

FTAA-2509-1101: Application received for referral of the project under the Fast-track Approvals Act 2024 – Stage 2 decisions

Project Name: POTL – Stella Passage Development

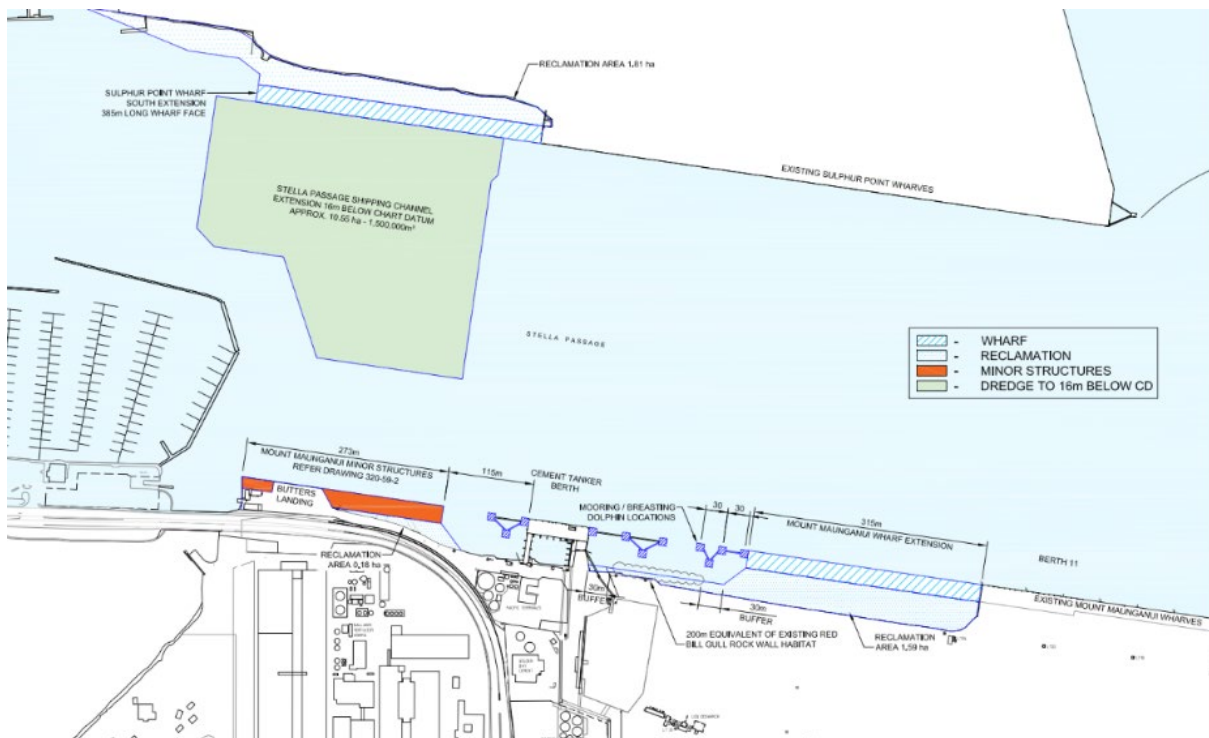
Date submitted:	25 November 2025	Tracking #: BRF-7218	
Security level:	In-Confidence	MfE priority:	Urgent
To Hon Chris Bishop, Minister for Infrastructure		Action sought:	Response by:
		Decision on recommendations	2 December 2025

Actions for Minister's Office staff	<p>Return the signed briefing to MfE: FTAreferrals@mfe.govt.nz.</p> <p>Approve the attached notice of decisions letter.</p>
Number of appendices: 6	<p>Appendices (refer to File Exchange link for appendices 2-6):</p> <ol style="list-style-type: none"> 1. Statutory framework for making decisions 2. Application documents for POTL – Stella Passage Development 3. Stage 1 Briefing Note and decisions 4. Section 18 Report on Treaty settlements and other obligations including comments from Māori groups 5. Comments received from all other parties the Minister sought comments from 6. Draft Notice of Decisions

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Max Gander-Cooper		
Manager	Stephanie Frame	s 9(2)(a)	✓
General Manager	Ilana Miller	s 9(2)(a)	

Project location



Key messages

1. This briefing seeks your decisions under section 21 of the Fast-track Approvals Act 2024 (the Act) on the application from Port of Tauranga Limited (the applicant) to refer the POTL – Stella Passage Development project (the project) to the fast-track approvals process.
2. A copy of the application is in Appendix 2. This is the second briefing on this application. The first (Stage 1) briefing (BRF-6906) with your initial decisions annotated is in Appendix 3.
3. The project is to extend the Sulphur Point and Mount Maunganui Wharves, in the coastal marine area (Tauranga Harbour) including dredging and reclamation for the wharf extensions.
4. The project's key components are:
 - a. deepening, by dredging, approximately 10.55 hectares of Stella Passage to a finished depth of approximately 16m below Chart Datum (CD) (approximately mean low water spring tide). This would yield a volume of dredgings of approximately 1.5 million cubic metres. This dredging will provide clearance for vessels to berth at the proposed wharf extensions
 - i. maintenance dredging, on an as needed basis, to maintain an operational depth of 16m below CD within sitting basins and the shipping channel of Stella Passage
 - ii. reclamation of approximately 3.58 hectares of the coastal marine area (CMA) either side of Stella Passage, to facilitate the wharf extensions. Approximately 1.81 hectares is to be reclaimed on the Sulphur Point (western) side, and

approximately 1.77 hectares is to be reclaimed on the Mount Maunganui (eastern) side

- iii. development of an approximately 385m long extension to the south of the existing Sulphur Point wharves in two stages, a 285m extension first and the balance later
 - iv. development of an approximately 315m long extension to the south of the existing Mount Maunganui wharves in stages
 - v. reconfiguration of existing structures and development of new structures in the CMA, primarily wharf piles, berthing piles and jetties
 - vi. construction and use of four additional cranes atop the proposed Sulphur Point wharf extensions for port operations (shipping container handling)
 - vii. if necessary, the capture and relocation of kororā/blue penguin from the footprint of the Mount Maunganui extension; and
- b. activities involved in, or that support and are subsidiary to, the project. These include for example:
- i. development of new penguin nesting boxes and habitat, and a penguin access ramp, at the south end of Butters Landing;
 - ii. development of the equivalent of 200m of the existing gull nesting habitat in the rock seawall;
 - iii. installation of 11 mooring/breasting dolphins beside the existing Tanker Berth;
 - iv. relocation of the existing ferry ramp and nearby jetties towards the north; and
 - v. development of a bunker barge jetty and associated mooring/breasting dolphins between Butters Landing and the ferry ramp.

5. The project will require the proposed approvals:

- a. resource consents under the Resource Management Act 1991 (RMA)
- b. approvals under the Wildlife Act 1953.

6. The Stella Passage Development project is listed in Schedule 2 of the Act. A substantive application was lodged for that project and found complete by the Environmental Protection Authority (EPA). However, upon judicial review that decision was set aside by the High Court, which held that the description of the project in Schedule 2 related solely to the Sulphur Point wharf extensions and did not include the extension of the Mount Maunganui wharves.¹ We note that if this project is referred, the substantive application for this project will be treated as a wholly new application, separate from the listed application.

7. While we note that there are reasons you may decline the application, we do not consider any mandatory reasons to decline apply. We consider the benefits of the project justify referral and consider other matters can be addressed by an expert panel. We recommend you **accept** the referral application as it meets the criteria set out in section 22 and does not appear to involve an ineligible activity.

¹ *Ngāti Kuku Hapū Trust v Environmental Protection Agency* [2025] NZHC 2453.

8. We seek your decisions on this recommendation and on directions to an expert panel and notification of your decisions.

Assessment against statutory framework

9. The statutory framework for your decision-making is set out in Appendix 1. You must apply this framework when you are deciding whether to accept or decline the referral application and when deciding on any further requirements or directions associated with referral of the project.
10. Before accepting the project, you must consider the application (in Appendix 2), the Section 18 Treaty settlements and other obligations report (in Appendix 4), any comments from invited parties (in Appendix 5), and any document that requires your consideration under section 16, and comply with any procedural requirements under section 16. Following that, you may accept the application if you are satisfied that it meets the criteria in section 22 of the Act and if there are no reasons meaning you must decline the application. We provide our advice on these matters below.

Section 18 Treaty settlements and other obligations report

11. The section 18 report identifies 32 relevant parties under section 18(2) of the Act, and those parties are included in Appendix 3 of that report.
12. The report identifies three Treaty settlement Acts (Waitaha Claims Settlement Act 2013, Ngāti Pūkenga Claims Settlement Act 2017, Ngā Hapū o Ngāti Ranginui Claims Settlement Act 2025), a signed deed of settlement (Ngāi Te Rangi and Ngā Potiki), and signed collective redress deed (Tauranga Moana Iwi Collective) relevant to the project area. Some of these settlements include Crown acknowledgements that specifically refer to the environmental and cultural impact of the development of the Port of Tauranga.
13. The Waitaha Claims Settlement Act 2013 includes a conservation protocol that provides for general principles to be followed by the Department of Conservation (DOC) when consulting Waitaha. While you have partially met the obligations of this protocol by inviting Waitaha to comment on the referral application, these provisions are more relevant to a panel considering a substantive application, as the decision-maker on the Wildlife Act 1953 approval. Conservation relationship agreements with other relevant Treaty settlement entities are less specific or are subject to enactment of the Tauranga Moana Iwi Collective redress legislation.
14. The Tauranga Moana Framework, provided for in the Tauranga Moana Iwi Collective Deed, includes several procedural arrangements regarding resource consent applications – such as information sharing, the appointment of hearing commissioners, and having regard to the Ngā Tai ki Mauao framework document. Again, these provisions are more relevant for a panel considering a substantive application and, importantly, the collective redress legislation has yet to be enacted. Nevertheless, in accordance with section 7 of the Act, it may be appropriate for the panel to consider how it might act consistently with the intent of the Tauranga Moana Framework redress, as set out in the signed collective deed.
15. Similarly, should you accept this application for referral, a panel may also want to consider whether statutory acknowledgements (for Waitaha and Ngāi Te Rangi/Ngā Potiki) over the nearby coast, and customary fishing rights provided for under the Fisheries Act 1996 within the project area, may be affected by the approvals being sought by the applicant.

16. You received comments on the application from Tauranga Moana Iwi Customary Fisheries Trust, Ngā Tai ki Mauao hapū collective, Ngāti Ranginui Fisheries Trust, Ngāti Ranginui Iwi Society Incorporated, and Ngāi Tukairangi Hapū Trust. All raise concerns with or oppose the referral of this application. In summary, they are concerned about the adverse environmental and cultural impact of the project on the harbour, particularly in relation to kaimoana, when the ongoing effects of the applicant's current activities have not been addressed. They point to the applicant's previous compliance history, and question why the applicant is seeking approvals under the Act rather than continuing with the Environment Court process which included directions on matters such as joint environmental monitoring with tangata whenua. Ngāti Ranginui Fisheries Trust contend that the application does not meet several criteria for referral under the Act, including inadequate information to inform the decision, adverse effects on the environment, and poor compliance history.
17. The report notes the opposition of Māori groups invited to comment on the application may make it more appropriate for the proposed approvals to be considered under another Act or Acts, where there is more time for such views to be heard and considered.
18. In his feedback on the draft of this report, the Minister for Māori Development and the Minister for Māori Crown Relations: Te Arawhiti recommended that environmental and cultural concerns be appropriately addressed through the panel, particularly in relation to Rangataua and other areas of iwi significance.

Section 16 Effects of Treaty settlements and other obligations on decision-making

19. Pursuant to section 16 of the Act, we consider you have partially complied with the relevant procedural requirements of the Treaty settlement obligations set out in paragraphs 12-15, as they relate to providing information about the application to, and inviting comments from, Waitaha (in relation to the conservation protocol and statutory acknowledgement) and Ngāi Te Rangi/Ngā Potiki (statutory acknowledgement).
20. While the consultation obligations set out in the Waitaha conservation protocol are more relevant for a panel considering a substantive application, in relation to the Wildlife Act 1953 approval sought, we consider these procedural requirements (and those relating to statutory acknowledgements, if applicable) are able to be complied with through the invitation to comment under section 53 of the Act.

Written comments received

21. Comments were received from Bay of Plenty Regional Council (BOPRC), DOC, Tauranga Airport Authority (TAA) and five Māori groups. The key points of relevance to your decisions are summarised in Table A.
22. The key points from the comments are:
 - a. BOPRC considered the project would be regionally and nationally significant and there are no competing applications or applications to which section 30 would be relevant. BOPRC made reference to previous court decisions and an ongoing court process, but did not oppose referral on this basis
 - b. TAA supported project referral and consider that any issues can be addressed operationally
 - c. DOC did not oppose project referral or identify any concerns about the project
 - d. the Minister for the Environment responded with no comments on the application

- e. the comments from the Māori groups are summarised at paragraph 16 above.

Further information provided by applicant, relevant local authorities, relevant administering agencies

23. You did not request any further information from the applicant, relevant local authorities or relevant administering agencies under section 20 of the Act.

Reasons to decline

24. The statutory framework in Appendix 1 sets out the situations where you must decline the application for referral under section 21(3).
25. We do not consider you must decline this application.
26. You may also decline the application for any other reason under section 21(4). The Act gives some guidance on matters you could consider when deciding whether to decline an application and these are set out in Appendix 1.
27. We have considered the reasons in section 21(5) why you may choose to decline an application, and consider the following may be relevant to your decision:
- a. the project may be inconsistent with a Treaty settlement.
 - b. it would be more appropriate to deal with the matters that would be authorised by the proposed approvals under another Act or Acts.
 - c. the project may have significant adverse effects on the environment.
 - d. the applicant has a poor compliance history under a specified Act that relates to the proposed approvals.

Inconsistency with Treaty settlements

28. While we do not consider that the project is necessarily inconsistent with the relevant redress provisions provided for in Treaty settlements, those settlements also include formal acknowledgements by the Crown of its historical role in the environmental degradation of Tauranga Harbour, including the impact of the development of the port, and how that has affected tangata whenua. If the project perpetuates or exacerbates these impacts, then it could be argued that approving it would be contrary to the Crown's commitment (through its apology) to atone for historical grievances and rebuild the relationship with iwi.
29. While we acknowledge that the cultural effects of the project may be significant, we do not consider that referring the project would be inconsistent with the obligations arising under Treaty Settlements as articulated in section 7. We also note that the Act is consultative, and requires comments from Māori groups to be considered by an expert panel. We also recommend that you direct under section 27 that a panel invites comments from parties other than those they are required to by section 53, including 7 additional Māori groups.

Consideration under another Act or Acts

30. Commenters raised concerns that, due to potential effects and the contentious history of the project, it would be more appropriately considered under the RMA. We do not consider you should decline the project on the basis it would be more appropriately considered under the RMA. An expert panel is required to have the expertise to assess an application, and the panel convener can set a timeframe they consider appropriate for a decision to be issued. We also note the time it has taken to process only the Sulphur Point component of the

project through the existing process under the RMA (over two years before the applicant withdrew).

Significant adverse effects

31. Commenters raised concerns that the cultural effects (including cumulative cultural effects) would be significant, and this is aligned with statements made by the Environment Court in its interim decision on the applicant's application under the RMA for the same project.
32. The applicant provided a preliminary assessment of adverse effects and considers the adverse effects of the project can be mitigated to be no more than minor, with the exception of landscape effects on Whareroa Marae which would be moderate. We do not consider this level of effect is sufficient grounds to decline the application, and consider the adverse effects of the project are able to be considered by an expert panel with the benefit of a substantive application including a full assessment of environmental effects as the Act requires.

Compliance history

33. Commenters noted that the applicant has operated for over 20 years without stormwater discharge permits and has failed to meet the conditions of a 2011 resource consent.
34. The applicant also notes in their application that they have been the subject of five abatement notices under the RMA (one downgraded to a warning upon review) for non-compliance with consent conditions largely related to discharges. The Court has commented that the applicant's attitude to compliance appears to be lacking.
35. We note that the applicant has demonstrated action taken to remedy BOPRC's concerns each time an abatement notice has been issued. We consider this compliance history is concerning, but note a panel could impose pre-start conditions and operational reporting conditions on the applicant which could address concerns about poor compliance.
36. Our discussion of these matters is included in Table A.
37. We have identified one issue further to the section 21(5) matters identified above.

Consenting history

38. The project has been through, or partly through, alternative consenting processes. The applicant previously sought to have the project included among those approved for fast-track consenting under the COVID-19 Recovery (Fast Track Consenting) Act 2020 (FTCA), but in March 2021 the then-Minister for the Environment declined, concluding it would be more appropriate for the project to go through a standard consenting process under the RMA.
39. The applicant then sought a resource consent under the RMA, and asked the consenting authority (Bay of Plenty Regional Council) to allow the application to be determined by the Environment Court. In December 2024, the Environment Court confirmed it would grant consent to stage one of the Sulphur Point extension, subject to the applicant submitting amended conditions, having made some progress towards compliance with the directions in the Court's first interim decision. The Court reserved its decision on the other parts of the application (stage two of Sulphur Point and the Mount Maunganui extensions) until the remaining directions, and a series of new directions, were met. The applicant withdrew that application in May 2025.
40. We do not consider you should decline this application because the project was previously declined under different legislation, as the FTCA required decision-makers to consider a different framework than the Act. The purpose of the FTCA was to urgently promote

employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources. The purpose of the Fast-track Approvals Act 2024 is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits. Decisions issued under the FTCA should not be determinative of decisions under this Act.

41. Nor do we consider you should decline this application because the project (or substantially the same project) was considered by the Environment Court. The Court assessed the application under the RMA, so applied a different decision-making framework than would an expert panel under the Act. We also note the project was not declined under the RMA.

Reasons to accept

42. The statutory framework in Appendix 1 sets out the reasons you can accept a project for referral.
43. Our assessment of these matters is summarised in Table A. We consider the project meets the requirements of section 22, as:
- a. it is an infrastructure or development project because it involves extensions to existing port infrastructure.
 - b. it would have significant regional or national benefits because it would:
 - c. deliver new regionally and nationally significant infrastructure
 - d. deliver significant economic benefits.
44. referring the project to the fast-track approvals process would facilitate the project, including by enabling it to be processed in a more timely and cost-effective way than under normal processes because the timeframes under the Act are shorter than under standard processes, public notification is precluded and appeals are limited to points of law, and only to the High Court.
45. it is unlikely to materially affect the efficient operation of the fast-track approvals process because the project is substantially the same as the project for which a substantive application has already been lodged and found to contain sufficient information to be provided to an expert panel, and the applicant has extensive supporting information, having gone through existing consenting processes for part of the project already.
46. We note the Fast-track Approvals Amendment Bill is currently before the Environment Select Committee, and includes an amendment to the project description for the Stella Passage Development project in Schedule 2. This raises the question of whether referring the project alongside it being listed is an efficient use of the fast-track process. We consider that you should not pre-judge Parliament's decisions on the Fast-track Approvals Amendment Bill, so should not decline this application on the basis of a clause in that Bill.
47. If you disagree with our assessment in paragraphs 42-44, you must decline the referral application under section 21(3)(a) of the Act.

s 9(2)(h)

48. s 9(2)(h)

Conclusions

50. We consider the project meets the section 22 criteria and you could accept the application under section 21 of the Act and refer the project to a panel with the specifications outlined below.
51. We consider there are grounds under which you could decline the application at your discretion (section 21(4)), but also note these matters may be able to be addressed by an expert panel with the benefit of a full application and the imposition of appropriate conditions. We consider this application is finely balanced, but consider that you could refer the application.
52. We consider that if you decide to refer the project, you should specify under section 27 of the Act the following requirements that should apply to the project:
 - a. the following persons or groups from whom a panel must invite comments from in addition to those specified in section 53:
 - i. Minister for Climate Change
 - ii. Tauranga Moana Advisory Group
 - iii. Mauao Trust
 - iv. Te Kōtahitanga o Te Arawa Waka
 - v. Ngā Matarae Trust
 - vi. Whareroa Marae Committee
 - vii. Whareroa Marae Reservation Trust
 - viii. Huria Marae Committee
 - ix. Tauranga Airport Authority.
53. The above restrictions are required to ensure an expert panel has the necessary information to make its decision on a substantive application for the project, and we consider these parties are able to provide information to assist a panel in making that decision.

² At [26].

Next steps

54. The Ministry for the Environment (the Ministry) must give notice of your decisions on the referral application, and the reasons for them, to the applicant(s) and anyone invited to comment under section 17 and publish the notice on the Fast Track website.
55. In your notice of decisions you must direct a panel to comply with any requirements identified in section 16. We do not consider any such requirements apply that would not be satisfied under the Act without your direction.
56. If you decide to refer the project, the Ministry must also give notice of your decision to:
 - a. the panel convener
 - b. any additional iwi authorities or Treaty settlement entities that you consider have an interest in the matter other than those invited to comment under section 17
 - c. the Environmental Protection Authority (EPA)
 - d. the relevant administering agencies
57. You must also provide all of the information you received that relates to this application to the EPA and the panel convener, including:
 - a. the referral application
 - b. any comments received under section 17
 - c. the report obtained under section 18.
58. We will undertake this action on your behalf.
59. We have attached a notice of decisions letter to the applicant(s) based on our recommendations (refer Appendix 6) and we will provide it to all relevant parties. We will provide you with an amended letter if required.
60. Our recommendations for your decisions follow.

Recommendations

61. We recommend that you:

- a. **Note** section 21(3) of the Fast-track Approvals Act 2024 (the Act) requires you to decline the referral application from Port of Tauranga Limited if you are satisfied that the project involves an ineligible activity, or you consider that you do not have adequate information to inform the decision under this section or if you are not satisfied that the POTL – Stella Passage Development Project (project) meets the referral criteria in section 22 of the Act.

Noted

- b. **Agree** that before deciding on the application for project referral under section 21(1) of the Act you have considered:
- i. the application in Appendix 2
 - ii. the report obtained under section 18 in Appendix 4
 - iii. any comments and further information sought under sections 17 and 20 and provided within the required timeframe (if you have received any comments or further information after the required timeframe you are not required to consider them but may do so at your discretion) in Appendix 5.

Yes / No

- c. **Agree** that having considered the matters in recommendation (b) you consider the factors weighing in favour of referring the project outweigh the arguments in favour of declining the project.

Yes / No

- d. **Agree** you are satisfied the project will meet the referral criteria in section 22 of the Act as:
- i. it is an infrastructure project that would have significant regional or national benefits because:
 - it would deliver new nationally significant infrastructure through extensions to the existing wharves and enabling increased throughput capacity
 - it would deliver significant economic benefits by enabling a contribution of \$792 million to \$1.179 billion to GDP
 - ii. referring the project to the fast-track approvals process would facilitate the project, including by enabling it to be processed in a more timely and cost-effective way than under normal processes because the timeframes under the Act are shorter than under standard processes, public notification is precluded and appeals are limited to points of law, and only to the High Court
 - iii. it is unlikely to materially affect the efficient operation of the fast-track approvals process because the project is substantially the same as the project for which a substantive application has already been lodged and found to contain sufficient information, and the applicant has extensive supporting information, having gone through existing consenting processes for part of the project.

Yes / No

e. **Agree** there is no reason the project must be declined under section 21(3).

Yes / No

f. **Agree** to accept the referral application under section 21(1) and refer all of the project to a panel under section 26(2).

Yes / No

g. **Agree** to specify Port of Tauranga Limited as the person who is authorised to lodge a substantive application for the project.

Yes / No

h. **Agree** to specify under section 27(3)(b) of the Act:

- i. the deadline for lodging the application is two years from the date of the notice of decision (default period)
- ii. the following persons or groups from whom a panel must invite comments in addition to those specified in section 53:
 - Minister of Climate Change
 - Tauranga Moana Advisory Group
 - Mauao Trust
 - Te Kōtahitanga o Te Arawa Waka
 - Ngā Matarae Trust
 - Whareroa Marae Committee
 - Whareroa Marae Reservation Trust
 - Huria Marae Committee
 - Tauranga Airport Authority.

Yes / No

- i. **Agree** that the Ministry will provide your notice of decisions to:
- i. anyone invited to comment on the application including local authorities and relevant Māori groups
 - ii. the panel convener
 - iii. the Environmental Protection Authority (EPA)
 - iv. the following relevant administering agencies:
 - Department of Conservation
 - Ministry for the Environment

Yes / No

Signatures

A handwritten signature in black ink, consisting of a large, stylized 'I' followed by a horizontal line that tapers to the right.

Ilana Miller
General Manager – Delivery and Operations

Hon Chris Bishop
Minister for Infrastructure

Date:

Table A: Stage 2 analysis

Recommendation	<u>Accept</u> the referral application to the fast-track approvals process		
Project details	Project Name	Applicant	Project Location
	POTL – Stella Passage Development	Port of Tauranga Limited c/- Holland Beckett The applicant is eligible to apply for and hold the relevant approvals.	In the coastal marine area of Tauranga Harbour
Project description	<p>The project is to extend the Sulphur Point and Mount Maunganui Wharves, in the coastal marine area (Tauranga Harbour) including dredging, reclamation for the wharf extensions.</p> <p>The project's key components are:</p> <ol style="list-style-type: none"> deepening, by dredging, approximately 10.55 hectares of Stella Passage to a finished depth of approximately 16m below Chart Datum (CD) (approximately mean low water spring tide). This would yield a volume of dredgings of approximately 1.5 million cubic metres. This dredging will provide clearance for vessels to berth at the proposed wharf extensions maintenance dredging, on an as needed basis, to maintain an operational depth of 16m below CD within sitting basins and the shipping channel of Stella Passage reclamation of approximately 3.58 hectares of the coastal marine area (CMA) either side of Stella Passage, to facilitate the wharf extensions. Approximately 1.81 hectares is to be reclaimed on the Sulphur Point (western) side, and approximately 1.77 hectares is to be reclaimed on the Mount Maunganui (eastern) side development of an approximately 385m long extension to the south of the existing Sulphur Point wharves in two stages, a 285m extension first and the balance later development of an approximately 315m long extension to the south of the existing Mount Maunganui wharves in stages reconfiguration of existing structures and development of new structures in the CMA, primarily wharf piles, berthing piles and jetties construction and use of four additional cranes atop the proposed Sulphur Point wharf extensions for port operations (shipping container handling) if necessary, the capture and relocation of kororā/blue penguin from the footprint of the Mount Maunganui extensions; and activities involved in, or that support and are subsidiary to, the project. <p>The project will require the proposed approvals:</p> <ol style="list-style-type: none"> resource consents under the Resource Management Act 1991 approvals under the Wildlife Act 1953. 		
Minister invites comments / requests information	Comments from invited parties		Further information from applicant, relevant local authorities, relevant administering agencies
	<p><i>Local authorities</i></p> <p>Bay of Plenty Regional Council (BOPRC) stated there are no competing applications, nor consents for which section 30 of the Act is relevant. BOPRC considered that the Stella Passage project is of regional and national significance, has undergone detailed scrutiny, and that a well-structured process can support effective management of technical, cultural, and environmental matters while contributing to enduring benefits for Te Awanui (Tauranga Harbour) and the wider region.</p> <p>BOPRC noted the project's history, referencing an unsuccessful referral application under the COVID-19 Recovery (Fast-track Consenting) Act 2020 and a direct referral to the Environment Court. BOPRC made mention that the Court highlighted the need for further measures to address cumulative cultural effects on Whareroa Marae and tangata whenua. It emphasised robust mitigation, monitoring, and advisory arrangements to support ongoing participation of iwi and hapū and to manage environmental and cultural values effectively.</p> <p>BOPRC's comments were accompanied by summaries of technical expert advice, which did not identify any significant concerns with the applicant's effects assessments.</p> <p><i>Ministers</i></p> <p>The Minister for the Environment responded with no comments on the application.</p> <p><i>Māori Groups</i></p> <p>Tauranga Moana Iwi Customary Fisheries Trust (TMICFT) opposed the application based on recent kaimoana survey results, which they say indicates an unsustainable decline in kaimoana within the nearby mātaihai reserve. TMICFT stated that the applicant has failed to complete the required monitoring of kaimoana reserves under its current consents for seven years. TMICFT opposed any development that does not include meaningful partnership and robust cultural and environmental safeguards.</p> <p>Should the application be approved, TMICFT proposed a number of conditions including establishing a TMICFT-led kaimoana enhancement programme for Te Awanui and the mātaihai reserve, resourcing long-term monitoring and mātauranga-based data collection and analysis, and ensuring TMICFT representation in all monitoring and marine protection plans.</p>		N/A

These comments draw on an appended cultural values report prepared by TMICFT. The Chair of TMICFT also submitted these comments in their capacity as tāngata kaitiaki under the Fisheries (Kaimoana Customary Fishing) Regulations 1998, to manage and protect customary fisheries in Tauranga Moana.

The Ngā Tai ki Mauao hapū collective did not support project referral. The 20 members of Ngā Tai ki Mauao were all participants in the previous proceedings for this project, and they question why the applicant has abandoned the Environment Court process when interim approval for part of the Sulphur Point works had been granted, subject to conditions. In light of the applicant's previous undertakings to rebuild its relationship with tangata whenua, Ngā Tai ki Mauao view this change of course as acting in bad faith.

Ngā Tai ki Mauao note that the applicant has a poor history of compliance, operating for over 20 years without stormwater discharge permits, and failed to meet earlier consent conditions. Ngā Tai ki Mauao cite the Environment Court's view that the applicant had previously disregarded its Treaty responsibilities under the RMA. Ngā Tai ki Mauao maintain that the applicant's current operations have significant cultural effects, particularly in relation to the adverse impact on Whareora Marae, and that there needs to be substantial remediation of these effects before further consents should be considered.

Ngāti Ranginui Fisheries Trust cite the Environment Court's previous finding that the cultural effects of the applicant's operations on Te Awanui were significant and ongoing, and that tangata whenua had been unable to exercise kaitiakitanga in a meaningful sense. The Court held that the applicant had not met its monitoring and restoration obligations, and directed further work be undertaken with tangata whenua to prepare a Southern Te Awanui Harbour Plan, complete kaimoana surveys, and develop a governance framework for kaitiaki monitoring. Ngāti Ranginui Fisheries Trust stated that these directions have not been fully implemented, and their view is that the referral application is an attempt to circumvent them.

Ngāti Ranginui Fisheries Trust contended that the application does not meet several tests for referral under the Act:

- a. there is insufficient information to inform the decision (under section 21(3)(c)), due to the absence of baseline and cumulative effects environmental data, and the lack of evidence that consultation has informed the project;
- b. you cannot be satisfied that the application is not likely to have significant adverse effects on the environment (under section 21(5)(c)), given the evidence from tangata whenua of the impact of the applicant's current activities;
- c. you cannot be satisfied that the application is consistent with Treaty settlements (section 21(5)(a)), when the applicant makes no reference to fisheries or aquaculture settlements, or the impact of the application on fisheries or aquaculture; and
- d. the applicant's compliance history is poor (section 21 (5)(d)), and there is no evidence that prior deficiencies have been addressed or enforcement issues resolved.

Ngāti Ranginui Fisheries Trust considered that the referral application should be declined for these reasons, and that the applicant should instead complete the partnership, monitoring and restoration commitments arising from the Environment Court's 2023 decision before seeking any further approvals.

The comment from Ngāti Ranginui Iwi Society Incorporated is consistent with the position set out by the Ngāti Ranginui Fisheries Trust. Ngāti Ranginui Iwi Society submits that you should decline to refer the application, due to the unresolved compliance issues and the absence of meaningful incorporation of the views of tangata whenua.

In addition, Ngāti Ranginui Iwi Society Incorporated points to the Crown's apology for historical Treaty breaches in the Ngāti Ranginui settlement, including acknowledgement of deprivation of access to Te Awanui and the environmental degradation caused by the development of the port. Ngāti Ranginui Iwi Society believe that referral of an application that directly affects the same environment would be inconsistent with the Ngāti Ranginui and Tauranga Moana settlements, including the participatory mechanisms established through those settlements, and the Crown's commitment to restoring the relationship with tangata whenua.

Ngāi Tukairangi Hapū Trust did not expressly oppose the application, but oppose any development that does not include meaningful partnership, legal compliance, and robust cultural and environmental safeguards. Ngāi Tukairangi Hapū Trust claim mana whenua status over the project area, and as such they expect to be included in the Fast-track process and outcomes.

Ngāi Tukairangi Hapū Trust view the application as a continuation of the degradation of Te Awanui that has already occurred, and they support the approach of TMICFT, including proposed conditions to protect and restore kaimoana. Ngāi Tukairangi Hapū Trust appended their cultural values report which discusses the cumulative effect of development on the harbour.

Administering agencies

The Department of Conservation (DOC) did not oppose project referral.

DOC did not consider there were any reasons under section 21 why you should decline the application and the project is not inconsistent with the relevant Conservation Management Strategy. While a Wildlife Act approval of this nature would ordinarily take 3-4 months, DOC notes there may be benefits in considering them alongside RMA approvals.

Owners of Māori land in the project area

N/A

Other persons or groups

Tauranga Airport Authority stated they have been engaging with the applicant and fully support the project. They consider any operational implications can be mitigated.

<p>The Minister must decline an application if the Minister is satisfied that the project involves an ineligible activity [section 21(3)(b)]</p>	<p>Based on the information in the application, we consider you can be satisfied that the project does not involve an ineligible activity because it:</p> <ul style="list-style-type: none"> • would not occur on identified Māori land, Māori customary land or a Māori reservation as confirmed by the relevant records of title and consultation with iwi authorities • would not occur in a customary marine title area or protected customary rights area as it has not appeared in our check of agreed CMT • is not an aquaculture activity or activity that is incompatible with aquaculture activities that would occur in an aquaculture settlement area and for which the applicant is not authorised to apply for a coastal permit because it will not occur in an aquaculture settlement area • would not require an access arrangement which cannot be granted under the Crown Minerals Act (including s61(1A)) because it does not include an access arrangement and would not occur on Schedule 4 land • would not be prevented by section 165J, M, Q, ZC or ZDB of the RMA • would not occur on Schedule 4 land as confirmed by the records of title • would not occur on a national reserve as confirmed by the records of title • would not occur on a reserve held under the Reserves Act 1977 that is managed by or vested in someone other than the Crown or a local authority and that person has not consented in writing as confirmed by the record of title • is not a prohibited activity or decommissioning activity under the EEZA, 15B or 15C of the RMA as it does not involve the relevant activities • is not for the purpose of an offshore renewable energy project because it will not involve renewable energy production <p>No comments raised by parties invited to comment have indicated that the project would be ineligible for referral.</p>
<p>The Minister must decline an application if the Minister considers they do not have adequate information to inform the decision [section 21(3)(c)]</p>	<p>Ngāti Ranginui Fisheries Trust (NRFT) considered the application does not include sufficient information to inform your decision, particularly in relation baseline and cumulative effect data, and the adequacy of consultation to inform the project.</p> <p>The Act does not require the applicant to provide a full assessment of environmental effects with a referral application, and we note that this must be provided with a substantive application if the project is referred. We also consider the applicant has consulted with the required parties.</p> <p>We consider you have sufficient information to inform your decision.</p>
<p>Relevant considerations and procedural requirements in Treaty settlement, Mana Whakahono ā Rohe, joint management agreement, or the Marine and Coast Area (Takutai Moana) Act 2011 or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 [section 16]</p>	<p>Pursuant to section 16 of the Act, we consider you have partially complied with the relevant procedural requirements of the Treaty settlement obligations set out in paragraphs 12-15, as they relate to providing information about the application to, and inviting comments from, Waitaha (in relation to the conservation protocol and statutory acknowledgement) and Ngāi Te Rangi/Ngā Potiki (statutory acknowledgement).</p> <p>While the consultation obligations set out in the Waitaha conservation protocol are more relevant for a panel considering a substantive application, in relation to the Wildlife Act 1953 approval sought, we consider these procedural requirements (and those relating to statutory acknowledgements, if applicable) are able to be complied with through the invitation to comment under section 53 of the Act.</p>
<p>Section 22 assessment criteria</p>	
<p>The project is an infrastructure or development project that would have significant regional or national benefits [section 22(1)(a)]</p>	<p>The Minister may consider any of the following matters, or any other matters the Minister considers relevant.</p> <p><i>Assess the factors that are relevant to the application. How is the factor relevant and is it being met by the project?</i></p> <p><i>Will deliver new regionally or nationally significant infrastructure or enable the continued functioning of existing regionally or nationally significant infrastructure [s22(2)(a)(ii)]</i></p> <p>The applicant states the project will enable and enhance the functions of existing significant infrastructure by removing existing constraints on the Port's freight throughput capacity. The Project will enable New Zealand to avoid the significant economic opportunity costs that would accumulate for as long as constraints on Port throughput capacity are allowed to persist.</p> <p>BOPRC considered the project would be both regionally and nationally significant.</p> <p>We consider you can refer the project on this basis.</p> <p><i>Will increase the supply of housing, address housing needs, or contribute to a well-functioning urban environment [s22(2)(a)(iii)]</i></p> <p>The applicant states the project will contribute indirectly to these outcomes, insofar as removing constraints on throughput capacity will contribute meaningfully to the continued supply of building materials, which are fundamental to the outcomes sought by the NPS-UD.</p> <p>No parties commented on this matter. Given the indirect contribution, we do not consider you should refer the project based on this criterion.</p> <p><i>Will deliver significant economic benefits [s22(2)(a)(iv)]</i></p> <p>The applicant states the project will remove constraints which, if allowed to persist, would have significant economic costs for the region and nation. The application (Attachment 2) includes an economic effects assessment from NZIER which estimates opportunity costs for the year 2033 as ranging between around \$792 million to around \$1.179 billion foregone GDP nationally (considering both stages 1 and 2 of the project), and those opportunity costs would continue to accumulate over successive years.</p> <p>We consider that you can refer the project on this basis.</p>

	<p><i>Will support primary industries, including aquaculture [s22(2)(a)(v)]</i></p> <p>The applicant states the project is New Zealand's busiest import-export gateway. As such it is infrastructure that supports, and is significant to, the competitiveness and success of the nation's primary industry export sector. Removing throughput constraints will therefore support the access of New Zealand's primary industries to international markets.</p> <p>While the project is likely to increase New Zealand's export throughput, including for the primary sector, we consider this benefit is not well-quantified and we do not consider you should use this as a basis to refer the project.</p> <p><i>Will support development of natural resources, including minerals and petroleum [s22(2)(a)(vi)]</i></p> <p>The applicant states the project includes improvements that would enhance the capacity and resilience of the Tanker Berth in its role as part of the fuel supply network.</p> <p>We do not consider this is likely to be a significant regional or national benefit, and do not consider you should use this as a basis to refer the project.</p> <p><i>Will support climate change mitigation, including the reduction or removal of greenhouse gas emissions [s22(2)(a)(vii)]</i></p> <p>The applicant states the project will provide mooring capacity to accommodate more of the larger ships that are being commissioned across the global shipping fleet. These larger ships use more modern and efficient propulsion systems. They are therefore more emissions-efficient per unit of cargo shipped than the older, smaller fleet.</p> <p>We do not consider this is likely to be a significant regional or national benefit, and do not consider you should use this as a basis to refer the project.</p> <p><i>Will support climate change adaptation, reduce risks arising from natural hazards, or support recovery from events caused by natural hazards [s22(2)(a)(viii)]</i></p> <p>The applicant states the port is a lifeline utility under the Civil Defence and Emergency Management Act 2002. Removing constraints on the Port's freight handling capacity would improve the Port's ability to contribute to/facilitate natural hazard recovery efforts.</p> <p>We do not consider this is likely to be a significant regional or national benefit, and do not consider you should use this as a basis to refer the project.</p> <p><i>Is consistent with local or regional planning documents, including spatial strategies [s22(2)(a)(x)]</i></p> <p>The applicant states the application is highly consistent with relevant planning documents. It is particularly notable that the Project will occur with the areas the Bay of Plenty Regional Coastal Environment Plan (RCEP) identifies for Port expansion, but has been refined over time to a smaller footprint than that anticipated by the RCEP.</p> <p>While the project appears to be consistent with planning documents, we do not consider this is a benefit that would justify referral.</p> <p><i>Any other matters that may be relevant [s22(b)]</i></p> <p>We note that this project is identical to the Stella Passage project that sought listing in Schedule 2 of the Act, indicating Parliament's intention that the project be able to be considered through the substantive application process as a project with nationally or regionally significant benefits. However, the Mount Maunganui wharves extension was unable to progress through the substantive stage as a result of an error in the description of the project in Schedule 2.</p>
Referring the project to the fast-track approvals process [section 22(1)(b)]	<p><i>Would facilitate the project, including by enabling it to be processed in a more timely and cost-effective way than under normal processes [s22(1)(b)(i)]</i></p> <p>The applicant states that consenting processes undertaken to date pursuant to the RMA have been extremely protracted and costly. The normal processes have consumed more than four years of effort, without delivering a decision on the Project. In comparison, the Panel Convenor responsible for administering POTL's April 2025 application for the listed Stella Passage Development set an 80 working day timeframe for the processing of that application by an Expert Panel, after the receipt of comments from parties invited to provide feedback. This indicates a more timely and cost-effective process when compared to normal RMA processes.</p> <p><i>Is unlikely to materially affect the efficient operation of the fast-track approvals process [s22(1)(b)(ii)]</i></p> <p>A substantive application for the Project has progressed (via the Act Schedule 2 "listed" pathway) to the expert panel stage of the Act process. This demonstrates that sufficient information is available for the Project to pass through the Environmental Protection Authority's completeness checks under section 46 of the Act. The lodgement of this separate referral application responds to the High Court decision³ Ngāti Kuku Hapu Trust v Environmental Protection Agency which identified the Mount Maunganui wharves extension was outside the scope of the Project listing in Schedule 2 of the Act, 4 and indicated the opportunity to utilise the referral application pathway for this Project.⁵ As such, this application is not for a new or additional project that was previously unforeseen.</p>
Reasons to decline	
Minister <u>must</u> decline [section 21(3)]	Minister may decline [section 21(4) and 21(5)(a-h)]

³ Ngāti Kuku Hapu Trust v Environmental Protection Agency [2025] NZHC 2453.

⁴ At [74].

⁵ At [25].

<p><i>The Minister <u>must</u> decline a referral application if:</i></p> <p><i>The application may not be accepted under subsection 1 (meets referral criteria)</i> We consider the application meets the criteria in section 22.</p> <p><i>The Minister is satisfied the project involves an ineligible activity</i> The project does not appear to include an ineligible activity.</p> <p><i>The Minister considers that they do not have adequate information to inform the decision under this section</i> We consider you have sufficient information to inform your referral decision.</p> <p>We do not consider that you must decline the application under this section.</p>	<p><i>The Minister <u>may</u> decline a referral application for any other reason, whether or not it meets the criteria in section 22.</i> <i>Reasons to decline a referral application under subsection 4 include, without limitation:</i></p> <p><i>The project would be inconsistent with a Treaty settlement, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Marine and Coastal Area (Takutai Moana) Act 2011 (MACA), a Mana Whakahono ā Rohe, or a joint management agreement</i></p> <p>The comments from Nga Hapu o Ngāti Ranginui Settlement Trust consider that referring the project would be inconsistent with the Ngā Hapū o Ngāti Ranginui Deed of Settlement and Tauranga Moana Iwi Collective Deed of Settlement, in particular that the Trust has not been meaningfully consulted, the project has not demonstrated it would restore, enhance or protect Tauranga Moana, and the project is not being considered by iwi-appointed commissioners. The Trust noted its MACA application area entirely encompasses the project area. The Trust's view is that its MACA application will be prejudiced by consent being granted for the project.</p> <p>NRFT consider that referring the project would be inconsistent with the Māori Fisheries Settlement 1992, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, and the Māori Commercial Aquaculture Claims Settlement Act 2004. These settlements affirm Māori proprietary rights and kaitiaki responsibilities in the marine environment and impose ongoing duties of active protection and partnership upon the Crown and its statutory decision-makers. NRFT, as the mandated iwi organisation and Iwi Aquaculture Organisation for Ngāti Ranginui, carries the legal mandate to manage and protect those interests within Te Awanui (Tauranga Harbour) and the coastal waters affected by the Stella Passage Project.</p> <p>NRFT noted POTL's referral material makes no reference to the Fisheries or Aquaculture Settlements, and no consideration appears to have been given to how the proposal might impact iwi fishing or aquaculture assets, mahinga kai, or the ecological integrity of Te Awanui which underpins those settlements. NRFT considered referral on the basis of such omission would be inconsistent with the Crown's obligations under ss7, 16, 18 and 21(5)(a) of the Act.</p> <p>While we do not consider that the project is necessarily inconsistent with the relevant redress provisions provided for in Treaty settlements, those settlements also include formal acknowledgements by the Crown of its historical role in the environmental degradation of Tauranga Harbour, including the impact of the development of the port, and how that has affected tangata whenua. If the project perpetuates or exacerbates these impacts, then it could be argued that approving it would be contrary to the Crown's commitment (through its apology) to atone for historical grievances and rebuild the relationship with iwi.</p> <p>While we acknowledge that the cultural effects of the project may be significant, we do not consider that referring the project would be inconsistent with the obligations arising under Treaty Settlements, as articulated in section 7.</p> <p>We note that in their response to request for comments on the section 18 report the Minister for Māori Crown Relations: Te Arawhiti and Māori Development did not consider the project should be declined on this basis.</p> <p><i>It would be more appropriate to deal with the matters that would be authorised by the proposed approvals under another Act or Acts</i></p> <p>Comments from several Māori groups referred to the applicant's application before the Environment Court, and considered it would be more appropriate for the project to progress through RMA process rather than under the Act. The commenters note that a conditional approval has already been obtained for the Sulphur Point works through that process, and it would better enable their participation and provide a better opportunity to address perceived issues with the project. Commenters considered the applicant's withdrawal from the Environment Court process having obtain this conditional approval is in bad faith. The section 18 report notes that given the extensive opposition from iwi groups you should consider whether it would be more appropriate for the project to be considered under another Act or Acts.</p> <p>We note the length of time it took for the interim decision under the RMA which provided the conditional approval for the Sulphur Point works, being more than 18 months after a hearing was held. We consider that the project would be processed more quickly under the Act, and consider that the Act enables robust consideration of the commenters' concerns, through the requirement of panels to invite comments, hold hearings, and appoint experts. We consider the panel convener(s) can appoint a suitably qualified panel and impose a suitable timeframe for consideration of the project, and you should not decline on the basis the project should be considered under another Act or Acts.</p> <p><i>The project may have significant adverse effects on the environment</i></p> <p>Ngā Tai ki Mauao Hapū Collective (NTKMHC) considered (citing the Environment Court in its comments on the applicant's direct referral application) that the project may have significant cumulative effects on cultural values, and on Māori parties who are required to engage repeatedly in regulatory processes. The Collective considered the cultural effects are so significant that there is a risk that the application may be declined by an expert panel.</p> <p>NRFT considered (citing the Environment Court) that the project's cultural effects are significant and ongoing, and the project should be declined due to these adverse effects.</p> <p>While we consider these concerns have merit, particularly in light of the Environment Court's comments,⁶ we note that the Court, in considering the previous direct referral application, considered the Sulphur Point wharf extensions could be granted subject to conditions. We consider an expert panel is best placed to consider the adverse environmental effects of the project with the benefit of a full application (including full assessment of environmental effects), relevant expert input, and further input from commenters. We do not consider you should decline the application on this basis.</p> <p><i>The applicant(s) has a poor compliance history under a specified Act that relates to any of the proposed approvals</i></p> <p>NTKMHC and NRFT noted that the applicant has operated for over 20 years without stormwater discharge permits and failed to meet the conditions of a 2011 resource consent.</p> <p>The applicant also notes in their application that they have been the subject of five abatement notices under the RMA (one downgraded to a warning upon review) for non-compliance with consent conditions largely related to discharge. The Court has commented that the applicant's attitude to compliance appears to be lacking.</p>
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⁶ *Port of Tauranga Ltd v Bay of Plenty Regional Council* [2023] NZEnvC 270 at [25].

	<p>We note that the applicant has demonstrated action taken to remedy BOPRC's concerns each time an abatement notice has been issued, We consider this compliance history is concerning, and may be grounds to decline the application. If you chose to refer the application, we consider a panel could impose pre-start conditions and operational reporting conditions on the applicant which could address concerns about poor compliance.</p> <p><i>The project area includes land that the Minister for Treaty of Waitangi Negotiations considers necessary for Treaty settlement purposes</i></p> <p>No comments received indicated this was the case, and the project will occur in the coastal marine environment.</p> <p><i>The project includes an activity that is a prohibited activity under the Resource Management Act 1991</i></p> <p>Neither the application nor any comments received indicated the project would include a prohibited activity.</p> <p><i>A substantive application for the project would have one or more competing applications.</i></p> <p>Neither BOPRC nor DOC identified any competing applications for the project.</p> <p><i>In relation to any proposed approval of the kind described in section 42(4)(a) (resource consents), there are one or more existing resource consents of the kind referred to in section 30(3)(a</i></p> <p>BOPRC did not identify any consents of this type.</p> <p>We consider there are grounds under which you could decline the application, but also note these matters may be able to be addressed by an expert panel with the benefit of a full application and the imposition of appropriate conditions. We consider this application is finely balanced, but consider that you could refer the application.</p>
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Appendix 1: Statutory framework summary

1. You are the sole decision maker for referral applications. If you accept a referral application, then the whole or part of the project will be referred to the fast-track approvals process.
2. If a Treaty settlement, the Marine and Coastal Area (Takutai Moana) Act 2011, the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, a Mana Whakahono ā Rohe or a joint management agreement provides for consideration of any document or procedural requirements, you must, where relevant:
 - a. give the document the same or equivalent effect through this process as it would have under any specified Act; and
 - b. comply with any applicable procedural requirements.
3. You must decline a referral application if:
 - a. you are satisfied the project does not meet the referral criteria in s22
 - b. you are satisfied the project involves an ineligible activity (s5)
 - c. you consider you do not have adequate information to inform your decision.
4. You may decline an application for any other reason, including those set out in s21(5) and even if the application meets the s22 referral criteria.
5. You can decline an application before or after inviting comments under s17(1). However, if comments have been sought and provided within the required time frame, you must consider them, along with the referral application, before deciding to decline the application.
6. If you do not decline a referral application at the initial stage you must copy the application to, and invite written comments from:
 - a. the relevant local authorities,
 - b. the Minister for the Environment and relevant portfolio Ministers
 - c. the relevant administering agencies
 - d. the Māori groups identified by the responsible agency
 - e. the owners of Māori land in the project area (if applicable)
 - f. you may provide the application to and invite comments from any other person.
7. You can request further information from an applicant, any relevant local authority or any relevant administering agency at any time before you decide to decline or accept a referral application (see section 20 of the Act).
8. However, if further information has been sought and provided within the required time frame you must consider it, along with the referral application, before deciding to decline the application.