

## **SECTION 8**

# **STATUTORY ASSESSMENT SECTION APPENDICES**



## Appendix 8.1: FTA requirements

Section of FTA	Requirement	Comment
Pre-lodgement Requirements		
29(1)(a) and 11	The authorised person for the project must consult the persons and groups referred to in section 11.	Consultation has been undertaken with the parties listed in section 11 of the FTA as required by section 29(1)(a) ( <b>Section 5 of the application</b> ).
29(1)(b)	The authorised person for the project must, if the substantive application seeks an approval described in section 42(4)(l) or (m) (access arrangement), comply with section 59(1) and (2) of the Crown Minerals Act 1991 (which applies as if a reference to an access arrangement under that Act were a reference to an access arrangement under this Act)	The substantive application does not seek an approval described in section 42(4)(l) or (m) and does not need to comply with section 59(1) and (2) of the Crown Minerals Act 1991.
29(2)	If there is more than 1 authorised person for a listed project,—  (a) any 1 of the authorised persons may comply with paragraph (a) of subsection (1) on behalf of all of them:  (b) the authorised person who is the proposed holder of the approval referred to in paragraph (b) of subsection (1) must comply with that paragraph.	TTR is the only authorised person listed for the project.
Substantive Application Requirements		
42(1)	The authorised person for a listed project or a referred project may lodge with the EPA—  (a) 1 substantive application for the project; or	The application constitutes a substantive application, in this case for marine consent approvals.



Section of FTA	Requirement	Comment
	(b) in the case of a referred project whose referral application was accepted under section 21(1)(a), 1 substantive application for each stage of the project.	
42(2)	<p>A substantive application must—</p> <p>(a) comply with section 43; and</p> <p>(b) if there is more than 1 authorised person for the project, be lodged jointly by every authorised person who is the proposed holder of an approval.</p>	The substantive application complies with section 43 as required by section 42(2) ( <b>see below</b> )
42(3)	<p>For each approval sought under subsection (4),—</p> <p>(a) the applicant must be eligible to apply for any corresponding approval under a specified Act; or</p> <p>(b) if the substantive application is lodged by more than 1 authorised person, the authorised person who is proposed to hold the approval sought under subsection (4) must be a person who would be eligible to apply for any corresponding approval under a specified Act.</p>	<p>&gt; TTR is eligible to apply for the corresponding approval under the EEZ Act as required by section 42(3) (<b>Section 4 of the application</b>).</p>
42(4)	<p>A substantive application may seek 1 or more of the following matters (the <b>approvals</b>):</p> <p>[...]</p> <p>(k) a marine consent that would otherwise be applied for under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012:</p> <p>[...]</p>	The substantive application is seeking marine consent that would otherwise be applied for under the EEZ Act.

Section of FTA	Requirement	Comment
42(5) to (12)	<p>A substantive application that seeks an approval described in subsection (4)(a)—</p> <p>(a) may seek that approval for an activity that is a prohibited activity under the Resource Management Act 1991:</p> <p>(b) must, if section 30(6) applies, be lodged within the time frame specified in that section.</p> <p>[...]</p>	Section 42(5) to (12) are not applicable.
43(1)(a)	(1) A substantive application—	
43(1)(a)	(a) must be lodged in the form and manner approved by the EPA; and	The application will be lodged as per the FTA Substantive Application Form Guide.
43(1)(b)	<p>must—</p> <p>(i) explain how the project to which the application relates is consistent with the purpose of this Act; or</p> <p>(ii) for a project referred under section 21(1)(a),—</p> <p>(A) explain how both the stage to which the application relates and the whole project are consistent with the purpose of this Act; and</p> <p>(B) contain information relating to the likelihood that any later stages of the project will be completed; and</p>	The project is consistent with the purpose of the FTA ( <b>Section 8.2.1 of the application</b> ).

Section of FTA	Requirement	Comment
43(1)(c)	must demonstrate that the project does not involve any ineligible activities; and	The project is located entirely within the EEZ and is not a prohibited activity in the EEZ Act and therefore does not involve ineligible activities listed in section 5 of the FTA.
43(1)(d)	must, if the application is lodged by more than 1 authorised person, state the proposed approval to be held by each person; and	The application will be lodged by an authorised person being TTR.
43(1)(e)	<p>must comply with—</p> <p>(i) any information requirements specified by the Minister under section 27(3)(b)(ii); and</p> <p>(ii) the requirements listed in subsection (3) that apply to the approvals sought; and</p> <p>For the purposes of section 43(3)(k), an application for a marine consent must include the following information:</p> <p>(a) a description of the proposed activity;</p> <p>(b) an impact assessment prepared in accordance with section 39 of the EEZ Act and any requirements prescribed in regulations made under that Act;</p> <p>(c) if the application relates to an activity referred to in section 20(2)(a), (b), or (c) of the EEZ Act, a description in general terms of how and when it is proposed that the structure, submarine pipeline, or submarine cable will be dealt with at the end of its life.</p>	<p>No information requirements have been specified by the Minister under section 27(3)(b)(ii).</p> <p>The requirements listed in subsection (3) (clause 4 of Schedule 10) of the FTA are assessed below.</p> <p>(a) A description of the proposed activity is provided in <b>Section 2 of the application</b>.</p> <p>(b) The application constitutes the impact assessment, specifically <b>Sections 2, 3, 5 and 6 of the application</b>.</p> <p>(c) The application relates to an activity referred to in section 20(2)(a) for structures on the seabed. A condition is proposed (Condition 39 in <b>Attachment 1 to the application</b>) which requires the disestablishment and removal of all structures on the seabed after the completion of the project.</p>

Section of FTA	Requirement	Comment
43(1)(f)	must, if the authorised person has applied under section 39 for a determination under section 23 or 24, include a copy of the notice under section 39(4); and	The authorised person has not applied under section 39 for a determination under sections 23 or 24.
43(1)(g)	must, if the application seeks an approval for an activity that is the subject of a determination under section 23, set out the steps taken to secure the agreement referred to in section 5(1)(a); and	The authorised person has not applied under section 39 for a determination under section 23.
43(1)(h)	must state whether the application relates to a priority project and, if so, include confirmation that, to the best of the applicant's knowledge, there are no competing applications; and	The application does not relate to a priority project.
43(1)(i)	must be made by the deadline specified in the notice under section 28(3)(d); and	There is no deadline for the lodgement of the application as it is not for land exchange.
43(1)(j)	must not lodge a substantive application unless any fee, charge, or levy payable under regulations in respect of the application is paid.	Fees will be paid at the time of lodgement.
43(2)	<p>If a substantive application is for a listed project, it must also contain the information required by section 13(4) (other than section 13(4)(b), (f)(ii) and (iii), and (g)), which applies—</p> <p>(a) as if the reference in section 13(4)(k) to section 11 were a reference to section 29; and</p> <p>(b) as if the reference in clause 2 of Schedule 11 to section 12(2) were a reference to section 29; and</p> <p>(c) with any other necessary modifications.</p>	<p>Information required by section 13(4) is provided below.</p> <p>Information required under section 29 is provided at the start of this table.</p>

Section of FTA	Requirement	Comment
13(4)(a)	a description of the project and the activities it involves:	A description of the project and activities is provided in <b>Section 2 of the application</b> .
13(4)(b)	an explanation of how the project meets the criteria in section 22:	Not required.
13(4)(c)	information to demonstrate that the project does not involve any ineligible activities (other than activities that may be the subject of a determination under section 23 or 24):	The project is offshore in the EEZ and is not a prohibited activity in the EEZ Act and therefore does not involve ineligible activities listed in section 5 of the FTA.
13(4)(d)	a description or map of the whole project area that identifies its boundaries in sufficient detail to enable consideration of the referral application:	A description and map of the whole project area that identifies its boundaries is provided in <b>Section 2.1 of the application</b> .
13(4)(e)	the anticipated commencement and completion dates for construction activities (where relevant):	The anticipated commencement and completion dates for construction are not relevant to this application.
13(4)(f)	<p>a statement of whether the project is planned to proceed in stages and, if so,—</p> <p>(i) an outline of the nature and timing of the stages; and</p> <p>(ii) a statement of whether a separate substantive application is to be lodged for each of the stages; and</p> <p>(iii) an explanation of how each stage meets the criteria in section 22:</p>	No specific stages are proposed for the project.
13(4)(g)	<p>a statement of whether a part of the project is proposed as an alternative project in itself and, if so,—</p> <p>(i) a description of that part of the project; and</p>	Not required.

Section of FTA	Requirement	Comment
	(ii) an explanation of how that part of the project meets the criteria in section 22:	
13(4)(h)	a description of the anticipated and known adverse effects of the project on the environment:	The anticipated and known adverse effects are provided in <b>Section 5 of the application</b> .
13(4)(i)	a statement of any activities involved in the project that are prohibited activities under the Resource Management Act 1991:	No activities are proposed that are prohibited under the RMA.
13(4)(j)	<p>a list of the persons and groups the applicant considers are likely to be affected by the project, including—</p> <p>(i) relevant local authorities:</p> <p>(ii) iwi authorities and groups that represent hapū that are parties to relevant Mana Whakahono ā Rohe or joint management agreements:</p> <p>(iii) other relevant iwi authorities:</p> <p>(iv) relevant Treaty settlement entities:</p> <p>(v) relevant protected customary rights groups and customary marine title groups:</p> <p>(vi) ngā hapū o Ngāti Porou, if the project area is within or adjacent to, or the project would directly affect, ngā rohe moana o ngā hapū o Ngāti Porou:</p> <p>(vii) relevant applicant groups under the Marine and Coastal Area (Takutai Moana) Act 2011:</p>	A list of persons and groups considered to be affected by the project is provided in <b>Section 7.1.4 of the application</b> .



Section of FTA	Requirement	Comment
	(viii) persons with a registered interest in land that may need to be acquired under the Public Works Act 1981:	
13(4)(k)	<p>a summary of—</p> <p>(i) the consultation undertaken for the purposes of section 11 and any other consultation undertaken on the project with the persons and groups referred to in paragraph (j); and</p> <p>(ii) how the consultation has informed the project:</p>	A summary of the consultation and how the consultation has informed the project is provided in <b>Section 7.2 of the application</b> .
13(4)(l)	a list of any Treaty settlements that apply to the project area, and a summary of the relevant principles and provisions in those settlements:	A list of Treaty Settlements and a summary of the relevant principles and provisions in those settlements are provided in <b>Section 3.4.9 and Section 8.3.18 of the application</b> .
13(4)(m)	a description of any processes already undertaken under the Public Works Act 1981 in relation to the project:	No processes have been undertaken under the Public Works Act 1981 in relation to the project.
13(4)(n)	a statement of any relevant principles or provisions in the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019:	There are no relevant principles or provisions in the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 to the project.
13(4)(o)	information identifying the parcels of Māori land, marae, and identified wāhi tapu within the project area:	There are no parcels of Māori land, marae, or identified wāhi tapu within the project area.
13(4)(p)	a statement of whether the applicant is seeking a determination under section 23 and, if so, an assessment of the effects of the activity on the relevant land and on the rights and interests of Māori in that land:	The applicant is not seeking a determination under section 23 of the FTA.

Section of FTA	Requirement	Comment
13(4)(q)	a statement of whether the applicant is seeking a determination under section 24(2) and, if so, a description of—  [...]	The applicant is not seeking a determination under section 24(2) of the FTA.
13(4)(r)	a statement of whether the applicant is seeking a determination under section 24(4) and, if so,—  [...]	The applicant is not seeking a determination under section 24(4) of the FTA.
13(4)(s)	a description of the applicant's legal interest (if any), or if the referral application is lodged by more than 1 person, the legal interest of any of those persons (if any), in the land on which the project will occur, including a statement of how that affects the applicant's ability to undertake the work:	The site is in the EEZ and does not have a legal interest in the area on which the project will occur.
13(4)(t)	an outline of the types of consents, certificates, designations, concessions, and other legal authorisations (other than contractual authorisations or the proposed approvals) that the applicant considers are needed to authorise the project, including any that the applicant considers may be needed by someone other than the applicant:	The approvals required and sought are provided in <b>Section 4 of the application</b> .
13(4)(u)	whether any activities that are involved in the project, or are substantially the same as those involved in the project, have been the subject of an application or a decision under a specified Act and,—  (i) if an application has been made, details of the application:	The details of previous applications and decisions are provided in <b>Section 1.5 of the application</b> .

Section of FTA	Requirement	Comment
	(ii) if a decision has been made, the outcome of the decision and the reasons for it:	
13(4)(v)	a description of whether and how the project would be affected by climate change and natural hazards:	Due to the nature and offshore location of the proposal, it is unlikely to be affected by climate changes.
13(4)(w)	if the referral application is lodged by more than 1 person, a statement of each proposed approval to be held by each of those persons:	The application will be lodged by one person.
13(4)(x)	a summary of compliance or enforcement actions (if any), and the outcome of those actions, taken against the applicant (or if the referral application is lodged by more than 1 person, any of those persons) under a specified Act:	No compliance or enforcement history exists against TTR.
13(4)(y)	<p>if the proposed approvals include—</p> <p>[...]</p> <p>(vii) an approval described in section 42(4)(k) (marine consent), the information specified in clause 2 of Schedule 10:</p> <p>[...]</p> <p><b>Clause 2 of Schedule 10</b></p> <p>The information required to be provided under section 13(4)(y)(vii) is—</p> <p>(1)(a) information about whether the Minister of Conservation is an affected person:</p>	<p>(y) The proposed approval is an approval described in Section 42(4)(k) marine consent and the information specified in clause 2 of Schedule 11 is provided below:</p> <p>(1)(a) The Minister of Conservation is not an affected person.</p> <p>(1)(b) Details of previous applications for consent under the EEZ Act and decisions made are in <b>Section 1.5 of the application</b>. There are no current and other likely uses of the space given its offshore location, regardless the economic benefits and strategic importance of the project are detailed in Section 1.4 of this IA as per section 22(6) of the FTA.</p> <p>(1)(c) No compliance or enforcement history exists against TTR.</p>

Section of FTA	Requirement	Comment
	<p>(1)(b) additional information about whether the applicant has already made an application for a consent under the EEZ Act in relation to the project, and, if so,—</p> <p>(i) details of any application made; and</p> <p>(ii) the decisions made on that application; and</p> <p>(iii) information about the matters that the Minister may consider under section 22(6):</p> <p>(1)(c) additional information (in a summary form) about compliance or enforcement action taken against the applicant by the EPA under the EEZ Act.</p> <p>(2) If the referral application is to be lodged by more than 1 person, the reference to the applicant in subclause (1)(b) must be read as a reference to the person who is to be identified in the application as the proposed holder of the marine consent.</p>	<p>(2) The application will be lodged by one person.</p>
43(3)	<p>The requirements referred to in subsection (1)(e)(ii) are those set out in,—</p> <p>(k) for an approval described in section 42(4)(k) (marine consent), clauses 3 and 4 of Schedule 10:</p>	<p>The requirements listed in section 43(3) (clauses 4 of Schedule 10) are provided above in this table.</p>

## Appendix 8.2: Trans-Tasman Resources Limited's Health and Safety Initiatives

### **Management Responsibilities**

Many of the specific operational activities associated with the Project have the potential to cause adverse health and safety effects if they are not managed appropriately. It is therefore important that clear management responsibilities are defined and assigned for all aspects of the Project. TTR's health and safety management protocols will assign the health and safety responsibilities as follows:

- Role of the managers is:
  - To ensure that health and safety related matters are promoted to all staff and contractors;
  - Prepare specific health and safety management plans as required;
  - Provide for hazard and incident management and reporting; and
  - Comply with standard protocols for audit and review and communication.
- Role of all staff and contractors is:
  - To follow procedures set out in any health and safety manuals with a particular focus on hazard and incident management and reporting; and
  - Must participate in an annual review phase to address health and safety objectives and targets.

Any health and safety plans will set out required planning, review and evaluation procedures ensuring the plan is maintained and appropriate to the circumstances as they relate to the Project.

### **Vessel Operations**

All of the vessels involved in TTR's extraction operations will follow the International Safety Management Code, in accordance with SOLAS, for vessel operations, as well as complying with the Maritime Transport Act & Maritime NZ Marine Protection Rules. TTR will develop tailored health and safety systems based on the normal day to day deck based operations, with particular health and safety procedures developed for specialist vessel operations as follows:

#### 1. **Integrated Mining Vessel (IMV)**

- Deployment, connection and emergency release of slurry hoses to Floating Storage and Offloading (FSO) vessel:

- Vessel proximity procedures (based on Dynamic Positioning System (DPS) capability); and
- Safe sea state operating conditions.
- On deck Crawler operations:
  - Power plant operations;
  - Crane operations;
  - Anchoring operations;
  - Port operations (handled by Pilot) – This will be specifically covered due to the size of the vessel;
  - Entry;
  - Exit; and
  - Berthing.

## 2. Anchor Handling Tug (AHT)

All of the AHT and anchor handling operations will be dependent on the oceanic meteorological conditions and the operating range of the AHT.

- Loading and Unloading supplies to the IMV or FSO vessel via IMV/FSO vessel deck crane:
  - Vessel Proximity Procedures (based on DPS capability).
- Bunkering of fuel to IMV/FSO vessel - This will be one of the most rigidly enforced health and safety procedures due to potentially high risk of safety, environmental and economic impacts; and
- Moving the anchors of the IMV.

## 3. FSO vessel

- Deployment, connection and emergency release of slurry hoses to FSO vessel:
  - Vessel proximity procedures (based on DPS capability); and
  - Safe sea state operating conditions.
- Loading between the FSO vessel and export vessel.

## **Processing Areas**

Process areas will be treated in the same way as high level production plants onshore, with each piece of machinery assessed and assigned Standard Operational Procedures and maintenance schedules with hazards and work plans associated to each. A HAZOPS will be undertaken before commissioning of any operations in these areas.

### **Crawler Operation**

Handling of the Crawler will require health and safety systems and procedures similar to mining equipment on shore. However, as this unit will be deployed at sea, there are some unique aspects to be addressed including:

- Operating the Crawler on deck;
- Lifting procedures:
  - Safe sea state operating conditions; and
  - Emergency lift.
- Loss of vessel position;
- Umbilical tendering:
  - Steel wire lifting cable;
  - Slurry hose; and
  - High voltage power supply subsea and on deck.
- Maintenance procedures on Crawler:
  - High voltage power;
  - High pressure hydraulic;
  - Movement of heavy equipment or Crawler on deck; and
  - Crane operations.

Further, the Crawler is existing technology with established use at sea, so health and safety procedures will be developed by TTR in accordance with international operational “best practice” methods.

### **Power Generation**

Health and safety requirements for the power generation plants are of the highest standard and have been modelled on procedures used by on-shore power plants. TTR will operate an integrated power system which will control, monitor and regulate the power being sent to each piece of plant, this will allow automatic control of safety systems for faster and more efficient deployment. Specific attention will be applied to:

- Security and treatment of on deck power cables;
- Integrity of areas where power is generated - Electrical isolation of plant and emergency stop of whole process;

- Monitoring of fumes and gases;
- Electrical safety plans - High voltage safety;
- Emergency power requirements; and
- Class protection of equipment established.

### **HFO Fuel Handling and Transfer**

HFO has been selected as the preferred fuel option. Specific health and safety risks associated with HFO will be taken into account in the development of hazard controls and incident responses. Bunkering at sea is regulated under the Maritime Transport Act with attention being given to a wide range of health and safety factors, many of which have direct environmental consequences. These factors include:

- A safe and controlled surface transfer system – with an automated mating/coupling system;
- Transfers to occur in daylight hours only;
- A safety management system documenting all procedures to take place to allow the safe transfer of fuel oil;
- Strict protocols being in place for oil spill control;
- The vessel transferring to have spill control and dispersants available and ready; and
- Meteorological ocean conditions favourable for the period of transfer.

### **Personnel**

Maintaining the health and safety of all personnel working within this project will be paramount. Crews will be working on a rotation basis, and will follow health and safety procedures similar to other off-shore manned production platforms such as the Raroa and Umoroa which are New Zealand's other existing offshore IMVs. The key health and safety policies will focus on:

- Physical health:
  - Dealing with accidents and injuries;
  - Promotion of a healthy lifestyle on board; and
  - Physical properties of fine iron sand and associated hazards.
- Mental Health:



- Fatigue; and
  - Isolated working environment.
- Adherence to strict procedures and practices;
  - Active participation in promoting a safe work environment; and
  - The proper training is provided in offshore survival; first aid and fire fighting.

### **Helicopter Operations**

These operations are some of the most dangerous and will have to be carried out regularly to transfer crews and emergency/specialist supplies. Associated safety precautions are very specific and require a number of trained specialists. Particular consideration will be given to:

- Security;
- Communications;
- Cold water survival training;
- Weather parameters;
- Fire-fighting capability; and
- Rescue capability.

### **Operational Policy**

TTR is committed to adopting recognised “Best Practice” International and New Zealand Standards relating to operational quality, (International Standard, ISO 9000) and environmental management (International Standard, ISO 14000) for all aspects of the Project.

In addition, TTR is investigating the potential for benefits resulting from the implementing standards developed by the American Bureau of Shipping for the design, construction and operational maintenance of marine-related facilities. No decision had been made on this at the time of writing this IA.

### **Employment Policy**

TTR has adopted a policy of employing local worker where possible and considers this to be a “Best Practice” approach in respect of community involvement.

TTR’s policies focus on safe and effective working relationships at all levels of the organisation. Within this framework, TTR is committed to the elimination of workplace injuries, and to good corporate values and ethical behaviour.

## Appendix 8.3: Trans-Tasman Resources Limited's Health and Safety Policy.

### **TTR Health and Safety Policy**

#### **Purpose**

Trans-Tasman Resources Limited (TTRL) aims to promote a healthy workforce, maintain a safe system of work and to proactively support the wellbeing of our people.

TTRL's safety beliefs are:

- Working safely is a condition of employment and a core value
- Employee involvement is essential.
- Management is accountable for safety performance and ensuring staff are properly trained to safely carry out their work.
- All operating exposures can be safeguarded and all incidents can be prevented.

Our beliefs will be accomplished by:

- Visible safety leadership
- Provide a safe and healthy work environment,
- Actively monitor and continuously improve health and safety performance at all levels by undertaking reviews to measure progress and compliance with this policy,
- Establishing a strong safety culture throughout our business by charging our leaders with responsibility for safety monitoring,
- Preventing work related injuries or illness through proper training, the promotion of safe behaviours and the integration of safe work practices into all work methods,
- Complying with or exceeding all applicable legislation, standards and codes of practice for health and safety,
- Systematically identify, assess and control work-place hazards,
- Record, report, investigate and learn from all incidents and near misses,
- Ensure all employees and contractors understand health and safety responsibilities relevant to their roles and take responsibility for their own safety and the safety of those around them,

## **Appendix 8.4: Trans-Tasman Resources Limited's Environment and Community Policy.**

### **TTR Environment and Community Policy**

#### **Purpose**

Trans-Tasman Resources Limited (TTRL) aims to take care of and use natural resources in a manner that minimises harm to the environment and provides benefits to New Zealanders

#### **TTRL's Environment and community beliefs are:**

- environmental responsibility, support the communities in which we work and place health and safety as a top priority
- embrace openness and keep things simple
- do what is right and do what we say, we are consistently reliable
- our relationships are based on respect and are mutually beneficial
- stretch our capabilities and achieve superior business results
- define and accept responsibility and deliver on our commitments.

#### **Our beliefs will be accomplished by:**

- visible leadership in supporting the communities we operate in and in minimizing the impacts of our operations on the environment
- being involved with and conducting open and honest dialogue in our dealings with the community
- supporting communities local to our operations in practical means and leaving a positive legacy to mark its temporary occupation
- training our staff and contractors in the efficient and safe use of all plant and equipment
- complying with all legislation, resource/marine consents and commitments made
- striving for sustainable and efficient use of natural resources
- monitoring the effects of our operations on the environment and using the results to

## **Appendix 8.5: Assessment of relevant statutory planning documents under the Resource Management Act 1991**

### **1. INTRODUCTION**

This Appendix sets out the nature and effect of relevant RMA planning instruments for the purposes of identifying whether granting marine consent to TTR would be inconsistent with the outcomes those instruments are seeking to achieve.

As addressed in section 8.3.6 of the IA this does not require the minutiae of each instrument to be examined. It is, after all, not the function of the FTA Panel to apply those instruments. Rather the examination is at a higher level, identifying the key features of the instruments, and the outcomes they are seeking to achieve.

As also noted in section 8.3.6 of the IA, inconsistency with any such outcomes is not a basis for declining approval under the FTA – it is merely a matter to be taken into account.

The following statutory documents under the RMA are considered to be MMRs under the EEZ Act, and have been considered in this assessment:

- > The New Zealand Coastal Policy Statement 2010;
- > The Regional Policy Statement for Taranaki 2010;
- > The Regional Coastal Plan for Taranaki 2023; and
- > The Horizons One Plan 2014.

No District Plans are addressed, on the basis that District Plans do not regulate the marine environment and are therefore not MMRs.

### **2. NEW ZEALAND COASTAL POLICY STATEMENT**

The New Zealand Coastal Policy Statement (“NZCPS”) is a national policy statement under the RMA that came into effect on 3 December 2010. The NZCPS assists in achieving the ‘sustainable management’ purpose of the RMA in relation to the coastal environment. The NZCPS is to be applied by persons exercising functions and powers under the RMA.

The New Zealand Coastal Policy Statement (**NZCPS**) covers all of New Zealand’s coastal environment above and below the line of mean high water springs. This includes all of the

coastal marine area (i.e. out to the limit of the territorial sea) and some terrestrial environment.<sup>1</sup>

The purpose of the NZCPS is to state objectives and policies in order to achieve the purpose of the RMA in relation to the coastal environment. It contains seven objectives and 29 policies. The policies support the objectives.

The objectives state a variety of outcomes, the most relevant in the present context being Objectives 1, 2, 3 and 6. There are corresponding policies that address the same subject matter as these objectives.

Broadly speaking, most of the objectives and policies of the NZCPS are expressed in language that is not strongly directive. For example they require specified subjects to be 'recognised', 'promoted' or 'taken into account'. Granting consent to TTR's Project cannot be inconsistent with objectives and policies that are expressed in such discretionary terms.

There are six policies in the NZCPS that are expressed in a more directive way. *King Salmon*<sup>2</sup> recognised two of those: policies 13 and 15. *Port Otago*<sup>3</sup> recognised two more: policies 11 and 16. In addition to those, Policies 23 and 25 both contain directive language.

## **2.1 POLICY 11 - INDIGENOUS BIOLOGICAL DIVERSITY**

Policy 11 concerns the protection of indigenous biological diversity in the coastal environment.

The relevant parts of Policy 11(a) require adverse effects on threatened or at risk taxa to be avoided, so as to protect indigenous biological diversity. The relevant parts of Policy 11(b) require avoidance of significant adverse effects on habitats important to indigenous biodiversity.

The potential impacts of the Project on indigenous biological diversity are limited to potential effects on threatened or at-risk marine mammals or seabirds (or the habitats important to them), or potential impacts on benthic ecosystems/habitat. These potential impacts are comprehensively addressed in section 5 of the IA, and the assessments there support the conclusion that the Project will not be inconsistent with Policy 11.

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<sup>1</sup> The full extent of the landward side of the coastal environment is not defined in the RMA, but it is unnecessary to address that further, as there is no identified potential for the Project to generate effects on the terrestrial natural environment.

<sup>2</sup> *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2104] NZSC 38.

<sup>3</sup> *Port Otago Ltd v Environmental Defence Society* [2021] NZCA 638.

TTR acknowledges that Policy 11 sets a high bar, requiring adverse effects on certain taxa to be avoided, even if those effects are not “significant”. However, the Court of Appeal in *Port Otago* emphasised that the nature of such enquiries is fact-specific. The Court was addressing Policy 13, but its guidance demonstrates that a fact-specific approach, consisting of detailed evaluation of both the activity and the affected environment, is required:<sup>4</sup>

“Whether an activity has an adverse effect, whether that effect can be avoided, and how it can be avoided will depend on the facts of a specific proposal and its context. Where factual context is relevant in determining policy compliance, provisions enabling an application for resource consent can be appropriate. Whether in fact an adverse effect, on natural character, occurs in an area of the coastal environment with outstanding natural character from a proposed port activity is a fact-specific enquiry and requires detailed evaluation of both activity and environment.”

The ‘avoidance’ standard must also be assessed against the opening words of the policy<sup>5</sup> — “To protect indigenous biological diversity”. The Project may give rise to adverse effects if those effects are consistent with the protection of indigenous biological diversity. This includes effects of the type characterised in *King Salmon* as “minor or transitory”.<sup>6</sup>

A detailed evaluation of the activity and the environment has been provided in sections 5 and 3 of the IA, and supports a conclusion that the only adverse effects on indigenous biological diversity that may result from the Project are sufficiently minor or transitory that granting consent would not be inconsistent with Policy 11.

## **2.2 POLICY 13 - NATURAL CHARACTER**

NZCPS Policy 13 concerns preservation of the natural character of the coastal environment. Where the coastal environment has outstanding natural character, Policy 13(1)(a) requires adverse effects on that character to be avoided; and in all other areas Policy 13(1)(b) requires significant adverse effects on natural character to be avoided. This relates back to the requirement in the opening words of the policy: “To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use and development.”

There are two relevant areas within the coastal environment identified as having outstanding natural character: “Project Reef” and “North and South Traps”.

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<sup>4</sup> Above n 3 at [85].

<sup>5</sup> *King Salmon* above n 2 at [145].

<sup>6</sup> Above n 2 at [145].

The 2017 DMC found that effects of the Project on primary production would be significant at Project Reef and there would be minor effects on macroalgae at The Traps.<sup>7</sup>

The Court of Appeal summarised these findings at paragraph 111(a) of its decision. It said it was not for the Court to determine whether these findings amounted to an inconsistency with Policy 13, but on the basis of these findings it held there is a “serious argument to that effect”.<sup>8</sup> The Supreme Court agreed.<sup>9</sup>

These matters have been re-evaluated for TTR. MacDiarmid (2023) concludes that impacts on primary production will be temporally limited, spatially limited and occurring in an environment where physical disturbance on much greater scales is a normal feature and well within the adaptive capacity of the primary producer community.<sup>10</sup>

This supports a conclusion that effects on primary production at Project Reef and macroalgae at the Traps are so minor or transitory when considered in context that there is no inconsistency with Policy 13(1)(a).

A broader assessment of potential effects on natural character — as required by Policy 13(1)(b) — is set out in the Seascape, Natural Character and Visual Effects Assessment by Boffa Miskell.<sup>11</sup> It relies on the technical and expert reports of other parties to assess effects on natural character by reference to all of the natural character attributes listed in Policy 13(2). The assessment concludes the only significant effects on natural character will be in the mining area itself, and specifically relates to the mine pits and mounds that will form at the end of each mining lane as a result of the extraction and deposition of seabed material.

On this basis, it is considered the Project will give rise to no significant adverse effects on natural character within the coastal marine area/coastal environment, and accordingly the grant of marine consents is consistent with preserving the natural character of the coastal environment in the manner required by Policy 13(1)(b).

## **2.3 POLICY 15 - NATURAL FEATURES AND LANDSCAPES**

Policy 15 requires the protection of natural features and natural landscapes from inappropriate subdivision, use and development. To achieve this, Policy 15(a) requires adverse effects on outstanding natural features and outstanding natural landscapes to be

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<sup>7</sup> 2017 Decision at [970].

<sup>8</sup> *Trans Tasman Resources Ltd v Taranaki Whānau Conservation Board* [2020] NZCA 86 at [203].

<sup>9</sup> *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127 at [185].

<sup>10</sup> MacDiarmid, A. (2023). Expert evidence of Dr Alison MacDiarmid on behalf of Trans Tasman Resources Limited, dated 19 May 2023 at [21]-[25].

<sup>11</sup> Report 31 Seascape, Natural Character and Visual Effects Assessment, December 2015.



avoided; and for all other natural features and natural landscapes Policy 15(b) requires significant adverse effects to be avoided.

The only outstanding natural feature that is relevant to consider is the North and South Traps.

Potential effects on this feature and on other natural features and landscapes are addressed in section 5.11.1 of the IA. The assessment supports a conclusion that the location of the Project will avoid any direct adverse effects on the Traps, and will avoid any significant adverse effects on other natural features and natural landscapes. The only potential impact on this area would be from suspended sediment plumes where those are above the naturally high background levels, and such impacts would by their nature be transitory.

It is therefore considered that granting marine consents for the Project would not be inconsistent with Policy 15.

#### **2.4 POLICY 16 - SURF BREAKS**

Policy 16 requires protection of a number of surf breaks of national significance. This Policy is not directly relevant as the none of the 10 surf breaks inshore of the Project are listed as nationally significant.

#### **2.5 POLICY 23 - DISCHARGES**

Policy 23(1)(d) requires discharges to water in the coastal environment to be managed so as to avoid significant adverse effects on ecosystems and habitats after reasonable mixing.

What is “reasonable” varies according to context. Further, what is reasonable may not be a single absolute value, but a range of equally reasonable values.

The sediment discharge effects of the Project are comprehensively addressed in section 5.3 of the IA (and other parts of section 5 addressing potential downstream impacts on marine biota).

Of particular relevance, the assessment is that there is a band of elevated sediment concentration near to the coast that is unrelated to the project (i.e. due to other natural or non-natural sediment disturbance in, or discharge to, the coastal environment) and 5-20km wide. While the Project will introduce additional suspended sediment to the waters of the coastal environment, that effect reduces rapidly with distance.

The modelling does not attempt to quantify how far the mining sediment travels before it can be said to be “reasonably mixed” with the background, but by 20km from the mining source

(which is approximately the same distance as the width of the territorial sea), the worst-case contribution of sediment from the mining is 2.8mg/L at the surface and 6-7mg/L at the seabed, compared with background levels of >200mg/L at the surface and >1,00mg/L at the seabed.

Further, the assessment is that the effects from the mining sediment on all biota will not result in material harm, which for the purposes of Policy 23(1)(d) means significant adverse effects will be avoided. Accordingly, it is considered that granting consent will not be inconsistent with Policy 23(1)(d).

## **2.6 POLICY 25 – COASTAL HAZARD RISK**

Policies 25(a) and (b) address coastal hazard risk, which are not relevant to TTRL's application. For the reasons outlined above, when considering all aspects of the project against key features of the NZCPS, it is considered that the project is not inconsistent with the NZCPS.

## **3. REGIONAL POLICY STATEMENT FOR TARANAKI**

The purpose of the Regional Policy Statement for Taranaki 2010 (**RPS**) is to promote the sustainable management of natural and physical resources in the Taranaki region by:

- > Providing an overview of the resource management issues of the region, and
- > Identifying policies and methods to achieve integrated management of the natural and physical resources of the region.

The RPS does not contain rules to regulate activities—rather, it sets the strategic direction for sustainable management at a regional level, and is required to be given effect when the regional or district councils prepare or change regional or district plans; and taken into account when consent authorities evaluate consent applications.

The RPS subject matter that is relevant for present purposes are the sections addressing:

- > Resource use and development;<sup>12</sup>
- > Coastal environment: natural character;<sup>13</sup>
- > Coastal environment: water quality;<sup>14</sup>

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<sup>12</sup> RPS Chapter 4.

<sup>13</sup> RPS Chapter 8.1.

<sup>14</sup> RPS Chapter 8.2.

- > Indigenous biodiversity;<sup>15</sup>
- > Natural features and landscapes;<sup>16</sup>
- > Minerals;<sup>17</sup> and
- > Issues of significance to iwi.<sup>18</sup>

A feature of this regime is that it sets relatively few requirements using directive language. Among the matters addressed in less directive terms, key relevant matters are:

- > The role of resource use and development and its contribution to enabling people and communities to provide for their economic, social and cultural wellbeing;<sup>19</sup>
- > Avoiding, remedying or mitigating, to the fullest practicable extent, adverse effects on coastal water quality arising from ship or offshore installation discharges;<sup>20</sup>
- > Avoiding, remedying or mitigating adverse effects on indigenous biodiversity as far as practicable;<sup>21</sup>
- > Promoting maintenance, enhancement or restoration of indigenous biodiversity in ecosystems, habitats and areas that have not been identified as having significant indigenous biodiversity values;<sup>22</sup>
- > Considering the social and economic benefits of appropriate use and development of resources<sup>23</sup> when giving effect to Indigenous biodiversity directives;<sup>24</sup>
- > Appropriately managing all natural areas, features or landscapes that are not outstanding;<sup>25</sup>
- > Enabling appropriate use and development of mineral resources in a way that avoids, remedies or mitigates adverse effects on the environment;<sup>26</sup>
- > Taking into account the principles of the Treaty of Waitangi;<sup>27</sup>

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<sup>15</sup> RPS Chapter 9.

<sup>16</sup> RPS Chapter 10.1.

<sup>17</sup> RPS Chapter 13.

<sup>18</sup> RPS Chapter 16.

<sup>19</sup> UDR Issue 1, UDR Objective 1, UDR Policy 1.

<sup>20</sup> CWQ Policy 2.

<sup>21</sup> BIO Policy 2.

<sup>22</sup> BIO Policy 5.

<sup>23</sup> BIO Policy 7.

<sup>24</sup> i.e. the directives in BIO Policy 5, and BIO Policy 3.

<sup>25</sup> NFL Policy 2.

<sup>26</sup> MIN Policy 1.

<sup>27</sup> TOW Policy 2

- > As far as practicable, protecting sites or features of historical or cultural significance to iwi and hapū from the adverse effects of activities;<sup>28</sup>
- > Providing for protection of areas or characteristics of the coastal environment which have special significance to iwi in a manner respectful of tikanga.<sup>29</sup>

The nature and effect of these provisions is to guide the management of natural resources in a balanced way, i.e. both enabling use and development and managing environmental effects. Given this balanced nature and effect, no inconsistency could arise from the grant of marine consents for the Project. Also, most of the matters addressed in these provisions of the RPS overlap with matters that the FTA Panel is directly required to consider under the EEZ Act, which also reduces any potential inconsistency between the schemes at the general “nature and effect” level.

There are five more directive policies in the RPS that are addressed in further detail below.

### **3.1 CNC POLICY 1 - PROTECTION OF NATURAL CHARACTER**

CNC Policy 1 requires the natural character of the coastal environment to be protected from inappropriate use and occupation.

Despite the protection directive, the RPS also sets out (in CNC Policy 2) 14 criteria to be considered in order to achieve this outcome, and the criteria require a broad approach that balances competing factors. Attention is to be paid to the degree and significance of the effects,<sup>30</sup> and they may be remedied or mitigated as well as avoided.<sup>31</sup> The criteria also allow for the possibility that there may be significant adverse effects<sup>32</sup> or that some effects may be unavoidable.<sup>33</sup>

It is considered that CNC Policy 1, applied in the manner required by CNC Policy 2, sets materially the same requirement as NZCPS Policy 13(1)(b). For the reasons identified above in relation to NZCPS Policy 13(1)(b), it is considered the grant of marine consents for TTR’s Project will not be inconsistent with CNC Policy 1.

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<sup>28</sup> REL Policy 3.

<sup>29</sup> REL Policy 8.

<sup>30</sup> Paragraph (a).

<sup>31</sup> Paragraphs (a) and (c).

<sup>32</sup> Paragraph (e).

<sup>33</sup> Paragraph (m).

### **3.2 CNC POLICY 4 – PRIORITISING PROTECTION OF IMPORTANT NATURAL CHARACTER AREAS**

CNC Policy 4 requires priority to be given to protecting the natural character, ecological and amenity values of identified areas.

The only relevant areas presently identified as important for natural character are Project Reef and The Traps. The relevant potential effects on those areas are addressed above in relation to NZCPS Policy 13(1)(a), and for the reasons given there it is considered that the grant of consent and marine discharge consent will not be inconsistent with CNC Policy 4.

### **3.3 BIO POLICY 3 – SIGNIFICANT INDIGENOUS BIODIVERSITY**

BIO Policy 3 requires priority to be given to protecting, enhancing or restoring marine ecosystems, habitats and areas that have significant indigenous biodiversity values. This corresponds to the requirements in BIO Policy 4 that direct the matters to be considered when identifying ecosystems, habitats and areas with significant indigenous biodiversity.

As addressed in sections 3 and 5 of the IA, no part of the area that may be affected by the Project has been identified as having significant indigenous biodiversity values. On that basis, BIO Policy 3 does not set any environmental bottom line with which the Project could be inconsistent.

### **3.4 NFL POLICY 1 – NATURAL FEATURES AND LANDSCAPES**

NFL Policy 1 requires outstanding natural features and landscapes to be protected from inappropriate use and development. How the policy is to be applied is explicitly addressed in NFL Policy 3, which sets out the criteria for assessing “appropriateness”. Relevantly, this includes:

- > The degree and significance of the effects;
- > The benefits to be derived from the use at a local, regional and national level;
- > The need for the use to occur in a particular location; and
- > The capacity of the feature or landscape to accommodate change, without compromising the feature or landscape values.

Most of these factors are addressed above in relation to NZCPS Policy 15(a). In addition, TTR relies on the assessment of benefits set out in section 5 of the IA, which demonstrates the Project will have significant regional and national benefits. For these reasons, it is considered that granting marine consent and marine discharge consent will not be inconsistent with NFL Policy 1.

### **3.5 HIS POLICY 2 – HISTORIC HERITAGE**

HIS Policy 2 is not considered relevant to the Project as there are no identified historic heritage values within the potentially affected area.

## **4. REGIONAL COASTAL PLAN FOR TARANAKI**

The Regional Coastal Plan for Taranaki (“**RCP**”) became operative on 4 September 2023. The Plan’s purpose is to assist the Taranaki Regional Council to carry out its functions under the RMA to promote the sustainable management of the coastal environment, including the coastal marine area, in the Taranaki region. The RCP applies to the CMA adjoining the Taranaki Region extending from mean high water springs out to the 12 nautical mile limit.

At a high-level, the RCP identifies:

- > Coastal management matters for the Region;
- > Objectives – which identify the resource management outcomes / goals for the CMA and coastal environment;
- > Policies – which set out the course of action to be followed to achieve or implement the plan’s objectives; and
- > Methods – being the regulatory (rules) or non-regulatory (other methods) ways in which the policies are implemented.

The RCP divides the CMA into five coastal management areas being: Outstanding value; Estuaries Unmodified; Estuaries Modified; Port and Open Coast.

In broad terms, the grant of marine consents to the Project would not be inconsistent with the nature and effect of the RCP’s objectives to guide and regulate the sustainable management of the coastal environment and CMA.

There are six policies in the RCP that are directive in nature, addressed below.

### **4.1 POLICY 9**

Policy 9 requires protection of visual quality and the physical, ecological and cultural integrity of coastal areas of outstanding value identified in Schedules 1 and 2 of the RCP by avoiding adverse effects of activities on the outstanding values and characteristics including those identified in Schedules 1 and 2. The only areas identified in Schedules 1 and 2 that are of potential relevance are North and South Traps and Project Reef, and for the reasons addressed above in relation to the NZCPS (and the further detail set out in section 5 of the

IA) it is considered any potential impact on those areas will not be inconsistent with Policy 9.

#### **4.2 POLICY 15**

Policy 15(a) requires the protection of significant indigenous biodiversity in the coastal environment by avoiding adverse effects on a range of areas, indigenous taxa, habitats and ecosystems inclusive of those identified in Schedule 4A and those which are rare, nationally significant or protected under other legislation.

The only adverse effects on indigenous biological diversity that may result from the Project are sufficiently minor or transitory that granting consent would not be inconsistent with the bottom line in this policy, for the same reasons as discussed above in relation to NZCPS Policy 11.

#### **4.3 POLICY 18**

Clause (a) of this policy requires protection of historic heritage in the coastal environment through the avoidance of adverse effects on values associated with Category A archaeological sites of significance and historic areas identified in Schedule 6A of the RCP.

The Project would not result in any direct adverse effects on any sites identified within Schedule 6A. Any indirect effects would be limited to effects of the sediment plume which by its nature would be transitory and therefore consistent with the Policy.

#### **4.4 POLICY 22**

Policy 22 applies to surf breaks and Significant Surfing Areas. Clause (a) requires adverse effects to be avoided on nationally significant breaks and designated Significant Surfing Areas as identified in Schedule 8 of the RCP.

This Policy is not directly relevant as the none of the 10 surf breaks inshore of the Project are listed as nationally significant and – as addressed in section 5.4 of the IA any effects within the CMA are less than minor at the coastline.

#### **4.5 POLICIES 26 & 28**

The RCP contains policies which direct that discharges of untreated sewage (Policy 26) and new wastewater discharges (Policy 28) to coastal waters are not allowed.

These policies are not relevant to the Project as it does not involve the discharge of sewage or wastewater to coastal waters.

## 5. HORIZONS ONE PLAN

The Horizons Regional Council One Plan (**One Plan**) is a combined regional policy statement, regional coastal plan and regional plans for the Manawatu-Whanganui Region. Its only relevance is as a regional policy statement and regional coastal plan, as those are the only aspects of the One Plan that apply to the CMA, and there is no identified possibility of any impact of the Project on the terrestrial environment of the Manawatu-Whanganui Region.

The boundary between the Taranaki Region and Manawatu-Whanganui Region is about 3km east of Waiinu Beach, which puts it almost 50km from the closest point of the Project site, even within the CMA.

The regulatory approach in the One Plan has been guided by the low level of demand for activities in the CMA (relative to demand for terrestrial activities). Its key objective in managing the CMA is to ensure that the natural character and ecosystem processes are maintained while still allowing activities and development.<sup>34</sup>

The area of the CMA that could potentially receive mining sediment is part of the One Plan's General Activity Management Area. The purpose of that area is to ensure that adverse effects are avoided as far as reasonably practicable, and otherwise remedied or mitigated.<sup>35</sup>

The One Plan provides for use and development in the CMA that:<sup>36</sup>

- > has a functional necessity to locate in the CMA,
- > facilitates restoration or rehabilitation of natural features where reasonably practicable, and
- > avoids as far as reasonably practicable any adverse effects on important value, and otherwise remedies or mitigates effects.

Consistent with this, occupation of the CMA, disturbance of the seabed and discharges to coastal water are all provided for as discretionary activities under the One Plan.

Given these key features, it is considered the grant of marine consents for the Project cannot be inconsistent with the general nature and effect of the One Plan.

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<sup>34</sup> One Plan at 8.1.3.

<sup>35</sup> One Plan, Policy 8-3.

<sup>36</sup> Policy 8-4.



The only relevant provision in the One Plan that is more directive is Policy 8-6 which requires water to be managed in a way which will ensure:

- > Ongoing compliance, where water quality targets are met; and
- > Enhancement where water quality targets are not yet met.

The optical modelling undertaken for TTR confirms that on occasions there may be a greater than 20% reduction in visual clarity at the One Plan boundary, which exceeds the relevant water quality targets. However, the 'anticipated environmental result' in relation to this policy is that water quality in the open sea will be generally suitable for specified values, and the 'indicator' for this result focuses on safe swimming, safe food gathering and aquatic ecosystem health. For the reasons traversed in section 5 of the IA it is considered the mining sediment from the Project will not adversely affect safe swimming or recreational activities, food gathering or marine ecology within the CMA waters under the One Plan jurisdiction, and therefore the Project is not inconsistent with Policy 8-6.