
MINUTE OF THE PANEL CONVENER

Post-conference directions - Taranaki VTM Project [FTAA-2504-1048]

(17 July 2025)

Purpose of Minute

[1] On 7 July 2025 I held a convener conference in respect of this application. The purpose of the conference was to canvass views of the statutory participants in respect of the two principal matters that I must determine in the exercise of my duties, functions and powers under the Act namely the appointment of an expert panel to make a decision on the approvals sought in the application, and the setting of a timeframe within which that decision must be delivered.

[2] I will issue a separate Minute in due course confirming the determinations I have made on those two matters. The purpose of this Minute is to:

- a. Summarise the views expressed by conference participants as to the matter of decision timeframe in particular;
- b. Identify the matters on which I require further information before I can make a final determination on decision timeframe; and
- c. Issue directions to the Applicant to provide that further information.

Conference participant views

[3] The conference was attended by the Applicant, the local authorities (Taranaki Regional Council, South Taranaki District Council and Whanganui

District Council), MfE and the Environmental Protection Authority (EPA) as the administering agency of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act).

[4] The conference was also attended by iwi authorities and Treaty settlement entities, claimants under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA) and iwi or hapū whose practices are recognised under the Fisheries Act 1996 through regulation or customary management area, as follows:

- a. Muaūpoko Tribal Authority
- b. Te Kāhui o Taranaki Trust Board
- c. Te Kaahui o Rauru Trust
- d. Te Korowai o Ngāruahine Trust
- e. Te Ohu Kaimoana
- f. Te Rūnanga o Ngāti Ruanui
- g. Araukuuku hapū
- h. Kanihi Umutahi me etēhi atu hapū (CIV-2011-485-814)
- i. Ngāti Hāua hapū of Ngāruahine
- j. Ngāti Manuhiakai (CIV-2011-485-797)
- k. Ngāti Tū hapū
- l. Ōkahu Inuāwai me etēhi atu hapū (CIV-2011-485-797)
- m. Te Patutokotoko

[5] The participants listed in paragraph 4 were all identified in the section 18 report prepared by MfE. Other participants identified in that report were invited to the conference but did not attend.

[6] Conference participants were asked to file memoranda in advance of the conference, addressing the specific matters listed in Schedule 1 to the Minute regarding convener conference dated 26 June 2025 - <https://www.fasttrack.govt.nz/projects/taranaki-vtm/correspondence>. These included matters specifically relevant to the setting of the decision timeframe, such as complexity (legal, factual, evidential) and issues, either identified during consultation or any disputed fact or opinion likely to be of consequence to the determination of the application. Almost all participants filed memoranda in advanced of the conference, addressing these matters to a greater or lesser degree. All filed memoranda are now published on the EPA's Fast-track website, so there is no need to summarise their content.

[7] On the issue of decision timeframe, there is a stark divergence of views between the Applicant and the other participants who attended the conference. This appears to be driven by very different perspectives on:

- a. The issues in contention;
- b. Whether those issues have any relevance to the ultimate decision given the purpose of the Act, its directives as to weighting and the test to be met before an application can be declined;
- c. The extent to which the Supreme Court's 2021 decision¹ on an earlier version of this application under the EEZ Act applies to the new approval process under the Act;
- d. The degree of legal and evidential complexity in this application (compared to the earlier iteration);
- e. The need for a hearing and, if a hearing were to be required by the expert panel, the amount of time that should be provided for it.

[8] In summary, the Applicant considers that:

- a. The application does not involve any significant legal complexity, essentially because the assessment is required to give greatest weight to the Act's stated purpose. There are no novel or difficult issues arising from the wording of the Act;

- b. There is sufficient evidence, as well as legal guidance, provided in the application as lodged to enable the expert panel to undertake the relevant assessment, along with any supplementary evidence that may be provided by those invited to comment;
- c. The environmental effects of the proposal on the physical environment are well understood;
- d. While there are outstanding cultural issues (described in the Applicant's memorandum as "implacable and unilateral opposition to the proposal by tangata whenua on cultural grounds"), these concerns are "readily addressed by the factual evidence and the conditions";
- e. Notwithstanding these issues, a hearing is not required;
- f. A total of 46 working days, following the expert panel's receipt of invited comments (section 53), will be sufficient for the expert panel to determine the application. Notably, the Applicant proposes that only 10 working days are required between the expert panel receiving invited comments and then issuing draft conditions (together with a draft decision) to participants². Those 10 working days would also need to accommodate the Applicant's response to invited comments.

[9] Of relevance to these conclusions is paragraph 11 of Appendix 1 to the Applicant's memoranda of 2 July, as follows:

... TTR notes that the Project has already been tested and approved previously by the EPA and highlights there are no differences between the Project in the FTAA process and the version [that] was approved under the EPA process and subject to the final appeals.

[10] I return to the previous EPA process later in this Minute.

[11] The views of other participants on these matters are briefly summarised below. It is worth noting that, overall, these views were shared by Māori and local authorities alike as well as by MfE and EPA:

- a. The application is factually and legally complex, with a long and contentious history;

- b. The impact and relevance of the Supreme Court decision on the previous EEZ Act application needs to be carefully considered in the context of the new Act;
- c. Environmental impacts and cultural effects remain of concern, including the impact on tikanga which was the subject of important findings in the Supreme Court decision;
- d. A hearing is likely to be required and time should be factored into the decision-making timeframe for that to occur;
- e. The time required is likely to be at the "upper end of the timeframe scale".

[12] Many of the Māori participants made additional observations regarding the need for a hearing, a site visit and pre-hearing engagement with the expert panel in accordance with tikanga (important both procedurally and substantively), the need to consider Treaty settlements (including the fisheries settlement) and their relevance, as well as outstanding MACA claims and other customary interests. Some of these participants expressed the view that an appropriate decision timeframe might be in the region of six months or 130 working days.

[13] I found the memoranda filed by the EPA to be particularly helpful in summarising the recent procedural background to this application.³

- a. Following an earlier (2013) application under the EEZ Act that was declined, a second application was lodged in 2016. Approvals were granted in August 2017 after a publicly notified process.
- b. Following various appeals (to the High Court, Court of Appeal and the Supreme Court), the Supreme Court in September 2021 made findings as to various errors of law and referred it back to the EPA for reconsideration.
- c. The EPA appointed a new decision-making committee (DMC) for that purpose in December 2022⁴.
- d. A range of procedural steps followed. The Applicant provided further information to the DMC in May 2023, and the DMC then directed expert caucusing and set hearing dates (which I understand comprised three sets

of three days over three weeks). Expert caucusing took place in February 2024 for a range of environmental matters, and Stage 1 of the hearing took place on 13-15 March 2024 in Hāwera, focusing on environmental matters.

- e. Following Stage 1 of the hearing, the DMC issued a number of Minutes providing directions to parties in preparation for the next stage of the hearing. For example, Minute 20 dated 21 March 2024 identified a range of actions for the parties, including as to the filing of an agreed statement of issues, seeking confirmation as to the overall description of the project and whether it remains the same since the 2017 decision, asking for clarification and potential enhancement of various conditions to reflect international best practice and seeking an updated assessment of economic benefits.

[14] On 28 March 2024, the Applicant withdrew the application. The balance of the reconsideration hearing did not proceed, and, presumably, none of the directions recorded in the DMC's Minutes were complied with.

[15] It is not clear to me what further work the Applicant has undertaken since March 2024 to address any of the matters raised by the DMC, by the other interested parties prior to or at the initial reconsideration hearing session, or to address the matters identified as flaws or information gaps in the Supreme Court decision. When I posed that question to the Applicant team at the conference, I was told that in preparing the current application, the Applicant's team was cognisant of the matters canvassed at the March 2024 hearing and that they have all been addressed.

[16] Having undertaken a high-level review of the application material, those matters remain unclear to me. Almost all of the technical appendices are dated 2015 and were obviously prepared to support the 2016 application. Only a handful of those reports were updated in 2023 or 2024 prior to the reconsideration (eg in respect of marine mammals and seabirds in particular) or were the subject of evidence filed for the reconsideration hearing. The Cultural Values Assessment report, prepared by an independent consultant in 2017, was not updated despite what must have been new information as to the Māori concerns provided as part of the reconsideration process. The summary of consultation provided at Section 7 of the current application appears to be unchanged since 2016.

Directions

[17] The assessment of, and decisions on, the approvals sought in the application are not mere formalities under the Act.

[18] As to the timeframe for a decision, section 79 is clear: the timeframe must be appropriate having regard to the scale, nature and complexity of the approvals sought in, and any other matters raised by, the substantive application (section 79(b)) and secondly, must be set after having consulted with the relevant administering agencies (section 79(2)(c)).

[19] The expert panel will need to form its own view on the principal issues in contention (section 87) and must regulate their procedures as they think appropriate and in a manner that promotes the just and timely determination of the approvals sought (Schedule 3, clause 10). The panel's ability to do so should not, however, be undermined by a timeframe that cannot be amended and fails to take into consideration the complexity of the matters they are being asked to determine.

[20] It is not appropriate to fix the decision timeframe for the expert panel until I have a clearer picture of the technical and evidential matters likely to be in dispute and the extent to which issues identified as part of the reconsideration prior to March 2024 have been addressed by the Applicant in the current application. These matters are relevant to the consideration of complexity which informs my decision on timeframe. I am also conscious that, prior to the appointment of the expert panel and the exercise they must undertake to determine those parties who should be invited to comment, I do not have the full range of views as to disputed matters available to me.

[21] For that reason, I am directing the Applicant in the terms set out below to provide a memorandum that indicates which of the matters identified as being in contention in the reconsideration, or raised by the DMC in various Minutes issued

in March 2024, have been subsequently addressed as part of this application, including the identification of any corresponding amendments or updates to information lodged.

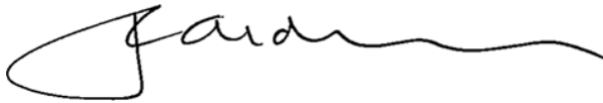
[22] Further, the Applicant is invited to propose a more realistic decision timeframe, having regard to the range of views expressed at the conference, and to propose specific mechanisms for the efficient discussion and potential resolution of issues before the expert panel.

[23] I direct the Applicant to provide:

- a. a memorandum that identifies clearly which sections of the application documentation, including technical reports and conditions, have been substantively updated:
 - i. in response to the findings of the Supreme Court in 2021;
 - ii. in response to any of the issues that were in contention during the reconsideration or were identified by the DMC as requiring further information prior to withdrawal of the application;
 - iii. since the 2016 application was withdrawn in March 2024;
- b. a table indicating by report and section reference where those updates or amendments have principally been made;
- c. a list of issues that the Applicant expects will be in contention, having regard to the application history of the project, the parties who have been involved in earlier processes and hearings, and the issues they have previously identified;
- d. an updated draft decision timeframe, including provision for mechanisms

that might be used to enable the expert panel to efficiently interrogate disputed issues and evidence, and to allow for the application of tikanga.

[24] This information should be provided to the EPA no later than **Monday 4 August 2025**.

A handwritten signature in black ink, appearing to read 'J. Caldwell', written over a light blue horizontal line.

Jennifer Caldwell
Associate Panel Convener