

**BEFORE THE PANEL CONVENER PURSUANT TO THE FAST-TRACK
APPROVALS ACT 2024**

IN THE MATTER of an application made under the Fast-
Track Approvals Act 2024 by Trans-
Tasman Resources Limited

**MEMORANDUM OF COUNSEL FOR TRANS-TASMAN RESOURCES IN
RESPONSE TO PANEL CONVENER DIRECTIONS**

4 AUGUST 2025



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INTRODUCTION

1. This case management memorandum is filed on behalf of Trans-Tasman Resources (**TTR**) in response to the Panel Convener's directions dated 16 July 2025.
2. Those directions require TTR to provide the following:
 - (a) a memorandum that identifies clearly which sections of the application documentation, including technical reports and conditions, have been substantively updated:
 - i. in response to the findings of the Supreme Court in 2021;
 - ii. in response to any of the issues that were in contention during the reconsideration or were identified by the DMC as requiring further information prior to withdrawal of the application;
 - iii. since the 2016 application was withdrawn in March 2024;
 - (b) a table indicating by report and section reference where those updates or amendments have principally been made;
 - (c) a list of issues that the Applicant expects will be in contention, having regard to the application history of the project, the parties who have been involved in earlier processes and hearings, and the issues they have previously identified;
 - (d) an updated draft decision timeframe, including provision for mechanisms that might be used to enable the expert panel to efficiently interrogate disputed issues and evidence, and to allow for the application of tikanga.

DIRECTION (a)

Context

3. TTR will identify which sections of the application documents have been substantively updated in the various ways described in direction (a).
4. First, and for the avoidance of misunderstanding, the application which has been submitted under the Fast-Track Approvals Act 2024 (**FTA Act**) is a new application made under a new legislative regime, and is therefore separate and distinct from any previous application made under different legislation. For the reasons that follow, TTR does not consider that:
 - (a) the findings of the Supreme Court,
 - (b) the issues in contention during the reconsideration, or
 - (c) the matters on which the reconsideration DMC requested further information,

will provide as much guidance for the Panel on the present application as others may think.
5. The task of the yet-to-be appointed Panel will be to determine TTR's application applying the legal framework set by the FTA Act. Neither the Supreme Court, nor the DMC undertaking the reconsideration, were governed by that framework.
6. From a legal perspective, the relevance of the Supreme Court's 2021 findings to the present application has been addressed in sections 1.5 and 8 of the application. Those sections identify significant differences between the framework of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2014 (**EEZ Act**), with which the Supreme Court's 2021 decision was concerned, and the FTA Act. Some key differences are:

- (a) Under the FTA Act, the project's significant regional and national benefits are required to be given greater weight than all other considerations;
 - (b) Under the FTA Act there are no 'environmental bottom lines'; and
 - (c) The FTA Act only permits an application to be declined for a very limited number of reasons (none of which, TTR submits, is triggered here).
7. Given these (and other) differences, it is the FTA Act, not the EEZ Act, which establishes the legal framework for this application. The Supreme Court's findings¹ only remain relevant to the extent that they align with the FTA framework. The extent of that alignment is detailed in section 8 of TTR's present application.
8. Broadly speaking, the key findings of the Supreme Court were:
- (a) Information deficits: the Supreme Court identified three specific 'deficits' in the information that the EPA had relied on in 2017. These related to:
 - i. Marine mammals;²
 - ii. Seabirds;³ and
 - iii. Sediment Plume.⁴

The Supreme Court held that the information deficits on these topics led the 2017 DMC to make a number of inter-related errors of law:

¹ *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, (2021) 23 ELRNZ 47 at [12].

² At [119] and [121] per William Young and Ellen France JJ, [271] and [274] per Glazebrook J, [294] per Williams J, [328] per Winkelmann CJ.

³ At [119] and [120] per William Young and Ellen France JJ, [271] and [274] per Glazebrook J, [294] per Williams J, [328] per Winkelmann CJ.

⁴ At [131] per William Young and Ellen France JJ, [271] and [274] per Glazebrook J, [294] per Williams J, [328] per Winkelmann CJ.

- i. A failure to protect the environment from material harm;⁵
- ii. A failure to favour caution and environmental protection;⁶
- iii. Breach of an 'environmental bottom line' in the NZCPS 2010;⁷ and
- iv. Improper reliance on conditions requiring pre-commencement monitoring.⁸

The Supreme Court directed the EPA to reconsider the application, and left it open for TTR to address the information deficits if it could.⁹

- (b) Tikanga: the Supreme Court held the 2017 DMC failed to effectively grapple with the true effect of the proposal for iwi parties.¹⁰ It held that the DMC had not accounted for tikanga as law,¹¹ or reflected that tikanga-based customary rights and interests constituted existing interests under s 59(2)(a) of the EEZ Act, including kaitiakitanga and rights claimed, but not yet granted, under the Marine and Coastal Area (Takutai Moana) Act 2011.¹²
- (c) Bond: the Supreme Court held that the 2017 DMC was in error for failing to explain why it was not necessary

⁵ At [266], [271] and [274] per Glazebrook J; [294] per Williams J and [308], [310] and [320] per Winkelmann CJ.

⁶ At [205] per William Young and Ellen France JJ, [271] per Glazebrook J, [328] per Winkelmann CJ,

⁷ At [280] per Glazebrook J, [298] per Williams J and [331] per Winkelmann CJ. See also [185] and [187] per William Young and Ellen France JJ.

⁸ At [275] and [282] per Glazebrook J, [295] per Williams J and [329] per Winkelmann CJ.

⁹ At [228]-[229] per William Young and Ellen France JJ, [299] per Williams J and [333] per Winkelmann CJ.

¹⁰ At [160] per William Young and Ellen France JJ,

¹¹ At [169] per William Young and Ellen France JJ, [237] per Glazebrook J, [296]-[297] per Williams J and [332] per Winkelmann CJ.

¹² At [154]-[155] per William Young and Ellen France JJ, [237] per Glazebrook J, [296]-[297] per Williams J and [332] per Winkelmann CJ.

to impose a bond in addition to the insurance offered by TTR.¹³

Substantive Updates in response to the Supreme Court's findings

9. In response to the Supreme Court's findings of information deficits and related legal errors TTR filed new evidence with the EPA in 2023. This suite of evidence comprised:
 - (a) Primary and rebuttal statements of evidence of Dr Simon Childerhouse, addressing potential effects on marine mammals and recommended conditions to manage those effects;
 - (b) A primary statement of evidence of Darran Humpheson, addressing the measurement/management of underwater noise on marine mammals;
 - (c) Primary and rebuttal statements of evidence of Dr David Thompson, addressing potential effects on seabirds, and recommended conditions to manage those effects;
 - (d) Primary and rebuttal statements of evidence of Dr Helen Macdonald on sediment plume modelling to inform assessments of sediment effects beyond the near-field;
 - (e) A rebuttal statement of evidence of Dr Michael Dearnaley addressing near-field sediment dispersion and the plume modelling's fitness-for-purpose;
 - (f) Primary and rebuttal statements of evidence of Dr Alison MacDiarmid addressing all effects of sediment

¹³ At [221] per William Young and Ellen France JJ.

discharge on marine biota other than marine mammals and seabirds; and

- (g) Primary and rebuttal statements of evidence of Dr Philip Mitchell providing a planning assessment of all effects on marine mammals and seabirds, and other sediment discharge effects, framed in accordance with the legal principles identified by the Supreme Court, including recommended conditions to manage those effects.

10. This evidence offered a comprehensive re-assessment of effects on marine mammals, effects on seabirds and all effects of the sediment plume, and addressed (from the perspective of each expert's field of expertise) the errors of law that the Supreme Court had identified.
11. The present application incorporates all of these substantive updates. Rather than prepare further standalone technical reports on each of the above topics, the updates have been made directly to the application document.
12. TTR considers that this updated information, in combination with the new FTA framework, will enable the FTA Panel to have confidence that all matters previously raised by the Supreme Court (other than tikanga, which is addressed below) have been resolved, to the extent they remain relevant under the new legislation.
13. For completeness, while the Supreme Court's findings meant that for the reconsideration TTR had to address the 'information deficits' with new evidence, TTR did not file any new evidence in the reconsideration on the bond or tikanga issues. The bond issue was addressed as a purely legal matter,

by way of submissions;¹⁴ and the essence of TTR's position regarding tikanga was:

- (a) That there had been limited material before the EPA in 2017 regarding tikanga issues.
- (b) That in order for the reconsideration DMC to 'grapple with the true effect of the proposal for iwi parties', it fell to those with mana moana (and not TTR) to provide the evidential basis regarding the relevant tikanga.

14. As at the date of withdrawal of the 2016 application, TTR did not consider the iwi parties had met that evidential burden.¹⁵

Issues in contention in the reconsideration

15. As detailed above at [9], TTR filed extensive new evidence to inform the reconsideration, focussing on the issues identified by the Supreme Court; and those updates have been incorporated into the present application.
16. That does not mean that the FTA Panel is exercising the same reconsideration task that the EPA began to undertake in 2023/2024. There are a number of material differences, such as:
- (a) While the reconsideration was focussed on the handful of 'information deficits' and the tikanga and bond issues identified by the Supreme Court, the present application requires a full assessment of all relevant effects of the proposal.

¹⁴ Outline of Legal Submissions for Trans-Tasman Resources Limited, 5 February 2024 and TTR Speaking Notes for Opening Statement, 13 March 2024, both publicly available on the EPA's 2023 reconsideration web-pages.

¹⁵ TTR commissioned a Cultural Values Assessment from Tahu Potiki in May 2016 due to unsuccessful attempts to engage with iwi who refused to produce their own. No further work has been done here as it is deemed inappropriate without input from local iwi. See 5.13.1.2 of the Application.

- (b) While the reconsideration had to apply s 10(1)(b) of the EEZ Act (to protect the environment from material harm from pollution) as a “bottom line”, the FTA Act prevents that provision from being applied as a bottom line — it is only one of a number of matters to be “taken into account”.
 - (c) While the reconsideration also had to apply policy 13(1)(a) of the NZCPS as a “bottom line”, the FTA Act prevents that too from applying as a bottom line — it is also only a matter to be taken into account.
 - (d) The present application may only be declined for one of the limited grounds specified in the FTA Act, which are far more constraining than the discretionary bases for declining a marine consent under the EEZ Act. In particular, the proportionality test in s 85(3) of the FTA Act means that even a project that has significant adverse impacts (which TTR contends is not the case here) may be approved if those impacts are in proportion to the project's benefits.
17. The further distinctions between the EEZ Act's and FTA Act's legal frameworks for the project are described fully in section 8 of the application.
 18. TTR submits that the only issues that were legitimately in contention in the reconsideration (given the limited scope of that process), were those arising in response to the Supreme Court's 2021 decision. TTR addressed all those issues in its updated evidence (and related legal submissions) before the DMC, and the present application incorporates those updates. This includes updated evidence on all the ‘information deficit’ topics, and assessments of the application according to the Supreme Court's findings on the meanings of the relevant legal tests, where those continue to

apply in accordance with the substantially different FTA Act framework.

19. TTR acknowledges that over the course of the initial hearing days of the reconsideration the DMC expressed an interest in a variety of additional or ancillary topics — some raised with counsel, and others taken up with TTR witnesses. However, the process in which the DMC was engaged was dictated by the legal framework of the EEZ Act and the unabridged application of the Supreme Court's 2021 findings.
20. Further, the DMC's nascent inquiries were made in the context of a known group of participants, a pre-circulated body of evidence, and a partial hearing (three hearing days having been completed).
21. While it is tempting to consider efficiencies that the FTA Panel may adopt (given the large volume of information involved here), TTR submits it cannot and should not be pre-supposed that a new Panel would pursue the same or even similar lines of inquiry as the previous DMC. The new Panel may have different skills and experience than the DMC members, it will be applying a different legal framework than the DMC was applying, the process may or may not involve the same participants involved in the reconsideration (bearing in mind that participation under the FTA Act, unlike the previous application, is not based on open-ended public notification), and it may or may not receive the same evidence from 'commentators' that was before the DMC.
22. For all these reasons, TTR has not sought to address in a specific way any of the DMC's lines of inquiry in the present application. TTR maintains that all relevant considerations for the FTA Panel have been comprehensively addressed in its new application, incorporating such updates as remain

relevant given the Supreme Court's findings (which may have incidentally addressed some of the DMC's lines of inquiry).

Updates since the withdrawal of the application

23. Since withdrawing its 2016 application, TTR has commissioned significant and additional work, including the pre-feasibility study and the associated metallurgical review.¹⁶ The 2025 metallurgical review focused on vanadium and titanium extraction potential from the project, concluding that "The TTR test work not only achieved high recovery rates of vanadium (79%) but also exemplifies a model that balances economic viability with environmental stewardship. This dual focus ensures that resource extraction aligns with sustainable development goals."¹⁷ In January 2025 the New Zealand Government released "A Critical Minerals List for New Zealand" which included vanadium and titanium as critical minerals "essential to modern economies" and the list was described as "an important first step to ensure a secure supply of the minerals we need for our economic growth and resilience". This identification of critical minerals in relation to the project, and the accompanying clear government direction, along with the new legislative regime of the FTA Act, emphasise the context and assessment differences arising in relation to this application in respect of provision of national and regional benefits and supply of critical minerals.
24. TTR's legal and technical advisors also conducted a full review of TTR's previous application against the requirements of the new legislation.
25. Some parts of the application required minimal adjustment. For example, descriptions of the mining process and

¹⁶ Attachments 3 and 4 of the FTA Act application.

¹⁷ Attachment 4 of the FTA Act application, pg 4.

equipment¹⁸ remained materially the same, as did the relevant assessments of human health effects,¹⁹ visual, seascape and natural character effects,²⁰ and air quality effects.²¹

26. Other parts of the application required material revisions. Given the scale of the work it is not feasible to identify every change that was made to the application, but examples of the material revisions include:

- (a) The Project rationale²² and description of the mineral resource²³ were substantively updated to reflect the new pre-feasibility study and metallurgical review.
- (b) A new assessment of economic impacts was commissioned from NZIER specifically to inform the assessment of national and regional benefits required under the new legislation, and the corresponding parts of the application²⁴ were updated to reflect NZIER's assessment.
- (c) The descriptions of the existing environment in the South Taranaki Bight were updated to reflect:
 - i. NIWA's 2022 work for Taranaki Regional Council which had identified additional rocky reef habitat, and
 - ii. NIWA's 2020 work for the Department of Conservation on fish species.²⁵

¹⁸ Section 2.3 of the FTA Act application.

¹⁹ Section 5.10 of the FTA Act application.

²⁰ Section 5.11 of the FTA Act application.

²¹ Section 5.12 of the FTA Act application.

²² Section 1.4 of the FTA Act application.

²³ Section 2.2 of the FTA Act application.

²⁴ Section 5.2 of the FTA Act application.

²⁵ Section 3.3.1.2 of the FTA Act application.

- (d) The descriptions of sediment plume modelling,²⁶ effects of sediment discharge (including effects on benthic ecology and primary productivity²⁷), effects on marine mammals,²⁸ noise effects²⁹ and effects on seabirds³⁰ were all updated in line with TTR's evidence for the reconsideration.
- (e) The assessment of effects on parties with commercial fishing interests³¹ (as distinct from effects on fished species) was updated in line with TTR's evidence for the reconsideration.
- (f) The effects on biosecurity were updated to reflect changes to biosecurity regulation that post-dated the EPA's 2017 decision.³²
- (g) The management and monitoring framework³³ was updated, in particular to provide clearer information about the function of the Operational Sediment Plume Model, and the role of Pre-commencement monitoring.
- (h) The consultation section was updated to address TTR's additional attempts at consultation regarding its new FTA Act application.³⁴
- (i) The statutory assessment section³⁵ was amended to identify all relevant parts of the new FTA Act framework (and the relevance of the Supreme Court's 2021 various findings to that framework), and

²⁶ Section 5.3.2 of the FTA Act application.

²⁷ Section 5.5 of the FTA Act application.

²⁸ Section 5.8 of the FTA Act application.

²⁹ Section 5.9 of the FTA Act application.

³⁰ Section 5.7 of the FTA Act application.

³¹ Section 5.13.2 of the FTA Act application.

³² Section 5.13.4 of the FTA Act application.

³³ Section 6 of the FTA Act application.

³⁴ Section 7.2.1 and Appendix 7.3 of the FTA Act application.

³⁵ Section 8 of the FTA Act application.

to provide an assessment of the entire project against that framework.

DIRECTION (B)

27. The table below identifies where updates or amendments have principally been made within the set of documents supporting the application.

Updated topic	Location
Project rationale	Taranaki VTM Application, Attachment 2 NZIER economic impact assessment
	Taranaki VTM Application, Section 1.4
Description of the mineral resource	Taranaki VTM Application, Attachment 3a: Siecap — pre-feasibility study part 1 and Attachment 3b: Siecap — pre-feasibility study part 2
	Taranaki VTM Application, Section 2.2
Economic effects assessment	Taranaki VTM Application, Attachment 2 NZIER economic impact assessment
	Taranaki VTM Application, Section 5.2
Existing environment, marine mammals	Evidence of Dr Simon Childerhouse, 19 May 2023 at [22]-[79]
	Rebuttal Evidence of Dr Simon Childerhouse, 23 January 2024
	Evidence of Dr Alison MacDiarmid, 19 May 2023 at [11]-[15]
	Rebuttal evidence of Dr Alison MacDiarmid, 23 January 2024 at [7]-[8]
	Taranaki VTM Application, Section 3.3.4
Existing environment, rocky reefs	Evidence of Dr Alison MacDiarmid, 19 May 2023 at [17]-[18]
	Taranaki VTM Application, Section 3.3.1.2

Updated topic	Location
Existing environment, benthic invertebrates	Evidence of Dr Alison MacDiarmid, 19 May 2023 at [16]
	Taranaki VTM Application, Section 3.3.1.2
Existing environment, fish species	Taranaki VTM Application, Section 3.3.3
Dispersal of sediment	Evidence of Dr Helen Macdonald, 19 May 2023
	Rebuttal evidence of Dr Helen Macdonald, 23 January 2024
	Rebuttal evidence of Dr Michael Dearnaley, 23 January 2024
	Evidence of Dr Philip Mitchell, 19 May 2023 at [41]-[47]
Effects of sediment, including on benthic ecology and primary productivity	Evidence of Dr Alison MacDiarmid 19 May 2023 at [19]-[35]
	Rebuttal evidence of Dr Alison MacDiarmid, 23 January 2024 at [18]-[34]
	Evidence of Dr Philip Mitchell, 19 May 2023 at [48]-[61]
	Taranaki VTM Application, Section 5.5
Effects on marine mammals, including noise	Evidence of Dr Simon Childerhouse, 19 May 2023 at [73]-[115]
	Rebuttal evidence of Dr Simon Childerhouse, 23 January 2024
	Evidence of Darran Humpheson, 16 February 2024
	Evidence of Dr Philip Mitchell, 19 May 2023 at [14]-[29]
	Taranaki VTM Application, Sections 5.8 and 5.9
Effects on seabirds	Evidence of Dr David Thompson, 19 May 2023
	Rebuttal evidence of Dr David Thompson, 23 January 2023

Updated topic	Location
	Evidence of Dr Philip Mitchell, 19 May 2023 at [30]-[40]
	Taranaki VTM Application, Section 5.7
Effects on fished species and commercial fishing	Rebuttal evidence Dr Alison MacDiarmid 23 January 2024 at [12]-[17]
	MacDiarmid, A., MacGibbon, D., Anderson, O., 2024 "South Taranaki Bight Fishing" NIWA Client Report No: 2024053WN, March 2024, 37pp (Submitted to the reconsideration DMC under cover of Memorandum of Counsel for TTR, 8 March 2024)
	Taranaki VTM Application, Sections 3.4.4, 5.6 and 5.13.2
Effects on biosecurity	Taranaki VTM Application, Section 5.13.4
Planning matters	Evidence of Dr Philip Mitchell, 19 May 2023
	Rebuttal evidence of Dr Philip Mitchell, 23 January 2024
	Taranaki VTM Application, Attachment 1, Proposed marine consent conditions
Management and monitoring framework	Taranaki VTM Application, Section 6
Consultation	Taranaki VTM Application, Section 7.2.1
	Taranaki VTM Application, Appendix 7.3 Community consultation 2024-2025
Statutory assessment	Taranaki VTM Application, Section 8

DIRECTION (c)

28. TTR's past applications have been vigorously contested.
29. While the contest has been strident, TTR perceives the issues raised by some opponents have been emotional and unsupported by robust evidence.

30. However, given the breadth of issues that have been raised by opponents over the course of all prior hearings, and given the requirement for the present application to be assessed in its entirety (and not limited to the specific reconsideration issues) TTR expects that opponents who are invited to comment are very likely to raise any and every issue that they think may impede the project, regardless of merit.
31. As an indicative list TTR can anticipate that, given the opportunity, opponents may at least contend that:
 - (a) TTR has inadequately assessed the existing environment, which undermines all aspects of TTR's assessments of effects.
 - (b) The existing environment that will be impacted by the project has values that are somehow incompatible with the project (for example, it provides habitat for rare or threatened species which will be significantly harmed if the project proceeds, and this sort of effect is prohibited).
 - (c) TTR has under-estimated the effects of the mining discharge, which will produce a plume of elevated sediment concentrations over a vast marine area.
 - (d) That sediment plume will cause significant harm to a variety of marine biota (including impacts on primary production, fish, marine mammals and seabirds).
 - (e) The outcomes described above are inconsistent with the tikanga of relevant iwi.
 - (f) The project will have a severe impact on commercial fishing.

- (g) These issues cannot be adequately addressed by conditions, and in any event the conditions volunteered by TTR are uncertain or invalid.
32. TTR is not in a position to reliably assess what further issues opponents might add, though it is highly likely that opponents will debate TTR's assessment of the meanings of the relevant FTA Act provisions (as set out in section 8 of TTR's application).
33. Despite all this, and despite the volume of material involved, TTR maintains that the task before the Panel is not as complex as others have already suggested. The key provisions of the FTA Act are in fact clear, leaving little room for real debate about the framework that governs the Panel's work.
34. Further TTR will maintain that its application documents address every relevant aspect of that framework, and will enable the Panel to conduct the necessary assessment without the need for a hearing, and without getting distracted by any unsubstantiated claims made by opponents. In particular, TTR will say:
- (a) The project area is one of the best studied marine environments in New Zealand, and the available information will enable the FTA Panel to conclude that all potential effects on the environment have been thoroughly and reliably assessed.
 - (b) Those assessments support a conclusion that the project will not result in any significant or permanent adverse effects on marine biota, ecosystems or processes.
 - (c) The greatest impacts will be at the site of extraction, which at any given time will be a very small area (0.3km²).

- (d) Those impacts will be temporary, as almost all of the extracted iron sands will immediately be returned directly to the seabed, and will naturally recolonise and start to recover within weeks, with full recovery for smaller biota within months, and larger biota within two years.
- (e) Historically, the focus of greatest concern has been on the very small proportion of natural sediment (from clean iron sands being returned to the seabed) that will remain suspended in the water long enough to be carried, by natural currents, some distance from the extraction site (the somewhat mis-named sediment "plume").
- (f) Beyond the near-field (i.e. beyond about 3km from the point of discharge) the suspended sediment concentrations will be so low as to be insignificant in comparison with the background levels. That is because the existing marine environment already experiences elevated levels. It is a very exposed, high energy and highly dynamic sandy environment that is subject to frequent episodic disturbance from wave events and river inputs during high rainfall events.
- (g) A significant part of the Panel's work will be to become familiar with the extremely detailed suite of proposed conditions, and the many ways in which they require the project to be monitored and managed to ensure its effects conform with the assessments provided by TTR's experts.

35. For completeness, TTR acknowledges that a draft of an agreed list of issues was being worked on by the parties to the reconsideration at the time of TTR's withdrawal of its 2016 application. The Convener may be interested in whether that

document would provide any guidance as to the issues that may become contested in the present process.

36. In TTR's submission that draft list cannot provide any real guidance, as:
- (a) It was no more than a record of all the issues that every party to the reconsideration wished to pursue. It did not represent any consensus as to the materiality or merit of any of those issues, and in fact TTR was only agreeable to some of them being included on the list because TTR anticipated they could be addressed (and dismissed) summarily.
 - (b) The list reflected the particular interests of the parties to the 2016 process, some of whom may not become parties to the present application given the differences between public notification (as occurred in 2016) and invitation to comment (as will occur for the present application).
 - (c) The range of issues was limited by the nature of the reconsideration, and cannot therefore be taken as any reliable representation of the range of issues that opponents may wish to pursue (given the opportunity) on a full assessment under the FTA Act.
 - (d) The legal framework for the present application is significantly different, and removes from contention a large number of issues (such as the operation of the anti-pollution purpose of the EEZ Act, or the relevance of economic benefits to the assessment).

DIRECTION (d)

37. TTR has considered the range of views expressed at the conference on 7 July 2025. While other participants consider that a hearing is likely to be required, TTR submits that the

setting of time frames cannot reasonably proceed on an assumption that a hearing will be required, given the uncertainties that exist. The decision on whether a hearing is held will be made by the Panel,³⁶ but there is no requirement to hold a hearing.³⁷ Whether a hearing is required, and the extent of any such hearing, may depend on a variety of factors: the mix of expertise of the Panel members, their experience of marine consents, mining activities and/or tikanga, and the extent of any issues that other participants raise in due course. In the face of such variables a hearing could involve anything from a few days to a few weeks, and any time allowance incorporated to cover this would have to be somewhat arbitrary.

38. That said, TTR is mindful of the challenge the Panel will face merely to absorb the amount of information that comprises the full application. It is noted that one of the other Panels already appointed to determine another FTA Act application (the Bledisloe North Wharf and Fergusson North Berth Extension) held an on-line briefing within the first 10 working days of their appointment, providing the applicant with an opportunity to present a high-level overview, and the Panel an opportunity to ask questions about the application. TTR considers that a procedure like this could be an efficient way to assist the Panel to become familiar with the volume of material in TTR's application, and identify early on what assistance the Panel needs from TTR to undertake its assessment.
39. TTR has also reflected on the time that the Panel may realistically need to evaluate the comments from invited participants, arrive at a draft decision, and produce a set of

³⁶ Fast Track Approvals Act 2024, s57(1).

³⁷ Fast Track Approvals Act 2024, s56.

draft conditions (noting that an extremely detailed set of conditions has been volunteered in the application).

40. In all these circumstances, TTR proposes a total timeframe from Panel commencement to finalisation of decision of 100 working days. TTR submits that any longer period cannot reasonably be justified on present information, particularly in light of the requirements for the process to be timely, efficient, and proportionate under section 10 of the FTA Act.
41. Finally it is submitted that it is not for TTR to propose what procedural steps may allow for the application of relevant tikanga in the process. Those are matters for the relevant iwi parties to address. However, the total timeframe proposed above would provide the Panel with flexibility to address these issues as well as any need the Panel may yet identify for holding any hearing.

DATE: 4 August 2025


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