

**BEFORE THE PANEL CONVENER UNDER THE FAST-TRACK APPROVALS ACT
2024**

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

MEMORANDUM OF COUNSEL

DATED 11 FEBRUARY 2026



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MAY IT PLEASE THE PANEL CONVENER

1. This memorandum is filed on behalf of Port of Tauranga Limited (**POTL**), the applicant for the listed Stella Passage Development **Project**, and sets out POTL's position in relation to the Panel Conveners' conference for its substantive application.
2. POTL's position is that no conference is required for this application as:
 - (a) The scope of this application is the same as the scope of the previous substantive application;
 - (b) The Panel Conveners held a conference for that previous substantive application;
 - (c) The level of complexity and quantity of issues arising from that previous application remain the same as for this application;
 - (d) The Panel Conveners had satisfied themselves that sufficient information was obtained to stand up a panel; and
 - (e) To hold a conference in these circumstances is inconsistent with the procedural principles of the Fast-track Approvals **Act** 2024.

Background

3. As the Panel Conveners are aware, the Project was the subject of a prior substantive application.¹ The EPA's completeness and scope decision on that prior application was judicially reviewed by two interested parties,

¹ [FTAA-2504-1042], lodged 14 April 2025.

with the High Court finding that it was out of scope as it did not relate *solely* to a listed project.² Specifically, the Court’s finding on scope related to the previous application seeking approvals for the extensions of the Mount Maunganui wharves (and ancillary activities) which were not referenced in the Project’s description in Schedule 2. At the direction of the High Court, no further work was to be undertaken on that application.³

4. Before the High Court’s finding on scope, the application was provided to the Panel Conveners⁴ to begin the process for commencing a panel. A conference was held on 2 July 2025, and subsequently a decision timeframe was established and the panel stood up, with a commencement date of 1 September 2025.⁵
5. That panel did not commence in light of the High Court’s directions.⁶
6. The Fast-track Approvals **Amendment Act** 2025 was enacted on 16 December 2025, which corrected the Project’s listing by including reference to the Mount Maunganui extensions and removing the reference to “8.5 hectares” of the coastal marine area.⁷ The changes made to the Project’s listing are set out in the table at Appendix One.
7. In light of these amendments, POTL withdrew the previous substantive application on 16 January 2026 and subsequently lodged this new substantive application to benefit from the Project’s amended listing description.

² *Ngāti Kuku Hapū Trust v Environmental Protection* [2025] NZHC 2453 at [74].

³ *Ngāti Kuku Hapū Trust v Environmental Protection* [2025] NZHC 2453 at [75(a)].

⁴ On 26 May 2025.

⁵ Minute of the Panel Convener, *Post-conference decisions on panel appointment and decision timeframe*, POTL – Stella Passage Development [FTAA-2504-1042] (15 August 2025) at [17] – [24].

⁶ *Ngāti Kuku Hapū Trust v Environmental Protection* [2025] NZHC 2453 at [75(a)].

⁷ s 52(25) Fast-track Approvals Amendment Act 2025.

8. For the avoidance of any doubt, Counsel confirm that the scope of the Project that is the subject of this application is the same as that for the previous application. There are minimal differences between the new and previous substantive applications, and any differences present reflect the passage of time since the first application was lodged and any procedural changes made by the Amendment Act.

Panel Conveners' conference

9. The purpose of the conference is to inform the Panel Conveners of information that would assist them in making two of their key decisions:⁸
 - (a) The appointment of panel members, including the expertise required of the panel and the number of panel members;⁹ and
 - (b) The timing of the panel decisions.¹⁰
10. The Panel Conveners gather this information by inviting conference participants to set out the number and range of approvals sought, comment on the level of complexity – whether this be factual, evidential or legal, highlight areas of contention or dispute, comment on the agreement of conditions, and propose processes that the panel may adopt.¹¹
11. At the time of the conference for the first substantive application the Panel Conveners were satisfied that they had sufficient information to exercise their functions, powers, and duties in establishing the panel and setting the decision timeframe. In terms of scope, issues, complexity

⁸ Section 6.2, Fast-track Approvals Act 2024: Panel Conveners' Practice and Procedure Guidance (22 July 2025).

⁹ Schedule 2 Fast-track Approvals Act 2024.

¹⁰ s 79 Fast-track Approvals Act 2024.

¹¹ Section 6.6, Fast-track Approvals Act 2024: Panel Conveners' Practice and Procedure Guidance (22 July 2025).

(including legal, evidentiary, and factual), effects, mitigation, and any procedural requirements, the current substantive application remains consistent with the prior substantive application.

12. It is our submission that the Panel Conveners are sufficiently informed as a result of the first conference to exercise their duties and powers in relation to the panel commencement, without needing to obtain further information. As such, holding a conference for this application is unnecessary.
13. Following the above submissions, it is POTL's position that:
 - (a) The timeframe for the panel's decision should be the same as what was previously set – 80 working days post-receipt of comments.
 - (b) The panel's expertise, and the number of panel members, should remain the same as that which was established.

Procedural principles

14. The Act requires that:¹²
 - (1) *Every person performing functions and duties and exercising powers under this Act must take all practicable steps to use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions, duties, or powers being performed or exercised.*
 - (2) *Without limiting subsection (1), that subsection –*

¹² s 10 Fast-track Approvals Act 2024.

(a) *includes a duty to act promptly in circumstances where no time limit has been set for the performance or exercise of a function, power, duty or requirement under this Act:*

(b) ...

(3) *A failure to comply with this section does not of itself invalidate the performance of a function or duty or the exercise of a power under this Act.*

15. We submit that to hold a further conference would not be keeping with the procedural principles of the Act for the Panel Conveners to use timely, efficient, and cost-effective processes that are proportionate to their role in standing up a panel.¹³

Conclusion

16. We respectfully request that the Panel Conveners dispense with its requirement to hold conference for this new substantive application on the basis that:

- (a) They are already sufficiently informed so as to make a decision on the panel composition and decision timeframe; and
- (b) To hold a conference in these circumstances would not be in keeping with the Act's procedural principles.

¹³ Noting that the conference itself is not a statutory function, duty, or power but the establishment of the panel and decision timeframe are.

DATED this 11th day of February 2026.

A handwritten signature in blue ink, consisting of a large, stylized initial 'V' followed by a series of connected loops and a horizontal line at the end.

Vanessa Hamm / Cory Lipinski
Counsel for Port of Tauranga Limited

Appendix One

Changes to Project's Schedule 2 listing

Authorised person	Project name	Project description	Approximate geographical location
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 Coastal marine area within Tauranga Harbour at Sulphur Point and Mount Maunganui