ENVIRONMENTAL PROTECTION AUTHORITY
HEARING

Trans-Tasman Resources Limited
Marine Consent Application

HEARING at
THE DEVON HOTEL,
390 DEVON STREET EAST,
STRANDON,
NEW PLYMOUTH
on 6 March 2017

DECISION-MAKING COMMITTEE:
Mr Alick Shaw (Chairperson)
Mr Kevin Thompson (EPA Board Representative)
Ms Sharon McGarry (Committee Member)
Mr Gerry Te Kapa Coates (Committee Member)
## Hearing Proceedings

### Day 10 Monday 6 March 2017

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MR SHAW: Kia ora. Good morning, my name is Alick Shaw and I'm chairing the Decision-making Committee for this hearing. I want to thank everybody for coming today. I have to say that this is by far the greatest expression of interest that we've seen in the days and weeks that we've been sitting already; and no great surprise there. I think we knew that that was going to be precisely the case.

I am going to repeat some things I said when the hearing opened in Wellington. We are acutely aware of the number and the weight of submissions that we've received from people in this area and, indeed, in other parts of the country but I want to make really clear to people that this is not about numbers. This is about evidence and that's what the law obliges us to do, is to weigh the information that we get and to make a decision based on that information, and it's really important that people understand that because it goes to the process that we use. When people come to make a representation to talk to their submission, they'll have a short period of time to talk about that. We'll have read the submission and then if we've got questions we will ask those. My colleagues on the DMC will do that.

When we're dealing with evidence, and we'll be hearing quite a lot of evidence today, it's a wee bit different. The evidence will be given by people and then there will be questions almost certainly that come from the DMC, and then their lawyers or counsel who are representing various parties will have the opportunity to ask any questions that they may have. All of those must be in writing and must come through the DMC. The only exception to that is if it is your witness, if it is a particular organisation's witness, before we finish this with them, the organisation or party that called the witness will have the opportunity to ask any closing questions and we're not insisting that those are provided in writing. But I go back to this question about evidence because it is very important. It doesn't matter how often something is said. It doesn't matter how many people say it. What's important is the evidence because we are dealing with effects. Now, effects can mean a myriad of different things to different people but we need to talk about those things; that's the basis upon which we are charged with making a decision.

Finally, I want to thank people for the very respectful and generous way in which they've approached the opening today. It means a great deal because you need to understand that my colleagues and I don't know what the decision is going to be. It's a long way from being made and, truthfully, I don't think that we will know what that decision is until we
have been sitting together long after the hearing has finished and worked our way through the material that we've got in front of us; and it's complex material and it's a complex issue, but while I said it doesn't matter how many people say something or how often they say it, we do give weight to submissions. We do give weight to expressions because that does go to issues of effect to some degree at least.

[10.15 am]

I think that's probably about as far as I want to go by way of an opening statement other than to say that we, the members of the DMC, can't talk with you other than through the formal process so at lunchtime or during a break for a cup of tea, this morning being a slight exception because we hadn't opened the hearing. We will be going to a room on our own. It's not the naughty step; it's just to make sure that we don't need the naughty step for winding up talking to people outside the hearing because that's what we must not do. It's not because we don't enjoy people's company; we do. It's one of the realities of this job that over the course of a hearing you get to know people quite well but always from a distance and that's the way it's got to be. In that sense, it's a wee bit like a courtroom.

Okay? I am now going to just deal with a small number of procedural matters which affect the parties, some of which I think may have been discussed with parties already and I will see what responses we may have to those. We've just received or recently received a joint witness statement in terms of sediment plume modelling so this is the cloud created in the ocean by mining operations, and witnesses got together and talked about this as they do about other effects and they were modelling a worst-case scenario. That witness statement recorded a lot of agreement but also some areas of disagreement. In fact, all of the experts hadn't had an opportunity to review the source material. We think that needs to be provided to them and I understand, Mr Holm, that that's been discussed with you already.

MR HOLM: Yes, sir, it has. The only issue, sir, was because of the bulk of that technical information we needed some specific clarity around the issues that the parties would like to discuss. I'm more than happy to arrange for a briefing running alongside the hearing so that they are better informed but, as we say, it's all available but there's a lot of material and it would be good to have a little bit more precision from the individuals and we'll approach them with that in mind.

MR SHAW: I certainly think, Mr Holm, that's much better dealt with in the context of a briefing of the experts than in the hearing proper because I think this is a matter of reassurance that they're seeking or --
MR HOLM: Yes, it's a vast amount of technical data and it's just a matter of, I guess, giving confidence that certain things were looked at and we're certainly able to do that.

MR SHAW: The second matter relates to a memorandum we had from KASM and Greenpeace relating to the analysis of submissions. I think, Mr McCabe, you're aware that, in fact, a minute of response to that has already been posted?

MR McCABE: Yes, I've read that this morning, sir, and requested a digital copy be sent around.

MR SHAW: Yes, certainly that is available to people. I should just say there, the EPA prepares on behalf -- well, not on behalf of the DMC but at the DMC's request an analysis of the submissions that have been made, the issues that are covered, how many people have raised particular questions, and KASM and Greenpeace were concerned about the way that those submissions had been collated and reported and asked that the DMC withdraw the report. We're not going to do that. We can't withdraw the report; we're not the authors. It's a non-statutory document which is prepared to assist in the provision of information. So, that response is available and our detailed response is available in the minute. Anything you want to say, Mr McCabe, without re-litigation of course?

MR McCABE: There's plenty I'd like to say, sir, but I won't. I don't think this is the time for it.

[10.20 am]

MR SHAW: Yes. Admiral restraint, Mr McCabe. Thank you. There's another minute which has also been issued relating to -- this is for the lawyers, relating to the question of adaptive management and for members of the public who are here, that goes to a legal question about the sorts of conditions we might or might not be allowed to impose because two different consents are being sought here. One is a marine consent; that's for the mining activity itself. The other is for a discharge consent, and the discharge consent relates to the putting back into the ocean and back on to the seabed floor the material that's left over after the iron ore has been extracted. What the Act tells us is that we're not allowed to apply adaptive management regimes in respect of that discharge consent, so there's a big legal conversation that has to be had as to what the implications of that might be. So, that's again been issued.

We will be expecting to hear from lawyers, as the hearing goes on, their contributions in terms of trying to reach a clearer understanding and...
hopefully a consensus, though in the end I suspect that the courts, one way or another, will decide it - it would be good if we can - but a consensus in respect of the conditions that might be imposed if we decide to grant the consents. I don't think there's any other procedural matters that I have but turning to the parties, the applicant Mr Holm?

MR HOLM: No, thank you, sir.

MR SHAW: Mr McCabe, you're on your own this morning but anything from you?

MR McCabe: Not at the moment, sir.

MR SHAW: Okay. I would like now to turn to Ngāti Ruanui, the Trust, who are going to be the first presentation or who will be leading the first presentation today. We have them scheduled and they will be with us until lunchtime. We will be expecting to hear from whomsoever but I think it's either Mr Maruera, Ms Ngarewa-Packer - it was inevitable that I would get tongue-tied at the wrong time - by way of an opening statement and then we'll hear from Mr Young and Ms Cashmore, both of whom are giving evidence on our behalf. Oh, sorry, on the Trust's behalf, not on our behalf although in a sense it's all on our behalf, and that's the point because what the law tells us is that our job is to get the best available information and that means from a multiple of sources and it does go to this duty that people have to give us the best available information because we rely on their professionalism and their integrity to do that. Okay, kia ora. Thank you very much and I will hand over now. Ms Packer, are you beginning? No, Mr Maruera.

MR MARUERA: (Māori content)

INTERPRETER Mr Hammond: To my people. Mr Maruera has just opened with a chant that is specific to the Aotea and South Taranaki people and extended acknowledgements to you, the Commissioners, and to all assembled here.

MR MARUERA: (Māori content)

INTERPRETER Mr Hammond: I acknowledge what has been said this morning by Ngāti Te Whiti, this morning here in this house. In this place that we have gathered is a place of discussion; a place for earnest discussion.

MR MARUERA: (Māori content)

[10.25 am]

INTERPRETER Mr Hammond: This is us, Ngāti Ruanui, who have brought forth our case and with special regard to those who have passed on and with regard to the
ocean. We have not come here today to lay down our genealogical credentials but rather we'd like to present to you copies of this book within which that information is contained.

5  MR MARUERA: (Māori content)

INTERPRETER Mr Hammond: So based on the information that will be presented today in regard to our food store house, that being in the presence of Taranaki ki te Tonga that is South Taranaki.

10  MR MARUERA: (Māori content)

INTERPRETER Mr Hammond: So we have come here today on the basis of the statement that people and the land are an afterthought as has been the treatment with our relations in Tauranga Moana in recent times.

15  MR MARUERA: (Māori content)

INTERPRETER Mr Hammond: So we come here presenting our case, we Ngāti Ruanui, bringing forth the words and the thoughts of those - our elders kui ma, koro ma, female and male entities.

20  MR MARUERA: (Māori content)

INTERPRETER Mr Hammond: So we bring with us the mana, that is the authority of our people, of our ancestors Turi and Rongorongo for those are the things that sustain us presently and ongoing.

25  MR MARUERA: (Māori content)

INTERPRETER Mr Hammond: So we, Ngāti Ruanui, have come here today to lay the foundation of our evidence of our case but we also leave it for our relations to present their cases.

30  MR MARUERA: (Māori content)

INTERPRETER Mr Hammond: So we extend to you, the Commissioners, our empathy in regards to having to make a decision on this case but would like to remind you that we are the mana whenua, we carry the authority for that area.

35  MR MARUERA: (Māori content)

INTERPRETER Mr Hammond: My tribal sister will expand on what I've said and bring the embellishments through the presentation that we make to you today. It is in accordance with the waiata that was sung this morning, No Rongo Mātou, in regard to our tribunal traditions as Aotea people.
MR MARUERA: (Māori content)

MS NGAREWA-PACKER: Tēnā koutou. First of all, I'd like to put apologies in from our whānau, Kahu, we have a mate, and she would and the family would like to have been here today. So it is on those sentiments that we pass on our sympathies through this forum but also acknowledge that many couldn't be here but they are with us in heart. We thank you and acknowledge the Decision-making Committee that you have a long journey ahead of you and you have come from a long journey so our apologies that this is a Monday morning, but hopefully I will make it exciting for you that you won't forget it.

So, I guess just to sort of lay down a couple of tikanga, we will receive questions and collectively talk and answer collectively, if that's okay. It means we are aware that behind me we have the mana of our pou tuarā, our Ngāti Ruanui, our pāhake and, most importantly, our rangatahi. So, it is in that essence that we have arrived. We need to make sure that we are aware that we are collectively speaking so it's not Debbie's views. I mean certainly we will be dignified and, again, hopefully entertaining throughout this morning.

So, one of the things that we wanted to discuss on top of the submission is - and hopefully at the end of this process you'll have some enjoyable reading of the Ngāti Ruanui book - is some evidence from our experts as far as our seaward boundaries and I guess the Kupu boundaries is very new to us. How we were raise is that our maunga travelled from Kāhui Maunga, travelled down the Whanganui Awa. So, it's extremely important and significant that Whanganui are here today; that Aotea Waka are here today.

Our maunga travelled out to the sea - out to the sea - and arrived here at Pouakai. We sprung from our maunga. So, for us as Ngāti Ruanui we know no boundaries. In a later sense, our tohunga, Huirangi Waikerepuru taught us and made sure we had that reiterated in waiata that our seaward boundary has no end. We go out until the cosmological atmosphere meets the end of the sea. Tangaroa is living as much as our maunga is so, therefore, we are from Tangaroa. Tangaroa is from us as far as our next generation.

I guess this concept today of borders and boundaries is something that's become very contemporary and has come as a significance of kōrero from the Deeds of Settlements. You will note that Ngā Rauru, Ngāti Ruanui, Ngāruahine, Whanganui again, we term ourselves as Aotea Waka here. That's because we're whakapapa to each other. The only
time we don't is when we're playing rugby, netball or kapa haka against each other. The rest of the time we do waka whanaunga, we are interconnected.

For the purposes of some of these contemporary processes, the likes of the EEZ, our kaitiakitanga, our whanaungatanga, our mana, our whakapapa, doesn't stop, we are the 12 nautical zone starts and ends and it never has. It hasn't from the moment that we were raised with the kōrero of our maunga. To say that it stops is to say our maunga didn't travel. To say that is to say we don't exist and that is the kōrero that we've had.

There's also another important mātua whose name is Maimau, who believes that everyone is of Ngāti Ruanui descent. He's not able to be here but I guess that is a love way of being able to share that we all interconnect. So, the statutory acknowledgments, the MAKA, the EEZ boundaries I just want to emphasise, are things that have come later in life and even though they are applied today, it's not a mentality; it's not a cultural norm that we've been raised to understand.

From the perspective of our manaakitanga, so our Chair this morning has spoken about mana; about mana as far as the existence in our acknowledgment of Tangaroa, our sea, our living being, the existence of our maunga, our whenua. There are some things also that we have as a consequence and we've seen this happen just recently with what's going on with Te Āti Awa and Waitara, is that we have I guess an empathy as whanaunga for each other. We're invested in the future and we also share some hurts from the past. Part of that, I guess we travel together for important kaupapa like this. We travel together to acknowledge our mokopuna's whakapapa and we all, I guess, are able to enjoy in the fruits of having thriving whakapapa.

[10.35 am]

We also have shared history. Unlike a lot of Taranaki iwi in the 19th century, Ngāti Ruanui stayed alongside Taranaki Tūturu and we responded to the Crown's proclamation of war against Waitara by occupying Waireka. I emphasise this kōrero and give you some context later on but specifically about 20 days from today actually in 1860 we fought together at a pā called Kaipopo Pā near Ōkurukuru. Our leaders including our Ngāti Ruanui Chief, Tito Te Hanataua fought together with Taranaki Tūturu to fight against things that we didn't want, that our tupuna didn't want and, consequently it has given us a huge relationship with Taranaki Tūturu. Ngāti Ruanui and Taranaki Tūturu fought together, they died together and some of our common tupuna, our common leaders, lay together on Taranaki land. So, I guess what I want to emphasise is that amongst ourselves as Aotea Waka we're very close.
We have a shared relationship with Tangaroa but also within the rest of Taranaki.

So, when we had the experience - and I'd like you to hold on to that kōrero please - for a long, long time Ngāti Ruanui had one strategy when it concerned oil and minerals and it was pretty much a crouch and hold. We were resistant to anything that was extracting and I guess that's a lot to do with our history. We were forced to be landless so we didn't have a particular leaning towards anything that was progressing, that was extracting, that was polluting.

Maybe about five or six years ago, Ngāti Ruanui had to confront the fact that we were the largest extractors -- well, we had the largest amount of permits in our backyard, in our takiwā for want of the right words, and we consequently were dealing with the fact that our marae were emptying out. Our young people, our families, were going over to Australia to get work in the mining businesses so we had to confront that. I guess it comes down to this question, and I know that one of the cultural advisors has sort of indicated that Māori cultural values don't change; actually, they do. Our tangas don't change, our kawa doesn't change but our values have to change if we have to meet the needs of our rangatahi and our tamariki.

We were confronting the fact that some of our largest families from marae, our ringawera families, our families that actually keep the fires burning, that are there for every tangi, every kaupapa, were leaving. They were leaving to get jobs to be able to feed and clothe their families. So, we were confronting the fact that we had this largest area of oil and mineral activity. We hadn't figured out what to do with it. So, we spent a long time, much to the begrudge of even some of our tino kaitiaki friends, and we had to develop the strategy. And over that period of time, over that two, three years we spent doing that, we actually were told by our kaumātua, we were told by our people, "We are open for business. We do want to have economic development in our backyard. But we want to understand that we can live with our conscience that they are going to err on the side of caution as we do environmentally".

So that was really challenging and in fact we became experts in something that I think for a long time, our people only knew how to fight in Tribunal claims. And like I say, it was very controversial, upset various people. We then found ourselves becoming expert advisors to the Iwi Chairs Forum; in fact, our nickname was OMG, which is Oil and Mineral Group. We were called the OMG team.

So with the largest permits and the most experience, we became recognised experts within the iwi circle. We became recognised experts externally and were invited - and there's probably numerous YouTube
videos of us reporting, presenting at conferences. We crawled all over the EEZ regulations that were being created. In fact, we had a parallel engagement, invited by the Crown, by Nick Smith at the time and then Amy Adams. So our knowledge of this from the inside is very strong. We also became advisors to industry experts that wanted to engage better, that wanted to be able to get some of these activities to fruition.

[10.40 am]

So as a consequence of that knowledge, and I just would like to bring exhibit 2; I'm not sure what it's called. But as a consequence of that knowledge, we created a best-practice guide that was actually commissioned by the government and the industry alike. Part of that best-practice engagements - and this is the first generation; we're currently going through the creation of a second generation - was to bring about our knowledge, and was to bring about what we had understood to be an example of best practice, and to be honest, poor practice. We were able to scope and I guess it started off very crudely, but we were able to put together a graph, where we could see the minimum requirements, the best and we could actually plot who were meeting that and who weren't. And to be fair, a lot weren't. Well, those who weren't - I beg your pardon - just needed direction. And what we were able to guess, I guess gauged from that, was a formula that worked, that we could then go back and report to our people. Because ultimately, that's who we're here to serve.

What I'd like to do is refer you to page 15, diagram 4 and page 21. Part of our engagement has been able to find out the best practice in going forward. Now, this was developed in a real practical sense for us to be able to ensure that we were able to facilitate engagement between ourselves and 16 hapū. And not forgetting that we're very diverse, not everyone is going to land in the same place so quite often you're agreeing to disagree. But it provided us with I guess a practical, methodical way in going forward and being able to report. And it doesn't matter that we may not agree at the end. What matters is that as the mana whenua, that as our hapū and our whānau are never disempowered, to feel that they don't have enough knowledge to engage and understand. So it wasn't going looking for a relationship at the end that agreed, where no one went in there expecting that this process would be such that we'd have a veto. That's never ever been the purpose of this engagement process. But you will see, and I understand that there may be -- because often you get a bit of myth and a bit of legend; here's a bit of Disney that goes around. You may have been given the impression that Ngāti Ruanui is completely opposed to any activity. In fact, we have supported activity in the EEZ and in fact we have made sure that we have spoken and talked to companies that are working, and they're working well.
And you will see from this example on the PowerPoint at the moment, and in the ideal model - and not forgetting that not everything is linear - we get all the information at the front. So in OMV's case, in 2012 they indicated they were wanting to do something end of 2013/14. At the beginning, they advised us of their intentions. The OMV technicians share all baseline information. We've had instances where there has been commercial sensitivity and we have had to sign confidential disclosure. Iwi and technicians are invited to technical hui; they assess, they make reports and then they do a report to the rūnanga who then come and do site visits. And we then progress down to the rūnanga relationships, where there's a whole lot mitigation, a whole lot of aspects and you'll see within the graph - on the table sorry - in page 21, that that's step 4. If you do this calmly and methodical, you'll get through it. Step 4 is where we have a mitigation stop. It's almost a give-way intersection and if we can get to that point, then we're okay. If we don't, then we keep going through that and let's go through those things very, very clearly and concisely.

So in the ideal world, everything's done at the front end. The hapū, the iwi then engage; they respond; mitigation has been confirmed and then we go to a cultural impact analysis. The draft application is received and I think in this instance -- and sorry, that's January 2015 not 2016. But in this instance, we'd had the draft application at least six months before EPA notified us. Ideal relationship.

[10.45 am]

Now the relationship is ongoing, they have information, including all environment information received quarterly. There's safety mitigation, staff changes, everything, and it gets to a point where one of the companies we have, their relationship with the mana whenua is so strong that actually there was an incident – an eel died; they rang for the kaumātua to do a karakia. The kaumātua rang me to ask is it possible can they eat it, are there any more? So there is a really great relationship.

So, this hater and wreckers mentality that has been given out about us is simply false. It's simply false. If we speak out, if we go to media, it's because these people behind us have exhausted every avenue at step 4 and have told us to go. So, I want to give you an example of what went wrong in this instance. So if you have a look at the next timeline, the first thing is there are nine methodical steps. Our rūnanga know this, our hapū representatives know. They may not be able to quote it but we are simple people. We are very simple people. Something works for us, we go with it. If it doesn't, we do. So we have a very strong do and review mentality.
So for this instance, what went wrong is that it started at the relationship building so everybody wanted to ignore the first four or five steps that engage with us. This isn't the last application that happened but there was a degree of self-correcting. In this instance, there was no degree of self-correcting so we started at the end. And I think that there were exclusive trips that were great, but at the end of the day there were invites to dinners and things, and actually that's all great but actually we're not paid on our people's time who already think that we don't do enough for them. We are paid to get information and bring it back to them. They may look harmless but they are very involved, very informed. These are people who when the freezing works shut down, were out there creating Poi E. We belong to a very, very smart people, so for us to be able to sort of sit there between January to September, with no information compared to every other application they’ve seen, sends out signals. It sent out poor signals of trust and engagement. So in some stages that happens. Sometimes there's a little bit of misunderstanding. Sometimes people think they know iwi better and so we know these people will cut the corner here. Kei te pai, that happens. It happens in multiple sectors. So when a stakeholder package arrived in December; between October, December 2015, we knew that things had gone wrong.

Now, I want to assure you, sir, and ladies and gentlemen here in this room, that we did not take this lack of information arriving easily. When we could see that the process was offline -- now not forgetting that Ngāti Ruanui and Taranaki Tūturu tūpuna fought together. So we appealed to the legal counsel, we appealed to the chair. I had a 46-minute phone call with him to say that we cannot engage the way and with the person that you have given us because it's not working. And it is not in our way to takahi the mana of an iwi that has deep relationships with our tūpuna. We will default to being respectful and apply mana. Who are we, mokopuna's of these tūpuna who fought together to stop the land confiscations that started in Waitara, to sit there and say, "It's not working"? So we appealed. We have phone calls, transcripts, emails, where we appealed to say, "It's not working. Please put someone else in". And that's not personal. That was because we could see the engagement process was off on another trail.

[10.50 am]

By October to December 2015, when the stakeholder engagement packages had arrived, we were then told at that stage that clearly the step between one to four wasn't going to apply. And in fact we had to sign a confidentiality agreement. Now, that was new for us. It created tension, and certainly when we went back and consulted, it wasn't supported in any way or form. By this stage, we'd applied at an Iwi Chairs Forum for EPA to help us.
We appealed and asked for some help to sort of say we need some help, some possible ways forward. We felt that we were being trivialised, ignored. Other iwi were repeating comments that were being said and certainly I think what we could see from our perspective in comparison with other applications is that we were being railroaded. And there was a deliberate intent not to take on step 1 - 4 and 5, because there was time restraints for the applicant and they simply didn't want to go through the process to disclose the information. And that was validated further down when we actually had to go to Environment Court to get redacted areas disclosed. That was new.

By that stage, we were then in a position to actually let our descendants know within a 24-hour timeframe as per our comms policy where we stand. So we then got caught up in media battles, which is not ideal. It's not ideal to be in Environment Court. We don't have enough money to be looking after our descendants now, to be sitting there wasting it on environmental fees. That is not our ideal position and you will look in other relationships that we have with multiple companies, the origins, the OMVs; we have multiple relationships with some of the companies that have some of the worst practices in the world but we've been able to still engage. So this was real fraught. We were in real trouble through this process. And no matter where we appealed, we were knocked down.

So as discussions continued. By that stage I guess things had gotten to an all-time low and certainly by May to August, when we could see that we weren't going to be able to have better engagements. By September, I think it was, we were told that actually we've got a cultural impact analysis from an independent person done in March. And it just had this overwhelming sense of déjà vu, because this is exactly what TTR did in the first-time application when we were told, "Actually we want to continue to engage with you but we need a CIA so we've got an independent person who tells us that your cultural values don't change at all". And that was pretty hard to stomach but what was worse was it was pretty hard for us four -- although I think Maria stood behind Graham to go back and front to these people and a hell of a lot more at an AGM.

So, what we found ourselves was in the unenviable position where clearly things were being rushed and gushed up because of the desperation of the application. So I want to be very, very clear: that to iwi spells disingenuous. It has a lack of trust. In our experience, when companies come and they are being true to what it is they going to do out in the environment, they cannot bring enough boxes of information. They pile up and we are literally looking at Graham and Maria trying to run for the hills because they're wanting to enjoy us all revelling in their data and their information and the environmental information. And I
don't mean to offend anybody in the room but I'm sorry. But scientists are sometimes some of the most boring people to be in a room with. Because we're an iwi, we're one minute doing vulnerable children submissions, the next minute we've bought the biggest tourism infrastructure on the maunga. We are a one-stop shop effectively to put it crudely.

So we almost want to run out the back entrance when we see them. In the ideal world, they turn up with every "entist, lientist, logilist" in the world and we sit there for days and days and weeks getting presentations. So this in the very, very peak, when actually what could have happened is that there was less drama about the information, created a sense of huge lack of trust, because if you can't come forward with your information at the beginning, in our experience, you certainly are going to struggle to meet any conditions or meet any other monitoring commitments you make. And we've had that experience. We've had the experience with those who have the less mitigation, who have the less ability to bring forward information that their focus -- their mouths move. They say a lot but their actions just don't speak it. And unfortunately, in this instance, that's what's happened. We have not been assured in any way or form that they have the information, that they have the experience to be able to mitigate anything and meet adaptive management requirements.

[10.55 am]

The cultural impact analysis or the cultural impact assessment, which there's been a lot of to and fro and again, we have extensive experience and I think that's been half of the problem, is that we don't promote that we actively have to engage as kaitiaki in this field. Because in the ideal world, everyone is practising fantastic and there are lots of things that are doing better. To emphasise Ngāti Ruanui's experience, we don't have hydraulic fracking in Ngāti Ruanui's takiwā anymore. That wasn't determined by the government; that was relationships. We were at the opening of TAGs great big environmental gas thing, production station. We sat there with Chester and the Prime Minister in one corner and the Māori Party in another corner and Green Party.

We will mix and go across multiple sectors to get things done for our mokopuna. We are not exclusive in any way or form. So I guess what worried us with this is that there was just this whole sense of a lack of insight into who we are. I think there were at times personalities that took over when common sense and certainly respect to whakapapa and respect to experience. I think at times our experience in the sector was forgotten and it became certainly portrayed far too personal.
From our perspective, our values have changed even since the 2013 application. And again, that's because we have this -- and it may have slowed down slightly, but I bet you I can name three families off the top of my head that are sitting here today, who have more of their mokopuna in Australia than they do here.

So, we have had to take on an open attitude about how we engage with the sector and that includes mining. And I guess one of the things that we've been really emphatic about is making sure that's reflected in our own cultural impact analysis. It is simply not appropriate for Tahu Potiki from Ngāi Tahu or Buddy Mikaere from Tauranga, I think still, to be doing and assuming a role as a cultural person for us. No one can understand what it is to be a mokopuna of Muru-Raupatu. No one can understand what it is like to sit there and see your ancestors buried in Dunedin that in fact were sitting there being asked why we don't have the means to support our mokopuna, why we have such increasing disparity in South Taranaki. The average income in Patea is $17,000 per annum. So we are not a tribe that will sit there and turn our back on opportunities. We can't afford to be. We haven't able to be doing like that for a long, long time. So this myth, this legend, this whole Walt Disney story that the haters and wreckers just don't want progress, is simply incorrect. But we just cannot be assured in this instance, as we have with other extractors in our backyard, that you can mitigate the damage that they're going to do environmentally.

So we have huge sites of significance out there and it's not my place to hold up today's process to say that to you, but of course, if a maunga has travelled from Kāhui Maunga -- and this isn't Ngāti Ruanui's Aotea waka story. This is the kōrero that comes from Kāhui Maunga as well. If your maunga has moved down the Whanganui Awa and across the sea to Pouakai, across us all, there are sites of significance. It's common sense. Taranaki Tuturu, where the maunga came up at Pouakai, has this kōrero themselves. The evidence is overwhelming.

It's simply wrong for us to sit here and say, "Where are your tupuna from? No, they didn't do anything out in the EEZ. Nobody did anything out there. They only did it within the 12 nautical mile zone". That's crazy. That's like saying the Vikings only came down alongside the shore. It's just crazy. So there is huge evidence. Had we got to the step of cultural impact analysis or assessment, that may have been disclosed, but we simply could not get past step four.

[11.00 am]

One of the things that I guess is really important to emphasise, too, is I talked about our values as far as our tanga, so that's our manaakitanga, our kaitiakitanga, our rangatiratanga. We struggled. We struggled...
technically, and look to my right. These are non-Māori technicians that we have working for our office in our environmental policy unit. We're not all emotive. All right, Moko? Ka pai, Moko. We're not going to call on our emotive side and be accused of being irrational.

But what we could see in this engagement was a lack of tika and pono. There was a lack of disclosure; a lack of trust, certainly compared to the presence we'd had set before. It was the worst performing. In our own internal model, the lever that would've been ignited would be to exit. We thought we were being polite by not exiting and constantly sending emails to say, "The door is open". You can take a horse to water but you can't make it drink. In our normal sense, we would've been told to walk away, slam the door and never look back.

So, in our sense, there was a lot of goodwill. There was a recognition of conflicts that struggled. We struggled. We struggled to be engaging with the mana of an iwi in that role. No one went into this realising that would happen. It is simply what it is. It is simply what it is. Would we both walk into those situations again? No. We would've asked at the very beginning to have someone that didn't compromise and made it a little bit easier to actually say, "Look, we are struggling with this". And certainly that's not at the tangata; that's at the company. We appealed for help. We appealed for them to be able to open up the discussions and be more transparent.

So, in our sense of this, it has been about the application of consistency. The special treatment TTR received from us in this engagement is exactly the same. It's a blueprint we apply to everyone, methodically, within our values and within our own reach.

Our key concern, as we come to the end of this, is that there is too much uncertainty. Let's just take away the fact that we could repair the loss of trust, that we could ignore the fact that this company made it extremely difficult to get anything out of it as far as the right information to be able to feed out to our families. There is so much uncertainty and our team will talk about the evidence and unknown impacts.

We have companies that we deal with who have proven track records. They have proven kaitiaki principles. For goodness sake, someone is trying to do a karakia over a dead tuna - a dead eel - and I'm trying to hold the kaumātua from asking if there's any more in the freezer. This is simply where we're at with this sector. This sector does not work with lack of transparency. It is very scientific. They have taught us so much. They have taught us so much and I guess that in some way has asserted how strongly we feel about this.
This company is unproven. It has no track record in environmental management. It certainly has had the worst track record with iwi engagement that we've ever come across to get it wrong twice. And I'm going to be straight up: they were worse this time than the last. This application was an absolute disgrace and it's been difficult not to sit up here and show how cross we were that we had to get dragged out like this.

[11.05 am]

So there has been a huge lack of trust in this company, a huge lack of trust. These people have taken time off work. They're people that can't afford to be up here. We've got a whānau member lying in state and our paepae, our rangatira from Ngāti Ruanui, have turned up here. And they don't do that lightly. They don't just mobilise because somebody says there's a bus leaving town, and they don't not go to tangi for no reason, not a big, big family like our Kahu whānau.

The trust is important because we need to know that should anything go wrong, they can manage it. We need to be able to look them in the eyes and know that what they're going to do is going to be sustainable and it's going to be able to be something that we can say, "It's not that bad. We've got some ideas on how we can make this work". And we challenged ourselves: irrespective of the fact that we don't trust them, can we figure out how this could work? We spent months and we'd drop it and we'd come back and we'd drop it. We just can't discuss the conditions or adaptive management because, even if they promised our people work, we cannot, hand on heart, say that they could meet these conditions, any conditions. It's about keeping our uri safe, about keeping our mokopuna safe. It's about making sure that with the $17,000 average income a year, whānau can gather food and can continue to gather food.

I guess the most important thing is about us being able to confront this and say that the small gains that are and may be achievable are not that achievable. They are not able to meet the potential long-term harm and we know that to be correct. We're experts because we have the most experience out of any iwi with extractors, with all the mineral companies. We live with them. They're in our backyard minute by minute. What we're saying to you, Decision-making Committee, is that we cannot support this activity.

Our relationship is so strong that we have the likes of Origin Energy that are here supporting us. Now, these are people who've been doing this for long, long years. I know about the RMA and I know that this is all still very new, but for us this environmental uncertainty is so frightening that we must err on the side of caution and urge that that's certainly how it's seen. So we don't support the application. Kia ora.
MR SHAW: Kia ora. I don't know about the integrity of wellheads but the structural integrity of the microphone leaves a little to be desired at the moment.

Look, I'm not sure whether the panel has questions for you because I think what we had there was a very coherent and very clearly expressed opening statement, but my suspicion is that the questions are more likely to follow after we've heard from the other two presenters this morning. Having said that, I am going to see if my colleagues have any questions.

Now, I want to say to everybody here that the matter of consultation in and of itself is something we take account of, but it's not a key consideration in terms of the Act. There's no part of the Act that requires people to consult. So we come back to this question of offence. In broad terms, we've heard about some of the issues around the strength and mana of the people but, as Ms Ngarewa-Packer has observed, it's pretty difficult for us to come to any conclusions about that unless people are speaking for themselves, and we understand that. But I say this because I'm talking to the people at the back.

[11.10 am]

But we are where we are at the moment and I think probably we're going to be best to hear from Mr Young and Ms Cashmore before we get into too much detailed discussion, but I'll just see whether my colleagues have any questions. Gerry? No, go for it. I am not trying to put you off by any means, mate.

MR COATES: Kia ora, whāea. You've said that you're not against employment-generating proposals. So is there a solution apart from declining the application, in your view?

MS NGAREWA-PACKER: Not without more certainty.

MR SHAW: Not without, sorry?

MS NGAREWA-PACKER: Not without more certainty.

MR COATES: Thank you.

MR SHAW: I was going to kick off at the end of that with my own question and when I said, "We are where we are", I think that that's something that everybody needs to bear in mind.

I said at the beginning we don't know whether this application is going to be granted or declined, but when it comes to issues and conditions - and I think it's really important that people here understand this - we can
impose conditions on the applicant if it's granted. We can make them do certain things if consent is granted and we're a long way away from being in that situation.

What we can't do is impose conditions on third parties, and you undoubtedly don't see yourselves as third parties but as first parties and that's been made perfectly clear. But we can't impose conditions on Ngāti Ruanui or anybody else other than the applicant. So, in a chance, we're in a situation here where it's the "last chance saloon" if the application is granted because the other thing we can't do - and I just want people to understand this as we wind our way through the process - is that we're not in the business of being able to negotiate between the parties.

But - and this, I guess, is the question I'm going to leave hanging until we've finished this exercise - what we can do is facilitate contact and encourage contact to try and see what may be achieved now that things have begun that couldn't be achieved before they began. Again, we can't make anybody do it. Ms Ngarewa-Packer used the expression, "You can take a horse to water but you can't make it drink". So true; any horse and any water. So we'll leave that there for the moment, but I think that Mr Coates's question is something, I suspect, that we inevitably are going to have to come back to during the course of this presentation and later in the process.

Anything you want to follow up with? I'm not going to ask counsel to comment at the moment. I don't think it would assist us in making progress.

So it's Mr Young, I think, now. Mr Young, over to you. There will be questions for you. Of that you can be certain.

MR YOUNG: Yes. I appreciate that, sir. Okay. Obviously, you've had my evidence and you've read that. My evidence paragraphs 1 - 10 outline my background and qualifications and I take these as being read.

My evidence as presented covers the following areas: background and context to the application, summary of the position taken by Ngāti Ruanui, statutory considerations, consultation and engagement by TTR, adaptive management, condition-setting and economic impact. My summary today concentrates on key statutory considerations, information principles, the key principles of adaptive management, the stakeholder package by TTR and economic impact. Should there be any part of my submitted evidence that you wish me to elaborate further on, I'd be happy to do so.
I also note that my evidence, along with the evidence of Maria Cashmore, attempts to link the key issues from our perspective based on documentation provided at the time. I also note that I’ve reviewed some of the witness statements and hearing transcripts. I acknowledge my involvement in the expert witness conferencing on planning conditions, noting that the reporting on consent conditions is yet to take place.

[11.15 am]

I'm sure that the Committee is familiar with the statutory requirements set out under the EEZ Act. I would, however, like to highlight some key areas which I consider go to the heart of decision-making on the application made by TTR. The need to apply a precautionary approach, while not explicitly defined within the Act, is in fact the lens which any decision-making needs to be applied.

Key to this approach is perhaps the ultimate environmental issue at the centre of this application, being the sediment plume created during extraction and redepositing of sand. The sediment gives rise to a range of multiple-level, cumulative impacts across a range of ocean and inshore environments. Reef environments, fish life, their food chains and marine mammals have all been identified as being impacted. The degree of impact, I note, is open for debate and I acknowledge the large amount of evidence and views before the Committee on these critical aspects.

As a planning practitioner and having dealt with multiple effect applications, I recognise that reconciling these in the context of statutory decision-making can be problematic when it comes to the final consideration. Further difficulty arises with condition-setting and testing of impacts against possible specific mitigation control. All of this must be viewed in the context of section 10 of the Act, achieving protection to the environment. I stress the need to hold this section of the Act at the centre and focus of decision-making.

Protection of the ocean environment, I believe, goes far beyond the immediate project area, based on the information available to me. I do not agree with the proposition put by TTR that the effects beyond the project area are minor. Decision-makers following the requirements of the Act will need to achieve a high degree of certainty to ensure protection of habitats. I say this because, again, I disagree with TTR that the methodology and extraction methods are proven. Such methods are not proven in the challenging environment of the South Taranaki Bight and, to use their own words, in a very active and dynamic environment. This is like nothing before we have seen in our ocean waters. There are potential risks to food-gathering sites closer to the coast. There are significant marine sites, such as reefs, which are uniquely balanced in
providing a key part of the ocean and foreshore environments. I am confident that further details of these aspects will be presented over the remainder of this hearing session and the coming days to come.

Is this an efficient use of natural resources? It is probably quite a hard question to answer. I believe the short answer is unknown. While we can never predict at the time whether attempts to win natural resources is the most efficient, we can only assess that fact based on what’s known at the time.

However, once again, precaution is a key factor here. A challenging and difficult environment, I believe, heightens the need to consider this aspect. I am convinced that we’re dealing with cutting-edge methodologies in this environment. To win iron sands, nothing else can be compared to it as far as I can see and as far as we have researched.

Information principles also go to the heart of statutory requirements and perhaps, most importantly, decision-making. I am not convinced, based on the information available, that certainty has been achieved. In my years of experience with this application, it is likely to be unique with such a wide-ranging view of different information and understanding of effects which is widely spread across so many aspects of the application being sought. It is wide-ranging. There is not a single point you can find that may provide certainty. It’s very unusual to have such a dynamic range of effects and impacts.

With such a wide-ranging set of views, and some will be resolved through expert conferencing - I’m quite probably convinced of that - the ability to achieve certainty is still likely to be difficult even discounting the most opposite end of views for the for and against. I believe within the spectrum, somewhere in the middle, which is probably where we may all find ourselves, there will still be uncertainty.

[11.20 am]

Uncertainty always equals caution and putting the equation together, caution and environmental protection takes you to the Act’s requirements of adaptive management. Adaptive management relies on four key principles: good baseline information, effective monitoring, triggers for remedial action, and the effects can be remedied.

The application of these principles is not easy in this application in that the idea is to gather baseline information after the consent has been granted. I struggle with the concept as the resulting data from the two-years baseline study may, in fact, reveal something that’s not anticipated and, in itself, may create more uncertainty. The key question
is can adaptive management reconcile that uncertainty? This was the challenge in 2013/14 and I believe remains the challenge today.

Just turning to the stakeholder package, and I know Debbie has talked extensively about engagement, but I just make some comments on the stakeholder package. The things I would note is the stakeholder package was a concept for all and was of limited use to interested parties whose need for specific information requirements was different. Information was critical to this application. Information and building relationships, in my view, go hand in hand. Without one, the other one falls.

The effort to extract information became the focus of the engagement rather than understanding and building trust and relationship; I believe the very opposite to what TTR was trying to achieve.

I have been involved in a number of large-scale projects and picking up on the theme that Debbie raised, the deficiency of information in this application was like nothing I'd seen before. The inability to obtain the draft when presented to EPA is perhaps a reflection on how guarded and controlled information availability was.

I turn to economic impact and I don't present expert witness statements here - I'm not an economist - but rather observations based on my years of experience in the oil and mineral industry. My experience to date with offshore developments is that they are unique in the way such developments interact with onshore economies. Interaction with local economies is limited where there is no corresponding onshore development or physical link.

The local economy of South Taranaki will struggle to interact with this project. Existing businesses will not need to provide services in the normal way. Purely logistics of getting to the site is a major factor. Petroleum and mineral development workforces have always been highly technical, transient and tend to be absent from local communities, even more so for offshore developments.

There has perhaps been a lot of debate on the number of jobs and impact of indirect and induced effects. My point has simply been that the numbers and calculations of employment opportunities have been confusing when you've read the information that I did.

While model jobs can be set out in an academic way, the realistic interpretation on the ground in a local sense is doubtful. Even with onshore development, the spinoff in small, local, rural communities was not necessarily uniform and certainly became largely centred on the large metropolitan areas.
MR SHAW: There you're talking about New Plymouth and Whanganui.

[11.25 am]

5 MR YOUNG: Yes; probably New Plymouth more than anything. My final point has been the applicant's definition of local area which has included Whanganui and South Taranaki. By any imagination, this is not a local catchment but one that really represents two halves of two regions. I don't believe that is a definition of local environment from a South Taranaki concept.

The communities most directly affected if this consent were to be granted have to accept a degree of environmental risk - I don't think you'll ever get around that - and will see little or no economic benefit to offset that risk.

In conclusion, I still consider that there are serious deficiencies in this application which call into doubt the reliability of the information. I believe the sediment plume will impact wider than the project area. The resulting effects will more than likely be more than minor and economic offsetting of environmental risk is doubtful. Therefore, I can only reiterate that a precautionary approach must be paramount in any decision-making. Thank you, sir.

25 MR SHAW: Thank you. Not many planners get applauded. I have to tell you that is most unusual.

MR YOUNG: I'll take that one though.

30 MR SHAW: I want to ask you a question which you may or may not feel able to answer. You began by identifying yourself as not being an economist but you, certainly at the end, and a common thread of the submissions from all of you so far, has been around economic impact at the local level, whether it's stated bluntly, as you have, or whether it's been a little more in the ether but looming there nonetheless.

What I want to understand is whether or not Ngāti Ruanui has ever sat down and asked the questions of themselves. What are the outcomes we would like to see if this project went ahead? In broad terms, training and employment and all the rest of it but all of these things, in the end, have to be quantified to be meaningful. I don't want the details of it. I just want to know whether the exercise has been engaged.

45 MR YOUNG: Most definitely, sir. As it's been iterated, we've stopped and paused on this application many times to have another look at it, to try and determine a way forward. Part of that was to assess the balancing between environmental risk and economic opportunity. Based on what
we saw, the economic opportunity for locations like the town of Patea and our descendants in there and whether those opportunities exist were not evident to us but we did stop and pause to look at those opportunities. Those opportunities, to be fair, were raised in our first meeting with TTR around 3 September. There was some discussion around those economic possibilities. We have stopped; we've paused; we've relooked at those to say, "What can we make sense of this? How can we see this working?" You see that in a lot of what we've said and in a lot of our history of how we've worked with other companies in terms of the opportunities and balancing those risks versus the opportunities and what they may pose for the people out there who might potentially benefit the most from them. One of the hardest things for us has been how do you see this benefiting those who are right on the doorstep of accepting the environmental risk? That is the people of Patea and, at this point in time, we struggle with that. It's been a lot of uncertainty in terms of trying to reconcile that information.

MR SHAW: I think inevitably we are going to come back to that conversation; whether it's with you or whether it's between ourselves or whether it's at the point of responses from the applicant and from other parties to the application. Curiously, this thing that's at the very centre of what you talk about is not at the centre of the consideration on the face of it. Therein lies a bit of a problem, doesn't it? What can be made of it? It's obviously important because it's recognised in the conditions that have been proffered; there's an acknowledgement implicit in the application and the proffered conditions that this is a matter of concern to local people. There's common ground there. I'm going to leave it. Did you want to say something, Ms Ngarewa-Packer? Go for it.

[11.30 am]

MS NGAREWA-PACKER: I was going to say, sir, with all respect, one of the interesting things is you would imagine a tribe that has the largest amount of oil companies in its backyard is doing particularly well. In our experience, that hasn't and, certainly, the reconciliation wasn't particularly hard because there is none of that that comes to iwi, to indigenous people. In this case, it was even less. The reconciliation, the time to pause, given the huge uncertainty and one of the notes that I'm looking at that came across from our iwi was the critical issue being too much uncertainty, little or no benefit and high risk of accumulative negative effects. That's where it really sat.

It would be remiss of us not to say that, of course, everyone's going to stop. What can we do for our mokopuna to stay home? The last thing we want to do is do that for a couple of years with a 35-year linked permit. That's been the problem in Patea and the home. There have been a lot of short-term economic gains that then go and we're left with
the damage for generations after and that's been the experience even with Lord Vestey. That's how they've landed.

MR SHAW: Vestey, my goodness. A blast from the past.

MS NGAREWA-PACKER: They're still surviving that mess.

MR SHAW: Yes. They were still recruiting at university when I was there, so there's the thing. Anyway, I'm going to leave it there but, clearly, that question of centrality of local benefit is something, in your view, that has got to be read in the context of the uncertainty around local impact in a negative sense. Is that right?

MR YOUNG: That's correct.

MR SHAW: Okay. I'm going to turn to my colleagues and see if they've got questions for you. I'll start with Dr Thompson. Anything from you, Dr Thompson?

MR THOMPSON: Good morning, Mr Young. Just a couple of questions. In your evidence, section 42, you described the mining methodology and expressed some concern about the methodology being adopted in that to return the de-ored sediment to the location of mining. If that methodology wasn't followed, would you have another alternative of how the iron ore could be extracted from the seabed?

MR YOUNG: The short answer is no, I don't have a specific methodology. My concerns there in that paragraph are based on our research and looking at the methodology that was being applied and looking at what methodologies were used when TTR proposed this in 2013. There were various different attempts to have a look at how this could work. I acknowledge that the methodologies here are, like I've said, probably unproven and ground-breaking but I don't necessarily have a solution to say you should do X, Y or Z either.

That's why I'm saying, in my summary this morning, whether this is the most efficient way to extract iron sand is probably an unknown because in ten years' time, there could be a different, more efficient, more environmental method that comes along that you or I have not thought about. That's like with any resource that you may win at a time but that just takes you back to the whole issue and that's why the Act is probably balanced quite well. It takes you back to make sure can you, with hand on heart, have certainty over the impact and effects on this? That's the dilemma with this application. I don't have a magic solution to say you should apply another type of methodology because certainly I don't propose to be an expert in iron sand mining or the extraction of sand from the seabed.
MR THOMPSON: Thank you. In item 61 or your evidence, you advise that Ngāti Ruanui would, to help the DMC determine negative effects, give us advice on the location of your food gathering sites. Are you still keen to do that for us?

[11.35 am]

MR YOUNG: Yes, we certainly are. Like I said, this is the point again that Debbie raised. In the failure of the not having a cultural impact assessment put together by Ngāti Ruanui, a lot of that information would have been forthcoming. Some of that may have been closed in terms of effectively a silent file but in terms of we would have been able to disclose, and we have done on many other cultural impact assessments. You'll find that type of information in the cultural impact assessment for OMV. You'll find that type of information assessment for Fonterra which we've recently undertaken for a marine ocean outfall pipe which is also a marine ocean outfall pipe for the South Taranaki District Council. We're quite adept at explaining where these sites are and potentially looking at the impact and mitigation for them.

MR THOMPSON: Can I then say that the DMC is very keen to hear from you on that matter?

MR YOUNG: Yes, sir.

MR THOMPSON: Also at 95, you express some willingness to speak further with the DMC on conditions. Does that stand as well? Not that that means approval but in my limited experience, when you start talking about conditions, the minds are meeting about impacts and ways of getting around it. It's a good way of parties discussing impacts and mitigation measures. It's a very constructive way of dealing with the problem.

MR YOUNG: The acknowledgement by the fact that I've been placed on the expert conferencing for planning conditions enables us to discuss them from a technical perspective. However, there is still the problem around that and the problem that I highlight today is developing conditions with an uncertain set of information is very problematic and is not easy. I would reiterate that it's still hard and I would not like to rise to the challenge at this point in time as I've not seen enough information to enable conditions to be written for this application.

MR SHAW: If these things were easy, we wouldn't be taking weeks of hearings, and that's the truth of it, and months and months in preparation. They're not easy.

MR YOUNG: Yes, that's right.

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MR THOMPSON: Thanks, Mr Young.

MS McGARRY: Good morning, thank you. Just one. It's not specifically for you but for all of your team, and that's the question of our site visit. We did raise it in a minute earlier in the proceeding that we were keen to hear from anybody as to any locations that we should, as a DMC, go and visit. The only response we've had so far to our query about the site visit is from the applicant themselves and they have put before us a list of places they think we should go and would like to take us out to the application site. I pose that to you and I don't propose to put you on the spot now but I would like to encourage you to think about, on our site visit, where you think we would get the most benefit from seeing first-hand some of the things you're trying so very hard to protect.

In terms of your evidence, Mr Young, you've talked about adaptive management. If we could just park the issue of whether we can or can't go down that track at this time and where that's going to leave us. I just wanted to get your comment on the fact that perhaps in terms of what you've said about starting small and for a short-term, but if you look at the type of operations that's proposed here and the capital investment and the technology involved that the applicant could argue that 66-square kilometres out of New Zealand's wider resource or even in the context of the South Taranaki Bight is a small chunk and, in some way, a staged approach to be able to see what the effects are of that and that the effects, in their view, aren't irreversible. Therefore, you could look at it as a small scale staged development. I just wonder if you've got any comment on that.

[11.40 am]

MR YOUNG: I don't see this as a small scale, as has been proposed by TTR, what they believe as economically viable to mine iron sands. I don't believe this is an attempt to create a staged pilot programme to see what might happen. This is based purely on making sure that they've got a site that's an appropriate size to mine iron sands and if you look at the size, this is unprecedented in terms of size and it's unprecedented in terms of impact that it will have on the ocean environment.

MS McGARRY: You've talked in your submission that you're particularly interested in the net benefits. I can't help wondering if that's the point of disconnect here that the applicant really has done a benefit analysis, an economic benefit analysis without looking at the environmental cost. That's based on them saying there are no irreversible effects again. The disconnect, in your view, is that that level of risk just hasn't been balanced in and you're saying the uncertainty of enduring effects or very significant effects just haven't been weighed into that overall net benefit.

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MR YOUNG: Yes, I would totally agree with that. I don't believe it has and I don't believe it has in a local sense. It's been far too much expanded to basically a quasi-regional sense halfway between probably Opunake and Whanganui, if the truth be told, if you look at South Taranaki and half of Whanganui that's been included in what they believe is a local setting. No, I don't believe there's been enough consideration of that to determine the overall impact and the whole view of potentially whether you call it adaptive management or environmental offsetting.

MS McGARRY: Thank you. You've talked in paragraph 77 of your evidence about the need to have good baseline environmental management before you can go down the path of doing a cultural impact assessment. Do you think one opportunity open to us would be to, in some way, ask the applicant to go off and do that baseline monitoring and have a two-part process and then having some kind of final approval process after that baseline monitoring was done, a cultural impact assessment was done? Is that a possible way forward?

MR YOUNG: Certainly, the biggest problem with this application to date is the discovery and putting all the information together because effectively, it was limited in the engagement package that came first. It talked about a lot more other information that you could never get hold of unless you were prepared to sign up to a confidentiality agreement. Then you were right into the application process as it was rolling through the EPA, so trying to piece it all together and looking at how it might look from there was always the challenge and was the challenge to determining whether there was certainty etc.

Clearly, I have not contemplated whether you would have a staged approach and whether that's even possible under the regime of the Act that you would then send them back. Effectively, I believe what you'd do is just send the application away saying, "Come back with more information and we'll rehear it again".

MS McGARRY: Thank you.

MR SHAW: Mr Coates.

MR COATES: Kia ora, Mr Young. On your evidence, you talk about uncertainty equals caution and caution in the approach to it. You talked about expert witnesses and reaching agreement but not with any great belief in that that's the answer. When you think about certainty, do you think of certainty as attainable?

MR YOUNG: Certainty is possible in anything but I believe you're going to need a large amount of more analysis and in-depth information to achieve
certainty. As I've said at the beginning of my summary here today, there is bound to be a lot more put before you. There's bound to be, as a professional, I would review and keep on reviewing that information. At the moment, no, I just can't see; I don't believe that you will arrive at certainty at this stage. You have to potentially go back and you've got to potentially give Ngāti Ruanui the opportunity to have another look at any more information that may come out to enable them, for Ngāti Ruanui to decide whether certainty can be achieved in the context of a cultural impact.

MR COATES: In your conclusions in your evidence, you said the ultimate environmental issue of the sediment plume is not confined to the project area. Is that your view that the real issue is the sediment plume?

[11.45 am]

MR YOUNG: I believe the centre of this application radiates out from the sediment plume, yes. I believe that is the ultimate environmental issue in terms of the most significant set of impacts.

MR COATES: Do you think that agreement by expert witnesses in conferencing about the sediment plume and the worst-case scenario would alleviate your issues?

MR YOUNG: One, I haven't seen that but I don't believe, at this stage, given its multiple-level effect across a wide range of environments, that Ngāti Ruanui could be assured that there was certainty achieved around the control and the conditions that might apply to the sediment plume.

MR COATES: Thank you, Mr Young.

MR SHAW: Okay, thank you. It will only encourage the planners if you applaud them. Not always a good idea, Mr Young, is it?

MR YOUNG: No. You can keep going if you like.

MR SHAW: I just want to do one thing before we move on to hear from Ms Cashmore and that is it's pretty unusual in these hearings for people to be identified by name, other than when you're dealing with their presentation around expert evidence. People who are identified by name, inevitably in these processes, can't speak for themselves at all. It's to the process alone. I do want to acknowledge that both Mr Mikaere and Mr Walden, who have been referred to today, are in the room and acknowledge the fact they have to sit there and just listen to the points that are being made. It's unusual in that respect but I figured the acknowledgement is something we should make and understand. I'm sure I see Ms Ngarewa-Packer agreeing, nodding in agreement, because
it is a serious question and it goes to the discipline that all of us have to follow in these processes, which has been well displayed today, I have to say.

Ms Cashmore, I have to say, when I read your CV, I was scratching my head as to one of the many disciplines we might be described as being able to give expert evidence, but in this context, it is not mentioned.

MS CASHMORE: Thank you for acknowledging the different aspects of expertise but, at this point, I'll choose to be an environmental advisor at this point. It may be that my previous experience and in my qualifications in terms of the laboratory side may help, but I will certainly try my best and help out in giving the best available information to you.

Ki a ora. My name is Maria Cashmore. I am employed by Te Rūnanga O Ngāti Ruanui Trust as their environmental advisor. I've outlined my qualifications in my evidence and I take this is as being read.

After reading the application and several published and unpublished journals and articles written by reputable institutions and scholars, I consider that there are uncertainties associated with the proposal. The purpose of my presentation is to summarise these uncertainties listed on the slide and referred to in my written evidence.

The application mentions that the proposed mining and adjacent sites typically consist of sand waves --

MR SHAW: Could you just pause? I'm sorry, Ms Cashmore. Could I just get somebody to move the mic a little closer to Ms Cashmore, from the bottom? That will do, yes. It's just you're softly spoken.

MS CASHMORE: Thank you. Okay, can you hear me better this way?

MR SHAW: That's fine, we can hear you.

[11.50 am]

MS CASHMORE: Thank you. The application mentions that the proposed mining and adjacent sites typically consist of sand waves, worms, and support a low number of organisms and species. However, studies and surveys referenced in my evidence say otherwise. The coastal marine area, which adjoins the site, is considered of regional marine importance because of its distinctive habitat. This area is highly vulnerable to sediment discharge and dispersal.

According to studies, there is potentially more sensitive habitat to investigate within the proposed mining site and beyond. The map on the
left side of my slide, referred to on page 4 of my evidence, shows that the proposed mining site approximately within the area labelled "rolling ground" would potentially be located within a large area of shell hash, dog cockles, high ground and coral.

The applicant's expert witnesses mentioned that there are no records of the presence of any eels in the South Taranaki Bight. To confirm this, I have requested the commercial catch data relating to the proposed mining site and within the South Taranaki Bight from 2005 to 2016 from the Ministry of Primary Industries. The table on my slide provided by the Ministry confirms that long and shortfin eels were caught within this period and within the South Taranaki Bight.

The lack of acknowledgement of the existence of such a risk, declining and cultural significant specie and the lack of assessment of effects on the long-term survival of these eels create uncertainties. The longfin eel is the largest freshwater eel in the world and is found only in New Zealand. In my opinion, the protection of longfin eels, including their migratory path, is required to meet section 59(2)(d) and (e) of the EEZ Act.

The credibility of sediment sampling in a laboratory test is uncertain. The samples were collected and chosen by the applicant. In my opinion, it is appropriate that the collection points and the collection process, including storage and transport, are random taken and/or supervised by independent testing facilities to ensure applicable laboratory quality standards are met.

Information and collection points are inconsistent. The applicant's expert witnesses, particularly Matthew Brown's evidence, mentioned 10 locations, while Michael Dearnaley's evidence shows 16 locations. The location of collection points are in close proximity from each other. The right side of my slide shows figure 3 and the 16 collection points referred to in Mr Dearnaley's evidence. I note that most collection points in blue dots are approximately 2 kilometres apart and there are no collection points on most areas of the proposed mining site.

In my opinion, the test in sediments for particle size, which is one of the critical matters requiring accuracy to determine sedimentation and optical effects, do not adequately represent the entire proposed mining site.

NIWA initially removed magnetic material from the natural sediment core samples provided by the applicant. However, Matt Brown, the applicant's General Manager of Exploration, instructed NIWA to use raw tailings in the likelihood that iron is not fully removed in the mining process. The presence of iron causes sediment to flocculate and settle
faster. It is uncertain how much iron is contained in the tested samples. This means that the test results presented in the application could have falsely elevated flocculated sediments, thereby increasing the settling velocity and uncertainties.

[11.55 am]

The accuracy and reliability of predicted optical effects and sediment model is uncertain. The optical test is reliant on the performance of the sediment model which is untested. According to studies, testing replicate samples increases the chance of detecting reproducible effects of a certain particle size, in effect, increasing accuracy and reliability. The laboratory test did not include replicate samples. On this basis, the reproducibility, accuracy and reliability of the test are uncertain, in my view.

The sediment plume model incorporates flocculation, sediment settling rates and resuspension. However, in my view, uncertainties lie on each methodology. According to the applicant, fine sediments combine to form aggregates, called flocks, through flocculation, which will settle rapidly to the seabed. However, studies show that fragmentation breaks these aggregates, called micro and macron flocks, which could be resuspended back to the water column. The sediment settling rate is based on one particle size, less than 63 microns. According to studies, multimodality of particle size redistribution includes primary particles, floccule, micro flocks and macron flocks and should be tested to accurately estimate the settling rate of sediments. Besides this, the resuspension of sediments are influenced by several factors. The table on my slide shows these factors which include internal tides, internal solitary waves, bed load, suspended load, turbulence, seasonal variations and cavity vortex hypothesis. In my view, further investigation is required with respect to these factors.

Sediments in the seabed contain concentrations of heavy trace metals, such as cadmium, copper, lead and zinc. The extraction and discharge process would release sediments to the water column including heavy and trace metals, in effect, give rise to toxic, metabolic, sensory, growth effects to benthic macrofauna. Its accumulated effects could also impact on human health. In my view, further investigation is required to address this.

According to studies, offshore mining could potentially trigger seabed instability through the creation of large scale offshore sandpits, sandbags or both. Sandpits could potentially undergo evolution, depravation, gradual deepening, migration as well as appearance of adjacent humps. In my view, this should also be investigated.
The applicant proposes to discharge the old tailings back to the seafloor with the assumption that benthic communities would naturally re-establish without undertaking any reinstatement work. In my opinion, at the outset, the light supporting capacity of the affected areas would be compromised in varying degrees. The lack of reinstatement work would further reinforce this. The proposal would remove soft and hard layers of seabed, including live adult worms and other life forms. It would also remove the iron from the sand. According to studies, low iron concentrations have been shown to limit primary production rates, biomass accumulation and ecosystem structure in ocean environments and coastal areas. The presence of live adult worms are required to repopulate the worm community. Tube worm mounds need some hard structure and soft sediment systems with cobbles, bedrock and dead shell to initially establish. Besides this, physical stabilisation of the tailings on the seabed meant that primary opportunist species could grow and breed, and elevated trace metals could be controlled.

According to studies, if typography and sediment composition are permanently altered and previously stable sediments are not re-established, communities remain at an early developmental stage, and biological recovery can take more than ten years. The lack of reinstatement assessment gives uncertainties not only to the overall recovery of the affected sites but also under the cost of reinstatement works, which includes bond requirements, the cost could potentially render the proposal non-operational.

I conclude my presentation with a recommendation. That the application be declined on the basis of uncertainties in accordance with section 61(2) of the Exclusive Economic Zone and Continental Shelf Act 2012.

[12.00 pm]

MR SHAW: Thank you Ms Cashmore.

MS CASHMORE: Thank you for clapping for me.

MR SHAW: We’ll start with Mr Coates this time.

MR COATES: Kia ora, Ms Cashmore. You talk in paragraph 187 about the social licence to operate. What I’m hearing from Ngāti Ruanui is that you would be reluctant to give TTRL a social licence to operate on the basis of the information you are aware of so far?

MS CASHMORE: Yes. Yes, sir.

MR COATES: What would they have to do in order to gain a social licence to operate?
MS CASHMORE: I think pretty much we're clear about certainty, sir. Having the certainty of information, the certainty that the proposal will look after sustainable management of the environment, and that the effects are no more than minor.

MR COATES: Certainty of information is not more information though. What do you mean by certainty of information?

MS CASHMORE: The certainty of information, sir, is on the basis that the information will give us the outcome of sustainable management, that the information is precise and is not going to give rise to any risk in any environment.

MR COATES: And, on paragraph 183, you talk about iron, which you've also mentioned on your slide about reinstatement, iron as being essential for primary production of other organic material, also even as part of the carbon cycle to absorb carbon dioxide. This is a relatively small piece of the ocean where the primary purpose is removing the iron from the sand and shipping it offshore.

Are there trade-offs to be made between using a small piece of ocean and denuding it of iron and foregoing the benefits that the iron might have? How do you reconcile those two?

MS CASHMORE: Well, first of all, sir, I believe that it is not similar as what my colleague mentioned, that I believe it is not a small area in the context of what's happening in international areas. I believe that there are also aspects where biological recovery can take place. As I mentioned before, presence of live adult worms will help repopulate the worm community.

Another example that I've mentioned is stabilisation of the seabed to ensure that those trace metals are not uncontained and are controlled. There's also pretty much the removal of the hard and soft system of the seabed will also help.

So, there are other mechanisms in terms of - shall I use the word - trade-off to ensure biological recovery is pretty much reinstated.

MR COATES: Thank you.

MR THOMPSON: Good morning, Ms Cashmore. Just one question about the long and short-finned eels. I think your chart was presented to show that there is an abundance of those species in the South Taranaki Bight. Is there any more information we take from those figures?

I've noticed that there's a decline in numbers year on year. Is that because of a decline in the population or a decline in the fishing effort?
MS CASHMORE: No, sir. I've looked into many aspects of it and I think the main reason there is I believe there is a quota management issue. When they've identified that the eels are actually recently declining, they've actually reduced the quota.

[12.05 pm]

MR THOMPSON: So, it's being managed now?

MR YOUNG: If I can just add to that because Ngāti Ruanui has had quite a lot of experience. It doesn't exercise its quota because it wishes to see the species recover. The species has been under a lot of threat both onshore and offshore. Ngāti Ruanui has consistently recognised that, and consistently made a stand in terms of ensuring that the eel populations recover. They are very vulnerable to aspects of this type of activity especially in sediment plume activities. And we've seen that onshore in terms of some of the hydro-production aspects relating to eels as well.

MR THOMPSON: Thank you.

MR SHAW: Ms McGarry?

MS McGARRY: Thank you, Ms Cashmore. Just looking at your evidence, in paragraph 16 of your evidence, you talk about high-value areas in close proximity to the proposed mining site. I just want to get an idea of what "close proximity" is in your view. Two to 5 kilometres? What are you thinking when you wrote that?

MS CASHMORE: Based on the sediment model plume it's covering, I'm looking into, I think, about 20 kilometres from the proposed mining site, and these areas cover the adjoining, as I said, coastal marine area. So, pretty much I'm linking that through the affected area as part of the sediment model affected areas.

MS McGARRY: Again, when you say, "close proximity", you're not talking about the whole CMA obviously. There is a difference between what the experts are saying about the average effects over the South Taranaki Bight and then there's your localised effects. I just want to know what you're actually referring to there.

MS CASHMORE: Well, because the proposed mining site adjoins the coastal marine area, I'm particularly referring to the adjoining coastal marine area.

MS McGARRY: Based on the sediment model plume it's covering, I'm looking into, I think, about 20 kilometres from the proposed mining site, and these areas cover the adjoining, as I said, coastal marine area. So, pretty much I'm linking that through the affected area as part of the sediment model affected areas.

MS McGARRY: Thank you. In paragraph 148 of your evidence - I'm just going to pull it up - you talk there about needing more information. And then in the last sentence you've said:
"In the absence of the above information, the proposed consent conditions could render the activity non-operational."

Are you really alerting us there to the sort of issue of potentially issuing like a Clayton's consent, that the consent could be issued but, in fact, it could never be complied with and, therefore, it's invalid? Is that what you're saying?

MR YOUNG: Sorry. We've looked at this in considerable detail. You're potentially right. You could end up in a position where the regime to control such an activity that has such an effect in fact stops the activity from being operational.

So, I think that is the dilemma is that you could potentially end up with mechanisms that are too onerous and, therefore, the operation couldn't proceed. And I believe that's the place where you end up in terms of where you have uncertainty of information.

MR SHAW: Well, we're not going to have the legal debate at the moment, which is essentially the fact that we can't impose conditions that have the effect of declining an application. So, we'll leave that to one side.

MS CASHMORE: I think, sir, in addition to my colleague here, there's a difference between an environmental standard and operational standard. So, it may be that it will meet environmental standards, and that's what I mean it may render it non-operational because it's not going to meet the operational standard.

MS McGARRY: You talk in paragraph 157 of your evidence about the RMA, and you say there that nothing receives consent unless the effects are no more than minor. In my view, that's for a non-complying activity. That's not the threshold for a discretionary activity under the Act. So, you've sort of transposed that the cost to the EEZ is no more than minor. I'm not sure if that's the correct test here. Would you agree?

MR YOUNG: Sorry, I just confer --

MS McGARRY: Mr Young, it is her evidence though. I would prefer if she clarified what she meant.

(off-mic conversation)

[12.10 pm]

MS CASHMORE: I think my opinion is that it's not similar. I think that, in a discretionary activity, you are able to assess environmental effects, and that to be able to grant it, with or without conditions, you must be satisfied that effects will be no more than minor.
MS McGARRY: Yes. I guess my question is: is that actually a threshold under the EEZ, that "no more than minor"? It's about addressing significant adverse effects.

MS CASHMORE: I think it goes back to the purpose of the Act, and the purpose of the Act is pretty much to promote the sustainable management. And there are three trigger points, shall I say, and that is the life-supporting capacity of the environment, that the resource is available for the future generations, and that the effects should be avoided, remedied or mitigated. In situations where there is doubt, we also always go back to the purpose of the Act.

MS McGARRY: Thank you.

MR SHAW: No more? That brings us neatly, I think, to a time when we'll adjourn for lunch. Well done, all concerned. We had a late start, so thank you, and we'll be back in one hour. Thank you.

ADJOURNED [12.11 pm]

RESUMED [1.15 pm]

MR SHAW: Okay, ladies and gentlemen, welcome back. There are some questions that we have, and I explained earlier that we require questions in writing, and we've got questions for Mr Young and Ms Cashmore. I think all of these are from the applicant, and everyone should understand that these questions are not the questions of the DMC, they're questions of a party, in this case the applicant. If you've got more there, Mr Holm, that's fine, if we can arrange for those questions to be sent up to us. I'm sure we're safe from your predations, in the short term at least. Thank you. As I say, these questions are questions from in this case the applicant. They are read without editorial, unless the question has already been asked or answered in which case we will still read it out and people know. But in this case I think we'll be going through from top to bottom and I think you've had the questions -- maybe now.

MS CASHMORE: We've had some of them.

MR SHAW: You've had some of them. Well, I'll deal, if we can, with those that were submitted some time ago. Mr Young, in the first instance, these are to you. Please clarify who you are employed by and whether you consider you meet the requirements of an independent expert witness under the code of conduct.
MR YOUNG: I'm employed by Ngāti Ruanui in the capacity of an environmental advisor and policy advisor. I've read the expert witness statement and it was confirmed that I was an expert witness when we entered the expert witness conferencing group on planning conditions, and that was accepted by all parties.

MR SHAW: The next question is what is the seaward boundary of the takiwā?

MR YOUNG: With respect, I think Debbie answered that question in terms of there was no seaward boundary.

MR SHAW: I think that's what we heard. Is that a view you share, because bear in mind here what Ms Ngarewa-Packer said is entirely beside the point? It's your opinion we're seeking here.

MR YOUNG: I share that view, sir.

MR SHAW: Okay, fine. What is the boundary of the statutory acknowledgments contained in the treaty settlement?

MR YOUNG: Okay, so the statutory acknowledge is based on the Settlement Act of 2003 and it extends across our entire takiwā coastline from the south to the north, and we've got a diagram here if you wish to see that which shows our entire takiwā, and that's based on the 2003 settlement.

MR SHAW: And to the east?

MR YOUNG: To the east, that goes inland to the east.

MR SHAW: Sorry, to the west.

MR YOUNG: To the west, we've got that and we can show that if you'd like me to distribute that.

MR SHAW: That would be good. How would such recognition normally occur? This relates to paragraph 59 of your evidence.

MR YOUNG: Recognition usually occurs when an application interacts with Ngāti Ruanui, and that occurs at multiple levels. It occurs at meetings where the statutory acknowledgement is discussed, and the implications of that statutory acknowledgement, and it's often traversed through details within an application. That's often after discussion with Ngāti Ruanui in terms of how that statutory acknowledgement would be impacted.
MR SHAW: Would recognition of iwi statutory acknowledgements normally involve seeking to engage with the iwi, and recognition of these acknowledgements in the subsequent application?

MR YOUNG: It does. It depends on the type of application, to be honest. Because Ngāti Ruanui has been fortunate to produce its own environmental management plan, often applicants find guidance there in the first instance in how to interact with a statutory acknowledgement.

MR SHAW: What else could TTR have done to better recognise these statutory acknowledgements?

MR YOUNG: Well, from my understanding there was no recognition of the statutory acknowledgement in the application. I think the statutory acknowledgement would have become a reality from Ngāti Ruanui through a cultural impact assessment.

MR SHAW: Which groups did you notify about your customary marine title and rights application?

MR YOUNG: The customary marine titles application was lodged with the Office of Treaty Settlements in I think late November, December of 2016. That got acknowledged late in December 2016 and is on the website now as being an acknowledged application by the Office of Treaty Settlements.

MR SHAW: Could you please clarify what the seaward boundary of your application for customary marine title and rights is?

MR YOUNG: In accordance with that Act it goes as far as the 12 nautical mile zone and we also have a map which we've downloaded from the Office of Treaty Settlements which shows the application in detail.

MR SHAW: Could you please confirm what process was followed to confirm opposition to the TTR proposal from the Ngāti Ruanui Marae, Hapū and Iwi?

[1.20 pm]

MR YOUNG: Sir, I think that has been traversed today but in my view I concur with what's been said today, where there are 16 trustees who represent hapū on the trust. Those trustees interact with hapū and marae and feed information back and forth to our table. Equally this application has been discussed extensively through our AGMs and I think the mandate from Ngāti Ruanui has always been clear.

MR SHAW: Well, could I just say by way of commentary here, and this is not from the applicant, this is from me. I'm happy to ask the questions but we
cannot go behind the fact that quite clearly people with authority to act and authority to speak, and that is not specific to Ngāti Ruanui or to any iwi groups, it is specific to the fact that where people are appropriate mandated it's not for us to go behind that.

Could you please explain what obligations iwi have under the best practice guidelines produced by Ngāti Ruanui for MBIE? And there's one that follows.

5  MR YOUNG: Sir, the best practice guidelines are just that: a guideline. They don't set out specific obligations. It will be up to each iwi, hapū or marae to determine how they would apply them. It is merely there as a guide to what Ngāti Ruanui considers as best practice.

10  MR SHAW: Could you explain the recommended approach outlined in those guidelines for an applicant where iwi refuses to engage?

MR YOUNG: Yes, I think it's very clear in the guidelines where an iwi refuses to engage that in fact an applicant keeps an open door policy and the applicant keeps returning with information to that iwi, even if that iwi doesn't wish to engage, which hasn't been the case in this application.

15  MR SHAW: What information would you routinely expect to receive in initial discussions on an application?

MR YOUNG: As I think has been expressed today, and I think which is outlined in our own best practice guideline, we would expect to receive all information in terms of technical detail and reports. We've developed that over the years as best practice as that enables us to help inform Ngāti Ruanui on any mitigation in terms of its cultural impact.

20  MR SHAW: Would you expect that level of information to increase as the relationship is established, engagement proceeds and the application is refined?

MR YOUNG: No, not necessarily because we believe that most of the technical information and details of information come up front. What we actually believe is the level of sophistication of engagement improves over time. So there may be more in depth understanding of that information but we don't believe more information just becomes more available if your relationship matures. That, we actually believe, is an immature way to operate.

25  MR SHAW: When you're asked to prepare a cultural impact assessment what level of information do you routinely require?
MR YOUNG: Sorry to be repetitive but we would expect that all the technical information, all the application details are provided up front so that we can provide information to Ngāti Ruanui and its descendants on how that may impact.

MR SHAW: And by "we" you're talking about the management office?

MR YOUNG: Yes.

MR SHAW: Yes, the rūnanga office. In what circumstances would you prepare a cultural impact assessment in advance of receiving the full application?

MR YOUNG: We wouldn't.

MR SHAW: Could you please advise whether Ngāti Ruanui has received copies of the other entire draft EEZ marine consent applications, either prior to or at the time the applications are sent to the EPA for a completeness check?

MR YOUNG: In terms of other applications that have been made in there OMV has provided us with extensive information on their application, and when the application was complete the draft was provided to us.

MR SHAW: So that was prior to it being sent?

MR YOUNG: Prior to, yes.

MR SHAW: Okay, I just wanted to be clear what it was you were saying.

MR YOUNG: Yes, sorry, and potentially I think the first draft from the OMV re-consenting of its deep sea oil well was provided at least six months -- in fact what they provided was the first edition and then we had to sort of put it all together as they provided new editions.

MR SHAW: If consent is granted, how would you suggest that the conditions be amended to address matters raised in your evidence?

MR YOUNG: I think I answered that one probably this morning, sir. Look, at the moment I think it would be extremely difficult to present a set of conditions based on the uncertainty of information that is before us at the moment.

[1.25 pm]

MR SHAW: Thank you, Mr Young. Ms Cashmore, how does mud - ie fine particles - get deposited in the South Taranaki Bight in the first place?
MS CASHMORE: Well, sir, I am not a geology expert. However, it is my understanding that sediments are transported from onshore to offshore or vice versa depending on current, tide, etc. However, according to Cawthron unpublished data, the homogeneity of the entire offshore area must not be assumed and, therefore, sediment composition could vary. I mean, this is pretty much clear in terms of why some areas have got mud and some areas have got fine particles, etc.

MR SHAW: What role does biofouling play?

MS CASHMORE: It's actually quite interesting because that question refers to paragraphs 39, 66 - 68 of my evidence and I have not referred to biofouling at all so I'm not particularly sure whether that was intended for me to answer. But that's not within the scope of my evidence.

MR SHAW: Okay. In your view would the predicted level of sedimentation, which is less than 0.1 millimetres a year downstream, adversely impact biota?

MS CASHMORE: There are actually diverging views with respect to the predicted level of sedimentation, which is less than 0.1 millimetres per year. In my opinion this is the sort of level would possibly be discussed by expert conferencing, or for the DMC to consider in terms of as a baseline.

MR SHAW: What customary use was made of the proposed mining site?

MS CASHMORE: Sir, if it's possible that I refer the question to Debbie, given that she's presented --

MR SHAW: Look, you're perfectly entitled, Ms Cashmore, to say that these matters are outside your expertise.

MS CASHMORE: Yes, it is outside my expertise.

MR SHAW: What is your response to the next question - you may have the same response - what impact does a refusal have on the DMC's ability to grant consent?

MS CASHMORE: Yes, sir, and also the next question after that, they're all cultural values related.

MR SHAW: And that's not your area of expertise?

MS CASHMORE: Yes, sir.

MR SHAW: Okay, would you like me to redirect those questions to anyone, Mr Holm?
MR HOLM: Just the handwritten ones, sir.

MR SHAW: Just the handwritten ones, but these other ones can lie, okay, thank you. Mr Young, and these are also from the applicant but drafted today, as the expert planner involved in advising on the TTR application did you have the opportunity to listen to the extensive scientific evidence presented on behalf of the applicant and the EPA when issues of "uncertainty" were discussed in detail?

MR YOUNG: Yes. As indicated this morning, I have not read all the transcripts today, I have read some of them and I've also read some of the evidence that has been submitted and is on the website. I cannot say that I've read all the transcripts, no.

MR SHAW: Are you comfortable that you can reliable express opinions on a wide range of "effects" and related scientific issues when you have not informed yourself by listening to the expert evidence? Well, you've already answered I think but if you want to make further comment there, Mr Young?

MR YOUNG: No, to be fair I think my evidence has been contained within the areas I believe that I can answer. I've not delved into extensive scientific analysis, but made a general view on some parts of that.

MR SHAW: As a planner engaged full-time by Ngāti Ruanui's "strategy and influence team", how do you ensure that the credibility and independence of your opinions are in accordance with the code of conduct for expert witnesses?

MR YOUNG: Sir, I always pride myself to give independent and expert advice to Ngāti Ruanui.

MR SHAW: And finally, Mr Young, TTR has proposed mana whenua conditions for any marine consent on an osier(?) basis. Do you believe these conditions should continue to be included?

MR YOUNG: I believe the conditions are worthwhile for further consideration, yes.

MR SHAW: Okay, fine. I think that's all the questions we've got from the applicant. Any other parties have questions? No, okay, I think that being the case we'll turn now to closing. No, we've got Mr Ngarewa now, isn't it? Yes.

[1.30 pm]

MR NGAREWA: Kia ora, Mr Ngarewa. Mr Ngarewa, do you prefer to give your evidence standing?
MR NGAREWA: I'll be standing and sitting.

MR SHAW: Okay. Mr Ngarewa, just one thing, can you use a microphone? Otherwise we don't get it included in the transcript.

MR NGAREWA: (Māori content)

INTERPRETER Mr Hammond: I'm here with my supporters in the group and they will be reciting a poi in regard to the Aotea Canoe.

MR SHAW: Look, could I ask those people there, just come up, I think it's going to be easier if you come further to the front. I'll give us much more space. If you go to either side I think it will be fine. That's okay for the staff? Yes.

INTERPRETER Mr Hammond: Mr Ngarewa has also indicated he will be reciting a karakia that has an incantation in relation to Tangaroa, the deity of the ocean.

MR SHAW: And are you anticipating having that translated, Mr Ngarewa? Yes?

INTERPRETER Mr Hammond: I shall try my best.

MR NGAREWA: (Māori content)

INTERPRETER Mr Hammond: Greetings to everyone. We are from the Marae of Pariroa, Ngāti Tūpito, and others far too numerous to mention right now. We have come here today in response to this kaupapa.

MR NGAREWA: (Māori content)

INTERPRETER Mr Hammond: To you, Tangaroa, the deity of the ocean, the originator of the seas, we call upon you to guide us in our deliberations today.

(karakia)

MR NGAREWA: (Māori content)

INTERPRETER Mr Hammond: I stand before you, the Commission. We come before you, the assembled subtribes and clans of Pariroa Marae. We have authority over the land from Patea, beneath the mantle and protection of Ngāti Ruanui. Pakakohi is the ancestor. In times of confiscation and days of old from 1860 onwards to tēnā kora he maino?

[1.35 pm]

MR NGAREWA: 1869 to 1872.
INTERPRETER Mr Hammond: Kia ora.

MR NGAREWA: (Māori content)

INTERPRETER Mr Hammond: The people of Pakakohi hoisted their flags but were shifted by the Crown, by the government, and ended up being imprisoned in the South Island. They were driven off the land, taken down to Wellington and to beyond. They were taken by sea to Dunedin where they were thus imprisoned. One of our elders perished at sea. And they expended great effort, sweat, blood and tears, in building the infrastructure of Dunedin.

MR NGAREWA: (Māori content)

INTERPRETER Mr Hammond: Tumahuki and one other of my elders perished down there and are buried down in those precincts. Three years later they returned to Patea. Let it not be forgotten that they were great, strong people but they were also the first who were imprisoned. So we stand before you 148 years later.

MR NGAREWA: 148 years we stand before you. As I said, our people were sent to Otago, and I know we’re going way back because my great-grandfather was one of those people who died down there. My grandfather, Hohepa Ngarewa came back, and now after 148 years we look to TTR and now we are at another war. We're at a war, a different war but a war where we, our kaumātua for tomorrow, are there because one of our tikanga is when you pass away you leave the land in good conditions and you leave the papa moana, the Tasman Sea, in good condition to our mokopuna’s of tomorrow, and we've got mokopuna’s at the back here.

That is our responsibility. You guys, as I said, are fluent educationally and financially, and we are only just ordinary people, but when we leave this whenua that was given to us back in the year 1350 when our people came over on Aotea Waka, even though the Aotea Waka landed at Kāwhia, and we came down here. It's our responsibility, and being the mana whenua, to ensure that our moko’s of tomorrow are looked after.

[1.40 pm]

But with TTR and reading some of my documents, I think from Sarah Ongley, article 17/11/2016, Taranaki Daily News, Mining in the deep - uncertainties in our ocean. Now, that's evidence, not my evidence, okay, I made it quite clear.

We speak about - as a young lad, I heard of Witikau, and I heard someone say, if you've got a place to go to, show us. It was said to be a village of Tāneroroa, who was the daughter of Rongorongo and Turi off the Aotea Waka that arrived, as I said, in Aotearoa in the year 1350 and
from which the following tribes is associated from: Ngāti Ruanui, Ngāruahine, Ngā Rauru Kītahi, Wainui Arua.

Twenty years ago I was fortunate enough as part of a group to visit Witiko Pā, a fishing village which was established approximately in the year between 1800 and 1900. Ngāti Rangi and Ngāti Hine are the hapū’s or subtribe of Witikau Pā. They are both affiliated to Pariroa Pā of Ngāti Ruanui, Pakakohi tangata, or the people of Pakakohi.

During the 1800s, Witikau Pā, which is situated almost 3 kilometres west of Patea, and Parirao Pā was a fabulous spot for catching a variety and abundance of fish, especially hapuka, and collecting kaimoana, and where basically in a direct line is the designated location where TTR is proposing to apply deep sea mining. Kaikapua, a cousin of mine, a kaumātua, died at the age of 80-plus years 6 years ago, and can recall as a young boy he was used as a bailer. Multiple times he would accompany the skilful fishermen of possibly five men, sometimes they would have up to eight in a crew, and they would row out on the rārea (rowing-boat) in the Tasman Sea to the designated area proposed by TTR for seabed mining, anchor their boat, their rarōa, throw their fishing lines into the deep sea, and when their rōa were filled to capacity they would return to sure. Kaikapua added he was very privileged to go out on a Ngāti Ruanui tribal fishing boat, rōa, alongside the skilful fishermen.

They would row out to the area using various landscapes as a point of direction, and in those they did not have motor-driven boats, nor did any safety gear exist. They would return to land and distribute the fish to families and extended families, including (inaudible) and special occasions. The rarōa boat means long horizon and it’s named after a stretch of coast between Manapou Stream just south of Opaora and the Patea hydroelectric plant. It was 22 feet long and manned by 4 rowers and 1 steersman. It was built in 1906 and it was a tribal fishing boat that belonged to Ngāti Ruanui. It was designed for domestic purposes.

Currently the area associated is situated in the designated area for seabed mining by Trans-Tasman. The area TTR is proposing to apply for a 35-year lease to extract 5 million tonnes of sand from the seabed, mining covering an area 65 - 76 square kilometres, which is approximately the area of New Plymouth, and change the shape of once the shining gem and naturalistic environmentalist sea world of the coast of the Tasman Sea. It is not an even playing field. The corporate companies, investors, TTR are financially subsidised or can apply for funding through agencies or by government. Meanwhile the little people, for example myself and others, the protestors have to dig deep into our pocket or acquire assistance from iwis or other groups if we wish to protest vehemently against seabed mining. It’s appalling.
After millions of years the variety of fishes and the sea food chain, its habitat and pristine environment surrounded in its natural environment is pollution-free. However, no more if TTR obtain approval because from my perspective and many others like myself, the mighty dollar speaks louder than the ordinary people whose history goes back many centuries. Because we feel so passionate and compassionate about the destructive effect seabed mining will have and its impact concerning the related deep sea, which is a gem and a jewel, but with just a stroke of a pen, and I will say it three times, with just a stroke of a pen, and just a stroke of a pen TTR will destroy history.

TTR will not only destroy history but deny our mokopunas of tomorrow and observing the variety of fishes in its panorama, pristine, natural, colourful habitat, surrounded in a splendour and pollution-free environment. The landscape area will be a catastrophe to both human consumption because fishes may contain a high level of lead, destroying its habitat and environment. TTR cannot give a guarantee. I make it quite clear in front of everyone here, I can give a guarantee but TTR cannot. I can give a guarantee but TTR can't. With all the uncertainties hanging over our heads, TTR want to actually monitor for two years. My own word, I say experiment for two years.

I wish to emphasise and highlight working under Te Moana Tapokopoko Tawhaki, which is the Tasman Sea, for two years with no guarantee whatsoever: get real. If may have been a premonition. Last year one of the moko was only a year old and their uncle came up from the South Island and he said to me, "Uncle, I work on the ships". I'm not going to divulge his name because it'll go around Ngāmotu, and he said, "What happens is because of the noise from the machines and the boats, the whales become disoriented and look what happened". This was the February, March where approximately 1,000 were stranded and 300 died. I'm not a scientist but I'm a believer. And he also said, "What have they done to deserve this?" You just imagine it was your children, or your grandchildren, how would you feel?

There are millions of people globally who visit Kaikoura to observe these majestic, gentle mammals displaying and performing with acrobatic finesse in its natural habitat and environment. As I say, look at the catastrophe that happened in February, March this year. Maybe in the near future, like Kaikoura, the west coast of Taranaki may have a whale sanctuary like Kaikoura.

Now, there are blue whales, I believe, situation in the seabed mining area, according to marine mammal expert, Leigh Torres, Taranaki Daily
News, 22 February 2017, and these are not my words. I think it's fraudulent when TTR cannot give a guarantee of its work regarding seabed mining in the Tasman Sea off the west coast of Patea. Application to mine phosphate from the Chatham was declined due to uncertainties and destructive effect on the wider area. Unless they can give us 100 per cent guarantee, the uri or the descendants of Parirao Pā, which was established in 1894, unashamedly strongly recommend to the Decision-making Committee to vehemently and unequivocally deny TTR application on the grounds above due to uncertainties and destructive effect on a wider area.

[1.50 pm]

Listen to this. Part of our past is healing the history. Part of our past is healing the history. What happened in 1869, hence the reason I brought that up, what's happening now. The Committee, it's your decision, not my decision. All I'm trying to convince, part of our past is healing the history. It is our duty and responsibility as kaumātua’s to leave the whenua in good condition and the moana taonga in its current natural habitat and serene condition. Like our tipunas, predecessor, left it for us, and to pass this on to our mokopuna’s of the future.

(Māori content)

I am happy to answer any questions.

MR SHAW: Dr Thompson, any questions from you?

MR THOMPSON: No questions, thanks.

MR SHAW: Mr Coates, any questions from you?

MR COATES: No.

MR SHAW: Okay, thank you. Ms Ngarewa-Packer and Mr Maruera in conclusion. We've been very liberal with time.

MS NGAREWA-PACKER: Kia ora. First of all we'd like to thank you for being very liberal with time. We'd also like to thank you for being very tolerant in this process, and we understand that there is a lot of emotion. There is no certainty in life but one thing I guess that we can be certain about is that when it involves our land and our sea we will turn up to say how we feel, so we appreciate you listening.

We do want to conclude, we state precaution must be central to this consideration. We've already emphasised that the information is uncertain, it's unreliable, and I guess for us what's emphatic about the
kōrero that I shared this morning is in our experience conditions in the EEZ are self-monitored. This requires a large degree of trust, discipline and integrity. We have not seen that behaviour in this application, and we implore the Decision-making Committee that this application be declined. The reliability of information is lacking, the environmental impact is uncertain, particularly around the sediment plume. That has been the worrying agent for most of our uri.

The precautionary approach is underlined within the EEZ Act. Adaptive management cannot avoid the ongoing uncertain nature of effects and would not solve adverse effects. Cultural impact is significant on Ngāti Ruanui, as has been shared today, and also as has been covered is economic benefits do outweigh environmental fundamentals. So again we'd really like to emphasise that uncertainty plus insufficient information equals extreme caution. Thank you very much, I'd like to hand it over to Haimona.

MR MARUERA:  (Māori content)

INTERPRETER Mr Hammond: Greetings all, it is time to bring our presentation to a conclusion, and acknowledgments to TTRL, who are welcomed here today, and also to the experts who have appeared in front of the Commission. Here is but a small fraction of Ngāti Ruanui who have appeared here today to bring forth our case.

MR MARUERA:  (Māori content)

[1.55 pm]

(haka performed)

MR SHAW:  Thank you very much, all of you. I've just been asked by staff to adjourn for a few moments so they can sort things out with Te Kaahui o Rauru in terms of the order of their presentation. But before I do I would like to acknowledge the people here today. Thank you for approaching this in a very respectful fashion. I've got to say that I wasn't sure whether I was looking forward to this day when it started, I was a little apprehensive, but thank you all for being here, thank you for being respectful, thank you for talking to us. Kia ora.

ADJOURNED  [1.56 pm]

RESUMED  [2.01 pm]

MR SHAW:  Ladies and gentlemen, welcome back. Before we begin hearing the contribution from Ngā Rauru, I want to just ask if you could begin by introducing those of you who are presenting. We've been given a batting
order as well but I think it would be good for us to know who we have in front of us before we begin. So is that your job, Ms Broughton? Who's going to do it?

5 MS BROUGHTON: Tēnā koutou, tēnā tātou. So our first speaker will be our Tumu Whakahaere, our Chairperson, Marty Davies, followed by Turama Hawira, Bill Hamilton, Anaru Erueti, Jacinta Ruru, Catherine Iorns and Tom Stuart, and then myself, Anne-Marie Broughton.

10 MR SHAW: And you're assisting Ms Iorns, are you, Mr Stuart? Is that right?

MR STUART: Yes.

MR SHAW: Okay. I think you've got a structure that's a little different from the way it was approached by your neighbours. I know that there are some people who are giving evidence, particularly in the field of tidal law and international law, where people are giving evidence, and I think we are aware of those. It would be helpful that they tell us that before they begin, and where it's just straightforward representations, because it's a different way in which we approach some of the questioning associated with that. Mr Davies, I think you all probably know who's in front of you and if not our names, our name tags tell you who we are, and if you're speaking in te reo we will be hearing from our interpreter. Mr Davis, over to you.

25 MR DAVIS: (Māori content)

INTERPRETER Mr Hammond: Under the shelter of our mountain, Taranaki, that stands lofty, I give respects to the tangata whenua of this land. My eyes turn ... the multitudes have come here this morning in support of this kaupapa, in particular Ngāruahine and others who have assembled here today. I acknowledge all those here today but also those who are not with us physically but, rather, spiritually. They exist within their realm, just as we exist within ours, so acknowledgements to each and every one of us.

[2.05 pm]

30 MR DAVIS: (Māori content)

INTERPRETER Mr Hammond: First up I will receipt the whakapapa, the genealogical tables of the Ngā Rauru people.

35 MR DAVIS: (Māori content)

INTERPRETER Mr Hammond: So down from those lines of descent come our connections throughout the Aotea peoples.
(karakia)

MR DAVIS: (Māori content)

INTERPRETER Mr Hammond: This is us who have arrived here today. From the mouth of Te Awanui O Taikehu, inland to Matemateāonga, to the river mouth of the Whanganui River, here is the sacred place of Kupe, the gathering of Ngā Rauru Kītahi at this time. This is our proverb from heaven to the earth, from inland to seaward. Everything is sacred. Rauru Kītahi hold fast, hold firm, hold strong.

MR DAVIS: Ngā Rauru Kītahi is our term to describe those values, those rights, and those responsibilities we hold according to our custom, including the values, rights and responsibilities recognised by the Treaty of Waitangi. We have exercised Ngā Raurutanga in respect of our traditional rohe, and to hold tight to the values that constitute Ngā Raurutanga. Such values as mātauranga, as hauora, as wairuatanga, as te reo, as whakapapa, as kaitiakitanga.

I wish to expand a little bit on kaitiakitanga. Mana motuhake and Ngā Raurutanga are key concepts underpinning how we exercise kaitiakitanga. Through these concepts we demonstrate our authority of kaitiakitanga over the environment and its resources. They enable us to protect, to enhance, to restore, and to utilise the natural and the physical resources appropriately.

[2.10 pm]

Tiaki, its base meaning is to guard, but has other closely related meanings depending on context. Therefore, tiaki also means to keep, to preserve, to conserve, to foster, to protect, to shelter, to keep watch over. The prefix kai with a verb denotes the agent of act, so kaitiaki is a guardian, kaitiaki is a keeper, kaitiaki is a preserver, kaitiaki is a conservator.

The suffix tanga added making kaitiakitanga means guardianship, it means conservation, it means preservation. We note the RMA defines kaitiakitanga as guardianship and/or stewardship, which is inappropriate because the original meaning of stewardship is to guard someone else's property, a foreign concept in pre-contact times. Further, all use of land, water, forests, fisheries, was a communal and a tribal right. All natural resources were birthed from mother earth or Papatuānuku, plus resources of the earth did not belong to man but rather man belonged to the earth. This iwi maintains the values, the rights, the responsibilities, mai rānō. Those responsibilities for fishing or planting kai for harvesting, ērā mea katoa.
MR DAVIS: Even today Ngā Rauru Kītahi maintains these values, rights and responsibilities and traditions. To finally close, the DNA of us as an iwi was here long before and was cast along before we came along. Our whakapapa, our values, our rights, our responsibilities, our Ngā Raurutanga, our mātauranga, our hauora, our kaitiakitanga, our mana motuhake, our place in this world was here way before now. We look at our constitutional stuff and today we talk about tika, we talk about pono, we talk about mātauranga, we talk about kotahitanga.

(Māori content)

MR SHAW: I'm just doing what I'm told in this situation, so you guys go ahead.

MR DAVIS: So there's no questions, haere tonu.

MR SHAW: Okay, so you're ready for questions if need be. I will see. Mr Thompson, Mr Coates, no. I think an admirably clear submission. So this is Mr Hawira now.

MR HAWIRA: (Māori content)

INTERPRETER Mr Hammond: Acknowledgements to you all. First of all, I have presented my written submission, the translations within which are my own.

MR HAWIRA: (Māori content)

MR HAMMOND: I am not sure if I should translate that. The speaker is acknowledging our difference in philosophical houses of learning.

[2.15 pm]

MR SHAW: Diplomacy. Look, I've got to say to you, Mr Hawira, you might have heard a squeak from my computer at the beginning and that was because I was trying to bring up your evidence in anticipation. And, unfortunately, I brought up the haka, which was partly in some sequence, so I wasn't off my task. But I'm afraid I had to shut it down because otherwise it would have been, I think, an interruption for everybody else.

MR HAWIRA: (Māori content)

INTERPRETER Mr Hammond: The contemplation of the inner being from whence does the narrative devolve. It is in the heavens upheld as in heavens suspended. It dwells within the mouth of tides. It is with the celestial parent above, it is with the celestial parent below, such it is. Stand forth the heart pole of the narrative. It is the principle of law, it is the principle of ancient law and the openness of space. For this is the taproot of equilibrium and
peace, hail the deity of two white rocks. Afloat on the ocean vastness, turbulent oceans, rough surging oceans to substantiate the principle of law and life.

The principles of laws expressed by universal law and radiant sun and great space. Universal law and radiant sun in the great gap of space, universal law and radiant sun in the opening of space. Universal law and radiant sun in the emptiness of space. Universal law and radiant sun in the thumping noise of space. Universal law and radiant sun in the reverberation of space. Universal law and radiant sun in the splitting vibrating space. Universal law and radiant sun in the split shattering space.

The law of the earthbound waters, the law of nurturing accessible waters. The law of radiant sun and influence, the law of imbalance of life on land and in the forests. The law of water, of food and life. The law of the moon's effects on the ocean. The law of the effect of tidal waters at river mouths. The law of all life in the oceans. The law of all life on the sacred mat of life.

The birth of Tiki Hawaiki humanity, Tāne, dispenser of the seed on earth. Tāne of life, knowledge and death. The seeping water, water, water everywhere reflecting all of life's forms. Human life form from the source that becomes the reality of life and brought into this world of light, knowledge and understanding, wisdom and enlightenment. Recite the universal law. The principle of life and law belonging to whom?

The principle of life and law of the ocean deity. It has seeped up from beneath his feet, emanating to his origins in the heavens. Rise up, rise up, Tangaroa. Welcome to the principle of law and life, secured and legitimately confirmed, ready for the tide of time, place and need. My resolute stand upon Mataimoana. Hazy is my gaze to the headlands that dominate Te Kiri o Rauru. The horizon of the west perseveres. The ebbing tide, the inward tide, the resounding tide. The retreating tide of Rehua. Above glistens Te Matau a Māui, that brought forth the land mass. The sun sinks beyond.

The resonance of wings of the flying clan, of the ancient clan, migrating to the inland places, migrating to the coastal places, coming to rest upon Te Potiki o Rehua. The launching platform of venerated leaders inspiring resilience, fortitude and awe, inspiring the vitality of Rakatakapo that anchored man to the earth's consciousness. By small increments we will achieve.

[2.20 pm]
Manifest the night, manifest the day. Manifest the pathway of the absolute word, that descends from the elite, the learned elite, the wise discerning lips, the lips of oration. The piercing of the heavens, the contentment of the land. The life force above, the life force below, the living force of Rauru. Panepanepopoa is the reputed fighting staff. Rikōrero and Riwānanga are the exponents. I am the descendant, Turama Hawira. Standing under the mantle of my sacred house of learning, Aotea renowned for abundance of cargo and of learned prose.

In accordance with the descendants on Ngā Rauru Kītahi, in accordance with the descendants of Te Awanui a Rua, desist from interfering with the ocean current from Taranaki. Firstly, cast your gaze to the waves crashing at Herehere-i-moana. There stands the sacred altar belonging to whom? It is the altar belonging to Maru. The historical anchorage of Te Atua Ranganuku. Rākei is the tohunga, he who defined the marae of men, the marae of Tangaroa. Rendering sacred the kawa, the cutting definition of the kawa, appeasing the sacred kawa. Go forth Tāne, go forth Karewaonui. The long wait of Piere awaiting the return of the sacrificial fish. Consume it, Maru.

The essence of the message, refrain from intercepting the sacred chants from Waikaramihi. Do not allow for the sandstorm under the ocean. Secondly, the migratory pathway of the whales. Returning to the mouth of the Whanganui River to Te Paku o Te Rangi. Who was the figurehead at the apex? It is Aokehu. The famous ancestor, he who killed the giant shark, Tutaeporoporo. The annual gathering of the mammals at Whangaehu, breast milk for the new-born calves. The sharks draw close. Ngāti Tumango emerges to form a barrier of nets and people.

The message in essence: do not interfere with the ocean current from Tahiti. Do not intercept the ocean current from Taranaki. It is the sacred ocean path of the whales. Thirdly, the customary fishing grounds. Each species returns to their designated reef.

[2.25 pm]

Ko Opahoa, ko Te Whare Kakaho. Launch the Te Puna i Te Moa, launch Kuratau, launch Tupuna, launch Kai Iwi, launch Ngakore, launch Karewaonui. The six fishing vessels of the people. The message in essence: desist from impacting upon the life force inherent in our ancestral fishing grounds, lest the future generations become refugee survivors without sustenance, without substance.

In conclusion, in the first instances of arrival at Pariroa, it is I who composed the haka that has gone before the people, the nation and was performed at Te Matatini, the recent festival. This is the substance of
that haka that was performed. Awaken the immortal guardians, awaken the ancient ones. A great demon sits poised on the horizon of the west. Who is the enemy that approaches? It is the spawn of the evil one from the underworld. Herald the birds of inland and of the coast, united be the stand at the marae, Te Marae o Tāne.

Uphold the sacred invocation, the sacred order of the oceans, ensures the sacred order of life. Send forth the sentinel. He will enforce the absolute line in the sand. Thine enemy from afar draws close. The earth trembles, the ocean rumbles. Smash the head. Strangle the throat. Manifesting still the dark ancient forces within. Feed the blade of the weapon. The first slain at battle, the sacrificial fish of war. Consume, feast, o Maru. Rise up, rise up, Tangaroa. Welcome to the principle of law and life. Secured and legitimately confirmed, ready for the tide of time, place and need.

MR HAWIRA: I will now conclude with the video.

(video played)

(Māori song)

[2.30 pm]

MR HAWIRA: That concludes my evidence.

MR SHAW: Thank you.

MR HAMILTON: Kia ora koutou katoa.

INTERPRETER Mr Hammond: Greetings to all.

MR HAMILTON: I'm Te Huia Bill Hamilton, and you've received a copy of my statement, and I really want to focus my comments on paragraphs 13 and 14, which are the statement about the obligation of the EPA as the Crown and raising a number of questions around that relationship, the Crown relationship with Ngā Rauru Kītahi. I understand and fully appreciate that the EPA can only make decisions based on getting good information, and I want to mihi to Turama and Marty for clarifying a bit of information that you've received from an unnamed source to do with the customary practices of Ngā Rauru Kītahi, that they did exist and they were outlined in the presentations by Marty and Turama. And also the fact that the relationship that Ngā Rauru ended up with the Crown after our Treaty Settlement was mai ota kitai, which includes the sea, so I just wanted to correct that information.
I think one of the other points I want to make is that this application is quite different from what it might have been 20 years ago, when the whole focus was on commercial exploitation of resources, and now it's actually about economic development. And Ngā Rauyu was in favour of economic development. In fact, it's one of the issues that we addressed in our settlement with the Crown. I want to firstly make three points; the first one is to talk about the outcome that the Crown wanted from our treaty settlement, and that's to restore the honour of the Crown.

[2.35 pm]

The second point I want to make is to do with the Crown/Rangatira relationships that already exist and to explain how they can reach international human rights standards. The third point I want to make is to open up some information about a set of human rights standards that help business and states do business while meeting their obligations towards particularly indigenous people.

The first thing is that often there's a feeling in New Zealand that once treaties are settled that's the end of the matter, but in fact treaties aren't there to be settled, they're to be honoured. I think the Crown, in setting a high-level goal, are wanting to honour its relationship, to restore the honour of the Crown in terms of relationship with Ngā Rauyu was a really, really good focus. One of the mechanisms we have developed with the Crown is a thing called a paipai rangatira, where our Rangatira meet with Crown Ministers and talk about the health of the relationship and we talk about ways that we could work together in social and economic priorities.

A lot of that stuff is to do with the values that Marty talked about that have been presented in our submission, particularly around kaitiakitanga. The big issue here is the partnership that enables Ngā Rauyu to exercise kaitiakitanga over this resource because it's in that relationship that the honour of the Crown can be restored. When I'm talking about the Crown, that term also applies to business, because business happens under the authority of the Crown. In the treaty relationship there are only two parties; tangata whenua are represented by our Rangatira and tauiwi represented by the Crown.

In making this application, TTR needs to meet the same rights and obligations that the Crown has. I noticed earlier on, Alick, that you talked about there's no requirement to consult, but in fact under that relationship, under the relationship of partnership, there is a responsibility to engage, otherwise the partnership doesn't exist. I just sort of want that point to come out because Anne-Marie will elaborate on it a bit more.
The second point I want to make is that there are existing Crown/Rangatira relationships that meet international human rights standards, and particularly in relation to good faith, co-operation, and that's explained in Article 19 of the Declaration of the Rights of Indigenous Peoples, which says, and this is a shorthand version of it:

"Governments must engage in good faith with indigenous peoples to obtain their free, prior and informed consent before adopting laws and policies that affect them."

Now, while that might seem a high standard, it's actually happening. It's happening in the Whānau Ora engagement between the Crown and Rangatira and it's happening in some of the discussions about water, so that when they look at how they're going to develop policy about that, they work on the basis of free, prior and informed consent. The other thing is Article 18 talks about decision-making, and it says:

"Indigenous peoples have the right to participate in decisions that affect them. They can choose their own representatives and use their own decision-making procedures."

I think one of the things that concerns Ngā Rauru, which Anne-Marie will talk about a bit more, is that we haven't really had that engagement around this application to achieve that.

The third point I want to make is to inform the Decision-making Committee about a set of principles that have been developed by the United Nations to help states and business to do business. They're called the Ruggie principles, and they were designed around some of the concerns that happened when mining consents were formed and mining and development consents were being imposed on areas.

[2.40 pm]

The principles have three pillars. Briefly, they're called protect, respect and provide remedies. So the first pillar of the United Nations framework is the state duty to protect against human rights abuses committed by third parties, including business, through appropriate policies, regulation and adjudication. In many ways that's what you have been set up to do, to help meet that obligation. It highlights that states have the primary role in preventing and addressing corporate-related human rights abuses.

The second pillar is the corporate responsibility to respect human rights by acting with due diligence to avoid infringing on the rights of others and addressing harms that do occur. I'm not sure that that has happened
between the applicant and Ngā Rauru. I don't think that standard has been reached.

The third pillar, which we hope may not apply, is greater access by victims to effective remedy, both judicial and non-judicial. Even when institutions operate optimally, adverse human rights impacts may still result from a company's activities and victims must be able to seek redress.

So just in summary, the state has an obligation of partnership, the state has an obligation to protect Ngā Raurutanga, which Māori has emphasised in this case specifically is about kaitiakitanga, and the third part of it is to enable full participation of the right and responsibility to provide full participation by tangata whenua in decisions that impact on us. I am available for any questions.

MR SHAW: Thank you. Mr Coates, any questions?

MR COATES: Kia ora, kaumātua. The EEZ Act is quite clear in its purposes, and that is it is trying to enable people to provide for the economic well-being while sustaining the potential of natural resources to meet the reasonably foreseeable needs of future generations, but it does also emphasise the fact that it is designed also to help exploit natural resources. So it has a two-edged meaning and it is balancing those needs that we are tasked with as well.

MR HAMILTON: Yes, and so your question is?

MR COATES: Yours was a more high-level approach, looking at it from an international perspective and saying that the Crown is on one hand and iwi are on the other. But the Crown has multiple tasks, if you like, and so we have to consider those in the --

MR HAMILTON: I think one of the lines I tried to differentiate again is there is a difference between exploiting and developing, and I think even if exploitation is used in there it is still about sustainable development, and I think one of the bits of evidence we have heard from Ngāti Ruanui this morning and we will hear from other speakers from Ngā Rauru is that there is no guarantee of sustainability and no guarantee of development. They are certainly opening up an opportunity for exploitation.

MR COATES: Thank you.

MR SHAW: Kia ora, Bill. Just one thing I think that we should remember in terms of the question of the definition of sustainable management in this legislation is different from other instruments, inasmuch as it is very clear when it comes to minerals that the Act is expecting the exploitation
of minerals. Because what it says is that sustaining a potential of national resources, so providing for a future for them to meet the reasonably foreseeable needs of future generations, but minerals are excluded from that question of the potential natural resources. They are specifically excluded from that clause defining sustainable management. So there are pretty clear expectations that in respect of minerals efficient extraction is what the Act anticipates, isn't it?

[2.45 pm]

MR HAMILTON: I think the point I was really trying to make there is that those decisions about how those resources are used really needs to be made in a partnership. See the relationship between the Crown and Ngā Rauru is different from the relationship of the public with Ngā Rauru. It is a treaty relationship, therefore it needs to meet some of those.

You are dead right, Gerry, I have explained them at an international-level standard there, but those standards actually apply at the village level as well. That is the point I was trying to make. It is the protection of kaitiakitanga or rangatiratanga and Ngā Raurutanga that is the front edge of the point we are making, which is our ability to protect and look after that environment we are talking about.

MR SHAW: I don't think there's any question that there's an absolute requirement to manage the effects on the environment and to sustain the environment for future generations. There is no question about that at all, except in terms of natural resources and the question of minerals.

MR HAMILTON: I know that this may sound a bit cheeky but the Crown does have --

MR SHAW: We neither of us unused to cheek, Bill.

MR HAMILTON: I think the Crown does have this habit of writing up its rights and writing down its responsibilities. While that may say that in the Act, there is an international framework for those aspects of law to be compliant. You will see that I was a negotiator for the treaty settlement for Ngā Rauru when we settled, and I don't want my grandchildren to be here complaining about the future and negotiating another settlement because of breaches, which is really why I have put my energy behind this submission.

MR SHAW: I think we all of us who have been involved in any one of a number of movements would hope our grandchildren aren't going to be going around the same issues as we were. I think recent events would demonstrate perhaps the hope is a bit vain, and I'm not just talking about here. But, anyway, that's a discussion for an entirely different time. Thank you, Bill.
MR HAMILTON: Thank you.

MR SHAW: Ms Broughton, where do we head now?

MS BROUGHTON: Andrew Erueti.

DR ERUETI: Kia ora koutou. So my name is Andrew Erueti from University of Auckland and I'm going to speak on international human rights obligations, New Zealand's obligations and the implications for this application for marine consent.

So, typically in matters such as this, one doesn't really care much about human rights law. There tends to be instead a lot of focus on the treaty and cultural rights and also environmental rights. I think it is important, therefore, to emphasise the significance of international human rights for the sorts of issues that are arising with this marine consent application. One thing just to be clear about is when I talk about international human rights, I'm thinking about what is typically known as the international covenants, for example, which many people will be familiar with, which is what is known as the ICCPR, the International Covenant on Civil and Political Rights, and ICESCR, which is the International Covenant on Economic, Social and Cultural Rights. These are international human rights obligations that have been ratified and incorporated into the domestic legal system of many, many countries around the world, and that includes New Zealand who has, and often says in international fora, a fairly robust reputation for compliance with the international human rights standards.

I think also it is good to emphasise that these are standards that sit above our legal system and they act as a benchmark, if you like, for assessing and evaluating our legislature, our common law's compliance with human rights. So what I am seeking to do today - I have very limited time - is just to raise some of the saliences of human rights that arise in this context and talk about some of the gaps that have arisen as well.

I should also note that with international human rights that they are constantly being vetted by international human rights tribunals. So, for example, the Human Rights Council has established this universal periodic review, which involves a regular review of the human rights standards of states around the world. There is also the UN human rights treaty bodies which monitor compliance with specific human rights statutes that have been ratified by New Zealand.

I am going to move on now and just talk a bit about the area of human
rights as they relate to indigenous peoples, which have arisen. Particularly in the last decade or so there has been some significant events. The most significant event is the adoption of the UN Declaration of the Rights of Indigenous Peoples by New Zealand in 2010.

Now, this is a very long history of this instrument. The UN started drafting it in 1985 and a large number of Māori attended these negotiations in the UN and Geneva at great cost, as you can imagine. The expense of getting to Geneva, let alone spending two weeks there. People like Moana Jackson, for example, participated but there were many, many others, Aroha Mead, Māui Solomon, for example. What emerged from this are what are commonly known as a set of human rights standard elaborated to fit the specific circumstances of indigenous peoples. It was a significant victory for indigenous people.

The UN General Assembly in 2007 overwhelmingly voted in favour of the declaration. It was about 143 states from memory. New Zealand at the time actually voted against the declaration. My feeling for the reason for that is that New Zealand was concerned about the robust standards contained in the declaration, that was why they were hesitant. But eventually - with some prompting from the Māori Party, I imagine - New Zealand reversed its position in 2010 and endorsed the declaration in the General Assembly.

The specific relevant rights in the declaration that bear on this application include the right to self-determination and self-governance in Articles 3 and 4 of the declaration. The right to property in Articles 26 and 27 and free prior informed consent, which my colleague Bill Hamilton has elaborated on, in Articles 19 to 32 of the declaration. These are what I like to call the self-determination framework of the declaration. They are the lynchpin basically of all the other rights in the declaration and they bear on this case in a number of significant ways, I think.

One of the issues I think that's raised, not just in this application but many other cases of extractive industry in New Zealand, is this question about whether Māori have property rights in the area that is subject to marine consent or resource management consent. I think we need to be very cautious about that question, for example, in this case to suggest that there are no tangible recognisable property rights. As people will be well familiar with, that was the position in relation to the foreshore and seabed prior to the Ngāti Apa decision in 2003. It was simply assumed for many, many decades that Māori had no rights, no property rights in the foreshore and seabed area. The Ngāti Apa proved that to be very wrong, of course.

The issue of fisheries resources is another example. For many, many
years it was assumed that Māori only had personal, recreational rights to fish and then we had a series of interim judgments from the High Court which made quite plain that there was a tangible property right on its face.

[2.55 pm]

So, with the declaration you see a similar affirmation of the right to property as guaranteed to those who show that they have traditionally used and occupied areas or the resource in question. A body of jurisprudence has emerged out of this standard because many of the standards in the declaration, like human rights, generally are drafted in quite broad terms, so what happens is that these monitoring committees that I just referred to, it often falls upon them to elaborate and clarify the meaning of these rights. What has become clear through this series of jurisprudence is that for indigenous peoples, provided there is evidence of their customary use and affinity of the resource in question, then international law will recognise that they have a property right, irrespective of whether the domestic legal system itself has recognised that right.

The other relevant provisions in this case, I think, are particularly the issue of self-determination which has been brought up by Ngāti Ruanui and Ngā Rauru Kitahi as well. It is something that I think a lot of jurors struggle with about its real meaning, but I think in a New Zealand context, if you think about tino rangatiratanga, the way it is set out in the Treaty of Waitangi, the way it has been construed by the Waitangi Tribunal, for example, in the recent He Whakaputanga report, I think that is what self-determination means for many Māori. It cannot be reduced to a right to self-management, for example.

The other relevant right that I refer to - and Mr Hamilton referred to also - is the right to consultation and free prior informed consent. Through this jurisprudence, I have just been speaking of this issue -- is in greater clarity and certainty around the context in which this right applies as well. Commonly, states have asserted that this amounts to an unworkable right of veto. New Zealand has said that in the past as well. In response to that the jurisprudence that has emerged is that it doesn't amount to a rise of veto, it depends on the context of the particular case.

Generally if the event in question has the potential to have a significant impact on the local community, then there will be a requirement that they give their informed consent to that activity. It is clear in this jurisprudence also that that question of its potential implications and ramifications should be through the perspective and eyes of the community that's affected, not by the state.

So, lastly, just turning beyond the declaration and the rights that are
relevant there, I want to make some further points about the Ruggie framework or the business and human rights that have emerged in the last decade as well. The Human Rights Council in 2011 produced a resolution which is now known as the UN Guiding Principles on Business and Human Rights. I am not going to repeat what Bill has just said about the three core components of those obligations, but what this is is an endeavour to hold companies to account for the implications of their activities on human rights. It is gaining significant momentum internationally throughout the UN and many, many different states. What I have found in my experience and looking at extracting this through New Zealand is that very few companies actually know about the Ruggie guiding principles, very few companies have specific policies directed at business and human rights or indigenous peoples in New Zealand. Now, that is really swimming against the tide of practice and policy in many, many other jurisdictions overseas. Rio Tinto, for example, has a specific indigenous rights policy. Anglo-American has a policy on business and human rights. So one of the objects of participating here I hope is to raise greater awareness of this business and human rights framework and encourage companies to adopt these principles.

I will close now but I'll just say that it was interesting sitting this morning and listening to Ngāti Ruanui talk about their process of consultation and engagement, and this is an issue that comes up in many, many other jurisdictions as well. I have seen it working on projects in South Asia and Latin America, and that is the issue of establishing a very strong relationship with an indigenous community from the outset, investing in the outset and taking the time to build a very strong relationship. Very often what you find is that businesses seek to jump those first four steps which Ngāti Ruanui has in its guidance and goes straight to step 5 without investing the time and energy to build strong relationships. Kia ora.

[3.00 pm]

MR SHAW: I wonder, Dr Erueti, whether you could talk to us about the difference between an application for mining a resource, a mineral resource, under the EEZ and mining the same mineral under the laws relating to granting consent in the terrestrial realm, the land, and other instruments of course as well when it comes to the extractive industries.

DR ERUETI: Well, yes, I think --

MR SHAW: Let's go to the first question. Who owns the resource?

DR ERUETI: Who owns the resource?
MR SHAW: According to New Zealand law, who owns the mineral resources?

DR ERUETI: Well, for precious minerals it is all vested in the state as their property under section 10, I think, of the Crown Minerals Act. For all other minerals I think there is a presumption the Crown owns them. It depends upon the original grant that is made whether the Crown has reserved them. I think at present about 50 per cent of minerals, by virtue of that principle, remain with the Crown.

MR SHAW: So I want to just understand the difference from your point of view between this and one related to terrestrial mining. In this case, you have an applicant who has obtained from the Crown, and Crown minerals, a right to exploit a resource, subject obviously to them getting an appropriate consent, in this case under the EEZ legislation. In this case we are talking about the Crown giving permission to extract this mineral. So what's the difference? If this was to be a land-based activity, what would the difference be in terms of the issues that you are raising with us here today around the rights of indigenous people? What is the difference?

DR ERUETI: Well, I think the Crown's property rights beyond 12 nautical miles -- I think under international law you can't actually claim ownership. It is the area out to the edge of the continental shelf where the sovereignty of the state extends out there but property rights is another matter. Now, within the territorial waters, the 12 nautical miles, it is clear that Crown minerals are vested in the Crown, but beyond there there's this question mark about the legal status of the property rights.

MR SHAW: I am not a lawyer but I am just again trying to get to understand what is the difference, because here we are not talking about granting the right; that has been granted by Crown minerals. Here we are talking about managing the effect on the environment. That is what the instrument is supposed to make us do.

DR ERUETI: I think what the code does is assume that the Crown has property rights in all minerals out there and just has a regulatory code for managing its extraction and use consistent with environmental possibilities --

MR SHAW: I am going to try and stop going around in circles and just ask you again, what would the difference be in terms of the issues that are at the heart of your submission, which are the property rights of indigenous people? What would be different? If you like we will take three different environments: an application for terrestrial based mining under the RMA or any other instrument; an application for the extraction of minerals from the coastal marine area under the RMA or whatever; and this. What is the difference in terms of the issues that you are talking about?
DR ERUETI: Under the RMA and Crown Minerals Act there are particular treaty obligations and they can be infused with international human rights principles and the same thing with the EPA. There is a regulatory code which refers to treaty rights and treaty obligations, how to give effect to those principles. Again, international human rights is something that should be applied in a manner that is consistent with our obligations in international law.

MR SHAW: I am not sure it was an answer to a question but I am probably expecting too much in fact, Dr Erueti, and that's all right. That's all good. Thank you, I've got no more questions for you. I will see whether my colleagues do. We will start with you, Ms McGarry. Dr Thompson? Mr Coates?

MR COATES: Yes, the Chair in some ways asked the questions that I wanted to ask which is really in your evidence you had quite a powerful case for indigenous people owning, developing, controlling their own resources and also having the right of veto, which really puts them in a very powerful position, but in practical terms, for this particular application, what does that really mean?

[3.05pm]

DR ERUETI: The way I see international human rights, including the declaration, is that they can be called upon in looking at particular issues such the requirements of consultation and engagement. I think it is important to read the provisions in the EEZ Act with regard to these international obligations, which include the right to free prior and informed consent, which include the right to self-determination, in the same way legislation is typically interpreted with reference to the obligations under the Treaty of Waitangi. To use an example, the Mabo decision in 1992, the High Court of Australia overturns 200 years of the terra nullius principle that Australia was considered to be absent of peoples. When Justice Brennan issued his majority judgment in that case, one of the key things he used in updating the common law, as he put it, was the international covenants of human rights and the reference to the right to equality. He said that common law needs to keep abreast and up to date with developments in international human rights law, so he used the right to equality in ICCPR to support his decision to reject the principle of terra nullius and recognise aboriginal property rights.

So that is the type of weaving in of international human rights obligations that I am hoping that the DMC will do with this application.

MR COATES: Thank you. You are setting us a very high task indeed.

MR SHAW: Let's just hope the task is consistent with the legislation. Herein lies the
rub. On that basis we will go to your colleague, Dr Ruru. You are next are you, ma'am? Welcome.

PROFESSOR RURU:  Tēnā koutu katoa. (Māori content)

My name is Jacinta. I have presented expert evidence here in a pro bono form with a PhD student, Sarah Down, who has completed the bulk of the submission but unfortunately is unable to be here today.

I simply want to make one very simple point concerning Te Tiriti o Waitangi and the law. So in 1840 our ancestors signed Te Tiriti o Waitangi. Even reading the watered-down English translation version it has guaranteed tangata whenua undisturbed possession of their lands and waters. The New Zealand legal system has had a long and tangled history of recognising the legal significance of the Treaty of Waitangi. In 1987 the New Zealand Court of Appeal emphasized the treaty is not a simply nullity, instead it is our founding document to guide us as our country matures.

I believe the Treaty of Waitangi is entirely relevant to this marine consent application. Thirty years of case law strongly establishes the treaty is part of the fabric of our constitution and it must influence all decision-making. It must go to the heart of procedure including consultation. As the Committee, you must take into account the effects of this proposal on the existing interests of tangata whenua under the EEZ Act in a manner that gives effect to treaty principles including the partnership between tangata whenua and the Crown, along with the duties this entails of acting reasonably and in good faith towards relevant iwi and hapū, being sufficiently informed of the Treaty of Waitangi impacts of any decision if in favour of TTR and actively protecting Māori interests in their lands, waters and taonga to their fullest extent practicable.

The Committee is concerned with receiving evidence and here there is significant Māori evidence about their connection with Tangaroa. The DMC, the Committee, should have regard to the parallel jurisdiction of the Resource Management Act 1991. The RMA and the EEZ Act should be understood as complementary pieces of legislation. The Environment Court and the Appeal Court jurisprudence on treaty principles should be relevant and of interest. The EEZ Act lacks comparable directions to section 6(e) of the RMA for decision makers to recognise and provide for Māori relationship with their ancestral waters, wāhi tapu and other taonga, or section 7(a) to have particular regard to kaitiakitanga. But the Committee should still refer to the growing jurisprudence in our Environment Court and Upper Appeal Courts pursuant to legislative commitments to the Treaty of Waitangi in the EEZ Act, the EPA Act and He Whetū Mārama.
The Environment Court and the Upper Appeal Courts tell us strongly that treaty obligations and concerns of tangata whenua should not be given simply lip service. Consultation is a significant, paramount component of understanding the Treaty of Waitangi and, in fact, the Environment Protection Authority has emphasised this itself with He Whetū Mārama. It provides the overarching framework for all decision-making, emphasising four principles. The principle of partnership, the principle of protection, the principle of participation and the principle of potential.

So the Treaty of Waitangi is entirely relevant, as is the process, and here really positioning He Whetū Mārama provides the shape for your own decision-making. It is an Environmental Protection Authority framework to see the treaty not as an add-on but an integral component to all of the decision-making. And if I can just emphasise, while I realise you sit under the EEZ Act and are here as the Decision-making Committee of the EPA and we are not sitting within the Environment Court or Upper Appeal Court process, it would be odd to have decision-making under the EEZ Act that is not cognisant of where and how the appeal courts are now regarding the Treaty of Waitangi. There has been significant movement in the last 30 years and even in the last 5 or so years of the appeal courts becoming not just comfortable with tikanga Māori but are now explicitly stating that it is a component of our common law. The Supreme Court stated in the Takamore case in 2012 tikanga Māori is part of our common law. We had a decision just before Christmas from the High Court reinforcing that and we had just last week the Supreme Court emphasising the Crown owes fiduciary duties to Māori.

So if I can just really emphasise in this submission the relevance, I hope, that you will see to the growing jurisprudence within the courts and emphasising the point that the treaty matters. It matters to procedure and it matters to relationship building, including consultation in addition to what is at the forefront around the effects on the environment in your consideration of this marine consent.

Thank you for the opportunity to present. Kia ora.

MR SHAW: Thank you, Professor. Questions, Mr Thompson?

MR THOMPSON: Professor Ruru, just one question, and we are grappling with this overlaying of laws and the like but we are guided to some extent by section 12 of the EEZ Act, which endeavours to put into context our responsibilities in consulting with and seeking advice from the Māori
Advisory Committee as a particular requirement. Does that go some way to meeting your concerns?

PROFESSOR RURU: The report that you have received from the --

MR THOMPSON: Our obligation to seek one and to take note of one.

PROFESSOR RURU: It's an important statutory component, the Māori Committee there, and that report has come in. It came in late, so it is quite light and it could have provided you, I think, with more detail around treaty jurisprudence in particular. I think it is an important report for part of your own considerations and I hope that you would go beyond what has been reported to you by that committee, and particularly I hope that you would be led primarily by tangata whenua concerns as they have been raised here today and in their own submissions.

[3.15 pm]

MR THOMPSON: Thank you.

MS McGARRY: Thank you. In your evidence you raise another door in for treaty considerations when they are not explicitly stated under the Act, and that is under 59(2)(m). What you are suggesting is a weighting matter, is it, in terms of how much weight we give to iwi consideration? That is the way to give effect to the treaty under section 59?

PROFESSOR RURU: Sorry, just give me a moment. I should have brought the legislation with me. That would have been helpful.

MS McGARRY: As another matter to help you out there, it is sort of any other matter, it's a catch clause. You have addressed it in the evidence.

PROFESSOR RURU: Sorry, just looking for that.

MS McGARRY: It is right up front here.

PROFESSOR RURU: So we are emphasising here that under section 59 the paragraph to any effects must include the effects for tangata whenua.

MS McGARRY: Yes, I guess my question really is that it's clear as an existing interest of the status of iwi but what's not clear is the obligation there for treaty matters. I have asked other witnesses whether a relevant consideration under 59(2)(m) is to have regard to the principles of the Treaty of Waitangi.

PROFESSOR RURU: Yes, absolutely.
MS McGARRY: I am sure you tell me, yes, it is relevant under that sort of catch-all, but how do we do that? Is it a matter of the weight that we give to what you are saying under that part as any other relevant matter?

PROFESSOR RURU: You can tie that back into section 12, you can tie that back explicitly to He Whetū Mārama, the statutory framework of the EPA and any other matter must be the treaty principles. So, for example, up until very recently no family law legislation has ever referenced the Treaty of Waitangi. The courts have got around that by saying, "Treaty principles must colour all that we are dealing with, must colour all of our framework" and so you are empowered through the jurisprudence to read the Treaty of Waitangi throughout the whole EEZ Act. I believe that section 59(2)(m) does provide an opportunity for you to be able to do that explicitly.

MS McGARRY: Thank you.

MR COATES: Kia ora. In paragraph (d) in your discussion section you talk about the DMC should consider whether the conditions that are proposed by TTR to mitigate the concerns are appropriate. So just looking at a more micro view rather than a macro view, is what you are saying that if we can't veto or provide a veto or decline situation that we just have to make sure that the conditions are right?

PROFESSOR RURU: The overwhelming evidence here has been repeated by tangata whenua to not accept the marine consent. If you are going to decide to issue the marine consent you will need extensive conditions on that and maybe a condition is to park the application for a period of time to encourage consultation to begin. That is a process that did take place with Tauranga Port a few years ago in a decision-making from the Environment Court, where a consent was issued but there was a time lag on that, and that was relevant to the conditions to building a relationship.

[3.20 pm]

MR COATES: Thank you for that. I found your evidence a very good summary of the situation.

PROFESSOR RURU: Kia ora.

MR SHAW: I am tempted to ask you about what you described as the parallel legislation of the RMA with the EEZ. I'm not going to because I have more than a sense that it would be a fruitless pursuit, a matter upon which I suspect you and I would probably be unlikely to agree today. However, I am equally certain that it is a matter that will be addressed. You having raised it by counsel for other parties as we go through, but I do want to ask you, very simply, the basis upon which you assert the
parallel nature of those two pieces of legislation when applied to this particular proposal.

PROFESSOR RURU: I think both statutes are entirely concerned with the environment and with the effects on the environment so both statutes are requiring decision-makers to have a wide, holistic understanding of the effects that activities that may be permitted will have on the environment.

MR SHAU: So you are saying that RMA applies in this case?

PROFESSOR RURU: No.

MR SHAW: That's fine. That's all I wanted to understand. That was all I was interested in understanding because I thought we were there heading into novel territory.

PROFESSOR RURU: I would not take you into novel territory.

MR SHAW: No, I'm sure you wouldn't, and I've given up on novelty. Too old for novelty now. Thank you very much, Professor Ruru.

PROFESSOR RURU: Thank you.

MR SHAW: I've got to say as we move to you, Ms Iorns, it's been I think an interesting conversation and in many ways I'm going to be sorry to see the end of it but you're the last cab off the rank, as it were. Welcome.

PROFESSOR IORNS: I've got just one more difference between the RMA and the EEZ Act that I'm going to have to tell you about in a minute. Tēnā koutou katoa. I'm Catherine Iorns, a law professor at Victoria University of Wellington. My credentials are in the written submissions. We've made two written submissions and appearing with me today is Mr Stuart who has assisted me with the submission on adaptive management.

We appear as expert witnesses for Te Kaahui o Rauru but I guess our advice is more akin to legal counsel. It's just that we've done it pro bono just because they've asked. We do thank the Committee for hearing us.

I've noted we made two written submissions, one on the standard for exercising caution under section 61(2) particularly detailing the requirements for that, should you get to that stage. That was the long one. We kind of went a bit overboard. You know how if you had time you'd shorten it. That was the 68 pages one. The other is on the parameters of adaptive management as per the request in the Committee's minute number 28. I note that second submission was emailed late on Friday afternoon so you may have it before you but I totally understand if you haven't managed to read it yet.
I plan to speak for approximately ten minutes providing an overview of both submissions including some differences between the RMA and the EEZ Act. Then Mr Stuart will focus on adaptive management illustrating what kinds of measures and uncertainty amount to an adaptive management approach.

MR SHAW: Professor Iorns, we're going to be pushing the envelope if you're going to speak for ten and Mr Stuart is going to speak as well.

PROFESSOR IORNS: Ten and 5, I thought I got 15.

MR SHAW: Away you go. We'll see how we go.

PROFESSOR IORNS: See how we go.

MR SHAW: We've got more to do.

PROFESSOR IORNS: Yes, but you don't want me to talk too fast, do you?

MR SHAW: Sorry, Ms Broughton?

MS BROUGHTON: We have been monitoring our time very carefully. We're of the understanding that we have a total of 2 hours and 30 minutes, and at this point we have used 60 minutes of that time.

[3.25 pm]

MR SHAW: I'm not keeping time as clearly as that but others are, Ms Broughton. What are my eyes on? I will be quite clear with you, we've got other iwi groups to see this afternoon and it is quite simply a matter of trying to show a respect that they need as well as we come to the end of this day. It looks at the moment like we could be going until 7 o'clock this evening, which is not a good space. I'm not being horrid. I'm not trying to shut anyone down, but I am trying to say, look, time is limited. And, yes, we did come to an agreement with you about being able to use the time as you saw fit.

PROFESSOR IORNS: Thank you.

MR SHAW: You're getting two experts for the price of one when it comes to time here, you see. At least I hope that's what we're going to get in. That was the point of the interruption. Off you go, Professor Iorns.

PROFESSOR IORNS: I thought at first I'd make some preliminary notes about the EEZ Act, comparing it with the RMA, because that issue has arisen. I do note that decision-making under the EEZ Act is not the same as for the RMA. We
I don't have a general section 5 or an overall broad judgement approach. I know you've got section 59 with a lot of matters to consider, so it's similar and so in that sense it looks like a similar structure particularly in relation to the consenting regime but there are key differences.

I think the first one to note is that they EEZ arose at a later date and has taken a different approach to environment regulation. The traditional approach used to allow activities until they caused harm. However, science and law have both acknowledged that this can still permit significant ecological damage because of a limited understanding of the natural environment.

Even science has got problems with detection of harm soon enough to avoid it. Establishing causal links, they can be too hard under legal standards of proof and it can take too long before a regulator decides on measures to address the harm, and then especially to adopt them. Too much damage has been done while waiting for these three factors to occur. Environmental regulation worldwide, and including in New Zealand, if you want to look at trends, they have moved away from that traditional approach towards one where we don't rely on proof of causation and damage but we favour caution. The EEZ Act was passed at this later time and within that ethos.

The kinds of things are relevant because you may not know or you may have been briefed that the standard approach to interpreting any words in any legislation is governed by -- we have an Interpretation Act and you have to look at the words, but they're interpreted in light of purpose. That's within section 5 of the Interpretation Act. All of the guiding purpose things are relevant to the decisions you make over what's included or not within a word or a concept in the Act itself.

A second key difference between the EEZ and RMA is that this cautionary approach has been made explicit so it's not just an ethos. It's actually been made explicit. Even though we might know the RMA best, we have to be careful to follow this Act's requirements under section 61 there.

A third difference is that while our whole authority to regulate within certainly up to 12 nautical miles is different from beyond the 12-nautical mile limit, we have sovereignty up to 12 under which we've got the RMA. We only get the authority to manage our economic zone via the UN Convention on the Law of the Sea. So, international law does become particularly relevant to the interpretation of the EEZ Act. That is actually recognised right up front in the purpose of the EEZ Act.

What that means is that we have to keep in mind the UNCLOS requirement, United Nations Convention on the Law of the Sea, in all.
decision-making under the Act. We have to comply with UNCLOS or else we'll be breaking our international law obligations and we'll open up liability for that in a different sphere.

What is important about UNCLOS for these proceedings is its duties of protection over the marine environment including all of its flora and fauna. That requirement in the EEZ Act to secure the sustainable management of the natural resources of our economic zone, that has to be interpreted in light of this goal of upholding environmental protection provisions of UNCLOS because without UNCLOS we wouldn't even be able to do anything in the zone in terms of having the authority to pass that legislation.

[3.30 pm]

The fourth note and the relationship between the RMA and the EEZ Act which just arose out of your previous questions is that despite there being different Acts, because we've had the RMA since 1991, we've been discussing caution, what's a precautionary approach, for example, we discussed adaptive management. The courts have discussed this inside and out, including all the way up to the Supreme Court, and all of these definitions and concepts were around. It's the same concept that was then imported or used in the economic zone legislation.

We may not have a direct authority in terms of they're not subject to the same sections, but when you've got a definition of adaptive management that's been worked on for the last 20 years and we've got examples of what's in and what's out, even if it comes under the RMA, that's still relevant because exactly the same underlying background knowledge was used when they put those same words and therefore same concept into the EEZ Act. That is where you get an overlap between the two even though they're different. That's just one example of an overlap between the two even though you've got different pieces of legislation.

I would like to note as an illustration - maybe just note it, I don't expect you to turn to it - but on page 40 of our first submission on the section 61 it acknowledges the possible harm that the EEZ is trying to avoid, which includes the destruction of significant benthic communities, I think is the term. On page 41 we've noted Cabinet itself noted that because we don't know much about the EEZ -- I can see I obviously inserted my fourth point a little bit before I'd finished the third one but I'll carry on with this. Cabinet noted that because we don't know much about the EEZ, the legislation itself acknowledges and incorporates all those uncertainties and so they deliberately realised that we aren't going to be able to handle them all without sticking them in the legislation.
Therefore, caution is not just something to be weighed up with a list of other factors like, say, an overall broad judgement. Section 61 actually requires a separate consideration and separate from overlaying all of those ones in 59 together. You have to then approach it separately and as a legal obligation to favour environmental protection.

In relation to the application of section 61 to the situation before us, I know that the applicant submits that there's no uncertainty as to the effects of the proposed activities, I read that in a couple of the submissions, and it's because, if I'm going to summarise it in a nutshell, they've done such good modelling.

I'm not convinced that this modelling shows no legal uncertainty, certainly under this Act. For example, even if you've got an excellent plume model, the Act is also concerned with the effects of the plume, on what the Act needs to protect, ie the effect of the sediment on the marine flora and fauna and the habitat. That includes effects of that plume on the whales, the fish, the plankton, the reefs, the breeding grounds, all those things. All of that uncertainty comes into the certainty of the effects so it's not just models of plume and sediment. It's then models of what it does to fish and whales and other things like that. That's what we need information on. You simply can't bat away an application of section 61 by saying you've got some good models on plumes.

The rest of our first longer submission addresses the detail of section 16 and the different parameters and limits of caution in law. However, because the Committee has actually asked for specific guidance on adaptive management, I thought I'd address that now.

As our written submission on adaptive management discusses, that concept of adaptive management is defined very broadly in the Act, and that was deliberate. Page 12 of our submission notes the drafting proposals for the Act included a range of options for adaptive management and Cabinet deliberately chose the broad option, rejecting the narrower definitions of what was included, what could be included and should be included, as adaptive management.

On page 14 we note that this was to favour economic development. That was explicit. Cabinet wanted to ensure that the cautionary approach in section 61(2) did not completely deny economic development and so a broad definition of adaptive management was chosen in order to do this. That was seen as allowing New Zealand to pick up economic opportunities but also in an environmentally responsible way. And we've got quotes from Ministers to that effect.

[3.35 pm]
Our written submission addresses the case law that backs up that broad definition. Those cases are under the RMA but it's still the same concept. I won't go into the detail of what makes it broad here. However, as you probably are well aware, it's this breadth of the Act's concept of adaptive management that is what provides the difficulty for the marine discharge consent.

You will be aware that the discharge consent process was added to the Act in 2013. It deliberately adopted a very strict consent process. That was after the Rena oil spill and Parliament didn't want to allow an adaptive management approach to marine pollution. It was instead labelled as a "no tolerance" approach to marine pollution. This was well agreed across the political spectrum, a no tolerance approach to the Rena type example, marine pollution generally.

There was at the time unfortunately no discussion of the link between the marine activity consents and the discharge consents applications. At least there are none on record. I don't know what went on behind the scenes. So, that this may well have been an unintended consequence of the drafting, adding it later, inserting something into a regime and they hadn't thought about what would happen in practice. But, I can say it was deliberately strict for the discharge applications. It may be a bit unfortunately in this case but I think that very broad reading of adaptive management does make it a lot more difficult for the discharge consent.

I will now just turn very briefly to the ingredients or elements of adaptive management before giving Mr Stuart --

MR SHAW: Can I just interrupt you for a moment?

PROFESSOR IORNS: Yes.

MR SHAW: Just very briefly. You would like us to take these more recent submissions into account when we look at the responses, the overall responses, from counsel?

PROFESSOR IORNS: Yes.

MR SHAW: To our minute of adaptive management.

PROFESSOR IORNS: Yes. Do you mean the submission that we handed in last week?

MR SHAW: Yes.

PROFESSOR IORNS: Yes, we thought that was just answering your request in minute 28.
MR SHAW: That's fine. I just wanted to understand very clearly that was what it is directed at.

PROFESSOR IORNS: Yes, it is directed at that. It's answering that minute.

MR SHAW: All help is welcome.

PROFESSOR IORNS: We can write heaps on the stuff you've seen there.

MR SHAW: I'm well aware of that. You're lawyers.

PROFESSOR IORNS: Just briefly, I'll give an overview and then Mr Stuart will give the detail. Discussion of the elements of adaptive management in our later submission starts on page 17. What you have to first do is see if there's a monitoring condition as per section 66, and this is central but, yes, it's very easily satisfied here. Monitoring conditions are exactly -- it's a range of monitoring that's been proposed. That's not an issue.

The second thing you look at is under section 64(2)(a). You look to see is there a time limit or small-scale start. That hasn't been proposed so that one's not so relevant. What's really relevant is the next one, 64(2)(b). Does the monitoring condition allow effects to be assessed and the activity - all conditions but I was focusing on the monitoring ones particularly - modified or stopped as a result of those effects? This is what is really quite broad.

It means that any trial of an activity that is based on guesses, effectively, that are in turn based on models, with or without some baseline data, preferably with, but where the activity conditions are designed to reduce uncertainty and to determine where the limits are for acceptable effects. Then that is adaptive management.

It means that really the Committee has to be extremely certain about everything that's going to happen for any conditions that are imposed to not amount to adaptive management conditions. If it's confident that there will be no unaccepted effects on the marine life, if the mining is kept within particular limits of what's allowed, eg because the science is so clear, then that might not be adaptive management. But it's going to be quite a hard or high standard to meet and I suggest it's going to be difficult to avoid a finding of adaptive management in this case if the proposal would be approved. But because of that, then you maybe need to deny it because of 87(f).

It's here that I'm going to pass this on to Mr Stuart to elaborate on and then perhaps maybe ask more questions of us both after we speak. He might answer some of your questions on the actual application of this law to the situations before us.
MR SHAW: Mr Stuart?

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MR STUART: Thank you. My name is Thomas Stuart and I work closely with Professor Iorns in my capacity as a lawyer and research assistant. I would like to address in particular this issue of adaptive management in the context of the present application to mine iron sand from the seabed in Patea.

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I wish to demonstrate that the consent conditions proposed by TTRL amount to an adaptive management approach to uncertainty and cannot be considered in deciding whether or not to grant consent. As that line on page 25 of our second submission in respect of adaptive management, we understand that the main thrust of the conditions proposed by TTRL amount to an undertaking to conduct baseline monitoring for two years prior to mining, monitor sediment concentration and seabed sediment quality every six months at seven different sites during mining operations, take operational action if a modelled operational limit is reached, and to halt operations if a model response limit is reached.

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The critical question is whether such conditions amount or contribute to an adaptive management approach and are therefore prohibited under the explicit section 87(f)(4) outlined by Professor Iorns. I don't intend to go into any particular depth on what Professor Iorns has already outlined so I'll assume that is taken for the purposes of your deliberation. But I would like to point out that the applicant suggests that its conditions do not meet the standard on the basis that they are not time limited, do not purport to scale down the proposed activity, and are not targeted at addressing underlying uncertainty as to the effects of the proposal on the marine environment or existing interests.

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While we accept that the proposed conditions fall outside the definition of adaptive management at 64(2)(a) we disagree that they fall outside the definition of adaptive management altogether. Rather, they are caught by section 64(2)(b) and amount to ongoing adaptive management. They are directed at underlying uncertainty as to effects. They closely resemble the adaptive management conditions used by New Zealand King Salmon and Sustain Our Sounds, and they satisfy the test for adaptive management in section 64(2)(b).

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It is our professional opinion, as articulated on page 27, that section 64(2)(b) catches any structured trial of informed guesswork based on models and baseline data within their definition of an adaptive management approach. Where a calculated risk has been taken on the basis that would sufficiently reduce uncertainty and can be adequately
managed, this amounts to an adaptive management approach for the purposes of section 64(2)(b). We note that this is consistent with Sustain Our Sounds under the RMA approach and we believe that for our purposes under the EEZ Act, the interpretation of adaptive management should be consistent.

Under section 61(2) there is an obligation on the DMC to favour caution where there is uncertainty as to the effects in the environment. As already articulated, this is not uncertainty as to what is going to happen or the nature of the proposal but uncertainty as to the effects on marine taonga, on the Māori, on the marine environment more generally, marine mammals, benthic communities and fish stocks.

While the DMC must favour caution, it must not take an adaptive management approach. While the line is blurry between an adaptive management approach and other monitoring conditions, we suggest the distinction turns on whether monitoring conditions are intended to help learn through doing and reduce uncertainty or simply amount to routine assessments against well-established bottom lines.

We wish to draw the DMC's attention to the facts of Sustain Our Sounds to help articulate this distinction. In that case, the applicant sought to construct salmon farms in the Marlborough Sounds and while the consents were granted, they were subject to adaptive management conditions. These were not ordinary monitoring conditions because the precise effect of salmon farming on this scale in the Marlborough Sounds was unclear. There was limited information about the water quality and an underlying risk that the farms would stimulate harmful algal blooms or alter the tropic environment irreversibly and an adaptable approach was needed to overcome this uncertainty.

Adaptive management conditions were proposed and accepted which included the preparation of a baseline plan, monitoring and analysis in accordance with that plan, adherence to an adaptive management scheme which included a number of trigger and response conditions, and an undertaking to respond by reducing the tonnage of feed discharge if any of the host of environmental quality triggers were sprung.

We wish to point out that these conditions are remarkably similar to those proposed by TTRL in the present application. They are designed to diminish uncertainty, not premised on a belief that there is no uncertainty in the first place.

In order to fall outside the definition of adaptive management, there must be some degree of certainty within the limits against which conduct
is assessed, ie they must be known variables. In order to determine whether these limits are known variables, the decision-maker must have some certainty of this.

By way of an example, I would like to point out in an RMA context, if a farmer was obliged to monitor and analyse water samples in a river to ensure that E. coli levels remained within predetermined safe levels during the course of farming operations, this would not amount to an adaptive management approach. The farmer is not learning anything. He is not learning what safe levels are. He is simply measuring his conduct against a predetermined yardstick. We know with certainty that provided E. coli levels are not exceeded, effects will be minor, predictable and reversible, therefore this is not adaptive management. But if such an E. coli limit was uncertain and can be called into question, it would be an adaptive management approach.

There is a low degree of certainty regarding response limits in the present case just like in New Zealand King Salmon in which there was a degree of uncertainty regarding the effects of the salmon farms. It appears there is uncertainty in the present case as to the effects of a sediment plume and operational noise on benthic communities, marine mammals and the marine environment more generally.

While there are limits proposed, they are best guesses, informed as they are by plume modelling and baseline data and they are not evidentially known variables. They are not adequate bottom lines within which can be known sufficiently that only minor and reversible effects will occur. They represent an attempt to model an uncertain environment and carry inherent risks. On that basis, then, they amount to an adaptive management approach.

We respectfully suggest that the DMC cannot determine with sufficient certainty that effects on the marine environment will be tolerable within the response limits proposed. The effects of iron sand mining on the marine environment and existing interests are not sufficiently clear nor minor, that they carry little or no risk of adverse harm.

An adaptive management approach would be the only way to overcome such uncertainty as to the effects and this is not available on the law given the explicit wording of section 87(f)(4). On this basis, we respectfully advise that you decline the application to accord with your overarching duty to favour caution in section 61(2) of the Act. Thank you for your time.

MR SHAW: There is one thing that is very certain, Professor Iorns, and that is you said you were making what amounted to two legal submissions, and there's no doubt about that, and helpful. Thank you. This is going to be
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a major area of debate as we go forward. I've got no questions for you but my colleagues may do.

MS McGARRY: Thank you. I'm interested in section 64(2) and it's got two parts; it's got the (a) and (b) and I'm interested in your broad interpretation of that. You could say that part (a) is about starting small and going big. I wonder, and this is my question to you, whether part (b) is about having something at a size and going smaller, and that that's the two-way adaptive management. Have you considered that?

PROFESSOR IORNS: I'm sure you could include your second one in part (b) but it's not going to be the only type of --

MS McGARRY: No, but it's really the direction, isn't it, any other approach? The first one is about starting small for a short time and going up. It appears to me that (b) is any other approach that allows it to be undertaken and basically tinkered with until you get it to an acceptable level of effects or within the envelope of what you've predicted.

PROFESSOR IORNS: Yes, and one common way to tinker with something is you find an effect and you go, "That effect happened a bit earlier than we thought. Let's dial it back". So, that's quite possible, yes.

MS McGARRY: Yes, so a two-way thing.

PROFESSOR IORNS: Exactly.

MS McGARRY: I would have liked to have more time to go through your submissions on adaptive management because I think we're about to lose an opportunity to ask some other questions. I just haven't had time to digest it. But I must say in reading what you've said about your broad approach, I find it difficult to distinguish whether nearly any consent granted under the RMA wouldn't fit into that adaptive management. I know you've tried to just tease that out for us towards the end of your submission there.

MR STUART: If I could just comment on that.

MS McGARRY: Yes.

MR STUART: That really comes down to the statutory drafting of the EEZ Act and the fact that adaptive management has been excluded from your decision-making capacity in terms of 87(f)(4). Under the RMA there is no such exclusion for adaptive management in any case so there has never been this distinction drawn.

[3.50 pm]
Because it was framed so broadly, and we are dealing with a principle that arguably was intended to cover almost anything, and since the passing of the particular narrow interpretation needed to make use of and interpret the meaning of discharge consents, I believe that we are now faced with a question where there is a very limited scenario, and I think that reflects the need for certainty. And there must be certainty as to the effects necessary to undergo the initial stage or the initial trial of an activity, and if we don't have certainty then it seems that there is very limited scope for a decision-maker to approve an application when there is a discharge component. Obviously, that was intended to make particular reference to marine pollution but does also cover marine discharges.

MR SHAW: I'm struggling here. I'm sorry to interrupt, Ms McGarry, but I'm struggling here a little bit. What we have is something that's prohibited but not entirely described, shall we say. If we look at a consent granted under the RMA, consents that establish thresholds that must not be exceeded, not just commonplace, they are the norm, whether it relates to sound or whatever. Conditions are imposed which require the establishment of a construction management plan or a transport management plan, or any of these other things, which are not attended to by the consenting committee or panel but which are attended to later by the consenting authority together with the applicant.

Does that mean that every consent, using the definitions, and I appreciate exactly the point you're making that we don't have the prohibition, but is every consent that has these thresholds and that has these very reasonable provisions that people will do things safely, which is what the management plans are generally about, that they would amount to adaptive management if applied in the context of the EEZ?

MR STUART: I think that really comes down to the certainty with which those limits are for.

MR SHAW: Is what you're saying to us, in respect of marine discharges, does that certainty have to be at the point, which is a pretty unscientific thing, that you can grant consent without any conditions whatsoever? Is that the level of certainty you're saying we need to have?

MR STUART: I think that you need to be certain that within the limits proposed, any effects will be extremely unlikely.

MR SHAW: What you're saying is if you establish a threshold, it's adaptive management.

MR STUART: No.
MR SHAW: You're not?

MR STUART: No.

MR SHAW: Then tell me what it is that you are saying.

MR STUART: If you establish a threshold that is reasonably certain that you can be confident that within that limit all of the effects will be minor, predictable or reversible, then that limit is not adaptive management. But if you cannot be certain of that fact then I believe that any action you take will amount, unfortunately, due to the broad definition in the Act, or will have reasonable cause to be considered an adaptive management approach.

PROFESSOR IORNS: The amount of cases that have been taken on conditions and adaptive management, the Supreme Court has ruled on what they consider adaptive management. Like, for example, the King Salmon cases. Yes, the Save Our Sounds one particularly. Certainly, there will be a lot of argument.

MR SHAW: There will.

PROFESSOR IORNS: There will be a lot of argument. We were sort of joking, well, it's going to depend on who do you want to be the one that's going to be taking the appeal.

MR SHAW: One thing is for sure, Lord Cooke Thorndon is not a member of this Decision-making Committee so we will be taking a cautious approach, obviously, in respect of trying to decide the law.

PROFESSOR IORNS: There are limits, and I think the E. coli one was a really good example. We're fairly certain at what levels you can put E. coli in water and not get people too sick, and there are certain levels that they consider acceptable. You may debate about what's swimmable and what's not, for example, but there are fixed levels. There's a lot of which is known about, and you can set a limit and say, "As soon as you go over the limit, you've got to stop". That's not adaptive management.

MR SHAW: I'm finding the discussion of E. coli, for personal reasons, very, very problematic, but that's another story altogether. I'm sorry, Ms McGarry.

[3.55 pm]

MS McGARRY: Just to tease it out a little further. In this case, we've got the applicant saying, "The threshold is set by the baseline information and that we will not go above a certain change of that baseline". So, they're not having a pie in the sky, "We'll set that later". They're defining an acceptable
variation from the background level. In this case, you could say that's pretty known because what they're saying is we know the magnitude of change that's acceptable. What we don't know is the background level.

PROFESSOR IORNS: Can you say with certainty, is it like some of the other fixed nitrogen limits or algae bloom? Is it like something that we know a lot about and we can say at that level, then those effects will be, for example, reversible, minor, that kind of thing? Or is there enough uncertainty like if you don't know enough about the background, can you say with enough certainty what's going to happen as a result of that? If you end up having to say, no, as soon as you get to this limit or these things, we're going to have some conditions.

I think it would be unreasonable to not take into account that kind of uncertainty in this environment. I think the whales and the noise was a really good example, some of the evidence that we've had on that. I'm just going by some of the summaries of some of the evidence that's been put out there. But it would be very hard as a decision-making committee to not put in certain conditions about, well, maybe we've got to monitor what happens to these and if it gets to a certain point and unintended effects that we weren't expecting, then we've got to put a condition that you've got to dial something back. I think that would be almost irresponsible.

MR STUART: I would just like to say I think it depends entirely on what is considered acceptable within that limit. If you can be reasonably confident that within that limit there will be no unpredictable or significant adverse effects, then it is perhaps not adaptive management, most likely would not be adaptive management. If there is a potential inherent in that limit for it to be incorrect and for it to need adjustment in the future, then it would require an adaptive management approach and I think that the Act intended to provide for that with respect to marine consents but is not available in marine discharge consents and therefore is not available in the present scenario.

PROFESSOR IORNS: Just one last comment. I just wanted to note that when you said is there nothing we can do and it's almost like that because they deliberately wanted really broad adaptive management abilities in order to provide for more economic development.

MR SHAW: More confidence and more draftsmen and ministers than some like.

PROFESSOR IORNS: But that's all taken into account --

MR SHAW: That's exactly what we've got to decide.
PROFESSOR IORNS: Yes, it's all taken into account in the meaning of the word. If that's what the meaning of the word was intended and has been interpreted so far, you can't just say, "I think we're going to change the meaning for this proceedings". That's too difficult to do and I just think that was maybe an unintended consequence of the combination here.

MS McGARRY: Thank you.

MR SHAW: Thank you very much. A very useful and, although entirely anticipated contribution because we'd seen all of -- I'm talking the three of you now - your written briefs of evidence. It was helpful and interesting. Thank you. We are not going to turn to you now, Ms Broughton. We're going to have a cup of tea and then we will come back to hear your closing, which means that you can, if you wish, rehearse to an empty hall.

ADJOURNED [3.59 pm]

RESUMED [4.20 pm]

MR SHAW: I'm not sure whether I should maintain a fiction until after you've finished, Ms Broughton, but my sense of honour demands that I don't. The people who we were expecting to see after you have now advised that they will be joining us by Skype sometime later in the hearing process. So you are the last presenter today. It's not an invitation to fill a vacant space for no effort but it does mean that there is no pressure at all. Before you begin, thank you again. I think it's been a useful day for us with the two iwi that we've heard from. Thank you very much and over to you.

MS BROUGHTON: (Māori content)

INTERPRETER Mr Hammond: Acknowledgements to you, the Commissioners.

MS BROUGHTON: (Māori content)

INTERPRETER Mr Hammond: We are the sea and the sea is us. If the water dies we die also. We are its descendants and we will fight forever. My name is Anne-Marie. I am the CEO of Te Kaahui o Rauru.

MS BROUGHTON: Mr Shaw, this morning in your introduction you stated that you wanted to hear about the effects of this application so in my presentation this afternoon that's what I am going to be speaking to on behalf of Ngā Rauru Kītahi Iwi and you've been given a copy of the presentation that I would like to talk to.

Thank you for the first slide. Who couldn't remember this natural disaster, Kaikoura, November 2016? One day. Natural disaster.
Catastrophic effects on our reef ecosystems. Effects that the NIWA ecologists said last week may take hundreds of years to recover or may never recover at all.

Taranaki marine environment. We believe to allow 35 years of seabed mining will be a human disaster with catastrophic effects on our reef ecosystems. What's the difference? We have no control over those kinds of natural disasters but we have absolute control over seabed mining.

Mr Shaw, earlier you asked of Anaru Erueti, "What's the difference between land and a sea-based extraction?" I'm going to answer that from a very simplistic standpoint and that would be that we actually know more about how to restore land-based damage. We don't know enough about how to restore damage in our marine environment and for that reason we can't support this application.

As a treaty partner, the Crown has committed to help us practise Ngā Raurutanga that was introduced earlier by our Chair in Turama. Kaitiakitanga is one of our practices. We submit that seabed mining is an experimental operation and that it will have destructive effects on our marine environment, marine species and people. As kaitiaki we cannot support this activity. It is the absolute antithesis of what we stand for.

Seabed mining effects are a violation of kaitiakitanga. Seabed mining effects are a violation of Ngā Raurutanga. So we say you must reject the application because the effects and impacts of seabed mining is a breach of the Crown's commitment to recognise, respect and practice Ngā Rauru-tanga and that's stated really clearly, not only in the treaty but in section 2 of our deed of settlement.

You've heard of others speak of kaitiakitanga, and as kaitiaki, we, as Ngā Rauru Kītahi, are defenders of the ecosystems and its constituent parts. We believe that everything has a mauri or a life force and that that mauri must be protected.

I'm going to talk about three main parts in terms of the effects. There was a question earlier, Mr Thompson to Professor Ruru, about the adequacy of the Ngā Kaihautū report. We believe it is inadequate because it hasn't addressed the impacts and effects on us as Ngā Rauru. When you look at the currents and tidal systems of the marine environment we are one of the first to be highly impacted by this type of activity.
The kind of effects that we are really concerned about are the silt and slurry discharges because we know that they make our reefs sick, and we have already experienced some of those negative effects and impacts and I'm going to talk to you about them.

You would have heard about the recent science discovery of 68 blue whales being identified in the South Taranaki Bight. That's not really news to us. You heard from Turama about the whales. They've always been a part of us. So we must exercise kaitiakitanga and be cautious, very, very cautious about any new activities in their environment. It's theirs. It's not ours.

The third thing I'm going to talk to is the effects and impacts on people. They're going to be damaging culturally, physically, emotionally and spiritually.

Let me first talk to our reef systems. Our reef systems are absolutely essential. I'm sure you know more about the food web than I do but we know that all those microscopic phytoplankton, all the little stuff that lives, the worms and little stuff at the bottom of the food chain, we know that they are essential in the food chain. It goes all the way up to our whales, our sharks, to us. We know that when you have a healthy reef system there's an abundance of kai. The mussels, the kina, the crabs, the kōtore, sea anemones, the karengo, crayfish. These are all really essential food items to us as Māori, to us as Ngā Rauru.

[4.30 pm]

For generations that's all our people had to survive on, and if you think about the effects that we, as Taranaki Iwi, have been through in terms of land confiscation and loss of land, we have had to survive on the sea. These reef systems are a feeding ground for our snapper. A really essential part of our diet.

Our reef systems are obviously well below the water but some of them are really easily accessible, very accessible. Our people can just walk out there on a low tide and collect their kai.

We know that silt and slurry makes our reefs sick. We learnt this lesson 45 years ago. Waipipi Iron Sands was a land-based iron sand extraction operation on our coast. It had 16 years of mining activity from 1971 to 1987. Yes, the economic returns to our Waverley and our rural community were good. There were good jobs or there were jobs. The local businesses did really well but that's what we call a boom-bust activity. It lasted for 16 years and then it's gone.
They exported 15.7 million tonnes of iron sand and to do that they had to anchor the ships off the coast. They processed the iron sand on land. It was a land-based extraction activity. The sand was then mixed with water and using huge pumps, hoses and pipes they pumped it out to the waiting ships. So what you can see here is an onshore part of the activity. What you can’t see is out further beyond the reefs the huge tankers and ships that would line up to take the iron sands away.

The iron sand though had to be pumped out from land using water. It then had to be separated once it got out to the ship and the slurry was pumped back into the sea.

There were two serious effects from that activity: (1) the massive pipes damaged the reef systems, and (2) the slurry choked the reef life. What was the impact? The impact was that our mussel beds and all those associated other kaimoana suffered. Some of our people say that 45 years on those reefs still haven’t recovered to the state that they were in before the Waipiipi Iron Sands began.

So it was no surprise that in 1990 when our iwi was approached to give consent for an LPG pipe to come ashore it was rejected by our kaumātua.

[4.35 pm]

I’m going to go to another recent example. No, not that one. Never mind, I’ll come back to it.

What I want to talk to though is that you will be aware that in 2015 we had a major weather event and huge floods in our region, huge damage. This is a photo. The NASA satellites do a 16-day sweep across our country, and 16 days before 20 June this was a picture of the Whanganui River Mouth and the marine environment. So you can see from the Whanganui River Mouth it's clear. When you go to the 20 June photo you can see the effects of the runoff, the silting from the floods. That was hugely damaging to our community. How do I know? Because it affected our mussel reefs.

The Whanganui River wasn’t the only river to have the runoff obviously. We have got three major catchments in our rohe that go back to the hill country; so the Whanganui River, the Waitotara River and the Whenuakura River. So there was a significant amount of silting that took place over that period of time. The effects of that were that the silt covered our mussel beds. So when you spoke to people that went out and collected mussels soon after that event they will tell you that when the mussels were purged, put in a bucket of water to get all the sea water and salt out of them, it left a thin slick on top of the water. That’s very
unusual and they didn't taste good. So we know that silt and slurry, as recently from the 2015 floods, has an impact on our reef systems.

So, yes, we're going to fight for the protection of our reef systems very vigorously because it's absolutely central to who we are to be able to conduct these kind of practices.

I'm going to take you to this photo, only three weeks ago, beautiful day, maybe one of our few summer's days for 2017. I was down at this reef with my family. This is a reef that we have been going to forever as an iwi, forever. Personally, for over 50 years. This was a beautiful site. We were down there and this group of about 15 to 20 people - you can't see them all because some of them are in the water - they swept in. It took them about 10 to 15 minutes to gather their kai and then they were off again.

So being able to collect good healthy kaimoana is absolutely essential for us. It's a practice that we have followed forever. It has tikanga around it. It has mātauranga. We teach this to our young.

[4.40 pm]

We have a marae down at this beach, Rerere moana, and we bring our tamariki mokopuna there for programmes, and one of the things those kids are taught is that in the middle of the night one of kuia will go and wake up some of the older ones and take them outside and teach them how to collect crabs by stacking them on top of each other. They take them back and then they are taught how to prepare those kai.

These are all essential tikanga, essential practices, that we need to be able to maintain, and we can't do it if we don't have healthy ecosystems. This is what a healthy ecosystem looks like. This is what healthy mussel beds look like. You can see why it only took them 10 or 15 minutes to collect their kai. The karengo on there is thick. That's down the bottom of the food chain but that's so essential to feeding our mussels, to feeding our snapper, to feeding all those other kaimoana.

So we've learnt some lessons. We know that silt and slurry harms our reef systems. That natural flooding event in Whanganui and South Taranaki occurred over two to three years but it took a year for our seabeds to come right.

To say that we are worried about the impact of this proposed application on our environment is an understatement. We are so disturbed by it.

We know that seabed mining will produce abnormal volumes of sediment. We know that the sediment will settle on our reefs whether
they are outshore or inshore or both. We know that the impact will be sickness to our reef systems, possibly death. We know that action will be intentional. In western culture to intentionally harm a human is a crime. It's called aggravated assault. You'll get locked up and might go to jail. In western culture to intentionally kill a human is a crime, homicide. You'll get locked up, go to jail.

In western culture to intentionally cause mass damage and destruction to the environment is called ecocide. It's not a crime yet but Polly Higgins, a British lawyer for the earth, is proposing that ecocide is made a fifth crime against peace in the International Criminal Court.

In Māori culture we have our own laws and practices, Ngā Raurutanga, kaitiakitanga, and when you transgress those laws and practices there are consequences.

So you, as our Treaty partner representing the Crown, must decline this application, otherwise you will force upon us a breach of Ngā Raurutanga and kaitiakitanga.

I'm going to talk now to the blue whale population, and Turama spoke earlier about the longest association we have with the whales. Just to give you a little bit more background he spoke of these whales. The location of this nursing area is just on the south side of Whanganui. It used to be called Mothering Bay because that's where the whales used to come to nurse their calves. As Turama said, they came and they were protected by Ngāti Tumango. They were protected from the sharks while the mothers were nursing their babies. The people would get out there with their nets to protect those nursing mothers and their babies.

[4.45 pm]

So we know that these whales have been in our environment for a long time. We've all got stories. All our iwi will have stories about them. But, as Dr Leigh Torres has already said, we don't know enough about them. So we must protect their habitat until we learn more about them.

It has been spoken about the benefits of seabed mining, the economic benefits of seabed mining to our community. But places all around the world, including Kaikoura and Vancouver, have a whole local economy built on whale watching, so why would we want to put at risk not only the whales and our environment but any future economic opportunities that may arise before we've had a chance to even explore them? Ngā Rauru are not anti-business. Ngāti Ruanui said the same thing this morning.
In fact we are pro-business; pro-business that is socially, culturally, economically and environmentally sustainable. So we implore you not to deny us the right to learn about these creatures, not to decline us the right to care for and protect them and not to deny us the right to exercise Ngā Rauru-tanga and kaitiakitanga.

The third point I'm going to cover off is the effects on us as people, the cultural, physical, emotional and spiritual effects. I'm going to share with you today. I've been in my role for three years and never before have I felt the burden of the weight of this kaupapa that we're presenting on before. I was involved in the first application but today I feel it so much more and part of that is because we are hearing from our people. We're hearing the concern and the worry that our people have in respect of the effects and impacts that this application is going to have on them.

Kai is a very uniting experience. Jeepers, how many food shows are there on TV at the moment? So much of our socialisation revolves around kai, around food. We know how important it is. For Ngaa Rauru it's always been, as for other iwi, probably all iwi. It's also an expression of our wealth. The abundance of kai in our rivers, in our bush and our sea is how we've always measured our wealth.

Harvesting kai is a privilege that Papatūānuku bestows on us. We've got a reverence for us. There's a sacredness to our practices. It's those practices or those tikanga that have sustained us.

I note Jacinta's reference earlier that the courts are saying that tikanga must be protected. We have those tikanga around karakia for harvesting, for preserving, for when we eat. We have lots of other tikanga. Yesterday we had a wānanga at one of my maraes, Whenuakura Marae, right on the Whenuakura River, and that was to bring our kaumātua, few that there are, together to hear from them, to hear their stories because they were brought up on the river and at the sea.

So that I'm actually going to share some of those stories that I heard yesterday in the hope that you will understand the tikanga and the preciousness of kai, of our marine environment to us.

That's Whenuakura Marae and at the front, on the right-hand side, is my mother. She is 96. She'll be 97 in June. This is where she was raised as a baby. She spent her whole life along the Whenuakura River. To the left is my Uncle Joe. He's in his 80s. In the background are other of our kaumātua in their 70s and 80s. So yesterday we heard about the tikanga around fishing.
One of them was that we had a weather forecaster, she was a woman, and her role was to go out in the early, early morning and listen to the winds and based on the sound of the winds, the movement of the waters she would instruct our fishermen as to whether they could go out or not. She was a really reliable weather forecaster. There was an event in our rohe whereby one of the -- she had decided that it wasn’t a good day to go out, so the rarōa didn’t go but another boat went out. That boat got into difficulties. It was a beautiful day when they set out but the weather turned rough and many lives were lost in that. Fortunately one of our own was on board. He managed to cling to the boat and he survived.

The practices that they spoke of, the tikanga that they spoke of yesterday, were around how the women would always karanga the boats out to sea, but what happened out at sea was also upheld on land because to us they are one and the same. So as an example when our people went out in the boat they weren’t allowed to whistle because whistling would distract the captain from hearing the waves and hearing the winds. On shore that was the same. So since my mother was a little kid when the boats went out they weren’t allowed to whistle. When the boats went out they weren’t allowed to scribble in the sand. Why? Because the movement of the sands will affect the movement of the waters and change the tides.

[4.55 pm]

So can you imagine how our old people respond when they were brought up not being allowed to scratch in the sand and yet we want to send in these huge machines to mine? They just think its absolute madness. They cannot understand why you would allow that kind of activity to take place.

Yesterday they spoke of the fishing holes that we have out there. See, they knew exactly where they were. They had names for all these fishing holes. They knew where to go to get the groper. They knew where the snapper beds were. They had their markers for all these places. In fact yesterday they spoke of a place that was way out at sea but actually when they were over the top of this fishing hole they can see right down to the bottom of the seafloor, miles out to sea. So these are really precious and sacred fishing grounds that have been handed down from generation to generation.

So we absolutely must protect them. Another thing that one of the kuia said yesterday - I won’t give you the details of this - but she talked about the severe repercussions that happen when there’s a transgression of tikanga and she shared an example with us. We don’t want you to put us into that situation.
We are trying so hard to fight for our environment. We are already feeling hugely responsible and guilty for the amount of damage and destruction that we, as a society, have caused through deforestation, industrialisation, intensive farming and so on. In fact last year in Whanganui, we, along with our other iwi, Whanganui, Tupoho, Ngāti Apa and Rauru fought vigorously against the discharge of untreated waste into our marine environment.

You may recall that in Whanganui the sewerage system broke down about four years ago so the council was granted, under an emergency consent, permission to discharge untreated effluent into the sea, to use it as a toilet. They wanted another renewal of that consent; we opposed it. The outcome of that was unfortunately there was no other quicker solution so they were granted the consent for three years, just three years. They wanted longer. But in that time we were collectively working with council to look at ways that we can mitigate those effects. They're not going to be 100 per cent effective, we know that. What we will be able to do to mitigate those effects will be minimal in the scheme of things.

[5.00 pm]

But the important thing is that the effects are recognised and that the council must work very quickly to make sure that the sewage system is rebuilt within that three years.

Tomorrow, you're going to hear from the Whanganui iwi, and no doubt they will talk to you about the Whanganui River, the importance of that river to us, so important that it's been given its own legal identity. And, on 15 March, there will be the third reading of the Te Awa Tupua Bill recognising the rights of that river. And beside me, Turama Hawira. There's going to be two people that are going to be given the responsibility to be the face and voice of the river. The Crown will appoint one, and the iwi have appointed Turama.

I think it's a really positive thing that New Zealand is recognising that our environment needs a voice, and we're one of those voices, and we're here today to impress upon you just how important it is that you uphold your commitment to us to care and protect our environment.

Nō reira tēnā koutou, tēnā koutou, tēnā ra tātou katoa.

MR SHAW: Mr Coates, have you got any questions? Ms McGarry?

MS McGARRY: Thank you very much for a very articulate submission, and thank you very much for your time in coming to see us today.
I'm not sure if you were here this morning when I asked Ngāti Ruanui to have a think about our site visit and any places that you'd particularly like us to go. So, I just want you to think about that, and I'm not sure when that is but it will be in the next couple of weeks. So, do put some thought to that, and by way of staff provide us with some suggestions.

I just wanted to really ask you about the sedimentation issue and the damage to the reefs that you've observed and experienced over the years. On one hand, the applicant's saying that it's that background levels, it's those high background levels of sedimentation really that mean that the magnitude of the effect isn't so great because it's just a small amount on top of those background levels. But what you're saying to us here is you're already observing adverse effects; don't make it any worse. Is that cumulative effect on top of that?

MS BROUGHTON: Yes, absolutely.

MS McGARRY: That's what you want us to give weight to?

MS BROUGHTON: Yes.

MS McGARRY: You've said it took about a year for the reef to recover after that event. Just give us an idea of the significance of that event. Is that the kind of event you might have seen once in your lifetime? Is that the kind of event you might see annually? Just give us an idea of the scale of that event and the damage.

[5.05 pm]

MS BROUGHTON: Sure. So, pre-2003, they would say that you had a big flood event once every 100 years. Well, we had one in 2003, 2004 and 2015. So, some will say that, on top of deforestation and those sorts of things, its climate change. Don't know. But the regularity of these events, these flooding effects, is different to the stories that we've heard of old.

MS McGARRY: Is this something that iwi is actively seeking to engage on in the future to decrease that sedimentation issue from the rivers? Is that part of the management of the river?

MS BROUGHTON: Yes. But it's largely out of our control because the landowners on these steep hill-country farms, which are that lower-class land, class 6 - 7 lands, they traditionally have looked for those kinds of farming activities, forestry. So, the council is really trying to encourage the farmers to look at permanent forestry. So, a lot of our hill country is in pine forestry, which is harvested after 25 years, and then you have a period of time where the ground is very exposed and subject to run-off, slips, that sort of thing. So, the council is definitely trying to do some
things to mitigate the effects of deforestation but it's out of our hands. We're not those landowners.

MS McGARRY: Thank you.

MS BROUGHTON: Welcome.

MR SHAW: Mr Thompson?

MR THOMPSON: No, thank you.

MR SHAW: Okay. No questions from me.

MS BROUGHTON: Thank you.

MR SHAW: Thank you.

It's been an interesting afternoon, an interesting day, and I thank you all for it. As I said at the beginning of the day, we don't know where we're going to be at the end of this process, and I would be loath to predict that even if I was allowed to. Don't have a clue. We do know that increasingly we're getting more and more information, which will help us to make the decision that we need to make.

I want to remind everybody about what we are required to do, and that is to get the best available information, to understand it and to apply that information to the consideration of the application that we've got. Thank you for helping in the task today and wish you all well. Have a safe journey home.

You wish to finish with a karakia? That's fine.

MR HURUNUI: (karakia - Māori content)

INTERPRETER Mr Hammond: So, to you, the line-up that is here to adjudicate on this particular matter, this is the food basket that has been presented before you from our people. Tomorrow you'll hear more from my younger sibling.

And, so, the prow of my canoe turns seaward and, from there, I shall retrieve the ancient incantation of my chieftain, Turi, he who chanced upon and encountered Te Korokoro o Te Parata, the whirlpool that was left behind by Ngātoro-i-rangi. The purpose of this incantation, this affirmation, is to uplift the spirits of those who are within this assembly. Thus, you will not disappear. For you are seeds that have been sown...
upon the ancient homeland. The treasures of the ancestors reveal them, reveal them, reveal them all.

MR SHAW: Thank you all. Kia ora. Travel well.

MATTER ADJOURNED AT 5.13 PM UNTIL TUESDAY, 7 MARCH 2017