

BEFORE THE PANEL

FTAA-2512-1163

UNDER THE

FAST TRACK APPROVALS ACT 2024 ("FTAA")

IN THE MATTER OF

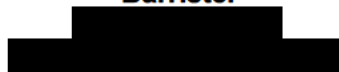
a substantive application by the Port of Tauranga Limited, for resource consent and a wildlife approval associated with the Stella Passage Development Project listed in Schedule 2 of the FTAA

NGĀ TAI KI MAUAO: COMMENTS ON CONDITIONS

24 August 2026

JGH BARRISTER

**James Gardner-Hopkins
Barrister**



MAY IT PLEASE THE PANEL:

Introduction

1. These comments are provided for Ngā Tai ki Mauao under s 70 of the Fast-track Approvals Act 2024 (**FTAA**) and are confined to the draft conditions provided by the Panel on 17 August 2026. The comments are informed by the earlier comments, submissions and evidence of Ngā Tai ki Mauao and Ngā Hapū o Ngā Moutere Trust.
2. Ngā Tai ki Mauao's opposition to the Stella Passage Development is maintained. Nothing in these comments should be understood as accepting that approval should be granted, or that the conditions as proposed can (despite the Panel's findings in its draft decision) ensure that:
 - (a) the Panel is acting in a manner consistent with the obligations arising under existing Treaty settlements; and
 - (b) the adverse cultural effects are reduced so that they are no longer out of proportion to the Stella Passage Development's regional or national benefits.

Approach to *Augier* issue – supported in part

3. Ngā Tai ki Mauao supports in part the Panel's approach to this issue, at least as summarised at [99](e):

The Panel sees no reason why a financial payment to a third party that is specifically required to “address an adverse effect of the activity on the environment” can only be imposed as a condition when an applicant agrees or offers the same. The Panel has amended the conditions proposed by the Applicant, including those it indicated were offered on an Augier basis.

4. That finding is supported on the basis that “address” should be interpreted broadly, as encompassing financial payments to a third party—or the funding of works to be undertaken by a third party—where, on an objective assessment, the payment or works are directed to avoiding, remedying, mitigating, offsetting or compensating for an adverse effect. On that interpretation, the finding at [99](e) is inconsistent with the limitation subsequently expressed at [371](b). Further, POTL's categorisation of the purpose of the conditions cannot be determinative. If the Panel's jurisdiction depends upon the distinction drawn at [371], the proper characterisation of each condition must be determined objectively by reference to its substantive purpose and effect.
5. In any event, having accepted POTL's confirmation that the funding conditions were intended to avoid, remedy or mitigate the adverse cultural effects—and therefore having proceeded on the basis that it was not constrained by the quantum offered—the Panel did not go far enough in the amendments it made, as addressed below at [7]-[11].

Limitations of the revised conditions

6. Ngā Tai ki Mauao acknowledges the care taken by the Panel to seek to improve the conditions in the time available.

7. Ngā Tai ki Mauao is nevertheless disappointed that the Panel has not gone further, particularly given its findings that the Project will have significant cumulative cultural effects, that tangata whenua are best placed to qualify and quantify mauri, and that the relationship effects remain uncertain even with the proposed Relationship Agreements: draft decision at [99](d), [226] and [233].
8. Ngā Tai ki Mauao does not attempt, in this short period provided to comment, to redesign the cultural conditions, condition by condition. The “delta” between what POTL has offered (with relatively minor changes by the Panel) and what Ngā Tai ki Mauao considers appropriate is too significant to resolve in a few days’ drafting – with no assurance that if time is spent on that exercise that it will bear any fruit.
9. That should not be treated as indicating that further improvements are unavailable, or that there is no way forward. Rather, a credible tikanga based framework governing relationships, rangatiratanga, kaitiakitanga, mātauranga, monitoring and restoration requires meaningful discussion and co-design with the tangata whenua who must participate in it. It cannot responsibly be constructed from near-final drafting within a few working days. In other words, if a way forward is to be found, then it is regrettably not through this process. POTL’s forging ahead (including, for example, refusing to seek a suspension to allow further time to engage on conditions with tangata whenua) is illustrative of its expectation of consents, on conditions of little moment to it. As the Environment Court observed in respect of the costs of past conditions at [356]-[357]:

... proposed mitigation measures ... to the value of \$3.75 million over the 35-year term of consent sought or just over \$100,000 a year ... [in the context where] projected Group net profit for the 10-year period ranged from \$120 million in 2023 to more than \$200 million in 2032. ...

... The objective to operate as a successful business should not be based on success coming at the expense of those affected by its operations and whose concerns have historically been largely ignored.
10. At a broad, order-of-magnitude level, the package used by the Environment Court to put mitigation in context represented approximately 0.2–0.3% of ten years’ projected underlying Group profit at that time. Allowing for the increased value of the package now proposed by POTL and amended by the Panel—and for some uncertainty arising from mitigation obligations that cannot readily be quantified—the present package appears to represent, conservatively, around one-half of one percent of indicative underlying Group profit over ten years.¹ Even if its true cost were as much as 1% of ten years’ profit, that would remain a very modest amount in the context of POTL’s financial position and the 35-year duration of the consents sought.
11. In addition, any condition which purports to recognise and provide for the relationship of tangata whenua with Te Awanui must do so inclusively – particularly if intended to promote rangatiratanga and kaitiakitanga. A condition should not permit POTL, through a closed list of parties selected by it (or the Panel), effectively to determine, at least for the purposes of the consents, whose relationship with Te Awanui is recognised and whose is not. All Tauranga Moana iwi and hapū holding relationships with Te Awanui according to tikanga should have a genuine opportunity to participate in

¹ Based on POTL’s latest public FY2026 underlying Group net-profit guidance, extrapolated over ten years on an indicative no-growth and growth basis. The comparison is deliberately approximate and compares the entire 35-year package against only ten years’ profit.

generally expressed relationship mechanisms, including the SPDAG. That does not preclude separate or additional conditions responding to the particular effects experienced by individual iwi, hapū or marae in the context of their respective relationships with Te Awanui.

Responsibility for the procedural difficulty

12. Ngā Tai ki Mauao recognises the practical difficulty confronting the Panel in respect of conditions. The Panel has been required, within the compressed FTAA timetable and without the benefit of an agreed tangata whenua framework, to do its best with the conditions developed principally by POTL.
13. The primary responsibility for the difficulty in improving conditions to – potentially – address the concerns held by tangata whenua lies with POTL. As Ngā Tai ki Mauao has previously submitted, the Project and its conditions were not developed through genuine engagement with tangata whenua. The opportunity to develop the relationship framework and cultural conditions collaboratively existed before lodgement. POTL did not take it. It preferred a race to the finish-line, rather than to get its ducks in a row before pushing the start button.
14. The Panel itself records its uncertainty as to whether the proposed Relationship Agreements can appropriately and effectively address the adverse relationship effect, largely because they were proposed as conditions rather than addressed outside the consenting process and before lodgement: draft decision at [233]. Those findings are important. A pre-grant five-working-day period to comment on substantially settled conditions is not equivalent to early participation in identifying agreed effects, co-designing responses and agreeing workable, genuine governance arrangements.
15. Nor can the fast-track timetable excuse the omission. POTL chose to pursue the FTAA process against the background of the earlier Environment Court proceedings, the longstanding concerns of tangata whenua, and extensive knowledge of the cultural concerns associated with further port expansion; all of which remained unresolved at the outset of the FTAA process. The statutory time constraints of the FTAA process were foreseeable. They made meaningful pre-lodgement engagement more important, not less.
16. The present difficulty is therefore not that tangata whenua have failed, within the s 70 period, to supply the Panel with a complete alternative conditions package. It is that POTL lodged without first undertaking the sustained engagement and co-design work necessary to produce one.

Concluding comments

17. Accordingly, and understanding where matters stand in the statutory process, Ngā Tai ki Mauao respectfully declines to provide condition-by-condition feedback on the Panel's conditions, for the reasons above and, in particular, because:
 - (a) it really now is “too little too late” to make a meaningful difference to address Ngā Tai ki Mauao's concerns;
 - (b) it would require significant effort in a short timeframe, adding to the “fatigue” of participation in yet another process that is focused on

letting POTL do what it wants, rather than on restoring Te Awanui and achieving other outcomes sought by tangata whenua;

- (c) the issues, and the consequences of any decision in favour of POTL, are of POTL's own making, and it is not considered that tangata whenua—or at least those represented by Ngā Tai ki Mauao—should be expected to fix those matters for POTL.

DATED 24 August 2026



James Gardner-Hopkins
Counsel for Ngā Tai ki Mauao

