

BEFORE THE EXPERT PANEL

IN THE MATTER of the Fast-track Approvals Act 2024

AND

IN THE MATTER of an application for marine consent approvals under
the FTAA for the Taranaki VTM Project

**MEMORANDUM OF COUNSEL ON BEHALF OF ENVIRONMENTAL DEFENCE SOCIETY
INCORPORATED**

06 November 2025

Environmental Defence Society Inc
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To:



By email: info@fasttrack.govt.nz

Attn: Expert Panel convened to consider the Taranaki VTM Project

MAY IT PLEASE THE PANEL

1. This memorandum is filed on behalf of Environmental Defence Society Incorporated (**EDS**) in response to Minute 11 of the Expert Panel (**Panel**), dated 4 November 2025.¹
2. EDS welcomes the Panel's decision to hold a hearing on specific legal issues and supports the draft list of questions proposed to be addressed at the hearing. This memorandum covers EDS's suggested additional legal questions for consideration at the hearing,² and a request for remote participation.³

Suggested additional legal questions

3. EDS considers the draft list of legal questions in Appendix A of the Minute to be generally comprehensive. However, some key gaps remain. In response to paragraph [6] of the Minute, EDS invites the Panel to include the following additional legal questions (or questions to similar effect) on the final list of issues to be covered at the hearing:
 - a. Proportionality: What does "out of proportion" in s 85(3) mean? How should the Panel apply the 'proportionality test'?
 - b. Residual discretion: In relation to s85(3)-(5) FTAA, if the Panel finds that the thresholds in s85(3)(a)(b) are met (meaning that there are 1 or more adverse impacts in relation to the approval that are out of proportion to the project's regional or national benefits, even after taking into account s85(3)(b)(i)(ii)), then whether the Panel must decline the proposal, subject only to a residual discretion?
4. The 'proportionality test' in s 85(3) is fundamental to your decision on the Taranaki VTM Project. In its original comments on the Project,⁴ EDS proposed guiding methodologies to assist with the proportionality assessment, but these appear to have been misinterpreted in the Applicant's reply comments.⁵ With respect, EDS considers it would be of assistance to the Panel to hear from parties on these matters.

¹ Minute 11 of the Expert Panel: Upcoming Hearing of Contentious Legal Issues, Taranaki VTM Project [FTAA-2504-1048], 4 November 2025

² In response to paragraph [6] of the Minute

³ In accordance with paragraph [10] of the Minute

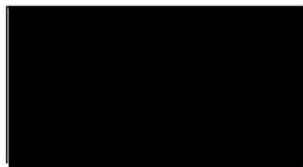
⁴ Comments of the Environmental Defence Society Incorporated, 06 October 2025, at [36]-[38]

⁵ Legal submissions on behalf of Trans-Tasman Resources Limited in Response to Comments Received, 13 October 2025, at [109]-[111]

Request for remote attendance

5. Acknowledging the Panel's preference for counsel to attend in person for the duration of the hearing, EDS regrettably advises that Mr Enright (lead counsel) is unable to attend the hearing in person if it is scheduled as proposed,⁶ due to international flight commitments on 26 November that cannot be changed.
6. In accordance with paragraph [10] of the Minute, EDS respectfully requests leave for Mr Enright to participate remotely. In light of the above circumstances, EDS also respectfully requests to be heard before 11.30am so as to ensure Mr Enright is available to answer any questions that the Panel may have.

Dated this 6th day of November 2025



**R B Enright / J C Commissaris
Counsel for Environmental Defence Society Inc**

⁶ Minute 11, at [4]