

BEFORE THE EXPERT PANEL UNDER THE FAST-TRACK APPROVALS ACT 2024

IN THE MATTER of a substantive application by Port of Tauranga Limited for resource consents and a wildlife approval for the Stella Passage Development project (the **Project**), being a listed project in Schedule 2 of the Fast-track Approvals Act 2024 (the **Application**)

**MEMORANDUM ON BEHALF OF THE APPLICANT IN RESPONSE TO MINUTE 5 OF THE
STELLA PASSAGE DEVELOPMENT EXPERT PANEL
[FTAA-2512-1163]
8 JUNE 2026**


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Introduction

1. This memorandum is filed on behalf of Port of Tauranga Limited (**POTL**) in response to Minute 5 (**Minute**) of the Stella Passage Development Expert Panel (**Panel**).¹ This memorandum sets out POTL's responses to the further information requested by the Panel in the Minute. Specifically, counsel responds to:
 - (a) The letter from the Ngā Hapū o Ngāti Ranginui Settlement Trust dated 1 May 2026;
 - (b) The updated evidence of Pia Bennett;
 - (c) The query at paragraph 4(b) of the Minute in relation to how the Panel should assess "past" and "present" effects; and
 - (d) The clarification sought by the Panel in relation to *Augier* conditions.

Response to Ngā Hapū o Ngāti Ranginui Settlement Trust

2. The Expert Panel has confirmed that the late comment from the Ngā Hapū o Ngāti Ranginui Settlement Trust (the **Settlement Trust**) has been accepted as a late comment. The Settlement Trust contends, in summary, that the Project is unsuitable for fast-track, and that proceeding with the application would not meet s 7 of the Fast-track Approvals Act 2024 (**FTAA**). Instead, the Project should proceed via a "normal" resource consenting process.
3. The Settlement Trust in its letter and supporting Cultural Values Report (**CVR**) assert inconsistency with Ngāti Ranginui and Tauranga Moana Iwi Collective settlement arrangements, including with respect to an integrated/holistic approach to the management of Tauranga Moana, and express concern about prejudice to the

¹ Minute 5 of the Expert Panel (Stella Passage Development FTAA-2512-1163) dated 22 May 2026.

Settlement Trust's Marine and Coastal Area (Takutai Moana) Act 2011 (**MACA**) position.

Treaty settlement obligations

4. Section 7 of the FTAA requires all persons performing and exercising functions, powers and duties under the FTAA to act in a manner consistent with *obligations* arising under relevant Treaty settlements.
5. Section 7 does not anticipate a broad Treaty settlement assessment; it is a specific statutory consistency test against the *obligations* arising under Treaty settlements. Nor is s 7 a broad proposition that the fast-track process itself is inconsistent in every case, or that the existence of settlement redress requires a standstill pending the future implementation of all settlement-related governance mechanisms.
6. The Applicant submits the appropriate way to address s 7 is to:
 - (a) Identify the relevant "existing Treaty settlements" said to be engaged;
 - (b) Identify the specific *obligations* arising under those settlement instruments that are said to be relevant to the Panel's decision; and then
 - (c) Assess whether granting the approvals (including with conditions available to the Panel²) would be inconsistent with those obligations in a way that would materially undermine their intended practical operation and integrity.
7. This approach ensures s 7 is applied as the statute directs: it is a consistency test with identified obligations arising under existing settlements, rather than a general merits inquiry about Treaty principles or historic grievances more broadly.

² Section 84 of the FTAA allows an Expert Panel to set conditions to recognise or protect a relevant Treaty settlement.

Ngā Hapū o Ngāti Ranginui Claims Settlement Act 2025

8. The Ngā Hapū o Ngāti Ranginui Claims Settlement Act 2025 (**Settlement Act**) records the acknowledgements and apology given by the Crown to Ngā Hapū o Ngāti Ranginui in the deed of settlement, and gives effect to certain provisions of the deed of settlement that settles the historical claims of Ngā Hapū o Ngāti Ranginui.

9. The Settlement Act contains an acknowledgement that “the clearing of forests, development of the Port of Tauranga, the development of the Mangapapa hydro scheme and the collapse of the Ruahihi Canal, and the disposing of sewage and wastewater into the harbours and waterways of Tauranga Moana have resulted in environmental degradation of Tauranga Moana which remains a source of great distress to the hapū of Ngāti Ranginui”.³ Through the apology in the Settlement Act, the “Crown seeks atonement for the wrongs of the past and to establish a new relationship with the hapū of Ngāti Ranginui based upon mutual trust, co-operation, and respect for te Tiriti o Waitangi/the Treaty of Waitangi and its principles”.⁴

10. POTL submits that these provisions provide context, but they do not, without more, operate as freestanding obligations that dictate the outcome of an approval decision. If the thrust of the Settlement Trust’s comment is that the processing of an application through the FTAA (in the absence of agreement with the relevant Treaty settlement entity) is a breach of s 7 FTAA, then this is not correct. If it were correct, then no applicant would be able to navigate the FTAA without the agreement of the relevant Treaty settlement entity, and this cannot have been Parliament’s intention.

11. We turn now to the Tauranga Moana Iwi Collective settlement, which is at the core of the Settlement Trust’s comments.

³ Settlement Act, at s 8(17)(b).

⁴ Settlement Act, s 9(5).

Tauranga Moana collective redress / “framework” arrangements

12. We addressed the Tauranga Moana Iwi Collective settlement briefly as part of our response to comments,⁵ and now address it more fulsomely in response to the Settlement Trust. The Treaty settlement deed has been signed, and the settlement Bill is before the House. It is yet to be passed, given royal assent, and become law.
13. The Tauranga Moana Iwi Collective settlement includes reference to the following subsidiary documents:⁶
 - (a) The Tauranga Moana Governance Group (**TMGG**);⁷
 - (b) Tauranga Moana Framework document (**TMF**)⁸; and
 - (c) Te Kūpenga Framework (Conservation Agreement) (**TKF**).⁹
14. The TKF provides a framework for collaboration between the Department of Conservation and the Tauranga Moana iwi Collective to enhance conservation land in the Te Kūpenga Area. This area does not include the coastal marine area and we do not understand the Settlement Trust to be raising any issue about this in the context of Stella Passage, so we do not comment on it further.

TMGG and TMF

15. The establishment of the TMGG and the preparation of the TMF is anticipated to sequentially follow the Tauranga Moana Iwi Collective Redress Bill being enacted (that

⁵ Legal submissions for the Applicant in response to comments, at paragraph 108 onwards.

⁶ Tauranga Moana Iwi Collective Deed (21 January 2015).

⁷ Tauranga Moana Iwi Collective Deed (21 January 2015), cl 2.11.1(a).

⁸ Tauranga Moana Iwi Collective Deed (21 January 2015), cl 2.11.1(b).

⁹ Tauranga Moana Iwi Collective Deed (21 January 2015), cl 3.4.

Bill is only at the Second Reading stage). We note that the Bill does not include the TMF, with the purpose of the Bill stating:¹⁰

The Tauranga Moana Framework legislation is not included in Parts 1 to 3, but the Crown acknowledges that it will introduce that legislation as soon as practicable.

16. The purpose and powers of the TMGG are set out at paragraphs 109-110 of our legal submissions responding to comments.¹¹
17. The Tauranga Moana Iwi Collective settlement legislation must include provisions that:¹²
 - (a) Identify of the significant environmental management issues for Tauranga Moana from the perspective of the TMGG;
 - (b) Identify and reflect iwi and hapū values and mātauranga Māori relating to Tauranga Moana; and

¹⁰ Tauranga Moana Iwi Collective Redress Bill, cl 3(2). Note that “Tauranga Moana Framework legislation” is defined in cl 8 as:

Tauranga Moana Framework legislation means the legislation that will, on the terms provided by part 3 of the legislative matters schedule,—

- (a) establish a statutory committee called the Tauranga Moana Governance Group; and
- (b) provide for the preparation, review, amendment, and adoption of a Tauranga Moana Framework document (Ngā Tai ki Mauao).

¹¹ Re-produced here for ease of reference, excluding footnotes:

109. The purpose of the TMGG is to provide leadership and strategic direction to restore, enhance and protect the health and wellbeing of Tauranga Moana and achieve sustainable management of Tauranga Moana for present and future generations through the TMF, facilitating an integrated, holistic, and implementation of the TMF, and co-ordinated approach to management of Tauranga Moana, and providing a platform for participation of iwi and hapū.

110. The TMGG is empowered to:

- (a) Prepare, periodically review, and monitor the effectiveness of the TMF;
- (b) Obtain, share, and monitor information of the state of Tauranga Moana;
- (c) Provide strategic guidance to, and assist, local authorities, management agencies, and Ministers with preparation and dissemination of information, monitoring, and engagement;
- (d) Be provided with resource consent activity reports;
- (e) Establish working groups for monitoring and to review criteria and policies for procedural resource consent application matters; and
- (f) Maintain a register of persons for the purpose of appointing one to the panel for resource consent applications.

¹² Tauranga Moana Iwi Collective Deed (21 January 2015): Legislative Matters, cl 3.15.

- (c) Describe objectives to achieve the purpose of the TMF, which, without limitation, may include objectives for:
- (i) Preserving and improving the natural character and heritage of the Tauranga Moana environment;
 - (ii) Integrating and co-ordinating the management of natural, historical and traditional resources within Tauranga Moana;
 - (iii) Providing for the relationship of Tauranga Moana iwi and hapū and their culture and traditions with Tauranga Moana and protecting and enhancing those characteristics of the Tauranga Moana environment that are of special value to Tauranga Moana iwi and hapū;
 - (iv) Maintaining and improving indigenous biological diversity and the biological diversity of the aquatic environment of Tauranga Moana;
 - (v) Protecting and enhancing the habitats of significance for fisheries management and sustainable customary fishing;
 - (vi) Sustaining and developing the potential of the natural and physical resources of Tauranga Moana to meet the reasonably foreseeable needs of present and future generations including their social, economic, and cultural well-being;
 - (vii) Avoiding natural hazards and adverse effects from the storage, use, disposal and transportation of hazardous substances;
 - (viii) Protecting the marine environment from pollution; and
 - (ix) Measuring the health of the Tauranga Moana environment.

18. As we have previously said, while the Treaty settlement provides for a high level structure and purpose for the TMGG and TMF, the detail lies in the yet to be established/prepared TMF. Nevertheless, the Expert Panel can be satisfied that the grant of the Application will not be inconsistent with the Tauranga Moana Iwi Collective settlement, and to the contrary will complement it through the proposed SPDAG (see also paragraph 26(a) below).¹³
19. Our submission is that granting the approvals sought will be consistent with any obligations that would arise as if those arrangements were in place. The Expert Panel will not be undermining the Tauranga Moana Iwi Collective's Treaty settlement so that it can no longer be practically implemented or operate as intended – the TMGG can still be established and the TMF can still be prepared.
20. The Settlement Trust comments that "the settlement envisages that consents relating to matters set out in section 12 of the RMA, such as reclamations and the erection of structures, will be considered by Commissioners that have been appointed by the iwi of Tauranga Moana. There are no iwi appointed Commissioners involved in this process. Also, the provision for the appointment of Commissioners envisages a full resource consent process. Here, the Port of Tauranga is explicitly seeking to bypass the full resource consent process. In doing so it is subverting the terms and intent of the Tauranga Moana Framework and the Ngāti Ranginui settlement".¹⁴ However, these comments are not borne out by the terms of the settlement which expressly recognise that this will not apply until a register of commissioners established by the TMGG exists.
21. In particular, cl 3.9.7 of the Legislative schedule to the Tauranga Moana Iwi Collective settlement states (emphasis added):¹⁵

3.9.7 the requirements of paragraph 3.9.3 **will not apply if:**

¹³ Legal submissions for the Applicant in response to comments, at paragraphs 111-113.

¹⁴ Comments from the Settlement Trust, at paragraph 10(c).

¹⁵ Tauranga Moana Iwi Collective Deed (21 January 2015): Legislative Matters, cl 3.9.7(a).

- (a) no-one has been appointed by Tauranga Moana iwi and hapū to the register established and maintained by the Tauranga Moana Governance Group under paragraph 3.9.2; or
- (b) there is no person on the register established and maintained by the Tauranga Moana Governance Group under paragraph 3.9.2 who is eligible to be appointed as a commissioner under paragraphs 3.9.3(b) or 3.9.9; or
- (c) the Tauranga Moana Governance Group has, in respect of a particular hearing, waived in writing the requirements of paragraph 3.9.3;

22. In short, the requirement to appoint a decision maker under the Collective settlement cannot apply if no one has been appointed to the register. The Project does not undermine this aspect of the settlement as there is no TMGG yet, nor list, and therefore no one to nominate.

Summary with respect to Collective settlement and TMGG/TMF

23. POTL recognises that the Tauranga Moana Iwi Collective deed of settlement (and associated redress architecture described in the CVR) is an important part of the settlement context for Tauranga Moana, including its emphasis on restoring, enhancing, and protecting the health and wellbeing of Tauranga Moana and achieving sustainable management for present and future generations, and participation by Tauranga Moana iwi and hapū in management of Tauranga Moana.
24. However, POTL submits that the s 7 inquiry remains whether granting approvals would be inconsistent with the *obligations* arising under existing Treaty settlements. The statutory test does not require an applicant to delay a project until every future governance or planning mechanism contemplated by a settlement deed is fully operational; rather, it requires the Expert Panel to assess consistency with the obligations that arise under the existing settlement instruments that are engaged at the time of decision.

25. In any event, POTL submits that the grant of the Application is in fact *consistent* for the following reasons:

- (a) The proposed conditions framework is intended to complement harbour outcomes and tangata whenua participation mechanisms, including through structured engagement, mātauranga-based monitoring and wider harbour initiatives (as set out in POTL’s response package). The existence of consent-based mechanisms aimed at harbour outcomes does not purport to replace settlement governance; rather it is an effects-management response within the consent framework.
- (b) The Tauranga Moana Iwi Collective settlement expressly states that the register related requirements *will not apply* if no one has been appointed to the register.

MACA applications

26. The Settlement Trust comments that there is an acknowledgement by the Crown of the Ngā hapū o Ngāti Ranginui application under MACA, and that as the Settlement Trust’s MACA application area entirely encompasses the Project area, its MACA application will be prejudiced by consent being granted.¹⁶

27. In the Ngāti Ranginui Deed of Settlement, the Crown acknowledges views held by Ngā Hapū o Ngāti Ranginui, which include that Ngā Hapū o Ngāti Ranginui “consider they have grounds” to seek recognition of protected customary rights and customary marine title (**CMT**) through an agreement made in accordance with s 95 of MACA, and to apply for a recognition order under s 100 of MACA.¹⁷ However, the immediately subsequent clause also states that:¹⁸

¹⁶ Comments from the Settlement Trust, at paragraphs 8 and 11.

¹⁷ Ngā Hapū o Ngāti Ranginui Deed of Settlement at 4.6.3.

¹⁸ Ngā Hapū o Ngāti Ranginui Deed of Settlement at 4.7.

The Crown's acknowledgement under clause 4.6 does not predetermine the outcome of any assessment of the nature of any interest of Nga Hapu o Ngati Ranginui in the common marine and coastal area under the Marine and Coastal Area (Takutai Moana) Act 2011.

28. Accordingly, the acknowledgement does not put s 7 of the FTAA in play given that overlapping applications for CMT in relation to Te Awanui are yet to be heard, and given that it is understood that those will not be heard until at least 2029.
29. Furthermore, any prejudice to an application for CMT is not a relevant consideration. In the Environment Court decision concerning Tauranga Bridge Marina's coastal occupation consent, the Court considered the relationship between applications for CMT and the RMA. Ngāti Kuku sought a short duration consent as this would be more consistent with them being able to exercise their rights as an owner of the CMA when a CMT order is made under the MACA. The Court found that the prospect of obtaining such an order is not a relevant consideration as it does not involve any particular resource management issue which was reasonably necessary to determine the appeal, within the scope of s 104(1)(c) of the RMA.¹⁹

Summary of response to the Settlement Trust

30. POTL acknowledges Ngā Hapū o Ngāti Ranginui and its Treaty settlement, including the Settlement Act and the Tauranga Moana Iwi Collective settlement. The FTAA contains provisions which expressly require these Treaty settlements to be considered.²⁰ However, neither of these settlements contain *obligations* that the grant of approvals for the Project would be inconsistent with.

¹⁹ *Ngāti Kuku Hapū v Bay of Plenty Regional Council* [2023] NZEnvC 163 at [122].

²⁰ Including ss 7 and 82, 84, and 85(1)(b).

Response to Pia Bennett's evidence

31. The Panel has accepted a request by the Ngā Tai ki Mauao Hapū Collective and the Ngā Hapū O Ngā Moutere Trust to replace the evidence of Pia Bennett filed on 30 April 2026 with an updated version dated 8 May 2026.
32. We set out POTL's response to Ms Bennett's updated evidence in the table at Appendix 1 to this memorandum. We discuss further aspects of Ms Bennett's evidence in relation to "past effects" in the next section of this memorandum.

Past and present effects

33. The Minute records that s 3 of the RMA defines "effect" to include cumulative effects arising over time or in combination with other effects, and that the Panel understands "other effects" can be "past, present or future".²¹ The Panel seeks comment on how it should assess the "past" and "present" effects that will combine with the effects of allowing this proposal to result in the cumulative effects of concern to tangata whenua, including historic incremental port reclamation, berth expansion, dredging and industrialisation in Tauranga Harbour over time.
34. We agree that cumulative effects require consideration of the receiving environment, which necessarily includes effects that have already occurred, and the Project's effects on that environment. However, we submit that a new proposal does not itself generate "past effects". Rather, "past" and "present" effects in this context refer to the existing receiving environment (including its historic modification and current state) against which the incremental effects of the proposal are assessed, and with which the proposal's effects may combine.
35. POTL's position is that the most workable and legally orthodox baseline for cumulative effects assessment is the current state of the environment, which by definition already

²¹ Minute 5, paragraph 4(b).

incorporates the legacy of past activities (whether Port-related or non Port-related) that have shaped the receiving environment. In our submission, it is not realistic to formulate a “pre-development” baseline given the urbanisation that has occurred in and around Te Awanui over time. This approach is consistent with existing environment case law.²²

36. To assist the Expert Panel, we submit that it can approach cumulative effects (including “past and present effects”) through the following steps:
- (a) Describe the receiving environment: Identify the existing physical and cultural context within Tauranga Harbour, including the presence of established port infrastructure (including reclamation, berth development, dredging and industrialisation), to formulate the receiving environment as it exists today.²³ The technical reports submitted with the Application present information on the scientific ‘health’ of the existing environment, and the CVRs present the tangata whenua parties’ view of the existing environment as it stands today.
 - (b) Identify the incremental effects of this proposal (i.e. the Project): Identify the actual and potential effects of the proposed activities.
 - (c) Assess cumulative effects by combination: Evaluate whether the incremental effects, in combination with the existing baseline state (including past and present effects embedded in that baseline), result in cumulative effects that are significant for the purposes of the relevant statutory tests.
 - (d) And only if necessary, consider the residual cumulative effects net of conditions: Consider whether mitigation appropriately addresses cumulative

²² This includes *Arrigato Investments Ltd v Auckland Regional Council* CA84/01 which held that the relevant environment and relevant effects are essentially factual matters for the decision maker which should not be overlaid by refinements or rule of law, at [38].

²³ Stella Passage Development, Fast-track Approvals Act 2024 Substantive Application Report (20 January 2026), section 3. Statement of Evidence of Dr Willem de Lange (7 May 2026) at [24] to [31] and Appendix 1.

effects, noting that POTL's mitigation package is directed primarily to addressing cumulative cultural effects as articulated by tangata whenua.

37. POTL recognises that tangata whenua evidence describes cumulative adverse cultural effects in ways that include historic degradation, incremental encroachment, and impacts on cultural relationships and values. POTL's distillation of adverse cumulative cultural effects (at paragraph 128 of our legal submissions) was intended to capture that articulation in a structured form. We submit, however, that the legal task under s 3 of the RMA and the FTAA decision-making framework is not to allocate responsibility for all historic harbour modification (whether Port or non-Port related). Rather, it is to assess the effects of the Project on the existing receiving environment and to impose conditions that are lawful, proportionate, and directed to managing the adverse effects of the activity being approved.
38. For completeness, we record that we understand the approach we describe above to be similar to the one that the Environment Court took when it said that "when assessing the effects of a proposal, including its cumulative effects, it is necessary to understand the baseline condition of the environment against which future cumulative effects can be monitored and assessed".²⁴

Response to Ms Bennett's evidence on past effects

39. On the topic of past effects, POTL rejects any suggestion that it has an "inherited level of culpability to address past wrongs" as asserted by Ms Bennett on behalf of Ngā Tai ki Mauao parties.²⁵ It is abundantly clear that past wrongs, which form the basis for the acknowledgement and apology in the Treaty settlement, were perpetuated by, acknowledged by, apologised for, and settled by, the Crown.

²⁴ *Port of Tauranga Ltd v Bay of Plenty Regional Council* [2023] NZEnvC 270 at [127] – noting that POTL has now prepared a scientific state of the environment report, and carried out comprehensive monitoring at Te Paritaha, as directed in the first interim decision.

²⁵ Summary update statement dated 30 April 2026 (received by POTL on 22 May 2026) at un-numbered page 8.

40. Ms Bennett’s evidence then goes on to say (amongst other things) that the Application amplifies adverse effects by discounting past and ongoing harm as irrelevant to the present decision.²⁶ As discussed, an assessment of the relevant environment is a factual assessment for the Expert Panel. Where activities have been lawfully carried out, then the *effects* of those activities (past, present, and ongoing) will be embedded within the existing environment.
41. The scientific evidence does not present an environmental baseline which is degraded or under stress – Dr de Luca, having considered the State of the Environment report which POTL prepared following the Environment Court’s first interim decision, states that her assessment is consistent with previous assessments, such as Professor Battershill’s assessment of the “health” of Te Awanui (2022) and in particular his finding that Te Awanui is in good health and its biodiversity is suggestive of a typical north eastern New Zealand temperate harbour ecosystem.²⁷ On coastal geomorphological matters, the evidence of Dr de Lange presents a step by step breakdown of Port activities, and the changes these occasioned in Te Awanui.²⁸ The Panel has before it, in these and other technical reports/statements of evidence,²⁹ a clear picture of how Te Awanui (in the Port vicinity) has lawfully developed over time to today’s physical state, and its general health.
42. To the extent that the CVRs present a different picture, it will be for the Panel to reconcile this. The Environment Court’s findings in relation to *cumulative* effects largely centred on Whareroa Marae. For example, in relation to Ngā Hapū o Ngā Moutere Trust, the Environment Court noted that in addition to effects of concern to all tangata whenua, the Ngā Hapū o Ngā Moutere Trust sought certainty as to whether POTL intended to retain the existing boat ramp within the Port area for use by vessels travelling to and from Matakana – however, it did not consider that the proposal

²⁶ Summary update statement dated 30 April 2026 (received by POTL on 22 May 2026) at paragraph 88.

²⁷ Statement of Evidence of Sharon Betty de Luca dated 7 May 2026, at paragraphs 10-13.

²⁸ Statement of Evidence of Dr Willem Pieter de Lange, at paragraph 95.

²⁹ This would include the reports/statements from Dr Della Bennett and Helen McConnell.

would result in any other cumulative effects specific to Matakana hapū represented by the Trust.³⁰

43. Before leaving this topic, it is submitted that, in order to mitigate the cumulative adverse cultural effects of the Project, POTL has extended its mitigation beyond the discrete and identifiable effects *of the Project* to address such cumulative adverse effects. In particular:

- (a) The funds to be provided to the SPDAG to invest in projects of its choosing are not limited to the Port of Tauranga area and can be directed towards projects that contribute to the restoration of the health of Te Awanui/Tauranga Harbour, abundance projects, projects that benefit iwi and hapū that have a relationship with Te Awanui/Tauranga Harbour, or any other project deemed appropriate by the SPDAG.³¹
- (b) The proposal to contribute funds to the SPDAG for use for a longitudinal assessment of health and wellbeing against agreed marae outcomes for Whareroa Marae, and to fund an independent audit and assessment of discharges against existing consent conditions, address matters of concern which extend beyond effects generated from the Port of Tauranga.³²
- (c) The proposed scholarship fund responds to identified cumulative cultural effects of the Project on the cultural health of Te Awanui by making provision for research by tangata whenua that promotes a better understanding of and improvements to the health of Te Awanui generally (i.e. it is not confined to Port-related activities or effects).³³
- (d) The proposal to undertake all works in accordance with the Avifauna Management Plan and establish a one off fund of \$150,000 to be administered

³⁰ *Port of Tauranga Ltd v Bay of Plenty Regional Council* [2023] NZEnvC 270 at [394]-[395].

³¹ Reclamation and structures conditions, 15.1. Dredging conditions, 18.1.

³² Reclamation and structures conditions, 15.3 and 15.4. Dredging conditions, 18.3 and 18.4.

³³ Dredging conditions, 19.1 and 19.2.

by the SPDAG for the purposes of assessing and developing opportunities to enhance avifauna habitat in and around Te Awanui is broader than the Port of Tauranga locality.³⁴

- (e) The proposed Mātauranga Māori Statement of the Environment report and Mātauranga Monitoring Plan relate to the establishing a cultural baseline and ongoing cultural monitoring in order to identify any ongoing cumulative cultural effects of development within the Port Zone.³⁵

Augier conditions

- 44. The Panel has requested clarification from the Applicant as to which conditions, (or parts of conditions) in Appendix 1 to Luke Faithfull's statement of evidence dated 7 May 2026 (**the draft conditions**), should be considered to be *Augier* conditions.

Augier, and s 108AA codification

- 45. The case of *Augier* related to a situation where an applicant gave an undertaking to fulfil a condition, and planning permission was granted on that basis. The Court held that it was not then open to the applicant to argue that a Council did not have the powers to secure compliance with that condition.³⁶ The principle of *Augier* has been applied in the New Zealand context to allow consent conditions to be included which a decision maker does not necessarily have jurisdiction to include, but which an applicant agrees to be bound by. As recently discussed by the Environment Court:³⁷

[37] The original **Augier** principle has been extended since that case was determined nearly 40 years ago. It is therefore useful to consider the original decision which found that:

³⁴ Reclamation and structures conditions, 13.1 and 13.4.

³⁵ Reclamation and structures conditions, 14.2 and 14.3. Dredging conditions, 12.1, 15.2 and 15.3.

³⁶ *Augier v Secretary of State for the Environment* (1978) 38 P & CR 219 (QBD).

³⁷ *Jones v Taupō District Council* [2025] NZEnvC 388.

“ ... where an applicant for planning permission gives an undertaking, and relying on that undertaking, the local planning authority, or the Secretary of State on Appeal, grants planning permission subject to a condition in terms broad enough to embrace that undertaking, the applicant cannot later be heard to say that there is no power to require compliance with the undertaking.”

[38] Section 108AA(1)(a) is generally said to have codified the **Augier** principle. Relevantly, s 108AA(1) provides:

“(1) A consent authority must not include a condition in a resource consent for an activity unless—

- (a) the applicant for the resource consent agrees to the condition; or
- (b) the condition is directly connected to 1 or more of the following:
 - (i) an adverse effect of the activity on the environment: ... ; or
- (c) the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.”

[39] The operation of s 108AA(1) means that a condition may be accepted and included which does not specifically address an identified resource management matter but an applicant wishes to offer it anyway.

46. The Environment Court has also declined to impose *Augier* conditions where it has not considered them necessary for the grant of consent.³⁸

³⁸ *Cooper v Kaipara District Council* [2024] NZEnvC 143 at [210].

Draft conditions

47. Where the draft conditions include an *Augier* advice note, it is intended that that advice note will relate only to the specific sub-condition or sub-conditions referenced in the advice note. Most of the conditions subject to an *Augier* advice note include a financial payment to a third party.
48. As set out in our legal submissions dated 7 May 2026,³⁹ Schedule 11 of the Regional Coastal Environment Plan (**RCEP**) does not identify cultural circumstances or purposes which would support the making of financial contributions to address cultural effects. More significantly, in our submission Schedule 11 does not meet the requirements of s 108(10)(b) of the RMA. BOPRC has identified through its own Development Contributions of Financial Contributions Policy 2024 that it will not require financial contributions under the RCEP. In our submission, it is not possible for financial contributions to be required for the purposes of addressing cultural effects in relation to the Project.
49. As such, the financial payments identified within the draft conditions as being *Augier* are generally linked to a broader mechanism or proposal that is intended to respond to cumulative adverse cultural effects. For example, the condition requiring *funding to be provided* for the SPDAG to prepare and delivery a Mātauranga Monitoring Plan is an *Augier* condition.⁴⁰ However, the conditions relating to the preparation of the plan are not *Augier*, because the proposal directly responds to the cultural effects identified by tangata whenua that require mātauranga monitoring in order to be understood.⁴¹
50. The express inclusion of a funding commitment, does provide all parties with certainty that funding will be available to undertake the activities outlined in the consent conditions, and certainty as to what that funding will be.

³⁹ Paragraph 59.

⁴⁰ Dredging Condition 15.5.

⁴¹ Dredging Conditions 15.1 – 15.4.

51. In summary, what is proposed by POTL in terms of the funding commitments to be made as part of the conditions, are not “financial contributions” as defined by the RMA. Accordingly, they have been framed as *Augier* conditions.
52. We attach a detailed breakdown of the conditions at Appendix 2 and make three further points:
 - (a) On closer review, some conditions have been incorrectly identified as *Augier* conditions, while other conditions that are properly *Augier* conditions have not been identified as such. We clarify this in the attached table and attach a marked up version of the conditions at Appendix 3 and 4. New changes made to these condition sets are highlighted in yellow.
 - (b) Rather than scattering the *Augier* conditions throughout the draft conditions, there would be the option of having a condition which clearly consolidates the *Augier* elements. We have not provided for that at this stage.
 - (c) Rather than referring to *Augier*, there would be the option of using more modern language recording that the consent holder has agreed to the condition. We have not provided for that at this stage.

Conclusion

53. In summary, in response to the Settlement Trust, POTL submits that granting the approvals sought would not be inconsistent with the *obligations* arising under the relevant Treaty settlements. To the extent that POTL’s proposed conditions provide for iwi and hapū participation, as well as kaitiakitanga, harbour health, and restoration aspirations through the SPDAG, granting approvals to the Project would be *consistent* with the Tauranga Moana Iwi Collective settlement.

54. In relation to cumulative effects, the Expert Panel’s task is to assess the Project against the existing receiving environment, which by definition already incorporates the legacy of past activities (whether Port-related or non Port-related) that have shaped the receiving environment. That is a different exercise from attributing responsibility to this Project for all historical modification or degradation of Te Awanui.
55. In relation to *Augier* conditions, POTL has identified the particular draft conditions that are properly characterised as *Augier* conditions—principally funding commitments to third parties that are not “financial contributions” as defined in the RMA or provided for under the RCEP, but instead form part of an applicant-led response to cumulative cultural effects, providing certainty that agreed mitigation and monitoring measures will be implemented.

Minute 5 responses from other parties

56. Through Minute 5, the Panel has also made requests to other parties to provide further information in the Minute. POTL respectfully requests that it be given the opportunity to respond to any comments that address new matters, arguments, or information.

DATED at Tauranga this 8th day of June 2026

Three handwritten signatures in blue ink are displayed horizontally. The first signature is a cursive 'V' followed by 'Hamm'. The second is a cursive 'L' followed by 'Murphy'. The third is a cursive 'C' followed by 'Lipinski'.

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