

UNDER

the Fast-track Approvals Act 2024 (the FTAA)

IN THE MATTER

of the Port of Tauranga Ltd FTAA
Substantive Application (FTAA-2512-1163) for the Stella Passage
Development Project

**MEMORANDUM OF COUNSEL ON BEHALF OF
NGĀI TUKAIRANGI HAPŪ TRUST**

DATED: 24 AUGUST 2026

Level 3, 2 Osterley Way, Manukau 2104
PO Box 75 517, Manurewa, Auckland 2243
P. 09 263 5420
E: victoria@tamakilegal.com

Counsel Acting: Victoria Tumai

TamakiLegal
Barristers & Solicitors

MAY IT PLEASE THE EXPERT PANEL

INTRODUCTION

1. This memorandum is filed on behalf of Ngāi Tukairangi Hapū Trust (“**Hapū Trust**”) in response to the Expert Panel’s Minute 14 (dated 17 August 2026) seeking comments from specified parties on the draft conditions of consent.
2. This memorandum records the Hapū Trust’s position on the decision to grant approvals for the Stella Passage Development (“SPD”) and provides preliminary, without prejudice comments on the draft conditions of consent as amended by the Expert Panel on 17 August 2026. The comments below are intended to assist the Panel and the parties while further work on the conditions and related arrangements is undertaken.

NGĀI TUKAIRANGI HAPŪ TRUST POSITION

3. The Hapū Trust continues to oppose POTL’s resource consent application for SPD. Its participation in the development of conditions and related arrangements does not alter that position, and must not be treated as agreement to, endorsement of, or acceptance of the Port’s existing or proposed operations.
4. The Hapū Trust do not agree with the conclusion reached by the Panel in its decision that granting the approvals would be consistent with the obligations arising under the existing settlements, including the Tauranga Moana Iwi Collective Deed of Settlement. The Hapū Trust’s position on this matter is set out in its response to the Panel’s Minute 7 dated 14 July 2026.
5. However, as one of the kaitiaki hapū in Te Awanui, the Hapū Trust is strongly motivated to engage constructively on the protections that would be required if the approvals are to be exercised. The Trust wishes to work toward detailed, effective and enforceable consent conditions, together with an enduring and sustainable relationship arrangement that recognises Ngāi Tukairangi’s status and meets the cultural standards identified through its Cultural Values Report and subsequent responses. That engagement is undertaken while maintaining the Trust’s opposition to the SPD application.
6. The Hapū Trust refers to Minute 15 (dated 21 August 2026) and the Panel’s strong encouragement to POTL, as applicant, to consider whether a section

64 suspension of processing would enable a more considered response to the conditions. The Trust supports additional time being made available for that purpose.

7. The Hapū Trust asks that approximately one month be allowed for focused re-engagement on the draft conditions and the wider arrangements needed to address cultural effects. The Trust intends to provide further detailed comments on the conditions within the next two weeks, with the balance of the period used, where parties are willing, to test wording, responsibilities, implementation pathways and the relationship arrangements that need to sit alongside the conditions.
8. The Trust acknowledges that the fast-track process has required all parties to respond within compressed timeframes. For the Hapū Trust, this has occurred while navigating the interests and sensitivities of multiple parties, limited hapū capacity, and a process that is relatively new to the Trust. These matters have constrained the opportunity to work through the draft conditions with the level of care, technical input, governance consideration and tikanga-based discussion that the issues warrant. They should not be understood as a lack of willingness to engage or to develop workable solutions.
9. The Trust considers that the final response to cultural effects cannot be reduced to individual consent conditions considered in isolation. Some matters will properly require enforceable consent conditions; others may be better carried through a direct relationship agreement, monitoring or management arrangements, agreed protocols, resourcing commitments, restoration mechanisms, or a combination of these. The overall package needs to be coherent, durable and capable of implementation over the life of the consents.
10. Against that background, the condition wording set out in this memorandum should be treated as the Trust's first, without prejudice thoughts rather than its final drafting position. The Trust has included them to assist progress and to identify the direction of the protections sought. Further consideration may result in refinement of the wording, additional conditions, or a recommendation that particular matters are more appropriately secured

through the wider relationship arrangement, provided that the resulting protections are clear and effective.

11. The Trust is willing to use the requested period constructively with POTL, the Panel and relevant tangata whenua parties. The objective is not to delay for its own sake, but to see whether a more considered process can produce conditions and an enduring arrangement that respond meaningfully to the real and cumulative cultural effects identified by Ngāi Tukairangi, while preserving the Trust's position on the application itself.

NGĀI TUKAIRANGI HAPŪ TRUST COMMENTS ON DRAFT CONDITIONS OF CONSENT RELATING TO NGĀI TUKAIRANGI HAPŪ TRUST CULTURAL VALUES REPORT

Recognition of Ngāi Tukairangi

12. The Trust acknowledges the recognition in the draft conditions of Ngāi Tukairangi's relationship to Te Awanui. However, the Trust considers that participation through SPDAG, which is currently comprised of 16 entities, does not by itself adequately recognise the distinct position of Ngāi Tukairangi as mana whenua directly affected by the works proposed under the SPD consents. The Trust does not consider direct mana whenua engagement and participation in a harbour-wide group to be interchangeable, and considers that both mechanisms can operate alongside each other.
13. Accordingly, the Hapū Trust proposes the following wording is included in condition 2 either in the condition itself or as an advice note:
 - a. For the avoidance of doubt, participation by Ngāi Tūkairangi in the Stella Passage Development Advisory Group does not replace, limit or satisfy the Consent Holder's obligations to engage directly with Ngāi Tūkairangi on matters affecting its mana whenua, tangata whenua, rangatiratanga and kaitiakitanga interests within the Mount Maunganui, Whareroa, Sulphur Point and adjoining Te Awanui areas affected by the activities authorised by these consents.
 - b. The Consent Holder must provide Ngāi Tūkairangi with reasonable opportunity, time, information and resourcing to participate directly in the

development, implementation, monitoring and review of measures affecting Ngāi Tukairangi interests.

Relationship Arrangement

14. In the Cultural Values Report (“**CVR**”) prepared by the Hapū Trust, Ngāi Tukairangi requested an apology for excluding their people from earlier phases of these consent proceedings as mana whenua-tangata whenua in the Mount wharf area and the Sulphur Point wharf area. Ngāi Tukairangi mana whenua-tangata whenua status should form part of POTL institutional knowledge.
15. The Hapū Trust requests that draft condition 2 includes a provision along the following lines:
 - a. As part of the establishment of the relationship agreement with Ngāi Tūkairangi, the Consent Holder shall formally acknowledge Ngāi Tūkairangi’s mana whenua status in the areas affected by the Mount Maunganui and Sulphur Point works and acknowledge and apologise for its exclusion from earlier stages of the consenting processes.
 - b. Ngāi Tukairangi preference is that an apology is provided before works commence.

Cultural Monitoring of Dredge Operations

16. Under draft condition 14 cultural monitoring is provided via the Tauranga Moana Iwi Customary Fisheries Trust only. The Hapū Trust requests that Ngāi Tukairangi is provided the ability to nominate a cultural monitor where dredging or associated activities occur within in or may affect areas in which Ngāi Tukairangi exercises mana whenua and kaitiakitanga.

Mātauranga Monitoring Plan

17. The CVR for the Hapū Trust considered what should form part of a Mātauranga Monitoring Plan (“**MMP**”). In addition to those matters listed in draft condition 15.3, the Hapū Trust requests that the following additional matters are also provided for in any MMP:

- a. assessment and ongoing monitoring of the cumulative effects of capital and maintenance dredging and associated Port activities on cultural, ecological and kaimoana values;
- b. identification of culturally significant and/or vulnerable kaimoana beds, including site-specific baseline and post-dredging monitoring;
- c. real-time or near-real-time sediment and turbidity monitoring at identified sensitive kaimoana locations where practicable;
- d. protocols for the relocation, protection, reseeding and restoration of kaimoana and vulnerable marine species where monitoring identifies actual or potential adverse effects;
- e. consideration of improved or less invasive dredging techniques where monitoring identifies adverse effects;
- f. integration of mātauranga Māori, cultural health indicators and scientific monitoring;
- g. the direct participation of Ngāi Tūkairangi kaitiaki and rangatahi in monitoring, research, restoration and reporting; and
- h. appropriate resourcing, training, scholarships and capability development to enable that participation.

Restoration and Mitigation

- 18. The Hapū Trust, while supportive of the various payments described in draft condition 18, proposed in its CVR a Te Awanui Moana Fund and Levy establishing a continuing relationship between POTL activity, environmental effects and restoration. The Hapū Trust therefore requests that additional wording is included in draft condition 18 in relation to all payments as follows:
 - a. In addition to the initial funding provided under Condition 18, the consent holder shall make an annual CPI-adjusted contribution to a Te Awanui restoration fund for the term of the consent.

Reclamations

- 19. The Hapū Trust in its CVR proposed that reclamations of foreshore and seabed; and their respective land title are vested in hapū who have mana

whenua-tangata whenua status where POTL is granted a lease on reasonable terms. The Hapū Trust requests that either a specific condition is included to this effect or otherwise draft condition 18.6 is amended accordingly and achieved through an appropriate legal mechanism.

Review

20. The concerns in the Hapū Trust's CVR centres around cumulative effects and so an effect may already be known but become materially worse because of SPD. The wording in draft condition 24.1b) recognises effects only where they become evident after the date of issue. The Hapū Trust does not support this and requests that condition 24.1b) i) is amended as follows:

- a. became evident, increased in magnitude, extent, duration or significance, or was materially different from that anticipated at the date of issue.

Wildlife Approval Conditions

21. The Trust's CVR supports trialling the new nesting box colony at Butters Landing and exclusion of Kororā from nesting sites likely to be harmed from development. The Trust also seeks that mana whenua is included in decision-making alongside expert bird handlers. Accordingly, the Hapū Trust requests a condition is included in the Wildlife Approval to provide the Trust with the opportunity to be involved with and in to participate in the management of any Kororā affected by SPD project.

NGĀI TUKAIRANGI HAPU TRUST SPECIFIC COMMENTS ON DRAFT CONDITIONS OF CONSENT

22. The Hapū Trust supports the inclusion of the words '*undertake a tikanga-based approach*' in draft conditions 2.1. and 3.1. While notes the concerns POTL raise around certainty and enforceability of including such wording in a consent condition, the Hapū Trust consider these concerns can be addressed if more time were available to consider. The Hapū Trust agree that each hapū has its own *tikanga* but any differences in tikanga are not insurmountable. There is value in working through POTL's concerns if more time to do so were available.

23. The Hapū Trust supports the inclusion of a Terms of Reference (“**TOR**”) in draft condition 3.4. and considers the TOR as proposed by the Panel has the potential to work well alongside a tikanga-based approach to help guide the relationship between POTL and iwi and hapū (SPDAG) for the term of the consent.
24. However, regarding draft condition 3.4 c), the Hapū Trust considers that stronger wording is required so rather than the consent holder merely observing the processes agreed in any TOR, the consent should provide for the processes agreed in any TOR.
25. The Hapū Trust supports draft condition 3.4 j) but considers the focus of the annual meetings with POTL Chief Executive Officer and Chair of the Board of Director should extend beyond strategic matters and should also include an opportunity for SPDAG to raise and discuss any cultural effects-based concerns identified by SPDAG.
26. While the Hapū Trust considers the wording of draft condition 8.1 has improved, it believes this condition could be strengthened. Accordingly, additional wording is proposed where certain matters or concerns must be considered by the consent holder when taking into account any advice and or recommendations provided by SPDAG.
27. For example, if the advice or recommendations from SPDAG concern unforeseen effects on the marine environment, including unforeseen cultural effects, that were not identified or considered at time of grant then in this instance the Review provisions in condition 24.1b) should be triggered. The Hapū Trust also consider that the scope of the review triggered under 24.1b) should not be limited to just cultural effects but to all ecological effects as well. The concern here is that if an ecological effect is identified it would have to wait under 1 November for consent conditions to be reviewed as provided under draft condition 24.1a) this is not an appropriate response especially where there are unforeseen adverse effects identified.
28. In addition, with any explanation by the consent holder for not adopting SPDAG recommendations and/or advice under draft condition 8.1, the explanation should detail with evidence how the consent holder took into account concerns such as unforeseen effects.

29. The Hapū Trust considers a similar approach should be taken in relation to the wording in draft condition 8.8
30. With draft condition 10 – Marine Mammal Recording and Reporting, the Trust request that hapū / SPADAG are also provided with annual summary reports of marine mammal sightings along side the Regional Council and the Department of Conservation.
31. With draft condition 15.1, the Hapū Trust do not agree with the proposal for the Initial Mātauranga Monitoring Plan (“**MMP**”) to be consistent with Te Pā Pātiki conceptual framework. This framework was developed without involvement from or endorsement by the Hapū Trust. The Hapū Trust are also concerned that this framework is not pitched at hapū or Fisheries Trust level.
32. The Hapū Trust consider that any MMP should be written alongside actual base line monitoring and implemented before the consents / approvals are exercised. The Hapū Trust’s position is that mātaruanga Māori baseline monitoring applies to both an initial and final MMP. Furthermore, the Hapū Trust supports the inclusion of culturally appropriate methods for monitoring and mitigation.

DATED at Auckland this 24th day of August 2026



Victoria Tumai
Counsel Acting