BEFORE THE EXPERT HEARING PANEL

IN THE MATTER	of an application under the Fast-track Approvals Act 2024 for marine consent and marine discharge consent by Trans-Tasman Resources Limited to undertake iron ore mining and processing operations offshore in the South Taranaki Bight
BETWEEN	**Trans-Tasman Resources Limited** Applicant

LEGAL SUBMISSIONS ON BEHALF OF TALLEY'S GROUP LTD AND SEAFOOD NEW ZEALAND FOR CONTENTIOUS LEGAL ISSUES HEARING

Dated: 14 NOVEMBER 2025

Next event: Contentious legal issues hearing on 26 November 2025 at 9am

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MAY IT PLEASE THE PANEL

1. Talley's Group Ltd (**Talley's**) and Seafood New Zealand (**SNZ**) lodge these legal submissions in response to the questions of law formulated in Appendix A to the Notice of Hearing dated 11 November 2025.

2. Talley's and SNZ is grateful for the opportunity to lodge legal submissions on the contentious issues. However, we have instructions as counsel to limit the extent of Talley's and SNZ participation in the current fast-track process due to resourcing and capacity limitations. Accordingly, we have been instructed:

   (a) to focus these submissions on responses to the questions of law that are central to Talley's and SNZ's comments on the application; and

   (b) not to attend the contentious legal issues hearing on 26 November 2025.

3. These submissions are filed to assist the panel as far as is practicable within the scope of those instructions.

4. The questions that these submissions respond to are:

   (a) Question 1: relevance of factual findings by previous DMC processes.

   (b) Question 14: habitats of particular significance to fisheries management;

   (c) Question 18: lawfulness of pre-commencement monitoring.

   (d) Question 19: significance of Supreme Court decision; and

   (e) Question 20: inadequate information as a decline ground.

Question 1: relevance of factual findings by previous DMC processes

5. The panel has asked: *What is the relevance, if any, of factual findings by Decision-Making Committees on previous applications by the Applicant?*

6. Talley's and SNZ submit that factual findings by DMCs on the applicant's previous unsuccessful applications are highly persuasive in this process. They are factual findings by expert bodies on substantially the same application and evidential material.

7. For example, the 2017 DMC majority made a suite of factual findings that the sediment plume would have "severe effects on seabed life" and significant effects on ecologically sensitive areas substantially further from the site, which were endorsed by the Supreme Court.[1] The fast track Panel should only depart from those findings where it is satisfied that TTR has presented clear and compelling evidence and explanation that the factual findings were wrong, noting that TTR has continued to rely upon many assessments undertaken for previous 2013 and 2017 applications. Those findings have been the subject of significant amount of expert evidence and expert conferencing.

8. This approach is supported by the following features of the Fast-track Approvals Act 2024 (**FTAA**) legislative regime:

   (a) Applications must provide information about applications or decisions made under the EEZ Act that are "substantially the same" as those involved in the project.[2] The obvious purpose of that requirement is so that previous applications and decisions may inform the fast-track Panel's decision-making.

   (b) The Act imposes compressed timeframes for the processing and evaluation of applications,[3] even where they are complex like this one.[4] All persons who perform functions under the FTAA are obliged to act promptly.[5] An efficient approach, whereby mahi/work undertaken by decision-makers on applications that are "substantially the same" is recycled to the extent appropriate, will serve the legislative objective of speeding up or "fast tracking" decisions.

9. The Panel will of course need to consider whether any previous DMC factual findings have been impacted by fresh evidence or changes in the legislative regime since those decisions were issued.

Question 14: habitats of particular significance to fisheries management

10. The Panel has asked: *Must "habitats of particular significance to fisheries*

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[1] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] 1 NZLR 801 (SC), Glazebrook J at [268], footnote 438 and Appendix 3 to the judgment.
[2] Fast-track Approvals Act 2024 (**FTAA**), s 13(4)(u), which applies to listed projects such as the Taranaki VTM project because of s 43(2).
[3] FTAA, s 79.
[4] Panel convener's minute dated 12 August 2025 at para 20.
[5] FTAA, s 10(2)(a).

management" be formally identified to be relevant under s 59(2)(h) EEZ Act? If so, what form must such identification take?

11. The context to this question is that there are reefs in the Pātea Shoals area, proximate to the proposed mining area, that operate as nursery or breeding grounds for fish.[6]

12. The concept of "habitats of particular significance to fisheries management" comes from s 9 of the Fisheries Act 1996, which is a marine management regime that is required to be taken into account under s 59(2)(h) of the EEZ Act and sch 10, cl 6(1)(d) of the FTAA. Section 9 of the Fisheries Act says:

> All persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account the following environmental principles:
>
> …
>
> (c) habitat of particular significance for fisheries management should be protected.

13. The Fisheries Act does not create any formal statutory process for the identification of habitat of particular significance within the scope of s 9(c). Talley's and SNZ submits that no formal identification is required before s 9(c) may be engaged in the Panel's consideration of the Fisheries Act as a relevant marine management regime under the FTAA and EEZ Act.

14. As a matter of non-statutory practice, Fisheries New Zealand has developed guidance for identifying such habitats, and a register of such habitats.[7] It considers these habitats include nursery areas, adult feeding areas, spawning areas, migratory corridors and specific areas to which species are highly restricted.

15. The area is not currently registered as a habitat of significance, however that work is undertaken in tranches, the mapping work undertaken by Fisheries New Zealand is not complete. SNZ and Talley's expect that Patea Shoals will be identified as a habitat of particular significance for fisheries management

[6] Talley's comments dated 3 October 2025 at [11](e).
[7] Fisheries New Zealand "Habitats of particular significance for fisheries management"

when Fisheries New Zealand assess that area, it is understood Fisheries New Zealand is currently progressing with this work.

16. The fact that Fisheries New Zealand is undertaking a non-statutory process to flesh out the concept and application of s 9(c) of the Fisheries Act does not mean that there a statutory requirement for such habitats to be formally identified by Fisheries New Zealand or any other agency.

17. The situation has similarities to the Environment Court's identification of outstanding natural landscapes or features as a matter of national importance as a factual finding as part of its consideration of consent applications under s 6(b) RMA.

18. In *Unison Networks Ltd v Hasting District Council*[8] Potter J dismissed an appeal by Unison that the Environment Court had erred in making a finding of fact that the area of the Unison 2 windfarm was within an outstanding natural landscape, despite the area not having been previously identified as such in the plan. The Court confirmed the approach of the Environment Court noting that it is based on the values present not whether they had previously been identified in a plan or not.[9] In dismissing the appeal the Court citied *Chance Bay Marine Farms Ltd v Marlborough District* At [159]:

> [84] **Regardless of the provisions of the proposed plan which do not identify the Chance Bay landscape as outstanding, it is still open to the Court to make this finding as one of fact, which we do.** If the adverse effects of a marine farm on this landscape are such as we have indicated, it should be avoided altogether.'
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> [85] On appeal to this Court (AP210/99 HC WN 15 March 2000), in response to a submission of the appellant that the Environment Court exceeded its jurisdiction in making that decision, Doogue J said at [27] of his judgment:
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> … the Court was fully entitled to take into account that Chance Bay
> contained an outstanding landscape. That issue was raised by the appellant's reference. The Court, like the respondent, was untrammelled in taking that aspect of the matter into account, notwithstanding the decisions of the respondent in relation to the classification of areas of outstanding landscape character for the purposes of resource consent applications.

[8] [2011] NZRMA 394.
[9] *The Outstanding Landscape Protection Society Inc v Hastings District Council* [2007] Decision No. 24/2007 Ibid at paras 105 and 108, citing *Pigeon Bay Aquaculture Ltd v Canterbury Regional Council* [1999] NZRMA 209 and confirmed on appeal at para 79-81

> [86] **This Court upheld the ability of the Environment Court to make a finding of fact that the Chance Bay landscape was outstanding notwithstanding that it was not so classified by the Proposed Plan of the Marlborough District Council.**
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> **(our emphasis)**

19. It follows that the panel must take into account whether there are any habitats of particular significance to fisheries management whose protection will be affected by the TTR project. This is a factual matter that the Panel needs to consider as part of the Panels obligations under section 9(c) of the Fisheries Act.

20. The evidence of Dr Jeremy Helson, the former Chief Executive of Seafood New Zealand, is highly informative on that topic.[10]

Question 18: lawfulness of pre-commencement monitoring

21. The Panel has asked: *Are proposed conditions requiring pre-commencement* monitoring *lawful?*

22. The proposed conditions under consideration are draft conditions 47–51 of TTR's proposed conditions.[11] These require the consent holder to undertake two years of pre-commencement environmental monitoring in respect of:

a. Suspended sediment concentrations;

b. Suspended and seafloor sediment quality;

c. Subtidal and intertidal biology;

d. Optical water quality;

e. Physio-chemical parameters;

f. Heavy metals;

g. Oceanography;

[10] Evidence of Dr Helson dated 6 October 2023 at para 52
[11] Proposed conditions on TTR's application

h. Primary production;

i. Zooplankton;

j. Seafood resources;

k. Marine mammals;

l. Underwater noise;

m. Seabirds;

n. Commercial fishing; and

o. Recreational fishing

23. Conditions 48 - 51 also provide for the setting of suspended sediment concentration limits (SSC) primary production and underwater noise. Purposes of the monitoring include providing data to "validate" the Operational Sediment Plume Model and "verify" the SSC Limits in Schedule 2 to the conditions. Close examination of Schedule 2, referred to in condition 48 (c) and (d) reveals the extent to which SSC limit controls on key locations are missing and only established post consent by the Technical Review Group.[12]

24. These conditions were imposed by the 2017 DMC majority for the purpose of providing sufficient information as a precursor to commencing extraction.[13] It corresponds closely with the list of matters that the 2017 DMC found they did not have sufficient information on to make a decision. The 2017 DMC minority, by contrast, said the lack of adequate baseline information meant it could not adequately describe the potentially affected environment and assess the sensitivity of the receiving environment, and it followed that formulation of robust consent conditions was not possible.[14] This was confirmed by the Supreme Court, which held that given the uncertainty of the information it was

[12] For example, in Schedule 2 there are no SSC limits for the Crack – which only has provisional testing locations 1 and 2 and no testing location for the Project Reef (this is set post consent by the TRG),the note to the condition confirms all percentile values marked TRG are to be set by the Technical Review Group (post consent). 77.6% of the limits proposed in the consent condition are to be decided by the TRG 2 years after consent is issued. Therefore, the reference in condition 48 (c) to 'verify' is more akin to setting.
[13] 2017 DMC decision at [1065], where the DMC said that the pre-commencement monitoring period was to "provide sufficient information as a precursor to commencing extraction of seabed materials".
[14] 2017 DMC decision, minority decision at page 228, [3].

not possible to be confident that the conditions would remedy, mitigate or avoid the effects.[15]

25. The Supreme Court was critical of the DMC's decision to rectify the information deficits by pre-commencement monitoring. It described these conditions as being a "mechanism for providing baseline information as to effects, which was lacking in TTR's application", [16] and the conditions being "designed to collect the very information that would have been required" to draw conclusions as to the possible effects, harms and impacts of the conditions. [17] The Court found that this failed to meet the requirement to favour caution and environmental protection. Glazebrook J said:[18]

> … I think it is strongly arguable that in this case the pre-commencement monitoring conditions (conditions 48 to 51) were ultra vires as they went well beyond monitoring or identifying adverse effects and were for the purpose of gathering totally absent baseline information.

26. Talley's and SNZ agree with Glazebrook J that the pre-commencement monitoring conditions are ultra vires.

27. Sections 63–67 of the EEZ Act only enables conditions to be set for the purpose of "deal[ing] with adverse effects of the activity … on the environment or existing interests".[19] These provisions governing the imposition of conditions apply with equal force when an application for marine consent is advanced under the FTAA.[20] Examples of the types of conditions that might be lawfully imposed are set out in s 63(2) of the EEZ Act, [21] including a condition requiring monitoring and reporting on "the exercise of the consent and the effects of the activity it authorises".

28. Draft condition 48 falls outside the permitted purpose for which conditions can be imposed. It is for the purpose of gathering absent baseline information

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[15] Ellen France J at [129].
[16] Ellen France J at [205].
[17] Glazebrook J at [275].
[18] Glazebrook J at [276].
[19] EEZ Act, s 63(1), which links conditions to the purpose of "deal[ing] with adverse effects".
[20] Fast-track Approvals Act 2024, sch 10, cl 7.
[21] But see EEZ Act, s 87F(4) in respect of marine discharge consents.

about the receiving environment to understand the characteristics of that environment. [22] The condition is not about monitoring and reporting on the activity and its adverse effects, but rather for setting the baseline against which the effects of the activity will be measured later. As Glazebrook J said:[23]

> This information deficit could not legitimately be compensated for by conditions designed to collect the very information that would have been required before any conclusion at all could be drawn as to possible effects, any possible material harm and any effect of any possible conditions. No conclusion was therefore possible on what the bottom line could be met and a consent could not legitimately be granted.

29. The purpose of the pre-commencement monitoring is clear from the DMC 2017 decision and TTR's 2023–2024 evidence.[24] And Ms Sitarz, Forest & Bird's planning expert, explains that the pre-commencement monitoring condition goes further than just informing operational model outputs, because it involves monitoring of sediment quality and marine mammals to gather additional information, which inform the imposition of limits.[25]

30. From a policy perspective, there are good reasons why the EEZ Act's provisions (adopted into the FTAA) do not permit pre-commencement monitoring regimes of this nature. Such regimes delegate the Panel's condition setting power to an EPA "certification" process, where the monitoring leads to a review and possible adjustment of certain matters (e.g. numerical SSC limits) to reflect *actual rather than modelled* conditions.[26] It is unlawful for conditions of consent to delegate the consent authority's decision-making power.[27] Doing so means that commenting parties are deprived of the right to

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[22] Glazebrook J at [275]–[276]; Williams J at [295] and Winkelmann CJ at [329].
[23] Glazebrook J at [275].
[24] 2017 DMC Decision at [36], [155], [1062], [1064]–[1065]. Dr Childerhouse explains the pre-commencement monitoring is to "allow meaningful comparisons with future and ongoing survey work to assess potential trends or changes" (Evidence of Simon Childerhouse (19 May 2023) at [111]). See also Evidence of Philip Mitchell (19 May 2023) at [20], and Evidence of David Tompson (19 May 2023) at [46].
[25] Evidence of Natasha Sitarz (6 October 2025) at [337].
[26] 2017 DMC decision at [1064] and condition 51. See also Glazebrook J at [278], where Her Honour says that "some of the suspended sediment concentration limits required to be complied with under condition 5 are only to be set following the pre-commencement monitoring", with reference to DMC 2017 decision at condition 48 and 51 and sch 2.
[27] *Royal Forest and Bird Protection Society Inc v Gisborne District Council* [2013] NZRMA 336 (EnvC) at [83]–[85]; *Mount Field Ltd v Queenstown Lakes District Council* [2012] NZEnvC 262 at [77]; *Aubade NZ Ltd v Marlborough District Council* [2015] NZEnvC 154 at [37]; *Turner v Allison* [1971] NZLR 833 (CA) at 856–857.

comment on the effects of the proposal and are excluded from the subsequent process of reviewing limits as these steps do not occur until after the issue of consent and receipt of the environmental data obtained via the two years of pre-commencement monitoring.[28]

31. TTR's most recent legal submissions argue that the pre-commencement monitoring is not an attempt to obtain baseline data needed, and that the Supreme Court did not understand the "true function" of the pre-commencement monitoring. This position is premised on TTR's position that there is already ample information and that other conditions are adequate to avoid adverse effects.[29] The problem with that submission is it leads to the problematic conclusion that the pre-commencement condition has no purpose at all. That cannot be a lawful basis for evaluating TTR's application, because all conditions must serve one of the purposes directed by s 63 of the EEZ Act.

32. In light of this, the suite of pre-commencement monitoring conditions including condition 48 must be eliminated from the Panel's assessment of TTR's application. This is a problem for TTR because condition 48 forms the crux of how TTR proposes to address uncertainty.

33. It is noted for completeness, that SNZ's initial comments on TTR's conditions were prepared without legal input and did not turn their mind to the lawfulness of those conditions per se. Having now received legal advice, SNZ recognises that the conditions are ultra vires and should not be considered.

Question 19: significance of Supreme Court decision

34. The panel has asked: *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?*

35. Talley's and SNZ's position is:

(a) As a matter of law, the Supreme Court decision is binding on the Panel as to the approach that must be taken to the interpretation and

[28] Glazebrook J at [277]; Williams J at [295] and Winkelmann CJ at [329].
[29] Legal submissions on behalf of TTR in response to comments received dated 13 October 2025 at paras 63–70.

application of the EEZ Act, in accordance with the usual principles of precedent. The interpretation and application of the EEZ Act will form a core part of the panel's assessment under sch 10 cl 6 of the FTAA.

(b) The Supreme Court decision can have no relevance as a matter of law to the interpretation and application of the provisions in the FTAA. That legislation did not exist when the Supreme Court delivered its judgment.

(c) The Supreme Court decision is highly persuasive to the extent that it made findings of fact or endorsed findings of fact by the 2017 DMC. This is for the reasons set out above in paragraphs 6 – 9 of these submissions.

Question 20: inadequate information as a decline ground

36. The panel has asked: *Is s 62 EEZ Act a standalone ground for declining a marine consent in this process, or are the Panel's powers to decline confined to s* 85 *FTAA?*

37. This was a matter that Talley's and SNZ raised in its comments document dated 3 October 2025 at [20] – [22]. As set out in those comments, TTR appears to accept that s 62(2) should be treated as an additional ground for a Panel to decline an approval where there is inadequate information.

38. Any other approach to interpretation of the FTAA leads to absurdity. It is unclear what purpose the cross-reference to s 62(2) of the EEZ Act in sch 10, cl 6(1)(d) would serve if it does not enable a Panel to decline approval if it determines that the information is inadequate. Why would Parliament have directed a Panel to "take into account" that a marine consent authority could decline a marine consent application that was not supported by adequate information, where the fast-track, Panel cannot itself decline approval on that basis?

39. Talley's and SNZ acknowledges that this interpretation involves some "reading between the lines" of the FTAA and grates against the statement in s 81(2)(f) that the Panel may decline the approval "only" in accordance with section 85.

40. However, Talley's and SNZ's interpretation is supported by the usual approach of ascertaining the meaning of legislation from its text and in light of its purpose and its context.[30] In that regard:

(a) The text of the FTAA in sch 10, cl 6(d) has an express reference to the decline ground that is contained in section 62(2) of the EEZ Act.

(b) The purpose of the references to ss 61(1)(c) and (2) and 62(2) of the EEZ Act in sch 10 cl 6(1)(d) of the FTAA is to ensure that EEZ decisions are based on adequate information. It is consistent with that purpose for applications to be declined where the information base is inadequate.

(c) The context of the FTAA is that the process will be dealing with complex applications, and there are detailed requirements for the level of information required to support applications.[31] The adequacy of information is vetted by the EPA at an early stage for completeness, but within a short timeframe.[32] This statutory context supports an ability for Panels to decline applications where the information is not adequate.

41. To the extent that this involves a departure from the wording of the FTAA, Talley's and SNZ's interpretation is appropriate to ensure that the provisions are interpreted in the way Parliament intended and to avoid an absurd or unreasonable outcome.[33] Applicants who have not provided adequate information to allow the Panel to properly assess the impact of their proposals should not be rewarded with Fast Track approvals as this would incentivise applicants to game the system.

[30] Legislation Act 2019, s 10.
[31] FTAA, ss 13, 43, and sch 10, sch 10 cl 4.
[32] FTAA, s 46.
[33] *Ngāti Kuku Hapū Trust v Environmental Protection Agency* [2025] NZHC 2453 at [56].

Dated 14 November 2025

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