Panel for the Purpose of the Fast-track Approvals Act 2024
Jennifer Caldwell
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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**].

5. 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.

Te Korowai Response dated 27 June 2025

6. Te Korowai responded to the Minute on 27 June 2025, affirming our status as a relevant iwi authority.

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7. We also affirmed that tikanga forms part of the applicable law to the FAA Taranaki VTM Project application, as per the invitation in the Minute from the Convenor to include kōrero related to tikanga, on several grounds including under Schedule 10 of FAA, particularly section 6(1)(d) of Scheule 10 of FAA requiring mandatory consideration of section 59 of the EEZ Act, which includes the requirement to apply "any other applicable law" in s59(2)(l) of the EEZ Act.

8. The status of tikanga as applicable was also affirmed in the decision of the Supreme Court regarding this TTR Project. 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.[1]

9. Our response asserted the requirement that 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), read together with section 4, 10 and Schedule 3 sections 5 and 10 of the FAA, and the jurisprudence recognising tikanga as procedural and substantive law of Aotearoa.[2] We referred to the principles of statutory interpretation such as applying the plain reading of the text and drafting efficiencies. Only section 53 (2)(c)(ii) refers to a Treaty Settlement entity in the PSGE sense, which supports the conclusion that the remaining subsections of section 53(2) must apply to entities other than PSGEs, namely, ngā hapū.

10. We also indicated the errors in the section 18 report from the Ministry of Environment dated 16 of June with respect to the MACA claimants within Ngāruahine.

11. We reiterated our request for a hearing based on several grounds including tikanga of kanohi kitea, respect to our pāhake and our oral culture, and ensuring evidential probity.

12. We informed the Convenor of our office shutdown from 5pm Friday 27th June until 9am Monday 7th July under our tikanga observance of Puanga mā Matariki.

13. Based on these facts and assertions, we requested:

    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 10th 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,

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

[2] 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/ 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,

we reiterate the request for the Conference rescheduling to 3 working days after that written response deadline, namely Tuesday 15th July 2025 at 10am.

c. A separate and dedicated Convenor's Conference on Monday 28th 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 ngā hapū as relevant iwi authorities and relevant Treaty settlement entities as participants, and

d. A separate Conference on Monday 4th 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.

Reply of the Advisor Regulatory Process dated 1 July 2025

14. On Tuesday 1st July at 4:03pm Te Korowai received an email from the Fast-track Advisor Regulatory Process stating "Thank you for providing this information. Are representatives from Te Korowai o Ngāruahine Trust wanting to attend the hui next Monday?

15. We had already provided information addressing this pātai. Te Korowai notes that the Convenor has elected to ignore our communications regarding the prejudice caused by her timeframes under our tikanga, despite our prompt best efforts to seek timely and reasonable accommodations for our annual ritenga for the observance of Puanga mā Matariki under our tikanga.
16. In seeking to avert undue prejudice to our uri, our kaimahi received this email later Wednesday morning whilst conducting a due diligence check for communication from the Convenor confirming rescheduling of the deadlines in light of our annual ritenga for the observance of Puanga mā Matariki under our tikanga. We therefore had insufficient time to prepare this attempt at a response to the two pātai from the Minute, whilst we remain unclear regarding the Convenor's response to our initial filing and requests from Friday 27th June.

17. We consider this a grave breach of Te Tiriti o Waitangi/Treaty of Waitangi and our settlement legislation. We further consider this as discriminatory and cannot determine a rational basis for outright ignoring our requests.

Te Korowai Response to Pātai #1 of Minute dated 26 June 2025

18. Panel members assessing this Taranaki VTM project require deep expertise and experience across a range of technical matters, which must include, but should not be limited to:

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a. Lived experience within the rohe of Aotea waka in order to viscerally understand the factual context,
b. Whakapapa to Aotea waka in order to maintain safety and connections to tūpuna within a deeply treacherous decision-making process,
c. Deep tikanga experience as recognised and accepted within Aotea waka,
d. Deep mātauranga expertise as recognised and accepted within Aotea waka,
e. Exceptional legal and technical capabilities in order to execute sound decision-making with respect to both procedure and substantive matters on the merits.

19. The importance of whakapapa to Aotea waka, and associated aspects, has been recognised within case law in Aotearoa, insofar as tikanga is recognised as living law, arrived at through dynamic consensus as evidenced by the ongoing practice of an iwi or hapū.[3]

20. Because this panel is anchored within the takutai moana of South Taranaki, it follows that whakapapa to Aotea waka is the only means by which this aspect of the existing caselaw can be upheld. Furthermore, any potential concerns regarding appearance of bias, merely by virtue of whakapapa, can be addressed through ethical protections which apply to any other panel member. To hold otherwise would be clearly and evidently discriminatory.

21. To best appreciate the basis for the need for panel members with whakapapa to Aotea waka to enable fully-informed decision making of the full panel, it is necessary to consider the nuance and skill required of non-Māori in such settings. Caselaw has referred to the need for persons such as the panel members deciding the Taranaki VTM application to demonstrate a commitment to cultural sensitivity and self-awareness of the courts' historical and systemic structural issues. Justice Palmer has noted that there is a need for non-Māori to exercise caution,[4] in particular due to the "inherently difficult task of transcending culturally-specific mindsets".[5] He demonstrated the increased nuance in the courts' jurisprudence around tikanga and respecting local customs by stating that:

> "[i]n recognising tikanga, common law courts must hold 'in check closely' any unconscious tendency to see tikanga in terms of the English law heritage of New Zealand common law. They must be open to seeing tikanga on its own terms, as a distinct framework. I accept [the] submission that the Court must be mindful of the unique character of tribal tradition and practice engaged in any claim about tikanga. A court's caution in approaching tikanga must be heightened when the content of tikanga is disputed within an iwi or hapū or between iwi or hapū".[6]

22. In order for the Convenor to best appreciate the aspects of tikanga within Te Korowai which must underpin the decision regarding the appointment of panel members, we therefore urge the Convenor to review directly the core public documentation which guide our operations. According to the existing caselaw on tikanga, it is only by the Convenor directly reading these materials that it would be reasonable to attempt to achieve the required level of appreciation

[3] See for example Ngāti Whātua Ōrakei v Attorney General [2022] (NZHC 843), paras 370-371, 383.
[4] Ngāti Whātua Ōrakei v Attorney General [2022] (NZHC 843), paragraphs 371-378.
[5] Ngāti Whātua Ōrakei v Attorney General [2022] (NZHC 843), para 373.
[6] Ngāti Whātua Ōrakei v Attorney General [2022] (NZHC 843), para 377.

of our tikanga that achieves "transcending culturally-specific mindsets." In other words, merely seeking to summarise these documents would not suffice. Such documents include the following, and we strong urge the Convenor to also review materials such as the Deed of Settlement, settlement legislation,[7] Waitangi Tribunal claims, reports, historical research,[8] and contemporary publications:

a. Te Korowai's Mātāpono.[9] It is essential for panel members to embody the values advanced by Te Korowai as informed by our tikanga.
b. Tupua Te Mauri.[10] It is essential that for panel members to be familiar with our taiao strategy, Te Uru Taiao, including the engagement guidance and expectations set out therein.[11]
c. Te Ara Toiroa.[12] Appointments of uri of Aotea waka is in furtherance of our uri procurement strategy which has a framework seeking to support the appointment of uri of Ngāruahine as first order of priority, followed by Taranaki Whānui, Te Ao Māori, Tauiwi, then Pākeha – including maintaining a register of businesses, experts, which also extends to qualified Environmental Commissioners.[13]
d. Annual Plan.[14] It is essential for panel members to appreciate current operational guidance and objectives of Te Korowai for uri of Ngāruahine.

23. Te Korowai has engaged in collaborations with our sister iwi of Aotea waka, and also local councils. To this end, extensive hui have been conducted to identify consensus candidates. As such, Te Korowai supports the appointments as identified by the consensus. However, this does not detract the need for all panel members to reflect the requirements as set out above, and Te Korowai urges the panel Convenor to appoint further uri of Aotea waka. Indeed, we have many qualified lawyers, technicians, commercial and business experts, mātauranga and taiao pūkenga, including Environmental Commissioners listed through the WSP database, and we invite the Convenor to contact us for further information, noting that such databases may not contain the most recent information.

[7] See for example, compilation here: https://www.ngaruahine.iwi.nz/all-documents
[8] See for example https://www.waitangitribunal.govt.nz/en/inquiries/district-inquiries/kaipara-14
[9] Listed on: https://www.ngaruahine.iwi.nz/ Mahi ka tika | Transparency, Mahi pono | Trustworthiness Manaakitanga | Sharing and caring, Māhakitanga | Respect and humility, Ngākaunui | Sound judgement, Hari me te koa | Fun and celebration.
[10] https://www.ngaruahine.iwi.nz/Taiao
[11] https://irp.cdn-website.com/9b6bde97/files/uploaded/Te-20Uru-20Taiao-20o-20Ngaruahine.pdf
[12] https://irp.cdn-website.com/9b6bde97/files/uploaded/Te-Ara-Toiroa-Strategy-Final-Version-Updated-20-10-201.pdf
[13] https://www.ngaruahine.iwi.nz/ng%C4%81ruahine-skills-and-business-register
[14] Most recent annual plan, 2025 annual plan update underway for 2025 annual hui: https://issuu.com/ngaruahine/docs/tkont_annual_report_2024_web_2?fr=sN2NjMDc5MTA4NDQ

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Te Korowai Response to Pātai #2 of Minute dated 26 June 2025

24. Te Korowai notes that there are two options regarding the Convenor's request for input with respect to the date for the panel's final decision on the application from Taranaki VTM. The first option pertains to the set timeframes laid out in the FAA, should the Convenor not announce a date for their final decision. The second option concerns the Convenor setting the "due date" for the panel's final decision.

Option 1: Te Korowai rejects the timeframes under the FAA

25. Te Korowai asserts that the nature of the application mandates that the Convenor should set a date for the panel's final decision. Te Korowai therefore does not consider the application of Taranaki VTM to be appropriately decided under the timeframes set out in the Act in lieu of a pre-determined date for the final decision.

26. In support of this position, Te Korowai refers to (1) the laws of tikanga, (2) the laws of statutory interpretation, (3) the applications uniquely complicated facts. Each will be addressed in turn below.

27. First, our tikanga is both procedural and substantive—in other words, it guides how decisions are made and the principles by which outcomes are assessed. Tikanga mandates that a hearing be held for matters of serious consequence such as the Taranaki VTM application. It would be a grave breach of tikanga to proceed without affording time and space for those most affected—our kaumātua, kaitiaki, and uri—to be heard directly. The panel has discretion to determine its own procedure, and under tikanga, it is essential that the Convenor set a decision date that enables such a hearing. Default timeframes under the FAA should not override tikanga requirements. Breaches of tikanga create hara, which must be addressed through the process of take-utu-ea. If ignored, such breaches would necessitate further action to restore balance and uphold the integrity of our tikanga.

28. A tikanga approach also requires that failures to uphold proper engagement—such as the lack of mandatory pre-lodgement consultation under the FAA—be addressed through the process of take-utu-ea. This concept offers a Māori legal framework for responding to transgressions. The "take" refers to the original breach—here, the Crown's failure to consult. This triggers a need for "utu,"[15] or remedy, to rebalance the relationship, and ultimately achieve "ea"—restored harmony. As outlined by Mead and others, this process reflects foundational Māori values of reciprocity and the centrality of whanaungatanga. As the NZ Law Commission notes, utu is the action undertaken to restore balance and may take various forms—positive or corrective. The current process must allow space for such tikanga-based redress to occur[16].

29. Second, the FAA itself reflects a recognition that applications will vary in complexity. Some may be relatively straightforward—for example, a single consent under a single statute such as the RMA. In those cases, the default timeframes serve a useful function. However, the Act also contemplates applications of far greater complexity, requiring more flexible, case-specific

[15]Mead, S. M. (2003). Tikanga Māori : living by Māori values. Huia, p.27.

[16] https://www.lawcom.govt.nz/assets/Publications/StudyPapers/NZLC-SP24.pdf para.3.60

approaches. This is evident in the discretion available to the Convenor and panel, which must be exercised with regard to the context of each case.

30. Third, the Taranaki VTM application represents a highly complex case. It engages multiple legislative regimes (FAA, EEZ Act, Crown Minerals Act, RMA), has previously been litigated all the way to the Supreme Court, and involves unresolved technical, environmental, and cultural issues. The feasibility of the proposed technology is contested in public literature, and the proposed activities have generated sustained community opposition, led by mana moana, for more than a decade. This is not a routine application. Under tikanga and principles of statutory interpretation, the application cannot be fairly or lawfully assessed under the standard FAA timeframes.

31. Te Korowai therefore assesses the Taranaki VTM application as one that requires a tikanga-consistent, flexible approach. A rigid application of fixed timeframes would disregard both the intent of the legislation and the fundamental legal traditions of mana whenua.

Option 2: Te Korowai affirms that the Convenor must select a decision date under the FAA

32. Te Korowai asserts that the Convenor must select a decision date according to the principles of natural justice in alignment with tikanga. This of necessity should involve compliance with the terms of the FAA itself, which to date, has not occurred. Our submissions on this point will set out aspects for decision making according to the following:
    a. Remedying breaches of the FAA with respect to pre-lodgement consultation,
    b. Remedying breaches of the FAA with respect to lack of information,
    c. Upholding tikanga,
    d. Holding a hearing,
    e. Natural justice.

a) Urgent pause in proceedings to remedy breach of FAA pre-lodgement consultation requirements

33. Te Korowai wrote to the EPA and the Fast-track Panel on 30 March 2025 seeking remedies for the failure to comply with the mandatory provisions of the Act with respect to pre-lodgement requirements. We have received absolutely no response on this matter. This of course is grounds for judicial review. The decision date must therefore reflect the necessary pause of proceedings to seek to remedy the failure to conduct pre-lodgement engagement.

34. Under FAA section 11 and 29 the applicants are required to engage in pre-lodgement consultation with MACA claimants, iwi and, as explained in our previous response dated 27 June 2025 to the Convenor's Minute dated 26 June, with hapū.

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35. The applicant did not conduct this pre-lodgement engagement with any of these groups. In our letter to the EPA and Fasttrack Panel dated 30 March 2025, we therefore assert that the application cannot proceed and at a minimum must be deemed incomplete. At a minimum, this necessitates a pause in pre-application proceedings to ensure adequate time and resources are committed by Taranaki VTN towards conducting the legislative requirements for pre-lodgement consultation, in accordance with our tikanga.

36. As an indication of the necessary timeframes to inform the Convenor's selection of a final decision date, several hapū engage in a three-monthly hui cycle. Issues raised within pan-hapū monthly hui with taiao representatives are subsequently raised within monthly hui with hapū committee members and trustees. Some hapū alternate between monthly hui with committee members only, then the following month with hui for all uri. Complex matters may necessitate additional wānanga with pūkenga and tikanga experts. Once the issues are canvassed at a committee-level, then the matter may be taken to the hui with all uri. Then the decision can be reported back at the next pan-hapū hui with taiao representatives to ensure transparency and collaboration under kotahitanga. As this example illustrates, sufficient time and information is absolutely necessary in order to ensure pre-lodgement consultation.

37. Under Crown law and guidance to public servants in Aotearoa, basic consultation must include the provision of the relevant information in order that for us to make an informed decision on the application and provide our position through our tikanga processes led by hapū. Under case law, *Wellington International Airport Ltd v Air NZ* [1993] 1 NZLR 67 mandates that consultation must involve a genuine exchange of views and an opportunity for those consulted to influence the decision-making process. Indeed, more recently courts have held that, (which will be familiar to anyone accustomed to pā life), tikanga process is typically more time intensive than expected in formal court proceedings due to the emphasis on relationships and supporting consensus decision making through ensuring thorough comprehension of the issues through the sharing of kōrero.[17]

38. These consultation methods are also mandated under international law, such as the UN Declaration of the Rights of Indigenous Peoples which requires that engagement must involve "free, prior and informed consent". Clearly, we can only come to an informed position if adequate information has been provided and sufficient time allocated for consultation which complies with tikanga and the law. This has not occurred through the pre-lodgement process, thereby constituting violations of section 11 and 29 of the FTAA.

b) Urgent pause in proceedings to remedy breach of FAA pre-lodgement consultation requirements specifically with respect to the Supreme Court's ruling on lack of environmental information

39. The Taranaki VTM application asserts that they were utilising the same information from the 2016 application, but the Supreme Court decision had already determined that this information is inadequate.

40. In other words, this letter does not include basic information such as an updated Assessment of Environmental Effects (**AEE**), updated the economic information, updated plume modelling, updated information related to impacts on marine mammals, seabirds, and other taonga species. This letter did not address any of the matters which the Supreme Court directed the applicant to address.

[17] (NZHC 843), para 364

41. The consistent issue through the three previous EPA processes regarding this project and the decision of the Supreme Court related to the lack of information from the applicant which meant that it was not possible to determine that the project would not involve any material harm. In the absence of this information, both the Crown's law in Aotearoa and international law relating to the EEZ necessitates the declining of the consent application.

42. For the avoidance of doubt, we therefore will itemise specific requests for information as per these prior procedures, which we assert are necessary information as part of the pre-lodgement process in consulting with us and ngā hapū:

    (a) Updated plume modelling, notably in regard to the worst-case modelling and wave periods (an issue which arose in the reconsideration hearing). It is notable that the previous Decision Making Committee (**DMC**) already requested this modelling back in 2023.

    (b) Updated marine mammal evidence, including undertaking a survey. Relevant marine mammal observations are set out in the evidence of Dr Leigh Torres 2023 and Dr Slooten in 2023.

    (c) Updated seabird evidence including undertaking a survey, taking into consideration John Cockrem's previous evidence.

    (d) Updated economic evidence, undertaking a cost and benefit analysis including effects to other industries in the area, including ones excluded by the project, and including damage to the environment.

43. We consider these four categories to be the bare minimum of information that must be provided to us prior to pre-lodgement consultation in compliance with previous legal findings. Without the provision of adequate information from Taranaki VTN through wānanga with MACA, iwi, hapū, the application is incomplete and we are unable to determine a fully informed position on the proposal at this stage.

44. Te Korowai therefore requests an urgent pause to proceedings to enable compliance with the FAA and tikanga.

45. Te Korowai has filed with the Waitangi Tribunal in the Wai 3475 claim seeking an injunction to pause these proceedings for compliance with the FAA provisions regarding pre-lodgement engagement, and supports the statement of claims presented by ngā hapū across Ngāruahine and our sister iwi, including across the mātou, opposing Taranaki VTM as a breach of Te Tiriti o Waitangi / Treaty of Waitangi.

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46. Te Korowai also considers Taranaki VTM in violation of its requirements under ASX to notify of market sensitive information including legal proceedings.

47. Te Korowai is also considering judicial review regarding the unreasonable and irrational approach to ignoring pre-lodgement consultation requirements and our submissions seeking remedy.

48. As such, Te Korowai's initial response regarding the date for the decision on the application therefore requests an urgent pause to proceedings to enable compliance with the FAA and tikanga, particularly relating to remedying the failure to conduct pre-lodgement consultation and provide sufficient information particularly relating to the Supreme Court's findings regarding environmental and cultural impacts.

c) Upholding tikanga

49. The questions posed in the Minute reinforce the critical need for tikanga expertise in the decision-making process. Tikanga encompasses both procedural and substantive elements, and it is not possible to make a fully informed decision—particularly regarding timing—without first understanding the whakapapa and qualifications of the appointed panel members.

50. If panel members are not uri of Aotea waka, sufficient time must be allocated for them to undertake cultural capability training. This may include marae visits, wānanga[18], engagement with pūkenga[19], and contextual review of legislation such as Te Ture Whenua Māori Act 1993. Without such grounding, the panel may lack the cultural and ecological competence required to address matters of profound significance to tangata whenua.

51. Te Korowai acknowledges the Convenor's invitation to speak to tikanga and highlights two foundational aspects that must be upheld from the outset: kaitiakitanga and the mechanisms of rāhui and aukati.

52. Tikanga is unique to people and place, and while practices may evolve, the core principles—conceptual regulators—remain constant[20]. As recognised by the courts, tikanga is the first law of Aotearoa and part of the common law[21]. Its application is particularly vital in environmental contexts, including through tools such as rāhui[22].

53. Kaitiakitanga expresses our obligation to protect and nurture te taiao through whakapapa-based responsibilities[23]. It is an active duty of guardianship, not only spiritual but enforceable—failures to uphold kaitiakitanga can result in loss of mana or harm to the whānau

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[18] (NZHC 843), para 364

[19] [20] NZHC 843), para 367

[20] Mikaere, A. (2013). *Colonising Myths - Maori Realities: He Rukuruku Whakaaro.* Huia NZ Ltd, p.109.

[21] Ellis v R [2022] NZSC 114 [7 October 2022] 1 NZLR 239, Statement of Tikanga of Sir Hirini Moko Mead and Professor Pou Temara, 31 January 2020, 31 January 2020, para. 19.

[22] Ellis v R [2022] NZSC 114 [7 October 2022] 1 NZLR 239, Winkelman at para 173.

[23] Roberts, M. (1995). Kaitiakitanga: Maori perspectives on conservation. *Pacific Conservation Biology.* 2(7) at 14; Durie, E.T., (2017). Ngā wai o te Māori: ngā tikanga me ngā ture roia The waters of the Māori: Māori law and State law. *New Zealand Māori Council*. p.30. McCully, M. & Mutu, M. (2003) *Te Whānau Moana: ngā Kaupapa me ngā Tikanga Customs and Protocols* Reed Books, p.67.

and hapū[24]. The ethic of kaitiakitanga requires managing people, not just the environment, and compels Māori to respond to crises such as climate change in accordance with inherited duties[25].

54. Rāhui and aukati[26] are key tikanga mechanisms that operationalise kaitiakitanga[27]. A rāhui temporarily prohibits access or use of an area to allow for recovery and regeneration of natural resources, guided by tapu and lifted only through the appropriate kawa[28].

55. Rāhui affirms that the environment is not an endless resource for exploitation. It imposes necessary ecological limits and reflects an accountability to atua and future generations. These practices uphold the balance and mauri of Papatūānuku, preventing irreversible damage caused by overuse or pollution.

56. When a rāhui is imposed, the area becomes tapu (sacred)[29]. Breaches can result in serious consequences, historically both spiritual and physical. Today, rāhui are increasingly recognised and observed by the wider public[30], serving to regulate both Māori and non-Māori conduct in environmental contexts.

57. In a modern context, where technological advances accelerate environmental degradation—particularly through fossil fuel extraction—rāhui offers a tikanga-based response. Te Korowai asserts that rāhui must be considered as a legitimate mechanism to restrict activities like deep-sea mining and fossil fuel emissions.

58. Rāhui function within the tikanga framework of take-utu-ea—restoring balance when breaches (hara) occur[31].

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[24] Jones, C. (2016). *New Treaty, New Tradition: Reconciling New Zealand and Maori Law.* UBC Press, p.75.
[25] Selby, R., Moore, P., & Mulholland, M. (2010). *Māori and the environment : kaitiaki.* Huia, p.116
[26] See for example https://www.rnz.co.nz/news/national/76553/cultural-ban-to-be-imposed-on-tidal-power-plant
[27] Mead, S. M. (2003). *Tikanga Māori : living by Māori values.* Huia, p.193.
[28] Marsden, M., & Royal, T. A. C. (2003). *The woven universe : selected writings of Rev. Māori Marsden.* Estate of Rev. Māori Marsden, p.49.
[29] Marsden, M., & Royal, T. A. C. (2003). *The woven universe : selected writings of Rev. Māori Marsden.* Estate of Rev. Māori Marsden, p.5.
[30] [60] https://www.lawcom.govt.nz/assets/Publications/StudyPapers/NZLC-SP24.pdf para.3.137 "A place or natural resource subject to a rāhui will have a right to protection and an immunity from interference. People have a duty to respect the rāhui and cannot access the place or natural resource. Therefore, a rāhui is a good example of a process for managing the powers and responsibilities associated with tapu, and of how tapu (by setting in place a prohibition) facilitates utu and ea."
[31] [61] https://www.lawcom.govt.nz/assets/Publications/StudyPapers/NZLC-SP24.pdf para.3.137 "A place or natural resource subject to a rāhui will have a right to protection and an immunity from interference.

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59. By restricting use through a state of tapu, rāhui maintain mauri, protect taonga, and prevent spiritual and environmental imbalance. As such, they must be recognised as binding and respected by all.

d) Holding a hearing

60. Te Korowai has been asserting the requirement under tikanga and the FAA with respect to this uniquely complex application since our first communication with the EPA and the Fast-track panel in our letter dated 30th March 2025, and most recently, our response to the Memorandum of the Convenor dated 27th June 2025.

61. The timing of the final decision must therefore account for the tikanga aspects which require a hearing, as pre our prior communications, and the complexity of the Taranaki VTM, not to mention the voluminous materials from the previous legal processes, and the matters yet to be addressed pertaining to the Supreme Court decision requiring remediation of the lack of information on environmental and cultural impacts.

62. To date, we have witnessed worrying misinformation regarding this application from persons who appear to be influential shareholders of Taranaki VTM. In particular:

    a. We urge the Convenor to review the presentation from Alan J Eggers on 18 June 2025 to the New Plymouth District Council regarding TTR[32] which included alarming factual errors and misstatements of law. Although he went further during his oral presentation as recorded on the recording of the presentation (linked in the footnote above), even his publicly accessible PowerPoint indicates clear errors of law and fact, erroneously stating that there is "No impact on fish, whales or dolphins"[33] despite voluminous reports and independent expert witnesses, as affirmed by the findings of the Supreme Court, finding the exact opposite to be true, as per the factual and legal review compiled by Ruby Haazen and attached in the appendix.[34]

    b. We also have noted the misinformation on the website of Philip Brown and his associations with political campaign donations and shareholdings of the TTR enterprise. This has extended to sending letters with misstatements of fact regarding the Taranaki VTM project to local and regional councillors voting on resolutions addressing Taranaki VTM.

63. For these reasons, in addition to the reasons already raised with the Convenor and the EPA through Te Korowai's prior communications, particularly regarding the extent of recent misinformation being provided to the public including through local democratic processes, and

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People have a duty to respect the rāhui and cannot access the place or natural resource. Therefore, a rāhui is a good example of a process for managing the powers and responsibilities associated with tapu, and of how tapu (by setting in place a prohibition) facilitates utu and ea."

[32] See Elected Members Workshop - Trans Tasman Resources presentation on seabed project 18 Jun 2025 9:00AM Council Chambers, Civic Centre, video accessible:

[33] https://www.npdc.govt.nz/media/qm3llwyu/ecm_9521229_v2_ttr-corporate-presentation-taranaki-18jun25-small.pdf slide number 22.

[34] Also attached to this letter for ease of reference, citing extensively from Trans-Tasman Resources Limited v The Taranaki-Whanganui Conservation Board [2021] NZSC 127.

it is essential that a hearing be held to address matters raised in public hearings regarding the current application.

e) Natural justice

64. The requirements of natural justice, as a bedrock of the legal system in Aotearoa, ensures that sufficient time must be afforded to affected parties in order to properly participate in legal processes. This naturally requires more time depending on fairness and due processes issues such as (1) resources available for participation, (2) the nature of the risks at stake, (3) the complexity of the issues of law, (3) the complexity of the issues of fact, (5) the volume of relevant materials.

65. There are a variety of fairness matters which must be considered within this calculus:

    a. Resources available for participation. At Te Korowai, we have one full time permanent staff member addressing all resource consent matters under the RMA, CMA, EEZ, and FAA. This person can only be reasonably expected to afford 0.2 FTE i.e. one morning a week given the scope of legally mandated mahi under our settlement with respect to these other legislation obligations. As one of the most affected PSGEs in the motu, alongside our sister iwi in Aotea waka, we require due consideration of our limited FTE to enable this mahi and reasonably participate in a fair timeframe for the final decision.

    b. Risks at stake. The claims at the Waitangi Tribunal have scoped an indication of the irreversible harm and unacceptable prejudice to our tikanga, taiao, cultural and spiritual taonga under the application. These claims are attached for ease of reference. We therefore urge sufficient time in the final decision to ensure that these weighty matters are afforded due time to address and scope adverse effects, including those without meaningful mitigations.

    c. Complexity in law. At Te Korowai, we do not have in-house counsel, nor do we have the mandate under our Trust to disburse funds for legal advice with respect to this matter. We are all contending with new legislation under the FAA, but at Te Korowai, we are also dealing with the EEZ Act which is entirely new in scope. It is clear that the EEZ and the FAA clash, and the findings of the Supreme Court clearly require the bottom lines in the EEZ to apply to the FAA. The legal complexity of this matter would challenge even the most experienced KC. We therefore require sufficient time to upskill and enable requisite research to ensure these matters are fully understood such that we can meaningfully participate in proceedings as an affected party for whom it is mandatory to seek fully informed comments.

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d. Complexity in fact. At Te Korowai, we do not have in-house engineering or commercial experts who can assist in reviewing and developing assessments of the application related to technical reports. We note there are vastly differing conclusions on technical matters, including mineral extraction processes, what processes are even feasible (noting that vanadium appears to be new technology such that it is debated if it actually can be extracted), whether the economic benefits are even correct within Taranaki VTM's projects (noting that profits are exported and vanadium does not require payment of Crown royalties and none of the minimal employment opportunities are located within South Taranaki). We therefore require sufficient time to subskill and enable requisite research to ensure these matters are fully understood such that we can meaningfully participate in proceedings as an affected party for whom it is mandatory to seek fully informed comments. We note too that none of the existing environmental reporting, which the Supreme Court already identified as insufficient, addressed any Ngāruahine tikanga and mātauranga.

e. Voluminous materials. Te Korowai was not a participant to prior proceedings over the past ten years, culminating in the rejection by the Supreme Court of the same application as currently before the Convenor. We have attempted to conduct an assessment of the volume of materials we would require to review and estimate the timeframes required. However, this too was not able to be completed within the timeframes afforded by the Convenor for responding to her Minute, but would include matters such as:

    i. Assess number of pages for submission from all parties at the previous Decision Making Panels (**DCMs**).
    ii. Assess number of pages for witness statements at the previous Decision Making Panels (**DCMs**).
    iii. Assess number of pages for expert reports at the previous Decision Making Panels (**DCMs**).
    iv. Assess number of pages for panel Minutes, Decisions, Directives of the panel at the previous Decision Making Panels (**DCMs**).
    v. Assess number of pages of transcripts from the previous Decision Making Panels (**DCMs**).
    vi. Assess number of pages for submission from all parties at the previous High Court proceedings.
    vii. Assess number of pages for witness statements at the previous High Court proceedings.
    viii. Assess number of pages for expert reports at the previous High Court proceedings.
    ix. Assess number of pages for judicial Minutes, Decisions, Case Conferences at the previous High Court proceedings.
    x. Assess number of pages of transcripts from the previous High Court proceedings.
    xi. Assess number of pages for submission from all parties at the previous Court of Appeal proceedings.
    xii. Assess number of pages for witness statements at the previous Court of Appeal proceedings.

xiii. Assess number of pages for expert reports at the previous Court of Appeal proceedings.
xiv. Assess number of pages for judicial Minutes, Decisions, Case Conferences at the previous Court of Appeal proceedings.
xv. Assess number of pages of transcripts from the previous Court of Appeal proceedings.
xvi. Assess number of pages for submission from all parties at the previous Supreme Court proceedings.
xvii. Assess number of pages for witness statements at the previous Supreme Court proceedings.
xviii. Assess number of pages for expert reports at the previous Supreme Court proceedings.
xix. Assess number of pages for judicial Minutes, Decisions, Case Conferences at the previous Supreme Court proceedings.
xx. Assess number of pages of transcripts from the previous Supreme Court proceedings.

f. Assess the time required to syntheses this information and provide in a format for hapū and uri.
g. Assess uri register and develop engagement strategy for connecting with 9,639 uri currently affiliated with Ngāruahine.[35]
h. Conduct outreach and engagement regarding this information although the decision making cycles specific for each hapū, as discussed above regarding minimum 3 month decision making cycles.
i. Conduct online wānanga for uri outside the rohe.
j. Travel to uri outside the rohe for kanohi-kitea sessions under our tikanga, particularly with our kaumatua.
k. Conduct kaupapa Māori and mātauranga research, particularly regarding the areas flagged by the Supreme Court as insufficient with respect to the legal requirements for environmental aspects.

Assessments

66. Te Korowai has only managed to connect with an extremely limited under of uri in the limited space of time. An example of the common responses on this pātai include:
    a. We need minimum time as legal process to Supreme Court given complexity of law, fact, tikanga e.g. 10 years

[35] See assessments of uri demographics: https://tewhata.io/nga-ruahine/

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b. We need minimum time for untested technology and environmental research e.g. 5 generations
c. The adverse effects and prejudice can never be mitigated. The panel should therefore reject this application and there should never be an approval decision.

Hei whakakapi

3. With respect to pātai #1 regarding panel members:
    a. Te Korowai supports the consensus candidates advanced by sister iwi and local councils,
    b. Te Korowai requests the appointment of additional panel members with whakapapa to Aotea waka,
    c. Te Korowai requests the appointment of additional panel members with the minimum expertise and experience as set out above.

4. With respect to pātai #2 regarding timing of the final decision:
    a. Te Korowai requests an urgent pause to proceedings to enable remedy of the non-compliance with the FAA and tikanga on pre-lodgement consultation,
    b. Te Korowai requests an urgent pause to proceedings to enable remedy of the non-compliance with the necessary information required under the our tikanga and the terms of the FAA, the EEZ Act, the Crown Minerals Act, and the Resource Mangement Act, read with the Supreme Court decision regarding TTR (noting that the Taranaki VTM application utilise the same insufficient information),
    c. Te Korowai requests sufficient time to ensure all panel members are reasonably culturally capable to assess aspects specific to Aotea waka, including tikanga and taiao including kaitiakitanga, within our mana moana and mana whenua, as well as rāhui and aukati.
    d. Te Korowai repeats its request that a hearing is absolutely necessary under tikanga and the requirements of natural justice, including to address egregious misinformation from persons associated with the application.
    e. Te Korowai requests any date for a final decision reflects the requirements of natural justice, including but not limited to, acknowledging our lack of resources, the complexity of the facts and law, the high stakes of adverse effects and permanent prejudice to uri and mana moana, the need for additional research including mātauranga and kaupapa Māori research, and our tikanga processes of information sharing, outreach, and decision-making.

5. With respect to the pātai posed in the īmera received Tuesday, July 1, Te Korowai confirms its participation at the Convenor's conference Monday 7th July 10am and requests information for joining online, and to share this information with MACA and hapū o Ngāruahine.

Pai mārire,

Te Aorangi Dillon

Tumu Whakarae

Te Korowai o Ngāruahine Trust

APPENDIX:

1) Legal and factual analysis from Ruby Haazen.
2) Waitangi Tribunal application for urgency including injunction to stop FAA proceedings, Wai 3475
3) Waitangi Tribunal Te Korowai filing in support of ngā hapū and Wai 3475.

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TRANS TASMAN RESOURCES'LIMITED APPLICATION TO THE EPA UNDER THE FAST TRACK APPROVALS ACT (FTAA)

'The Taranaki VTM Project'

SUBMISSION GUIDE

Produced by
Ruby Haazen
Barrister
Magdalene Chambers

February 2025

Table of Contents

Summary and Introduction

This document serves as a submission guide and analysis regarding Trans-Tasman Resources Limited's (**TTRL**) application to fast-track seabed mining in the South Taranaki Bight under the Fast-track Approvals Act 2024 (**FTAA**). It evaluates key environmental, social, and economic impacts, considers decision-making frameworks under the FTAA and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), and identifies areas requiring further information or reconsideration.

Trans-Tasman Resources Limited proposes an experimental and novel seabed mining operation, targeting a 66 km² area in the South Taranaki Bight to extract 50 million tonnes of seabed material annually over 35 years. Despite previous applications being declined due to environmental concerns and information gaps, TTRL's 2025 submission under the FTAA raises critical questions about:

1. Its adherence to environmental bottom lines under the EEZ Act.
2. The sufficiency of any updated economic and environmental analyses.
3. The potential for balancing regional/national benefits against environmental and cultural costs.

This guide outlines the decision-making process, key legal and evidential considerations, and areas requiring robust scrutiny.

The application largely remains unchanged since 2017, a point emphasised by many submitters during the 2024 reconsideration hearings. The application under the fast track is also expected to be basically the same. TTR has undertaken no substantial new research on environmental effects since 2016/2017. There is expected to be only two areas where information will be updated as part of TTRL's Fast Track Application, in the area of economics and consultation with interested parties. Given the lack of significant updates to the proposal, the critical question now is whether the application, while failing under the EEZ framework, could succeed under the FTAA criteria. This raises two essential tests for evaluation.

Because it is unlikely that the application will undergo meaningful changes beyond economics and consultation this allows submitters to prepare draft responses in advance to notification based on TTRL's previous applications. This guide will hopefully support submitters during this initial drafting stage.

TABLE ONE: Timeline

Date	Stage	Steps in the Fast Track Process
	Application to be eligible for Fast Track	• TTRL was included in Schedule 2 of the the Fast Track Bill. The Fast Track Act 2024 and Schedule 2 were passed into legislation on 17 December 2024.
	Pre-Lodgement Consultation Section 11 and 29 FTAA	• TTRL is known to have undertaken some if not all of its pre-lodgment consultation in November and December 2024 • Consultation **must** occur with a. Relevant local authorities – **TTRL meet with a number of District Councils in late 2024 b. Relevant iwi authorities c. Any group with application under MACA in the application area
January 2025		NOW
7 February 2025	**Fast Track Approval Portal Operational**	• On this date or afterwards TTRL will be able to submit its application through the portal. • TTRL must pay the required fees to cover the actual and reasonable costs incurred by government agencies for processing. • The date – 7 Feb 2025- will align with the finalisation of fees and levies payable by applicants – expected in the new year.
	Application **43 FTAA**	• Must explain how the project is consistent with the Purpose, i.e how will the project deliver *significant* regional or national benefit • Must be in sufficient detail to satisfy the purpose for which it is required • Must include impact assessment prepared under s39 of the EEZ Act (see Clause 4 of Schedule 10 FTAA)
Earliest date: anytime between 7 February and	**EPA Completeness Check** Must be done within 15 working days of	• If the application is incomplete it must be returned to the applicant who can re-apply. If the applicant re-applies then the 15 days starts again.

28 February 2025	receiving the application. Section 46 FTAA	
Likely to be end of February	Competing Applications, EPA consideration Within 10 days Section 47 EPA	• The EPA **must** consult with relevant agencies and consent authorities whether there are any competing applications • There are no competing resource consents that we know of that would trigger this section
Likely to be end of February	Competing Applications, Minister Unknown timeframe but if delegated to EPA – then within 10 working days	S47(7) the EPA must not provide the substantive application to the panel convener before the Minister notifies the EPA in writing that a panel may be set up for the substantive application.
No timeframe	**Establishment of the Panel**	
Early – Mid March	EPA invites comments on Substantive Application 10 days from the date of establishing the Panel Section 53	Comments must be invited from (s53(2)): a. Relevant local authorities b. Relevant iwi authorities c. Relevant Treaty settlement entities d. Any applicant group under the Marine and Coastal Area (Takutai Moana) Act 2011 that is identified in the report prepared under section 18 or 49 and seeks recognition of customary marine title or protected customary rights within the area to which the substantive application relates; and e. The tangata whenua of any area within the area to which the substantive application relates that is a taiāpure-local fishery, a mātaitai reserve, or an area that is subject to bylaws or regulations made under Part 9 of the Fisheries Act 1996; and f. Relevant administering agencies; and For purposes of section 53(2)(m)(v)- refers to parties listed in Clause 5 of Schedule 10. Clause 5 of Schedule 10 refers to parties listed at s46 (1)(b)(ii):

		ii) serve a copy of the notice on— *(A) every other Minister with responsibilities that may be affected by the activity for which consent is sought:* *(B) Maritime New Zealand:* *(C) iwi authorities that the EPA considers may be affected by the application:* *(D) customary marine title groups that the EPA considers may be affected by the application:* *(E) protected customary rights groups that the EPA considers may be affected by the application:* ***(F) other persons that the EPA considers have existing interests that may be affected by the application**:* *(G) regional councils whose regions may be affected by the application.* **53(3) Comments may be invited from any other person the panel considers appropriate.**
End of March 2025	Comments Recieved by Panel Within 20 working days from invitation S54 FTAA	
	Right of reply Within 5 Working days S55 FTAA	
	Hearing S 56 and 57	• No obligation on the hearing panel to hold a hearing in respect of a subtantive application • Minimum 5 days notice will be provided
End of April/ Begining of May	**Decision** Within 30 days after receiving comments from submitters if the timeframe is not set by the panel convenor	The Criteria for assessing marine consents can be found at clause 6 of Schedule 10 of the EEZ Act: (1) the panel must take into account, **giving the greatest weight to paragraph (a),—** *(a) the purpose of this Act; and* *(b) sections 10 and 11 of the EEZ Act; and*

	(so could be much longer). S80 and 81 FTAA	*(c) any relevant policy statements issued under the EEZ Act; and* *(d) sections 59, 60, 61(1)(b) and (c) and (2) to (5), 62(1A) and (2), 63, and 64 to 67 of the EEZ Act.*

TTR FAST TRACK APPLICATION 2025

Is it likely to be different from previous applications?

This document considers the 2016/2017 evidence (provided to the EPA as part of its 2016 application for marine consent to mine iron ore) alongside the updated material provided to the EPA as part of the reconsideration hearing in 2023/2024. This represents the most recent and up to date evidence package that we have on the effects from the proposal.

It is highly likely[1] that the 2016/2017 application, together with TTRL's 2023/2024 evidential updates (as part of the reconsideration hearing), will also form the main body of TTRL's 2025 Fast Track Application. The only further evidential updates we can expect in 2025 are

(a) evidence on the regional and national economic benefit from the mining; and
(b) an update on any further consultation that TTRL has undertaken since 2016.

- **Access the 2016/2017 application, submitter evidence, legal submissions and other hearing documents here.**
- **Access the 2023/2024 reconsideration application, submitter evidence, and other hearing documents here.**
- **In December 2024, TTRL's application to be eligible for fast track were uploaded to the EPA's website.**

The Vanadium component of the proposal

As of late 2024, TTRL has re-branded its project as a vanadium mining project or the 'Taranaki VTM Project'. T TTRL seek to establish New Zealand as a leading vanadium producer. The proposal however remains the same as 2013 and 2016 and has always been an iron-ore mining project with vanadium mining as an add-on.

Critics, including environmental groups and local iwi, have expressed concerns that TTR has not sufficiently demonstrated a viable process for extracting vanadium from the iron sands. They argue that the company lacks a proven method for this extraction, raising questions about the

[1] Given that the impact assessment relied upon by TTRL in its application to be eligible for fast track in 2024 and in the reconsideration hearing in 2024 is the same impact assessment that was filed with the EPA in 2016.

project's technical feasibility and potential environmental risks. Since the iron sands are mined from the seabed, they contain significant amounts of salt which can complicate the extraction and separation and refining process. In response, TTR has indicated plans to conduct additional metallurgical test work to optimize the processing of VTM concentrate[2] but to date this testing has not occurred.

Secondly, at present and without a law change, TTRL would not pay any royalties for vanadium as opposed to the exponentially less valuable iron sand.

Decision Making Framework under Fast Track

As of January 2025, the Fast-track Approvals Act 2024 (**FTAA Act**) has introduced to Aotearoa/New Zealand a new process for obtaining consents for infrastructure and development projects, including marine consents. The FTAA Act is designed to expedite approvals for projects that deliver "significant national or regional benefit"[3]. Key features of the FTAA include: significantly reduced submitter participation, compressed timeframes and a new decision-making criteria requiring regional and national benefit to be given greater weight than other matters.

A number of further changes were made to the Act before its third reading into law, including that:

> **Applicants can now apply to seek priority** for a listed or referred project via an application to the Minister, before a substantive application is lodged.
>
> **Changes to applications can be made if the Panel plans to decline an approval:** If a panel intends to decline an application, the Act now requires the panel to provide a copy of its draft decision to the applicant before it is issued as final to enable the applicant to make amendments to the proposal.
>
> **Time limiting judicial review applications:** A new provision has been added limiting the timeframe for judicial review applications to 20 working days after the notice / publication of the relevant decision.

The Trans-Tasman Resources Limited (TTRL) application to mine for iron ore in the South Taranaki Bight is listed in Schedule 2 of the Fast Track Act 2024 (**FTAA**). The 'Taranaki VTM' project is a referred project under the FTAA and TTRL is able to apply directly to the EPA Portal

[2] https://www.manukaresources.com.au/site/pdf/ba77d298-97c1-473d-b419-98b2ad54cda2/Maiden-Vanadium-Resource-at-Taranaki-VTM-Iron-Sand-Project.pdf?utm_source=chatgpt.com

any time after the **7 February 2025** for its application to be considered by a Fast Track Panel. At this stage it is unclear whether or not TTRL has applied to be a priority applicant[4].

The timeframes for the decision making process are set out in **Table 1 above.** Assuming TTRL applies on the 7 February 2025 and is one of the first in the queue, the key timeframes for parties allowed to submit are:

(a) **The date of notification to submitters:** which could be as early as end of February but is more likely to be early to mid-March.

(b) **The date written submissions are due**: Submitters will have 20 working days from the date of notification in which to file any responses to the application. Submissions could be due as early as the end of March or early April.

The new decision-making criteria under the FTAA 2024:

The criteria for considering fast track applications relating to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ Act**) is set out at clause 6 of Schedule 10 of the FTAA.

Clause 6 of Schedule 10

1. For the purposes of section 81, when considering an application for a marine consent, including conditions in accordance with clause 7, the panel must take into account, giving the greatest weight to paragraph (a),—

    (a) The purpose of the FTAA Act 2024 which is to: (s 3)
    "facilitate the delivery of infrastructure and development projects with significant regional or national benefits"

    (b) Sections 10 and 11 of the EEZ Act/ the purpose sections of the EEZ Act 2012

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

    (d) Sections 59, 60, 61(1)(b) and (c) and (2) to (5), s62(1A) and (2), 63 and 64 to 67

[4]Applicants can now apply to seek priority for a listed or referred project via an application to the Minister, before a substantive application is lodged. If the Minister determines a project to be a "priority project" a panel will be set up for that project ahead of other non-priority projects already lodged with the EPA.

2. 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.

Essentially the Fast Track Panel is required to apply two different Acts and then weigh the results of both to come to a final decision, giving greater weight to the FTAA.

There is no indication whether a Fast Track Panel should first consider the test under the purpose of the FTAA: *whether a project will facilitate significant national and regional benefit* or the tests under the EEZ Act. It probably does not matter which way a panel approaches this, and logically it may first want to step through the evidence drawing conclusions on each topic and then reach an overall conclusion under both Acts before undertaking a final weighing exercise.

The decision criteria requiring consideration of two Acts will be very difficult for decision makers to navigate. There are a number of areas where the Acts come into conflict with one another. Some of these are touched on below, including some of the key legal matters that will need to be considered by a decision maker:

a. Relevance of previous decisions and case law, especially the Supreme Court decision in *Trans-Tasman Resources Limited v The Taranaki-Whanganui Conservation Board* [2021] NZSC 127
b. What is the definition of 'benefit' under the FTAAA? Does it include costs?
c. If a consent fails under the EEZ Act does this require a decline or can this be weighed under the FTAAA and consent be granted?

This document does not go into depth in exploring each of these topics but canvasses the issues and identifies the key points submitters should be aware of. Further analysis is required.

Relevance of previous decisions

The Supreme Court decision is relevant to any application of the EEZ Act. The prior decision of the DMC in 2017 is also relevant[5].

There were a number of errors of law identified in the Supreme Court findings; those relevant to TTRL's 2025 application are addressed in the balance of this document. However, submitter submissions to the EPA in 2024 asserted that the EPA's application would fail in three key ways:

a. It would not meet the material harm test:

   The Fast Track Panel must address whether the "material harm" bottom line test in s10(1)(b) of the EEZ Act is satisfied. There are factual findings from the 2017

[5] As per schedule 10, clause 2(1)(b) FTAA 2024.

DMC that are tantamount to findings of material harm. There was no new evidence in the 2023/2024 reconsideration which changed that position.

If there is no further evidence in TTRL's 2025 Fast Track application addressing identified gaps (plume modelling, marine mammals or seabirds) then applying the law properly to the evidence before it, the Fast Track Panel should conclude that there will be material harm and the application fails under the EEZ Act. How a decision making panel should deal with a breach of a bottom-line when undertaking a weighing exercise between the FTAA and EEZ Act is discussed further below.

b. It would not meet the test under s61(2) to favour caution and environmental protection:

The majority in the Supreme Court said that s 61(2) and the other information principles operate differently in the context of discharge and dumping consents where the environmental bottom-line in s 10(b) must be met.[6] In effect, the higher threshold for such consents under s 10(b) means that the effect of the requirement to favour caution and environmental protection is heightened. Such consents cannot be granted unless, taking a cautious approach and favouring environmental protection, the information is sufficient to establish that material harm will not occur.[7]

The Supreme Court found that the information about effects on seabirds, on marine mammals and from the sediment plume in TTRL's 2016 application was uncertain.[8] Glazebrook J referred to "the almost total lack of information in this case on seabirds and marine mammals and the similar issues with sediment plume and suspended sediment levels", which meant that the DMC could not be satisfied that the requirements to avoid material harm had not been met.[9]

c. The Application was contrary to bottom lines in other relevant marine management regimes which could not be set aside and required a decline, notably bottomlines under the New Zealand Coastal Policy Statement (NZCPS).

Meaning of Benefit

The Fast Track Approvals Act, in Section 3, sets out its purpose:

> *The purpose of this Act is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.*

[6] Ibid, at [274] per Glazebrook J, at [294] per Williams J, at [326] and [327] per Winkelmann CJ.
[7] Ibid, at [274] per Glazebrook J.
[8] Ibid, at [125] per William Young and Ellen France J, at [274] per Glazebrook J, at [294] per Williams J, at [328] per Winkelmann CJ.
[9] Ibid, at [274] per Glazebrook J.

Benefits can be regional *or* national to satisfy the test. Benefits do not need to be both.

The word 'Benefit' is used extensively in RMA jurisprudence and the RMA Act defines benefits as "includes benefits and costs of any kind, whether monetary or non-monetary."[10]

The Fast-Track Act also assumes a wider definition of benefit than just economic benefit. At s22(2)(a)(i)-(x) there are a number of matters that a Minister must consider when determining if a project will provide 'significant regional or national benefit'. These include

> (ii) will deliver new regional or nationally significant infrastructure
> (iii) will increase the supply of housing
> (vii) will support climate mitigation and adaptation at (viii)
> (ix) will address significant environmental issues

It is not clear what "address" means. Arguably, benefits under the FTAA may include those social and environmental values relevant to the application and is broader than just economic concerns.

Benefit also includes the costs or the impacts on other industries as set out in s22(6) of the FTAA and cumulative effect of a proposal alongside the effects of existing industries.

> *Under s 22(6) of the FTAA a Minister ..*
> *"may compare the activity involved in the project against the current and other likely uses of the space, taking into account –*
> *(a) The economic benefits and strategic importance of the proposed project; and*
> *(b) The likely impact of the proposed project on current and proposed marine management regimes; and*
> *(c) The environment impacts of the competing activities."*

If a consent fails under the EEZ Act does this require decline or can this be weighed under the FTAA and consent be granted?

In clause 6 (2) of Schedule 10 of the FTAA states:

> *(2) 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.*

[10] S2 Resource Management Act (**RMA**).

Clause 62(1A) is limited to dumping waste or a pipeline and does not relate to marine consents for discharges.

We are, however, still faced with the issue that where a decision-maker comes to the conclusion that an application should be declined under the provisions of the EEZ Act – how does that come to bear in the weighing exercise? There are at least two possible answers. The decision-maker has to undertake the weighing exercise and give greater weight to the FTAA, however:

(a) When the decision-maker considers the reasons for decline under the EEZ Act and where these are in the nature of a bottom-line, they may come to the conclusion that even when giving greater weight to the consideration of benefit this cannot overcome a bottom line, or
(b) As discussed above, environmental values and social values are relevant to a consideration of benefit, therefore a finding that an environment or social bottom-line has been breached means that this cannot be a benefit, and the decision-maker may come to the conclusion that the application therefore also fails to reach the threshold of 'significant regional or national benefit' under the FTAA.

Either way, one can see that it remains important to include environmental, social and economic effects within submissions as they are arguably relevant to both tests.

The Supreme Court considered that section 61 of the EEZ Act which provides that where the information available is uncertain or inadequate, the marine consent authority must favour caution and environmental protection, reflects the precautionary principle under international law.[11] Likewise, Glazebrook J found that "s 10(1)(b) is an operative restriction for discharges and dumping and thus an environmental bottom line in the sense that, if the environment cannot be protected from pollution through regulation, then discharges of harmful substances or dumping must be prohibited."[12] Such an approach is inconsistent with merely 'weighing' an environmental bottom line.

Benefits (Regional and National)

As discussed above, Benefit captures more than just economic values and includes environmental, social values and opportunity costs.

Economic benefits to New Zealand must be considered under s59(2)(f) of the EEZ Act 2012.

The Supreme Court in its decision in 2021 did not focus on economics but did comment that under the EEZ decision making criteria; while the economic benefits are relevant, they do not outweigh the environmental considerations, particularly when material harm to the

[11] At [110].
[12] At [245].

environment is involved.[13] Moreover, the Supreme Court agreed that "that the DMC would need to satisfy itself that there was an economic benefit so that, if there were material economic costs, the DMC would be obliged to take those into account."[14] It would be anomalous if economic costs or disbenefits were not taken into account under the FTAAA.

The Economic Analysis Thus Far

The economic benefits from the project have been questioned every time TTRL has sought marine consents.

The Decision Making Committee (DMC) of the EPA in its decision in 2014, questioned the overall benefits of the project to New Zealand outside of the royalties and taxes[15], especially given the environmental risks. The economic gains from the mining operation, such as job creation and export revenue, were seen as insufficient to outweigh the environmental costs.[16]

In 2016 Jason Leung-Wai for TTRL undertook a second economic impact analysis of the project for three study areas – local, regional and national. The local study area consists of South Taranaki and Whanganui, where the project will occur. The regional study area is made up of four local authorities - South Taranaki, Whanganui, Stratford, and New Plymouth.

This is the most recent economic evidence we have from TTRL. This evidence was not updated as part of the 2023/2024 reconsideration and all of the economic material has been redacted from the public notification of TTRL Fast Track Application. It is expected that TTRL will produce an updated economic analysis to meet the Fast Track Approval Act 2024 test of providing "significant regional and national benefit" but that this won't be shared with submitters until they are notified in or around early March – Mid March 2025. Submitters will then have 20 working days to respond to this updated material.

The other relevant economic analysis we do have now, is the peer review of Jason Leung-Wai's work produced by Jim Binney on behalf of KASM and Greenpeace. The key differences between Mr Leung-Wai's and Mr Binney is summarised below, the main point of difference was whether the economic impact analysis methodology was appropriate, or whether another methodology was better suited.

Appropriate Methodology

[13] The discussion is located in **[5]**, **[188]**, and **[59]** sections of the judgment, where the broader balancing of economic and environmental factors is addressed.
[14] At [189].
[15] At [13] and further discussed from [155] onwards.
[16] Ibid.

- The economic analysis undertaken by Mr Leung-Wai was conducted using an Input-Output (**I-O**) multiplier analysis**.** This method measures the direct, indirect, and induced effects of the project on Gross Domestic Product (GDP) and employment.

- Both Economists agreed that Mr Leung-Wai's economic report "was not trying to determine net benefits to New Zealand but was rather identifying the economic benefits (activity) of iron sands project". [17] The economists agreed that a full costs and benefits (C&B) analysis could be a useful analysis[18], Mr Binney thought that a C&B was a necessary and appropriate analysis.

- The evidence of Jim Binney discusses different types of economic analysis applied to the TTR project, emphasising the shortcomings and challenges in the methodologies used for its assessment. Mr Binney stated that the IO model, while providing estimates of economic activity, fails to measure net benefits and can overstate impacts (especially employment) by assuming all economic activity is beneficial, regardless of its actual value. It also does not incorporate non-market values (such as the environment and social impacts) and is based on national data, limiting transparency. Mr Binney also considered that the benefits were likely overstated, particularly regarding jobs, and the project's financing structure suggests that profits may accrue overseas.

- The Fishing Industry were also critical of the model in that the potential costs to the industry were not considered and have not been considered in any economic analysis undertaken by TTRL.

- Mr Binney considered that a costs benefit analysis was a more suitable method for assessing the project's net benefits, including both market and non-market values, long-term impacts, and uncertainties. It is commonly used internationally and recommended by New Zealand Treasury[19]. To date there have been no costs benefit analysis undertaken of the proposed seabed mining proposal.

The Economic Report produced by Mr Leung-Wai's in 2016 found:

- The TTRL project is expected to generate an annual average operational expenditure of NZ$254 million, with around half (52.2%) spent within New Zealand.
    - Local Area Spend: NZ$34.6 million (47.1% of total NZ spend).
    - Regional Spend: NZ$73.4 million (55.3% of total NZ spend).
- National Impact:
    - NZ$159 million contribution to GDP annually.
    - 1,666 jobs created (directly and indirectly).
- Regional Impact (Taranaki/Whanganui):

[17] At [17] JWS.
[18] At [15] Economic JWS.
[19] Presentation by Binney 2017.

    - NZ$50.6 million contribution to GDP annually.
    - 705 jobs created.
- Local Impact (South Taranaki/Whanganui):
    - NZ$18.6 million contribution to GDP annually.
    - 299 jobs created.

- TTR is required to pay royalties to the New Zealand government based on the volume of minerals (iron sands, it seems, as opposed to vanadium) extracted. Minimum royalty is estimated at NZ$7 million annually.
- Corporate income tax obligations apply, with a maximum rate of 28% (naturally expenses are to be deducted and transfer pricing and other issues remain to be resolved).

Criticism of these findings:

- There is little attempt to evaluate the environmental risks associated with the project. Binney estimates that the environmental damage could range between $28 million to $543 million over the project's 20-year life, a cost that should be considered in any economic evaluation. The analysis expressly did not undertake a benefit-cost analysis.
- The analysis neglects the potential environmental and social costs, such as risks to biodiversity and tourism, which could range from $30M to $500M+. These should be included in a more comprehensive C&B analysis[20].
- The analysis fails to consider impacts to other industries such as fishing and wind energy.
- During the discussion in the 2016 hearing on these issues, Mr Leung-Wei for TTRL conceded that only some of its claimed 1600 jobs would be new jobs. The company also conceded that around 80% of the jobs would be filled by people from outside the area as the skills were not available in Taranaki. The EPA[21] noted the Social Impact Assessment stating that new jobs were "unlikely to significantly reduce unemployment levels."
- TTRL CEO Alan Eggars, in his evidence, told the EPA the project would "directly employ" 277 people.[22]
- Given the New Zealand government doesn't have vanadium listed as a mineral on which to pay royalties, it is more than likely that TTRL would pay royalties only on the iron sands, which is exponentially less valuable than vanadium. The vanadium would not be extracted until the iron sands have arrived at their export destination in Asia. The economic benefit would instead be felt by TTRL's parent company Manuka Resources, an ASX-listed (Australian) company.

[20] Evidence of Jim Binney,2017.
[21] EPA decision 2017 paragraph 800 page 188
[22] Alan Eggars: submission to EPA hearing

Conclusion on Economics:

The current economic analysis does not sufficiently demonstrate a net benefit from the project. A costs and benefit analysis is necessary to provide a comprehensive evaluation. Key impacts, particularly environmental and social, need to be properly assessed. A benefit cost analysis must take account of environmental costs and damages as well as other costs such as lost opportunity for offshore windfarms.

Disruption to Commercial and Recreational Fisheries

The mining area is located near productive fishing grounds. Disruption to these areas will more than likely affect the abundance and distribution of commercially important fish species. The potential for habitat degradation, coupled with sediment plumes and pollution, could lead to a decline in fish stocks, harming commercial and recreational fishing interests.

Commercial Fishing Interests:

Within the STB there are two Fishing Management Areas (FMA), FMA 7 and 8[23]. The mining area is in FMA 8.

There are many different companies that operate in the area, many of whom have taken an active role in opposing the seabed mining application since 2016 and have provided substantial evidence on the nature of their operation, the potential effects and the potential loss in revenue.[24]

One example of this, is evidence from the Talley's Group in 2017:

> In 2017, the Talley's Group estimated that the value of their interest in the area was $12 Million.[25] Mr Saunders estimated that the impact to the fishing industry was more than moderate and could be significant. He stated that one tonne of snapper unable to be caught in FMA8 would result in a loss to Talley's of $60,000. If Talley's was unable to catch any of its snapper in FMA 8 the loss would be $3 million annually. Similarly, he surmised that an inshore fishing operator could lose $5,000-$10,000 per year of snapper revenue that would need to be replaced by other fish stocks in different FMAs[26].
>
> Mr Saunders-Loder provided us with a further example of costs that might be imposed on a Patea Shoals inshore fishing operation. For an actual operator based in Nelson,

[23] The allowable catch taken from FMA 8 and some from FMA 7 is listed in the DMC 2017 decision at [853].
[24] The New Zealand Federation of Commercial Fisherman Inc, Talleys Ltd, Southern Inshore Fisheries Limited and Cloudy Bay Claims Limited have opposed the TTRL mining application since 2016. The evidence of fisheries submitters can be found online at the EPA website and is summarised in the DMC's 2017 decision from paragraph [851] onwards.
[25] DMC Decision 2017, at [854].
[26] Ibid.

> whose fish are normally caught in the Patea Shoals, the trip from Nelson costs $5,000 - $7,000 in fuel. He calculated that relocation of effort to other areas (if fish are unavailable due to effects from the mining project), would impose at least a 30% increase in costs.

*These estimates would have changed significantly since 2017.

The 2016 TTRL economic assessment excluded the potential costs of mining to the fishing industry. It is unknown if TTRL will provide the Fast Track Panel with any evidence of the potential economic costs to commercial fishing interests. These costs are relevant under both the EEZ Act 2012 decision making criteria and the Fast Track Act 2024 consideration of 'regional and national benefit'.

A key criticism from the Commercial Fisheries Submitters is the lack of certainty in the plume information (both the size and scale). The Supreme Court found uncertainties in the plume information impacted the DMC decision. The Commercial Fisheries Submitters said that without adequate information then the scale of impact on the industry is unknown. In submissions in 2023 Fisheries stated that despite the passage of ten years "there is still a lack of information presented by TTR to enable the Fisheries Submitters to properly understand the likely effects of the sediment plume on the fisheries industry."[27].

In 2023 Fisheries Submitters' experts provided updating evidence on the fisheries industry, which underscored that the level of harm to that industry from the sediment discharge is almost certainly greater than the position was in 2017.

Commercial Fisher, Andy Smith Stated in 2023[28]:

> Dealing with the effects of seabed mining within STB for industry participants who own quota there would be a further blow to an industry that is already struggling. I note that many fisheries operators are already contemplating exiting the industry or have already left. In 2012 there were 1378 registered fishing vessels, and we are now down to 948 in 2023.

The Fisheries submitters also consider that the Fisheries Act constitutes a marine management regime. Jeremy Helson for Seafood New Zealand stated in 2023:

> [54] In my view, the existence of possible habitats of particular significance for fisheries management in and around the TTR proposed mining area raises a similar inconsistency with the Fisheries Act marine management regime, TTR's proposal will result in significant and in some cases irreversible effects on habitats that may be of a particular significance for fisheries management. There is a duty to take into account the protection of these areas under the Fisheries Legislation.

[27] Fisheries opening submissions 2024.
[28] SOE Andy Smith at [21].

Recreational Fishing

Local communities that rely on recreational fishing for both economic and cultural reasons may also experience a loss in fish catch rates and a decrease in the quality of the fishing environment. The degree of impact is uncertain due the uncertainties in the plume information.

There have been numerous recreational fisherman and divers who have also appeared before the 2017 hearing and gave evidence[29]. It was due to these witnesses that other key rocky reef systems in the affected area were identified in 2017 such as The Crack. In 2017, a map was produced identifying local fishing and diving spots in vicinity of the project area, and a map reefs, foul ground and different substrates.

Likely Impacts on other Industries

Wind Energy

Since 2017 there has been renewed interest in the development of Taranaki's relatively shallow offshore shelf for offshore wind farms in West Taranaki[30]. Some of these projects are in the vicinity of the proposed mining area:

(a) Wind Quarry Ltd recently applied for resource consent to Taranaki Regional Council for an 810MW (54 turbine) offshore windfarm on the South Taranaki Bight; and

(b) The South Taranaki Offshore Wind Project was being developed by Blue Float Energy and Elemental Group. This is a 900MW offshore windfarm consisting of 60 turbines off and a proposed 230 km2 beyond the 12 nautical mile zone and outside of the Patea Shoals and West Coast North Marine Mammal Reserve.[31] Blue Float recently pulled out of the feasibility study because of the proposed seabed mining proposal, stating the two activities were "incompatible". It is unknown whether this company would return if the mining proposal was declined, but unlikely, as Blue Float is now investing in other countries.

These proposals demonstrate that there are many competing "would-be" users of the proposed project area in the South Taranaki Bight. It should not be a "first come first served" situation, given the impact on future generations.

Tourism

[29] Evidence of Recreational Fisherman and Divers can who appeared at the 2017 hearing can be found on the EPA website. Their evidence was also summarised in the DMC 2017 decision from [906].
[30] https://www.venture.org.nz/assets/Offshore-Wind-Discussion-Paper.pdf
[31] https://southtaranakioffshorewindproject.com

As discussed above, the impact of tourism has not been assessed. Mr Binney estimates that opportunity costs and impacts to tourism could be in millions per annum.

Impacts to Tangata Whenua

Te Rūnanga o Ngāti Ruanui Trust, the Trustees of Te Kāhui o Rauru, Te Ohu kai Moana Trustee Limited and Ngaruahine have all been submitters in opposition to seabed mining in previous applications. These parties are recognised as having existing interests in the area.

Te Rūnanga o Ngāti Ruanui Trust, the Trustees of Te Kāhui o Rauru, Te Ohu kai Moana Trustee Limited say the application involves experimental seabed mining operations that will have destructive effects on the marine environment and marine species which directly affects the tikanga and existing interests and rights of the Iwi Parties. For this reason, the Iwi parties oppose the application.[32]

As part of the 2023/2024 reconsideration application Haimoana Maruera filed evidence on behalf of Te Rūnanga o Ngāti Ruanui Trust setting out the key impacts for Ngāti Ruanui as being significant.

The DMC majority in 2017 stated:

> *[724] The highest levels of suspended sediment concentration will occur in the coastal marine area offshore from Ngāti Ruanui's whenua. There will be severe effects on seabed life within 2-3 km of the project area and moderate effects up to 15km from the mining activity. Most of these effects will occur within the CMA. There will be adverse effects such as avoidance of fish of those areas. Kaimoana gathering sires on nearshore reefs are likely to be subject to minor impacts given background suspended sediment concentrations nearshore.*

And at [924]:

> *[924] We acknowledge there will be significant impact on kaitiakitanga, mauri, or cultural values. A significant physical area will be affected, either within the mining site itself, or through the effects of elevated SSC in the discharge. Iwi identified other relevant effects such as the impact of noise on marine mammals as being of concern.*

The Supreme Court held that the DMC in 2017 "fail[ed] to properly engage with the nature of the interests affected"[33] and continued:[34]

[32] Opening Submissions, the Iwi Parties, 2024.
[33] Ibid, at [159] per William Young and Ellen France JJ.
[34] Ibid, at [160].

> *However, despite the references to the effect of the proposal on kaitiakitanga and the mauri of the marine environment, the DMC did not effectively grapple with the true effect of this proposal for the iwi parties or with how ongoing monitoring could meet the iwi parties' concern that they will be unable to exercise their kaitiakitanga to protect the mauri of the marine environment, particularly given the length of the consent and the long-term nature of the effects of the proposal on that environment.*

The DMC needed "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."[35] The Court made clear that spiritual effects need to be considered just as much as physical effects.[36]

The principles of Te Tiriti are also directly relevant when considering existing interests. The Supreme Court held that it was an error of law for the DMC to regard such principles as only "colour[ing]" its approach and not as directly relevant.

Tikanga is also relevant under the category of "any other applicable law in s59(2)(l). Effects on kaitiakitanga and the interests of tangata whenua from the discharge are subject to the environmental bottom-line of protection from material harm, just as any other effects from the discharge are.[37]

Summary of Key Environmental Impacts identified in previous applications

The potential impacts of seabed mining in the South Taranaki Bight are multifaceted, affecting the marine environment, local ecosystems, and human communities.

The key criticism of submitters, upheld by the Supreme Court, is that there are large information gaps in the application and the effects of the activity are therefore uncertain. The Supreme Court considered that the effects were so uncertain as to necessitate a decline of the proposal unless this information could be provided. Further information would need to demonstrate that material harm to the environment would not occur or could be remedied or mitigated by conditions of consent.

In the 2023/2024 reconsideration hearings for the EPA, the information gaps in TTRL's application identified by the Supreme Court remained. These information gaps are not expected to be plugged as part of TTRL's fast track application.

[35] Ibid, at [161].
[36] Ibid.
[37] See Ellen France J's reference at [172] to spiritual effects based on tikanga potentially amounting to material harm, quoted at [46] of these submissions.

Due to the numerous applications of TTRL from 2013 through to 2016 and the reconsideration in 2024, the amount of information on the potential effects of the seabed mining activity is voluminous.

Impacts from seabed mining are largely related to three activities:

- the removal of the benthic organisms at the mining site itself,
- the discharge of sediment back into the ocean following processing and
- the resultant plume and noise and vibration effects from the mining, processing and discharge activities.

The focus of much of the evidence is on the impact from the plume and secondly the impact of noise and vibration on marine mammals.

Destruction of the Seabed Habitat within the Mining Site

The recovery of ecosystems within the mining site after seabed mining is a slow and uncertain process. Once the seabed is disturbed, it may take decades, or it may take centuries, for the ecosystem to recover fully. Some species, particularly those with slow reproduction rates, may not return at all, leading to permanent ecological changes. TTRL estimates that benthic recovery while it cannot be said with any precision, will be relatively quick in the mining area itself, others disagree. Andy Smith for the fishing industry stated in evidence in 2023:

> [49] I expect it will take significant time for the benthic communities to recover from the cumulative impacts of this additional sediment load. I agree with Dr MacDiarmid that the time for recovery cannot be stated with precision. However, I would add that in my view we cannot assume the prospect of any recovery at all on the information TTR has provided. I consider it is quite likely that the level of harm to the benthic ecosystems will be irreparable.

Sediment Plume Modelling

Over the 35-year duration of the mining consent, there will be 1.57 billion tonnes (that is, 45 million tonnes per year over 35 years) of sand and associated sediment discharged into the South Taranaki Bight area. This is over and above what would have been there naturally.

The size and scale of the sediment plume and its impacts on the marine environment was a key issue in 2013, 2017 and 2024. In the evidence of experts filed in 2023, there remains disagreement on the appropriateness and adequacy of the TTRL modelling.[38] While some experts consider the model is reliable, others have identified issues with the accuracy and information which the model relies on. Experts disagree that the worst case modelling is in fact, worst case modelling. Mr Greer considered that neither the plume model nor the worst-case model is fit for purpose and does not consider that the worst-case model favours caution and

[38] Dr MacDonald [23] to [25], Mr Jorissen [19] and Mr Greer [15] 2023 .

environmental protection. The Supreme Court identified concerns in respect to uncertainty of the sedimental effects and the associated conditions dealing with those effects.[39]

The assessments of impacts to the marine environment outside of the mining site rely upon the accuracy of the sediment plume model in order to assess the degree of effects. Therefore any uncertainty and any inaccuracies in the sediment plume model and in particular the worst case scenario affect the confidence we can place on the assessments of effects to the broader marine environment and eco-system.

No new sediment plume modelling has been completed since 2017. The DMC in 2024 considered the issues that remained outstanding in regard to the Plume modelling and came to the conclusion that it needed further information before it could make a decision. In TTRL DMC Minute M23[40], the DMC Panel sought further information from an independent expert on the sediment plume modelling of TTRL. However, TTRL withdrew from the 2023/2024 hearing process before this further information could be produced.

The key differences of opinion in the expert on the plume modelling from 2023/2024 is set out in Schedule One.

Effects to the marine ecosystems and biodiversity from the Plume

The South Taranaki Bight has a rich marine biodiversity, including the presence of species like Hector's and Maui dolphins (one of the world's smallest and most endangered dolphins), endangered seabirds such as the little blue penguin - or kororā[41], an endemic species of pygmy blue whales and a variety of fish species. Mining can disrupt migration routes, breeding areas, and feeding grounds for these species, potentially leading to population declines or shifts in species distribution.

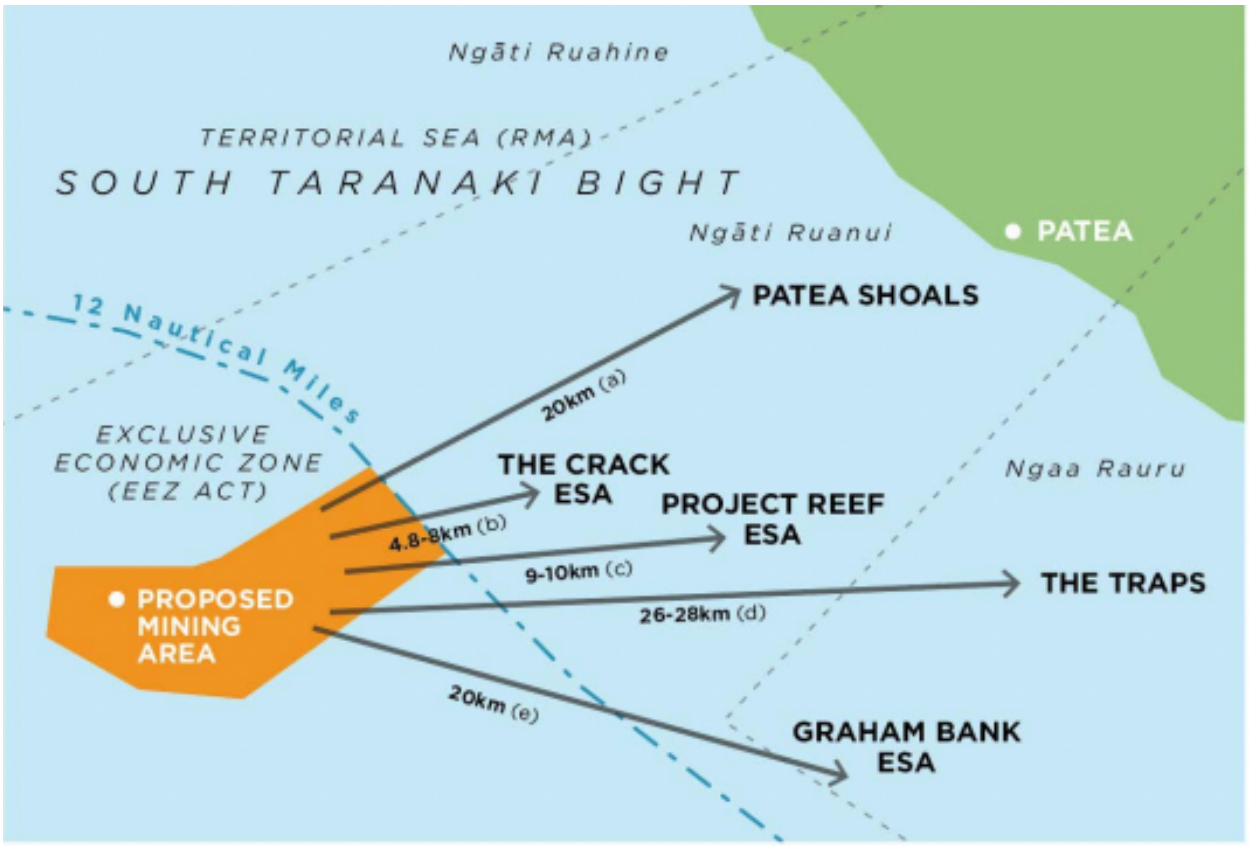
Many fish, marine mammals, and seabirds depend on the marine food webs that include benthic organisms and the rocky reef systems in the South Taranaki Bight. Disruptions to the seabed ecosystem can ripple through the food chain, potentially leading to a decline in populations of species important to both the local ecosystem and the fishing industry. A key assessment in the degree of impact to the benthic and rocky reef systems outside of the mining area.

Impacts to Rocky Reef Systems and Benthic Communities outside of the Mining Area

[39] Supreme Court decision [131]
[40] TTRL DMC Minute 23, From 2024 Hearing (dated 26 March 2024) EPA sought a further report on "the assumptions, limitations and parameterisation of the applicable models.
[41] For a full list of bird species impacted by the application see evidence of John Cockrem 2023 at page 60.

The DMC decision in 2017 includes findings on the level of effect on various ecological sensitive rocky reef areas. In making these findings, the DMC accepted the plume modelling produced by TTRL, and the worst case modelling. Other submitters have called into question the appropriateness of this modelling (as discussed above).

Below is a map and table summarising the 2017 DMC findings of effects from the sediment plume to key rocky reef systems.[42] Both the map and table were also attached to the Supreme Court decisions in 2020.



[42] Both the Map and Table can be found attached as Appendices to the Supreme Courts finding.

ESA	DMC Finding on Effect	Ref to DMC Decision
PATEA SHOALS	Moderate effect	At [350] At [970]
	Significant effect	At [968]
THE CRACK	Significant effect	At [350] At [970]
	Effects of concern	At [406]
	Effects including temporary or permanent displacement of species	At [437] At [980]
	Major effect	At [952]
THE PROJECT REEF	Significant effect	At [350] At [970]
	Major effect	At [952]
THE TRAPS	Minor effect	At [970]
GRAHAM BANK	Significant adverse effect	At [350] At [940] At [970]
	Effects including temporary or permanent displacement of species	At [437] At [980]

What is significant to note is that:

(a) no new evidence has been produced by TTRL which would set aside these findings of the DMC regarding the significance of effects; and

(b) if these effects are not mitigated or remedied through conditions of consent, then the application fails to avoid material harm. There is discussion on whether 'significance' equates to 'material harm'[43]. This document concludes that in the absence of conditions addressing these effects, then the application would fail under the EEZ Act.

[43] Discussed in legal submissions before the 2023/2024 DMC panel in reconsideration hearings.

The DMC decision in 2017 also concluded that the benthic community within 2 to 3 kilometres of the site is likely to be significantly impacted by the sediment deposition[44]; it is possible that there will be a more than 20% reduction in visibility in some parts of the CMA subject to the One Plan;[45] and overall effects on fish will be generally no more than minor, other than eagle ray for which the effect will be moderate.[46]

On the above results, the applicant would breach bottom-lines in the NZCPS, in particular policy 13. The Supreme Court gave strong directions that the original DMC's findings would result in a breach of the bottom-line in s10(1)(b) of the EEZ Act:

> *[268] There is also much force in the iwi parties submission that the DMC majority could not, had it properly directed itself in terms of the requirements of s10(1)(b), have rationally come to the conclusion it did in light of a sediment plume, that for a distance of 2-3 km of the mining site, would have "severe effects on seabed life" and significant effects on ecologically sensitive areas further from the site.*

New Information since 2017 identifies many more rocky reef systems in the area

There was no new evidence on rocky reef systems provided by TTRL in 2023[47]. It is not expected that there will be any further evidence in its fast track application in 2025.

There has however been an extensive NIWA study undertaken on behalf of Taranaki Regional Council as part of its 10 year coastal review process. Morrison et all (2022) (the **Morrison Report**) identified further areas of rocky reef in this same general area / the area impacted by the plume, and it is highly likely that other areas of rocky reef occur in this area inshore of the PPA and may be known to the local fishing and diving community but remain to be formally mapped. The report concludes that in South Taranaki "limited site observations suggest that extensive rock/reef habitat exists inshore of the extent of the surveys reported on here.."[48]. These rocky reef habitats "are islands of biological diversity among the otherwise low diversity communities occurring on the surrounding sandy flats".[49]

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[44] 2017 DMC decision [405] with the DMC noting with deposition rates and the consequent effects in the mid to far-field reducing with distance .

[45] Such a change would be inconsistent with Policy 8-6 of the One Plan, see planning evidence of Ms Sitarz.

[46] "Ray" are a identified as a value in Schedule 2 ONC 6 Project Reef in the Coastal Plan for Taranaki. Policy 9 of the Coastal Plan requires the avoidance of adverse effects on the values and characteristics, including those in Schedules 1 and 2, that contribute to areas having outstanding natural character. I have also identified Policy 9 as being in the nature of a bottom line in my consideration of MMRs below. While it is beyond my expertise to determine what level of effect the proposal may have on ray at the Project reef, in comparing Figure 4 of the DMC decision with the SC decision Appendix 3 diagram of rocky reefs, indicates that the Project reef is within the green 40 to 60% probability of catch area for ray.

[47] See [17] and [18] Dr MacDiarmid 2023 on behalf of TTRL where she summarises the most recent data on rocky reefs systems which is limited to the Morrison et al (2022) surveys).

[48] Morrison et al (2022) at pg 173.

[49] *See SOE Allison MacDiarmid at [18], dated 19 May 2023.*

There was disagreement from the experts whether the Morrison Report added anything to the findings of the DMC in 2017, see a summary of this evidence at SCHEDULE TWO. Experts for TTRL argued that because the DMC already found that effects were significant, the location of more reefs systems within the area would not impact this finding. However, the presence of other rocky reefs systems identified and not-identified is relevant to the appropriateness of any conditions, the assessment of material harm, and whether conditions can mitigate, remedy or avoid adverse effects so as to set aside material harm.

The fishing industry noted the significance of the area as a rocky reef eco-system also increases the importance of the area to the sustainability of the regional fish stock[50]:

> *[43] Rocky reefs are significant to fisheries, because they act as a nursery and breeding ground. The rough seafloor of the rocky reef attracts fish and many juvenile fish species tend to live in and around rough ground. There is typically good fishing in the vicinity of these areas. Sponges, crustaceans, molluscs, corals and similar species are a part of the rocky reef ecosystem. Snapper, terakihi , blue cod and gurnard are abundant in these areas. These rocky reef areas not themselves commercially fished, but they play an important role in maintaining the fishery as they area areas where fish source their food.[51]*
>
> *[46] … In my view the greater geographical extent of the rocky reef within and near to the project area, which has been identified since 2017, demonstrates that the impact on the fisheries industry would be greater.[52]*

Haimoana Maruera on behalf of Ngāti Ruanui said of the rocky reef systems[53]:

> *"Ngāti Ruanui expresses grave concerns about the reef system overall, the ability for the reef system to cope with sediment plum is not supported by robust ecological evidence. The precautionary principle both in law and traditional ancestral landscape is of utmost importance in this regard. The resources found within Te Moananui A Kupe have, since time immemorial, provided the people of Ngāti Ruanui with a constant supply of food resources. The hidden reefs provided koura, paua, kina, pupu, papaka, pipi tuatua, and many other species of reef inhabitants. Apuka, moki, kanae, mako and patiki swim freely between the many reefs that can be found stretching out into the spiritual waters of Te Moananui A Kupe and along the Ngāti Ruanui coastline."*

Effects on Marine Mammals

Marine mammals are impacted in three key ways: by the sediment plume, by noise and vibration and from ship strike.

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[50] Evidence of Andy Smith, 2023.
[51] Andy Smith at [43]
[52] Ibid at [46].
[53] SOE Haimoana Maruera, 15 February 2024 at [29].

The Key issues regarding marine mammals in 2013, 2016/2017 and 2023/2024 largely remain the same; lack of data and uncertainty in effects.

A detailed summary of the key differences in the expert evidence can be found in the Joint Witness Statements from 2016/2017 and 2024. The evidence presented in the most recent round of reconsideration hearings in 2023/2024 is summarised in Schedule Three to this document. The key topics are also briefly discussed below.

Crucially, evidence from KASM and Greenpeace presented by marine mammal experts including one from Oregon University; Leigh Torres whose extensive research in the area has established that the South Taranaki Bight is home to a genetically distinct population of pygmy blue whales, found nowhere else. This evidence was not contested by the applicant. Nor has the applicant undertaken any marine mammal surveys, necessary to identify the species, numbers and behaviour of marine mammals which may be in the affected area. Its modelling is based on random sighting information given to the Department of Conservation. Dr Torres stated the following regarding the marine mammal modelling produced by TTRL:

> It's like seeing a mean temperature map for all of the North Island for a year and then using that to try and predict what the temperature might be in Wellington on a certain day, the two different 5 types of data aren't compatible for their application."[54]

Gaps in Baseline Data

The Supreme Court found that there were gaps in baseline information on marine mammals in the 2016/2017 application. [55] The Supreme Court made the following findings:

> *"It is plain that the information available about the environmental effects on seabirds and on marine mammals was uncertain...The obligation to favour caution and environmental protection was accordingly triggered."*[56]
>
> *"This information deficit could not legitimately be compensated for by conditions designed to collect the very information that would have been required before any conclusion at all could be drawn as to the possible effects, any possible material harm and any effect of any possible conditions. No conclusion was therefore possible on whether the bottom line could be met, and a consent could not legitimately be granted."*[57]

[54] Transcript from 2023 reconsideration hearing, from page 107 and at page 218.
[55] In relation to (a) survey information for marine mammals within the near the consent area (b) abundance estimates on marine mammals and their use of the wider South Taranaki Bight and (c) the reliance on underwater noise estimates for what the activity may generate.
[56] SC at [125].
[57] *SC at [275] per Glazebrook J.*

"It follows from my view of s 10(1)(b) that the DMC could not have met either step (a) or (b) above, given the almost total lack of information in this case on seabirds and marine mammals."

There have been no further baseline studies undertaken by TTRL since 2016. It is not expected that any further information will be provided under a Fast Track application. Therefore the gaps in information identified by the Supreme Court remain.

TTRL argued in 2023/24 that despite the Supreme Court's findings and despite there being no new marine mammal surveys undertaken by TTRL at the mining site, that there was sufficient information to make a determination. All other experts who peer reviewed TTRL's assessment disagreed. Furthermore, experts considered[58] that the costs of gathering the relevant information are not so expensive as to make them unreasonable and TTRL has had over twelve years since 2013 to undertake this work.

The only further information on marine mammals that was provided as part of the 2023/2024 was by other submitters, notably the findings from studies on the Pygmy Blue Whales produced by Dr Leigh Torres. This information has reconfirmed the significance of the area to marine mammals.

The other key area of uncertainty relates to sound. Relevant data gaps identified by experts in caucusing in 2017[59] have not been resolved. Therefore, the degree of effects is also unknown.

Impacts to Marine Mammals

All the marine mammals experts agreed that:

a. The South Taranaki Bight is an important hotspot for marine mammal diversity within New Zealand, including as a feeding and breeding location.
b. There are a number of nationally vulnerable and nationally threatened and endangered species that reside within the area. You can find a species list at XX
c. The new information confirms that the South Taranaki Bight is home to an endemic population of Pygmy Blue Whales which are located within the South Taranaki Bight year round.
d. There is a new Impact Marine Mammals Areas (IMMAs); the South Taranaki Bight IMMA which the proposed consent area falls within.

The experts disagreed on the presence of marine mammals in the mining site and degree of effects on marine mammals from the sediment plume, noise and vibration and ship strike. Mr Childerhouse considers that conditions can be drafted to require that material harm be avoided

[58] See evidence of Dr Slooten at [12], [13], [45].
[59] Marine Mammal JWS 2017

to marine mammals outside of the mining area and that there is unlikely to find marine mammals in the mining areas itself.

Dr Torres considers there is a likelihood that blue whales and Maui dolphins will occur in the consent area and that evidence exists demonstrating that vulnerable cetacean populations, like blue whales and Maui/Hector's dolphins, do occur near the TTR Consent area. Dr Slooten also raised evidence about the vulnerability of Maui and Hectors dolphins and that these animals also act as an indicator of likely effects to other marine mammal species in the area. Dr Torres considers there is potential for the seabed mining to impact the distribution, behaviour, health and population growth of blue whales in the STB.

Effect on Seabirds

Summary of the key differences on seabirds can be found in the Joint Witness Statement from 2017 and the Joint Witness Statement from 2024.

KASM and Greenpeace brought evidence that there would be effects on seabirds including little blue penguins (kororā), including effects on foraging caused by the plume.

The DMC found that in the 2017 application there had been "no systematic and quantitative studies of the at-sea distributions and abundances of seabirds within the area".[60] This is still the case.

The Supreme Court made similar findings regarding information on seabirds, finding a "paucity" of information so much that conditions were unable to drafted and that "in relation to seabirds and marine mammals and some other factors, the DMC majority simply could not be satisfied, on the basis of the information before it and taking the required cautious approach favouring the environment, that the conditions imposed would ensure all of the material harm would be remedied, mitigated or avoided."[61]

In 2024, Dr Thompson claimed that new information overcame the deficiencies identified by the Supreme Court. The JWS in 2024 identifies new information that was not available to the original DMC. However, no indication is given as to how this new information overcomes the information deficits.

No systematic observations from boats have been made to determine the abundance and distribution of seabirds in the South Taranaki Bight throughout the year and across different years. The total number of seabird species using the STB is therefore not known.[62]

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[60] *DMC decision, at [563]. The experts for TTR and Kiwis Against Seabed Mining Inc (KASM)/Greenpeace of New Zealand Inc agreed a number of "threatened" and "at risk" taxa occur within the South Taranaki Bight year-round or seasonally (conservatively, 10 and 24 taxa respectively).*

[61] At [271].

[62] *DMC decision, at [563]. The experts for TTR and Kiwis Against Seabed Mining Inc (KASM)/Greenpeace of New Zealand Inc agreed a number of "threatened" and "at risk" taxa occur within the South Taranaki Bight year-round or*

John Cockrem, expert for KASM and Greenpeace stated that the available evidence that we do have indicates that the proposed seabed mining in the STB for a period of 30 years, would have adverse and cumulative adverse effects on populations of seabirds and would result in material harm and that effects for kororā and fairy prions would be adverse and potentially significant.[63]

Dr Thompson agreed that birds that dive below the surface in pursuit of prey could potentially be impacted by elevated turbidity levels in the water column[64] and that seabirds may be prevented from feeding within a few kilometres of the mining site due to increased turbidity in the water column,[65] particularly fairy prion and little penguin, but relies on the plume modelling to argue that the area affected by elevated SSCs will be relatively small.

Impacts on Other Marine Management Regimes (MMRS)

Under the EEZ Act, the nature and effect of other marine management regimes (MMRs) must be considered by the decision maker (s59 EEZ Act). A decision maker does not need to apply both regimes or to "consider the minutiae of each particular regime"[66] but needs to consider "key features of the other MMR " and how they would apply if the activity were being pursued under those regimes.[67] Bottom lines must be identified as well as looking at the objectives of the relevant regime and the outcomes sought to be achieved by those instruments. [68] It is both a specific and an overall consideration.

This is highly relevant for regional authorities who are responsible for the maintenance of marine management regimes in their areas.

Planning experts before the 2023/2024 hearing disagreed on whether the proposal was contrary to the RMA regime. Most submitters placed reliance on the Forest and Bird Planner Ms Sitarz whose evidence summarises the bottom-lines in other relevant regimes which are triggered and those which are breached by the proposal.

The Supreme Court looked at this issue and the majority concluded[69] that where a bottom line in the NZCPS were breached this was not defeasible[70] by reference to other s59 factors because

seasonally (conservatively, 10 and 24 taxa respectively).

[63] *At [107] SOE John Cockrem, (6 October 2023).*

[64] *At [14] SOE David Thompson (19 May 2023).*

[65] *Ibid at [16].*

[66] *SC at [179] per Young and France JJ.*

[67] *SC at [125] William Young and Ellen France JJ.*

[68] *SC at [244], citing DMC decision, above n 38, at [544]. At SC [121].*

[69] *SC per Glazebrook J at [280], Williams J at [298], and Winkelmann CJ at [331].*

[70] *SC Williams J at [298].*

the NZCPS and the EEZ are in lockstep with each and there is a requirement of synergy between regimes[71], and therefore would result in a decline of the application under the EEZ Act criteria.

Ms Sitarz stated[72] in 2023:

> *"taking into account the nature and effect of the NZCPS would require the DMC to be satisfied that the effects of the proposed activity do not result in the deterioration of the coastal environment or those marine species which share both the EEZ and CMA in a way that would be inconsistent with the NZCPS."*

The Regional Coastal Plan for Taranaki became operative in September 2023, therefore this planning instrument was not considered by the DMC in 2016/2017 and given that the EPA panel dissolved before a decision was made, nor was it considered by the 2023/2024 panel either. This will need to be brought to the attention of any Fast Track Panel. The One Plan for the Horizons Regional Council is also relevant given the extent of the plume also reaches the coastal marine area in the Manawatu region. The Project Reef and North and South Traps are within the coastal marine area of Taranaki and identified as Outstanding Natural Character in the Coastal Plan for Taranaki. The Traps are also identified as Outstanding Natural Landscape in the Coastal Plan for Taranaki[73].

The Impact of the proposal on Marine Mammal Areas (IMMAs) and in particular the South Taranaki Bight IMMA is a relevant to the Policy 15 of the NZCPS.[74] The evidence of Dr Slooten can be referred to in this regard. The effects of the sediment plume will be felt in the coastal marine area, the West Coast North Island Marine area, the West Coast North Island Marine Mammal sanctuary (which was expanded in 2020 to include the South Taranaki Bight) and the areas with set net and trawling prohibitions. The Fisheries parties also submit that the impact on the fishing management regime is also relevant.

A Bond? Yes or No?

S 63(2)(a)(i) of the EEZ Act provides for the power for a consent holder to "provide a bond for the performance of any 1 or more conditions of the consent". The Supreme Court held that the 2017 Decision needed to explain (even if briefly) why the former DMC considered it was not necessary to impose a bond in addition to the insurance offered by TTRL[75]. Glazebrook J noted the real possibility

[71] *SC Glazebrook J at [280].*
[72] *SOE Natasha Sitarz at [100].*
[73] Policies 11, 13 and 15 of the NZCPS provide for the avoidance of identified effects. These policies all make a clear distinction between the most important areas, where adverse effects must be avoided and other areas where significant adverse effects must be avoided and other adverse effects avoided remedied or mitigated. Policy 13 requires the avoidance of adverse effects on outstanding natural character, the avoidance of significant adverse effects on other natural character and the avoidance remediation or mitigation of other adverse effects.
[74] *SOE of Natasha Sitarz at [8].*
[75] *SC [285]-[286] per Glazebrook J, [299] per Williams J and [332] per Winkelmann CJ At [214]-[221] per William Young and Ellen France.*

of insolvency [286] and said that it was irrational not to require a bond. In addition to insolvency, she pointed to time, trouble and expense. There is nothing that suggests this position of the Supreme Court can be set aside. A Fast Track Panel will need to consider the relevance of a bond. The Supreme Court noted that insurance perform very different functions from bonds ([258]) and each must be considered separately.

Given the significant environmental and social risks associated with seabed mining and the uncertainties in the current effect assessments, requiring a significant bond would be appropriate. This is especially so for local authorities who may find themselves footing some of the costs of restoration.

Conclusion

The Trans-Tasman Resources Limited (TTRL) 2016 application to extract and process iron sands in the South Taranaki Bight generated significant public interest, with the Environmental Protection Authority (EPA) receiving over 13,700 submissions, this included submissions from all of impacted iwi along the Taranaki coastline, from other industries, from NGOs and from local interest groups and clubs such as the boating club. However, under the Fast Track process**,** the range of eligible submitters has been severely restricted. As a result, those still permitted to submit—particularly regional and local bodies will be expected to act in a representative capacity, ensuring that community concerns and interests are properly conveyed.

It would be advisable for submitters who wish to be considered as an existing interest to write to the EPA prior to the **7th of February 2025** and advise the reason why they consider themselves existing interest.

Information Requests to be made as part of any submission

There are a number of information requests that submitters could address the EPA on prior to or as part of their submissions including:

(a) Updating plume modelling, notably in regard to the worst-case modelling and wave periods (an issue which arose in the reconsideration hearing). Reference can be made to the DMC request for further modelling in 2023.
(b) Updating marine mammal evidence, including undertaking a survey. Relevant marine mammal observations are set out in the evidence of Dr Leigh Torres 2023 and Dr Slooten 2023
(c) Updating seabird evidence Including undertaking a survey. Reference John Cockrem's evidence.
(d) Updating economic evidence, undertaking a cost and benefit analysis including effects to other industries in the area, including ones excluded by the project, and including damage to the environment.

SCHEDULE ONE: Consideration of updated evidence on modelling and sediment effects

1 Mr Jorissen sets out that there is no new information provided relating to modelling. In particular he responds on the evidence of Dr MacDonald, that no new sediment plume modelling has been completed since the 2017 evidence.

2 There remains disagreement on appropriateness and adequacy of the TTRL 'worst case' scenario as modelled. [76]

3 There also remains disagreement on assessing effects of sediment relying on the Sediment Plum model (also referred to as OPSM). While some experts consider the model is reliable others have identified issues with accuracy and information which the model relies on:

a. Dr MacDonald[77] considers consider the OPS Model provides a reliable basis for others to assess the effects of the sediment plume on the environment.

b. Prof. Luick has a number of concerns with the modelling, including:

- the way flocculation was or was not taken into account and the impact of this has on how sediment settles out or remains in suspension for longer periods and accumulation over time.[78]

- the models ability to show circulation of fine partials over the full project timeframe.[79]

- Prof. Luick[80] considers that had the runs been extended to the full projected lifetime of mining, and had they used a single grid enclosing the entire Bight, rather than restricting their modelling to a small restricted nested grid, they might have seen SSC increase at mid-Bight over time.

c. Mr Greer identifies inadequacies in the model, including with respect to:

- far field modelling,[81]

- insufficient sampling,[82]

[76] Dr MacDonald [23] to [25], Mr Jorissen [19] and Mr Greer [15] 2023
[77] Dr MacDonald [29]
[78] paragraph 12.b, evidence of Prof. Luick 2023
[79] paragraph 12.d, evidence of Prof. Luick 2023
[80] paragraph 15.e, evidence of Prof. Luick 2023
[81] paragraph 15.c, evidence of Mr Greer 2023
[82] paragraph 15.d, evidence of Mr Greer 2023

- that model results to not show how the periods of higher release affect median an 99th percentile SSC[83]

- that comparisons between modelling of the plume and 'background' SSC levels fails to take into account cumulative effects of existing activities on the marine environment[84]

- sediment settling rate and consideration of accumulation of suspended fine material.[85]

d. Mr Greer considers[86] that neither the plum model nor the worst-case model is fit for purpose. He does not consider that the worst-case model favours caution and environmental protection.

e. Mr Jorissen has concerns with the accuracy of the model, including that:

   - there remains uncertainty whether or not the sediment plume modelling undertaken by TTR can be relied upon to accurately assess the associated environmental impacts of the proposal.[87]

   - there is potential that the sediment plume may be substantially greater than predicted by the sediment plume modelling and has set out that this is not effectively addressed through conditions.[88]

f. Mr Jorissen[89] remains of the opinion that there remains insufficient evidence to predict sufficiently accurately the nature and rate of the fine sediment potentially being released by the mining operations at timescales relevant to the behaviour of the sediment plume.

g. Dr Barbara[90] considers that reliance on the TTRL sediment model predictions as worst-case is flawed.

h. Dr Barbara[91] concludes that the information about the sediment plume remains uncertain and inadequate for the purposes of assessing the effects of the sediment plume.

i. Dr MacDiarmid[92] sets out that her assessment of impacts of sediments suspended in the water column and deposited on the seabed on flora and fauna outside of the PPA is dependent on the quality of the sediment plume, optical, and primary production. She

[83] paragraph 16, evidence of Mr Greer 2023
[84] paragraph 17, evidence of Mr Greer 2023
[85] paragraph 18, evidence of Mr Greer 2023 .
[86] paragraph 19, evidence of Mr Greer 2023
[87] paragraph 9.b, evidence of Mr Jorissen 2023
[88] paragraphs 28 and 29, evidence of Mr Jorissen 2023
[89] paragraph 17, evidence of Mr Jorissen 2023
[90] paragraph 65, evidence of Dr Barbara 2023
[91] paragraph 74, evidence of Dr Barbara 2023
[92] paragraph 19, Dr MacDiarmid 19 May 2023

refers to the incorporation of a "worst case scenario" and related sediment effects being assessed on that basis as giving confidence that assessments are appropriately cautious.

SCHEDULE TWO: Newly identified Rocky Reefs- Whats the Impact?

1. Both Dr MacDiarmid[31] and Dr Barbara[32] have considered a recently identified area if rocky reef and the likelihood of other nearby reefs.

2. Dr MacDiarmid has also applied the Supreme Court guidance on "material harm" in considering the findings of the DMC described of the DMC described by the Court of Appeal at paragraph 111 of its judgment. Notwithstanding those findings, Dr Macdiarmid considers the harm described is "immaterial" when taking into account the evidence put before the 2017 DMC that provides what the Supreme Court considers qualitative, temporal, quantitative and spatial aspects.[33]

3. Dr Barbara[34] has set out that this reef is within area already identified at paragraphs 350, 940 and 970 of the 2017 DMC decision as being likely to be significantly impacted by the sediment plume. He has set out[35] the findings of the DMC decision with respect to various ecologically sensitive rocky reef areas and his opinion that there is nothing to suggest the level of impact on the recently identified reef will be any less. He considers that the uncertainty around the model predictions for sedimentation means it not possible to predict the extent of impact on the new identified reef habitats.

4. Dr Barbara's view is that, the level of impact to ecologically sensitive rocky reef areas within the coastal marine area inshore of the proposed mining area, particularly any within the area of the reefs assessed during the 2017 DMC is likely to be material.

5. Dr Barbara concludes that at the very least, the level of information available to the DMC is uncertain and inadequate to be able to conclude that the level of harm will be immaterial.

SCHEDULE THREE: Summary of Evidence on Marine Mammals

Sufficient Information

6. Experts agreed[93] that there have been a number of new studies including acoustic monitoring studies confirming the presence of blue whales within the South Taranaki Bight as well as other work. Leigh Torres who was one of the scientists working on the study on the pygmy blue whales presented updated material on the findings to the DMC in 2024.[94] At the time of the hearing in March 2024, no further studies or observations had been undertaken by TTRL since 2016.

[93] Dr Childerhouse [42] [48] .
[94] Evidence of Leigh Torres.

7. Dr Barbara agreed that the work undertaken on the Pygmy Blue Whales confirmed the prevalence of Pygmy and Antarctic blue whales, and that the South Taranaki Bight is of significance for marine mammals. However, Dr Barbara set out there is no new evidence or studies for TTR's proposed mining area, with all other studies conducted outside of the area and a distance too far to determine if any cetacean vocalizations occur within the proposed area.[95] Dr Barbara's view is that the reliance on inadequate spatial modelling for marine mammal distributions (TTRL's modelling from 2016) means the information remains uncertain and inadequate for the purposes of assessing the effects on marine mammals[96] and that this remains an information gap.[97]

Impact of the new information

1. Experts agrees that a significant portion of the South Taranaki Bight including the proposed mining area are a part of a new Impact Marine Mammal Areas (IMMAs), the *South Taranaki Bight IMMA*. Dr Childerhouse explains that while IMMAs confer no specific international or legal protection, they are increasingly being utilised in environmental impact assessments, marine - regional conservation, policy, and management initiatives. There was no disagreement with this point. In this respect the values identified for the IMMA provide relevant information to include in an assessment under Policy 15 of the Coastal Plan for Taranaki.

2. All the experts agreed that the new data confirms the STB as an important hotspot for marine mammal diversity within New Zealand, including as a feeding and breeding location.[98] This is recognised by the new IMMA area and identification of areas adjacent to the mining site as a Significant marine animal and seabed area under the Coastal Plan for Taranaki.

3. In the reconsideration hearings, Dr Childerhouse concluded overall, that new information is consistent with and supports his previous assessments, that there is a low likelihood of marine mammals being present in the proposed TTR consent area and there is nothing to suggest that the mining area is of any significance to any marine mammal species.[99]

4. Dr Torres[100] disagrees with Dr Childerhouse, she considers there is a likelihood that blue whales and Maui dolphins will occur in the consent area[101] and that evidence exists demonstrating that vulnerable cetacean populations, like blue whales and Maui /Hectors dolphins, do occur near the TTR consent area.[102]

[95] Dr Barbara [28] 2023
[96] Dr Barbara [60] 2023
[97] Dr Barbara [30] 2023
[98] Dr Childerhouse [4]
[99] Dr Childerhouse [2]
[100] Dr Torres [15] 2023
[101] Dr Torres [16] 2023
[102] Dr Torres [19] 2023

5. Dr Childerhouse's view in the 2023/2024 reconsideration hearing before the EPA was that that there is sufficient information relating to marine mammals and the potential impacts on them.[103]

6. It must be noted that this is contrary to the finding of the Supreme Court as discussed above.

7. Dr Childerhouse also considered that it is still possible to assess impacts upon marine mammals in the absence of abundance estimates.[104]

8. In respect of underwater noise Dr Childerhouse considered[105] it has become more difficult to provide a definitive assessment as the previously used assessment standard is no longer considered appropriate and there is no new standard. He explains[106] that best practise now recommends a case by case analysis and species by species approach should be undertaken and that this requires extraordinary amounts of data which, Dr Childerhouse informs, is not available in this case. Ultimately, Dr Childerhouse[107] considers his previous assessment of potential acoustic impacts on marine mammals is still useful, informative, and represents the best available information.

9. Once again this statement from TTRL marine mammal evidence is contrary to the findings of the Supreme Court who considered that the data presented to the EPA was not the best available information.

10. As discussed above it is submitters who have provided all the further information on marine mammal evidence. Some of the experts also commented on the cost of further abundance studies arguing that they were not unsurmountable and such studies could be undertaken.

11. Dr Torres[108] considers there is evidence demonstrating that vulnerable cetacean populations do occur near the TTR consent area and that it is likely for marine mammals to be present within the consent area.

12. Dr Slooten's evidence[109] considers the need for further scientific survey data in order to assess potential effects of the proposal on marine mammals in the area.

13. Dr Childerhouse's evidence is that effects on marine mammals can be addressed by conditions of consent with some refinements.[110] In particular, he identifies that Condition 11, relating to noise, should be retained but could be updated to reflect more recent metrics for underwater sound[111] and he consider that Condition 10(a) relating to "no adverse effects at a population level could be amended for clarity or potentially even material harm on marine mammals.[112]

[103] Paragraph 78 Dr Childerhouse 19 May 2023
[104] Paragraph 79 Dr Childerhouse 19 May 2023
[105] Paragraph 95, Dr Childerhouse 19 May 2023
[106] Paragraph 101, Dr Childerhouse 19 May 2023
[107] Paragraph 93, Dr Childerhouse 19 May 2023
[108] Paragraphs 16 to 18, 19, 21, 22, evidence of Dr Torres 2023
[109] Paragraphs 12 to 15, Need for scientific marine mammal surveys, evidence of Dr Slooten 2023
[110] Paragraph 104 to 108, 110, 112, 113 Dr Childerhouse 19 May 2023
[111] Paragraphs 109 – 110 Dr Childerhouse 19 May 2023
[112] Paragraph 115, Dr Childerhouse 19 May 2023

14. Overall, Dr Childerhouse[113] considers that the Conditions are comprehensive and will avoid or mitigate significant impacts from the activity on the local marine mammal populations.
15. Dr Slooten[114] considers there is still high uncertainty about noise impacts on marine mammals due to the absence of reliable noise information and the absence of scientifically robust information on the number of marine mammals in the area.

16. Dr Slooten's evidence [115] is that the assumption that marine mammals will move away from human impacts, such as mining, is problematic, including due to biological risks with displacement.

17. Dr Slooten[116]concludes that the potential impacts of seabed mining on marine mammals are unknown. This applies to Maui and Hector's dolphins as well as other marine mammals. Dr Torres also considers information inadequacies and gaps remain.[117]

18. Dr Slooten[118] considers that the conditions are insufficient to ensure that impacts on marine mammals, including Maui and Hectors dolphins would be detected, remedied or mitigated.[119]

19. In terms of noise, Dr Torres[120] considers that the noise estimates (which, in turn, impact the propagation model outputs) and information on behavioural response are insufficient to make an informed assessment of risk to cetaceans.[121]

20. Dr Torres[122] considers there is potential for the proposed activities by TTR to impact the distribution, behaviour, health and population growth of blue whales in the STB region due to disturbance from elevated ocean noise, increased risk of ship strike due to increased vessel activity across the region, and impacts on the quality, quantity and distribution of the krill prey blue whale rely on in the STB.

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[113] Paragraph 113, Dr Childerhouse 19 May 2023
[114] Paragraph 38, evidence of Dr Slooten 2023
[115] Paragraphs 42 and 43, evidence of Dr Slooten 2023
[116] Paragraph 9, evidence of Dr Slooten 2023
[117] At paragraph 11, Dr Torres considers inadequacies by limiting assessment of the impacts from TTR activities to the immediate vicinity of the proposed consent area. At paragraph 12 she refers to Scant information available on the impacts of deep sea minerals extraction on cetaceans. At paragraph 25, she sets out that that there is insufficient information to determine the degree of impact to (a) the turbidity of the water column that may impact whale foraging efficiency, and (b) sediment plume, deposition and pollution that may impact the health and productivity of the krill prey of blue whales and blue whales themselves.
[118] Paragraph 10, Effects of the Proposal on Maui and Hector Dolphins, evidence of Dr Torres 2023
[119] At paragraph 11, Dr Slooten sets out that in regard to the sediment plume, because of the vulnerability of Maui and Hectors dolphins and low population numbers, any loss in their natural range due to the sediment will potentially result in a significant impact and material harm, given existing pressures.
[120] Paragraph 27, evidence of Dr Torres 2023
[121] In particular, Dr Torres considers (paragraph 28) the fact that "there are still no available estimates for the specific underwater noise generated by this proposal" a data gap that is highly problematic. She also identifies (paragraph 30) a discrepancy in values used by Dr Childerhouse and considers therefore that even relying on the noise estimates supplied by TTR, it appears that there is evidence for potential impacts to all cetacean hearing groups based on broadband sound exposure over 24 hours.
[122] Paragraph 13, evidence of Dr Torres 2023

21. Dr Torres[123] concludes there is insufficient evidence at this time to determine whether there will be material harm to marine mammal populations in the STB region caused by the noise and sediment plume impacts of the TTR mining operation.

SCHEDULE FOUR: Table with links to key documents

Topic/ Document	Link to evidence
2013 Application	
2016 Application	
TTRL 2016 Application	
2016 Evdience filed, submitters + TTRL	
Transcript 2016/2017 EPA Hearings	
Decision EPA 2017	
APPEALS	
Appeals to the High Court, Court of Appeal and Supreme Court All of the decisions can be found here:	
RECONSIDERATION HEARING	
Updated Evidence, Joint Witness statements	
Morrison et al (2022) Study on Rocky Reefs	
Relevant Minute from DMC	TTRL DMC Minute 23, From 2024 Hearing (dated 26 March 2024) EPA sought a further report on "the assumptions, limitations and parameterisation of the applicable models.
FAST TRACK PROCESS	
Transcript 2024 Reconsideration Hearing	
Fast Track Approvals Act 2024	

[123] Paragraph 43, evidence of Dr Torres 2023

TTRL application to be selected for Fast Track Approval for its ‘Taranaki VTM Project’

BEFORE THE WAITANGI TRIBUNAL **WAI [to be allocated]**

UNDER	the Treaty of Waitangi Act 1975
IN THE MATTER OF	the Taranaki VTM Application for an urgent inquiry
AND	
IN THE MATTER OF	a claim by William Tihoi Maha and Jordan Dianne te Puawai o te Atua Waller ("Puawai Hudson") for and on behalf of members of respective hapū of Ngāruahine.

STATEMENT OF CLAIM

Dated this 29th day of May 2025

TO:

The Registrar
Waitangi Tribunal
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Wellington
Email: WT.Registrar@justice.govt.nz

Treaty Issues and International Law Team
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Puawai Hudson
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MAY IT PLEASE THE TRIBUNAL

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Mai i Tangaroa ki Tawhiti pāmamao,
Hawaiki pāmamao Tawhitiroa,
Hawaikiroa, Tawhitinui,
Hawaikinui, Aotearoa
E tū, e tū ki uta e tu, e tu ki tai
Tae noa ki te ngutu awa o Waingongoro ki Taungatara

[1] *Ngā Ruahine Deed of Settlement*.

Piki ake ki te tihi o Maunga Taranaki
Huri noa ki te Tonga,haere tonu ki te awa o Waingongoro, o Ngāruahine, Ngāruahinerangi.[2]

Waiho mai ko ēnei kupu, me tēnei whakapapa hei takapau mō ngā kōrero e whai ake nei.

Ko te tangi tēnei o te ngākau ki ngā mate kua riro i ngā tau, ērā e whakamānawatia nei i ngā kupu kua tīpakohia i te kerēme matua o Ngāruahine, e eke ai te kōrero, nā te mata karehu i tanu, mā te mata arero, mā te mata pene e hahu mai anō.

Kia tīkina ake ngā kōrero a tō mātou koroua a Ron Hudson;

"I te wa i timata ai te muru me te raupatu i te tau kotahi mano warn rau ono tekau ma toru. I eke mai ai nga hoia, nga pu, me nga purepo i te awa o Waitotara i te timatanga o te muru me te raupatu. I tera wa i a tatou te tino rangatiratanga o to tatou maunga, awa, whenua, ngahere, te takutaimoana, hinu, hou, nga whakairo, a tatou maoritanga, a tatou marae, a tatou maara, a tatou kainga, o tatou urupa. i te mutunga i te matenga o etahi o ratou i te raupatu. i murua katoatia te whenua."[3]

Ahakoa ngā mamae i tau ki a mātou i te wā o te muru me te raupatu, ahakoa te kōrero, e kore a muri e hokia, kei konei tonu mātou e tohe ana i te muru, me te raupatu o te whakaaro, o te mana, o te rohe moana, o te taiao.

Tēnei mātou ngā uri o Tangaroa, o Taranaki, o Tītokowaru e tohe tonu nei i te kōrero,

"e kore au e mate, ka mate ko te mate, ka ora au".

1.1 This Statement of Claim is prepared and filed on behalf of Puawai Hudson, making this claim on behalf of themselves and their hapū Ngāti Tū.

1.2 This Statement of Claim is also prepared and filed on behalf of William Tihoi Maha who, alongside Ms Hudson, makes this claim on behalf of themselves and their hapū, Ngāti Hāua.

1.3 Ngāti Tū and Ngāti Hāua are hapū of Ngāruahine.

1.4 This Statement of Claim is also submitted on behalf of Māori and those groups of Māori who have been affected by the actions and inactions of the Crown with respect to the shallow-sea sea-bed mining project of Taranaki VTM.

1.5 This Statement of Claim is also submitted for and on behalf of the tamariki and mokopuna who are the generations set to inherit the moana, takutai moana, awa, and whenua, who are so affected by the actions and inactions of the Crown.

[2] *Ngā Ruahine Deed of Settlement.*
[3] *Ngā Ruahine Deed of Settlement.*

2 Jurisdiction

2.1 The Applicants are Ngāruahine for the purposes of s 6(1) of the Treaty of Waitangi Act 1975.

2.2 The Applicants assert they have been, continue to be, and are likely to be prejudicially affected by Crown actions in breach of Te Tiriti.

2.3 The Applicants are suffering significant, irreversible, and ongoing prejudice as a result of the Crown's acts and omissions, and as particularised in this Application for Urgency.

3 Requests

3.1 The Applicants seek remedies including but not limited to **enabling hapū and iwi participation** and consultation, whilst **ensuring necessary mitigations for active protection of our taonga katoa.**

4 Factual Overview

4.1 Under the time estimates we have based on the Fast-Track Approvals Act 2024 [**FAA**], we have a matter of days for the Waitangi Tribunal to respond to our requests.

4.2 To the best of our knowledge key dates are indicated below:

Date	**Stage**	**Iwi involvement in Fast Track Process**
23 May 2025	Expert Panel Established	No participation afforded to iwi and pre-lodgement requirements regarding consultation were ignored by the Crown.
2 June 2025 (10 days from the date of establishing the Panel Section 53)	EPA invites comments on Substantive Application	Comments must be invited from (s53(2)): Relevant Iwi authorities
27 June 2025 (Within 20 working days from invitation S54 FTAA)	Our comments are put forward to the panel	Comments are received by Panel within 20 working days from invitation

28 June - 3 July 2025 (Within 5 Working days S55 FTAA)	Right of Reply	TTR have the opportunity to reply to comments
Undetermined	Hearing (at discretion of the panel)	There is no obligation on the hearing panel to hold a hearing in respect of a substantive application
At the earliest: 27 July (Within 30 days after receiving comments from submitters)	Decision	Within 30 days after receiving comments from submitters if the timeframe is not set by the panel convener (so it could be much longer)

4.3 On 16 May 2025, the Crown Environmental Protection Agency [**EPA**] approved the Trans-Tasman Resources Limited [**TTR**] application under the Fast-Track Approvals Act 2024 [**FAA**] to implement an experimental and novel seabed mining operation, targeting a 66 km² area in the South Taranaki Bight to extract 50 million tonnes of seabed material annually over 35 years. The adverse effects from this activity will cause irreparable damage to moana, takutai, awa, whenua, taonga species, and tikanga practices such as mahinga kai, across vast stretches of the West Coasts of both the North and South Island of Aotearoa.

4.4 However, TTR issued a press release stating that they had submitted their application on 16 April 2025[4] but the Crown failed to notify us of this fact at the time, nor did the Crown provide us with the application. Instead, we finally saw that the application was uploaded on the EPA website on 23 May 2025.[5] Indeed, on 26 May 2025, the EPA accepted that it "has not been lawfully applying the Act" by not posting the application on the Fasttrack website for public access as soon as it was filed with the Crown.[6] The Crown is effectively admitting Treaty violations specifically with respect us as iwi effected by the negative adverse effects of this seabed mining application, by failing to apply its own Act with respect to the minimal provisions regarding participation and consultation. The voluminous material within the application could have been reviewed

[4] https://www.manukaresources.com.au/site/showdownloaddoc.aspx?AnnounceGuid=8f0d9d4c-5280-4df8-8948-2ef617adb1df

[5] https://www.fasttrack.govt.nz/projects/taranaki-vtm

[6] https://eds.org.nz/resources/documents/media-releases/2025/environmental-defence-society-strikes-procedural-fast-track-win/

from the moment TTR announced they had submitted their application, and instead, we received the application at the time that the panel triggered the countdown to when iwi must be invited to submit comments, i.e. we have only had a matter of days as opposed to months to review the hundreds of pages of technical documentation which we have already identified to contain factual errors which are contrary to scientific evidence presented in the prior legal proceedings addressing this application, including proceedings at the Supreme Court.

4.5 The Crown approved this application despite the clear requirements in section 11 and 29 of the FAA that the Crown cannot deem applications complete without pre-lodgement consultation with "relevant iwi authorities." The PSGE for our hapū, Te Korowai o Ngāruahine, sent a letter to the EPA on 3 April 2025 clearly indicating that no such pre-lodgement consultation had occurred. The letter from Te Korowai o Ngāruahine also attached the letter dated 29 January 2025 whereby Taranaki VTM indicated its intention to lodge its application in March 2025. By dismissing the requirements for consultation, the Crown therefore committed a Treaty breach and in addition, breached the terms of the FAA and the principles of Te Tiriti/The Treaty under all relevant applicable legislation mandating participation under Te Tiriti o Waitangi/Treaty of Waitangi e.g. the Resource Management Act [**RMA**], the EEZ Act, and the Crown Minerals Act [**CMA**], among others.

4.6 Indeed, the previous TTR applications had been declined through legal processes which took over 10 years and led to the Supreme Court decision overruling the Crown's decision to issue the consent, the applications being declined due information gaps and environmental concerns, which are of particular concern for us as one of the iwi in closest proximity to the proposed site of activity, although the environmental impacts are predicted to extend across a significant portion of the whole motu. According to TTR's own assertion in their letter dated 29 January 2025, the current application is "for the same mining activity as TTR's previous application to the EPA" – i.e. the same activity which was found to be illegal under previous decision of the Supreme Court. This is the most egregious form of Crown breach of Te Tiriti/Treaty to date, wherein the Crown is creating a constitutional crisis such that it is not abiding by decisions of the Supreme Court whilst trampling on our Treaty interests and committing Treaty breaches which will have irreversible consequences for the mokopuna of our mokopuna, for time immemorial.

5 Procedural Matters

5.1 In accordance with the Guide to the Practice and Procedure of the Waitangi Tribunal (August 2023) ["**the Guide to Procedure**"] supporting affidavits are attached to this application in support of the relevant criteria for urgent applications. These affidavits fall within scope of the Guide to Procedure by seeking to provide factual evidence to the Tribunal (not opinions or submissions) and also include reference to existing relevant scientific research and mātauranga, but without constituting briefs of evidence.

5.2 This application relates to any claims which may also be submitted by whānau, hapū, iwi with respect to the actions and inactions of the Crown with respect to the shallow-sea sea-bed mining project of Taranaki VTM. However, the current application is specific to the rohe of the hapū and iwi within this application, namely, ngā hapū o Ngāruahine and no other applicant can purport to speak on our behalf, likewise, we do not wish to speak on behalf of whānau, hapū, iwi who are also impacted, but we gladly offer our research to support any other applicants seeking the same outcome as us. We therefore welcome the Waitangi Tribunal grouping applicants into a single claim against the Crown with respect to the shallow-sea sea-bed mining project of Taranaki VTM.

5.3 We are cognisant of WAI 745, 3450, 2003, 2764, 1194, 1212, 3288, 1140, 2139, 3468, and Ms Mere Kepa's claim regarding the application for a priority hearing into the Fast-Track Approvals Act 2024 [**FTAA**]. Whilst it is clear that these claims are with respect to the same legislation, namely, FTAA, we consider our application substantially different as to require recognition as a separate claim under urgency, given the particularly irreparable nature and magnitude of the harm threatened by the Crown in this case. We seek an urgent hearing under or a group of claims in their entirety or whether this relates to an aspect of our claims against the Crown with respect to the shallow-sea sea-bed mining project of Taranaki VTM. There is urgency in that Crown approval for the project is unfolding within a matter of days but has been confirmed by the Supreme Court[7] as posing environmental harms which we consider irreparable and striking at the heart of the Crown's obligations with respect to taonga katoa under Te Tiriti/Treaty.

5.4 We are ready to be heard and indeed, request a hearing under urgency, particularly given the extent to which substantial research already exists from over ten years of legal proceedings through which mana whenua prevailed in rejecting the previous

[7] *Trans-Tasman Resources Limited v The Taranaki-Whanganui Conservation Board* [2021] NZSC 127.

approval by the Crown of this project. This research is also referred to in our supporting affidavits and annexes.

5.5 With respect to the requirement in the Guide to Procedure for any people or bodies that the applicants believe should be notified by the Tribunal because they are affected by the application, we suggest that the following entities should be notified:

5.5.1 Taranaki VTM

5.5.2 Manuka Resources Limited

5.5.3 Shareholders of Manuka Resources Limited

5.5.4 ASX

6 Urgency

Applicants are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies

6.1 In accordance with the criteria set out in the Guide to Procedure, the applicants consider we have met the three legal tests set out in *Haronga v Waitangi Tribunal* [2011] NZSC 53 to justify urgency regarding our claims against the Crown with respect to the shallow-sea sea-bed mining project of Taranaki VTM.

6.2 Firstly, with respect to the size of the group represented by the applicants and the support for this application from this rōpu, we are confident that we have support across the hapū of our iwi. Indeed, all three iwi of Aotea waka have issued joint press releases sharing the same opposition which underlies our application for urgency. This same joint statement was released on each respective PSGE iwi Facebook page[8] and each PSGE iwi is sharing each others Facebook content related to opposing Taranaki VTM and the ensuing breaches of Te Tiriti/Treaty by the Crown.

[8] Te Korowai o Ngāruahine: https://www.facebook.com/Ngaruahine/posts/pfbid02viMEd8Edv5WzT7VNtgwCHzuXqRZdLNsQ8c8YBhTcnir7FNmQpxg827DHkZ1RAyRZl
Te Rūnanga o Ngāti Ruanui: https://www.facebook.com/ruanuingati/posts/pfbid02hLC9bXhG9yqe4vJaiSBEcrJpiV4PJ1UwHdLJBvBJ4JnPTK97ZJmzNFbTmDxiaoJql
Te Kaahui o Rauru Hapori: https://www.facebook.com/NgaaRauruTKOR/posts/pfbid0v48L7QygRGYGeW8Ni9Gu1J8aGnXuPDsZt4Z6NX27Nc9YCP7UyBbnxAFqRbLhThizl

6.3 Furthermore, all eight iwi of Taranaki issued a joint press release on 28 May 2025[9] uniting in opposition to the Crown's actions with respect to Taranaki VTM, as per the copy below:

Ngā Iwi o Taranaki Collective

28 May 2025

Ngā Iwi o Taranaki strongly oppose Seabed Mining off the South Taranaki coast

Ngā Iwi o Taranaki, on behalf of the collective of eight Post-Settlement Governance Entity (PSGE) iwi of Taranaki, voice our strong opposition to the proposed Trans-Tasman Resources (TTR) plans to mine iron ore off the South Taranaki coast.

Our eight iwi have been consistent in opposing TTR and their intention to annually mine 50 million tonnes of South Taranaki seabed. We collectively support our southern iwi of Ngā Rauru, Ngāti Ruanui and Ngā Ruahine, who will be most affected as the mining is in their coastal areas.

"Our iwi of Taranaki stand alongside our southern iwi to support them and amplify their concerns against seabed mining in their takiwā," says Ngā Iwi o Taranaki Pouwhakahaere Wharehoka Wano. "We encourage all iwi to support our South Taranaki whānau in their deep opposition to TTR and seabed mining."

6.4 Additional iwi within Taranaki and across the motu[10] are opposing the Crown's actions and further across Aotearoa, given the adverse effects extend further around Aotearoa according to scientific modelling submitted during prior legal processes which rejected the first iteration of the Taranaki VTM project due to taiao and our concerns under Te Tiriti/Treaty.

6.5 With respect to the second legal test related to land claims, our application does not relate to the return of land as a remedy in this specific context (thus it is not required under existing jurisprudence to assess whether the land is subject to a "well-founded

[9] See for example Te Kotahitanga o Te Atiawa: https://www.facebook.com/share/p/1ASJe23PDL/

[10] See for example Te Kāhui o Taranaki Iwi posting their "tautoko for opposition to the Trans-Tasman Resource Fast Track Application" sharing Aotea waka press release on 23 May 2025 https://www.facebook.com/TeKahuiOTaranakiIwi/posts/pfbid0Uo5DndD4Lkkegi12zSHj26yXdRNjD5Cz6tFvMVKauRvcQgc4jMAJ7xKT1Ezr3bTrl and Te Rūnanga o Ngāti Mutunga https://www.facebook.com/share/p/1F6y6X4dpS/

claim"). Moreover, there is a clear connection between the remedies sought in our application and the Te Tiriti breaches, largely due to the nexus between our requested remedies and the ability to enable a fulsome consultation process with hapū and iwi, and a fulsome consideration of the taiao and taonga katoa adverse effects which resulted in the dismissal by the Supreme Court of the previous attempts by the Crown to commit Treaty breaches through awarding resource consent approvals to TTR. There can be nothing more persuasive regarding necessity under Te Tiriti of the remedies we seek than a previous Supreme Court in our favour overturning the Crown's illegal actions in seeking to allow this shallow-sea seabed mining to progress in our rohe.

6.6 With respect to the third legal test, there are no current negotiations between the Crown and a mandated settlement body such that there is no risk that the Tribunal's jurisdiction to hear us on remedies is likely to be imminently removed by legislation as a result of any such negotiations.

There is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise

6.7 Given that the Crown has violated Te Tiriti/The Treaty by approving Taranaki VTM's application without even complying with the FAA's pre-lodgement requirements to consult with iwi, it is clear that the Crown is not receptive to iwi input. Indeed, with respect to the letter of Te Korowai o Ngāruahine to the EPA dated 3 April 2025, the Crown did not even afford us the decency of a reply on the merits, let alone even acknowledge receipt or answer of our follow up email specifically requesting urgent feedback on the lack of pre-lodgement consultation. The Crown has refused to engage with us. The Crown has refused to even answer our emails. Therefore there is no reasonable alternative remedy available to us.

6.8 Similarly, the FAA does not permit any alternative remedy processes such as statutory or private mediation or other alternative resolution methods, such as informal facilitated hui or formal mediation under clause 9A of schedule 2 to the Treaty of Waitangi Act 1975.

Applicants can demonstrate that they are ready to proceed urgently to a hearing, generally without the need of further research to be filed.

6.9 We have ample information and evidence from previous legal processes relating to the Crown's breaches of Te Tiriti/Treaty which enable proceeding urgently to a hearing. We have analysis and compendiums of such materials relevant to the Crown's breaches in order to enable rapid implementation of a hearing under urgency.

6.10 Although we note that the Guide to Procedure indicates that our application should not include briefs of evidence, the following is an example of the key sources of our existing research:

6.10.1 Previous legal proceedings with respect to TTR as it pertains to Taranaki VTM and the Crowns actions and inactions under Te Tiriti/Treaty;

6.10.2 Scientific research from these previous legal proceedings;

6.10.3 Mātauranga and mana whenua evidence from these previous legal proceedings;

6.10.4 Scientific research from independent and industry-related sources, including the Crown's own research indicating adverse effects regarding the Crown's actions with respect to TTR under the FAA;

6.10.5 Research reports addressing our tūpuna and tikanga with respect to moana and taonga species, including for previous Waitangi Tribunal claims such as the multiple Takutai Moana claims from Ngaruahine uri at the Waitangi Tribunal since 2004, including separate claims and associated evidence filed by Koro Rocky and Koro Tohepakanga.

6.10.6 Research reports, including historical research, addressing our tūpuna and tikanga with respect to moana and taonga species prepared for our Marine and Coastal Act [**MACA**] applications;

6.10.7 Affidavits prepared for our MACA claims detailing whakapapa to Tangaroa and marine life, tikanga, tauranga waka, fishing, and mahinga kai.

6.10.8 Research reports regarding Crown breaches of Te Tiriti with respect to our moana as compiled for the climate change claim at the Waitangi Tribunal.

6.11 To illustrate the first collection of sources with respect to the previous legal and scientific analysis related to the Crowns actions with respect to TTR, we **attach the evidence compiled by Counsel Ruby Haazen of Magdalene Chambers** which summaries the key impacts on our taonga katoa as identified by the Supreme Court and previous scientific research related to this claim which the Crown has effectively excluded from consideration within the FAA given that there has been no consultation with hapū and iwi as mandated under the FAA pre-lodgement requirements and Te Tiriti/Treaty, and that there is no scope for community or environment concerns to be afforded rights to participate in the hearing as an affected party. It is notable that the Supreme Court also found that the environmental bottom lines in the EEZ Act could

not be ignored by the Crown, which is precisely what the Crown has done through excluding such elements in the FAA.

6.12 In addition to the overview of the key evidence across the 40 pages compiled by Counsel Haazen, she also provides hyperlinks to the original documents for ease of access through the following schedule:

SCHEDULE FOUR: Table with links to key documents

Topic/ Document	Link to evidence
2013 Application	
2016 Application	
TTRL 2016 Application	
2016 Evdience filed, submitters + TTRL	
Transcript 2016/2017 EPA Hearings	
Decision EPA 2017	
APPEALS	
Appeals to the High Court, Court of Appeal and Supreme Court All of the decisions can be found here:	
RECONSIDERATION HEARING	
Updated Evidence, Joint Witness statements	
Morrison et al (2022) Study on Rocky Reefs	
Relevant Minute from DMC	TTRL DMC Minute 23, From 2024 Hearing (dated 26 March 2024) EPA sought a further report on "the assumptions, limitations and parameterisation of the applicable models.
FAST TRACK PROCESS	
Transcript 2024 Reconsideration Hearing	
Fast Track Approvals Act 2024	

The claim or claims challenge an important current or pending Crown action or policy

6.13 The scale of the Treaty breaches are hard to comprehend within the Crown's the current and pending Crown actions with respect to Taranaki VTM and their vocal support for seabed mining.[11] Aside from excluding our involvement under Te Tiriti, which is also mandated under the FAA itself, the Crown has designed the process under the FAA which overrides the scientific research and legal conclusions of over 10 years of

[11] See for example: https://www.thepost.co.nz/nz-news/360701609/minister-jones-backs-science-over-emotion-seabed-mining

litigation, including by the Supreme Court. Given the scale of the Treaty breaches, for efficiencies and in order to not stray into briefing evidence as per the Guide on Procedure, we will focus our current application on Crown breaches related to: (1) our tikanga, and (2) our taonga species and te taiao.

6.14 With respect to our tikanga, the current and pending Crown actions and policies with respect to Taranaki VTM and the Crown's vocal support for seabed mining in our rohe strike at the foundations of our tikanga. As a summary of the core themes within our existing research and documentation of our tikanga threatened by the Crown's actions:

6.14.1 Whakapapa to Tangaroa: under our tikanga, our whakapapa literally arises from the ocean. The Crowns actions with respect to Taranaki VTM and seabed mining in our rohe therefore constitutes grievous bodily harm and murderous intent towards our tuakana, our living connection to our past and our whakapapa to Tangaroa. According to our whakapapa, in lieu of a singular eponymous ancestor, Ngāruahine trace our whakapapa to Aotea waka captained by Turi, but also to earlier waka such as Wakaringaringa captained by Mawakeroa. Even earlier than these waka, there is the whakapapa line from Tangaroa's relationship with Mareikura, and as such, the whakapapa lineage to the moana and Tangaroa literally flows through our blood as uri. The environmental harms associated with seabed mining is therefore an egregious desecration of our living ancestor which cannot be tolerated.

6.14.2 Whakapapa to Taonga: under our tikanga, through our whakapapa with Tangaroa, we share bloodline lineage with all taonga species within the moana. Our pūrākau are held closely within whānau, but a common example which is freely spoken of, is the relationship with tohorā (blue whales) as our tuakana. Tohorā hold kōrero passed down over hundreds of years which provide tohu regarding our fishing practices and therefore the very survival of ourselves as an iwi over time and into the future. Under our tikanga, the survival of our moana and our tohorā must be protected at all costs, particularly as our own survival as a people is linked to the survival of our living tūpuna in the moana.

6.14.3 Wāhi Tapu: the reef systems along the seabed are vibrant living wāhi tapu with specific names which hold deep mātauranga which has been passed down through generations for hundreds of years. To this day, our kaitiaki maintain the mauri along these reefs, including maintaining wāhi tapu protected through feeding mauri stones integrated within the reef systems. Our reefs are unique in generating waiata which travel over hundreds of kilometres and provide

sound orientation for taonga species which travel to our reefs from as far away as Antarctica. Our mātauranga with regards to these wāhi tapu is continually corroborated with scientific research, such as the acoustic marine research into fish migrations following the sounds of the reefs. The reef structures are also wāhi tapu for our ancestral fishing grounds as key navigation guides for our waka such as the Raurimu and Raumiro.

6.14.4 Ritenga: our reef systems are built into our tikanga practices relating to our ritual practices which maintain the wellbeing of our people and our environment. For example, tikanga practices involved in installing the mauri into pounamu for personal protection require the stone to be left for a certain period within certain ocean waters connected to the reefs. Similarly, tikanga practices related to kaumatua such as Koro Rangihuna submerging specific stones which hold tapu qualities at times and places necessary to signal for reef species to come closer to support the people in times of need.

6.14.5 Mahinga kai: much of our tikanga within the moana, takutai, awa and whenua depend upon healthy seabed and reef systems. For example, our tikanga such as maintaining knowledge of harakeke weaving hinaki or manuka matting related to pīharau and īnanga depend on healthy seabed's where these taonga species spend half their life cycle. Our tikanga practices related to mataitai depend on sediment-free oceans, particularly for pāua which cannot survive and are choked through sediment, similarly kūtai filter feeders. Such tikanga practices related to mataitai including karakia, waiata, poi, poi ahi, maintaining mauri stones, coastal awa practices such as the tikanga of preparing rotten corn, salted shark, and the tikanga associated with the ten tauranga waka sites within our rohe following the Crown's land confiscation over the entirety of our rohe

6.15 With respect to our taonga and te taiao, Counsel Haazen identifies evidence regarding irreparable damage to taonga protected under Te Tirti with respect to the following taonga species, among others:

6.15.1 Destruction of the seabed habitat, including habitat of little blue penguins (kororā), and the effects on foraging caused by the plume. The previous EPA decision in 2017 found that there had been "no systematic and quantitative studies of the at-sea distributions and abundances of seabirds within the area".[12] The Supreme Court made similar findings regarding information on

[12] DMC decision, at [563]. The experts for TTR and Kiwis Against Seabed Mining Inc (KASM)/Greenpeace of New Zealand Inc agreed a number of "threatened" and "at risk" taxa occur within the South Taranaki Bight year-round or seasonally (conservatively, 10 and 24 taxa respectively).

seabirds, finding a "paucity" of information to the extent that conditions were unable to drafted and that "in relation to seabirds and marine mammals and some other factors, the DMC majority simply could not be satisfied, on the basis of the information before it and taking the required cautious approach favouring the environment, that the conditions imposed would ensure all of the material harm would be remedied, mitigated or avoided."[13] This is still the case and further highlights why we are requesting a hearing under urgency.

6.15.2 Errors with the current sediment plume modelling being considered by the Crown which do not capture the full scope and extent of the modelling of adverse effects which the Crown has excluded from consideration under the FAA processes.

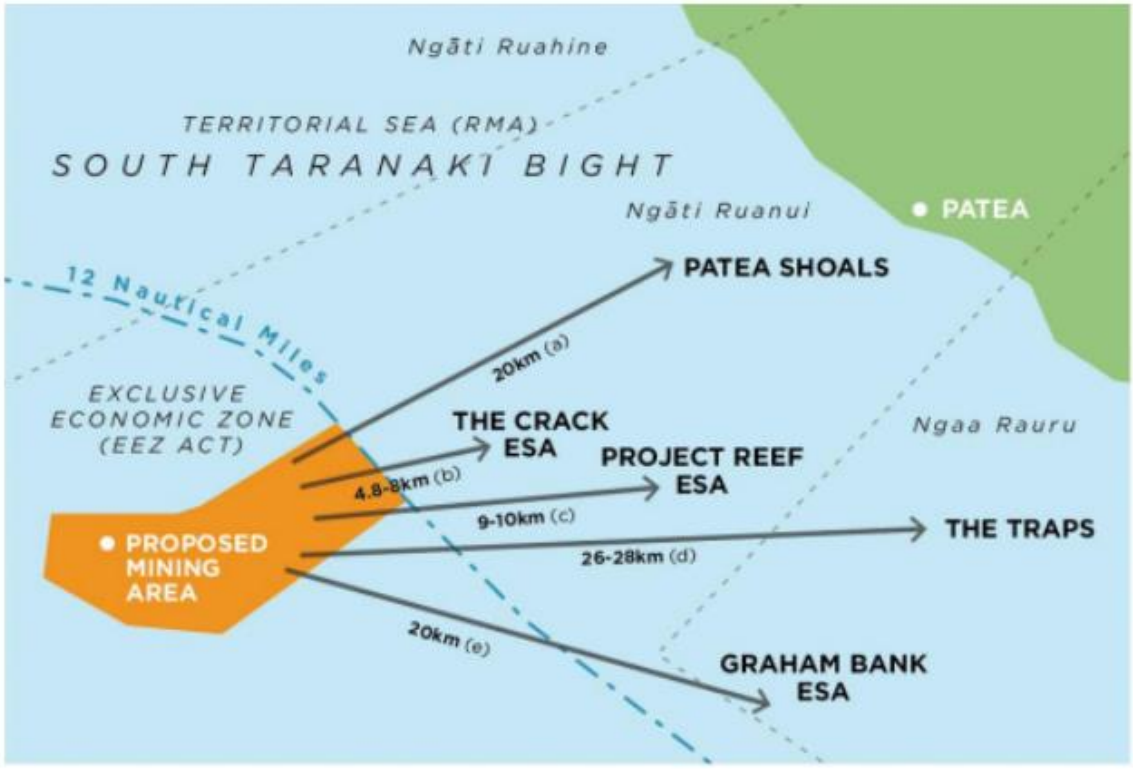
6.15.3 Adverse effects to the marine ecosystems, biodiversity, and interconnected food webs from sediment plume, including hectors and Maui dolphins and endangered seabirds, such as kororā, endemic blue whales which are only found in the South Taranaki bight. This is particularly significant for our taonga species which uniquely coexist in marine and freshwater habitat such as pīharau and īnanga.

6.15.4 Effects on marine mammals are irreparably harmful in three main ways: by the sediment plume, by noise and vibration and from ship strike. All the marine mammal experts in previous legal proceedings agreed that the South Taranaki Bight is an important hotspot for marine mammal diversity within New Zealand, including as a feeding and breeding location. There are a number of nationally vulnerable and nationally threatened and endangered species that reside within our rohe moana, including an endemic population of Pygmy Blue Whales which are located within the South Taranaki Bight year round. Marine mammal expert Dr Leigh Torres from Oregon University has given extensive research indicating that these tohorā blue whales are already under stress due to climate change and we believe our tūpuna would be at serious risk of survival due to the Crown's actions under the FAA. Furthermore, the Supreme Court found that there were unacceptable gaps in baseline information on marine mammals in the 2016/2017 application (which remains the same information subject to the current FAA Crown processes).[14] All this information including the expert report from Dr Torres regarding the vulnerability of our taonga species in the face of the Crowns action under the

[13] At [271].
[14] SC at [125]. See also [275] per Glazebrook J.

FAA is not disputed by the Crown nor Taranaki VTM but they continue under the FAA regardless.

6.15.5 Adverse effects to rock reef systems and benthic communities beyond the mining area, as identified in the 2017 EPA decision and the Supreme Court decision (images below), however, there has subsequently been an extensive NIWA study undertaken on behalf of Taranaki Regional Council as part of its 10 year coastal review process which identified further areas of rocky reef in this same general area / the area impacted by the plume, and it is highly likely that other areas of rocky reef occur in this area inshore of the proposed mining area and may be known to the local fishing and diving community but remain to be formally mapped which are "are islands of biological diversity among the otherwise low diversity communities occurring on the surrounding sandy flats".[15]



[15] See SOE Allison MacDiarmid at [18], dated 19 May 2023.

ESA	DMC Finding on Effect	Ref to DMC Decision
PATEA SHOALS	Moderate effect	At [350] At [970]
	Significant effect	At [968]
THE CRACK	Significant effect	At [350] At [970]
	Effects of concern	At [406]
	Effects including temporary or permanent displacement of species	At [437] At [980]
	Major effect	At [952]
THE PROJECT REEF	Significant effect	At [350] At [970]
	Major effect	At [952]
ESA	**DMC Finding on Effect**	**Ref to DMC Decision**
THE TRAPS	Minor effect	At [970]
GRAHAM BANK	Significant adverse effect	At [350] At [940] At [970]
	Effects including temporary or permanent displacement of species	At [437] At [980]

An injunction has been issued by the courts on the basis that the claimants have submitted to the Tribunal the claim or claims for which urgency has been sought & any other grounds justifying urgency have been made out.

6.16 Due to the Crown's restrictions under the terms of the FAA, it is not available to us to seek injunctions or other legal remedies outside of the FAA processes which are limited to the right of appeal to the High Court, with no further appeals permitted. This is yet another example of the Crown breaching Te Tiriti and overriding Supreme Court decisions which uphold protection of te taiao and our taonga species.

7 The Claim

7.1 The core of this claim is that the Crown has breached Te Tiriti o Waitangi and its principles in:

7.1.1 Failing to take adequate steps to ensure hapū and iwi engagement under the FAA regarding our moana and taonga species;

7.1.2 Failing to undertake appropriate action to uphold the Supreme Court decisions regarding protection of te taiao and our taonga species;

7.1.3 Failing to properly understand or acknowledge the specific issues facing, and harming, Māori and the Claimants' hapū arising from the Taranaki VTM Project's lack of engagement, lack of information, and the irreparable harm posed by seabed mining;

7.1.4 Failing to support the authority of Māori and the Claimants' hapū to exercise kaitiakitanga of taonga species and moana, takutai, awa, and whenua;

7.1.5 Failing to support and equip Māori and the Claimants' hapū with proper tools to participate in the resource consenting processes related to Taranaki VTM;

7.1.6 Failing to prepare a strategy to recognise and mitigate any proposals relating to seabed mining and the impact on Māori of destructive ocean practices;

7.1.7 Failing to follow through on previous Tribunal recommendations to have Māori and the Claimants' hapū rights and interests recognised;

7.1.8 Failing to partner with Māori and the Claimants' hapū to enable tikanga and Te Ao Māori perspectives to assist in management of moana and fishing spaces.

8 Te Tiriti o Waitangi and its principles

8.1 The premise of this claim recognises that there is "no definitive or exhaustive list of the principles of the Treaty", rather, that this paradigm of understanding, as it relates to climate change, is developed and evolves as the claimant and witness evidence is presented.[16]

8.2 The principles are informed by the words of Te Tiriti o Waitangi/The Treaty of Waitangi and inferred from Te Tiriti o Waitangi/The Treaty of Waitangi in its entirety, taking into account "the context and spirit in which the treaty was entered into."[17]

[16] Wai 3300, #A006 *Kōrero Taunaki a Natalie Ramarihia Coates,* at [56].
[17] Wai 1040, *Tino Rangatiratanga me te Kāwantanga: The Report on Stage 2 of the Te Paparahi o te Raki Inquiry,* (Wai 1040, 2023) at 38.

8.3 Without limiting Te Tiriti o Waitangi, the Claimants assert that the following are principles of Te Tiriti, each of which they say is relevant to the present claim.

Tino Rangatiratanga

8.4 The report on Stage 2 of the Te Paparahi o Te Raki Inquiry traced the principle of tino rangatiratanga from its inception to its use in modern treaty jurisprudence. Early reports acknowledged that the term, as derived from the treaty, should not be equated with the term 'chief' in English. Rather, a very important element in the identification of a rangatira was recognition by the people, and that which distinguished the true rangatira was the quality of commonality, binding the leader as one with their people.[18] The Tribunal has concluded that an appropriate definition for rangatiratanga is 'authority', with tino rangatiratanga being 'full authority'.[19] Subsequent jurisprudence acknowledged tino rangatiratanga as an indigenous right that encapsulates autonomy, separate authority or self-government.[20]

8.5 With respect to seabed mining proposals, tino rangatiratanga encompasses the ability for tangata whenua to respond to and mitigate, including prohibiting, any such activity with irreversible detrimental impacts in their rohe. Seabed mining is not exclusively a matter for the kāwanatanga sphere.

8.6 The *Report on the Crown's Foreshore and Seabed Policy* introduced the idea that tino rangatiratanga includes a guarantee of the right to exercise tikanga. *Te Mana Whatu Ahuru* explained that:[21]

> *Tikanga underpinned how 'tino rangatiratanga' was exercised as it was relevant to their land tenure, the environment, social and political relationships, and generally to the Māori way of life… Tikanga mediated relationships between people and taonga and was therefore an integral aspect of tino rangatiratanga. In respect of any interests or taonga, a community's authority… depended on its exercise of the relevant tikanga. Because the guarantee of rangatiratanga was a promise of protection for Māori autonomy, the Crown was therefore obliged to respect Māori tikanga as a system of law, policy, and practice.*

[18] Wai 1040, *Tino Rangatiratanga me te Kāwantanga: The Report on Stage 2 of the Te Paparahi o te Raki Inquiry,* (Wai 1040, 2023) at 39.
[19] Ibid.
[20] Wai 1040, *Tino Rangatiratanga me te Kāwantanga: The Report on Stage 2 of the Te Paparahi o te Raki Inquiry,* (Wai 1040, 2023) at 40.
[21] Wai 898, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claim, volume 1* (Wai 898, 2023) at 182.

8.7 Within the seabed mining context, it must be recognised that[22]

> *Māori culture is a creation of its environment. It retains aspects of Hawaikian roots, but the elements that make it distinctive in the world can be seen as both a reflection of and response to this particular place.*

8.8 Tino rangatiratanga – autonomy, self-government and self-determination – is therefore dependent on the environment from which it has developed. Māori tikanga and 'cultural preferences' depend on the dictates of the environment, which the Claimants say is at threat due to the failures of the Crown to address the impacts of climate change. As the whakataukī reminds, 'oranga whenua, oranga tangata', and as rendered by Te Aorere Pewhairangi in his walk along the length of State Highway 35 after Cyclone Gabrielle, 'māuiui whenua, māuiui tangata'.

Matapopore Moroki – Active Protection

8.9 In the Tribunal's report on the Manukau claim, it noted that the treaty 'obliges the Crown not only to recognise the Māori interests specified in the treaty but actively to protect them' and that 'the omission to provide that protection is as much a breach of the treaty as a positive act that removes those rights.'[23]

8.10 *Te Mana Whatu Ahuru* went further to state that the Crown had a duty to actively protect Māori rights and interests:[24]

> *Including the exercise of Māori authority – this included a duty not to ignore, deny, or interfere with Māori authority or relationships with lands and other taonga, and a duty to actively support those relationships to the greatest extent practicable in accordance with Māori wishes (including through legislation and institutional arrangements if that was what Māori communities sought).*

8.11 Efforts by our hapū to have our rights and interests recognised by the Crown led to *The Taranaki Report*,[25] and then *The Petroleum Report*[26] and *The Report on the Management of the Petroleum Resource*.[27] For the Claimants and their hapū, these claims were settled through the Crown's settlement agreement with Ngāruahine in 2014. The Ngāruahine Claims Settlement Act 2016 enacted environmental protections

[22] Wai 262, at 65.
[23] Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim,* (Wai 8, 1985) at 70.
[24] Waitangi Tribunal, *Te Mana Whatu Ahuru, vol 1* (Wai 898, 2023) at 215.
[25] Waitangi Tribunal, *The Taranaki Report,* (Wai 143, 1996).
[26] Waitangi Tribunal, *The Petroleum Report,* (Wai 796, 2003). Mere Brooks, a Claimant for the present claim, was a claimant in Wai 796.
[27] Waitangi Tribunal, *The Report on the Management of the Petroleum Resource*

for particular areas, and provided for consultation with Ngāruahine on environmental issues.

8.12 Despite the provisions of settlement, the Crown have not supported the relationships between the Claimants' hapū and their taiao, and the Crown have failed to take proactive action to prevent harm to the moana as posed by seabed mining. The Claimants' relationship to their taiao, and the taonga therein, has been eroded by the Crown's actions and omissions regarding their seabed mining policy.

8.13 Subsequent to the raupatu suffered by the Claimants' hapū in the 19th century, some parcels of land eventually returned to them were located on the South Taranaki coast. Pursuant to settlement, coastal land near the mouth of the Claimants' awa (Waingongoro) has been given protected status as Whāriki o Ngāruahine, under which the Claimants' hapū (through Te Korowai o Ngāruahine, the iwi PSGE) has input into its conservation management. This land is significant to the Claimants' hapū because it is where their ancestral waka landed, and where they have historic papakainga, pa, and mahinga kai.

8.14 The Crown, in failing to take appropriate action to stop seabed mining, have failed to discharge the obligation of active protection within the area of their hapū and the wider Taranaki area.

8.15 Where the Crown delegates responsibility for the management of natural resources, *The Report on the Management of the Petroleum Resource* recognised the following:[28]

> *With specific reference to the resource management regime, the Tribunal has observed in several earlier reports that the Crown cannot avoid its Treaty duty of active protection by delegating responsibility for the control of natural resources to others. More particularly, it cannot avoid responsibility by delegating on terms that do not require such authorities or bodies to afford the same degree of protection as is required by the Treaty to be afforded by the Crown.*

8.16 We say that active protection applies in these circumstances. The Claimants say that the Crown cannot hide behind other agencies or bodies of the Crown which have been entrusted with discharging duties and obligations that relate to the environment.

Houruatanga – Partnership

[28] Waitangi Tribunal, *The Report on the Management of the Petroleum Report,* (Wai 796, 2003) at 149.

8.17 The principle of partnership has been properly characterised as requiring the cooperation of both parties within their "respective areas of authority and influence", with both parties "required to act honourably and in good faith."[29]

> *The Crown could not unilaterally decide what Māori interests were or what the sphere of tino rangatiratanga encompassed…The Crown was obliged… to acknowledge rangatiratanga by recognising the need to engage with hapū and include them in decision-making about whether, or how British law was to operate in Māori communities… As the shared authority of the treaty partners developed, the need would arise for joint consideration of how two legal systems, one based in tikanga, and the other in British common law, could operate alongside each other.*

8.18 Against the expressed wishes of our hapū and iwi, and sister hapū and iwi, the Crown has progressed in supporting seabed mining for over 10 years. The imminent steps with respect to the Taranaki VTM Project have been deliberately implemented in the face of iwi opposition and even the decision of the Supreme Court in favour of iwi.

8.19 In the Crown's arbitrary application of their authority over that of tikanga Māori, the Claimants say that the Crown has breached the principle of partnership. We have not been properly engaged in the application of government laws and we have been repeatedly ignored by the Crown even as we respond under tight timeframes under the FAA.

8.20 The shared space of authority has become blurred as the Crown have overstepped their authority, and dishonourably discharged their obligations under the principle of partnership.

Redress

8.21 Where the Crown has acted in breach of the principles of Te Tiriti and the agreement of Te Tiriti itself, and Māori have suffered prejudice as a result, the Crown has a duty to restore the honour and integrity of the Crown and the mana and status of Māori.[30]

> *Substantive redress is an important step in re-establishing the mutual recognition and respect embodied in the treaty relationship, for restoring the honour of the Crown, and for providing a renewed opportunity for giving effect*

[29] Stage 2, Paparahi o Te Raki at 61.
[30] Waitangi Tribunal *Report on the Crown's Foreshore and Seabed Policy* (Wai 1071, 2004) at 134; Te Paparahi o te Raki Stage 2 at 68.

to the treaty's guarantee of tino rangatiratanga and, ultimately, te mātāpono o te houruatanga.

8.22 The principles of Te Tiriti do not operate in isolation and each give credence to one another. In acknowledging their prejudicial actions, the Crown must provide an avenue for redress and in doing so, they uphold those principles that operate laterally to ensure that Te Tiriti is honoured.

Kaua e tuku kia murua, kia raupatuhia anō mātou.

Pupuhi e te hau, e ua e te au, kia mau tonu ki tō mātou mana Māori e.

Tau ana.

BEFORE THE WAITANGI TRIBUNAL **WAI 3475**

UNDER	the Treaty of Waitangi Act 1975
IN THE MATTER OF	the Taranaki VTM Application for an urgent inquiry
AND	
IN THE MATTER OF	a claim by William Tihoi Maha and Jordan Dianne te Puawai o te Atua Waller ("Puawai Hudson") for and on behalf of members of their respective hapū of Ngāruahine.

MEMORANDUM IN SUPPORT OF APPLICATION FOR URGENCY

Dated 24 June 2025

TO:

The Registrar
Waitangi Tribunal
SX 11237
Wellington
Email: WT.Registrar@justice.govt.nz

Treaty Issues and International Law Team
Crown Law Office
PO Box 2858
Wellington 6140
Email: treaty.issues@crownlaw.govt.nz, treaty.teams@crownlaw.govt.nz

Te Aorangi Dillon
Tumu Whakarae | Chief Executive
Te Korowai o Ngāruahine Trust
40a Union Street, Te Hāwera, 4610
info@ngaruahine.iwi.nz

MAY IT PLEASE THE TRIBUNAL | TĒNĀ E TE TARAIPIUNARA:

1. Ngā Kaitono

Te ika te ika i Waitotara
Te ika te ika i Whenua Kura
Te ika te ika i Patea
Te ika te ika i Tangahoe
Te ika te ika i Waingongoro
Te ika te ika i Kawhia
Te ika te ika i Taranaki
Te Takina mai hoki te ika
Ki tēnei rua ki tēnei one
Te ika ki tēnei papa
Te ika ki tēnei au tapu
Te ika ki te au tapu nui nō Tane
Ki te au tapu o Tangaroa te ika
Teretere te ika
He ika waka mou kaha hai
Tēnā te ika ka moe
Ko te ika o te rua
Ko te ika o te one
Te ika o te hohono
Tena te ika ka moe
Ka taki ki roto
Ka taki ki te tūranga
Ka taki ki te kāinga
Ka taki ki te au tapu nui nō Tane
Ki te au tapu nui o Tangaroa.[1]

[1] *Ngā Ruahine Deed of Settlement*.

1.1 This Memorandum is prepared and filed on behalf of Te Korowai o Ngāruahine Trust.

1.2 This Memorandum is in support of hapū of Ngāruahine who have filed with respect to Wai 3475, namely, the Application for Urgency regarding shallow seabed mining related to the Taranaki VTM project under the Crown's Fast Track Approval Act.

1.3 We acknowledge that the Waitangi Tribunal has received filings which reference all six of our hapū of Ngāruahine. We particularly acknowledge the powerful implications of this kotahitangi among our hapū in seeking an urgent hearing.

1.4 This Memorandum is also submitted on behalf of Māori and those groups of Māori who have been affected by the actions and inactions of the Crown with respect to the shallow-sea sea-bed mining project of Taranaki VTM.

1.5 Furthermore, this Memorandum is submitted for and on behalf of the tamariki and mokopuna who are the generations set to inherit the moana, takutai moana, awa, and whenua, who are so affected by the actions and inactions of the Crown.

1.6 Te Korowai o Ngāruahine Trust has already been receiving updates through the email distribution list from the Waitangi Tribunal regarding Wai 3475 and hereby seeks to formalise recognition as an Applicant and interested party to these proceedings.

2 Jurisdiction

2.1 The Applicants are Māori for the purposes of s 6(1) of the Treaty of Waitangi Act 1975.

2.2 The Applicants assert they have been, continue to be, and are likely to be prejudicially affected by Crown actions in breach of Te Tiriti.

2.3 The Applicants are suffering significant, irreversible, and ongoing prejudice as a result of the Crown's acts and omissions, and as particularised in this Application for Urgency.

3 Requests

3.1 The Applicants seek to support, tautoko, and join the Applications for Urgency and Statement of Claim already submitted to the Waitangi Tribunal regarding the Crown and the Taranaki VTM, in particular, the filings of Puawai Hudson submitted to the Waitangi Tribunal on 29th May 2025.

3.2 Regarding the Applicant for Urgency filed by Puawai Hudson, the current filing supports the progression of their claim and a hearing under urgency; as well as the

requests to the Waitangi Tribunal to issue an injunction to pause the Crown Environmental Protection Agency [EPA] from addressing the Taranaki VTM Project application under the Fast-Track Approvals Act 2024 [FAA] pending the outcome of this urgency application; and the request to issue a summons for the Chief Executives of the Crown agencies responsible (including but not limited to the EPA) approving this in violation of the governing legislation (in particular section 11 and 29 of the FAA requiring pre-lodgement engagement with relevant iwi) under the precedent set in *Skerret-White v Minister for Children* [2024] NZCA 160.

3.3 Regarding the Statement of Claim filed by Puawai Hudson, the current filing supports the request for remedies including but not limited to enabling hapū and iwi participation and consultation, whilst ensuring necessary mitigations for active protection of our taonga katoa.

4 Reasons

He raru ki uta, he raru iti. He raru ki tai, he tangata te utu.

A problem with a waka on land is miniscule but the same problem at sea could spell disaster.

4.1 We write in full tautoko of the **Urgency WAI 3475 Claim filed by Puawai Hudson and William Tihoi Maha on behalf of ngā hapū o Ngāruahine**. These claims are not political abstractions to us. They speak directly to the experiences of our uri and who stand as current and future kaitiaki of our moana.

4.2 The seabed mining proposal from Taranaki VTM, and the Crown's failure to uphold its legal and Treaty responsibilities through the Fast Track Approvals Act 2024, represents a denial of those past, present, and both imminent future rights, as well as long term permanent future rights.

4.3 The Crown has failed in its duties of partnership, active protection and recognition of tino rangatiratanga. We note:

- The compete absence of pre-lodgement consultation in breach of both the FAA and section 11 and 29 obligations to engage with relevant iwi authorities;
- The failure to respond to Te Korowai's multiple communications, including letter dated 3 April 2025 warning that the mandatory pre-lodgement consultation had not occurred;
- The deliberate exclusion of iwi and hapū voices, where the application was not publicly available until 23 May 2025, despite being lodged on 16 April 2025;

- The disregard of prior Supreme Court rulings which already found the TTR proposal to be unlawful and lacking sufficient environmental and cultural protections.

4.4 This shallow seabed mining project under the fast-track regime not only overrides over 10 years of court-based scrutiny but also extinguishes our ability to meaningfully participate in decisions that will have irreversible impacts on our whakapapa, tikanga, and the taiao.

4.5 As kaitiaki, we cannot remain silent while the Crown bypasses its obligations and facilitates desecration in our takutai moana.

5 Kotahitanga

5.1 The concerns raised by this application are not isolated. On 28 May 2025, all eight Taranaki iwi PSGE issued a joint statement opposing the Crown's actions. Aotea waka PSGE Te Korowai o Ngāruahine, Te Runanga o Ngāti Ruanui, and Te Kaahui o Rauruu—have likewise expressed collective opposition, reflecting a widespread consensus of tangata whenua opposition to seabed mining.

6 Conclusion

6.1 As the PSGE for Ngāruahine, Te Korowai holds a statutory and moral obligation to protect the mana, taonga and future of our people. The current process not only dishonours Te Tiriti o Waitangi—it jeopardises the survival of ecosystems and the wellbeing of generations to come.

We therefore urge the Tribunal to grant the application for urgency and give full and proper weight to the claimants' request.

Kaore te tamaiti ka tū me tōna Kotahi, me tū tōna iwi hei tuarā mōna.

Date: 24 June 2025

Name: Te Aorangi Dillon

Signature: