Before a panel appointed under the Fast-track Approvals Act 2024 **FTAA-2511-1138**

UNDER	the Fast-track Approvals Act 2024 (**Act**)
IN THE MATTER	an application for approvals for the Hananui Aquaculture Project – a listed project described in Schedule 2 of the Act
BY	**NGĀI TAHU SEAFOOD RESOURCES LIMITED Applicant**

INITIAL PANEL BRIEFING: SUBMISSIONS OF COUNSEL FOR NGĀI TAHU SEAFOOD RESOURCES LIMITED

17 March 2026

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MAY IT PLEASE THE PANEL

Introduction and context

1. These submissions are made on behalf of Ngāi Tahu Seafood Resources Limited (**NTS**), the approved person in relation to the Hananui Aquaculture Project (**HAP**). The HAP is a listed project under the Act by virtue of its inclusion in Schedule 2.
2. NTS is a Ngāi Tahu entity. It manages Ngāi Tahu's commercial seafood assets and business for the benefit of the tribe.[1] At the heart of the HAP is a commitment to deliver the project in a way that is consistent with and advances Ngāi Tahu values and aspirations.[2]
3. Chapter 3 of the Substantive Application describes the broader Treaty, Settlement, and legislative context within which the HAP sits. The section concludes by noting that "The HAP sits at the confluence of the relationship between Te Kerēme, Settlement, the Fisheries Settlement and the Aquaculture Settlement".[3] It is therefore not difficult to understand why the HAP is important to Ngāi Tahu ki Murihiku and to Te Rūnanga o Ngāi Tahu more generally.
4. The HAP's importance extends beyond Ngāi Tahu's interests to the whole Southland Region, and the proposal has positive implications for the development of New Zealand's aquaculture industry.
5. Significant growth in Southland aquaculture is a firm regional goal, supported by regional and local government, Ngāi Tahu, and more generally by those who are concerned for the growth and diversification of the regional economy.[4] Within the Murihiku Southland Aquaculture Pathway 2025 (**MSAP**) the HAP is referenced as a key part of realising aquaculture growth in the region. It is referred to as representing "a next-generation opportunity to lead sustainable, culturally aligned, and economically resilient

1 Substantive Application Section 2.3.2, page 6
2 Ngā Pou o Te Rūnanga o Ngāi Tahu – see Substantive Application Section 2.3.1.1, Table 2.1, page 5
3 Substantive Application Section 3.3.6, page 24
4 Murihiku Southland Aquaculture Pathway 2025 – see Substantive Application Section 13.5.7, page 137

aquaculture – an example of how partnership with iwi and mana whenua can shape the future of the industry".[5]

6. Significant growth of New Zealand's aquaculture sector is also a strategic, Government-led national goal, with key themes including extending salmon farming into the open ocean, and opportunities for partnership with iwi.[6]

7. Within those regional and national contexts it is recognised that significant growth of aquaculture requires developments of scale. This in turn means development in more exposed waters. As the panel will appreciate, to date marine aquaculture in New Zealand has essentially been confined to sheltered inshore locations[7]. There are limited opportunities to significantly grow New Zealand and Southland's aquaculture sector through further inshore developments, and it is widely recognised that the future will lie with the successful consenting and development of projects like the HAP.

Purpose of the FTAA

8. The FTAA has a single purpose: "…*to facilitate the delivery of infrastructure and development projects with significant regional or national benefits*"[8]. This is worked out through the FTAA's provisions and results in a presumption that projects approved to apply under the FTAA should be approved.

9. The statutory purpose must be given the greatest weight in the panel's decision on the application under section 81[9], including when deciding what conditions should be imposed on approvals, or, in an exceptional case that meets the requirements in section 85(3)(b), in deciding not to grant an approval.

10. The prioritisation of, or greater weighting to be given to, the FTAA's purpose when making decisions is similar to the hierarchy of considerations that was

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5 Ibid, page 15

6 New Zealand Aquaculture Strategy 2019; New Zealand Aquaculture Development Plan 2025-2030; See Substantive Application Sections 13.5.5 and 13.5.6, pages 136 - 137

7 Big Glory Bay in Paterson Inlet being the notable example in Rakiura

8 Section 3

9 See for example Schedule 5, clause 17(1) (relating to resource consents) and Schedule 7, clause 5 (relating to wildlife approvals)

provided in s 34(1) of the Housing Accords and Special Housing Areas Act 2013. That provision required the decision maker to have regard to a list of matters, giving weight to them (greater to lesser) in the order listed, with the purpose of that Act being the first listed matter. The Court of Appeal in *Enterprise Miramar Peninsula Inc v Wellington City Council* found that provision required the decision maker to consider the various matters listed "uninfluenced" by the purpose of the Act, before conducting an overall balancing in accordance with the hierarchy.[10] This approach has been applied by other panels considering substantive applications under the FTAA.

11. Unlike the previous Covid-19 Recovery (Fast-track Consenting) Act 2020 (**CRFTCA**), the purpose of the FTAA does not include or import the RMA concept of sustainable management. That concept, and RMA documents that are written to expand on what that concept means in particular contexts (e.g., the NZCPS, and the Regional Coastal Plan), while still relevant matters to be taken into account[11], need to be viewed with some caution as they are not written to direct the outcome of processes under the FTAA.

12. Related to this, I respectfully submit that the panel needs to view with considerable caution the planning analysis contained in the decision of the panel appointed to consider the earlier version of the HAP under the CRFTCA. That analysis remains untested, and in the applicant's view is wrong. Regardless, that analysis relates to an earlier version of the project, was made in the context of a different statutory purpose, and was uninformed by subsequent policy documents such as the New Zealand Aquaculture Development Plan 2025 – 2030 and the Murihiku Southland Aquaculture Pathway 2025.

13. As Ms Lojkine will explain, in her expert opinion the HAP as presented in the current application is largely consistent with the relevant statutory and non-

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[10] *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541, [2019] 2 NZLR 501 at [52]–[53].

[11] The direction to 'take into account' requires the panel to consider a matter (i.e., to give it genuine attention and thought) and weigh it against other relevant matters. The weighting of that matter is at the panel's discretion – see *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC) at [72]; and *Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2024] NZCA 134, (2024) 25 ELRNZ 1047 at [15].

statutory planning documents that are to be taken into account under clause 17(1) of Schedule 5 of the FTAA.[12]

Why does HAP use FTAA?

14. The HAP needs approvals that would otherwise be required across multiple statutes[13] with potential for overlapping and inconsistent purposes, outcomes and requirements. The FTAA provides a pathway that:

    a. Allows a panel to ensure consistency across multiple approvals, thereby providing clarity that will assist all parties moving forward.

    b. Ensures timely decision-making, particularly for approvals like a wildlife authority that would otherwise be dealt with under another enactment that specifies no processing timeframes and does not provide for transparent processing or accountability, thereby enabling more efficiently enabling projects with significant national and regional benefits to proceed with confidence.

    c. Ensures the purpose of the FTAA is the paramount consideration for all approvals; and

    d. Requires that conditions on approvals are no more onerous than is necessary to address the reasons for which they are set[14].

15. For a project like the HAP, the FTAA facilitates better outcomes in both a procedural and substantive sense than are available under the disparate approvals processes in the specified Acts (and the Fisheries Act in relation to the aquaculture decision).

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12 See also Substantive Application Section 13.5.9, pages 138 - 139

13 Resource Management Act, Wildlife Act, and an aquaculture decision under the Fisheries Act

14 Section 83. There is some discussion amongst practitioners as to whether this section has any practical effect. In my submission it does. By way of example, a requirement that a management plan be separately certified by two administering agencies when one would suffice is more onerous than it needs to be

Overview of the assessment process

16. Within the weighting framework, the FTAA requires that the panel consider all the impacts of the proposal – positive and adverse – and how adverse impacts are best managed so that they are avoided or otherwise mitigated, offset or compensated for to the extent practicable. The panel must determine what conditions are needed to ensure the project's impacts are managed as intended. In coming to an understanding of the importance of an adverse impact some guidance can be taken from the relevant planning and policy instruments but as I noted earlier it needs to be remembered that these documents are not written for the purpose of the FTAA.

17. In the case of positive effects, are any conditions needed to secure those benefits?[15]

18. If residual adverse impacts remain after practicable measures to manage them are exhausted, a weighing exercise[16] is undertaken to determine if those adverse impacts "*are sufficiently significant to be out of proportion to the project's regional or national benefits*". Only in that case, and only after the panel has considered any conditions it could set, or any conditions or modifications to the project that the applicant may agree to[17], does the panel have jurisdiction to decline an approval. Even then, the decision to decline is discretionary, and the FTAA contemplates that a panel may nevertheless still grant an approval.[18]

19. The FTAA therefore presumes that approvals will be granted, and allows for exceptions only where one or more adverse impacts outweigh a project's national or regional benefits, and are unable to be managed through conditions or project modifications.

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15 For example, NTS is proffering conditions in relation to the proposed Community, Environmental, and Health and Education funds

16 Section 85(3)

17 Noting that if a panel reaches a preliminary view that an approval might be declined it must provide an applicant an opportunity to amend its proposal or propose additional conditions to address the panel's concern (see section 69)

18 Section 85(3)

20. NTS's position is that there are no significant adverse impacts of the HAP that are incapable of appropriate management through the way the project is conditioned. Accordingly the project 'passes muster' even without the need to weigh the project's significant benefits in the balance.

21. However, the project's benefits – as are outlined in the Substantive Application and discussed by Mr Hildebrand and Mr Bragg are significant – both in their own right in terms of project scale, but also when viewed through the lens of iwi development and development of New Zealand's aquaculture industry. When these benefits are considered it becomes clear that the approvals sought, subject to appropriate conditions, must be granted even if the panel concluded there were one or more significant residual adverse impacts.

Procedural matters

Inviting additional parties to comment

22. Section 53(2) sets out an extensive list of parties that must be invited to comment on an application.

23. It is notable that the list includes those parties Parliament considers may be directly and legitimately affected by a project. This includes relevant local authorities, relevant iwi authorities and other specified Māori interests, owners and occupiers of and adjacent to the sites upon which activities are proposed, relevant Ministers, and relevant administering agencies. Wider individuals and groups that may take an interest in a particular activity or class of activity and who may claim to have an interest greater than the general public[19,20] are not included. This can be contrasted with the previous CRFTCA which named some of these parties and mandated they were to be invited to comment. The change in approach is intentional.

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[19] Examples would include environmental NGOs that are often opposed to marine development and/or the FTAA in general (such as F&B and EDS), as well as industry and employee sector representatives that might be expected to support proposals that deliver jobs and economic benefits (such as Business NZ and major unions)

[20] I note that in the context of section 274(1)(d) of the RMA the Environment Court has recently held that being an advocate for environmental issues is not enough to show an interest in the matter greater than the general public – see *Otago Regional Council v Queenstown Lakes District Council* [2025] NZEnvC 178 at [21]

24. In rejecting a proposal during Committee of the Whole House to require public notification of fast-track applications, the Minister for Regional Development, the Hon Shane Jones, stated:[21]

> "*… those who have an entitlement to be integrally involved in the consideration of the panel in granting approval of [sic] those that are most affected by the approval, it is not a wide, vague description of who may or may not feel that they are affected by what externalities might flow from the project. This is the whole key point of the bill. So, for those reasons, obviously, we are not going to accept that submission or that proposed amendment. This bill will allow the people to be consulted, providing they represent that circle of interests that are genuinely and most impacted by the decision."*

25. The Minister responsible for RMA Reform, the Hon Chris Bishop, made a similar point earlier in the debate:[22]

> *"… It is true that there are fewer participation rights and less ability than in the past as per the Resource Management Act, for example, but that is precisely the point. That is one of the purposes of the bill. That is why the bill has been drafted the way it is. …"*

26. In addition to the parties listed in section 53(2), under section 53(3) the panel has a discretion to invite comment from "*any other person the panel considers appropriate*". Section 53(3) provides no express guidance as to what factors the panel should consider when deciding whether additional persons ought to be invited to comment. However, while a discretion may be framed in broad terms, it should be exercised in a way that promotes the policy and purpose of the statute under which it is created.[23]

27. In my submission the discretion to invite comments from additional persons should be exercised sparingly and on a principled basis:

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21 (10 December 2024) 780 NZPD 7944.

22 (10 December 2024) 780 NZPD 7809.

23 See *Unison Networks Ltd v Commerce Commission* [2007] NZSC 74, [2008] 1 NZLR 42 at [53] where the Supreme Court stated "*A statutory power is subject to limits even if it is conferred in unqualified terms. Parliament must have intended that a broadly framed discretion should always be exercised to promote the policy and objects of the Act. These are ascertained from reading the Act as a whole*."

a. This is not akin to a notified RMA process that allows any person with sufficient interest to fill in a form to be involved. Parliament has deliberately chosen to limit participation as described above.

b. A panel needs to determine whether it considers it is likely to receive the information it needs to make an informed decision in accordance with the FTAA's requirements from the parties that it must invite to comment. Only if it considers that to be unlikely should it consider inviting additional persons to comment.

c. In the present case the application has been informed by the previous CRFTCA process, NTS has undertaken extensive consultation and engagement with the key stakeholders[24], independent reviews of key technical work have been completed, and extensive work on developing a suite of agreed conditions to attach to the approvals has been undertaken resulting in nearly complete agreement on all conditions.

d. Some parties that might ordinarily like to be included in the process because they object to the FTAA and/or oppose aquaculture or other marine development projects as a matter of principle – including some that were involved in the previous CRFTCA application - have chosen not to engage with NTS on the proposal.

28. When these factors are considered I submit it becomes clear that the panel should expect to be well-supported with relevant information from the parties that must be invited to comment (together with the departmental report that will be provided under section 51(2)(c) in relation to the wildlife approval) such that no additional persons should be invited to comment under section 53(3) beyond those that will be identified by the EPA as needing to be invited under section 53(2).

[24] Mana whenua, Environment Southland, Department of Conservation, Ministry for Primary Industries

29. A further factor to be considered is that the FTAA only allows an applicant 5 working days to respond to all comments made on the application. That task cannot be realistically completed in anything approaching a comprehensive or helpful way if applicants are confronted with and expected to substantively respond to comments from all manner of 'interested' persons raising matters that are not already addressed in comments from the suite of competent agencies that must be invited.

Aquaculture decision

30. As part of this application process and because this is an aquaculture proposal, the panel is required to make an aquaculture decision that would otherwise be made under section 80 of the Fisheries Act 1996 at the same time as it makes its other decisions on the application under section 81 of the FTAA.[25] To my knowledge the HAP is the first aquaculture proposal to reach substantive application stage under the FTAA, so you will be the first panel to navigate the rather complex provisions that apply to the making of aquaculture decisions.

31. The panel convener considered the procedural requirements relating to the making of an aquaculture decision and invited comments on these from the applicant and MPI as part of her process in arriving at the 70 working day timeframe for the making of your decisions. In a nutshell the procedural complexity that arises is the requirement for the panel to produce its draft decision and conditions before it has received the recommendation on the aquaculture decision from the chief executive of the Ministry for Primary Industries.

32. The timeframe the Panel Convener has allowed is intended to ensure you have sufficient time available to deal with anything that arises from the recommendation when it is received (for example if the recommendation does not align with the draft conditions you have proposed you may need to establish some kind of process to close the gap).

[25] Section 80(2) FTAA

33. In reality the applicant does not think any additional process step is likely to be required. The aquaculture decision concerns whether the proposal will have an undue adverse impact on commercial, cultural or recreational fishing. Impacts on fishing are assessed as part of the application and are not significant[26]. The applicant anticipates the recommendation on the aquaculture decision is likely to reflect the conclusions reached in the various assessments that address fishing.

Aquaculture Settlement Space

34. At paragraph [13] of the Panel Convener's Minute dated 2 March 2026 the panel convener noted that the panel would benefit from commentary on new aquaculture space settlement obligations if relevant to the panel's decision.

35. I submit this is not a relevant consideration for the panel and should be disregarded.

36. The panel's obligation is to apply the provisions of the FTAA by considering the benefits and impacts of the proposal before it and determining whether to grant approvals and if so, on what conditions.

37. The aquaculture settlement space regime sits within the Māori Commercial Aquaculture Claims Settlement Act 2004. Decisions that may or may not in future be made under that Act are speculative and irrelevant to the matters before the panel.

Overall consideration process

38. Subject to the specific directions in the FTAA the panel is able to determine its own process and has discretion to "… *regulate its own procedure as it thinks appropriate, without procedural formality, and in a manner that best promotes the just and timely determination of the approvals sought in a substantive application.*"[27]

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[26] Appendix R (Recreation and tourism); Appendix S (Commercial Fishing); Appendix D (Ngā Hua o Āpiti Hono Tātai Hono); Appendix E (Cultural Impact Assessment)

[27] Schedule 3 cl 10(1)

39. In my submission the primary consideration in determining what the panel's process should look like is how best to get to the endpoints – the panel's set of draft conditions[28] followed by final decisions and conditions[29].

40. Natural justice and fair process requirements are always incorporated into statutory decision-making, but what these requirements are in a particular statutory context will be informed by the scheme of and direction in the statute. In the case of the FTAA it is explicit that there is no requirement to hold any type of hearing[30], there are strict timeframes specified for various steps[31], there is a default expectation that a panel will complete its process within 30 working days after the date upon which comments are received[32] (which has been enlarged by the panel convener in relation to this project), and there is a general requirement to "*take all practicable steps to use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions, duties, or powers being performed or exercised*"[33].

41. All the above factors in my submission indicate an expectation that the procedural 'coat' the panel cuts must fit the strictly limited 'cloth' Parliament has made available, and must do so within the timeframe set by the panel convener. This in turn imposes boundaries on what might in other circumstances be considered optimal in terms of process.

42. What follows from these limitations and deliverable requirements is a need to adopt a process that is at the same time more transparent and accountable than the standard process under some of the specified Acts[34] and more inquisitorial in nature, rather than the more usual adversarial approach adopted by the Environment Court under the Resource Management Act. A body of practice is developing as different panels have discharged their statutory functions under the FTAA, characterised by less formality and a

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28 Section 70

29 Sections 80, 81 and 87

30 Section 56

31 For example 20 working days for invited parties to comment (section 54(1) and 5 working days for the applicant to respond to comments (section 55)

32 Section 79(1)

33 Section 10(1)

34 Especially the Wildlife Act authority process which is entirely opaque, and which is well-known to be cumbersome and excessively slow

focus on looking for solutions to issues. For those of us who toil away inside the labyrinthine world of consenting major projects under the RMA and associated legislation the change in approach is welcome, and is enabling important and well-designed projects to be granted sensible approvals that allow timely development to proceed while still ensuring impacts are managed carefully and appropriately.

43. I therefore encourage the panel to:

    a. Ask for additional briefings from NTS if there are matters in respect of which your understanding would benefit from further explanation and the ability to ask questions.

    b. Adopt an inquisitorial process rather than a more formal adversarial/adjudicative model. For example, if there is an issue where the material before you recommends conflicting approaches or conditions and you are not clear which approach is to be preferred, require the relevant experts and the parties they are advising to meet with you to discuss the issue so that you are able to seek the assistance you need to make the most informed decision you can.

    c. Use sparingly your ability to engage additional experts. The HAP application is informed by leading independent experts in their respective fields, and the administering agencies and Councils have used their own topic experts (including external experts in some cases). In my experience engaging another expert to assist the panel can cause more issues than it solves (particularly if the panel finds itself struggling with the advice its own expert gives it). Instead, and as is the more usual practice of experienced decision-makers in the RMA jurisdiction, look to the experts already engaged by the parties and demand from them the assistance they are required to give you as independent experts as you form up your decisions and conditions on the various approvals being sought.

d. The role of counsel, and of the applicant, its planning advisors, and its experts generally, is to provide you with the assistance you need to get your job done. If you require submissions on a legal point, or any other assistance, it is our job to help you, so don't be slow to ask, and expect that we will treat your needs as our top priority.

Dated 17 March 2026

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Stephen Christensen
Counsel for Ngāi Tahu Seafood Resources Limited