

**BEFORE THE DECISION MAKING COMMITTEE  
AT WELLINGTON**

**IN THE MATTER** of the Exclusive Economic Zone and Continental Shelf  
(Environmental Effects) Act 2012

**AND**

**IN THE MATTER** of the Trans-Tasman Resources Limited iron sand  
extraction and processing application

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**MEMORANDUM OF COUNSEL ON BEHALF OF TE OHU KAI MOANA  
TRUSTEE LIMITED**

**11 OCTOBER 2016**

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**WELLINGTON**

**MAY IT PLEASE THE DECISION MAKING COMMITTEE:**

1. This memorandum of counsel is filed on behalf of Te Ohu Kai Moana Trustee Limited (**Te Ohu**) in response to the Decision-Making Committee's (the **DMC**) minute dated 7 October 2016 regarding Te Rūnanga o Ngāti Ruanui's (**Ngāti Ruanui**) request to extend the submission period for Trans-Tasman Resources Limited's (**TTR**) iron sand extraction and processing application (the **Application**).
2. Te Ohu:
  - (a) due to its statutory role and functions, is directly affected by the extension request by Ngāti Ruanui (the **Extension Request**); and
  - (b) supports the Extension Request for the reasons set out in this memorandum.

**The Māori Fisheries Settlement and Te Ohu's purpose, duties and functions pursuant to the Māori Fisheries Act 2004**

3. By way of a very brief summary on the Māori Fisheries Settlement, the Treaty of Waitangi 1840 (the **Treaty**) guaranteed full, exclusive, and undisturbed possession and tino rangatiratanga of fisheries for so long as Māori wished to retain them. Over many years Māori held historical Treaty grievances in respect of fisheries rights. The Quota Management System (the **QMS**) was introduced in 1986. Litigation followed; Māori claimed that the QMS was unlawful and in breach of the Treaty. The Crown and Māori negotiated two settlements:
  - (a) The interim settlement (1989) providing 10% of all quota then subject to the QMS and \$10 million; and
  - (b) The final settlement (1992) providing for: payment of \$150 million to purchase a half-share in Sealord; transfer of 20% of quota for any new stocks introduced to the QMS; the making of regulations to recognise and provide for customary fisheries gathering; for the (then) Treaty of

Waitangi Fisheries Commission to hold all assets on trust pending the formulation of a scheme for allocation of the assets to iwi ultimately for the benefit of all Māori.

4. The Māori Fisheries Act 2004 (**MFA**) enacts the scheme for allocation of the settlement assets and establishes Te Ohu to complete that task.
5. Te Ohu's purpose is to advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities.<sup>1</sup> Te Ohu's duties include acting as custodian "to manage on a transitional basis, collectively or separately as Te Ohu Kai Moana Trustee Limited considers appropriate, the settlement assets to be allocated to an iwi, until they are transferred to the mandated iwi organisation of the iwi".<sup>2</sup> To further its purpose Te Ohu may, in relation to fisheries, fishing, and fisheries-related activities, act to protect and enhance the interests of iwi and Māori in those activities (among other things).<sup>3</sup> Te Ohu's obligations are to *all iwi*, individually and collectively, and *Māori generally*, pursuant to the MFA. This is particularly relevant given the way in which iwi interests are represented in the QMS.

#### **Te Ohu's interest in the Application and support for Extension Request**

6. In the context of the Application, Te Ohu has an "existing interest" pursuant to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.<sup>4</sup>
7. Due to Te Ohu's statutory purpose and functions, and as an "existing interest" holder, it intends to make a submission on the Application.<sup>5</sup> In particular, Te Ohu intends to submit on the extent to which TTR has

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<sup>1</sup> MFA, section 32. This is "to ultimately benefit the members of iwi and Māori generally; further the agreements made in the Deed of Settlement; assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty; and contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement."

<sup>2</sup> MFA, section 34(d).

<sup>3</sup> MFA, section 35(1)(b).

<sup>4</sup> EEZ Act, section 4, definition of existing interest. See also the decision of the DMC on TTR's 2013 application at paragraphs 584 and 587.

<sup>5</sup> Te Ohu also made a submission on TTR's previous 2013 Application.

addressed the effects on “existing interests” and provide further detail about how iwi hold quota pursuant to the QMS. In short, it is not simply the iwi in and around the Application area that are affected due to the way in which quota shares are held. However, Te Ohu’s submissions on the effects on particular iwi, aside from Te Ohu submissions on how quota is held and the implications of this, will be limited. The iwi themselves are best placed to make these submissions. Therefore, it is extremely important that Ngāti Ruanui are afforded the opportunity to make a robust submission to ensure that the DMC has the information it needs to make a decision on the Application.

8. Te Ohu supports the submissions made by Ngāti Ruanui on the Extension Request and submits further that the Environmental Protection Authority’s Key Issues Report:
  - (a) specifically recommends that the DMC should test TTR’s conclusion that there will be no effect on the existing interests of Māori given the Application’s location;<sup>6</sup> and
  - (b) notes that the DMC will need to satisfy itself that the Cultural Values Assessment adequately represents the views of Ngāti Ruanui given that the CVA has not been provided or endorsed by Ngāti Ruanui (noting further that “this is a key consideration before the DMC can move on to assess the magnitude and significance of the effects of the proposal on existing interests held by Māori, including Ngāti Ruanui”).<sup>7</sup>

**DATED this 11<sup>th</sup> day of October 2016**



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**H K Irwin-Easthope**  
For Te Ohu Kai Moana Trustee Limited

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<sup>6</sup> EPA Key Issues Report, section 4.5, paragraph 103, pp.26-27.

<sup>7</sup> Ibid, paragraphs 105-106, p.27.