

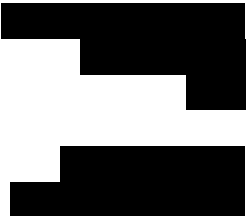
BEFORE AN EXPERT PANEL
IN NEW PLYMOUTH | NGĀMOTU ROHE

UNDER THE	Fast-track Approvals Act 2024 (“FTAA”)
IN THE MATTER OF	an application by Trans-Tasman Resources Limited under the FTAA
BETWEEN	TRANS-TASMAN RESOURCES LIMITED
	Applicant
AND	THE EXPERT PANEL
	Consent authority

COMMENTS ON BEHALF OF NGĀTI TŪ, NGĀTI MANUHIKAI, KĀNIHI-UMUTAHĪ, ŌKAHU-ĪNUĀWAI, AND TE PATUTOKOTOKO

6 OCTOBER 2025

BLACK LAW



Counsel:



MAY IT PLEASE THE PANEL:

INTRODUCTION

1. These “comments” are made on behalf of Ngāti Tū, Ngāti Manuhiakai, Kānihi-Umutah, Ōkahu-Inuāwai, and Te Patutokotoko (**Submitters**) in respect of the application by Trans-Tasman Resources Limited for a marine consent under the Fast-track Approvals Act 2024 (**FTAA**).
2. The Panel must apply the statutory framework of the FTAA and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ Act**), ensuring that environmental protection, Treaty obligations, and statutory decision-making criteria are fully observed.
3. In particular, the submitters emphasise:
 - a. The importance of robust assessment of effects on the environment and existing interests. It remains a significant concern that the applicant still wishes to undertake significant pre-commencement monitoring prior to commencing its activities – despite having now had so many years to undertake that monitoring.
 - b. Accordingly, there remains insufficient information before this Panel for it to grant consent.
 - c. This also emphasises the application of the precautionary principle or approach, given that the current information is uncertain and/ or insufficient.
 - d. Even under FTAA process, this is a significant pointer to insufficiency of information and/ or adverse impacts being out of proportion to the project's regional or national benefits – which need to be carefully tested including to ensure that they are true benefits to New Zealand.

Statutory Framework for Marine Consent Applications under the FTAA

4. The FTAA establishes a streamlined process for determining listed (or referred) projects, including those requiring marine consents.
5. TTRL's project is listed in Schedule 2 of the FTAA as follows:

Authorised Person	Project Name	Project description	Approximate Geographical Location
Trans-Tasman Resources Limited	Taranaki VTM	Extract up to approximately 50 million tonnes of seabed material per year, over 20 years, recover up to approximately 5 million tonnes of vanadium-rich titanomagnetite concentrate, return the de-ored material to the seabed, and monitor environmental recovery for up to 5 years post-extraction	65.76 square kilometres located between 22 kilometres and 36 kilometres from the coastline of South Taranaki

6. The EEZ Act ordinarily governs marine consents for activities within the Exclusive Economic Zone (and continental shelf).

7. The EEZ Act's purpose in s10(1) is:

- (a) to promote the sustainable management of the natural resources of the exclusive economic zone and the continental shelf; and
- (b) in relation to the exclusive economic zone, the continental shelf, and the waters above the continental shelf beyond the outer limits of the exclusive economic zone, to protect the environment from pollution by regulating or prohibiting the discharge of harmful substances and the dumping or incineration of waste or other matter.

8. Sustainable management is defined under the EEZ Act in s10(2), as:

... managing the use, development, and protection of natural resources in a way, or at a rate, that enables people to provide for their economic well-being while—

- (a) sustaining the potential of natural resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of the environment; and
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

9. Under the EEZ Act, in order to achieve its purpose, decision-makers are directed under s10(3)(a) to:

take into account decision-making criteria specified in relation to particular decisions;

10. Under the FTAA, pursuant to cl 6 of Sch 10:

- (1) For the purposes of section 81, when considering an application for a marine consent, including conditions in accordance with clause 7, the panel must take into account, giving the greatest weight to paragraph (a),—
 - (a) the purpose of this Act; and
 - (b) sections 10 and 11 of the EEZ Act; and

- (c) any relevant policy statements issued under the EEZ Act; and
- (d) sections 59, 60, 61(1)(b) and (c) and (2) to (5), 62(1A) and (2), 63, and 64 to 67 of the EEZ Act.

- (2) For the purposes of subclause (1)(d), 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.

11. Clause 7 of Sch 10 additionally provides:

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.

12. Sections 63-67 of the FTAA are largely procedural.

13. Section 81 of the FTAA provides:

Decisions on approvals sought in substantive application

- (1) A panel must, for each approval sought in a substantive application, decide whether to—
 - (a) grant the approval and set any conditions to be imposed on the approval; or
 - (b) decline the approval.
- (2) For the purpose of making the decision, the panel—
 - (a) must consider the substantive application and any advice, report, comment, or other information received by the panel under section 51, 52, 53, 55, 58, 67, 68, 69, 70, 72, or 90:
 - (b) must apply the applicable clauses set out in subsection (3) (see those clauses in relation to the weight to be given to the purpose of this Act when making the decision):
 - (c) must comply with section 82, if applicable:
 - (d) must comply with section 83 in setting conditions:
 - (e) may impose conditions under section 84:
 - (f) may decline the approval only in accordance with section 85.
- (3) For the purposes of subsection (2)(b), the clauses are as follows:
 - ... (l) for an approval described in section 42(4)(k) (marine consent), clauses 6 and 7 of Schedule 10: ...
- (4) When taking the purpose of this Act into account under a clause referred to in subsection (3), the panel must consider the extent of the project's regional or national benefits.

...

14. As relevant, s85 of the FTAA states:

Approval may be declined if adverse impacts out of proportion to regional or national benefits

- ... (3) A panel may decline an approval if, in complying with section 81(2), the panel forms the view that—
- (a) there are 1 or more adverse impacts in relation to the approval sought; and
 - (b) those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered under section 81(4), even after taking into account—
 - (i) any conditions that the panel may set in relation to those adverse impacts; and
 - (ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.
- (4) To avoid doubt, a panel may not form the view that an adverse impact meets the threshold in subsection (3)(b) solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with section 81(2).
- (5) In subsections (3) and (4), adverse impact means any matter considered by the panel in complying with section 81(2) that weighs against granting the approval.

15. Some of the Submitters will also provide separate hapū-specific comments.
16. The focus of these comments is on how the NZCPS (and RMA) fits into the decision-making framework. They are matters that must be taken into account, and contribute materially to the decision-making.

Relevance of the NZCPS

17. This is considered to be a significant issue, as the nature and effect of the NZCPS was a key factor in the Supreme Court decision that upheld challenges to the grant of the marine consent by the relevant Decision Making Committee (**DMC**) in TTRL's earlier application.¹
18. Under the EEZ Act, the NZCPS is a "marine management regime" that is required to be considered under s59(2)(h) of the EEZ Act.
19. The Supreme Court recognised the issue at [178], stating (footnotes omitted):

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

The context for the consideration of the approach to s 59(2)(h) of the EEZ Act is the practical reality that the effects of a proposed activity in a particular part of the marine environment may well spill over into other areas. Here for example, as the Court of Appeal said, the effects of the sediment plume will in fact be felt mostly within the CMA. There are good policy reasons for not ignoring the fact that if the proposed activity took place on the other side of an arbitrary line between two regimes, its proposed effects would be assessed differently.

20. It went on to state what considering the “nature and effect” required, at [181] (footnotes omitted):

... approaching the matter by using the ordinary dictionary meaning of the words “nature and effect”, it is apparent that the DMC does have to consider the key features of the other management regimes and how they would apply if the activity “were” being pursued under those regimes. The word “nature” means the “inherent or essential quality ... of a thing”. The word “effect” means “a consequence”, “a contemplated result”, or “a purpose”. Accordingly, consideration of the nature and effect of the other marine management regimes must, as the Court of Appeal said, involve considering:

- (a) the objectives of the RMA and NZCPS, and the outcomes sought to be achieved by those instruments, in the area affected by the TTR proposal; and
- (b) whether TTR’s proposal would produce effects within the CMA that are inconsistent with the outcomes sought to be achieved by those regimes.

21. At [182], the Supreme Court agreed with the Court of Appeal that the DMC had to consider:

... whether TTR’s proposal would be inconsistent with any environmental bottom lines established by the NZCPS. If a proposed activity within the EEZ would have effects within the CMA that are inconsistent with environmental bottom lines under the marine management regime governing the CMA, that would be a highly relevant factor for the DMC to take into account. The DMC would need to squarely address the inconsistency between the proposal before it and the objectives of the NZCPS. If the DMC was minded to grant a consent notwithstanding such an inconsistency, it would need to clearly articulate its reasons for doing so.

22. In particular, the DMC had to (at [186]):

... directly confront the effect of the environmental bottom lines in the NZCPS in relation to areas where TTR’s mining activities would be felt and explain, albeit briefly, why it considered that factor was outweighed by other s 59 factors or sufficiently accommodated in other ways.

23. Significantly, it erred in that it did not (at [187]):

... identify relevant environmental bottom lines under the NZCPS and did not consider whether the effects of the TTR proposal would be inconsistent with those bottom lines.

The current application

24. While the weight to be given to the NZCPS (and other matters) must be applied under the framework of the FTAA, the assessment of the application

against the NZCPS must be undertaken on its terms, and then factored faithfully into the decision-making process under the FTAA. The extent of assessment against the NZCPS cannot be downplayed at any earlier stage.

25. It is important in this context to note that avoiding adverse effects on natural character or outstanding natural features (Policies 13 and 15 NZCPS, as another marine management regime under s 59(2)(h) EEZ Act) remain environmental bottom lines under the NZCPS, and need careful consideration in the decision-making process under the FTAA. They signal important environmental effects that would ordinarily be avoided, and must weigh significantly into determining whether “the adverse impacts are sufficiently significant to be out of proportion to the project’s regional or national benefits”.
26. There is also a question to be asked as to whether there are RMA consents that should (or must) have been sought as part of the proposal, given that there is to be deposition of sediment within the coastal marine area (CMA) as a consequence of the activities occurring outside the CMA within the EEZ. This is a question that has never been determined in any of the previous proceedings.
27. Putting that aside at this point, key features of the RMA and NZCPS marine management regime – ie its “nature and effect” – include:
 - a. Under the RMA itself:
 - i. The sections requiring resource consents to be declined in circumstances where: there is “any conspicuous charge in colour or visual clarity”;² and if there is “any significant adverse effects on aquatic life”³ in the absence of reasonable mixing. There appears to be no consideration of a zone of reasonable mixing in the current application.
 - ii. The inherent protection and bottom lines provided in the RMA’s s 5 sustainable management purpose.⁴

² RMA s107(1)(d).

³ RMA s107(1)(g).

⁴ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors* [2014] 1 NZLR 593 (SC), at [24(d)].

- b. Under the NZCPS, the strong policy directions to avoid (ie to “not allow”)⁵ certain effects, including:
- i. **Policy 11:** Biodiversity: avoid significant adverse effects on indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification.
 - ii. **Policy 22:** Sedimentation - Require that subdivision, use, or development will not result in a significant increase in sedimentation in the coastal marine area, or other coastal water.
 - iii. **Policy 23:** Discharge of contaminants - avoid significant adverse effects on ecosystems and habitats after reasonable mixing.
28. In respect of factual findings as to effects, the previous DMC had made some very clear findings of fact as to there being “significant effects” in the CMA that these policies required the avoidance of (emphasis added):

a. DMC Decision at [939]:

There will be **severe effects** on seabed life within 2 – 3 km of the project area and moderate effects up to 15 km from the mining activity. Most of these effects will occur within the CMA.

b. DMC Decision at [350]:

We accept that the modelling indicates that there will be **significant adverse effects** within ESA to the east-southeast of the mining site extending to at least Graham Bank. We accept the conclusions of Professor Cahoon that there will be **significant effects on macroalgae** on at least part of Graham Bank and minor effects on macroalgae at The Traps. We also accept his opinion that there will be **significant effects on MPB** within 1 to 2 km of the mining site. Overall, we find that the effect on the primary production of the Patea Shoals is likely to be moderate, but will be **significant at ESA such as The Crack and The “Project Reef”**.

⁵ Ibid, at [24(b)], [62], [93] and [96]. Such policies create “something in the nature of a bottom line ... consistent with ... s5(2) ... which contemplates protection, as well as use and development”, at [132]. While the Court of Appeal in *RJ Davidson Family Trust v Marlborough District Council* [2018] 3 NZLR 283 clarified in a consenting context that the requirement for consents was to have regard to the NZCPS and not give effect to it, it cautioned that “resort to pt 2 for the purpose of subverting a clearly relevant restriction in the NZCPS adverse to the applicant would be contrary to King Salmon and expose the consent authority to being overturned on appeal”, at [71].

c. DMC Decision at [970]:

There will be **significant adverse effects on environmentally sensitive areas** to the east-southeast of the mining site. We agree that there will be **significant effects on macroalgae on at least part of Graham Bank** and minor effects on macroalgae at The Traps. **There will also be significant effects on microphytobenthos** within 1 to 2 km of the mining site. Overall, we find that the effect on the primary production of the Patea Shoals is likely to be moderate, but **will be significant at environmentally sensitive areas such as The Crack and The “Project Reef”**.

29. TTRL does not seem to have addressed these findings in its FTAA application, at least not squarely. It should be required to do so directly and transparently and explain if the factual findings of the DMC are now considered out of date, how and why they should be considered so. The sediment plume modelling for example, appears to be that re-run by NIWA in 2015:⁶

As part of the reconsideration of TTR's 2016 application, which is described in section 1 of this IA, NIWA reconsidered in 2023 whether the sediment dispersion model should be further updated. It was concluded that the only available updates (being updated model code and atmospheric forcing) would not substantially alter the results presented in the previous assessments, as those results are driven by large scale oceanic currents and tides which updates would not substantially change.

30. If the modelling has not changed, then it is hard to see how the findings of effects should now change.
31. It is for TTRL to dispel (if it can) the findings of the DMC, rather than obfuscate and/ or skirt round the issues. It should not fall to the people invited to comment to have to unpick TTRL's approach to its assessment for this FTAA application.
32. TTRL has recognised in its application (p320) that the findings of the Supreme Court “provide relevant guidance about the level of scrutiny that s 59(2)(h) requires regarding “other marine management regimes”. In addition, it recognised that (p320):

The Supreme Court also reiterated that the outcomes sought by policy 13(1)(a) of the NZCPS are expressed as environmental bottom lines, and held that the EPA would have identified this if it had correctly applied s 59(2)(h). The bottom-line nature of the policy would also have precluded the EPA from finding that inconsistency with the policy could be outweighed by other s 59 consideration

33. Yet TTRL now says that these elements of the Supreme Court's decision are “not relevant” to the present application (p320). This is quite extraordinary. A “bottom line” in the RMA or NZCPS had to be seriously

⁶ Impact Assessment, p134-135.

considered in the previous process, and the same is the case in respect of a FTAA application. A breach of a “bottom line” may well be a considerable (if not a determining) factor weighing towards a finding that a proposal has “adverse impacts sufficiently significant to be out of proportion to the project’s regional or national benefit”.

34. It is also still appropriate to recognise, even under the FTAA regime, that:
- a. There was a deliberate alignment of the sustainable management purpose of the EEZ Act with the sustainable management purpose of the RMA.⁷
 - b. Accordingly, the EEZ and RLA enactments are entwined in terms of their fundamental purpose. They are required to be considered as part of the FTAA, and are significant – if not critical - pointers to identifying effects that might be “sufficiently significant to be out of proportion to the project’s regional or national benefit”.
 - c. From an environmental and integrated management of effects perspective, the EEZ-CMA boundary is entirely arbitrary, and, if an activity fell to be considered under both the EEZ Act and RMA regimes, different outcomes should not logically result under the different regimes.
 - d. Nor should there be a fundamentally different outcome under the FTAA – although it is acknowledged that the test under the FTAA is: “adverse impacts sufficiently significant to be out of proportion to the project’s regional or national benefit”.
 - e. However, that is not out of kilter with established decision making under the RMA (or EEZ Act). Neither are “no effects” legislation, and – putting aside environmental bottom lines (for now) – would ordinarily require consideration of whether the adverse effects outweigh the benefits.
 - f. To the extent that environmental bottom lines exist in either the EEZ Act or the RMA, they are significant indicators for consideration under the FTAA as to whether adverse impacts are out of proportion to regional or national benefits.

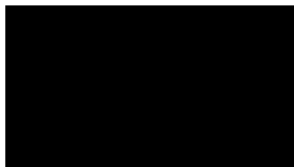
⁷ Hansard Debates (16 August 2012) 682 NZPD 4492; and Hansard Debates (28 August 2012) 683 NZPD 4780.

- g. This requires a very robust and clear understanding of purported benefits, as well as adverse impacts.

Conclusions

35. Environmental bottom lines set by the NZCPS (and RMA) must be acknowledged and taken into account, even in decision making under the FTAA. If those bottom lines are not met, then that is a significant factor that would weigh towards a finding that the “adverse impacts are sufficiently significant to be out of proportion to the project’s regional or national benefit”.

6 October 2025



Counsel for Ngāti Tū and Te Patutokotoko



Counsel for Ngāti Manuhiakai, Kanihi Umutahi, and Okahu-Inuāwai