

**BEFORE THE ENVIRONMENTAL PROTECTION AUTHORITY  
AT WELLINGTON**

**IN THE MATTER**

of the Exclusive Economic Zone and  
Continental Shelf (Environmental Effects)  
Act 2012

**AND**

**IN THE MATTER**

of a decision-making committee  
appointed to hear a marine consent  
application by Trans Tasman Resources  
to undertake iron ore extraction and  
processing operations offshore in the  
South Taranaki Bight

---

**EXPERT REBUTTAL EVIDENCE OF BUDDY MIKAERE ON BEHALF OF TRANS  
TASMAN RESOURCES LIMITED**

**9 FEBRUARY 2017**

---

---

**ATKINS | HOLM | MAJUREY**

Mike Holm/Vicki Morrison-Shaw  
PO Box 1585  
Shortland Street  
AUCKLAND 1140

Solicitor on the record  
**Contact solicitor**

Mike Holm  
Vicki Morrison-Shaw

Mike.Holm@ahmlaw.nz  
Vicki.Morrison-Shaw@ahmlaw.nz

(09) 304 0428  
(09) 304 0422

## **INTRODUCTION**

1. My name Buddy Mikaere.
2. I prepared Expert Evidence dated 17 December 2016 (First Statement) with respect to these proceedings on behalf of Trans Tasman Resources Limited.
3. My qualifications and experience are set out in Appendix 1 attached to my First Statement.
4. The purpose of this Rebuttal Evidence is to respond to matters raised in the Nga Kaihautū Report and statements of evidence of Graham Young, and Bill Hamilton,

## **RESPONSE TO NGA KAIHAUTŪ REPORT**

5. In my view the key cultural issue for this application has been the lack of input (via discussion or via a CIA) from Ngāti Ruanui as tāngata whenua – but the Kaihautū report does not seem to accept that in the absence of engagement – the applicant has little option but to attempt to ascertain what the tāngata whenua concerns might be as best possible. Fortunately in the case of this application, it is broadly similar to the earlier 2013 application and the parties participating are also the same. Therefore there was already an existing body of knowledge about what the cultural concerns might be and I believe the revised application with its mitigation package and relevant consent conditions especially are based around addressing those same issues.
6. Kaihautū also appear to be of the view that being able to consult also means being able to get tāngata whenua acceptance of the suite of consent conditions. These are two entirely different matters and in my experience a robust consultation process does not necessarily result in an agreed set of conditions.
7. I consider the other important point is in respect of the allegation that Māori interests have not been properly taken into account. My view is that there was no customary usage of the project area in traditional times – therefore there is no basis for taking into account customary usage. (See my First Statement evidence on page 12). Contemporary usage consists of commercial fishing and we already have an indication of support from Ngāti Ruanui's commercial partner Sanfords – that they do not have an issue with fishing/plume matters. In the same vein some play is made on the term of consent and how things might change in the interim e.g. should the iwi obtain Customary Marine Title – alleging that the applicant is deficient for failing to take this into account. I understand that Ngāti Ruanui is a Customary Marine Title applicant but this would apply to the inshore-

portion of their "rohe". Exactly how this would affect the EEZ aspect of the application is not explained.

8. The failures to take into account Treaty settlements and settlement legislation is mentioned several times. But as far as I know there has never been any settlement of lands and/or resources – in the EEZ apart from relevant fisheries claims. Fisheries interests both contemporary and customary are taken into account as part of the application.

#### **RESPONSE TO MR GRAHAM YOUNG FOR TE RUNANGA O NGĀTI RUANUI TRUST**

9. The main cultural issues raised in Mr Young's evidence relates to the question of consultation. Paragraphs 62 – 80 of his evidence) is predicated on the assertion that TTR failed to adequately consult with Ngāti Ruanui and that as a result the iwi response has been hampered by a lack of information and similar.
10. The arguments presented are not too dissimilar to his evidence at the 2013 application hearing. However from my examination of the project documentation and as set out in my First Statement at paragraphs 11 to 18, it appears to me that Ngāti Ruanui made a conscious decision not to participate or consult. The one crucial element missing in his justification of the Ngāti Ruanui approach is that of good faith which in my experience has a validity even in the most adversarial of situations. It seems to me that it would have been a straightforward matter to state unequivocally the Ngāti Ruanui position.

#### **CONCLUSIONS**

11. I confirm that none of the issues raised in submitter evidence have affected the conclusions in my First Statement.



Buddy Mikaere

9 February 2017