

**Document 2**

**From:** Abby Cheeseman <Abby.Cheeseman@mbie.govt.nz>  
**Sent:** Thursday, 6 June 2024 10:05 pm  
**To:** David Tapsell [EXTERNAL] (DT Law Office)  
**Cc:** Maggie Vickers; Madeleine Berry; Genevieve Duval; Caitlin Tapa-Hirini; Sarah Langstone  
**Subject:** Conflicts of Interest - decisions ahead of applications being loaded onto Diligent

Hi David

Just working through the list of applications for review ahead of next weeks hui and matching with conflicts. Below are the mining/minerals applications, noting there is only two disclosed conflicts.

Comments on conflicts, and a proposal for how this could be dealt with (highlighted) is below, please let me know if you are comfortable with this approach.


Thanks – Abby

FTA008	Trans-Tasman Resources Limited (TTR)	Taranaki VTM Project	<p><b>David T and David H both conflicted.</b></p> <p><b>David T:</b> <i>I was the legal advisor for Ngati Ruanui and Nga Rauru in their historical Treaty Settlement negotiations with the Crown (20 years ago). I was also a director on their post Settlement commercial subsidiary companies for approximately a year after Settlement. During that time I was never involved in anything to do with TTR.</i></p> <p><i>Suggest this is disclosed, but David can still see the application and vote.</i></p> <p><b>David H:</b> <i>I have been closely involved in advising Taranaki Offshore Partnership on its proposed offshore wind farm development for the last 2 years - including participation in meetings with councils and relevant iwi. In practical terms, TTR and TOP have directly competing interests in relation to use of seabed in the South Taranaki Bight. Because my involvement with TOP has been close and very recent (up until 30 April 2024), I believe that I should recuse myself from decision making in relation to this application.</i></p> <p><i>Suggest this is disclosed, and David does not see the application or vote.</i></p>
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Out of scope

Out of scope

Out of scope



**Abby Cheeseman**  
Policy Director

Ministry of Business, Innovation & Employment (MBIE)

Email: [abby.cheeseman@mbie.govt.nz](mailto:abby.cheeseman@mbie.govt.nz) | Mobile: +64 21 823316  
25 The Terrace, Wellington 6011

NZBN 9429000106078



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HIKINA WHAKATUTUKI



New Zealand Government

## Document 4

**From:** Sarah Langstone <Sarah.Langstone@mbie.govt.nz>  
**Sent:** Wednesday, 24 July 2024 1:36 pm  
**To:** Rosie Mercer; Mark Davey; 9(2)(a) David Tapsell [EXTERNAL] (DT Law Office);  
Vaughan  
**Cc:** Abby Cheeseman; Genevieve Duval; Caitlin Tapa-Hirini; Max Gander-Cooper  
**Subject:** Environmental Consents Information [UNCLASSIFIED]  
**Attachments:** MfE previous consents.docx

Note: this attachment has been provided as an excerpt as per section 16(e) of the Act

As discussed yesterday

Ngā mihi,  
Sarah Langstone [[she/her](#)]

Policy Advisor | Climate and Economic Policy Team  
Te Waka Pūtahitanga – Strategic Policy & Programmes  
Ministry of Business, Innovation & Employment (MBIE)  
[Sarah.langstone@mbie.govt.nz](mailto:Sarah.langstone@mbie.govt.nz) | +6449010975  
Auckland Policy Office, 167b Victoria St West, Auckland, 1010



	<b>Applicant</b>	<b>Project Name</b>	<b>Previous Consent</b>	<b>Consent Type</b>
Out of scope				
FTA008	Trans-Tasman Resources Limited (TTR)	Taranaki VTM Project	Yes	Consent obtained under EEZA, quashed on appeal to the Supreme Court

Out of scope



Document 5

**From:** Alan Eggers 9(2)(a)  
**Sent:** Thursday, 8 August 2024 10:08 am  
**To:** Listed Projects  
**Cc:** John; Dennis Karp; Haydn Lynch  
**Subject:** Re: [COMMERCIAL]Public release of Listed Projects application- 008  
**Attachments:** 8.01\_response-ANON-URZ4-5FA8-9\_Redacted.pdf

Note: the attachment is refused under section 18(d) of the Act as it is already publicly available

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**Ms Stephenie Frame**  
**Manager Fast Track Implementation**  
**Ministry for the Environment**

[Public release of Listed Projects application - 008](#)  
[Response ID ANON-URZ4-5FA8-9](#)

Thank you for your email 7 August 2024 and update about the next steps for applications, and advice of the proactive release of application documents.

With regard to your intention to proactively release TTR's application documentation on the Ministry for the Environment website please find attached the redacted TTR Fast Track Application file '8.01\_response-ANON-URZ4-5FA8-9\_Redacted'.

We have reviewed this file and redacted information that we do not wish to be proactively released. The information redacted is the Submitter's contact persons phone number and the address and details, including all contact details for the Address for Service organisation.

The reasons are privacy as these are private contact details of the individual and organisation for service that we wish not to be released.

Otherwise we have no issue with the pro-active release of the TTR Application ID ANON-URZ4-5FA8-9 documents as sent being released on the MfE website as proposed.

**Best Regards**  
**Alan J Eggers**



**Alan J Eggers**  
Executive Chairman  
**TTR GLOBAL LIMITED**  
M: +61 4 1111 2101  
E: 9(2)(a)  
W: [www.ttrl.co.nz](http://www.ttrl.co.nz)

On 7 Aug 2024, at 9:54 AM, Listed Projects <ListedProjects@mfe.govt.nz> wrote:

Dear Alan

Thank you for your participation in the Fast-track Approvals Bill (the Bill) Listed Project process to date. The purpose of this email is to provide you with an update on application progress, and to advise you about next steps for applications, and for the proactive release of application documents.

### **Assessment of applications**

As you may be aware, an Advisory Group has been reviewing all the project applications with a view to making recommendations to the delegated Ministers: Hons Bishop, Minister for Infrastructure; Hon Brown, Minister of Transport; and Hon Jones, Minister for Regional Development on which projects should be included in each of Schedule 2, Part A and Part B of the Bill.

As this work nears completion, it is timely to provide applicants with an update on next steps: Once the Advisory Group has provided their recommendation report to Ministers in early August, delegated Ministers will then commence their own decision-making process on the recommendations. Cabinet will make final decisions on Schedules 2A and 2B.

In the interim, we will be undertaking confidential consultation and engagement including as required with relevant Treaty settlement entities, and also with relevant Government agencies.

You will be advised on whether your project will be proposed to be listed in Schedule 2 once final decisions have been made on the Bill.

### **Proactive release of documents**

We last contacted you about proactive release on 25 June 2024 to assist with decision-making in response to requests under the Official Information Act 1982 (OIA). We did not release any applicant or project information at that time.

To align with good Government practice, and as previously advised (including on the Fast-track Listed project application form) we intend to proactively release your application documentation on the Ministry for the Environment website.

Please find linked/attached the application documents we received from you. **Can you review this information and either add strike-out or add commentary notes to information that you do not wish to be proactively released including any reasons for this request? This will need to be returned to us within 5 working days of receiving this request.** Please note our team will apply the redactions in accordance with Government guidelines for proactive release, which may result in additional redactions for consistency (ie, such as private contact details). Please be aware that we are required to assess all OIA requests against the statutory criteria, which may result in the release of material which had previously been marked for redaction under proactive release. (That is, information not proactively released at this point can still be requested under the OIA in the future).

We expect the proactively released information to be published here [Fast-track approvals proposed process | Ministry for the Environment](#) between September and early November 2024.

If you have any questions about the processes outlined above, please contact [ListedProjects@mfe.govt.nz](mailto:ListedProjects@mfe.govt.nz) in the first instance.

Yours sincerely

Stephanie Frame

Manager, Fast-track Implementation

<image001.jpg>

<image002.png><image003.png><image004.png><image005.png><image006.png>

<image007.jpg>

<8.03\_Project Grid References.pdf><8.04\_TTRL Tokatumoana Walden evidence 16 December 2016.pdf><8.05\_Effects Assessment, August 2016.pdf><8.01\_response-ANON-URZ4-5FA8-9.pdf><8.02\_Project Location figure.pdf>

**From:** RM Treaty Settlement <RMTreatySettlement@mfe.govt.nz>  
**Sent:** Tuesday, 13 August 2024 12:30 pm  
**To:** Naomi Puketapu-Waite  
**Cc:** Ben White; Michal Akurangi; RM Treaty Settlement  
**Subject:** RE: **CLASSIFICATION** Te Korowai o Ngāruahine Trust - Fast Track Approvals Bill - Listed Projects

Ngā mihi nui e Naomi,

Thank you for signing and returning the confidentiality undertaking.

We are contacting you to provide opportunity to comment on the potential for projects to be listed in schedule 2 of the Fast Track Approvals Bill (the Bill).

**Background on the Fast Track Approvals Bill**

The Bill is currently before Select Committee. During this time, the Government has been running a parallel process to identify projects to be listed in schedule 2 of the Bill. This process has been led by an independent advisory panel that have reviewed and made recommendations to Ministers on which projects to list. You can find more information on the advisory group here: <https://www.beehive.govt.nz/release/new-fast-track-projects-advisory-group-named>.

Once the Bill is passed, projects listed in schedule 2A can apply directly to the EPA to be assessed under the fast-track approvals process by a Panel. Projects listed in schedule 2B will be considered by Ministers under the referral process outlined in the Bill.

**Project specific consultation**

Ministers are currently considering projects for schedule 2A, in an area where we have identified you as having a potential interest. We would therefore like to extend an opportunity to provide comment on the potential impact of these projects being listed in schedule 2A on your interests, before Ministers make final decisions on projects to include on the list.

**We ask that you please provide any comment or information you would like to be considered by Thursday 15 August.**

Please find details of the project below for your consideration. This is not a full list of projects being considered in your region. Please note this information is commercially sensitive and is being shared with you in confidence, consistent with the confidentiality undertaking you signed earlier in the year.

FTA Number	Project title	Submitter	Location	Project description
FTA008	Taranaki VTM Project	Trans-Tasman Resources Limited (TTR)	Taranaki	The Taranaki VTM project is to extract up to 50 million tonnes (Mt) of seabed material per year from the Project Area. The project proposes to process on board a mining vessel to recover 5Mt per year of naturally occurring vanadium rich titanomagnetite (VTM) concentrates. The process returns the remainder of the de-ored material (approximately 45Mt pa) to the seabed.

Please note this information has only been sent to people who have signed a confidentiality undertaking with the Ministry for the Environment. If other people in your entity would like to review this information, please provide the names, email addresses and titles for each individual.

Kia ora rā  
RM Treaty settlement team

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**From:** Naomi Puketapu-Waite 9(2)(a)  
**Sent:** Monday, August 12, 2024 4:12 PM

To: RM Treaty Settlement <RMTreatySettlement@mfe.govt.nz>  
Subject: Re: CLASSIFICATION Te Korowai o Ngāruahine Trust - Fast Track Approvals Bill - Listed Projects

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Kia ora ano,

Anei taku tuhinga kua hainatia.

Ngā mihi,

Naomi

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From: RM Treaty Settlement <RMTreatySettlement@mfe.govt.nz>  
Sent: 12 August 2024 14:25  
To: Naomi Puketapu-Waite 9(2)(a); Te Aorangi Dillon 9(2)(a); Pouwhakarae - Te Korowai o Ngaruahine 9(2)(a)  
Cc: Ben White <Ben.White@mfe.govt.nz>; Michal Akurangi <Michal.Akurangi@mfe.govt.nz>; Naedene Stewart <Naedene.Stewart@mfe.govt.nz>; RM Treaty Settlement <RMTreatySettlement@mfe.govt.nz>  
Subject: RE: CLASSIFICATION Te Korowai o Ngāruahine Trust - Fast Track Approvals Bill - Listed Projects

Kia ora Naomi,

Attached are the confidentiality undertakings for you, Emma and Te Aorangi to sign.

We will send you the details of the projects once we have received a signed copy of the confidentiality undertaking.

Ngā manaakitanga,  
RM Treaty settlement team

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From: Naomi Puketapu-Waite 9(2)(a)  
Sent: Monday, August 12, 2024 11:56 AM  
To: RM Treaty Settlement <RMTreatySettlement@mfe.govt.nz>; Te Aorangi Dillon 9(2)(a); Pouwhakarae - Te Korowai o Ngaruahine 9(2)(a)  
Cc: Ben White <Ben.White@mfe.govt.nz>; Michal Akurangi <Michal.Akurangi@mfe.govt.nz>; Naedene Stewart <Naedene.Stewart@mfe.govt.nz>  
Subject: Re: CLASSIFICATION Te Korowai o Ngāruahine Trust - Fast Track Approvals Bill - Listed Projects

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Tēnā koutou,

Āe, tukuna ngā tuhinga ki:

Emma Gardiner, 9(2)(a) Pouwhakarae

Te Aorangi Dillon, 9(2)(a) Tumu Whakarae

Naomi Puketapu-Waite, 9(2)(a) Pouuruhi Taiao

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**From:** RM Treaty Settlement <[RMTreatySettlement@mfe.govt.nz](mailto:RMTreatySettlement@mfe.govt.nz)>

**Sent:** 12 August 2024 10:09

**To:** Te Aorangi Dillon <[redacted]>; Naomi Puketapu-Waite <[redacted]>; Pouwhakarae - Te Korowai o Ngaruahine <[redacted]>

**Cc:** Ben White <[Ben.White@mfe.govt.nz](mailto:Ben.White@mfe.govt.nz)>; Michal Akurangi <[Michal.Akurangi@mfe.govt.nz](mailto:Michal.Akurangi@mfe.govt.nz)>; Naedene Stewart <[Naedene.Stewart@mfe.govt.nz](mailto:Naedene.Stewart@mfe.govt.nz)>; RM Treaty Settlement <[RMTreatySettlement@mfe.govt.nz](mailto:RMTreatySettlement@mfe.govt.nz)>

**Subject:** [redacted] Te Korowai o Ngāruahine Trust - Fast Track Approvals Bill - Listed Projects

Tēnā koutou,

We are contacting you to provide opportunity to comment on the potential for projects to be listed in schedule 2 of the Fast Track Approvals Bill (the Bill).

#### **Background on the Fast Track Approvals Bill**

The Bill is currently before Select Committee. During this time, the Government has been running a parallel process to identify projects to be listed in schedule 2 of the Bill. This process has been led by an independent advisory panel that have reviewed and made recommendations to Ministers on which projects to list. You can find more information on the advisory group here: <https://www.beehive.govt.nz/release/new-fast-track-projects-advisory-group-named>.

Once the Bill is passed, projects listed in schedule 2A can apply directly to the EPA to be assessed under the fast-track approvals process by a Panel. Projects listed in schedule 2B will be considered by Ministers under the referral process outlined in the Bill.

#### **Project specific consultation**

Ministers are currently considering projects for schedule 2A, in an area where we have identified you as having a potential interest. We would therefore like to extend an opportunity to provide comment on the potential impact of these projects being listed in schedule 2A on your interests, before Ministers make final decisions on projects to include on the list.

**We ask that you please provide any comment or information you would like to be considered by Thursday 15 August.**

Due to the sensitive nature of this information, including commercial sensitivities, a confidentiality undertaking will need to be in place before project information can be shared. If you are interested in receiving details of the projects identified for the purpose of providing comment, we ask that you please provide the names, email addresses and titles for each individual who wish to receive a Non-Disclosure Agreement for signing. Note that an undertaking will need to be in place for each person who will be reviewing this information.

If you have any queries please contact Ben White directly.

Ngā mihi nui,  
RM Treaty settlement team

**From:** Graham Young [EXTERNAL] (RUANUI) <graham.young@ruanui.co.nz>  
**Sent:** Wednesday, 14 August 2024 10:40 am  
**To:** Naedene Stewart; Nicola Coogan  
**Cc:** Ben White; Michal Akurangi; RM Treaty Settlement  
**Subject:** classification Response Te Rūnanga o Ngāti Ruanui - Fast Track Approvals Bill - Listed Projects  
**Attachments:** Fast-Track Approvals Bill submission Final (1).pdf

**MFE CYBER SECURITY WARNING**

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Kia ora Naedene,

Ngati Ruanui acknowledges your email of Monday the 12 of August 2024, where you have sought our comments on a possible project for inclusion in schedule 2A of the Fast Track Approvals Bill.

Ngati Ruanui wishes to record its objection to the short notice, of less than 4 working days, in which to provide a response. This is unacceptable to us given the importance and potential/ actual magnitude that the Taranaki VTM Project could have on Ngati Ruanui.

In response and within the timeframe given we provide the following comments on ( FTA008) Taranaki VTM Project (Trans-Tasman Resources Limited (TTR)):

1. The 2017 Decision-Making Committee (DMC) of the EPA is the only body to have looked, in detail, at evidence of the effects the proposed TTR activity would have on the environment. The DMC concluded, among other things, that the activity would have significant adverse effects on the environment in relation to the Pātea Shoals and other environmentally sensitive areas and found that, “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 2-3km of the project area and moderate effects up to 15km from the mining activity.” These are the effects that the DMC considered would occur, even with strict conditions imposed on the activity. Ngāti Ruanui does not believe that it is appropriate for activities that will have significant, and even “severe” adverse effects on the environment to be permitted, and certainly not for such activities to progress through a fast-track process that provides virtually no scope for such effects to be robustly considered and tested by experts.
2. Further, the Supreme Court found that allowing such activity would be contrary to the purpose of the Exclusive Economic Zone (Environmental Effects) Act 2012 (EEZ Act) ,which includes a requirement to protect the environment from material harm from discharges/pollution. That requirement was not included in the EEZ Act at the whim of a Parliament made up of anti-growth, environmental fundamentalists. Rather, it was inserted into the Act in 2015 under the Fifth National Government, in order to give effect to New Zealand’s international obligations. Those obligations are found in the United Nations Convention on the Law of the Sea and London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. Allowing the TTR proposal to proceed will be inconsistent with those international obligations. Allowing the proposal to proceed through the fast-track process, in particular, will be in breach of Article 13 of the more recent New Zealand-

European Union Free Trade Agreement. Our submission to the Select Committee addresses these issues in more detail and a copy is attached.

3. Finally, allowing the TTR proposal to proceed in this matter will breach the tino rangatiratanga of Ngāti Ruanui guaranteed by Te Tiriti o Waitangi and rights secured under the Māori Fisheries Settlement 2004. More to the point, such an action will be in direct contravention of the commitment the Crown made to Ngāti Ruanui in connection of the settlement of the historical grievances of the iwi: “Na runga i enei ahuatanga, e hiahia ana te Karauna ki te muru i ona hara, ki te timata i nga mahi whakaora ma te whakataunga. Na konei a te Karauna ka titiro whakamua ki te wa ka whiriwhiria he taura tangata ki a Ngati Ruanui i runga i te whakawhirinaki me te mahi ngatahi.” (Accordingly, the Crown seeks to atone for these wrongs, and to begin the process of healing with the Settlement, and looks forward to building a relationship of mutual trust and co-operation with Ngati Ruanui.)

Ngati Ruanui totally rejects the “Taranaki VTM Project” being listed in the schedule 2 of the Fast Track Approvals Bill. Ngati Ruanui seeks urgent discussion with the RM Treaty Settlement Team of MFE to address this high-risk consenting application further.

Nga mihi

Graham

**Graham Young**  
**Strategy and Policy Team**  
**Te Runanga o Ngati Ruanui Trust**

Ph 06 278 0148 / Fax 06 278 1358  
74 Princes Street / PO Box 594 / Hawera 4640



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**From:** Naedene Stewart <Naedene.Stewart@mfe.govt.nz>  
**Sent:** Monday, August 12, 2024 8:59 AM  
**To:** Graham Young <Graham.Young@ruanui.co.nz>; Nicola Coogan <Nicola.Coogan@ruanui.co.nz>  
**Cc:** Ben White <Ben.White@mfe.govt.nz>; Michal Akurangi <Michal.Akurangi@mfe.govt.nz>; Naedene Stewart <Naedene.Stewart@mfe.govt.nz>; RM Treaty Settlement <RMTreatySettlement@mfe.govt.nz>  
**Subject:** Classification Te Rūnanga o Ngāti Ruanui - Fast Track Approvals Bill - Listed Projects

Tēnā kōrua Graham ko Nicola,

We are contacting you to provide opportunity to comment on the potential for a project to be listed in schedule 2 of the Fast Track Approvals Bill (the Bill).

### Background on the Fast Track Approvals Bill

The Bill is currently before Select Committee. During this time, the Government has been running a parallel process to identify projects to be listed in schedule 2 of the Bill. This process has been led by an independent advisory panel that have reviewed and made recommendations to Ministers on which projects to list. You can find more information on the advisory group here: <https://www.beehive.govt.nz/release/new-fast-track-projects-advisory-group-named>.

Projects listed in schedule 2A of the Bill will be the first to initiate the fast-track approvals process outlined in the Bill, once it has passed into legislation. The granting of consents through the fast-track approvals process differs from the usual consents process. Projects listed in schedule 2B will undergo the referral process outlined in the Bill which will provide a future opportunity to comment.

### Project specific consultation

Ministers are currently considering a project for schedule 2A, in an area where we have identified you as having a potential interest. We would therefore like to extend an opportunity to provide comment on the potential impact of this project being listed in schedule 2A on your interests, before Ministers make final decisions on projects to include on the list.

**We ask that you please provide any comment or information you would like to be considered by Thursday 15 August.**

Please find details of the project below for your consideration. This is not a full list of projects being considered in your region. Please note this information is commercially sensitive and is being shared with you in confidence, consistent with the confidentiality undertaking you signed earlier in the year.

FTA Number	Project title	Submitter	Location	Project description
FTA008	Taranaki VTM Project	Trans-Tasman Resources Limited (TTR)	Taranaki	The Taranaki VTM project is to extract up to 45Mt of seabed material per year from the Project. The Project proposes to process on board a mining vessel to recover 5Mt per year of vanadium rich titanomagnetite (VTM) concentrate and return the remainder of the de-ore material (approximately 40Mt pa) to the seabed.
FTA259	Pohutukawa Place Development – Stages 6-12	Robe & Roche Investments Limited	Taranaki	The project will comprise approximately 1,270m <sup>2</sup> .

Please note this information has only been sent to people who have signed a confidentiality undertaking with the Ministry for the Environment. If other people in your entity would like to review this information, please provide the names, email addresses and titles for each individual.

Ngā mihi nui

RM Treaty settlement team



**SUBMISSION OF TE RŪNANGA O NGĀTI RUANUI TRUST**  
to  
**Environment Select Committee**  
on the  
**Fast-track Approvals Bill**

**Submitter:** Te Rūnanga o Ngāti Ruanui Trust

**Name:** Rachel Rae

**Designation:** Kaiw'aka'aere

**Address:** 74 Princes Street, Te 'Awera

**Telephone:** 06-278 0148

**Facsimile:** 06-278 1358

**Email:** office@ruanui.co.nz

## ***Introduction***

1. Te Rūnanga o Ngāti Ruanui Trust is the mandated voice of the 16 hapū of the Iwi, with more than 9,000 registered descendants. The takiwā of Ngāti Ruanui is bounded by the Whenuakura River in the south, the Waingongoro River in the north, the moana (including the coastal marine area) between the two rivers to the west, and the Matemateonga Ranges to the east.
2. As tangata whenua, Ngāti Ruanui is intimately related to the taiao – whenua, wai māori, moana, takutai moana – in a manner that is expressed through a range of cultural, social, economic and historical associations. We regard land, soil and water as taonga which provide unity and identity to us. These taonga are also a source of sustenance and enjoyment as well as economic development and employment.
3. Ngāti Ruanui is the kaitiaki of these taonga and is acknowledged as having mana whenua in its takiwā through te Tiriti o Waitangi, the Ngāti Ruanui Deed of Settlement 2003 (the Deed) and the Ngāti Ruanui Claims Settlement Act 2003 (the Ruanui Settlement Act).
4. In this submission, we explain how the Bill is inconsistent with:
  - a) New Zealand’s international obligations, including:
    - i. the United Nations Convention on the Law of the Sea (**UNCLOS**);
    - ii. the New Zealand-European Union Free Trade Agreement (**NZ-EU FTA**); and
    - iii. the London Convention London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (**the London Convention**);
  - b) the principles of te Tiriti o Waitangi;
  - c) the Fisheries Settlement; and
  - d) the Aquaculture Settlement.
5. We oppose the Bill proceeding but, if the Bill is to proceed, we recommend that the Exclusive Economic Zone (EEZ) be removed from the scope of the Bill to address the inconsistencies with UNCLOS and the London Convention. We also suggest some other amendments to the Bill.
6. We also adopt the points made by Ngā Iwi o Taranaki in their submission on the Bill.

## ***The EEZ Act and UNCLOS***

7. Section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ Act**) recognises that the Act implements New Zealand’s international obligations regarding environmental protection in the Exclusive Economic Zone (EEZ). It reads:

This Act continues or enables the implementation of New Zealand’s obligations under various international conventions relating to the marine environment, including— (a) the United Nations Convention on the Law of the Sea 1982: (b) the Convention on Biological Diversity 1992: (c) the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL): (d) the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter, 1972 (the London Convention).

8. In its judgment in *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board*, the Supreme Court found that the requirement in s 10(a)(ii) of the EEZ Act to “protect the environment from pollution by regulating or prohibiting the discharge of harmful substances and the dumping or incineration of waste or other matter” established an environmental bottom line of preventing material harm to the environment from discharges.
9. The Supreme Court majority relied on the UNCLOS in support of their approach of an environmental bottom line of preventing material harm.
10. Glazebrook J (with whom Williams J agreed) said that “New Zealand’s international obligations” supported her interpretation of s 10(a)(ii).<sup>1</sup> Her Honour explained:<sup>2</sup>

In accordance with s 11 of the EEZ Act. Article 192 of the United Nations Convention on the Law of the Sea 1982 (LOSC) provides that “States have the obligation to protect and preserve the marine environment”. Article 194 imposes an obligation on States to use the “best practicable means” to “prevent, reduce and control pollution of the marine environment”. It is true that art 193 allows the exploitation of natural resources, but it also provides that this must accord with the duty to protect and preserve the marine environment. I thus see LOSC as being consistent with the bottom line approach of protection from material harm in s 10(1)(b). The same applies to the Convention on Biological Diversity, the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 (MARPOL) and the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (London Convention). ...

11. In justifying her adoption of the material harm bottom line, Winkelmann CJ said that ‘the definition of “pollution of the marine environment” in the United Nations Convention on the Law of the Sea 1982 is also set at the level of what can be described as material harm...’<sup>3</sup> Her Honour quoted the definition of “pollution of the marine environment in art 1(4) of UNCLOS:<sup>4</sup>

... the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such

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<sup>1</sup> *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, [2021] 1 NZLR 801 at [246].

<sup>2</sup> *Ibid*, at [246] fn 398.

<sup>3</sup> *Ibid*, at [308].

<sup>4</sup> *Ibid*.

deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities[.]

12. The Supreme Court said that the requirement of s 61(2) to “favour caution and environmental protection” if “the information available is uncertain or inadequate” was an implementation of the precautionary principle in international environmental law.<sup>5</sup> William Young and Ellen France JJ noted that two of the treaties referred to in s 11, the Convention on Biological Diversity and the London Convention, incorporate the precautionary principle.<sup>6</sup>

### ***Relevant provisions of UNCLOS***

13. Part XII of UNCLOS deals with “Protection and Preservation of the Marine Environment”.
14. The central obligation is set out in art 192: “States have the obligation to protect and preserve the marine environment.”
15. Article 194(1) provides:

States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.
16. Article 194(3) makes clear that “[t]he measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment”, including “pollution from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil”.
17. Article 194(5) states:

The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.
18. Article 195(1) provides that “States shall take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control...”

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<sup>5</sup> Ibid, at [113] per William Young and Ellen France JJ, at [324] per Winkelmann CJ.

<sup>6</sup> Ibid, at [107].

19. Article 206 requires environment impact assessments of activities that may harm the marine environment:

When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment.

20. Article 208 deals with pollution from seabed activities (such as mining) in the EEZ or territorial sea. Articles 208(1)-(3) provide:

1. Coastal States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.
2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.
3. Such laws, regulations and measures shall be no less effective than international rules, standards and recommended practices and procedures.

21. Article 214 provides:

States shall enforce their laws and regulations adopted in accordance with article 208 and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction ...

22. Article 61(2) says:

The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation ...

### ***International jurisprudence***

23. The International Tribunal of the Law of the Sea (ITLOS) considered the obligations on states in relation to seabed mining in its *Seabed Advisory Opinion*.<sup>7</sup> While the *Seabed Advisory Opinion* related to seabed mining in the high seas rather than in the EEZ, the primary obligations regarding environmental protection are applicable in both situations.

24. ITLOS concluded that states' obligations to protect and preserve the marine environment, and to prevent pollution of it, involve a requirement of "due diligence".<sup>8</sup>

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<sup>7</sup> *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion)* [2011] ITLOS Reports 10 (***Seabed Advisory Opinion***).

<sup>8</sup> *Ibid*, at [110].

It characterised this as “an obligation to deploy adequate means, to exercise best possible efforts, to do the utmost, to obtain this result.”<sup>9</sup>

25. ITLOS quoted from the judgment of the International Court of Justice (ICJ) in *Pulp Mills on the River Uruguay* regarding what a due diligence obligation required:<sup>10</sup>

It is an obligation which entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators . . .

26. ITLOS observed that there was a hierarchy of seabed mining-related activities in terms of their risk to the environment, with exploitation (i.e. actual mining) at the top, exploration in the middle and prospecting at the bottom. The due diligence obligation was therefore “more severe” in relation to exploitation.<sup>11</sup>

27. ITLOS stated that the “the precautionary approach is also an integral part of the general obligation of due diligence of sponsoring States”:<sup>12</sup>

... The due diligence obligation of the sponsoring States requires them to take all appropriate measures to prevent damage that might result from the activities of contractors that they sponsor. This obligation applies in situations where scientific evidence concerning the scope and potential negative impact of the activity in question is insufficient but where there are plausible indications of potential risks. A sponsoring State would not meet its obligation of due diligence if it disregarded those risks. Such disregard would amount to a failure to comply with the precautionary approach.

28. ITLOS also identified the precautionary principle as a principle of general (or customary) international law, noting that the ICJ in *Pulp Mills on the River Uruguay* has identified it as relevant to the interpretation of environmental treaties even when they did not expressly refer to it.<sup>13</sup>

29. ITLOS stated that the “the obligation to conduct an environmental impact assessment is a direct obligation under the Convention and a general obligation under customary international law.”<sup>14</sup> Environmental impact assessments were also relevant to the state’s discharge of its due diligence obligations.<sup>15</sup>

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid, at [115], quoting *Pulp Mills on the River Uruguay (Argentina v Uruguay) (Merits)* [2010] ICJ Rep 14 at [197].

<sup>11</sup> Ibid, at [117].

<sup>12</sup> Ibid, at [131].

<sup>13</sup> Ibid, at [135], quoting *Pulp Mills on the River Uruguay*, above n 10, at [164].

<sup>14</sup> Ibid, at [145].

<sup>15</sup> Ibid, at [147], quoting *Pulp Mills on the River Uruguay*, above n 10, at [204].

30. In the *South China Sea Arbitration*,<sup>16</sup> an arbitral tribunal containing several ITLOS judges considered the provisions of Part XII of UNCLOS concerning the protection and preservation of the marine environment.
31. In relation to art 192, the tribunal stated:<sup>17</sup>
- Although phrased in general terms, the Tribunal considers it well established that Article 192 does impose a duty on States Parties, the content of which is informed by the other provisions of Part XII and other applicable rules of international law. This “general obligation” extends both to “protection” of the marine environment from future damage and “preservation” in the sense of maintaining or improving its present condition. Article 192 thus entails the positive obligation to take active measures to protect and preserve the marine environment, and by logical implication, entails the negative obligation not to degrade the marine environment.
32. The tribunal affirmed that arts 192 and 194 created due diligence obligations for states.<sup>18</sup>
33. In relation to art 206, the tribunal said that it “ensures that planned activities with potentially damaging effects may be effectively controlled and that other States are kept informed of their potential risks.”<sup>19</sup> It quoted with approval a description by commentators of the requirement to conduct an environmental impact assessment in art 206 as an “essential part of a comprehensive environmental management system”.<sup>20</sup>

***The Bill is inconsistent with UNCLOS***

34. Schedule 9, cl 9(1)(a) of the Bill requires a panel considering an application for a marine consent in the EEZ to consider the following matters in descending order of weight:
- (i) the purpose of the Bill (“to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits”);
  - (ii) the purposes and principles of the EEZ Act;
  - (iii) any relevant policy statements issued under the EEZ Act;
  - (iv) any relevant provisions of the EEZ Act relating to assessments and the provision of information (see sections 59 to 64).
35. It was the purpose of the EEZ Act, as set out in s 10, that the Supreme Court interpreted as establishing an environmental bottom line of protection of the environment from material harm from pollution. Under the Bill, however, this purpose is reduced to the level of a consideration and subordinated in weight to the purpose

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<sup>16</sup> *South China Sea Arbitration (Philippines v China) (Award)* PCA Case No 2013–19, 12 July 2016.

<sup>17</sup> *Ibid*, at [941].

<sup>18</sup> *Ibid*, at [944].

<sup>19</sup> *Ibid*, at [948].

<sup>20</sup> *Ibid*, quoting S. Rosenne & A. Yankov (eds) *United Nations Convention on the Law of the Sea 1982: A Commentary, Volume IV* (Martinus Nijhoff, Dordrecht, 2002) at [206.6(b)].

of the Bill, which relates to facilitating infrastructure and development and is therefore likely to sometimes conflict with the environmental bottom line of preventing material harm.

36. Accordingly, under the Bill the environmental bottom line is no longer a bottom line – it is merely a consideration and not even the consideration with the most weight. The Bill would not preclude the grant of consent to activities that would breach the environmental bottom line and result in material harm to the environment from pollution, if the ministers concluded that this was outweighed by the benefits of the project for facilitating infrastructure and development.
37. The environmental bottom line was necessary because the EEZ was expressly implementing New Zealand’s international obligations under UNCLOS and other treaties. As the Supreme Court majority explained, UNCLOS imposes an environmental bottom line regarding pollution in the EEZ. This environmental bottom line cannot be removed or weakened without breaching New Zealand’s international obligations under UNCLOS.
38. Allowing material harm to the marine environment from pollution is inconsistent with the obligation under art 192 “to protect and preserve the marine environment”. It is also inconsistent with art 194(1)’s requirement to take “all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source...”
39. Under art 194(5), states must take measures that are “necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.” The Bill’s provisions relating to the EEZ contain no protections that ensure the protection of rare or fragile ecosystem and the habitat of depleted, threatened or endangered species. The environmental bottom line of preventing material harm provided such protection, but it no longer applies under the Bill.
40. As the Supreme Court found, the EEZ Act incorporates the precautionary principle through the requirement in s 61(2) to “favour caution and environmental protection” where the “information available is uncertain or inadequate”. The precautionary principle is part of New Zealand international obligations because:
  - a) it is a part of the obligation of due diligence to protect the marine environment from pollution under UNCLOS, as ITLOS stated in the *Seabed Advisory Opinion*;
  - b) it is expressly incorporated in the London Convention and the Convention on Biological Diversity;
  - c) it is a principle of customary international law, as the ICJ and ITLOS have found.

41. Under the Bill, the requirement to favour caution and environment protection in s 61(2) of the EEZ Act comes within the consideration given the lowest weighting when considering an application for a marine consent in the EEZ: “any relevant provisions of the EEZ Act relating to assessments and the provision of information”. This is made clear by the parenthetical reference “see sections 59 to 64”.
42. Given its low weighting, the requirement to favour caution and environmental protection is likely to often be outweighed by the purpose of facilitating infrastructure and development projects, as the purpose of the Bill has the highest weighting among the matters for the panel and the ministers to consider. While favouring caution and environmental protection remains a consideration, its low weighting means that the Bill fails to actually implement or comply with the precautionary principle. It is therefore inconsistent with New Zealand’s obligations to follow the precautionary principle in the marine environment under multiple sources of international law, including UNCLOS, the London Convention, the Convention on Biological Diversity and customary international law.
43. States’ due diligence obligations to protect the marine environment under UNCLOS require them to use their “best possible efforts” to achieve the result of protecting the marine environment from pollution.<sup>21</sup> This includes adopting necessary laws and procedures. The procedures provided for by the Bill fail to meet this requirement.
44. Firstly, the timeframes provided for in the Bill provide insufficient time for proper environmental assessments of the impact of the project to be conducted, either by the panel or by those parties who have the opportunity to make comments on the application. The environment effects of activities in the EEZ often raise complex questions that require expert scientific evidence and where different experts may have different views. This is particularly so as the marine environment is less well understood than the terrestrial environment.
45. Obtaining such scientific evidence takes time and will not be possible in the timeframes provided for in the Bill. The panel will therefore only be left with the evidence and assessment prepared by the applicant, which will not be independent. The applicant will of course have an interest in only presenting evidence that supports the granting of the application and not any evidence to the contrary.
46. Secondly, the severe limits on who is entitled to receive notice and make comments on applications mean that many groups or persons who have relevant information or expertise may be unable to submit on the application. This could include environmental groups, scientists and persons or groups with particular knowledge of the relevant environment.

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<sup>21</sup> *Seabed Advisory Opinion*, above n 7, at [110].

47. Article 206 of UNCLOS requires environmental impact assessments for activities that may cause “substantial pollution of or significant and harmful changes to the marine environment”. Such assessments are also an element of the due diligence obligation to protect the marine environment.
48. Environment impact assessments are also required by art 14(1)(a) of the Convention on Biological Diversity for projects that are likely to have significant adverse effects on biological diversity.
49. The Bill fails to provide for a meaningful environmental impact assessment. The assessment prepared by the applicant is not an independent assessment, while the panel has insufficient time and a lack of access to independent scientific or environmental evidence. This means that a proper environmental impact assessment will not occur under the Bill. This is inconsistent with New Zealand’s international obligations.

***The Bill is inconsistent with the NZ-EU FTA***

50. Article 13.8 of the New Zealand-European Union Free Trade Agreement contains more detailed requirements for environmental impact assessments:
  1. Each Party shall ensure that its laws and regulations require an environmental impact assessment for activities related to production of energy goods or raw materials, where such activities may have a significant impact on the environment.
  2. With respect to the environmental impact assessment referred to in paragraph 1, each Party shall, as required by its laws and regulations:
    - (a) ensure that all interested persons, including non-governmental organisations, have an early and effective opportunity, and an appropriate time period, to participate in the environmental impact assessment as well as an appropriate time period to provide comments on the environmental impact assessment report;
    - (b) take into account the findings of the environmental impact assessment relating to the effects on the environment prior to granting the authorisation;
    - (c) make publicly available the outcome findings of the environmental impact assessment; and
    - (d) identify and assess as appropriate the significant effects of a project on:
      - (i) population and human health;
      - (ii) biodiversity;
      - (iii) land, soil, water, air, and climate; and
      - (iv) cultural heritage and landscape, including the expected effects deriving from the vulnerability of the project to risks of major accidents or disasters that are relevant to the project concerned.
51. Article 13.8 will apply to many activities in the EEZ, such as mining.

52. The Bill's procedures do not provide for all interested persons and non-governmental organisations (NGOs) to participate in the environmental impact assessment and to provide comments on the report. The categories of persons and organisations who are notified and have the opportunity to provide comments on application are very limited. They do not include environmental NGOs or persons who live in the area affected by the application. Ten working days is also not an appropriate time period for providing comments on the application, particularly as many projects to which art 13.8 applies (such as seabed mining) will involve complex scientific questions about environmental effects that are likely to require expert evidence. The Bill is therefore inconsistent with art 13.8 of the New Zealand-European Union Free Trade Agreement.

***The Bill is inconsistent with the London Convention***

53. The Bill is also inconsistent with the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, as modified by the London Protocol. This is one of the treaties that s 11 of the EEZ Act states the EEZ Act is designed to implement.
54. Under art 4(1) of the London Protocol, dumping of wastes and other matter at sea is prohibited except for types listed in Annex 1. Article 4(2) provides:
- The dumping of wastes or other matter listed in Annex 1 shall require a permit. Contracting Parties shall adopt administrative or legislative measures to ensure that issuance of permits and permit conditions comply with provisions of Annex 2. Particular attention shall be paid to opportunities to avoid dumping in favour of environmentally preferable alternatives.
55. Annex 2 sets out detailed requirements before a dumping permit can be granted. These include: consideration of waste prevention/reduction techniques and other waste management options, as well as a variety of potential effects.
56. Dumping types of waste or other matter covered by Annex 1 is currently a discretionary activity<sup>22</sup> under regs 31-33 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects—Discharge and Dumping) Regulations 2015. In considering an application, the EPA will assess whether it complies with the requirements of Annex 2, as s 11 of the EEZ Act makes clear that it is designed to implement the London Convention.
57. Under the Bill, however, international obligations such as the London Convention are subordinated to the purpose of the Bill to facilitate the provision of infrastructure and development projects. The purpose of the Bill ranks as the consideration with the most weight, while international obligations (through the reference to them in s 11 of the EEZ Act, which is part of the purposes and principles section of the EEZ Act) has lesser

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<sup>22</sup> Some are referred to as non-notified activities, but this is a type of discretionary activity without notification.

weight. This means that, under the Bill, the requirements of the London Convention and Protocol could be outweighed by the purpose of facilitating the provision of infrastructure and development projects. The Bill therefore fails to ensure consistency with the London Convention and Protocol.

***The Bill is inconsistent with the principles of te Tiriti***

58. The Bill provides for relevant iwi (presumably iwi whose rohe includes the area affected by the project) to be consulted about applications for referral<sup>23</sup> and when a panel is considering its recommendations on an application.<sup>24</sup> It also requires the applicant to engage with such iwi before submitting an application.<sup>25</sup>
59. However, the process that applies under the Bill significantly curtails the ability of iwi (and other submitters) to meaningfully engage with applications for approval, compared to normal resource management processes. In particular:
- a) Iwi will only have 10 working days to provide written comments on an application for referral to a panel;<sup>26</sup>
  - b) Iwi will also only have 10 working days to provide written comment on an application that is being considered by a panel;<sup>27</sup>
  - c) There is no requirement to hold a hearing;<sup>28</sup>
  - d) While there is power to hold a hearing, hearings are likely to be very rare in practice given the timeframes that panels are operating under (25 working days from the date of referral to provide a report to the ministers, with an ability to extend this period by another 25 days);<sup>29</sup>
  - e) The ministers who make the ultimate decision on whether to accept or reject the application are not required to undertake any consultation;<sup>30</sup>
  - f) Any person consulted by the Chief Executive under the Fisheries Act 1996 (FA96) in respect of the making of an aquaculture decision must have their comments to the Chief Executive within 10 days.<sup>31</sup>
60. The Waitangi Tribunal has concluded that the principles of te Tiriti give rise to a duty to consult on environmental and fisheries matters.

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<sup>23</sup> Fast-Track Approvals Bill, cl 19(1).

<sup>24</sup> Fast-Track Approvals Bill, sch 4, cls 20(3)(b) and (c) and 20(5)(b) and (c) and sch 9, cl 9(1).

<sup>25</sup> Fast-Track Approvals Bill, cl 16(1).

<sup>26</sup> Fast-Track Approvals Bill, cl 19(5).

<sup>27</sup> Fast-Track Approvals Bill, sch 4, cl 21(1) and sch 9, cl 9(1).

<sup>28</sup> Fast-Track Approvals Bill, sch 4, cl 23.

<sup>29</sup> Fast-Track Approvals Bill, cl 39(3) and (4).

<sup>30</sup> See Fast-Track Approvals Bill, cl 25(6).

<sup>31</sup> Fast-Track Approvals Bill, sch n12 cl 5

61. In the *Ngāi Tahu Sea Fisheries Report*, the Tribunal said that: <sup>32</sup>

... environmental matters and, we would emphasise, measures of resource control as they affect Maori access to traditional food resources – mahinga kai – require consultation with the Maori people concerned. Given the express guarantee to Maori of sea fisheries, consultation by the Crown before imposing restriction This duty to consult reflects the obligation to make informed decisions expressed by Richardson J in the *Lands case*.<sup>33</sup>

The responsibility of one Treaty partner to act in good faith fairly and reasonably towards the other puts the onus on a partner, here the Crown, when acting within its sphere to make an informed decision, that is a decision where it is sufficiently informed as to the relevant facts and law to be able to say it had proper regard to the impact of the principles of the Treaty.

62. The duty to consult is also related to the principle of active protection, which states that “... the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable.”<sup>34</sup>

63. The courts have said that “[c]onsultation must be allowed sufficient time ...”<sup>35</sup> and that those consulted “must be given a reasonably ample and sufficient opportunity to express their views ...”<sup>36</sup>

64. Under the Resource Management Act 1991 (**RMA**) and other environmental legislation, iwi have the opportunity participate more fully in the decision-making process. For significant projects (such as those that the Bill is likely to apply to), there are typically oral hearings. Evidence (including expert evidence) can be presented and questions asked of witnesses for other parties.

65. The timeframes in the Bill are likely to make it almost impossible to commission expert evidence on proposals. Significant projects often involve expert reports from multiple types of expert. The applicant will be able to prepare this evidence before submitting an application, but it is likely to be impossible for submitters to counter that evidence with their own expert evidence within the 10-day period for comments. That means that iwi are unlikely to be able to obtain independent evidence about what the effects of the project would be, in order to assess its impacts on them and support a submission in opposition to the project (or seeking particular conditions on it).

66. The process and timeframes provided for in the Bill do not provide a meaningful and sufficient opportunity for iwi to express their views on applications. These projects will often be complex, with the applications involving much technical evidence. It will be

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<sup>32</sup> Waitangi Tribunal *The Ngāi Tahu Sea Fisheries Report* (Wai 27, 1992) at [11.5.3].

<sup>33</sup> *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 683.

<sup>34</sup> *Ibid*, at 642 per Cooke P.

<sup>35</sup> *Wellington International Airport Ltd v Air New Zealand* [1993] 1 NZLR 671 (CA) at 675, quoting the High Court judgment in that case.

<sup>36</sup> *Ibid*, quoting *Port Louis Corporation v Attorney-General of Mauritius* [1965] AC 1111 (PC) at 1124.

impossible to meaningfully consider and respond to such evidence in a period of two weeks.

67. The practical effect is that the panel and ministers will be making recommendations or decisions based on full and complete evidence from the applicant in favour of the project and little or no meaningful information from the limited pool of persons or organisations that must be given the opportunity to comment.
68. Accordingly, the process set out in the Bill does not discharge the duty to consult Māori on environmental and fisheries matters that affect them.
69. The requirement in the Bill for applicants to consult with iwi before submitting an application is not an adequate substitute for a process that allows iwi to meaningfully engage when the application is being considered.
70. The Bill simply states that “the applicant must undertake engagement with ... relevant iwi, hapū and Treaty settlement entities”<sup>37</sup> and “include in their referral application a record of the engagement and a statement explaining how it has informed the project.”<sup>38</sup> Given the lack of specificity around the engagement that is required, there is no guarantee that it will be genuine and meaningful consultation. There is also no guarantee that it will involve sufficient detail about the potential effects of the project to enable iwi to make an informed assessment of it and commission their own evidence if they wish to do so.
71. Furthermore, engagement with the applicant cannot be a substitute for a meaningful opportunity to participate in the decision-making process. Where a decision is being made that affects the rights and interests of iwi, they must have a meaningful opportunity to put their views before the decision-maker, along with supporting evidence. The nature and timeframes of the process in the Bill prevent that, particularly in relation to evidence.
72. Clause 6 of the Bill provides:

All persons exercising functions, powers, and duties under this Act must act in a manner that is consistent with—

  - (a) the obligations arising under existing Treaty settlements; and
  - (b) customary rights recognised under—
    - (i) the Marine and Coastal Area (Takutai Moana) Act 2011;
    - (ii) the NHNP Act.
73. However, the inconsistency with the principles of te Tiriti, discussed above, involves the fundamental nature of the process that the Bill provides for. It is not a matter that

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<sup>37</sup> Fast-Track Approvals Bill, cl 16(1).

<sup>38</sup> Fast-Track Approvals Bill, cl 16(2).

can be remedied by persons (such as the ministers or panels) exercising their powers under the Bill in a certain way, even if they accepted that there was an inconsistency with, for example, obligations arising under an existing Treaty settlement. This clause therefore does not solve the issue.

***The Bill is inconsistent with the Fisheries Settlement***

74. The Bill is inconsistent with the Fisheries Settlement and the principles of te Tiriti o Waitangi as they relate to it.
75. Projects approved under the Bill have the potential to impact on both commercial and customary fishing rights of iwi/Māori. For instance, proposals for seabed mining could affect both commercial and customary fishing due to discharges from the activity. Coastal projects could affect the ability to engage in customary fishing in particular.
76. Impacts on customary fishing can be particularly great because such fishing often cannot be relocated in the same way that commercial fishing might. Particular sites may be of cultural and historical significance to iwi/hapū. Other sites may not be easily accessible. Customary fishers are unlikely to have the sort of vessels that enable commercial fishers to travel long distances to other areas if they are unable to fish in a particular area.
77. The preamble to the Fisheries Deed of Settlement and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 make clear that the Deed and the Act are designed to settle claims that the principles of te Tiriti were not being respected with respect to fisheries. The Deed states that it is entered into in a “spirit of co-operation and good faith ...”<sup>39</sup> Section 10(a) of the Act also states that Māori non-commercial fishing rights “shall, in accordance with the principles of the Treaty of Waitangi, continue to give rise to Treaty obligations on the Crown...”
78. Accordingly, the Fisheries Settlement recognises that the parties must continue to act in accordance with the principles of te Tiriti in matters relating to it.
79. The process provided for in the Bill is inconsistent, for example, with the principle of active protection, as it does not provide a process that will effectively protect Māori fishing rights (both customary and commercial). Under this principle, the Crown has an obligation to actively ensure that the processes by which it grants approval for activities with environmental effects protect Māori fishing rights. A process that does not enable iwi to effectively engage in the decision-making process where their rights are potentially affected fails to actively protect those rights.
80. The Bill would therefore breach the principles of te Tiriti. As these principles underlie the Fisheries Settlement, this also amounts to a breach of the Fisheries Settlement.

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<sup>39</sup> Fisheries Deed of Settlement at 4.

81. In particular, the Bill's arrangements for the making of *aquaculture decisions* under the FA96 are problematic.
82. Under Schedule 12 of the Bill, the function of making an "aquaculture decision" as to whether or not there are undue adverse effects on fishing under s 186E of the FA96 in respect any marine consent<sup>40</sup> for aquaculture activities approved under the fast track process passes to the ministers upon a recommendation from the Chief Executive and/or the panel. The ministers may or may not follow the recommendation of the Chief Executive.<sup>41</sup>
83. The time for comment in respect of the application is limited to 10 days. This means that iwi interests in fisheries settlement assets including quota, and in customary fishing rights, may be ignored in granting approvals under the Bill because iwi did not have enough time to properly respond when comments were sought.

### ***The Bill is inconsistent with Aquaculture Settlement***

84. The Bill is also inconsistent with the Aquaculture Settlement.
85. As with s 12(3) of the Maori Commercial Aquaculture Claims Settlement Act 2004 (**MCACSA**), clause 18(e) of the Bill provides that a project must not include an aquaculture activity or other incompatible activity that would occur within an aquaculture settlement area declared under s 12 of the MCACSA or identified within an individual iwi settlement, unless the applicant holds the relevant authorisation under that Act or the relevant Treaty Settlement Act.
86. However, this clause does not preserve the right in s 165E(2) RMA for the trustee of the aquaculture settlement (Te Ohu Kaimoana) and iwi in the region to be consulted in respect of activities in an aquaculture settlement area where that activity is compatible with aquaculture activities. This omission from the words of s 18(e) is an erosion of the protection currently available under s 165E. This presents risks for the security of aquaculture settlement areas.
87. The current prohibition in s 18(e) will only render an application ineligible if it is for aquaculture activities or activities incompatible with aquaculture within a settlement area.

#### *Authorisations*

88. To be granted approval under the Bill for aquaculture activities within an aquaculture settlement area, the applicant must hold the relevant authorisation under that MCACSA. However, there is no requirement under the Bill that any coastal permit issued in respect of an aquaculture settlement area must be within the terms of the

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<sup>40</sup> The language in schedule 12 is inconsistent as it refers to both coastal permits and marine consents. There is a need to tidy up some of the provisions in schedule 12 for constancy of language and clarity of meaning

<sup>41</sup> Refer Fast-Track Approvals Bill, sch 12, cl 9.

authorisation. The effect of this is to make the coastal permitting regime more permissive. This again presents risks for the security of aquaculture settlement areas.

#### *New Space*

89. A critical component of the Aquaculture Settlement is the requirement, set out in ss 8-18 of the MCACSA, that the Crown provide for, and transfer to the trustee, settlement assets that are representative of 20% of new space.
90. The Bill is unclear on whether any coastal permit approved under the Bill is deemed to be “new space” for the purposes of the MCACSA. In order to preserve the rights of iwi under the Aquaculture Settlement, it is essential that a clear statement that coastal permits approved under the Bill are deemed to be “new space” for the purposes of the MCACSA.
91. Clause 13 of schedule 12 of the Bill erroneously refers to s 116A of the FA96, where instead it should refer to s 116A of the RMA. This needs to be fixed to refer to the correct legislation. This clause states that “*Section 116A of the Fisheries Act 1996 [sic] applies in respect of the commencement of marine consents for aquaculture activities granted by joint Ministers in response to applications to which this schedule applies, with any necessary modifications*”.

#### **Conclusion**

92. The Bill is inconsistent with international law, the principles of te Tiriti, the Fisheries Settlement and the Aquaculture Settlement. We therefore oppose it.
93. However, if the Bill is to proceed, we strongly recommend that the EEZ be excluded from the scope of the Bill, to address the inconsistencies with UNCLOS and the London Convention.
94. We wish to make an oral submission.
95. The contact person for this submission is:

Graham Young  
Strategy and Policy Team  
Te Rūnanga o Ngāti Ruanui Trust  
74 Princes Street  
PO Box 594  
Hawera 4640

Email: [Graham.Young@ruanui.co.nz](mailto:Graham.Young@ruanui.co.nz)

Phone: 06 278 0148

Document 8

**From:** Ben White <Ben.White@mfe.govt.nz>  
**Sent:** Thursday, 15 August 2024 8:13 am  
**To:** Kerena Wano  
**Subject:** FW: Fast Track Approvals Bill - Listed Projects  
**Attachments:** 20240814\_Te\_Korowai\_Feedback\_FTA\_Bill\_S2A\_Listed\_Project.docx

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**From:** Te Aorangi Dillon 9(2)(a)  
**Sent:** Wednesday, August 14, 2024 11:03 PM  
**To:** RM Treaty Settlement <RMTreatySettlement@mfe.govt.nz>  
**Cc:** Ben White <Ben.White@mfe.govt.nz>  
**Subject:** Fast Track Approvals Bill - Listed Projects

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Tena koe.

Kua tapiri to mātou whakaaro ki te ĩmera nei.

Naku na



**TE AORANGI DILLON**

**Tumu Whakarae**  
**Chief Executive**

147 HIGH STREET, TE HĀWERA, 4610  
PO BOX 474, TE HĀWERA, TARANAKI 4640

9(2)(a)

WWW.NGARUAHINE.IWI.NZ

9(2)(a)



WFH MONDAY



8 Willis St  
Wellington  
New Zealand

RM Treaty Settlements Team

14 Hereturikōkā 2024

*Mai Tangaroa ki Tawhiti pamamao, Hawaiki pamamao  
Tawhitiroa, Hawaikiroa, Tawhitinui, Hawaikinui, Aotearoa  
E tū, e tū ki uta  
E tū, e tū ki tai  
Tae noa ki te ngutu awa o Waingongoro ki Taungatara  
Piki ake ki te tihi o Maunga Taranaki  
Huri noa ki te Tonga  
Haere tonu ki te awa o Waingongoro, o Ngāruahine, Ngāruahinerangi.*

***Feedback on the projects listed under schedule 2A of the Fast Track Approvals Bill.***

**Mai Tangaroa ki Tawhiti pamamao, Hawaiki pamamao, Tawhitiroa, Hawaikiroa,  
Tawhitinui, Hawaikinui, Aotearoa**

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. 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 (arā, ko Egmont National Park te ingoa o mua), otirā ko te tupuna, Koro Taranaki (Taranaki Maunga), ā, ka inaki ki Taranaki iwi (kei te uru), ki Te Ātiawa (kei te raki), ki Ngāti Maru (kei te rāwhiti-mā-raki), ā, ki Ngāti Ruanui (kei te rāwhiti).<sup>1</sup>

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<sup>1</sup> <https://ngaruahine.iwi.nz/>

3. Te Korowai is committed to the protection of the taiao and supporting our hapū who are the kaitiaki across the Ngāruahine takiwā. Te Korowai has the responsibility of ensuring an enduring settlement and that Te Tiriti rights, as well as iwi and Hapū interests of Ngāruahine are upheld.
4. We are disappointed at the short period given by the RM Treaty Settlement team to respond to this matter. We were notified of our opportunity to provide feedback on Monday, 12 August 2024, and received the relevant information 20 hours after providing the non-disclosure agreement, leaving us a day in which to respond and very little time to formulate a substantive response by 11:59 PM, 14 August 2024. Given the critically short notice to provide such feedback, we provide the following comments on (FTA008) Taranaki VTM Project (Trans-Tasman Resources Limited (TTRL)).
5. Providing less than 24 hours of realtime to respond in a robust manner identifies a lack of willingness within Government Departments to maintain and respect treaty partnership. The Fast Track Bill essentially accepts poor engagement given there is no requirement to engage with mana whenua.
6. As per our submission on 12 December 2016, titled Trans-Tasman Resources Ltd.- Seabed Mining Application, we were not supportive of their application then and the views of Te Korowai remain the same. In 2012 the TTRL application submitted was rejected by the Environmental Protection Authority. This was supported by iwi and community feedback stating the damaging nature of the practice of Seabed mining would have an adverse effect on the environment. It was also noted in 2012 that TTRL did not address the concerns in the feedback and raised in the application. Te Korowai held a very strong view at the time regarding the lack of consultation on TTRL's behalf.
7. Again in 2024, it would seem TTRL practices have not changed, and they are being enabled by a process that allows corners to be cut regarding consultation with hapū and iwi. Te Korowai has not been engaged by TTRL to advise that they would be accessing the Fast Track mechanism.
8. On the 18 April 2024 Te Korowai made a submission on the Fast Track Approvals Bill. In paras 29 – 31 we listed our concerns pertaining to the makeup of the (or lack thereof) schedules. We noted that there was a lack of transparency regarding the opportunity for public scrutiny, providing no evidence or understanding on how

decisions on what projects would be considered within the Bill. We stated that there was a lack of spatial planning at both the national and regional level that could provide comfort to hapū or iwi that the process was robust and transparent.

### **E tū, e tū ki uta. E tū, e tū ki tai**

9. The proposed project will impact on our spiritual, cultural and traditional interests along the coastline where Ngāruahine exercises or shares mana whenua rights and obligations. We also anticipate the proposal may impact our current and future aspirations around the use, management and decision-making regarding our marine and coastal interests.
10. A foundational understanding of Te Ao Māori tells us that our taiao is intimately interlinked. 'Ki uta ki tai' refers to the journey of wai as it falls from the sky, flows over land and out to sea. Part of this journey in Taranaki is the flow of wai from our tupuna maunga, which transports iron-rich minerals through our awa to the moana.
11. Within a Ngāruahine context, the iron in our whenua and sand goes back to when Turi, captain of the Aotea waka was told by Kupe of the whenua that was termed as 'One-kakara', the soil that was sweet smelling and therefore fertile for growing kūmara. The volcanic properties of our whenua have been longed recognised as important for our cultural identity, and the iron rich sands and benthic material in our moana are vital to our taonga species as well as our coastal, and oceanic environments.

### **Tae noa ki te ngutu awa o Waingongoro ki Taungatara. Piki ake ki te tihi o Maunga Taranaki. Huri noa ki te Tonga, haere tonu ki te awa o Waingongoro, o Ngāruahine, Ngāruahinerangi.**

12. The coastal environment of Ngāruahine contains many wāhi tapu, Tauranga waka, places of ritual and sources of mātaihai. Safe and secure access to these areas is required to maintain our culture and traditions and pass them on to future generations<sup>2</sup>.
13. Our Marine and Coastal Areas Claim has been ongoing for seven years. Our customary rights are currently unprotected, and we have no customary marine title over the application area, with our takutai under further threat with the current legislation and Section 58 under review. Additionally, we hold a fishing

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<sup>2</sup> [Te Uru Taiao o Ngāruahine by Ngāruahine - Issuu](#)

quota within FMA 8 and Ngā hapū o Ngāruahine currently has proceedings in the High Court and with the Office of Treaty Settlements in relation to the Marine and Coastal Area (Takutai Moana) Act 2011. Due to this, alongside the other iwi of South Taranaki, Ngāruahine are deeply affected by the TTRL application.

14. Regarding fishing, we are gravely concerned that our fishing interests and statutory recognised interests will be harmed. Fishing practices are not just about sustaining our people with kai, but they provide opportunity to engage with our traditional methods, cultural heritage and spiritual values. The disruption that would come with such a project would ultimately lead to a loss of cultural knowledge and heritage<sup>3</sup> as well as the abundance and quality of our kaimoana becoming compromised<sup>4</sup>.
  
15. The South Taranaki coastal environment is home to many taonga species that are both culturally significant to Ngāruahine and ecologically important to the environment<sup>5</sup>. Notably, the proposed project's direct and indirect effects—including noise, sediment plumes, and vessel traffic—will impact the health and populations of blue whales. These tohora have been recognised as tupuna by our kaumatua for generations. Disturbing them, as is likely with this project, will have a negative impact on our people.

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<sup>3</sup> Mccarthy, A. *et al.* (2013) 'Local people see and care most? severe depletion of inshore fisheries and its consequences for Māori communities in New Zealand', *Aquatic Conservation: Marine and Freshwater Ecosystems*, 24(3), pp. 369–390. doi:10.1002/aqc.2378.

<sup>4</sup> [Sensitive habitats and threatened species in the Taranaki Coastal Marine Area \(TCMA\) — database investigation \(trc.govt.nz\)](https://trc.govt.nz/sensitive-habitats-and-threatened-species-in-the-taranaki-coastal-marine-area-tcma-database-investigation)

<sup>5</sup> Baker, C. S., B. L. Chilvers, S. Childerhouse, R. Constantine, R. J. C. Currey, R. H. Mattlin, A. Van Helden, R. Hitchmough and J. Rolfe. 2016. Conservation status of New Zealand marine mammals, 2013. Department of Conservation

## Hei Whakakapi

16. Te Korowai vehemently opposes the addition of TTRL to Schedule 2A.
17. In summary, the Government can and must do better in working with iwi and Hapū to ensure the stability of a fit-for-purpose resource management system for Aotearoa New Zealand. The Resource Management Treaty settlement team can ensure that sustainable resource management is maintained as a coherent, resilient and connected part of the fabric of our society.
18. Thus, we urge the Resource Management Treaty settlement team, and relevant Ministers to consider the impacts this proposed project would have on our interests, which would gravely affect our spiritual, cultural and traditional interests.

Pai Mārire,



Emma Gardiner  
Te Korowai o Ngāruahine Trust

Cc: 9(2)(a)

**From:** Listed Projects <ListedProjects@mfe.govt.nz>  
**Sent:** Saturday, 5 October 2024 5:39 pm  
**To:** 9(2)(a)  
**Subject:** Fast-track Approvals Bill Listed Projects update

Dear Applicant,

**Project included in Schedule 2 of the Fast-track Approvals Bill**

Thank you for Trans-Tasman Resources Limited (TTR)'s application to have Taranaki VTM Project included as a listed project on Schedule 2 of the Fast-track Approvals Bill (the Bill).

I am pleased to inform you that Taranaki VTM Project will be listed in Schedule 2 of the Bill.

Ministers will be releasing high level details of the projects on Schedule 2 on or around Sunday 6 October. **Please keep the contents of this email confidential until Ministers' announcements have been made.**

The project was assessed by an independent Projects Advisory Group and the Minister Responsible for Resource Management Reform, Minister for Regional Development and Minister of Transport, who consider the project meets the Bill's purpose to facilitate the delivery of infrastructure and development projects with significant regional or national benefit.

Please note that being listed in Schedule 2 is not a granting of the necessary approvals. Applicants for projects listed in Schedule 2 still have to make an application to the Environmental Protection Authority and their project will still be assessed under the Bill, once enacted.

The Fast-track Approvals Bill is due to be reported back from Select Committee on 18 October 2024. From there, Schedule 2 will be included into the Bill later this year. The Bill is expected to be enacted before the end of the year.

If you have any questions please contact [listedprojects@mfe.govt.nz](mailto:listedprojects@mfe.govt.nz).

Yours sincerely



**Ilana Miller**  
**General Manager Delivery and Operations**