
MINUTE 5 OF THE EXPERT PANEL

Stella Passage Development FTAA-2512-1163

22 May 2026

[1] The purpose of this Minute is to:

- (a) Record that, as foreshadowed in Minute 4, the comment from Ngāi Tamawhariua puta noa ki Te Rereatūkāhia was accepted.
- (b) Record that as requested by counsel for Ngā Hapū o Ngāti Ranginui Settlement Trust on 6 May 2026, the Panel has agreed to accept its letter dated 1 May 2026 as a late comment.
- (c) Record that as requested by counsel for the Ngā Tai Ki Mauao Hapū Collective and Ngā Hapū O Ngā Moutere Trust in his memorandum dated 8 May 2025, the Panel has agreed to accept the “update” to the evidence of Ms Bennett provided that day.
- (d) Invite the Applicant to respond to the late comment referenced in paragraph (b) above and the updated evidence referenced in paragraph (c) above within 10 working days.
- (e) Set out the further information the Panel has directed the EPA to request following the Panel’s initial review of the comments and Applicant’s response., as outlined further below.

Further information

[2] The Panel has directed the EPA to request the further information from the parties identified in **bold** below. Section 67(3) of the FTAA provides a maximum time period of 10 working days for providing the further information.

[3] Section 7 of the FTAA requires all persons, other than those “exercising a judicial power or performing a judicial function or duty”, to “act in a manner that is consistent with the obligations arising under existing Treaty settlements” (defined to include settlement Acts and deeds that exist at this time). If the Panel considers that granting the approval would breach s7, s85(1)(b) requires the Panel to decline the approval. Mr Enright, on behalf of Ngāti Kuku Hapū and the Trustees of Whareroa Marae, submitted this jurisdictional bar is in play. Paragraphs 71 – 114 of the Applicant’s Legal Submissions dated 7 May 2026 provide its initial response to this challenge. The Panel requests confirmation from **participants with existing Treaty settlements** as to whether each agrees with the Applicant’s response and/or wishes to provide further submissions in relation to these provisions (with an indication to be given as to timing within which such submissions could be prepared, if it is not within the 10 working day period of this request).

[4] Section 3 of the RMA defines effect to include “any cumulative effect which arises over time or in combination with other effects regardless of the scale...”. The Panel understands from section 3(c) of the RMA that the “other effects” can be “past, present or future” effects. Paragraph 128 of the Applicant’s Legal Submissions dated 7 May 2026 appears to be a commendable attempt to distil the adverse cumulative cultural effects as articulated by tangata whenua. The Panel seeks:

- (a) comment from the **tangata whenua participants** as to:
 - (i) the Applicant’s distillation of the *adverse* cumulative cultural effects of allowing this project and/or an alternative list or explanation;
 - (ii) the existence of any *positive* effects of allowing this project (including effects arising in the foreseeable future) and, if applicable, actual or potential examples;

- (b) comment from the **Applicant** on how it considers the Panel should assess the “past” and “present” effects which the Panel understands are the “other effects” that will combine with the effects of allowing the proposal to result in the cumulative effects of concern to tangata whenua participants. From its response to Minute 3, the Panel anticipates the Applicant may need to specifically address the effects of incremental and successive port reclamation, berth expansion, dredging and industrialisation activities within Tauranga Harbour over time that are present within the receiving environment.

[5] Section 108(10) of the RMA limits the imposition of conditions requiring financial contributions. Mr Enright, on behalf of Ngāti Kuku Hapū and the Trustees of Whareroa Marae, submitted that the proposed compensation be imposed as a “financial contribution”. Mr Enright has not addressed whether “financial contributions” under s108(9) can be payable to other than the consent authority. Nor has he addressed how the “financial contribution” sought meets the clear statutory test in s108(10). The Panel requests clarification from **Ngāti Kuku Hapū and the Trustees of Whareroa Marae** as to whether Mr Enright is submitting that the proposed compensation is a financial contribution within the scope of s108(10) and, if so, how.

[6] An *Augier* condition is one that could not otherwise be imposed given the strict constraints in s108 and s108AA of the RMA and s83 of the FTAA. The Panel requests clarification from the **Applicant** as to which conditions (or parts of conditions) in Appendix 1 to the 7 May 2026 planning evidence of Luke Faithfull relating to cultural effects it identifies as not being “directly connected” to “an adverse effect of the activity on the environment” and therefore *Augier* conditions. Depending on that information, the Panel indicates that it may then request:

- (a) Legal submissions and/or planning evidence from other participants

as to whether any conditions identified by the Applicant as *Augier* conditions may instead fall within the scope of allowable conditions under s108 and s108AA of the RMA.

- (b) In the event any conditions identified by the Applicant as an *Augier* condition are identified by any other participant as being within scope of allowable conditions under s108 and s108AA of the RMA, a response from the Applicant that addresses, among other matters, s83 of the FTAA.

The requests in (a) and (b) above will be the subject of further directions to the EPA in due course once the Panel has received and considered the Applicant's response.

[7] Rules PZ5, PZ8, PZ10 and PZ11 of the Regional Coastal Environment Plan (**RCEP**) contain a matter of discretion "site specific historical or cultural values under ss 6(e) or 7(a) of the RMA". Section 6(e) requires decision makers to recognise and provide for "the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga". Section 7(a) requires decision makers to have particular regard to "kaitiakitanga". The Panel requests further information:

- (a) from the **Regional Council** as to its interpretation and application of this matter of discretion in its plan to date, including whether it has been the subject of judicial consideration;
- (b) from **any participant** that wishes to provide an interpretation of this matter of discretion in the context of this application.

[8] Policies IW 8 and IW 9 of the RCEP envisage tangata whenua involvement in establishing "appropriate mitigation, remediation and offsetting" options. Some tangata whenua participants have expressed concern at the establishment, role, composition and scope of potential influence of the Stella Passage Development Advisory Group (**SPDAG**). Paragraphs 65 – 69 of Mr Enright's submissions on behalf of Ngāti Kuku Hapū and the Trustees of Whareroa Marae explain his

clients' position. Leaving to one side quantum, the Panel seeks further information from all **tangata whenua participants** as to:

- (a) their concerns with the SPDAG in the revised condition set provided in Appendix 1 to the 7 May 2026 planning evidence of Luke Faithfull on behalf of the Applicant;
- (b) any amendments to those conditions that might address those concerns; and
- (c) whether there are currently known alternative mechanisms that have the support of all tangata whenua participants through which the adverse cumulative cultural effects of allowing this project could be better addressed.

[9] Some tangata whenua participants have requested an oral hearing. Paragraph 244 of the Applicant's Legal Submissions dated 7 May 2026 suggests a potential process for the Panel to adopt in the first instance. The Panel requests feedback from the **tangata whenua participants** as to that suggested process and/or an alternate process that may assist the Panel to better understand the scale of the cumulative cultural effects and the "appropriate mitigation, remediation and offsetting".

[10] Paragraph 4.6 of the comments provided by Ngati Ranginui Fisheries Trust refer to "related" High Court proceedings that have raised questions concerning process and the adequacy and scope of conditions. The Panel seeks clarification from **Ngati Ranginui Fisheries Trust**.

[11] The Applicant has provided extensive information in response to the comments received, including multiple statements of evidence addressing the "western science" effects. The Panel seeks clarification from the **commenters that raised "western science" matters (other than economics and planning)** as to whether their comments have been satisfactorily addressed by the response or whether matters remain in contention. If the latter, the Panel would be assisted

by a list of matters in dispute and the expert's indication of whether it is material (such that it may benefit from inclusion on an agenda for direct conferencing) or not.

A handwritten signature in blue ink, appearing to read 'Bronwyn Carruthers', with a long horizontal flourish extending to the right.

Bronwyn Carruthers KC

Stella Passage Development Expert Panel Chair