

**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  
Limited to undertake iron ore extraction  
and processing operations offshore in  
the South Taranaki Bight

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

**17 DECEMBER 2016**

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## EXECUTIVE SUMMARY

1. My review of the Cultural Assessment document commissioned by TTRL finds that while it is useful in outlining a conceptual framework within which the Ngāti Ruanui issues with the Project might be identified and considered, much of that framework is in my opinion too general and unspecific and a more direct approach is preferred. In my opinion the relevant cultural matters at issue in this case are relatively straightforward being confirmation of mana whenua/mana moana, consultation, impact on the environment from a kaitiaki perspective and impact on mauri.
2. I agree with the Cultural Assessment conclusion that the environmental impact aspects associated with the Project and which have implications for Ngāti Ruanui's kaitiaki obligations have been considered and addressed as part of the Project proposal and that consideration is reflected in the draft conditions.
3. The Cultural Assessment concludes that "the proposed conditions avoid, remedy or mitigate effects of the proposal on Ngāti Ruanui" (para 2.3g). While I agree, I would qualify that by saying that this is in respect of the "known" effects as has been able to be discerned from the information available to date.

## INTRODUCTION

1. My name is Buddy Mikaere. I am a consultant specialising in tangata whenua consultation and cultural issues arising from development applications primarily under the Resource Management Act 1991 ("the RMA") but which I believe provides me with sufficient background to deal with matters raised under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 ("the EEZ Act").
2. I have had twenty-five years experience in the area of iwi consultation. I have set out in Appendix 1 my qualifications and relevant work experience.
3. I have been engaged by Trans-Tasman Resources Ltd ("TTRL") in relation to its application to excavate iron sand from the seabed in the exclusive economic zone in the South Taranaki Bight and to process that sand to remove iron particles and return the remaining sand / de-ored sediments to the seabed ("the Project"). The detail of the Project is explained in other expert evidence.
4. I have been associated with this project since receiving instructions in late October 2016.
5. My brief has been to undertake a peer review and comment on the Cultural Values Assessment and Analysis (the "Cultural Assessment") prepared for the Project by Mr Tahu Potiki who I understand, because of illness, is unable to present evidence on his Assessment. The review also includes an examination and comment on the tangata whenua consultation effort.
6. I have also been asked to consider and comment where appropriate, on submissions opposing the application but which reference cultural issues.
7. I confirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses contained in the

Environment Court Practice Note dated 1 December 2014. This evidence is within my area of expertise, except where I say I am relying upon the specified evidence of another person. I also confirm that I have considered all material facts that I am aware of, that might alter or detract from the opinions I express.

## **SCOPE OF EVIDENCE AND METHODOLOGY**

### **Scope of evidence**

8. My statement of evidence:
  - Peer reviews aspects of the Cultural Assessment prepared by Tahu Potiki;
  - Considers what the appropriate cultural issues might be given the fact that the mana moana iwi for the project location as represented by the Te Runanga O Ngāti Ruanui Trust (“Ngāti Ruanui”) have not been a participant in the consultation effort.
  - Comments on the cultural and related environmental issues identified for the Project and how these matters have been addressed in the Cultural Assessment and the Impact Assessment;
  - For completeness, examines other documentation in which Ngāti Ruanui cultural values and issues have previously been identified and comments on how those matters have been addressed by the Project;
  - Where appropriate points to the appropriate mitigation, remedial and avoidance measures proposed to address those issues;
  - Discusses whether the application is compliant with the relevant provisions (sections 10 and 12) of the EEZ Act; and
  - Comments on relevant opposing submissions.

9. My evidence should be read in conjunction with many of the expert witnesses providing evidence on this matter but in particular Mr Tokatumoana Kevin Walden who provides evidence on tāngata whenua consultation and in particular the relationship between TTRL and Ngāti Ruanui.

### **Methodology**

10. I have prepared my evidence following a briefing on the project from applicant counsel; an examination of the Cultural Assessment and also an examination of the relevant project documentation; the Project Impact Assessment ("Impact Assessment") in particular. I have supplemented the information available from these sources with further research of my own including a consideration of the Ngāti Ruanui submissions and evidence on the 2013 application.

### **CONSULTATION AND CONFIRMATION OF MANA WHENUA/MANA MOANA**

11. The Cultural Assessment does not examine the consultation between TTRL and Ngāti Ruanui in any depth. But in my experience a good consultation process, where both parties actively engage and consider each other's views, lies at the heart of endeavouring to ascertain relevant cultural issues.
12. However, where a party is unresponsive or unwilling to engage this can frustrate the process and the evidence of Mr Walden outlines the difficulties that TTRL has experienced in seeking to consult and fully engage with Ngāti Ruanui in this case. In these circumstances commissioning the independent Cultural Assessment in an endeavour to ensure that important cultural values and issues are identified and addressed is, in my opinion, a sensible alternative.
13. At the hearing of the 2013 application Graham Young giving evidence on behalf of Ngāti Ruanui was critical of the TTRL

consultation effort saying that rather than consultation there was only engagement. By his definition engagement meant just an exchange of information as opposed to consultation which required taking into account feedback.

14. In my view, based on the evidence of Mr Walden and the information included in the Impact Assessment, TTRL created many opportunities to both engage and consult with Ngāti Ruanui but with very little tangible result; particularly in respect of feedback.
15. In my experience it is normally a clear signal that no response equates to strong disapproval of a proposal or no change in a previously well-articulated opposing position.
16. The “positive” aspect of the attempted consultation with Ngāti Ruanui is that it is an acknowledgement by TTRL of Ngāti Ruanui’s status as mana whenua/mana moana for the Project area.
17. Furthermore it is an acknowledgement of their rangatiratanga under Article 2 of the Treaty of Waitangi.
18. In my opinion it also contributes towards achieving compliance with section 12 of the EEZ Act because the Treaty “interests” referred to in the section are in the first instance clearly Ngāti Ruanui interests.

#### **CULTURAL VALUES**

19. In a submission letter dated 24 January 2014 to the Environmental Protection Agency (refer **Appendix 2**) outlining their position on the previous TTRL application, Te Runanga O Ngāti Ruanui at page 2 set out the values they believed needed consideration. In the absence of confirmation from Ngāti Ruanui I believe that these values probably remain unchanged in respect of the current

application and I propose to consider them in that light. The values were:

- Kaitiakitanga – sustainable guardianship over all resources for the use and enjoyment for future generations;
- Puwaitanga – to safeguard and preserve the environment through sustainable growth;
- Manaakitanga – protection and preservation to ensure good health and well being;
- Whakapapa – our identity and where we come from;
- Tikanga – the spiritual, mental, physical and cultural determinants of Ngāti Ruanui; and
- Rangatiratanga – the right of Ngāti Ruanui uri to assert their self determination over their turangawaewae.

20. Rather than addressing these values directly the Cultural Assessment instead considered the following: Whakapapa (section 6); Mana, Tapu, Taonga, Wahi Tapu, Kaitiaki, Wahi Tapu ki te Moana (sections 7 – 9); Mauri (section 10); Mauri restoration – including rahui (section 11).
21. Section 12 of the Cultural Assessment then drew these conceptual threads together against a consideration of the application.
22. As indicated above, it is not the approach that I might have followed in addressing the cultural impact question although I do agree with the emphasis the Cultural Assessment placed on consideration of the mauri impact which in my opinion is the issue.
23. However in terms of defining an appropriate approach, in my view, it is important to recognise the differences between the EEZ Act and the RMA. While the EEZ Act contains a section on the Treaty of Waitangi (s 12) the expression of the obligation under this section is quite different to the Treaty

section under the RMA. S 12 of the EEZ states how the Crown's responsibility to give effect to the Treaty has been provided for, rather than imposing a general obligation on decision-makers to take into account the principles of the Treaty (as is required under the RMA). The Environmental Protection Authority ("EPA") as the decision maker is however required to take into account "any effects on the environment or existing interests" which includes Treaty settlement and protected customary rights and title interests

24. My evidence addresses the Cultural Values listed by Ngāti Ruanui against the Project proposal as outlined in the Impact Assessment and referencing any relevant commentary from the Cultural Assessment.

#### **Sanctioned by tradition**

25. Before doing so I wish to first consider the Project against the relevant traditional setting. In the traditional Māori world what sanctioned any action or activity was the application of precedent normally as recorded in creation or foundation stories and myths. These were the korero on which Māori society was structured and which helped explain the shape of the world they lived in. As an example earthquakes and volcanic eruptions are the manifestations of Ruaumoko, the unborn child of the earth mother Papa, who lives within her belly and whose stirrings are the earthquakes that assail us from time to time.
26. Interference with the seabed, more especially the lands under the sea, is found in the story of Maui who fishes up a great fish, new land, from the ocean depths which his brothers cut and slice in greedy haste thus creating the rugged landscape of Te Ika a Maui.
27. Ruatēpupuke goes in search of his grandson in the lands under the sea. He sets fire to the house of Tangaroa releasing

all the fish – thus explaining how fish came into the world - and in his escape brings back some of the pou from Tangaroa's house which is the origin of whakairo – wood carving - in this world.

28. These traditions are indicative of the Māori view of the sea – and what lies beneath - as being a strange and alien environment. Maui himself is a child of that alien environment being cast into the water at birth by his mother and then later discovered on the beach wrapped in seaweed.
29. Echoes of this alienness, this otherness, can be found in conceptual ideas about loss. Land sold in the 19th century for example was said by some to have been sent out to sea i.e. totally alienated.
30. But the fact that people also believed in a world existing under the water that was very much like this one, where people lit fires and otherwise lived and behaved just the same also shows that though different that world needed to be treated with respect.
31. So while I believe conceptually that there is sanction by traditional precedent for seabed disturbance by the Project, in practical terms the disturbance posed by the Project goes far beyond anything that that tradition might ever have conceived. It is a question of scale.
32. The large-scale extraction and processing of iron sand is clearly a matter which sits well outside traditional Māori conceptual thought. The “respect” aspect of the traditional approach or how we consider and deal with environmental issues therefore assumes a greater importance.

### **KAITIAKITANGA – THE ENVIRONMENTAL IMPACT**

33. The location of the Project – beyond the 12 nautical mile (22.2 km) mark - makes any determination of environmental

impact challenging and any assessment is heavily reliant on science and technical information. In fact this was one of the main issues raised by Ngāti Ruanui in evidence opposing the 2013 application i.e. the heavy reliance on theoretical modelling and the unproven/untested nature of the proposed extraction operation.

34. The evidence of Shi-Han Grace Ngarewa on behalf of Ngāti Ruanui, at paragraph 7 said:

*It is our submission that based upon the information to date, the questions still left unanswered, the heavy reliance on theoretical modelling, minimal benefits that this activity will provide to iwi and the potential risks posed to our environment. Ngāti Ruanui is left with no option but to oppose the proposed activity based upon its current merits.*

35. These matters are largely covered in Sections 3, 4 and 5 of the Impact Assessment which considers the Existing Environment (3), the Assessment of Effects (4) and the Monitoring and Management Framework (5). They are expanded upon in the relevant expert evidence statements.
36. But assessing the impact on the cultural value of kaitiakitanga is shaped by the Project location.

### **Customary Fisheries**

37. Exercising kaitiakitanga or traditional guardianship over the customary fishing resource within the Project area is in my opinion questionable in that it is doubtful any traditional customary fishing took place there. The exercise of kaitiakitanga for offshore customary fishing is normally focused around islands, rock pinnacles and reefs of which I understand the actual Project area is bereft.
38. In the letter of 24 January 2014 mentioned earlier (**Appendix 2**) Ngāti Ruanui make reference to the North and South

Traps, adjoining reef systems six km offshore from Patea and described as “being responsible for some of the best fishing in Taranaki”. Rocky outcrops are also mentioned but their location is not identified.

39. My understanding is that the technical evidence posits no impact on the North and South Traps and no rocky outcrops – potential locations for taonga species - are within the Project area or if located further away will not be affected by mining operations. (Evidence of Dr Mark James and Dr Alison MacDiarmid)
40. Similarly, with the use of the sea floor for customary fishing activities. In traditional times sea floor use was limited to the gathering of kaimoana by diving or by the use of simple dredging devices and nets. This meant that these were largely inshore activities. Because of the absence of target shellfish species and the depth of the water (20 – 42m) I consider that these activities would not have occurred on the seabed within the Project area in traditional times. This is why, as far as I can discern, there is no customary relationship with this part of the seabed.
41. I note that the Ngāti Ruanui submission refers to catch data which identifies both long-fin and short-fin eels being found within the wider Taranaki offshore area. However, this catch data explicitly states that there is no information about where such eels have been caught within the area. In traditional and contemporary times eel fishing is a freshwater activity. The expert evidence of Dr James and Dr MacDiarmid do not record the presence of any eels (either long or short fin) in the South Taranaki Bight.
42. The Cultural Assessment at 12.19 concluded that there was no indication that any specific traditional or customary

fishing grounds have been identified as being threatened by the Project.

43. The Cultural Assessment also discusses the tapu nature of waterways (section 9) and provides examples and more importantly reasons for why that was the case in each instance. But there is no indication that the Project area was tapu in a similar way. I have also been unable to find any claim for tapu status in the Ngāti Ruanui material I have examined. This is not surprising because the distance off-shore, and the depth of the waters and the lack of resources meant there was no reason to go there even in transit where canoes closely followed the coastline.
44. In any event at 9.6 the Cultural Assessment opines that the presence of tapu did not preclude use of a particular waterway for fishing and I concur with that statement. All the examples given are located in-shore and to preclude a large area of coastline from fishing because of a tapu would deny access and use of a valuable resource.
45. In sections 11 and 12 of the Cultural Assessment the rahui concept is discussed. This is a "tapu" normally applied for conservation purposes or for a particular reason such as a death by drowning.
46. At section 11.18 an example of Ngāti Ruanui's use of a rahui is quoted. But the main consideration here is that the use of rahui is a temporary measure and it has not been applied to the Project area as far as I am aware. Nor would I expect that to be the case given the nature of rahui and the absence of customary practices in the Project area that might require it.
47. The impact on customary fisheries from the mining activity itself and on fisheries outside the Project area through sediment distribution (the sediment plume) by tide and

currents is examined in section 3.3 Physical Setting of the Impact Assessment. My understanding is that the expert evidence on this point is that there will be no impact outside the immediate Project area except to the extent that fish might avoid plume areas. (See Dr James and Dr MacDiarmid evidence)

48. In summary the environmental impact on customary fishing by the Project as shown by the technical evidence is assessed as being minimal at worst (Dr James/Dr MacDiarmid evidence). It is also concluded that currently there is no tapu or rahui in force for the Project area and Ngāti Ruanui do not raise them as issues.
49. I note that customary fishing mitigation is offered in proposed consent condition 38 which requires the preparation of a Kaimoana Monitoring Programme. This programme is to provide for the monitoring of species important to customary needs including from customary fishing grounds from around the Project site.
50. I also note that the position of Ngāti Ruanui in opposing the Project because of concerns about customary fisheries impact can be considered to be a proper exercise of their perceived kaitiakitanga obligations (See paragraph 5.1 of my evidence above).

#### **COMMERCIAL FISHING IMPACT**

51. Like most other iwi, Ngāti Ruanui have commercial fishing interests which might be affected by Project activities. In previous submissions the iwi fishing interests have been described as "a taonga" (Cultural Assessment paragraph 12.12). The impact of the Project on commercial fisheries - including iwi interests - is examined in the Impact Assessment document at section 3.11.4 and section 4.15.1. I note that in

their submission Ngāti Ruanui say that their commercial fishing interests will be affected.

52. In their 24 January 2014 letter Ngāti Ruanui describe how their commercial fishing interests are managed by Sanford Ltd and the Project area (which sits within Fisheries Management Area 8 – “FMA”) is described as being an important trevally fishery. Section 3.6.1.3 of the Impact Assessment confirms the presence of trevally in the Project area with the main capture method being by bottom trawling (3.11.4.1 page 63 of the Impact Assessment). The main trevally “season” occurs in January/February.
53. At 4.15.1.4 of the Impact Assessment which discusses Bottom Trawling, the expectation is that any impact on the fishery (for all bottom trawled species including trevally) displaced because of mining activities will be minimal, and there is unlikely to be a negative impact on commercial fishing with fish displaced by the sediment plume able to be caught within the same FMA.
54. Unlike the 2013 application where Ngāti Ruanui were critical of the failure by TTRL to consult with commercial fishing interests including Sanford Ltd that does not appear to be the case this time around. (See 3.11.4 of the Impact Assessment) It is noted from their submission that Sanford Ltd has accepted the TTRL application with the only qualification being acceptance of the sediment plume modelling by the EPA. Unlike their iwi “client” I understand that Sanford Ltd is supportive of the application.
55. There are no aquaculture activities within the Project area - Māori or otherwise - with the closest such being in the outer Marlborough Sounds. The only possibility of impact on aquaculture relates to a potential bio-security risk from Project vessels forced to anchor in Admiralty Bay during

rough weather. However, I understand from the evidence of Dr Barrie Forrest that the consent conditions propose measures which will ensure that any such risk is appropriately managed.

56. In summary the Project impact on Ngāti Ruanui's commercial interests appear to be minimal but as with customary fishing interests, raising the issue is a proper exercise of their kaitiakitanga.

### **Wider environment and ecology**

57. These aspects of the proposal also fall within the Ngāti Ruanui kaitiaki ambit. They are addressed in the Impact Assessment at sections 4.4 to 4.12 inclusive but except in a very general way do not appear to be covered in the Cultural Assessment. I note in summary that the impact on the wider environment and ecology is highly dependent on scientific and "technical" analysis/modelling as opposed to the Māori preference for direct observation. This was a strong Ngāti Ruanui criticism of the 2013 application when they said they were not comfortable with the untested and untried nature of the Project.
58. The Project analysis is that the impact on the wider environment including the benthic ecology within the Project area, fish, seabirds, and mammals is minimal and manageable (See Dr James evidence).
59. In my opinion the issue is a question of whether the TTRL proposal contains sufficient safeguards to meet Ngāti Ruanui concerns about the heavy reliance on modelling.

### **Kaitiakitanga**

60. To address the Kaitiakitanga issues across the board the Project response as set out in the Cultural Assessment at paragraphs 12.12 and 12.13, is to propose the establishment

of a Kaitiaki Reference Group ("KRG") (see also Impact Assessment section 4.11.4) where Ngāti Ruanui would be invited to play a leading role in terms of monitoring, scientific analysis and communications. This proposal is captured in proposed consent conditions 33 to 37.

61. I consider the establishment of the KRG is a reasonable response, particularly where there is no input forthcoming from Ngāti Ruanui on kaitiakitanga issues. I agree with the Cultural Assessment recommendation that the KRG proposal be supported by a Memorandum of Understanding which clearly sets out the expectations of both parties.
62. In terms of addressing the Kaitiakitanga issue, in the particular circumstances of this application I agree that the proposed conditions including the proposed establishment of the KRG avoid, remedy or mitigate the known effects of the proposal on Ngāti Ruanui.

#### **PUWAITANGA AND MANAAKITANGA**

63. These matters are not addressed in the Cultural Assessment. Ngāti Ruanui describes Puwaitanga as being a value requirement to safeguard and preserve the environment through sustainable growth. The Project however is an extractive operation which removes iron sand from the seabed, 90% of which is then returned as de-ored sediment.
64. So while the project does not result in "sustainable growth" of the particular iron sand resource, the expert evidence of TTRL's other witnesses indicates that completed mining areas will recolonise and have very little long-term effects (other than removal of the iron sand). In terms of being an extractive industry this is more restorative than most.
65. What is important in Puwaitanga terms therefore is the protection and preservation of the environment in the

interim. The Impact Assessment sets out how that might be achieved through the various measures and conditions contained in the proposal's consent conditions and as set out in expert evidence.

66. With Manaakitanga, where the Ngāti Ruanui requirement for protection and preservation to ensure good health and well being is assumed to refer not just to the environment but also to people. The environment aspect has already been dealt with and in terms of people I can find nothing in the Project proposals that might be regarded as especially detrimental to Ngāti Ruanui in physical terms. However in cultural terms there may well be aspects of the Project that might be harmful to health and well being. I deal with this particular question later in my evidence when discussing mauri.
67. I note that proposed consent condition 40 for the KRG which provides for an annual grant for environmental initiatives and/or for the cultural well-being of Ngāti Ruanui, is proposed as mitigation for such effects.

#### **WHAKAPAPA**

68. This issue is dealt with in some detail in section 6 of the Cultural Assessment. However this is not a point of contention for the Project as far as I can determine. TTRL acknowledges and accepts the pre-eminent role of Ngāti Ruanui including its ancestry and antecedents all within the wider context of Taranaki, the sea and landscapes that constitute the tribal rohe and the environment and resources that sit within those geographical/tribal boundaries. It also accepts unreservedly the unstated right of Ngāti Ruanui to exercise its cultural and spiritual beliefs as it sees fit.
69. As part of that acceptance the TTRL approach has been to offer throughout its consultation efforts and draft consent

conditions a potential process where it believes the needs of both parties can be accommodated within the Project.

70. While there has been contact by TTRL with other iwi groups, there is no doubt about the consultation focus; Ngāti Ruanui is clearly the mana whenua mana moana body for this part of the southern Taranaki coastline.

### **TIKANGA**

71. The lack of direct consultation and engagement means that getting an understanding of the spiritual, mental, physical and cultural determinants of Ngāti Ruanui is difficult. Responding in an appropriate manner is also difficult for the same reason. The adoption of a general approach to tikanga and cultural aspects associated with the Project is, in these circumstances, the only possible outcome.
72. However in my experience many of the cultural issues dealt with in the Cultural Assessment and as discussed here in my evidence are generic in nature as are the responses and proposals to address them. In the absence of Ngāti Ruanui comment I consider the TTRL approach is consistent with general tikanga principles.

### **RANGATIRATANGA**

73. As I noted earlier, the EEZ Act is not the RMA and the requirements are quite different. In particular while there is an obligation to take into account existing interests (which would include Ngāti Ruanui interests) there is no specific obligation to take into account the principles of the Treaty (such as active protection of rangatiratanga). However, in my view, TTRL has done so.
74. Rangatiratanga or chiefly authority is not expressed simply by assertion because there is an obligation to act appropriately as well. Ngāti Ruanui will undoubtedly have another view but

refusal to engage or korero about a matter which is of such obvious importance does not strike me as an appropriate expression of rangatiratanga.

## **MAURI**

75. My view is that the impact on the mauri of the Project area is the most important cultural issue associated with the proposal. This matter is covered in the Cultural Assessment at Sections 10 and 11. I agree that mauri – which is the life force or life principle inherent in all things animate or inanimate – is normally linked to a resource.
76. Thus a forest with its birdlife and timber resources has mauri and if the mauri is negatively impacted then the mauri is diminished as is the resource. Protection of the mauri of a resource was therefore a traditional priority and this could be achieved spiritually by ritual placement of the mauri of the forest for example – in an object such as a rock which might be further protected by the ritual placement of ancestral atua. In the absence of a written law code spiritual protection such as the measures outlined here provided social controls of great power. Section 11.5 of the Cultural Assessment provides a traditional Taranaki fishing example of this practice.
77. For the present case the first thing to say is that the sand mining proposal which envisages the mining of iron sand, extraction of the iron ore and then returning the de-ored sediment back to the marine environment will in my opinion have an impact on the mauri at two levels; on the mauri of the resource itself (the sand) and on the mauri of the wider environment/ecology.
78. The difficulty as I see it is how to put a cutting edge technical proposal into a traditional Māori conceptual framework. This is compounded by the fact that while the iron sand is clearly

a valuable resource to TTRL it is not a resource in traditional Māori terms. Therefore is this a true mauri resource impact in traditional terms?

79. The second mauri impact is on the Project area's environment/ecology. The environmental and ecological effects are covered off in the Impact Assessment and in other expert evidence. I have also commented on this aspect earlier in my evidence. If, as has become reasonably common in recent times, the health of the mauri is regarded as being equivalent to the health of the environment then consideration of mauri impact becomes quantifiable as has been demonstrated with the commercial fishery impact issue.
80. From this perspective the impact on the mauri is minimal and given the nature of the proposal, temporary as the processed sand is returned and the seabed restored. But this is not the complete answer because there is no consideration of the intangible, the spiritual component. That is because that spiritual mauri impact can only be determined and articulated by Ngāti Ruanui but they are not participating. For this reason I am unable to assess the intangible aspect of mauri from a Ngāti Ruanui perspective. However I can comment from a generic Māori perspective which I expect will be not too different from the Ngāti Ruanui perspective.
81. Section 11 of the Cultural Assessment addresses Mauri and its Restoration and the conclusion seems to be that the restoration of mauri, in particular the spiritual dimension, can be addressed by spiritual means such as the recitation of appropriate karakia and proper ritual. I agree but only in conjunction with the restoration of the physical environment and its ecological component.

82. At paragraph 2.3(b) of the Cultural Assessment the observation is made that "The Māori world is comprehensive and is difficult to reconcile with the general requirements of a formulaic consent process". I agree with this statement too and it seems particularly apt when considering mauri impact.
83. On analysis of the above and in the absence of any detailed information from Ngāti Ruanui on this issue, I consider that overall while mauri is affected that impact is temporary in nature due to the eventual removal of the crawler and the proposed progressive return of the processed sand.

#### **Mauri restoration**

84. At 11.19 of the Cultural Assessment mauri restoration is discussed and an argument presented which says that mauri "...cannot be extinguished, merely diminished or made dormant." This however is related to the use of rahui to allow resource recovery. The use of karakia to protect spiritual integrity and ensure the ongoing health of the mauri is also proposed.
85. My own view is that mauri is restored by a cessation of the cause and rahui represents a variant of this outcome. In my view however seabed restoration is the best approach to mauri restoration.

#### **BENEFITS TO IWI**

86. One of the opposing submission points in the 24 January 2014 Ngāti Ruanui letter was that the 2013 proposal had minimal benefits to iwi.
87. However proposed consent conditions 33 to 41 outline a suite of conditions surrounding the proposed KRG aimed at giving Ngāti Ruanui a central role in the on-going activities of the Project.

88. Wider benefits such as employment and stimulation of local and wider economies are briefly mentioned in the concluding statement of the TTRL application (Section 8). At paragraph 2.3.8 employment for some 250 personnel is proposed. How these might benefit Ngāti Ruanui is not described but the assumption is that engagement with TTRL might put some specifics to these general statements.

## **SUBMISSIONS**

### **Ngāti Ruanui**

89. The Ngāti Ruanui opposing submission is a comprehensive one which utterly rejects the Cultural Assessment and also rejects any suggestion that the iwi has failed to participate or engage in the process. What is repeated is its view that the application and the discussions surrounding it lack essential detail thereby making their ability to assess the proposal and participate in meaningful consultation, difficult.

### **Customary Right or Customary Marine Title**

90. At page 14 Section 10 of their submission Ngāti Ruanui advise that they have made application for Customary Marine Title for the customary and inshore parts of their rohe out to the 12-mile limit. As I understand it the Project area is therefore not subject to this application which is interesting and I believe supports my belief that there was no customary use associated with the Project area. Ngāti Ruanui say that there will be an impact on their Customary Marine Title area from the Project. As outlined earlier in my evidence that question is addressed in other expert evidence.

### **Cultural Impact Assessment**

91. At page 29 of their opposing submission Ngāti Ruanui rejects the Cultural Assessment on the grounds that they were not provided with detailed environment information to enable

them to assess their own cultural impact and produce their own report. They also say that there is extensive correspondence between themselves and TTRL about the release and provision of information and that they had concerns about the method of engagement and communications. These assertions run counter to evidence produced by TTRL saying that this is not the case or is a selective summary of the consultation effort. These assertions are addressed in the evidence of Mr Walden.

### **He tangata tō mua he whenua tō muri**

92. At pages 30-32 of their submission Ngāti Ruanui provide an extensive extract from a Cultural Values Assessment prepared by Te Poihi Campbell of Ngāti Ruanui centred around the whakataukī (proverb) “He tangata tō mua he whenua tō muri – the man first: the land after.” My own belief is that it is a variant on that other well known whakataukī: “Whatungarongaro te tangata, toitu te whenua” “Men die, only the land endures or remains” which aligns with an alternative Ngāti Ruanui translation: “Even when we are gone the land will always remain”. (Packer 230714 Taranaki Daily News) (Extract attached as **Appendix 3**).
93. Ngāti Ruanui say that this proverb and their current interpretation is one example of the basis of the values and ideals held by them. It provides a platform that assists the articulation of these values and arises from hui held in the 1850s to gather support for opposition to land sales to Pākehā. My view is that at the time it was coined the whakataukī was conceived to specifically address land issues. This is because the 1850s is the genesis of Maori opposition to land sales. Ngāti Ruanui were at the 1856 hui held at Pukawa on the southern shore of Lake Taupo to pledge allegiance to the idea of kotahitanga and joined

with the other tribes attending in placing the mana of their land under the Waikato chief Pōtatau.

### **Aukati**

94. The lands placed under Pōtatau were thus reserved from sale and a boundary was created to seal them off from Pākehā. In Taranaki, among other places, the boundary was called the aukati and Pākehā were forbidden to cross it on pain of death.
95. Accordingly, my belief is that when first coined the whakataukī was indeed focused on land and land loss. I am reinforced in this view by the Ngāti Ruanui statement in the Cultural Values Assessment extract that “the people share genealogical spiritual links with their natural home environment and is intricately interconnected. The welfare and state of the people depend directly on the welfare and state of the environment, in this case the land”.
96. However Ngāti Ruanui say that one of the meanings of the phrase “He tangata tō mua” is “engagement in person” which means physically meeting to discuss issues with the intention to reach a point of resolution that satisfies all parties. They go on to say that a win-win outcome is always preferable but in the event that a resolution has not been reached, then the discussions continue. This is described as being in accordance with Ngāti Ruanui tikanga.
97. I think this is a very recent interpretation because that was definitely not the intent behind the opposition to land sales in the 1850s and the mechanism to enforce it which was the establishment of the aukati. The intent of the aukati was not to help achieve resolution or win-win outcomes. Its purpose was to prevent engagement and keep people, namely Pākehā, out.

### **He tangata tō mua – other interpretations**

98. I ascribe a similar recent origin to the other interpretations of the phrase “He tangata tō mua” set out in the extract i.e. “Advocates of People and Place” and “Prosperity for Future Generations.” The relatively straightforward interpretation of the phrase in its original form is now, over 160-years later, being asked to carry a complex set of ideas and concepts which I think would be totally foreign to those who originally coined the phrase. I am not denying that culture should not be subject to evolution because otherwise culture dies; but what I am saying is that the almost 180 degree conceptual change in orientation of “He tangata tō mua” is so profound as to be unlikely.

### **He whenua tō muri**

99. With the second part of the whakatauki the phrase “He whenua tō muri” and the Ngāti Ruanui interpretation “Protectors of the Land” I have little dispute until the application of the concept is moved offshore. In its original conception that was clearly about land and land only. The submission extension of the phrase now to include the sea and its resources, particularly in the Project area, is even more clearly a recent construct.
100. We are being asked to assume that any 1850s application of the phrase “He whenua tō muri” applies to not just the land but the sea and its resources, and furthermore that includes a reference to customary fishing. I have touched on the issue of customary fishing earlier in my evidence and why I believe the Project area would not have provided such a resource. Establishing and maintaining a traditional relationship with an “empty” area of sea not only over the horizon (for a 6’ 6” person standing on the beach the horizon is 3 miles away)and well out of sight while at the same time lacking

the technical means to exploit an undefined seabed area seems unlikely to me. It does not make sense given the very pragmatic approach taken by our ancestors.

101. We know that iwi fishing reserves and customary fishing rights had a modicum of recognition by the Crown in the years following the signing of the Treaty of Waitangi, but the extension to include commercial fisheries and therefore extend the application of “He whenua tō muri” – a land based concept - into the ocean and into places like the Project area dates to the Treaty of Waitangi fishing claims of the 1980s bought by Muriwhenua and Ngai Tahu.
102. At that time and in the years following, being able to claim mana moana equated to a share of the Waitangi (Maori) Fisheries Commission assets and later following the Sealord deal, fishing quota. These developments radically changed how Māori viewed offshore non customary fishing activities and it is my belief that this is the driver behind the current Ngāti Ruanui position. There is of course nothing wrong with this development and Ngāti Ruanui is quite entitled to claim mana moana and a share of the commercial fishery as other iwi have done. But to apply a land-based whakataukī to an offshore “never previously utilised” resource in order to oppose this application is, I think inappropriate.
103. I think it is important to have this analysis of the whakataukī question because otherwise we have a modern recently minted “tradition” dressed up in antique clothes to lend authenticity to the assertion.
104. Disappointingly the Cultural Values Assessment section of the Ngāti Ruanui submission concludes with the statement that: “Ngāti Ruanui will provide further evidence of cultural impact through the hearing process” which neatly sums up this most unfortunate situation. Despite protestations to the

contrary it seems clear to me from the evidence of Mr Walden that the inability to engage with Ngāti Ruanui has been the key reason for firstly commissioning an independent Cultural Impact Assessment as the only sensible response to Ngāti Ruanui's unarticulated cultural issues and secondly, required an unnecessary and convoluted approach to dealing with their cultural values issues.

### **Fisheries Forum**

105. I am reliant on other expert evidence to respond to the Ngāti Ruanui submission criticism of the Te Tai Hauauru Fisheries Forum report.

### **Mitigation**

106. The reasons given in the submission for the rejection of the proposed TTRL mitigation through the creation of a Kaitiaki Reference Group, with the inclusion of Ngāti Ruanui representatives, are also unfortunate. The intention of the KRG is to address cultural impacts as well as establishing a working forum for engagement with monitoring and technical monitoring groups in particular. But Ngāti Ruanui say that the adequacy of the KRG as mitigation cannot be determined given that environmental and cultural impact has not been identified through the application process to date.
107. My belief is that the consent conditions establishing the proposed KRG are broad enough to enable the monitoring role to be a wide one with sufficient flexibility to also enable the incorporation of any new issues, or to expand or contract cultural values issues as needed. The formation of the proposed KRG begins with a written offer (Proposed condition 34) which is indicative to me that the terms are negotiable. I also note the recommendation from the Cultural Assessment and myself that the KRG be supported

by a Memorandum of Understanding which clearly sets out the responsibilities and expectations of the parties.

### **Commercial fishing effects**

108. Commercial fishing effects are dealt with in detail elsewhere in the expert evidence. My comments on the cultural impact are set out above.

### **Consultation**

109. Consultation between Ngāti Ruanui and TTRL is addressed in the submission and the detail set out there seems minimal when compared with the information made available to me on the subject. As stated earlier in my evidence the detail of the attempts made to consult, as set out in the evidence of Mr Walden – a participant in the process - are comprehensive and compelling.

### **Other opposing “cultural” submissions**

110. There are a number of other opposing submissions that raise cultural issues and I intend to address those here. Those submissions are:

- Jefferson Lucas
- Climate Justice
- Malibu Hamilton
- Anne Marie Broughton
- Raymond Nairn
- Martin De Jong
- Karen Pratt
- Te Kopere o Raehina
- Te Kotahitanga o Te Atiawa
- Te Ohu Kaimoana
- Phil McCabe
- Te Korowai o Ngaruahine

*Jefferson Lucas*

111. Mr Lucas regards himself as a kaitiaki of the environment with protection obligations. There is nothing fresh or different, culturally, in the submission. Other expert evidence addresses environmental impacts while my evidence considers kaitiakitanga from a cultural perspective.
112. Mr Lucas also alleges a Treaty breach because the application fails to provide active protection of Maori interests and taonga (particularly over fisheries), and also negates kaitiakitanga (or stewardship) by tangata whenua over the environment. These matters are addressed under section 12 of the EEZ Act and as I understand it under this legislation the actual Treaty responsibility lies with the Minister and the EPA to ensure that the effects of activities on existing interests are taken into account. For its part TTRL say this has been the case.
113. Mr Lucas says that the applicant's consultation has been incomplete, insufficient and lacking integrity in the sharing of information. The TTRL evidence has a contrary view.

*Climate Justice*

114. These submissions point to the fact that the application is opposed by a number of iwi but no further detail is given. TTRL is aware of this opposition and I believe my evidence addresses all potential points that might be at issue from an iwi perspective.

*Te Ngaru Roa a Maui - Malibu Hamilton*

115. The cultural issues in these submissions are impact on existing use rights (fishing), Treaty matters and consultation failures. My assessment is that I believe I have addressed all the issues raised in my evidence with the Treaty matters also referred to in my response at paragraph 112 above.

*Taranaki Whanganui Conservation Board – Te Kaahui O Rauru*

116. Both submissions point to the potential impact on unspecified Maori interests. I have identified what I believe are the interests which might be impacted and have addressed these matters earlier in my evidence.

*Tamaki Treaty Workers*

117. This is largely a pro-forma submission being similar in content to submission 29 addressed above. The Treaty issues raised refer to Treaty claims surrounding fishing issues but in my opinion are irrelevant because of the lack of evidence supporting customary fishing in the Project area. No Treaty breaches are identified and the submission identifies the EPA rather than the TTRL as the responsible party.

*Caritas Aotearoa*

118. This submission raises inadequacy of consultation and potential impact on customary fisheries as issues. I have dealt with these matters earlier in my evidence.

*Karen Pratt*

119. This lengthy submission makes reference to customary fishing as an issue but as far I can determine refers to areas outside the Project area.

*Te Kopere O Raehina Rongoa*

120. The submission partly draws on the same pro forma material used in earlier submissions. These submitters are concerned about the impact on their ability to exercise kaitiakitanga and the impact the application will have, among other things, on their cultural world as they perceive it. My view is that the TTRL response is contained in my evidence and in the other expert evidence in particular that which relates to the environment.

*Te Kotahitanga O Te Atiawa*

121. In cultural terms this submission is mainly concerned about the impact on its commercial and customary fishing interests. The submission acknowledges that although the Project is located beyond the 12-mile limit, the concern is for effects outside the Project area. These matters are dealt with in detail throughout the TTRL expert evidence. The submission also takes time to set out the extent of its tribal rohe/marine interests but these are accepted without question by TTRL.

*Te Runanga O Nga Wairiki Ngāti Apa*

122. The submission is general in nature expressing concerns about the unproven nature of the Project but it is presumed that the wider issue is the impact on fishing interests. Ngāti Apa say they are yet to confirm the extent of their customary fishing interests.

*Te Ohu Kaimoana*

123. Not unexpectedly the major concern for Te Ohu Kaimoana is in respect of the impact on Maori fishing interests in the Project area and the unproven nature of the proposal and its potential effects. There is also criticism of TTRL's apparent failure to properly identify all iwi fishing interests in the wider area. The impact issues are dealt with in other TTRL expert evidence while it seems to me that the issues for individual iwi fishing interests are matters common to all therefore the impact or lack thereof is the same.

*Phillip McCabe*

124. This submission is a pro forma one, the cultural components of which I have dealt with earlier.

*Te Korowai O Ngaruahine Trust (Ngaruahine)*

125. This comprehensive submission touches on all the cultural points already covered in my evidence and those of other expert evidence and I shall restrict myself to only commenting on what I believe are the main points of the submission. My view is that despite criticism of TTRL not paying sufficient attention to cultural matters the Ngaruahine submission is actually confirmation that the reverse is true.
126. For example comments on the inadequacy of the Cultural Assessment because it does not articulate a proper Ngāti Ruanui perspective provides confirmation of what happens when participation in consultation is not forthcoming. Saying that the assessment should have been prepared by Ngāti Ruanui also reinforces what might have been, had Ngāti Ruanui accepted the invitation to prepare an assessment. The Ngaruahine criticism reinforces why TTRL was forced to take the independent Cultural Assessment approach because of a lack of response to consultation overtures. In this respect, criticism of the consultation process is warranted but from the opposite perspective in my opinion.
127. Ngaruahine, while acknowledging Ngāti Ruanui mana whenua for the project area, are also critical of the consultation effort in the case of themselves and other iwi. Having looked through the opposing submission from other iwi including Ngaruahine, I can see no issues that are unique and in fact what is striking is the consistency of the issues across the iwi. In addressing issues therefore the same response to the same issue should suffice.
128. There is nothing to challenge in the Ngaruahine korero about cultural issues applicable to land. Neither is there any material difference in respect of commercial and customary fisheries; particularly the importance of the customary inshore fishing resource. However these matters have all

been addressed earlier in my evidence and the expert evidence addressing customary inshore fisheries impact.

129. What strikes me about the customary use aspects of the Ngaruahine submissions however is the attempt to push that customary usage out beyond the 12-mile limit into an area where accessing any kai moana resource by traditional means – apart from fish – would have not been possible. My earlier comments about the unlikely existence of a resource gathering relationship with this part of the offshore seabed are applicable in the consideration of this submission too.
130. I note that as with some of the other iwi submitting in opposition because of a perceived impact on their commercial fisheries, Ngaruahine have nevertheless leased out their quota. My expectation is that had there been a problem then the commercial leasee would have been an opposing submitter.

## **CONCLUSIONS**

131. This has been a difficult brief of evidence to prepare largely because of the absence of meaningful input from Ngāti Ruanui. Despite the lodging of a full and comprehensive opposing submission, in cultural issues terms the situation remains unchanged and Ngāti Ruanui say they will release cultural information as part of their opposing evidence.
132. Fortunately, surmising what their position might be on the various cultural touch points associated with the application is a reasonably straightforward exercise based around the cultural and other issues raised with the 2013 application. But the possibility that something new or additional might be raised is always present and in my opinion, even with the current submission, this has not been the case.

133. Having reviewed all the documentation including the Cultural Assessment, the Impact Assessment and other application documents; previous evidence and submissions from Ngāti Ruanui for the 2013 application, from an examination of other relevant expert evidence and from an analysis of the multiple opposing submissions, I am satisfied that from a cultural perspective there is no reason to deny the application.



**Buddy Mikaere**

**17 December 2016**

## **APPENDIX 1**

### **Buddy Mikaere**

#### **Principal Buddy Mikaere Consultant**

#### **Summary Curriculum Vitae**

Date of Birth: 19 January 1951

Citizenship: New Zealand

Education: BA (First Class Honours) Canterbury University

Diploma in Industrial Psychology Victoria University of  
Wellington

#### **Competence:**

Buddy Mikaere is a professional historian by qualification and specialises in Māori consultation and associated activities through his own consultancy. For the past twenty-five years he has facilitated Māori consultation for a large number of development projects working closely with iwi, government departments, local government, large corporate companies and many other clients mostly in the area of resource consents.

The work undertaken has been wide-ranging in nature but has largely revolved around infrastructure projects such as sub-divisions, marinas, wind farms, transmission and hydro electric projects and similar. Apart from cultural issues, these projects have inevitably involved dealing with water, transport and amenity issues and values.

The larger scale projects have involved the design and implementation of consultation plans with associated follow-up and drafting and implementation of consent conditions as necessary.

He is regarded as one of the country's leading practitioner in his specialist area of expertise i.e. dealing with cultural issues arising from resource consent applications and has appeared as an expert witness before the Environment Court and at Commissioner Hearings on many occasions.

Buddy has worked closely with a number of large Māori organisations including the Tuwharetoa Māori Trust Board, the Ngai Tahu Trust Board, Waikato Raupatu Lands Trust and the Wellington Tenth's Trust. He has an extensive network within the Māori world.

Prior to becoming engaged in consultancy work, Buddy was Director of the Waitangi Tribunal and as such has an extensive understanding of Māori issues. He has undertaken the preparation of a number of research reports and is a published author in his specialist field of 19<sup>th</sup> century race relations.

Buddy is the founding Chairperson of the Māori Business Network – Tamaki Makaurau and the Tauranga Māori Business Association. He was also a founding Board Member of the NZ Universities Academic Audit Unit and has served two terms on the Board of the Bay of Plenty Polytechnic.

Buddy has also served as an Adviser to the Foundation for Research, Science and Technology and as a Hearing Commissioner to the Far North District Council and the Gisborne District Council and spent seven years on the Board of the World Wide Fund for Nature.

Lastly Buddy completed two terms on the Board of Diabetes Auckland and two terms on the Board of Diabetes New Zealand.

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**APPENDIX 2 – Ngāti Ruanui submission of 24 January 2014**

# TE RUNANGA O NGATI RUANUI TRUST

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Friday 24 January 2014

Richard Johnson  
Application Manager EEZ  
Environmental Protection Authority  
Private Bag 63002  
Waterloo Quay  
Wellington 6140

Tena koe Richard

## **RE: Trans-Tasman Resources Ltd: Application for Marine Consent.**

E rere nei te mihi i roto i nga tini āhuatanga o te wā. Hikihikitia, riariakina, hapahapainga ngā kōrero kia whai huruhuru te kaupapa nei.

Ngati Ruanui welcomes the opportunity to provide a submission in relation to Trans-Tasman Resources Ltd's (TTR) application for marine consent.

### **Introduction**

Ngati Ruanui understands that that the proposed activity will be the first of its kind to take place within New Zealand's Exclusive Economic Zone.

It is also understood that:

- the proposed methodology is still relatively new not just in New Zealand but around the world; and
- TTR are a newly established company and therefore are unable to be evaluated based upon their past performance

Given the above Ngati Ruanui must adopt an extremely conservative and precautionary approach when assessing TTR's application. In arriving at this position Ngati Ruanui has reviewed information provided by TTR, undertaken both national and international research and sought additional information from TTR. Ngati Ruanui has not reached a position where all our questions about the proposed activity have been answered.

Therefore, based upon the information provided, the questions still left unanswered, the heavy reliance on theoretical modelling, minimal benefits that this activity will provide to iwi and the potential risks posed to our environment Ngati Ruanui is left with no choice but to oppose the proposed activity based upon its current merits.

Ngati Ruanui fosters a strong set of values that we seek to implement and practice on a day to day basis. These values include:

- Kaitiakitanga- sustainable guardianship over all resources for the use and enjoyment for future generations;
- Puawaitanga- to safeguard and preserve the environment through sustainable growth;
- Manaakitanga-protection and preservation to ensure good health and well-being;
- Whakapapa- our identity and where we come from;
- Tikanga- the spiritual, mental, physical and cultural determinants of Ngati Ruanui;
- Rāngatiratanga-the right of Ngati Ruanui uri to assert their self-determination over their turangawaewae.

**It is these values that have guided our reasoning for opposing the proposed activities of TTR.**

## **Environmental effects on the health of Tangaroa/Exploitation of natural resources**

Ngati Ruanui has witnessed the applicant make numerous changes to the proposed methodology and project design for undertaking the iron ore extraction. While Ngati Ruanui accepts these design changes appear to be more effective in terms of minimizing the impact on Tangaroa (for example using the crawlers as opposed to a tailing suction hopper dredge) Ngati Ruanui considers the current methodology is still very new and untested therefore lacks certainty in terms of the impacts that will follow.

Ngati Ruanui is concerned that information has been compartmentalised in respect of potential and actual effects, which results in an inability to determine the whole of effect, including cumulative impact and long term impact.

While it is understood the applicant has used experts who oversee similar activities (such as offshore diamond mining off the coast of Namibia) to inform the proposed activities, in the South Taranaki Bight, Ngati Ruanui is of the view that this advice must be used with extreme caution particularly where the activities begin to differentiate themselves.

Ngati Ruanui considers it to be very important that all aspects of the environment are considered carefully not just in terms of physical aspects of the marine environment (such as sediment movement, tidal currents and coastal stability) but also in terms of the biological aspects such as understanding species locations, distribution, abundance and behaviour. We have seen very little evidence that suggests TTR understands the biological aspect of the marine environment, particularly to the standard expected by iwi, hapu and whanau, whereby a number of reports recognise the limitations in their methodologies and predictions. For example, the heavy reliance on limited information is evident in the Cetacean habitat modelling report. It is acknowledged that the ecological function and use of these areas for cetaceans remains poorly understood due to limited information yet the report concludes that the South Taranaki Bight appears to be of low suitability for all three of threatened cetaceans (southern right whales, hector dolphins and killer whales).

## **Risk management and ability for agency to monitor compliance**

Ngati Ruanui is of the understanding that TTR have yet to develop emergency and risk management plans for the proposed activity. Considering the enormous effort that has gone into developing every other aspect of this activity (technical reports, determining appropriate methodology, technology and consultation amongst other matters) Ngati Ruanui questions why this is the case.

Needless to say the implementation of contingency plans is at the forefront of Ngati Ruanui's mind as we reach a point where EPA has decided that TTR's application is complete for consideration. Ngati Ruanui needs to be assured that in the case of an emergency both TTR and the EPA are in a position to adequately address any issues. Ngati Ruanui will not support any natural resource development activity without prior observation and opportunity to feed into contingency plans. This means being given the opportunity to identify what we, as iwi, consider to be the key risks, mitigation measures and response procedures.

It is likely the absence of these plans is also based upon the structure and development of the TTR Company, or lack of substantial structure. The company is in fact being developed in sync with the application it is progressing, but simply the company has yet to reach a stage where it has the ability to develop such plans because its technical base is concentrated on theoretical modelling of the applications impact on the environment, rather than connecting the whole operation together for consideration.

Ngati Ruanui has extensive knowledge of deep sea mining activities and understands the need for companies to be able to show depth of understanding and an ability to manage the whole the process to be successful; in effect Ngati Ruanui has seen the best and worst of operators. Unfortunately TTR has not shown any Company structure that can demonstrate the best of operations.

## **Mixing of the sediment with the Fonterra Ocean Waste Outfall**

Ngati Ruanui raised the issue, early on when in contact with TTR, of whether the combined impacts of TTR's activity and Fonterra's ocean waste outfall would generate new or affect the existing conditions of the outfall in any way. To date the only response we have from TTR is that they have spoken with one of Fonterra's consultants and it has been determined that the respective consents will not affect each other in any way. However Ngati Ruanui has yet to observe any evidence that shows how TTR has reached this conclusion or justified this position. Therefore Ngati Ruanui believes that this issue still requires further consideration and therefore is still outstanding in regards to our submission.

## **Commercial Fishing**

Not only does Ngati Ruanui have customary but we also have commercial interests within the proposed project area. It has been identified by Sanford Limited, who manage Ngati Ruanui's fishing quota, that the proposed project area is particularly an important trevally catching area. It is important to Ngati Ruanui that we also maintain our commercial fishing opportunities. This said it is disappointing to hear that TTR failed to engage or consult with Sanford Limited given TTR have contracted a commercial fisheries report, amongst the many technical reports produced. Sanford Limited have identified the sediment plume, the disturbance to the area over a long period of time and no consultation as preliminary issues which will be included in Sanford Limited's submission.

## **Sediment plume/ Removal and degradation of crucial habitats**

In terms of effects it is fairly clear that one of the more obvious impacts associated with the proposed activities will be the sediment plume caused by the discharge of de-ored sand being returned to the seafloor. The applicant has conducted tests (namely near field (CFD) modelling) that suggests that because of 1) sand particle size, 2) known wave energy, and 3) water depths at deposition sites-the deposited de-ored sand will move less than 200 metres before settling. The applicant has therefore concluded that "This work along with practical experience with behaviour of dredged material around the world confirmed that widespread movement of de-ored sand and associated smothering will not be a concern."

The widespread movement and associated smothering, in addition with the other associated effects, expected from the sediment plume remains a significant concern to Ngati Ruanui. These concerns have not been satisfied by the information provided by TTR. As mentioned earlier the technical reports provided by TTR place a heavy reliance on theoretical modelling.

Furthermore Ngati Ruanui is unable to identify anywhere else in the world, where this type of activity, can be compared to ensure:

- a) what is expected from the report will in fact will become a reality (e.g the de-ored sand will only move less than 200 metres away from the deposited area); and
- b) important marine features present within our takiwa (including the North and South Traps, rocky outcrops and taonga species)<sup>1</sup> are going to be protected from adverse effects such as choking, presence, productivity or visibility amongst other matters.

Ngati Ruanui remains uncomfortable with providing our moana and environment as effectively the “guinea pigs” for this industry therefore opening up our environment to irreversible risk and uncertainty.

In fact Ngati Ruanui remains concerned at the changing information that has been presented by TTR in respect of this matter only undermines the credibility of experts TTR have engaged to demonstrate the impact. Once again the plume modelling has not been connected across the technical reports to build any complete picture of environmental impact.

## Cumulative effects

It is of concern to Ngati Ruanui that there has been little or no consideration of the cumulative impacts of the proposed extraction. This forces Ngati Ruanui to ask the question of whether the cumulative impacts are in fact understood by the TTR given the limited information available in regards to the South Taranaki Bight. It may be that further information is needed before the cumulative impacts can be understood.

Whether or not this is the case it appears that there lacks a clear strategy to manage this issue. It is requested that information on cumulative impact, taking in account all technical reports, must be made available to both the EPA and Ngati Ruanui for further consideration prior to any formal determination of this application.

## Ecological effects/Customary fishing

Ngati Ruanui understands that TTR have undertaken an ecological effects evaluation using a Risk Assessment Framework. It is further understood that 3 risk effects were identified, in relation to effects on benthic organisms in the vicinity of the direct extraction and deposition area, and potential impacts on biogenic offshore habitats. These effects are:

- 1) Loss of benthos at extraction site due to sand extraction, and smothering and burial from de-ored sand re-deposition. A particular effect was associated with direct impact on the habitat tubeworm *Euchone sp. A*;
- 2) Impact on near-field benthos due to de-ored sand deposition (same effect as above-but at lower deposition rates across a wider area than the direct extraction and deposition zone); and

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<sup>11</sup> The North and South Traps are two large adjoining reef systems located approximately 6km offshore from Patea. The area is an important marine habitat in a sandy environment. The tall water pinnacles are an unusual feature on a sandy coast. The reef has high ecological value, with forests of the seaweed *Eklonia* and a high diversity and abundance of marine life present. These reefs are described as being responsible for some of the best fishing in Taranaki containing abundant food species such as corals, bryozoans, sponges, crustacea, mollusca and polychaetes. These organisms are an intricate part of the marine ecosystem and draw the demersal fish such as snapper, blue cod, terakihi and gurnard near to shore.

3) Impact on offshore biogenic habitats due to potential effect of elevated sediment loads in water column.

In respect to the first effect-the applicant has suggested that because of the nature of the high energy environment within which these species, of polychaetes, live they are generally short lived with rapid reproduction rates (some with generation cycles of less than one year). Re-colonisation of operational areas is therefore expected to occur rapidly, within a timeframe of 1-2 years.

It appears the applicant has adopted what can be summed up as a very “colonial” approach with respect to the ecological impacts on our moana. Ngati Ruanui struggles with this approach for a number of reasons including the fact that as a people we are still recovering from the impacts of a “colonial” past-150 years down the track.

This theoretical reasoning, that suggests that polychaetes will experience a fast recolonisation rate, coupled with the fact we have yet to see the applicant establish whether this area or species is important in the wider food web highlights the issue raised earlier and our concerns with regards to the cumulative impacts associated with the proposed activities.

The applicant’s studies suggest:

- that shoreline effects will be indistinguishable from natural processes;
- that while elevated sediment levels may cause avoidance behaviour within the immediate vicinity of the extraction operations, given the localised influence of elevated turbidity, the overall risk of adverse effect is low; and
- where effects are more than minor on species in the immediate operational area-recruitment from undisturbed areas will occur.

Ngati Ruanui remains sceptical about the potential effects on our taonga species being identified as no more than minor particularly where there are instances of the reports contradicting themselves.

As mentioned earlier one of the 3 key ecological risks identified by the applicant’s reports state that elevated sediment levels may cause avoidance behaviour within the immediate vicinity of the extraction operations. At the same time their impact assessment suggests the presence of the Floating Production Storage and Offloading Vessel may act as an aggregation device with associated potential for enhanced localised fisheries abundance although direct access will be limited by the navigational exclusion zone.

This causes confusion and makes iwi question the credibility of the findings which highlight another issue in terms of the heavy emphasis being placed upon limited information to make key findings. As an example Ngati Ruanui asked the applicant to identify the effects on our taonga species recognised under our settlement act where 16/43 of these species were not recorded in the applicant’s studies. Amongst these species that were not recorded include the pipi, kina, kuku and paua whereby the applicant states effects on nearshore reefs will be indistinguishable from natural processes. This provides little assurance to iwi that the activities are providing adequate protection to our taonga species and the wider environment.

Needless to say the sustainability of the mauri (life force) of the moana (ocean) and kaimoana (seafood) is a very important factor in iwi’s assessment and consideration of the proposed activities. There are many reasons for why the health of the ocean is so important to Ngati Ruanui including the fact that Kaimoana not only has sustained our people for many generations but it has also allowed our people to sustain our culture through the practice of Maturanga Maori (Maori Education) which is what makes us, as an iwi and people, so unique. Maturanga Maori is significantly connected to the natural environment and is therefore dependent on the health of our taonga. This said Ngati Ruanui holds grave concerns over the potential risks to our taonga species and tribal knowledge. There has been no acknowledgement by TTR of this situation or any willingness to understand this position.

For many generations Ngati Ruanui have taught their children when and how to gather pupu. If, for example, an environmental accident took place as a result of the proposed activities this could impact upon the number, location, seasonal patterns and size of pupu. This would also impact on Ngati Ruanui's knowledge associated with these species. If tribal indicators are no longer relevant, kaumatua will be passing down information that may no longer be pertinent. Vocabulary, such as the names of tools to gather pupu, will be lost and so too could iwi stand to lose the close relationship that we hold with the natural environment. The effects would be felt on both a cultural and environmental level consequently impacting on our tribal health and wellbeing. As stated earlier everything is connected.

## **Employment opportunities/economic benefits**

TTR commissioned a specific report on the economic impact of the proposal. The report provided a much generalised view of economic opportunities largely from a national perspective. While some of the assertions within the report are not disputed, the lack of any specific economic impact upon the Taranaki region and most importantly the takiwa of Ngati Ruanui are completely absent.

TTR has for some time attempted to link economic benefit with this proposal, and the positive benefit to those in locations such as Patea and Hawera. The report provided by TTR provides no assurances of positive economic benefit to these communities.

If negative environmental impact is to be weighed with potential economic benefit it must directly attribute to those who will be most affected, the concept of "offsetting", TTR has failed to demonstrate this. Ngati Ruanui finds itself in position where it cannot find any direct economic benefit to its people or the wider Taranaki community.

## **Engagement with iwi**

It is important to note that Ngati Ruanui are of the view that we have yet to undertake consultation with TTR; and what has occurred to date has effectively only been a series of engagements.

This said Ngati Ruanui cannot support the statements made within the consultation section of the Impact Assessment. It needs to be recognised that the issues in this section have been identified and drafted by TTR and not in conjunction with iwi.

Ngati Ruanui takes offence at the statements about cultural impact and the conclusion that are drawn by TTR to support their own actions and the application before the EPA.

Ngati Ruanui is of the understanding that in order to ensure the application was considered complete the EPA required cultural impact statements to be included as part of the application. The fact that these statements were generated by TTR merely to cross the line for the application to be considered complete is wholly inappropriate.

Ngati Ruanui considers that the EPA has failed to adequately address whether the cultural impact statement were in fact genuine, this failure undermines the EPA position that the application is complete.

Ngati Ruanui requests an urgent review of this matter of the application process prior to any consideration of a hearing of the application.

## Conclusion

The key issues for Ngati Ruanui have only been summarised in this submission and it is our intention to provide extensive evidence during the hearing of this application both due to the enormity and significance of this application.

Lastly, it is suggested that the Te Runanga o Ngati Ruanui meets with the Environment Protection Authority to discuss, amongst other matters, how this application is going to be progressed.

Ngā mihi,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

**Debbie Ngarewa-Packer**

Kaiarataki mo Te Runanga o Ngati Ruanui

**APPENDIX 3 – EXCERPT FROM TARANAKI DAILY NEWS 23/07/14**

**stuff**

## Whanau, music move language forward

DEBBIE NGAREWA-PACKER Last updated 05:00 23/07/2014

Te Reo Maori for me is about whanau, hapu and iwi.

OPINION: My koro, who was born in 1901, was a native speaker and played a huge influence in my life.

So, hearing Te Reo Maori today always makes me feel connected to him and my heritage and to all that we were, are and can be.

I believe there are many ways and forms to transport Te Reo Maori forward. It can be within the comforts of our whanau environments, with aunts, uncles and cousins or at marae, which for me is Pariroa.

Another example of how it can be done is through music. The Patea Maori Club is just one group who keep our reo and Maori tikanga alive through what they do. I am extremely proud of their achievements, including their success 30 years ago with the first Maori No 1 hit song, Poi E.

The group were ahead of their time and it is their consistency to keep aspiring to new heights which encourages me to be a life learner of our reo o Ngati Ruanui.

Te Reo is also transferred through the use of waiata, karanga and karakia. We have third and fourth generations today who can lead, celebrate and promote Te Reo Maori at tangi, powhiri, wananga and on a regional, national and global stage.

I myself have travelled overseas in delegations to the United Nations and to places like Stanford University. Being able to identify myself as Maori in such places is an awesome experience. It was obvious to me during my time there just how highly people outside New Zealand regard Maori and other indigenous cultures.

I respect our leaders who choose to live at home and teach as well as pass on our reo and I am absolutely inspired by the passion and respect our rangatahi have for their reo rangatira.

In closing, I would like to share a favourite whakatauki of my own. He tangata too mua, he whenua too muri - even when we are gone the land will always remain.

*Debbie Ngarewa-Packer is the kairataki of Te Runanga o Ngati Ruanui, which is based in Hawera.*

- Taranaki Daily News

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#### APPENDIX 4 – EXTRACT FROM NGĀTI RUANUI CULTURAL VALUES ASSESSMENT – OPPOSING SUBMISSION PAGES 30-32

*“5.6.....as such, the purpose of this report is not to purport to convey the view of Ngāti Ruanui in any way. Rather it outlines **general Māori values** and concepts in the hope to provide some understanding of the potential impacts of the TTR application on Ngāti Ruanui and to assist in considering measures to mitigate impacts on Ngāti Ruanui **should** the application be granted.”*

The statement above (5.6) clearly defines that the report does not convey a Ngāti Ruanui view or perspective in anyway. Despite a number of references in relation to Ngāti Ruanui i.e. people, place and culture, from a number of historical writings, it is my view that the report should not be seen as a replacement or substitute to a Ngāti Ruanui holistic welfare perspective in regards to cultural values. The Cultural Values Assessment and Analysis report presented by Tahu Pōtiki in essence outlines a broad understanding of a number of cultural values, practices, concepts and protocols, commonly termed as “Mātauranga Māori” or Māori Knowledge. Ngāti Ruanui has its own cultural perspectives that derive from Ngāti Ruanui historical narratives and storylines as presented in this document.

The following is an example of a Ngāti Ruanui cultural view in regards to the health and wellbeing of its people in relation to the health and wellbeing of the environment and how these two entities are intricately interconnected. It will clarify the importance of personal interrelationship and terms of engagement. It will also clarify the strong Ngāti Ruanui stance to defend and protect what Ngāti Ruanui views as being a imperative to its survival i.e. health and wellbeing of the people and environment.

A Ngāti Ruanui whakataukī or proverb will be used in this document to demonstrate this view.

## Whakataukī (Proverb) “**HE TANGATA TŌ MUA, HE WHENUA TŌ MURI**”

The above Ngāti Ruanui proclamation is one example that forms the basis of the values and ideals that are firmly held by Ngāti Ruanui. It also creates a platform that assists the articulation of these values. By way of background, this proclamation directly translated as ‘the man first: the land after’<sup>1</sup> was coined at a Hui held at Manawapou, South Taranaki in April 1854. The focus of the discussions at that Hui was for Ngāti Ruanui and others to oppose the selling of their lands to the Pākehā and maintain sovereignty over their lands during this period. Ngāti Ruanui people share genealogical spiritual links with their natural home environment and is intricately interconnected. Intrinsically, the welfare and state of the people depend directly on the welfare and state of the environment, in this case the land. Accordingly, if the integrity of the land was compromised and the tenure ship of the land was lost the outcome would be cultural, physical and spiritual deprivation of the people. Denied access to the lands and not having the meaningful pathway to oppose the punitive actions of others imposed a deep sense of disempowerment among the people which still resonates today. History, in particular Taranaki history, has been well catalogued and the traumatic effects have been well documented.

The following paragraphs gives meaning and understanding of the whakataukī in the context of building interpersonal relationships and skills between people-people, and people- environment.

### **HE TANGATA TŌ MUA**

#### ***He tangata tō mua “The Man First”***

As with many Māori phrases there are multiple layers of meaning. In the first instance, the phrase highlights the importance of people (tangata) i.e. people's health and wellbeing, people's birth rights, people's ideas, people's beliefs and concepts and in this case Ngāti Ruanui's health and wellbeing, Ngāti Ruanui's birth rights, Ngāti Ruanui's ideas, beliefs and concepts.

### ***He tangata tō mua “Engagement in person”***

An important component of interpersonal engagement is meeting in person (Tangata tō mua – person to the fore) i.e. physically meeting to discuss issues with the intention to reach a point of resolution that satisfies all parties. A ‘win-win’ outcomes is always preferable but in the event that a resolution has not been reached, then the discussions continue. Time is ‘not’ of the essence. The outcome of the discussion will take as long as it takes to reach a desired outcome. This engagement process is in accordance with Ngāti Ruanui tikanga (Tangata tō mua – people being seen, people being heard).

### ***He tangata tō mua “Advocates of people and place”***

This phrase expresses human endurance. Ngāti Ruanui people are determined to maintaining and sustaining great health and wellbeing of people and place. It is implicit that Ngāti Ruanui descendants fiercely protect the health and wellbeing of its people and place, which incorporates cultural preferences, psychological and mental health and the physical and spiritual elements of both people and place. Subsequently, Ngāti Ruanui will avoid any proposal where there maybe factors of ambiguity that has the potential to compromise the integrity of people of place.

### ***He tangata tō mua “Prosperity for future generations”***

The above phrase also recognises the tenacity, courage and attitude of Ngāti Ruanui to prosper as a people. It is not of Ngāti Ruanui's interest to deliberately equivocate future endeavours. On the contrary, Ngāti Ruanui is a staunch advocate of initiating innovative projects and progressing kaupapa with caution that will benefit the wider community.

## **HE WHENUA TŌ MURI**

### ***He whenua tō muri “Protectors of the land”***

To give this phrase context, land has and still is viewed as a treasured “taonga”. A tangible taonga intricately intertwined with spiritual essence and significance. Accordingly, both the physical environment and spiritual aspects are acknowledged. Ngāti Ruanui does not view land as an asset or commodity to spoil, but rather a taonga that can be utilized by firstly enhancing the status of the taonga i.e. promoting bounty and produce to flourish. It is only the excess of the bounty that is extracted for use. This cultivating process of the taonga does not deplete the vitality of the taonga at any stage because enhancement measures are put in place prior to harvesting. The same process can be applied to the other aspects of the natural world including forest, waterways and sea.

It is important to note that in my view the health and wellbeing of these natural environs directly reflect the health and wellbeing of the people; psychologically, spiritually, culturally and physically consciously or unconsciously.

The above narrative gives a small insight into a Ngāti Ruanui perspective in regards to the health and wellbeing of its people in relation to the health and wellbeing of the environment. It acknowledges the personal interrelationship engagement practices and ideals that Ngāti Ruanui view as a central to forming positive relations. This document also gives a Ngāti Ruanui explanation of the concept around ‘taonga’, the physical and spiritual value of taonga.

Ngāti Ruanui is ardent in its approach to protect its views and perspective as did the tupuna of Ngāti Ruanui at Manawapou in April 1854 where the exclamation was coined ‘He tangata tō mua, he whenua tō muri’, an enduring legacy relevant to this generation and future generations to come.