

16 July 2026

Re: FTAA-2512-1158 (*Downtown Carpark Site Development*)

To: Expert Panel: Kitt Littlejohn, Greg Hill and Rebecca Skidmore; and

Jessie Richardson – Application Lead

By email: info@fasttrack.govt.nz

Tēnā koutou e ngā Mema o te Poari,

1. Ngāti Whātua Ōrākei Trust refers to the Draft Decision and Draft Conditions in relation to FTAA-2512-1158 – Te Pūmanawa o Tāmaki, made available on 8 July 2026. The Panel has invited Ngāti Whātua Ōrākei to provide comments on both of those drafts under s 70 of the Fast-track Approvals Act 2024 (**FTAA**).¹ This letter provides the comments of Ngāti Whātua Ōrākei, which focus on the Draft Archaeological Authority Conditions the Panel proposes to adopt.
2. The Draft Decision explains at [55] the Draft Archaeological Authority Conditions the Panel proposes to adopt are those “recommended by HNZPT” (Heritage New Zealand Pouhere Taonga). Having reviewed the Draft Decision, Ngāti Whātua Ōrākei draws the following matters about the Archaeological Authority Conditions to the Panel’s attention:

2.1. There are three sets of archaeological authority conditions before the Panel:

2.1.1. The first set is dated 18 December 2025, which accompanied the Application by Precinct Properties (the **Applicant**). These conditions do not specify iwi or hapū to whom the authority holder would be obliged to consult in the event of taonga, artefacts, and kōiwi being encountered.

2.1.2. The second set is dated 22 April 2026, provided by HNZPT. Conditions 5, 6 and 11 specify three iwi that Precinct would be obliged to consult. The iwi are Ngāti Whātua Ōrākei, Ngāti Te Ata and Te Ākitai Waiohū.

2.1.3. The third set is dated 7 May 2026, also provided by HNZPT. Conditions 5, 6 and 11 also specify three iwi that Precinct would be obliged to consult. The iwi are Ngāti Whātua Ōrākei, Ngāti Whanaunga and Waikato-Tainui. The third set acknowledged that the

¹ [Minute 8](#) dated 8 July 2026.

second set contained an error in relation to the iwi specified (drawn to its attention by Precinct on 30 April 2026), and apologised for that error.

- 2.2. The Draft Decision appends the second set of archaeological authority conditions as the Draft Archaeological Authority Conditions, the same set which have been acknowledged by HNZPT as an error.
3. The **Appendix** to this letter sets out the evolution of the archaeological authority conditions.
4. Ngāti Whātua Ōrākei considers the Panel has made two errors in relation to the Draft Archaeological Authority Conditions:
 - 4.1. First, in proposing as the Draft Archaeological Authority Conditions the second set of archaeological authority conditions which had been superseded by the third set; and
 - 4.2. Secondly, in proposing as the Draft Archaeological Authority Conditions a set of conditions that specifies iwi other than Ngāti Whātua Ōrākei when the Panel has accepted that Ngāti Whātua Ōrākei is the appropriate tangata whenua in relation to the Application.
5. Ngāti Whātua Ōrākei considers the above are errors because:
 - 5.1. Ngāti Whātua Ōrākei is the tangata whenua and ahi-kā in Tāmaki, and in particular within the rohe of Te Kahu Tōpuni o Tuperiri and specifically for the Downtown Carpark development site. The site is within what was formerly the seabed of Waitematā Kupenga Rau, over which Ngāti Whātua Ōrākei holds an unresolved grievance surrounding the loss of customary title.
 - 5.2. The responsibility of Ngāti Whātua Ōrākei as tangata whenua and ahi kā within Tāmaki, and the significance of the relationship between Ngāti Whātua Ōrākei and Precinct are set out in the Trust's letter dated 5 November 2025 (appended to the Application dated 18 December 2025) and in the Trust's s 53 comments on the Application dated 5 May 2026.
 - 5.3. The enduring role and responsibilities of Ngāti Whātua Ōrākei are reflected in the partnership Ngāti Whātua Ōrākei has with Precinct in relation to the Application. Ngāti Whātua Ōrākei supports the Application and has set out its position on matters of importance to it jointly with and supported by Precinct.
 - 5.4. The Draft Decision refers to and analyses the material provided to the Panel by Ngāti Whātua Ōrākei (for example at [67], [103] [161], [207], [356], [357]) and at [210] in particular, records:

“We also accept the Applicant’s and Ngāti Whātua Ōrākei’s response that, for this Site, Ngāti Whātua Ōrākei is the tangata whenua project partner and that ongoing cultural design and tikanga matters should be addressed through that relationship.”

- 5.5. The Draft Decision does not accept or prefer the information provided by other iwi, if those iwi provided any information to the Panel at all. For example, at [210] of the Draft Decision, the Panel only acknowledged the cultural values assessment (**CVA**) provided by Ngaati Whanaunga (noting at [136] that Precinct and Ngāti Whātua Ōrākei were working together in respect of the CVA and that Ngāti Whātua Ōrākei wished to address those matters in accordance with tikanga). The Draft Decision does not refer to cultural or other information provided by Waikato-Tainui, but noted at [133] that Waikato-Tainui were approached/consulted by Precinct as were other iwi.
6. In these circumstances, Ngāti Whātua Ōrākei accordingly requests the Panel amends the Draft Archaeological Authority Conditions to those proposed by Precinct and Ngāti Whātua Ōrākei. These are dated 19 May 2026, and are set out in Attachment U to Precinct’s memorandum of counsel of that same date. These proposed archaeological authority conditions provide only for Ngāti Whātua Ōrākei.
7. The balance of this letter provides more detailed comments in relation to the Draft Archaeological Authority Conditions.

The Panel proposes as the Draft Archaeological Authority Conditions an earlier and incorrect set of conditions

8. In relation to the first error, Precinct’s Application dated 18 December 2025 provided an initial draft of archaeological authority conditions, at p 137. As reflected discussions ongoing at that stage, this had a “[placeholder for iwi information]”.
9. HZNPT were required to provide a report on the Application to the Panel under s 51 FTAA. This was provided to the Panel on 22 April 2026. Appendix A of the 22 April 2026 report set out the archaeological conditions upon which HNZPT proposed the Panel should grant an archaeological authority to Precinct for the archaeological works required for the project. It referred to the original draft of Precinct, and stated it had “completed the “place holder for iwi information” conditions” (at [21]).

10. Conditions 5, 6 and 11 in the s 51 Report each set out how Precinct, as the Authority Holder, would interact with iwi in the event of taonga, artefacts, and kōiwi being encountered. Those conditions specified that Precinct would have obligations to Ngāti Whātua Ōrākei, Te Ākitai Waiohua and Ngaati te Ata. HNZPT did not explain why its draft archaeological conditions included Ngāti Whātua Ōrākei, Te Ākitai Waiohua and Ngaati te Ata. HNZPT stated briefly, at [16], that the Applicant had undertaken consultation with iwi/hapū “who have not expressed opposition to the application proposal”.
11. It was the view of Ngāti Whātua Ōrākei that there was no basis upon which HNZPT could consider that Te Ākitai Waiohua and Ngaati Te Ata would be in a position to provide guidance to Precinct on the tikanga relating to the archaeological works: those groups are not tangata whenua in relation to the project site or the general area and provided no comment to Precinct when contacted about the Application.
12. Precinct drew this error to the attention of HNZPT on 30 April 2026. HNZPT acknowledged it had made an “error” and “apologise[d] for any inconvenience”.
13. HNZPT accordingly provided updated conditions and comments on 7 May 2026 which specified at [8]:
- The Applicant has pointed out that there was an error in those conditions and as such, we apologise for any inconvenience and attached at Appendix A to these comments is an amended set of conditions. Conditions 5, 6, and 11 have been amended to refer to **Ngāti Whātua Ōrākei, Waikato-Tainui and Ngaati Whanaunga**.
- (emphasis added)**
14. Although the 7 May 2026 HNZPT comment and draft archaeological authority conditions is the set of HNZPT conditions properly before the Panel:
- 14.1. The Draft Decision at [55] records the conditions “were those recommended by HNZPT and included as Appendix A to its report provided under section 51(2)(d) dated 3 September 2025”; and
- 14.2. It is the 22 April 2026 set of HNZPT conditions that the Panel proposes as the Draft Archaeological Authority Conditions.

15. The Panel has accordingly made an error by proposing as the Draft Archaeological Authority Conditions a set of conditions that were superseded. It has also made a related error by explaining at [394] that:

Unlike the proposed conditions to be imposed on the archaeological authority, **which were agreed by the HNZPT and the Applicant early in the process**, the Panel adopted a 'two-step approach to its review, drafting and imposition of the RMA conditions for the project. This was because important aspects of these conditions were clearly in contention from the outset of the decision-making process."

(emphasis added)

16. While the form of the archaeological authority conditions has not changed materially from HNZPT's as between the second and third sets of archaeological authority conditions, there has not been agreement between Precinct and HNZPT about the iwi Precinct has to consult. HNZPT and Ngāti Whātua Ōrākei (supported by Precinct) hold different positions about this important matter.
17. For completeness, Ngāti Whātua Ōrākei considers that even if the Panel had proposed to adopt the third set of archaeological authority conditions, it would have similarly made an error because neither set of the HNZPT conditions represented an agreed position between HNZPT and Precinct.

The Draft Archaeological Authority Conditions are inconsistent with the Panel's acceptance of the Ngāti Whātua Ōrākei position

18. Neither the second nor the third sets of archaeological authority conditions explain the basis upon which the listed iwi were specified:
- 18.1. The second set (22 April 2026) specifies Ngāti Whātua Ōrākei, Ngaati Te Ata and Te Ākitai Waiohū. HNZPT refers to the consultation Precinct had undertaken with iwi and hapū, but did not provide additional detail.
- 18.2. The third set (7 May 2026) specifies Ngāti Whātua Ōrākei, Ngaati Whanaunga and Waikato-Tainui. HNZPT does not provide additional detail to the error it made as between the second and third sets.
19. It is Ngāti Whātua Ōrākei's view that, while Waikato-Tainui and Ngaati Whanaunga were the only two groups to respond to Precinct's contact about the Application, that alone should not give rise to HNZPT's treatment of those groups' interests as equivalent to those of Ngāti Whātua Ōrākei. Although the Draft Archaeological Authority Conditions themselves reflect an 'equivalence of

interests' approach, the Panel's reasons for adopting the conditions does not. This is apparent from the material before the Panel and its consideration of them as set out in the Draft Decision.

20. The position of Ngāti Whātua Ōrākei and Precinct in relation to HNZPT's 7 May comments was explained in Precinct's memorandum of counsel dated 21 May 2026. That memorandum explained:

50. Precinct and Ngāti Whātua Ōrākei (as project partner) have provided a joint response to the CVA provided by Ngāti Whanaunga (refer **Attachment E**). In this response, Ngāti Whātua Ōrākei sets out its position regarding the proposed conditions of the archaeological authority in relation to Tikanga.
51. As set out in the conditions provided within Heritage New Zealand Pouhere Taonga's section 53 comments, Waikato-Tainui and Ngāti Whanaunga are proposed to be involved in the archaeological process alongside Ngāti Whātua. Precinct supports Ngāti Whātua Ōrākei's position that it should only be Ngāti Whātua Ōrākei referenced in these conditions, as tangata whenua of Tāmaki and the project site.
52. Precinct therefore seeks removal of Waikato-Tainui and Ngāti Whanaunga from proposed conditions 5, 6 and 11 to the Authority to Modify (refer **Attachment U**).

21. Attachment E is the joint response by Ngāti Whātua Ōrākei and Precinct dated 19 May 2026 to the 7 April 2026 cultural values assessment provided by Ngaati Whanaunga. Attachment E specifies:

For the reasons set out above, particularly that Ngāti Whātua Ōrākei are the tangata whenua of Tāmaki and the Project site, Ngāti Whātua Ōrākei considers it is not appropriate for Waikato-Tainui and Ngaati Whanaunga to be included in conditions 5, 6 and 11 of the archaeological authority. Ngāti Whātua Ōrākei's position is supported by Precinct. **Those parties should therefore be removed from the proposed condition wording.**

(emphasis added)

22. Attachment U specifies:

5	Tikanga In addition to tikanga Māori protocols agreed between the Authority Holder and Ngāti Whātua Ōrākei, Waikato-Tainui and Ngāti Whanaunga, the following shall apply: a) access for Ngāti Whātua Ōrākei, Waikato-Tainui and Ngāti Whanaunga to any archaeological site encountered in order to undertake tikanga subject to any health and safety requirements. b) If any possible taonga or Māori artefacts are encountered, Ngāti Whātua Ōrākei, Waikato-Tainui and Ngāti Whanaunga shall be informed to enable appropriate tikanga to be undertaken, so long as all statutory requirements under the Heritage New Zealand Pouhere Taonga Act 2014 and the Protected Objects Act 1975 are met. c) If any archaeological site is encountered and works modifying or destroying the archaeological site are undertaken, Ngāti Whātua Ōrākei, Waikato-Tainui and Ngāti Whanaunga shall be provided with a copy of any reports completed and be given an opportunity to discuss it with the Project Archaeologist if required.
6	Kōiwi Discovery If any kōiwi (human remains) are encountered, all works must cease within 20 metres of the discovery. HNZPT, New Zealand Police, and Ngāti Whātua Ōrākei, Waikato-Tainui and Ngāti Whanaunga must be advised immediately. Any steps following must be undertaken in accordance with Guidelines for Kōiwi Tangata/Human Remains (AGS8 2014) and no further work in the area may take place until future actions have been agreed by all parties.
...	
11	Archaeological Records Within 12 months of the completion of the on-site archaeological work, the Authority Holder shall ensure that a final report, completed following the Archaeological Report Guideline (AGS12 2023), is emailed to HNZPT for inclusion in HNZPT's Archaeological Reports Digital Library, and to Ngāti Whātua Ōrākei, Waikato-Tainui and Ngāti Whanaunga. A copy must also be provided to the NZAA Central Filekeeper.

23. The Panel acknowledges the position of Precinct and Ngāti Whātua Ōrākei in relation to the archaeological authority conditions at [103]:

... on archaeological conditions, Precinct supported Ngāti Whātua Ōrākei's position that tikanga-related archaeological authority conditions should refer only to Ngāti Whātua Ōrākei, as tangata whenua of Tāmaki and the project site, and sought removal of Waikato-Tainui and Ngāti Whanaunga from proposed conditions 5, 6 and 11.

24. The Panel then concludes at [209]–[210], that:

209. We accept that the cultural effects of the project are positive. **We give significant weight to the direct support of Ngāti Whātua Ōrākei**, its role as project partner, and its evidence that the project will enhance cultural values, provide for cultural expression and support the exercise of mana and kaitiakitanga over a site of deep significance.

210. We acknowledge the Ngāti Whanaunga CVA. **We also accept the Applicant's and Ngāti Whātua Ōrākei's response that, for this Site, Ngāti Whātua Ōrākei is the tangata whenua project partner and that ongoing cultural design and tikanga matters should be addressed through that relationship.** We are satisfied that no iwi authority has opposed the project and that cultural effects have been appropriately addressed.

(emphasis added)

25. The Panel's conclusions at [209]–[210] are consistent with its observations about the position of Ngāti Whātua Ōrākei in relation to the Application and the material provided to the Panel at [67], [103] [161], [207], [356] and [357]. Paragraph [209] in particular demonstrates the Panel has considered and weighed the material before it from Ngāti Whātua Ōrākei and Ngaati Whanaunga, and prefers that of Ngāti Whātua Ōrākei. Because there was no material before the Panel from any of the other iwi specified in the second and third sets of the archaeological authority conditions, the Panel did not (and could not) conduct a similar analysis.

26. At [215], the Panel concludes:

We also find that archaeological effects can be appropriately addressed through the archaeological authority conditions. HNZPT supports grant of the authority subject to conditions. We accept that the conditions requiring archaeological management, monitoring, tikanga procedures, taonga and kōiwi protocols, recording and reporting are appropriate.

27. Then, at [394] the Panel concludes:

Unlike the proposed conditions to be imposed on the archaeological authority, **which were agreed by the HNZPT and the Applicant early in the process**, the Panel adopted a 'two-step approach to its review, drafting and imposition of the RMA conditions for the project. This was because important aspects of these conditions were clearly in contention from the outset of the decision-making process."

(emphasis added)

28. Together, the Panel's conclusions and explanations at [103], [209]–[210], [215], [356], [357] and [394] are inconsistent with the Draft Archaeological Authority Conditions appended to the Draft Decision. The reasoning above strongly suggests the Panel was alive to the potentially competing positions of Ngāti Whātua Ōrākei and Ngaati Whanaunga, and preferred the position of Ngāti Whātua Ōrākei as set out in the materials it provided to the Panel. The materials include, for example, comments from Ngāti Whātua Ōrākei that:² *"As a general overarching position, Ngāti*

² Ngāti Whātua Ōrākei Trust, s 53 comments. 5 May 2026.

Whātua Ōrākei considers that resource management processes should involve the “appropriate” iwi and hapū with recognised ahi kā and mana whenua status within the relevant rohe. This reflects a principled approach to engagement and decision-making that recognises the importance of tikanga, whakapapa, and enduring customary relationships to place.” Ngāti Whātua Ōrākei also considers the archaeological authority conditions should involve the appropriate iwi and hapū with recognised ahi kā and mana whenua status.

29. The Panel has accordingly made an error by proposing to adopt Draft Archaeological Authority Conditions that are not supported by the Panel’s reasons.
30. The Draft Archaeological Authority Conditions accordingly offend the tikanga of Ngāti Whātua Ōrākei. They do so because the Panel proposes to impose conditions on Precinct that require it to consult iwi who do not have (and do not profess to have) tangata whenua interests within Te Kahu Tōpuni o Tuperiri, where the development is to take place. The Panel’s recognition of additional iwi is not grounded in material that was before the Panel (in particular in relation to Ngaati Te Ata, Te Ākitai Waiohū and Waikato-Tainui) and is inconsistent with the status of Ngāti Whātua Ōrākei as outlined in November 2025 and May 2026. As above, the Panel appears has accepted Ngāti Whātua Ōrākei’s position.³

Ngāti Whātua Ōrākei seeks changes to the Draft Archaeological Authority Conditions

31. In these circumstances, for the purposes of the Panel’s final decision, Ngāti Whātua Ōrākei requests that the Panel adopt the archaeological authority conditions set out at Appendix U to the 21 May 2026 memorandum of counsel for Precinct (which are consistent with its conclusions about the relevant tangata whenua interests at [209]–[210] of the Draft Decision).
32. Alternatively, Ngāti Whātua Ōrākei requests that the Panel adopt the same “two-step approach” for the archaeological authority conditions that it followed in relation to the Draft RMA conditions on the basis that, in the Panel’s words, there were “*important aspects of these conditions that were clearly in contention*”. Given paragraphs [209]–[210] of the Draft Decision, Ngāti Whātua Ōrākei considers it is very likely the Panel would then explain that the Appendix U conditions should be adopted. If the Panel did not consider the Appendix U conditions should be adopted, it would be obliged to

³ The Draft Archaeological Authority Conditions is similarly inconsistent with declarations of the High Court, as brought to the Panel’s attention in the s 53 comments: see *Ngāti Whātua Ōrākei Trust v Attorney-General (No 5)* [2023] NZHC 74.

explain why the archaeological conditions should not reflect the conclusions at [209]–[210] (and elsewhere) of the Draft Decision.

33. Ngāti Whātua Ōrākei and their legal counsel can be available for a teleconference at short notice if that would be of assistance to the Panel.

Nāku noa, nā



Ngarimu Blair

Deputy Chair, Ngāti Whātua Ōrākei Trust

APPENDIX: ARCHAEOLOGICAL CONDITIONS

Proposed conditions in the Archaeological Authority					
Author	Applicant	Heritage New Zealand Pouhere Taonga	Heritage New Zealand Pouhere Taonga	Applicant and Ngāti Whātua Ōrākei	Expert Panel
Empowering provision	43(3)(i)	51(2)(d)	53(2)(k)	55(2)	70
Name of annexure	Substantive Application	Appendix A	Appendix A	Attachment U (tracked changes version)	Draft Archaeological Authority Conditions
Date	18 December 2025	22 April 2026	7 May	21 May	8 July
Extract of condition 5	[placeholder for iwi information]	tikanga Māori protocols agreed between the Authority Holder and Ngāti Whātua Ōrākei, Te Ākitai Waiohū and Ngaati te Ata,	tikanga Māori protocols agreed between the Authority Holder and Ngāti Whātua Ōrākei, Waikato-Tainui and Ngaati Whanaunga,	tikanga Māori protocols agreed between the Authority Holder and Ngāti Whātua Ōrākei, Waikato-Tainui and Ngaati Whanaunga,	tikanga Māori protocols agreed between the Authority Holder and Ngāti Whātua Ōrākei, Te Ākitai Waiohū and Ngaati te Ata,
Extract of condition 6		Ngāti Whātua Ōrākei, Te Ākitai Waiohū and Ngaati te Ata must be advised immediately.	Ngāti Whātua Ōrākei, Waikato-Tainui and Ngaati Whanaunga must be advised immediately.	Ngāti Whātua Ōrākei, Waikato-Tainui and Ngaati Whanaunga must be advised immediately.	Ngāti Whātua Ōrākei, Te Ākitai Waiohū and Ngaati te Ata must be advised immediately.
Extract of condition 11		and to Ngāti Whātua Ōrākei, Te Ākitai Waiohū and Ngaati te Ata.	and to Ngāti Whātua Ōrākei, Waikato-Tainui and Ngaati Whanaunga.	and to Ngāti Whātua Ōrākei, Waikato-Tainui and Ngaati Whanaunga.	and to Ngāti Whātua Ōrākei, Te Ākitai Waiohū and Ngaati te Ata.