

BEFORE THE PANEL CONVENER

FTAA-2512-1163

UNDER THE

FAST TRACK APPROVALS ACT 2024 (FTAA or 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
NGĀTI KUKU HAPŪ FOR CONVENER'S CONFERENCE**

3 MARCH 2026

Tu Pono Legal Ltd
Solicitor: Jason Po |

Counsel: Rob Enright

1. This memorandum is filed on behalf of Ngāti Kuku hapū, as a discretionary invitee for tomorrow's Convener Conference. Ngāti Kuku notes that Whareroa Marae is also an affected party, but has not been invited to participate.
2. In 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. Ngāti Kuku hapū does not oppose re-appointment of the original Expert Panel.
4. As regards the timeframe for the decision-making process, and having regard to the relevant factors identified at paragraph [10] of Minute 1 (including disparity of positions on cultural effects and their management / mitigation, failed processes of engagement, and the need for independent processes to reach final determinations on these issues), Ngāti Kuku hapū submits that a modest increase to the decision-making timeframe to **100 working days** is appropriate.
5. The relevant factors are identified in Minute 1 at paragraph [10]. By reference to those factors, it is submitted that:

(a) Principal issues

From Ngāti Kuku's perspective, it has not yet had the opportunity to identify key issues in contention for the purposes of this FTAA proposal.¹ However, there is a degree of thematic repetition from earlier litigation between these parties, particularly as a result of failed engagement processes, and the Port's continued undervaluing of the impacts on Ngāti Kuku and Whareroa Marae, and the commensurate 'mitigation' required. Ngāti Kuku will remain focused on the relevant decision-making criteria in ss81-85 FTAA, including the extent of net benefit, as compared with the relevant adverse cultural effects, and whether these can be addressed through consent conditions that recognise and provide for the cumulative impacts; or whether approval should be declined in whole or part. A major issue, likely to require sufficient time and a mini-

¹ Counsel understands that the Port has filed a memorandum in advance of tomorrow's conference. To Counsel's knowledge, this has not yet been posted to the EPA website, or provided to other parties.

hearing process, will be the topic of 'mitigation' (including offsetting/compensation) of cultural effects.

Engagement with participants on contentious issues

- (b) Counsel is instructed that the engagement process between the Port and Ngāti Kuku on this FTAA proposal has not produced any tangible outcomes. Relevant context is otherwise ably summarised by Counsel for Ngā Hapū o Ngā Moutere Trust.² To the extent there has been engagement, Counsel is instructed that it has not resulted in concrete or constructive outcomes. Independent oversight by the Panel, ideally through a tikanga based mini-hearing or workshop will be needed, to ensure key issues are properly understood.

Consent conditions

- (c) As noted, little progress has been made on proposed consent conditions. There is a substantial disparity in positions.

Expert Panel processes

- (d) It is submitted that sufficient time is required for several workshops or mini-hearings, to ensure that the Panel has the best available information for decision-making. This is likely to be in addition to expert caucusing processes, and includes similar methods followed by the Expert Panel in the *Taranaki VTM* hearing:

- Mana whenua workshop, involving the Panel, to allow tikanga based engagement and contextual understanding of core issues;
- Mini-hearing or workshop to address proposed conditions to address cumulative and intergenerational cultural effects and their mitigation (including offsetting/compensation).
- Legal issues mini-hearing, to allow Counsel and parties to address outcomes of (a) and (b) and more broadly.

6. In summary, it is respectfully submitted that an extension to **100 working days** is required to ensure that the best available information is before the Panel on a range of complex and interrelated issues. Allowing greater time reflects the complex underlying priority and public interest factors present, as well as the decision-making principles in s10 FTAA. It is

² Memorandum dated 04 March 2026

more likely to result in a lasting solution, that better recognises tikanga and enables some degree of kanohi ki te kanohi engagement under the Panel's independent auspices.

7. Counsel will attend at the Conference and will be available to address the above issues, as required.

Dated this 4th March 2026

Rob Enright

Counsel for Ngāti Kuku hapū