

# TE KAAHUI O RAURU

NGAA RAURU KIITAH IWI  
14 FOOKES STREET  
PO Box 18, WAVERLEY 4544  
PHONE: (06) 346 5707



---

14 October 2016

The Decision Making Committee  
Environmental Protection Agency  
WELLINGTON

**Submitted online:**

Teena koutou

**Te Kaahui o Rauru OPPOSES Trans Tasman Resources Limited**

Application for marine consents and marine discharge consents to extract and process iron sand within the South Taranaki Bight - EEZ 000011

---

**Introduction**

Te Kaahui o Rauru is the Post-Settlement Governance Entity for the iwi of Ngaa Rauru Kiitahi. The coastal boundaries for Ngaa Rauru Kiitahi iwi spans from the Whanganui River in the south to the Patea River in the north. This submission is made by Te Kaahui o Rauru as the mandated entity for Ngaa Rauru Kiitahi iwi.

**Ngaa Rauru Kiitahi**

This submission sets out the relationship Ngaa Rauru Kiitahi had with the offshore area in question prior to the Treaty (Ngaa Raurutanga), the rights and responsibilities that were affirmed when the Treaty was agreed, and the impact of the Treaty settlement between the Crown and Ngaa Rauru Kiitahi finalised in 2005.

Ngaa Rauru Kiitahi has and continues to have a relationship with the offshore area in South Taranaki based on our Ngaa Raurutanga. It is a taonga over which Nga Rauru Kiitahi has always exercised kaitiakitanga and continues to do so. It provided Nga Rauru Kiitahi whanau with kai, medicine (rongoa), a place to live, recreation, learning and whanaungatanga. *These rights and responsibilities and the Treaty relationship must be protected by the Crown.*

## **Ngaa Raurutanga**

Ngaa Raurutanga is the article two guarantee of “Rangatiratanga” in the Treaty. In our Deed of Settlement it states:

*“2.9 Ngaa Raurutanga is the term used by Ngaa Rauru Kiitahi to describe those values, rights and responsibilities Ngaa Rauru Kiitahi holds according to custom, including the values, rights and responsibilities recognised by Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.*

*2.10 The Crown acknowledges the statement by Ngaa Rauru Kiitahi that:*

*(a) Ngaa Rauru Kiitahi has:*

*(i) exercised Ngaa Raurutanga in respect of, and has occupied, the traditional rohe (as described in the Preface to this Deed); and*

*(ii) held tight to the values that constitute Ngaa Raurutanga; and*

*(b) Ngaa Rauru Kiitahi values means the values held by Ngaa Rauru Kiitahi which are reflected in:*

*(i) the practice by Ngaa Rauru Kiitahi of:*

*(aa) Maatauranga;*

*(bb) Waiora/Hauora;*

*(cc) Kaitiakitanga;*

*(dd) Wairuatanga;*

*(ee) Te Reo; and*

*(ff) Whakapapa; and*

*(ii) respect for the principle “mai te rangi ki te whenua, mai uta ki tai, ko nga mea katoa e tapu ana, Ngaa Rauru Kiitahi ki a mau, ki a ita”.*

*2.11 The Crown further acknowledges that, in its dealings with the Crown, Ngaa Rauru Kiitahi:*

*2.11.1 is guided by Ngaa Rauru Kiitahi values; and*

*2.11.2 seeks outcomes that enable Ngaa Rauru Kiitahi to practise Ngaa Raurutanga.*

*2.12 Accordingly, in order to enhance the ongoing relationship between Ngaa Rauru Kiitahi and the Crown (in terms of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles), this Deed of Settlement includes Redress that assists the Crown to recognise and respect Ngaa Raurutanga and the desire of Ngaa Rauru Kiitahi to practise Ngaa Raurutanga.”*

## **Treaty of Waitangi Obligations**

It is important to note that Ngaa Rauru Kiitahi is currently going through the process of formalising its customary rights under the Marine and Coastal Area (Takutai Moana Act 2011). Any decision made prior to completion of this process is at risk of undermining the principles of the Treaty and even of creating a new Treaty breach.

## **Existing Interests**

Ngaa Rauru Kiihahi clearly has existing interests, rights and a cultural relationship with the marine environment in which the proposed mining activities will operate. As these are all interests recognised by a Deed of Settlement, they satisfy the definition of "existing interest" in the EEZ Act (s.4). The EPA must therefore take these interests into account under ss.59, 60 and 61 when considering this application for the marine consents.

Note that these recognised interests are broad. They are not confined to the exercise of customary harvest rights, for example, and it is more than simple guardianship. The interests recognised in the Settlement include the wider exercise of kaitiakitanga, wairuatanga, and the abilities to both exercise and gain traditional knowledge about – and whakapapa back to – Tangaroa and all its elements. Importantly, even if the activities in question occur outside the Settlement area, what is important is their effects on the interests that are protected.

Ngaa Rauru Kiihahi has ancient customary rights, interests and practices that require protection - evidenced by the korero, karakia, waiata, places, place names, etc throughout the onshore and offshore environment of Ngaa Rauru Kiihahi. The Trans Tasman Resources application as proposed will undermine these rights and interests. Ngaa Rauru Kiihahi can elaborate on how these interests would be undermined in oral submissions. Ngaa Rauru Kiihahi will vigorously fight for the protection of these rights and interests as guaranteed under our Deed of Settlement.

## **Environmental Impacts**

The information provided in the application indicates that the level of environmental damage resulting from the applicant's activities could be significant. The level of destruction being proposed in the marine environment and the risk to the health and wellbeing of Tangaroa and all its living creatures is totally unacceptable to Ngaa Rauru Kiihahi, no matter the significant economic benefit. In general, we are concerned about:

- The impacts of the plume on the marine environment – reef structures, eco systems, etc
- Adverse effects on the seabed, subsoil, benthic biota, marine species and their habitat
- Use of heavy equipment, fuels, artificial light, noise, etc on marine species

There is not enough information provided by the applicant to show that these impacts will not be serious and/or long-lived. Until there is undisputed evidence that the recognised damage or negative effects created by seabed mining will be quickly restored, the EPA must favour caution and environmental protection, under s.61, and decline the application.

## **Cultural Values Assessment**

“Ko au ko Tangaroa, ko Tangaroa ko au – I am the sea, and the sea is me.”

Ngaa Raurutanga principles and teachings say that a depletion in the health of the marine environment will be reflected in those who have a relationship with it, and particularly those responsible for its protection – Ngaa Rauru Kiitahi Kaitiaki.

One of the values we hold strong is our ability to gather kai moana and rongoa. We have a number of traditional fishing kainga in our rohe that utilise not only the immediate coast but also the deep sea and reefs for food gathering. Our traditional medicine practices utilise the marine environment in a number of ways (spiritual, emotional and physical) and we are concerned at the potential for loss and damage to these taonga, and therefore also to the health (spiritual, emotional and physical) of the people of Ngaa Rauru Kiitahi.

Western science discoveries are now occurring with a variety of species, e.g. sea sponges being identified as potential cancer drug treatments. To put the health and wellbeing of the marine environment at risk when so much is still unknown about it is irresponsible and is a serious breach of our cultural values and existing interests.

To the best of our knowledge, Ngaa Raurutanga was not incorporated into the Cultural Values Assessment, nor was Ngaa Rauru Kiitahi involved in the preparation of a Cultural Values Assessment. Accordingly, we consider the Trans Tasman Resources Limited application incomplete.

## **Decision making under the EEZ Act**

The EPA must take into account the effects on our existing interests of allowing the activity, including the effects on cultural aspects of our interests (s.59(2)(a)). As these interests have not been identified by the applicant, let alone an assessment made of the effects of the activities on them, the EPA must collect further information on these effects. Ngaa Rauru Kiitahi needs to be involved in such an assessment. At the very least, oral submissions must be made; it may be that a review report will need to be commissioned under s61(1).

The EPA also needs to take into account the effects on the human health of members of Ngaa Rauru Kiitahi that may arise from effects on the environment as a result of the proposed activities (s.59(2)(c)).

The information provided by the applicant about the likely future effects of their activities is insufficient. It is acknowledged that there will be some but there is not enough knowledge about the likely extent and duration of damage. The risk of catastrophic loss – including extinction of species – is too great given the high level of uncertainty. Therefore the risk of

catastrophic damage to our existing interests is also too great. Ngaa Rauru Kiitahi does not believe that this uncertainty has been reduced since the previous application. Nor do we believe – on the information provided – that an adaptive management approach could prevent these losses.

In light of the uncertainty and inadequacy in the information provided about the risks to the environment and to our existing interests, both caution and environmental protection must be favoured (s.61(2)). Ngaa Rauru Kiitahi suggests that this means that the application must again be denied.

### **The Treaty of Waitangi**

Parliament has already provided for the protection of existing Maori interests through s.12 of the Act. Ngaa Rauru Kiitahi therefore considers that the very broad interests protected under the Deed of Settlement can be appropriately protected pursuant to the EEZ Act. However, it must also be noted that New Zealand law provides that all legislation must be interpreted in accordance with the Treaty of Waitangi where it is appropriate, as a matter of statutory interpretation, to do so. Thus it is also important to consider the need to not create new Treaty breaches through decision-making under the Act. This is likely to be relevant in relation to the current process whereby Ngaa Rauru Kiitahi is formalising its customary rights under the Marine and Coastal Area (Takutai Moana Act 2011). Ngaa Rauru Kiitahi submits that the EPA must favour caution in this respect, and in protecting our taonga and wider cultural interest in Tangaroa and all of its species so as to avoid any future Treaty breaches.

### **International Human Rights Standards**

An additional matter that must be taken into account in decision-making is New Zealand's international obligations. Under New Zealand law, the government is presumed to comply with our international obligations and, in cases of doubt, an interpretation that upholds these international obligations must be preferred. This is a factor that does not need to be referred to within the Act itself, but the courts overlay this obligation across all statutes.

In 2010 the government gave its support to the UN Declaration on the Rights of Indigenous Peoples. The Declaration provides a set of international human rights standards to be achieved by States if indigenous peoples are to enjoy their rights and responsibilities.

The nearest human right to “Ngaa Raurutanga” is “self-determination.” The Declaration has a number of standards by which to measure self-determination. They include *Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.* Articles 4 and 5 are also useful (Self-governing, institutions.)

Another important right in the Declaration is the right to give “*free, prior and informed consent*” in relation to legislative or administrative measures that may affect Tangata Whenua (articles 19, 29 and 32).

In looking at the South Taranaki coastline, the Declaration has standards in relation to lands, territories and resources, and economic and social development.

They include *article 8 (cultural integrity), article 10 (removal and relocation), article 25 (relationship to the environment), article 26 (lands and resources), article 27 (process for dealing with land rights), article 28 (restitution), article 29 (environment), article 31 (intellectual property), article 32 (resource development) and article 39 (financial assistance).*

The Declaration is useful in relation to Crown responsibilities. *Article 18 states; “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions”. Article 19 provides a standard for “good faith cooperation.”*

These standards must be upheld as a matter of international law, where it is appropriate as a matter of statutory interpretation to do so. In addition, these are significant standards which Nga Rauru is keen to achieve in practice. The proposal for the Trans Tasman Resources mining needs to reach these standards if Nga Rauru is to support it. We do not believe the application reaches these standards.

## **Conclusion**

Based on information contained in the proposal, the mining activity proposed by TTRL is contrary and totally foreign to our concept of kaitiakitanga. The proposal is an exploitation of Tangaroa, the natural marine environment, for monetary gain. There's nothing in it for Tangaroa.

In addition, the proposal will have an adverse effect on the existing interests of Ngaa Rauru Kiiitahi, both in relation to the environment of Tangaroa itself and to its cultural relationship with the people. Further, these adverse effects could be significant and long-lasting if not permanent, with the potential for devastating losses, physical, cultural and spiritual, and thus including to the health of the people of Ngaa Rauru Kiiitahi.

The uncertainty and insufficiency of information about all of these effects is extremely concerning. Therefore, based on these and the values of Ngaa Raurutanga, as well as the standards of the Treaty of Waitangi and of international human rights law, Ngaa Rauru Kiitahi oppose the granting of consent to Trans Tasman Resources Limited.

Finally, we wish to appear before the Decision Making Committee and respectfully request that a hearing be conducted on one of our marae.

Naa maaua noa, naa



Te Pahunga Martin Davis  
**Tumu Whakarae/Chair**



Anne-Marie Broughton  
**Kaiwhakahaere/General Manager**

