FTA-2054

BEFORE THE EXPERT PANEL

UNDER the Fast-track Approvals Act 2024

IN THE MATTER OF the Taranaki VTM Project

LEGAL SUBMISSIONS ON BEHALF OF TE KAAHUI O RAURU TRUST

14 November 2025

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MAY IT PLEASE THE PANEL

1. These legal submissions are filed on behalf of Ngaa Rauru Kiitahi and Te Kaahui o Rauru Trust (the **Trust**) (together, **Ngaa Rauru**) in response to the list of questions on which the Panel wishes to receive submissions set out in the Notice of Hearing dated 11 November 2025 (the **Notice**). [1]

2. These written submissions are filed in advance of the one-day hearing on contentious legal issues scheduled to occur on 26 November 2025. The questions address the contentious legal matters arising from the Trans-Tasman Resources' Application (the **Application**) seeking fast-track approvals for marine consents in relation to the Taranaki VTM Project (the **Project**) under the Fast-Track Approvals Act 2024 (the **FTAA**).

3. These submissions refer to Ngaa Rauru's previous submissions dated 6 October 2025 (**Initial Submission**) and should be read in conjunction with its written comment (including the various statements filed on its behalf) and the oral presentation at the three-day conference with the Panel on 21-23 October 2025.

4. These submissions do not attempt to address all of the questions comprehensively and are necessarily confined to certain issues as they specifically relate to Ngaa Rauru. Other participants will be better placed to address other matters. For that reason, some questions are not addressed at all and others are considered only briefly.

5. Where issues of common interest arise, particularly among the other iwi parties, these submissions endorse the views of other participants where it is appropriate so as to avoid duplication.

SUBMISSIONS IN RESPONSE TO QUESTIONS

Question 1: What is the relevance, if any, of factual findings by Decision-Making Committees on previous applications by the Applicant (TTR)?

6. The factual findings of the 2017 Decision-Making Committee (**DMC**) are highly relevant for the reasons set out in the submissions of Ngāti Ruanui.

[1] Notice of Hearing on Contentious Legal Issues (dated 11 November 2025) [FTAA-2504-1048].

Ngaa Rauru submits that the following factual findings are relevant to the current Application:

(a) The important offshore customary sites include: The Traps (fishing and crayfishing) and a spawning ground between Graham Bank and the Traps.[2] Both of these areas are within the Ngaa Rauru Kiitahi rohe.[3]

(b) The DMC confirmed that the Traps, Graham Bank and the Project Reef are all within the Ngaa Rauru Kiitahi rohe and that there are likely to be adverse effects, such as avoidance by fish in areas towards the outer edge of the coastal marine area (**CMA**) (such as Graham Bank) and this area will at times have significant reductions in light, affecting primary production levels.[4]

(c) The DMC found there was likely to be adverse effects on kaimoana gathering sites – but that those impacts would vary depending on if their location was nearshore or towards the western end of the rohe.[5]

(d) In respect of the Traps, Graham Bank and the Project Reef, the DMC accepted that:[6]

    (i) the modelling indicated **significant adverse effects** within the ecologically sensitive areas to the east-southeast of the mining site extending to at least Graham Bank;

    (ii) there would be significant effects on macroalgae on at least part of Graham Bank and minor effects on macroalgae at the Traps;

    (iii) there would be **significant effects** on microscopic organisms within 1 to 2 km of the mining site; and

    (iv) overall, there would be **significant effects on ecologically sensitive areas** such as the Crack and the Project Reef.

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2 At [671], DMC (3 August 2017).

3 See Appendix 3: Diagram prepared by iwi parties in [2021] NZSC 127.

4 At [940], DMC (3 August 2017).

5 At [940], DMC (3 August 2017).

6 At [370] and [970], DMC (3 August 2017).

7. As submitted by Ngāti Ruanui, the continuing relevance of the DMC's factual findings is illustrated by the fact that the Supreme Court elected to append to its decision an illustrative diagram and table of DMC findings prepared by the iwi/Māori parties in those proceedings. A copy of which is appended to those submissions and Ngaa Rauru's response to the request for further information, with further information about how the Project impacts on Ngaa Raurutanga and Ngaa Rauru Kiitahi.

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

8. Ngaa Rauru endorses the submissions of Ngāti Ruanui and supports the view that the Panel cannot determine the significance of the Project's regional and national benefits if the Application is contingent upon the approval of additional resource consents.

9. Ngaa Rauru further submits that the 2017 DMC's approach to its assessment of the Project's effects on the CMA suggests that the current Application likely requires an additional approval under the RMA.

10. The DMC's 2017 decision "assessed the effects within the CMA in the same way as if the consent were applied for that area".[7]

11. The DMC acknowledged that the RMA only applies to the CMA but that this necessarily "buts up against the boundary of the [EEZ]" and, while certain RMA policy instruments – including the New Zealand Coastal Policy Statement (**NZCPS**) – are not directly applicable within the EEZ, the DMC – within the context of its decision under the EEZ Act – "had regard to the fact that many of the effects will be experienced within the CMA where those documents are relevant".[8]

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7 At [1010], DMC (3 August 2017).

8 At [1008], DMC (3 August 2017).

12. In its assessment of effects, the DMC confirmed that it had regard to the NZCPS due to the fact that many of the effects would be experienced within the CMA where the NZCPS is relevant.[9]

13. In Ngaa Rauru's view, the Application may be contingent upon seeking approval for additional resource consent(s). At this juncture, it is unclear whether the activity would be a restricted or prohibited activity under the RMA.

14. In the absence of such information, statutory participants cannot properly be informed as to the nature of the effects on the CMA, how this satisfies the applicable provisions of the RMA, and whether it falls to be excluded under s 5(1)(l) of the FTAA. In addition and as above, the claimed benefits of the Project are speculative in the absence of consideration of approval of any necessary resource consents.

15. Te Kaahui o Rauru endorse the submissions of other participants (Ngāti Ruanui, the Environmental Defence Society, and KASM and Greenpeace) on this issue.

Question 4: How should "benefits" be interpreted under the FTAA when considering the extent of the project's regional or national benefits and the purpose of the FTAA, including: (a) Whether a gross benefit approach is required? (b) Whether disbenefits or other costs are relevant? (c) Whether a net benefit or cost-benefit approach is required?

16. These issues are addressed in paragraphs [47]-[55] of the Initial Submissions.

17. The benefits of the project must be considered in terms of net benefits, rather than gross benefit. A gross benefit approach, which the Applicant has relied on, risks significantly over-stating the Project's benefits. Indeed, the gross benefit approach misrepresents the actual net benefit to the region, and more broadly to the nation – which is the statutory threshold required.

18. This is supported by the views of Dr Ganesh Nana, expert economist for the iwi parties. Ngaa Rauru refers to and endorses the submissions and written

[9] At 1012], DMC (3 August 2017).

comment of Ngāti Ruanui,[10] and the written comment of other participants (the Environmental Defence Society,[11] and KASM and Greenpeace).[12]

19. The disbenefits and other costs are required to be taken into account under a net benefit approach – such as the Total Economic Approach (TEV) approach promoted by Dr Ganesh Nana. Ngaa Rauru submits that applying a net benefit or cost-benefit approach would ensure that relevant disbenefits and other costs are appropriately taken into account in the Panel's assessment.

20. By way of example, the gross benefit approach relied on by the Applicant fails to take into consideration the relevant disbenefits and other costs to existing industries within district and regional economy,[13] as well as the use and non-use value of a resource.[14]

21. There is precedent for applying a net-benefit or cost-benefit approach. In *Delmore*, the expert panel found that it would not be prudent to conclude that the economic benefits were of such significance in the absence of a detailed cost-benefit analysis.[15] The expert panel concluded that the benefits (largely economic), claimed to occur from that project had been overstated.[16]

22. Consistent with this approach, Ngaa Rauru submits that a net benefit or cost-benefit approach is required to assess the significance of the Project's stated regional or national "benefits" under s 3 of the FTAA.

Question 5(a): Does the same approach apply when the Panel takes into account "the economic benefit to New Zealand of allowing the application" under s 59(2)(f) EEZ Act?

23. Ngaa Rauru endorse the submissions of Ngāti Ruanui on this point.

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[10] Ngāti Ruanui Written Comment dated 6 October 2025, at [117]-[123].
[11] EDS Written Comment dated 6 October 2025, at [23]-[32]
[12] KASM-Greenpeace Written Comment dated 6 October 2025 at [78]-[96].
[13] Statement of Dr Ganesh Nana dated 6 October 2025, at [48]-[56].
[14] Statement of Dr Ganesh Nana dated 6 October 2025, at [57]-[74].
[15] Delmore, at [500].
[16] Delmore, at [503].

Question 5(b): If not are two separate economic assessments needed?

24. Ngaa Rauru endorse the submissions of Ngāti Ruanui on this point.

25. Ngaa Rauru further relies on the Parliamentary Commissioner for the Environment's view that the modelling relied on by the Applicant overstates the economic benefits of the Project and that a net benefit assessment is required to appropriately account for the additional economic costs incurred by the Project.[17]

Question 9: What is the relevance of the Treaty principles, cultural values and kaitiakitanga to the Panel's consideration, and where do they fit within the assessment framework?

26. These issues are addressed in paragraphs [17]-[30] of the Initial Submissions. In essence, Ngaa Rauru's rights and existing interests are protected in a range of Treaty settlements, including the Ngaa Rauru Kiitahi Settlement, the Māori Fisheries Settlement, and the settlements relating to Te Awa Tupua and Taranaki Mounga. The Panel should consider these interests as they exist in their own right – in addition to other effects.

27. There is no express requirement in the FTAA to consider the Treaty and/or its principles, beyond reference to consistency Treaty settlements. However, it is a well-accepted and established principle of law that the Treaty is a relevant extrinsic aid to statutory interpretation in the absence of express wording to the contrary.[18] Further, *Te Ohu Kaimoana Trustee Ltd v Attorney-General* [2025] NZHC 657 is the most recent expression from the courts of the important of upholding and maintaining the commitments and intentions set out in deed of settlement. In addition, there is nothing in the FTAA that prohibits the consideration of the Treaty and/or its principles.

28. While it involved an express Treaty provision, we consider the following findings of the High Court in *Te Taiwhenua o Heretaunga v Environmental*

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[17] Parliamentary Commissioner for the Environment Written Comment dated 6 October 2025, at page 3.

[18] *Huakina Development Limited v Waikato Valley Authority* [1987] 2 NZLR 188 at 19; *Barton-Prescott v Director-General of Social Welfare* [1997] 3 NZLR 179. The High Court in the *Ngati Whātua Ōrākei Trust v Attorney-General (No.4)* [2022] 3 NZLR 601 at [589] said "whether the Treaty is incorporated into law by legislation makes little difference, due to the principles of statutory interpretation and administrative law".

Protection Agency Expert Consenting Panel to be highly persuasive to the Panel's assessment of the effects of this Application:[19]

(a) The context in which the Treaty principles arose for consideration in that case was quite different to *Hiringa* – in that, all the affected Māori interests were unanimous in their view the project and the process undertaken by the applicant were inconsistent with the requirements of the Treaty principles.[20]

(b) In that case, there was found to be "significant and potentially permanent alterations to the natural environment that may be adverse to customary and spiritual values".[21]

(c) The Panel erred in law by failing to clearly identify the Treaty principles that were engaged and assess the application and process against those principles, and explain how the final balance had been struck.[22] This error of law was found to have been previously illustrated in the Supreme Court's decision in respect of TTR's previous application.[23]

(d) The Panel erred in law by subsuming its consideration of Treaty principles within the broader consideration of the project's environmental effects.[24]

Question 11(a): Are Iwi Environmental Management Plans relevant considerations?

29. Ngaa Rauru submits that iwi environmental management plans are relevant considerations, as they speak to the relationship of iwi at place to their rohe (including their preference for engagement). This is consistent with the obligations arising from the Ngaa Rauru Kiitahi Settlement.

30. Further, as earlier submitted, it is likely that the Applicant is required to seek an additional approval for a resource consent in relation to the Project's

19 [2025] NZHC 2397.
20 [2025] NZHC 2397, at [48].
21 [2025] NZHC 2397, at [48].
22 [2025] NZHC 2397, at [49] and [56].
23 [2025] NZHC 2397, at [53].
24 [2025] NZHC 2397, at [49] and [57].

effects within the CMA. In that regard, section 6(e) of the RMA would apply., together with the statutory acknowledgement of Ngaa Rauru Kiitahi's association with the coastal marine area.[25]

31. Te Kaahui o Rauru is the recognised iwi authority on behalf of Ngaa Rauru Kiitahi for the purposes of the RMA. The Ngaa Rauru Kiitahi Puutaiao Management Plan must be taken into account by the relevant regional councils and territorial authorities pursuant to ss 61(2A)(a), 66(2A)(a) and 74(2A) of the RMA.[26]

Question 11(b): If so, how they should be taken into account?

32. Ngaa Rauru submits that the Application, and the approach to engagement taken by the Applicant, makes no reference nor does it attempt to meet any of the stated goals (including the preference for engagement) in the Ngaa Rauru Kiitahi Puutaiao Management Plan, which is the current publicly available version of the Management Plan (since updated in 2025). The Applicant has made no attempt to obtain or consider any of Ngaa Rauru Kiitahi's iwi environmental plans, strategies or ethos. This is a relevant consideration that the Panel should take into account in its assessment.

33. The issues regarding engagement with the Applicant are addressed in paragraphs 11-16 of the Initial Submissions. Ngaa Rauru refers to, and repeats, the previous statements filed by Te Kaahui o Rauru in respect of the lack of engagement from the Applicant.[27]

34. Under the RMA, if an applicant wishes to apply for a resource consent that overlaps with the Ngaa Rauru Kiitahi rohe, the relevant regional council/territorial authority must have regard to the Ngaa Rauru Kiitahi Puutaiao Management Plan. Accordingly, applicants are expected to comply with the engagement process set out in that plan.

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[25] Schedule 5, clause 17(1)(b) of the FTAA.

[26] Horizons Regional Council, Taranaki Regional Council, Whanganui District Council and South Taranaki District Council.

[27] Statement of Tahinganui Hina and Renée Bradley dated 6 October 2025, at [82]-[89].

35. For the Panel's reference, the plan as currently lodged with local authorities sets the expectation that any resource consent application that overlaps with the Ngaa Rauru Kiitahi rohe should contain: [28]

    (a) an assessment against that plan's objectives and policies; and

    (b) how the proposal has given back to the Atua domains, as set out in the plan.

Question 12: 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?

36. Ngaa Rauru adopts the submissions of Ngāti Ruanui on this point and takes the view that the NZCPS must be taken into account as there will be effects in the CMA – to which these instruments apply.

Question 13: (a) Must "habitats of particular significance to fisheries management" be formally identified to be relevant under s 59(2)(h) EEZ Act? (b) If so, what form must such identification take?

37. The 2017 DMC identified adverse effects on fish and fish habitats which risks depreciation of the settlement quota held by Ngaa Rauru, as set out earlier in these submissions at paragraph 6. Ngaa Rauru otherwise endorses the submissions of Te Ohu Kaimoana.

38. Ngaa Rauru's view is that these adverse effects must be taken into account by the Panel in weighing up the relevant factors under FTAA Schedule 10.

Question 18: To what extent, if any, is the decision of the Supreme Court in *Trans-Tasman Resources v Taranaki-Whanganui Conservation Board* [2021] NZSC 127 binding on the Panel or of highly persuasive significance?

39. Ngaa Rauru adopts the position of Ngāti Ruanui that the Supreme Court's conclusions regarding the interpretation of the EEZ Act are binding on the Panel. While the Panel's decision-making framework is different to that of a

[28] Section 7.6, Ngaa Rauru Kiitahi, Puutaiao Management Plan.

DMC under the EEZ Act, but the Supreme Court's interpretation of the EEZ Act remains binding where provisions of the EEZ Act must be taken into account by the Panel.

40. These issues are addressed throughout the Initial Submissions in respect of the Supreme Court's interpretation of the following EEZ Act provisions:

    (a) uncertainty of information (s 61(1) and (2), EEZ Act);[29]

    (b) effects on the environment and existing interests (s 59(2)(a), EEZ Act);[30]

    (c) Ngaa Raurutanga as applicable law (s 59(2)(l), EEZ Act);[31] and

    (d) the proposed conditions (ss 83 and 84 of the EEZ Act).[32]

Question 20(a): Are the members of the Panel "exercising a judicial power or performing a judicial function or duty" in terms of s 7(2) FTAA?

41. Ngaa Rauru endorses the submissions of Ngāti Ruanui and takes the view that s 7(2) was not intended to apply to the Panel.

42. Section 85(1)(b) requires that the Panel must decline an approval if it considers this would result in a breach of s 7. This is addressed further at [64]-[73] of the Initial Submissions.

Question 20(b): If adverse effects on fish stocks or aquaculture stocks are found to exist, would granting the application be inconsistent with obligations under the Māori Fisheries Settlement or the Māori Commercial Aquaculture Claims Settlement Act 2004?

43. If approved, this activity was not contemplated by the protections contained in the Ngaa Rauru Kiitahi Settlement, which includes the continued exercise of Ngaa Raurutanga over the rohe and the CMA statutory acknowledgement.

[29] At [56]-[63] of the Initial Submissions.
[30] At [77]-[82] of the Initial Submissions.
[31] At [74]-[76] of the Initial Submissions.
[32] At [90]-[95] of the Initial Submissions.

44. Furthermore, the 2017 DMC identified adverse effects on fish and fish habitats which risks depreciation of the settlement quota held by Ngaa Rauru, as set out earlier in these submissions at paragraph 6. In respect of the impact on our fisheries settlement quota, Ngaa Rauru adopts and endorses the position of Te Ohu Kaimoana on these issues.

Question 24: In relation to ss 85(3)-(5) FTAA, how should inconsistency with a provision of the EEZ Act, or with a document that the Panel must take into account or consider in complying with s 81(2), be factored into the Panel's s 85(3) assessment?

45. Inconsistency with the EEZ Act is a matter that the Panel must take into account, under cl 6 of sch 10 of the FTAA. Sections 59(2)(a), (l), 61(1) and (2), 83 and 84 of the EEZ Act are addressed at paragraphs [77]-[95] of the Initial Submissions.

46. Ngaa Rauru submits that the cumulative effect of the adverse impacts under the statutory decision-making framework are such that the Application should be declined pursuant to ss 85(1) and (3) of the FTAA.

DATED this 14th day of November 2025

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