

Before the Hearing Commissioners
at Gisborne District Council, Ōpōtiki District Council and
Bay of Plenty Regional Council

under: the Resource Management Act 1991 (*RMA*)

in the matter of: an application by Te Ara Tipuna Charitable Trust for
land use consents, coastal permits and other consents
to construct, operate and maintain a recreational
pathway from Tairāwhiti around the coast to Ōpōtiki,
known as "Te Ara Tipuna"

between: **Te Ara Tipuna Charitable Trust**
Applicant

and: **Gisborne District Council**
Ōpōtiki District Council and
Bay of Plenty Regional Council
Consent Authorities

Memorandum of counsel on behalf of Te Ara Tipuna Charitable
Trust

Dated: 3 February 2025

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MEMORANDUM OF COUNSEL ON BEHALF OF TE ARA TIPUNA CHARITABLE TRUST

- 1 This memorandum is filed on behalf of Te Ara Tipuna Charitable Trust (*Trust*) in response to:
 - 1.1 Minute 1 (*Minute*) of the Independent Hearing Commissioners (*Commissioners*);¹
 - 1.2 the memorandum of counsel (*Council Memorandum*) filed on behalf of Gisborne District Council, Bay of Plenty Regional Council, and Ōpōtiki District Council (together *the Councils*);² and
 - 1.3 the memorandum to the Commissioners filed by Councils' reporting planner requesting further information in relation to the Te Ara Tipuna application (*Reporting Planner Memorandum*).³

- 2 This memorandum addresses the following matters:
 - 2.1 Background to the Project and engagement between the Trust and the Councils to date;
 - 2.2 The effects assessment and management approach taken in the application;
 - 2.3 The merits of a proposed meeting between the Applicant, Councils and the Commissioners to confirm the application's effects management approach;
 - 2.4 Acknowledgement of the Council Memorandum and Reporting Planner Memorandum and the Trust's anticipated response;
 - 2.5 Administrative matters related to the hearing including the hearing venue, site visits and conflicts; and
 - 2.6 Requested directions.

Background to the Project

- 3 Te Ara Tipuna (or "the ways of our forebears") is a 500km continuous pedestrian trail stretching from the southern boundary of Ngati Porou at Te Toka-a-Taiau through the rohe of Te Whānau-Āpanui, Ngai Tai ki Torere, and ending at Tarakeha, in Te

¹ Te Ara Tipuna (Stage 1) – Minute 1 & Directions of Hearing Commissioners dated 24 January 2025.

² Memorandum of counsel on behalf of Gisborne District Council, Bay of Plenty Regional Council, and Ōpōtiki District Council dated 24 January 2025.

³ Memo to Commissioners – Te Ara Tipuna – Minute 1 & Directions of Hearing Commissioners – requests for further information, Te Ara Tipuna dated 31 January 2025.

Whakatōhea (*Project*). The Project has been designed to reconnect mana whenua with the ways of ancestors, allowing mana whenua to physically, figuratively and culturally walk in their ancestors' footsteps.

- 4 A full overview of the Project was provided in a cover letter lodged with the consent application, available [here](#).

Engagement with Councils to date

- 5 The Trust wishes to express its appreciation for the collaborative approach to the Project being taken by the Councils (and counsel for the Councils).
- 6 As indicated by the chronology in **Appendix A**, the Trust and its consultant planners have been engaging with the Councils in relation to the Project (including previous iterations of the Project) over a considerable period of time. Although this engagement predates counsel's engagement, we understand that much of this engagement has focussed on developing an appropriate and practicable approach to effects assessment and management given the unique nature of the Project – being an extensive linear trail project with predominantly low-level effects not justifying surveying and assessment of the full 500km route.
- 7 The Trust has consistently sought specific feedback from the Councils and their expert teams on the application's approach to effects management but has until recently had relatively limited and/or high level engagement or feedback, which has not included information requests of the nature now set out in the Reporting Planner Memorandum. The Trust does however deeply appreciate the recent engagement it has had with the Councils which resulted in a productive meeting on 30 January 2025 between the Applicant's and Councils' ecological and landscape experts.

Management Plan approach

- 8 As noted above, Te Ara Tipuna is a unique project. Although it is significant in a geographic sense, being 500km long and spanning the coast from Gisborne to Ōpōtiki, the route is predominantly (~90%) wayfaring (i.e. no constructed path and only periodic way marking poles). As a result, its environmental effects are predominantly minor and it triggers relatively few consent requirements.
- 9 Given the length and remoteness of the route, the inherently low impact nature of the activity, and the extended lead in times expected before the Project can be implemented, the Trust adopted an effects assessment and mitigation approach that relied heavily on management plans to identify and manage effects at the detailed design stage.

Council Memorandum and Reporting Planner Memorandum

- 10 The Trust acknowledges the recent feedback reflected in the Council Memorandum and Reporting Planner Memorandum.
- 11 The Trust is in the process of responding to those requests and compiling appropriate further information.
- 12 At this stage, the Trust anticipates providing clarification (including in the form of revised conditions) so as to provide:
- 12.1 clearer parameters for the avoidance of effects in high value areas;
 - 12.2 requirements for pre-construction surveys to be undertaken to determine moderate value areas;
 - 12.3 revised management plan requirements, providing clear criteria for mitigation methods and effects outcomes; and
 - 12.4 provision for the Councils to certify management plans against specified criteria and authorised effects.
- 13 The Trust anticipates continuing to refine the proposed conditions (including via engagement with the Councils). To that end, counsel consider that the parties would benefit from focussed engagement regarding the conditions.
- 14 Accordingly, counsel respectfully requests that the Commissioners issue directions requiring the Trust and Councils to confer with one another to prepare an agreed set of conditions in advance of the hearing, identifying any outstanding areas of disagreement.

Meeting with the Commissioners

- 15 At paragraph 15 of the Minute, the Commissioners indicated that they would be willing to attend a Teams meeting with counsel for the Councils and the Applicant, if this would be of assistance.
- 16 The Trust considers there would be considerable value in this discussion. In particular, the Trust would welcome the opportunity to discuss its proposed approach to effects assessment, management plans and draft conditions with the Commissioners and the Councils.
- 17 Accordingly, we respectfully request that the Commissioners convene a Teams meeting between counsel. Ideally, this meeting would be scheduled well in advance of the Trust's 14 February 2025 response deadline (as directed in the Minute). This timing would enable the Trust to refine the further information that the Commissioners consider to be necessary / appropriate to determine the application.

Hearing administration and conflicts of interest

- 18 With respect to the potential hearing venue, the Trust wishes to clarify its position on the hearing location. The Trust previously indicated (through correspondence and in the course of discussions with Councils) that it was willing to make preliminary enquires as to holding a hearing in Ruatōria (being in the heart of the application). However, on reflection, the Trust now considers it would be preferable to hold the hearing in Gisborne, at Gisborne District Council, should the Commissioners consider that to be appropriate. Holding the hearing in Gisborne will:
- 18.1 be more accessible for the Commissioners, the Councils' staff, experts, submitters and the Trust's technical and expert support (including providing more reliable wifi for live-streaming and online submitters and removing the potential for weather events to interrupt or delay the hearing);
 - 18.2 may facilitate a more efficient 3-4 day hearing process; and
 - 18.3 will provide a neutral space for all 4 iwi involved.
- 19 Notwithstanding the above, the Trust acknowledges that the consenting process, in all aspects, is determined and controlled by the Councils, in carrying out its responsibilities under the RMA.
- 20 With respect to site visits, the Trust is available to help facilitate a site visit for the Commissioners and the Councils' reporting planner. We confirm that the Commissioners are welcome to contact the Trust at any time to make such arrangements.
- 21 Finally, the Trust confirms it does not have any concerns in respect of potential conflicts of interest referenced at paragraphs 6-8 of the Minute.

Conclusion and next steps

- 22 In light of the above, the Trust respectfully requests that the Commissioners issue directions to:
- 22.1 require the Trust and Councils to confer with one another to prepare an agreed set of conditions in advance of the hearing, identifying any outstanding areas of disagreement; and
 - 22.2 convene a Teams meeting between counsel for the Councils and the Trust during the course of this week or early the following week.
- 23 Finally, we note with sadness the recent passing of Dame Iritana Tāwhiwhirangi. Key personnel at the Trust are relatives of Dame Iritana Tāwhiwhirangi and have tangihanga commitments. Those commitments may impact the Trust's immediate availability. Counsel will keep the Commissioners and Councils updated in the

event that the Trust's availability impacts on any directions issued in the Minute.

Dated: 3 February 2025

A handwritten signature in blue ink, appearing to read 'Alana' or 'Rebecca', written in a cursive style.

Alana Lampitt / Rebecca Tompkins
Counsel for Te Ara Tipuna Charitable Trust

APPENDIX A – APPLICATION CHRONOLOGY⁴

Date	Activity
2021	Project inception
January 2023	Cyclone Gabrielle
February 2023	Joint pre-app meeting with Gisborne District Council (GDC), Ōpōtiki District Council (ODC) and Bay of Plenty Regional Council (BOP)
April 2023	Pre-app meeting with GDC
June 2023	Planning triggers and consenting process meeting with the Councils (GDC, ODC and BOP)
June 2023	Project meeting with the Councils to discuss notification and logistics
October 2023	Application lodged, with site visit offer from the Trust
November 2023	Preliminary review comments re: Application provided by the Councils
December 2023	Meeting between the Trust and the Councils re: administration, notification, landowner contacts
December 2023	Meeting between the Trust and the Councils re: planning matters
March 2024	Site visit undertaken by Todd Whittaker and Esta Kowhai from the Councils, accompanied by Diana Bell, Victoria Murphy and Zac Borrie
March 2024	Detail design tracker of Project route provided to the Councils
March 2024	Te Ara Tipuna Charitable Trust incorporated
22 March 2024	Application accepted by Councils under s88
9 April 2024	Section 92 request issued by the Councils
16 May 2024	Section 92 response provided by the Trust
July 2024	Rules assessment/consent trigger workshop between the Trust, BOP and ODC
August 2024	Rules assessment/consent trigger workshop between the Trust and GDC
15 November 2024	Revised application lodged by Trust – amending original application to relate to pedestrian use only (excluding cycling and horse riding)
13 December 2024	Application notified

⁴ Prepared by the Trust's consultant planner, Diana Bell, The Planning Collective.