

**Before a panel appointed under the
Fast-track Approvals Act 2024**

FTAA-2511-1138

UNDER the Fast-track Approvals Act 2024 (**Act**)

IN THE MATTER an application for approvals for the Hananui
Aquaculture Project – a listed project described in
Schedule 2 of the Act

BY **NGĀI TAHU SEAFOOD RESOURCES LIMITED**
Applicant

**APPLICANT'S RESPONSE TO MINUTE 9: COMMENCEMENT DATE FOR
CONSENT**

28 July 2026

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MAY IT PLEASE THE PANEL

Introduction

1. On 23 July 2026 the Panel issued Minute 9 addressing condition 6 of the draft resource consent for the Hananui Aquaculture Project. The Panel requested that the Applicant respond to the Minute by 28 July 2026.

2. Draft condition 6 says:

This consent shall lapse ten years from the date of commencement. The consent shall commence on the date that the consent commences in accordance with sections 116 and 116A, RMA, or the date specified in the Commencement Date Notice, whichever is the later.

3. The Department of Conservation (**DOC**) has commented on this condition suggesting that the words “or the date specified in the Commencement Date Notice, whichever is the later” be deleted from the condition.

4. The Panel notes that it is considering the DOC comment, and notes section 97(1) of the FTAA which states:

Subject to subsection (2), an approval granted under this Act commences –

- (a) on the date on which the panel's decision document for the approval is issued under section 88; or
- (b) on any later date specified by the panel in the decision document

5. The Panel has indicated that if it decides that it would prefer to insert a specific commencement date into the decision document it would assist for the Applicant to provide any views on what that date should be. The Panel further indicated that it could accommodate some flexibility to the commencement date, out to say 2 years from the date of issue of the decision.

Applicant's Response

Incorporation into decision document

6. Section 97(1) of the FTAA works like section 116 of the RMA, but is slightly different. Under both statutes the default commencement date for a consent is the date the consent is first available to be given effect to in law. In the case of the RMA, this is when any merits appeals are determined (or there are no appeals). Under the FTAA, because there are no merits appeals available, it is the date a panel issues its decision documents under section 81.
7. Both the FTAA and RMA provide for a panel (in the case of the FTAA) or consent authority (in the case of the RMA) to make the commencement date for a particular consent later than the default commencement date.
8. Under the RMA this is achieved by stating a later date in the consent. Under the FTAA this is achieved by stating a later date in the decision document.
9. Section 87(1) of the FTAA defines a 'decision document' as a document prepared for a panel's decision under section 81. Section 87(2)(a) sets out a list of mandatory contents in a decision document. The list includes the panel's decision, the reasons for the decision, a statement of the principal issues in contention, and the panel's main findings on those issues. The contents of a decision document are therefore similar to the contents of a decision on a resource consent application as required by section 113 RMA. A consent granted by a panel cannot itself be a decision document because it will not contain the mandatory information required by section 87(2)(a).
10. I submit that what flows from the above analysis is that the consent document itself is not a decision document for the purpose of the FTAA. Section 97(1)(b) is clear that if a panel determines the commencement date for an approval should be later than the default commencement date it needs to specify the later date in the decision document itself (presumably as well as in

the consent document for the assistance of subsequent readers of that document).

11. The FTAA does not provide any explicit direction to a panel as to how it might exercise its discretion to specify a later commencement date for an approval.
12. In my submission the setting of a later commencement date for a resource consent needs to be guided by a panel's general requirement to take into account the matters listed in clause 17(1) of Schedule 5 when considering the application, and in particular the requirement to place greatest weight on the purpose of the FTAA – to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.¹

Use of the Commencement Date Notice to establish a later commencement date

13. The FTAA does not say that when a panel specifies a later commencement date it must specify that date as a calendar date and not by some other method (such as, in this case, via the Commencement Date Notice).
14. Counsel is aware of no caselaw that answers this question. However, in my submission there may be some doubt that the setting of a later commencement date by reference to a Commencement Date Notice that rests entirely with the consent holder is sufficiently certain and legally safe. As currently drafted condition 6 would in theory allow the consent holder to defer the commencement of the consent until immediately prior to the lapsing date (being 10 years from the decision date).
15. While I can find no cases that deal directly with the method of setting later commencement dates for resource consents, the Court of Appeal has considered a similar issue in another legislative context. In *Northland Regional Council v Rogan*² the Court considered section 24 of the Local Government (Rating) Act 2002 which requires resolutions of local authorities that set rates to state the financial year to which the rate applies and the date

¹ Section 3 FTAA
² [2018] NZCA 63 at [19] – [25]

or dates upon which the rate must be paid. In that case the relevant resolution of the Northland Regional Council did not specify the dates the rate must be paid by reference to calendar dates. Instead the resolution indicated the relevant dates would be the same as those to be set for the payment of rates by the three district councils making up the region. The Court of Appeal agreed with the High Court that this resolution was in breach of s24 of the Local Government (Rating) Act 2002 and that the section required specificity and certainty at the time of the resolution. It was not sufficient in that context that the due dates for payment would be known by the time the rates demands were issued to ratepayers.

16. In the Hananui context the significance of the commencement of the consent is somewhat different to the significance of a local government resolution that imposes a tax on ratepayers.
17. As the Panel has identified³ it is important to the Applicant that the 25 year term over which it can operate under the consent is not eroded by having the clock start 'ticking' before it has a reasonable opportunity to put in place the many arrangements that will need to be worked through ahead of construction activities on the water getting underway. In terms of realising the full benefits of the project to Ngāi Tahu, to Southland, and to New Zealand, as much as practicable of the 25 year term of the consent needs to be available for actual farming.
18. I am instructed that the activities that need to occur post the grant of approvals and before on the water activities that rely on the consent can begin are significant and include:
 - a. Pre-development monitoring (including a minimum of 24 months of biogenic habitat monitoring – draft condition 74(a))
 - b. Completing a business case; confirming an operating structure and ownership; securing suitable financing arrangements; and establishing appropriate governance and delivery structures.

³ Minute 9, paragraph [5]

- c. Procurement and construction of on-water infrastructure (feed barges, specialist vessels, mooring systems, pens and nets)
- d. Procurement and construction of dedicated supporting shore-based facilities
- e. Establishing supply chain arrangements including smolt and feed supply; fish processing; distribution and sales.
- f. Third party investment in port infrastructure, including berthage, cold storage, logistics, and export capabilities, to enhance regional connectivity and efficiency.

19. The Applicant has begun progressing some of these activities in anticipation of receiving a favourable outcome from the current process, but cannot progress too far down the implementation track before a final decision is made. Realistically these activities will take some time from the grant of approvals.⁴ The Applicant estimates (recognising that some of the required activities will need engagement with and decisions by third parties) it is likely to take four to five years from the grant of consent before it will be in a position to give effect to the resource consent and begin construction activities, and that this also represents a reasonable estimate of the likely time that will be needed for the development of supporting regional infrastructure.⁵

20. Accordingly, if the Panel was minded to include a later commencement date in the decision document by reference to a calendar date, the Applicant requests that this be five years from the date of the decision.

21. In addition, if the Panel decides to take the approach of specifying a later commencement date by reference to a calendar date, the Applicant requests that the Commencement Date Notice concept still be included in the

⁴ This is referred to in the Hananui Aquaculture Project Economic Assessment for Fast Track Approval report prepared by Market Economics and forming part of the substantive application (Appendix I) which notes (page 7) "Establishing the HAP will take several years, starting with components of the on-water infrastructure and procuring the supporting infrastructure (vessels and barges) over the short term and medium terms."

⁵ The recent (June 2026) report prepared by Great South / COIN South — Aquaculture Infrastructure & Supply Chain Pathway provides a useful independent assessment of the regional infrastructure development needed to support significant growth in aquaculture in Southland, including the Hananui Aquaculture Project

conditions, but on the basis that the Commencement Date Notice can be used to bring *forward* the commencement date in the event the Applicant finds itself in a position to give effect to the consent earlier than the specified date.

22. In my submission such an approach is not unlawful and does not rub against the 'mischief' that is addressed by requiring a certain commencement date for a resource consent. The suggested approach ensures that as much as possible of the 25 years of the consent is actually available to the Applicant, and ensures that interested parties have certainty of the latest date that the consent can expire.

23. If the Panel decided to take this approach the appropriate wording suggested for condition 6 is:

This consent shall lapse ten years from the date of commencement. The consent shall commence on the fifth anniversary of the date the consent is granted, or any earlier date specified in a Commencement Date Notice.

24. This wording (or at least the intent of the wording) should be included in the Panel's decision so that the requirement of section 97(1) of the FTAA is satisfied.

DOC's Request

25. DOC requests that the reference to the Commencement Date Notice in condition 6 of the resource consent be deleted entirely.

26. The Applicant opposes this deletion.

27. The Commencement Date Notice is defined in the Interpretation section at the beginning of the consent as "...a notice in writing given by the Consent Holder to the Consent Authority specifying the date on which this resource consent is to commence".

28. The purpose of the Commencement Date Notice is to ensure that the (in this instance 25 year) term of the consent is not inadvertently eroded by having the

25 years commence before the Consent Holder is in a position to implement the consent.

29. That purpose is entirely consistent with the purpose of the FTAA and ensures that the full national and regional benefits of the project have a chance to be realised. The use of the Commencement Date Notice is neutral so far as adverse impacts are concerned since by definition no adverse impacts can occur prior to the date specified in the Commencement Date Notice.
30. Condition 2(e) provides that certification of documents may occur prior to the consent holder issuing the Commencement Date Notice provided that the consent would otherwise have commenced in accordance with sections 116 and 116A RMA.
31. DOC has not commented on condition 2(e), and this condition may need to be addressed depending on what the Panel decides about condition 6 (I address this below).
32. DOC comments *"It is understood that, whilst not defined, in practice a Commencement Date Notice in relation to a resource consent usually prescribes a Consent Holder's intention to give effect to the consent, rather than prescribing the commencement of a consent"*. The comment is unhelpful. This consent does define what the Commencement Date Notice is, and as the words suggest, it relates to the date the consent commences (and therefore when the 25-year term starts) and not the date upon which the consent holder intends to give effect to the consent (a concept relevant to lapsing of consent under section 125 RMA rather than to the commencement of consent under section 116).

Additional suggested condition wording changes

33. Assuming the Panel was minded to adopt an approach such as that now suggested by the Applicant in this memorandum, I submit it would be appropriate to consider a clarification of the definition of the Commencement Date Notice to read:

“...a notice in writing given by the Consent Holder to the Consent Authority specifying ~~the a date earlier than the fifth anniversary of the date the consent is granted~~ on which this resource consent is to commence”.

34. Condition 2(e) could also usefully be amended to read:

Certification of documents under this condition may occur prior to the ~~Consent Holder issuing the Commencement Date Notice~~ commencement of this consent pursuant to condition 6 provided that, at the time certification occurs, the consent would otherwise have commenced in accordance with sections 116 and 116A, Resource Management Act 1991.

Dated 28 July 2026



Stephen Christensen

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