

UNDER

the Fast-track Approvals Act 2024 (the FTAA)

IN THE MATTER

of the Port of Tauranga Ltd FTAA
Substantive Application (FTAA-2512-1163) for the Stella Passage
Development Project

**MEMORANDUM OF COUNSEL ON BEHALF OF
TAURANGA MOANA IWI CUSTOMARY FISHERIES TRUST**

DATED: 24 AUGUST 2026

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MAY IT PLEASE THE EXPERT PANEL

INTRODUCTION

1. This memorandum is filed on behalf of Tauranga Moana Iwi Customary Fisheries Trust ("**TMICFT**") in response to the Expert Panel's Minute 14 (dated 17 August 2026) seeking comments from specified parties on the draft conditions of consent.
2. Specifically, this memorandum sets out TMICFT position on the decision to grant approvals for the Stella Passage Development ("**SPD**") and includes TMICFT comments and views on the draft conditions of consent as amended by the Expert Panel (dated 17 August 2026).

TMICFT POSITION

3. TMICFT maintains its position as set out in its Cultural Values Report and as expressed at the cultural values hearing held at Whareroa Marae. That is, TMICFT strongly oppose Port of Tauranga Limited's ("**POTL**") resource consent application for the SPD.
4. TMICFT position is that there remain significant historical, ecological, cultural, economic and spiritual risks, in particular the combined cumulative effects of degradation on Te Awanui are increasing at an unsustainable rate requiring immediate avoidance, remedial and mitigation measures to be imposed to arrest the ecological decline Te Awanui is experiencing.
5. Accordingly, TMICFT do not agree with the conclusion reached by the Panel in its decision that granting the approvals would be consistent with the obligations arising under the existing settlements, including the Treaty of Waitangi (Fisheries Claim) Settlement Act 1992 and subsequent Customary Fisheries Regulations. TMICFT position on this matter is set out in TMICFT response to the Panel's Minute 7 dated 14 July 2026 and was discussed in legal submissions at the cultural values hearing.
6. However, as part of TMICFT tangata kaitiaki obligations to Te Maunga o Mauao Mātaihai Reserve and to Te Awanui generally, TMICFT continues to engage and to provide its comments on the draft conditions of consent, as they relate to TMICFT interests, while maintaining its opposition to POTL resource consent application for the SPD.

7. TMICFT refers to Minute 15 (dated 21 August 2026) and the Panels strong encouragement to POTL as the applicant to consider, again, whether a s 64 suspension of processing might enable it time to prepare and submit a more considered response to the conditions.
8. TMICFT supports any suspension of processing as this would allow more time for all parties involved to engage more fully in the draft conditions of consent.

TMICFT COMMENTS ON THE DRAFT CONDITIONS OF CONSENT

9. TMICFT supports the inclusion of the words '*undertake a tikanga-based approach*' in draft conditions 2.1. and 3.1. While TMICFT notes the concerns POTL raise around certainty and enforceability of including such wording in a consent condition, TMICFT consider these concerns can be addressed if more time were available to consider. TMICFT agree that each hapū has its own tikanga but any differences in tikanga are not insurmountable. There is value in working through POTL's concerns if more time to do so were available.
10. TMICFT supports the inclusion of a Terms of Reference ("**TOR**") in draft condition 3.4. TMICFT considers the TOR as proposed by the Panel has the potential to work well alongside a tikanga-based approach to help guide the relationship between POTL and iwi and hapū (SPDAG) for the term of the consent.
11. However, regarding draft condition 3.4 c), TMICFT considers that stronger wording is required so rather than the consent holder merely observing the processes agreed in any TOR, the consent holder should provide for the processes agreed in any TOR.
12. TMICFT supports draft condition 3.4 j) but considers the focus of the annual meetings with POTL Chief Executive Officer and Chair of the Board of Director should extend beyond strategic matters and should also include an opportunity for SPDAG to raise and discuss any cultural effects-based concerns identified by SPDAG.
13. While TMICFT considers the wording of draft condition 8.1 has improved, TMICFT believes this condition could be strengthened. Accordingly, TMICFT suggests additional wording where certain matters or concerns

must be considered by the consent holder when taking into account any advice and or recommendations provided by SPDAG.

14. For example, if the advice or recommendations from SPDAG concern unforeseen effects on the marine environment, including unforeseen cultural effects, that were not identified or considered at time of grant then in this instance the Review provisions in condition 24.1b) should automatically be triggered.
15. TMICFT also consider that the scope of the review triggered under draft condition 24.1b) should not be limited to just cultural effects but should include all ecological effects. The concern here is that if an ecological effect is identified it would have to wait under 1 November for consent conditions to be reviewed as provided under draft condition 24.1a). TMICFT considers this would not be an appropriate response especially where there are unforeseen adverse effects identified. That said, other effects arising from the implementation of the consent that are not new, are unforeseen or became evident after consents are issued should also be capable of triggering a review of conditions under draft condition 24.1b). TMICFT therefore do not support the wording in draft condition 24.1b).
16. In addition, with any explanation by the consent holder for not adopting SPDAG recommendations and/or advice under draft condition 8.1, the explanation should detail how the consent holder took into account concerns such as unforeseen effects and provide evidence of how the effects identified by SPDAG have been resolved.
17. TMICFT considers a similar approach should be taken in relation to the wording in draft condition 8.8
18. TMICFT has concerns with draft condition 13 – Te Paritaha Ongoing Monitoring. The concern is that undertaking annual monitoring at Te Paritaha in accordance with Tauranga Harbour Marine Monitoring Methodologies Plan dated 27 September 2024 is likely to run the risk of sidelining the importance of mātaruranga Māori.
19. In other words, TMICFT believe there is a real risk that the methodologies in the 2024 Plan will not align with mātauranga Māori but because draft

condition 13 requires annual monitoring to be undertaken in accordance with the 2024 Plan, the methodologies in this Plan will prevail.

20. With draft condition 14 – Cultural Monitoring of Dredge operations, TMICFT request that both a cultural and Port induction occurs prior to commencement of work. TMICFT learnings from other POTL consents are that the induction should cover health and safety as well as cultural monitoring requirements.
21. With draft condition 15.1, TMICFT do not agree with the proposal for the Initial Mātauranga Monitoring Plan (“**MMP**”) to be consistent with Te Pā Pātiki conceptual framework. This framework was developed without involvement from or endorsement by TMICFT. TMICFT are also concerned that this framework is not pitched at hapū or Fisheries Trust level.
22. TMICFT consider that any MMP should be written alongside actual base line monitoring and implemented before the consents / approvals are exercised. TMICFT position is that mātaruanga Māori baseline monitoring applies to both an initial and final MMP. Furthermore, TMICFT supports the inclusion of culturally appropriate methods for monitoring and mitigation.
23. With draft condition 18.7 TMICFT appreciates the fisheries restoration fund offered by POTL and agrees with the wording that the purpose of the fund is to facilitate customary fisheries restoration projects within Te Awanui. The TMICFT notes however that \$500,000.00 over the 35-year term of the consent is woefully inadequate providing approximately \$14,000.000 per year to facilitate customary fisheries restoration work in a marine environment that is declining at an unsustainable rate.
24. Importantly, TMICFT aim through this process is to ensure it stays in the lane of customary fisheries as a separate working group to SPDAG. Again, TMICFT appreciates the offer of the fund but is concerned that the fund amount would not cover sustainable restoration of kaimoana over the term of the consent in relation to TMICFT responsibilities to maintain a sustainable fishery.

HYDROGEN SULPHIDE CONCERN

25. While mindful that this concern is new information, at a hui between TMICFT and POTL engineers on 7 August 2026, a health and safety concern was

raised around the release of Hydrogen Sulphide gas when dredging in Stella Passage. When the release of the gas exceeds a certain level, those working on the dredge, including cultural monitors, are required to go inside the vessel for their own health and safety.

26. This concern has not been raised in this resource consent process and therefore not factored into the draft conditions of consent.
27. TMICFT are cognisant that this concern relates to POTL current dredging consents and intends to raise this concern directly with POTL and Regional Council but wanted to make the Panel aware of this issue that was only recently identified.

NGĀTI RANGINUI IWI SOCIARY INCORPORATED, NGĀ RANGINUI SETTLEMENT TRUST, NGĀTI RANGINUI FISHERIES TRUST (“NGĀTI RANGINUI”)

28. TMICFT has had the opportunity to review a draft version of Ngāti Ranginui comments on the draft conditions of consent.
29. To the extent that Ngāti Ranginui comments are consistent with TMICFT position and comments on conditions as set out in this memorandum, TMICFT supports Ngāti Ranginui comments on the draft consent conditions.
30. TMICFT shares the concerns Ngāti Ranginui have raised with the limited time available for commenting on the draft conditions. TMICFT have had to react to the draft conditions formulated by POTL rather than being involved in the development of the conditions putting TMICFT on the back foot from the outset.

DATED at Auckland this 24th day of August 2026



Victoria Tumai
Counsel Acting