

**Appendix I – Ineligibility Activity Criteria Assessment**



# FTAA - Ineligibility Assessment

| Section 5 - Meaning of ineligible activity                                |                                                                                                                                                                                                                                                                                                       |                                                                                                                                             |
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| Section 5(1) In this Act, ineligible activity means any of the following: |                                                                                                                                                                                                                                                                                                       |                                                                                                                                             |
| 5(1)(a)                                                                   | (a) an activity that—<br>(i) would occur on identified Māori land; and<br>(ii) has not been agreed to in writing by the owners of the land or been subject to a determination under section 23:                                                                                                       | The site is not identified as Māori land.                                                                                                   |
| 5(1)(b)                                                                   | (b) an activity that—<br>(i) would occur in a customary marine title area; and<br>(ii) has not been agreed to in writing by the customary marine title group:                                                                                                                                         | It is not applicable. The site is not located within or near a customary marine title area. Furthermore, the site is adjacent to the coast. |
| 5(1)(c)                                                                   | (c) an activity that—<br>(i) would occur in a protected customary rights area; and<br>(ii) would have a more than minor adverse effect on the exercise of the protected customary right; and<br>(iii) has not been agreed to in writing by the protected customary rights group:                      | Not applicable, for similar reasons noted above.                                                                                            |
| 5(1)(d)                                                                   | an activity that would occur on either of the following classes of land:<br>(i) Māori customary land;<br>(ii) land set apart as a Māori reservation as defined in section 4 of Te Ture Whenua Maori Act 1993:                                                                                         | Neither site is not subject to Māori customary land or set apart as a Māori reserve.                                                        |
| 5(1)(e)                                                                   | an aquaculture activity or an activity that is incompatible with aquaculture activities—                                                                                                                                                                                                              | Not applicable                                                                                                                              |
| 5(1)(f)                                                                   | (i) that would require an access arrangement under section 61 or 61B of the Crown Minerals Act 1991; and<br>(ii) that—<br>(A) could not be granted an access arrangement because of section 61(1A) of that Act; or<br>(B) would occur in an area for which a permit cannot be granted under that Act: | Not applicable                                                                                                                              |
| 5(1)(g)                                                                   | an activity that would be prevented under section 165J, 165M, 165Q, 165ZC, or 165ZDB of the Resource Management Act 1991:                                                                                                                                                                             | These sections of the RMA relate to coastal permits which is not applicable.                                                                |
| 5(1)(h)                                                                   | an activity (other than an activity that would require an access arrangement under the Crown Minerals Act 1991) that—<br>(i) would occur on land that is listed in Schedule 4; and                                                                                                                    | Not applicable                                                                                                                              |

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|                                                                                                                                                                                                                                                                                                          | (ii) has not been subject to a determination under section 24:                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                 |
| 5(1)(i)                                                                                                                                                                                                                                                                                                  | an activity that—<br>(i) would occur on a national reserve held under the Reserves Act 1977; and<br>(ii) requires approval under that Act; and<br>(iii) has not been subject to a determination under section 24:                                                                                                                                                                                                                                   | Not applicable – no national reserves present or affected.                                                                                                                                                                                                                                                                                                      |
| 5(1)(j)                                                                                                                                                                                                                                                                                                  | an activity that—<br>(i) would occur on a reserve held under the Reserves Act 1977 that is vested in someone other than the Crown or a local authority; and<br>(ii) has not been agreed to in writing by the person or persons in whom the reserve is vested:                                                                                                                                                                                       | Not applicable                                                                                                                                                                                                                                                                                                                                                  |
| 5(1)(k)                                                                                                                                                                                                                                                                                                  | an activity that—<br>(i) would occur on a reserve held under the Reserves Act 1977 that is managed by someone other than the Department of Conservation or a local authority; and<br>(ii) has not been agreed to in writing by the person or persons responsible for managing it:                                                                                                                                                                   | Not applicable                                                                                                                                                                                                                                                                                                                                                  |
| 5(1)(l)                                                                                                                                                                                                                                                                                                  | an activity that is—<br>(i) a prohibited activity under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 or regulations made under that Act; or<br>(ii) an activity that is described in section 15B of the Resource Management Act 1991 and is a prohibited activity under that Act or regulations made under it; or<br>(iii) an activity that is prohibited by section 15C of the Resource Management Act 1991: | The project/site is not located within the Exclusive Economic Zone. The project is not a prohibited activity under s15B or s15C as these sections relate to the discharge of harmful substances from ships or offshore installation in the coastal marine area, or the discharge of radioactive waste or other radioactive matter into the coastal marine area. |
| 5(1)(m)                                                                                                                                                                                                                                                                                                  | a decommissioning-related activity (which is an activity described in section 38(3) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012):                                                                                                                                                                                                                                                                         | Not applicable                                                                                                                                                                                                                                                                                                                                                  |
| 5(1)(n)                                                                                                                                                                                                                                                                                                  | an activity undertaken for the purposes of an offshore renewable energy project.                                                                                                                                                                                                                                                                                                                                                                    | Not applicable                                                                                                                                                                                                                                                                                                                                                  |
| 5(2) The agreement referred to in subsection (1)(a), (b), (j), or (k) is not required for an activity that is prospecting, exploration, mining, or mining operations of Crown-owned minerals undertaken below the surface of any land or area referred to in that subsection (the land) if the activity— |                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                 |
| 5(2)(a)                                                                                                                                                                                                                                                                                                  | will not or is not likely to cause any damage to the surface of the land or any loss or damage to the owner or occupier of the land; and                                                                                                                                                                                                                                                                                                            | Not applicable                                                                                                                                                                                                                                                                                                                                                  |

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| 5(2)(b)                                                                                                                                                                                                                                                                                                              | will not or is not likely to have any prejudicial effect in respect of the use and enjoyment of the land by the owner or occupier of the land; and | Not applicable |
| 5(2)(c)                                                                                                                                                                                                                                                                                                              | will not or is not likely to have any prejudicial effect in respect of any possible future use of the surface of the land.                         | Not applicable |
| 5(3) A person whose agreement is required under subsection (1)(j) or (k)—                                                                                                                                                                                                                                            |                                                                                                                                                    |                |
| 5(3)(a)                                                                                                                                                                                                                                                                                                              | must not unreasonably withhold their agreement; and                                                                                                | Not applicable |
| 5(3)(b)                                                                                                                                                                                                                                                                                                              | in deciding whether to give their agreement, must take into account the purpose of this Act and any relevant matters under the Reserves Act 1977.  | Not applicable |
| 5(4) For the purposes of subsection (3)(b), if a provision of the Reserves Act 1977 would require the person to withhold their agreement, the person must take into account that the provision would normally require them to withhold their agreement, but must not treat the provision as requiring them to do so. |                                                                                                                                                    |                |
| 5(5)                                                                                                                                                                                                                                                                                                                 | The agreement referred to in subsection (1)(k) is not required if—                                                                                 | Not applicable |
| 5(5)(a)                                                                                                                                                                                                                                                                                                              | the reserve on which the activity is to occur is proposed to be the subject of a land exchange; and                                                | Not applicable |
| 5(5)(b)                                                                                                                                                                                                                                                                                                              | the reserve is a Crown-owned reserve; and                                                                                                          | Not applicable |
| 5(5)(c)                                                                                                                                                                                                                                                                                                              | the person or persons responsible for managing the reserve are not in place because of a Treaty settlement.                                        | Not applicable |
| 5(6) In subsection (2), exploration, mining, mining operations, and prospecting have the meanings given to those terms in section 2(1) of the Crown Minerals Act 1991.                                                                                                                                               |                                                                                                                                                    |                |