginui position, that POTL should be required to meet the actual and reasonable costs of preparing the SOE Report without a ‘funding cap’, in its Condition Comment Memorandum.²⁵ POTL’s view is that there is no basis for imposing an uncapped financial obligation. Without detailed parameters defining the scope and content of the SOE Report, it is not possible to assess the reasonableness of costs invoiced to POTL associated with preparation. At the same time, because the SOE Report is intended to be informed by Mātauranga Māori and cultural values, it would not be appropriate for POTL, and may not be appropriate for the Panel, to prescribe in detail the matters that must be addressed in the report. In those circumstances, POTL’s proposed approach of providing a defined level of funding for preparation of the SOE Report strikes an appropriate balance between enabling the report to be prepared and ensuring that the consent holder's obligations are certain and proportionate.

Implementation post-SOE Report establishment

22. Ngāti Ranginui have sought the inclusion of conditions preventing the implementation of the Project until the SOE Report is completed.²⁶ POTL does not support this amendment for the following reason:
 - (a) We question the *vires* of such an amendment, as it would effectively confer on third parties the ability to delay or prevent implementation of the consent through the non-achievement of an outcome that the consent holder cannot compel. As submitted above, implementation should not be contingent on

²⁵ Condition Comment Memorandum at 21.

²⁶ Ngāti Ranginui Comments at 32.

milestones that depend on the actions or agreement of persons other than the consent holder.

- (b) POTL, in addressing the directions of the Environment Court in the direct referral proceedings, sought input multiple times from tangata whenua on the Mātauranga Māori inputs for the ongoing Kaimoana Survey Plan that it was required to develop.²⁷ None was received before the Survey Plan was due to be filed with the Court. POTL is concerned that it would be faced with a similar situation if an SOE report were required to be completed prior to implementation of the consents.
- (c) The SPDAG is able to increase the scope of the SOE Report beyond the Port Zone. It would be inappropriate for a report with a potentially broader geographic scope to delay implementation of the Project that is confined to the Port Zone.
- (d) Ongoing port operations and maintenance dredging are already occurring where the Project is to occur. The activities associated with the Project will not be vastly different from what is occurring in the Project area today, and as such requiring the SOE Report to be done before any works commence is not necessary.
- (e) As discussed above, under POTL's proposed amendments to the Conditions, it is at least 6 months before POTL is able to have management plans certified. Any additional time that could be required to complete the SOE Report would significantly delay implementation. This would be disproportionate to the effects of the Project and risk failing to satisfy the requirement that the Conditions be no more onerous than necessary to deal with those effects.²⁸

²⁷ *Port of Tauranga Ltd v Bay of Plenty Regional Council* [2023] at 567, POTL Response to RFI #1 dated 31 March 2026, paragraph 32.

²⁸ FTAA, s 83.

- (f) The Panel is also required, when considering the Conditions, to give the greatest weight to the purpose of the FTAA.²⁹ It is our submission that conditions that unnecessarily prolong the implementation timeframe for the Project cannot be characterised as facilitating the delivery of infrastructure with regional or national benefits. Rather than facilitation, such conditions risk impeding the timely implementation of the Project and would be difficult to reconcile with the purpose of the FTAA.
- (g) Finally, the Panel does have before it a State of the Environment Report that was prepared during the Environment Court process.³⁰ That was a direction to POTL, and so necessarily is a biophysical State of the Environment Report. While POTL acknowledges that this report does not include Mātauranga Māori, in our submission it does provide confirmation that the baseline scientific conditions within the Port Zone are well understood.

23. In light of the above, POTL remains of the view that the SOE Report condition should revert to POTL's proposed wording. POTL has therefore tracked its originally proposed SOE Report condition wording into the Conditions.

Mātauranga Māori Monitoring Programme

Facilitation of the Mātauranga Māori Monitoring Programme by POTL

24. BOPRC shares POTL's concerns around the efficacy and enforceability of the Panel's proposed 'Initial Mātauranga Monitoring Plan' condition, and what is meant by the consent holder 'facilitating' the preparation of that plan.³¹ Further, BOPRC agrees that a Mātauranga Monitoring Plan should follow the SOE Report, as envisaged by POTL's proposed conditions.³² POTL has tracked changes so as to revert the wording of this clause to its previous version.

²⁹ FTAA, Sch 5, cl 17(1)(a).

³⁰ POTL Response to RFI #1 dated 31 March 2026, Appendix I page 182.

³¹ BOPRC Comments at 14.

³² BOPRC Comments at 16.

Reference to Te Pā Pātiki

25. BOPRC has also raised concerns regarding the inclusion of the requirement for the Initial Mātauranga Monitoring Plan to be consistent with the Te Pā Pātiki conceptual framework, given it may not have the support of all relevant tangata whenua parties.³³ Ngāi Tukairangi Hapū Trust and the Tauranga Moana Iwi Customary Fisheries Trust (TMICFT) have confirmed that they do not agree with the inclusion of Te Pā Pātiki³⁴ in the condition, while Ngāti Ranginui has reserved its position as to the application of the framework to their hapū.³⁵ Counsel notes that no parties have expressed support for the approach proposed in the Conditions to include both an ‘initial’ and ‘final’ mātauranga monitoring plan. Some parties have made more detailed comments on mātauranga monitoring, which are addressed through the Response Table.
26. In light of BOPRC’s comments and the lack of consensus regarding Te Pā Pātiki, POTL remains of the view that the mātauranga monitoring plan condition should revert to POTL’s proposed wording, and we have tracked changes into the Conditions to reflect this. For completeness, we record that POTL’s tracked changes do not preclude Te Pā Pātiki from being the model utilised, if it is considered appropriate by the SPDAG.

Implementation post-monitoring plan establishment

27. Similar to the SOE Report discussed above, Ngāti Ranginui have sought conditions preventing the implementation of the resource consents until the monitoring contemplated by the Mātauranga Monitoring Plan has commenced. POTL does not support this amendment. We refer the Panel to the submissions made at paragraph 22 above.

³³ BOPRC Comments at 15.

³⁴ Memorandum of Counsel on behalf of Ngāi Tukairangi Hapū Trust dated 24 August 2026 (**Ngāi Tukairangi Comments**) at 31 and Memorandum of Counsel on behalf of the Tauranga Moana Iwi Customary Fisheries Trust dated 24 August 2026 (**TMICFT Comments**) at 21.

³⁵ Ngāti Ranginui Comments page 4 of Attachment A.

Other matters

Amendments to the Conditions

28. The memoranda filed by iwi and hapū participants point towards the likelihood of appeals against the Panel’s final decision.³⁶ In these circumstances, POTL has considered the obligations within the Conditions which are tied to “commencement” given that unlike the RMA, the FTAA provides that an approval under the FTAA commences on the date on which the panel’s decision document for the approval is issued under s 88.³⁷
29. Condition 23 of the Dredging Conditions has been amended to require POTL to surrender consent 62920 prior to the commencement of any dredging works under this dredging consent. The reason for that change is that dredging under that consent is occurring currently, and so that ability is preserved notwithstanding any appeals.
30. Additionally, the conditions requiring payment of funds to the Whareroa Marae Reservation Trust, TMICFT, and BOPRC, have been amended so that the required payments are due within the required period of commencement *of physical works authorised by the consents*.³⁸ This will similarly avoid any issues about whether payments are due notwithstanding that appeals have been lodged, which is submitted to be reasonable and proportionate.

Response to comments on conditions

31. Other, discrete, comments made by participants on the draft condition set are addressed below:

³⁶ Ngāti Ranginui Comments at 3–5; Memorandum on behalf of Ngāti Kuku Hapū and Trustees of Whareroa Marae in Response to Minute 14 (Draft Decision) dated 24 August 2026 (Ngāti Kuku Comments) at 2–4

³⁷ FTAA, s 97(1)(a).

³⁸ Dredging Conditions at 18.4, 18.5 and 18.7 and Structures and Reclamations Conditions at 15.4, 15.5, 15.7 and 16.1.

- (a) Ngāi Tukairangi seek that the conditions pertaining to the relationship agreement require POTL to apologise for its exclusion from earlier stages of the consent process and to acknowledge its mana whenua status.³⁹ We make the following responses:
- (i) POTL rejects the claim that Ngāi Tukairangi were excluded from the earlier stages of the consent process. POTL had approached the hapū to engage as early as 2019 and met with representatives through the next several years. As far as POTL is aware, Ngāi Tukairangi determined not to participate in the Environment Court proceedings, either directly or through Ngā Tai Ki Mauao (**NTKM**) once it was formed. However, POTL welcomes Ngāi Tukairangi's participation in this process and looks forward to working with the hapū through the SPDAG.
 - (ii) The mana whenua status of Ngāi Tukairangi is acknowledged through the Panel's amendment to condition 1.1 of the Conditions that provides for express recognition of Ngāi Tukairangi (which POTL accepts) and also expressly in the Avifauna Management Plan through their specific involvement in the review of that plan.⁴⁰
- (b) TMICFT has raised concerns with hydrogen sulphide from POTL's current dredging activities and associated health risks to staff on the dredge boat.⁴¹ Dredging operations are subject to the applicable Maritime New Zealand and WorkSafe regulatory requirements, including monitoring and management of naturally occurring gases where necessary. Counsel is instructed that, to the best of POTL's knowledge, all dredge operators are in compliance with those regulatory requirements. The existence of these controls demonstrates that this matter is appropriately addressed through health and safety regulations and does not warrant further regulation through the Conditions. Further,

³⁹ Ngāi Tukairangi Comments at 15.

⁴⁰ Avifauna Management Plan, Appendix 2a of the Substantive Application, Section 2, Clause 8.

⁴¹ TMICFT Comments at 25 – 27.

counsel understands that at this stage of the process, no further evidence is to be provided and feedback is to be limited to comments on conditions.

- (c) Ngāti Ranginui have expressed concerns that the effectiveness of cultural protections are dependent on the SPDAG forming.⁴² That is incorrect. The Conditions provide for mitigation that is not tied to the SPDAG's establishment – this includes funds to Whareroa Marae and the TMICFT, tangata whenua scholarships, funds for a longitudinal health study, funds for avifauna habitat improvement, and the Whareroa land-use policy. Further, in the absence of the SPDAG establishing, the conditions provide for the funds that would be paid to the SPDAG to be paid to the Tauranga Moana Governance Group (**TMGG**) (or the Tauranga Moana Advisory Group, if the TMGG is not established) for use towards harbour restoration projects. As such, POTL considers that the concern of Ngāti Ranginui is already addressed through the conditions.
- (d) TCC provided a late comment.⁴³ POTL does not consider amendment of the land use conditions necessary. The conditions already contain clear and enforceable obligations requiring the cranes and associated aviation lighting to comply with the relevant Civil Aviation requirements and to be maintained in an operational condition. Those obligations are capable of being monitored and enforced. POTL is not aware of any evidential basis demonstrating that an additional certification or verification regime is required, and considers that such a requirement would be more onerous than necessary to address the relevant effects.

32. Whilst not being comments on conditions, we address the following statements made by NTKM:

⁴² Ngāti Ranginui Comments, paragraph 27.

⁴³ Comments on draft conditions from Tauranga City Council dated 28 August 2026.

- (a) That the financial elements of POTL's proposed mitigation appears to equate to circa 0.5% of POTL's indicative profits over a ten year period.⁴⁴ We submit that this is not relevant; the appropriateness of mitigation is to be assessed against a project's effects, not an applicant's revenue.
- (b) The criticism of POTL's approach to engagement in that 'It preferred to race to the finish-line, rather than to get its ducks in a row before pushing the start button'.⁴⁵ POTL does not accept that characterisation. The Project is not new to any of the participants. It has been the subject of consenting processes for the past six years, and is urgently required to address congestion and capacity constraints. Input from tangata whenua has been sought at many stages of the fast-track process and the present form of these conditions have been in circulation for two years. Engagement on a project is important but it cannot be indefinitely iterative. There must come a point in time where engagement is considered sufficient. To echo the decision of the Environment Court, there must be a limit to the time given for tangata whenua input and further delays cannot be justified.⁴⁶

Conclusion

33. POTL has carefully considered the comments received on the draft conditions and, where appropriate, has proposed further amendments to the Conditions in response. The amendments advanced by POTL are directed at ensuring that the Conditions are certain, lawful, workable and capable of enforcement, while remaining consistent with the statutory requirement that conditions be no more onerous than necessary to address the effects of the Project.
34. The Conditions continue to provide for a substantial package of mitigation, monitoring and restoration measures. These include significant funding for harbour restoration

⁴⁴ Ngā Tai ki Mauao: Comments on Conditions dated 24 August 2026 (**NTKM Comments**) at 10.

⁴⁵ NTKM Comments at 13.

⁴⁶ *Port of Tauranga Ltd v Bay of Plenty Regional Council* [2024] NZEnvC 337 at [11].

initiatives, funding for tangata whenua-led monitoring and environmental reporting, support for avifauna habitat enhancement, scholarships, a longitudinal health study, contributions to Whareroa Marae and the TMICFT, and mechanisms for ongoing tangata whenua participation through the SPDAG. Taken together, these measures represent a meaningful and enduring investment in the environmental, cultural and social wellbeing of Tauranga Moana and reflect the substantial benefits that will flow from the Project beyond its operational and economic outcomes.

35. For those reasons, POTL respectfully submits that the amendments proposed by POTL in the Conditions achieve an appropriate balance between recognising and providing for tangata whenua interests, delivering significant restoration and mitigation outcomes, and ensuring that the Conditions remain clear, enforceable and capable of practical implementation. POTL therefore requests that the Panel approve the Conditions as amended at Appendix A, B and C, and the District (Land Use) consent conditions as issued by the Panel in draft on 17 August 2026.⁴⁷
36. POTL again thanks the Panel for their efforts in drafting the decision and providing draft conditions for comment. POTL looks forward to receiving the Panel's final decision.

DATED at Tauranga this 31st day of August 2026



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

⁴⁷ Noting that POTL did not request any amendments to the District (Land Use) Conditions through the s 70 process.