BEFORE THE TARANAKI VTM PROJECT EXPERT PANEL **FTAA-2504-1048**

UNDER THE	Fast-track approvals Act 2024
IN THE MATTER OF	an application by the Trans-Tasman Resources Limited under the FTAA for marine consents

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SUBMISSIONS OF COUNSEL FOR

KANIHI UMUTAHI ME ĒTEHI ATU HAPŪ AND

ŌKAHU INUAWAI ME ĒTEHI ATU HAPŪ O NGĀRUAHINE

Dated this 14th day of November 2025

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INTRODUCTION

1. These submissions are made on behalf of Kanihi Umutahi me ētehi atu hapū and Ōkahu Inuawai me ētehi atu hapū of the iwi Ngāruahine (Kanihi and Ōkahu) in respect of the application by Trans-Tasman Resources Limited for a marine consent under the Fast-track Approvals Act 2024 (FTAA).

2. As well as being local hapū, Kanihi and Ōkahu are also Applicants under the Marine and Coastal Area (Takutai Moana) Act 2011. The intent of this submission is to address a few of the questions asked by the panel. There has been co-ordination between counsel to avoid duplication and also to ensure an efficient use of counsel and panel time and resources.

10. What is the relevance of Treaty principles, cultural values and kaitiakitanga to the Panel's consideration, and where do they fit within the assessment framework? In particular, what is the correct legal test to distinguish an effect on an "existing interest" (as defined and used in the EEZ Act) from an effect on an "obligation arising under a Treaty settlement" (FTAA s 7(1)(a))?

3. Treaty principles are directly relevant where the FTAA expressly incorporates them. Treaty considerations enter the Panel's assessment through:
   (a) an obligation to "act in a manner that is consistent with the obligations arising under existing Treaty settlements" (FTAA s 7(1)(a);
   (b) EEZ Act provisions incorporated through FTAA Sch 10, including:
      i. existing interests (EEZ Act s 4 and s 59(2)(a)(i–iii));
      ii. cultural interests and Māori relationships with the marine environment as recognised existing interests.
   (c) Planning instruments that embed Treaty principles and cultural values, for example NZCPS policies.

4. Cultural values and kaitiakitanga enter through multiple statutory gateways. Tikanga, kaitiakitanga, mana moana, and cultural relationships are engaged through:
   (a) existing interests (EEZ Act s 59(2)(a));
   (b) environmental effects (EEZ Act s 59(2)(a));
   (c) relevant planning instruments (EEZ Act s 59(2)(m)); and
   (d) Treaty settlement obligations (FTAA s 7(1)(a)).

5. Cultural values, tikanga and kaitiakitanga remain central through existing interests, environmental effects and planning instruments.

6. Treaty settlement obligations must not be conflated with existing interests. They are separate. Settlement obligations are interpreted textually while Māori interests are identified factually. Effects are evaluated distinctly and final judgment integrates both.

11. What, if any, is the significance of the High Court's judgment in *Te Ohu Kaimoana Trustee Ltd v Attorney-General* [2025] NZHC 657?

7. Although the judgment concerns a different statutory context (the Crown's fisheries settlement obligations), it has direct interpretive and analytical relevance to the Panel's task under the FTAA, particularly FTAA s 7(1)(a) and questions about Treaty settlement obligations, tikanga, and Crown decision-making duties.

8. The High Court judgment is significant because it:
   (a) Reinforces that such obligations must be expressly recognised in the decision and cannot be collapsed into general Treaty principles.
   (b) Positions tikanga and cultural values as substantively important, but conceptually separate from settlement obligations

12. (a) Are Iwi Environmental Management Plans relevant considerations? (b) If so, how should they be taken into account?

9. Yes, they are relevant as evidence of existing Māori interests, explanations of cultural values and kaitiakitanga, and interpretive tools for planning instruments.

10. They should they be taken into account by recognising them as authoritative Māori evidence, using them to identify and assess effects on existing interests, using them to interpret planning instruments that reference or incorporate tangata whenua values.

11. Under the FTAA, Iwi Environmental Management Plans (also called iwi management plans, IMPs, or IEMPs) are not expressly listed as mandatory considerations. However, they enter the Panel's assessment through the EEZ Act provisions imported into the FTAA (primarily through Sch 10).

12. IEMPs are relevant through "existing interests" (EEZ Act s 59(2)(a)). IEMPs are strong evidence of:
    i. cultural values,
    ii. tikanga-based relationships with the marine environment,
    iii. kaitiakitanga,
    iv. concerns about cumulative effects,
    v. spatial areas of significance.

13. The Court of Appeal in *Trans-Tasman Resources Ltd* accepted that iwi-authored documents can be probative evidence of Māori relationships with the marine environment and their vulnerability to effects.

14. IEMPs are relevant through "any other applicable law" (EEZ Act s 59(2)(h)). IEMPs are recognised documents under the RMA (s 66(2A), s 74(2A)). While the RMA isn't directly applied here, the EEZ Act requires the Panel to consider other applicable law.

15. An IEMP indirectly informs the Panel through it's influence on regional coastal plans, or the NZCPS implementation.

16. IEMPs are relevant through planning instruments (EEZ Act s 59(2)(f)), such as the NZCPS or RPS/RCEP provisions may reference or rely on iwi plans. Thus, while IEMPs are not planning instruments in themselves, they can help interpret the content and intent of the instruments the Panel must consider.

17. The Panel should take them into account as evidential documents confirming and explaining Māori interests, cultural effects, and planning context.

18. The panel can use IEMPs to identify and describe existing interests. IEMPs often articulate:
    (a) rohe moana boundaries,
    (b) areas of significance,
    (c) harvesting and customary practices,
    (d) mauri considerations,
    (e) kaitiakitanga obligations,
    (f) cultural risk thresholds.

19. The Panel should treat these as primary sources of Māori knowledge. This aligns with EEZ Act s 59(2)(a)(i) and the principles from *Trans Tasman Resources Ltd* (CA) requiring meaningful engagement with Māori evidence.

20. Additionally, the panel can use IEMPs to evaluate the magnitude and nature of effects. IEMPs help the Panel understand:
    (a) what constitutes an adverse cultural effect,
    (b) the types of effects Māori consider significant,
    (c) Māori perspectives on cumulative effects,
    (d) thresholds or triggers for unacceptable impacts.

21. The panel can also use IEMPs to interpret relevant planning instruments

13. When considering national or regional planning instruments prepared under the RMA under s 9(2)(h) EEZ Act, to what extent, if any, should the Panel be guided by the Supreme Court's decision in *Royal Forest & Bird Protection Society v New Zealand Transport Agency* [2024] NZSC 26?

22. The Panel should be guided by the Supreme Court's decision in *Forest & Bird* when considering national or regional planning instruments under s 9(2)(h) EEZ Act. The decision is relevant for how to interpret and apply strong directive policies in planning instruments.

23. Some of the key holdings (summarised) are:
    (a) The case concerned the Auckland East West Link ("EWL") in a Significant Ecological Area in the coastal environment, where the "avoid adverse effects" policies in the RMA context (the New Zealand Coastal Policy Statement 2010 (NZCPS) Policy 11) were engaged.
    (b) The Court emphasised that where a policy says "avoid adverse effects" on indigenous biodiversity, that is a strong directive — "avoid means avoid" (though qualified).
    (c) The Court rejected the Board of Inquiry's use of an "overall judgement" approach that simply balanced competing objectives/policies without giving proper effect to the strong directive.
    (d) It confirmed that in cases of significant infrastructure in highly sensitive environments, the applicant must establish, among other things:
        i. the necessity of the infrastructure (i.e., no practicable alternative);
        ii. that uncompensated adverse effects are remedied or mitigated to a standard proportionate to the sensitivity of environment;

iii. that the benefits plainly justify the environmental cost.

(e) Offsets/compensation cannot simply rubber-stamp an approval where the policy mandatory "avoid" directive is engaged — one must assess whether such measures satisfy the directive in context.

24. The Court reaffirmed that when high-order planning instruments include strong directive text (for example "avoid"), decision-makers cannot treat those as mere guidelines to be weighed lightly. The directive must be given effect to.

25. Given the Panel is considering an application under the FTAA and must take into account, under the EEZ Act as incorporated (see FTAA Sch 10, s 6(1)(d)), any other matter the marine consent authority considers relevant and reasonably necessary to determine the application (see EEZ s59(2)(m), the *Forest & Bird* decision provides a strong interpretive lens for how to treat planning instruments:

(a) It emphasises how to interpret planning-instruments with strong directive content (for example avoidance, protection of biodiversity) rather than treating them as soft aspirations.

(b) It alerts decision-makers to the importance of reading the instrument "in the round" (not cherry-picking weaker policies) but also giving proper weight to the directive ones.

(c) It highlights that when an activity is in a high-sensitivity environment, decision-makers should expect a higher threshold of justification, stronger mitigation/remedy/offset, and greater scrutiny.

(d) It shows that decision-makers must reason explicitly how they have given effect to the directive policies: for example did they have regard to the "avoid" language? Did they assess necessity or alternatives? Did they assess mitigation/offset proportional to environmental sensitivity?

(e) It offers precedent that the planning instrument provisions have real teeth not mere "factors" to be weighed in a broad balancing exercise.

26. The Panel should consider Māori and Treaty interests in parallel and ensure the planning instrument interpretation is consistent with those interests.

14. (a) Must "habitats of particular significance to fisheries management" be formally identified to be relevant under s 59(2)(h) EEZ Act? (b) If so, what form must such identification take?

27. No. A habitat does not need to be formally identified in any statutory instrument to be relevant under s 59(2)(h). The provision applies whenever the evidence before the decision-maker demonstrates that such a habitat exists and may be affected.

28. If identification exists, it may take many forms. It does not require designation in RMA instruments, fisheries plans, or regulations. Identification can arise from scientific evidence, commercial fisheries information, tangata whenua evidence through customary knowledge, or agency assessments.

29. Section 59(2)(h) requires the decision-maker to "have regard to": "the habitat of particular significance to fisheries management." It does not refer to habitats "formally identified," "listed," or "designated." It does not cross-reference any statutory identification mechanism. It forms part of a mandatory list of environmental considerations the decision-maker must take into account.

30. This significantly differs from other environmental statutes where formal identification is required (outstanding natural landscapes under the RMA).

31. While there is no direct New Zealand authority squarely on s 59(2)(h), analogous principles come from EEZ Act case law:

    (a) *Trans-Tasman Resources* (HC and CA) evidentiary identification is enough. IN this case the courts criticised the EPA and DMC for failing to engage with scientific evidence relating to benthic habitats and fisheries interactions. The decisions confirm:

        i. The EEZ Act's mandatory considerations require active engagement.

        ii. Decision-makers must evaluate relevant scientific evidence, even if there is no formal designation.

    (b) Marine Mammal Sanctuary / Maui dolphin cases: Courts have repeatedly held that absence of a formal identification process does not excuse overlooking ecological values where reliable evidence demonstrates their presence.

    (c) Fisheries Act jurisprudence: Under the Fisheries Act, areas "of significance to fisheries management" are often recognised through scientific stock assessments, spawning maps, and habitat studies, not formal designation. Courts accept informal identification as sufficient.

32. Taken together, judicial reasoning favours a functional, evidence-based approach, not a formalistic one.

33. The EEZ Act purpose in s10 is to protect the environment from "the effects of activities." If "habitats of particular significance" required formal identification then vast areas of the EEZ, where such habitats exist but are not mapped, would receive no protection. This would undermine ecological protection and the precautionary approach in s61. Parliament cannot have intended that.

34. A habitat does not need to be formally identified. A habitat is relevant if:

(a) Scientific studies demonstrate particular fisheries functions (for example spawning, juvenile settlement, primary trophic habitat).
(b) Iwi or customary knowledge evidences significant fishery dependence.
(c) Fisheries New Zealand, MPI, NIWA, or scientific experts describe its role.
(d) Commercial fishers provide operational evidence (known breeding grounds or sensitive benthic zones).

35. The threshold is evidential, not formal.

36. If identification does exist, it can take varied forms. There is no statutory requirement for a prescribed format. It may include:
(a) NIWA or academic research papers.
(b) FNZ stock assessment reports or spatial habitat models.
(c) Iwi maps or mātauranga Māori documenting important customary fishing areas.
(d) Regionally produced RMA maps that incidentally identify significant habitats.
(e) Industry-generated evidence (for example fishing logbooks or spatial effort patterns).

37. Any of these satisfy the requirement, none need to be "official" or "designated."

Practical implications for the Panel

38. The Panel must consider any evidence suggesting such habitats exist even if not mapped or formalised.

39. The Panel must apply the precautionary approach (s 61). If uncertainty exists around whether important fisheries habitats may

be present, lack of full scientific certainty cannot be a reason to ignore or down-weight them.

40. Habitat functions, not "labelled areas", are what matter. The Panel should assess:
    (a) biological importance to fish stocks or ecosystems
    (b) vulnerability to seabed disturbance
    (c) recovery likelihood

41. The Panel must consider both customary commercial fisheries and customary fisheries values including Māori non-commercial fisheries, which are relevant under the Treaty principles and EEZ framework.

21. (b) If adverse effects on fish stocks or aquaculture stocks are found to exist, would granting the application be inconsistent with obligations under the Māori Fisheries Settlement or the Māori Commercial Aquaculture Claims Settlement Act 2004?

42. Granting the application may be inconsistent with settlement obligations if the adverse effects are material, causally linked to the proposed activity, and impact Māori settlement assets or settlement-derived rights in a way that undermines the purpose or integrity of the settlement.

Dated this 14th day of November 2025

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