BEFORE THE TARANAKI VTM PROJECT EXPERT PANEL [FTAA-2504-1048]

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

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SUBMISSIONS OF COUNSEL FOR TE RŪNANGA O NGĀTI RUANUI

Dated 14 November 2025

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Introduction

1. These submissions are filed on behalf of Te Rūnanga o Ngāti Ruanui Trust (**Te Rūnanga**) 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.

2. These submissions also refer to Te Rūnanga's previous submissions dated 6 October 2025 (**Initial Submissions**).

3. These submissions do not attempt to address all of the questions comprehensively, as other parties will be better placed than Te Rūnanga to address some matters. For that reason, some questions are not addressed at all and others are considered only briefly.

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

4. The factual findings of the 2017 Decision-Making Committee (**DMC**) are highly relevant. While they are not binding on the Panel, the application and the evidence in support of it have not changed significantly since the 2017 DMC decision. The DMC received extensive oral and written evidence. The less constrained timeframes for its consideration meant that it was able to hear more extensively from expert witnesses. These factors mean that the DMC was well-placed to make robust factual findings.

5. Where there isn't new evidence affecting a factual finding of the DMC, the Panel would be entitled to rely on the 2017 factual finding. If there is new evidence relevant to the matter, the Panel would need to consider whether or not it undermines the correctness of the factual finding.

6. While the 2017 DMC decision was successfully appealed on questions of law, this did not affect the factual findings made by the DMC. The appeals concerned legal questions about the DMC's interpretation of the law and application of the law to its factual findings. The DMC's factual findings therefore remained intact after the Supreme Court's judgment in *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* (**TTR**).[1]

[1] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, [2021] 1 NZLR 801.

7. 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.[2] A copy of that appendix is annexed to these submissions.

Q.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. It appears likely that aspects of the proposal will require approval under the RMA.

9. The 2013 pre-feasibility study prepared by TTR identified a number of activities that were likely to require resource consents:[3]

TTR Potential Project Element – RMA Activities	Activity
Freshwater storage pond and ancillary equipment – includes noise and other land-related controls.	Land use
Freshwater pipeline; end-of-pipe structure for freshwater offtake; power cable	Structures on or under the foreshore and sea bed
Installation of freshwater pipeline; power cable, extraction	Disturbance of foreshore and sea bed where adverse effect on foreshore or sea bed
Occupation of sea bed and exclusion of other users by pipeline and power cable.	Occupy any part of the common marine and coastal area
Discharges arising from mining on sea bed	Discharge of a harmful substance from a ship or offshore installation Discharge water into water from any ship or offshore installation
Extracting of the sea bed and deposition of de-ored sand	Disturbance of foreshore and sea bed where adverse effect on foreshore or sea bed Deposit any material on the sea bed in a manner that is likely to have an adverse effect on the sea bed Destroy damage or disturb the sea bed in a manner that has an adverse effect on plants and animals or their habitat

[2] At 913.

[3] Table replicated from Pre-Feasability Study Offshore Iron Sands Project, TTR, Document number TTR-01-REP-001, 10 July 2013. This document was included in the EPA's electronic bundle for the 2024 DMC hearing, but as it hasn't been located on the EPA website, a copy is filed with these submissions.

Noise	Every occupier of land (including coastal marine area) and every person carrying out an activity in the coastal marine area shall adopt the best practicable option to ensure that the emission of noise ... does not exceed a reasonable level.

10. It appears that aspects of the proposed methodology have changed, so that some, or all, of those consents may no longer be required. The possibility that other consents will still be required cannot be excluded, however. For example, monitoring equipment to be deployed at sites within the CMA may require authorisation by resource consent. TTR has also indicated that upgrades will be required to Port Taranaki and Whanganui Port in order to serve vessels associated with its proposal.

11. Te Rūnanga has always taken the view that discharges arising from TTR's mining activity may require resource consent in that they come within the terms of s 15B of the RMA, i.e. they are discharges of a "harmful substance or contaminant, from a ship or offshore installation". There is nothing in s 15B that requires that the ship or installation that is the source of the discharge is, itself, within the CMA. Rather that section focuses on the location of the discharge.

12. While TTR was applying under the EEZ Act that remained a live question: had TTR been successful in obtaining marine consents under that Act, would it still have required RMA consents, either for discharges to the CMA or other activities, before commencing?[4]

13. The situation is different under the FTAA, which was lauded as a "one-stop shop". This would suggest that if RMA consents are required, then they should be sought at the same time as marine consents. While there is no explicit requirement for this in the Act,[5] it is implicit that all consents/approvals necessary to carry out the proposed activity are sought in the process. Otherwise the test of significant regional or national benefit cannot be met, as

[4] It does not appear that these would be prohibited activities, for RMA purposes, but counsel refers to the Taranaki Regional Council and other parties on that point.

[5] Clause 3, Sch 3 of the FTAA provides for cross boundary applications, i.e. those that include both marine consents and RMA consents, with reference to s 88 of the EEZ Act but does not appear to require that approach be taken.

doing so would rely on an assumption that any further consents required would be granted.

Q.3(a) Do other participants agree with the Applicant's position on the consents it requires under the EEZ Act? (b) If not, identify the points of disagreement and reasons?

14. Te Rūnanga takes the position that it is not possible to assess whether TTR requires consents beyond those sought in this application – such as consents under the RMA referred to above – due to a lack of detail on some aspects of the proposal.[6] Other parties with access to planning expertise may be able to respond to this question more thoroughly.

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

15. The feasibility of a project must be a highly relevant factor under the FTAA; a project that is not feasible cannot deliver regional or economic benefit. That is a necessary consequence of the purpose of the Act and its description of the type of project that should be facilitated.

16. In this regard, the report from Sanofex Limited, which forms part of the Wanganui District Council comments, and the evidence of Dr Jill Cooper filed by KASM/Greenpeace, are particularly relevant. While that report certainly questions the level of economic benefits the TTR project might deliver, it goes further than that and, in several respects, questions the feasibility and commercial viability of the project.

17. Another approach would be to apply an appropriate risk-adjusted discount rate to projected earnings to reflect not just known risks, such as exchange rate and iron ore price fluctuations, but also the risk that the project does not turn out to be feasible at all.

[6] For example, in the RFI appended to Minute 20, the Panel seeks more information on the mooted upgrades to Port Taranaki and Whanganui Port. It is inevitable that any such upgrades will require resource consents, but impossible to assess the nature of those without more information.

Q.5 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; and

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

18. These issues are addressed in paragraphs [117]-[122] of the Initial Submissions.

19. In short, it must logically be that a net benefit approach must be taken. Parliament cannot have intended that a project with a large gross benefit but no net benefit (since its costs outweighed its benefits) should be promoted through the FTAA process. Rather, the purpose of the FTAA must be "facilitat[ing] the delivery of infrastructure and development projects with significant [net] regional or national benefits."

20. While it is tempting to say that the assessment of net benefit should be derived from a cost-benefit analysis, it is acknowledged that double-counting must be avoided, given that s 85 provides for a balancing of regional and national benefits against adverse impacts.[7]

21. As noted in the Initial Submissions, no risk of double-counting benefits can arise in the present case, as the economic analysis for TTR uses standard multiplier model to demonstrate a (gross) positive economic impact, as opposed to economic benefit. The assumptions underlying that model do not allow for a conclusion to be reached as to whether the project will have a positive net economic impact.

22. A key assumption Dr Nana identifies is that no production supply constraints exist, i.e. aggregate supply curves facing the district, region and nation are horizontal. If In particular, should there be production supply constraints — e.g. in terms of direct (specialist) labour requirements —changes in relative prices will likely reduce the quantum of the gross impacts calculated by the multiplier model.[8] The likelihood of supply constraints is much greater for a

[7] Conversely, Dr Nana notes two respects in which the TTR economic analysis appears to double count benefits – see paragraphs [34] and[47].
[8] Nana at [31].

project with a large impact, as TTR's is claimed to have, than for one with a small impact.[9]

Q.6(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? (b) If not, are two separate economic assessments needed?

23. The Supreme Court in *TTR* held that the reference in s 59(2)(f) of the EEZ Act is to net benefit, rather than gross benefit.[10] As such, the same approach applies as for assessing benefits under the FTAA and a separate economic assessment is not needed. Doing two economic assessments would only result in double-counting of economic benefits.

Climate changes Qs.7-9

24. The submissions of KASM and Greenpeace on this points are supported and adopted.

Q.10 What is the relevance of Treaty principles, cultural values and kaitiakitanga to the Panel's consideration, and where do they fit within the assessment framework? In particular, what is the correct legal test to distinguish an effect on an "existing interest" (as defined and used in the EEZ Act) from an effect on an "obligation arising under a Treaty settlement" (FTAA s 7(1)(a))?

25. The Initial Submissions address the principles of te Tiriti o Waitangi and tikanga (including kaitiakitanga and cultural values) more fully at [8]-[27].

26. The Supreme Court held that tikanga qualifies as "any other applicable law" under s 59(2)(l) of the EEZ Act[11] and that tikanga-based customary interests are "existing interests" under s 59(2)(a) of the EEZ Act.[12] Both these provisions require decision-makers on marine consent applications to take these matters into account.

27. Clause 6(1)(d) of sch 10 of the FTAA requires the Panel to take into account the considerations set out in s 59(2) of the EEZ Act when considering a marine consent application. As such, the Supreme Court's conclusions on these matters remain applicable and the

[9] Nana at [44].
[10] *TTR* at]189] per William Young and Ellen France JJ, at [237], per Glazebrook J, at [299] per Williams J, at [332] per Winkelmann CJ.
[11] At [172] per William Young and Ellen France JJ.
[12] At [154] per William Young and Ellen France JJ.

Panel must take into account tikanga and tikanga-based customary interests.

28. The tikanga-based customary interests that must be taken into account under the Supreme Court judgment are:[13]

    (a) the kaitiakitanga of iwi of their rohe;

    (b) rights claimed or granted under the MACAA;

    (c) interests under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

29. The Supreme Court held that the principles of te Tiriti o Waitangi were "directly relevant" when deciding on an application for a marine consent.[14] They did not merely "colour" the approach taken, as the DMC said.[15] The same applies to the Panel, for the reasons set out in paragraph 54 below, albeit within the decision-making framework of the FTAA.

30. The constitutional significance of Te Tiriti[16] and the presumption that Parliament does not intend to legislate inconsistently with it[17] mean that effects that would be inconsistent with te Tiriti or its principles must have particular weight. Principles of kaitiakaitanga and active protection are particularly relevant here.

31. These "existing interests" considered by the Supreme Court are distinct from the Treaty settlement obligations to which specific provisions of the FTAA apply. The latter are analysed in some detail in [39]-[57] of the Initial Submissions.

Q.11 What, if any, is the significance of the High Court's judgment in Te Ohu Kaimoana Trustee Ltd v Attorney-General [2025] NZHC 657?

32. Ngāti Ruanui supports and adopts the submissions of Te Ohu Kaimoana on this question.

33. In relation to the present application, T*e Ohu Kaimoana Trustee Ltd v Attorney-General* (***Te Ohu***) stands for the proposition that the Crown must ensure that "the integrity of the settlement" is

[13] At [154] per William Young and Ellen France JJ.
[14] At [161] per William Young and Ellen France JJ.
[15] At [161] per William Young and Ellen France JJ.
[16] *Tukaki v Commonwealth of Australia* [2018] NZCA 324, [2018] NZAR 1597 at [35].
[17] *TTR*, above n 6, at [151] per William Young and Ellen France JJ; *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR 188 (HC) at 210; *Barton-Prescott v Director-General of Social Welfare* [1997] 3 NZLR 179 (HC) at 184.

not impaired[18] and that may require more than simply complying with specific, explicit provisions of a settlement deed or settlement legislation.[19]

34. In that case, the Crown was held to be in breach of its obligations under the Māori fisheries settlement as a result of implementing provisions of the Fisheries Act 1996 (**FA96**) that had the effect of reducing the number of shares of settlement quota held by iwi over time. That was an action inconsistent with the Treaty of Waitangi (Fisheries Claims Settlement) Act 1992 and the Deed of Settlement that preceded it, notwithstanding that there was no provision of those instruments stating that the Crown could not reduce the amount of settlement quota after that quota had been issued to iwi.[20]

Q.12(a) Are Iwi Environmental Management Plans relevant considerations? (b) If so, how they should be taken into account?

35. The Ngāti Ruanui Environmental Management Plan (**EMP**) was issued in 2012 and is described as "[a] statutory Environmental Policy document to help guide central and local government in formulating their Environmental Policy". It is recorded[21] as being a statutory document for the purposes of ss 61, 66 and 74 of the RMA and for the purposes of the Fisheries (Kaimoana Customary Fishing) Regulations 1998. As such, it can be considered a part of another "marine management regime" in terms of s 59(2)(h) of the EEZ Act.

36. More importantly, however, such iwi EMPs are an expression of the kaitiakitanga of iwi (or hapū) in their rohe. The Supreme Court's decision therefore requires that they be taken into account as existing interests under s 59(2)(a) of the EEZ Act. As such, the submissions above in relation to the relevance of kaitiakitanga and tikanga-based customary interests apply to the expression of those values through iwi environmental management plans and equivalent documents.

37. The Ngāti Ruanui EMP includes detailed sections on "Te Moana Uriuri Tangaroa Takapou Whariki i Papatuanuku e Takoto Nei / the

[18] *Te Ohu Kaimoana Trustee Ltd v Attorney-General* [2025] NZHC 657 [2025] 2 NZLR 382 at [194].
[19] At [188]-[189], [193].
[20] At [189]-[194].
[21] At 3.

Coastal and Marine Environment" (expressly recognised as extending into the EEZ)[22] and 'He Whenua Momona (A Fertile Land) / Oil and Minerals".[23]

Q.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?

38. The Supreme Court in *Royal Forest & Bird Protection Society v New Zealand Transport Agency (**East West Link**)*[24] made some general comments on the interpretation and application of planning documents that are relevant in this case. The Court emphasised that its approach "does not mean all objectives and policies can simply be put in a blender with the possible effect that stronger policies are weakened and weaker policies strengthened."[25] Glazebrook J also observed that it was "not open to decision makers at resource consent level to undermine the choices made in planning documents of favouring environmental protection through avoidance policies if directly applicable to the relevant project."[26]

39. The Supreme Court in *East West Link* discussed the New Zealand Coastal Policy Statement (**NZCPS**) in some detail. In the context of a marine consent to which the EEZ Act applies, the discussion of the NZCPS in *East West Link* needs to be considered in light of the Supreme Court's earlier consideration of the NZCPS in *TTR*.

40. In *TTR* the Supreme Court held that there is an environmental bottom line in Policy 13(1)(a) of the NZCPS[27] which directs decision-makers to "avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character" in order to "preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development".

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[22] At 31.
[23] At 49, with explicit reference to "Exploitation of iron sands and other Minerals" at 52 and elsewehere.
[24] *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26, [2024] 1 NZLR 242.
[25] At [80] per Winkelmann CJ, Ellen France and Williams JJ.
[26] At [224].
[27] *TTR*, above n 1, at [280] per Glazebrook J, at [298] per Williams J, at [331] per Winkelmann CJ.

41. Glazebrook J said that this bottom line "must be interpreted and applied in light of s 10(1)(b)"[28] and that "[t]here must be synergy in the approach to the NZCPS bottom line and s 10(1)(b)."[29] As the environmental bottom line in s 10(1)(b) could not be overridden by other factors, the same applied to Policy 13(1)(a) of the NZCPS.

42. The Supreme Court's judgment in the *East West Link* case discussed other policies in the NZCPS. It noted that some policies in the NZCPS, such as Policy 22(2) regarding sedimentation, left "not much wriggle room ..."[30]

43. The Supreme Court's particular focus in *East West Link* was on Policy 11 of the NZCPS regarding indigenous biological diversity. It held that there was a very narrow "exceptions pathway" that could potentially, on reconsideration by the board of inquiry, apply in that case.[31] However, this exceptions pathway is not relevant in this case for several reasons:

    (a) it was the link between the NZCPS and s 10(1)(b) of the EEZ Act that led the Supreme Court in *TTR* to conclude that the environmental bottom line in the NZCPS could not be overridden;[32]

    (b) the exceptions pathway arose from the particular provisions of the Auckland Unitary Plan that applied in the *East Week Link* case;[33]

    (c) the Supreme Court emphasised the significance of the infrastructure project in that case (a public road) being for public benefit, as a reason why the exceptions pathway was necessary and potentially applicable;[34]

    (d) the limited grounds for declining a project in s 85(3) of the FTAA mean that the reasons why the Supreme Court felt the need to establish an exceptions pathway in *East West Link* do not apply in the context of the FTAA.

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[28] At [280] fn 465.
[29] At [280].
[30] *East West Link*, above 26, at [104] per Winkelmann CJ, Ellen France and Williams JJ.
[31] At [118] per Winkelmann CJ, Ellen France and Williams JJ.
[32] *TTR*, above n 1, at [280] and fn 465 per Glazebrook J, at [298] per Williams J, at [331] per Winkelmann CJ.
[33] *East West Link*, above 26, at [120]-[126] per Winkelmann CJ, Ellen France and Williams JJ.
[34] At [125] per Winkelmann CJ, Ellen France and Williams JJ.

44. *East West Link* confirms that the more directive policies have greater weight.[35] This supports the view that environmental bottom lines in the EEZ Act, while not precluding the grant of approvals under the FTAA, should nonetheless be accorded particular weight.

Q.14(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?

45. The phrase "habitats of particular significance to fisheries management" is found in s 9(c) FA96, where one of three key environmental principles that persons exercising or performing relevant functions, duties or powers under the Act must take into the account is that "habitat of particular significance for fisheries management should be protected." There is no requirement in the FA96 for formal identification of such environments and in the context of the environmental principles set out in the same section – "associated or dependent species should be maintained above a level that ensures their long-term viability"[36] and "biological diversity of the aquatic environment should be maintained"[37] – it would make no sense to expect such identification.

46. Rather, the existence of habitat of particular significance for fisheries management is a matter of fact and evidence in the particular instance, as is the existence of associated or dependent species or the status of biological diversity. This approach is also consistent with the environmental bottom line that is found in the purpose of the FA96,[38] which could not be met if only formally identified habitats warranted protection.

[Existing interests and infrastructure Qs15-16 not addressed]

[35] At [77] per Winkelmann CJ, Ellen France and Williams JJ.
[36] Fisheries Act 1996, s 9(a).
[37] Fisheries Act 1996, s 9(b).
[38] *New Zealand Recreational Fishing Council Inc v Sanford Ltd* [2009] NZSC 54, [2009] 3 NZLR 438 at [39]–[40]; *Seafood New Zealand Ltd v Royal Forest & Bird Protection Society of New Zealand Inc* [2024] NZSC 111, [2024] 1 NZLR 511 at [15] and [83]; *The Environmental Law Initiative v Minister for Oceans and Fisheries* [2022] NZHC 2969, at [11].

Q.17 Which, if any, of the conditions proposed by the applicant constitute adaptive management within s 61(3) and s 64(2) EEZ Act?

47. The Supreme Court held in TTR that the conditions imposed by the 2017 DMC did not constitute adaptive management. Effectively the same conditions are proposed in the present application.

Q.18 Are proposed conditions requiring pre-commencement monitoring lawful?

48. In *TTR*, Glazebrook J said:[39]

> While it is not necessary to decide this point, 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.

49. William Young and Ellen France JJ said, with respect to conditions regarding effects on seabirds:[40]

> There is much force in the argument for the first respondents that these conditions and other pre-commencement monitoring conditions are a mechanism for providing baseline information as to effects, which was lacking in TTR's application. There is some support for that in the descriptions used in the decision of the DMC.

50. The 'Summary of Result' section of the decision records:[41]

> Winkelmann CJ, Glazebrook and Williams JJ also made the point that the attempt to rectify information deficits by imposing conditions requiring pre-commencement monitoring which would subsequently inform the creation of management plans inappropriately deprived the public of the right to be heard on a fundamental aspect of the application.

51. There was, therefore, a majority finding that the arrangement of pre-commencement monitoring informing management plans was unlawful because it inappropriately prevented those submitting on the application from being heard on the matters that would be covered in these management plans.

52. In addition, as several judges suggested, the conditions involved gathering baseline information and were unlawful for that reason. Section 63(1) of the EEZ Act requires conditions to be imposed to

[39] *TTR*, above n 1, at [276].
[40] At [205].
[41] At [11].

"deal with adverse effects of the activity authorised by the consent on the environment or existing interests." Monitoring to assess the nature and characteristics of the existing environment does not deal with adverse effects on the environment; it is something that should occur prior to conditions being set to deal with these effects on the environment, so that they can be set based on an accurate picture of that environment. The same reasoning applies to the equivalent conditions in this application.

53. The Supreme Court's conclusions regarding conditions are binding on the Panel because clause 7 of sch 10 of the FTAA provides that "Sections 63 to 67 of the EEZ Act apply with any necessary modifications as if the references to a marine consent authority in those sections were references to the panel." Sections 63 to 67 are the provisions of the EEZ dealing with conditions. The same legal position therefore applies to conditions imposed by the Panel as to the conditions imposed by the DMC that were under consideration in *TTR*.

Q.19 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?

54. The Supreme Court's conclusions regarding the interpretation of the EEZ Act are binding on the Panel. The Panel is required to take into account various provisions of the EEZ Act and it must follow the Supreme Court judgment regarding the interpretation of them. The Panel's decision-making framework is different to that of a 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.

Q.20 Is s 62 EEZ Act a standalone ground for declining a marine consent in this process, or are the Panel's power to decline confined to s 85 FTAA?

55. Clause 6(2) of sch 10 of the FTAA provides that "the panel must take into account that section 62(1A) of the EEZ Act would normally require an application to be declined, but must not treat that provision as requiring the panel to decline the approval the panel is considering."

56. This means that the environmental bottom line in s 62(1A) of the EEZ Act does not preclude the Panel from granting an approval. However, the Panel should give particular weight to effects that

would breach s 62(1A), since the fact that Parliament made it an environmental bottom line indicates that it regarded it as particularly important.

57. Section 62(2) of the EEZ Act provides:

> To avoid doubt, the marine consent authority may refuse an application for a consent if it considers that it does not have adequate information to determine the application.

58. Section 62(2) does not apply directly as a ground for declining a marine consent under the FTAA; however, as TTR acknowledges, the Panel can decline an application if uncertain or inadequate information prevents it from being able to properly evaluate the likely impacts of the activity.

59. The information principles in s 61(1)(a) and (b) and (2) of the EEZ Act must be taken into account by the Panel under cl 6(d) of sch 10. These principles require the Panel to favour caution and environmental protection where information is uncertain or inadequate, base decisions on the best available information, and take into account any uncertainty or inadequacy of the information available.

60. The Panel must take these principles into account when deciding under s 85(3) of the EEZ Act whether adverse impacts are out of proportion to the project's regional or national benefits.

61. The requirement to favour caution and environmental protection where information is uncertain or inadequate means that the Panel should resolve any uncertainty regarding a project's adverse effects by proceeding on the basis of the greater potential effects. In contrast, it should resolve any uncertainty about the project's regional or national benefits by adopting the more cautious and lower assessment of the potential benefits.

62. The effect of this is that, where uncertain or inadequate information prevents the Panel from being able to properly evaluate the likely impacts of the activity, the Panel will be able to decline the application under s 85(3). This is because the requirement to favour caution and environmental protection kicks in to resolve this uncertainty or inadequacy regarding the adverse effects and/or benefits of the activity, and leads to the conclusion that the adverse effects of the activity will be out of proportion to its regional or national benefits.

Q.21(a) Are the members of the Panel "exercising a judicial power or performing a judicial function or duty" in terms of 7(2) FTAA?

63. Section 85(1)(b), which provides that "[t]he panel must decline an approval if … the panel considers that granting the approval would breach section 7, makes clear that s 7(2) was not intended to apply to the Panel. Section 85(1)(b) would be pointless if the obligation in s 7(1) did not apply to a panel because of the exclusion in s 7(2).

64. This is addressed further at [28]-[34] of the Initial Submissions.

Q.21(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?

65. As outlined in paragraph 33 above, *Te Ohu* provides authority for the proposition that the Crown may be in breach of a Treaty settlement by taking actions that are inconsistent with the scheme of the settlement, not just an obligation contained in a specific provision.

66. Applying that principle to the present application, it is submitted that granting consent could be inconsistent with the fisheries settlement or aquaculture settlement (or, indeed any of the iwi settlements) if doing so would have the effect of undermining the integrity of those settlements, including by diminishing the value of settlement entitlements. A key factor is that the inconsistency would arise from an action by the Crown (or its statutory delegate, in this case) that was not contemplated in any of the settlements in question.

67. It is important to note that not every Crown action that detrimentally impacts on settlement entitlements will automatically be inconsistent with that settlement. Total Allowable Catches, set under the FA96, can change from year to year, impacting the value of settlement quota, but this was contemplated in the fisheries settlement.

68. Another contrast is found in the process whereby the effects of any proposed new aquaculture development on fisheries must be assessed.[42] Where the development would have an "undue"[43]

[42] Fisheries Act 1991, part 9A.

[43] In *SMW Consortium (Golden Bay) Ltd v Chief Executive of the Ministry of Fisheries* [2013] NZCA 95 at [52], the Court of Appeal upheld the Chief Executive's use of a

adverse effect on non-commercial (customary or recreational) fishing it cannot proceed. Where there would be an undue effect on commercial fishing, the developer must negotiate a compensation arrangement with quota owners, including iwi owners of settlement quota. This is an example of a process that protects the integrity and value of a Treaty settlement.

Q.22 In cl 6(1)(a) of Schedule 10 FTAA, is "the purpose" of the Act limited to the purpose specified in s 3 of the Act?

69. Yes. Where a statute has a purpose provision, its purpose should be ascertained by reference to that provision. That is the point of expressly specifying the purpose in the statute.

Q.23 What is the meaning of "facilitate" in s 3 FTAA?

70. "Facilitate" has both a procedural and a substantive element. Procedurally it is about providing a timely and efficient consenting process. Substantively it is about enabling the delivery of infrastructure and development projects with significant regional or national benefits.

71. This does not mean, however, that the purpose of the FTAA is to enable such projects at all costs. The purpose of the FTAA must be given the greatest weight of the various criteria for assessing an application in cl 6 of sch 10, but it is capable of being outweighed by the other criteria. In making its final decision on whether to decline an approval under s 85(3) on the basis that its adverse impacts are out of proportion to the projects regional or national benefits, the Panel is not required to give the greatest weight to the purpose of the FTAA. Rather it is to consider the project's benefits and then weigh them against its adverse impacts.

Q.24 In relation to s 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?

72. Inconsistency with the EEZ Act is a matter that the Panel must take into account, under cl 6 of sch 10 of the FTAA. While the Panel is not precluded from granting an approval that is inconsistent with the EEZ Act, the environmental bottom line in s 10 of the EEZ Act should be given particular weight. Providing for an environmental

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threshold of 5% of catch being displaced to assess whether there was an undue adverse effect on fishing.

bottom line of protecting the environment in the EEZ from material harm indicates that Parliament thought that this was a matter of particular importance. As such, the Panel should be slow to conclude that a breach of this environmental bottom line is outweighed by other factors.

73. To put it another way, inconsistencies with relevant provisions of the EEZ Act are adverse impacts for the purposes of s 85(3)-(5) and they are adverse impacts that should carry particular weight in the assessment of proportionality where they relate to environmental bottom lines or matters as significant as tikanga-based existing interests and the principles of Te Tiriti.[44]

74. A similar approach applies to the documents that the Panel must take into account. Environmental bottom lines in such documents should be given particular weight.

Q.25 What does "out of proportion" in s 85(3) mean and how should it be applied?

75. If the regional or national benefits of the project are not proportionate to its adverse impacts, the Panel will be entitled to decline consent under s 85(3) on the basis that the adverse effects are out of proportion to the benefits.

76. Section 85(3) requires the panel to evaluate competing and potentially incommensurable considerations, before making an evaluative judgment. There is no simple or mathematical way of weighing economic benefits against ecological damage or interference with customary interests contrary to te Tiriti.

77. If the Panel concludes that the adverse impacts mean that the net benefits of the project are not nationally or regionally significant, then it can decline the approvals. In this situation, granting approval would not advance the purpose of the FTAA of "facilitate[ing] the delivery of infrastructure and development projects with significant regional or national benefits."[45] As such, cl 6 of sch 10 and s 85(3) are aligned and work together, rather than there being two separate and unrelated decision-making provisions that the Panel must apply in determining whether to grant approvals.

[44] See also Initial Submissions at [113].
[45] Fast-track Approvals Act 2024, s 3.

78. The proper approach to s 85(3) is discussed further at [111]-[124] of the Initial Submissions.

Q.26 (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?

79. Impact is clearly a broader concept than environmental effect and can encompass a number of factors that would not come within the FTAA definition of an environmental effect. For example, the FTAA definition of environment is narrower than that included in the RMA. Section 4(1) of the FTAA contains the following definition of "environment":

> **environment** means the natural environment, including ecosystems and their constituent parts and all natural resources, of—
>
> (a) New Zealand:
>
> (b) the exclusive economic zone:
>
> (c) the continental shelf:
>
> (d) the waters beyond the exclusive economic zone and above and beyond the continental shelf.

80. In contrast, the definition of "environment" in s 2(1) of the RMA is:

> **environment** includes— (a) ecosystems and their constituent parts, including people and communities; and (b) all natural and physical resources; and (c) amenity values; and (d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters.

81. This is a broad and inclusive definition, which includes amenity values and social, economic, aesthetic and cultural conditions. Adverse impacts on these matters would qualify as "adverse impacts" under s 85(3) of the FTAA, even if they do not qualify as environmental effects under the FTAA.

82. Furthermore, adverse impacts can go beyond effects on the environment, even in the broad, RMA sense, They can include matters such as negative policy impacts, precedent effect, breaches of international law and inconsistency with planning documents.

DATED 14 November 2025

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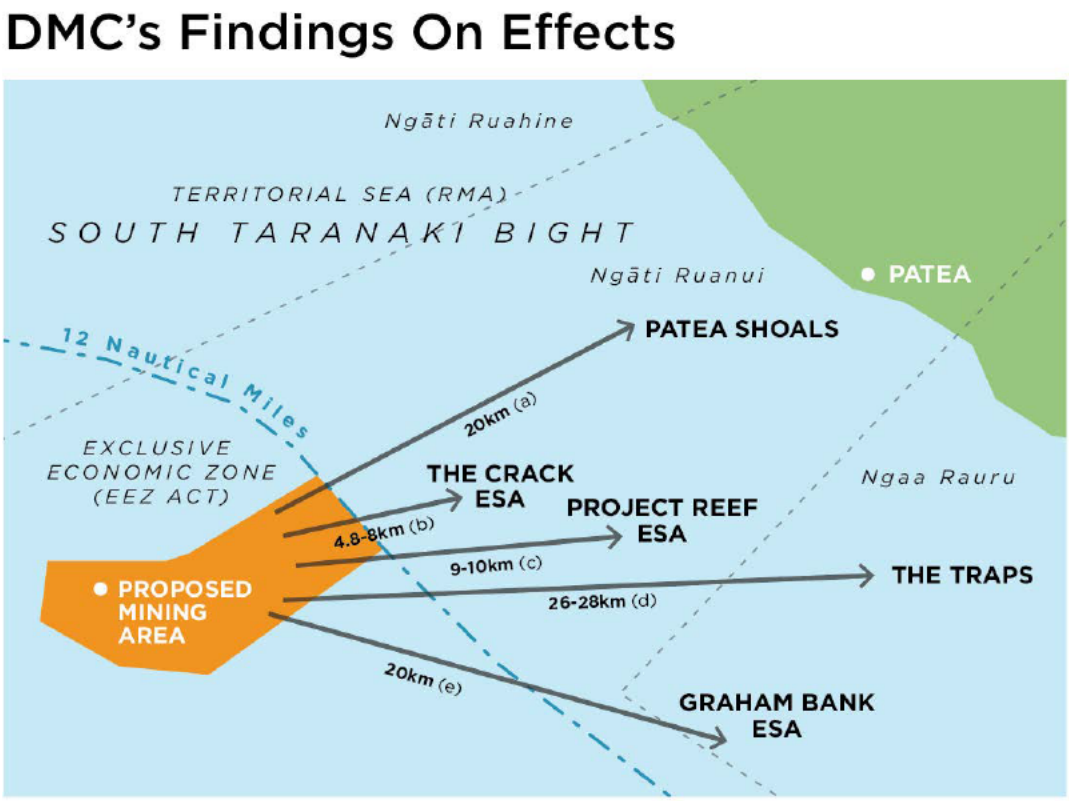
Appendix 3: Diagram prepared by iwi parties

Below is a diagram prepared by the iwi parties. The diagram is not to scale and should not be read as a map.



ESA	DMC Finding on Effect	Ref to DMC Decision
PATEA SHOALS	Moderate effect	At [350] At [970]
	Significant effect	At [968]
THE CRACK	Significant effect	At [350] At [970]
	Effects of concern	At [406]
	Effects including temporary or permanent displacement of species	At [437] At [980]
	Major effect	At [952]
THE PROJECT REEF	Significant effect	At [350] At [970]
	Major effect	At [952]

ESA	DMC Finding on Effect	Ref to DMC Decision
THE TRAPS	Minor effect	At [970]
GRAHAM BANK	Significant adverse effect	At [350] At [940] At [970]
	Effects including temporary or permanent displacement of species	At [437] At [980]