

**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 (the **Project**), being a listed project in Schedule 2 of the Fast-track Approvals Act 2024

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**MEMORANDUM ON BEHALF OF THE APPLICANT IN RESPONSE TO MINUTE 3 OF THE  
STELLA PASSAGE DEVELOPMENT EXPERT PANEL  
[FTAA-2512-1163]  
16 APRIL 2026**

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## Introduction

1. This memorandum is filed on behalf of Port of Tauranga Limited (**POTL**) in response to Minute 3 (**Minute**) of the Stella Passage Development Expert Panel (**Panel**).<sup>1</sup> This memorandum sets out POTL's responses to the further information requested by the Panel in the Minute.

## Non-economic benefits

2. The Panel has sought clarification as to whether there are benefits (other than economic) that POTL wishes the Panel to have regard to. Counsel confirms that there are other benefits which the Panel should have regard to for the purposes of considering the s 3 purpose of the Fast-track Approvals Act 2024 (**FTAA**), and if it undertakes the proportionality assessment under s 85(3) of the FTAA. These benefits are for the most part canvassed in the substantive application for approvals under the FTAA (the **Application**), and we attach a statement of evidence from POTL's General Manager for Property and Infrastructure, Dan Kneebone, which confirms the nature of these additional benefits (Annexure A to this memorandum). A memorandum from NZIER is also attached as Annexure B which canvases the benefits of the application for the Māori Economy.
3. The benefits which POTL asks the Panel to have regard to can be summarised as follows:
  - (a) *Carbon emission benefits* – the Project will assist with POTL's carbon reduction goals. POTL has set an initial short-term target of a 5% reduction in greenhouse gas emissions per cargo tonne per annum. This will occur through the use of bigger ships which have proportionally lower carbon emissions than smaller ships (an 8000+ twenty foot equivalent shipping container unit (**TEU**) vessel would have carbon emissions of 0.013 kilograms of CO<sub>2</sub> per tonne-kilometre

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<sup>1</sup> Minute 3 of the Expert Panel (Stella Passage Development FTAA-2512-1163) dated 31 March 2026.

(tkm) versus a 3000-4999 TEU vessel which would have carbon emissions of 0.017 kilograms of CO<sub>2</sub> tkm and a 2000-2999 TEU vessel which would have carbon emissions of 0.020 kilograms CO<sub>2</sub> tkm). This will also occur through an increase in coastal shipping between the Port of Tauranga (**Port**) and other New Zealand ports, which has lower carbon emissions than other forms of transport such as road transport (between 0.017 and 0.020 kilograms of CO<sub>2</sub> tkm for coastal shipping versus 0.123 kilograms of CO<sub>2</sub> tkm for road transport). The Project will also be a catalyst for POTL's container terminal moving to the use of automatic stacking cranes, which will lower carbon emissions.<sup>2</sup>

- (b) *Infrastructure resilience* – the Project's new wharves will be designed to the highest design classification so as to be as resilient as possible in the event of a major seismic event, or other natural hazard emergency. This is a benefit to Tauranga and the Bay of Plenty region, safeguarding the supply chain in the event of such an emergency.<sup>3</sup> There are also benefits for the Port's existing older Mount Maunganui wharves, which will be able to be upgraded once the new Mount Maunganui wharf is built without disrupting overall Port operations.
- (c) *Fuel supply chain resilience* – the Project's additional tanker berth capacity will provide a resilience benefit. This is achieved by the proposed additional mooring dolphins at the existing tanker berth that will enable larger modern vessels to be accommodated. The proposed extension to the Mount Maunganui wharf and mooring dolphins to the southern end of the wharves will provide a second modern tanker vessel berth, reducing congestion and reducing the risk of loss of service.<sup>4</sup> Since the date that the Application was lodged, and for well understood reasons, as a result of geopolitical events, it is arguable that this benefit could be significantly elevated to being of national importance.

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<sup>2</sup> This matter is addressed at section 1.4.1.3 of the Application.

<sup>3</sup> This matter is discussed at section 4.6.11 of the Application.

<sup>4</sup> This matter is discussed at section 1.4.2.2 of the Application.

- (d) *Ships at anchor* – the Project will have an efficiency benefit in reducing the time that ships need to wait at anchor off the coast of Tauranga.<sup>5</sup> There is a reputational benefit for the nation as shipping lines will want to call due to efficiency and security of berth availability.
- (e) *Rail optimisation* – when the Project is operational and handling the additional cargo it has capacity for, it will result in a doubling of the utilisation of the existing rail infrastructure, from 10 to 20 train services on peak days. Again, this is an efficiency benefit which will result in existing infrastructure being better utilised.
- (f) *Space efficiency* – the space occupied in the coastal marine area at the Port is less than what would be required at some other New Zealand ports to berth the same amount of ships, due to the Port's continuous quay which enables maximum flexibility of vessel combinations. POTL is also the most productive port in New Zealand, which ensures that the new wharf space will achieve the maximum productivity possible.<sup>6</sup> These are efficiency benefits to be gained from the Project.
- (g) *Reputation* – there is a reputational benefit to the Project, which will assist with enhancing POTL's reputation as reliable, efficient and with capacity. This will ultimately be a positive benefit for New Zealand.
- (h) *Māori economy* – the memorandum from NZIER (Annexure B) highlights the \$14 billion worth of primary sector asset holdings held by Māori businesses in the combined Bay of Plenty and Waikato region. These businesses will stand to benefit from the improved capacity associated with the Project. There is also disproportionately high employment of Māori in primary industries, particularly in the Bay of Plenty, and those employees and business owners

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<sup>5</sup> This matter is discussed at section 1.4.1 of the Application.

<sup>6</sup> This matter is discussed at section 10.4.3 of the Application.

stand to benefit from future growth in the primary industries which will result from the Project.

4. As requested, a copy of the Minister for Infrastructure's Notice of Decision on POTL's referral application for the Project is attached at Annexure C to this memorandum. It is also available on the Fast-track website [here](#).

#### **Activity status**

5. The Panel has sought clarification as to what is meant by the statement in the Application that "it is appropriate to bundle the activities for which consent is required, as they are inter-dependent. Therefore, the project is a restricted discretionary activity overall."
6. Counsel confirms that the intention was not to suggest that controlled and restricted discretionary activity rules be bundled together, which could mean that matters of control and discretion apply to all activities. Counsel submits 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 the maintenance dredging) that apply to the relevant activity.
7. The Panel also requested an assessment of each of the controlled and restricted discretionary activities against the relevant matters/assessment criteria for each activity. The table is attached as Annexure D to this memorandum. We also attach, as Annexure E, a plan showing the footprint of future maintenance dredging under the Project.

## Cultural effects

8. The Panel has sought clarification as to whether POTL considers that cultural effects are an “adverse impact” as defined by the FTAA. Counsel’s submission is that cultural effects are capable of being adverse impacts as defined by the FTAA. However, whether a particular cultural effect or set of cultural effects amounts to an adverse impact will be fact specific, and will depend on the evidence received by the Panel through the application process, including comments from third parties and response to comments.

## Chronological outline of development

9. The Panel has requested a “comprehensive chronological outline of the historical development and progressive expansion of the Port of Tauranga”. We attach the following documents:
  - (a) Annexure F: a table setting out the Port’s development history (and other information requested by the Panel);
  - (b) Annexure G: a map of the Mount Maunganui and Sulphur Point extensions; and
  - (c) Annexure H: a report on the history of the Port (dated 31 August 2023).
10. We have interpreted the Panel’s request as being focused on development at the Port in the coastal marine area and as such have not included information regarding the inland Port operations. Additionally, and for the avoidance of doubt, we have interpreted the Panel’s request as being focussed on key milestones, and as such:
  - (a) With respect to consultation, we have not detailed specific consultation/engagement for RMA consent processes as it would be challenging to do this comprehensively given the passage of time. We expect

that the cultural impact assessments and agreements listed will indicate when engagement was occurring. Consultation for the Project specifically is detailed in the Application.<sup>7</sup>

- (b) With respect to arrangements established between the Port company / owner at the relevant time and iwi/hapū/marae, we have not included arrangements of an operational nature, for example, agreements as to the procurement of cultural monitoring or cultural impact assessments.

11. Notwithstanding the above, we of course remain ready to assist the Panel further should it have further questions about these matters.

### **Receiving environment**

12. The Panel has sought clarification as to whether either or both of the existing consents, RC 62920 and 65806, are being relied on to determine either the receiving environment or effects generated by the Project and if so, in what manner. By way of summary:

- (a) RC 65806 provides for capital and maintenance dredging and the associated seabed disturbance throughout the shipping channel, as well as deposition of dredged material to the coastal marine area. This consent sits entirely outside of the Project's footprint and POTL will pursue consent renewals for this area (Figure 29 of the Application) as part of a separate fast-track application (that project is listed in Schedule 2 FTAA – *Capital and Maintenance Dredging*).
- (b) RC 62920 provides for dredging within the Project's footprint but only in the footprint shown in Figure 26 of the Application, and only to a depth of 12.9m below CD in that footprint.

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<sup>7</sup> Appendix 18 – Consultation Summary Report (Mahea NZ Limited), and s 8.2, Application.

- (c) Additionally, RC 65807 provides for the disposal of all dredged material under both the existing consents discussed in the preceding paragraphs and will also be utilised for the disposal of dredged material yielded from the Project.

13. These existing consents, along with consent 04-0128 (which authorises POTL's consented area of coastal occupation as shown in the Outline Development Plan at Schedule 9 to the Bay of Plenty Regional Coastal Environmental Plan (**RCEP**)), all form part of the existing environment considerations. As a result, the effects generated by the Project have been considered in terms of the 'balance of effects' (i.e. the effects beyond those already provided for under the existing consents). By way of example:

- (a) Beyond the cumulative effects considerations, effects associated with the occupation of coastal structures are not required to be considered as part of this Application as these have been considered and approved through the process that resulted in the grant of consent 04-0128;

- (b) Within the Assessment of Effects on Hydrodynamics and Sedimentation:<sup>8</sup>

*"The dredging required for Stage 1 of the proposal includes seabed located below and adjoining the areas previously authorised to be dredged under resource consent 62920 (Figure 2). Consent 62920 covers 5.9 ha of the 6.1 ha area that is proposed to be dredged for Stage 1, but only authorises dredging to a depth of 12.9 m. Stage 1 of this proposal will allow deepening the channel to a depth of 16 m. Previous assessments of the sediment characteristics for southern Stella Passage focussed on depths shallower than 14.5 m. **Hence, this assessment also considers any potential impacts involving sediment at depths between 14.5 m and 16 m**".*

[emphasis added]

- (c) Within the Assessment of Effects on Marine Ecological Values:

*"Dredging of 10.55 ha and 1.5 Mm<sup>3</sup> (Stage 1 6.1 Ha and 0.85 Mm<sup>3</sup> and Stage 2 4.45 Ha and 0.65 Mm<sup>3</sup>) is proposed, of which 5.9 ha (800,000*

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<sup>8</sup> Appendix 13, Application, s 2.

*m<sup>3</sup>) is already authorised under Resource Consent 62920 and the ecological effects of that component of the dredging have already been considered (Table 1). **Therefore, this assessment considers the ecological effects arising from the balance 700,000 m<sup>3</sup> of the total 1.5 Mm<sup>3</sup> of dredging**".<sup>9</sup>*

[emphasis added]

*"Dredging is proposed to occur over 10.55 Ha and 1.5M m<sup>3</sup> (Stage 1: 6.1 Ha and 0.85 Mm<sup>3</sup> and Stage 2: 4.45 Ha and 0.65 Mm<sup>3</sup>), of which 5.9 Ha (800,000 m<sup>3</sup>) is already authorised under Resource Consent 62920 and the ecological effects of that component of the dredging have already been assessed and considered. **Technically, this application is therefore for the ecological effects of 4.45 Ha of dredging or 700,000 m<sup>3</sup> of the 1.5 Mm<sup>3</sup> of dredging**".<sup>10</sup>*

[emphasis added]

14. In summary, Counsel submits consent 04-0128, RC 65806, RC 65807, and RC 62920 form part of the existing environment and as such any effects relating to the following activities cannot form part of the Panel's consideration of the Project's effects:
- (a) The Project's occupation of the coastal marine area (consent 04-0128);
  - (b) Disposal of dredged material in the coastal marine area (RC 65806 and RC 65807); and
  - (c) Dredging of 5.9ha (800,000m<sup>3</sup> of material) to a depth of 12.9m below CD in the footprint represented in Figure 26 of the Application (RC 62920).

### Changes to the development through the Environment Court process

15. The Panel has requested "information provided to the Environment Court in May 2021 that more clearly explains the concerns raised and how the changes responded". It

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<sup>9</sup> Appendix 14, Application, s 2.1.1, paragraph 1.

<sup>10</sup> Appendix 14, Application, s 7.1.3, paragraph 2.

also requests a copy of the substantive response (with attachments) filed with the Environment Court on 30 September 2024.

16. As set out in the Application<sup>11</sup>, the proposed development, for which consent was lodged with the Bay of Plenty Regional Council in May 2021, was amended prior to the Environment Court hearing, and was further amended during the hearing.<sup>12</sup>
17. The application lodged with the Bay of Plenty Regional Council (for which direct referral was then sought and obtained) sought consent to dredge 14.4ha of the shipping channel (the whole width of Stella Passage) to a depth of 16m, and for Mount Maunganui wharf extensions of 530m north of the Tanker Berth and 388m south of the Tanker Berth, and associated reclamations. A plan showing the extent of what was sought in the original application is at Figure 1.

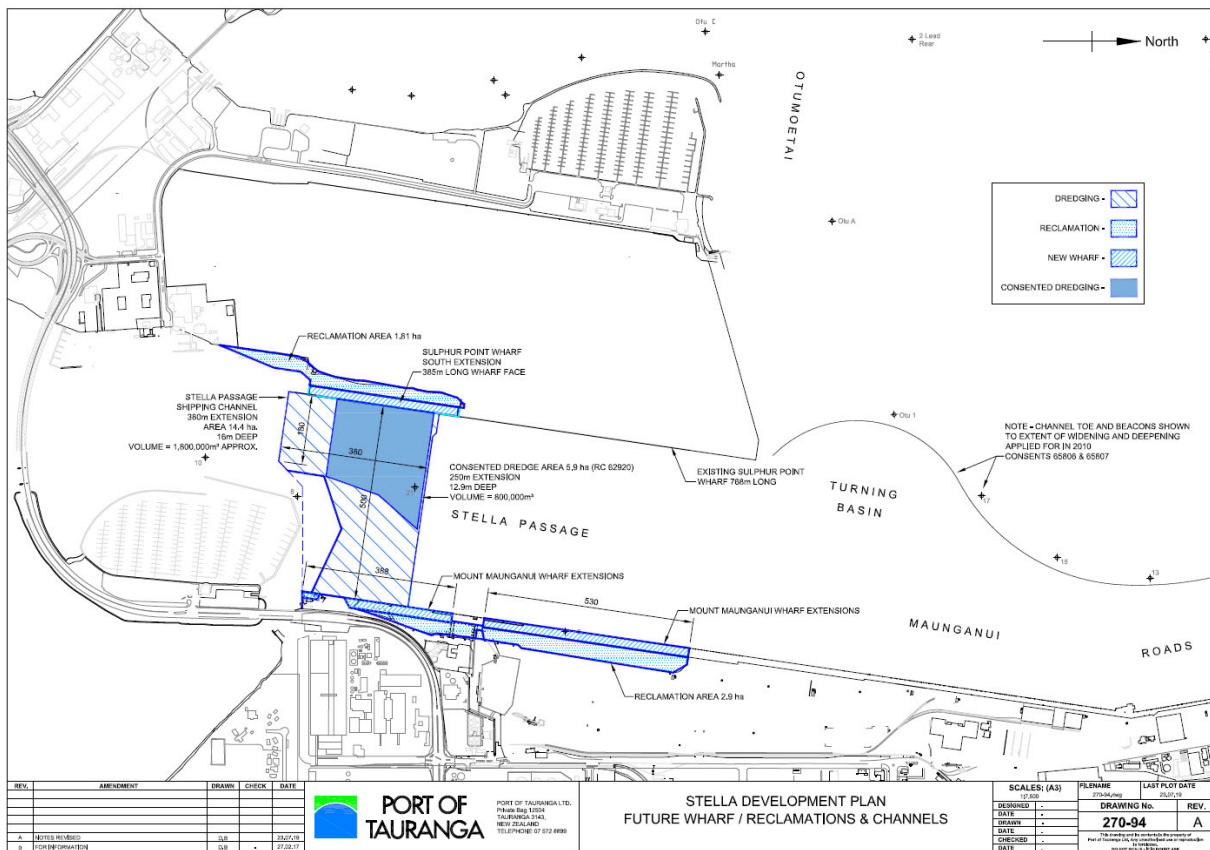


Figure 1

<sup>11</sup> Section 1.7.2.

<sup>12</sup> The amendments were proposed as part of POTL’s reply evidence, filed on 30 June 2022 before the Environment Court hearing was due to start in July 2022. However, that hearing was postponed due to Covid-19 and did not begin until February 2023.

18. Evidence filed in advance of the Environment Court hearing by tangata whenua, and in particular the evidence of the Ngāi Te Rangi parties' planner, Greg Carlyon<sup>13</sup>, articulated the adverse effects of the project from the Ngāi Te Rangi parties' perspective and provided a series of tables on behalf of the different groups of 'potential projects and initiatives to respond to adverse effects associated with Port development'. One category of project was titled 'Port Project Changes', and the table provided on behalf of Whareroa Marae and Ngāti Kuku articulated that they sought for POTL to 'avoid ships berthing adjacent to the marae' and 'remove extension of Port infrastructure to Whareroa Bridge'.
19. POTL responded to this evidence by proposing through the reply evidence of Dan Kneebone and Rowan Johnstone<sup>14</sup> to reduce the scope of the application significantly at the southern end of the Mount Maunganui wharves. The intention of this reduction in scope was to directly respond to the mitigation sought by Whareroa Marae as set out in Mr Carlyon's evidence.
20. In terms of the details of the change in scope, these were set out in the reply evidence of Rowan Johnstone.<sup>15</sup> The reductions can be summarised as:
  - (a) Dredging adjacent to the minor Mount Maunganui berths/structures to be limited to 6m below CD, which is consistent with the depth of the existing channel adjacent to Butters Landing, greatly reducing the amount of dredging required. This depth would also limit the size of vessels able to berth at this part of the port to vessels such as tugs, dredges, barges, work and fishing boats.

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<sup>13</sup> Statement of Evidence of Gregory John Carlyon (dated 9 June 2022). Greg Carlyon gave his evidence on behalf of Te Rūnanga o Ngāi Te Rangi Iwi Trust, Ngā Hapū o Ngā Moutere Trust, Ngāti Hē, Ngāti Kaahu a Tamapahore Trust, Ngāti Kuku Hapū, Ngāti Tapu and Whareroa Marae Trust.

<sup>14</sup> POTL's Engineering Manager.

<sup>15</sup> Reply Statement of Evidence of Rowan Johnstone (dated 30 June 2022).

- (b) Reduction in the scale of wharf structures in that area to be more ‘minor’ than what was originally proposed. These more minor wharves would be designed for relatively much smaller vessels than POTL originally intended.

21. A plan showing the changes proposed prior to the Environment Court hearing is at Figure 2.

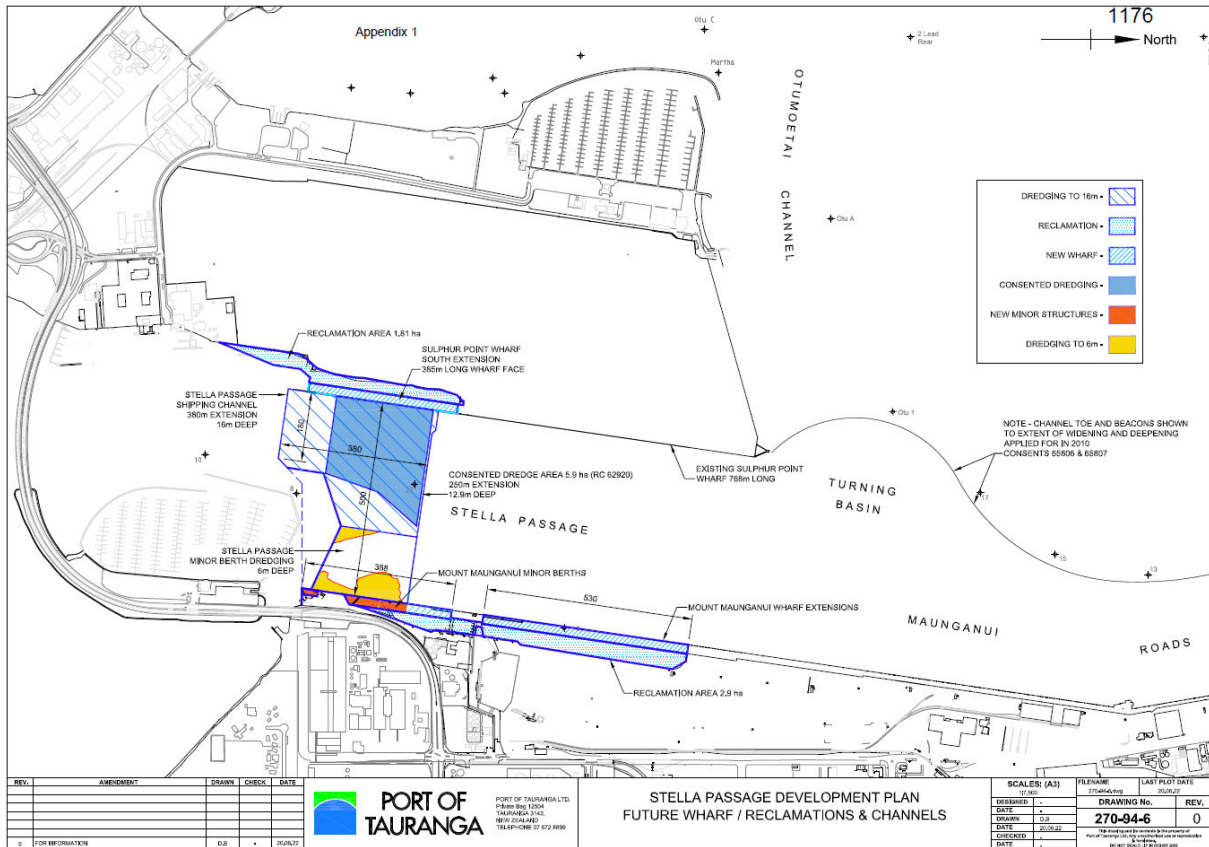


Figure 2

22. Over the course of the Environment Court hearing in February to March 2023, tangata whenua witnesses, and in particular witnesses from Whareroa Marae, gave evidence regarding their concerns with the development’s proximity to the marae. POTL considered through the hearing whether it could do anything further to limit the scale of the development in the vicinity of Whareroa Marae, and proposed further modifications through its reply submissions.<sup>16</sup> The modifications involved:

<sup>16</sup> Reply Submissions on Behalf of Port of Tauranga Limited (dated 6 April 2023).

- (a) No dredging on the eastern side of Stella Passage, instead of the limited dredging previously proposed through POTL's reply evidence;
- (b) Reducing the extension of the Mount Maunganui wharves to 315m only;
- (c) Breasting and mooring dolphins associated with the existing tanker berth instead of wharf structures (with a lighter footprint than a wharf structure);
- (d) Reduced reclamation on the Mount Maunganui side (reduced from a total of 2.9ha to 1.77ha);
- (e) A 2,000 tonne dead weight limit for the already proposed minor structures, which effectively restricts the minor structures at the southern end to vessels that can already berth there; and
- (f) A proposal that any vessels using the new minor structures connect to shore power whilst alongside.

23. The plan showing the further modified development proposal is at Figure 3.

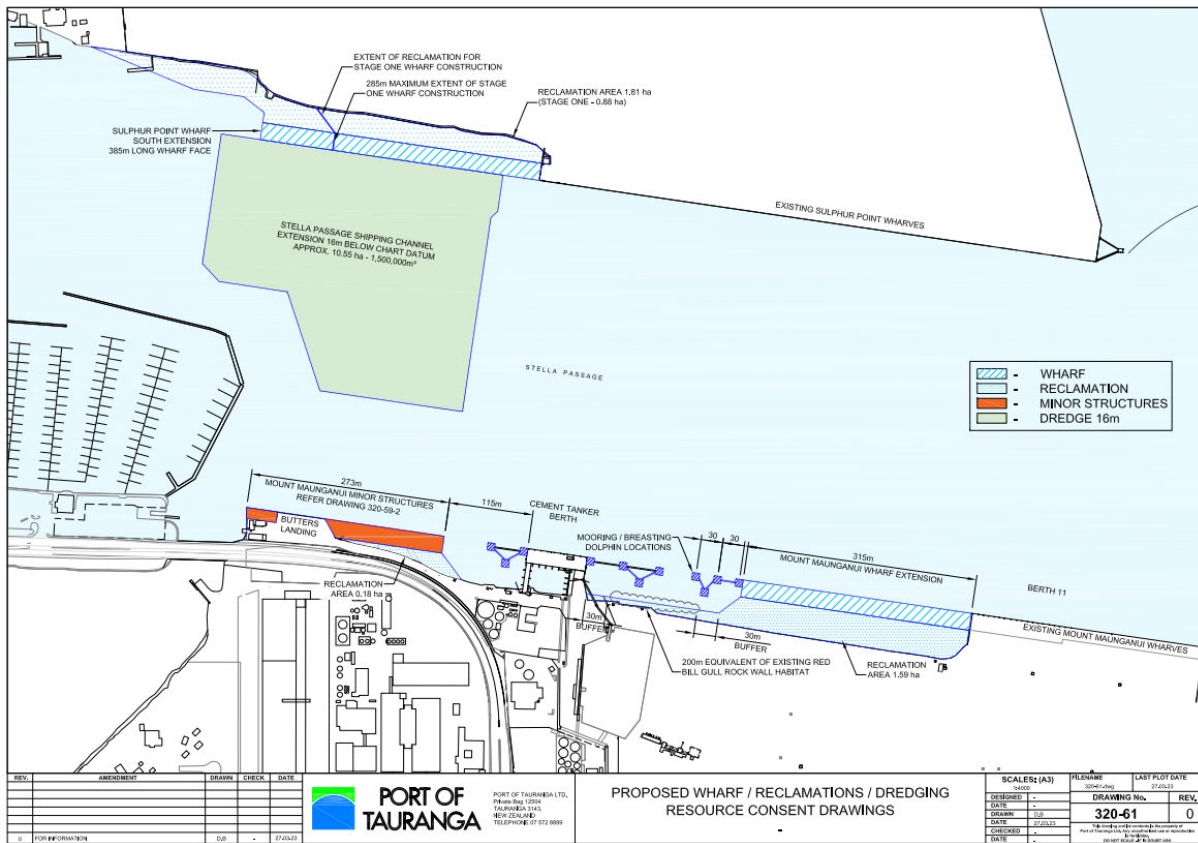


Figure 3

24. Alongside these changes to the development proposal, changes were made to the mitigation proposal that formed part of the consent conditions throughout the Environment Court process. We have interpreted the Panel’s question as being focused on the physical changes made to the development proposal but we are able to provide more information regarding changes to the mitigation proposal should that assist the Panel.

25. As requested, we attach a copy of the substantive response (dated 30 September 2024) to the Environment Court’s directions in its first interim decision is at Annexure I.

## **Cranes**

26. The Panel has sought clarification as to whether the relevant rule and related assessment criteria for the proposed cranes is reliant on the proposed cranes being within the Port Industry Zone and/or whether any further or different consents are required if the proposed cranes are consented or erected prior to the reclaimed land being zoned.

### *Summary of response*

27. The substantive application has assessed the proposed cranes as being within the Port Industry Zone (to the extent that they are located on land). If the proposed cranes are consented or erected prior to the reclaimed land being zoned, then they will require consent under rule 4I.2 of the Tauranga City Plan (**TCP**). This is also a restricted discretionary activity, with the matters of discretion relating to the safe operation of Tauranga City Airport.

### *Crane configuration*

28. The proposed cranes are primarily located on the wharves, and are moveable by rail.
29. The rails for the proposed cranes will be located on the wharves, and the cranes will traverse onto land when and if the northernmost cranes traverse northwards onto the existing wharves. This can be seen in Figure 50 of the Application (Indicative crane range). If the northernmost cranes traverse northwards onto land, then that land is zoned Port Industry Zone.
30. The crane profiles will protrude in both an easterly (front reach) and westerly (back reach) direction, with the eastern protrusions being over the coastal marine area. The western protrusions will extend over reclaimed land. Figures 48 and 49 of the Application indicate the crane profiles.

*TCP rule framework*

31. Chapter 4 of the TCP contains General Rules, the purpose of which is to identify the Objectives, Policies, and Rules that relate to City-wide activities. These include Section 4I relating to Specified Airport Slopes and Surfaces.
32. Section 4I is very short and is attached as Annexure J.
33. Under Rule 4I.2, no building or structure (other than port cranes and floodlight towers provided for under Rule 4H.2.3 c. – Permitted Height & Viewshaft Protection Area Intrusions and Rule 18A.12.1.3 – Port Industry Zone) may penetrate an airport take-off and approach slope, transitional surface or slope, horizontal surface and surrounding sloping planes.
34. The Specified Airport Slopes and Surfaces are depicted in Section 5, Diagram 2, Plan Maps Part B of the TCP.
35. Any such building or structure becomes a restricted discretionary activity under Rule 4I.3, to be non-notified with the exception of Tauranga City Airport under rule 4I.3.1, and with the matters of discretion restricted as follows:

*In considering whether to grant consent and what conditions, if any, to impose Council shall have regard to the following:*

- a. Any recommendations resulting from consultation with Tauranga City Airport;*
  - b. The potential adverse effects on the safe operation of Tauranga City Airport.*
36. The rules in Section 18A of the TCP relate to the Industrial Zones, and apply to land that has an industrial zoning. For the Port Industry Zone, and with respect to crane intrusions through the Specified Airport Slopes and Surfaces described in Rule 4I.2,

notification is similarly limited to the Tauranga Airport Authority (Rule 18A.15.3), and the matters of discretion also relate to the safe operation of Tauranga City Airport (Rule 18A.15.4.1).

*Application of the TCP rule framework to the proposed cranes*

37. The General Rules in Chapter 4 of the TCP will capture activities, where relevant. In this case, it is clear that Section 4I and specifically Rule 4I.3 will capture activities that do not comply with the zone-specific permitted intrusions to the Specified Airport Slopes and Surfaces.
38. The Specified Airport Slopes and Surfaces, in the location of the proposed cranes, increase in a northerly direction over the proposed cranes to a maximum of 49m. POTL has plotted the airport slopes over the proposed wharf extensions at Annexure K. The maximum airport slope is at 49m.<sup>17</sup> The cranes' back reach in this area will be about 59m with intrusions up to 63m.
39. POTL has also produced a plan which shows how the proposed crane typologies relate to the proposed reclamation, wharves, and existing land. This is attached at Annexure L.
40. Against that background, the TCP rule framework applies to the proposed cranes as follows:

Part of crane	Stage 1 Extension	Future Extension
<i>Crane tower</i>	Located on wharf on the Stage 1 Extension but capable of moving by rail northwards alongside existing wharves, which is on land (Port	Located on wharf on the Future Extension (over the coastal marine area, not on land). Being within the CMA, this does not require consent

<sup>17</sup> Note that only two cranes (one for each height) are show on this plan for ease of reference. For the avoidance of any doubt, consent for four cranes is still sought.

Part of crane	Stage 1 Extension	Future Extension
	Industry Zone), thereby requiring consent under TCP rule 18A.15.4.1.	under the TCP (but requires consent under Rule PZ 9 of the RCEP).
<i>Crane back reach</i>	<p>The back reach will protrude over reclaimed land which will initially be unzoned. POTL proposes that it will be zoned Port Industry. While the land is unzoned, this will require consent under TCP rule 4I.3.</p> <p>The westernmost portion of the back reach will also protrude over existing land, which is zoned Port Industry.</p> <p>This will require consent under TCP rule 18A.15.4.1.</p>	<p>The back reach will protrude over reclaimed land which will initially be unzoned. POTL proposes that it will be zoned Port Industry.</p> <p>The westernmost portion of the back reach will also protrude over existing land, which is zoned Port Industry.</p> <p>These protrusions will require consent under TCP Rules 4I.3 and 18A.15.4.1 for the same reasons as the protrusions associated with the Stage 1 extension.</p>
<i>Crane front reach</i>	The front reach will protrude over the coastal marine area. Therefore, these front reach protrusions do not require resource consent under the TCP, but require restricted discretionary consent under Rule PZ 9 of the RCEP.	The front reach will protrude over the coastal marine area. The same resource consent requirements apply as noted for the Stage 1 front reach protrusions.

41. The consequence of this is that if the proposed cranes are consented or erected prior to the reclaimed land being zoned, then they will require consent under Rule 4I.2 of the TCP. This is also a restricted discretionary activity, with the matters of discretion

restricted to any recommendations resulting from consultation with Tauranga City Airport, and the potential adverse effects on the safe operation of Tauranga City Airport. For the avoidance of doubt, Counsel suggest that consent be granted on this basis (i.e. addressing both Rules 4I.3 and 18A.15.4.1, noting that this involves no additional assessment given the equivalent activity status and matters of discretion in both rules).

42. The Tauranga Airport Authority has provided a letter of support for the Application, which is included at Appendix 20 to the Application, and seeks compliance with a condition resulting from a CAA determination. That condition has been included as proposed condition 5 of the Tauranga City Council<sup>18</sup> resource consent and as proposed condition 18.5 of the Bay of Plenty Regional Council reclamation and structures resource consent.<sup>19</sup>

### **Construction noise**

43. The Panel has referred to the assessment of “small potential exceedances” of applicable noise limits in the RCEP Rule Assessment and sought clarification as to the following matters which Counsel address in turn:
- (a) The applicable noise limits for night-time construction;
  - (b) Whether those limits are predicted to be exceeded such that consent is required; and
  - (c) If so, either the activity status or clarification as to whether night-time dredging can be avoided in the area identified in Figure 83 of the Application.

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<sup>18</sup> Appendix 5a, Application.

<sup>19</sup> Appendix 5, Application.

*Applicable noise limits for night-time construction*

44. Section 4.1 of the Construction Noise Assessment (Appendix 16 to the Application) addresses this matter. The Application does not require resource consent in relation to noise from night-time construction activities. There is no rule in the RCEP that sets a night-time construction noise limit in the Port Zone.
45. Rule PZ 1(d) requires noise to be assessed in accordance with the Port Noise Standard, NZS6809:1999. The Port Noise Standard addresses operational port noise and cl 1.6 of the Port Noise Standard specifically excludes construction noise. On this basis, Counsel submits that the scope of Rule PZ 1 is limited to *operational* port noise, not *construction* noise. Rules PZ 1(b) and (c) specify a 15-minute 65 dB LAeq night-time noise limit, and a night-time maximum sound level (Lmax) of 85 dBA beyond the 65 dBA noise contour respectively.

*Are noise limits predicted to be exceeded such that consent is required?*

46. Even if the Panel prefers a reading of Rule PZ 1 that applies the noise limits specified therein to night-time *construction* noise, sections 1.2 and 5.2.4 of the Construction Noise Assessment confirm that the dredging could generate a maximum night time noise level of 47 dBA, and this level is within the PZ 1(b) and (c) noise limits. As such, although Rule PZ 1 is inapplicable, even if the levels in Rule PZ 1 are applied to the project's construction noise, that noise would not breach the permitted noise levels and no resource consent would be required.
47. Where section 6.12 of the Application refers to an "exceedance" of night-time noise levels, this is referring to an exceedance of noise levels specified in the Construction Noise Standard – not an exceedance of any RCEP rule/performance standard. (The Construction Noise Standard was applied by the author of the Construction Noise Assessment as the appropriate standard to assess the potential construction noise effects, however the Construction Noise Standard is not applied by the RCEP). As set out in the Construction Noise Assessment: "A difference in level of 1-2 decibels is

generally indistinguishable". Furthermore, the 47 dBA maximum noise level could only occur if a small portion of the dredging footprint is dredged at night-time. The Construction Noise Assessment recommends (section 1.4) that this area be dredged outside of night-time hours where practicable. This is POTL's intent. However unforeseen circumstances cannot be excluded. Given the minimal effect of a 1-2 dB exceedance of the Construction Noise Standard, which would remain substantially lower than the permitted noise levels specified in Rule PZ 1, it is submitted that the proposed approach is reasonable.

48. Counsel submits, that for these reasons, that there will be no breach of the RCEP noise limits and no consent is required in this regard.

*If so, what is the activity status or can night-time dredging be avoided?*

49. The noise generated by night-time dredging will be substantially less than the noise levels that Rule PZ 1 specifies as permitted activity performance standards for Port operational noise. No consent is required in regard to this noise.
50. The noise is a permitted activity and there is no adverse effect that would require dredging to be avoided.

### **Crane placement**

51. The Panel has sought clarification as to whether any of the proposed new cranes meet the locational criteria in Rule PZ 4. Counsel confirms that:<sup>20</sup>
- (a) The range of the two northern most cranes will be restricted to the existing Sulphur Point Wharf and the "proposed Sulphur Point Extension South (being 286 metres south of the existing Sulphur Point Wharf)" referred to in Rule PZ

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<sup>20</sup> Set out in the Application in Table 18 on page 147.

4. However, they will not meet the maximum height requirement in Rule PZ 4(a), 100m MD, and will require consent under Rule PZ 9.

- (b) The range of the two southern most cranes, despite meeting the maximum height requirements in Rule PZ 4(a), will extend further south than the “proposed Sulphur Point Extension South” area set out in Rule PZ 4. Accordingly, consent is required for them under Rule PZ 9.

52. The Panel has also sought clarification as to whether the placement of the new cranes on the extended wharf is an effect of allowing the Sulphur Point wharf extension. In Counsel’s submission, the answer is no, *in the context of this case*, given the restricted discretionary activity rule framework applying to both structures, and cranes, under the RCEP. In particular:

- (a) This question cannot be answered without considering the relevant rule framework. In the *Sustainable Ōtākiri* Supreme Court decision, the Court said (**emphasis added**):<sup>21</sup>

*That said, we accept that “effects” is not of limitless scope. Not every matter will require consideration under s 104(1)(a). Identifying the effects that are within s 104(1)(a)’s scope is an exercise of statutory interpretation in light of facts. Put another way, the meaning of “effects” must be determined by the words of the RMA construed in light of its purpose and context, and applied in the particular factual context. **The effects that will be relevant in any particular case will depend on the controlling objectives, policies and rules (if there are any) and on the facts as determined by the consent authority.***

- (b) Under the RCEP, Rule PZ 8 clearly *excludes* cranes (**emphasis added**):

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<sup>21</sup> *Sustainable Ōtākiri Inc v Whakatāne District Council* [2025] NZSC 158 at [59].

*With the exclusion of the Sulphur Point North End Berth shown on Map 270-27C contained in Schedule 9 to this Plan, the erection, reconstruction, placement, alteration, extension, removal or demolition of:*

*(a) Any structure or building (**excluding cranes**) within the area that the Port of Tauranga Limited has been granted a section 384A occupation permit that is not a permitted, or controlled activity is a restricted discretionary activity.*

- (c) The matters of discretion in Rule PZ 8 are constrained by the activity which the rule applies to. Rule PZ 8 excludes cranes. The matters of discretion cannot extend the application of the rule.
- (d) Cranes exceeding the permitted height or location are dealt with through a separate restricted discretionary activity rule, Rule PZ 9, with discretion restricted to airport height restrictions and the safe operation of the Tauranga City Airport.
53. The Panel has asked whether the matters of discretion in Rule PZ 8 make that effect relevant to the Panel's consideration. In Counsel's submission, the answer is no given that the rule does not apply to cranes on the basis that the matters of discretion cannot extend the application of the rule. It would be perverse if Rule PZ 8 excluded cranes, but the effects of cranes somehow came back in through a matter of discretion.
54. As set out above at [8], Counsel submits that whether any adverse cultural effect amounts to an adverse impact under the FTAA is fact specific, and will depend on the evidence received by the Panel through the application, comments and response to comments. However, with respect to cranes specifically, for the reasons set out above, Counsel does not see the placement of cranes on the extended wharf as being capable of being an adverse impact. This is because discretion under Rule PZ 9 is restricted to airport height restrictions and the safe operation of the Tauranga City

Airport, and the Tauranga City Airport has provided a letter of support for the Application.

### **Outcomes framework**

55. The Panel has requested an update on the development of the Outcomes Framework that is being developed by POTL and tangata whenua as referred to in the Application.<sup>22</sup>
56. In October 2025, POTL convened a hui with Tauranga Moana iwi and hapū to consider how engagement on future resource consent processes should be undertaken. A clear consensus emerged that a more structured and forward-looking approach was required and in response, parties agreed to develop an Outcomes Framework to identify areas of alignment, strengthen relationships, and provide a foundation to guide engagement on transactional matters.
57. A facilitated working session led by Nanaia Mahuta supported the initial framing of a shared approach. Following this, a joint working party comprising POTL representatives and Tauranga Moana iwi and hapū members was established to progress the Outcomes Framework. POTL provided resourcing support to enable iwi and hapū participation, and the working party met on a weekly basis through to December 2025.
58. A draft Outcomes Framework was prepared and circulated to all parties in March 2026. The Outcomes Framework reflects the collaborative work undertaken to date and has been developed on a without prejudice basis. As at the date of this memorandum, all parties (including POTL and tangata whenua) are yet to provide comments, feedback, and amendments to the Outcome Framework. For the avoidance of doubt, there is no 'due date' on which this needs to be provided.

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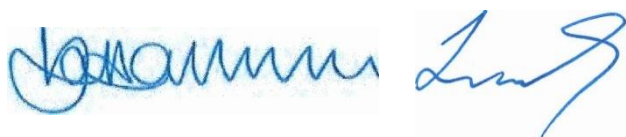
<sup>22</sup> Referred to at section 8.2.4 of the Application.

59. Due to the without prejudice nature of the discussions and the development of the framework, POTL is unable to provide a copy of the draft Outcomes Framework to the Panel. Nonetheless, POTL will update the Panel of any substantive progress made on the framework during the course of the Panel’s decision making period.

#### Other documents

60. Counsel notes that one report was omitted from the Application and a further report contained referencing errors. These are annexed to this memorandum as follows:
- (a) *Annexure M, Kern Consultants Proposed Crane Lighting Peer Review* – this report is referred to as “Appendix A” of the Landscape Report (Application, Appendix 17) but was omitted from the Application when it was filed. This is now provided as Appendix 17c to the Application.
  - (b) *Annexure N, Assessment of Effects on Marine Ecological Values (Application, Appendix 14)* – this report was provided as part of the substantive application but the referencing tool had malfunctioned resulting in a number of references throughout the report referencing “Error! Reference source not found”. Annexed to this memorandum is a copy of the report with the references fixed. For the avoidance of doubt, Counsel confirms that but for the correction to the referencing, the remainder of this report is verbatim with that filed with the Application.

**DATED** at Tauranga this 16<sup>th</sup> day of April 2026



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