Fast Track Panel, for the Taranaki VTM Project
Hon. Kit Toogood KC Taranaki VTM Expert Panel Chair
By email info@fasttrack.govt.nz
14 o Noemea 2025

Te Korowai o Ngāruahine Response to Minute 11

Te ika te ika i Waitotara
Te ika te ika i Whenuakura
Te ika te ika i Patea
Te ika te ika i Tangahoe
Te ika te ika i Waingongoro
Te ika te ika i Kawhia
Te ika te ika i Taranaki
Te takina mai hoki te ika
Ki tenei rua ki tenei one
Te ika ki tenei papa
Te ika ki tenei au tapu
Te ika ki te au tapu nui no Tane
Ki te au tapu o Tangaroa te ika
Haumi e! Hui e! Taiki e!

Te Korowai o Ngāruahine welcome the opportunity to respond to the patai set out in Minute 11 of the Taranaki VTM Project. While given a short period of time to collate these answers, we hope the Panel find our kōrero informative in their assessment of this application.

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

The 2017 DMC's factual findings are highly relevant, particularly the findings on the effects on the coastal marine area (**CMA**) and on ecologically sensitive areas within the CMA.

TTR must demonstrate with clear evidence what has materially changed to support the new application – the additional evidence filed to date simply reiterates the previous position and an updated assessment on the effects on existing interests has not been undertaken, as noted by the s 51 report from the EPA.

The Supreme Court in *Trans-Tasman Resources* [2021] NZSC 127 relied on previous factual record. A diagram of these areas, the overlap with respective iwi rohe, and the DMC's factual findings on the adverse effects in ecologically sensitive areas are set out in Appendix 3 of the Supreme Court's decision.

2. (a) Is the Panel required to determine whether TTRM's proposal requires approval under the Resource Management Act 1991 ("RMA")? (b) If so, does TTRM's proposal require approval under the RMA, and is s 5(1)(l) of the Fast-track Approvals Act 2024 ("FTAA") relevant?

The FTAA is supposed to be a one stop shop – the Panel cannot reasonably assess the significance of the stated regional/national benefits where an application is contingent upon seeking additional resource consent approvals. Given that the effects of the Application will be felt within the CMA, there may be a good argument that an RMA consent is required to properly assess those effects (including in accordance with the New Zealand Coastal Policy Statement (**NZCPS**)).

If additional consents are required, the Application would be incomplete at this juncture. If the application was approved, but subject to a condition that other consents are to be obtained first, then this brings into question whether s 5(1)(l) is engaged and, more broadly, whether a true assessment of the Application's stated benefits has been conducted in order to satisfy the purpose of the FTAA.

Furthermore, natural justice requires that all participants know the full scope of consenting in order to properly participate in the fast-track process.

Benefits and economic assessment

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?

A net benefit approach is required – this is supported by the views of Dr Ganesh Nana, expert economist for the iwi parties. As noted by Dr Nana, the gross-benefit approach relied on by the Applicant risks significantly over-stating the Project's regional/national benefits and therefore should be viewed with caution by the Panel in assessing the significance of those benefits.

(b) whether disbenefits or other costs are relevant; and

A net-benefit approach would take into account any disbenefits or other costs relevant to the Application. Dr Nana has promoted the Total Economic Approach (**TEV**) model. The disbenefits and other costs that are relevant to the application include the impacts on existing industries within the district and regional economy (particularly those that involve iwi at place), as well as the use and non-use value of a resource.

(c) whether a net benefit or cost-benefit approach is required?

A net-benefit approach is required and there is precedent for applying a net-benefit approach in other fast-track applications – see *Delmore* and *Bledisloe.*

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?

For the same reasons as above, we consider a net-benefit approach can be applied to s 59(2)(f) – see *Bledisloe*, which refers to the project's likelihood of delivering a "net-benefit to society".

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

As above, a separate economic assessment is not required.

Treaty, cultural and planning instruments

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

Ngāruahine's rights and existing interests are protected in a range of Treaty settlements, including the Ngāruahine Settlement and the Māori Fisheries Settlement. Our rights and interests further addressed in our written comment dated 6 October 2025.

It is a well-established principle of law that the Treaty is a relevant extrinsic aid to statutory interpretation, in the absence of express wording to the contrary. There is nothing in the FTAA that prohibits the consideration of the Treaty and/or its principles.

The FTAA requires that persons act consistently with Treaty settlements and the obligations that arise from those settlements. Settlements provide redress in recognition of the Crown's historical breaches of the Treaty – the directive to act consistently with settlements necessarily requires consideration to be given to the Treaty and its principles. Furthermore, settlements express cultural values (including kaitiakitanga) and therefore the need to act consistently with tikanga is also engaged.

10. What if any, is the significance of the High Court's judgment in *Te Ohu Court Trustee Ltd v Attorney General* [2025] NZHC 657?

We endorse the submissions of Te Ohu Kaimoana on this question.

11 (a) Are Iwi Environmental Management Plans relevant considerations? (b) If so, how they should be taken into account?

Iwi environmental management plans speak to the relationship of iwi at place to their rohe (including their preference for engagement). We discuss our engagement principles further in our written comment dated 6 October 2025. Consideration of iwi management plans is consistent with the obligations arising from the Ngaaruahine Settlement.

If an RMA consent is required, regional/territorial authorities must have regard to these plans under the RMA. By analogy, the Panel should consider the plans relevant in its assessment. In particular, we note that s 6(e) of the RMA would apply to the Panel's assessment (Schedule 5).

12. When considering national or regional planning instruments prepared under the RMA under s 59(2)(h) EEZ Acts 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?

We refer to our earlier comment that the NZCPS must be considered as there will be effects in the CMA if approved.

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?

The 2017 DMC identified adverse effects on fish and fish habitats, and we refer to our earlier submission that the Panel should adopt the factual findings relating to adverse

effects within our rohe. Adverse effects on fish and fish habitats should be considered in the usual way under Schedule 10 and weighed accordingly.

Existing interests and infrastructure

Decision tests, inconsistency and discretion

18. To what extents if any, is the decision of the Supreme Court in Trans-Tasman Resources v Taranaki Whanganui Conservation Board [2022] NZSC 227 binding on the Panel or of highly persuasive significance?

The Supreme Court's decision is binding, and we endorse the detailed submissions of Ngāti Ruanui on this point. In particular, the Supreme Court's interpretation of the relevant EEZ Act provisions remains binding to the extent that the Panel is required to take those provisions into account under Schedule 10.

The key findings we consider to be binding on the Panel include the interpretative approach taken to: the uncertainty of information (s 61), effects on the environment and existing interests (s 59(2)(a)), tikanga as applicable law (s 59(2)(l)), and the proposed conditions (ss 83 and 84).

20. In relation to s 85 (2)(b) FTAA and the obligation under s 7(2) FTAA to act in a manner consistent with the obligations arising under existing Treaty settlements and customary rights.

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

Ngāruahine endorses the submissions of Ngāti Ruanui. Section 7(2) was not intended to apply to the Panel, otherwise the directive in s 85(1)(b) to consider whether an approval breaches s 7 would be redundant.

(b) If adverse effects on fish stocks or aquaculture stocks are found to exists would granting the application be Inconsistent with obligations under the Maori Fisheries Settlement or the Maori Commercial Aquaculture Claims Settlement Act 2004?

The project was not contemplated by the protections contained in the Ngāruahine settlement and the Māori Fisheries Settlement. If approved, it would seriously risk breaching our rights and existing interests which are further detailed in our written comment dated 6 October 2025.

With particular regard to fisheries, there is a risk that our settlement quota will depreciate in value due to the adverse effects. We refer to the submissions of Te Ohu Kaimoana on this point.

24. In relation to ss 85 (3)-(5) FTAA, how is inconsistency with the EEZ Act or with documents taken into account under s 81(2) to be factored into the s 85 (3) assessment.

Broadly speaking, inconsistent with the EEZ Act is a matter that the Panel must consider under Schedule 10. We refer to our earlier comments that the Supreme Court's decision is binding on the applicable interpretative approach adopted in relation to those provisions, in light of the 2017 DMC's factual findings on adverse effects within our rohe.

As is clear from our written comment dated 6 October 2025, the cumulative effect of adverse effects within our rohe are such that the Application should be declined either under s 83(1) or (3).

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25. (a) Is there, in a substantive sense, any difference between an "impact" and an "environmental effect" under the FTAA? (b) If so, what if any consequence(s) does that difference have for the Panel' s decision on the application?

Impacts are wider than effects and include the impacts on the CMA, particularly those ecologically sensitive areas within our rohe. That is, irrespective of the fact that the mining area is outside the 12 nautical mile point. We refer to our earlier submissions regarding the need for the Panel to take into account the 2017 DMC's factual findings and the NZCPS (if a resource consent is required, which we say is the case).

Pai Mārire,

Te Aorangi Dillon

Tumu Whakarae

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