

Your Comment on the Taranaki VTM Project

Please include all the contact details listed below with your comments.

1. Contact Details	
Please ensure that you have authority to comment on the application on behalf of those named on this form.	
Organisation name (if relevant)	Te Korowai o Ngāruahine Trust
First name	[REDACTED]
Last name	[REDACTED]
Postal address	[REDACTED]
Phone number	[REDACTED]
Email (<i>a valid email address enables us to communicate efficiently with you</i>)	[REDACTED]

2. We will email you draft conditions of consent for your comment			
☒	I can receive emails and my email address is correct	☐	I cannot receive emails and my postal address is correct

3. Please select the effects (positive or negative) that your comments address:			
☒	Economic Effects	☒	Sedimentation and Optical Water Quality Effects
☒	Effects on Coastal Processes	☒	Benthic Ecology and Primary Productivity Effects
☒	Fished Species	☒	Seabirds
☒	Marine Mammals	☒	Noise Effects
☒	Human Health Effects of the Marine Discharge Activities	☒	Visual, Seascape and Natural Character Effects
☐	Air Quality Effects	☒	Effects on Existing Interests
☐	Other Considerations (please specify):		

Please provide your comments below. You may include additional pages if needed. If you are emailing this form and attaching any supporting documents, please list the names of those files below to help us ensure all materials are received.

Supporting documentation is included with this email, in a PDF file titled:
20251006_Consent_Application_Response_TKoNT.pdf

Thank you for your comments



Karakia

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

Teretere te ika
He ika waka mou kaha hai
Tena te ika ka moe
Ko te ika o te rua
Ko te ika o te one
Te ika o te hohonu
Tena te ika ka taki ki mua
Ka taki ki roto
Ka taki ki te turanga
Ka taki ki te kainga
Ka taki ki te au tapu nui o Tane
Ki te au tapu nui o Tangaroa

Fast Track Panel for the Taranaki VTM Project [FTAA-2504-1048]

Written Comments from Te Korowai o Ngāruahine Trust

Dated 6 October 2025

1. Ko te Tarati o Te Korowai o Ngāruahine, (arā, ko Te Korowai) te Rōpū Mana Whakahaere mō Ngāruahine iwi nō muri Whakataunga Take Tiriti. Kei a Te Korowai te haepapa mō te whakahaere me te whakatipu i ngā rawa whakataunga take Tiriti a Ngāruahine – hei painga mō ngā uri o Ngāruahine. Kei a Te Korowai te haepapa ki te whakapātari i nga kuapapa here ka tukituki pea ki ngā hiahia o Ngāruahine.
2. Mō ngā Whakataunga Take Tiriti, ka hora te rohe o Ngāruahine, mai i Manga Taungatara kei te pito whakateraki rawa, ki Manga Waihi kei te pito whakatetonga rawa. Tae ana te rohe hoki ki Te Papa-Kura-o-Taranaki otirā ko te tupuna, Koro Taranaki (Taranaki Maunga)
3. Kāore a Te Korowai i te honohono ki ngā kaupapa tōrangapū, ā, ka mahi ngātahi me te kāwanatanga ahakoa ko wai ki te whakaahu whakamua i ngā whāinga me ngā hiahia o Ngāruahine. Waihoki, kei a Te Korowai te haepapa ki te whakapātari i nga kuapapa here ka tukituki pea ki ngā hiahia o Ngāruahine.

Karakia – Te ika te ika

4. We make this written submission in accordance with our tikanga and thereby opened our kōrero with karakia. This karakia, handed down by our tūpuna, affirms our enduring relationship with the moana and our role as kaitiaki.¹ It acknowledges the immense power of Tangaroa and Hinemoana, and the karakia's original purpose—to protect our people traversing the seas— remains deeply relevant today.
5. Our response to the Taranaki VTM Project (TTR) represents a perilous journey through environmental, legal, and cultural challenges. Through this karakia, we assert our duty to uphold the mauri of the ocean, resist destructive activities, and act in accordance with our ancestral responsibilities as kaitiaki.

Whakataukī – Kei te korokoro o te parata tatou.

6. In accordance with our tikanga, our first response to this application is to return to the authority of our tūpuna and the mātauranga they have left us through kōrero tuku iho.

¹ Sole, T. (2005) *Ngāti Ruanui, A History*, Huia Publications, page 55: "This karakia was used by tohunga on the return of a successful fishing party. The Ngāruahine tāhuna (fishing grounds) extended far out west from the mouth of the Waingongoro, and in the appropriate seasons the fleet would remain at sea for days at a time. Nearer the shore were the waters for kahawai and tāmure but the fishing ground for hapuku was some kilometers out to sea. The fleet found the spot by paddling until an old rimu far up on Tirotiromoana seemed to be level with the sea, thus the name of that spot."



7. Kōrero tuku iho is not metaphor or myth—it is inherited instruction, refined across generations and grounded in lived experience. The whakataukī we uphold speak directly to survival, decision-making, and the consequences of inaction. This whakatauki “Kei te korokoro o te parata tatou” recalls the danger faced by our tūpuna aboard Aotea waka as they confronted a deadly ocean whirlpool—an event that threatened not only their lives but the futures of all their descendants, including us, of Ngāruahine.
8. Their response was deliberate, unified, and unwavering. So too is ours. We draw strength from their example as we oppose this application and the irreversible damage it threatens to inflict on our moana, our tikanga, and our kaitiakitanga.

Summary of Requests to the Fast Track Panel

9. We request the panel to issue an **immediate stay of proceedings** under section 67 of the Fast-track Approvals Act 2024 (FTAA) so that TTR, the panel, and the Environment Protection Agency (EPA) can seek to remedy the following procedural errors which have sufficiently prejudiced proceedings to warrant immediate remedy:
 - 7.1 Failure to conduct mandatory pre-lodgement consultation with hapū and iwi under section 11 and 29 FTAA.
 - 7.2 Failure to provide information in an appropriate format as required under section 44 FTAA for consultation with hapū and iwi.
 - 7.3 Breach of natural justice requirements of due process through the failure to involve relevant parties, including ngā hapū o Ngāruahine, in matters such as the preliminary proceedings with the FTAA Convenor and the panel’s hui with TTR, despite our numerous timely notifications of concern and requests to the Convenor, the panel, and the EPA.
 - 7.4 Breach of natural justice requirements of due process due to the delays in providing submissions to the participants and the lack of an information management system to avoid such delays, as evidenced by the delay in providing us with TTR’s written application (which the EPA later confirmed should have been posted online on the date of receipt)² and the delay in providing us with TTR’s written submission

² See <https://eds.org.nz/resources/documents/media-releases/2025/environmental-defence-society-strikes-procedural-fast-track-win/>

which was due on 4th August 2025 detailing the information updated in TTR's application following the Supreme Court decision.

10. We submit the following procedural requests:

8.1 That the panel holds **hearings** on the TTR application, on the grounds that:

(i) the panel can determine its own procedure under FTAA section 10 and Schedule 3 section 10 FTAA,

(ii) the complexity and novelty of the facts and the law applicable to TTR require that the panel members have the fullest opportunity to probe the issues,

(iii) under the oral traditions of our culture, our tikanga principles including kanohi-kitea, and the status of our potential evidence and witnesses as kaumatua, in-person hearings within the rohe of Aotea waka are most likely to support evidential processes to enable the panel's fact-finding obligations and analysis.

8.2 That the panel appoints **pūkenga** with the ability to report in writing and orally during hearings regarding expertise such as:

(i) the tikanga relevant to the application, including of Ngāruahine,

(ii) mana moana relevant to the applicant, including Ngāruahine,

(iii) Māori economy relevant to the application, including related to Ngāruahine.

11. We submit that the panel must decline the TTR application due to the **failure to meet the benefit test** under section 3 FTAA, section 43(1)(b)(i), and section 81 on the following grounds:

9.1 That the "benefits" test is a "net benefits" assessment which must also assess matters such as costs, risks, and adverse impacts.

9.2 That "benefits" cannot exclude tangata whenua and therefore requires an assessment of tikanga, which in turn mandates the assessment of taiao environmental impacts.

9.3 That TTR's application has significant negative taiao environmental impacts that cannot be mitigated.

9.4 That any economics assessments under the "benefits" test must include the assessment of tikanga-based Māori economy approaches to the economy.

9.5 That TTR's application has significant negative economic impacts that cannot be mitigated.

9.6 That the costs, risks and adverse impacts are significant to the extent that the costs nullify any "benefits".



9.7 There are no “significant regional or national benefits” and therefore the TTR application must be rejected.

12. We submit that the panel must decline the TTR application under section 85(1) FTAA, particularly with respect to section 85(1)(b) due to the breach of section 7 and the **failure to meet obligations under Te Tiriti/Treaty of Waitangi**.
13. We submit that the panel must decline the TTR application for the failure to meet the legal tests for the **Resource Management Act** under section 85(3) FTAA due to there being adverse impacts that are sufficiently significant to be out of proportion to TTR’s supposed regional or national benefits and any potential conditions or mitigations.
14. We submit that the panel must decline the TTR application due to the failure to meet the legal tests for the **Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012** under Schedule 10 FAA.
15. We submit that the panel must decline the TTR application due to the **inability to impose any conditions** which comply with sections 83 and 84 FTAA.
16. We have consistently opposed the fast-track process and entirely reject the Fasttrack Approvals Act 2024 as undemocratic, unconstitutional, and a grave violation of Te Tiriti o Waitangi/Treaty of Waitangi (**Te Tiriti/Treaty**). Deliberative democracy and engagement under Te Tiriti/Treaty cannot be fast-tracked. This Act is a breach of our fundamental human rights and international law including the United Nations Declaration on the Rights of Indigenous Peoples.
17. Nothing in our current submission can be interpreted as a change in our position in this regard. We are only making this current submission because we feel forced to by the Crown’s lack of due process such that we must make the most of any opportunity that the Crown affords us to be heard in their forums, even if it is entirely on their terms. We note that opposition to the fast-track is shared broadly within ao Māori and that hapū within Ngāruahine initiated litigation on similar grounds with respect to the prior iteration of this legislation, namely the COVID-19 Recovery (Fast-track Consenting) Act 2020.

Immediate stay of proceedings

18. We request that the Fast Track Panel (**panel**) immediately stay proceedings on the grounds that Taranaki VTM Project's (**TTR**) did not comply with the pre-lodgement requirements under section 11 and 29 of the Fasttrack Approvals Act 2024 (**FTAA**) which has the mandatory requirement that applicants must consult with relevant iwi authorities. We also note that these pre-lodgement engagement provisions must be read with caselaw which requires that engagement must not be intended to be a charade, must not be merely a one-way process of information sharing, and cannot be in the form of a negotiation.³
19. The lack of any such pre-lodgement engagement from TTR poses particularly significant prejudice to us since we have not participated in the past 10 years of litigation. We note that this mandatory pre-engagement was intended by Parliament to address the democratic rights otherwise breached through the speed of the fast-track process. To render such a mandatory provision null and void would therefore violate not only our rights under Te Tiriti/Treaty but strikes to the heart of constitutional rights in a democratic nation. Given the significance of this provision under FTAA, constitutional law and Te Tiriti, the only remedy must be the immediate stay of proceedings in order to re-set proceedings such that such mandated pre-lodgement engagement can be conducted.
20. Under section 10 and Schedule 3 section 10 FTAA, the panel has the power to determine its own procedure. Under section 5(1) of the Interpretation Act 1999, the panel therefore has the right to apply a plain reading and a purposive reading of FTAA to address breaches of FTAA and violations of due process. We note that previous cases have found inherent powers to ensure procedural fairness which extend to issuing a stay of proceedings.⁴ We believe that failure to do so in this matter risks breaches of natural justice, constitutional law, tikanga, and our rights under Te Tiriti/Treaty of Waitangi.
21. We have repeatedly asserted in writing to the EPA, the Convenor, and the panel, since our letter to the EPA dated 3 April 2025, that the pre-lodgement engagement has not occurred, and that ngā hapū and claimants under the Marine and Coastal Act (**MACA**) must also be approached directly by the Applicant, the EPA, MFE, the Convenor and the panel, because ngā hapū are also relevant entities who led our settlement process and who hold mana motuhake under their tikanga.⁵
22. We also assert that the pre-lodgement engagement requirements under sections 11 and 29 FTAA must be read together with the requirements for applications under section 43 FTAA. We therefore request that the panel issue a stay of proceedings on the grounds that the application does not sufficiently explain how the project is consistent with the purpose of the

³ See *Wellington International Airport Limited and others v Air New Zealand* [1993] 1 NZLR 671

⁴ See for example *Thomas J in R v Duval*, [1995] NZHC 1658; [1995] 3 NZLR 202 at 205, finding that the Court may invoke its inherent powers "whenever the justice of the case so demands."

⁵ [Fast-track Approvals Act 2024 No 56, Public Act 4 Interpretation – New Zealand Legislation](#)



FTAA i.e. it does not have sufficient detail on how the project will deliver significant regional or national benefits, and did not include an appropriate impact assessment in accordance with section 39 of the EEZ Act as required under clause 4 of schedule 10 FTAA.⁶ The first step in pre-lodgement consultation logically requires that the application provides sufficient detail, indeed, the Applicant has repeatedly failed to show the panel how there is any new information in their application since the rejection of the application by the Supreme Court.⁷

23. We believe that our exclusion from meaningful and constructive consultation is no accidental oversight, it is part of a long-standing systemic failure to uphold the principles of Te Tiriti o Waitangi/Treaty of Waitangi in the context of this kaupapa. At no point in any of TTR's past or current applications do they share their commitment to mana whenua let alone Te Tiriti/Treaty. This is a direct breach of Article II as our rights to participate in decisions regarding our taiao and taonga are ignored.
24. At a minimum, the applicants should have ensured sufficient time and information to enable this consultation. Without adequate information and time for uri participation, Te Korowai was unable to finalise a fully informed position on the proposal. Our engagement and consultation information is easily accessible online. Te Uru Taiao, our Ngāruahine Kaitiaki Management Plan is available on our website and has been lodged with the relevant local authorities. Section 6 of this plan clearly outlines 'Engagement with Ngāruahine'. Included in this section are the five Principles of Meaningful Engagement, each of which have not been considered in TTR's pre-lodgement engagement.
25. As an indication, several hapū engage in a three-monthly hui cycle. Issues raised within pan-hapū monthly hui with taiao representatives are subsequently raised within the next monthly hui with hapū committee members and trustees. Some hapū alternate between monthly hui with committee members only, then the following month with hui for all uri. Complex matters may necessitate additional wānanga with pūkenga and tikanga experts. Once the issues are canvassed at a committee-level, then the matter may be taken to the hui with all uri (which occurs on alternative months after hapū committee/trustee hui). Then the decision can be

⁶ [Fast-track Approvals Act 2024 No 56, Public Act 4 Interpretation - New Zealand Legislation](#)

⁷ See for example Minute 4 of the Expert Panel dated 19 September 2025

https://www.fasttrack.govt.nz/_data/assets/pdf_file/0019/12178/Minute-4-of-the-Taranaki-VTM-expert-panel.pdf

reported back at the next pan-hapū hui with taiao representatives to ensure transparency and collaboration under kotahitanga. As this example illustrates, sufficient time and information is absolutely necessary in order to ensure pre-lodgement consultation. For a kaupapa which has extended for over 10 years, there is no reasonable excuse for why this pre-lodgement engagement has not yet occurred.

26. We note that several relevant authorities, including hapū of Ngāruahine, submitted an urgent application to the Waitangi Tribunal seeking injunctions to pause the fast-track proceedings due to the breaches of Te Tiriti o Waitangi/Treaty of Waitangi.⁸ The Waitangi Tribunal found that “leave is reserved for the applicants to renew their application if circumstances change.”⁹ We would consider that this applies to a failure to remedy pre-lodgement consultation.

Hearing & Pūkenga

27. Should the mandatory pre-lodgement engagement requirements under sections 11, 29 and 47 FTAA be met, we request that the Panel hold a hearing and appoint pūkenga under section 56 and 57 FTAA.
28. As we have repeatedly asserted since our letter dated 30 Maehe 2025, we consider a hearing on this application is absolutely vital under tikanga, natural law, and applicable legislation. This procedural right is heightened given the significance of the kaupapa, including but not limited to the magnitude of the risks at stake under tikanga and te taiao, the lack of information at this late stage in the process, the lack of implementation of Supreme Court rulings and previous DMC decisions, not to mention the lack of appropriate consultation and respect of our tikanga.
29. For hearings to be genuine and evidentially robust under our tikanga, we would require sufficient time to enable our internal cycles of hui with hapū and uri as described above. Our high-participation model of decision-making best enables the application of our tikanga to the identification of potential witnesses and other potential evidence such as documents or kōrero tuku iho. This also ensures that our people, particularly our kaumatua as repositories and kaitiaki of mātauranga, have the necessary support to provide evidence at such hearings.
30. Given the complexities of the factual and legal matters, we also request the appointment of pūkenga under section 67(1)(b) with expertise regarding tikanga and moana of Aotea waka and Māori economy specific to us. We consider this particularly necessary for the assessment of the “benefits” test and Te Tiriti/Treaty under sections 3, 7, 10, 43, 44, and 81-85. We support the evidence of Dr Ganesh Nana and request the panel to appoint pūkenga to address additional essential evidential aspects related to the Māori economy.

⁸ See for example, Wai 3475 Claim by William Tihoi Maha and Jordan Dianne te Puawai o te Atua Waller (“Puawai Hudson”) for and on behalf of members of respective hapū of Ngāruahine.

⁹ Wai 3475 Decision on Application for Urgent Inquiry, 8 Hūrae 2025, Para. 56.



For example, we assert that the “benefits” test must include economic analysis which extends to what we call the “pātaka economy” e.g. mahinga kai practices wherein kaimoana is shared to maintain livelihoods across whānau, hapū and iwi, and assets associated with mahinga kai are collectively invested and maintained. Therefore, we assert that “benefits” includes the “informal economy” such as survival-based mahinga kai during cost of living crisis, and “externalities” such as environmental harm which risks survival-based mahinga kai.

Failure to meet legal tests regarding benefit, Te Tiriti/Treaty, RMA, EEZ

Benefit

31. Section 3 FTAA requires that TTR must show “significant regional or national benefits”. The section 4 FTAA does not define “benefits”. In the absence of definitions under section 4 FTAA, the panel must arrive at a reasonable and rational decision in accordance with Schedule 3 clause 10, the procedural principles in section 10 FAA, and the provisions for the panel’s consideration of substantive applications under Part 2, subpart 3 FAA.
32. The panel makes their decision under sections 81-85 FTAA. Panel decisions under section 81(4) require the panel to consider “regional or national benefits” i.e. the purpose test from section 3 FTAA, which the panel is required to give the “greatest weight to” under Schedule 10 clause 6(1). Decisions to decline the application under section 81(1)(b) and 81(2)(f) must be made in accordance with section 85 FTAA. Under section 85(3)(b) the panel must decline the application if there are any “adverse impacts” which are “sufficiently significant to be out of proportion to the project’s regional or national benefits” and there are no “conditions or mitigations” which “avoid, remedy, mitigate, offset, or compensate for those adverse impacts.” Indeed, other panel decisions to date note that environmental effects “do not become less than minor simply because of the purpose of the FTAA.”¹⁰
33. The FTAA defines “adverse impact” under section 85(5) as “any matter” which “weighs against granting the approval.” The plain reading of this

¹⁰ Fast-Track Approvals Act 2024, Bledisloe North Wharf and Fergusson North Berth [FTAA-2503-1028] Expert Panel, 21 August 2025 [Bledisloe North Wharf] at [121]. See also Draft Record of Decision of the Expert Consenting Panel under Section 87 of the Fast-Track Approvals Act 2024, Milldale Expert Panel, September 2025 at [60].

provision is that this definition allows for a low threshold in declining the application because it effectively refers to *any* reason under section 85(5) that has a negative impact “out of proportion” to “regional or national benefits” as per section 85(3)(b).

34. Section 85(3)(b) imposes a proportionality test against “regional or national benefits” and not “*significant* regional or national benefits.” This is a clear recognition in the Act that adverse effects are not to be held to a higher test of comparison to “significant regional or national benefits” thereby allowing for a lower threshold for assessing adverse effects. The adverse effects must only be significant enough to overcome these benefits. This is lower threshold is also clearly intended through the use of “any matter” which “weights against” the application as per section 85(5).

35. These provisions make clear that the panel is required to assess any benefits together with any adverse impacts. The panel’s decision therefore requires a net assessment, similar to a cost-benefit analysis required under other legislation related to the environment, for example:

- a. Resource Management Act (RMA) section 2(a) “benefits and costs includes benefits and costs **of any kind**, whether monetary or non-monetary” [emphasis added];
- b. Crown Minerals Act (CMA) section 1A(1) “for the benefit of New Zealand” is assessed in accordance with section 1A(2) to include the efficient allocation of rights, effective management and regulation, good industry practice, fair financial return to the Crown;
- c. Fisheries Bill 1996 “net national benefit” defined as “the sum of all costs and benefits **of any kind, both monetary and non-monetary**” [emphasis added];
- d. Fisheries Act 1996 section 57(g) benefit includes “(a) economic benefits for New Zealand (for example, the creation and retention of jobs, introduction of technology or business skills, increased export receipts, increased processing in New Zealand, (b) result in benefits to the **natural environment...**” [emphasis added].

36. Given the factual context within our mana moana, we therefore submit that the following non-exhaustive list reflects components that must be taken into account by the panel when defining the “benefits” test and the net assessment of benefit, costs, and adverse effects:

- 42.1 Taiao and taonga species,
- 42.2 Tikanga and cultural practices such as mauri stones on the seabed, moana-based wāhi tapu such as tauranga ika (customary fishing grounds), and manaakitanga practices from kaimoana and the takutai moana.
- 42.3 Tikanga-based approaches to the Māori economy, including the informal economy and externalities, such as impacts on pātaka and mahinga kai.



37. With respect to te taiao and the “benefits” test, we also rely on the detailed persuasive evidence submitted by other participants (such as research conducted by Greenpeace, KASM, Royal Forest & Bird) regarding the negative environmental impacts of this application which are not outweighed by any benefit. We refer to the findings of the Supreme Court which rejected the application due to the lack of sufficient factual information regarding the negative environmental impacts. This lack of information was raised by Te Korowai o Ngāruahine Trust in its letter to the EPA and the Fast-track Panel dated 30 Maehe 2025. The Supreme Court has held that in factual contexts of discharge and dumping consents such as those involved in the Project, then the material harm test in section 10(1)(b) of the EEZ Act requires that greater caution is required under section 61(2) EEZ Act, particularly in the context of insufficient information relating to the sediment plume, marine mammals, and seabirds. We note that no new information has been provided by the applicant regarding the direction of the Supreme Court to address significant gaps within their environmental impacts assessments.

38. The updated application uploaded to the Fast-Track website contained additional technical documents and appendices, including the Updated Environmental Impact Assessment (2025), the Siecap Pre-Feasibility Studies (Parts 1 & 2), and the Metallurgical Review report, among others. The updated application contained a large volume of supporting technical documents; however, many were either outdated, draft in nature, duplicated, or referenced but not provided. Our concerns are largely echoed in the Section 51 Report provided by the EPA on 22 September 2025.¹¹ Most importantly, we have reviewed the updated application with respect to the four main areas which the Supreme Court also found to be insufficient. In summary, the updated application provided:

38.1 Plume Modelling: The application relies heavily on dated plume modelling reports (2013–2017) and does not include new modelling or assessment of the brine plume from desalination discharges. The lack of updated data raises concerns as to whether the application reflects the best available information, particularly given changes in the South Taranaki Bight since the earlier studies.

¹¹ [FTAA-2504-1048-EEZ-Apps-response-to-s51-request-for-advice.pdf](#)

38.2 Marine Mammal evidence: The application refers to expert evidence submitted between 2023 and 2024 but provides no new field data or updated surveys. Key uncertainties remain about the cumulative impacts of noise, sedimentation, and displacement, especially for species such as blue whales and Hector's dolphins.

38.3 Seabird evidence: The evidence provided is largely based on NIWA seabird reports (2015) and expert evidence from 2023. No new survey data have been included, and the assessment does not adequately consider the effects of continuous 35-year operations (e.g., light emissions, habitat disruption) on seabird populations.

38.4 Economic Evidence: The application's economic evidence is narrow, focusing on projected company benefits, while failing to recognise the economic value of kaimoana, cultural practices, and healthy ecosystems to Ngāruahine. The exclusion of these values reflects an incomplete and biased assessment that does not meet the standard of best available information.

39. With respect to marine mammals, we support He Whakaputanga Moana (Declaration for the Ocean) signed by indigenous Pacific leaders on 28 March 2024 which recognizes this inextricable link between tikanga and taiao through the recognition of whales as legal persons with inherent rights, including the right to freedom of movement, a healthy environment, and the ability to thrive alongside humanity. The Māori King stated:

“Ultimately, He Whakaputanga Moana is a declaration for future generations. Our mokopuna (descendants) deserve to inherit an ocean teeming with life, where the songs of whales continue to resonate across the vast expanse. Let this declaration be a turning point. Let us ensure the whales, our kin, continue their migrations for generations to come.”¹²

40. In addition to rejecting the TTR proposal on the basis of these adverse environmental impacts which fail the “benefits” test, we also request that the Panel reject the application under clause 6 schedule 10 of the EEZ Act with respect to relevant policies such as the Taranaki Coastal Plan, and the notably bottom lines under the New Zealand Coastal Policy Statement (NZCPS) in which Te Korowai holds statutory acknowledgements under our settlement legislation and therefore has the right to seek to be enforced.¹³

41. These adverse environmental impacts are amplified for us as Ngāruahine because under our tikanga, negative impacts on te taiao also have (1) negative cultural impacts and (2) negative impacts for our Māori economy.

¹² See <https://www.teaonews.co.nz/2024/12/29/maori-who-made-waves-overseas-in-2024/>

¹³ See <https://www.trc.govt.nz/assets/Documents/Plans-policies/AirPlan/AirPlanApp10G.pdf> as read with <https://www.trc.govt.nz/council/plans-and-reports/strategy-policy-and-plans/regional-coastal-plan>



42. Culturally, negative taiao impacts also negatively impacts our whakapapa and tikanga practices such as maintaining mauri, karakia, waiata, and ritenga such as pure and tohi. In the case of seabirds, the negative impacts discussed at the Supreme Court will negatively impact on the culturally important the role of raukura from seabirds such as the seabird toroa albatross, given that this raukura feather has special significance for our hononga to Parihaka. This inextricable link between tikanga and taiao requires a holistic appreciation of the moana connections to the awa and whenua, and upholding kaitiakitanga and the tikanga of tangata whenua, including through the application of the precautionary principle. We support the statement of uri of Ngāruahine at the Waitangi Tribunal asserting these evidential aspects relating to our tikanga as follows:

“Whakapapa to Tangaroa: under our tikanga, our whakapapa literally arises from the ocean. The Crown's actions with respect to Taranaki VTM and seabed mining in our rohe therefore constitutes grievous bodily harm and murderous intent towards our tuakana, our living connection to our past and our whakapapa to Tangaroa. According to our whakapapa, in lieu of a singular eponymous ancestor, Ngāruahine trace our whakapapa to Aotea waka captained by Turi, but also to earlier waka such as Wakaringaringa captained by Mawakeroa. Even earlier than these waka, there is the whakapapa line from Tangaroa's relationship with Mareikura, and as such, the whakapapa lineage to the moana and Tangaroa literally flows through our blood as uri. The environmental harms associated with seabed mining is therefore an egregious desecration of our living ancestor which cannot be tolerated.

Whakapapa to Taonga: under our tikanga, through our whakapapa with Tangaroa, we share bloodline lineage with all taonga species within the moana. Our pūrākau are held closely within whānau, but a common example which is freely spoken of, is the relationship with tohorā (blue whales) as our tuakana. Tohorā hold kōrero passed down over hundreds of years which provide tohu regarding our fishing practices and therefore the very survival of ourselves as an iwi over time and into the future. Under our tikanga, the survival of our moana and our tohorā must be protected at all costs, particularly as our own survival as a people is linked to the survival of our living tūpuna in the moana.

Wāhi Tapu: the reef systems along the seabed are vibrant living wāhi tapu with specific names which hold deep mātauranga which has been passed down through generations for hundreds of years. To this day, our kaitiaki maintain the mauri along these reefs, including maintaining wāhi tapu protected through feeding mauri stones integrated within the reef systems. Our reefs are unique in generating waiata which travel over hundreds of kilometres and provide sound orientation for taonga species which travel to our reefs from as far away as Antarctica. Our mātauranga with regards to these wāhi tapu is continually corroborated with scientific research, such as the acoustic marine research into fish migrations following the sounds of the reefs. The reef structures are also wāhi tapu for our ancestral fishing grounds as key navigation guides for our waka such as the Raurimu and Raumiro.

Ritenga: our reef systems are built into our tikanga practices relating to our ritual practices which maintain the wellbeing of our people and our environment. For example, tikanga practices involved in installing the mauri into pounamu for personal protection require the stone to be left for a certain period within certain ocean waters connected to the reefs. Similarly, tikanga practices related to kaumatua such as Koro Rangihuna submerging specific stones which hold tapu qualities at times and places necessary to signal for reef species to come closer to support the people in times of need.

Mahinga kai: much of our tikanga within the moana, takutai, awa and whenua depend upon healthy seabed and reef systems. For example, our tikanga such as maintaining knowledge of harakeke weaving hinaki or manuka matting related to pīharau and īnanga depend on healthy seabed's where these taonga species spend half their life cycle. Our tikanga practices related to mataitai depend on sediment-free oceans, particularly for pāua which cannot survive and are choked through sediment, similarly kūtai filter feeders. Such tikanga practices related to mataitai including karakia, waiata, poi, poi ahi, maintaining mauri stones, coastal awa practices such as the tikanga of preparing rotten corn, salted shark, and the tikanga associated with the ten tauranga waka sites within our rohe following the Crown's land confiscation over the entirety of our rohe ¹⁴

43. Economically, taiao impacts negatively impact our tikanga of the shared economy and mahinga kai economy, wherein environmental impacts also negative affect our customary fishing, kai moana, mahinga kai. Under the

¹⁴ Wai 3475 Application for Urgency by William Tihoi Maha and Jordan Dianne te Puawai o te Atua Waller ("Puawai Hudson") for and on behalf of members of respective hapū of Ngāruahine at para 6.14.



sharing collective mahinga kai-based Māori economy, economic benefits must be assessed through our cultural practices. Economic metrics such as demographics, skills profile of the Māori population, employment statistics, and education information are still relevant for the economic aspects of assessing costs and benefits. However, culturally, our economy intersects with our taiao in prominent methods which must be included within the panel's assessment of the evidence and the legal tests. Uniquely, we are one of the only iwi wherein the Crown has specifically recognised our moana-based economy. Indeed, this was recognised by the Crown even whilst implementing te muru me te raupatu land confiscations, wherein the Crown set up ten land blocks within Ngāruahine specifically for our tauranga waka where our fishing boats would be anchored when accessing our open water tauranga ika customary fishing grounds, both within the territorial sea and the EEZ seas related to the negative taiao impacts of the application.¹⁵

44. Our regional and national economic is also at risk due to the biosecurity risks posed by the vessels and machinery proposed by TTR. The biosecurity risks posed by the on-ship processing and ballast water pose unacceptable economic and taiao risks both at sea and on-land, which poses particular risk for agriculture-based economies such as Taranaki region and the whole motu.¹⁶ We have been working alongside DOC relating to biosecurity threats such as sea spurge which is a toxic invasive species capable of overtaking coastal habitats and even causing death of animals, pets, and humans. A known vector for biosecurity transmission includes ballast water in ships and the vessels required to implement this Project, which therefore poses unacceptable economic risks that do not meet the “benefits” test under the FTAA.
45. We also note that the new project has changed to seeking vanadium (as opposed to the previous projects focus on iron sands) which is significantly more financially valuable to the Company. But under the current law, the Crown is unable to obtain royalties from the Company with respect to vanadium. This change is clearly to avoid payment of Crown royalties. By definition, we therefore do not consider there could be any socio-economic

¹⁵ See the documentation of the West Coast Commissions and the Sims Commission in the Deed of Settlement regarding the return of 10 Tauranga Waka fishing reserves https://whakatau.govt.nz/assets/Treaty-Settlements/FIND_Treaty_Settlements/Ngaruahine/DOS_documents/Ngaruahine-Deed-of-Settlement-1-Aug-2014.pdf as recognised under statutory acknowledgements at the Taranaki Regional Council <https://www.trc.govt.nz/assets/hero-images/Coastal-Plan/Documents/Replacement-Documents/Coastal-Plan-Schedule-6B-Ngaruahine.pdf>

¹⁶ See for example the discussion of vessels and ballast water as vectors for pathogens which can also have an impact from the sea onto the land: <https://www.frontiersin.org/journals/marine-science/articles/10.3389/fmars.2019.00489/full>

proximity to enable benefits to our whānau, hapū, iwi, rohe, region, or the entire country, even if there weren't such horrific environmental and cultural threats invalidating this project.

46. On our assessment, the process of extracting the vanadium from the iron sands is potentially not even possible scientifically, largely because iron sands obviously hold significant amounts of salt which can complicate the extraction, separation and refining process. TTR has previously indicated plans to conduct additional metallurgical test work to optimize the processing of VTM concentrate but to date we are not aware of whether this has occurred. Further, the extraction process can only be attempted at processing sites located in foreign jurisdictions such that Aotearoa has no ability to verify or otherwise potentially benefit from any end products within the steel alloy end-products, which in any event of course remain the property of the Company, which wouldn't even have been required to pay any Crown royalties. Even if there weren't such unconscionable environmental and cultural threats invalidating this project, the entirety of the facts underpinning the business case for this proposal is lacking in any inherent logic and cannot meet even the preliminary legal tests regarding the purpose of the Fast-track.

47. We also note that TTR's parent company, Manuka Resources, is listed on the Australian stock exchange and does not appear to hold significant economic or social ties to Aotearoa New Zealand, let alone to Taranaki nor Ngāruahine. We note the recent annual report for year end June 2025 wherein the Auditor's report states:

"Material Uncertainty Related to Going Concern: We draw attention to Note 3.2 in the financial report, which indicates that the Company incurred a net loss of \$16,876,465 during the year ended 30 June 2025 and, as of that date, the Group's current liabilities exceeded its total assets by \$47,880,425. As stated in Note 3.2, these events or conditions, along with other matters as set forth in Note 3.2, indicate that a material uncertainty exists that may cast significant doubt on the Group's ability to continue as a going concern. Our opinion is not modified in respect of this matter." ¹⁷

48. On this basis, we also request that the Panel impose the requirement of a bond under section 63(2)(a)(i) of the EEZ Act as well as requiring that TTR obtain comprehensive insurance, given the significant cultural, environmental, and social risks, including the risks for local authorities in covering costs and associated risks. The Supreme Court in its TTR decision noted that these two mechanisms serve very different functions and the Glaszebrook J at para 286 noted the real possibility of insolvency of the



Project such that it would be irrational not to require a bond.

Te Tiriti/Treaty

49. We request that the panel reject the TTR application for failure to be consistent with obligations arising under our Treaty settlement as per the requirements of section 7(1)(a) FTAA and the customary rights recognised under MACA pursuant to section 7(1)(b)(k) FTAA. Section 7(1) refers to “all persons performing and exercising functions” under the FTAA. This encompasses TTR since their function is triggering the FAA through submitting their application. The panel itself, logically, must also comply with section 7 and the obligations arising under our Treaty settlement and MACA.
50. Ngā hapū o Ngāruahine have a Treaty settlement with the Crown through our 2016 settlement legislation establishing Te Korowai. Members of ngā hapū hold legal rights under MACA. It is notable that section 7(1)(b)(k) does not require *adjudicated* customary rights through finalisation of High Court proceedings under MACA nor does it require *settled* customary rights through negotiations directly with the Crown under MACA.
51. This can only mean that customary rights must be assessed under fact and under tikanga, noting that tikanga is also a source of law in Aotearoa uphold in court (as detailed later in this submission). Notably, there is no additional requirement for MACA rights equivalent to section (7)(3) for Treaty settlements which clarifies that such settlements must “exist at the time the relevant function...is exercised.” This can only mean that the application must be assessed as to whether it is consistent with existing rights of ngā hapū o Ngāruahine.
52. Section 81(7) makes clear that “for the avoidance of doubt” nothing within sections 81, 82, and 85 regarding decisions on the application “limits section 7” and section 85(1)(b) requires that the panel must decline TTR if “the panel considers that granting the approval would breach section 7.”¹⁸ Thus applications which breach Treaty settlements and MACA rights under section 7 must be declined. Under all feasible metrics and mechanisms of analysis, as per the reasonings throughout this written submission, we assert

¹⁸ See also the panel decision Fast-Track Approvals Act 2024, Bledisloe North Wharf and Fergusson North Berth [FTAA-2503-1028] Expert Panel, 21 August 2025 [Bledisloe North Wharf] at [110].

that this application is in breach of our Treaty settlement, including the measures related to fisheries, and MACA. Therefore, this application must be declined under section 81(7).

RMA

53. We request that the panel reject the TTR application for the failure to meet the legal tests, (in addition to the general provisions under section 85(3) for declining the application), under the specific provisions for resource consents under section 85(1)(c) (noting that section 85(2) does not apply on the facts), section 81(3)(a), and section 42(4)(a)-(d) which in turn refers to the requirements for resource consents and associated processes under the RMA.

EEZ Act

54. We request that the panel reject the TTR application for the failure to meet the legal tests, (in addition to the general provisions under section 85(3) for declining the application), under the specific provisions for marine permits under section 81(3)(l), referring to section 42(4)(k) and clauses 6 and 7 of Schedule 10 FAA relating to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

55. The application fails to meet the legal thresholds set out in the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act)—particularly the “material harm” test under section 10(1)(b) and the precautionary principle in section 61(2), which requires a decision-making approach that favours caution and environmental protection in situations of scientific uncertainty.

56. The Supreme Court has confirmed that in discharge and dumping contexts—such as those central to this Project—the material harm threshold in section 10(1)(b) must be assessed alongside a heightened duty of caution under section 61(2), especially where information is lacking regarding sediment plumes, marine mammals, and seabirds.¹⁹ As the environmental evidence indicates, this standard was not met.

Conditions

57. We request that the panel reject the TTR application due to the inability to impose any conditions which comply with sections 83 and 84 FAA. Under our tikanga, there are no conditions possible to mitigate the adverse effects and provide any benefit regionally or nationally.

Summary of jurisprudence regarding tikanga as a source of law in Aotearoa

58. The application presents fundamental and irreversible risks to our tikanga, our responsibilities as kaitiaki, and our relationship with the moana. These are not abstract concerns—they go to the heart of our identity, our whakapapa, and our legally and culturally grounded responsibilities as mana

¹⁹ *Trans-Tasman Resources Ltd v Taranaki- Whanganui Conservation Board* [2021] NZSC 127 At [252] per Glazebrook J, at [292] per Williams J, at [308] per Winkelmann CJ.



whenua. Tikanga o Ngāruahine is a taonga from our tūpuna and held closely within whānau, hapū, iwi through our daily practices and teachings to our mokopuna. In this way, tikanga is enduring through time and inextricably people to place as tangata whenua. We assert that it is not possible to legislate over judicial recognition of tikanga, even under Crown law, due to the application of aboriginal title and international law.²⁰

59. An important part of our tikanga is protecting our tikanga. Noone but us can speak to our tikanga. Through these expressions of tino rangatiratanga as guaranteed under Te Tiriti/The Treaty of Waitangi, we do not lightly share our tikanga with people without direct whakapapa connections to our tikanga. However, given the seriousness of the irreversible harms at stake in this kaupapa, the following pūkenga have agreed to share aspects of tikanga which applies to the resource consent and require that the consent be rejected under tikanga.
60. Tikanga is a source of law in Aotearoa New Zealand and as such, the definition of benefit under section 3 FTAA must be interpreted alongside caselaw which is upholding increasingly broader aspects of tikanga. Since the concept of benefit under the FTAA by definition includes an assessment of risks and costs, it follows that threats, risks, and costs as understood under tikanga must also form part of the panel's assessment under the jurisprudence related to tikanga. Similarly, section 7 regarding consistency with Treaty settlements and MACA rights also requires the application of tikanga. Regarding marine consents, tikanga is law directly applicable under the requirement to apply "any other applicable law" in s59(2)(l) FTAA. In addition, under the EEZ Act, effects on kaitiakitanga and the interests of tangata whenua from the discharge are subject to the environmental bottom-line of protection from material harm, just as any other effects from the discharge are.
61. Examples of the role of tikanga can be found in the Law Commission's He Poutama Study Paper 24 September 2023, the landmark Supreme Court decision in the Ellis case in 2022²¹, commercial law cases related to possession orders and debts,²² trusts,²³ torts,²⁴ and employment law in cases

²⁰ See for example Mostert, H. & Jacobs J (2020) *Aboriginal Title* MPEPIL.

²¹ *Peter Ellis v R* [2022] NZSC 114.

²² *Bamber v Official Assignee* [2023] NZHC 260; *Doney v Adlam* (No 2) [2023] NZHC 363.

²³ *Kruger v Nikora* [2023] NZCA 179.

²⁴ *Smith v Fonterra Co-operative Group Ltd* [2024] NZSC 5.

where employers did not respect tikanga.²⁵ Palmer J called upon decision makers to recognise that “[i]n recognising tikanga, common law courts must hold ‘in check closely’ any unconscious tendency to see tikanga in terms of the English law heritage of New Zealand common law. They must be open to seeing tikanga on its own terms, as a distinct framework.”²⁶

62. Tikanga therefore needs to be approached on its own terms.²⁷ Tikanga is a “segment of mātauranga Māori”²⁸ and is often defined with reference to what is considered tika and pono, meaning right, correct, true and genuine.²⁹ At its root, it is comprised of the reo Māori term ‘tika’ which tikanga experts recently summarised at the Supreme Court as meaning “to be right” such that “Tikanga Māori therefore means the right Māori way of doing things. It is what Māori consider is just and correct.”³⁰ In other words, tikanga is essentially “doing things right, doing things the right way, and doing things for the right reasons.”³¹

63. Tikanga is culturally specific to ao Māori as “the first law of Aotearoa”³² and, as stated by the Supreme Court, “[t]ikanga regulated the lives of Māori when the first European settlers arrived in Aotearoa New Zealand. It has never ceased to do so.”³³ Tikanga is distinct from the reo Māori term ‘ture’ which is instead a transliteration of the word for Crown law as derived from the early translations of the Pākehā word ‘Torah.’³⁴ Tikanga can be thought of as the Māori understanding of both lore (as in custom) and law (as in codes),³⁵ meaning both societal lore which guides behaviour but also law that

²⁵ *Pact Group v Robinson* [2023] NZEmpC 173; *GF v Comp troller of the New Zealand Customs Service* [2023] NZEmpC 101; *Moke v Raukura Hauora o Tainui Trust* [2023] NZERA Auckland 603; *SFC v YKQ* [2023] NZERA Christchurch 529.

²⁶ *Ngāti Whātua Ōrakei v Attorney General* [2022] (NZHC 843), para 377.

²⁷ <https://www.lawcom.govt.nz/assets/Publications/StudyPapers/NZLC-SP24.pdf> page 223 (d) Tikanga must not be viewed through a non-Māori lens, or shoehorned into an English law framework. [*Attorney-General v Ngati Apa* [2003] 3 NZLR 643 (CA) at [33], as cited in *Trans-Tasman Resources Ltd v Taranaki- Whanganui Conservation Board* [2020] NZCA 86, [2020] NZRMA 248 at [169].] It should be defined by reference to tikanga as a complete system in which the core concepts are intertwined and exist as an interconnected matrix. Tikanga is a principles-based system of law, capable of adaptation according to context.

²⁸ Mead, S. M. (2003). *Tikanga Māori : living by Māori values*. Huia. Page 13.

²⁹ Mead, S. M. (2003). *Tikanga Māori : living by Māori values*. Huia. Page 25-33.

³⁰ *Ellis v R* [2022] NZSC 114 [7 October 2022] 1 NZLR 239, Statement of Tikanga of Sir Hirini Moko Mean and Professor Pou Temara 31 January 2020 wānanga occurred on 10 and 11 of December 2019. At para 25. <https://www.courtsofnz.govt.nz/assets/cases/2022/2022-NZSC-114.pdf>

³¹ Benton, R., Frame, A., & Meredith, P. (2013). *Te mātāpunenga : a compendium of references to the concepts and institutions of Māori customary law* (R. Benton, A. Frame, & P. Meredith, Eds.). Victoria University Press. Page 431. Citing Bishop Manuhuia Bennette

³² Mikaere, A. (2013). *Colonising Myths - Maori Realities He Rukuruku Whakaaro*. Huia NZ Ltd. Page 109. See also *Ellis v R* [2022] NZSC 114 [7 October 2022] 1 NZLR 239, at paras 19, 52 and Winkelman J at para 172, and Statement of Tikanga of Sir Hirini Moko Mead and Professor Pou Temara 31 January 2020 <https://www.courtsofnz.govt.nz/assets/cases/2022/2022-NZSC-114.pdf> and see <https://www.lawcom.govt.nz/assets/Publications/StudyPapers/NZLC-SP24.pdf> page 223

³³ *Ellis v R* [2022] NZSC 114 [7 October 2022] 1 NZLR 239 at 168.

³⁴ Buchanan, R. (2022). *Te Motunui Epa*. Bridget Williams Books. Page 115. citing Moana Jackson, *Where to next? Decolonisation and the Stores in the Land* In Bianca Elkinon et al. (2020) *Imagining Decolonisation*, Bridge Williams Books, p. 140.

³⁵ Māmari Stephens “‘Kei a koe, Chair!’: the norms of tikanga and the role of hui as a Māori constitutional tradition” (2022) 53 Victoria University of Wellington Law Review 463 at 470. Māori processes and self-definition are perhaps better respected on their own terms by the word “norm” or “legal norm” (rather than “law”, “lore”, and “custom”) to describe behaviours in dynamic Māori communities.



mandates rights and obligations.³⁶ Tikanga therefore comprises of “all of the values, standards, principles or norms that the Māori community subscribe to, to determine the appropriate conduct.”³⁷ As recognised by the Supreme Court, tikanga is in fact the original law of Aotearoa and “Tikanga Māori principles are part of the common law of Aotearoa”³⁸ and “should apply to all people.”³⁹

64. It is critical to acknowledge from the outset that “tikanga has always existed as a framework for regulating behaviour”⁴⁰ which includes kaitiakitanga for te taiao such as through rāhui, and consequentially, responding to hara caused to the environment. Thus, there is a foundational aspect of tikanga which is common across Māori communities i.e. “[t]he values and principles that underlie tikanga are common among Māori. They are universally accepted and are a constant. The practice and the manifestation of these principles in particular contexts can vary between different iwi, hapū and whānau.”⁴¹ Tikanga can therefore be thought of as a living law, however, “[w]hile the practice of tikanga may adapt over time, the underlying principles of ‘conceptual regulators’ (as Justice Taihakurei Durie has called them) ... do not.”⁴²

65. Kaitiakitanga is an essential conceptual regulator within tikanga. This flows from the axiomatic truth, as expressed by Sir Hirini Moko Mead and Professor Pou Temara, that tikanga “is the law that grew from and is very much embedded in our whenua (land).”⁴³ The Supreme Court has

³⁶ Mead, S. M. (2003). *Tikanga Māori: living by Māori values*. Huia Publishers.; Barlow, C. (1991). *Tikanga whakaaro: key concepts in Māori culture*. Auckland, Oxford University Press; Benton, R., Frame, A., & Meredith, P. (2013). *Te mātāpunenga: a compendium of references to the concepts and institutions of Māori customary law* (R. Benton, A. Frame, & P. Meredith, Eds.). Victoria University Press. Page 429-433.

³⁷ *Ellis v R* [2022] NZSC 114 [7 October 2022] 1 NZLR 239, STATEMENT OF TIKANGA OF SIR HIRINI MOKO MEAD AND PROFESSOR POU TEMARA 31 January 2020 wānanga occurred on 10 and 11 of December 2019. At para 26. <https://www.courtsofnz.govt.nz/assets/cases/2022/2022-NZSC-114.pdf>

³⁸ *Ellis v R* [2022] NZSC 114 [7 October 2022] 1 NZLR 239, Statement of Tikanga of Sir Hirini Moko Mead and Professor Pou Temara, 31 January 2020, 31 January 2020, para. 19.

³⁹ *Ellis v R* [2022] NZSC 114 [7 October 2022] 1 NZLR 239, Statement of Tikanga of Sir Hirini Moko Mead and Professor Pou Temara, 31 January 2020, 31 January 2020, para. 52.

⁴⁰ *Ellis v R* [2022] NZSC 114 [7 October 2022] 1 NZLR 239, STATEMENT OF TIKANGA OF SIR HIRINI MOKO MEAD AND PROFESSOR POU TEMARA 31 January 2020 wānanga occurred on 10 and 11 of December 2019. At para 40. <https://www.courtsofnz.govt.nz/assets/cases/2022/2022-NZSC-114.pdf>

⁴¹ *Ellis v R* [2022] NZSC 114 [7 October 2022] 1 NZLR 239, STATEMENT OF TIKANGA OF SIR HIRINI MOKO MEAD AND PROFESSOR POU TEMARA 31 January 2020 wānanga occurred on 10 and 11 of December 2019. At para 31. <https://www.courtsofnz.govt.nz/assets/cases/2022/2022-NZSC-114.pdf>

⁴² Mikaere, A. (2013). *Colonising Myths - Maori Realities: He Rukuruku Whakaaro*. Huia NZ Ltd, p.109.

⁴³ *Ellis v R* [2022] NZSC 114 [7 October 2022] 1 NZLR 239, Statement of Tikanga of Sir Hirini Moko Mead and Professor Pou Temara, 31 January 2020, para. 22.

acknowledged that tikanga is of particular importance with respect to environmental law,⁴⁴ including to “regulate the behaviour of non-Māori in many contexts, including through concepts such as rāhui”,⁴⁵ such that that “the common law of Aotearoa should develop bi-jurally.”⁴⁶

66. Kaitiakitanga comprises the acts of kaitiaki⁴⁷ who feed or nurture the mauri of te taiao under the “ethic of stewardship and guardianship, particularly in relation to the natural environment.”⁴⁸ Within ao Māori, the significance of kaitiaki is amplified by whakapapa connections to te taiao such that “[t]he environment is also seen as an ancestral landscape.”⁴⁹ Particularly for tangata whenua maintaining ahi kaa, kaitiakitanga is central to daily life because “each whānau or hapū is kaitiaki for the area in which they hold mana whenua, that is, their ancestral lands and seas. Should they fail to carry out their kaitiakitanga duties adequately, not only will mana be removed but harm will come to the members of the whānau and hapū.”⁵⁰ As recorded in research by the Law Commission, the “responsibility to maintain mauri renders it a normative force”⁵¹ and “lapses in respect for mauri are ‘hara’ or wrongs”⁵² which create imbalance which “spell doom.”⁵³ In order to achieve these protective outcomes for the environment, kaitiakitanga naturally involves “managing people.”⁵⁴

67. In 2017 the majority ruling of the DMC made findings that would also apply to the mana moana of ngā hapū of Ngāruahine, concluding that the Project would have severe effects on seabed life, marine mammals, kaimoana gathering, kaitiakitanga, mauri, and cultural values:

“The highest levels of suspended sediment concentration will occur in the coastal marine area offshore from Ngāti Ruanui’s whenua. There will be severe effects on seabed life within 2-3 km of the project area and moderate effects up to 15km from the mining activity. Most of these effects will occur within the CMA. There will be adverse effects such as avoidance of fish of those areas. Kaimoana gathering sires on

⁴⁴ *Ellis v R* [2022] NZSC 114 [7 October 2022] 1 NZLR 239, Winkelman at para 177, see also Glazebrook J at 113-116, Williams J at 260.

⁴⁵ *Ellis v R* [2022] NZSC 114 [7 October 2022] 1 NZLR 239, Winkelman at para 173.

⁴⁶ *Ellis v R* [2022] NZSC 114 [7 October 2022] 1 NZLR 239, at para. 271.

⁴⁷ Roberts, M. (1995). Kaitiakitanga: Maori perspectives on conservation. *Pacific Conservation Biology*. 2(7) at 14; Durie, E.T., (2017). Ngā wai o te Māori: ngā tikanga me ngā ture roia The waters of the Māori: Māori law and State law. *New Zealand Māori Council*. p.30. McCully, M. & Mutu, M. (2003) *Te Whānau Moana: ngā Kaupapa me ngā Tikanga Customs and Protocols* Reed Books, p.67.

⁴⁸ Jones, C. (2016). *New Treaty, New Tradition: Reconciling New Zealand and Maori Law*. UBC Press, p.71. See also Marsden, M., & Royal, T. A. C. (2003). *The woven universe: Selected writings of Rev. Māori Marsden*. Estate of Rev. Māori Marsden, pp. 67, 69.

⁴⁹ Selby, R., Moore, P., & Mulholland, M. (2010). *Māori and the environment: kaitiaki*. Huia, p.221.

⁵⁰ Jones, C. (2016). *New Treaty, New Tradition: Reconciling New Zealand and Maori Law*. UBC Press, p.75.

⁵¹ <https://www.lawcom.govt.nz/assets/Publications/StudyPapers/NZLC-SP24.pdf> para. 3.54.

⁵² <https://www.lawcom.govt.nz/assets/Publications/StudyPapers/NZLC-SP24.pdf> para. 3.59.

⁵³ <https://www.lawcom.govt.nz/assets/Publications/StudyPapers/NZLC-SP24.pdf> para. 3.56.

⁵⁴ Selby, R., Moore, P., & Mulholland, M. (2010). *Māori and the environment: kaitiaki*. Huia, p.227. See also Harmsworth, G., Dixon, L. & Awatere, S. (2011). *Review paper: Improved reporting tools – Māori cultural monitoring approaches throughout Aotearoa*. Lincoln, Landcare Research: https://www.landcareresearch.co.nz/assets/Discover-Our-Research/Environment/Sustainable-society-policy/VMO/Review_Cultural_Monitoring.pdf



nearshore reefs are likely to be subject to minor impacts given background suspended sediment concentrations nearshore... We acknowledge there will be significant impact on kaitiakitanga, mauri, or cultural values. A significant physical area will be affected, either within the mining site itself, or through the effects of elevated SSC in the discharge. Iwi identified other relevant effects such as the impact of noise on marine mammals as being of concern.”⁵⁵

68. Indeed, the Supreme Court found that the DMC ruling in 2017 did not go far enough and “fail[ed] to properly engage with the nature of the interests affected” highlighting the importance of mauri and kaitiakitanga, particularly given that TTR relates to a long period of time and poses long-term effects on the environment:

“However, despite the references to the effect of the proposal on kaitiakitanga and the mauri of the marine environment, the DMC did not effectively grapple with the true effect of this proposal for the iwi parties or with how ongoing monitoring could meet the iwi parties’ concern that they will be unable to exercise their kaitiakitanga to protect the mauri of the marine environment, particularly given the length of the consent and the long-term nature of the effects of the proposal on that environment.”⁵⁶

69. The Supreme Court clearly supporting tikanga aspects by finding that mauri and spiritual effects need to be considered just as much as physical effects, by finding that the DMC needed “to indicate an understanding of the nature and extent of the relevant interests, both physical and spiritual, and to identify the relevant principles of kaitiakitanga said to apply.”⁵⁷ Indeed, Ellen France J specifically referenced spiritual effects based on tikanga potentially amounting to material harm.⁵⁸ The Supreme Court also found that the principles of Te Tiriti are directly relevant when considering existing interests and that it was an error of law for the 2017 DMC decision to regard such principles as only “colour[ing]” its approach and not as directly relevant

Hei whakakapi

70. For these reasons, we maintain a firm and unequivocal opposition to the Taranaki VTM Project application.

⁵⁵ At paras 724 and 924.

⁵⁶ At para 160.

⁵⁷ At para 161.

⁵⁸ At para 172.

71. The failure to undertake proper pre-lodgement consultation, in direct breach of the FAA, combined with the applicant's dismissive approach to engagement and disregard for our tikanga, renders this application wholly unacceptable.

72. We urge the Panel to decline the application in full.

Pai Mārire,



Tumu Whakarae

Te Korowai o Ngāruahine Trust

