

**BEFORE AN EXPERT CONSENTING PANEL UNDER THE FAST-TRACK APPROVALS ACT
2024**

IN THE MATTER OF an application for resource consents and
a wildlife approval under the Fast-track
Approvals Act 2024 by Port of Tauranga
Limited for activities associated with a
listed project, being the Stella Passage
Development

MEMORANDUM OF COUNSEL ON BEHALF OF PORT OF TAURANGA LIMITED

DATED 19 January 2026



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Introduction

1. Port of Tauranga Limited (**POTL**) is seeking resource consents and a wildlife approval under the Fast-track Approvals **Act** 2024 to undertake the extension of the Sulphur Point and Mount Maunganui wharves at the Port of Tauranga (the **Project**). The Project is a listed project in Schedule 2 of the Act.
2. The Project involves undertaking reclamation of land and associated dredging, to extend the Sulphur Point wharf by 385m (in two stages) and the Mount Maunganui wharves by 315m. Minor structures at Butters Landing and mooring and breasting dolphins adjacent to the extension of the Mount Maunganui wharves will also be constructed as part of the Project as well as provision for four new cranes on the Sulphur Point wharf extension.
3. The Project's substantive application report prepared by Mitchell Daysh Limited provides the complete assessment of the Project, and its effects, against the requirements in the Act. This Memorandum accompanies the substantive application report and addresses the following:
 - (a) The national and regional significance of the Project;
 - (b) Background to the Project;
 - (c) Consultation with key stakeholders;
 - (d) Cultural mitigation proposed;
 - (e) Proposed management and monitoring plans;
 - (f) Transitional Provisions in the Fast-track Approvals **Amendment Act** 2025; and
 - (g) The scope of the Project.

National and regional significance

4. The Port of Tauranga is plainly infrastructure with national and regional significance, evidence of which includes the acknowledgement of this status in the Bay of Plenty Regional Policy Statement.¹ It is an economic and employment linchpin for the Bay of Plenty and houses New Zealand's largest container terminal at Sulphur Point, as well as extensive bulk cargo wharves, storage facilities, and bunker berths at Mount Maunganui. The Port of Tauranga handles around 25 million tonnes of cargo per annum, providing importers and exporters with the most efficient, lowest carbon route to and from international markets. One third of all New Zealand's cargo, 38% of all New Zealand's exports by volume, and 39% of all shipping containers are handled at the Port of Tauranga.

5. POTL's current activities at both the Sulphur Point and Mount Maunganui wharves are constrained in terms of container capacity, vessel congestion and/or age. One of the Project's key drivers is to allow POTL to maximise the efficient use of the existing infrastructure and footprint of the Port of Tauranga by removing or easing these constraints. Development of the Project is needed to accommodate current and future growth in vessel sizes and import and export cargo volume. The consequence of inaction is forgoing the additional significant economic activity that would be generated if the Project goes ahead.² Failure to realise the development of the Project would mean that New Zealand and the Bay of Plenty incur economic opportunity costs arising from unrealised growth in export and import throughput.

6. The Project is also recognised as "future development" for the Port of Tauranga in the Bay of Plenty Regional Council's Regional Coastal Environment

¹ Bay of Plenty Regional Policy Statement (1 August 2023), section 2.2, Policy CE 14B, and Appendix A.

² As at 2033, this is estimated to be between \$792 million to \$1.179 billion at the national economy level. (Section 1.4 of the substantive application report).

Plan 2019 (and is also expressly anticipated by the Outline Development Plan (2013) at Schedule 9 of that Coastal Environment Plan).³

7. It is evident from the discussion above that significant national and regional benefits would be derived from the development of the Project. The Port of Tauranga is vital infrastructure to New Zealand's economy and without the Project, the negative flow on effects would be felt nationwide, but particularly within the Bay of Plenty Region. POTL and its technical advisers consider that the Project can be undertaken in a manner that addresses any unavoidable adverse environmental effects while also achieving the purpose of the Act – to deliver significant regional and national benefits. As such, we respectfully submit that when the purpose of the Act is taken into account, that it is obvious that the consents and approvals for the Project must be granted.

Background to the Project

8. The Project has long been signalled, having been included in regional policies and plans for Te Awanui/Tauranga Harbour since 2003. The Project is not a new concept, and has been widely known to interested parties (including the Bay of Plenty Regional Council and tangata whenua) for some time.

COVID-19 fast-track application

9. Development of POTL's first consent application for the Project began in 2018. Following the enactment of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**COVID-19 Fast-track Act**), POTL applied in May 2020 for fast-track referral of the Project (albeit a larger version of the Project). This application was refused by the then Ministers for the Environment and Conservation in August 2020 on the basis that it would be more appropriately considered under the usual Resource Management Act 1991 (**RMA**) procedure due to the level of public interest.

³ Schedule 9, Regional Coastal Environmental Plan, Bay of Plenty Regional Council (3 December 2019).

Environment Court direct referral

10. In May 2021, POTL made a resource consent application to the Bay of Plenty Regional Council and shortly thereafter filed notice requesting direct referral of the application to the Environment Court. After the initial hearing scheduled for July 2022 was postponed due to a COVID-19 outbreak amongst some of the participants, a three week hearing between February and March 2023 ensued involving participation by tangata whenua as s 274 parties and the Bay of Plenty Regional Council. Towards the end of the Environment Court hearing in 2023, the scope of POTL's application was reduced in response to concerns raised during the hearing by the tangata whenua of Whareroa Marae. In particular, the size of the southern Mount Maunganui reclamation, wharf extensions and dredging was decreased.
11. The Environment Court's first interim decision was released in December 2023. The Court indicated that consent for Stage One would be granted, and POTL was directed to undertake further work and consultation with tangata whenua over a nine month period. A decision on Stage Two was reserved.⁴
12. In responding to the Court's directions in its first interim decision, POTL undertook further consultation with tangata whenua in 2024 and developed an extensive body of further work between January and September 2024.⁵ Following receipt of this body of work, the Environment Court, in its second interim decision in December 2024, held that consent for Stage One would be granted pending submission of a further set of agreed conditions between

⁴ The Project was separated into two stages by the Environment Court (see Table 3, section 1.3 of the substantive application report):

- Stage One includes reclamation of 0.88ha of the coastal marine area (**CMA**), construction of a 285m extension to the Sulphur Point wharf and dredging of 6.1 ha of Stella passage to 16m chart datum (which equates to approximately 850,000m³ of dredging).
- Stage Two includes reclamation of 0.93ha of the CMA and construction of a further 100m extension of the Sulphur Point wharf south of the stage one reclamation and extension, dredging of 4.45 ha of Stella passage to 16m chart datum (which equates to approximately 650,000m³ of dredging), reclamation of 1.77 ha of CMA at the Mount Maunganui wharves, extension of the Mount Maunganui wharves by 315m and construction of the equivalent of 200m of gull habitat, 11 mooring and breasting dolphins, a bunker barge jetty and a penguin ramp and habitat south of the Mount Maunganui reclamation.
- The cranes at Sulphur Point are not limited to either Stage One or Two.

⁵ As set out in *Port of Tauranga Limited v Bay of Plenty Regional Council* [2023] NZEnvC 270 at the Directions at C.

POTL and the Bay of Plenty Regional Council and the further matters as set out in its decision being addressed (a decision on Stage Two remained reserved).⁶ In doing so, the Court reaffirmed its determination that from a western science perspective the effects of the Project are expected to be minor in the short-term and negligible in the long-term.⁷ Three appeals to the High Court were received against the Court's second interim decision at the end of 2024. The direct referral application was withdrawn on 8 May 2025.

13. POTL's application under the Act incorporates, the Project proposed through the direct referral application, as refined through the Environment Court process, as well as the additional body of work undertaken between January and September 2024. Whilst there have been some amendments to technical reports to meet certain requirements in the Act (and to update reports in light of the further body of work produced following the Court's first interim decision), they ultimately remain consistent with the form of the direct referral application currently before the Environment Court.
14. This application does not materially depart from the application that was before the Environment Court. The only notable changes are that POTL is now applying for a wildlife approval in relation to handling of little blue penguins under the Act (which it could not do under the RMA direct referral process),⁸ and resource consent for installation of four cranes at Sulphur Point.

First substantive application

15. Following the enactment of the Act and the listing of the Project, POTL, following a period of consultation with interested parties, lodged a listed substantive application under the Act for the Project on 14 April 2025 (which we refer to as the "first substantive application"). That application was accepted as being complete and within scope by the EPA (in accordance with

⁶ *Port of Tauranga Limited v Bay of Plenty Regional Council* [2024] NZEnvC 337.

⁷ *Port of Tauranga Limited v Bay of Plenty Regional Council* [2024] NZEnvC 337 at [8].

⁸ POTL would have obtained the wildlife approval from DOC under the Wildlife Act 1953 once it was granted the resource consents under the direct referral process.

s 46 of the Act) on 8 May 2025 and was referred to the Panel Conveners. Judicial review proceedings were subsequently lodged on 4 June 2025 against the EPA's decision by two interested hapū groups on a number of grounds, notably the issue of scope – s 46(2)(b) (other grounds raised were subsequently withdrawn before the substantive hearing). Those proceedings were ultimately successful, and on 27 August 2025 the High Court found that the first substantive application was out of scope due to it seeking approvals relating to the extension of the Mount Maunganui Wharves (which at the time were not referred to in the Project's description in Schedule 2).⁹ No further work was to be undertaken in respect of the first substantive application until relief could be agreed – no such relief was agreed as the issue of scope was remedied by the Amendment Act.

16. The Government had acknowledged that the omission of the Mount Maunganui wharf extensions in Schedule 2 was a mistake and would be corrected. Following that announcement, the Fast-track Approvals Amendment Act 2025 was enacted¹⁰ correcting the description and geographical location of the Project in Schedule 2 to include the extensions of the Mount Maunganui wharves and to remove the reference to 8.5 hectares in the Project's approximate geographical location (see the table below).¹¹

<i>Authorised person</i>	<i>Project name</i>	<i>Project description</i>	<i>Approximate geographical location</i>
Port of Tauranga Limited	Stella Passage Development	In stages, extend the Sulphur Point and Mount Maunganui wharves, including associated reclamation and dredging of the seabed	8.5 hectares of the Coastal marine area within Tauranga Harbour at Sulphur Point and Mount Maunganui

⁹ *Ngāti Kuku Hapū Trust v Environmental Protection Agency* [2025] NZHC 2453 at [74].

¹⁰ 16 December 2025.

¹¹ s 52(25) Fast-track Approvals Amendment Act 2025.

17. The extensions of the Mount Maunganui wharves always have been part of the scope of the activities proposed to be undertaken as part of the Project throughout all processes discussed above – there was never a form of the Project that did not include these extensions.
18. Unfortunately, the first substantive application did not benefit from the changes to Schedule 2 in the Amendment Act.¹² That application would continue to be out of scope. As such the first substantive application was withdrawn by POTL on 16 January 2026 and this new application subsequently lodged to ensure that the entire scope of the Project is captured.
19. For completeness, it is recorded that POTL also applied for and was granted a referral application for the Project.¹³
20. The Project has already faced extensive scrutiny by the Court, Bay of Plenty Regional Council, and tangata whenua alike. All parties (bar the Environment Court) are now involved in this fast-track application.
21. The Project's history, and recognition in the Outline Development Plan area in the Bay of Plenty Regional Council's Regional Coastal Environment Plan, demonstrates that this is not a new development. Throughout the nearly five year process, key stakeholders and the Environment Court have raised their concerns and provided comments on the application and Project. POTL has listened to these concerns and comments and has actively addressed them through provision of further information and/or reports or has adapted the Project's configuration (specifically, the size of the Mount Maunganui Wharves and dredging were reduced in response to the concerns of Ngāti Kuku and Whareroa Marae).

¹² Schedule Fast-track Approvals Amendment Act 2025.

¹³ *Notice of Decision on application for referral of the POTL – Stella Passage Development project under the Fast-track Approvals Act 2024* FTAA-2509-1101 (27 November 2025).

22. The consenting history to date speaks to the Project's robustness and adequacy in identification and assessment of any effects or concerns that may arise.

Consultation

23. POTL, through its involvement with Ngā Mātarae Charitable Trust, has been sharing its development plans in relation to Stella Passage with tangata whenua since 2016. The Ngā Mātarae Charitable Trust includes representatives of Ngāi Te Rangi, Ngāti Ranginui, Ngāti Pūkenga, the Tauranga Moana Iwi Customary Fisheries Trust and the Mauao Trust. Key stakeholders were consulted in early 2019 in anticipation of lodgement of POTL's application for the Project, which ultimately informed the application under the COVID-19 Fast-track Act. Consultation has been ongoing and consistent from this time and has spanned three processes: the COVID-19 Fast-track Act, the RMA, and now the Act. We again highlight that the applications under each of these processes remained substantially consistent with its predecessor, subject to amendments, primarily reducing the scale of the proposed development, to address feedback received through these processes.
24. In anticipation of its COVID-19 Fast-track Act application, POTL arranged hui in early 2019 with tangata whenua to discuss the Project and subsequently circulated expert reports to the groups in March and April 2020. The aim was to give tangata whenua the opportunity to establish a cultural view on the Project's effects. At this time, POTL funded an independent planner to assist Ngāi Te Rangi (at their request).
25. Following rejection of its application under the COVID-19 Fast-track Act, POTL continued to engage with tangata whenua on an application under the RMA. Cultural impact assessments and letters were received between February and May 2021 and hui were held in February and March 2021 to discuss the application. Following lodgement of its direct referral application various

tangata whenua filed s 274 notices.¹⁴ POTL continued to meet with representatives of the s 274 parties post-hearing and in the interim period between the initial and postponed hearing dates.¹⁵

26. Following the Environment Court's first interim decision, POTL sent an invitation to all s 274 parties in December 2023 proposing a wānanga to discuss the Court's decision and sought that tangata whenua advise how they wished to be engaged with. Some responses were received and a tentative date was set down for 15 June 2024, but the day prior Ngāti Ranginui advised that its representatives would not be attending. POTL still went ahead and attended a hui with Ngā Tai ki Mauao¹⁶ and the Bay of Plenty Regional Council that day. Despite POTL's continued attempts, no wānanga with all parties to the direct referral proceedings occurred.
27. Between January and September 2024, POTL met and communicated with representatives of the s 274 parties to discuss the Court's directions. Draft documents addressing the Court's directions were circulated and feedback sought from tangata whenua. After initial meetings in early and mid-2024, direct feedback from the groups on the documents prepared by POTL to address the Court's directions was limited. These documents were ultimately filed with the Environment Court on 30 September 2024 to meet the Court's deadline in its directions.
28. POTL and the Ngā Tai ki Mauao Hapū Collective agreed (following the Court's suggestions) to an alternative dispute resolution process in which Alex Hope was appointed as facilitator. Ngā Tai ki Mauao, Ngāti Kuku/Whareroa Marae and POTL attended meetings, but unfortunately, Mr Hope's assistance did not

¹⁴ These parties were: Te Rūnanga o Ngāi Te Rangi Iwi Trust, Te Rūnanga o Ngāti Kahu (ki Tauranga Moana), Ngāti Kuku Hapū, Ngāti Tapu, Ngāti He, Ngāti Ranginui Fisheries Trust, Ngāti Kaahu a Tamapahore Trust, Whareroa Marae Trustees, Ngā Hapū o Ngā Moutere Trust, Ngāti Kahu, Ngāti Ranginui Iwi Society and the Tupuna Trust (who filed a late notice).

¹⁵ At the time of the Court's first interim decision Ngāi Te Rangi advised that it would leave engagement to be led by their hapū. Following which POTL began engagement with Ngā Tai ki Mauao Hapū Collective, a collective of the Ngāi Te Rangi hapū which includes those Ngāi Te Rangi hapū who were s 274 parties to the Environment Court proceedings, but also hapū who were not.

¹⁶ A grouping of Ngāi Te Rangi hapū as described in the above footnote.

result in any formal feedback in relation to the documents required to be produced as part of the Court's directions.

29. POTL has taken a broad approach to consultation with relevant iwi and hapū under the Act to ensure that all relevant parties are consulted. This includes consulting entities who were not party to the direct referral or the COVID-19 Fast-track Act applications. Some parties that have been consulted under the Act were not party to either of the previous processes, but are collectives of tangata whenua who were (such as the Ngā Tai ki Mauao Hapū Collective which is a collective of Ngāi Te Rangi hapū). Other groups had no involvement in the Environment Court process, but have been provided with opportunity to engage with the process under the Act.

30. For this application, POTL has held technical forums from January to April 2025 in which tangata whenua's cultural specialists and experts have been able to work with POTL's experts and officials to gain a technical understanding of the application. POTL has also provided copies of the draft substantive application report, draft consent conditions and supporting documents to tangata whenua and afforded them the opportunity to engage directly with POTL's officials on more specific matters upon request. POTL's consultation process is described in the report *Port of Tauranga Limited Tauranga Moana Tauranga Tāngata Consultation Report* prepared by Mahea NZ Limited.¹⁷

31. From 2020 to 2024, POTL contributed funding in excess of \$1,100,000 to tangata whenua parties to facilitate their participation in the process of consenting the Project.¹⁸ This included significant resourcing to Ngāi Tai ki Mauao and Ngāti Ranginui in the direct referral process, and comprised direct resourcing as well as payment of their professional legal and planning fees.

¹⁷ Appendix 18 to the substantive application report.

¹⁸ Not all tangata whenua being consulted under the Act were party to the Environment Court direct referral proceedings.

32. Funding has also been made available to tangata whenua to assist them in consultation prior to lodgement of this application under the Act including, but not limited to, resourcing for preparation of cultural impact assessments and participation at hui with POTL staff and experts. Each party has been given access to amounts of up to \$40,000 through service agreements, with over \$800,000 being made available to support iwi and hapū with pre-lodgement engagement of this application. We note that additionally the Environmental Protection Authority must pay a contribution to the costs of a Māori Consultation Group (being defined as certain tangata whenua groups who are invited to comment on a substantive application by the panel) from the fees paid by POTL.¹⁹ This assures ongoing financial support for tangata whenua to participate in this fast-track process.
33. Following the lodgement of the first substantive application POTL continued to engage and consult with tangata whenua, including maintaining open communication pathways on the referral application.
34. We submit that prior consultation under previous processes (including the first substantive application) cannot be discounted or ignored as POTL has addressed issues raised through this consultation in its application. POTL has committed a vast amount of resources to undertaking consultation under each of the three processes and remains committed to continuing engagement post the granting of the consents and wildlife approval.

Cultural mitigation

35. In proposing its cultural mitigation package for the Project, POTL has retained key elements that it developed during the direct referral process and that were present in the Environment Court's first and second interim decisions. This includes:

¹⁹ Clause 6(1) Fast-track Approvals (Cost Recovery) Regulations 2025.

- (a) Retaining the amendments it made to its application during the direct referral process, to modify the Project to avoid as far as practicable, adverse effects on Ngāti Kuku, Ngāi Tukairangi and the Whareroa Marae, by avoiding dredging on the eastern side of Stella Passage, minimising reclamation and restricting construction to minor structures at Butters Landing/south of the existing tanker berth;
 - (b) Retaining the proposal for conditions as to relationship agreements, which were proposed as a means for POTL to have direct relationships with iwi and hapū, as a forum for discussion about wider initiatives that are not suitable for inclusion in consent conditions;²⁰
 - (c) The Te Awanui/Tauranga Harbour focussed scholarship fund through the University of Waikato for the iwi and hapū of Tauranga Moana.²¹
36. POTL has further retained base concepts in its cultural mitigation package, and refined those for this application:
- (a) The proposal for a contribution of funds to the Whareroa Marae towards Whareroa Marae infrastructure projects in recognition of effects on it specifically, noting that in addition to an annual payment, a substantial one-off payment is also proposed;
 - (b) Retaining the proposal for resourcing a tangata whenua-led forum (in the proposed consent conditions, the Stella Passage Development Advisory Group (**SPDAG**)). The SPDAG will have a wide-ranging remit to advise the consent holder in the implementation of the consents, develop a Mātauranga Monitoring Plan, meet with POTL's Chief Executive and Chair in relation to long-term strategic planning of the Port, and administer funds derived from a range of payments required by the proposed consent conditions;

²⁰ Condition 2.1 on both the Proposed Dredging Consent, and Proposed Reclamation and Structures Consent.

²¹ Conditions 19.1 and 19.2 Proposed Dredging Consent.

- (c) Retaining proposals to recognise the mana and rangatiratanga of Tauranga Moana iwi such as funding the design and implementation of Pou or other structures, to recognise the significance of the land to tangata whenua parties.
 - (d) Retaining the proposal for POTL to undertake annual ongoing monitoring of Te Paritaha for the duration of the dredging consent.
 - (e) Providing funding for tangata whenua (through the SPDAG) to prepare a Mātauranga Māori State of the Environment Report.
37. POTL has also considered the Court's first interim decision, that POTL should address further the extent and degree of recognition of and provision for the relationship of Ngāti Kuku and Whareroa Marae.²² In light of that, it has developed further mitigation proposals specific to Whareroa Marae. Although those parties have not provided POTL with Cultural Values Reports for lodgement of this application, POTL has been able to draw on the impacts and mitigations previously expressed by those parties through the direct referral process. Those further mitigation proposals are:
- (a) A substantial one-off payment of \$1,000,000 (and ongoing annual payments of \$25,000) to the Whareroa Marae Reservation Trust towards Whareroa Marae infrastructure projects;
 - (b) A one off payment of \$250,000 for the SPDAG to use for a longitudinal assessment of health and wellbeing against agreed marae outcomes for Whareroa Marae; and
 - (c) A land use policy addressing incompatible activities on land owned by the Port of Tauranga Limited and located adjacent to Whareroa Marae.

²² *Port of Tauranga Limited v Bay of Plenty Regional Council* [2023] NZEnvC 270 at [414].

38. As a result of the Court's first interim decision, which brought some focus on the sandpile at Sulphur Point as a result of the direct referral process, POTL has also established a fund of \$150,000 to be administered by the SPDAG for the purpose of assessing and developing opportunities to enhance avifauna habitat in and around Te Awanui/Tauranga Harbour.
39. POTL's application includes a cultural mitigation package in excess of \$6,000,000 (to be paid over the life of the consents). POTL respectfully considers that the sum of this package is commensurate with the level of potential cultural effects that may arise from the Project. POTL's mitigation package includes the following financial contributions to tangata whenua:
- (a) A one off payment of \$2,000,000 to the SPDAG to invest in projects of its choosing;²³
 - (b) \$100,000 to the SPDAG to prepare a Mātauranga Māori State of the Environment Report;²⁴
 - (c) \$25,000 annually to support the SPDAG in the preparation and delivery of the Mātauranga Monitoring Plan (from the time of establishment of the Mātauranga Monitoring Plan to the expiry of the consents);²⁵
 - (d) A one off payment of \$500,000 to the SPDAG to use for establishment of Pou;²⁶
 - (e) A one off payment of \$250,000 to the SPDAG to use for a longitudinal assessment of the health and wellbeing against agreed marae outcomes for Whareroa Marae;²⁷

²³ Condition 18.1 Proposed Dredging Consent and Condition 15.1 Proposed Reclamation and Structures Consent.

²⁴ Condition 12.1 Proposed Dredging Consent.

²⁵ Condition 15.5 Proposed Dredging Consent and Condition 14.5 Proposed Reclamation and Structures Consent.

²⁶ Condition 18.2 Proposed Dredging Consent and Condition 15.2 Proposed Reclamation and Structures Consent.

²⁷ Condition 18.3 Proposed Dredging Consent and Condition 15.3 Proposed Reclamation and Structures Consent.

- (f) A one off payment of \$100,000 to the SPDAG to fund an independent audit and assessment of discharges against existing consent conditions and discharges to Te Awanui/Tauranga Harbour;²⁸
 - (g) A fund of \$150,000 to be administered by the SPDAG for the purpose of assessing and developing opportunities to enhance avifauna habitat in and around Te Awanui/Tauranga Harbour;²⁹
 - (h) A one off payment of \$1,000,000, and an annual payment of \$25,000, to the Whareroa Marae Reservation Trust towards Whareroa Marae infrastructure projects;³⁰
 - (i) Establishment of a fund of \$250,000 to provide for research and education scholarships for iwi and hapū that have a relationship with Te Awanui/Tauranga Harbour;³¹
 - (j) Funding for establishment of a land use policy for POTL land immediately adjacent to Whareroa Marae.³²
40. Evidence provided in the Environment Court hearing on behalf of the Ngāi Te Rangi parties estimated that the cost of their cultural mitigation proposals would be in the range of \$75,000,000 to \$100,000,000 (notably this sum excludes other Tauranga Moana tangata whenua).³³ POTL understands that this quantum has not changed following the Court's first interim decision and that it continues to exclude other local tangata whenua.

²⁸ Condition 18.4 Proposed Dredging Consent and Condition 15.4 Proposed Reclamation and Structures Consent.

²⁹ Condition 13.4 Proposed Reclamation and Structures Consent.

³⁰ Condition 18.5 Proposed Dredging Consent and Condition 15.5 Proposed Reclamation and Structures Consent.

³¹ Condition 19.1 Proposed Dredging Consent.

³² Condition 18.6 Proposed Dredging Consent and Condition 15.6 Reclamation and Structures Consent.

³³ Gregory John Carlyon, Notes of evidence taken before the Environment Court (27 February 2023), p 1536 at [20].

41. When developing its proposed mitigation package, POTL has had regard to mitigation packages offered for other coastal consents within the following range:
- (a) Port of Auckland, Channel Dredging Consent and Deposition Consent - \$1,500,000;³⁴ and
 - (b) *Rena*, Restoration and Mitigation Package - \$3,600,000.³⁵
42. With respect to previous Port of Tauranga consenting and re-consenting projects, the following sums were provided by POTL by way of cultural mitigation:
- (a) Mount Maunganui Stormwater - \$3,080,000; and
 - (b) Capital Dredging (2011) - \$3,289,000.
43. The circa \$6,000,000 mitigation package proposed in POTL's application far exceeds these other cultural mitigation packages. In developing its cultural mitigation package for the Project, POTL acknowledges that each of the abovementioned packages have been developed in light of the particular circumstances of the various applications which are likely to differ from that of the Project. Furthermore POTL acknowledges that it is not sufficient to only address cultural effects through monetary compensation, and has also provided for mitigation through other means. These mitigation measures are outlined in more detail in the substantive application report and we do not repeat them here.³⁶

³⁴ *Ports of Auckland will contribute \$1.5 million to preserve the Waitematā Harbour*, NZ Herald (14 January 2023) - [Ports of Auckland will contribute \\$1.5 million to preserve the Waitematā Harbour - NZ Herald](#)

³⁵ *Māori get \$3.6 million from Rena*, Sun Live (8 September 2015) - [SunLive - Maori get \\$3.6 million from Rena - The Bay's News First](#)

³⁶ Section 7, Assessment of Environmental Effects.

44. Various mitigation was put forward in the CVRs and CIAs produced by tangata whenua and provided either to POTL or the EPA directly. To better understand how the various parties' proposed mitigation overlaps or differs, POTL produced a cultural mitigation table which set out each aspect of mitigation put forward and by which tangata whenua party and if that mitigation is adopted in the proposed conditions.

Management and monitoring plans

45. With respect to a completeness assessment, we briefly address the management and monitoring plans proposed in POTL's application.
46. A Marine Mammal Management Plan and an Avifauna Management Plan are proposed, and those proposed management plans are included in the application. POTL is seeking certification of those management plans through the Panel's decision making process under the Act.
47. Insofar as is possible, POTL has otherwise provided drafts of the management and monitoring plans referred to in its application. Two draft plans are only able to be finalised after the consents are granted as they rely on input from third parties that will be engaged once a decision is made (i.e. the Reclamation and Construction Management Plan and Dredging Management Plan require input from the contractors undertaking the reclamation and dredging who will be engaged following a tender process that will be commenced by POTL after the consents are granted).
48. A draft of the Mātauranga Monitoring Plan is not able to be provided at this stage as it relies on input from the yet to be established SPDAG.
49. The proposed condition sets out the process by which the SPDAG will be established.³⁷ They also provide a process by which the Mātauranga

³⁷ See conditions 3.1 to 3.6 of both the structures/reclamation and dredging consents.

Monitoring Plan will be developed and certified by the Bay of Plenty Regional Council.³⁸ We submit that the proposed conditions adequately and sufficiently address the purpose, parameters and certification of this plan.

Transitional provisions in the Amendment Act

50. The changes made to the Act by the Amendment Act are separated into different categories:

- (a) Those that have immediate force upon enactment; and
- (b) Those with delayed force on 31 March 2026.

51. This substantive application, being lodged after enactment of the Amendment Act but before 31 March 2026, benefits from a number of changes made by that Act. We do not set out every relevant change in this memorandum but draw your attention to the following key changes:

- (a) The amendments to the Project's description in Schedule 2;³⁹
- (b) Confirmation that projects have regional and/or national benefits;⁴⁰
- (c) The requirement that a Panel must consider any relevant Government policy statement – although at the time of this application none are in force.⁴¹
- (d) The ability for a Panel to impose conditions on POTL to ensure that infrastructure in the Project and other infrastructure the Project will

³⁸ See conditions 11.1 to 11.4 (structures consent) for the Reclamation and Construction Management Plan and Conditions 14.1 to 14.3 and 15.1 to 15.5 (structures and dredging consents respectively) for the Mātauranga Monitoring Plan.

³⁹ Section 51(25) Fast-track Approvals Amendment Act 2025.

⁴⁰ Section 51(2) Fast-track Approvals Amendment Act 2025.

⁴¹ Section 40(1) Fast-track Approvals Amendment Act 2025.

rely on is, or can be made, adequate to support the Project.⁴² However, as per s 6.1 of the Substantive Application Report this is not relevant to the Project so no conditions are proposed in this regard.

52. Of note, the Fast-track Approvals Amendment Act 2025 changes the consultation requirements for some parties to notification but these changes only apply to application lodged after 31 March 2026.⁴³

Scope of the Project

53. Counsel acknowledges that there is a jurisdictional question as to whether a panel may consider the scope of an application.⁴⁴ We submit that the Panel must proceed on the basis that the application is within scope in light of the EPA's decision under s 46 of the FTAA.
54. However, in the situation where the Panel considers that it can make a further finding on scope, it is our submission that the scope of the Project, as applied for, is not in question. This is evident from the changes made in the Amendment Act to correct the Project's listing description and geographic location in Schedule 2.⁴⁵
55. The Government has also acknowledged that the omission of "Mount Maunganui wharves" in that description was an error that was corrected by the Amendment Act.⁴⁶ It is our submission that in enacting changes to the Project's listing, Parliament has demonstrated its intention that the Project, in the form that is currently being applied for, is within scope. Counsel would go so far as to submit that the legislative amendments were a direct response to the High Court's findings on the scope of the first substantive application.

⁴² Section 41 Fast-track Approvals Amendment Act 2025.

⁴³ s 1 and Schedule 1(8) and (11) Fast-track Approvals Amendment Act 2025.

⁴⁴ Record of Decision of the Expert Consenting Panel under section 87 of the Fast-track Approvals Act 2024, Drury Metropolitan Centre – Consolidated Stages 1 and 2 Project (7 November 2025) at [44]. Notably the Panel in that decision did not address this question as the parties agreed to change scope of what was being applied for.

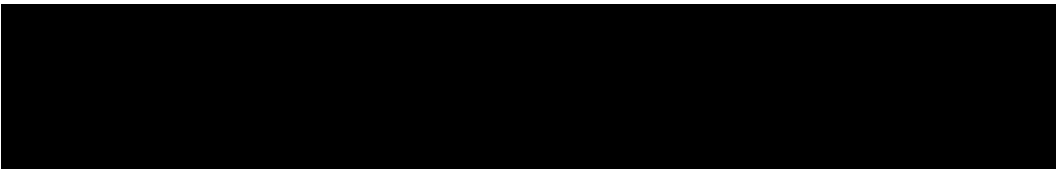
⁴⁵ s 52(25) Fast-track Approvals Act 2025.

⁴⁶ NZ Herald Live: *Christopher Luxon addresses media on the first fast-track approval project* (26 September 2025) - [NZ Herald Live: Christopher Luxon addresses media on the first fast-track approval project - NZ Herald](#)

Conclusion

56. It has been five years since a consent application was first lodged for the Project and further delays cannot be justified. The Project, once implemented, would have significant benefits for both New Zealand and the Bay of Plenty and would play a vital role in allowing the Port of Tauranga to meet future import and export demands.
57. The application now lodged under the Act, is not a new development but rather a development identified within the regional planning documents. It has faced extensive scrutiny from all interested parties through an Environment Court direct referral application and has, in part, been approved by the Environment Court.
58. We respectfully submit that the resource consents and wildlife approval should be granted with the proposed consent conditions.

DATED at Tauranga this 19th day of January 2026



Vanessa Jane Hamm / Cory Lennon Lipinski
Counsel for Port of Tauranga Limited