

Fast-track Approvals Act 2024

Taranaki VTM Application [FTAA-2504-1048]

NOTICE OF HEARING ON 26 NOVEMBER 2025

Contentious Legal Issues

Notice of Hearing

1. The Expert Panel appointed under the Fast-track Approvals Act 2024 (the FTAA) is considering the Taranaki VTM substantive application to extract up to approx. 50 Mt of seabed material a year for 20 years, recover up to approx. 5 Mt of vanadium-rich titanomagnetite concentrate, return material to the seabed, and monitor environmental recovery (the Application). In its consideration of the application, the Panel has identified several legal issues on which the participants or their lawyers have expressed differing opinions. The Panel will be required to reach a view on each of those matters and wishes to receive submissions on them.
2. At the direction of the Panel, the EPA gives notice under section 57(3) of the FTAA that the Panel will conduct a hearing on specific legal issues related to the Application.
3. The hearing will be confined strictly to addressing submissions on the questions of law formulated and listed by the Panel in **Appendix A**. That list incorporates some questions suggested by participants. A strict timetable for the provision of written submissions in advance of the hearing will apply. **Oral submissions at the hearing will be limited to addressing questions from Panel members.** No evidence will be received.
4. The hearing is scheduled to commence **on 26 November 2025 at 9am in the Grand Millenium Hotel, Mayoral Drive, Auckland** and will conclude no later than 5pm, unless the Panel directs otherwise. The members of the Panel who will hear the oral submissions are Hon Kit Toogood KC (Chair), Loretta Lovell and Gavin Kemble. The other members of the Panel will receive copies of all written submissions and will have access to a transcript of the hearing.
5. It is expected that the hearing will not take longer than one day.

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6. Participants who wish to be heard shall, **by 4pm on Friday, 14 November 2025** –
 - a. File with the EPA electronically, written submissions on any listed question. Submissions shall be focused and succinct; paragraphs shall be numbered; all statutory references and authorities shall be footnoted and, where possible, hyperlinked; **and**
 - b. Inform the Panel who will be appearing on their behalf at the hearing.
 7. Except as may otherwise be indicated in this notice, the hearing will be conducted according to the Taranaki VTM Panel hearing procedures, which can be found at:

<https://www.fasttrack.govt.nz/projects/taranaki-vtm/conferences,-workshops-and-hearings>.
 8. Should you have any questions regarding the hearing, please contact the Application Leader, Keely Pater by email at info@fasttrack.govt.nz.

No hearing schedule

9. Counsel or self-represented parties are expected to attend the hearing in person. On request, the Panel may permit any participant who cannot reasonably be represented in person to participate by remote means under s 59 of the FTAA. Requests to participate by remote means must be submitted to the Application Leader **before 4pm on Friday, 21 November 2025**. The hearing will be available to view live, with details to be determined and notified, and a written transcript of the hearing will be posted on the Taranaki VTM website.
10. The Panel has received a request from Environmental Defence Society Inc (EDS) for its lead counsel, Mr R Enright, to participate in the hearing remotely, due to pre-existing international travel, and to be heard before 11.30am so he can answer any questions from the Panel. In this instance, the Panel will accommodate remote participation for Mr Enright and, subject to the overall conduct of the hearing and the order of issues, will endeavour to hear from EDS before 11.30am. EDS may wish to make contingency arrangements and identify in its written submission any and all matters it wishes to raise in the event Mr Enright is not able to be heard in full or in part on the day. The EPA will liaise with EDS to confirm the technical arrangements for remote attendance and an indicative speaking window.
11. At the hearing the Panel will address the questions of law in the order of listing, so far as it is practicable to do so. There will be no schedule specifying the times at which individual participants will be heard. Participants wishing to be heard, therefore, shall ensure that their counsel or representatives are available throughout the hearing.
12. Further information about the Taranaki VTM application will continue to be posted and updated on this website at: <https://www.fasttrack.govt.nz/projects/taranaki-vtm>



Hon. Kit Toogood KC
Taranaki VTM Expert Panel Chair

11 November 2025

APPENDIX A

The Panel wishes to receive submissions on the questions listed below. The answers to the questions will inform the Panel's deliberations. The Panel has not reached a view on any issue arising in connection with a listed question.

Jurisdiction and statutory framework

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

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

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

Benefits and economic assessment

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

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

Climate change

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

(b) If so, how?

8. (a) Is the effect on the climate of releasing seabed-stored carbon or reducing carbon flux to the seabed a relevant consideration?
- (b) If so, to which aspects of the assessment?
9. Given the asserted climate-related benefits, should a net approach to climate effects be adopted?

Treaty, cultural and planning instruments

10. What is the relevance of Treaty principles, cultural values and kaitiakitanga to the Panel's consideration, and where do they fit within the assessment framework? In particular, what is the correct legal test to distinguish an effect on an "existing interest" (as defined and used in the EEZ Act) from an effect on an "obligation arising under a Treaty settlement" (FTAA s 7(1)(a))?
11. What, if any, is the significance of the High Court's judgment in *Te Ohu Kaimoana Trustee Ltd v Attorney-General* [2025] NZHC 657?
12. (a) Are Iwi Environmental Management Plans relevant considerations?
- (b) If so, how should they be taken into account?
13. When considering national or regional planning instruments prepared under the RMA under s 9(2)(h) EEZ Act, to what extent, if any, should the Panel be guided by the Supreme Court's decision in *Royal Forest & Bird Protection Society v New Zealand Transport Agency* [2024] NZSC 26?
14. (a) Must "habitats of particular significance to fisheries management" be formally identified to be relevant under s 59(2)(h) EEZ Act?
- (b) If so, what form must such identification take?

Existing interests and infrastructure

15. (a) To what extent, if any, is the potential for offshore wind energy generation in or near the project area relevant, whether as an "existing interest" under s 59(2)(a) or (b) or under s 59(2)(g) EEZ Act, or otherwise?
- (b) If the potential for offshore wind energy generation is relevant, how should it be taken into account?
16. How are the potential effects on oil and gas permit infrastructure and associated safety regimes weighed within the FTAA and EEZ Act decision frameworks?

Conditions, adaptive management and monitoring

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

Decision tests, inconsistency and discretion

19. To what extent, if any, is the decision of the Supreme Court in *Trans-Tasman Resources v Taranaki-Whanganui Conservation Board* [2021] NZSC 127 binding on the Panel or of highly persuasive significance?
20. Is s 62 EEZ Act a standalone ground for declining a marine consent in this process, or are the Panel's powers to decline confined to s 85 FTAA?
21. In relation to s 85(1)(b) FTAA and the obligation under s 7(2) FTAA to act in a manner consistent with the obligations arising under existing Treaty settlements and customary rights:
 - (a) Are the members of the Panel "exercising a judicial power or performing a judicial function or duty" in terms of 7(2) FTAA?
 - (b) If adverse effects on fish stocks or aquaculture stocks are found to exist, would granting the application be inconsistent with obligations under the Māori Fisheries Settlement or the Māori Commercial Aquaculture Claims Settlement Act 2004?
22. In cl 6(1)(a) of Schedule 10 FTAA, is "the purpose" of the Act limited to the purpose specified in s 3 of the Act?
23. What is the meaning of "facilitate" in s 3 FTAA?
24. In relation to ss 85(3)-(5) FTAA, how should inconsistency with a provision of the EEZ Act, or with a document that the Panel must take into account or consider in complying with s 81(2), be factored into the Panel's s 85(3) assessment?
25. What does "out of proportion" in s 85(3) mean and how should it be applied?
26. (a) Is there, in a substantive sense, any difference between an "impact" and an "environmental effect" under the FTAA?
 - (b) If so, what if any consequence(s) does that difference have for the Panel's decision on the application?