

24 August 2026

For the Expert Panel
Stella Passage Development [FTAA-2512-1163]

BY EMAIL: substantive@fasttrack.govt.nz

COMMENTS BY BAY OF PLENTY REGIONAL COUNCIL ON DRAFT CONDITIONS IN ACCORDANCE WITH SECTION 70 FAST-TRACK APPROVALS ACT 2024 (“FTAA”)

Tēnā koutou

1. Thank you for the opportunity to provide comments on behalf of Bay of Plenty Regional Council (**Council**) in relation to the Panel’s draft conditions associated with its draft decision to grant the approvals sought by Port of Tauranga Limited (**POTL**) to enable the Stella Passage development.
2. Council has reviewed the comments made by POTL on the draft conditions and the accompanying memorandum of counsel dated 19 August 2026 (**MOC**). The MOC raises some concerns in relation to the clarity and enforceability of the draft conditions.
3. Under the FTAA, any resource consents granted by the expert panel are effectively deemed to have been granted under the Resource Management Act 1991 (**RMA**).¹ It follows that Council will be the relevant compliance, monitoring and enforcement (**CME**) agency for any regional consents granted by the Panel. Council therefore has an interest in ensuring that the consent conditions imposed by the Panel on any regional consents approved by the Panel are clear and enforceable.
4. The Council’s comments on the draft conditions are limited to such matters. **Attached** are two marked up sets of conditions (provided in Word) relating to the dredging consent (RM26-0055-DC) and the reclamation and structures consent (RM26-0055-LC).² Council has worked off the Panel’s versions, but has taken into account the comments made by POTL.
5. Brief reasons for the proposed amendments are provided as “comments” in the condition documents for ease of reference. These reasons are elaborated on below under the key themes arising.

¹ Section 96 provides that any approval granted under the FTAA has the same force and effect for its duration, and according to its terms and conditions, as if it were granted, issued, or entered into under the relevant specified Act.

² Council’s suggested amendments are highlighted for ease of reference.

Tikanga-based approach

6. Council acknowledges and supports the intention behind the Panel's amendments which seek to ensure a tikanga-based approach to the processes provided for in the draft conditions, which include establishment of the SPDAG and preparation of relationship agreements between POTL and tangata whenua parties.
7. However, Council shares the concerns expressed in the MOC on behalf of POTL, that requiring POTL to undertake a "tikanga-based approach" to the implementation of certain conditions lacks the clarity and certainty required of a lawful consent condition. As part of its CME functions, Council is required to understand, with objective certainty, what a condition of consent requires of a consent holder in order to be able to monitor compliance with and if necessary enforce the condition. As currently worded, the requirement to undertake a "tikanga-based approach" lacks that objective certainty, particularly where the consent holder (the party required to comply) is not tangata whenua and therefore does not have direct knowledge or understanding of the relevant or appropriate tikanga process or processes to be followed.
8. The Council considers that there is merit in POTL's submission that:

POTL's proposed conditions provide the framework within which tikanga can be recognised, expressed and exercised by tangata whenua. They do so by creating processes and opportunities for engagement, allowing tangata whenua to bring their own tikanga to their interactions with POTL, while ensuring that the obligations imposed on the consent holder remain clear, certain and capable of enforcement.³

9. Rather than including an additional requirement in the conditions that the consent holder must undertake a tikanga-based approach, which gives rise to the certainty and enforceability issues outlined above and in POTL's submission, an alternative approach would be to state in the purpose and objective provisions of the conditions that the conditions are intended to provide for a tikanga-based approach. For example, condition 2.2 which sets out the purpose of the relationship agreements, and condition 3.1 which sets out the purpose of the SPDAG, could affirm that those arrangements reflect a tikanga-based approach.

Terms of reference

10. Council acknowledges Minute 15 of the Panel, which clarifies that the intention of the Terms of Reference approach is to ensure that any obligations are only placed on the consent holder. The Council understands the Panel's approach and considers that the conditions have been re-worded by the Panel in a manner which is *vires*. As Council understands Condition 3.4 of the dredging consent, the consent holder is only obliged to *commence preparation* of a Terms of Reference with the SPDAG and is only obliged to

³ MOC at 11(d).

observe the processes of any *agreed* Terms of Reference. Council has proposed some amendments to Condition 3.4 to make this intention clearer and more certain.

11. Given the possibility that final Terms of Reference are not approved by all members of the SPDAG, or where there is an interim SPDAG, Council agrees with POTL that the conditions should provide that the consent may nevertheless be implemented once those processes have been exhausted. Council considers that the risk of those processes not being concluded is mitigated to the extent possible within the conditions framework (which cannot compel agreement), through the SPDAG facilitation and funding processes provided for in the conditions. Council has not suggested any wording to address this issue given that POTL has indicated that it will do so, following feedback from tangata whenua parties.

Mātauranga State of the Environment (SoE) Report

12. Council shares POTL's concerns regarding the *vires* (due to uncertainty) of the Panel's changes to condition 12.1. It is unclear what POTL's obligations to "facilitate" the preparation by the SPDAG of the SoE report would involve, in order for this condition to be satisfied. Council considers the former provision, which required a funding contribution offered by POTL (of \$100,000), to be an objectively clear and enforceable obligation and therefore preferable from a certainty and enforceability perspective. In practice, the funding contribution should assist in facilitating the preparation of the SoE report, by ensuring that it is adequately resourced.
13. An alternative approach might be to reinstate the original wording, but to add in an additional requirement that POTL must also provide access to any information requested by the SPDAG for the purposes of preparing the SoE report and / or provide any such further reasonable administrative assistance with preparation of the SoE report as may be requested by the SPDAG from time to time.

Mātauranga Monitoring Plan

14. While Council understands the intention behind the Panel's proposed new condition, which would require POTL to "facilitate the preparation of an Initial Mātauranga Monitoring Plan" within two months of the consent commencing, Council shares POTL's concerns around the efficacy and enforceability of this condition. It is unclear on the face of the condition who is intended to prepare the plan. It is implicit from the advice note that this may be Ngā Tai ki Mauao. POTL has explained that it does not have the relevant cultural expertise to prepare the plan itself. Council's concern is that the meaning of "facilitate" is uncertain in this context. If the plan does not eventuate in two months, how is Council to assess whether POTL has sufficiently facilitated its preparation?
15. Council also shares POTL's concerns that the Te Pā Pātiki framework may not have the support of all relevant tangata whenua parties. If it does not, this may make facilitation by

POTL of preparation of the Initial Mātauranga Monitoring Plan more difficult to achieve, particularly within the short (two month) timeframe.

16. Finally, Council agrees with POTL that the design and effectiveness of the Initial Mātauranga Monitoring Plan is likely to be dependent on the baseline information derived from the SoE reporting process. It therefore appears sensible to allow that process to occur first, prior to development of the Mātauranga Monitoring Plan as envisaged by the original conditions. If timing is considered important, the Panel may wish consider incentivising prompt completion of the SoE Monitoring report by reinstating the funding requirement, and amending it to require payment of (say) \$50,000 up front, with \$50,000 on completion of the report, or by tying payment to completion of the report by a certain date.

Minor amendments for clarity

17. Council has marked up a number of additional amendments of a minor nature for the Panel's consideration, to assist with the clarity and enforceability of the conditions.

Nāku noa, nā



Mary Hill
Barrister