

BEFORE THE PANEL CONVENER

FTAA-2512-1163

UNDER THE

FAST TRACK APPROVALS ACT 2024 ("Act")

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

**MEMORANDUM OF COUNSEL FOR THE TRUSTEES OF
NGĀ HAPŪ O NGĀ MOUTERE TRUST IN RESPECT OF:**

THE CONVENER'S CONFERENCE

4 MARCH 2026

JGH BARRISTER

**James Gardner-Hopkins
Barrister**

M: [REDACTED]

E: [REDACTED]

MAY IT PLEASE THE PANEL CONVENER:**Introduction**

1. I act for Ngā Hapū o Ngā Moutere Trust (**Moutere Trust**),¹ a participant invited at the discretion of the Panel Convener. For completeness, I note that I also act for the Nga Tai ki Mauao hapū collective (**Nga Tai ki Mauao**),² which the Moutere Trust is part of and works closely with. Ngai Tai ki Mauao has not been invited to participate in the Panel Convener's conference on 5 March 2026.
2. In Minute 1 of the Panel Convener (**PC Minute 1**), the Convener indicated that written memoranda were not required to be filed by conference participants unless:
 - a. participants wish to express views as to timeframe that are different to those of the Applicant; or
 - b. participants have concerns regarding re-appointment of the original Expert Panel.
3. The Moutere Trust does not oppose the re-appointment of the original Expert Panel.
4. The Moutere Trust does have some concerns however at retaining the 80 working day timeframe, rather than extending it slightly, to, say, 100 working days. The reasons for this largely stem from the matters identified in para [10](a)-(d) of PC Minute 1. Accordingly, these are addressed briefly in this memorandum.

Para [10] matters

(a) Whether the principal issues in contention remain the same or have increased or reduced in any material way since the first application;

5. The Moutere Trust does not consider that the principal issues in contention have changed. There remains a significant gulf between what the Port of

¹ A collective of Matakana Island hapū: Ngāi Tuwhiwhia, Ngāi Tamawhariua, Ngāti Tauaiti, Te Ngare, Whānau a Tauwhao.

² Comprising Ngāi Tuwhiwhia, Ngāi Tamawhariua, Te Ngare, Whānau a Tauwhao (ki Rangiwaea), Ngāti Tauaiti, Ngāti Kuku, Whareroa Marae Trust, Ngāti Tapu; Ngāti Kaahu a Tamapahore; Ngā Kaitiaki o Rangataua; Ngāti Hē; Ngāti Kahu (ki Tauranga).

Tauranga Limited (**POTL**) considers the cultural effects of its Stella Passage Development Project (**Project**) to be, and what Mana Whenua consider those effects to be. This is compounded if the cultural effects of the Project are considered cumulatively to all the cultural effects inflicted by POTL in the past on Mana Whenua, as well as POTL's predecessor, the Harbour Board, and other entities before then. Each has caused cultural harm, and the cultural harm that POTL's current Project will have on Mana Whenua must be assessed in that context. Past mitigation does also not dictate what is right and proper in current circumstances and understanding. Otherwise we would (for example) still be reclaiming streams and wetlands without offsets, and discharging nitrates without limits, as was done in the past.

(b) The extent to which the Applicant has engaged with other participants regarding the contentious issues prior to lodging the new application;

6. There was little or no engagement, or at least meaningful engagement, with the Moutere Trust *prior to* lodging the new application.
7. In fairness to POTL, the time of the year for its lodgement did not endear itself to engagement. In addition, however, it is noted that POTL had not long before engaged in respect of making its "backup" referral application. It has long felt, for the Moutere Trust (and Ngai Tai ki Mauao), that POTL has been seeking to engage to "tick that box". This sense is compounded by the fact, that whatever feedback Mana Whenua give nothing in the Project or its conditions substantially changes (at least that is what it seems).
8. That said, there has recently been some indication of the rebuilding of a wider relationship between POTL and Mana Whenua (at least those who are part of Ngai Tai ki Mauao, which includes the Moutere Trust, with engagement recently occurring on a potential "Outcomes Framework" that looks to deal with restoring Te Awanui in a more holistic way. That engagement has not been specific to the Proposal or its conditions but they have necessarily been part of the discussions. Insufficient progress has been made on this front however to impact on the time required through this process.

(c) The extent to which the proposed consent conditions are accepted

9. The Moutere Trust consider the conditions continue to be inadequate to address the cultural impacts, including in light of its position as identified at [5] above. It is understood that POTL has not responded to the Nga Tai ki Mauao proposals for mitigation, and therefore has not responded to the Moutere Trust's proposals for mitigation, as they were integrated with the Nga Tai ki Mauao proposals.

(d) Any Expert Panel processes that may be required or proposed to enable the panel to understand, resolve or narrow the scope of any likely issues and how they can be provided for when setting the decision timeframe;

10. The Moutere Trust considers that sufficient time, ie a slight extension from 80 to 100 working days should be allowed to enable:
- a. A hearing on any legal issues that the Panel will need to resolve, such as the issue identified in [5] above.
 - b. A hearing or workshop on cultural values and cultural effects, so the Panel can hear direct from Mana Whenua. This is both in accordance with tikanga, but also as evidence of the nature and strength of the connection with the Whenua and Moana and the severity of impacts is hard to "feel" on the paper. Cultural impacts are not of the same nature as a scientific study, although Matauranga Māori infuses how Mana Whenua approach matters – and is rejected (if it might be claimed) as "non-scientific".
 - c. A hearing or workshop on the cultural conditions. Should consent be granted, appropriate conditions are essential to mitigating or offsetting adverse cultural effects. While "comments" on conditions are required to be called for, there is no substitute to being able to engage direct with the decision-maker on conditions.
11. In addition, it is noted that 130 working days was set for the Taranaki VTM, which allowed it (it is understood) to hold three "participatory" processes. 140 working days has also been set for the Bendigo–Ophir Gold Project. While both of those Projects were "expert heavy", POTL's Project is "cultural heavy" with a large number of iwi authorities and representative entities, together with hapū and their representatives, MACA applicant groups,

customary fisheries entities, and other Māori groups. There are diverse, overlapping, and complementary interest that all need to be understood, not put into a “blender” and

Forward progress

12. The Moutere Trust looks forward to expanding on these issues if necessary at the Conference. Hopefully, however, this memorandum will have assisted in streamlining the Panel Convener in understanding Moutere Trust’s position.

4 March 2026



**James Gardner-Hopkins
Counsel for the Moutere Trust**