

IN THE MATTER AND IN THE MATTER	of the Fast-track Approvals Act 2024 (FTAA) of an application for approvals under the FTAA for the Stella Passage Development FTAA-2512-1163
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NGĀTI KUKU HAPŪ AND WHAREROA MARAE
RESPONSE TO MINUTE 7

16 July 2026

Tu Pono Legal Ltd
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[Redacted]

Counsel: Rob Enright
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MAY IT PLEASE THE PANEL

Introduction

- 1 Counsel has applied for leave for the delayed filing of these legal submissions in response to Minute 7.¹ Counsel have respectfully filed these submissions within the requested extended timeframe (i.e. 16 July 2026).
- 2 Accordingly, this Memorandum responds to Minute 7, and the Request for Information, in relation to:
 - (a) Treaty Settlement Issues;
 - (b) Augier issues.
- 3 Ngāti Kuku is a member of Ngā Tai ki Mauao, which is a participant in this process. Counsel have had the benefit of reviewing the submissions of Counsel for Ngā Tai ki Mauao (dated 14 July 2026).
- 4 To avoid repetition, those submissions are adopted.² A few additional issues are addressed below.

Treaty Settlement Issues

- 5 This issue goes to the question of consentability, and jurisdiction, and is therefore dealt with first.
- 6 S7 FTAA requires all persons performing and exercising functions, powers and duties under the Act to act in a manner that is consistent with the obligations arising under existing Treaty settlements. A panel must decline consent where the panel considers that granting the approval would breach section 7.³
- 7 Sections 7 and 85(1)(b) FTAA, in combination, give mandatory force to "Treaty Settlement" instruments as defined by the FTAA.

¹ Application made on 14 July 2026.

² Ngāti Kuku is already a member of Ngā Tai ki Mauao, so this may be axiomatic.

³ S85(1)(b) FTAA

- 8 Where a fast-track proposal is inconsistent with a Treaty Settlement, then the proposal must be declined. "Inconsistent" is of course a lower threshold than "contrary".
- 9 This is a factor unique to the FTAA legislative framework, and may be contrasted with Pt 2 RMA (sections 6(e) RMA ("recognise and provide for"), s7(a) ("have particular regard") and s8 ("have regard")). While these RMA provisions use directive language, inconsistency does not *per se* require decline of (for example) resource consent applications.
- 10 By electing to follow the fast-track process, the Port assumed the risk that mandatory decline would follow if the proposal was inconsistent with the Deeds of Settlement for Ngāi Te Rangi.
- 11 Read in their proper context, the Deeds impose continuing obligations, and identify that expansion of Port activities, will result in continuing adverse impacts. The proposal (including the proposed conditions framework put forward by the Port (including volunteered conditions)) is directly inconsistent with these obligations meaning that the proposal must be declined.

Existing Treaty Settlement

- 12 The relevant statutory definitions are addressed in the submissions for Ngā Tai Ki Mauao. "Inconsistency" with either legislation or deed will prevent consent being granted under the FTAA. There is no hierarchy between the two.
- 13 This does not constitute a so-called 'veto' power (as appears to be suggested by the Port). Rather, the legislative directive is provided by Parliament, via the wording carefully chosen in section 7. This is not a veto – but a cultural bottom line imposed by legislation.
- 14 It is material that the Ngāi te Rangi Settlement Deeds specifically focus on the historic and ongoing adverse impacts (i.e. cumulative impacts) of development and expansion of the Port.

- 15 Axiomatically, whether the proposal is consistent with the obligations arising under existing Treaty settlements, requires assessment of the language used in those instruments. These are:
- Deed of Settlement dated 14 December 2013⁴
 - Tauranga Moana Iwi Collective Deed of Settlement.
- 16 Counsel for Ngā Tai ki Mauao has stepped through the relevant language in both Deeds and that analysis is (as noted) adopted.
- 17 Absent any settlement legislation, the Settlement Deeds are contractual in nature, and will be interpreted on contractual principles. Despite this, it seems likely that similar principles of interpretation to those set out in the Legislation Act 2019 will apply (text, purpose, context).⁵ Part of this wider context is that Ngāi te Rangi holds an integrated and holistic relationship with the seascape which forms part of their customary lands and rohe through the authority of their hapū.
- 18 *Moreover, it* is important to recognise that obligations imposed by the Settlement Deeds reference and rely upon tikanga concepts as understood and applied by Ngāi te Rangi. This is relevant to their interpretation as obligations under section 7.
- 19 While the submissions of Ngā Tai ki Mauao have largely covered the field, additional points relating to the language used in the (2013) Deed of Settlement include:
- (a) Clause [1.3] lists the relevant hapū of Ngāi Te Rangi. This includes Ngāti Kuku.
 - (b) Clauses [2.51] to [2.53] explicitly reference Whareroa Marae, and related harm caused by compulsory acquisition of whenua at Whareroa for development of the Port.

⁴ The Deed has been amended several times (in 2014 and 2016) but these changes do not appear to be material.

⁵ A similar approach was adopted by the Court of Appeal (when interpreting district plan provisions) in *Powell v Dunedin CC* [2004] 3 NZLR 721 (relating to the predecessor Interpretation Act 1999).

- (c) Clause [2.57] identifies that Tauranga Moana is a taonga over which Ngāi Te Rangi exercises kaitiakitanga. Reference to “taonga” is deliberate, importing the duty of active protection under Ngāi Te Rangi tikanga for the purposes of s7 FTAA.
- (d) Clauses [2.57]-[2.58] and [2.78] cross-reference paramount Rangatira Hori Ngatai’s address in 1865 to Native Minister Balance (“my mana has never been taken away..I have always held authority..”);⁶ and the mana, rangatiratanga, kaitiakitanga and customary interests of Ngāi Te Rangi in the management of Tauranga Harbour.
- (e) The Supreme Court has confirmed the significance of “mana” as an expression of right. Mana should not be disaggregated and includes authority as well as spiritual relationships with place.⁷ The Deed recognises this authority is continuous and applies to the whenua that will be developed by the Stella Passage proposal.
- (f) The Deed includes a number of references to adverse impacts caused by establishment and expansion of the Port. Those impacts are of a continuing nature, such as at clause [3.15] (“public works have had enduring negative effects”), and that the “expansion of Tauranga onto the remaining lands of [relevantly] Ngāi te Rangi” has contributed to the socio-economic marginalisation of Ngāi Te Rangi in their rohe. The expansion of the Port, and the related adverse impacts, includes the Stella Passage proposal which is located in the rohe and ancestral whenua of Ngāi Te Rangi as Iwi and Ngāti Kuku as hapū. It is generally accepted that whenua is whenua, whether marine-based or terrestrial.
- (g) Clause [3.16] emphasises both the importance of Tauranga Moana and the countervailing development of the Port as a source of **great distress** to Ngāi Te Rangi. On its plain

⁶ See the evidence of Awhina Ngātuere and Dr Vincent O’Malley.

⁷ *Re Edwards* [2024] NZSC 164 at [41], [141]

reading, “development” of the Port necessarily includes future or ongoing development, such as the Stella Passage proposal. This will continue the significant impacts (great distress) identified. Clause [3.23] further identifies lost opportunities for development, and social and economic wellbeing.

- (h) The Apologies set out in the Deed have particular mana and importance to Ngāi Te Rangi, and confirm historic and ongoing obligations owed to Ngāi Te Rangi, including their hapū.
- (i) As noted by Charlie Tawhiao at [8] of his evidence (dated 08 June 2026), the apologies are not symbolic narrative or historic reflection. They are central to the settlement. They record what must be different going forward. The language used is mandatory in nature and conveys duties (obligations) that are directly relevant to the proposed expansion of Tauranga Port through the Stella Passage proposal.

- 20 To the extent that the Settlement Deeds reference tikanga-based concepts (such as mana, rangatiratanga, kaitiakitanga, customary relationships of Ngāi Te Rangi with their ancestral whenua, waters, taonga (including the area occupied/to be occupied by the Stella Passage proposal)), then it is submitted the Panel **must** adopt the tribal and acknowledged expert evidence of the ahi kā parties on (in)consistency with these obligations.
- 21 Charlie Tawhiao, as Chair of the Iwi Settlement Authority, Ngāi Te Rangi, has filed evidence to confirm that the Stella Passage proposal is inconsistent with the two Settlement Deeds.
- 22 There is no suggestion that the evidence filed on behalf of Ngāi Te Rangi, is not mandated or could otherwise be challenged under a rule of reason analysis. This includes the evidence filed by Ngāti Kuku hapū, Whareroa Marae, and the hapū of Ngāi Te Rangi.
- 23 Moreover, it is settled law that the Panel cannot (subject to a ‘rule of reason ‘threshold) substitute its own view as to whether the

proposal will breach tikanga, or will be inconsistent with the authority and customary relationships of Ngāi te Rangi with the area that will be developed for the proposal (if approval is granted). Identifying the tikanga-ā-iwi standard is a matter for the affected iwi or hapū: per Whata J in *Te Rūnanga o Ngāti Whātua v Auckland Council* [2024] NZHC 3794 at [183].

- 24 The Panel is entitled to, and must, assess the credibility and reliability of the evidence for Ngāi Te Rangi parties. But mandated kaumatua and tribal leaders are experts in their own tikanga: per Palmer J in *Tauranga Environmental Protection Society Inc v Tauranga City Council* [2021] NZHC 1201 at [65]-[69].
- 25 In summary, the obligations imposed by the existing Treaty settlements impose ongoing and continuous obligations for reasons otherwise identified by Counsel for Ngā Tai ki Mauao. The proposal (including on the basis of the consent conditions volunteered or otherwise imposed under s84 FTAA) is inconsistent with the existing Treaty settlements.

Augier issue

- 26 This has been thoroughly canvassed in the submissions for Ngā Tai ki Mauao relating to Minute 7; and in the earlier submissions filed on behalf of Ngāti Kuku and Whareroa (relating to Minute 5).
- 27 To recap, the primary submission by Ngāti Kuku and Whareroa is that the Panel must decline the proposal (under s7 and s85(1)(b)); and (if needed) the Panel should decline the proposal under s85(3).
- 28 The secondary position is that the Panel has jurisdiction to impose conditions requiring compensation or offsetting in favour of Ngāti Kuku and Whareroa Marae to address adverse effects of the proposal on the environment directly connected to the proposal.
- 29 This means that the claimed *Augier* status put forward by the Port (essentially in respect of consent conditions that involve a financial component) is simplistic and erroneous.

- 30 Perhaps the only additional point is that s84 FTAA provides a further basis to impose conditions that involve a payment or compensatory element to address adverse impacts related to the subject proposal (including adverse cumulative impacts). Section 84 FTAA employs directive language and enables the Panel to impose conditions that “recognise or protect” an existing Treaty settlement, without recourse to offered (Augier) undertakings.
- 31 Accordingly, there is jurisdiction to impose the conditions recommended by Dr Richard Meade and Vanessa Wilkinson, but which are not volunteered by the Applicant on an *Augier* basis, and these conditions meet the nexus and other requirements set by ss83, 84, and the related FTAA and RMA provisions imported under Schedule 5 FTAA.

Dated this 16th July 2026



Rob Enright / Jason Pou
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