**FTA-2054**

**BEFORE THE EXPERT PANEL**

**UNDER** the Fast-track Approvals Act 2024

**IN THE MATTER OF** the Taranaki VTM Project

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# SUBMISSIONS ON BEHALF OF TE KAAHUI O RAURU TRUST

## 6 OCTOBER 2025

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KĀHUI LEGAL

**Counsel for Te Kaahui o Rauru:** [redacted]

[redacted]

*Ko te mouri moana, ko te mouri whenua, ko te mouri wai, ko te mouri ora o Rauru*

## INTRODUCTION

1. These legal submissions are filed on behalf of Ngaa Rauru Kiitahi and Te Kaahui o Rauru Trust (the **Trust**) (together, **Te Kaahui o Rauru**) in response to the invitation issued by the Expert Panel (the **Panel**) on Trans-Tasman Resources' Application (the **Application**) seeking fast-track approvals for marine consents in relation to the Taranaki VTM Project (the **Project**) under the Fast-Track Approvals Act 2024 (the **FTAA** or the **Act**).[1]

2. Ngaa Rauru Kiitahi is a pre-migration iwi which includes all whaanau, hapuu and iwi who descend from Rauru, the eponymous ancestor. Within the paahuki (tribal rohe) of Ngaa Rauru Kiitahi can be found place names and hapuu that were named by Te Kaahui Rere prior to the arrival of Aotea waka to Aotearoa – Te Ihonga, Tieke, Tapuarau, Potiki-a-Rehua, Oturooriki, Te Kiri-o-Rauru, Moerangi, Ngaa Ariki and Te Ihupuku. As at the present day, the descendants of Rauru are spread across twelve (12) marae in the paahuki.[2]

3. Te Kaahui o Rauru Trust is a trust with charitable status and acts for the benefit of Ngaa Uki o Ngaa Rauru Kiitahi. The Trust holds many representative functions, including:

   (a) as the post-settlement governance entity (**PSGE**) for Ngaa Rauru Kiitahi established pursuant to the Ngaa Rauru Kiitahi settlement;

   (b) acting in its capacity as the mandated iwi organisation for the purposes of the Māori Fisheries Act 2004;

   (c) representing Ngaa Rauru Kiitahi as an iwi authority for the purposes of the Resource Management Act 1991; and

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1 Minute 3 of the Expert Panel regarding invitation to comment (dated 8 September 2025) [FTAA-2504-1048].

2 Statement of Evidence of Tahinganui Hina and Renee Bradley dated 6 October 2025 at [16]-[17].

(d) as an applicant on behalf of Ngaa Rauru Kiitahi for recognition orders under the Marine and Coastal Area (Takutai Moana) Act 2011 (**MACA**), including:

(i) customary marine title between Te Awanui-a-Taikehu (Patea River) in the north, through to the Whanganui River, in the south, out to 12 nautical miles; and

(ii) protected customary rights for mahinga kai between Te Awanui-a-Taikehu (Patea River) in the north, through to the Whanganui River, in the south, out to 12 nautical miles.[3]

4. In support of Te Kaahui o Rauru's comments and overall position, the following statements have been filed on behalf of Te Kaahui o Rauru:

(a) Joint statement of Tahinganui Hina and Renee Bradley dated 6 October 2025;

(b) Statement of Te Huia Bill Hamilton dated 6 October 2025; and

(c) Statement of Turama Hawira dated 6 October 2025.

5. Te Kaahui o Rauru also relies on the Statement of Evidence of Dr Ganesh Nana (aka Ganesh Rajaram Ahirao), dated 4 Whiringa-ā-Nuku / October 2025. Dr Nana's evidence was commissioned jointly by Te Kaahui o Rauru, Te Rūnanga o Ngāti Ruanui and Te Korowai o Ngāruahine.

**OVERVIEW OF THESE SUBMISSIONS**

6. These submissions set out the following matters in order to assist the Panel and to outline why Te Kaahui o Rauru considers that the Application must declined:

(a) A summary of statements and evidence filed for Te Kaahui o Rauru;

(b) An overview of engagement to date from the Applicant, why this has been lacking and why the Application is misleading;

[3] Above, at [26].

(c) Ngaa Raurutanga, Tikanga and Te Tiriti o Waitangi;

(d) Considerations under the FTAA and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the **EEZ Act**).

**SUMMARY OF STATEMENTS AND EVIDENCE**

7. **Statement of Tahinganui Hina and Renée Bradley:** This joint statement is filed on behalf of the Paepae Representatives of Te Kaahui o Rauru Trust and sets out the overarching position of Ngaa Rauru Kiitahi opposing the Application:

(a) Mr Hina and Ms Bradley provide a detailed account of the Ngaa Rauru Kiitahi rohe, which includes the coastal marine area, and explain the central concept of Ngaa Raurutanga – which is protected under the Ngaa Rauru Kiitahi Settlement of their historical Treaty of Waitangi claims. Against that background, they clearly describe the nature and extent of the Application's impacts on the continued exercise of Ngaa Raurutanga, which necessarily includes concerns regarding TTR's approach to engagement.

(b) This joint statement refers to and draws the Panel's attention to the significant findings of the Supreme Court in relation to substantially the same application made and the cautionary approach it favoured due to the lack of information available as to the adverse environmental effects of the proposed seabed mining activity.

(c) Mr Hina and Ms Bradley record that the information that TTR relies on in its Application under the new fast-track approvals regime (including as to its engagement) has not changed and the same information deficit therefore remains.

(d) In order to assist the Panel, the statement concludes by recommending that the Panel decline the Application but, before doing so, describes an alternate vision for the continued exercise of Ngaa Raurutanga – one that incorporates development, albeit not at the expense of the taiao, and contributes to the sustenance and wellbeing of future generations of Ngaa Rauru uki.

8. **Statement of Turama Hawira:** This statement is filed as a traditional customary evidence statement on behalf of Ngaa Rauru Kiitahi. In his statement, Mr Hawira explains the whakapapa relationality between the Maaori worldview, the Ngaa Rauru worldview and kawa, and the role and exercise of kaitiakitanga in relation to the whenua me te moana. Mr Hawira holds customary knowledge in relation to the kawa of Aotea Waka and warns against disrupting the balance that exists within the relationship between taangata and the whenua me te moana.

9. **Statement of Te Huia Bill Hamilton:** He uki nō Ngaa Rauru, Ngāti Kahungunu and Ngāti Raukawa. Mr Hamilton makes his statement as an uki of Ngaa Rauru and as one of the negotiators appointed to settle the Ngaa Rauru Kiitahi historical Treaty of Waitangi claims, which ultimately culminated in the Ngaa Rauru Kiitahi Settlement. Building on the statements made by his whanaunga, he sets out how Ngaa Raurutanga can be understood as an exercise of rangatiratanga, protected as a matter of domestic and international law. He considers that there is significant risk to the Ngaa Rauru Settlement (particularly the Crown's commitment to protect and honour Ngaa Raurutanga) and those future generations of Ngaa Rauru uki if the approvals were granted.

10. **Expert Economic Evidence of Dr Ganesh Nana:** Dr Nana was jointly commissioned to provide independent expert evidence on behalf of Te Kaahui o Rauru, Te Rūnanga o Ngāti Ruanui and Te Korowai o Ngāruahine. In his evidence, Dr Nana advises that significant caution be exercised when viewing the economic effects presented by the multiplier model analysis presented in the Application. His reasons for this are that there are considerable limitations, assumptions and caveats that underpin this modelling framework. In his view, the multiplier model is not an accurate representation of any net economic effects of a project. In that regard, he states that any consequential net economic effects should properly be addressed ideally within a Total Economic Value (TEV) framing – which takes into account both the use and non-use value of the resource, with reference to Māori views of value and iwi economies.

## ENGAGEMENT TO DATE LACKING AND MISLEADING

11. Te Kaahui o Rauru wish to record at the outset their concerns with the engagement to date from TTR in respect of this Application. It is their view that the Application as filed is misleading, insofar as engagement with Te Kaahui o Rauru is concerned.

12. As is evidenced by Mr Hina and Ms Bradley, the particular statements made by the Applicant in relation to engagement with Te Kaahui o Rauru are not accurate.[4]

13. Before lodging a substantive application for a list project, an applicant must (among other things) consult:[5]

    (a) any relevant iwi authorities, hapū and Treaty settlement entities (s 11(1)(b)); and

    (b) any relevant applicant groups with applications for customary marine title under MACA (s 11(1)(c)).

14. Once the substantive application has been lodged, the Environmental Protection Authority (the **EPA**) must decide whether a substantive application is complete and within scope of the fast-track approvals process under the Act – being satisfied that the Application complies with the pre-lodgement conditions.[6] The Application was deemed complete on 15 May 2025.[7]

15. While the Applicant continues to assert that this Application is a new application, it has made no effort to engage with Te Kaahui o Rauru in relation to this Application prior to lodging its substantive application – despite the

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4 See Statement of Evidence of Tahinganui Hina and Renee Bradley dated 6 October 2025 at [80]-[87].

5 Section 29, FTAA.

6 Section 46(1), FTAA.

7 Decision on Completeness and Scope for the Taranaki VTM Project under section 46 of the FTAA (dated 15 May 2025).

requirements in the FTAA and EEZ regime in relation to iwi interests and Treaty settlements. In this regard, Mr Hina and Ms Bradley record that:[8]

(a) It is clear from the current Application that the Applicant relies on its early attempts to engage in the previous application processes that have occurred to date.[9]

(b) The Applicant continues to rely on the 2016 Cultural Values Assessment (the **CVA**).[10] To the best of their knowledge, Ngaa Raurutanga was not incorporated into the CVA, nor was Ngaa Rauru Kiitahi involved in the preparation of a CVA.

(c) Ngaa Rauru Kiitahi opposition to the proposed mining activity and its effects has been clear:

(i) Ngaa Rauru Kiitahi first opposed the activity in our submissions to the Authority, as recorded in letters from Anne-Marie Broughton (the former Kaiwhakahaere of Te Kaahui o Rauru) to the Authority dated 14 October 2016 and 12 December 2016.[11]

(ii) Their submission was supported by an overwhelming amount of evidence filed during the previous hearing before the Authority in 2017.[12]

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8 Statement of Evidence of Tahinganui Hina and Renee Bradley dated 6 October 2025 at [80]-[87].

9 The Application, section 7.1.4 (FTA Pre-lodgement Consultation).

10 The Application, section 5.13.1 (Cultural Effects) and 5.13.2 (Cultural Values Assessment).

11 The Authority "Te Kaahui o Rauru" (Submission) <https://www.epa.govt.nz/assets/Uploads/Documents/Marine-Activities-EEZ/Activities/EEZ000011-TTRL-Reconsideration/Submissions/Te-Kaahui-O-Rauru-121947.pdf>.

12 In particular:

(A) Expert environmental academic evidence of Professor Catherine Iorns Magallanes, Thomas Stuart and Dale Scott (jointly);

(B) Evidence of Anne-Marie Broughton (in her capacity as the former Kaiwhakahaere of Te Kaahui o Rauru);

(C) Evidence of Martin Davies and Turama Hawira regarding Ngaa Raurutanga and tikanga Māori;

(D) Evidence of Te Huia Bill Hamilton and Mike Neho regarding the Ngaa Rauru Settlement and the interests protected therein; and

(E) Expert Māori academic evidence of Dr Andrew Erueti and Professor Jacinta Ruru and Sarah Downs.

(d) To the best of their knowledge, the Applicant has only attempted to contact Te Kaahui o Rauru twice – by way of letters dated 29 January and 15 August 2025 (for which we responded on 26 August) – in relation to the current Application under the Fast-Track approvals process.

(e) They consider the information provided at paragraph 7.2.5 of the Application to be historic, outdated and misleading, given that this is a new application under a completely different legislative regime for Fast-Track consenting.

16. There has been ample opportunity for TTR to seek meaningful and genuine engagement with Te Kaahui o Rauru. This is particularly heightened given that Te Kaahui o Rauru have participated in proceedings in relation to this project for almost a decade – which has come at an enormous cost (both in time and monetary terms) to the uki of Ngaa Rauru Kiitahi.

**KEY ISSUES – NGAA RAURUTANGA, TIKANGA AND TE TIRITI O WAITANGI**

*Ngaa Raurutanga*

17. Ngaa Raurutanga is the foundation of Ngaa Rauru Kiitahi existence and tikanga. Ngaa Raurutanga is the term used by Ngaa Rauru Kiitahi to describe those values, rights and responsibilities Ngaa Rauru Kiitahi holds according to custom, including the values, rights and responsibilities recognised by Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.[13]

18. Ngaa Raurutanga is underpinned by the worldview of Aotea Whare Waananga, that is responsible for, the tikanga or tribal customary laws, that legitimize and justify human behavior. According to Mr Hawira, kawa, in the context of today's thinking, is the manifestation of the cosmogonical tree of life, from which all life forms evolve. Based upon an integrated familial relationship with his environment, man, according to our customary laws, shares a symbiotic relationship with all living things, both animate and inanimate. Kawa is the sacred order of creation, retained in ritual narratives of ancient genealogies. The function of these rituals are to maintain the equilibrium of nature and govern the human activities between man and his

[13] Statement of Evidence of Tahinganui Hina and Renee Bradley dated 6 October 2025 at [25].

environmental relations.[14] Inherent in these kawa are the obligations to act as kaitiaki in relation to all life.[15]

19. The values held by Ngaa Rauru Kiitahi are reflected in:[16]

    (a) the practice by Ngaa Rauru Kiitahi of mataauranga, waiora/hauora, kaitiakitanga, wairuatanga, te reo and whakapapa; and

    (b) respect for the principle "mai te rangi ki te whenua, mai uta ki tai, ko nga mea katoa e tapu ana, Ngaa Rauru Kiitahi ki a mau, ki a ita".

*Te Tiriti o Waitangi*

20. Ngaa Rauru Kiitahi entered into a deed of settlement with the Crown on 27 November 2003 (the **Deed**). In order to give effect to the Deed, the Ngaa Rauru Kiitahi Claims Settlement Act 2005 was enacted on 28 June 2005 (the **Settlement Act**) (together, the **Ngaa Rauru Kiitahi Settlement**).

21. Importantly, the Ngaa Rauru Kiitahi Settlement contains a statement of Ngaa Raurutanga that is expressly acknowledged by the Crown. The Crown acknowledged that Ngaa Rauru Kiitahi has exercised Ngaa Raurutanga in respect of, and has occupied, the Ngaa Rauru Kiitahi rohe and held tight to the values that constitute Ngaa Raurutanga.[17]

22. Mr Hamilton describes how Ngaa Raurutanga is the name that Ngaa Rauru give to the expression of our Ngaa Rauru rangatiratanga. It includes all the rights and responsibilities that flow from the guarantee of tino rangatiratanga in Article II of Te Tiriti o Waitangi. It is often referred to as their mana motuhake.[18] Mr Hamilton describes how the Treaty breaches suffered by Ngaa Rauru can be defined as breaches to our mana atua (belief systems), mana whenua (lands, territories and resources) and mana tangata (our institutions and communities). The redress provided by the Crown in

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[14] Statement of Evidence of Turama Hawira dated 6 October 2025 at [3], [32]-[34].

[15] See for example above, at page 4: "Puwai Tangaroa – The law of all life in the oceans".

[16] Deed of Settlement, clause 2.10(b).

[17] Deed of Settlement, clause 2.10(a).

[18] Statement of Evidence of Te Huia Bill Hamilton dated 6 October 2025 at [20].

recognition of those breaches includes the commitment to recognise and protect our Ngaa Raurutanga.[19]

23. Te Kaahui o Rauru consider Ngaa Raurutanga to be a commitment protected by the terms of their settlement. Their ability to continue to exercise Ngaa Raurutanga is therefore an obligation arising out of the Ngaa Rauru Kiitahi Settlement – that the Panel must grapple with in deciding the Application. In their view, anything less risks adopting a shallow meaning of their Treaty settlement.

24. Te Kaahui o Rauru, through Mr Hamilton, consider that the exploitation of the moana proposed in this Application will undermine and over-ride their kaitiaki responsibilities, inherent in the continued exercise of Ngaa Raurutanga.

*Tikanga (Ngaa Raurutanga) and Te Tiriti o Waitangi Considerations*

25. In relation to a previous iteration of this application in *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board*, the Supreme Court found that:

    (a) in considering the application under the EEZ Act, the Authority's decision-making committee was required to take into account the effects of the proposed activity on "existing interests" in a manner that "recognised and respected" the Crown's obligation to give effect to the principles of the Treaty; [20]

    (b) it follows that, by interpreting existing interests consistently with the Crown's obligations under the Treaty, tikanga-based customary rights and interests constitute "existing interests" (including the exercise of kaitiakitanga and any customary rights claimed, but not yet granted);[21]

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[19] Above, at [21].

[20] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZSC 67 at [149] per William Young and Ellen France JJ, [237] per Glazebrook J, [296] per Williams J and [332] per Winkelmann CJ.

[21] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZSC 67 at [154]-[155] per William Young and Ellen France JJ, [237] per Glazebrook J, [296]–[297] per Williams J and [332] per Winkelmann CJ.

(c) accordingly, the "existing interests" that the Authority's decision-making committee was required to consider were:[22]

(i) the exercise of kaitiakitanga within the rohe;

(ii) rights and interests claimed under the Marine and Coastal Area (Takutai Moana) Act 2011; and

(iii) rights and interests under the Treaty of Waitangi (Fisheries Claim) Settlement Act 1992;

(d) if such "existing interests" are outweighed by others, then the EEZ Act required the decision-making committee to provide reasons for its decision. In other words, where there are a number of factors to be taken into account and interests reflecting Treaty obligations, the decision-maker will need to explain how the balance has been struck;[23]

(e) in this case, the Court held that the decision-making committee had failed to properly engage with the nature of the interests affected by the proposed activity in Applicant's application. For example, the decision-making committee referred to the effect of the proposed activity on kaitiakitanga and the mauri of the marine environment, but did not grapple with how Maaori (in that case, the iwi) would be able to continue to exercise their kaitiakitanga if the consent was granted (particularly given the length of the consent and the long-term nature of the environmental effects);[24]

(f) furthermore, the Court held that tikanga Maaori, as law, must be taken into account by the decision-making committee as "other applicable

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[22] This approach was held to be consistent with the guarantee in Article II of the Treaty of tino rangatiratanga in the context of the marine environment: *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZSC 67 at [154] per William Young and Ellen France JJ.

[23] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZSC 67 at [157] per William Young and Ellen France JJ.

[24] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZSC 67 at [160] per William Young and Ellen France JJ.

law", where its recognition and application is appropriate to the particular circumstances of the consent application at hand.[25]

26. For Te Kaahui o Rauru, the protection of the rights and interests of their people and of the moana in terms of Ngaa Raurutanga and Te Tiriti o Waitangi was paramount. These concerns continue in the present Application.

27. The matters identified above by the Supreme Court are expressly relevant to and must be taken into account by the Panel in these proceedings under the FTAA (s 81(3)(l)).

28. In this regard, Te Kaahui o Rauru have considered the Application and associated information in the context of their responsibilities to whenua, to the moana and all associated elements as manifested through the mataapono identified in the evidence filed on behalf of Te Kaahui o Rauru, and in particular on the continued exercise of Ngaa Raurutanga in relation to the affected area and its interconnectedness with the wider Ngaa Rauru Kiitahi rohe.[26]

29. Information and evidence to date indicates that the adverse impacts and level of environmental destruction resulting from the proposed mining activity could be significant. They consider that the flow on impacts of the effects on the domain of Tangaroa on the people who rely on and are intrinsically connected with and responsible to those eco systems is alarming – "mai te rangi ki te

[25] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZSC 67 at [169] per William Young and Ellen France JJ, [237] per Glazebrook J, [296]–[297] per Williams J and [332] per Winkelmann CJ. Williams J at [297] (with whom Glazebrook J agreed) wished to make explicit that these questions must be considered not only through a Pākehā lens.

[26] Statement of Evidence of Tahinganui Hina and Renee Bradley dated 6 October 2025 at [72].

whenua, mai uta ki tai, ko nga mea katoa e tapu ana, Ngaa Rauru Kiitahi ki a mau, ki a ita".[27]

30. Te Kaahui o Rauru consider that the risk to the health and wellbeing of Tangaroa and all its living creatures, including offshore reefs, the seabed and ocean life to be totally unacceptable to Ngaa Rauru Kiitahi.[28]

**DECISION-MAKING FRAMEWORK IN THE FTAA AND EEZ ACT**

31. The purpose of the FTAA is to "facilitate the delivery of infrastructure and development projects with significant regional or national benefits".[29]

32. In deciding whether to approve or decline an application seeking fast-track approval for a marine consent, the Panel must take into account the criterion set out in Schedule 10 (approvals relating to the EEZ Act), clause 6:[30]

    (a) the purpose of the FTAA;

    (b) section 10 (purpose of the EEZ Act) and 11 (international obligations) of the EEZ Act;

    (c) any relevant policy statements issued under the EEZ Act; and

    (d) sections 59 (Marine consent authority's consideration of application), 60 (Matters to be considered in deciding extent of adverse effects on existing interests), 61(1)(b) and (c) and (2) to (5) (Information principles), 62(1A) and (2) (Marine consent authority must refuse an application), 63 (Conditions), and 64 to 67 of the EEZ Act.

33. For the purposes of subclause (1)(d), the Panel must take into account that section 62(1A) of the EEZ Act would normally require an application to be declined, but must not treat that provision as requiring the panel to decline the approval the panel is considering.[31]

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27 Above, at [76].

28 Above, at [76].

29 Section 3, FTAA.

30 Sch 10 of the FTAA, cl 6(1).

31 Sch 10, cl 6(2).

34. The phrase “take into account” requires the Panel to directly consider the matters identified and give them genuine consideration; rather than mere lip service, such as listing them and setting them aside.[32]

35. In respect of those matters to be taken into account, the greatest weight must be given to the purpose of the FTAA.[33] The implication, therefore, is that in the FTAA criteria in (b) to (d) are to have equal statutory weight.[34]

36. However, subject to bearing that distinction in mind – as noted by the expert panel in the *Ports of Auckland* decision – the Court of Appeal’s *Enterprise Miramar* decision provides the following guidance for the Panel’s decision-making (adapted as it would apply to the FTAA):[35]

    (a) While the greatest weight is to be placed on the purpose of the FTAA, we must be careful not to rely solely on that purpose at the expense of due consideration of the other matters listed in (b) to (d);[36]

    (b) Clause 6 requires the Panel to consider the matters listed in clause 6(1)(a)-(d) on an individual basis, prior to standing back and conducting an overall weighting in accordance with the specified statutory direction;[37]

    (c) The purpose of the FTAA is not logically relevant to an assessment of environmental effects. Environmental effects do not become less than minor simply because of the purpose of the FTAA. What changes is the weight to be placed on those more than minor effects; they may be outweighed by the purpose of facilitating the delivery of infrastructure and development projects with significant regional or national benefit, or they may not.[38]

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[32] Port of Auckland FTAA Application – Decision of Expert Panel (dated 21 August 2025) [FTAA-2503], at [119].

[33] Sch 10, cl 6(1); Port of Auckland Decision at [120].

[34] Port of Auckland Decision at [121].

[35] Port of Auckland Decision at [121], citing *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541.

[36] *Enterprise Miramar* at [41].

[37] *Enterprise Miramar* at [52]-[53].

[38] *Enterprise Miramar* at [55].

37. The purpose of the FTAA is "to facilitate the delivery of infrastructure and development projects with significant regional or national benefits".[39] The Project is a "development" project. When assessing this criterion, the Panel must consider the extent of the Projects' national or regional benefits.[40] The criterion is to be individually assessed as part of a clause 6(1) assessment, and then, when conducting an overall assessment, is to be given the greatest weight.

38. Clause 7 is procedural and directs that in setting conditions, sections 63 to 67 of the EEZ Act apply subject to the necessary modifications to reflect the FTAA. In particular, sections 64 (adaptive management approach) and 66 (monitoring conditions) are relevant to the Application.

39. In addition to the Schedule 10 matters applying to approvals under the EEZ Act, section 81(2) of the FTAA provides that – for the purpose of making the decision on approvals sought in a substantive application – the Panel:

    (a) must consider the substantive application and any advice, report, comment, or other information received by the panel under section 51, 52, 53, 55, 58, 67, 68, 69, 70, 72, or 90;

    (b) must apply the applicable clauses set out in subsection (3) (for an approval for a marine consent – clauses 6 and 7 of Schedule 10);[41]

    (c) must comply with section 82 (Effect of Treaty settlements and other obligations on decision making), if applicable;

    (d) must comply with section 83 (Conditions must be no more onerous than necessary) in setting conditions;

    (e) may impose conditions under section 84 (Conditions relating to Treaty settlements and recognised customary rights);

    (f) may decline the approval only in accordance with section 85 (When panel must or may decline approvals).

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[39] Section 3, FTAA.

[40] Section 82(4), FTAA.

[41] Section 82(3(l), FTAA.

40. For completeness, we note that section 85(7) provides that:

> To avoid doubt, noting in this section or section 82 or 85 limits section 7 (Obligation relating to Treaty settlements and recognised customary rights).

**APPLICATION OF CONSIDERATIONS UNDER THE FTAA AND EEZ ACT**

*To facilitate the delivery of infrastructure and development projects (s 3 and cl 6(1)(a))*

41. To the best of our knowledge, prior decisions made under the FTAA relate to the delivery of infrastructure projects, as opposed to *development* projects.

42. The Project concerns large-scale, deep sea-bed mining that takes place out in the open ocean (i.e. the exclusive economic zone). The area for which is approximately 65.76km$^2$ and is located between 22 kilometres and 36 kilometres from the coastline of South Taranaki (that is, inclusive of the Ngaa Rauru rohe).

43. This is different from the *infrastructure* projects that have been considered by other expert panels to date because it does not produce any benefit or utility for the community in its own right.

44. Rather, what is proposed is for:

    (a) The Applicant (wholly owned by an off-shore company in Australia) to extract up to approximately 50 million tonnes of seabed material per year, over a 10-year period – in order to recover up to approximately 5 million tonnes of vanadium-rich titanomagnetite concentrate (VTM).

    (b) Once extraction is complete, the Applicant proposes to return the remainder of the de-ored material to the seabed (50 million tonnes of seabed ≈ 5 million tonnes of VTM) and monitor environmental recovery for up to 5 years post-extraction (20 years extraction > 5 years environmental monitoring post-extraction).

45. It is unclear to what extent the Applicant's proposed economic benefits arising out of the Project will take place in Aotearoa New Zealand.

46. The potential adverse effects of a 20-year extraction project – compared with the 5-year post-extraction monitoring – involving up to 50 million tonnes of

seabed for up to a 5 per cent return on VTM (approximately 5 million tonnes), are significantly out of proportion to the economic benefits. This is compounded by the level of uncertainty regarding whether or not those benefits will be realised in Aotearoa New Zealand, or simply taken offshore.

*… with significant regional or national benefits (s 3 and cl 6(1)(a))*

47. The FTAA does not define the meaning of "significant regional or national benefits".

48. It is Te Kaahui o Rauru's position that this must be considered in a manner consistent with the continued exercise of Ngaa Raurutanga, tikanga and the Ngaa Rauru worldview. Te Kaahui o Rauru consider that, if approved, the Project by TTR (wholly owned by an Australian company) would create, and contribute to, the lost opportunity for Te Kaahui o Rauru to pursue *sustainable* and *intergenerational* economic growth for the benefit of our uki.[42] In their view:[43]

    (a) The Application has not demonstrated that it brings significant regional or national benefits given existing interests already at place.

    (b) If granted, the Application would impact Te Kaahui o Rauru and the existing community in pursuing existing and future opportunities with regional and national interests – such an outcome, if produced, would be contrary to the purpose for which the Act is trying to achieve.

    (c) The approach of Te Kaahui o Rauru to delivering regional and national economic benefit is measured, calculated and intergenerational. They work with the community to try and ensure that development in the rohe is sustainable and takes a long-term view. They are not necessarily opposed to development projects, provided that these reflect, and continue to support, the exercise of Ngaa Raurutanga (which encompasses ngaa maataapono such as tiakitanga, which ensures the

[42] See Statement of Evidence of Tahinganui Hina and Renee Bradley dated 6 October 2025 at [99]-[100].

[43] See Statement of Evidence of Tahinganui Hina and Renee Bradley dated 6 October 2025 at [114]-[118].

protection of the places, natural resources, taonga and its uki, and the mouri of those places, resources, taonga and uki).

(d) Development must be sustainable and, as a corollary, restoration must be reciprocal and adaptive in nature. In contrast, the Application does not provide for this.

(e) Within their rohe, Te Kaahui o Rauru are primarily concerned with building capability and capacity to create economic opportunities that, in turn, improve the health and wellbeing of people and te taiao.

49. Current operations that advance Ngaa Raurutanga in this regard include, but are not limited to the interests set out below, including significant and guaranteed Treaty of Waitangi commercial and customary fishing rights and interest (and we refer to the comments of Te Ohu Kaimoana for further information on these interests):[44]

(a) commercial fishing interests in Te Pātaka o Tangaroa and Te Pātaka o Rauru;

(b) ongoing efforts to re-connect uki to the whenua and marae, including awarding over 50 education scholarships for secondary school, undergraduate and postgraduate study to uki each year in 2023 and 2024, and hosting several te tipuranga and puutaiao wānanga;

(c) sustainability initiatives, including the delivery of over 30,000 plants in 2023, implementation of the Waitootara Catchment Plan, Freshwater Monitoring Framework (which is near completion), undertaking a review of our Environmental Management Plan, and supporting whale strandings in the rohe; and

(d) supporting infrastructure development within the rohe, including an investment in 20.49km fencing for the community in 2023.

50. Te Kaahui o Rauru cites that there are many examples of economic activities within the rohe that do not pose the level of cultural, environmental and physical threat as deep seabed mining, which the Application is exclusively

[44] See Statement of Evidence of Tahinganui Hina and Renee Bradley dated 6 October 2025 at [119]-[125].

concerned. These activities reflect a perspective more akin to the Total Economic Value approach described by Dr Nana, recognising broader perspectives (or definitions) of *value*, acknowledging economic activity may include using and/or not using resources (or assets). Further, an object, good, or service may be of *value* (or provide value) even if it is not being *used*.[45]

51. In this regard, Te Kaahui o Rauru rely on and record the views of "Roskruge et al and Dell et al pursue these considerations – building on the seminal work of Professor Mānuka Hēnare – in extending economic understanding beyond the narrow 'produce and spend' multiplier model. In particular, the importance of natural resources and taonga *in and of themselves* should not be understated, or worse ignored".[46]

52. Te Kaahui o Rauru emphasise and record the significance of this statement in relation to this Application, and rely in particular on the evidence of the tangata whenua witnesses of Messrs Hawira, Hamilton, Hina and Ms Bradley in relation to this worldview and perspective.

53. Notwithstanding the above, Te Kaahui o Rauru also rely upon and refer to the expert evidence of Dr Nana which identifies the following **significant** issues with the economic analysis provided by the Applicants:[47]

    (a) Findings of positive economic impact are neither surprising nor unexpected given the model construction and the perspective embedded in such multiplier analysis, including that multiplier analysis:

        (i) are predicated on – and inherently restricted to – a *produce and spend* perspective on economic activity;

        (ii) by definition, any producing and spending (irrespective of what or of on what) will result in multiplied further production and spending;

        (iii) multiplied production and spending impacts are accompanied by positive employment impacts; and

[45] See Statement of Evidence of Dr G Nana dated 4 October 2025 at [61].

[46] Above, at [69].

[47] Above, at [28]-[37].

(iv) these impacts are inferred to be positive benefits.

(b) Consequently, there are numerous assumptions and caveats that underpin the findings of positive economic impact. These are well stated, as expected, in the section 2.2. However, an explanation of the effects or impacts of these caveats on the findings is absent.

(c) The export earnings discussion in Section 4 of the report **is egregiously incorrect** when stating

> *"The value of New Zealand's exports in the year to June 2024 totalled about $66 billion".*

(d) Indeed, that paragraph contains **errors and distortions of facts for it to be substantively misleading**. It should be deleted and/or ignored. The $66 billion figure ignores export revenue from services, of the order of $30 billion. Statistics New Zealand Tatauranga Aotearoa nominal GDP data estimates total export revenue for the year to June 2024 at $99 billion; while trade balance of payments data estimates goods export value at $69 billion and services export value at $30 billion, also totalling $99 billion.[48]

(e) This gross understatement of the nation's total export value has the effect of grossly overstating the importance of the potential contribution of VTM exports.

(f) Consequently, Table 14 (in Section 4) purportedly listing New Zealand's principal exports (along with potential VTM's contribution) **is similarly substantively misleading and should also be deleted and/or ignored**.

(g) It should be made clear that contributions from royalty and tax payments (sections 4 and 5) **are NOT totally in addition** to the calculated impact on GDP, as described earlier in Section 3. Further, the statement in section 2.3.6 **is misleading** and the word additional

[48] Statistics New Zealand Tatauranga Aotearoa INFOS data series *SNEQ.** and *BOPQ.** The discrepancy between the totals ($96bn and $99bn) result from conceptual accounting differences between National Accounts and Balance of Payments Trade Accounts valuations.

requires qualification and/or further clarification. There is **a significant risk of double-counting** the same economic effects if additional is interpreted as being in addition to the multiplier model calculated impacts on GDP.

> *"Our calculations of the additional economic contribution of the Project, in terms of export earnings, royalties and taxes…"*

54. In addition, Dr Nana records that:[49]

(a) Sustainable economic impact for local communities to benefit from the Project would require considerable investment in foundation workforce and business development in the area. In a similar vein, Māori economy and business activity is also at risk of being bypassed by this Project in the absence of targeted investments.

(b) Further, the delivery of infrastructure or development projects remains unclear as a result of this Project.

(c) Significant linkages with local area businesses and activity appears lacking, while the use of *fly-in-fly-out / drive-in-drive-out* workforce appears at odds with providing skills and training and employment opportunities for the local community.

(d) A positive down-stream 'legacy' impact from the Project – as would be implied for an infrastructure or development project – is difficult to observe. Curiously, the establishment of a facility to provide technical and marine skills-based training is listed under "Social impacts".

(e) Consequently, after 35 years and on completion of the Project, it is difficult to clearly envision a positive legacy in terms of business, employment, or income opportunities, or a more balanced economic structure, for the local area or the Region.

[49] See Statement of Evidence of Dr G Nana dated 4 October 2025 at [55]-[56].

55. In this regard, it is clear that the Application does not meet the threshold for significant regional and national benefit under any of the models referred to above.

*Uncertainty of information – the Panel must favour caution and environmental protection (s 61(1) and (2), EEZ Act)*

56. The Applicant has failed to provide the necessary updating information for this new application under the FTAA, including a sufficient response to the Supreme Court findings.

57. The Panel must base decisions on the best available information and take into account any uncertainty or inadequacy in the information available (s 61(1)(b) and (c)): if the information available is uncertain or inadequate, the Panel must favour caution and environmental protection – s 61(2).

58. The level of uncertainty in the current Application must be considered within the necessary context of the Supreme Court's findings in *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZSC 67 (the **Supreme Court Decision**). In particular:

    (a) The fact that there is a heightened threshold is emphasised by the need to favour caution and environmental protection if there is uncertainty as to the information available. In practice, the uncertainty is likely to relate to environmental effects.[50]

    (b) The effect of the information principles was articulated by Glazebrook J as: [51]

> Discharge consents may be granted even on incomplete information, as long as that is the best available information and that, taking a cautious approach and favouring environmental protection, the decision-maker is satisfied that the bottom line in s 10(1)(b) is met: that there is no material harm from pollution or that material environmental harm can be avoided, remedied (within a reasonable timeframe) or mitigated (so that it is not

[50] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZSC 67 at [85], per William Young and Ellen France JJ.

[51] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZSC 67 at [273], per Glazebrook J.

material) through the use of conditions. Where this is not the case, the application must be refused.

(c) Given the uncertainty of the information in the previous application, it was not possible to be confident that the conditions would remedy, mitigate or avoid the effects.[52]

(d) On this point, Glazebrook further remarked that the "pre-commencement monitoring conditions" were ultra vires as they were for the purpose of gathering "totally absent baseline information".[53]

59. Once the Application was determined to be complete for the purposes of the FTAA, a Convener's Conference was held on 7 July 2025.[54] Following the Conference, the Convener released a set of post-conference directions in a subsequent minute, which required the Applicant to file a response that:[55]

(a) identified which sections of the Application, including technical reports and conditions had been substantively updated, in response to:

(i) the Supreme Court findings in the Supreme Court Decision;

(ii) issues that were in contention during the reconsideration or were identified by the 2024 Environmental Protection Authority (**EPA**) decision-making committee (**DMC**) as requiring further information; or

(iii) since the 2016 EPA application was withdrawn from the EPA reconsideration process in March 2024.

60. The Applicant filed its response to these directions on 4 August 2025.[56]

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52 *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZSC 67 at [129], per William Young and Ellen France JJ; at [275] per Glazebrook J.

53 *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZSC 67 at [276], per Glazebrook J.

54 Minute of the Panel Convener (dated 26 June 2025) [FTAA-2504-1048].

55 Minute of the Panel Convener (dated 17 July 2025) [FTAA-2054-1048].

56 Memorandum of Counsel for TTR in response to Panel Convener Directions (dated 4 August 2025).

61. Having considered the Applicant's response against the backdrop of the Convenor's post-conference directions, it is clear that the Applicant:

(a) did not address what further work or engagement had been undertaken to address the matters raised by the Supreme Court or the DMC since the EPA application was lodged in 2016;[57]

(b) contained assertions in its response that "the application which has been submitted under the [FTAA] is a new application made under a new legislative regime, and is therefore separate and distinct from any previous application made under different legislation";[58]

(c) accordingly, it follows that "TTR does not consider that:

(i) the findings of the Supreme Court,

(ii) issues in contention during the reconsideration, or

(iii) the matters on which the reconsideration DMC requested further information.

will provide as much guidance for the Panel on the present application as others may think";[59]

(d) further asserted that issues deemed significant under the EEZ Act and in previous decisions of the EPA and the senior courts do not have the same weighting in the FTAA as they otherwise would under the EEZ regime;[60] and

(e) largely referred to updated briefs of evidence filed in 2023/24 as part of the EPA reconsideration process, in which expert witnesses reassessed likely environmental effects with respect to relevant parts of the Supreme Court Decision – predominantly reconfirming their 2017 assessments.[61]

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[57] TTR's response merely stated that "the consultation section was updated to address TTR's additional attempts at consultation regarding its new [FTAA] application" at [26(h)].

[58] TTR response (4 August 2025) at [4].

[59] TTR response (4 August 2025) at [4].

[60] TTR response (4 August 2025) at [6].

[61] TTR response (4 August 2025) at [9].

62. Importantly, the Applicant admitted that "TTR did not file any new evidence in the reconsideration on the bond or tikanga issues" and that its position regarding tikanga was:[62]

    (a) "That there had been limited material before the EPA in 2017 regarding tikanga issues.

    (b) That in order for the reconsideration DMC to 'grapple with the true effect of the proposal for iwi parties', it fell to those with mana moana (and not TTR) to provide the evidential basis regarding the relevant tikanga."

63. In light of this, we consider that the level of uncertainty that was the subject of the Supreme Court decision remains and the issue of uncertainty as to adverse environmental effects therefore continues to persist within this new application under the FTAA. This factor weighs against approval, and the Panel is statutorily required to take this into account on its own merit (prior to the overall weighing of considerations).

*Effect on Ngaa Raurutanga and obligations arising out of Ngaa Rauru Settlement and Fisheries Settlement (ss 82 and 7)*

64. Section 85(1) and (2) of the FTAA describe the circumstances in which a Panel must decline an approval.

65. Section 85(1)(b) provides that the panel must decline an approval if it considers that granting the approval would breach section 7 (Obligation relating to Treaty settlements and recognised customary rights).

66. As noted earlier in our submissions, Ngaa Rauru Kiitahi entered into a deed of settlement with the Crown on 27 November 2003, which settled our historical Treaty of Waitangi claims (the **Deed**). In order to give effect to the Deed, the Ngaa Rauru Kiitahi Claims Settlement Act 2005 was enacted on 28 June 2005 (the **Settlement Act**) (together, the **Ngaa Rauru Settlement**).

67. The evidence of Mr Hina and Ms Bradley provides an extremely detailed account of the fact that Ngaa Rauru Kiitahi has and continues to have a relationship with the offshore area in South Taranaki based on Ngaa

[62] TTR's response (4 August 2025) at [13].

Raurutanga. Ngaa Raurutanga has always existed in its own right – but is affirmed in the Crown's Treaty of Waitangi settlement commitments made to Ngaa Rauru Kiitahi.

68. The expression of Ngaa Raurutanga is underpinned by a series of mātāpono (principles) that are specific to Ngaa Rauru Kiitahi and that guide the practical manifestation and practice of Ngaa Raurutanga. Identifying these mātāpono is consistent with the Supreme Court's finding that:[63]

> What was required was for the DMC 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.

69. For the purposes of the FTAA, we say that the protection and continued exercise of Ngaa Raurutanga is an obligation arising out of the Ngaa Rauru Settlement (particularly having regard to the commitments made in the Deed of Settlement).[64]

70. In addition, Te Kaahui o Rauru note and endorse the comments of Te Ohu Kaimoana that the Application, if approved, will be at risk of undermining the 1992 Treaty of Waitangi Fisheries Settlement. This settlement recognised that Māori customary interests in fisheries include commercial and non-commercial aspects. The Trust is the relevant mandated iwi authority that currently holds settlement quota for and on behalf of Ngaa Rauru under the Māori Fisheries Act 2004.

71. The conclusion that can be drawn from the cumulative evidence filed on behalf of Te Kaahui o Rauru makes it clear that the Panel must take into account the adverse effects of the Project on the:

    (a) sustenance and wellbeing of the uki of Ngaa Rauru Kiitahi;

    (b) revival, retention and continued exercise of Ngaa Raurutanga;

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63 *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZSC 67 at [161], per William Young and Ellen France JJ.

64 Deed of Settlement, clauses 2.9 to 2.13.

(c) opportunity for Te Kaahui o Rauru to foster, promote, and pursue its own economic development for its uki (that includes infrastructure and development projects and the creation of job for uki); and

(d) health and wellbeing of te taiao (the environment), including the relationship that Ngaa Rauru Kiitahi have with both the onshore and offshore area.

72. In light of such effects, this factor weighs against approval, and the Panel is statutorily required to take this into account on its own merit (prior to the overall weighing of considerations).

73. Furthermore, given the nature of the fisheries settlement quota within the South Taranaki Bight, Te Kaahui o Rauru consider that the Application, if approved, will breach of section 7 of the FTAA. In particular, that exercising the power to grant the approvals sought in the Application would not be consistent with the obligations arising out of the 1992 Treaty of Waitangi (Fisheries Claims) Settlement Deed and Act and the Māori Fisheries Act 2004.

*Ngaa Raurutanga as applicable law (s 59(2)(l), EEZ Act)*

74. The Supreme Court held that tikanga Māori, as law, must be taken into account by the decision-making committee as "other applicable law", where its recognition and application is appropriate to the particular circumstances of the consent application at hand.[65]

75. Ngaa Raurutanga is the applicable law that must be taken into account by the Panel. Ngaa Raurutanga is a cornerstone of the Ngaa Rauru Settlement. Ngaa Raurutanga and its associated kawa, tikanga and maataapono is set out in the evidence of Messrs Hawira, Hamilton, Hina and Ms Bradley and above.

76. Given the FTAA and EEZ requirements in relation to iwi interests and Treaty settlements, its recognition and application to the Application is clearly appropriate – particularly taken together with the almost decade long

[65] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZSC 67 at [169] per William Young and Ellen France JJ, [237] per Glazebrook J, [296]–[297] per Williams J and [332] per Winkelmann CJ. Williams J at [297] (with whom Glazebrook J agreed) wished to make explicit that these questions must be considered not only through a Pākehā lens.

participation of Ngaa Rauru Kiitahi in opposing the marine consents that continue to be sought by the Applicant in various fora.

*Effects on the environment and existing interests (s 59(2)(a), EEZ Act)*

77. The Supreme Court has confirmed that "existing interests" for the purposes of the EEZ Act, which are required to be taken into account in this fast-track approvals process pursuant to s 59(2)(a) of the EEZ,[66] include, but are not limited to: [67]

(a) the exercise of kaitiakitanga within the rohe and other tikanga-based interests (in this case, the exercise of Ngaa Raurutanga) – which include both physical and spiritual elements. It is the evidence of Mr Hina and Ms Bradley, as well as Mr Hawira and Mr Hamilton, that such interests extend to activities that support the sustenance and wellbeing of the people of Ngaa Rauru and the natural world;

(b) the rights and interests claimed under MACA and, as was acknowledged in the s 18 report on Treaty settlements and the invitation to comment on this Application – Ngaa Rauru Kiitahi is currently undertaking the process of formalising its customary rights as an applicant group under MACA; and

(c) the rights and interests under the Treaty of Waitangi (Fisheries Claim) Settlement Act 1992. The customary and commercial fisheries within the Taranaki rohe are evidenced by the comment of Te Ohu Kaimoana.

78. Ngaa Rauru Kiitahi clearly has existing interests, rights, responsibilities and a relationship with the marine environment in which the Project will operate – as derived from, and continuously expressed by, Ngaa Raurutanga. Ngaa Rauru Kiitahi has ancient customary rights, responsibilities, interests and practices that require protection for present and future generations – evidenced by the

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66 Sch 10 of FTAA, clause 6(1)(d).

67 *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZSC 67 at [154]-[155] per William Young and Ellen France JJ, [237] per Glazebrook J, [296]–[297] per Williams J and [332] per Winkelmann CJ. This approach was held to be consistent with the guarantee in Article II of the Treaty of tino rangatiratanga in the context of the marine environment: at [154] per William Young and Ellen France JJ.

koorero, karakia, waiata, places, place names (among other things) throughout the onshore and offshore environment of Ngaa Rauru Kiitahi.[68]

79. Consistent with the Supreme Court's findings, these existing interests – for the purposes of approvals sought within the EEZ – include, but are not limited to:[69]

(a) the exercise of Ngaa Raurutanga and the obligation of tiakitanga within the rohe and other tikanga interests as expressed through ngaa mataapono (which include activities that support the sustenance and well being of Ngaa Rauru Kiitahi people and the natural world);

(b) the rights and interests claimed under MACA; and

(c) the rights and interests under the Treaty of Waitangi (Fisheries Claim) Settlement Act 1992.

80. These existing interests include the wider practise and exercise of tiakitanga, wairuatanga, and the ability to both exercise and gain traditional knowledge (maatauranga) about – and whakapapa back to – Tangaroa and all its elements. Importantly, even if the activities in question occur in the offshore environment in the EEZ (a distinction which is not recognised at tikanga), what is important is their *effects on* the interests that are protected, and the impacts that flow from those effects. It is clear that the effects (including any potential effects) will have a profound impact on the existing interests of Ngaa Rauru Kiithai, which exist in their own right in Ngaa Raurutanga and are expressly protected by the terms of the Ngaa Rauru Kiitahi settlement.[70]

81. As noted above, Ngaa Rauru Kiitahi is currently going through the process of formalising its customary rights under MACA.

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[68] See Statement of Evidence of Tahinganui Hina and Renee Bradley dated 6 October 2025 at [14].

[69] This approach was held to be consistent with the guarantee in Article II of the Treaty of tino rangatiratanga in the context of the marine environment: *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZSC 67 at [154] per William Young and Ellen France JJ.

[70] See Statement of Evidence of Tahinganui Hina and Renee Bradley dated 6 October 2025 at [80].

82. As Mr Hamilton and Mr Hawira note, these existing interests are all supported by a number of international agreements and declarations that record the rights, interests and worldviews of indigenous peoples, including UNDRIP.[71]

*Adverse impacts out of proportion to regional or national benefits (s 85(3))*

83. Section 85(3) of the FTAA describes the circumstances in which an approval may be declined.

84. Section 85(3)(b) provides that the Panel may decline an approval if, in complying with section 81(2), the Panel forms the view that:

> those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered under section 81(4), even after taking into account—
>
> (i) any conditions that the panel may set in relation to those adverse impacts; and
>
> (ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.

85. It is clear that the impacts of the Project will impact and extent into the rohe of Ngaa Rauru Kiitahi.

86. As the EPA Decision-Making Committee recorded in 2017:[72]

> What we understand to be the view of iwi in general was succinctly expressed by Ms Broughton for Ngā Rauru Kītahi. She told us that "we submit that seabed mining is an experimental operation and that it will have destructive effects on our marine environment, marine species and people. As kaitiaki we cannot support this activity. It is the absolute antithesis of what we stand for. … Seabed mining effects are a violation of kaitiakitanga. … as kaitiaki, we, as Ngā Rauru Kītahi, are defenders of the ecosystems and its constituent parts. We believe that everything has a mauri or a life force and that mauri must be protected.

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[71] See Statement of Evidence of Turama Hawira dated 6 October 2025 at [45] and Statement of Evidence of Te Huia Bill Hamilton dated 6 October 2025 at [31]-[32].

[72] Environmental Protection Agency *Decision on Marine Consents and Marine Discharge Consents Application, Trans-Tasman Resources Limited, Extracting and processing iron sand within the South Taranaki Bight*, Application EEZ000011, August 2017 at [650].

87. This remains the view of Te Kaahui o Rauru today, as expressed in the evidence of Messrs Hawira, Hamilton, Hina and Ms Bradley, including that:

(a) In Mr Hina and Ms Bradley's view that: "We are particularly concerned with the level of destruction being proposed in the marine environment, and the risk to the health and wellbeing of Tangaroa and all its living creatures is totally unacceptable to Ngaa Rauru Kiitahi – regardless of any economic benefit (noting that we consider any claimed economic benefits to be negligible in the context of other priorities and activities in our rohe)."[73]

(b) As Mr Hamilton states: "In the present context, Te Kaahui o Rauru is firmly opposed to the approvals sought for deep sea-bed mining to occur in our rohe. Our position has remained unchanged for almost a decade. It is significant in our view that the present application as filed is largely unchanged from previous iterations. As indicated earlier, I have given evidence in relation to substantially the same application – in which my recommendation was for the EPA to decline the marine consents sought under the EEZ Act (at that time). Our engagement with the Applicant and the EPA has spanned almost a decade – these matters are dealt with in some detail in the evidence of Renée Bradley and Tahinganui Hina. The Applicant has adopted a cavalier and disrespectful approach to engagement with Ngaa Rauru Kiitahi over the past decade, with complete disregard for Ngaa Raurutanga. The failure of the Applicant and subsequent decision-making bodies (including the EPA when it initially granted the consents) to listen to our views is, in my opinion, a breach of our Ngaa Raurutanga."[74]

(c) Mr Hawira asserts that: "If we accept the impacts of iron sand extraction, then we face the loss of our traditional breeding grounds, the loss of other taonga migratory species co-dependent on this unique ecosystem and an unprecedented impact on the wider marine environment. The motive of securing short term income to reduce national deficit, does not weigh up to a desecrated seabed in our backyard. Short term economic

[73] Statement of Evidence of Tahinganui Hina and Renee Bradley dated 6 October 2025 at [74].

[74] Statement of Evidence of Te Huia Bill Hamilton dated 6 October 2025 at [26]-[27].

gain as opposed to the long term sustainability of the seabed environment, clearly delineates 'the line in the iron sand'." [75]

(d) As further stated by Mr Hawira: "Transgression occurs when we deliberately upset the delicate balance of nature, or the ethnosphere, whereby our symbiotic relationship within a particular realm of nature is severed, jeopardizing our ability to exist as tangata whenua into the future. The proposal to allow the extraction of iron sand from the West Coast seabed is a deliberate breach of kawa and tikanga and therefore a breach of Article 2 of the Treaty of Waitangi, that guarantees our undisturbed possession of all our taonga." [76]

88. Further physical issues identified within the Application include:[77]

(a) the impact of the sediment plume on the marine environment (including, but not limited to, reef structures and eco systems);[78]

(b) the proposed and potential adverse effects on the seabed, subsoil, benthic biota, marine species and their habitats;[79] and

(c) the use of heavy equipment, fuels, artificial light and noise (among other things) on marine species.[80]

89. As stated, the impacts and unaddressed level of uncertainty that remains in the Application is alarming to Te Kaahui o Rauru.

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75 Statement of Evidence of Turama Hawira dated 6 October 2025 at [39]-[40].

76 Above, at [36]-[37].

77 Statement of Evidence of Tahinganui Hina and Renee Bradley dated 6 October 2025 at [11].

78 The Application, section 5.3 (Sedimentation and Optical Water Quality Effects); 5.4 (Effects on Coastal Processes); 5.11 (Visual, Seascape and Natural Character Effects).

79 The Application, section 5.5 (Benthic Ecology and Primary Productivity Effects); 5.6 (Fished Species); 5.7 (Seabirds); 5.8 (Marine Mammals).

80 The Application, section 5.6 (Fished Species); 5.7 (Seabirds); 5.8 (Marine Mammals); 5.9 (Noise Effects); 5.12 (Air Quality Effects).

*The proposed conditions (ss 83 and 84 and the applicable provisions of the EEZ Act)*

90. Section 59(m)(j) of the EEZ Act requires the Panel to consider the extent to which imposing conditions might avoid, remedy, or mitigate the adverse effects of the activity.

91. If the Panel is favouring caution and environmental protection due to the level of uncertainty contained in the Application, and taking such an approach means that an activity is likely to be refused, the Panel must first consider whether taking an adaptive management approach would allow the activity to be undertaken – this is pursuant to ss 61(3), 63 and 64, EEZ Act.

92. In that respect, the Supreme Court found that the conditions imposed in the previous application do not constitute adaptive management.[81]

93. Furthermore, as noted earlier in our submissions, the Supreme Court found that it was not open to the DMC to determine that the conditions would avoid, remedy, or mitigate the adverse effects of the activity due to the level of uncertainty as to the environmental effects and would merely enable monitoring effects.[82]

94. Given the Applicant's lack of updating information since the Supreme Court's decision was released, the level of uncertainty and the conditions in and of themselves remain unchanged. The Applicants have also failed to engage at with Te Kaahui o Rauru on the Application prior to lodging the latest Application. That is the necessary context within which the Panel must apply these provisions.

95. Accordingly, the Panel ought to adopt the same view – that the conditions will not satisfy the thresholds it is required to take into account under the EEZ regime. Again, this factor weighs against approval.

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[81] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZSC 67 at [213], per William Young and Ellen France JJ.

[82] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZSC 67 at [129], per William Young and Ellen France JJ; at [275] per Glazebrook J.

## PROCEDURAL MATTERS

*EPA Report and Further Information from the Applicant*

96. The EPA's report responding to the request from the Panel under s 51 of the FTAA was filed on 22 September 2025 (the **EPA Report**). As a general comment, the EPA Report finds that, while the proposed activity is broadly described and key components are identified, "there are several areas where the Expert Panel may require further technical clarification and environmental justification to ensure that all potential effects are fully understood, properly assessed and appropriately managed." In the EPA's view, such further information "strengthen the robustness of the environmental assessment and align the application with good industry practice and regulatory expectations".[83]

97. In summary, the EPA Report identifies (among other things):

    (a) discrepancies within the application, including (but not limited to) inconsistent statements regarding the use of chemicals in the proposed process and a lack of clarity on their management;

    (b) several matters requiring clarification, including dated information referenced in the application that dates back approximately 10 years or more, the reliance on which raises questions about whether the application provides a sufficiently current understanding of potential environmental effects;

    (c) a question about whether the information provided by the Applicant is the best available information in line with s 61 of the EEZ Act (as required to be considered under Schedule 10 of the FTAA);

    (d) a summary of monitoring reports previously submitted by the Applicant in earlier applications for consent under the EEZ Act that does not contain any new assessment of the risks associated with the proposed activities, and no new data or updated analysis;

[83] EPA Report requested by the Panel under s 51 of the FTAA (dated 22 September 2025) at p 2-3.

(e) that no information has been provided about additional activities that have occurred in the project area, since the time the original environmental data was collected, that could affect the relevant or reliability of the older data relief on in the application (as set out in para 11 of Minute 6 of the Panel dated 26 September 2025).

98. The Panel requested the Applicant to file a memorandum informing the Panel what steps, if any, it proposes to take to address the contents of the s 51 report.[84]

99. On 1 October 2025, the Applicant filed its response to the Panel's request stating that further evidence addressing these identified information gaps would be filed under s 55 of the FTAA – that is, incorporated into its detailed response to all written comments after the closing date for comments.[85]

100. Te Kaahui o Rauru's comment has been prepared on the basis of the Applicant's Substantive Application dated 15 April 2025, as lodged with the EPA and is currently present on the Fast-Track Approvals website. It has therefore not had the benefit of all the relevant information. This indicates that there remains an overwhelming level of uncertainty as to the information submitted by the Applicant.

101. Te Kaahui o Rauru records its position that the ability to comment on the proposed impacts has been severely limited by the deficit of available information, both as to the overall benefit of the project as well as the adverse impacts. Should the Applicant file any further information in respect of its Application, Te Kaahui o Rauru seeks to reserve its right to file any updating or additional comment in response to this new information and respectfully requests that the Panel grant leave for it to do so.

*Tikanga*

102. Tikanga is directly engaged in this process and by the Application. The role of tikanga was a key feature in previous proceedings, and previous proceedings included visit to marae in the rohe.

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84 At [15] of Minute 6 of the Panel dated 26 September 2025

85 See TTR's memorandum filed dated 1 October 2025 at [6].

103. In this regard, Te Kaahui o Rauru consider it essential under tikanga that engagement with the Panel occurs kanohi ki te kanohi where possible.

104. For the reasons set out above, Te Kaahui o Rauru consider that a hearing or kanohi ki te kanohi engagement will be necessary to hear evidence and legal submissions in order to determine this Application.

**CONCLUSION**

105. Te Kaahui o Rauru considers that the Application should be declined pursuant to ss 85(1) and (3) of the FTAA.

106. Te Kaahui o Rauru observe the cavalier approach to engagement and this Application taken by the Applicant. In particular:[86]

(a) For engagement to be meaningful, it must also be *genuine.* For almost a decade, the Applicant's approach to the application process(es) and engagement with Te Kaahui o Rauru has not demonstrated any genuine desire to seek to address their significant concerns.

(b) The Applicant has only attempted to contact Te Kaahui o Rauru twice, without any genuine intent to engage, in relation to its application seeking fast-track approval of the very same mining activity that it previously sought consents for under the EEZ Act. It appears clear to Te Kaahui o Rauru that the Applicant is unwilling to allow for any change in outcome or approach – despite the project's adverse effects on their traditional rohe and maatauranga.

107. Te Kaahui o Rauru consider that, taking into account all relevant considerations:

(a) Te Kaahui o Rauru hold existing interests at place, in accordance with Ngaa Raurutanga and pursuant to Te Tiriti o Waitangi, that must be provided for in any consideration of regional or national benefits. This includes the inherent value, mana and mouri of Tangaroa and all

[86] Statement of Evidence of Tahinganui Hina and Renee Bradley dated 6 October 2025 at [88].

associated marine-life, as well as those of Ngaa Rauru Kiitahi whaanau, hapuu and iwi.

(b) These interests include customary and commercial interests recognised in both the Ngaa Rauru Kiitahi settlement and the Treaty of Waitangi (Fisheries Claims) settlement, as well as customary interests claimed under MACA across the entire rohe moana of Ngaa Rauru Kiitahi.

(c) This perspective recognises broader perspectives (or definitions) of *value*, acknowledging economic activity may include using and/or not using resources (or assets). Further, the moana in and of itself may be of *value* (or provide value) even if it is not being *used* and certainly goes towards its protection and favouring caution.[87]

(d) The regional and national benefits claimed by the Applicant are significantly over-stated and do not meet the threshold of significant benefits, including for the reasons set out above. The Applicant relies on claimed "gross benefits" without identifying any significant "net benefit". In this regard, any claimed benefits to the Project are clearly outweighed by the impacts identified by various submitters and expert evidence submitted to this Panel and as identified in the evidence of Te Kaahui o Rauru.

(e) The adverse effects of the Project remain significant and are not addressed by the Applicant in the latest version of the Application, despite ample opportunity to do so.

**DATED** this 6th day of October 2025

[redacted]

**Counsel for Te Kaahui o Rauru Trust**

[87] See Statement of Evidence of Dr G Nana dated 4 October 2025 at [61].