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Barristers & Solicitors

14 July 2026

RESPONSE TO MINUTE 7 REQUEST FOR INFORMATION ON THE STELLA PASSAGE DEVELOPMENT – FTAA-2512-1163

TAURANGA MOANA IWI CUSTOMARY FISHERIES TRUST

CONTACT DETAILS

1. Contact Details			
Please ensure that you have authority to comment on the application on behalf of those named on this form.			
Organisation name (if relevant)	Tauranga Moana Iwi Customary Fisheries Trust		
First name	Kia Māia		
Last name	Ellis		
Postal address	C/- Tamaki Legal PO Box 75 517, Manurewa, Manukau 2243		
Home phone / Mobile phone	██████████ ██████ ██████████ ██████	Work phone	
Email (a valid email address enables us to communicate efficiently with you)	██████████ and ██████████		

2. We will email you draft conditions of consent for your comment			
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INTRODUCTION

1. On 29 June 2026 the Expert Panel issued Minute 7 requesting any participant to provide targeted legal submissions addressing sections 7, 82 and 85(1)(b) of the Fast-track Approvals Act 2024 (“FTAA”) identifying:
 - a. The existing Treaty settlement, as defined in the FTAA;
 - b. The relevant obligations(s) arising under the settlement;
 - c. How a decision to grant the approvals would arguably be inconsistent with the obligation(s);
 - d. Whether the settlement provides for the consideration of any document (as defined in s 82(4) when decisions are made under s 104 of the RMA and 53 of the Wildlife Act 1953).¹
2. Section 7 FTAA provides for obligations relating to Treaty settlements and recognised customary rights. Relevantly, s 7 requires that all persons performing and exercising functions, powers, and duties under the FTAA must act in a manner consistent with the obligations arising under existing Treaty settlements.
3. Section 82 applies if a Treaty settlement is relevant to an approval. Furthermore, if the Treaty settlement provides for the consideration of any document, the panel must give the document the same or equivalent effect through the panel’s decision making as it would under any relevant specified Act. The panel must also consider whether granting the approval would comply with s 7 FTAA.
4. The reference to ‘document’ in s 82 means any document, arrangement, or other matter and includes any statutory planning document amended as a result of the settlement.
5. Section 85(1)(b) requires the panel to decline an approval if it considers that granting the approval would breach s 7 FTAA.

¹ Minute 7 of the Expert Panel *Stella Passage Development* FTAA-2512-1163 29, June 2026 at [2(c)]

EXISTING TREATY SETTLEMENT, AS DEFINED IN THE FTAA

6. Section 7(3) FTAA defines 'existing Treaty settlements' to mean Treaty settlements that exist at the time the relevant function, power, or duty is performed or exercised rather than only settlements that exist at the commencement of the FTAA.
7. Subject to s 7(3), s 4 FTAA defines:
 - a. 'Treaty settlement' to mean a Treaty settlement Act or a Treaty settlement deed,
 - b. 'Treaty settlement Act' to mean an Act listed in Schedule 3 of the Treaty of Waitangi Act 1975, or any other Act that provides for Treaty of Waitangi claims, including Acts that provide collective redress or participation arrangements for claimant groups whose claims are, or are to be settled by another Act,
 - c. 'Treaty Settlement deed' to mean a deed or other agreement that has been signed by or on behalf of a Minister of the Crown and representative of a group of Māori, is in settlement of the claims of that group or in express anticipation, or on account, of that settlement and includes a deed or other agreement (of the kind described) that relates to the claims of a collective or combination of Māori groups but does not include an agreement in principle or any document that is preliminary to a signed and ratified deed.

Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 ("Fisheries Settlement Act")

8. In 1996, following the introduction of a Quota Management System, which removed statutory recognition of Māori customary rights to fishing and fisheries combined with the issues at that time of lack of access and environmental degradation, claims were lodged with the Waitangi Tribunal that the QMS was in direct conflict with Te Tiriti o Waitangi.²
9. The claims were settled on 23 September 1992 with the signing of a Deed of Settlement – Māori Fisheries Settlement or the Sealord Deal.

² Refer <https://www.teohukaimoana.nz/about-us/history>

10. The Sealord Deal was given effect through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (“**Fisheries Settlement Act**”) Accordingly, it is submitted that the Fisheries Settlement Act is an existing Treaty Settlement as defined in the FTAA.

RELEVANT TREATY SETTLEMENT OBLIGATIONS

Fisheries Settlement Act Obligations

11. Section 10 of the Fisheries Settlement Act deals with the effect of settlement on non-commercial Māori Fishing rights and interests and states:

Effect of Settlement on non-commercial Māori fishing rights and interests

It is hereby declared that claims by Māori 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 Māori 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 Māori 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 Māori 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.

12. In accordance with Section 10(c) of the Fisheries Settlement Act, the Fisheries (Kaimoana Customary Fishing) Regulations 1998 ("**Customary Fishing Regulations**") were promulgated following consultation with representatives of iwi and hapū.³
13. Pursuant to regulation 24 of the Customary Fishing Regulations Tauranga Moana Iwi Customary Fisheries Trust ("**Trust**") were appointed as the Tangata Kaitiaki/Tiaki for Te Maunga o Mauao Mātaitai Reserve. The Mātaitai Reserve was established in 2008 and is the only kaimoana gathering place along the coastal area of Tauranga Moana containing varieties of taonga species not readily found in such diversity along any of the nearby coastline.⁴
14. As Tangata Kaitiaki for the Mātaitai Reserve, the Trust has responsibilities to ensure the health and sustainability of the taonga species and ecosystems within the area of the Reserve. The Trust's role is to enable fisheries management of kaimoana for customary purposes.⁵

HOW DECISION TO GRANT APPROVALS WOULD ARGUABLY BE INCONSISTENT WITH TREATY SETTLEMENT OBLIGATIONS

15. As discussed in full in the Trust's Cultural Values Report CVR, the proposed Stella Passage Development will have significant ecological and cultural effects. These effects are detailed throughout the CVR.
16. Of particular concern is the fact that current monitoring in the Mātaitai Reserve shows troubling signs for pipi, pāua, kina, kutai and kōura. Growth rates have declined, recruitment is inconsistent, and population densities remain below sustainable level for most species, particularly for pāua, pipi, kōura and kina.⁶
17. If approvals are granted for the Stella Passage Development, the current state and condition of kaimoana in the Mātaitai Reserve will likely deteriorate further. Consequently,

³ Refer <https://www.legislation.govt.nz/secondary-legislation/pco-drafted/1998/434/en/latest/#DLM267987>

⁴ Refer Tauranga Moana Iwi Customary Fisheries Trust Cultural Values Report ("**CVR**") for the Proposed Stella Passage Development (2025) at p 14.

⁵ Refer the Trust's CVR at p 14

⁶ Refer the Trust's CVR at 16

the ability for the Trust to meet its obligations as Tangata Kaitiaki for the Reserve will be severely infringed.

18. This concern is consistent with the Ministry for the Environment's Section 18 Report, which recognises that the Panel may need to consider whether the proposal affects customary fishing rights under the Fisheries Act 1996 and the ability of tangata kaitiaki/tiaki to exercise their statutory functions.⁷

WHETHER TREATY SETTLEMENT PROVIDES FOR CONSIDERATION OF ANY DOCUMENT DEFINED IN S 82(4) FTAA WHEN DECISIONS ARE MADE UNDER S 104 OF THE RMA OR S 53 OF THE WILDLIFE ACT 1953

19. Counsel is not aware of any relevant documents, as defined in s 82(4) FTAA, flowing from the Fisheries Settlement Act that apply to Tauranga Moana specifically.
20. While counsel is not aware of any Tauranga Moana-specific document within the meaning of s 82(4) arising directly from the Fisheries Settlement Act 1992, the Customary Fisheries Regulations and the Fisheries (Declaration of Mātaitai Reserve at Mt Maunganui and Part of Tauranga Harbour and Appointments of Tangata Kaitiaki/Tiaki) Notice 2008 give practical effect to the Crown's obligations under section 10 of the Fisheries Settlement Act by recognising and providing for customary food gathering and the exercise of tangata kaitiakitanga.

Victoria Tumai

Senior Associated – Tamaki Legal Ltd

on behalf of the Tauranga Moana Iwi Customary Fisheries Trust

⁷ Ministry for the Environment, *Fast-track Approvals Act 2024 – Treaty Settlements and other obligations (Section 18) report* to Hon Chri Bishop, Minister of Infrastructure, 25 November 2025 at p 13, [65] – [67]