

**Under the**

Fast-track Approvals Act 2024

**In the matter**

of a substantive application by Trans-Tasman Resources for the  
Taranaki VTM Project.

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**LEGAL SUBMISSIONS FOR SOUTH TARANAKI DISTRICT COUNCIL**

**14 November 2025**

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**TABLE OF CONTENTS**

**1. INTRODUCTION..... 2**

**2. EXECUTIVE SUMMARY..... 2**

**3. BENEFITS AND ECONOMIC ASSESSMENT ..... 6**

**4. EXISTING INTERESTS AND INFRASTRUCTURE ..... 13**

**5. DECISION TESTS, INCONSISTENCY AND DISCRETION ..... 14**

## MAY IT PLEASE THE PANEL

### 1. INTRODUCTION

**1.1** These legal submissions are filed on behalf of South Taranaki District Council (**STDC**) in response to questions set out in the Panel’s 11 November 2025 notice of hearing about the substantive application by Trans-Tasman Resources (**Applicant**) for the Taranaki VTM Project (**Application**).

**1.2** These legal submissions respond to questions 4, 5, 6, 15 and 25 from the Panel issued in its minute dated 11 November 2025. Those questions relate to the benefits and economic assessment, the relevance of offshore wind energy generation, and the “out of proportion” issue. Given the time available STDC has prioritised the questions of most relevance to its role in this process.

**1.3** STDC’s submissions align with those of the Taranaki Regional Council (**TRC**) on these issues,<sup>1</sup> noting that in its written comment STDC endorses the overall comments made by TRC and the technical reviews that it provided.

### 2. EXECUTIVE SUMMARY

**2.1** The table below summarises STDC’s answers to the questions it addresses. STDC’s detailed submissions in relation to each question follow this summary.

#	Question	Answer
<b>Benefits and economic assessment</b>		
4	Is the project’s feasibility a relevant consideration?	Feasibility is not expressly referred to in the relevant parts of the FTAA, but STDC submits that the likelihood of benefits and impacts occurring (and any practical barriers to that) must be inherently relevant to assessing an application. For example, the feasibility of achieving potential benefits or mitigation of impacts may be relevant to whether adverse

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1 Simpson Grierson also acts for the Taranaki Regional Council, with separate submissions filed on its behalf.

#	Question	Answer
		impacts are out of proportion to those benefits.
5	<p>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:</p> <p>(a) Whether a gross benefit approach is required?</p> <p>(b) whether disbenefits or other costs are relevant; and</p> <p>(c) whether a net benefit or cost-benefit approach is required?</p>	<p>The FTAA does not mandate a single, fixed approach for assessing benefits, and the approach used will depend on the benefits in question and how disbenefits are accounted for in the assessment. A consistent approach should be applied across all parts of the FTAA that refer to “benefits”<sup>2</sup> and it would be preferable if all experts adopted the same methodology to enable comparison.</p> <p>Any costs that are not accounted for in the assessment of benefits (including distributional effects due to different people experiencing the benefits and costs, or other effects that are not accounted for due to methodology choice or an inability to quantify them in dollar terms) would need to be considered in the assessment of adverse impacts under section 85(3) of the FTAA.</p> <p>Double-counting should be avoided. For example, if benefits are assessed on a net basis, the assessment of adverse impacts under section 85(3) should exclude any disbenefits that were already counted in the net benefit assessment.</p> <p>In light of the above:</p> <p>(a) For benefits and disbenefits that are quantifiable, a net benefit approach is consistent with economic best practice,</p>

<sup>2</sup> FTAA, sections [3](#), [22](#), [81](#), [85](#).

#	Question	Answer
		<p>although it is not expressly mandated by the FTAA. While less preferable, a gross benefit approach could be accommodated in the section 85(3) assessment as those gross benefits are then to be weighed against adverse impacts including costs.</p> <p>(b) Disbenefits or other costs are relevant, either as part of a net benefit assessment or as adverse impacts.</p> <p>(c) A net benefit approach, identifying relevant benefits and costs, is consistent with economic best practice.</p>
6	<p>(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) Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (<b>EEZ Act</b>)?</p> <p>(b) If not are two separate economic assessments needed?</p>	<p>The same approach generally applies under section 59(2)(f) of the EEZ Act as under the FTAA. EEZ Act s59(2)(f) refers to “<i>economic benefit to New Zealand</i>” with apparent parallel to the FTAA section 3 purpose “<i>to facilitate ... projects...with significant regional or national benefits</i>”.</p> <p>Guidance on applying section 59(2)(f) of the EEZ Act is set out in <i>Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board</i> [2021] NZSC 127 (<b>SC Decision</b>). The analysis of “economic benefit to New Zealand” should be a net assessment with costs weighed against benefits. Environmental, social and cultural impacts or disbenefits may be assessed on a qualitative or quantitative basis either as part of a net economic benefits assessment or under other criteria within section 59 of the EEZ Act.</p>

#	Question	Answer
<b>Existing interests and infrastructure</b>		
15	<p>(a) To what extent, if any, is the potential for offshore wind energy generation in or near the project area relevant, whether as an “existing interest” under s 59(2)(a) or (b) or under s 59(2)(g) EEZ Act, or otherwise?</p> <p>(b) If the potential for offshore wind energy generation is relevant, how should it be taken into account</p>	<p>To the extent that offshore wind energy-related activities are lawfully established existing activities, they would fit within the definition in the EEZ Act of “existing interests”. In any event, the potential offshore wind energy generation in or near the project area can be taken into account via section 59(2)(g) of the EEZ Act.</p>
<b>Decision tests, inconsistency and discretion</b>		
25	<p>What does “out of proportion” in s 85(3) mean and how should it be applied?</p>	<p>The FTAA does not expressly state what “out of proportion” means. STDC submits that “out of proportion” means that the identified adverse impacts (after mitigation by any consent conditions or modifications) are larger, worse, or more important than the benefits. The assessment is qualitative, and involves an element of judgement as to whether the adverse effects are of such significance, as compared to the benefits, that the activity should not proceed.</p> <p>Rather than simply considering whether the benefits outweigh the adverse impacts (which may not be possible in any truly measurable way), it may be preferable to assess whether the adverse impacts are large enough or of a sufficiently harmful type that they should properly be avoided, despite the existence of even significant benefits.</p>

### 3. BENEFITS AND ECONOMIC ASSESSMENT

#### Q4. Is the project's feasibility a relevant consideration?

##### *STDC's answer*

- 3.1** Feasibility is not expressly referred to in the relevant parts of the FTAA but STDC submits that the likelihood of benefits and impacts occurring (and any practical barriers to that) must be inherently relevant to assessing an application. For example, the feasibility of achieving potential benefits or mitigation of impacts may be relevant to whether adverse impacts are out of proportion to those benefits.

##### *Reasons*

- 3.2** The Environment Court recently declined a consent sought under the RMA stating that the biggest factor in the conclusion to decline the consent was due to the substantial gaps on matters for which the applicant had the burden of proof.<sup>3</sup> The Environment Court found that *"there must be evidence that the parameters and objectives are attainable"*<sup>4</sup> and that the applicant *"should have concentrated on providing evidence to support its proffered conditions of consent and showing that they are achievable"*.<sup>5</sup>
- 3.3** The Environment Court also observed that, there was *"evidence that [...] conditions would not be met for months or years"*, there was *"so little evidence [...] that we cannot be certain that there will not be significant adverse effects"*,<sup>6</sup> and that for many reasons, *"imposing increasingly complex conditions of consent will not produce a viable consent"*.<sup>7</sup>
- 3.4** These findings support the existence of a discretion to assess whether measures proposed by an applicant are feasible in the sense of being able to be achieved. STDC submits that the Panel is entitled to consider the degree of confidence it can have in the evidence about anticipated impacts and the success of offered

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3 [\*Remediation \(NZ\) Limited v Taranaki Regional Council\* \[2024\] NZEnvC 213 \(\*Remediation \(NZ\) Limited v Taranaki Regional Council\*\)](#), at [520] and [654].

4 [\*Remediation \(NZ\) Limited v Taranaki Regional Council\*](#), at [522].

5 [\*Remediation \(NZ\) Limited v Taranaki Regional Council\*](#), at [655].

6 [\*Remediation \(NZ\) Limited v Taranaki Regional Council\*](#), at [207].

7 [\*Remediation \(NZ\) Limited v Taranaki Regional Council\*](#), at [488].

conditions to manage those impacts. Those matters are directly relevant to assessing the impacts themselves because, under section 85(3)(b), conditions to address the impacts must be considered when forming a view about the significance of adverse impacts.

**3.5** The feasibility of the project and/or its components could be relevant to an assessment of its benefits and the application of the proportionality test (under section 85(3) of the FTAA). For example:

- (a) Uncertainty about the feasibility of measures needed to mitigate adverse effects would be relevant to consideration of the extent of the project's adverse impacts;
- (b) Uncertainty about the feasibility of measures that are intended to lead to benefits would be relevant to consideration of the extent of the project's benefits;
- (c) If complying with conditions necessary to mitigate adverse impacts would render the project unfeasible, this would be relevant to consideration of whether the project's regional or national benefits will be realised.

**3.6** In addition:

- (a) Written comments from submitters have identified uncertainty about the feasibility of the project, and the Panel must consider those comments under section 81(2)(a) of the FTAA.
- (b) The project's feasibility may be an "other matter" to be taken into account under section 59(2)(m) of the EEZ Act.

**Q5. 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?**

*STDC's answer*

- 3.7** The FTAA does not mandate a single, fixed approach for assessing benefits, and the approach used will depend on the benefits in question and how disbenefits are accounted for in the assessment. A consistent approach should be applied across all parts of the FTAA that refer to “benefits”<sup>8</sup> and it would be preferable if all experts adopted the same methodology or methodologies to enable comparison.
- 3.8** Any costs that are not accounted for in the assessment of benefits (including distributional effects due to different people experiencing the benefits and costs, or other effects that are not accounted for due to methodology choice or an inability to quantify them in dollar terms) would need to be considered in the assessment of adverse impacts under section 85(3).
- 3.9** Double-counting should be avoided. For example, if benefits are assessed on a net basis, the assessment of adverse impacts under section 85(3) should exclude any disbenefits that were already counted in the net benefit assessment.
- 3.10** In light of the above:
- (a) For benefits and disbenefits that are quantifiable, a net benefit approach is consistent with economic best practice, although it is not expressly mandated by the FTAA. While less preferable, a gross benefit approach could also be accommodated in the section 85(3) assessment (as those gross benefits are then to be weighed against adverse impacts including costs).
  - (b) Disbenefits or other costs are relevant, either as part of a net benefit assessment or as adverse impacts.
  - (c) A net benefit approach, identifying relevant benefits and costs, is consistent with economic best practice.

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<sup>8</sup> FTAA, sections [3](#), [22](#), [81](#), [85](#).

## Reasons

**3.11** Three key FTAA sections direct the Panel to consider the Project's benefits in a substantive application:

- (a) The Panel must take into account (and give the greatest weight to) the purpose of the FTAA, which is *"to facilitate the delivery of infrastructure and development projects with significant regional or national benefits"*<sup>9</sup>;
- (b) When taking into account the purpose of the FTAA, the Panel must consider *"the extent of the project's regional or national benefits"*<sup>10</sup>;
- (c) When deciding whether to decline the application, the assessment is whether adverse impacts are *"sufficiently significant to be out of proportion to the project's regional or national benefits"* even after taking into account a number of factors.<sup>11</sup>

**3.12** There is no FTAA definition of "regional or national benefits". "Benefits" may be economic, environmental, social or cultural.<sup>12</sup> Assessing the benefits was described by the *Maitahi Village* Expert Panel as "essentially a forensic exercise" that Panels must undertake.<sup>13</sup>

**3.13** All of the Panel decisions to approve projects under the FTAA to date have referred to the criteria in section 22(2)(a) of the FTAA when assessing the benefits of a project.<sup>14</sup> The criteria in section 22(2)(a) of the FTAA for "accepting a referral project" are not directly applicable to an assessment of "benefits" for a substantive application under the FTAA. Instead, the various Panels' consideration of project benefits to date have referred to the section 22 criteria as providing a "flavour of, or guide to" what might be required to demonstrate significant regional or national

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<sup>9</sup> FTAA, [s 3](#).

<sup>10</sup> FTAA, [s 81\(4\)](#).

<sup>11</sup> FTAA, [s 85\(3\)](#).

<sup>12</sup> [ME Consulting Economic Analysis](#), Dr Douglas Fairgray, at 2.2.1: "[ME Consulting Economic Analysis](#), Dr Douglas Fairgray."

<sup>13</sup> [Maitahi Village](#), at [84].

<sup>14</sup> [Milldale](#), at [186]. [Tekapo Power Scheme](#), at [338]-[340]. [Maitahi Village](#), at [513]-[515]; [Bledisloe Wharf](#), [285]. [Drury Metropolitan Centre](#), [263], [271].

benefits.<sup>15</sup> One of the criteria in section 22 is the delivery of significant *economic* benefits,<sup>16</sup> while other criteria include addressing significant environmental issues (ix), contribution to a well-functioning urban environment (iii), increase housing supply (iii), and support of primary industries (v).

**3.14** The FTAA does not explicitly state whether “benefits” must be assessed and considered<sup>17</sup> on a gross or net basis. To date, Panels have either been silent on whether their findings on “benefits” are in gross or net terms, or explicitly referred to “net” benefits.<sup>18</sup>

**3.15** The draft decision to decline the *Delmore* application discussed whether the analysis of benefits should be net or gross.<sup>19</sup> The applicant subsequently withdrew the application, and the draft decision is not binding on this Panel, but it is still relevant to consider as an example of a Panel grappling with exactly how to assess the benefits of a Project. In *Delmore* the Panel agreed with three of the four economists that the economic benefits of the Project had been overstated, as a cost benefit analysis (i.e. determining net benefit) had not been used by the applicant’s economist.<sup>20</sup>

**3.16** Dr Fairgray, who provided economic analysis on behalf of TRC, has taken the approach that in order to assess the economic benefits of the Project a ‘net’ approach should be adopted consistent with sound technical practice.<sup>21</sup>

**3.17** In our submission the following approach would be appropriate:

- (a) Identify both benefits and disbenefits (costs) in the “benefits assessment” in order to assess net benefits. Quantify these where that is possible. For example, the cost to the fishing economy as a result of the Project could

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<sup>15</sup> *Tekapo Power Scheme*, [Decision TPS](#) at [339].

<sup>16</sup> FTAA, section [22\(2\)\(a\)\(iv\)](#).

<sup>17</sup> FTAA, sections [3](#), [22](#), [81](#)(4), and [85](#)(3).

<sup>18</sup> [Bledisloe Wharf](#), at [294]: “deliver a net benefit to society” and also refers to the “value-added contribution”.

<sup>19</sup> [Delmore](#) (draft), at [475]-[503].

<sup>20</sup> [Delmore](#) (draft), at [500]: The independent peer review (Dr Denne), and Auckland Council’s economist (Mr Stewart) and legal submissions considered that a cost benefit analysis or “net” approach was the proper approach to assessing economic benefits under the FTAA.

<sup>21</sup> [ME Consulting Economic Analysis](#), Dr Douglas Fairgray.

be a disbenefit quantified and offset against the benefits to determine the net economic benefit. Where these are not quantifiable, identify their nature and extent within the economy.

- (b) Consider the scale and nature of all material benefits and disbenefits when applying the proportionality test under section 85(3) and in the consideration of the application under section 81 of the FTAA.

**3.18** This approach does not result in ‘double counting’ of any disbenefit and allows for both quantitative analysis and qualitative analysis (in accordance with both technical economic best practice and the weighted tests of the FTAA).

**3.19** Section 85 of the FTAA requires an overall assessment of benefits and adverse impacts. In broad terms that must be a “net” assessment in the sense that it must consider whether adverse impacts are sufficiently significant to be out of proportion to the project’s regional or national benefits. Not all benefits and adverse impacts will be quantifiable in a way that will allow this comparison to be carried out numerically, nor is that required.

**3.20** Further, all of the benefits and disbenefits are relevant to determining whether the project delivers a “significant regional or national benefit”, because the FTAA does not limit the purpose of the FTAA to consider only specific types of benefits and disbenefits, or only “gross economic benefits.”

**Q6. (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?**

*STDC’s answer*

**3.21** The same approach generally applies under section 59(2)(f) of the EEZ Act as under the FTAA. EEZ s59(2)(f) refers to “*economic benefit to New Zealand*” with apparent parallel to the FTAA section 3 purpose “*to facilitate ... projects...with significant regional or national benefits*”.

- 3.22** Guidance on applying section 59(2)(f) of the EEZ Act is set out in *Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board* [2021] NZSC 127 (**SC Decision**). The analysis of “economic benefit to New Zealand” should be a net assessment with costs weighed against benefits. Environmental, social and cultural impacts or disbenefits may be assessed on a qualitative or quantitative basis either as part of a net economic benefits assessment or under other criteria within section 59 of the EEZ Act.

#### *Reasons*

- 3.23** The SC Decision addresses the application of section 59(2)(f) of the EEZ Act when considering economic benefit.<sup>22</sup> Material economic costs must be taken into account in assessing the economic benefits. In other words, the correct approach is to assess net economic benefits.<sup>23</sup>
- 3.24** The SC Decision also confirmed that it is not an error of law to exclude environmental, social and cultural costs from a cost-benefit analysis under the EEZ Act and instead consider those matters qualitatively.<sup>24</sup>
- 3.25** The key difference between section 59(2)(f) EEZ Act and the FTAA assessment of “benefits” is that the “benefits” analysis in section 59(2)(f) of the EEZ Act is expressly “economic”. Whereas under the FTAA, the regional and national benefits are not expressly stated to be economic benefits. The lens for assessment of the Project under the FTAA also includes a qualitative ‘proportionality test’ that weighs the benefits against the adverse impacts.<sup>25</sup>

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22 [SC Decision](#), [188]-[197] per William Young and Ellen France JJ (with the remainder concurring at [237] per Glazebrook J, [299] per William J and [332] per Winkelmann CJ).

23 [SC Decision](#), [189] per William Young and Ellen France JJ.

24 [SC Decision](#), [195] per William Young and Ellen France JJ; citing CA Decision at [283].

25 [ME Consulting Economic Analysis](#), Dr Douglas Fairgray, page 7: “s85 is the replacement structure for cost and benefit analysis. The underlying arithmetic in cost and benefit analysis is whether costs outweigh benefits or vice versa, by direct comparison. The criterion in s85 is whether adverse effects and benefits are seen to “be out of proportion”. That structure provides wide scope for interpretation. This means that adverse effects may outweigh regional or national benefits without necessarily providing a rationale to decline an application. While adverse effects may be relatively minor compared to regional or national benefits, decision-makers may still consider whether those effects are acceptable in the context of the affected environment and the purpose of the EEZ Act, including the requirement to avoid, remedy, or mitigate adverse effects where practicable.”

- 3.26** However, the reference in section 59 of the EEZ Act to “*the economic benefits to New Zealand*” should not be read as excluding non-business benefits or costs, such as environmental, social and cultural benefits and costs. Dr Fairgray’s economic analysis notes that “*an economic assessment to examine relative benefits and costs of a Proposal, may encompass environmental, social and cultural aspects, and is not limited to matters which may be monetised, and shown in dollar terms*”.<sup>26</sup>

#### **4. EXISTING INTERESTS AND INFRASTRUCTURE**

**Q15. (a)** To what extent, if any, is the potential for offshore wind energy generation in or near the project area relevant, whether as an “existing interest” under section 59(2)(a) or (b) or under section 59(2)(g) EEZ Act, or otherwise? **(b)** If the potential for offshore wind energy generation is relevant, how should it be taken into account?

*STDC’s answer*

- 4.1** To the extent that offshore wind energy-related activities are lawfully established existing activities, they would fit within the definition in the EEZ Act of “existing interests”. In any event, the potential offshore wind energy generation in or near the project area can be taken into account via section 59(2)(g) of the EEZ Act.

*Reasons*

- 4.2** Sections 59(2)(a), (b) and (g) of the EEZ Act<sup>27</sup> provide for the Panel to take into account effects of allowing the activity on existing interests, and to take into account the efficient use and development of natural resources.
- 4.3** “Existing interest” is defined in section 4 of the EEZ Act to include an interest in:
- (a) any lawfully established existing activity; and
  - (b) any activity that may be taken under a marine or RMA consent.
- 4.4** STDC is not aware of any activities in the Project area that are consented under a marine or RMA consent. However, to the extent that any offshore wind energy-

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<sup>26</sup> [ME Consulting Economic Analysis](#), Dr Douglas Fairgray, at [2.2.1]

<sup>27</sup> [Clause 6 of Schedule 10](#) of the FTAA requires [section 59](#) of the EEZ Act to be taken into account.

related activities such as feasibility investigations are lawfully established, they would meet the first part of the definition of existing interests.

**4.5** In any event, the Panel's consideration under section 59(2)(g) can include consideration of whether the project is an efficient use and development of natural resources, or might hinder an opportunity to efficiently use and develop natural resources. While opportunity cost is not expressly listed within section 59, this could form part of the overall assessment being undertaken by the Panel, for example as a cost within a net benefit assessment or as an adverse impact.

**4.6** Additionally, while it relates to referral decisions rather than substantive decisions, section 22(6) of the FTAA provides for considerations of competing activities.

## **5. DECISION TESTS, INCONSISTENCY AND DISCRETION**

### **Q25. What does "out of proportion" in section 85(3) mean and how should it be applied?**

#### *STDC's answer*

**5.1** The FTAA does not expressly state what the phrase "out of proportion" means. STDC submits that "out of proportion" means that the identified adverse impacts (after mitigation by any consent conditions or modifications) are larger, worse, or more important than the benefits. The assessment is qualitative, and involves a judgement call as to whether the adverse effects are of such significance, as compared to the benefits, that the activity should not proceed.

**5.2** Rather than simply considering whether the benefits outweigh the adverse impacts (which may not be possible in any truly measurable way), it may be preferable to assess whether the adverse impacts are large enough or of a sufficiently harmful type that they should properly be avoided, despite the existence of even significant benefits.

#### *Reasons*

**5.3** Section 85(3) provides that an approval may be declined if adverse impacts are sufficiently significant to be "out of proportion" to the project's regional or national

benefits even after taking into account any conditions. When applying this test, the Panel will already have assessed the nature and significance of the adverse impacts under section 81(2) and the project's benefits under section 81(4) of the FTAA.

**5.4** In the absence of an FTAA definition of “out of proportion”, relevant guidance could be taken from dictionary definitions of: <sup>28</sup>

- (a) *phrases* under the definition of “proportion”: “in or out of proportion”: according (or not according) to a particular relationship in size, amount, or degree;
- (b) “disproportionate”: too large or too small when compared with something else.

**5.5** In this context, a plain meaning<sup>29</sup> of “out of proportion” could be that the identified adverse impacts (after mitigation by any consent conditions or modifications) are larger, worse, or more important than the identified benefits. The assessment is qualitative, and involves a ‘judgement call’ as to whether the adverse effects are significantly serious as compared to the benefits, so that the balance is wrong (i.e. “out of proportion”) and the activity should not proceed.

**5.6** Parliament has stopped short of providing greater precision about where the specific tipping point will lie, this will be for the Panel to determine. A project's benefits and adverse impacts are unlikely to be quantifiable on the same scale and therefore unable to be directly weighed to determine whether there is a net benefit or a net adverse impact. Accordingly, the relevant question is unlikely to be simply whether the benefits outweigh the adverse impacts. Rather, it may be preferable to carry out the evaluation by considering whether the adverse impacts are large enough or of a sufficiently harmful type that they should properly be avoided, despite the existence of even significant benefits.

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<sup>28</sup> *Concise Oxford English Dictionary* (11th ed, Oxford University Press, New York, 2008).

<sup>29</sup> Interpretation principles applied as per Legislation Act 2019, [section 10](#).



**5.7** The draft *Delmore* decision found that *adverse impacts (effects)*<sup>30</sup> were sufficiently out of proportion to the application’s benefits and that those *adverse impacts (effects)* were not capable of being addressed by way of conditions.<sup>31</sup> The Panel in *Delmore* did not explicitly say how it applied the term “out of proportion” in reaching that view.

**5.8** Even if an adverse impact is found to be out of proportion, section 85(3) only provides that the Panel *may* decline an approval. As observed in the *Maitahi Village* decision, even if adverse impacts are significantly out of proportion to the benefits, the Panel still has discretion to allow the approval to proceed. The discretion will necessarily be informed by the purpose of the FTAA.<sup>32</sup>

**DATED** this 14<sup>th</sup> day of November 2025



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Council

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30 Effects are discussed further in the answer to question 26 below.

31 [Delmore](#) (draft), at paragraphs 136 and 588.

32 [Maitahi Village](#), at paragraphs 94 and 95.