
MINUTE 11 OF THE EXPERT PANEL

Upcoming Hearing of
Contentious Legal Issues
Taranaki VTM Project
[FTAA-2504-1048]

(4 November 2025)

Forewarning of Upcoming Hearing

[1] The Expert Panel appointed under the Fast-track Approvals Act 2024 (the FTAA) is considering the Taranaki VTM substantive application to extract up to approx. 50 Mt of seabed material a year for 20 years, recover up to approx. 5 Mt of vanadium-rich titanomagnetite concentrate, return material to the seabed, and monitor environmental recovery (the Application). In its consideration of the application, the Panel has identified several legal issues on which the participants or their lawyers have expressed differing opinions. The Panel will be required to reach a view on each of those matters and wishes to receive submissions on them.

[2] The Panel has decided that, on 11 November 2025, it will direct the EPA to give notice under section 57(3) of the FTAA that the Panel will conduct a hearing on specific legal issues related to the Application. The purpose of this Minute is to forewarn participants of the details that will be contained in the notice, so they may begin preparing for the hearing and suggest topics for inclusion in the list of matters to be addressed.

[3] The hearing will be confined strictly to addressing submissions on the questions of law formulated and listed by the Panel. Participants, however, will be provided with an opportunity to invite the Panel to include on the list other legal issues not initially identified by the Panel. A strict timetable for the provision of written submissions in advance of the hearing will apply. **Oral submissions at the hearing will be limited to addressing questions from Panel members.** No evidence will be received.

[4] It is proposed that the hearing will take place in Auckland on **26 November 2025 at 9am** at the **Grand Millennium Auckland** (71 Mayoral Drive, Auckland, 1010) and will conclude no later than 5pm, unless the Panel directs otherwise. The members of the Panel who will hear the oral submissions will be Hon Kit Toogood KC (Chair), Loretta Lovell and Gavin Kemble. The other members of the Panel will receive copies of all written submissions and will have access to a transcript of the hearing.

[5] It is expected that the hearing will not take longer than one day.

[6] Participants who wish to be heard may, by **4pm on Friday, 7 November 2025**, file with the EPA any request for the addition of other legal questions to the draft list attached to this Minute as Appendix A.

[7] The formal notice of hearing that will be issued by the EPA on **Tuesday, 11 November 2025** will require any persons or groups that wish to attend the hearing to advise the EPA of their attendance by **Friday 14 November 2025**. Participants will also be required to file, by that date, their written submissions on any listed question, including those that the Panel has agreed to add to the draft list. Submissions shall be focused and succinct; paragraphs shall be numbered; all statutory references and authorities shall be footnoted and, where possible, hyperlinked.

[8] Except as may otherwise be indicated in the notice, the hearing will be conducted according to the Taranaki VTM Panel hearing procedures, which can be found at: <https://www.fasttrack.govt.nz/projects/taranaki-vtm/conferences,-workshops-and-hearings>

[9] Should you have any questions regarding the hearing or the steps to be taken in advance, please contact the Application Leader, Keely Paler by email at info@fasttrack.govt.nz.

No hearing schedule

[10] Counsel or self-represented parties will be expected to attend the hearing in person. On request, the Panel may permit any participant who cannot reasonably be represented in person to participate by remote means under s 59 of the FTAA. Requests to participate by remote means must be submitted to the Application Leader

before 4pm on Friday, 21 November 2025. The hearing will be available to the public live and free of charge on an internet site to be determined and notified, and a written transcript of the hearing will be posted on the Taranaki VTM website.

[11] At the hearing the Panel will address the questions of law in the order of listing, so far as it is practicable to do so. There will be no schedule specifying the times at which individual participants will be heard. Participants wishing to be heard, therefore, shall ensure that their counsel or representatives are available throughout the hearing.

[12] Further information about the Taranaki VTM application will continue to be posted and updated on this website at:

<https://www.fasttrack.govt.nz/projects/taranaki-vtm>

A handwritten signature in blue ink, appearing to read 'Kit Toogood', is positioned above the printed name and title.

Hon. Kit Toogood KC
Chair, Taranaki VTM Expert Panel

APPENDIX A

This is the draft list of questions on which the Panel wishes to receive submissions. The answers to the questions will inform the Panel’s deliberations. The Panel has not reached a view on any issue arising in connection with a listed question.

Jurisdiction and statutory framework

1. What is the relevance, if any, of factual findings by Decision-Making Committees on previous applications by the Applicant (TTR)?
2. (a) Is the Panel required to determine whether TTR’s proposal requires approval under the Resource Management Act 1991 (“RMA”)?

(b) If so, does TTR’s proposal require approval under the RMA, and is s 5(1)(l) of the Fast-track Approvals Act 2024 (“FTAA”) relevant?
3. (a) Do other participants agree with the Applicant’s position on the consents it requires under the EEZ Act?

(b) If not, identify the points of disagreement and reasons?

Benefits and economic assessment

4. How should “benefits” be interpreted under the FTAA when considering the extent of the project’s regional or national benefits and the purpose of the FTAA, including:
 - (a) Whether a gross benefit approach is required?
 - (b) whether disbenefits or other costs are relevant; and
 - (c) whether a net benefit or cost-benefit approach is required?
5. (a) Does the same approach apply when the Panel takes into account “the economic benefit to New Zealand of allowing the application” under s 59(2)(f) EEZ Act?

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

Climate change

6. (a) Are international climate conventions relevant under s 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (“EEZ Act”)?

(b) If so, how?
7. (a) Is the effect on the climate of releasing seabed-stored carbon or reducing carbon flux to the seabed a relevant consideration?

(b) If so, to which aspects of the assessment?
8. Given the asserted climate-related benefits, should a net approach to climate effects be adopted?

Treaty, cultural and planning instruments

9. What is the relevance of Treaty principles, cultural values and kaitiakitanga to the Panel's consideration, and where do they fit within the assessment framework?
10. What, if any, is the significance of the High Court's judgment in *Te Ohu Kaimoana Trustee Ltd v Attorney-General* [2025] NZHC 657?
11. (a) Are Iwi Environmental Management Plans relevant considerations?
(b) If so, how they should be taken into account?
12. When considering national or regional planning instruments prepared under the RMA under s 59(2)(h) EEZ Act, to what extent, if any, should the Panel be guided by the Supreme Court's decision in *Royal Forest & Bird Protection Society v New Zealand Transport Agency* [2024] NZSC 26?
13. (a) Must "habitats of particular significance to fisheries management" be formally identified to be relevant under s 59(2)(h) EEZ Act?
(b) If so, what form must such identification take?

Existing interests and infrastructure

14. (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?
(b) If the potential for offshore wind energy generation is relevant, how should it be taken into account?
15. How are the potential effects on oil and gas permit infrastructure and associated safety regimes weighed within the FTAA and EEZ Act decision frameworks?

Conditions, adaptive management and monitoring

16. Which, if any, of the conditions proposed by the applicant constitute adaptive management within ss 61(3) and s 64(2) EEZ Act?
17. Are proposed conditions requiring pre-commencement monitoring lawful?

Decision tests, inconsistency and discretion

18. To what extent, if any, is the decision of the Supreme Court in *Trans-Tasman Resources v Taranaki-Whanganui Conservation Board* [2021] NZSC 127 binding on the Panel or of highly persuasive significance?
19. Is s 62 EEZ Act a standalone ground for declining a marine consent in this process, or are the Panel's power to decline confined to s 85 FTAA?
20. In relation to s 85(1)(b) FTAA and the obligation under s 7(2) FTAA to act in a manner consistent with the obligations arising under existing Treaty settlements and customary rights:
 - (a) Are the members of the Panel "exercising a judicial power or performing a judicial function or duty" in terms of 7(2) FTAA?
 - (b) If adverse effects on fish stocks or aquaculture stocks are found to exist, would granting the application be inconsistent with obligations under the Māori Fisheries Settlement or the Māori Commercial Aquaculture Claims Settlement Act 2004?

21. In cl 6(1)(a) of Schedule 10 FTAA, is “the purpose” of the Act limited to the purpose specified in s 3 of the Act?
22. What is the meaning of “facilitate” in s 3 FTAA?
23. In relation to s 85(3) – (5) FTAA, how should inconsistency with a provision of the EEZ Act, or with a document that the Panel must take into account or consider in complying with s 81(2), be factored into the Panel’s s 85(3) assessment?
24. In relation to ss 85(3)-(5) FTAA, how is inconsistency with the EEZ Act or with documents taken into account under s 81(2) to be factored into the s 85(3) assessment.
25. (a) Is there, in a substantive sense, any difference between an “impact” and an “environmental effect” under the FTAA?

(b) If so, what if any consequence(s) does that difference have for the Panel’s decision on the application?