



### **Panel for the Purpose of the Fast-track Approvals Act 2024**

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Associate Panel Convenor for the Taranaki VTM Project [FTAA-2504-1048]

### **Environmental Protection Authority**

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

### **Minute of the Panel Convenor dated 26 June 2025**

4. Te Korowai received the Minute of the Panel Convener [**Convener**] dated 26 June 2025 [**Minute**] regarding the Convener's Conference for the Taranaki VTM Project application [**Conference**] under the Fast-track Approvals Act 2024 [**FAA**]. The Minute stated that the conference would be held on Monday 7 July at 10am in order to facilitate the Convener's decisions regarding (1) the appointment of panel members, and (2) the timing of the panel decision.

### **Applicable law**

5. Te Korowai acknowledges the reference to tikanga within the Minute, as also reiterated within the text of the email sent by the Fast-track Advisor on Regulatory Process in sending us the Minute and section 18 Report from the Ministry for the Environment [**section 18 Report**].

6. Te Korowai also notes that tikanga is directly applicable to the Project under the requirement to apply “any other applicable law” in s59(2)(l) of the EEZ Act, as applicable under Schedule 10 of FAA particularly section 6(1)(d) of Schedule 10 of FAA requiring *mandatory* consideration of section 59 of the EEZ Act, and according to the terms of the 2021 decision of the Supreme Court regarding this TTR Project.
7. Specifically, the 2021 Supreme Court decision on this TTR application (noting that case concerned exactly the same information which is in the current application under FAA) found that tikanga must be applied under the provisions of “any other applicable law” in s59(2)(l). Our tikanga as Ngāruahine, including the requirement to engage directly with ngā hapū, must apply to all aspects of this process.
8. In addition, with respect to the terms of the EZZ and Schedule 10 of the FAA, it is necessary to apply our tikanga regarding kaitiaki at a whānau and hapū level, including through enabling direct participation of those kaitiaki in order to give effect to the tikanga relating to kaitiakitanga. The Supreme Court stated that the discharge and adverse effects from this TTR Project are subject to the environmental bottom-lines of protection from material harm, just as any other effects from the discharge are. Indeed, the Supreme Court specifically found that spiritual effects based on tikanga must be considered when assessing material harm.<sup>1</sup>

#### Relevant authorities

9. Te Korowai acknowledges and affirms the recognition by the Convener in the Minute that Te Korowai o Ngāruahine is a relevant iwi authority for the purposes of the FAA, as stated in paragraph 4 and Schedule 3.
10. Te Korowai requests urgent amendment, or any other mechanism of remedying the Minute, to ensure ngā hapū o Ngāruahine [**ngā hapū**] are also recognised alongside Te Korowai, at the very least in order to uphold our tikanga, and, to comply with the FAA, particularly sections 53(2)(b) and section 53(c)(i).
11. The FAA clearly provides for recognition of ngā hapū, especially in the context of Ngāruahine, when interpreted according to the standard principles of statutory interpretation beginning with the plain and ordinary meaning of the text .
12. The FAA includes provisions that clearly contemplate the role of post-settlement governance entities (“PSGEs”) but also makes provisions for referring also to other distinct entities. These additional provisions when read in light of Ngāruahine tikanga and our Deed of Settlement (and settlement legislation), require that ngā hapū be recognised as participants entitled to receive notice and an opportunity to respond.
13. Specifically, Te Korowai is the entity described under section 53(2)(c)(ii), namely, “an entity operating in a collective arrangement, provided for under a Treaty settlement, that relates to that area.” This language is plainly directed towards PSGEs. The interpretation section in the FAA (section 4) defines a “Treaty Settlement entity” and makes no mention of hapū. Only section 53 (2)(c)(ii) refers to a Treaty Settlement entity in the PSGE sense, which supports the

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<sup>1</sup> *Trans-Tasman Resources Limited v The Taranaki-Whanganui Conservation Board* [2021] NZSC 127, at Ellen France J’s reference at [172].



conclusion that the remaining subsections of section 53(2) must apply to entities other than PSGEs.

14. Section 53(2)(b) requires the panel to seek comments from “*any* relevant iwi authorities” [emphasis added]. Under the Ngāruahine tikanga, as recognised in our Deed of Settlement and enabling legislation, ngā hapū are relevant iwi authority within their own takiwā. They are by definition, appropriate and necessary participants in this process and must be afforded a reasonable opportunity to comment in accordance with 53(2). That obligation must also extend to any procedural steps – including the issuance of the Minute and the convening of the Conference – as part of the natural justice framework and the proper implementation of section 52(2) of the FAA.
15. Further support is found in section 53(2)(i) which refers to “an entity that has an interest under a Treaty settlement within the area to which the substantive application relates.” This cannot be referring to PSGEs which are already addressed separately in section 53(2)(c)(ii)). Ngā hapū, by definition under our tikanga, hold “interests” under the Treaty settlement which relate directly to the application area. There is no other plausible or legally coherent interpretation of this provision
16. There are no provisions within section 4 that seeks to exclude hapū and nothing in the sub-provisions (a)-(e) in the definition of the “Treaty settlement entity” could be construed as referring to hapū. Te Korowai and ngā hapū have repeatedly raised this issue—that under our tikanga and our legislation, ngā hapū must be recognised as entities in their own right. Te Korowai o Ngāruahine is one of the few hapū-led settlement entities in Aotearoa, and that reality is recognised in our settlement legislation. To omit ngā hapū in their own right from notification or participation is, therefore, both discriminatory and a breach of their legal and tikanga-based rights
17. The Convenor has specifically invited input regarding tikanga. We emphasise that the mana motuhake of ngā hapū is central to Ngāruahine tikanga and has been consistently communicated to the EPA and relevant agencies. We further refer to the jurisprudence affirming that tikanga is part of the common law of Aotearoa and must be applied in administrative and procedural settings. This includes:
  - a. Schedule 3, section 5 of the FAA, which governs procedural matters relating to Treaty settlements.

- b. Section 10 of the FAA, which outlines procedural principles and must be interpreted in line with established case law confirming that tikanga can constitute procedural law.<sup>2</sup>
  - c. Schedule 3, section 10, which allows the panel to determine its own procedures—procedures which must lawfully incorporate tikanga where relevant.<sup>3</sup>
18. Te Korowai also request urgent remedy of the Minute to ensure MACA applicant groups are duly notified of information from the Convenor, particularly relating to the Conference. We have notified the EPA and made our best efforts to notify the Convenor that the section 18 report from MFE dated 16 of June included erroneous contact details for MACA claimants within Ngāruahine, including people who sadly have passed away, and did not include the contact details of the claimants legal representatives, which is information easily accessible from the public record, including the public information via the Ministry of Justice and the High Court regarding the counsel participating in the High Court proceedings. Of course, in any context, it is highly problematic to be in contact with a legal claimant without going through their lawyers, particularly when those lawyers are easily identifiable. We also pointed out in our communication that it appears that the priority applicants under MACA, who have claims in their own names as opposed to their hapū, also appear to have been omitted.
19. In order to address the significant prejudice caused by these oversights and errors, we request a separate and dedicated Convenor’s Conference on Monday 28<sup>th</sup> July 2025 at 10am to address these pending matters for which we still have received no response to date, regarding the failings with respect to recognition of the relevant MACA claimants and relevant iwi authorities and relevant Treaty settlement entities as participants.
20. We can compile and resend for the Convenor the repeated communication with the EPA to date on this matter within a reasonable time in the leadup to such a necessary Convenor’s Conference, although we note that the EPA has all this communication on file. Should the EPA be relied upon to provide the Convenor with this compilation of existing communication, we request that Te Korowai also be provided with their compilation and that we are afforded reasonable time of 5 days to cross-check with our records and confer with the MACA claimants (over 10 separate claimants) and six hapū, noting that such processes require calling hui across uri representatives comprised of multiple whānau.

### **Importance of participants views**

21. Te Korowai strongly reasserts the right to meaningful participate in FAA proceedings, particularly when our mana motuhake, our tikanga, our taiao, and duties of kaitiakitanga are at risk of irreparable harm. This is not only necessary under Te Tiriti o Waitangi/Treaty of Waitangi, but it is also a fundamental right under natural justice and the laws relating to due process.

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<sup>2</sup> See for example, *Ngāti Whātua Ōrakei v Attorney General [2022]* (NZHC 843), para 362. See discussion on procedure and need for caution to defer to mana whenua interpretation of tikanga: <https://www.thelawyers.nz/insights/maori-legal-services-tikanga-high-court-decision/>

<sup>3</sup> See generally Te Aka Matua o te Ture | Law Commission (2023) Detailed Study Paper that examines tikanga Māori and its place in Aotearoa New Zealand’s legal landscape. <https://www.lawcom.govt.nz/our-work/tikanga-maori/tab/study-paper> See also their 2001 Study Paper, Māori Custom and Values in New Zealand Law,



22. We note that the purpose of the Conference is to “gather participants views” as stated at paragraph 2 of the Minute and the Convener clearly stated that “[y]our participation is essential to determining the time frame for the decision” at paragraph 3. We have been advocating for these rights throughout the FAA proceedings to date, and to date, none of our urgent communication related to failings with respect to participation, including pre-lodgement consultation requirements under the FAA, have been addressed.
23. We therefore request a separate Conference on Monday 4<sup>th</sup> August 2025 at 10am to address these pending matters related to failings with respect to participation.

#### **Matariki office shutdown**

24. Matariki is a national public holiday and increasingly understood across the motu as the Māori New Year. As with the Pākehā New Year, there are many commitments within whānau, hapū, iwi, such as daily and weekly hau tapu events across the hapū and marae in our rohe. In the same way that with the Gregorian Christmas to New Year period, many offices close or official business is reduced (indeed, it is well known that public servants in Wellington generally do not return to mahi from Christmas Eve until after around 20 January Anniversary Weekend), within ao Māori, the same cycle occurs around end of June to mid-July.
25. Whilst seeking participation, the Minute sets a deadline for response of Wednesday 2 July exactly over the Puanga mā Matariki shutdown of our office, from Monday 30 June, reopening on Monday 7 July i.e. the date the Convener set for the Conference itself. These tari shutdown dates were publicly announced and accessible online, particularly given that it is known that Te Korowai is one of only three iwi which even the applicant listed as a relevant iwi authority (i.e. it would be compliant with section 10 of the FAA to review our public sources relating to the tikanga for our hapū and iwi regarding schedule availability, especially since the nation is duly on notice now that Puanga mā Matariki is celebrated by all New Zealanders as a national holiday for the Māori New Year).<sup>4</sup>
26. Even if this was an unintentional oversight despite a bona fides good faith effort to seek meaningful participation, not to remedy this timeline would risk discrimination or otherwise risk unreasonable timelines within a uniquely tapu time within the maramataka which is formally part of the statutory holidays of Aotearoa. We note again the specific request from the Convenor regarding tikanga and assert that the maramataka regarding Puanga and Matariki are one of the bedrocks of our tikanga practices.

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<sup>4</sup> See for example:

<https://www.facebook.com/photo.php?fbid=1110110211144868&set=pb.100064376993868.-2207520000&type=3>

27. We therefore request the rescheduling of the deadline for Te Korowai to reflect the same four working days available for responding such that we are on the same footing as other participants (noting that we have had to spend the first working day drafting this request and not able to respond to the substantive pātai in the Minute), namely, Thursday 10<sup>th</sup> July.
28. We therefore also request the rescheduling of the Conference for all participants 3 working days after that written response deadline, namely Tuesday 15<sup>th</sup> July 2025 at 10am.
29. It is based on these requested timeframes that we propose holding separate Convenor's Conferences within a reasonable period after the main Conference is scheduled—specifically, on Monday 28 July 2025 at 10am, and the following Monday, 4 August 2025 at 10am—to address outstanding issues relating to participation and the recognition of participants.

## **Hearing**

30. Te Korowai first communicated with the EPA panel through sending a letter seeking confirmation that Te Korowai and ngā hapū would be recognised, each in their own right, as relevant entities. In this communication, Te Korowai also articulated the importance to hold a hearing on this matter, including the importance of hearings within our tikanga.
31. Te Korowai wishes to ensure the Convenor has received this communication forwarded on from the EPA and wishes to reiterate to the Convenor the request to hold a hearing. Te Korowai would also seek to address such matters within the requested Convenor's Conference regarding participation matters.
32. In further support for holding a hearing, Te Korowai refers back to the analysis above regarding tikanga as applicable law to the FAA process, and in particular, the case law recognising procedural law aspects of tikanga. In particular, as an oral culture, and as a culture wherein our uri holding the mana as kaitiaki for our moana include our kaumatua, our comments and submissions must be inclusive of our tikanga of kanohi-kitea. Under our tikanga, kanohi-kitea is particularly important for affording due respect to our kaumatua.

## **Hei whakakapi**

33. We immediately reacted as soon as we received the Minute at 4:45pm on Thursday 26<sup>th</sup> June and worked through the night in order to finalise this response before our Matariki office closure at 5pm Friday 27<sup>th</sup> June. We cancelled all our scheduled mahi and commitments in order to do this current response to the Minute, setting out urgent procedural errors regarding recognition of relevant entities and participation issues regarding the timeframes.
34. Despite our best efforts, we cannot fairly participate and answer the pātai posed in the Minute regarding panel appointments, timeframe of decision, and tikanga within one working day.
35. We hope that when we return to the tari on Monday 7<sup>th</sup> July, we see due recognition from the Convenor of our submissions in this response to the Minute, such that we are afforded the



right to submit our responses to the pātai in the Minute and thereby ensure we can fairly participate to the same degree as other participants. In particular, we reiterate our request:

- a. To file our whakautu to the Convenor's substantive pātai in the Minute at least with the same working days afforded to other participants, namely, by Thursday 10<sup>th</sup> July.
  - b. To reschedule the Conference such that we can fairly participate alongside all other participants and benefit from the rights of natural justice to hear and directly engage with the participants to proceedings. In line with the timeframes set out in the Minute, we reiterate the request for the Conference rescheduling to 3 working days after that written response deadline, namely Tuesday 15<sup>th</sup> July 2025 at 10am.
36. We trust that upon our return to the tari on Monday 7<sup>th</sup> July that our submissions with respect to ngā hapū and MACA claimants will be duly addressed such that participation is also upheld for these relevant entities. As such, we affirm our requests for:
- a. A separate and dedicated Convenor's Conference on Monday 28<sup>th</sup> July 2025 at 10am to address these pending matters for which we still have received no response to date, regarding the failings with respect to recognition of the relevant MACA claimants and relevant iwi authorities and relevant Treaty settlement entities as participants, and
  - b. A separate Conference on Monday 4<sup>th</sup> August 2025 at 10am to address these pending matters related to failings with respect to participation, such as pre-lodgement consultation failings, with due time to review and comment on EPA compilation of communications on these matters.

Pai mārire,

Te Aorangi Dillon

Tumu Whakarae

Te Korowai o Ngāruahine Trust