

UNDER

the Fast Track Approvals Act 2024 (the FTAA)

IN THE MATTER

from the Port of Tauranga Ltd for the Stella Passage Development Project listed in Schedule 2 of the FTAA

**JOINT MEMORANDUM OF COUNSEL ON BEHALF OF NGĀTI RANGINUI IWI SOCIETY, NGĀ HAPU O NGĀTI RANGINUI SETTLEMENT TRUST AND NGĀTI RANGINUI FISHERIES TRUST
IN RESPOSNE TO EXPERT PANEL'S MINUTE 7**

DATED 14 JULY 2026

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MAY IT PLEASE THE COURT:

INTRODUCTION

1. This joint memorandum is filed in response to the Expert Panel's Minute 7. It responds to the request for the further information set out in paragraphs [2](a) (*Augier* conditions) and [2](c) (Treaty settlements). In providing the further information on Treaty settlements we also address the submissions made by POTL on the Treaty settlement impact of the Stella Passage Development Project (**Project**).
2. This memorandum is filed on behalf of all three Ngati Ranginui representative entities: Ngati Ranginui Iwi Society Inc (also referred to as Te Runanga o Ngati Ranginui (**Runanga**); the Nga Hapu o Ngati Ranginui Settlement Trust (**Settlement Trust**); and the Ngati Ranginui Fisheries Trust (**Fisheries Trust**). Together these entities are the combined representative voice for Ngati Ranginui.

AUGIER CONDITIONS

3. The first issue addressed is the Applicant's contention that a number of the proposed cultural conditions are properly characterised as *Augier* conditions rather than conditions capable of being imposed under ss 108 and 108AA of the Resource Management Act 1991 (**RMA**).
4. Counsel respectfully submit that the Applicant's analysis proceeds from two incorrect premises.
5. First, it effectively separates funding commitments from the mitigation measures they enable, notwithstanding that the funded activities are themselves acknowledged to directly respond to the Project's adverse cultural effects.
6. Secondly, although the Applicant acknowledges that the Project gives rise to cumulative cultural effects extending beyond the immediate Project footprint, its analysis nevertheless continues to draw distinctions between

the "*discrete and identifiable effects of the Project*", the "*Port locality*", and the wider cultural effects on Te Awanui. Those distinctions are difficult to reconcile with the relational nature of the cultural effects identified by tangata whenua.

The statutory framework

7. The issues identified by the Panel engage both s 108AA of the RMA and s 83 of the Fast-track Approvals Act 2024 (**FTAA**).
8. Section 108AA(1)(b) RMA permits conditions that are directly connected to an adverse effect of the activity on the environment.
9. Section 83 of the FTAA imposes a separate limitation on the Panel's discretion, requiring that any condition imposed be no more onerous than necessary to address the reason for which it is set.

The Applicant's analysis

10. Throughout Appendix 2, the Applicant repeatedly accepts that the underlying activities funded by the relevant conditions directly respond to the cumulative cultural effects of the Project. At the same time, it characterises the associated funding obligations as *Augier* conditions because they "*express a funding commitment to a third party*".
11. For example, the Applicant accepts that the preparation of a Mātauranga Māori State of the Environment Report, Mātauranga Monitoring Plan, restoration initiatives, scholarship programme, avifauna enhancement initiatives and other cultural mitigation measures are intended to respond directly to adverse cultural effects arising from the Project, yet contends that the funding required to implement those measures is properly characterised as *Augier*.
12. With respect, that analysis conflates the mechanism by which mitigation is implemented with the statutory test in s 108AA(1)(b).

13. Section 108AA does not ask whether implementation of a condition requires expenditure by the consent holder or whether funding is provided to another person or entity. Rather, the statutory enquiry is whether the obligation imposed by the condition is directly connected to an adverse effect of the activity on the environment.

Funding is integral to the mitigation

14. The funding obligation is not collateral to the mitigation. It is the mechanism by which the mitigation is implemented.
15. Without funding, there can be no Mātauranga Monitoring Plan, Mātauranga Māori State of the Environment Report, restoration projects, scholarships, cultural monitoring or other mitigation measures proposed by the Applicant.
16. Where the funded activity is directly connected to addressing adverse cultural effects of the Project, the funding necessary to prepare, implement and give effect to that activity is equally directly connected to those effects.
17. Nor does it matter that the work is undertaken by tangata whenua or another third party. Resource consent conditions routinely require consent holders to commission work from appropriately qualified experts and to meet the costs of doing so. There is no principled basis for treating mātauranga Māori, cultural health assessment, cultural monitoring or the exercise of kaitiakitanga differently simply because those matters are appropriately undertaken by tangata whenua.
18. Indeed, requiring tangata whenua to undertake that work reflects the very nature of the mitigation. Matters of mātauranga Māori, tikanga and kaitiakitanga can only properly be undertaken by those who hold the relevant knowledge, responsibilities and relationships. Requiring the consent holder to fund that work does not alter the direct connection between the condition and the adverse effects it is intended to address.

19. It follows that, where the Panel is satisfied that a condition requiring the preparation or implementation of a plan, report, monitoring programme or other cultural mitigation measure is directly connected to the adverse effects of the Project, the Panel is equally entitled to impose a condition requiring funding sufficient to prepare, implement and give effect to that mitigation. The Applicant's proposed funding amounts are not jurisdictional limits. Rather, the Panel remains entitled to determine, on the evidence before it, the funding necessary to ensure the mitigation required by the condition can be effectively delivered.
20. The Applicant's agreement that funding of this nature forms part of an appropriate mitigation package supports the conclusion that such conditions are capable of falling within s 108AA(1)(b). It does not, however, constrain the Panel's jurisdiction or discretion as to the form or amount of any funding condition ultimately imposed.

Cultural effects are relational

21. The Applicant's analysis also continues to reflect an unduly narrow conception of cultural effects.
22. In paragraph 43 of its memorandum, the Applicant distinguishes between "*the discrete and identifiable effects of the Project*" and mitigation that extends more broadly across Te Awanui, including restoration projects, scholarship funding, avifauna enhancement and other initiatives directed towards the wider health of the harbour. A similar distinction is reflected in Appendix 2, where aspects of those same measures are characterised as *Augier* conditions because they involve funding commitments to third parties or, in some instances, because they are said not to respond directly to an effect of the Project.
23. With respect, those distinctions are not readily reconciled with the Applicant's own repeated acknowledgement elsewhere that the relevant mitigation measures directly respond to the cumulative cultural effects of the Project.

24. The cultural evidence has consistently identified adverse effects on relationships with Te Awanui, whakapapa, mahinga kai, taonga species, cultural identity and the exercise of kaitiakitanga. Those are inherently relational effects. They are not confined to the physical footprint of the reclamation or dredging works, nor to the legal boundary of the Port.
25. Rather, they arise from the Project's contribution to the cumulative degradation of Te Awanui and its impact upon the ability of tangata whenua to continue exercising kaitiakitanga within that environment.
26. It follows that a condition does not cease to be directly connected to an adverse effect of the activity merely because the mitigation extends beyond the immediate operational footprint of the Project. Where the Project contributes to the cumulative degradation of Te Awanui, mitigation directed towards restoring or strengthening cultural relationships and resilience, restoring taonga species, improving the health of Te Awanui, or enabling tangata whenua to exercise kaitiakitanga may remain directly connected to those adverse effects.
27. That broader relational understanding is consistent with the recognition of Māori relationships with their ancestral waters and other taonga, and with the requirement to have particular regard to kaitiakitanga under Part 2 of the RMA.

Conclusion on *Augier* conditions

28. The Applicant's own Appendix 2 repeatedly acknowledges that the underlying mitigation measures directly respond to the adverse cultural effects of the Project.
29. Counsel respectfully submit that the Applicant's conclusion that the associated funding obligations are *Augier* conditions because they involve funding commitments to tangata whenua or another third party does not reflect the statutory test in s 108AA(1)(b).

30. Where funding is the necessary mechanism by which mitigation of identified cultural effects is implemented, that funding obligation is itself directly connected to those adverse effects.
31. The Panel is therefore invited to conclude that conditions requiring funding for the preparation, implementation and ongoing delivery of cultural mitigation measures are capable of being imposed pursuant to s 108AA(1)(b) of the RMA where the funded activity is directly connected to the adverse effects of the Project. The fact that implementation requires funding to be provided to tangata whenua or another appropriate entity does not, of itself, render such conditions to be no longer directly connected and so *Augier* conditions.
32. If the Panel concludes that such conditions fall within s 108AA(1)(b), the Panel remains entitled to determine, on the evidence before it, the content of those conditions, including the funding necessary to prepare, implement and give effect to the relevant mitigation. The Applicant's proposed funding amounts do not limit the Panel's jurisdiction or discretion in that regard.
33. To the extent the Panel ultimately adopts conditions in substantially the form proposed by the Applicant, Ngati Ranginui supports those conditions continuing to record the Applicant's agreement to them. Recording both the statutory basis for the conditions and the Applicant's agreement will provide greater certainty during implementation and assist in avoiding future uncertainty or disputes regarding the intended scope and operation of those conditions over the life of the Project.
34. However, the Applicant's agreement is not the source of the Panel's jurisdiction. Nor does it constrain the Panel's ability to determine, on the evidence before it, the conditions necessary to appropriately avoid, remedy or mitigate the adverse cultural effects of the Project.

TREATY SETTLEMENTS

Ngati Ranginui Treaty settlements

35. The Treaty settlements to which Ngati Ranginui is a party, and that are relevant to Project, are:
 - (a) The Maori Fisheries Settlement;
 - (b) The Maori Commercial Aquaculture Settlement; and
 - (c) The Nga Hapu o Ngati Ranginui Settlement.
36. The details of each of these settlements is discussed in detail in the sections below.
37. The redress relating to the commercial aspect of the Maori Fisheries Settlement and the Maori Commercial Aquaculture Settlement (fishing quota, cash, shares in Moana New Zealand Limited and future rights to aquaculture space) are held by the Fisheries Trust. No redress is provided by the Maori Fisheries Settlement for Maori non-commercial (customary) fishing. Instead, these rights are simply preserved by the settlement, and mechanisms are put in place for the exercise of those rights.
38. The redress from the Nga Hapu o Ngati Ranginui Settlement is held by the Settlement Trust, but with provision for certain of that redress to be transferred to hapu trusts. The Wairoa Hapu Settlement Trust, which has been a participant in this application, is one of those trusts.
39. The Runanga is not itself a recipient of settlement redress. However, as a representative entity for Ngati Ranginui, it benefits from the fact of the settlements and the Crown commitments to Ngati Ranginui that form part of those settlements.

Sections 7, 82 and 85(1)(b) of the FTAA

40. As the Expert Panel notes in Minute 7, Treaty settlements are made relevant by section 7 of the FTAA. Section 7 of the FTAA provides:

7 *Obligation relating to Treaty settlements and recognised customary rights*

- (1) *All persons performing and exercising functions, powers, and duties under this Act must act in a manner that is consistent with—*
- (a) *the obligations arising under existing Treaty settlements; and*
- (b) *customary rights recognised under—*
- (i) *the Marine and Coastal Area (Takutai Moana) Act 2011;*
- (ii) *the Nga Rohe Moana o Nga Hapu o Ngati Porou Act.*
- (2) *To avoid doubt, subsection (1) does not apply to a court or a person exercising a judicial power or performing a judicial function or duty.*
- (3) *In this section, **existing Treaty settlements** means Treaty settlements that exist at the time the relevant function, power, or duty is performed or exercised (rather than only those that exist at the commencement of this Act).*

41. Section 7 therefore requires that any person “*exercising functions, powers, and duties*” under the Act must act in a manner that is consistent with the obligations arising under existing Treaty settlements (section 7(1)(a)) and customary rights recognised under the Marine and Coastal Area Act 2011 (section 7(1)(b)(i)). Existing settlements are settlements that exist at the time a relevant function, power or duty is performed.

42. In the decision of the Expert Panel that considered the Taranaki VTM application there is a useful discussion at paragraph 249 on the essential nature of Treaty of Waitangi settlements, and therefore the approach that should be taken when considering the application of section 7 of the FTAA. At paragraph 249 the Expert Panel for that application says:

249. *Treaty settlements represent a negotiated resolution between the Crown and iwi to address historical breaches of Te Tiriti o Waitangi and to reset the relationship between the parties going forward. In the coastal and marine context, the instruments agreed through settlement are intended to provide practical and enduring instruments through which iwi relationships with lands, waters and taonga are recognised, and through*

which kaitiakitanga and participation in the management and use of natural resources can be exercised within contemporary statutory frameworks.

43. The Expert Panel elaborates on this at paragraph 264:

264. Treaty settlements are intended to operate in a practical and enduring way. They are not limited to compliance with individual clauses but include an obligation on the Crown to ensure that settlement redress is not undermined in practice.

44. The Expert Panel then concludes at paragraphs 1826 and 1827, that:

1826 The Panel treats s 82 as important for two related reasons. First, it prevents settlement instruments (and the obligations therein) from being treated as background context only where, under the relevant specified Act, they are intended to have real and practical effect. Second, it informs what kinds of measures could realistically avoid or remedy any inconsistency. Where a settlement instrument is intended to operate in a durable and practical way, the Panel must be satisfied that approval, including any conditions, would preserve that practical operation. Where the Panel is not so satisfied, the FTAA requires that approval be declined.

1827 In applying s 7, the Panel has considered whether approval would materially undermine the intended practical operation and integrity of Treaty settlement obligations. The Panel also recognises that Treaty settlement instruments frequently implement tikanga through relationship and participation structures (including protocols, agreed engagement pathways, recognition of kaitiakitanga responsibilities, and provisions directed to taonga species and customary practice). Where a settlement instrument is designed to enable iwi to exercise tikanga in connection with fisheries management and use, the Panel treats “integrity” as including the instrument’s practical ability to support that tikanga-based exercise over time.

45. Ultimately, the position reached by the Expert Panel is that both the commercial and non-commercial aspects of the Māori fisheries settlement are engaged and undermined by the Taranaki VTM application. The Expert Panel also concludes that the Māori commercial aquaculture settlement framework was engaged. However, it did not have information before it as to whether granting approval would materially constrain the Crown’s future ability to deliver settlement aquaculture space or materially affect the practical operation of the settlement in that area.
46. The terms of the relevant iwi specific Treaty settlements in that area do not appear to have been engaged by the Taranaki VTM application. Had they done so, it can reasonably be expected that the Expert Panel would have approached those settlements in the same way.

47. The position of the Taranaki VTM Expert Panel finds support in the recent High Court decision by Boldt J in *Te Ohu Kai Moana Trustee Ltd v The Attorney-General*¹. On the question of the nature of the Maori Fisheries Settlement Boldt J said:

[117] I reject the Crown’s submission that the settlement has no enduring legal force. The Court of Appeal’s comments in Sealords in 1992 and the Forests case in 2007, which described the respective settlement deeds as political compacts rather than legally-binding agreements, pre-dated the legislation which immediately followed in both cases.

[118] It was the Settlement Act and subsequent legislation which gave the settlement legal effect. In Sealords the Court of Appeal said the Deed meant nothing until it was enshrined in legislation; six weeks later legislation enshrining much of it in law came into force.

*[119] The [Treaty of Waitangi Fisheries Claims] Settlement Act is to be interpreted in a manner that best furthers the agreements in the Deed. The preamble records key aspects of the underlying settlement, including its status as a “just and honourable solution in conformity with the principles of the Treaty”. As the Court of Appeal later observed in *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission*, “[t]he deed, unlike the resolutions, is not set out in the [Settlement Act] but plainly the Act was intended to implement it.”*

[120] The settlement’s enduring legal force is also confirmed by s 32(b)–(d) of the Maori Fisheries Act 2004. Section 32, read as a whole, confirms the agreements in the Deed still bind the parties, and that the Crown’s obligations under the settlement remain in force.

48. Like the Taranaki VTM Expert Panel determination, Boldt J’s comments only relate to the Maori Fisheries Settlement (and only the commercial aspects of the settlement). However, Boldt J’s comments have broader application in that they indicate the approach of the Courts when dealing with Treaty settlements.

The POTL Position

49. The POTL position on Treaty settlements is set out in paragraphs [71] to [118] of the POTL Submissions. In short, POTL does not consider that there are any issues that arise because of Treaty settlements. The POTL view is

¹ *Te Ohu Kai Moana Trustee Ltd v The Attorney-General* [2025] NZHC 657. For completeness we do note that this decision has been the subject of an appeal. The appeal was heard on 9-10 June 2026. No decision has been issued by the Court of Appeal.

that section 7 is therefore not triggered and does preclude the approval of a fast-track consent for the Project.

50. Ngati Ranginui does not agree with the POTL position.

Fisheries and Aquaculture Settlements

51. As noted above, Ngati Ranginui has Treaty settlement interests arising from both the Maori Fisheries Settlement and the Maori Commercial Aquaculture Settlement. The legislation that gives effect to these settlements are:

- (a) The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;
- (b) Maori Fisheries Act 2004;
- (c) The Maori Commercial Aquaculture Claims Settlement Act 1992;
and
- (d) The Fisheries Act 1996.

52. The 1992 Māori Fisheries Deed of Settlement is also relevant because it sets out the primary terms of the Maori Fisheries Settlement.
53. The commercial aspect of the Maori Fisheries Settlement and the Maori Commercial Aquaculture Settlement raise separate considerations from the non-commercial aspects of the Maori Fisheries Settlement.
54. The commercial aspects of the Maori Fisheries Settlement are covered by sections 5 to 9 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. The commercial aspects of the settlement are delivered through the purchase of a 50% stake in Sealord, and transfer of fishing quota, shares in Moana New Zealand, and some cash. The interest in Sealord and transfer of fishing quota and shares in Moana New Zealand give rise to an ongoing interest on the part of Ngati Ranginui in New Zealand's commercial fisheries. This means that Ngati Ranginui has a settlement derived interest in any activities that might impact upon the health of New Zealand's

commercial fisheries. This is because any impacts on the health of New Zealand's commercial fisheries will affect the value of the fishing quota and shares in Sealord and Maona New Zealand that were obtained by Ngati Ranginui in settlement of their commercial fisheries claims.

55. The Maori Commercial Aquaculture Settlement is given effect through the Maori Commercial Aquaculture Settlement Act 1992. The redress for the settlement of Ngati Ranginui's commercial aquaculture claims is to be provided through the allocation of space and payment of cash. Like the commercial aspect of the Maori Fisheries Settlement this gives Ngati Ranginui an ongoing interest in the health and good management of the marine environment, especially within the rohe of Ngati Ranginui, which includes Te Awanui.
56. The non-commercial (customary) aspect of the Maori Fisheries Settlement is covered by section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. Section 10 provides for the development of regulations to manage Maori customary fishing. It also provides for ongoing obligations on the part of the Crown in respect of Maori non-commercial (customary) fishing.

Maori Commercial Fisheries and Maori Commercial Aquaculture Settlement

57. POTL submits that the Project will have no impact on commercial fishing effort and the practical utility of the commercial fisheries settlements will not be undermined or frustrated.² In taking this position POTL says that the Project occupies a "miniscule" percentage of the space within Te Awanui, that it is practically unlikely to have an impact anyway because the Project is within the current Port footprint, and no commercial fishing occurs within the Port footprint.

² Paragraph [100] of POTL Submissions.

58. POTL also observes that the Project is not an aquaculture activity so does not trigger an obligation to allocate 20% of the footprint (or equivalent).
59. It may be correct that commercial fishing and commercial aquaculture activities do not occur within the Port footprint. However, Ngati Ranginui's view is that its commercial fishing and commercial aquaculture interests (and the settlements from which they are derived) are still affected.
60. As the Taranaki TMV Expert Panel noted, the Maori Fisheries Settlement and the Māori Commercial Aquaculture Settlement are engaged where proposed activities impact upon the rights and interests of Maori arising from those settlements. Ngati Rangui agrees with this view and says further that those impacts may be direct (for example by excluding activities within parts of the coastal marine area) or indirect (for example by impacting upon the health and wellbeing of the marine environment).
61. As the Taranaki VTM Expert Panel also noted, assessing settlements goes beyond assessing specific clauses. It requires consideration of the real and practical effect of the settlement. In particular it requires an approach to the settlement that sees the agreements in the settlement as providing enduring instruments through which iwi relationships with lands, waters and taonga are recognised.
62. As noted earlier in this memorandum, the cultural evidence from Ngati Ranginui has consistently identified adverse effects from the Project on the relationship of Ngati Ranginui with Te Awanui. Those effects go beyond the physical footprint of the Port and extend to effects on the broader health and well-being of the marine environment. The position of Ngati Ranginui is that section 7 of the FTAA is inevitably engaged in relation to the commercial aspect of the Maori Fisheries Settlement and the Maori Commercial Aquaculture Settlement. This is because any activity that affects the health and wellbeing of the marine environment must affect commercial fishing and commercial aquaculture and therefore Ngati

Ranginui's settlement interests in commercial fishing and commercial aquaculture.

Maori Non-Commercial Fisheries

63. POTL submits that Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 *"provides an obligation for the Crown to develop regulations that recognise and provide for Maori customary food gathering"*³. POTL says further that this obligation was fulfilled by the promulgation of the Fisheries (Kaimoana Customary Fishing) Regulations 1998. The inference is that any obligations in relation to Maori non-commercial (customary) fishing is discharged through the promulgation of the regulations.
64. POTL also notes the existence of Te Maunga o Mauao Mataitai Reserve adjacent to the application area for the Project.
65. POTL submits that the Project will not undermine the intended operation or integrity of settlements relating to Māori customary fishing⁴ and will not undermine the intended operation or integrity of settlements relating to Māori customary fishing⁵. POTL says there is no evidence before the Panel as to how the Project will undermine management of customary food gathering within the application area for the Project⁶. POTL also says that the proposed consent conditions provide a mechanism for tangata whenua to exercise kaitiakitanga⁷.
66. The POTL approach to the non-commercial (customary) aspect of the Maori Fisheries Settlement appears to be that, as long as an activity does not interfere with the operation of Maori customary fishing regulations, there is no issue. This position is incorrect and takes too limited a view of

³ Paragraph [101] of POTL Submissions.

⁴ Paragraph [105] of POTL Submissions.

⁵ Paragraph [106] of POTL Submissions.

⁶ Paragraph [107](c) of PTOL Submissions.

⁷ Paragraph 114 of POTL Submissions.

the obligations owed to Māori in relation to non-commercial (customary) fishing.

67. In considering the obligations owed by the Crown to Maori in relation to Māori customary fishing it is necessary to consider section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. Section 10 provides:

10 *Effect of Settlement on non-commercial Maori fishing rights and interests*

It is hereby declared that claims by Maori in respect of non-commercial fishing for species or classes of fish, aquatic life, or seaweed that are subject to the Fisheries Act 1983 —

- (a) shall, in accordance with the principles of the Treaty of Waitangi, continue to give rise to Treaty obligations on the Crown; and in pursuance thereto;*
- (b) the Minister, acting in accordance with the principles of the Treaty of Waitangi, shall—*
 - (i) consult with tangata whenua about; and*
 - (ii) develop policies to help recognise—*

use and management practices of Maori in the exercise of non-commercial fishing rights; and

- (c) the Minister shall recommend to the Governor-General in Council the making of regulations pursuant to section 89 of the Fisheries Act 1983 to recognise and provide for customary food gathering by Maori and the special relationship between tangata whenua and those places which are of customary food gathering importance (including tauranga ika and mahinga mataitai), to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade; but*
- (d) the rights or interests of Maori in non-commercial fishing giving rise to such claims, whether such claims are founded on rights arising by or in common law (including customary law and aboriginal title), the Treaty of Waitangi, statute, or otherwise, shall henceforth have no legal effect, and accordingly—*
 - (i) are not enforceable in civil proceedings; and*
 - (ii) shall not provide a defence to any criminal, regulatory, or other proceeding,—*

except to the extent that such rights or interests are provided for in regulations made under section 89 of the Fisheries Act 1983.

68. Section 10 has a number of effects. These are:

- (a) Section 10(a) and (b) make it clear that, despite the Maori fisheries settlement, the Crown continues to owe Treaty of Waitangi obligations to Maori in respect of non-commercial (customary) fishing (despite non-commercial rights not being directly enforceable in and of themselves by virtue of section 10(d));
 - (b) That Maori non-commercial (customary) fishing will be managed through regulations promulgated under the (now) Fisheries Act 1996; and
 - (c) Those regulations are intended to both manage, and provide for the continued exercise of, Maori non-commercial (customary) fishing rights.
69. Relevant to Ngati Ranginui are both the continuing nature of the Crown Treaty of Waitangi obligations in respect of Maori non-commercial (customary) fishing rights and the provision for the exercise of those rights through regulations.
70. The continuing nature of Crown Treaty of Waitangi obligations means that, although customary fishing rights are not enforceable in and of themselves, the Crown maintains a legal obligation in respect of those rights. The Crown's obligation is therefore not exhausted by the promulgation of the regulations. It is a broader obligation and can be breached by activities that might have the effect of interfering with Maori customary fishing. Actions that would affect the management of customary food gathering would certainly be inconsistent with the Crown's ongoing obligations. However, the obligation would also be engaged where an activity has the potential to impact upon the health of the marine environment within which customary fishing occurs. That is the case here.
71. It is relevant that the area covered by the Project is adjacent to both a marae and a mataitai reserve. The power to establish a mataitai reserve is contained in section 186 of the Fisheries Act 1996. The general purpose of regulations under section 186 is set out in section 186(1). Section 186(1)

provides for regulations to be promulgated under that section for the purposes of recognising and providing for “*customary food gathering by Maori and the **special relationship between tangata whenua and places of importance for customary food gathering** (including tauranga ika and mahinga mataitai)*” (emphasis added).

72. The wording used in section 186(1) supports the position of Ngati Ranginui that section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 goes beyond simply enabling management of Maori non-commercial (customary) fishing. There is a broader recognition of the special relationship that exists between Maori and places of importance for customary food gathering. An activity that impacts upon the health and wellbeing of the places where customary food gathering occurs must necessarily impact upon that special relationship and must in turn be inconsistent with the ongoing Treaty of Waitangi obligations owed to Maori in respect of non-commercial (customary) fishing.

Summary of Position on Fisheries and Aquaculture Settlements

73. The specific impacts of the Porject that affect Ngati Ranginui’s interests under the Maori Fisheries Settlement and Maori Commercial Aquaculture Settlement are:
 - (a) The negative impacts on the health and wellbeing of the broader marine environment within Te Awanui which must inevitably impact upon commercial fisheries within Tauranga Moana and therefore the commercial fisheries interests of Ngati Ranginui;
 - (b) The negative impacts upon non-commercial customary fishing, especially in areas either adjacent to or affected by the Project; and
 - (c) The negative impacts on the ability of Ngati Ranginui to actively participate in aquaculture within their own tribal territories because of the impacts of the Project on the health and wellbeing of the broader marine environment within Te Awanui.

74. Section 7 of the FTAA is therefore engaged and Ngati Ranginui say that this precludes the grant of a fast track consent for the Project.

Ngati Ranginui Treaty Settlement

75. The Ngati Ranginui settlement is an existing settlement for the purposes of section 7. The terms of Ngā Hapū o Ngāti Ranginui settlement are set out in:

- (a) The Ngā Hapū o Ngāti Ranginui Deed of Settlement;
- (b) Nga Hapu o Ngati Ranginui Claims Settlement Act 2025; and
- (c) The Tauranga Moana Iwi Collective Deed of Settlement.

76. Relevant aspects of the Ngati Ranginui settlement for the purposes of the fast track application are:

- (a) The acknowledgment by the Crown of the extensive historical and present-day interests of ngā hapū o Ngāti Ranginui in relation to Tauranga Moana;
- (b) The commitment by the Crown to a new relationship with Ngati Ranginui based on “mutual trust, co-operation and respect for Te Tiriti and its principles”; and
- (c) The establishment of the Tauranga Moana Framework, which:
 - (i) Has the purpose of facilitating an integrated, holistic and co-ordinated approach to the management of Tauranga Moana;
 - (ii) Provides for the establishment of a Tauranga Moana Governance Group, which includes appointees of the Tauranga Moana iwi, 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;

- (iii) Commits the Crown and Ngāti Ranginui to ensuring that Tauranga Moana is managed so as to restore, enhance and protect the health and wellbeing of Tauranga Moana and to achieving sustainable management of Tauranga Moana for present and future generations;
- (iv) Provides for the development and implementation of Nga Tai ki Mauao (Tauranga Moana framework document);
- (v) Requires the meaningful participation of Ngāti Ranginui in all matters affecting Tauranga Moana; and
- (vi) Provides for the establishment of a register of appropriately qualified people, appointed by the iwi of Tauranga Moana, who must be appointed as a Commissioner to hear resource consent applications relating to, amongst other things, matters set out in section 12 of the RMA, which include reclamations and the erection of structures in the coastal marine area.

77. The POTL submissions focus on the fact that the legislation giving effect to the Tauranga Moana Collective Deed of Settlement has not yet been passed, so the Tauranga Moana Governance Group has not been established, and the Tauranga Moana Framework has not yet been put in place.

78. POTL asserts that the Panel *“can be satisfied that the grant of the Application will not be inconsistent with the Tauranga Moana Iwi Collective settlement”* and that the consent conditions proposed by POTL will complement the Tauranga Moana Iwi Collective settlement once the

Tauranga Moana Governance Group and Tauranga Moana Framework are established.

79. Ngati Ranginui does not agree with POTL's assertion. The position of Ngati Ranginui is that:
- (a) There is nothing in the fast track application for the Project that reflects a holistic and integrated management approach to Tauranga Moana.
 - (b) There is nothing in the fast track application for the Project to suggest that the Project will restore, enhance or protect the health and wellbeing of Tauranga Moana or achieve the sustainable management of Tauranga Moana for future generations. If anything, the materials relating to the Project suggest that it will have a negative effect on Tauranga Moana and its environment. It will also impact negatively upon the acknowledged interests of ngā hapū o Ngāti Ranginui in relation to Tauranga Moana. This has been the consistent evidence from Ngati Ranginui. The negative impacts identified include physical impacts on the environment and cultural impacts; and
 - (c) The fast track process is, in and of itself, inconsistent with the Tauranga Moana Framework and therefore the Ngāti Ranginui settlement. For example, 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, POTI is explicitly seeking to bypass the full resource consent process. In doing so it is subverting the terms and intent of the intended Tauranga Moana Framework and the Ngāti Ranginui settlement.

80. Section 7 of the FTAA is clearly engaged in relation to the Ngati Ranginui Treaty Settlement and the grant of a fast track consent would be inconsistent with the Ngati Ranginui Settlement. Ngati Ranginui therefore say that this precludes the grant of a fast track consent for the Project

Conclusion on Treaty settlements

81. In light of the matters set out above, Ngati Ranginui reiterates its view that the Project is unsuitable for the fast track process and proceeding with the application would be contrary to the requirements of section 7. The Project cannot lawfully be dealt with through the fast track process. It should instead be dealt with through the normal resource consenting process.



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