BEFORE THE TARANAKI VTM PROJECT EXPERT PANEL **FTAA-2504-1048**

UNDER THE	Fast-track approvals Act 2024
IN THE MATTER OF	an application by the Trans-Tasman Resources Limited under the FTAA for marine consents

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SUBMISSIONS OF COUNSEL FOR

NGĀTI MANUHIAKAI, ARAUKUUKU, NGĀTI TŪ, AND TE PATUTOKOTOKO

Dated this 14th day of November 2025

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INTRODUCTION

1. These submissions are filed on behalf of:
   (a) Ngāti Manuhiakai;
   (b) Araukuuku;
   (c) Ngāti Tū; and
   (d) Te Patutokotoko.

2. We have had the benefit of reading the draft submissions on behalf of Te Rūnanga o Ngāti Ruanui Trust (Te Rūnanga). There has been some co-ordination between various parties, to reduce unnecessary duplication and repetition for the Panel.

SUBMISSIONS

3. With that in mind, these submissions focus on the following questions posed by the Panel:
   (a) 2(a) Is the Panel required to determine whether TTR's proposal requires approval under the Resource Management Act 1991 ("RMA")?
   (b) 2(b) If so, does TTR's proposal require approval under the RMA, and is s 5(1)(l) of the Fast-track Approvals Act 2024 ("FTAA") relevant?
   (c) 4. Is the project's feasibility a relevant consideration?
   (d) 13. When considering national or regional planning instruments prepared under the RMA under s 9(2)(h) EEZ Act, to what extent, if any, should the Panel be guided by the Supreme Court's decision in Royal Forest & Bird Protection Society v New Zealand Transport Agency [2024] NZSC 26?

2(a) Is the Panel required to determine whether TTR's proposal requires approval under the Resource Management Act 1991 ("RMA")?

2(b) If so, does TTR's proposal require approval under the RMA, and is s 5(1)(l) of the Fast-track Approvals Act 2024 ("FTAA") relevant?

Ineligible activities

4. Under s5(1) of the FTAA, "ineligible activities" are activities which cannot be approved even under the FTAA regime. These include under s5(1)(l)(2) that breach s15B of the RMA, which, as relevant (emphasis added), states:

> **15B Discharge of harmful substances from ships or offshore installations**
>
> (1) No person may, in the coastal marine area, discharge a harmful substance or contaminant, from a ship or offshore installation into water, onto or into land, or into air, unless—
>
> (a) the discharge is permitted or controlled by regulations made under this Act, a rule in a regional coastal plan, proposed regional coastal plan, regional plan, proposed regional plan, or a resource consent; or
>
> (b) after reasonable mixing, the harmful substance or contaminant discharged (either by itself or in combination with any other discharge) is not likely to give rise to all or any of the following effects in the receiving waters:
>
> …
>
> (ii) any conspicuous change of colour or visual clarity:
>
> …
>
> (iv) any significant adverse effects on aquatic life; or
> …

5. This is a significant question that the Panel **must** determine.

6. It is clear that TTR's mining activities will involve the discharge of contaminants from a ship, in the area of its mining activities. That will result even after reasonable mixing in a conspicuous change of colour or visual clarity (ie the sediment plume) and will have significant effects on some aquatic life (as found by the previous DMC considering the last application, which is in substance the same as the present application).

7. The issue is whether the discharge is occurring "in the coastal marine area".

8. TTR will no doubt say that the discharge is occurring in the EEZ, and so section 15B cannot be activated.

9. That is a fallacious position to take. While the precise point of discharge may be "just" outside the CMA (at times, by metres), the discharge "continues" into the CMA. On any purposive interpretation, there should be no get out of jail card to be played simply because the starting point of the discharge is outside the CMA.

10. If the discharge was far enough into the EEZ, that by the time any sediment plume got to the CMA, that there was reasonable mixing and no conspicuous change of colour or visual clarity or significant effects on some aquatic life, then the s15B prohibition would not be activated.

11. So the answer for TTR is simple, go further away, and avoid these prohibited impacts within the CMA.

Other RMA consent requirements

12. On one view, it is the applicant's risk under the FTAA if it fails to identify and apply for all relevant consents to enable its activity. An applicant potentially could (say) not apply for a Wildlife Act authority, as part of its FTAA application, even if it were clear it would need one. They would then have to get that separate authority later, if granted a substantive consent under the FTAA. The same would apply to any RMA consent needed.

13. However, that goes against the whole philosophy of the FTAA which was intended to be a one stop shop for applicants (and participants) to identify and obtain all approvals necessary for a project.

14. On that basis (which is considered to be the correct position and that anticipated by Parliament in enacting the FTAA), the Panel will need to:
    (a) determine if any RMA consents are required as part of the project; and
    (b) if so, decide whether the FTAA application must fail because those consents have not been sought, including because of an absence of information and assessment.

15. Putting aside the prohibition discussed above in respect of conspicuous changes in colour and significant effects on aquatic live, section 12(1)(d) prohibits any person from:

> Deposit[ing] in, on, or under any foreshore or seabed any substance in a manner that has or is likely to have an adverse effect on the foreshore or seabed; …

unless expressly allowed in a plan or a consent.

16. Again, as a matter of interpretation, it would be disingenuous for TTR to say it is not depositing sediment on the seabed within the CMA, simply because the point of discharge is within the EEZ outside the CMA. The factual position is clear, including from the last DMC's findings: there will be deposition of sediment in sensitive areas that will have adverse effects (if not significant adverse effects, as the DMC previously found).

17. Accordingly, an RMA consent is required.

18. This position is reinforced by Environmental Law Initiative v Canterbury Regional Council [2024] NZHC 612. While not on all fours with the current situation, that case confirmed that where inland discharges into freshwater have proven, ongoing effects on the coastal environment, the NZCPS and regional coastal plan must be treated as relevant under s 104(1)(b), notwithstanding that the discharge point is upstream and no coastal permit is sought.

19. Applied here, the fact that TTR's discharges originate in the EEZ does not avoid the need for consents under the RMA: because the plume's principal effects occur in the coastal marine area, including, importantly, physical deposition (as well as a discharge plume), and so the coastal RMA regime (including NZCPS bottom lines) is engaged and separate RMA coastal consents are required alongside any EEZ/FTAA approval.

20. If the Panel agrees, then it may be open to it to decline the FTAA consent application for lack of information and/ or for failing to include all necessary consents required.

21. It may also be open to the Panel to grant a marine consent, but subject to an advice note or condition that prevents the exercise of the marine consent unless or until an RMA consent is obtained. That of course would be the position at law in any event, ie if another consent is required, then it must be obtained before the activity can be undertaken.

4. Is the project's feasibility a relevant consideration?

22. Under the RMA, feasibility or viability is something that has often been said to be a matter for the boardroom table, rather than weighing into whether or not consent should be granted. The focus is on the effects of allowing the activity (or not).

23. However, under the EEZ Act as well as the FTAA, the requirement to consider economic benefits feature more heavily.

24. TTR's application leans heavily on claimed economic and regional development benefits. That – and the scheme of the EEZ Act and the FTAA - makes feasibility very relevant, for example in regard to:
    (a) Weight to economic benefits. If the project is not realistically commercially or technically feasible, the claimed benefits are simply speculative. Or if the project proceeds, but is only marginal, then many of the claimed benefits will necessarily be significantly reduced.
    (b) Ability to comply with conditions. Subject to any bond or other similar mechanism, if the project is only marginal then there is no certainty as to mitigation/ remediation actually occurring.

13. When considering national or regional planning instruments prepared under the RMA under s 59(2)(h) EEZ Act, to what extent, if any, should the Panel be guided by the Supreme Court's decision in Royal Forest & Bird Protection Society v New Zealand Transport Agency [2024] NZSC 26?

25. In respect of how to consider the RMA instruments, the Supreme Court's approach in Royal Forest & Bird Protection Society v New Zealand Transport Agency [2024] NZSC 26 is binding – subject to the overlay of the FTAA decision making framework.

26. In other words, the approach of the Supreme Court in Royal Forest & Bird (or East West) in undertaking a very careful assessment of the relevant objectives and policies, and not putting them in a blender to dilute the more directive policies is entirely binding on the Panel. The Panel needs to consider to what extent the objectives and policies of the relevant RMA instruments might provide a window for TTRL's application to proceed – which may be a very small window, that they cannot pass through in terms of the RMA instruments.

27. This is consistent with the longstanding guidance of the Supreme Court in Discount Brands that the Plan (in that case the District Plan) provides the frame against which effects are to be assessed. Put simply, the planning instruments provide significant (if not determinative) guidance as to what effects are to be avoided.

28. The Panel will also need – consistent with Forest & Bird/ East West) – to decide whether, in terms of its consideration of RMA matters, whether TTR's proposal might constitute a "genuine exception" to the prohibitive policy framework against it. We say it is not, of course. The proposal cannot be considered unique or a limited exception.

29. In the framework of the FTAA that may not be determinative, but it must be a critical factor in the Panel's decision-making process.

Dated this 14th day of November 2025

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