

In the matter of an application by Trans-Tasman Resources  
for the Taranaki VTM Project [FTAA-2505-1048] under the  
Fast-track Approvals Act 2024

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**MEMORANDUM OF COUNSEL FOR THE NGĀTI HĀUA  
HAPŪ O NGĀRUAHINE REGARDING PANEL  
CONVENER'S MINUTE OF 26 JUNE 2025**

2 July 2025

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**MEMORANDUM OF COUNSEL FOR THE NGĀTI HĀUA HAPŪ O  
NGĀRUAHINE REGARDING PANEL CONVENER'S MINUTE OF 26 JUNE  
2025**

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1. We have been recently instructed to act for the Ngāti Hāua hapū of Ngāruahine.
2. We refer to the Panel Convener's minute of 26 June 2025 ahead of the conference to be held on Monday 7 July 2025 at 10am.
3. This memorandum addresses Ngāti Hāua's views on the matters raised in that minute.

**Schedule 1 matters**

*Complexity*

4. **Legal complexity** – the application involves significant legal complexity. The Fast-track Approvals Act 2024 (**FTAA**) is untested, and its interaction with the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ Act**) is not clear. There are likely to be numerous and significant issues of statutory interpretation.
5. Also unclear is how the Supreme Court's judgment on a materially similar application under the EEZ Act (and other failed applications by the applicant) will bear on the application under the FTAA. Additional complexity stems from interactions with the Resource Management Act 1991 and subsidiary instruments, and with rights and interests (whether crystallised or not) under the Marine and Coastal Area (Takutai Moana) Act 2011 (**MACA**) (including Ngāti Hāua's interests). International instruments, including the United Nations Convention of the Law of the Sea and United Nations Declaration on the Rights of Indigenous Peoples are also likely to bear on the application.
6. Ngāti Hāua notes that it has undetermined applications for the recognition of rights under the MACA. Those applications have been stalled by Government threats to amend legislation and to legislatively overturn any judgments given before those amendments have been made. However, the Government has also not advanced legislative change with any haste and it is not clear when, or if, that might occur. It appears likely that the Government is delaying changes to the MACA, at least in part, to frustrate and delay the ability of applicants like Ngāti Hāua to have their rights recognised, including for the purpose of allowing applications like this one to proceed before those rights are recognised. Ngāti Hāua records its view that this is unconstitutional, contrary to the Rule of Law, and a breach of the Treaty of Waitangi (and potentially New Zealand's international obligations). Ngāti Hāua is concerned that any Panel appointed under the FTAA will inevitably be acting in furtherance of a range of unconstitutional and Treaty-contrary efforts to further prejudice its rights.
7. As such, the context of the application significantly engages matters of constitutional and public law.

8. Put shortly, it is difficult to envisage a more legally complex application under the FTAA. Ngāti Hāua has limited resources and it is important that adequate time is allowed for its members and its counsel to have full and fair opportunity to be heard on the issues raised by the application.
9. **Evidentiary complexity** – the evidence provided in support of the application is likely to be highly complex given the significant effects the proposed activities will have on the large areas of the coastal marine environment, both within and outside the coastal marine area. Vast amounts of highly technical evidence will likely be required (including to adequately and effectively understand the material brought in support of the application).
10. Ngāti Hāua is unlikely to be in a position where it has resources to adduce much technical evidence from expert witnesses. In order to address the significant resource asymmetry between it and the applicant, it considers that, at a minimum, it is crucial that there is a full opportunity for an in person hearing to enable it and other parties to cross-examine the applicant's witnesses. If this does not occur, then Ngāti Hāua is concerned that resource asymmetry will lead to the applicant's evidence essentially being procedurally untested (when it is in fact highly contested and contestable).
11. Effects on Ngāti Hāua's interests, including in relation to tikanga Māori, will need to be properly considered. Again, Ngāti Hāua is extremely concerned that significant resource asymmetry will affect its ability to fairly participate in the process, and it invites consideration of how this issue is going to be addressed. Provision for payment of costs in the Regulations appears to be manifestly inadequate in the context of this application.
12. **Factual complexity** – as with the evidence, the factual setting is extremely complex, with significant informational deficiencies and uncertainty caused by the nature of the activity, its location, and the approach taken by the application.
13. Again, it is difficult to envisage a more factually complex application under the FTAA.

#### *Issues*

14. In addition to numerous issues of statutory interpretation, Ngāti Hāua apprehends that there will be dispute as to the nature and location of effects, and the evidential basis for making determinations about those matters. It also anticipates that there will be significant dispute as to the asserted benefits of the application, and how those relate to harms of the application on the environment and the interests of Māori, including Ngāti Hāua. These matters are likely to engage issues of law, evidence and fact.

#### *Panel members*

15. Ngāti Hāua submits that:
  - (a) it would be appropriate for the members of the Panel to be Māori (and preferably having whakapapa to the Aotea waka), given the significant impact of the application on Māori interests in Taranaki

and Whanganui, and the need for the Panel to properly understand those interests;

- (b) it would be appropriate that at least one member of the Panel is a recognised expert in matters including tikanga Māori and Māori legal issues (including the Treaty of Waitangi and the MACA);
- (c) it would be appropriate that at least one member of the Panel is a recognised expert in public and constitutional law;
- (d) it would be appropriate that at least one member of the Panel is a recognised expert in international law (preferably with expertise in international law of the sea, international environmental law, and/or international law relating to indigenous peoples);
- (e) it would be appropriate that at least one member of the Panel is a recognised expert in marine biology, particularly in connection with taonga species;
- (f) it would be appropriate that at least one member of the Panel is an economist with a recognised expertise in the assessment of social and environmental costs and benefits; and
- (g) it would be appropriate that at least one member of the Panel has particular expertise in the tikanga of the iwi and hapū of the South Taranaki Bight, to the satisfaction of the iwi and hapū participants.

#### *Tikanga Māori*

- 16. Tikanga Māori is relevant to all aspects of the application because the application seeks to carry out activities within and near to the rohe of iwi and hapū in the South Taranaki Bight, and will have effects within the rohe of iwi and hapū. Consideration of tikanga Māori is especially important for the contextual reasons stated above regarding government efforts to delay and obfuscate recognition of rights under the MACA (and prior governments purporting to confiscate and/or destroy pre-existing Māori rights recognised at common law).
- 17. Interests arising from tikanga Māori, and other evidence on the effects of the project on Māori rights and interests, will be significant including for assessing the overall net benefits of the project. For example, significant prejudice to Māori interests or the environment may outweigh any asserted economic benefits of the project.
- 18. The Panel ought to receive evidence on tikanga Māori kanohi ki te kanohi.
- 19. Ngāti Hāua will require, and it anticipates other parties will require, adequate time and funding to gather and prepare such evidence according to tikanga. Such evidence must be gathered and prepared in a manner that is tika. Generally, these matters cannot be rushed, and to do so will be contrary to tikanga.

#### *Procedural requirements*

- 20. As to procedural requirements:

- (a) Ngāti Hāua wishes to fully participate in the process, but its ability to do so will be limited by its resources. It considers that the provision for costs in the Regulations is inadequate given the nature of the application and this risks an unfair process.
- (b) Ngāti Hāua considers that the issues raised by the application are of such significance, gravity and complexity that the only appropriate course is a full hearing on all matters which allows for the cross-examination of witnesses and the making of legal submissions, following adequate time and resourcing to prepare for such a hearing.

*Anything else*

- 21. As noted, Ngāti Hāua is extremely troubled by a process that has the potential to grossly harm Māori interests for decades, the significant resource asymmetry between the applicant and other interested parties, and the context of the application in circumstances where its own efforts to have rights recognised under the MACA are being frustrated.
- 22. Ngāti Hāua also records that it considers the FTAA's enactment, scheme, provisions and processes to be contrary to the Crown's obligations under the Treaty of Waitangi and it reserves all of its rights in that regard.

**Schedule 2**

- 23. Ngāti Hāua submits that it would be appropriate for a completed draft timetable to be circulated for comment rather than an abstract one.
- 24. Its immediate comments are that the proposed period for comments is significantly too short to allow Ngāti Hāua to fully and fairly participate in the process, and that a full hearing is required.

**Costs recovery for these steps**

- 25. Ngāti Hāua seeks recovery of its counsel's fees in connection with these attendances.

Dated 2 July 2025



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David Bullock  
Counsel for Ngāti Hāua

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This document is filed by David Bullock solicitor for Ngāti Hāua of the firm LeeSalmonLong.

Documents for Ngāti Hāua may be served at the offices of LeeSalmonLong situated on Level 34, Vero Centre, 48 Shortland Street, Auckland and by emailing both [david.bullock@lsl.co.nz](mailto:david.bullock@lsl.co.nz) and [kirra.havemann@lsl.co.nz](mailto:kirra.havemann@lsl.co.nz).