IN THE MATTER of an application by Trans-Tasman Resources Limited under the Fast-track Approvals Act 2024

MEMORANDUM OF COUNSEL FOR
TE RŪNANGA O NGĀTI RUANUI TRUST

Dated 2 July 2025

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1. This memorandum is filed on behalf of Te Rūnanga o Ngāti Ruanui Trust (**Ngāti Ruanui**) in response to the minute of the Associate Panel Convenor dated 26 June 2025. The memorandum has been approved by the Chairman of Ngāti Ruanui, Haimona Maruera, who will attend the conference supported by counsel and Rūnanga staff.

Complexity

2. This application is likely to be one of the most complex applications under the Fast-Track Approvals Act 2024 (**FAA**). It engages, to a high degree, all the criteria identified for assessing the complexity of an application.

3. This application is highly legally complex. The proposed project has already resulted in a Supreme Court judgment, which involved a large number of legal issues and ran to 114 pages in the New Zealand Law Reports.

4. The panel will have to grapple with if, and how, the Supreme Court's reasoning and conclusions on these various legal issues are affected by the provisions of the FAA. All the grounds on which the Supreme Court set aside the previous grant of consents for the project now involve untested questions of law because how they are affected by the FAA has not been settled.

5. This will involve complex legal questions about the interaction between the FAA and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ Act**), including regarding the weight to be given to the various decision-making criteria under the FAA.

6. A variety of other statutes will also be relevant, including the:

   (a) Resource Management Act 1991 (the **RMA**);

   (b) Marine and Coastal Area (Takutai Moana) Act 2011 (**MACA**);

   (c) Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

7. These statutes were all considered in the Supreme Court judgment.

8. The application involves important questions of constitutional law, particularly relating to te Tiriti o Waitangi. The panel will have to consider how the FAA can be interpreted in a way that upholds the rights of iwi and hapū under te Tiriti. The panel will also have to

consider how tikanga, as part of the law of Aotearoa/New Zealand, is to factor into its role.

9. There is likely to be a very large volume of evidence in this case, considering the volume of evidence that was before a Decision-Making Committee (**DMC**) of the Environmental Protection Authority during its hearing regarding the project in 2024 and the need for updating evidence.

10. This evidence will include highly technical and specialised scientific evidence from many expert witnesses. The panel will have to address conflicting expert evidence on a range of issues and may need clarification on various points, given the technical nature of the evidence.

Issues

11. A large number of factual matters are likely to be in dispute, including matters relating to:

    (a) sediment plume modelling;

    (b) optical modelling;

    (c) effects on benthic ecology, including the extent of rocky reefs and effects on them;

    (d) effects on fish and fishing;

    (e) effects on seabirds;

    (f) effects on marine mammals;

    (g) effects on human and environmental health;

    (h) cultural impacts;

    (i) economic impacts;

    (j) the adequacy of proposed conditions.

12. We note that, in previous application processes, parties have worked together to cover a wide range of issues and effects of the propose activity. In particular, environmental and community groups were able to prove a great deal of expert technical evidence and input from a western science perspective, which was essential to decision-makers given the known gaps in the information provided by the applicant. If such parties are not invited to comment on the application in this process, a huge burden will be placed on Ngāti Ruanui and other iwi/hapū to cover

a broader range of issues beyond their primary areas of focus on tikanga and cultural impacts.

13. There are also likely to be a considerable number of legal issues in dispute, including issues relating to:

    (a) the meaning and application of the criteria in the FFA for granting approvals under the EEZ Act;

    (b) the interaction of these criteria;

    (c) the weight to be given to these various criteria;

    (d) the interpretation of other provisions of the FAA;

    (e) the interaction of various provisions of the FAA and the EEZ Act;

    (f) the implications of various other statutes;

    (g) the implications of te Tiriti o Waitangi and the constitutional presumption that legislation should interpreted consistently with it;

    (h) the application of tikanga;

    (i) the status and relevance of various aspects of the Supreme Court judgment in light of the FAA;

    (j) how conditions should be approached.

Tikanga

14. Tikanga is highly relevant to this application and featured prominently in the previous consideration of this project by the DMC and the courts.

15. Ngāti Ruanui will give evidence on tikanga.

16. Tikanga requires that Ngāti Ruanui have the opportunity to present tikanga evidence at a kanohi ki te kanohi hearing, and that that hearing takes place within its rohe.

17. Tikanga evidence takes time to prepare and finalise. This is because it requires discussion, consultation and wānanga within the iwi and its hapū. This process cannot be rushed.

Hearing

18. A kanohi ki te kanohi hearing to hear evidence and legal submissions is essential on this application.

19. As noted above, tikanga requires that Ngāti Ruanui have a kanohi ki te kanohi opportunity to give its tikanga evidence. This also applies to be having an opportunity to speak to its concerns about the application and question witnesses.

20. A hearing is necessary to enable the panel to get to grips with the expert evidence, clarify technical points that are unclear, and make judgments on points in dispute. It is not realistic for the panel to resolve highly complex and technical points in dispute between expert scientific witnesses without it (and parties) having the opportunity to question those witnesses. Ultimately, holding a hearing will be a more efficient way to address the matters than not having one.

21. The DMC hearing last year was originally set down for three blocks of three hearing days each. However, the environmental evidence ran substantially over time, requiring the addition of a fourth hearing block to the schedule.

22. The original DMC hearing in 2017 was somewhat longer and spanned 27 days, including a two-day site visit to a number of sites along the South Taranaki coastline. Additional time was devoted to caucusing between expert witnesses, which resulted in consensus on some matters but highlighted areas of dispute in others.

23. As such, it is suggested that the reconsideration hearing last year provides a good basis for what a more truncated hearing appropriate for the fast-track process could look like.

24. Based on its experience, Ngāti Ruanui considers that a <u>minimum</u> of three full weeks would be required for a hearing. This should be broken down into:

    (a) one week for environmental evidence;

    (b) one week for tikanga evidence (and possibly evidence of impacts on other holders of existing interests); and

    (c) one week for closing submissions.

25. We consider that the practice of having three separate hearing blocks was a sensible one and should be followed again this time.

26. The hearing should take place in South Taranaki. The DMC hearing last year took place in Hawera. The panel should also conduct a site visit.

Overall timeframe

27. Ngāti Ruanui considers that a minimum timeframe of six months should be set for decision on the application, given the exceptional complexity of the application and the large volume of evidence.

Panel members

28. Ngāti Ruanui is in the process of engaging with other Taranaki iwi and relevant local authorities with a view to making agreed recommendations on proposed panel members. Unfortunately, those discussions are ongoing and it is understood that internal processes within local authorities will not be complete in time for recommendations to be provided at the conference.

29. Counsel can advise that Ngāti Ruanui has proposed to those other parties that Loretta Lovell and Miria Pomare, who were members of the DMC that reconsidered the application last year (until the application under the EEZ Act was withdrawn), should be considered. Ngāti Ruanui considers that their familiarity with this matter would assist in the application being considered in a timely and efficient manner, as required by the FAA.

30. In any event, it is anticipated that the conference will provide an opportunity for parties to discuss the skill and expertise that the panel will require. In particular, it is essential that at least one member of the panel is familiar with, and has expertise in, the tikanga and history of Ngāti Ruanui and related South Taranaki iwi. Expertise in planning, law and marine biology will also be required.

Cost recovery

31. Ngāti Ruanui seeks recovery of its legal fees for preparation for (including drafting of this memorandum), and attendance at, this conference.

DATED: 2 July 2025

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